



Appeal Decision

Site visit made on 1 June 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/P1133/W/21/3286705

**Willhayes Equestrian, Road from Willhayes Cross to Penhill Cross,
Doddiscombsleigh EX6 7LT**

- 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 Mr and Mrs B and J Prest against the decision of Teignbridge District Council.
 - The application Ref 21/01480/VAR, dated 24 June 2021, was refused by notice dated 1 September 2021.
 - The application sought planning permission for an outline application for a new occupational dwelling with all matters reserved for future consideration without complying with a condition attached to planning permission Ref 10/01885/OUT, dated 7 September 2010.
 - The condition in dispute is No 5 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 in an equine enterprise, or a widow or widower of such a person, and to any resident dependants.
 - The reason given for the condition is: Permission is only granted in view of the exceptional requirement for on-site supervision.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission was granted on 7 September 2010 for the construction of a dwelling for an occupational worker on the site. The outline approval was followed by a reserved matters approval on 26 September 2011. The dwelling was subsequently built and occupied.
3. The application the subject of this appeal seeks to remove condition 5 attached to the outline permission which restricts the occupancy of the dwelling. If approved, the effect of the new planning permission would be that the occupancy of the dwelling would be unrestricted, effectively resulting in an open market dwelling.

Main Issue

4. The main issue is whether or not the condition restricting the occupancy of the dwelling is necessary and reasonable having regard to local and national planning policies which seek to restrict housing development in the countryside.

Reasons

5. The appeal building is a fairly sizeable dwelling located on a level area formed within a section of the sloping hill side. It has a chalet like appearance with accommodation within the sloping roof. The holding extends to about 28 acres with the majority being sloping pasture land and with the main group of stable and support buildings close to the entrance with the road. There are some other loose boxes and garage buildings close to the dwelling.
6. The evidence indicates that the appellants have operated the holding since the early 1990s and the business principally revolves around providing specialist livery and provision of equine therapy treatments for injured, sick and problematic horses. It is also explained that a specialist horse transportation business has also been run in conjunction with the activities on the holding but the appellant's statement explains that this has been significantly scaled back due to market conditions.
7. It appears that the activities on the holding satisfied the Council, when it considered the outline proposal, that a rural worker's dwelling was justified and this led to the construction of the dwelling. The activities on the site have been principally undertaken by one of the appellants who, because of personal circumstances beyond their control, is now unable to operate the business in the way that they have in the past. The intention of the appellants is for them to remain in their dwelling and it is explained that they will need to undertake work elsewhere which would be such that they would be unlikely to comply with the occupancy condition, albeit that they intend to continue to run the equine business relying on third party labour.
8. Policy WE10 of the Teignbridge Local Plan 2013-2033 (the Local Plan) sets out the policy criteria to assess the acceptability of a proposal for the removal of conditions imposed on rural workers' dwellings. The policy has three criteria and it is only necessary for one of the criterion to be met to accord with the policy. In terms of criterion (a) there is no clear evidence that the occupancy condition was inappropriately imposed. Criterion (c) of the policy would not be met as the dwelling has not been offered on the open market for a reasonable period of time at a price which reflects the restrictive condition.
9. The appellant's case is based on meeting the requirements of criterion (b), namely that there have been significant relevant changes in circumstances since the condition was imposed. In support of the appeal, in summary, it is argued that the equine business was intimately related to the activities of the appellants and given the materially changed personal circumstances, which are argued to be material planning considerations and together with the supporting information, the requirements of criterion (b) of Policy WE10 of the Local Plan would be met.
10. However, the Council do not believe that the personal circumstances are sufficient in this case. It argues that the policy wording is intended to cover situations such as changes to legislation or national or local planning policy, broader market changes such as technological advancements, or changes in the area immediately surrounding the site, such as a new local plan allocation for housing adjacent to the site which would alter the settlement boundary.
11. There appears to be little guidance on how this policy criterion should be interpreted and applied. Personal circumstances can be a material planning

consideration and, in this case, I accept that the business was developed and expanded by the appellants over a number of years such that it required an on-site presence in the form of a dwelling. The holding, and the related occupation, was undertaken until the personal change in circumstances meant that it could not be continued in the way it had for some years. There is often, as in this case, a clear link between the development of a business on a rural holding and those that run it.

12. On the other hand, the planning permission for the dwelling was, it appears, based on the requirements of the holding and the essential need to have an on-site presence to support those equine activities. It was not granted on the basis of a personal permission. This would be standard practice and would allow in the future a different occupant of the dwelling to live and undertake land based activities at the holding. The permission runs with the land. While I have noted the details of the trading accounts of the business and the related profitability, I have not been presented with clear and persuasive evidence that the holding under the present or different owners would not need an on-site presence, for instance, to look after horses or other stock in the future.
13. The evidence indicates that the value of the property with the occupancy condition may be quite high and this may exclude local rural workers from being able to purchase the property. However, in the absence of a marketing campaign, this is a matter that I attribute only limited weight.
14. The provision of a new dwelling for a rural worker in the open countryside is granted on an exceptional basis. I have great sympathy for the appellants and the situation that they have found themselves in. However, there does not appear to me to have been significant relevant changes in circumstances in terms of the needs of the holding since the occupancy condition was imposed. I give weight to the changed circumstances of the appellants and consider that they are material planning considerations. Nevertheless, they do not outweigh the weight that I attribute to the requirements of the holding with the apparent on-going need for an on-site presence which could continue to be met by the dwelling with its occupancy restriction. It seems to me that the occupancy condition has not out-lived its usefulness.
15. I conclude that there have not been sufficient significant relevant changes in circumstances since the condition was imposed to meet the bar set by criterion (b) of Policy WE10 of the Local Plan. The occupancy condition is still necessary and reasonable when all the circumstances are considered. Removal of the occupancy condition would lead to an open market dwelling in the countryside contrary to the policy approach in the National Planning Policy Framework. In terms of the development plan, the removal of the condition would not meet with the requirements of Policies WE10 and S22 of the Local Plan which help to set the policy requirements for development in the countryside.
16. Accordingly, the proposed development would not accord with the development plan when considered as a whole. The evidence does not indicate that material considerations are of such weight that a decision should be made otherwise than in accordance with the development plan.
17. It is also necessary to take into account that one of the existing occupiers of the dwelling has protected characteristics in terms of the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. I have also considered the rights of the appellants under the Human Rights Act 1998,

including the right to the protection of property and that everyone is entitled to the peaceful enjoyment of their possessions. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. I have taken into account the personal circumstances of the appellants in my considerations and do so again specifically in this conclusion having due regard to the requirements of the PSED and in terms of human rights.

18. Dismissing the appeal would interfere with the rights of the appellants to use their property with the unrestricted occupancy they seek and therefore to help meet their housing needs. However, the interference with these rights would be justified in this case, in the public interest and in a proportionate way. In particular it would be in relation to the legitimate aim of according with the policies of an adopted Local Plan to control development in the countryside. The protection of the public interest, in relation to this matter, cannot be achieved by a means that would be less interfering with the existing occupiers rights. In these circumstances, dismissal of the appeal would be proportionate and the appropriate course of action.
19. In the light of the above analysis, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR