



Appeal Decision

Site visit made on 27 March 2023

by Peter D. Biggers BSc HONS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th April 2023

Appeal Ref: APP/V0510/W/22/3299286

2 Hope Hall Cottages, Brinkley Road, Dullingham CB8 9UW.

- 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 S Dudley against the decision of East Cambridgeshire District Council.
- The application Ref 21/01501/VAR, dated 11 October 2021, was refused by notice dated 7 December 2021.
- The application sought planning permission for a racehorse stud and 4 No cottages without complying with conditions attached to planning permission Ref 02/01098/RMA dated 28 April 2003.
- The condition in dispute is No 3 which states that:
3) the occupation of the dwellings shall be limited to a person solely or mainly working or last working in the locality in agriculture, forestry, horse racing or stud farming or a widow or widower of such a person and to any resident dependants.
- The reasons given for the conditions are:
3) Reason: The dwelling hereby permitted, is situated in a rural area outside any established settlement where the Local Planning Authority would not normally grant permission for such development and this permission is granted solely in order to fulfil an essential need for the local horse racing industry and to satisfy the requirements of the East Cambridgeshire Local Plan 2000.

Decision

1. The appeal is dismissed.

Procedural Matter

2. In view of the facts in this case, set out below, I am unable to approach the decision in the usual manner for an appeal on a Section 73 application to vary a condition whereby my assessment would be based on whether the condition remains necessary and reasonable to control occupancy of the cottage.

Reasons

3. The appeal property is one of 2 cottages on the eastern boundary of Hope Hall Stud sitting just above and on the west side of the lane between Dullingham and Dullingham Ley although the property is accessed from the west via Brinkley Road. It is outside the development boundaries for Dullingham and therefore in open countryside subject to *East Cambridgeshire Local Plan* (ECLP) Policies GROWTH2 and HOU5.
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4. The main stud buildings and a total of four dwellings were granted outline planning permission in the early 2000s subject to an occupancy condition and a S106 Agreement restricting, amongst other things, occupancy of the dwellings to persons employed directly in the management or care of horses on the stud.
5. The S106 Agreement was subsequently varied in 2003 at the time of the reserved matters application (Ref 02/01098/RMA) to widen the occupancy to persons solely or mainly employed in agriculture, forestry, horse racing or stud farming or a widow or widower of such a person and their dependents.
6. In approving the reserved matters application at the same time, Condition No 3 was erroneously attached reflecting the wording of the revised S106 Agreement. Conditions may only be attached to a reserved matters approval which directly relate to the reserved matters under consideration. The matter of occupancy had already been restricted under the outline planning permission and by the S106 Agreement and therefore the condition should not have been attached in approving the reserved matters.
7. From the documentation before me it would appear that, up until around 2015, the cottage was being occupied in accordance with the revised S106 Agreement and occupancy conditions but that there then ensued a period in which a succession of tenants for the stud did not require the dwelling to be occupied in association with the stud.
8. In 2019 another application was made to further vary the S106 Agreement to remove the occupancy restriction for the dwellings but this was refused. Accordingly, the S106 Agreement remains in force running with the land. Therefore, even if Condition No 3 had been correctly imposed, whether or not its relaxation would meet the requirements set out in ECLP Policy HOU5 is irrelevant. The S106 Agreement still restricts the occupancy of the dwelling, as does the condition on the original outline, therefore preventing what the appellant seeks to do.

Other Matters

9. I note the representations of the third party (the tenant of No 2 Hope Hall Cottages) and the circumstances by which, in good faith, they took on the tenancy of No 2. It has been put to me that maintaining a condition that has the effect of resulting in an inefficient use of housing would not be sustainable. This is noted and, whilst in some respects, a short relaxation of the occupancy condition may not amount to substantial harm to the objectives of ECLP Policy HOU5, the reality is that the occupancy is still controlled by the S106 Agreement and the occupancy condition on the outline permission which remain in force.

Conclusion

10. I have had regard to the Public Sector Equality Duty contained in the Equality Act 2010 and understand the appellant's wish to accommodate his tenant's personal circumstances with a variation to the condition. However, for the reasons above, this cannot override the fact that a S106 Agreement and a condition on the outline permission remain in place. The appeal must therefore be dismissed.

P. D. Biggers

INSPECTOR