



Appeal Decision

Site visit made on 25 September 2023

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2023

Appeal Ref: APP/J0405/W/23/3314130

1 Rosebery Close, West End, Hoggaston MK18 3RR

- 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 Martin Baylis against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application Ref 22/02922/VRC, dated 2 November 2022, was refused by notice dated 4 January 2023.
 - The application sought planning permission for erection of 2 agricultural dwellings with ancillary domestic garages without complying with a condition attached to planning permission Ref T/APP/J0405/A/90/163903/P8, dated 9 April 1991.
 - The condition in dispute is No 3 which states that: *"The occupation of the dwellings shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in section 336 of the Town and Country Planning Act 1990, or in forestry, or a dependant 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: *To enable the Council to exercise proper control over the occupancy of the development.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of two agricultural dwellings with ancillary domestic garages on land adjoining Hillview, Hoggaston MK18 3RR in accordance with the terms of the application, Ref 22/02922/VRC, dated 2 November 2022, and the site plan produced on 6 June 2020 showing nos. 1 and 2 as being within the red line, subject to the following conditions:
 - 1) The occupation of the southernmost dwelling known as 2 Rosebery Close shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
 - 2) Within 3 months of the date of this decision, information to demonstrate how the development will achieve a net gain in biodiversity shall be submitted to and approved by the local planning authority. The submitted information shall also include the date by which any identified further actions are to be undertaken and any such actions shall then be undertaken in accordance with the approved details.
 - 3) Within 3 months of the date of this decision, one electric charging point per dwelling, of a minimum 7.4kW 32A, shall be provided in accordance with details which have first been submitted to and approved by the local planning authority. The charging points shall be retained as such for the lifetime of the development.

Application for costs

2. An application for costs was made by Mr Martin Bayliss against Buckinghamshire Council - North Area (Aylesbury). That application is the subject of a separate Decision.

Procedural matter

3. In my decision I have used the same address as given on the original planning permission for the sake of consistency.

Main Issue

4. The main issue is whether it has been satisfactorily demonstrated that the condition is no longer necessary or reasonable.

Reasons

5. Policy H3 of the Vale of Aylesbury Local Plan refers to rural workers dwellings. It states that conditions limiting the occupancy of dwellings to such workers will be lifted if it can be demonstrated that:
 - *"a suitable sustained attempt has been made to advertise and market the dwelling for sale or rent without any unreasonable restriction and with amenity land proportionate to its size and at a price that reflects the occupancy restriction for a continuous period of at least 12 months; and*
 - *the rural worker dwelling no longer serves a need in connection with the holding to which it relates and there is no agricultural, forestry or rural worker occupational need elsewhere that it could reasonably service, nor is it likely that any such needs will arise in the foreseeable future."*
6. Evidence has been provided that the property has been marketed for sale on property websites since 2019 and on a specialist agricultural property website since 2020. As of July this year, which would have been around 3½ years of marketing, there had been over 700,000 hits on the property websites and over 2,000 views on the specialist website. It also appeared in copies of the Farmers Guardian magazine in 2020 and 2021, and is on the estate agent's own website.
7. The sales particulars provided include some photos of the property, a floorplan and detail the extent of the reasonably sized plot, as is commonly seen in any property sales details. The particulars make it clear there is an agricultural worker restriction and that the first floor bedrooms and bathroom do not benefit from building control. Whilst that second fact may discourage some potential purchasers, to conceal such a matter would be disingenuous.
8. The price it is advertised at has not changed since 2019 and was 33% below the unrestricted open market price at that time. As confirmed by the letter from the estate agents in July 2021, the open market price will have risen substantially since 2019, and presumably will have risen further since then, so it is likely that it would be at an even greater discount below market value today. The Council do not dispute the price is reflective of the property.
9. As of August last year, 22 enquiries were received, but none of the prospective buyers met the agricultural restriction. Overall it is considered that the marketing exercise has been satisfactory in terms of its longevity, the media

used, the quality of the sales details and the price. It is considered that the first requirement of the policy has been met.

10. With regard to the second, it is not disputed by the parties that the occupier no longer works at Town Farm and that Town Farm has no need for an agricultural worker to be housed at the dwelling. Furthermore, the lack of response to the marketing, despite it being advertised in agricultural publications and websites and the local agent's office, suggests that there is no need for the dwelling from other agricultural or other rural operations elsewhere locally. Therefore it is considered that the second requirement has also been met.
11. In summary, I conclude that the requirements of policy H3 have been met. The condition is therefore no longer necessary and hence is unreasonable.

Conditions

12. By allowing this appeal a new planning permission is created. The national Planning Practice Guidance (PPG) advises that, for clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
13. As the development has already been completed it is unnecessary for me to attach the conditions relating to the commencement of development and reserved matters. Consequently, the condition restricting the dwellings to being single storey, which appears to be related to the reserved matters of design and external appearance, is also unnecessary. Similarly as both dwellings have been occupied for many years, is not necessary to impose the condition relating to the disposal of sewerage.
14. As this appeal relates solely to the dwelling at No 1 Rosebury Close, a condition sustaining the agricultural worker limitation at No 2 would be necessary as there is no evidence before me to justify the removal of the condition insofar as it relates to No 2.
15. The Council have suggested two additional conditions relating to biodiversity net gain and electric vehicle charging points. As, by allowing this appeal a fresh planning permission for the development is created, it is possible to apply new conditions. The suggested conditions are necessary in the interests of supporting biodiversity and low carbon forms of travel, though I have amended the wording to better reflect the requirements of the National Planning Policy Framework and the PPG.

Conclusion

16. The development accords with the development plan taken as a whole. Therefore, for the reasons given above, and taking account of all other considerations, the appeal is allowed.

A Owen

INSPECTOR