
Appeal Decision

Site visit made on 8 September 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 8 October 2020

Appeal Ref: APP/C1435/W/20/3252309

East Park Farm Cottage, High Street, Fletching TN22 3SS

- 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 The Trustees of the Sir Hugh Collum Will Trust against the decision of Wealden District Council.
 - The application Ref WD/2019/1598/FA, dated 16 July 2019, was refused by notice dated 24 December 2019.
 - The application sought planning permission for the erection of farm cottage without complying with a condition attached to planning permission Ref T/62/243, granted by Uckfield Rural District Council on 25 April 1962.
 - The condition in dispute is No3) which states that: The occupation of the dwelling shall be limited to persons whose employment or latest employment is or was employment locally in agriculture as defined by section 119(1) of the Town and Country Planning Act 1947 or in forestry and including also the dependants of such persons aforesaid.
 - The reason given for the condition is: To reserve suitable residential accommodation for persons employed locally in agriculture.
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Decision

1. I allow the appeal and grant planning permission for the erection of a cottage at East Park Farm Cottage, High Street, Fletching TN22 3SS in accordance with the application Ref WD/2019/1598/FA, dated 16 July 2019, without compliance with condition number 3) previously imposed on planning permission Ref T/62/243, dated 25 April 1962.

Main Issue

2. This is whether the retention of the condition satisfies the six tests in the National Planning Policy Framework and the Planning Practice Guidance, having regard to policies of restraint on housing development in the countryside.

Reasons

3. Core Strategy Policy WCS14 states the presumption in favour of sustainable development. Saved Policies GD2 and DC2 of the adopted Wealden Local Plan state that outside development boundaries, development will be resisted, and set out the exception with regard to agricultural dwellings.
4. The latter Policy continues with reference to the imposition of conditions, stating that the removal of occupancy conditions will be resisted unless it is demonstrated to the satisfaction of the Council that there is unlikely to be any need for such dwellings in the area in the foreseeable future. The supporting

text at paragraph 5.23 contains the statement that occupancy conditions will enable a dwelling to be available for other rural enterprises even if the original enterprise no longer seeks to retain it. They will only be lifted where it can be demonstrated that there is unlikely to be a need for the accommodation for such purposes in the area within a reasonable period of time.

5. Paragraphs 55 and 77 of the Framework set out requirements regarding the use of conditions and the provision of rural housing, while paragraph 79 lists the essential needs of a rural worker as an exception to the statement that isolated homes in the countryside should be avoided. The Council accept that the site is not isolated, and the 'Braintree' judgments¹ have given clarity on that matter. The Officer's Report states that the condition has been fully complied with since construction and that the property had been vacant since the demise of the last occupier.
6. The dwelling is set behind frontage development along the High Street, is beyond a gated lodge building listed at Grade II and is within the Fletching and Splayne's Green Conservation Area and the High Weald Area of Outstanding Natural Beauty. It comprises an undistinguished two-storey house with features common to the date of construction.
7. The dwelling was built in connection with a farming estate to house a worker, and therefore was an exception to the policies of restraint operating at that time. The rural estates surveyor employed by the Council to consider the current application advised that the dwelling was no longer required in respect of the original estate or farm, given the fragmentation of the estate.
8. That left consideration of the need with regard to the wider locality, and the surveyor advised the Council that this need related to the merits of providing lower-cost accommodation than would generally be available in the area, in order to allow the proper functioning of an immediately adjoining farm or other rural enterprise. The existence of the condition limits the availability of the dwelling on the open market and hence suppresses its open market value but should allow it to be affordable to a rural worker who might otherwise find difficulty in obtaining suitable accommodation near to their work.
9. The surveyor further advised that although it was accepted that market prices were high in the area and the stated 40% deduction in the value due to the occupancy condition would still result in a high value, there was nothing in the condition to prevent a compliant worker having access to additional income in the family, or capital, to close the gap. The resulting conclusion advised to the Council was that in the absence of marketing or similar to assess whether there was a demand from compliant workers, it was premature to lift the condition.
10. Whilst the far side of a gate, with barbed wire and a discouraging sign as to private land with no vehicular or pedestrian access, the dwelling is very close to the village centre and not located deep within an agricultural holding. Subject to access rights being available over apparently private land, the dwelling would be suitable for use by a compliant worker from a reasonable extent of the largely rural local area. For the same reasons however, the site should be a very attractive location for an open-market dwelling were it to be

¹ Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018

available unfettered by the condition, and this must affect its open market, and hence discounted value. Fletching is an attractive village and a dwelling within the setting of a listed building would likely command a premium selling price.

11. The Council had agreed many of the statements made by the appellant on likely selling price, mortgage repayments and the likely percentage of an individual's income, as well as the indicated cost of renovations. On this last point however, updated information supplied by the appellant as to work that has in the event been carried out show that about £60,000 was spent with some outstanding work to the sewage system costed at a further £8,000 to £10,000.
12. This completed work and the altered market conditions have raised the likely market value of the house unfettered to £600,000, which is higher than previously reported in its un-refurbished state, and even if the discount was taken to an extreme 50%, it would still be outside what should reasonably be considered affordable to an agricultural worker. As it is a discount of 30% would be more usual. Whilst stated to have been in anticipation of the removal of the condition, carrying out the works sooner would relieve a future agricultural worker of the costs and disruption of the works. The decision to go-ahead with the works is not unreasonable in order to protect the asset.
13. Figures have been put forward on the number of applications in the District for the lifting of similar restrictions, and the significantly smaller number of applications for new restricted dwellings. The latter may well indicate a lack of demand but is not conclusive of that, and the Council do not hold information on how many compliant workers are seeking accommodation. As to the numbers seeking to have the restriction lifted, there appear to be many willing to take the risk over the required period and then seek a Certificate of Lawful Development or Use. That leads to the main objection; the lack of marketing, which would have tested many of the assumptions put forward.
14. Whilst marketing may well show that there is no demand or need for the property within the restricted occupancy group, the information that has been put forward on the economics of ownership are compelling. Marketing may well have been sought in other cases in the District, but the 2 Appeal Decisions put forward by the Council are not local. The relevant Local Plan Policy DC2 only requires it to be '*unlikely*' that there is a need, and this is to be '*demonstrated to the satisfaction of the Council*'. Regardless of whether such wording is precise enough, and the Local Plan is now 22 years old, the need at appeal is to demonstrate an unlikely need to the satisfaction of the Secretary of State through the appointed Inspector. The content of Planning Inspectorate guidance is acknowledged but does not alter the operation of Section 38(6) and the primacy of the Development Plan which should give applicants certainty as to how proposals are to be considered.
15. To conclude, the situation at the time of the making of the appeal showed a discounted rate for the house that was above a reasonable level of affordability for an agricultural worker and the updated figures increase the headroom above that affordability threshold significantly. The balance of this Decision rests with the location and resulting open market value of the dwelling resulting in a discounted price, even allowing for a high discount, being beyond the reasonable range of an agricultural worker's price bracket and hence it is no longer reasonable to prevent the dwelling becoming part of the market

housing stock of the district and assisting in the supply of much needed housing. No harm has been identified in removing the restriction, rather the possible harm is that of it remaining un-used and prone to deterioration as a result.

16. The disputed condition has not been shown to be necessary or relevant to legitimate planning aims in this location, and it would not be reasonable to insist on its retention. It is clear from the date of the original grant of permission and the fact that it has been occupied in accordance with the restriction for over 50 years that this was and remains a legitimate application and not a ploy to obtain an open market dwelling in an area subject to policies of restraint.
17. The original grant of permission had only 2 other conditions, concerning roofing and walling materials which have been discharged and do not need re-stating. For the reasons given above it is concluded that the appeal should succeed. A new planning permission is granted without the disputed condition.

S J Papworth

INSPECTOR