



## Appeal Decision

Hearing held on 18 July 2018

Site visit made on 18 July 2018

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 29<sup>th</sup> August 2018

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**Appeal Ref: APP/H1840/W/18/3197358**

**Martinbrook Farm, Lower Town, Claines WR3 7RY**

- 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 I Hurley against the decision of Wychavon District Council.
  - The application Ref 17/02434/FUL, dated 30 November 2017, was refused by notice dated 23 January 2018.
  - The application sought planning permission for development originally described as "*Change of use of part of the existing pig farm to fencing contractors yard and variation of agricultural occupancy condition not in accordance with condition 3 of W/07/00501/CU, variation of condition 3 of W/16/01992/CU to allow the continued use of the building by a granite worktop supplier, B2 use, (retrospective)*" without complying with a condition attached to planning permission 17/00394/FUL, dated 18 May 2017.
  - The condition in dispute is No 1 which states that: The occupation of the dwellings on the site shall be limited to a person working in the fencing contracting business on the site and/or 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.
  - The reason given for the condition is: The Council would not be prepared to grant consent for the proposed development, unconnected with the use of adjoining land for agricultural or associated purposes.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of the dwelling, shown on the approved site plan as Martinbrook Farm House, and change of use of part of the pig farm to fencing contractors and vehicle repair business at Martinbrook Farm, Lower Town, Claines WR3 7RY in accordance with the application Ref 17/02434/FUL, dated 30 November 2017, without compliance with condition No 1 previously imposed on planning permission Ref 17/00394/FUL, dated 18 May 2017 but subject to the conditions in the attached schedule.

### Background and Procedural Matters

2. Section S73 applications are commonly said to be seeking to vary or remove conditions to which an existing permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal or non-determination) succeed, a completely new permission is created that stands alongside the original and the applicant or appellant is able to choose which is implemented.

3. The appellant's overall site includes 2 existing dwellings, The Bungalow and Martinbrook Farm House, a number of large former agricultural buildings and fields/paddocks to the north east of those buildings. The farmhouse has recently been completed and is occupied by the appellant. Only one of the buildings on the overall site is still within agricultural use and the fields/paddocks are rented out by a local farmer to graze cattle on.
4. The overall site has a complicated planning history and this was discussed at length at the hearing. In 1994 outline planning consent was granted for an agricultural workers dwelling (the existing farmhouse) on the site to serve the adjoining intensive pig farm. A reserved matters application was subsequently permitted. These permissions were subject to conditions restricting the occupancy of the dwelling to 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 residential dependants. A planning obligation made under Section 106 of the Town and Country Planning Act (Section 106 agreement) was completed that linked the use of The Bungalow, the proposed agricultural workers dwelling and the pig farm.
5. In 2007<sup>1</sup> a planning application was submitted to vary the agricultural occupancy condition noted above and to change the use of part of the pig farm to fencing contractors. The construction of the agricultural workers dwelling had been started but not completed at this time. This decision effectively gave a separate planning permission for the dwelling and the use of part of the pig farm as fencing contractors. The approved drawings for that application included drawing No KL3102/04 which indicated that only part of the overall site was included in that application. A deed of variation to the original Section 106 agreement was completed to reflect the change to the wording of the occupancy condition relating to the dwelling. Later in 2007 a separate planning permission was granted for a further 3 of the pig farm buildings to be used as part of the fencing contractors.
6. In 2016<sup>2</sup> a variation of condition 3 of the earlier 2007 decision was permitted. Condition 3 restricted the use of some of the former pig farm buildings to fencing contractors. In effect this decision granted a further separate permission for the dwelling, the use of some of the former pig farm buildings as fencing contractors and one of these buildings to be used as a vehicle repairs business.
7. The 2017<sup>3</sup> decision removed condition 3 of the earlier 2007 permission and effectively gave another separate planning permission for the dwelling, the use of some of the former pig farm buildings as a fencing contractors and one of these buildings to be used as a vehicle repairs business. It also means that the buildings used as fencing contractors on part of the site are not restricted purely to use as a fencing contractors. It was agreed at the hearing that the existing building used as a granite workshop was within the site area covered by the later 2007 permission and as such is not part of the development before me.
8. Taking into account all of the above, it was agreed, between the parties at the hearing, for the purposes of accuracy and clarity that the description of the development should be erection of dwelling and change of use of part of pig

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<sup>1</sup> W/07/00501/CU

<sup>2</sup> W/16/01992/CU

<sup>3</sup> 17/00394/FUL

farm to fencing contractors and vehicle repair business. I have used this description in the formal decision above. As the development in relation to the dwelling has already occurred I have identified it within the description in the formal decision.

9. There is no dispute that drawings No KL3102/02 and KL3102/04 formed the approved drawings to the earlier 2007 decision and were treated as forming part of the 2017 application. A site plan also formed part of the 2017 application. As such, I have treated these plans as forming part of the application before me.
10. The revised National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the response and the Framework in reaching my decision.

### **Main Issue**

11. The main issue in this case is whether the disputed condition is reasonable and necessary, having regard to national and local planning policy concerning the provision of dwellings within the countryside and the imposition of conditions.

### **Reasons**

12. The appeal site comprises the 2 dwellings noted above and their associated gardens and a number of large former agricultural buildings and the yard areas and access and parking for those buildings. The site is on the edge of the settlement known as Lower Town and there are other dwellings in close proximity to the site.
13. The development plan includes the South Worcestershire Development Plan (DP) adopted February 2016 and the made North Claines Neighbourhood Plan (NCNP). DP Policy SWDP 1 sets out the general presumption in favour of sustainable development. DP Policy SWDP 2 sets out the development strategy and settlement hierarchy. There is no dispute between the parties that the site is not within any defined development boundary for the purposes of DP Policy SWDP 2. Sites outside development boundaries are to be considered as open countryside where development will be strictly controlled. The nearest settlement with a defined settlement boundary is Fernhill Heath and this is a Category 2 settlement for the purposes of DP Policy SWDP2. NCNP Policy NCH1A reflects DP Policy SWDP 2 in that it states that additional new housing provision within the existing development boundary of Fernhill Heath provided it accords with other relevant policies.
14. Due to the cessation of the agricultural use of the farm and the existing uses of the former agricultural buildings there is not an essential need for a rural worker to live on the appeal site. Due to the amount of investment undertaken to convert the former agricultural buildings to commercial uses it is highly unlikely that these buildings would revert to agriculture use in the foreseeable future. As a result, the proposal would not comply with DP Policy SWDP 19. Moreover, the proposal would not fall within one of the categories of development allowed by Part C of DP Policy SWDP 2 and as such it would be in conflict with this policy. It follows that it would also conflict with NCNP Policy NCH1A.
15. Furthermore, the Council considers that although the dwellings are no longer needed for the operation of the businesses on the site that there is a need and

demand for agricultural/forestry workers dwellings within the District. The Council does not have a specific assessment of the demand for rural occupational dwellings in the area and it is not highlighted as an issue within the NCNP. Whilst the number of planning applications for agricultural workers dwellings received by the Council in the last 5 years suggests an ongoing demand for rural workers accommodation in the district, many of these are some distance from the appeal site. Furthermore, a number of the applications appear to be duplicate applications and some include holiday lets. Only one of the refused applications was within close proximity to the appeal site at Dilmore Lodge Farm. It is not clear from the evidence available as to whether one of the dwellings would be able to meet the requirement for accommodation in connection with that application.

16. The NCNP includes data<sup>4</sup> from the 2011 census and this indicates that 0.9% of the population of the parish and 2.6% of the wider population in the District work in agriculture. There are no proposals for large agricultural units or intensive farming operations within the area that could increase the demand for this type of dwelling. Whereas, there is a demand for affordable homes within the parish as indicated in the NCNP the available evidence does not appear to demonstrate a significant unfulfilled demand for rural worker's accommodation in the locality of the appeal site.
17. The appellant also considers that the wording of the condition does not effectively restrict the occupation of the dwellings. Annex G of DP Policy SWDP 19 states that in order to ensure that dwellings are kept available for meeting need as long as it exists, occupancy conditions will be placed on the dwelling. It goes on to state that the condition will only allow occupation by someone solely or mainly or last working in agriculture, forestry or another essential rural enterprise. The wording of condition No 1 does not contain the words solely and/or mainly.
18. As a result, the occupiers of the dwellings could meet the requirements of the condition by working for the fencing contractors or in agriculture or forestry for a very small amount of time as there is no stipulation that the employment has to be their sole or main occupation. Consequently, the dwellings could be lived in by an occupier whose main employment was totally unconnected with the fencing contractors, agriculture or forestry. As a result, their occupation would be essentially little different to an unfettered market house in this location.
19. It is likely that due to the distance to Fernhill Heath and the nature of the road between the site and that settlement that occupiers of the dwellings would tend to be dependent on travel by the private car to access day-to-day services and facilities in the wider area. Nevertheless, as their occupation would be little different as unfettered market housing it would be highly unlikely to generate materially more vehicle journeys and greenhouse gas emissions. As such, in this respect the condition is not necessary to minimise the need to travel. The removal of the condition would therefore comply with DP Policy SWDP4 which, amongst other things, states that proposals must demonstrate that the layout of development will minimise demand for travel and they offer genuinely sustainable travel choice.
20. Paragraphs 78 and 79 of the Framework state that to promote sustainable development in rural areas, housing should be located where it would enhance

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<sup>4</sup> Table 3.1.9

or maintain the vitality of rural communities and that (with certain identified exceptions) local planning authorities should avoid the development of isolated homes in the countryside.

21. As the site is adjacent to existing dwellings within the settlement of Lower Town there is no dispute that it is not in an isolated location. Future occupiers of the dwellings would be likely to continue to help to maintain the vitality of the rural community.
22. Drawing matters together, agricultural occupancy conditions are an important tool for the protection of the countryside. However, they should not be retained on the off-chance that there will be a functional need for the dwelling at some future stage, unless substantive evidence is presented to demonstrate that there is a realistic prospect of such a need arising. The submissions in this case fail to persuade me on this critical point. The circumstances relating to the dwellings have changed considerably since the original planning permission. Moreover, the wording of condition No 1 does not materially restrict the occupancy of the dwellings. Consequently, based on the evidence before me, I find that in this case condition No 1 does not serve a useful purpose for the appeal site or the locality. On this basis, I conclude that it is not reasonable or necessary.

#### *Other matters*

23. The removal of condition No 1 would not revoke the S106 agreement as a completed planning obligation is a binding legal document. Procedures for the modification and discharge of planning obligations are set out in The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. As such, it is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990.

#### **Conclusion and Conditions**

24. The Council did not suggest any conditions before the Hearing. Nonetheless, it agreed at the Hearing that if I was minded to allow the appeal that the conditions imposed on the 2017<sup>5</sup> permission would be required. I have considered these conditions against the requirements of the Planning Practice Guidance (PPG) and the Framework. In the interests of conciseness and enforceability the wording of some of the conditions has been amended.
25. In order to provide certainty as to what has been permitted I have imposed a condition specifying the relevant drawings.
26. In the interests of amenity and to prevent an intensification of the vehicle repair business a condition restricting the use of a building for that use is required. Both parties have confirmed that the submission of soft landscape works scheme condition has been formally discharged and is no longer required. In the interests of the amenity of nearby occupiers conditions restricting the hours of use of the commercial buildings and machinery are necessary.
27. The Council have stated that they can demonstrate a 5 year supply of deliverable housing sites (DHS). Whilst the appellant has drawn my attention to paragraph 74 of the Framework which indicates a number of ways a DHS can be demonstrated there is little evidence before me to specifically dispute

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<sup>5</sup> 17/00394/FUL

the Council's DHS. I have found that the proposal would conflict with Part C of DP Policy SWDP 2 and NCNP Policy NCH1A. These policies pre-date the publication of the revised Framework. However, paragraph 213 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior the publication of the revised Framework. Taking into account this paragraph I consider that these policies are broadly consistent with the revised Framework. Consequently, the conflict with these policies has significant weight.

28. In accordance with S38(6) of the Planning and Compensation Act 2004 development which conflicts with the development plan should be refused unless material considerations indicate otherwise.
29. The dwellings are already present on the site and have been occupied for a number of years. I have found that there would be no material increase in greenhouse emissions and traffic generation. I have also found that condition No 1 is not reasonable or necessary. I consider that these matters provide substantial weight in favour of the proposal and are sufficient to outweigh the conflict with the development plan.
30. Consequently, in this case I consider that the material considerations indicate that the decision should be made otherwise than in accordance with the development plan. I conclude that the appeal should be allowed.

*D. Boffin*

INSPECTOR



## **SCHEDULE OF CONDITIONS**

- 1) Unless modified by the conditions below the development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan; Site Plan submitted as part of planning application Ref 17/00394/FUL; KL3102/02 and KL3102/04.
- 2) The building to be used as a vehicle repairs business (as detailed on the Site Plan submitted as part of planning application Ref 17/00394/FUL) shall be used for these purposes only and shall not be used for any other purpose including Classes B1, B8 or an alternative B2 use of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended by the Use Classes (Amendment) Order 2005, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 3) The buildings subject to this permission, other than Martinbrook Farmhouse and The Bungalow, shall only be used between the following hours:
  - 07:30 - 18:30 Mondays – Fridays
  - 07:30 - 13:00 Saturdays and
  - At no time on Sundays or on Bank or Public Holidays.
- 4) The machinery used on site in connection with the peeling, cutting and trimming of the fencing shall only be operated between the hours of 08.00 and 18.00 Mondays to Fridays, 08.00 and 13.00 on Saturdays and shall not be operated at any time on Sundays or on Bank or Public Holidays.