
Appeal Decision

Site visit made on 4 July 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2022

Appeal Ref: APP/Q3630/W/21/3279169

Log House, Ruxbury Road, Chertsey KT16 9NH

- 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 Simon Fisher against the decision of Runnymede Borough Council.
 - The application Ref RU.20/1704, dated 1 December 2020, was refused by notice dated 27 January 2021.
 - The application sought planning permission for the construction of a one-bedroom bungalow as accommodation for an agriculture worker without complying with a condition attached to outline planning permission Ref APP/Q3630/A/88/110040/P7, dated 28 April 1989.
 - The condition in dispute is No 4 which states that: 'the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture, as defined in Section 290 of the Town and Country Planning Act 1971, or in forestry, or a dependent of such a person residing with him or her, or a widow or widower of such a person'.
 - The reason given for the condition is: 'as permission would not have been granted but for the justification on agricultural grounds, a condition is needed to restrict occupation to an agricultural worker in the usual terms'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although not indicated in the appeal form, new financial and marketing information was included as part of the appellant's appeal statement. It responded to the Council's officer report and reasons for refusal and does not evolve the nature of the proposal. The appeal has been advertised in the normal way and the Council has had the opportunity to consider this evidence. In this regard, it has, though, referred me to its decisions on a fresh planning application¹ and an application for a certificate of lawful use² made by the appellant since the appeal was lodged. The appellant nonetheless had an opportunity to make final comments.
3. These other applications are not the subject of this appeal. Consequently, while I have taken the appellant's new evidence into account in my decision, I have not had regard to comments made by both main parties on these other applications or the Council's respective decisions. Considering the Planning

¹ RU.21/2176

² RU.21/1205

Inspectorate 'Procedural Guide: Planning Appeals - England' and the 'Wheatcroft Principles'³ I am, therefore, satisfied that no party has been prejudiced. I have determined this appeal on its individual planning merits.

Background and Main Issue

4. Outline planning permission⁴ was granted, subject to conditions, on appeal in 1989 for the 'construction of a one-bedroom bungalow as accommodation for an agriculture worker' in the countryside, in the Green Belt. This dwelling was built in 1990 for the appellant who lived in it, next to a Christmas Tree plantation which he managed. However, following a serious accident to the appellant this rural enterprise ceased in 1994. He has lived in the bungalow since but the plantation land has not been managed.
5. Condition 4 restricts the occupancy of the bungalow to a person solely or mainly employed or last employed in the locality in agriculture or forestry, or a dependant of such a person, including a widow or widower. The main parties do not dispute that the appellant occupies the bungalow in compliance with this condition. The removal of the condition would, in effect, provide a new open market dwelling in a rural location. This requires appropriate justification.
6. The Council is concerned that the bungalow could meet a need for living accommodation for a rural worker if the plantation land was used for an agricultural or other forestry enterprise. Alternatively, even if this land was not used in this way, the bungalow could be occupied by another person who complied with the condition.
7. Taking account of this background, the main issue is:
 - whether the condition is necessary and reasonable in relation to an ongoing need to restrict occupation of the bungalow as an agricultural or forestry worker's dwelling.

Reasons

8. At my site visit I was accompanied by representatives of both main parties. I was not able to enter the bungalow but saw sufficient of its external appearance to agree that it has not been regularly maintained. I was given access to the plantation land, which is wild and overgrown.
9. I have been referred to costs for works to clear or prepare the plantation land, for possible future agricultural or other forestry use, and other costs such as to renovate the bungalow, for its sale or let with the plantation land, to employ a rural worker and for accommodation elsewhere. However, while the previous Inspector's decision was informed by the circumstances of the appellant and the associated Christmas Tree plantation at the time, even if these costs are such that it is unlikely to be viable for anyone to resume a Christmas Tree plantation or an agricultural or other forestry use on this land, condition 4 is not to be construed in this way.
10. Occupation of the bungalow in compliance with the condition is not linked to, or dependant on, ownership of the plantation or the use of that land for any agricultural or forestry enterprise. Its scope relates to a potential need for rural workers accommodation in the 'locality'. This wider meaning continues to have

³ *Bernard Wheatcroft Ltd v SSE (1982)*

⁴ T/APP/Q3630/A/88/110040/P7 (Council's Ref RU.88/0060)

effect despite how long the plantation land has not been managed or the appellant has lived in the bungalow, not employed in agriculture or forestry. It is also irrespective of the present appearance of this land, or whether it is used at all for agriculture or forestry, and the present appearance of the bungalow (though there is no suggestion that it is uninhabitable). Whether the costs identified by the appellant would 'unequivocally' render the plantation land incapable of any agricultural or forestry use or not viable for such use, is not, therefore, a determinative factor in my decision.

11. I have not been informed about any surplus of agricultural or forestry dwellings in the locality or recent or pending planning applications in this respect. Nonetheless, though not overly far from the built-up edge of Chertsey, the locality is rural in character. Planning Practice Guidance (PPG) states that it may be relevant to take into account evidence about the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural or forestry rural enterprise⁵.
12. Two suitably qualified professionals⁶ have informed the appellant that it is not necessary to conduct any marketing. However, this advice is based on a narrow understanding of condition 4 that assumes the bungalow is taken together with the plantation land, whereas the condition is not fettered in this way. I would, therefore, expect to see commentary on details such as the price advertised for sale or let, the method of marketing and duration, the number of enquiries received and the reasons why any interest did not proceed any further, but there has been no such marketing of the bungalow.
13. As a result, there is no objective evidence that the bungalow would not be lived in by another person who complied with the condition. I cannot, therefore, conclude with any certainty that it would not continue to fulfil an unmet need for rural workers accommodation in the locality. In these circumstances there is no appropriate justification to remove the bungalow from the stock of rural workers dwellings. To do so could result in an unwarranted proliferation of another dwelling elsewhere in the countryside or in the Green Belt. Accordingly, condition 4 continues to serve a useful planning purpose.
14. Considering all of the above, I find that the appellant has not sufficiently demonstrated that condition 4 is not necessary or reasonable in relation to an ongoing need to restrict occupation of the bungalow as an agricultural or forestry workers dwelling. I am also satisfied that the condition meets the other tests set out in paragraph 56 of the National Planning Policy Framework (the Framework) and relevant PPG⁷.

Other Matters

Green Belt

15. The Council considers that without condition 4 the bungalow would be inappropriate development in the Green Belt. It has referred me to an appeal decision⁸, albeit for a site in a different Council area and development plan context. I respect the other Inspector's approach. Nevertheless in this current appeal, while the Green Belt was a consideration relevant to the initial grant of

⁵ PPG paragraph ID: 67-010-20190722

⁶ Appellant's appeal statement – Appendix 7 (letters from Coopers, and Bovingsdons)

⁷ PPG paragraph ID: 21a-003-20190723

⁸ APP/J1535/W/19/3236226

outline planning permission, the bungalow is not itself a building 'for' agriculture or forestry (even though it is intended to support such a use) nor would it be re-used for such a purpose. Moreover, it already exists and a potential change in occupancy would not be a material change of use (or a re-use) or an act of development.

16. Accordingly, I consider that the question of Green Belt inappropriateness is not relevant to my decision.

Fall-back

17. The appellant contends that the bungalow was not built in accordance with the outline planning permission, or reserved matters⁹ granted by the Council in 1989, thus it can be occupied without the restriction imposed by condition 4. However, the lawfulness of the bungalow is not within the scope of this appeal. In any event, a lawful development certificate is not a planning permission and would not remove condition 4.
18. The Council has granted prior approval to enlarge the bungalow¹⁰. However, it has not been suggested that the bungalow has been increased in size, or that it would be by the appellant. Furthermore, even if it were enlarged, there is no objective evidence that this would in itself make it unsuitable or unavailable for occupation by a person who otherwise complied with condition 4. This could, for example, include a retired farm manager or owner.
19. There is, therefore, no fall-back position in these respects in this appeal.

Personal circumstances

20. The Council does not dispute that, for health related reasons, there is no likely prospect of the appellant resuming a Christmas Tree plantation, or any other agricultural or forestry enterprise, on the plantation land. I have no reason to reach a different view. The appellant no longer wishes, and is increasingly not able, to live independently in the bungalow as his home. Instead, he seeks to live elsewhere, in accommodation more suited to his health needs, including by disposing of the bungalow.
21. There is no evidence that condition 4 prevents the sale or let of the bungalow, albeit not at an open market price but at a value to reflect the presence of the condition. This is not unusual or unexpected. Nonetheless, in terms of what the appellant seeks to achieve, and albeit a private benefit, dismissing the appeal would, to that extent, infringe his right to respect for his private life and home¹¹. It would also have a negative impact on him with due regard to disability¹².
22. These considerations are factors in favour of the proposal.

Planning Balance

23. The open market dwelling that would be established if condition 4 were removed would remain long after the appellant's personal circumstances have

⁹ RU.89/1005

¹⁰ RU.20/1749

¹¹ Article 8, Human Rights Act 1998 which enshrines the European Convention on Human Rights

¹² Public Sector Equality Duty, contained in the Equality Act 2010

ceased to be material. Moreover, the planning system operates in the wider public interest.

24. Granting planning permission for rural worker dwellings is a recognised exception to the general restraint on residential development in the countryside or in the Green Belt. The removal of condition 4, without appropriate justification, would be contrary to objectives of the Framework for housing in rural areas. These include to meet local needs, maintain or enhance rural communities and to avoid isolated homes unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside (paragraphs 78, 79 and 80). It would also be at odds with aims of the Framework to maintain the intrinsic character and beauty of the countryside (paragraph 174 b)).
25. Consequently, the proposal would not outweigh the harm to these interests of acknowledged planning importance.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR