



Appeal Decision

Hearing Held on 3 December 2019

Site visit made on 3 December 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/J1535/W/19/3236226

Thistle Dew, Hoe Lane, Nazeing, Essex EN9 2RN

- 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 David Harrison against the decision of Epping Forest District Council.
 - The application Ref EPF/0584/19, dated 4 March 2019, was refused by notice dated 15 May 2019.
 - The application sought planning permission for: re-use of agricultural workers dwelling as residential dwelling without complying with Condition 2 attached to planning permission Ref EPF/691/83 dated 05 January 1984.
 - The condition in dispute is No 2 which states that: The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly employed or last employed, locally in agriculture as defined by Section 290 (1) of the Town and Country Planning Act 1971 or in forestry, or a dependent of such a person residing with him (but including a widow or widower of such person).
 - The reason given for the condition is: The site is within the Metropolitan Green Belt where there is a presumption against development unless required essentially for the purposes of agriculture, forestry or for other special reasons. Permission in this case is granted solely in the light of the special agricultural justification and the occupation of the dwelling is accordingly restricted in order to ensure its continued use for a purpose appropriate to the Green Belt and to safeguard the integrity of Green Belt policy.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) Whether the condition is reasonable and necessary in relation to an ongoing need to restrict occupation to persons employed in agriculture or forestry, and
 - (b) Whether the condition is reasonable and necessary in relation to any harm that would arise from unrestricted occupation on the aims and purposes of the Green Belt.

Reasons

Agricultural occupancy

3. Thistle Dew is a large detached two storey house set in a rectangular plot covering about 0.2 hectare that includes a single storey outbuilding in the front garden. The house is set back from the frontage to Hoe Lane on its southern side from which there is a centrally located vehicle access. There are fences and high hedgerows to the other boundaries. To the west of the site is Virosa Cottage, another two storey detached house in a similar sized plot. To the north and east of the site are substantial glass houses forming the Virosa Nursery site. Vehicle access to the nursery site is from Hoe Lane to the western side of Virosa Cottage.
4. At the hearing, evidence was provided in relation to the occupation of Thistle Dew. Following its construction, it was occupied in association with Virosa Nursery, in accordance with the agricultural occupancy restrictions imposed by condition 2 to planning permission EPF/691/83. Virosa Cottage was the subject of a planning permission in 2001, was constructed between 2007 and 2009 following which the occupiers of Thistle Dew relocated to run the nursery business from Virosa Cottage. The appellant's agent claims that Thistle Dew was sold in 2009 and sold again in 2018, the second time to the appellant, Mr Harrison, who has since occupied the dwelling with no linkage to Virosa Nursery or to any other agricultural or forestry enterprise.
5. The development plan comprises the Epping Forest District Council Local Plan Alterations (2006) (LPA). The Council has prepared a new plan, the Local Plan Submission Version (2017) (LPSV). This has been subject to examination with the Inspector's report in August 2019 recommending modifications. The LPSV is a material consideration.
6. Policy GB17B of the LPA states that the removal of agricultural occupancy conditions will not be permitted unless it has been clearly demonstrated that there is no longer a functional need for the dwelling on the holding, that there is no longer a need for this type of dwelling in the locality, that the dwelling has been marketed with its agricultural occupancy status made clear for a minimum of one year and that a survey of the agricultural community is carried out to assess the existing agricultural need in the locality for the dwelling. The appellant has offered no evidence in relation to complying with the requirements of this policy.
7. Whilst Virosa Nursery is now managed from Virosa Cottage, it remains to be considered if there is an ongoing demand locally for residential accommodation with an agricultural occupancy restriction that the appeal property could fulfil. At the hearing the Council indicated that there is no evidence of a surplus of such agricultural dwellings in the area but that there have been several applications for agricultural workers dwellings in the wider area, most commonly for caravans in relation to seasonal labour for the nurseries. In support of this contention reference was made to two current applications for Lawful Development Certificates for existing development at the Virosa Nursery site. The first, EPF/1414/19, relates to the use of an existing dilapidated building as two single dwellinghouses (units A & B). The second, EPF/1415/19, relates to the use of land for stationing three caravans for residential occupation (units C, D & E).

8. These applications indicate an ongoing requirement for accommodation with an agricultural tie. The surrounding area is rural in character and includes other similar nursery businesses with large glass houses. The thriving nature of these businesses in the area is also an indicator of the need locally for related housing. When these factors are considered in combination with the absence of any evidence in relation to the issues listed in Policy GB17B on the removal of agricultural occupancy conditions, my findings on the first issue are that condition 2 is reasonable and necessary in relation to an ongoing need to restrict occupation to persons employed in agriculture or forestry. Moreover, the proposal to remove the condition would be contrary to Policy GB17B.
9. The appellant contends that Policy GB17B should be set aside as there is not an equivalent policy in the LPSV to protect existing dwellings subject to an agricultural occupancy condition. It is reasoned that Policy E3 of the LPSV relates just to new accommodation for nursery workers, and as an indicator of direction of travel it is argued that greater weight should be afforded to the emerging LPSV as this is now at an advanced stage.
10. Policy E3(B) does relate to the provision of new accommodation for nursery workers but lists several factors to first be satisfied if permission is to be forthcoming. These include the need for evidence to show that the lack of on-site accommodation is affecting the viability of the business, the possibility of converting existing structures to provide the accommodation and the absence of other suitable alternative accommodation within a reasonable distance. The policy also includes a requirement for consented accommodation to be restricted to occupation by horticultural workers employed by a relevant enterprise, indicating that the loss of such accommodation to general housing should continue to be controlled.
11. Whilst Policy E3(B) is not as prescriptive as Policy GB17B on the relaxation of occupancy conditions, the purposes behind the two policies are similar. The emerging policy does not seek to replicate the means by which applications for relaxation of occupancy conditions should be assessed, but nonetheless indicates that this is a matter for strict control. There is not a clear-cut change in the direction of travel. Both policies are consistent with Paragraph 79(a) of the National Planning Policy Framework (the Framework) that cites as an exception to the development of isolated homes in the countryside "*an essential need for a rural worker, including those taking majority control of a farm business to live permanently at or near their place of work in the countryside*". Furthermore, although Policy E3(B) may not be subject to change prior to adoption of the LPSV, the weight that can be attributed to it does not exceed that for the adopted Policy GB17B.
12. The appellant also contends that condition 2 should be relaxed as Thistle Dew is too large and expensive a property to meet any local need for an agricultural worker. At the Hearing, the appellant claimed the house has a current market value of £680,000 and that it would therefore be unsuitable to provide housing for low wage seasonal labour. However, there is no evidence that the dwelling might not be suitable in relation to the oversight of another agricultural enterprise in the area. Policy GB17B requires a survey of the agricultural community to be carried out to assess existing need in the locality for the dwelling before an agricultural occupancy condition is removed. There is no evidence before me of such a survey. It is also possible that the building could be adapted to help meet an identified local need.

Green Belt

13. The reason for the imposition of Condition 2 is that the site is within the Metropolitan Green Belt where there is a presumption against development unless required essentially for the purposes of agriculture, forestry or for other special reasons. The appellant contends that the condition can reasonably be removed as firstly the house is no longer required for agriculture and secondly that this would be in accordance with Paragraph 146(d) of the Framework. This enables "*the re-use of buildings provided that the buildings are of permanent and substantial construction*" to not be regarded as inappropriate development in the Green Belt provided "*they preserve its openness and do not conflict with the purposes of including land within it*". The appellant reasons that as the building has been in existence for 36 years and is occupied, that there would be no material alterations to the building, no change in the way that it functions and no impact on the openness of the Green Belt or on its purposes.
14. Paragraph 134 of the Framework states that the Green Belt serves five purposes. One of these (c) is "*to assist in safeguarding the countryside from encroachment*". This purpose is consistent with restrictions on the proliferation of homes in the countryside set out at Paragraph 79 of the Framework and the reason for imposition of Condition 2 in 1983. Whilst the detail of national and local Green Belt policies has changed since that time, the underlying purposes remain and are applicable to the appeal proposal.
15. Paragraph 145 of the Framework specifies "*buildings for agriculture and forestry*" as an exception to the construction of new buildings being regarded as inappropriate in the Green Belt. Whilst Paragraph 145 refers expressly to new buildings, it is inconceivable that dwellings erected under this exception (or earlier versions of this policy) could readily trip to general market housing under the provisions of Paragraph 146(d) without impacting on the purpose of the Green Belt to assist in safeguarding the countryside from encroachment. Whilst removal of Condition 2 would not change the appearance of the dwelling or the way it currently operates, the original construction of the dwelling would have had an impact on the openness of the Green Belt and its purposes, and this was only deemed to be acceptable on the grounds of agricultural need. It has not been sufficiently demonstrated that there is not an ongoing demand for the dwelling to meet an agricultural need in the locality.
16. Paragraph 143 of the Framework states that "*Inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances*". The absence of physical change to the dwelling or the way it currently operates do not amount to the very special circumstances necessary to outweigh the harm arising through inappropriate development in the Green Belt if Condition 2 were to be removed. The proposal would thereby be contrary to the purposes of the Green Belt as set out at Paragraph 134 of the Framework and with emerging Policy DM4 of the LPSV which is consistent with the Framework in relation to development within the Green Belt.

Other Matters

17. The appellant has drawn to my attention that the Council cannot currently demonstrate a five year housing land supply, notwithstanding its aspirations to remedy this through the emerging LPSV. In these circumstances, Paragraph 11 of the Framework states that the Council's policies most important for determining the application should be regarded as out of date and that there

should be a presumption in favour of granting planning permission. However, footnote 6 to Paragraph 11 states that an exception to this is where the policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Land designated as Green Belt is one of the circumstances cited in footnote 6. In view of my finding that the proposal would be contrary to the Green Belt provisions in the Framework, the presumption in favour of sustainable development at Paragraph 11 does not apply.

18. The appellant has also made reference to a grant of planning permission for 18 dwellings at Stoneshott Farm elsewhere in Hoe Lane as a reason for removal of Condition 2. Whilst this site may not be far from the appeal site, it would appear to relate to a larger site and the raising of different issues. I have not been provided with any details of the site circumstances giving rise to that decision. As such, this attracts only limited weight in my considerations.

Conclusion

19. It has not been demonstrated that the house at Thistle Dew is not still required in relation to agricultural or forestry purposes and in the absence of this the removal of Condition 2 to planning permission EPF/691/83 would be contrary to the purposes of the Green Belt and contrary to national and local planning policies in this respect. For the reasons given and having regard to all other matters raised the appeal is dismissed.

Rory MacLeod

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dale Gill Barron Edwards (agent)

Aman Bajwa Barron Edwards (agent)

FOR THE LOCAL PLANNING AUTHORITY:

Caroline Brown Epping Forest District Council (Planning Officer)

DOCUMENTS SUBMITTED AT THE HEARING:

Planning Permission EPF/691/83 for the existing dwelling at Thistle Dew

Policies SP6, DM4 and E3 of the Submission Version Local Plan

Application form and site plan for EPF/1414/19: Lawful Development Certificate sought for existing use of a building as two single dwellinghouses (Units A & B)

Application form and site plan for EPF/1414/19: Lawful Development Certificate sought for existing use of land for stationing 3 caravans for residential occupation (Caravans C, D & E)