



Appeal Decision

Hearing held on 4 April 2023

Site visit made on 4 April 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2023

Appeal Ref: APP/Z3825/W/22/3300830

Blanches Farm Bungalow, Littleworth Lane, Partridge Green, Horsham RH13 8JF

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Sara Simmons against the decision of Horsham District Council.
 - The application Ref DC/20/2450, dated 3 December 2020, was refused by notice dated 16 December 2021.
 - The application sought planning permission for a bungalow and garage with vehicular and pedestrian access without complying with a condition attached to planning permission Ref WG/18/71, dated 24 August 1971.
 - The condition in dispute is No 4 which states that: The occupation of the dwelling shall be limited to persons solely or mainly employed or last employed locally in agriculture as defined in Section 221(1) of the Town and Country Planning Act 1962, or in forestry, or a dependent of such person residing with him (but including a widow or widower of such person).
 - The reason given for the condition is: The site lies in an area where permission for development unrelated to the essential needs of agriculture and/or forestry would not normally be granted.
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Decision

1. The appeal is allowed and planning permission is granted for a bungalow and garage with vehicular and pedestrian access at Blanches Farm Bungalow, Littleworth Lane, Partridge Green, Horsham RH13 8JF in accordance with the application Ref DC/20/2450 dated 3 December 2020, without compliance with condition number 4 previously imposed on planning permission Ref WG/18/71 dated 24 August 1971 and subject to the following condition:
 1. The occupation of the dwelling shall be limited to persons solely or mainly employed or last employed locally in agriculture or in forestry, or a dependent of such person residing with them (but including a widow or widower of such person).

Background and Preliminary Matters

2. Planning permission was granted in 1971 for the erection of the appeal dwelling, subject to 5 conditions. Condition 4 (the Condition) requires it to be occupied by persons employed or last employed locally in agriculture or in forestry, or a dependent, widow or widower of such person. The reason stated

in the decision notice for the Condition is because the appeal site is in an area where permission for development unrelated to the essential needs of agriculture and/or forestry would not have normally been granted at that time.

3. The site location plan shows the footprint of Blanches Farm Bungalow edged in red. This forms the appeal site and the other land edged in blue on that plan, under the same ownership, forms the wider site. I shall refer to these areas of land in those terms throughout this decision, and I shall refer to them together as 'the whole site'.
4. The appeal dwelling is a 3-bedroom bungalow in a countryside location. The wider site comprises gardens, a photovoltaic array, paddocks, 2 steel frame barns, stable block, former piggery building, yard and a sand school. The whole site covers approximately 4.82 acres. An access drive runs along the side of the appeal dwelling, leading to the buildings, sand school, yard and paddocks at the rear.
5. The Condition follows standard wording used regularly throughout the country¹, which is precise with regard to paragraph 56 of the National Planning Policy Framework (the Framework). The previous owner of the appeal site sold the whole site following a Council enforcement investigation into their apparent non-compliance with the Condition. This followed the dismissal of an appeal² where that previous owner sought to remove the Condition. The Condition is therefore enforceable.
6. The appellant occupies the appeal dwelling with their husband, who was last employed in agriculture 8 miles away. Although the appellant expressed doubt as to whether subsequent non-agricultural work undertaken by Mr Simmons had resulted in the Condition being breached, no compelling evidence was presented to demonstrate that a breach of condition currently exists.
7. It was confirmed that the Draft Horsham District Local Plan 2019-2036 (dLP) is yet to be formally considered by the Full Council and as such it has not been scrutinised by the appropriate democratic process. It has not been adopted and there is no certainty that it will be adopted in its current form. I therefore attach limited weight to it in my decision.

Main Issues

8. The main issues are:

- whether the Condition is necessary, relevant to the development, and reasonable in all other respects, with regard to local and national planning policies for development in the countryside; and
- the personal circumstances of the appellant.

Reasons

Local and National Policies

9. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise³. Policies 2 and 3 of the

¹ Similar to that set out in Appendix A of Circular 11/95: the use of conditions in planning permissions

² Appeal reference APP/Z3825/A/10/2119863

³ Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004

Horsham District Planning Framework (2015) (HDPF) seek to focus development to existing built-up areas within existing towns and villages in accordance with an identified settlement hierarchy. This is to maintain the district's unique rural character and settlement pattern whilst ensuring that the needs of the community are met through sustainable growth and suitable access to services and local employment, amongst other things.

10. The appeal site has been described as a sustainable location due to nearby services, but it is not located within the built-up area of any town or village defined in the HDPF. Development outside built-up area boundaries is supported by Policy 4 of the HDPF where the site is allocated in the Local Plan or in a Neighbourhood Plan and adjoins a settlement edge, amongst other things. Policy 26 of the HDPF also applies to development outside built-up boundaries, requiring development to be essential to its countryside location and to accord with other criteria which include supporting the needs of agriculture or forestry.
11. The appeal site is not allocated for development in the Local Plan or a Neighbourhood Plan. The appeal site is therefore located in an area where the development would be in conflict with the development plan, unless if it would be essential to its countryside location and support the needs of agriculture or forestry, amongst other things.
12. The appeal site is outside the secondary settlement boundary of Littleworth defined in the dLP. Even if the dLP formed part of the development plan, I have not been referred to any specific policies which would support the proposal.
13. The main parties agree that the proposal would not result in the development of an isolated home in the countryside and that paragraph 80 of the Framework does not weigh against it. I see no reason to form a different view.

Whether Necessary, Relevant, and Reasonable

14. The current wording of the Condition includes text which is no longer necessary. This defines agriculture and refers to the sex of the person who may be employed in agriculture or forestry. This does not mean that the Condition is no longer necessary, relevant or reasonable. It can be varied as part of this decision if I consider it appropriate.
15. It is part of the appellant's case that the appeal dwelling no longer fulfils its initial purposes, which was to provide an on-site worker's presence for an established agricultural holding. Land which previously formed part of the agricultural holding was sold by previous owners. It is agreed by the Council that the whole site is now of insufficient size to support a viable or sustainable agricultural enterprise requiring an agricultural worker to live on-site. As the appeal dwelling forms part of the district's agricultural/forestry workers' housing stock, the Council claims it could remain essential to its countryside location and support the needs of agriculture or forestry locally.
16. A marketing exercise would be one method of demonstrating whether there is any need for an agricultural/forestry worker's dwelling at the appeal site, but it would not be the only method. A marketing exercise has not been undertaken as the appellant wants to remain living at the appeal site, rather than sell or rent the property to any other people. There is no relevant policy requirement for a marketing exercise to be undertaken.

17. The whole site has been valued at £790,000⁴. This comprises a valuation of the appeal dwelling at £365,000, a valuation of the other buildings, yard and sand school at £350,000, and a valuation of the land at £75,000. The valuation of the appeal dwelling includes a 30% discount being applied to its open market value to take account of the requirements of the Condition. A 30% discount has not been applied to the other buildings and land in the overall valuation of the whole site. The appellant has advised that any potential purchaser would likely have to be a cash buyer, due to the Condition presenting difficulties when seeking a mortgage.
18. The Council agree with the valuations and that the whole site would not be affordable to an agricultural or forestry worker; however, it is suggested that the valuation of the appeal dwelling alone could be affordable to such persons. The valuations have not been tested and it was accepted by the appellant that people who would comply with the Condition could be interested in purchasing the whole site. No assessment has been undertaken as to the rental value of the appeal dwelling alone or the whole site.
19. Evidence has been presented of nearby dwellings of similar sizes to the appeal dwelling, on much smaller plots, which were advertised for sale for less than the whole site's valuation⁵. Agricultural or forestry workers looking to purchase accommodation in the local area would find those properties more affordable than the whole site, but those houses with the same number of bedrooms as the appeal dwelling would be less affordable than the valuation of the appeal dwelling alone⁶.
20. The whole site has been described as having a quite modest dwelling and the potential for quite good equestrian facilities, which makes it desirable in this part of the country. The appellant has claimed that selling the whole site for its valuation would not serve the rural community, as it would sell to someone like them. This was a reference to the good financial position of the appellant at the time they purchased the site, and their ability to comply with the Condition on account of where Mr Simmons was employed.
21. It was claimed that this ignores the spirit of the Condition to provide affordable accommodation for agricultural or forestry workers close to where they are employed. It was, however, accepted that there is no requirement for the appeal dwelling to be affordable to people who would comply with the Condition.
22. The Council received 48 applications for rural worker dwellings within the district between 1 January 2017 and 22 January 2021, with a further 7 applications for such dwellings received in 2021, and 12 in 2022. These figures are misleading, as some of those applications would have been resubmissions of other applications already accounted for in the figures. Those applications proposed on-site dwellings where there was a claimed need for a worker to live within sight and sound of the associated rural operation. Many of those applications were refused, but the figures suggest there is an ongoing demand for rural worker dwellings within the district.

⁴ Valuation Report by Batcheller Monkhouse, dated 4 March 2021

⁵ The appellant's appendices 10 – 13 and Section 15 of the Valuation Report

⁶ 1 Hill Crest Cottages with a guide price of £300,000 - £350,000 is a 2-bedroom house with less than half the floor area of the appeal dwelling

23. The Council's agricultural consultant explained that when an application is submitted for an agricultural/forestry worker's dwelling, they would assess whether there is an essential need for such a person to reside on-site, rather than the wider local area. As part of that process, they would search for alternative suitable accommodation available normally within 0.5 miles, but also up to 1 mile, of those application sites.
24. The Council's agricultural consultant also advised that farms employ many non-emergency workers who live in the wider local area around where they work, and that the appeal dwelling could potentially accommodate such people. It has provided accommodation for Mr Simmons to live local to his last place of agricultural work since 2011, even if that was only on account of the appellant's financial position.
25. I was informed that farm workers being provided with rental accommodation as part of their employment package is becoming popular across the country. The Condition does not require the owner of the appeal dwelling or wider site to be employed or last employed in any specific manner. The appeal dwelling could therefore be purchased or rented by someone who would not comply with the Condition, for other persons who would comply with the Condition to occupy it as part of their employment package.
26. Agricultural labour demand may have declined since 1971 when the Condition was imposed, but it has been static over recent years, with changes in approaches to farming. I was informed that although this has resulted in people seeking planning permission for on-site dwellings where they consider there is an essential need for an emergency worker, this does not mean farmers are not continuing to purchase and rent other properties to provide local accommodation for non-emergency workers.
27. Planning permission⁷ has previously been granted by the Council for a rural worker's dwelling at another site without the applicant in that case needing to consider purchasing or renting other properties locally. In that case, the Council found there was an essential need for emergency workers to be housed within sight and sound of cattle, even though that applicant owned other nearby dwellings and other agricultural workers' dwellings were on sale nearby.
28. With the above points in mind, it is unlikely that the appeal dwelling would have prevented any agricultural or forestry workers' dwellings from being permitted in the countryside had a marketing exercise been undertaken by the appellant. However, it is also likely that there are people who would comply with the Condition who would be interested in purchasing or renting the appeal dwelling, which could potentially vacate other agricultural or forestry workers' dwellings or support other agricultural or forestry enterprises. I note that the appellant vacated another property said to be subject to an agricultural tie when moving to the appeal site.
29. I have not been presented with clear evidence of demand or lack of demand for a dwelling subject to the Condition at the appeal site. It has not been demonstrated that there is no need for an agricultural/forestry worker's dwelling in this rural area, local to where agricultural and forestry workers are employed. In the absence of such evidence, taking all matters raised into account, it would be reasonable to conclude that the appeal dwelling remains

⁷ The Council's ref: DC/10/2102

capable of satisfying any ongoing need for an agricultural/forestry worker's dwelling in this location where dwellings would not normally be permitted.

30. I am not satisfied that any such need could not be met through selling or renting the appeal dwelling, even if the whole site would not be affordable to agricultural or forestry workers or if cheaper accommodation could be found elsewhere locally. Whether any potential future occupants of the appeal dwelling would need to live there, or merely want to live there on account of the equestrian facilities on the wider site, is not determinative as to whether there is any need for the Condition. The sale or rental of the appeal dwelling to another person who complies with the Condition could vacate another property subject to a similar condition. This would preserve the stock of agricultural and/or forestry workers' dwellings within the district to meet any ongoing need.
31. Taking the current development plan into account, the fact that the whole site no longer requires an on-site agricultural worker does not render the Condition unnecessary, irrelevant, or unreasonable. In this particular case, neither does the level of affordability of the whole site or its desirability to people who may not comply with the Condition. I am unconvinced that the appeal dwelling could not be sold or rented to people who would comply with the Condition separate to the buildings, yard, sand school, and other land adjoining the appeal site.
32. Part of the Condition is unnecessary, but it can be varied, which I shall address below. Otherwise, the Condition accords with paragraph 56 of the Framework. It remains necessary and relevant to the development to ensure it accords with the development plan, and the Condition is reasonable in all other respects. The proposal would replace an agricultural/forestry worker's dwelling with an open-market dwelling in the countryside, outside built-up boundaries, where it has not been demonstrated there is no need for the Condition. This would conflict with Policies 2, 3, 4 and 26 of the HDPF.

Personal Circumstances

33. The appellant's occupation of the appeal dwelling in accordance with the Condition relies on them being a dependent of Mr Simmons. I note the appellant's disagreement with the use of this term, as they are not financially dependent on Mr Simmons. For the purposes of such a condition, the Courts⁸ have held that the word 'dependents' should not be interpreted to only mean people who are financially dependent, and in this case reference to 'a widow or widower' shows that the Condition was intended to include spouses without financial dependency.
34. The appellant commenced divorce proceedings with Mr Simmons in August 2020. Were they to divorce, the appellant would want to be able to continue living at the appeal site without needing to comply with the Condition. As the appellant is not employed or last employed locally in agriculture or in forestry, the Condition prevents them from occupying the appeal dwelling other than as a dependent or widow of such a person.
35. It is therefore necessary for me to consider whether the Condition interferes with the appellant's right to respect for their private and family life, their home, and their correspondence in the context of Article 8 of Schedule 1 of the

⁸ *Shortt v SSCLG & Tewkesbury BC* [2014] EWHC 2480 (Admin)

Human Rights Act 1998. This is a qualified right, where interference may be justified in the public interest, applying the principle of proportionality.

36. The appellant has renovated buildings and land at the whole site and created equestrian facilities to pursue associated activities using life savings. The property provides part of the appellant's income through a photovoltaic array and DIY livery informally provided to a small group of people. Much hard work has gone into bringing the property up to its current standard, and it is understandable that the appellant would want to continue residing in the appeal dwelling without needing to rely on any other people to comply with the Condition. I am also mindful that Mr Simmons has an interest in the land.
37. It was confirmed that the appellant would be able to afford to live elsewhere, were they to divorce Mr Simmons, but this would require a change to their way of living. This would be on account of the appellant's aging horses which form an important part of their life.
38. The Council has suggested that the Condition could be varied to allow a divorcee of a person employed or last employed in agriculture or forestry to occupy the appeal dwelling. I was referred to an appeal decision⁹ of some age, where the Council claimed a similar condition had been varied in this manner on compassionate grounds. On reading that decision it is evident that condition was varied to provide a personal planning permission to that appellant, who was residing in a dwelling in breach of a similar condition following a divorce, which is quite different to the circumstances of this case and what was discussed during the Hearing.
39. I am unconvinced that varying the Condition to allow a divorcee of a person employed or last employed in agriculture or forestry would be reasonable in this instance for the following reasons. Firstly, the appellant is not a divorcee at present, and it is possible that this will not change. Secondly, I do not consider it reasonable for the Condition to be broadened to allow a divorcee to occupy the appeal dwelling in perpetuity. While a widow or widower would comply with the Condition, it is reasonable for the death of a spouse to be an anticipated eventuality, which would not result in an agricultural or forestry worker seeking alternative accommodation local to their current or last place of employment. Allowing a divorcee of an agricultural or forestry worker to occupy the appeal dwelling would broaden the range of people who could comply with the Condition without adequate justification.
40. Variation of the Condition in the manner suggested by the Council, or that adopted in the appeal decision referred to at footnote 9, would therefore be inappropriate. This is because the appellant currently occupies the appeal dwelling in accordance with the Condition, and they may continue to do so in the future. There is no exceptional justification for varying the Condition in those terms.
41. In conclusion on the second main issue, I find that the Condition interferes with the appellant's human rights under Article 8, as they would be prevented from occupying their home on their own in the event that they were to divorce Mr Simmons and want to live separately. However, that interference is necessary in the public interest, to protect the rights and freedoms of others in accordance with the law and in pursuance of the legitimate aim to regulate the

⁹ APP/U2235/A/00/1042639

use of land. Taking all matters raised into account, I find that the Condition is both proportionate and necessary and that the protection of that public interest cannot be achieved by any means which would be less interfering with the appellant's rights.

Other Matters

42. Planning permission has been granted for other houses near to the appeal site since the appeal dwelling was authorised. Notably, large houses at Rickmans, Littleworth House, and The Barn were permitted¹⁰ in the 1970s and 1990s either side of the appeal site without planning conditions controlling their occupancy. The appeal dwelling now forms the end of a row of 6 detached houses on this part of Littleworth Lane, separated from Rickmans and more consistent forms of development to the north by a paddock.
43. My attention has also been drawn to dwellings permitted¹¹ without such conditions further north of the appeal site at Abbots Lea and Southview, where the Council concluded they were sustainable locations for new houses. I have not been provided with the full details of those decisions or the development plan policies in place at the time of those decisions, but based on the evidence provided, it appears that different circumstances applied to those sites further north, where the Council found they formed part of a more distinct pattern of development. I agree with this point, even if it is unclear whether that on its own would make those sustainable locations for residential development.
44. I have been referred to a number of cases¹² where conditions similar to or the same as the Condition have been removed due to those dwellings being unaffordable to most local agricultural/forestry workers and in the absence of marketing exercises. I have only been provided with brief summaries of most of those decisions and the full details considered in those cases are not before me to clarify the reasoning which led to all of those decisions. In this particular case, the evidence indicates that although the whole site would not be affordable for most agricultural/forestry workers to purchase, it would not necessarily be unaffordable, and the appeal dwelling on its own would be more affordable to purchase than other local open-market properties.
45. I appreciate the appellant's arguments relating to other houses authorised near to the appeal site without conditions controlling their occupancy, but these do not render the Condition unnecessary, irrelevant, or unreasonable. They do not convince me that the appeal site is a sustainable location where housing should ordinarily be permitted in conflict with the development plan. This is on account of its location outside any built-up area boundary, although I note the appellant's reference to them being able to access a range of services on foot and by bicycle. For the reasons I have given, the other planning decisions referred to do not lead me to different conclusions on the main issues in this appeal, or otherwise convince me that the Condition should be removed.
46. There was some discussion during the Hearing as to whether the appeal dwelling could be separated from the wider site and whether this would be reasonable to make the appeal dwelling more affordable than the whole site. I do not consider the close arrangement of the appeal dwelling and access drive

¹⁰ The Council's refs: WG/48/72, WG/24/77, WG/47/92

¹¹ The Council's refs: DC/13/0984, DC/20/0592, DC/21/0726

¹² The Council's refs: DC/16/1842, DC/07/0630, and DC/05/2872; and appeal refs: APP/D0840/W/19/3229734 and APP/D0840/W/18/3207828

leading to the yard to be so restrictive as to prevent this from being a possibility. The access drive is narrow and has a public right of way running its length, but this would not prevent the land and buildings at the rear of the site from being used if the appeal dwelling was under different ownership or occupation. The historic association between the appeal site and the wider site would not be a barrier to their separation either. It would not therefore be unreasonable to consider that the appeal site could be separated from the wider site.

47. It was suggested that separating the appeal site from the wider site by renting or selling the appeal dwelling to other persons could create a need for a rural worker's dwelling at the rear of the appeal site to service the land or support equestrian activities. Minimal information was presented to suggest that such hypothetical situations would be likely to arise. Based on the limited information presented¹³, I consider it unlikely that there would be more than a theoretical possibility that separating the appeal dwelling from the wider site could create a justified need for a further dwelling in this countryside location.
48. The appellant suggested that separating the appeal dwelling from the wider site could create the possibility that permitted development rights¹⁴ could be used to convert other existing buildings into a dwelling. As the other buildings are no longer in agricultural use, I do not see how the provisions of Class Q, Part 3 of Schedule 2 of the GPDO would permit such conversion.

The Condition and Other Conditions

49. Parts of the Condition are no longer necessary. It is open to me to allow the appeal to issue a new planning permission for the development subject to a varied condition which does not include those unnecessary parts. I shall therefore allow the appeal and impose an appropriately worded condition with the same effect as the Condition. Specifically, at the time of this decision it is not necessary for a condition to refer to a definition of agriculture or to refer to the sex of any persons.
50. The other 4 conditions attached to the planning permission for the appeal dwelling are no longer necessary or relevant as the development has been carried out. There is no need for me to attach any further conditions to this decision.

Conclusion

51. Taking all matters raised into account I consider that the Condition as varied is necessary, relevant to the development, and reasonable in all other respects. The appeal should therefore be allowed, subject to a condition in the terms set out above.

L Douglas

INSPECTOR

¹³ Including Policy 29 of the HDPF, which offers support for equestrian development in certain circumstances

¹⁴ Under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO)

APPEARANCES

FOR THE APPELLANT:

Sara Simmons The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Robert Hermitage Horsham District Council
Olivia Wojniak Reading Agricultural Consultants

DOCUMENTS SUBMITTED AT THE HEARING

- Signed statement of common ground
- Reference numbers and descriptions of other planning decisions referred to by the appellant
- Appeal decision reference APP/D0840/W/19/3229734
- Appeal decision reference APP/D0840/W/18/3207828
- Policy 29 of the HDPF
- Documents and appeal decision relating to appeal references APP/U2235/A/00/1042639 and APP/U2235/C/00/1047163