



Appeal Decisions

Hearing held on 4 May 2011

Site visit made on 4 May 2011

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 May 2011

Appeal A - Ref: APP/M3645/C/10/2143195

Starline Farm, Starborough Road, Marsh Green, Edenbridge, TN8 5RB.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Taylor against an enforcement notice issued by Tandridge District Council.
- The Council's reference is ENF/2010/293.
- The notice was issued on 19 November 2010.
- The breach of planning control alleged in the notice is failure to comply with Condition No. 4 attached to planning permission Ref. TA/2005/635 granted by the Council on 7 February 2006.
- The development to which the permission relates is the erection of a detached dwelling with associated access. The condition in question is No. 4 which states that: "The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly employed in the business of fish farming carried out on the application site and adjoining blue edged land as shown on the application drawings, and any dependant or dependants of such a person residing with him or her.
- The notice alleges that the condition has not been complied with. The reasons for issuing the notice indicate that the person occupying the dwelling is not employed in the business of fish farming on the Land.
- The requirements of the notice are to: Cease the occupation of the dwelling by any person who is not solely or mainly employed in the business of fish farming carried out on the Land or by any dependent or dependents residing with him/her.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the notice is quashed and permission is granted in the terms set out in the Formal Decision.

Appeal B - Ref: APP/M3645/A/10/2139497

Starline Farm, Starborough Road, Marsh Green, Edenbridge, TN8 5RB.

- 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 John Taylor against the decision of Tandridge District Council.
- The application Ref TA/2010/1000, dated 5 August 2010, was refused by notice dated 1 October 2010.
- The application sought planning permission for the erection of a dwelling without complying with condition No. 4 attached to planning permission Ref TA/2005/635, dated 7 February 2006, and the substitution of a standard agricultural occupancy condition as set out in Circular 11/95.
- The condition in dispute is No. 4 which states that: "The occupation of the dwelling

hereby permitted shall be limited to a person solely or mainly employed in the business of fish farming carried out on the application site and adjoining blue edged land as shown on the application drawings, and any dependant or dependants of such a person residing with him or her."

- The reason given for the condition is: To ensure that the proposed dwelling is occupied only in accordance with the special agricultural circumstances of this case and the District Planning Authority's policy for the protection of the Metropolitan Green Belt and rural areas is not prejudiced, in accordance with policy RE24 of the Surrey Structure Plan 2004 and Policy RE2 of the Tandridge District Local Plan.

Summary of Decision: The appeal is allowed, and the planning permission varied in the terms set out below in the Formal Decision.

Application for costs

1. At the Hearing an application for costs was made by Mr Taylor against the Council. This application is the subject of a separate Decision.

Appeal A Ground (a) and Appeal B

Main Issue

2. The main issue is whether the circumstances of the fish farming enterprise at Starline Farm are such so as to justify the specific occupancy condition imposed on the permission for the dwelling as opposed to a model agricultural occupancy condition as set out in Circular 11/95.

Background

3. The site lies in an area of open countryside which is included in the Metropolitan Green Belt. It extends to about 1.2 hectares and comprises a dwelling, some circular tanks above ground level, ponds and various outbuildings. It is apparent that the appellant has owned the land for many years and started developing a fish farm in the early 1990s. Planning permission was granted in 1994 for the retention of 10 tanks and associated equipment for fish farming and a temporary permission was given for a mobile home on the site in 1995. This was renewed in 1999 and 2002. After a number of unsuccessful applications for the erection of a dwelling on the land, outline planning permission was granted for the erection of a dwelling in 2006, which was erected following the approval of reserved matters later that year. The occupation of the dwelling is subject to an occupancy condition specific to the business of fish farming at Starline Farm as set out in the heading above. Further, the appellant and the Council entered into a formal Agreement under s106 of the Act which covenants, in general terms, that the dwelling shall not be severed from the remainder of the land.
4. At that time when the outline permission was granted the appellant had continued to develop the business of farming trout and smoking the fish on site for sale locally and at farmer's markets. However, in March 2009, the appellant became ill and was treated in hospital. He has now largely recovered although he has chosen to retire to protect his health. The appellant seeks to have the specific condition removed from the permission and a standard model agricultural occupancy condition imposed so as to enable him and his family to continue to occupy the dwelling as a person last working in agricultural. At the time of my visit to the site, the house was occupied by the appellant and his family; the tanks were devoid of farmed fish and only native course fish occupied the ponds. The smoke house was also vacant although the equipment remained.

Compliance with national guidance

5. It is clear that over a period of some 15 years the fish farming enterprise developed to the extent that a functional need for someone to live on the site at all times to care for and manage the fish was demonstrated. This functional need for living accommodation was met by the appellant and his family living in a mobile home on the site for some seven years. The development of the new agricultural business therefore followed a process that generally accords with the guidance on agricultural dwellings set out in Annex A to Planning Policy Statement 7 – Sustainable Development in Rural Areas (PPS 7). PPS 7 also says that new permanent accommodation should also be justified though a financial test showing that the enterprise is economically viable but no evidence on that was given at the Hearing.
6. PPS 7 goes on to advise that where a new permanent dwelling in open countryside is shown to have special justification, the planning permission granted should be made subject to appropriate occupancy conditions and reference is made to the model agricultural occupancy condition as set out in Circular 11/95 re the use of planning conditions.
7. Circular 11/95 acknowledges that while the use of model conditions generally can be of benefit, it emphasises the need for careful assessment of the need for any condition and to ensure that the various tests of conditions as set out in the Circular are met. In terms of agricultural dwelling cases, the Circular advises in paragraph 107 that “it should not be necessary to tie the occupation of the dwelling to workers engaged in one specific farm or forestry business even though the needs of that business justifies the provision of that dwelling.”
8. Therefore the condition imposed, restricting occupation of the dwelling to a person actually and actively employed at the site is clearly contrary to this long standing national guidance and needs special and precise justification.

Did special circumstances exist?

9. The main difference between the model agricultural occupancy condition and the one imposed is that the latter requires the occupier of the house (and his/her dependants) to be employed in the business of fish farming on the site, whereas the model condition, allow such a dwelling to be occupied in addition by a person who was last working in agriculture in the locality. The formal reason for the specific condition refers to the Council’s concern that the new permanent dwelling should continue to meet the special agricultural circumstances that were put forward to justify it and in order not to prejudice the protection of the Green Belt. This reason was amplified at the hearing as being so as to ensure that an additional dwelling was not sought if the occupier did not continue to be involved in the fish farm. Further, the local Councillors who also attended the hearing said that at the time that outline application for the dwelling was considered, the members of the committee were also concerned about the modest nature of the enterprise on a relatively small site and the lack of substantial investment within the facility to ensure it continued.
10. It appears to me that the fish farming and smoking business was established over many years and was a genuine agricultural activity which operated in a niche market as Mr Clarke suggested on behalf of the appellant. Although the business was small in scale, there was a proven functional need for someone to live on site to tend the fish stock.

11. The fact that the appellant has now closed the business for personal reasons does not make it more likely that there would be pressure for a further dwelling on the land. I agree with Mr Dade's contention that the Council's policies and national guidance designed to protect the Green Belt from inappropriate development would be unlikely to be prejudiced. In making an assessment of any planning application for a further dwelling on the land, the Council (or the Secretary of State on appeal), would need to consider the guidance in PPS 7 Annex A paragraph 5, that any dwelling sold separately from the land on a holding could constitute evidence of lack of agricultural need. I therefore do not consider that the specific condition is *necessary* to prevent further development proliferating in the Green Belt and that the model occupancy condition would meet normal circumstances. Further, there is no support within the Tandridge District Local Plan Policy RE24 for a more restrictive form of agricultural occupancy condition to help protect the character and appearance of this area of countryside. (The s106 Agreement related to the original permission is a separate matter which does not have a bearing on my assessment of the likelihood of the proliferation of further development.) Overall on this issue, I conclude that special justification for a condition more restrictive than the model condition did not exist at the time that the outline permission was granted.

Compliance with other national guidance

12. I also agree with the appellant that the specific condition does not meet the requirements of other tests set out in Circular 11/95. It does not provide for the appellant and his family to continue to live in the dwelling if he retired on health grounds or if some other circumstances beyond his control force closure of the enterprise, such as the prevailing economic climate, or a change in consumer choice for the product. The fact that the condition requires the occupier to vacate his property in such circumstances means that it does not pass the test of being *reasonable*.
13. The Council recognise the problems associated with the appellant's illness but consider that inadequate steps have been pursued by him to try and find an alternative buyer/occupier to re-start the business and that the lack of continued viability has not been demonstrated. However, the need to ensure an active agricultural business on the specific holding goes beyond what is reasonable under planning control, even when a permanent dwelling is involved and has been demonstrated to be essential. Although it is the needs of the enterprise that are paramount, rather than the needs of a particular individual, when a particular agricultural dwelling proposal is assessed, these circumstances cannot be expected to remain unchanged over time. Where circumstances have changed materially, the model agricultural condition allows the occupation of the dwelling by others in the agricultural community and ensures that the property need not remain vacant. This ensures that the owner/occupier is not prejudiced by circumstances beyond their reasonable control. The scope of the condition imposed therefore goes beyond the guidance and the need for flexibility in the occupation of agricultural dwellings, as set out in PPS 7. This reinforces my concern about the nature of the condition.

Conclusion on the issue

14. Overall, I consider that the planning circumstances of the business at Starline Farm were not so special so as to justify the very limiting nature of the

condition imposed, and its additional requirements are unnecessary and unreasonable. It therefore fails the tests of being reasonable and necessary as set out in Circular 11/95. In addition, I conclude that the erection of the dwelling on the fish farm holding, as proposed in application TA/2005/635 could reasonably have been permitted with the standard agricultural occupancy, in accordance with Local Plan Policy RE24 and national planning guidance in PPS 7. I will therefore allow the appeal, quash the notice and grant planning permission for the development with the model agricultural occupancy condition imposed.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed on ground (a) and that the enforcement notice should be quashed. I propose to discharge the condition the subject of the notice, and to grant planning permission, on the applications made and deemed to have been made, for the operations previously permitted without complying with the condition enforced against, but to substitute a less onerous condition as indicated in paragraph 14 above. The appeal on grounds (f) and (g) does not therefore fall to be considered.

Formal Decisions

Appeal A - Ref: APP/M3645/C/10/2143195

16. I allow the appeal, and direct that the enforcement notice be quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, I hereby discharge condition No. 4 attached to the planning permission dated 7 February 2006, Ref TA/2005/635, granted by Tandridge District Council, and substitute the following new condition 4 (a). I also grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the erection of a detached dwelling with associated access without complying with the said conditions but subject to the other conditions attached to that permission and to the following new condition, No. 4 (a) as set out in the attached schedule.

Appeal B - Ref: APP/M3645/A/10/2139497

17. I allow the appeal, and vary the planning permission Ref TA/2005/635 for the erection of a detached dwelling with associated access at Starline Farm, Starborough Road, Marsh Green, Edenbridge, TN8 5RB, granted on 7 February 2006 by Tandridge District Council, deleting condition 4 and substituting for it a new condition 4 (a) as set out in the attached schedule.

David Murray

INSPECTOR

Schedule of Conditions

1. Before any development hereby permitted is commenced, approval of the design and external appearance of the building and the landscaping of the site (hereinafter called the 'reserved matters') shall be obtained from the District Planning Authority. Detailed plans and particulars of the 'reserved matters' shall be submitted in writing not later than 3 years from the date of this permission and shall be carried out as approved.
2. The development thereby permitted shall be begun before the expiry of 2 years from the date of approval of 'the last of the reserved matters' to be approved, whichever is the later.
3. The gross floor area of the dwelling hereby permitted, measured externally, shall not exceed 140 square metres, excluding any garaging, but including any basement area.
4. (a) 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 of such a person, and to any resident dependants.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no form of enlargement, improvement or other alteration of the dwelling hereby permitted shall be carried out nor shall any ancillary domestic buildings be erected, without the prior permission in writing of the District Planning Authority.
6. Within 1 month of the completion or first occupation of the dwelling hereby permitted, whichever is the sooner, the existing mobile home shall be removed from the site and thereafter the new dwelling shall provide the only residential accommodation on the site.
7. Prior to the commencement of the development, details of sewage and surface water disposals shall be submitted and approved in writing by the District Planning Authority shall be completed in accordance with the approved scheme before the dwelling is occupied.
8. No development hereby permitted shall commence until details of earthworks and proposals for the movement and disposal of any surplus excavated soil arising from the development have been submitted to and approved in writing by the District Planning Authority. These proposals shall show the measures to be taken for the protection and retention of trees on the site and details of the spread of any excavated soil.

APPEARANCES

FOR THE APPELLANT:

Mr John Taylor	Appellant
Mr M Dade, BSc, MRICS.	Planning Consultant, Speer Dade Planning Consultants.
Mr C Clark, FRICS.	Chartered Surveyor, Agricultural and Land Consultant, Charles Clark & Co.

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Hall, BSc, MPhil., MRTPI	Senior Planning Officer, Tandridge District Council.
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INTERESTED PERSONS:

Cllr. R Bisset	Local District Councillor
Cllr. M Sidney	Local District Councillor

DOCUMENT

1 Costs application on behalf of Mr Taylor ((MD))