

Our Ref: 5718pc-1
Your Ref: FG/101/12

26 October 2012

For the attention of Mr P Cleveland

Arun District Council
Arun Civic Centre
Maltravers Road
LITTLEHAMPTON
BN17 5LF

Dear Mr Cleveland

Application No: FG/101/12
Proposals: Application for removal of condition 2 following a grant of planning permission FG/80/00 for the occupation of the dwelling
Location: Millwood House, Littlehampton Road, Ferring

Thank you for your email of 8th October instructing Reading Agricultural Consultants Ltd (RAC) to undertake a desk-based assessment of the above planning application in the context of the current planning policy advice for dwellings in the countryside.

Paragraph 105 of Circular 11/95 notes:

"Where an agricultural occupancy condition has been imposed it will not be appropriate to remove it on a subsequent application unless it is shown that the existing need for dwellings for agricultural workers in the locality no longer warrants reserving the house for that purpose. This assessment will be necessary in all cases, including those where the condition was originally inappropriately imposed (Sevenoaks DC v Secretary of State for the Environment and Mr and Mrs Geer (1995) 69 P. & C.R. 87). However, the fact that planning permission for a dwelling would in all probability be granted today without an agricultural occupancy condition is a material consideration (Hambleton DC v Secretary of State for the Environment and others [1994] EGCS 202)."

A recent appeal decision (APP/H1840/A/12/2176564) also noted that following the publication of the National Planning Policy Framework (NPPF) planning applications for the removal of agricultural occupancy conditions still require close scrutiny to ensure that there is not a proliferation of new dwellings in the countryside.

"The appeal relates to a fairly large detached house in the countryside, outside the defined boundary of Crossway Green and therefore on a site where, in accordance with longstanding planning policies, permission for residential development would only be granted in exceptional circumstances. The occupancy condition refers to the locality and not to a particular holding or enterprise. This is in line with well established advice including that in Circular 11/95 (The Use of Planning Conditions) which states that the model occupancy condition will ensure that the dwelling is kept available to meet the needs of other farm or forestry businesses in the locality if it is no longer needed by the original business, thus avoiding a proliferation of dwellings in the

open countryside. This latter objective is included in the National Planning Policy Framework (2012) which states that isolated homes in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work."

In addition, Arun District has recently published a draft Local Plan (19th July 2012) for consultation and Policy DM13 accords with the above advice stating:

"Any planning permission granted will be subject to an occupancy condition, limiting occupation to a person solely or mainly employed in the locality in agriculture or forestry. Such conditions will only be removed if it can be demonstrated that the dwelling is no longer required for agricultural or forestry purposes or for any person solely or mainly employed in agriculture or forestry and that reasonable attempts have been made to market the dwelling for that use."

In preparing this response I have had regard solely to the documents submitted with the planning application. I have not visited the site nor made any contact with the applicants or their agent.

Background

The details submitted with the agricultural supporting statement state variously that:

1. Millwood House was granted permission (at appeal, APP/C3810/A/00/1055789) in April 2001 and subject to an agricultural occupancy condition that required:

"The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person and to any resident dependants".
2. It was permitted to support an existing horticultural enterprise known as McIntyres Nursery.
3. From the appeal decision it would appear that the Council accepted that the functional and financial tests for a dwelling were met, but that permission was refused due to the size of the proposed property (145m²) and its impact on the countryside.
4. The dwelling has never been occupied by a worker employed at McIntyres Nursery as the nursery site was (apparently) developed for commercial, non-horticultural uses before the house was actually built.
5. A planning application to remove the agricultural occupancy condition was made by a previous owner in 2006 following an extensive marketing campaign, but the application was refused, and not appealed. The reason for refusal is provided in the statement and states:

"The propert (sic) which has only recently been completed, has not been occupied. The LPA are therefore not satisfied that this proposal meets the criteria in PPS7, Annex A and further that the asking price does not reflect a reasonable reduction in market price which is normal for agricultural dwellings."
6. The applicants purchased the property in March 2007 *"fully intending to establish an apple orchard and make cider on site"*. The LPA was consulted on this proposed use (letter submitted with this application) and it agreed that the proposed use would be compliant with the agricultural occupancy condition.
7. In August 2011 the Council wrote to the occupiers suggesting that the number of trees grown (60) and the cider production was *"predominantly domestic in nature and the cider production proposal would appear to be more of a hobby than a sustainable agricultural enterprise"* (letter not submitted with this application).
8. The property comprises the dwelling and an orchard area detached from the dwelling of approximately one acre (0.4ha) planted with some 60 trees.

9. No marketing of the property has been undertaken.
10. It would appear from the planning statement that planning application was submitted at the request of the Council.

Assessment

Although the Council has not specified what issues should be considered in this appraisal it is considered pertinent to address (briefly):

- 1) whether the current occupiers are occupying the dwelling in compliance with the condition;
- 2) whether the condition has outlived its usefulness on this property; and,
- 3) whether the condition has outlived its usefulness in the locality.

On the first point, it is clear that the condition only requires that "an" occupier is working in the locality in agriculture (or forestry) and the Council has previously agreed that growing trees and making cider would be a compliant use of the dwelling - a position with which I agree. However, there is no requirement in the condition that the use has to be profitable or sustainable - simply that the occupation has to be undertaken. In this case, provided that one of the occupiers is solely or mainly employed in apple growing and cider making then they are occupying the dwelling in accordance with the condition.

This issue has been examined on numerous occasions and specifically in a Ministerial Planning Decision (reported in the JPEL February 1998) reference APP/x/96/G1115/2520. This decision, noted that:

"there is nothing in the wording...requiring the occupier to be engaged in agricultural work of a physical nature. If there was, that might well be discriminatory... there is nothing in the wording ...that the employment must be profitable or viable. The sole requirement is that it must be the occupier's sole or main employment..."

...and concluded

X at least is both solely and mainly employed in agriculture. Cumulatively, the total time he spends engaged in agriculture is small, but, as a matter of fact and degree, it is considered that it is not so minimal, as you claim, that it should be regarded as de minimis and ignored for planning purposes"

Provided one of the occupiers of the house is solely or mainly engaged in tree and cider production they are compliant (I believe) with the condition - though I have no information before me as to whether any of the current occupants is solely or mainly engaged in tree and cider production.

(For completeness, however I am aware of the alternative position being reported in a Welsh decision (APP/Z6950/X/09/2109455):

"I do not consider that Mr Harris is or was a dependant of a person last employed in agriculture, as the Council claims. As set out in Welsh Office Circular 35/95 on the use of conditions in planning permission, it was held in Fawcett Properties Ltd v. Buckingham County Council [1961] A.C. 636 (page 671) that the term "dependants" means persons living in a family with the person defined (the agricultural occupant), and dependent on him (or her) in whole or in part for their subsistence and support. In this instance, it seems to me that their roles were reversed, in that Mrs Harris was financially dependent on Mr Harris's earnings as an airline pilot. Clearly, neither Mr Harris nor their children were dependent on Mrs Harris's earnings from agriculture from 1995 until 2001.

Although Mrs Harris had no other paid employment during this period, she clearly had a full-time job looking after her family and home. I conclude that someone looking after up to 32

sheep for 10-15 hours per week for a relatively short period of 2-3 years is not 'solely employed' in agriculture, and therefore this modest sheep enterprise did not meet the requirements of the condition...")

The second point deals with whether the condition has outlived its usefulness on the property, and given that I consider a compliant use could already be undertaken (apple trees and cider) then it has not outlived its usefulness - though clearly depends on the facts of the case and whether one of the occupiers is solely or mainly so engaged. Alternatively, there are other small-scale agricultural operations that could be undertaken on the 1-acre paddock which could provide a compliant use.

In the alternative, a new compliant occupier might find the property of interest - if it were to be marketed - either as a retired farm worker, or farm owner or tenant. The condition is used to ensure that there are affordable properties available for former farm workers and until and unless the property is marketed there is no way of determining whether a compliant occupier exists. Although the agricultural statement submitted with the application belittles marketing exercises, they can identify a need. Many appeal decisions have explored this point, such as APP/H1840/A/11/2156079 where the Inspector explored the issue at length and in dismissing an appeal for the removal of a condition concluded:

"Marketing of the property provides a widely acknowledged mechanism for assessing demand for the specific holding or accommodation in question. Such an approach would also encompass those not able to pursue such accommodation through the planning process, or that may seek to lease such property or those who may be looking a property with such a specific functional purpose. The robustness of such a process is underpinned by the clear and emphatic advice set out by the Council in the text supporting development plan policy, and by the Planning Inspectorate's Case Law and Practice Guide¹ referred to above.

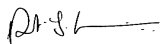
The third point looks at whether the condition has outlived itself in the locality and this is in part dealt with above with the complete lack of any marketing exercise or contact with local landowners and farmers. There can be no certainty that others, who could purchase and occupy the dwelling entirely legitimately whilst working elsewhere, do not exist.

A marketing strategy with an appropriately priced property (with a sensible discount to reflect the encumbrance) and for a sufficient length of time is needed to test demand.

Finally, there is the issue of continuing demand for agricultural workers' dwellings in the locality. I do not have access to the statistics but RAC has been consulted by Arun DC on a number of occasions over the past three years to assess applications for new agricultural dwellings in the countryside. We have not dealt with any applications for the removal of an occupancy condition, prior to this instruction. Thus it is clear, albeit at a simplistic level, there is a greater demand for new dwellings in the countryside in the District than for the removal of occupancy conditions. Although this simple approach covers the whole District - which may be considered larger than the "locality" - it does suggest that there is a continuing need for such dwellings to be maintained for use by agricultural workers.

I hope these comments and observations are helpful.

Yours sincerely



Peter Williams

¹ PINS Case law and practice guide 7; *Agricultural, forestry and other occupational dwellings in the countryside*