



Appeal Decision

Site visit made on 3 October 2023

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/V2255/W/23/3317534

Hole Street Farm, Kingsdown Road, Lynsted, Kent ME9 0QX

- 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 & Mrs Anderson against the decision of Swale Borough Council.
 - The application Ref 22/501217/OUT, dated 16 March 2022, was refused by notice dated 1 September 2022.
 - The application sought outline planning permission for a new dwellinghouse without complying with a condition attached to outline planning permission Ref SW/96/128, dated 20 May 1996.
 - The condition in dispute is No. 5 which states that: *The occupation of Hole Street Farm Cottage 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: *In approving this application the Planning Authority has accepted the contention that it is essential that two dwellings be available to meet the accommodation needs of the holding. In restricting occupancy of the existing farmhouse the Planning Authority is seeking to ensure that both dwellings remain available to meet agricultural needs in the future.*
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Decision

1. The appeal is allowed and outline planning permission is granted for a new farmhouse at Hole Street Farm, Kingsdown Road, Lynsted, Kent ME9 0QX, in accordance with the application Ref 22/501217/OUT, dated 16 March 2022, without compliance with condition 5 previously imposed on planning permission SW/96/128, dated 20 May 1996, and subject to the following conditions:
 - 1) The occupation of the dwelling 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) The space shown on the approved drawings for the parking of cars shall be kept available at all times for the parking of cars.
 - 3) Notwithstanding the provisions of Classes A to D of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the dwelling permitted shall not be enlarged and no porch shall be added.

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Procedural Matters

2. In my decision I have used the site address from the application form, which accurately describes the location of the development, including by means of a postcode. This coincides with the site address used by the Council in determining the application and would not prejudice the interests of any party.

Background and Main Issue

3. The Council granted outline planning permission (ref. SW/96/128) in 1996 for a new dwellinghouse at the above site on the basis that the agricultural enterprise at the farm demonstrated a functional need for 2 farm workers to live on the farm. Landscaping was the only reserved matter. This dwelling was built and is now known as Hare Cottage.
4. In granting permission, the Council imposed the disputed planning condition restricting occupation of an existing dwellinghouse on the farm, named in the condition as Hole Street Farm Cottage. The drawings and documents from the planning application that are before me in this appeal do not show a dwelling bearing this exact name. However, they do show 'Farm Cottages' and 'Farm Oast' on the location plan. Furthermore, the building identified by the land edged red on the drawing in this appeal appears to correspond to the 'Farm Cottages' on the original location plan, and also to the buildings shown and described as 'Hole Street Farm Cottages' and '1 Hole Street Farm Cottages' on the drawings and decision notices for planning permissions SW/95/224 and SW/96/34. Due to the different names given to this dwelling, I have for clarity referred to it as the 'farm cottage' in this decision.
5. The appellant is seeking to remove the disputed condition on the basis that it does not meet the 6 tests set out in Paragraph 56 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance¹; the approved plans did not meet with legislative requirements at the time; removal of the condition would not result in an unacceptable and unsustainable dwelling in the countryside, and there are no policies that seek to restrict the removal of agricultural occupancy conditions.
6. Having regard to the background evidence, the main issue in this case is whether or not the disputed condition meets the 6 tests having regard to local and national planning policy, and the purpose of the condition in restricting occupancy of the existing farm cottage to a worker solely or mainly employed, or last employed, locally in agriculture, including by a dependant, or a widow/widower of that person.

Reasons

7. The evidence suggests that prior to the grant of the planning permission for the new build dwelling (Hare Cottage), the farm cottage the subject of the disputed condition was a lawful open market dwelling. In the period leading up to the planning permission being granted in 1996, it had been confirmed to the Council by the agent of the applicant at the time (letter dated 30 April 1996), that the farm cottage, which had been occupied as 2 dwellings, was now occupied as a single four-bedroom dwelling.

¹ Paragraph: 005 Reference ID: 21a-005-20190723

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8. As a single dwellinghouse, the farm cottage was meeting part of the essential accommodation need for workers at the farm. That the dwelling could have ceased to do so without any breach of planning control, thus severing the functional link between its occupation and the farm, appears to have been of some concern to the Council. This was particularly so as occupation of the farm cottage as a single dwellinghouse had reduced the number of dwellings within the applicant's farm ownership and an existing dwelling at the farm had reportedly been sold off previously. Therefore, at the time of determining the planning application in 1996, the Council appeared concerned about the prospect of the farm cottage, now subject to the disputed condition, being sold off and replaced by a further new dwelling in another location in the countryside.
9. The new build dwelling (Hare Cottage) was not described as a replacement for the dwelling 'lost' to the farm through the amalgamation of the 2 farm cottages into a single dwellinghouse. That had already occurred. The new build dwelling was deemed acceptable in this location because its occupancy could be restricted by condition to ensure it met an essential accommodation need of the agricultural enterprise. To my mind, given the Council had accepted that an essential functional need existed for the new build dwelling, it was acceptable without the disputed occupancy condition being imposed on the existing farm cottage. Therefore, the disputed condition was not necessary to make the new build dwelling acceptable, nor was it fairly and reasonably relevant to the planning considerations for the new build dwelling.
10. The planning policies relevant to the grant of the planning permission in 1996 are not before me in this appeal. The current development plan policies ST 3 and DM 12 of the Swale Borough Local Plan – Bearing Fruits 2031, Adopted July 2017, (the LP) seek to permit rural workers dwellings in the countryside where there is a clearly established, existing, essential need for the proper functioning of the enterprise for a full-time worker to be readily available at most times. These policies are broadly consistent with Paragraph 80 of the Framework, which sets out that planning policies and decisions should avoid the development of isolated homes in the countryside unless, amongst other requirements, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. These policies do not expressly seek to retrospectively restrict the occupancy of existing dwellings in the countryside, even where they are meeting such a need.
11. The farm cottage was likely to have been occupied by a farm worker at the time of the 1996 planning application. It already existed as an open market dwelling and therefore would not have increased the number of dwellings in the countryside, regardless of the outcome of that planning application, which was not described as a replacement for the farm cottage. As such, it was not necessary to retrospectively control the occupancy of the existing farm cottage to meet the wider planning objectives that restrain housing within the countryside. Consequently, on the evidence before me, the disputed condition was not necessary, relevant to planning or to the development permitted. For the same reasons it is not necessary or relevant now.
12. I have had regard to the case of *UBB Waste Essex Ltd*² and find that the intention of the disputed condition and its purpose would, on the face of the

² *UBB Waste Essex Ltd v Essex County Council* [2019] EWHC 1924 (Admin).

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decision notice, be clear to the 'reasonable reader' with some knowledge of planning law and the matter in question. However, neither the wording of the condition or the documents incorporated within the planning permission, or indeed any other documentation that is before me in this appeal, identify the location of Hole Street Farm Cottage. The location of that dwelling, and thus the object of the disputed condition, could not be identified with sufficient certainty by the 'reasonable reader'.

13. The Council contends that the dwelling commonly understood by the main parties to be Hole Street Farm Cottage was shown by the planning drawings as situated on land under the control of the applicant (land within the blue line of the submission) for the new dwelling granted permission. I note that the drawings for the withdrawn planning application for a new build dwelling (ref SW/95/471) may have shown land edged red and blue, as the applicant's agent at the time suggested that certain documents would need to be transferred to the new application (ref SW/96/128). However, the evidence before me in this appeal does not support this contention as there are no drawings showing land edged blue or red.
14. There appears to be little doubt between the parties as to which dwelling the disputed condition relates to. On the balance of probabilities, I concur with the parties that the disputed condition relates to the farm cottage that I observed at my site visit. Nonetheless, the Court judgements in *UBB Waste Essex Ltd* and *Dunnett Investments Ltd*³, drawn to my attention by the appellants, have advised that a cautious approach be taken to the interpretation of conditions. This is because it is essential for third parties unrelated to the original case to rely on the face of the planning permission and any documents referred to, and because a breach of a planning permission might have criminal sanctions.
15. To my mind, in adopting a cautious approach, the 'reasonable reader' would be likely to understand the purpose and intention behind the disputed condition. However, they would not be able to rely on the face of the planning permission and the documents within it to identify, with sufficient certainty and precision, the dwelling controlled by the disputed condition. Thus, the disputed condition is not precise. Even if the dwelling understood to be Hole Street Farm Cottage was shown to be within the same ownership as the new build dwelling at the time of the planning application, it would not alter my conclusions above.
16. As there is no dwelling of this name 'on the ground' or in a precise location explicitly identified by the condition it would not be reasonably possible for the Council to detect a breach of the disputed planning condition. Even if I am wrong on this point, and a breach could be detected, it would not alter my conclusion that the disputed condition fails the tests of necessity, relevance to planning and to the development being permitted.
17. Based on my findings above, and the evidence before me, the control imposed on the occupation of the farm cottage by the disputed condition goes beyond that which is necessary to make the development acceptable. As such, it imposes a disproportionate and unjustified level of control upon the occupancy of the farm cottage, and potentially did so on land that was not in the control of the applicant for planning permission.

³ *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2016] EWHC 534 (Admin); 2017 EWCA Civ 192

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18. Whether or not the applicant for planning permission agreed to the disputed condition does not override the need for the condition to meet the 6 tests for imposing planning conditions. Furthermore, in the context of those tests, that the disputed condition has gone unchallenged since the grant of planning permission in 1996, is a neutral factor that weighs neither in favour or against this application.
19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
20. Based on the development plan policies referred to above, I find that on the evidence before me, granting outline planning permission for the proposed dwelling would, without the disputed condition, be consistent with Policies ST 3 and DM 12 of the LP. These policies seek to ensure that housing is not permitted outside the built-up area boundaries shown on the Proposals Map in order to avoid isolated homes in the countryside unless, amongst other requirements, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. Even if I were to agree with the appellants that the development plan policies referred to above do not seek to restrict the removal of agricultural occupancy conditions, it would not alter my conclusion that the disputed condition fails the tests for imposing planning conditions.

Other Matters

21. Given my conclusions on the disputed condition it would not be reasonable or necessary to transfer it onto a different existing dwellinghouse as suggested by an interested party.
22. The appeal site, including the farm cottage, lies within the Kingsdown Conservation Area (CA) and is near to several listed buildings, the closest of which is the former Oast, granary and stores (listed at Grade II), followed by Hole Street House (Grade II listed Farmhouse), The Malt House (Grade II) and Kingsdown House (Grade II). The significance of the CA appears to be derived from the grouping of buildings, including several farm buildings and several substantial brick dwellinghouses, and a few thatched cottages, set within spacious grounds, which are arranged alongside the narrow road as it runs through the settlement.
23. I have had regard to my statutory duty under Section 66(1) of the Town and Planning (Listed Buildings and Conservation Areas) Act, to have special regard to the desirability of preserving the listed buildings or their setting or any features of special architectural or historic interest which the listed buildings possess. I have also had regard to my statutory duty under Section 72(1) of that Act to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The removal of the disputed condition from a building that already exists and was likely to have existed prior to the listing of the nearby buildings and designation of the CA, would preserve (leave unharmed) the settings of the listed buildings and the character or appearance of the CA.

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Conditions

24. The guidance in the Planning Practice Guidance⁴ makes clear that decision notices for the grant of planning permission under Section 73 of the Town and Country Planning Act 1990, should also restate the conditions imposed on earlier permissions that continue to have effect.
25. I have no information before me about the status of the reserved matters condition and the time limit for submission of those details (conditions 1 and 2); the time limit for commencement of development (condition 3); nor the pre-commencement and compliance conditions (conditions 6 to 9) that were imposed on the original planning permission. However, these conditions are not in-dispute between the main parties, and I see no basis on the evidence before me, or my observations at the site visit, for concluding that those conditions were not complied with. Conditions 4, 10 and 11 remain relevant to enable the Council to retain control over the occupancy of the Hare Cottage, and any enlargement to it, and to ensure appropriate off-street parking provision. As such, I have imposed them.

Conclusion

26. For the reasons given I conclude that the appeal should succeed and planning permission should be granted without compliance with the disputed condition.

G Sylvester

INSPECTOR

⁴ Paragraph: 040 Reference ID: 21a-040-20190723