



Appeal Decision

Hearing (Virtual) held on 27 June 2023

Site visit made on 28 June 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

Appeal Ref: APP/X1545/W/23/3314045

Withs Farm Beckingham Road, Great Totham, Maldon CM9 8EA

- 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 T Forrester-Muir against the decision of Maldon District Council.
 - The application Ref VAR/MAL/22/00624, dated 12 May 2022, was refused by notice dated 25 July 2022.
 - The application sought planning permission for 'erection of one dwelling' without complying with a condition attached to planning permission Ref MAL/892/85, dated 15 January 1986.
 - The condition in dispute is No 2 which states that: 'The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly employed, or last employed, either at Forrester Park Golf Club or locally in agriculture as defined in Section 290 (1) of the Town and Country Planning Act 1971, or in forestry, or a dependent of such person residing with him (but including a widow or widower of such a person).'
 - The reason given for the condition is: 'The local planning authority would not be prepared to permit the dwelling on this site unconnected with the use of the land or neighbouring land for agricultural purposes'.
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Decision

1. The appeal is allowed and planning permission is granted for erection of one dwelling at Withs Farm, Beckingham Road, Great Totham, Maldon CM9 8EA in accordance with application ref VAR/MAL/22/00624 dated 12 May 2022 without compliance with conditions previously imposed on planning permission ref MAL/892/85 dated 15 January 1986 but subject to the condition below:
 - 1) All access to the dwelling hereby permitted shall be from the private access road to the site currently known as Forrester Park.

Background

2. Planning permission for a dwelling was granted under application reference MAL/892/85 ('the Original Permission') subject to a number of conditions. The appellant seeks to remove condition 2 ('the Disputed Condition') which restricts occupancy of the dwelling in the terms set out in the banner heading above.

Main Issue

3. Paragraph 56 of the Planning Policy Framework ('the Framework') outlines that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

4. The main issue is whether or not the Disputed Condition is reasonable and necessary including having regard to needs for agricultural and essential workers' accommodation.

Reasons

5. I have not been directed to any current development plan policies or guidance outlining the approach to be taken to proposals to remove occupancy conditions. Policy CC16 of the Maldon District Replacement Local Plan 2005 did outline criteria to be met for permission to be granted to occupy a dwelling without compliance with a restrictive condition, broadly requiring proof of no further agricultural need for the property, evidence of marketing of the property locally and nationally at a price to reflect the occupancy condition, and that 10 years had lapsed since the dwelling was first occupied. The main parties agreed at the Hearing that while Policy CC16 is no longer part of the development plan that the proposal should be determined against, it provides useful guidance and a starting point to consider the proposal. I have no firm reason to take a different view, and I have had regard to evidence of the need for the property and marketing and advertising carried out as part of my assessment of the appeal.
6. The appellant indicates that the Original Permission for the appeal dwelling was granted to serve the adjacent golf club complex which is now known as Forrester Park. I do not have full details of the circumstances which led to that grant, and can draw no firm conclusions from the evidence before me whether or not an equivalent application would now be granted. However, while I do not doubt that there could be some potential benefits to the golf club of a dwelling enabling a full-time presence close by, I was informed that Forrester Park is in separate ownership to the dwelling having been sold in June 2022. It has been operating without dependence on the dwelling over a fairly significant period since that time, and there is no firm evidence before me to indicate that this has adversely affected the operation or running of the business in any meaningful way, nor that there is an unmet need for a dwelling to support Forrester Park. The Disputed Condition does not specify a requirement for an occupier to fulfil a functional need, but I am satisfied in this context that the dwelling is not now required to support or sustain the adjacent golf club operation. I find that this element of the condition no longer serves a useful purpose in providing accommodation for employees of Forrester Park or their dependents.
7. The Disputed Condition also provides that the dwelling may be occupied by a person (and their dependents) employed or last employed in agriculture or in forestry. However, there is no other land linked to the dwelling beyond a residential garden, and I have no substantive evidence to show that the dwelling is needed in association with any identified agricultural or forestry holding or enterprise.
8. While I therefore find that there is no specific agricultural or forestry need for the dwelling, the Council has drawn my attention to planning permissions that have been granted for agriculturally tied dwellings going back to 2006. The numbers are fairly low, but to my mind do signal a level of general demand for agricultural workers accommodation in the District. The Council has also referred to an appeal decision concerning the removal of an agricultural occupancy condition at Honeywood Farm¹ which reached a similar view.

¹ Appeal ref APP/X1545/W/17/3167028

9. Nevertheless, I was informed that an application made after the decision on the appeal at Honeywood Farm to remove the occupancy condition was subsequently permitted. The appellant also highlights that 4 of the 5 most recent permissions referred to by the Council reflected requirements for accommodation within sight and sound of the enterprises concerned. Given that demand for agricultural dwellings is often site-specific, any dwelling capable of meeting such requirements would typically need to be in close proximity. I therefore have some doubt that the appeal dwelling would be likely in practice to be suitable to meet at least a proportion of any general need for agricultural dwellings in the District.
10. Moreover, even accepting that the dwelling is part of a finite supply of agriculturally tied dwellings in the area, actual demand for the dwelling was tested through marketing over a 12 month period between March 2021 and March 2022. The property was marketed at a guide price based on two independent agent valuations. The valuations were carried out around a year apart, and the appellant advised that the Nationwide House Price Index ('HPI') was used to adjust the earliest valuation in line with market increases since the time that it was provided. A 25% discount was then said to be applied to the average of the two valuations to reflect the occupancy condition. There is no disagreement between the main parties that this level of discount is reasonable, and I have no firm reason to find differently. In addition, it became clear at the Hearing that the discount applied to the valuations as adjusted by the HPI was actually slightly greater than the 25% initially suggested by the appellant. The resulting guide price after this greater discount reflected a 25% discount to the average of the valuations without any HPI adjustment. It is not therefore necessary to consider the Council's concern in respect of the use of HPI which is not site specific as the outcome valuation is the same.
11. No details of other similar properties for sale within the area have been submitted to allow comparison with the guide price of the appeal dwelling. However, the valuations were carried out by established agents, and there is no alternative valuation or compelling evidence before me to suggest that they were inappropriate or unduly high. The Council argued that the actual value of the property would be lower than the guide price noting that offers may typically be around 5-10% below asking prices. Be that as it may, the guide price would not have prevented such offers being made, and I see no clear justification to expect the downward adjustment of the guide price at the outset in order to account for potential lower offers. While I also acknowledge that the guide price was not reduced during the marketing period, the information before me suggests a fairly significant general increase in property prices over this time so that I consider that this was not unreasonable.
12. On the strength of the evidence before me, I am satisfied that the dwelling was marketed at a reasonable price that appropriately reflects the Disputed Condition.
13. The dwelling was advertised in the Farmers Weekly, Farmers Guardian and the Maldon Standard, as well as online on the Zoopla portal and the Acorus website. The Council accepted that the scope of the general marketing was sufficient, both nationally and locally. In addition, the appellant carried out targeted approaches to agricultural holdings within the area. The Council initially raised concern that this only included established holdings and not rural workers without a holding, but it confirmed at the Hearing that it was not relying on this as part of its case. In the absence of any identified reasonable

measures that had not been pursued, I find that the dwelling was properly marketed and advertised to potential agricultural or forestry occupiers.

14. There was no similar targeted marketing to present or former golf club employees as potential occupiers of the dwelling. Data protection concerns may have precluded direct mailings to such occupiers, but I agree with the Council that means such as posters or leaflets could have been used to promote the property. Nevertheless, the appellant suggests some awareness would have been generated through word of mouth, and the dwelling was advertised locally and nationally including online through property portals so that potential occupiers looking for a dwelling could reasonably have found it. The particulars of the property also included the full text of the Disputed Condition indicating that it could be occupied by persons employed at the golf course.
15. In my judgement, the marketing undertaken was suitably comprehensive and credible. Despite this marketing, the evidence indicates that there was little interest in the property from any party who would be eligible to occupy it under the terms of the Disputed Condition and no offers were made. I acknowledge the Council's concern that the removal of the condition would diminish the supply of agriculturally tied dwellings leading to future pressure to permit new dwellings in the countryside to meet agricultural needs. Nevertheless, I find in light of the demonstrated lack of demand in the local area for the dwelling subject to the Disputed Condition that it would be unreasonable to continue to impose this condition.
16. Furthermore, I have already found that the occupancy restriction in respect of Forrester Park employees does not serve a useful purpose. While the Council points to Policy H7 of the Local Development Plan 2017 ('the LDP') and the Framework as highlighting the importance of accommodation for agricultural and essential workers to support and sustain rural businesses, there is no substantive evidence before me of a requirement or demand for accommodation to support or sustain Forrester Park, or indeed any other golf clubs. Even if I were to find the lack of direct marketing to golf club employees to be a shortcoming of the proposal, I consider that there would be no meaningful harm to the supply of essential workers accommodation in the District arising from the removal of the tie to Forrester Park, and this element of the condition is unnecessary.
17. Removing the condition would result in a new permission being issued. I acknowledge that the appeal site is within the countryside where Policy S8 of the LDP sets out that planning permission for development will only be granted where, amongst other things, it is for specified purposes which include agricultural and essential workers' accommodation in accordance with Policy H7. However, the dwelling in this case already exists. The proposed removal of the Disputed Condition and change in potential occupancy of the dwelling would not result in the construction of a new building, nor is there compelling evidence before me that there would be a greater impact on the countryside than the existing building.
18. Given also my findings above in respect of the demand for the dwelling, the removal of the Disputed Condition would not be contrary to Policy H7 or S8 of the LDP insofar as they broadly seek to protect the countryside and provide agricultural and essential workers' accommodation to meet the demands of farming, forestry, or other rural-based enterprises. Nor would there be conflict

with the Framework which supports housing developments in rural areas that reflect local needs, and provides that isolated homes in the countryside should be avoided unless one of a number of circumstances apply, including where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

19. For these reasons, I conclude that the Disputed Condition is no longer necessary or reasonable. As a consequence, it does not meet the tests for conditions set out within the Framework, and should not be imposed. Although the proposal would effectively result in an untied dwelling within the countryside contrary to the general spatial strategy outlined by the LDP, the circumstances of the appeal site indicate that the decision should be made other than in accordance with the development plan.

Conditions

20. The Government's Planning Practice Guidance makes clear that permission granted under Section 73 of the Town and Country Planning Act 1990 should restate conditions imposed on the earlier permission that continue to have effect.
21. Noting that the Original Permission development was commenced and that the building has been constructed, it is not necessary to re-impose its conditions 1 and 4 which specified the time limit for implementation and required samples of materials to be submitted for approval. While I acknowledge the presence of mature landscaping on the appeal site, the requirements within Condition 3 of the Original Permission for the retention of trees and shrubs on the site and consent for any works to them which would apply in perpetuity seems to me to be unduly onerous and unreasonable, and it is unclear from the information before me why this would be necessary. I have not therefore reimposed it.
22. Condition 5 of the Original Permission relates to means of access to the dwelling and remains necessary in the interests of highway safety. However, I have amended the wording of the reimposed condition to ensure that the description of the access road remains appropriate.

Conclusion

23. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Henry Doble	Acorus Rural Property Services
Leanne Jeffreys	Acorus Rural Property Services
Tim Forrester-Muir	

FOR THE LOCAL PLANNING AUTHORITY:

Kathryn Mathews	Maldon District Council
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DOCUMENT SUBMITTED

- 1 Site Location Plan including blue line, submitted by the appellant.