



Appeal Decision

Hearing held on 16 December 2020

Site visit made on 17 December 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2021

Appeal Ref: APP/B9506/W/20/3258464

Paddock View, Bashley Road, Bashley, New Milton, Hampshire BH25 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 New Forest National Park Authority.
 - The application Ref 20/00434, dated 13 June 2020, was refused by notice dated 13 August 2020.
 - The application sought planning permission for the erection of a horticultural dwelling without complying with a condition attached to planning permission (allowed on appeal) Ref T/APP/B1740/A/94/239628/P5 (Authority Ref NFDC/94/54429), 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 dependents.
 - The reason given for the condition is not stated in the appeal decision.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by New Forest National Park Authority against Redcliffe Gardeners Ltd. It is the subject of a separate Decision.

Procedural Matters

3. The Authority's decision notice states that the application relates to 3 appeal decisions. The main parties agreed at the hearing that the application relates to the permission granted under reference T/APP/B1740/A/94/239628/P5. This is reflected in the heading above.
4. The location plan submitted with the application does not match the one associated with the approved scheme. The main parties also agreed that the drawings associated with the approved scheme should be taken into consideration. I have done so in making this decision.

Main Issue

5. The main issue is whether condition No 3 of the permission is necessary in order to ensure adequate provision of accommodation for agricultural or forestry workers, or persons practising commoning in the area.

Reasons

6. The site includes a bungalow adjacent to Redcliffe Garden Centre. It is within the New Forest National Park and outside the settlements designated by the New Forest National Park Local Plan 2016-2036 (LP).
7. The dwelling was permitted to fulfil a need that had been demonstrated for a worker to live on site to support the horticultural enterprise at that time. However, the need for an on site presence did not subsequently arise. The appellant puts forward that there is no need for the dwelling to be subject to condition No 3 of the permission, which restricts the occupation of the dwelling to people associated with agriculture or forestry in prescribed ways.
8. The main parties agree that the dwelling is not currently needed to support the garden centre. Moreover, no evidence has been advanced which indicates that the dwelling will be needed to support the garden centre in the future.
9. The application was submitted following the dismissal of an appeal for a similar proposal in September 2019¹. When that decision was made, the dwelling had been marketed to let for a 6 month period. The marketing was online, on site and from an estate agent's office. It was made clear that the dwelling could be occupied by agricultural workers. A survey letter was also sent to local farms within a 10 mile radius. Since then, the dwelling has been marketed to let for a further 6 months in the same manner as before, except it was made clear that the dwelling could be occupied by those last employed in agriculture and New Forest Commoners. No further letters were sent to local farms.
10. Policy DP32 of the LP refers specifically to occupancy conditions. It states that such a condition will not be removed unless the long term need for the dwelling subject to it has ceased and there is no evidence of a continuing need for housing for persons employed or last employed in agriculture or forestry, or practising commoning, in the locality. LP Policy SP4 is also relevant as it sets out the Council's spatial strategy. It does not support unrestricted dwellings outside defined settlements unless specific criteria are met.
11. The supporting text to LP Policy DP32 identifies the steps that an applicant is expected to take to demonstrate that there is no need for an occupancy condition, which includes trying to sell the dwelling subject to it. The dwelling has not been marketed for sale. Although some people might find renting the dwelling more affordable, individual circumstances can vary considerably. There may be people that are only able to purchase or would entertain purchasing the dwelling. Marketing it to let exclusively thus substantially reduces the likelihood of a suitable occupier coming forward. Whilst the appellant would entertain offers to buy the dwelling, such offers are unlikely to be forthcoming where a dwelling has not been marketed for sale.
12. The appellant highlighted that Annexe J of the Planning Appeals - England: Procedural Guide (November 2020) refers to evidence of efforts to sell or lease

¹ APP/B9506/W/19/3223195

dwelling subject to occupancy conditions, rather than sell *and* lease dwellings. However, that part of the guide advises appeal parties as to the information that an Inspector is likely to need in order to consider an appeal. It does not indicate that any particular approach to marketing is acceptable. It therefore attracts very limited weight in my decision.

13. There is common ground that the dwelling was marketed to let at an appropriately discounted rate. At the hearing the appellant was unable to confirm whether it had been marketed as suitable for forestry workers. In any case, the supporting text to LP Policy DP32 expects marketing to persist for at least 12 months and thus the dwelling has not been marketed to those last employed in agriculture or commoners for a sufficient duration. The appellant said that the length of the marketing period was influenced by the coronavirus pandemic and the closure of the estate agent's office. However, it would nonetheless have been possible to continue marketing the dwelling.
14. The appellant explained that the estate agent is experienced in marketing properties subject to occupancy restrictions. The estate agent says that most interest for such properties comes from online marketing and press advertising is ineffective. However, there is nevertheless an expectation in the supporting text to LP Policy DP32 that applicants will contact local land and estate owners and advertise properties in local newspapers or specialist journals. Notwithstanding the letters that were sent to local farms in the first marketing period, these steps have not been undertaken. In addition, correspondence from an Official Verderer of the New Forest suggests that commoners would search for properties both online and in the local press.
15. Furthermore, the LP was adopted in 2019 and online marketing has been established for many years. Firm evidence has not been provided which indicates that online marketing was not considered when the LP was written and it still expects other means of marketing to be undertaken. The marketing undertaken to date is therefore deficient.
16. I note that the Official Verderer stated they were unable to disclose commoners' contact details to the appellant. In addition, I can understand why the appellant would not wish to take up the offer of the New Forest Commoners Defence Association (CDA) to market the dwelling when arrangements had already been made with the estate agent. However, these matters do not address the shortcomings identified with the marketing of the dwelling.
17. There have been 21 approved applications for agricultural worker dwellings since December 2010. Whilst I have carefully considered the appellant's representations, I consider that this is a reasonable indication of need for such dwellings. Although the approved dwellings were proposed on agricultural holdings, this does not mean that all agricultural activities undertaken in the locality require a continuous on site presence. Similarly, there is no firm evidence which suggests that those working in forestry must be located near to their place of work. Moreover, retired workers could occupy the dwelling and they would not need to reside on or near to a holding or forest.
18. In addition, I have been referred to several approved applications for commoners' dwellings. The CDA have indicated that separation between such dwellings, the open forest and the occupiers' back up land is not a barrier to commoning. Compelling evidence to the contrary has not been advanced. Furthermore, it is reasonable to conclude that some people would choose to

occupy an existing dwelling, rather than build a new one. As such, I have no substantive reasons to conclude that the dwelling is unsuitable for or undesirable to those associated with agriculture, forestry or commoning.

19. The evidence indicates that the estate agent received over 80 enquiries relating to the dwelling. The appellant contends that none of the interested people would have satisfied the terms of the condition and that Authority's enforcement officer inputted into the vetting process. Based on what I heard, neither the appellant nor the Authority have records of the vetting that took place. Therefore, I cannot be certain that none of the interested people would not comply with the current terms of the condition. An agricultural worker expressed an interest in the dwelling during the application process and the Authority confirmed that they would be able to occupy the dwelling. Although this is stated within the officer's report, the appellant did not have an awareness of this person. Nevertheless, this provides further evidence of a continuing need for agricultural worker dwellings in the locality.
20. The appellant has suggested that an additional clause is inserted into condition No 3 in the event that I am minded to dismiss this appeal. It is intended to enable the dwelling to be offered to people who would not comply with the current terms of the condition, on a short hold tenancy and/or holiday let basis, in the absence of a compliant occupier coming forward. However, precise wording for the clause or the entirety of the condition has not been proposed.
21. Based on the evidence, the condition would not encourage people associated with agriculture, forestry or commoning to come forward. This is because a commitment to ongoing marketing or another means by which a suitable occupier could be found is not proposed. It was suggested that a short hold tenancy could last for up to a year and holiday lets could last for 3 months. Consequently, the dwelling would be unavailable to those associated with agriculture, forestry and commoning for long periods. Moreover, short hold tenancies and holiday lets are not supported outside defined settlements by LP Policy SP4. The condition would not therefore make the proposal accord with the development plan. Furthermore, the wording lacks precision and thus the condition would not satisfy all the tests set out at paragraph 55 of the National Planning Policy Framework (the Framework).
22. Having reached the conclusions above, it has not been adequately demonstrated that there is not a continuing need for housing for persons employed or last employed in the locality in agriculture or forestry, or those practising commoning. Thus, condition No 3 is necessary. Furthermore, the proposal would result in an unrestricted dwelling outside of defined settlements, which would undermine the integrity of the Council's spatial strategy. The proposal therefore conflicts with LP Policies DP32 and SP4. However, there is no conflict with LP Policy SP19 as this relates to new residential development.

Other Matters

23. The appellant contends that the proposal would reuse a redundant building in accordance with paragraph 79 of the Framework. Although the dwelling is vacant, it would remain in residential use irrespective of who resides within it. Moreover, it is located next to other properties and the garden centre. It is therefore not isolated and paragraph 79 is not applicable. In addition, the main parties agree that there have been limited changes in respect of the dwelling's

surroundings since the previous appeal decision. There is no evidence before me that contradicts the findings of the previous decision in respect of this matter. In any case, the conflict with the LP nevertheless remains.

24. The appellant puts forward that a dwelling should not remain empty when there is an ongoing need for all types of housing within the National Park. However, it has not been demonstrated that there is not a continuing need for dwellings for those associated with agriculture, forestry and commoning and there is no evidence before me which indicates that there is a greater need for other types of housing in the National Park.
25. There is no substantive evidence that an agricultural or forestry worker would be required to travel significant distances to their place of work if they occupied the dwelling. Moreover, there are commons located approximately one mile from the site and the CDA says that many commoners have their back up land in the vicinity. In addition, the site is relatively well placed in relation to services and facilities. Consequently, there are no compelling reasons to conclude that the appeal should succeed in the interests of environmental sustainability.
26. I have a degree of sympathy that the appellant's Council Tax bill includes a premium as the dwelling is unoccupied. However, this is not a matter that is relevant to whether or not the condition is necessary and thus it does not influence my findings in respect of the main issue.

Conclusion

27. For the above reasons, and having regard to all matters raised, the appeal is dismissed.

Mark Philpott

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Bill Redcliffe

Appellant

Robin Bryer BA(Hons)Dunelm MRTPI

The Bryer Partnership

FOR THE NATIONAL PARK AUTHORITY:

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