

Appeal Decision

Site visit made on 14 March 2017

by L Gibbons BA (Hons) MRTPI

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

Decision date: 12 April 2017

Appeal Ref: APP/D3640/W/16/3165312

Hawk Farm, Church Lane, Bisley, Woking GU24 9EA

- 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 S Howard against the decision of Surrey Heath Borough Council.
 - The application Ref 14/1000, dated 6 November 2014, was refused by notice dated 23 November 2016.
 - The application sought planning permission for an outline application to erect nursery Manager's dwelling and garage without complying with a condition attached to planning permission Ref BGR/8745, dated 19 November 1979.
 - The condition in dispute is No 3 which states that: *The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 or in forestry (including any dependents of such persons residing with him) or a widow of such a person.*
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Decision

1. The appeal is allowed and planning permission is granted for an outline application to erect nursery Manager's dwelling and garage at Hawk Farm, Church Lane, Bisley, Woking GU24 9EA in accordance with the application Ref 14/1000, dated 6 November 2014 without compliance with condition No 3 previously imposed on planning permission Ref BGR/8745, dated 19 November 1979 but subject to the following conditions:
 - 1) The residential curtilage is as shown outlined in red on drawing 574-P-16-4B and there shall be no enlargement to this curtilage. The existing picket fence, or an equivalent replacement, delineating the northern rear boundary of this residential curtilage shall be retained in perpetuity unless otherwise agreed in writing by the Local Planning Authority.
 - 2) There shall be no variation from the following approved plan 574-P-16-4B.
 - 3) Notwithstanding the provision of Classes A, B and E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order) no extensions, roof enlargements or outbuildings shall be permitted without the prior consent in writing of the Local Planning Authority.
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Procedural Matters

2. Outline planning permission for a nursery manager's dwelling and garage was granted in 1979. I have not been provided with a reason for condition 3 and the information provided relating to the original planning permission is not legible. The appellant argues that condition 3 is no longer necessary on the basis there is no agricultural need and no demand from agricultural workers or retired farmers, and is seeking its removal. The Council does not refer to any development plan policy relating to agricultural occupancy dwellings. However, valuation, marketing, and the size and nature of the constructed dwelling are referred to as reasons to retain the condition.
3. The appeal site is located within the Metropolitan Green Belt. The Council refers to the very special circumstances allowing the dwelling within the Green Belt in the first instance. However, it does not refer to the proposal as being inappropriate development in the Green Belt. A change in occupancy would not result in a material change of use or an act of development. Therefore, the question of whether the appeal proposal would represent inappropriate development in the Green Belt is not relevant to this case.
4. Construction works commenced in the late 1970s although this was not finished until 2013. The Council issued a certificate of lawful development in 2011 confirming that the development had been implemented. I have dealt with the appeal on this basis.

Main issue

5. The main issue is whether condition 3 is reasonable and necessary in respect of the occupation of Hawk Farm to be restricted to persons mainly employed, or last employed in the locality in agriculture or forestry.

Reasons

6. Paragraph 206 of the National Planning Policy Framework (the Framework) indicates that planning condition should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance advises that conditions limiting benefits to certain people may be justified on the demonstration of exceptional need.
7. Paragraph 55 of the Framework indicates that local planning authorities should avoid isolated new homes in the countryside unless there are special circumstances. This includes the essential need for a rural worker to live permanently at or near their place of work in the countryside. The appeal site is located just outside of the defined settlement boundary of Bisley. The north side of Church Lane consists of sporadic development with houses within fairly large plots, and there are houses very close to the appeal site. Given the location of the property close to a built up area, I consider the site is not isolated in this respect.
8. The land on which the appeal site is located was associated with a horticultural nursery and the dwelling was originally justified in relation to the viability of the nursery. Since that time the nursery has reduced in size as parcels of land have been sold off including the appeal site. Although there is some paddock land associated with the site the Council does not argue that there is any agricultural business with land relating to the appeal site. To my mind it is

clear that there is no direct functional relationship between the nursery and the dwelling or any other agricultural use.

9. In respect of a wider need for the dwelling, in 2011 the Council's agricultural advisors indicated that there were a number of nurseries in the area which had ceased trading. The conclusion was that there was no justification for a dwelling subject to an agricultural occupancy condition. I note the Council's current agricultural advisors do not agree with this. However, the Council does not dispute that horticultural uses are no longer prevalent in the area. I accept that the Council considers that this does not necessarily demonstrate there is no need for an agricultural workers dwelling. That said I have not been provided with any information relating to an identified need for agricultural workers dwellings in the locality.
10. A brief period of marketing took place in 2014 with a full market value of £1.7 million. In 2016 marketing took place between 25% and 30% of the previous market value with additional land included in the sale following discussions with the Council. This price was further reduced to £1.3 million and there was no other interest from suitable occupiers. The Council argues it would expect that the property is marketed at a level which reflects the restriction on the property. Longstanding practice is referred to suggesting a range of 25% and 40% below the market value. However, I cannot be certain that this range remains appropriate as no information was provided to support this.
11. In any event, the Council consider that the costs of the house should be approximately £670,000 to £840,000 and that this would be reasonable based on the properties recently sold in the immediate area. Nevertheless, the majority of these properties appear to be smaller than the dwelling or with different site characteristics. Therefore, they do not appear to be direct comparisons. I note that one of the properties has been marketed for a price similar to the top of the range referred to by the Council.
12. The large size of the dwelling and how this has come about is raised as a concern to the Council and local residents. However, the Council also consider the dwelling to be lawful. Its present size is therefore fully relevant to the market value. The closest property in terms of size to Hawk Farm has recently been advertised for sale at £1.4 million. Based on size and other relevant values I consider the most recent market value as estimated by the appellant to be a valid one. However, even if the Council's assessment of the value was realistic the cost of the property would still be so significant that it would not contribute to the stock of dwellings for suitable occupants.
13. The Council submits that the property should be marketed in manner to attract a potential suitable occupant and for a one year period. The Council consider that marketing through one agent would not be sufficient. However, there is no evidence to suggest that this would have resulted in more interest. From the information provided by the appellant I am also satisfied that interested parties have been made aware of the agricultural occupancy condition. The lack of a sale board outside the property is not an uncommon occurrence and to my mind does not have any significant bearing on whether the property would be attractive to a suitable occupier.
14. A marketing period of 3 months was originally agreed with the Council with an agreed extension to 6 months. I note that the Council's current agricultural consultants refer to the property having been extensively marketed. Given the

absence of any formal guidelines for marketing timescales I am satisfied that the property has been marketed for a reasonable period of time. The house was marketed on the UK Land and Farms website and whilst this was for a short time only it did not result in any inquiries from those would meet the occupancy condition. Given the factors in relation to size and value the approach to marketing is reasonable, and the lack of advertising at other potential sources does not weigh against the proposal.

15. The circumstances relating to the dwelling have changed considerably since the original planning permission. The land associated with the appeal site no longer relates to the nursery. I have considered whether the house could be suitable for a retired agricultural worker. However, it is also very unlikely to be attractive to prospective buyers due to the price and size. There is no evidence that a subsequent tie to an equestrian use or to the additional paddock land would be applicable or justifiable in this case.
16. In my view the size and value of the property is such that it would be unlikely to attract an agricultural worker, and to retain the occupancy condition is not justifiable. I conclude that the disputed condition is unnecessary and unreasonable given the specific circumstances of the dwelling.

Other matters

17. The Council does not raise any concerns in respect of the materials used or the design of the house. The materials are slightly different from the properties in immediate surroundings. However, this does not have a negative impact on the character and appearance of the area. Local residents raise concerns about the increase in house building locally. However, the dwelling already makes a contribution to the housing supply.

Conclusion and conditions

18. The Council indicate that there is no evidence to suggest that the original conditions have not been complied with and have suggested a number of new conditions. I have considered these in the light of the tests set out in paragraph 206 of the Framework and the Guidance. Where necessary, I have amended the suggested conditions in order to comply with the tests. I have imposed a condition specifying the relevant drawing as this provides certainty. In order to ensure that there would be no harm to the Green Belt, I have attached a condition in respect of the residential curtilage and that the northern boundary shall be retained. In the interests of the openness of the Green Belt and to protect the character and appearance of the area it is necessary to attach a condition which removes the permitted development rights in respect of extensions, roof enlargements and outbuildings.
19. For the reasons given above, I conclude that the appeal should succeed and that planning permission should be varied as set out in the formal decision.

L Gibbons

INSPECTOR