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## Appeal Decision

Hearing held on 31 January 2017

Site visit made on 31 January 2017

**by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 24<sup>th</sup> February 2017**

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**Appeal Ref: APP/L1765/W/16/3157388**

**Fry's Farm, Ingoldfield Lane, Soberton, Hampshire SO32 3QA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Simon Slater against the decision of Winchester City Council.
  - The application Ref 15/02610/FUL, dated 16 November 2015, was refused by notice dated 2 March 2016.
  - The application sought planning permission for a four bedroom detached dwelling without complying with a condition attached to planning permission Ref 0000735FUL, dated 28 June 2000.
  - The condition in dispute is No. 3 which states that: The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry or equestrian enterprise or a widow or widower of such a person, and to any resident dependents.
  - The reason given for the condition is: The site is in an area where new dwellings are not normally permitted except where there is an overriding need in the interests of agriculture or forestry.
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### Decision

1. The appeal is allowed and planning permission is granted for a four bedroom detached dwelling at Fry's Farm, Ingoldfield Lane, Soberton, Hampshire SO32 3QA, in accordance with the application Ref 15/02610/FUL, dated 16 November 2015, without complying with condition number 3 previously imposed on planning permission Ref 0000735FUL, dated 28 June 2000. The issue of the other conditions imposed therein is considered later in this decision.

### Procedural Matter

2. The description of development given on the application form sets out the originally approved development comprising the erection of a detached four bedroom dwelling. The Council's description on the decision notice is "Removal of condition 3 to permitted permission 00/00735/FUL 'Detached four bedroom dwelling' (Resubmission)". I have considered this appeal on the basis of the removal of condition 3 to planning permission Ref 00/00735/FUL for the erection of a detached four bedroom dwelling.
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## **Background**

3. The dwelling to which this appeal relates was granted planning permission in 2000 subject to a condition which limited occupancy to someone solely or mainly employed or last employed in the locality in agriculture or in forestry or in an equestrian enterprise. The appellant began trying to sell Fry's Farm in August 2007 and the farm has been widely marketed throughout this period.
4. In response, the Council states that the marketing of Fry's Farm has not been carried out at a realistic price for a sufficient period of time and that relevant targeted marketing has not occurred.

## **Main Issue**

5. Taking this into account, and also the original reason for the condition, the main issue in this appeal is whether or not there is a continuing need for the occupation of Fry's Farm to be restricted, having particular regard to the need for agricultural, forestry or equestrian worker's dwellings in the area.

## **Policy Context**

6. The appeal relates to a fairly large detached house in the open countryside, outside any recognised settlement and therefore on a site where in accordance with Policy MTRA4 of the Winchester District Local Plan Part 1 – Joint Core Strategy (2013) (the 'JCS'), permission for development, including residential development, would only be granted in exceptional circumstances. This is line with the National Planning Policy Framework (the 'Framework'), which states that isolated homes in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work.
7. Saved Policy CE.21 of the Winchester District Local Plan (2006) (the 'LP') sets out the Council's detailed approach to agricultural or forestry workers' occupancy conditions. It states that, when owners or occupiers of restricted dwellings seek to have such conditions removed, their removal will be carefully assessed in order to establish whether there is a continuing need for the dwelling not only on the holding but also in the locality.
8. To this end, there is a requirement to demonstrate that the dwelling is no longer required for workers on the holding or in the surrounding area, nor it is likely to be required in the foreseeable future. The policy advises on how this exercise should be carried out, including details of current and planned investment, a financial forecast and the continuing need for such accommodation. I find this policy to be not inconsistent or in conflict with the wider objectives of the Framework set out above and I give it full weight.

## **Reasons**

9. The appeal property was built in 2001 to serve the operational needs of an equestrian enterprise that formed a unit of some 4.5 hectares. The land lies outside the loose-knit village of Soberton in open countryside and contains in addition to the dwelling, a timber framed barn, brick former cow shed incorporating some loose boxes, a range of timber loose boxes with feed store, 12 concrete block pig pens and a hay/fodder store. There are a number of pasture paddocks and an area of woodland. Vacant or disused metal pig stys occupy part of the woodland.

10. The appellant's central argument is that since the purchase of the dwelling, land and buildings in 2008, he has not been able to operate a viable agricultural or equestrian/equine related business on site. A livery business was carried out at the appeal premises until around 2011 with a maximum of 8 horses and one family pet horse being accommodated for part of that time. However the appellant was forced to cease equine activities in 2011 due to a number of factors, but most importantly, the land becoming saturated and consequently becoming less attractive to users. At the time of my site visit, the agricultural activities were confined to the keeping of pigs, some sheep and poultry.
11. There appears to be general acceptance that the land associated with the dwelling does suffer from surface water discharging onto heavy clay soils which, according to the appellant, is compounded by the presence of underground springs, particularly in the woodland area. As a result, the appellant believes that the land is incapable of accommodating livestock of any weight. At the site visit, I was able to observe areas that appeared to have been heavily poached. The appellant believes that this was the fundamental reason for the demise of the equine business. A minimum investment of £100,000 would be necessary to provide field drainage. However, the appellant has been unable to secure a guarantee that these measures would be successful and from the limited works that have already been undertaken to date, there has been little meaningful improvement to the land drainage.
12. Although I accept the Council's argument that an occupancy condition of this type does not require to be underpinned by a viable business, the attractiveness of such a property to many prospective purchasers can be influenced by factors relating to the potential of the land and associated enterprise to achieve future commercial success. According to the appellant's financial accounts, the enterprise has been operating at a significant loss throughout his tenure despite efforts to diversify into mainstream farming. The accounts over a seven year period show considerable losses with no income taken from the business and culminating in net losses averaging some £27,000 over the last two years. The appellant has had to continue working in his joinery business to subsidise mortgage repayments, with Mrs Slater rearing the reduced levels of stock on a part-time basis.
13. The dwelling and associated land has been on the market over a continuous period of six years with five different agents. At the Hearing, both parties confirmed that despite some misgivings, the process of marketing has been broadly acceptable. Fry's Farm has been extensively marketed in both the local and national press, including specialist equine and equestrian publications and online.
14. Fry's Farm was first advertised for sale on an unrestricted basis of £1.2m but with a predicated sale price of mid £900,000 with the agricultural occupancy restriction. This valuation has been consistently applied by all five estate agents. This is against a background of the appellant having purchased the farm in 2007 at £810,000 and investing a further £190,000 during the period of his ownership. There have been a number of viewings but only one genuine offer received of £695,000 although this was subject to the prospective purchaser selling her own property and it was debatable whether she would have complied with the agricultural occupancy condition in any event. A higher offer was made but it became clear that the intended purchaser wanted to use

the property for the storage of classic cars and had no connection with agriculture, forestry of equestrian activities.

15. The Council's retained consultant suggests that whilst there is no fixed guidance on how to assess a reasonable market price which reflects the existence of an occupancy restriction, it is generally recognised that the price should be at a considerable discount from the unencumbered valuation. He advised that traditionally, mainstream agricultural dwellings have been marketed at prices generally two-thirds of their open market value. The appellant however maintains that the consistent valuations from five different agents reflect the fact that this property provides a wider opportunity for workers in the equine/equestrian sector as well as in agriculture or forestry.
16. I am not convinced by the Council's arguments that the single offer price that has been made should be viewed as either an appropriate or an "equilibrium" price, particularly where this was made by someone unconnected with agriculture or forestry and who did not wish to establish an equestrian business as such. In any event, this price is substantially less than the appellant would be prepared to accept, particularly given the level of investment that he has made at the farm. Notwithstanding, from the evidence, I am satisfied that the property has been marketed at a realistic price and that there has been no genuine interest from prospective purchasers with the ability to comply with the condition.
17. The Council draws attention to nineteen applications for farm worker's dwellings having been considered by the Council and the adjoining South Downs National Park Authority between 2010 and 2016, nine of which were within a five mile radius of the appeal site. Of the nineteen, fifteen were permitted with four of those located within the five mile radius. The Council argues that this is a good indicator of a continuation of local demand. No further evidence was provided with regard to the specific details of these applications. In addition, I have neither seen nor heard anything to suggest that the appeal dwelling would have been suitable to serve another enterprise (and the marketing evidence suggests not).
18. Other arguments advanced are that removal of the condition would facilitate obtaining a domestic rather than the present business mortgage. I appreciate the advantages but I do not find that these matters add to the planning considerations I have referred to above.
19. When taking all relevant matters into account, I am not persuaded that the preceding seven year period of marketing at around the mid £900,000 mark was unrealistic or that it should be reduced significantly given the range of occupations within the scope of the condition. I am satisfied that the farm has not raised any genuine interest. In my view there is little likelihood of this relatively large house being within the range of most rural enterprise workers included those identified within the condition. Even though the rental market has not been tested, I consider that any discounted rental valuation would still be out of reach of the overwhelming majority of tenants who might satisfy the occupancy condition. As a consequence, this further substantiates that there is little or no demand for Fry's Farm as a form of accommodation for the particular range of rural enterprise workers in the area.
20. I therefore conclude that there is no longer a continuing need for the occupation of Fry's Farm to be restricted. Thus the removal of condition 3

would not prejudice the need for agricultural, forestry or equestrian worker's dwellings in the area. As a result, there is no conflict with JCS Policy MTRA4 or with Saved LP Policy CE.21. These policies are consistent with paragraph 55 of the Framework that seeks to prevent isolated development in the countryside.

#### Conditions

21. I have considered the conditions relating to planning permission Reference 0000735FUL in the light of advice contained in the Government's Planning Practice Guidance (PPG). The guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have been discharged. The Council accepts that conditions 1 (time period for commencement), 2 (details of external materials) and 4 (landscaping requirement) have either been discharged or, in the case of the landscaping condition, is no longer relevant. However it believes that condition 5 relating to the withdrawal of permitted development rights at the property in respect of future small scale extensions and other alterations continues to serve a useful planning purpose. At the Hearing, the appellant confirmed that the inclusion of this condition would be acceptable. However, given the relatively inconspicuous location of the property, I do not believe that a condition withdrawing permitted development rights would serve any useful purpose in this instance as the property is well screened from the public highway and cannot readily be viewed from any public vantage point. I have therefore not re-applied this condition to the new permission.

#### Conclusion

22. For the reasons given above, I conclude that the appeal should succeed. I will vary the planning permission Reference 0000735FUL by removing condition 3. I will not be imposing any further conditions. This also means that there are now no restrictions on the occupation of Fry's Farm.

*Gareth W Thomas*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Simon Slater

Mrs Kym Slater

### FOR THE LOCAL PLANNING AUTHORITY:

Mrs Katie Nethersole                      Senior Planning Officer for the Council

Miss Julia Allen                              Bruton Knowles

Richard Brogden                             Bruton Knowles

## **DOCUMENTS SUBMITTED AT THE HEARING**

Attendance list