
Appeal Decision

Site visit made on 6 August 2019

by J Wilson BA Hons BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 13th September 2019

Appeal Ref: APP/B9506/W/19/3223195

Paddock View, Bashley Road, Bashley, New Milton, Hampshire BA25 5RY

- 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 Redcliffe Gardeners Ltd against the decision of the New Forest National Park Authority.
 - The application Ref 18/00943, dated 24 November 2018, was refused by notice dated 23 January 2019.
 - The application sought planning permission for the erection of a horticultural dwelling on land at Redcliffe Gardeners without complying with a condition attached to planning permission (allowed on appeal) Ref T/APP/B1740/A/94/239628/P5 and T/APP/B1740/A/94/246169/P5 (LPA references 00054429 and 00055303), dated 16 May 1995.
 - 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 a widow or widower of such a person, and to any resident dependant.
 - The reasons given for the condition is not stated in the appeal decision.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The New Forest National Parks Authority (NPA) adopted the New Forest National Park Local Plan 2016 – 2036 (NPNLP) on 29 August 2019. Policies quoted in the decision notice have now been replaced with Policies DP32 and SP4 which, as adopted policies, are afforded substantial weight. This policy change has been brought to the attention of the appellants.

Main Issue

3. The main issue is whether the condition continues to be necessary in order to ensure adequate provision of accommodation for agricultural/forestry workers in the area in the context of national and local policy.

Reasons

4. The National Planning Policy Framework (the Framework) sets out that a planning condition must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In this case the principal question is whether the agricultural

occupancy condition remains necessary to meet its original purpose overseeing the horticultural enterprise; or alternatively, to ensure that there is adequate provision of accommodation for agricultural/forestry workers in the area.

5. The dwelling was permitted on appeal in 1995 to fulfil, at that time, a demonstrated need for an onsite presence to meet the functional requirements of the horticultural enterprise in supporting on site plant propagation. Over the years the nature of the enterprise has changed; indeed, there is reference in the appellants evidence that the need for an agricultural worker did not actually materialise. The property is currently vacant as it has been for around a year and thus the agricultural tie is not at this time being breached.
6. Redcliffe Garden Centre appears to be used principally for retail sales with the largest greenhouses, previously used for growing, now occupied for the display of non-plant related products such as garden furniture. Other independent retailers have taken discrete spaces at the centre and part of the premises are used as a café. I have no information before me as to the labour requirements for the horticultural management at the site. Even so, as the display area of plants occupies less than 50% of the available space at the premises, it is doubtful that the current activity would support the need for a full-time on-site presence particularly as most plants are now grown elsewhere and are brought in for sale. It appears that this is as a result of the choices made by the appellants in the evolution of their business activity on site.
7. The appeal property is not within a defined settlement, but it is a relatively short distance from the main settlement of New Milton which lies around a mile and a half to the south and the property is located at the southern edge of the settlement of Bashley. Importantly, the site is within the National Park (NP) where residential development is strictly controlled and where the Framework states that planning decisions should recognise the intrinsic beauty of the countryside given the NP designation which is afforded the highest level of protection.
8. The appellants refer to the re-use of a redundant building however there is no suggestion that the use would alter from residential nor is it in a location where it could be described as isolated for the purposes of Paragraph 79 of the Framework. This proposal would not represent the re-use of a redundant building, albeit no longer required by Redcliffe Gardeners. The authorised use is residential and would remain so. Therefore, the key question is whether there is a continuing need for accommodation for an agricultural worker, not solely in relation to the enterprise with which it was originally connected but also within the locality as defined in the original condition.
9. Policy DP32 of the NFNPLP states that agricultural occupancy conditions will not be removed unless the long term need for the dwelling has ceased and there is no evidence of a continuing need for housing for persons employed or last employed in the locality in agriculture or forestry or practicing commoning.
10. The supporting text to that policy sets out the expectations of the NPA in demonstrating that appropriate steps have been taken to try to sell or market the property for rent in the full knowledge of the tie. It also ensures that the marketing has been correctly targeted, financially realistic and sustained, so as to demonstrate that there is no long-term agricultural need in the locality. This includes: contacting other local land and estate owners in the vicinity to establish whether they require further accommodation either presently or in

the near future; the property being placed with local estate agents and advertised locally for a reasonable period of time at a price reflecting the occupancy condition; the property being advertised widely in local newspapers and appropriate publications including specialist trade organisation journals and making contact with the Commoners Defence Association.

11. The appellants' say they were not advised that the use of the property should be offered to meet a local housing need. However, the wording of Policy DP32 of the NFNPLP does not contain the requirement to offer agriculturally tied properties to those in need of affordable housing (as previously required by the superseded policy DP14) and as such this aspect of the NPA's case no longer applies.
12. The appellants suggest that there would be a breach of human rights by the failure to remove the condition though this is unfounded as the property is empty and there would be no question of an occupier losing a home.
13. I have limited details of the marketing strategy though it is evident that when the property was marketed for rent between April to October 2018 it was clear that the property was subject to an agricultural tie. Advertisement was principally on line and via communication to local farms within a 10-mile radius by way of a survey letter. The replies provided were limited however they did show that some, if modest, interest existed for additional agricultural workers accommodation in the area. Additionally, the NPA outlined that 19 applications for new dwellings have been approved since the adoption of the Core Strategy (in 2010) and these factors undermine the appellants' assertion that there is no continuing need for agriculturally tied properties in the area. Of more fundamental concern is that the period of active advertisement was of insufficient duration and its scope/coverage was too limited to fulfil the policy requirements.
14. The appellants in their final comments, give an expansive commentary on the need for commoners' dwellings assessing the spread of permissions listed by the NPA along with a narrative as to why the appeal site could not have fulfilled the agricultural need in each of the listed cases. Whilst this analysis is broad it does not represent conclusive evidence that there is no agricultural need which the appeal property could fulfil.
15. Nevertheless, in the context of the development plan policy I find that the appellants' assessment of the continuing need for the property to serve an agricultural workforce in the locality is flawed. Deficiencies include: that the property was not offered for sale; that the period of marketing for rent was particularly short, and its range limited. Similarly, no evidence has been provided to demonstrate that any consideration was given to making the property available for commoners working in the National Park either before, or since the NPAs' decision. The appellants point to the fact that the Commoners Association has not been in contact with the appellants however the burden of proof falls on the appellants. Crucially, the appellants have not fulfilled the expectations set out in the former New Forest National Park Core Strategy the newly adopted NFNPLP; these expectations are neither unusual or overly burdensome in the context of the removal of an agricultural tie.
16. The appellants argue that the site is not located in the countryside but part of a built-up area from which facilities are accessible by means of bicycle, car or bus. However, this does not mean that in policy terms it is a location where

unrestricted housing should be permitted particularly given that the site is in the National Park where the highest form of protection from development is afforded, neither does it justify the removal of an agricultural tie which has to be considered in relation circumstances an individual location and need within the surrounding area.

17. The appellants suggest that the NPA have not made a robust case for the occupancy condition to be retained. However, the burden of proof is upon the appellants to demonstrate that the steps taken are in line with the requirements of the Policy. The appellants also suggest that the NPA harbour resentment that they may profit from the relief of the condition which they maintain did not actually materialise in the first instance. Even if this were to be the case, and I have no evidence that it is, the restrictive condition relates to those working in agriculture in the locality and not exclusively for the Redcliffe Gardeners' enterprise. As such a wide-ranging exercise is needed, as with any application to lift an agricultural tie, to demonstrate that it is not required in the wider area before realistic consideration can be given to its removal.
18. It is accepted that there would be no physical works at the property and there would be no visible impact on the NP. Nonetheless there would still be the creation of an unrestricted dwelling in a location which is given the highest level of protection from new development and where new dwellings are restricted. As such the lack of physical impact on the NP does not justify the lifting of an agricultural tie.
19. The appellants argue that the appeal proposal should be considered as a windfall addition to the housing stock. As this is an existing dwelling there would be no addition and therefore this cannot be regarded as a benefit.
20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. On the evidence before me, a robust assessment of the continuing need for the property to serve the agricultural or forestry workforce in the locality or for a New Forest Ccommoner has not been demonstrated and the steps outlined in the development plan policy have not been robustly evidenced. Consequently, removing condition 3 would not accord with Policies DP32 or SP4 of the NFNPLP or the aims of the Framework.

Conclusion

21. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Janet Wilson

INSPECTOR