
Appeal Decision

Site visit made on 20 August 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2019

Appeal Ref: APP/V1260/W/19/3230152

48 Willett Road, Ashington, Wimborne, Dorset BH21 3DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs L Coulling against the decision of Poole Council.
 - The application Ref APP/18/01340/F, dated 10 October 2018, was approved on 11 December 2018 and planning permission was granted subject to conditions.
 - The development permitted is "Erect agricultural building - amended scheme to regularize minor differences in siting and window and door design (retrospective) within Ashington Conservation Area".
 - The condition in dispute is No 1 which states that:
Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and the Town and Country Planning (General Permitted Development) Order 2015, or any subsequent re-enactments thereof, the development hereby approved shall be used for agricultural purposes only and for no other use purposes whatsoever without formal planning permission first being obtained. Upon ceasing to be used for agricultural purposes, the building shall be demolished in its entirety and removed from the site.
 - The reason given for the condition is:
The use of the building for non-agricultural purposes would conflict with the objectives of the green belt under PP2 of Poole Local Plan 2018 and the NPPF 2018.
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Decision

1. The appeal is allowed and the planning permission Ref APP/18/01340/F to "erect agricultural building - amended scheme to regularize minor differences in siting and window and door design (retrospective) within Ashington Conservation Area at 48 Willett Road, Ashington, Wimborne, Dorset BH21 3DL granted on 11 December 2018 by Poole Council, is varied by deleting condition 1 and substituting for it the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the building hereby permitted shall be used for no purposes other than agriculture.

Procedural Matters

2. The decision to impose the planning condition was made by Poole Council, which ceased to exist on 1 April 2019, following a merger with Bournemouth Borough Council and Christchurch Borough Council to form the new Bournemouth, Christchurch and Poole Unitary Authority. Provisions within the Local Government (Structural Changes) (Transitional Arrangements) (No.2)

Regulations 2008 allow for any “plan, scheme, statement, or strategy” prepared by one of the merging authorities to be treated as if “it had been prepared and, if so required, published by the single tier council for the whole or such part of its area as corresponds to the area to which the particular plan, scheme, statement or strategy relates”. The status of the Poole Local Plan (2018) (the Local Plan) has not therefore changed as a result of the merger.

3. The Council’s reason for imposing the condition refers to the National Planning Policy Framework 2018. In February 2019, the latest version of the National Planning Policy Framework (the Framework) was introduced. However, the revisions are not directly relevant to the issues in this appeal. I have therefore used the latest version of the Framework in my assessment without prejudice to any party.

Background and Main Issue

4. The appeal building is situated on an agricultural smallholding, to the west of the associated dwelling and domestic curtilage at 48 Willett Road. The site lies within the South East Dorset Green Belt. Planning permission for an agricultural building here was first granted in 2012¹, following the loss of a previous, similarly sized building, to storm damage. In 2013, following commencement of construction works, planning permission was granted² for an alternative design for an agricultural building with the same footprint.
5. The building was not constructed in accordance with the approved plans for either of the planning permissions. Subsequently, planning permission for the building that had been constructed was granted retrospectively, under the application that gives rise to this appeal. The appeal seeks the deletion of condition 1 of the planning permission which, in summary, removes permitted development rights to change the use of the building, and requires the building to be demolished when it ceases to be used for agricultural purposes.
6. Therefore, the main issue is whether the condition is reasonable and necessary to protect the openness of the Green Belt in respect of:
 - a) The removal of permitted development rights; and,
 - b) The demolition of the building if it ceases to be used for agricultural purposes.

Reasons

Removal of permitted development

7. The appellant contends that the condition fails the test of necessity, because any other use of the building would already require planning permission, due to the size of the holding not qualifying for permitted development rights under Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, the change of use of agricultural buildings can be carried out under Schedule 2, Part 3 of the GPDO. The permitted changes of use under this Part are not subject to the same thresholds relating to the size of the holding. On the evidence before me I cannot safely conclude that some, or all, of the permitted changes of use would not be available.

¹ Local Planning Authority Ref: APP/12/01301/F

² Local Planning Authority Ref: APP/13/00265/F

8. Paragraph 55 of the Framework advises that planning conditions should be kept to a minimum, and only 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 (the PPG) says that conditions restricting the future use of permitted development rights, or changes of use, will rarely pass the test of necessity, and should only be used in exceptional circumstances.
9. Permitted development rights to change the use of buildings under the GPDO apply in the Green Belt. Therefore, the fact that the site lies in a Green Belt is not, in itself, an exceptional reason to impose a condition restricting such rights. In this case, however, the building serves a relatively small area of agricultural land. I also saw that the agricultural enterprise is currently of a modest scale. The evidence indicates that the Council has taken a reasonable approach in permitting a building of this scale and standard of construction in the Green Belt to enable the smallholding to develop.
10. Whilst I have no reason to doubt the appellants' intentions to maintain and expand the agricultural operations on the site, the current scale of the operation means that it is likely to be vulnerable to changing agricultural and economic circumstances. It was therefore not unreasonable for the Council, in these particular circumstances, to have considered the potential longer-term impact on the Green Belt of alternative permitted uses.
11. I am mindful that the first planning permission for a replacement agricultural building on the site was not subject to a similar condition, suggesting that the Council found the building acceptable at that time without such a restriction. However, the permitted changes of use for agricultural buildings were not included in the GPDO at that time. It is not disputed by the Council that the building as it stands, when used for agricultural purposes, does not constitute inappropriate development in the Green Belt. However, an alternative permitted use could have a more significant impact on the visual openness of the Green Belt, through changes to the character of the adjacent land and resultant lack of association with the surrounding agricultural uses.
12. I therefore find that the restriction of permitted development rights for changes of use is reasonable and necessary to protect the openness of the Green Belt. The condition does, however, lack precision, as it refers to the Town and Country Planning (Use Classes) Order 1987 (the UCO). Use for agriculture does not fit within any of the Use Classes described in the UCO. I have therefore removed reference to the UCO from the amended condition that I have imposed.

Demolition of building

13. The disputed condition requires the demolition of the building upon it ceasing to be used for agricultural purposes. The PPG advises that a condition requiring the demolition, after a stated period, of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness.
14. Ceasing the agricultural use of the building, without instigating any new use, would not affect the openness of the Green Belt. The building is of permanent and substantial construction. Therefore, under the terms of paragraph 146 of the Framework, its re-use would not be inappropriate development, provided the proposal preserved the openness of the Green Belt. The imposition of a

condition restricting permitted changes of use means that any future alternative use would have to be the subject of a planning application. As a result, the Council would be able to ensure that any future use did not harm the openness of the Green Belt. I therefore find that the requirement to demolish the building is not reasonable or necessary to protect the openness of the Green Belt.

15. The condition does not precisely identify what is meant by “upon ceasing to be used for agricultural purposes”. The building could become disused, but unless an intervening use was established, it would remain an agricultural building, albeit vacant. An active agricultural use could be reinstated at any time. The condition does not explain the level of agricultural use that would be required to avoid a breach of the condition. In view of the size and permanence of the building, and the cost of demolishing it, it seems likely that any owner would reinstate some form of agricultural use, however small-scale, to avoid enforcement action. It is also unclear whether the use of the building for a mixed use, which included agricultural purposes, would result in a breach of the condition. This imprecision means that the condition fails the test of enforceability.
16. I appreciate that somewhat similar conditions are imposed on certain types of development under Schedule 2, Part 6 of the GDPO. However, these conditions only apply for 10 years after the building is completed, and only where the use of the building permanently ceases. The GPDO condition is therefore more precise and reasonable and, as it ceases to have effect after 10 years, it is less onerous.
17. I therefore find that the part of the condition requiring the demolition of the building, upon it ceasing to be used for agricultural purposes, fails the tests of necessity, reasonableness, precision and enforceability.

Conclusion

18. For the reasons given above I conclude that a condition removing permitted development rights for change of use of the building is reasonable and necessary to protect the openness of the Green Belt. However, the requirement to demolish the building, if it ceases to be used for agricultural purposes, does not meet the tests for the imposition of conditions as set out in paragraph 55 of the Framework, and is not necessary to protect the openness of the Green Belt.
19. As a result, I will vary the planning permission by deleting the disputed condition and substituting it with an amended condition, restricting permitted development rights for change of use only. The planning permission with the varied condition would therefore comply with Policy PP2 of the Local Plan, which seeks to manage the Green Belt in accordance with national policy.

Nick Davies

INSPECTOR