



Appeal Decision

Site Visit made on 8 March 2021

by Mr Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

Appeal Ref: APP/J3720/W/20/3260549

Fosse Way Bungalow, Fosse Way, Moreton Morrell, WARWICK CV35 9DF

- 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 Miss Hannah Austin against the decision of Stratford-on-Avon District Council.
- The application Ref 20/01564/VARY, dated 13 June 2020, was refused by notice dated 27 August 2020.
- The application sought planning permission for the 'Erection of detached bungalow (three bedroom) with integral garage and carport for disabled lady' without complying with a condition attached to planning permission 96/00260/FUL, dated 30 April 1996.
- The condition in dispute is No 2 which states that: "The occupancy of the dwelling hereby permitted and of the dwelling known as Fosse Way bungalow shown within the land edged blue on site plan number 01/96/06 received by the district planning authority on 28 February 1996 shall be limited to a person solely or mainly employed, or last employed, locally in agriculture as defined in section 336(1) of the Town and Country Planning act 1990, or in an equestrian business (including the dependence of such person residing with him) or a widow or widower of such a person".
- The reason given for the condition is: "The site lies in open countryside where policies are against the erection of new dwellings except where there is a special justification. This proposal has been permitted because it was considered that there was a particular need for two dwellings to serve the needs of an equestrian enterprise. This condition is imposed to ensure that both dwellings remain available to serve the needs of equestrian, agricultural or forestry workers, in accordance with the advice in Planning Policy Guidance Note 7 and paragraphs E15 - E17 and Stratford-on-Avon District Local Plan (Deposit Draft) policy H9".

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Permission was given in 1996 for the erection of a detached bungalow¹, to the rear of existing stables, to meet the needs of a disabled occupant connected to the equestrian use of the site (the root permission). The red lined application site shown on the site plan enclosed the plot for the new dwelling. A blue line, indicating other land in the vicinity owned by the applicant, was drawn around the stables, barn, associated fields and Fosse Way Bungalow. The approval imposed an agricultural occupancy condition on the dwelling the subject of the permission and on the existing dwelling (Fosse Way Bungalow).

¹ Planning Application Reference: 96/00260/FUL

3. At the same time, a scheme was also approved² for a much larger site, for the change of use to an equestrian business and alterations to Fosse Way Bungalow. This was to enable the existing bungalow to be used for a groom in connection with the livery and riding stables. No occupancy restriction condition was attached to this approval. The site plan for this second application covered the equestrian business and the plots of both dwellings.
4. A recent Lawful Development Certificate³ sought the Council's agreement that Fosse Way Bungalow could be occupied without being subject to the occupancy restriction. The Certificate was not issued, as the Council concluded that the dwelling was bound by condition 2 of planning approval 96/00260/FUL. There is no indication before me that that decision has been appealed.
5. It is undisputed between the main parties that the bungalow, to the rear of the equestrian use, should remain tied by condition 2 of the root permission. However, the appellant maintains that Fosse Way Bungalow should not be similarly restricted.
6. Taking these above points into consideration, the main issue is whether the condition, with respect to Fosse Way Bungalow, is reasonable, necessary and enforceable in the light of local and national planning policies.

Reasons

7. The appeal site consists of a dwelling within a small corner plot with access onto Brook Lane. The adjacent equestrian use consists of stables, a manège, fields and dwelling to the rear. At the time of determining the application the subject of this appeal, Fosse Way Bungalow was under the same ownership as the equestrian business. During my visit I observed that the gated entrances to the stables and Fosse Way Bungalow are separate. The bungalow is enclosed by hedging and fences and is physically severed from the neighbouring business. Fosse Way Bungalow is now stated as being in separate ownership with no clear functional relationship with the equestrian use.
8. Policy AS.10(i) of the Council's Core Strategy 2011-2031 relates to dwellings in rural parts of the District. This explains that a proposal for a rural worker's dwelling would be subject to a functional need being established. The findings of the functional need assessment submitted with the root application identified a need for one dwelling. However, a letter from the applicant's agent⁴ at the time showed her intention to initially adapt Fosse Way Bungalow for accessibility reasons and to then move into the new bungalow. The adapted bungalow would then be occupied by "an on-site groom to assist Miss Hardy [the owner] in running the establishment". On that basis, the Council accepted that the business required the owner and a groom to both reside on site, resulting in a need for two dwellings.
9. Fosse Way Bungalow was shown in the root application as lying outside the application site but within the ownership of the applicant. Conditions may be imposed on such land if they pass the tests of paragraph 55 of the National Planning Policy Framework. The condition was necessary as both dwellings were required in connection with the equestrian enterprise to accommodate a groom and the applicant. The occupancy condition was reasonable, in that it

² Planning Application Reference: 96/00261/FUL

³ Lawful Development Certificate application Reference: 20/00345/LDE

⁴ Letter from Mrs Treweek, 26 February 1996

tied both dwellings to prevent the potential future requirement for a further dwelling in connection with the business, notwithstanding that occupancy of Fosse Way Bungalow had previously been unfettered. Absent the occupancy condition, there would have been no substantive policy reason to approve the new dwelling, as the applicant already had access to a dwelling on site.

10. The Government's Planning Policy Guidance states that conditions that affect work on land not in the control of the applicant will often fail the tests of reasonableness and enforceability. However, at the time of the decision on the root application, all the associated land was under the applicant's ownership. Furthermore, Section 72⁵ makes it clear that conditions may be imposed regulating development or use of any land under the control of the applicant, whether or not it is land in respect of which the application was made, provided it would be expedient for the purposes of, or in connection with, the development authorised by the permission. The subsequent change of ownership of Fosse Way Bungalow does not negate the obligation to comply with the condition.
11. The text of condition 2 is slightly unclear regarding the time when the restriction on the occupancy of Fosse Way Bungalow would commence. However, whether the Council's intended trigger point was from the occupation of the new dwelling, or the commencement of development, both events occurred in the distant past. I am therefore satisfied that the meaning of the condition, once the property had been occupied by the groom, is sufficiently clear to ensure that the condition is now engaged.
12. The condition does not refer specifically to the adjacent equestrian business. However, this ensures that both dwellings continue to contribute towards any need for rural worker dwellings in the area, even if the business should cease. This would therefore assist with any latent demand. I recognise that the current equestrian business may only require the support of one dwelling. Nevertheless, the appellant has failed to demonstrate that there is no local demand for a rural worker's dwelling, such as Fosse Way Bungalow, for instance through a marketing exercise as suggested by the Council. Therefore, based on the evidence available, I am satisfied that the condition remains reasonable, necessary and enforceable.

Conclusion

13. For the above reasons the appeal is dismissed.

Mr Ben Plenty

INSPECTOR

⁵ 1990 Town and Country Planning Act