

Appeal Decision

Site visit made on 2 August 2016

by David Walker MA MRTPI

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

Decision date: 7th September 2016

Appeal Ref: APP/Y9507/W/16/3147251

Copper Beeches, Torberry Farm, B2146 Ditcham Lane to Hurst Mill Lane, Hurst, South Harting GU31 5RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Chew against the decision of South Downs National Park Authority.
 - The application Ref SDNP/15/03829/CND, dated 30 July 2015, was refused by notice dated 11 February 2016.
 - The application sought planning permission for conversion of barn to two semi-detached agricultural cottages without complying with a condition attached to planning permission Ref HT/2/69, dated 7 July 1969.
 - The condition in dispute is No 1 which states that: *The occupation of the dwellinghouses shall be limited to persons employed, or last employed, locally in agriculture as defined in section 221(1) of the Town and Country Planning Act, 1962, or in forestry, and a dependant of such persons residing with them (but including a widow or widower of such person).*
 - The reason given for the condition is: *As the site lies in an area where permission for residential development unrelated to the essential needs of agriculture and/or forestry would not normally be permitted.*
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Decision

1. The appeal is allowed and planning permission is granted for conversion of barn to two semi-detached agricultural cottages at Copper Beeches, Torberry Farm, B2146 Ditcham Lane to Hurst Mill Lane, Hurst, South Harting GU31 5RG in accordance with the application Ref SDNP/15/03829/CND made on the 30 July 2015 without complying with condition No 1 set out in planning permission No HT/2/69 granted on 7 July 1969 by the Midhurst Rural District Council, insofar as it relates to Copper Beeches only.

Preliminary Matter

2. The appeal being allowed, it is necessary to identify which of the two semi-detached cottages the permission relates to. I have therefore referred to the site as described within the Authority's decision notice in the interests of consistency and accuracy. I have also made it clear in my decision above that the condition is only lifted in respect of the appeal property.
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Main Issue

3. The main issue in the appeal is whether the proposal complies with policies for agricultural workers dwellings and, if not, whether there are any overriding material considerations.

Reasons

4. Saved Policy RE19 of the Chichester District Local Plan First Review 1999 (the Local Plan) seeks to retain agricultural workers dwellings unless it can be demonstrated that there is no longer a demand for such a dwelling within the area. A similar approach is employed within Policy SD48 of the South Downs Local Plan: Preferred Options 2015, although this is an emerging plan that has yet to be found sound and attracts limited weight accordingly.
5. Beyond the submission of a market appraisal drawing from the experiences of local estate agents, no formal marketing of the property has been undertaken to establish demand with the occupancy restrictions imposed by condition No 1 in place. It has not been demonstrated that the proposal satisfies the requirements of saved Policy RE19 of the Local Plan. Conversely, the Authority has brought my attention to 4 other examples of applications for rural workers dwellings within the National Park, thereby indicating some latent demand for suitable properties.
6. On the limited evidence available to me, therefore, I am satisfied that the condition remains necessary for the dwelling to comply with the requirements of the Local Plan.
7. However, the appellants have obtained a certificate of lawfulness¹ (CLEUD) for the occupation of the dwelling without complying with the condition. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. The certificate is unfettered and the benefits it provides would be transferable to subsequent occupiers. Copper Beeches could accordingly be occupied in breach of condition No 1 by any non-qualifying person in perpetuity.
8. I acknowledge that the occupation of the dwelling by a qualifying person would have the effect of breaking the continuity of the breach, thereby reinstating the occupancy restrictions. A period of no occupancy, depending on the circumstances, might have the same effect as well. I find this to be a theoretical concept, however.
9. Reverting back without the benefits provided by the CLEUD would, based on the evidence, have the effect of significantly reducing the current open market value of the property of £650,000 by about 30%. Given the risk of such a substantial loss that would confront the sellers and a qualifying person means this is a scenario that is very unlikely to arise at least for the foreseeable future. Moreover, the property and its value are highly likely to be based on it being sold as an existing B&B business and not as an agriculture or forestry workers property now without any associated agricultural land or buildings.
10. While the condition was originally necessary to achieve the purpose for which it was originally intended, the existence of the CLEUD has the effect of making it unenforceable for all practical purposes. Moreover, taking account of the

¹ Application Ref SDNP/14/000639/LDE

significant change of circumstances since 1969, the condition has now outlived any useful planning purpose thus also meaning that it is no longer necessary or reasonable to continue to require the property to be occupied by qualifying persons.

11. This background is a significant material consideration that weighs in favour of the proposal. I note that an Inspector adopted a similar approach regarding a CLEUD in the appeal decision² provided by the appellants. While that decision is from 13 years ago, the tests to be applied when imposing conditions have not materially changed over that time despite the more recent policy and guidance in the National Planning Policy Framework (the Framework) and Planning Practice Guidance.
12. Despite the conflict I have identified with Policy RE19 of the Local Plan I find the existence of the CLEUD to be an overriding consideration. Therefore, condition No 1 no longer accords with the six tests identified at paragraph 206 of the Framework and I conclude that it should be removed.
13. In reaching my conclusion I have had regard to the support offered by the occupants of the neighbouring property and to the objections of the Harting Parish Council. These raise matters surrounding the merits of the proposal, but as I find the condition to be technically unenforceable they do not weigh heavily either for or against it.
14. With regard to the statutory purposes of the National Park's designation, I am satisfied that the proposal would conserve the natural beauty, wildlife and cultural heritage of the area, and have a neutral effect on opportunities to promote the understanding and enjoyment of the special qualities of the National Park by the public.
15. I have also given regard to the need for any additional conditions. None have been provided by the parties. The only remaining condition attached to the original permission related to the submission of details of the works in conversion that have long since been carried out. I do not therefore find the need for any additional conditions to be necessary.

Conclusion

16. For the reasons given above, and with regard to the development plan read as a whole, I conclude the appeal should be allowed.

David Walker

INSPECTOR

² Appeal Ref APP/E2001/A/02/1104141