The Planning Inspectorate

Appeal Decision

Hearing held on 21 April 2021
Site visit made on 26 April 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 10 May 2021

Appeal Ref: APP/B9506/W/20/3258005
Brock Farm, Football Green, Minstead, Lyndhurst, SO43 7FR

- 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 Mrs Celia Stanwyck against the decision of New Forest National Park Authority.
- The application Ref 20/00235, dated 24 March 2020, was refused by notice dated 13 May 2020.
- The application sought planning permission for erection of house for agricultural worker with landscaping proposals without complying with a condition attached to planning permission Ref NFR/16013/2, dated 6 July 1970.
- The condition in dispute is No 2 which states that: *the occupier of the dwelling being a person employed or last employed in agriculture, as defined by Section 221(1) of the Town and Country Planning Act, 1962, or in forestry, or the dependant of such a person.*
- The reason given for the condition is: *The site being within the Green Belt is not one where the Local Planning Authority would permit residential development, other than that which is appropriate thereto, such as herein specified*.

Decision

1. The appeal is dismissed.

Preliminary matters

2. The site is not in the Green Belt and the original reason given for the condition is therefore no longer accurate. However, the principle still applies to residential development at this location, given that it is in the open countryside.

3. Future occupancy by commoners would only accord with the permission if they were practicing commoning to an extent that would satisfy the words of the condition. I do not therefore need to consider potential future occupancy of the dwelling by this group separately in my decision, insofar as it might increase the pool of potential qualifying purchasers.

Main issue

4. The main issues are:

- whether or not condition 2 continues to be reasonable and necessary with particular regard to provision of agricultural workers accommodation, and,
- if so, whether there are overriding material considerations, with particular reference to a Certificate of Lawful Development relating to breach of the condition.

Reasons

5. Brock Farm comprises a large, 2-storey, detached house built in the early 1970s. It is set within an agricultural holding of approximately 10 ha on the edge of the small, rural village of Minstead. Beyond the house is a yard surrounded by outbuildings. These included a substantial unused barn, and an open barn, which I observed was used for storage of equipment and hay for the appellant's horse. The holding has direct access to the open forest.

6. Policy DP32 of the New Forest National Park Local Plan (2016 – 2036) (August 2019) (LP) states that an agricultural occupancy condition will only be removed if it has been demonstrated that the long-term need for the dwelling has ceased, and there is no evidence of a continuing need for persons linked to agriculture, forestry or commoning.

7. The purpose of the policy is to ensure that dwellings specifically permitted to meet the needs of the rural economy remain available. The continuation of agriculture in the New Forest is an important contributor to both its cultural heritage and landscape. Paragraph 172 of the National Planning Policy Framework (the Framework) states that great weight should be given to the conservation and enhancement of cultural heritage, and landscape and scenic beauty in the National Parks.

8. The LP lists the evidence required to demonstrate that the long-term agricultural need for the dwelling has ceased, which includes marketing that has been targeted, realistic and sustained. The appellant has not provided any of the listed information.

9. The appellant states that marketing could not be undertaken because 'the occupancy condition is not intact'. As discussed below, I consider that the condition would be intact in the event that an agricultural or forestry worker were to come forward and for this reason, I do not consider that the appellant was precluded from marketing it as such.

10. It is not in dispute that the Authority receives planning applications for agricultural worker's dwellings and evidence has been submitted showing that over 20 dwellings for such a need have been approved since 2010. I am satisfied that this demonstrates an on-going need for tied housing.

11. In addition, the fact that the house is attached to an agricultural holding with associated barns and outbuildings leads me to conclude that the long-term need for the dwelling has not ceased through severance from the farm.

12. The appellant suggests that the house, even if discounted, is highly likely to be beyond the means of agricultural and forestry workers. No written evidence to support this has been provided. However, at the hearing it was not in dispute that houses in the New Forest are very expensive and I do not consider it controversial to accept that they are likely to be beyond the means of a typical farm worker's salary.

13. Notwithstanding this, the lack of marketing means that I have no evidence that a farmer or forester, or their dependants, with the means to afford the house could not come forward. The condition also allows occupation by somebody last employed in agriculture or forestry, which increases the chances of finding a person with the financial means.

14. In addition, there is no 'floor' in policy regarding the extent of the discount and, at least in theory, the house could be marketed at a heavily discounted price that would be accessible to workers to fulfil the policy. The lack of marketing and financial information means that I am unable to assess the extent of discount that would be required and whether this would be a prohibitive factor.

15. Turning to the objective of the policy, which is to ensure that a culture of agriculture and forestry can continue to some degree in the New Forest, the fact that houses in the area appear to be beyond the means of typical workers only serves to emphasise the importance of the policy.

16. At the hearing, it was reported that there were numerous less expensive houses on the outskirts of the nearby city. However, I consider that in most cases it would be essential for a farmer to live on the land, which would also reflect the historical pattern of settlement. A situation where those working on the land must commute into the area every day does not reflect the objective of the policy.

17. It has been suggested that the house is too large to be suitable for the purpose of an agricultural dwelling. I am mindful that the house is approximately 26% larger than that permitted in 1970 because it was extended in about 2002[1] in part to meet the requirements of the agricultural holding. The proposal included an additional bedroom for a worker at busy periods, office space and storage to keep the fleeces dry. While I appreciate that the angora goat business was not ultimately realised, the size of the house has therefore been permitted as appropriate for an agricultural enterprise.

18. The viability of the farm has been called into question. However, only oral evidence stating that the land was too wet to be accessed during part of the year was presented at the hearing. At the site visit, I observed that the fields had been cut and that the farm buildings included modern barns, which appeared to have previously been used for dairy farming. I remain unconvinced that the farm would not be a viable proposition.

19. I find that there is a continuing need for houses with an agricultural tie, and it has not been demonstrated that the long-term need for this dwelling has ceased. The requirements of Policy DP32 of the LP have not been fulfilled to justify its removal. In coming to this conclusion, I have had regard to the statutory purposes of the National Park, including to conserve and enhance the natural beauty and cultural heritage of the New Forest.

Other considerations

20. A Certificate of Lawful Development[2] was issued in 2018 certifying that the breach of condition 2 had become lawful because it had been in existence for at least 10 years.

[1] 02/74357 (12 June 2002)
[2] Reference 19/00859, 19 December 2019

21. The Authority cannot therefore enforce against the breach of condition while the current use continues. However, if the house becomes unoccupied or is again linked to agricultural or forestry use, then the condition becomes enforceable once more.

22. While I accept that a significant gap in occupancy is unlikely, it is not impossible. However, of greater likelihood is that a future occupier reverts to using the site for agriculture. The lack of a marketing exercise means that I have no evidence before me that this is so unlikely to happen that it can be dismissed. Given that the site includes approximately 10 ha of land and substantial farm buildings, I conclude that it is reasonably foreseeable that this could occur.

23. The appellant has drawn two appeals to my attention[3,4], both of which conclude that a Certificate of Lawful Development means that a restrictive occupancy condition no longer serves a purpose. Although I do not have the full details of these cases before me, it appears that both properties had become severed from the land and were no longer required for the purpose of agriculture. In the case of Conifer Lodge, the Inspector was also satisfied that the size of the dwelling meant that it would be unlikely to be suitable for a rural worker in the future, which for the reasons above I do not find to be the case here. I also note that Conifer Lodge is not located in a national park, where the weight given to protection of the culture and landscape is greater.

24. I conclude that there is a greater than theoretical possibility that condition 2 could be enforceable in the future. The condition therefore meets the requirements of the enforceability test outlined in the Framework and the Planning Practice Guidance[5].

Other matters

25. The site is in the Forest Central (South) Conservation Area, which is characterised by its settlement pattern and buildings. The proposal would not result in any physical changes to the building or land and I am therefore satisfied that there would be not harm to the character or appearance of the conservation area.

26. The site is adjacent to the New Forest SSSI and SAC. No change to land use is proposed through removal of the condition and I am therefore satisfied that there would be no harm to the designated sites.

Conclusion

27. It has not been demonstrated that there is only a theoretical possibility of condition 2 being enforceable in the future. Evidence has not been provided that the long-term need for the dwelling for persons linked to agriculture or forestry has ceased, as required by Policy DP32 of the LP. Continuation of agriculture in the New Forest National Park contributes to the conservation and enhancement of the cultural heritage and landscape, and protection of this therefore attracts great weight.

[3] APP/E2001/W/17/3170529 Conifer Lodge, Hull Road, Skirlaugh, Hull (4 July 2017)
[4] APP/Y9507/W/16/3147251 Copper Beeches, Torberry Farm, Hurst, South Harting (7 September 2016)
[5] Paragraph: 003 Reference ID: 21a-003-20190723, revised 23 July 2019

28. I conclude that retention of the condition is consistent with the policies of the local development plan when read as a whole, and for this reason, and having regard to all other matters raised, the appeal is dismissed.

B Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs A Whalley BA(Hons) Dip TP MRTPI, planning consultant, Woolley and Wallis

FOR THE LOCAL PLANNING AUTHORITY:

Miss L Young BSc MA MRTPI, Case Officer, New Forest National Park

OTHER INTERESTED PARTIES: None

DOCUMENTS SUBMITTED AT THE HEARING

LPA report relating to one and two storey additions, with alterations to roof (demolish existing conservatory) at Brock Farm, Football Green, Minstead (application 74357), 12 June 2002