



Appeal Decision

Site visit made on 3 April 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/C1435/W/23/3326306

Little Trodgers, Lake Street, Mark Cross TN6 3NT

- 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 Tindall against Wealden District Council.
 - The application Ref is WD/2022/0762/FA.
 - The application sought planning permission for construction of a single cottage to be used as an agricultural dwelling without complying with a condition attached to planning permission Ref WD/93/0254/J, dated 25 August 1994.
 - The condition in dispute is No 3 which states that: *The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, locally in agriculture as defined in Section 336 (1) of the Town and Country Planning Act 1990, or forestry, or a dependant of such a person residing with him (but including a widow or widower of such a person).*
 - The reason given for the condition is: *To reserve suitable residential accommodation for persons employed locally in agriculture.*
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Decision

1. The appeal is allowed and planning permission is granted for construction of a single cottage to be used as an agricultural dwelling at Little Trodgers, Lake Street, Mark Cross TN6 3NT in accordance with application Ref WD/2022/0762/FA, without compliance with condition 3 attached to planning permission Ref WD/93/0254/J, dated 25 August 1994, but subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The National Planning Policy Framework ('Framework') was updated in December 2023, and accordingly for the purposes of this decision I have referred to the latest version of the Framework. The content of the Framework has not been materially altered in respect of the main issue which I have considered. Therefore, it has not been necessary to seek further views from the main parties in this instance.
3. In November 2023, the National Landscapes Association reported that all designated Areas of Outstanding Natural Beauty (AONBs) had become National Landscapes. However, the Framework continues to refer to them as AONBs. In this decision I have used the term AONB, consistent with the evidence and the Framework. The legal designation and policy status of such areas is unaffected, whichever term is used.

4. In determining this appeal I have been mindful of the findings in the *Freddie Reid vs SSLUHC* [2022] EWHC 3116 (Admin) ('the Reid Judgement'). In the Reid Judgement, a section 73 application sought to remove an existing condition that restricted the use of thirty-four self-catering holiday units to holiday accommodation and not any other purpose, including within Class C3 of the Use Classes Order¹. The Council argued that by seeking to remove the condition, it would enable the units to be used as permanent residential dwellings, which would be contrary to the description of development.
5. The Judge found that when a condition is removed, the operative part of the permission remains intact, albeit in an unconditional way. If the condition restricting the units to holiday accommodation was removed, the way the development could change would have nothing to do with the description, but because the condition preventing the benefit of the Use Classes Order would be removed. The Judge held that what can be done with the use of the land may not be exhaustively written into the description but may arise by the operation of law (i.e. a lawful change of use to another purpose within the same Use Class by the operation of s55(2)(f) of the Act). Therefore, it is the decision-maker's function to consider, as a matter of planning judgement, the planning merits of removing the condition(s).
6. Whilst the appeal before me relates to the variation rather than the removal of a condition, the Reid Judgement is of direct relevance to the appeal. In the case before me a condition is imposed to restrict the use of the dwelling to an agricultural or forestry worker, their spouse or dependant, and the extant permission states that the development was for 'an agricultural dwelling'. The variation of the condition would make it less restrictive. The primary component use is therefore residential and the disputed condition's function was a way of controlling occupation, as distinct from controlling use. As such, I consider there to be no conflict with the description from the planning permission if the disputed condition 3 were varied. This does not alter the need to consider as a matter of planning judgement, the planning merits of varying the condition.

Background and Main Issue

7. Planning permission was granted in 1994 for the dwelling which was to be used as an agricultural dwelling. The appellant is seeking to change a condition of that permission that restricts the occupation of the dwelling to a person solely or mainly employed, or last employed, locally in agriculture, or forestry, or a dependant of such a person residing with them. The change proposed would allow the dwelling, in addition to those employed in agriculture or forestry, to be occupied by a person employed in equestrian enterprise at the property.
8. When the permission for the dwelling was granted Little Trodgers Farm was a dairy farm which required the presence of an on-site agricultural worker. It was part of the wider agricultural activity undertaken at the Highfield Estate. However, over the years, the nature of agricultural activity at Little Trodgers has changed, and it has become a centre of equestrian activity within the Estate.
9. A number of equestrian related planning permissions have been granted across Little Trodgers since the 1990's. These include the change of use of buildings to

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

livery and associated storage, change of use of land to horse grazing, a cross country course, and the creation of a new sand school². The appellant estimates that over 75% of the land is now in use for equestrian activities and this is not disputed by the Council.

10. I consider that the main issue in this case is whether the variation of condition 3 is justified having regard to local and national planning policy on the location and provision of new housing within the countryside.

Reasons

11. Paragraph 56 of the Framework indicates that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) advises that conditions limiting benefits to certain people may be justified on the demonstration of exceptional need.
12. The appeal property is located in the countryside and adjacent to a complex of buildings which are primarily in equestrian use. The buildings and facilities are occupied by a tenant whose small-scale business keeps ponies and horses in the livery and involves teaching riding, jumping and hacking.
13. The Framework is supportive of a prosperous rural economy. It therefore anticipates that dwellings will continue to be needed in rural areas to support the rural economy. However, Paragraph 84 of the Framework indicates that local planning authorities should avoid isolated new homes in the countryside unless there are special circumstances. One such special circumstance is the essential need for a rural worker to live permanently at or near their place of work in the countryside.
14. Whilst not defined within the Framework, in my view, the term "rural workers", is not strictly confined to agricultural or forestry workers, but can include essential workers at rural enterprises. Therefore, as an equestrian enterprise is one that requires a rural location, in my view, equestrian workers are rural workers for the purposes of the Framework.
15. Policy DC2 of the Wealden Local Plan (1998) (LP) permits new permanent dwellings for those employed in agriculture, or exceptionally in another enterprise where a countryside location is necessary where it can be demonstrated that a number of criteria are met.
16. The policy was written some time before the publication of the Framework. However, given that the policy refers to permitting dwellings for workers within an enterprise where a countryside location is necessary, I consider the criteria are broadly consistent with the requirements of the Framework in relation to essential need and permanent dwellings for rural workers.
17. Policy DC2 states that occupancy conditions will be imposed on dwellings permitted in accordance with the policy. The removal of occupancy conditions will be resisted unless it is demonstrated that there is unlikely to be any need for such dwellings in the area in the foreseeable future.

² Council Planning Refs: WD/1993/2469/F; WD/1995/0607/F; WD/2007/2785/FR and WD/2013/1958/F

18. I understand that the existing condition does not specifically tie the occupancy to the farm and the agricultural activities taking place on the land. The dwelling could therefore be occupied by a person working in agriculture or forestry which does not take place on Little Trodgers, and there may be local demand for this.
19. However, in this instance the variation to the condition does not seek the removal of an occupancy condition. Instead, it would widen the range of potential occupiers of the dwelling to include a person employed in equestrian enterprise at the property, in addition to agricultural and forestry workers. Given this, the proposal would not reduce the local stock of housing which is available to agricultural and forestry workers.
20. The supporting text to Policy DC2 states that occupancy conditions will enable a dwelling to be available for other rural enterprises even if the original enterprise no longer seeks to retain it. The broadening of the condition would not prevent agricultural or forestry workers from other nearby rural enterprises from occupying the dwelling in the future.
21. Paragraph 88 of the Framework states that planning decisions should enable the sustainable growth of all types of business in rural areas, and the development and diversification of agricultural and other land-based rural businesses. Whilst the use of the site has evolved over time, the equestrian business is well established, having been in operation since 2017. The variation of the condition would support the sustainable growth of business in this rural area, whilst continuing to protect the occupancy of the dwelling to those employed, or last employed as rural workers, in accordance with the aims of the Framework.

Functional need

22. It is not disputed that an established equestrian business is based at the site. The appellant indicates that a person who is experienced at looking after horses has been living within the dwelling since 2017. Further financial evidence in relation to the equestrian enterprise has not been submitted. However, the proposal is for the variation of a condition rather than for the creation of a new dwelling. Notwithstanding this, the appellant's evidence sets out that the business has proven to be successful, and that the nature of the business necessitates a person who is experienced and skilled at looking after horses to be present on site at all times.
23. Living on site would also enable the occupier of the dwelling to keep a close eye on the horses when stabled overnight in the interest of animal welfare and to respond quickly when emergencies arise. In that respect, the appellant refers to the requirement for a permanent on-site presence owing to horses' tendencies to being unpredictable in nature, leading to panic and injuring themselves through galloping into obstacles. Horses are also prone to becoming 'cast', and colic, both of which can lead to much more serious and potentially fatal, if not attended to promptly.
24. An overnight presence at the site is important for the horses' welfare and can enable immediate treatment for colic which could be the difference between life and death for the animal. Based on the evidence I am persuaded that there are a range of conditions, which would require intensive 24 hour monitoring and treatment for a period of time to ensure that the condition does not progress or

- worsen to a stage where complications may set in or which may pose a risk to the life of the horse.
25. Remote monitoring via CCTV with audible sound, as an alternative to a resident close to the stables, may be technically feasible. However, it may be difficult to identify changes in behaviour in this way, and depending on where the employee lived it could take a significant time for them to travel to the site. I am therefore satisfied that the regular monitoring would need to be done in person rather than relying solely on CCTV.
 26. Furthermore, fires in stables can occur, and the appellant has outlined that a permanent on site presence significantly improves the safety and security of equipment, which is stored on site, is valuable and easy to transport away. I saw that the stabling is close to Lake Street, and could be vulnerable to opportunistic thieves. Whilst I have not been provided with details of any specific previous security incidents at the site, I note that an employee of the equestrian enterprise has been living in the dwelling since 2017 and the proximity of the house, may well have helped reduce the risk of theft.
 27. The appellant has submitted some evidence in relation to the availability of alternative accommodation nearby which indicates that suitable properties in the area are out of the price range of equestrian workers such as horse grooms or horse riding instructors. As a result, it is suggested that it would be difficult for a skilled equestrian worker to find appropriate, affordable properties close to the site. Whilst the appellant has not provided details in relation to where various employees of the business currently live, as the employee in question already lives within the dwelling, and has done since 2017, this is of limited relevance.
 28. Whilst the same could be said about the affordability and availability of accommodation for agricultural or forestry workers, as established above, the variation of the condition would not prevent them from occupying the dwelling in the future.
 29. An essential need for a rural worker to live on site has, therefore, been demonstrated when taking account the animal welfare benefits, the security benefits, the long standing commitment of the appellant to an equestrian business and the absence of alternative accommodation nearby that could meet the needs of the enterprise.
 30. It follows that the variation of the condition to make it less restrictive to enable its occupation by a person employed in equestrian enterprise at the property would not conflict with Policy DC2 of the LP which permits new permanent dwellings for those employed in agriculture, or exceptionally in another enterprise where a countryside location is necessary.

Other Matters

31. The site is within the High Weald AONB. Since the appeal site is within an AONB, great weight should be given to conserving and enhancing landscape and scenic beauty, as set out in paragraph 182 of the Framework. As the proposal would not involve external alterations I am satisfied that it would conserve and enhance the natural beauty of the AONB.

Conditions

32. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant.
33. As the development has been implemented, it is not necessary to impose a condition requiring commencement within a set period.
34. In this case I have retained all other conditions for the avoidance of doubt and in order to enable compliance to be reviewed if necessary. Hence all the remaining conditions are to be retained, for the reasons that were originally stated on the Decision Notice. In the event that the conditions have previously been discharged, that is a matter which can be addressed by the parties.

Conclusion

35. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by varying the disputed condition.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The permission hereby granted relates to the amended proposals as shown on the amended plan date stamped 24th March 1993 and location plan date stamped 5th August 1993.
- 2) Before any constructional work is commenced, a schedule of external materials, indicating types, colours and finishes of bricks and tiles to be used in respect of the dwelling shall be submitted to the District Planning Authority and be subject to their approval.
- 3) The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, locally in agriculture as defined in Section 336 (1) of the Town and Country Planning Act 1990, or forestry, or a person employed in equestrian enterprise at the property, or a dependant of such a person residing with them (but including a widow or widower of such a person).
- 4) At the time of development and before it is used or occupied, the car parking and vehicular turning space(s) indicated on the approved plans shall be provided and thereafter retained for such purposes to the satisfaction of the District Planning Authority.
- 5) No development shall take place until there has been submitted to and approved by the District Planning Authority a scheme of landscaping which shall include indications of all existing trees and hedgerows on the land, including those to be retained together with measures for their protection in the course of the development.
- 6) Prior to the commencement of the construction of the dwelling hereby permitted, full details of the proposed finished floor levels of the building relative to existing ground levels shall be submitted to the District Planning Authority for approval in writing, and such approved levels shall be strictly observed in the implementation of this planning permission.
- 7) Notwithstanding the details of the external facing materials specified on the approved plan, the use of a painted render finish to the ground floor walls is hereby specifically excluded from this permission. Stock facing bricks shall be used, and samples of these, together with samples of the clay tiles to be used on the roof and first floor tile hung elevations, shall be submitted to the District Planning Authority for approval in writing prior to the commencement of the development. Only the approved materials shall be used in the implementation of the development.
- 8) Notwithstanding the provisions of the Town and Country Planning General Development Order (1988) (or any Order amending, revoking and re-enacting this Order), no buildings, structures, alterations, installations or operations as defined within Classes A-H of Part 1 of Schedule 2 of the Order shall be carried out on the site otherwise than in accordance with a planning permission granted by the District Planning Authority.

- 9) Prior to commencement of development details of the external treatment of the windows shall be submitted to and approved by the District Planning Authority.
- 10) Prior to commencement of development details of the surfacing of the drive shall be submitted to and approved by the District Planning Authority.

END OF SCHEDULE