

Report

Report subject: Butts Croft, Mead End, Bowerchalke

Report to: Western Area Committee

Date: 23rd June 2005

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Report Summary

To consider the expediency of enforcement action concerning the occupation of the dwelling in breach of an agricultural occupancy condition.

Introduction:

The site is occupied by a late 20th century bungalow and associated outbuildings. It lies in an area of scattered residential development, north-east of the main, built-up part of Bowerchalke village. The owners also appear to control around 3.5 hectares of agricultural land, mainly to the north and east of the bungalow.

Planning History:

Planning permission was given for erection of a bungalow and garage and access on the site on 9th September 1963 (reference 5905/9669). Condition 1 attached to that permission stated:

“Subject to the occupation of the bungalow being limited to persons employed locally in agriculture as defined in Section 221(1) of the Town & Country Planning Act 1962, or in forestry, or the dependants of such persons.”

The reason for imposing this condition does not appear on the records, however an explanation is found in a subsequent Council letter dating from 1966, which states that permission would not have been granted had it not been established that

there was a need for the use of such premises in connection with an agricultural holding.

Planning application S/89/1075 for a store/stock shed added to existing sheds and two field shelters for agricultural use and for horses was approved on 19th July 1989. The applicants were Mr. and Mrs. R. Gallop, the current occupiers of the dwelling.

Planning application S/89/1075 for a breakfast and utility rooms extension was approved on 9th October 1989. The applicants were Mr. and Mrs. R. Gallop.

S/05/0474 sought a Certificate of Lawful Development in respect of the occupation of the dwelling in breach of the agricultural occupancy conditions attached to planning permission 5905/9669 above. This application was refused on 29th April 2005, for the following reason:

“The applicants have not demonstrated, on the balance of probabilities, that the dwelling has been occupied for 10 years by a person not employed in agriculture. There is no evidence to confirm that the occupiers employment in agriculture ceased 10 years before the date of the application. Occupation of the dwelling without compliance with condition 1 is therefore unlawful and NOT immune for planning enforcement action by virtue of Section 171B(3)(Time Limits) of the Town & Country Planning Act 1990.”



Awarded in:
Housing Services
Waste and Recycling Services



The applicants for the CLD were also Mr. and Mrs. R. Gallop.

Planning Policies:

In the Adopted RDSLP 2003, the site is in countryside within the Area of Outstanding Natural Beauty. Policy H29 concerns applications to remove agricultural occupancy conditions, and indicates that such conditions should not be removed unless there is no longer an agricultural need for the dwelling on the holding or in the surrounding area.

The above policy pre-dates but is consistent with PPS 7, Annex A, paras 16 and 17.

Circular 11/95 at para 105 also gives advice on the relevant considerations in dealing with applications for removal of agricultural occupancy conditions. It indicates that it would not be appropriate to remove such conditions unless it was shown that the need in the locality no longer warrants reserving the dwelling for that purpose.

Considerations:

The breach of planning control

Evidence accompanying the refused CLD application suggested that the occupiers of the dwelling, who have lived at the site since 1985, satisfied the condition up until around 1995, by undertaking a limited amount of agricultural work, consisting of rearing and sales of sheep. However, this activity appears to have subsequently ceased and a breach of the condition in question then occurred.

The occupancy condition in relation to this dwelling pre-dates and is inconsistent with the modern, 'model' condition in Circular 11/95 in key respects. Firstly, the condition of this dwelling allows occupation by someone employed locally in agriculture. The level of such employment is not defined. The occupiers did not have to be 'solely or mainly' employed in agriculture; therefore, provided the occupiers undertook some agricultural activity amounting to employment (as appears to be in this case until the mid 1990s) they complied with the occupancy condition.

However, the condition in question also makes no provision for occupation of the dwelling by retired agricultural workers (unlike the 'model' condition in the Circular). Therefore, once the owners stopped being employed for agriculture, their occupation of the dwelling breached the condition.

The onus is on the owners to prove that their occupation of the dwelling in breach of condition is immune from enforcement action in view of the length of time passed. They failed to do this with their recent CLD application and it is considered that the Council would therefore be justified in

seeking to enforce compliance with the condition, if it is considered expedient to do so.

Continuing need for the condition

As noted above, the occupiers tried to claim that they were now immune from any action the Council wished to take to enforce the condition, rather than make application to have the condition removed. Currently, there is no available evidence to suggest that there is not a continuing need for an agricultural worker's dwelling on the holding or in the area as a whole.

The failure to take enforcement action at this time however could have the effect of the existing occupation in breach of condition eventually acquiring immunity from planning enforcement action.

The above would then deny the potential of occupation of the dwelling in future by persons employed in agriculture in the locality who could potentially satisfy the condition. This could also give rise to additional pressure for provision of further such accommodation in the locality in future, as this dwelling would no longer be available for occupation by agricultural workers on this or other holdings. It is accepted that within the last five years, there have been no applications for agricultural workers' dwellings in the general locality, which could be an indication of lack of need. However the loss of this dwelling to the agricultural market without testing the continuing need for such accommodation in the locality presents a threat of causing harm to the AONB through residential development in future.

Options For Enforcement

Officers consider that the following options are available in order to remedy the breach of planning control identified in this case:

1. *To issue an Enforcement Notice with a long period for compliance, to allow the current occupiers to continue to reside in the property whilst they wish to do so:* The effect of such a Notice would protect the Council's position by preventing the breach of condition from becoming lawful, and thereby ensuring that the dwelling could be occupied in future by persons who complied with the condition, but it is considered, would also be a proportionate response to the breach in Human Rights terms, having regard to the duration of their occupation and advanced age (also see Human Rights issues below).
2. *To issue an Enforcement Notice with a short period for compliance:* This course of action could have the effect that the dwelling potentially became available for occupation by persons who complied with the condition sooner than would otherwise be the case under option 1 above.

However, Officers consider that there are significant risks from this option associated with any appeal against the Notice and an Inspector's consideration of the proportionality of the action in Human Rights terms in view of their length of residence and advanced age.

3. *To invite a planning application to remove the condition:* As, at this stage, there is no assessment available of the continuing need for such accommodation in the locality. Having regard to the timescale involved in undertaking the works associated with such an assessment, i.e. through marketing of the property for several months at a price reflecting the restricted occupancy of the dwelling before submitting an application, it is likely that requiring such an exercise to be carried out would have the practical effect in any event of causing any remaining available time left to the Council to take enforcement action to be exceeded.
4. *To invite a planning application, to allow the current occupiers to continue to reside in the property whilst retaining the condition:* This option, the effect of which would be similar to option 1 above, has an added advantage in that the wording of the current condition could then be amended to reflect that of the model condition, to ensure that in future the dwelling was only occupied by persons 'solely or mainly' employed in agriculture, whilst ensuring that persons 'lastly' employed in agriculture could also occupy the dwelling. However, there is no incentive for the occupiers to submit an application, unless enforcement action has been taken. Moreover, there is a strong risk that further delay in enforcement could result in the breach becoming immune from action by the passage of time.
5. *To not take enforcement action at this time:* For reasons as already noted above, this option on its own is not recommended.

Human Rights

There are two rights under the Human Rights Act which are relevant in this case - Article 1, Protocol 1, which establishes the peaceful enjoyment of property and the legitimacy of controlling the use of such property in accordance with the general interest, and; Article 8 which establishes the right to respect for private and family life including an individual's right to a home.

The Human Rights of the occupiers owners must be balanced against the public interest of protection of the countryside in general, and the nationally recognized AONB landscape in particular, from unnecessary development and maintaining occupation of the dwelling in association with agricultural uses. In this regard, interference in the above rights is considered

justified, however the degree of interference is also required to be proportionate.

It is considered that any interference with the rights of the owners is proportionate, having regard to the objectives of Development Plan policies, in particular policy H29 and national planning guidance in Circular 11/95 and PPS 7 referred to above, which seek all protection of the environment in the public interest.

In ensuring that the level of interference with the Article 8 rights of the occupiers is proportionate, regard should be had to their age and status and length of occupation of the dwelling. In this regard, the recommended options for enforcement do not seek to deprive the occupiers of their home or any other Article 8 interest, whilst ensuring the dwelling's availability in future to persons who would comply with the condition and are in need of such accommodation, having regard to the objectives of Development Plan policies, in particular policy H29 and national planning guidance in Circular 11/95 and PPS 7 referred to above, which all seek protection of the environment in the public interest.

CONCLUSION

The occupation of this dwelling is in breach of planning control and in the light of the evidence currently available, is not immune from enforcement action.

In order to ensure that the dwelling is kept available to meet the needs of agriculture in the surrounding area, and reduce the pressure for the erection of further agricultural workers' dwellings in the AONB countryside, all in line with Development Plan policy, enforcement action is considered a necessary and expedient response to the breach and due to the threat of expiry of the time for taking enforcement action, is urgently required.

The proportionality of any action in Human Rights' terms however would be ensured by confirming the current occupiers' right to remain in residence free from the threat of further enforcement action whilst they wish to do so.

It is considered that enforcement action as outlined at option 1 would achieve the above objectives and safeguard the Council's position. There would be an advantage offered by the occupiers applying for planning permission to modify the existing condition to ensure that only persons employed full time in agriculture can occupy the dwelling as per option 4 in which case it would then be open for the Council to withdraw the Notice. Unless enforcement action is commenced however, there is little incentive for the occupiers to make such an application.

RECOMMENDATION:

That the Head of Legal and Property Services be authorised to issue an Enforcement Notice under the Town and Country Planning Act 1990 (as amended) in line with Option 1 set out in the report above, and serve it on the appropriate person(s)

Alleging the following breach of planning control:

Occupation of the dwelling without compliance with condition 1 attached to planning permission 5905/9569 dated 9th September 1965 (agricultural occupancy condition).

Requiring the following steps to be taken:

The occupation of the dwelling shall inure for the benefit of the current occupiers (Mr. & Mrs. R.G.C. Gallop) only and not for the benefit of the land. Once their occupation ceases, the dwelling shall not be occupied other than by a person or persons who are solely or mainly working, or last working, in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

Reasons for serving the Notice:

It appears to the Local Planning Authority that the above breach of planning control has occurred within the last 10 years. The dwelling is in the countryside within the Cranbone Chase and West Wiltshire Downs Area of Outstanding Natural Beauty, where new housing would not normally be permitted except where a need has been proven to meet the requirements of agriculture and forestry.

The Council do not consider that there should be any relaxation of the condition in question because it has not been sufficiently demonstrated that there is no longer a need for such a dwelling on the holding or in the surrounding area and the unrestricted occupation of the dwelling would continue to deny its availability to those who comply with the condition and are in need of such accommodation and is therefore in conflict with policy H29 of the June 2003 adopted Salisbury District Local Plan.

Time Period For Compliance:

One month after the date this Notice takes effect or the date that Mr. and Mrs. R.G. C. Gallop cease to occupy the dwelling, whichever is the later.

Implications:

- Financial: None at this time. There may be costs implications if the issue of an Enforcement Notice was held to be unreasonable by an Inspector determining an appeal.
- Legal: Detailed in the report.
- Human Rights: Detailed in the report.
- Environmental implications: Detailed in the report.
- Council's Core Values: Protecting the environment; fairness and quality.
- Wards Affected: Chalke Valley.