



Appeal Decision

Site visit made on 29 May 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal Ref: APP/C3810/W/19/3220132

Arundel Vineyard, Church Lane, Lyminster BN17 7QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Andrew and Susan Byrne against the decision of Arun District Council.
 - The application Ref LY/9/18/PL, dated 10 April 2018, was refused by notice dated 31 July 2018.
The planning permission sought was originally described as: *Application for continuance of use without compliance with condition 2-occupation imposed under LY/16/02, condition 3-occupation imposed under LY/3/04 & condition 3-occupation imposed under LY/25/04 (resubmission following LY/20/17/PL).*
The conditions in dispute are No 2 of planning permission Ref LY/16/02, No 3 of planning permission Ref LY/3/04 and No 3 of planning permission Ref LY/25/04. Each condition 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 by Section 336(1) of the Town and Country Planning Act 1990, or in forestry, including any dependents of such a person residing with him or her, or a widow or widower of such a person.*
 - The reason given for each condition is: *The site lies in a rural area and a Strategic Gap where development unrelated to the essential needs of agriculture and or forestry would not be permitted, in accordance with the policies C1, C7 of the West Sussex Structure Plan; LOC2 of the West Sussex Structure Plan Deposit Draft; EVT6 of the Arun District Local Plan; and GEN3 of the Arun District Local Plan Second Review Revised Deposit Draft.*
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Decision

1. The appeal is allowed and planning permission is granted for the replacement of the existing dwelling, at Arundel Vineyard, Church Lane, Lyminster BN17 7QJ, in accordance with the application Ref LY/9/18/PL made on 10 April 2018, without complying with condition No 3 set out in planning permission Ref LY/25/04 granted on 21 January 2005 by Arun District Council, but otherwise subject to 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 dwelling shall not be extended or altered.

Preliminary Matters

2. Before me is a single application for planning permission, to remove a condition subject to which a previous planning permission was granted. However, the description of development that was used in this case refers to 3 previous planning permissions.
3. It cannot be the case that I am asked to vary all 3 previous permissions simultaneously by this appeal, as the power to remove a condition applies to a single previous planning permission per application, not multiple permissions via a single application. To do so would not accord with the relevant provisions of the Act in this regard.
4. The main parties agree that the latest planning permission was implemented. So it seems to me that it is this latest permission which the appellant requires is varied by this appeal, and, from the information available to me, it is this latest permission which reflects the building which is now on site.
5. Therefore, the permission to be varied in this case is the latest permission, Ref LY/25/04 and I have determined the appeal on this basis. If permission is sought to vary either or both of the earlier permissions too, then separate applications may be made to the Council to vary those.
6. The latest permission (LY/25/04) was a variation of a previous permission. That previous permission was in itself a variation of an earlier permission. The consequence of this succession of permissions is a series of descriptions each of which refers to the previous. But each previous permission essentially relates to a replacement dwelling on the site and reads as a stand-alone fresh permission, complete with conditions.
7. The appellant now seeks that the agricultural tie is removed. It therefore makes little sense for the word 'agricultural' to remain in the description of the development I am allowing so I have omitted it as set out in my formal decision above.
8. The appellant states they have never been employed in agriculture in any capacity and therefore that they have not complied with this condition for more than 10 years. However, whether the condition is immune from enforcement action is not a matter for me to determine in the context of an appeal made under section 78 of the above Act. It is open to the appellant to apply to have the matter determined under section 191 of the Act and any such application would be unaffected by my determination of this appeal.
9. I have dealt with other appeals on this site and these are the subject of separate decisions.

Background and Main Issue

10. Planning permission was granted for the replacement of an agricultural dwelling at Arundel Vineyard in 2003. That permission was followed by a further planning permission in 2004 for modifications to the previously approved dwelling. Another planning permission was granted in 2005 for further modifications to the previously approved dwelling. Each of these permissions was subject to the same agricultural occupancy condition as set out in the heading above.

11. The main issue is whether it is necessary and reasonable for the occupancy of the dwelling to be limited to an agricultural or forestry worker as is described in the wording of the condition set out above.

Reasons

12. Policy H DM3 of the Arun Local Plan 2011-2031 adopted in July 2018 (the Local Plan) concerns rural workers' dwellings. In respect of such developments, part (g) of the policy states that any planning permission granted will be subject to an occupancy condition, limiting occupation to a person solely or mainly employed in the locality in agriculture or forestry.
13. Part (g) of Policy H DM3 further states that such conditions will only be removed if it can be demonstrated that the rural workers dwelling is no longer required for agricultural or forestry purposes or for any person solely or mainly employed in agriculture or forestry and that reasonable attempts have been made to market the rural workers dwelling for that use.
14. From the information available, it is clear that Arundel Vineyard is no longer operating as a vineyard, has not done so for some time and is not likely to again on the basis that the site is too small to operate a commercially viable business. As such, there is no functional need for an agricultural worker to live on site to tend to the vineyard. Moreover, based on the information provided, there is no evidence of housing need for rural workers in the wider area.
15. From the information available, the property was on the market from 10 April 2018 up until at least January 2019 with a purchase price of offers in the region of £1,200,000. The appellant says this price reflects a 30% discount for the agricultural occupancy condition from the initial valuation. The marketing information provided reflects this price and clearly states that the property has an agricultural tie and that it must be sold to someone working in or retired from the agricultural community.
16. In response to the marketing exercise, details were sent out to 10 parties, 5 viewings were booked but only 2 viewings took place. One offer was received for £1,200,000. However, the appellant states the prospective purchaser had a house to sell which was not on the market and so this was not considered a serious offer.
17. I have no reason to disagree with the marketing strategy adopted by the appellant, and, there is no evidence the asking price was unreasonable given the circumstances in this case including the size of the dwelling and the agricultural occupancy restriction. Moreover, there is no evidence in this case of what constitutes a reasonable period of time for the property to have been marketed. Also, it appears to me that the questions (referred to in the evidence) put to the appellant by the Council have been answered, and, the Council has made no further comments on the responses provided.
18. Considering all of the above points, based on the information available to me in this case, the dwelling is no longer required for a rural worker and there is no evidence the attempts made to market the dwelling were unreasonable. I conclude it is not necessary or reasonable for the occupancy of this dwelling to be limited to an agricultural or forestry worker as set out in the condition, and, that removing the condition does not conflict with Policy H DM3 of the Local Plan.

Other Matters

19. There is concern expressed in representations received that the appeal development may harm the adjacent Lyminster Conservation Area, the setting of the adjacent listed building of Lyminster House, views to Arundel and a strategic gap between settlements. But no physical changes are proposed as part of the appeal development and the building would still be used as a dwelling, albeit without the existing restriction. Therefore, I am satisfied that in these respects no harm would arise from allowing the appeal development.
20. There are also concerns expressed by third parties about future development of the appeal site. But there is no evidence that any such proposals would not be subject to planning control in the usual way.
21. I am also aware the site may be adjacent to a biodiversity opportunity area. But there is no evidence of harm as a result of the appeal development in this respect.
22. My attention has been drawn to covenants that the land may be subject to. But these are not for me to consider within the scope of an appeal under section 78 of the above Act.
23. I am aware of concern about errors relating to boundary lines shown on drawings provided. However, from the information available to me, the errors described in the representations received have no material effect on the appeal development before me or on the ownership of the land concerned and so any such errors make no difference to my overall conclusion in this case.

Conditions and Conclusion

24. In addition to the disputed agricultural occupancy condition, the original permission was subject to conditions relating to implementation, materials, permitted development rights and amended plans.
25. The Council has not suggested any conditions for this appeal and the dwelling already exists in a completed form. As such, in my view, none of the other conditions on the original permission need to be imposed again with the exception of a restriction on some permitted development rights.
26. In my judgement, a condition to this effect is necessary in the interests of the character and appearance of the area which is outside of the defined-built up area where built development is generally restricted.
27. For the reasons given above I conclude that the appeal should succeed and I shall exercise the powers transferred to me accordingly. I will grant a new planning permission without the disputed condition but subject to the previous restriction on permitted development rights.

L Perkins

INSPECTOR