



Appeal Decision

Site Visit made on 18 May 2021

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/F3545/W/20/3256501

**Smallwood House, Smallwood Green, Bradfield St. George, Suffolk
IP30 0AJ**

- 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 Richard Martin against the decision of West Suffolk Council.
 - The application Ref DC/19/2466/VAR, dated 17 December 2019, was refused by notice dated 25 March 2020.
 - The application sought planning permission for a detached dwelling without complying with a condition attached to planning permission Ref SE/05/01720, dated 1 September 2005.
 - The condition in dispute is No 4 which states that: The occupation of the dwelling hereby permitted, shall be limited to a person, or to persons solely or mainly employed in the horticultural business occupying the parcels of land edged blue and red on the submitted site location plan, and any dependents living with them. Furthermore, the land edged red and blue on the submitted site location plan shall be occupied together as a single planning unit and at no time shall any land be sold, leased, severed or occupied separately from the dwelling hereby permitted.
 - The reason given for the condition is: The site is in the countryside where new dwellings are not normally permitted except where there is an overriding need in the interests of agriculture, horticulture or forest in accordance with the provisions of Policy ENV6 (New Housing in the Countryside) of the Structure Plan, Policies PH7 (New Housing in the Countryside) and PH8 (Exceptions to the restrictions on New Housing in the Countryside) of the Local Plan and Policy RU6 (Housing Development in the Rural Areas) of the Draft Replacement Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for a detached dwelling at Smallwood House, Smallwood Green, Bradfield St. George, Suffolk IP30 0AJ in accordance with the application Ref DC/19/2466/VAR dated the 17 December 2019 without complying with conditions set out in planning permission SE/05/01720 granted on 1 September 2005 by West Suffolk Council (formally St Edmundsbury Borough Council).

Preliminary Matters

2. My formal decision above refers to the erection of a dwelling even though the property has been constructed. I have used this wording as it was the description of development relating to planning permission SE/05/01720. The proposal before me is for the same development but without the disputed condition. In effect, by allowing this appeal I have created a new planning permission which unconstrained by the disputed occupancy condition attached to planning permission SE/05/01720.

3. Planning Permission SE/05/01720 was assessed against the policies in a previous local plan that has since been replaced. The Joint Development Management Policies Document 2015 (DMP) forms part of the extant development plan. It is incumbent upon me to consider the proposal with reference to the most up to date development plan policies.

Background and Main Issue

4. The appeal site encompasses a detached dwelling known as Smallwood House, the occupation of which is linked by condition to a horticultural business known as Martin's Nursery. The appellant is seeking the removal of the occupancy condition so that the dwelling can continue to be lived in by persons unconnected to the horticultural business. Thus, the main issue in this appeal is whether it is still necessary and reasonable to limit the occupation of Smallwood House to persons solely or mainly employed in the adjoining horticultural business.

Reasons

5. The appeal site is positioned in a countryside location and although surrounded by a handful of other dwellings it is isolated from a discernible settlement by fields and woods. As a result, the appeal site is not in a location where new housing is generally supported by Policy DM5 of the DMP unless it meets one of the stated exceptions listed in the policy. One of the exceptions listed is a dwelling for a key worker essential to the operation of agriculture.
6. Horticulture is a form of agriculture and therefore Smallwood House is essentially an agricultural worker's dwelling. Condition 4 of planning permission SE/05/01720 was imposed to ensure it was occupied as such in order to address the functional need for the dwelling purported at the time of its approval. However, the condition should only be retained if it is necessary and reasonable to do so.
7. To this end, Policy DM26 of the DMP sets out criteria for assessing whether an agricultural worker's occupancy condition should be removed. It states that an occupancy condition will only be waived or varied where it can be demonstrated that there is no long term need for the dwelling to be associated with the enterprise, and if it has been demonstrated that the property has been offered for sale and to let to other relevant interests for a period of at least 12 months at a price to reflect the occupancy condition.
8. Both the Council and appellant share the view that Martin's Nursery is no longer a viable business. Some of the evidence underpinning this is based on future operators needing to borrow money, which may not always be the case. It is also unclear whether the business has modernised with an up to date business plan and an online presence.
9. However, substantive evidence, such as comparable sites or expert opinion, is not before me that demonstrates I should depart from this area of common ground between the Council and appellant. This is especially so because accounts have been provided that demonstrate the business performs poorly. In such circumstances, further investment would be hard to justify. The business is also small and very remote, minimising opportunities for passing trade. The appellant also points to a general national trend of small nursery businesses failing and the implications of recent national 'lock downs'. Thus,

there is no long term need for the dwelling to be associated with the enterprise, which the available evidence suggests is unviable.

10. Thus, compliance with Policy DM26 turns on whether the property has been marketed for sale and let to other relevant interests. The appellant's submissions clearly state that the property has not been marketed, and therefore the proposal is at odds with Policy DM26. However, as the business is probably unviable due to inherent limitations, it is unlikely anyone would wish to purchase it and keep it going. In the circumstances this would be a high risk given the requirements of the condition. Moreover, the condition as it stands prevents occupation by anyone that is not employed in the horticultural business so marketing it to the wider agricultural industry would be fruitless. For example, an occupant could not live at the property and work elsewhere in the agricultural sector.
11. Moreover, other aspects of this bespoke condition would seriously hamper a successful marketing campaign. In particular, the disputed condition ties occupation of the dwelling to the land on which the horticultural business operates. I share the view of the appellant that this would likely push the value of the site beyond what most agricultural workers could afford. The condition also effectively prevents the occupation of Smallwood House by retirees as there is no provision for those 'last occupied' at the horticultural business. It would be unreasonable and disproportionate to expect an occupant to vacate the property upon retirement. It is also unclear whether a spouse, partner, widow, or widower not employed in the business and not a dependent could live at the property and comply with the condition.
12. The Council suggests the condition could be varied to allow occupation by someone last employed at the horticultural business. However, it would be unnecessary to impose such a condition because the business is unviable, and the land cannot be severed from the house. As a result, the imposition of a 'varied' condition along these lines would achieve little.
13. In conclusion, the removal of the condition would be contrary to Policy DM26 because evidence has not been provided that the property has been marketed for sale or let to other interested parties. However, for the reasons given it is highly unlikely that a future occupant, which meets the requirements of the condition, could be found. As a result, there are material considerations that indicate the proposal should be determined otherwise than in accordance with Policy DM26.

Conditions and Conclusion

14. Save for a varied occupancy condition, which I have already discounted for the reasons given, the Council have not recommended any other conditions. I agree given that the building is in situ and no impacts need to be controlled or mitigated. Permitting the development to be carried out without complying with the disputed condition would be at odds with the development plan. However, in this instance there are material considerations that indicate the appeal should be determined otherwise than in accordance with the development plan. Accordingly, the appeal has succeeded.

Graham Chamberlain
INSPECTOR