

LOCATION: HAWK FARM, CHURCH LANE, BISLEY, WOKING, GU24 9EA

PROPOSAL: Application under Section 73 to remove Condition 3 of application ref. BGR/8745 (Outline application to erect nursery managers dwelling and garages) to allow non-agricultural occupancy of dwelling. (Amended plans recv'd 26/10/16)

TYPE: Relaxation/Modification

APPLICANT: Mr S Howard

OFFICER: Jonathan Partington

The application would normally be determined under the Council's Scheme of Delegation, however, it is being reported to Planning Applications Committee at the request of Cllr. Mansfield.

RECOMMENDATION: GRANT subject to conditions

1.0 SUMMARY

- 1.1 Permission is sought for the removal of an agricultural occupancy condition imposed in the 1970s. Construction works first commenced on the dwelling house within the time limit for implementation of the original 1970s consent with the laying on a concrete slab. Works then ceased for many years but the original consent remained extant. The dwelling house was not then substantially completed until 2013 but is lawful. To date the dwelling has not been occupied.
- 1.2 The report concludes that there is no agricultural need and no demand for the dwelling from agricultural workers or retired farmers. The removal of this condition causes no further harm to the Green Belt or residential amenities. The application is therefore recommended for approval subject to conditions.

2.0 SITE DESCRIPTION

- 2.1 Hawk Farm (or Hawks Farm) lies within the Green Belt and is located on the northern side of Church Lane outside of the settlement of Bisley. The overall area of land comprises approximately 5 hectares and was originally part of a horticultural nursery (Daydawn) which comprised a significantly larger area of land.
- 2.2 The application site area, and defined residential curtilage, is located in the south east corner of the land i.e. adjacent to the neighbouring semi-detached dwelling Crofters. The dwelling is a two-storey detached building with single storey side additions and a two storey rear extension. The dwelling has its own gated access and off street parking. There are trees on the site protected by TPOs.

There is a clear demarcation of this residential curtilage from the rest of the land, under the applicant's ownership. On this land outside of the curtilage there is a historical open sided barn, horse grazing and an unauthorised mobile home.

3.0 RELEVANT HISTORY

- 3.1 BGR 8745 Outline planning application for the erection of a dwelling and garage.

Refused July 1973 but subsequent appeal allowed May 1974. Condition 3 of this permission stated the following:

The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 or in forestry (including any dependents of such persons residing with him) or a widow of such a person.

- 3.2 SU/77/0405 Detailed application (pursuant to outline permission above) for the erection of a dwelling and garage.

Refused permission in October 1977 and subsequently allowed at appeal in November 1979.

- 3.3 SU10/0987 Certificate of Lawful Proposed Development for the erection of a part two storey, part single storey rear extension, conversion of garage into habitable accommodation and alterations to roof over the single storey element to a dwelling granted planning permission (under the outline and detailed permissions set out above) to which construction has started but not completed.

Split decision issued in April 2011. It was agreed that the concrete slab laid many years previous amounted to the lawful implementation of the 1979 approval and as such this permission remained extant. Adding extensions during the course of the build was not, however, permitted development.

- 3.3 SU/11/0731 Erection of a two storey dwelling with parking and access.

Refused permission June 2012 on Green Belt grounds. Advice was received from the Council's Agricultural Appraiser advising that the nature of land use has changed significantly since the original 1970s permission and there was no longer any agricultural/horticultural need for a dwelling on this site and no need for the retention of an agricultural occupancy condition.

- 3.4 SU/77/0405/3 Non Material Amendment to planning permission SU/77/0405 to allow the repositioning of windows, altered location for the front door and canopy.

Granted 12/4/2016

- 3.5 SU/15/0523 Certificate of Lawful Development for the retention of a single storey side and two storey rear extension and roof alterations undertaken as permitted development; to demonstrate that these were erected after the dwelling was approved under SU/77/0405 (as amended by NMA 77/0405/1) was substantially complete

Split decision. Certificate issued on the basis that on the balance of probabilities the dwelling house was substantially completed prior to the extension works; and, because the single storey side extension as built constitutes permitted development. However, the remainder of the application was refused as the alterations to the garage roof, single storey rear extension to garage and the two storey rear extension are not permitted development.

- 3.6 SU/15/1100 Planning application for retention of two storey rear extension, single storey rear extension to garage and alterations to the garage roof

Granted 12/4/2016

- 3.7 SU/15/1101 Certificate of Proposed Lawful Development for proposed alterations to the roof of the existing garage/utility building to bring the cubic roof volume of the two storey and single storey rear extension and alterations to the garage roof within the tolerances of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 2015.

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4.0 THE PROPOSAL

- 4.1 This is a Section 73 application to remove condition 3 of application BGR/8745 (Outline application to erect nursery manager's dwelling and garages) to allow non-agricultural occupancy of the dwelling.
- 4.2 According to the applicant this condition is no longer necessary because since outline permission was granted the nursery has significantly reduced in size and the land which does remain part of the nursery site is not held within the ownership of the applicant. Moreover, the applicant argues that retention of the condition would likely render the property vacant due to the inability to comply with the requirements of the condition, at a time when housing need in the area is considerable.
- 4.3 The applicant has entered into a 6 month marketing exercise with Hamptons International which has included advertising the property on 3 primary property sites and 37 secondary property sites. In addition, the dwelling has been advertised on the UK Land and Farms website. The dwelling has been marketed with specific

reference made to the restrictive condition and with the remainder of the grounds included (extending to 13 acres/5.26 hectares).

5.0 CONSULTATION RESPONSES

- 5.1 Surrey County Council Highways No objection subject to conditions.
- 5.2 Council's Agricultural Appraiser Initial advice advised that there was insufficient evidence to justify removal of the condition. On receipt of further evidence of marketing no objection has been raised.

6.0 REPRESENTATIONS

- 6.1 At the time of writing the report 6 letters of objection had been received including letters from Bisley Parish Council and Bisley Residents' Association. The reasons for objecting are summarised below:
- The dwelling was built approximately 30 years after the development was first started in 1981 and has been built in full knowledge that the essential agricultural need under condition 3 no longer remains
[Officer comment: See paragraph 7.3.2]
 - Concern that not all conditions relating to this site have been complied with
[Officer comment: This application is only concerned with the removal of the agricultural occupancy condition but there is no evidence to suggest that the 1970s conditions have not been complied with]
 - Query whether a mobile home on site and fencing require planning permission
[Officer comment: See paragraph 7.6.2. The applicant has been requested to remove the mobile home off the land. Fencing can be erected without planning permission provided that this does not exceed 2 metres or 1 metre adjacent to a highway]
 - Concern over the impact of the dwelling as built on the Green Belt, which has been built larger than the original planning permission, and there is no legislation to support retention of this dwelling
[Officer comment: The dwelling as built has already been granted a Lawful Use Certificate. The extensions were permitted under application 15/1100]
 - The Planning Statement fails to explain what is proposed for the remaining area of land, when the two pieces of land are intrinsically linked. Restrictions should be placed on the remaining area of land to prevent further development.
[Officer comment: This has been marketed in connection with the dwelling]

- Inconsistency in location plan versus the amount of land being sold as part of the house. The fence erected is different to the location plan and query whether the agricultural tie still applies to the extra land that has been fenced off.

[Officer comment: See paragraph 7.6]

- The Hatch nor Springfields were consulted on the application

[Officer comment: Neither of these properties adjoin the application site or are directly opposite and therefore they would not have been consulted]

7.0 PLANNING CONSIDERATION

7.1 The National Planning Policy Framework (NPPF) and Policies CPA, DM1, DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012 (CSDMP) are of most relevance to this case.

7.2 Paragraph 206 of the NPPF states that planning conditions should only be imposed where they meet six tests i.e. necessary; relevant to planning and; to the development to be permitted; enforceable; precise and; reasonable in all other respects. By the same token this agricultural occupancy condition should only be retained if it can be demonstrated to still meet these six tests. The following issues, relevant to the determination of the application, should therefore be considered against these tests:

- Agricultural occupancy need;
- Harm to the Green Belt and countryside character; and,
- Impact on residential amenities

7.3 Agricultural occupancy need

7.3.1 Government policy has long established that there should be an essential need for permitting dwellings in the countryside. Paragraph 55 of the NPPF is not dissimilar to earlier government policy and states that local planning authorities should avoid new isolated homes in the countryside 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 the countryside. The associated Planning Practice Guidance (PPG) further advises that the imposition of a condition limiting benefits to a particular class of people such as agricultural workers may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

7.3.2 When the agricultural workers dwelling was permitted in the 1970s there was clearly a genuine and demonstrable need with the dwelling relating to a much larger site, and thus the agricultural occupancy condition was both reasonable and necessary. However, with the subsequent selling off of the land, with the land to the south sold for housing in the 1980s, and with the severance of the land from Daydown Nurseries this direct functional need has been diluted over time.

- 7.3.3 The applicant's motives for the resumption of the construction of the dwelling in the last couple of years, without first testing the agricultural market or having a non-open market buyer secured, is therefore questionable and open to criticism. In 2012 the Council's former Agricultural Appraiser criticised the applicant for making no effort to identify a local need for houses for the farming community and no effort to sell the property subject to the occupancy condition, or at a price to reflect the existence of this condition. In 2014 the dwelling house was advertised on the website Right Move with a guide price of £1.7 m (substantially higher market value than other 4 bed dwellings in the vicinity) but with no mention of the occupancy condition or wider holding.
- 7.3.4 Even if the motives of the applicant have not been disingenuous, nevertheless, in considering this application officers are left with a fait accompli i.e. with a vacant and lawful dwellinghouse on the site and with an obligation to consider the merits of the current proposal relating to a significantly smaller holding than originally envisaged. Whilst lack of land is not on its own an adequate reason for removing an agricultural occupancy condition it still has to be shown that there is no demand for the dwelling from agricultural workers and retired farmers. The Council's Agricultural Appraiser therefore advised that marketing was required.
- 7.3.5 As a consequence of this, the applicant was requested to undertake marketing of the site with direct reference made in the marketing to the agricultural restriction. The applicant employed Hamptons International who marketed the property on 20th May 2016 with an adjusted price of £1.45m to take account of the restriction. After 3 months of marketing Hamptons concluded the following:
- Initial contact to 59 potential buyers who met the criteria and advertised in local property papers and 40 property portals;
 - Of this marketing 2,710 virtual viewings were received and 6 telephone calls but no prospective purchasers met the criteria and there were no viewings; and,
 - Our chances of finding a prospective buyer from the farming background will be difficult to punitive and even if the price is reduced by a further 20% this would have little impact in finding a buyer.
- 7.3.6 In response to this the Council's Agricultural Advisor advised that a realistic marketing period would typically be 6-12 months and requested justification to the shorter period. In addition, clarification was sought on whom Hamptons had deemed to be potential purchasers and what nature of advertising to target the restricted market had been undertaken; and, explanation as what adjustment had been made to the open market value to account for the restriction. Officers therefore requested the applicant extend the marketing period to at least 6 months and the applicant also lowered the asking price. The very latest details of the results from this marketing will be provided at the meeting but as of 20th October 2016 the applicant has advised the following:
- We deemed the potential purchasers to be an equestrian purchaser who also kept farm animals and those people who were looking for a small holding who would fulfil the restriction.

We also have had regular buyers, who wanted the house and land, but could not fulfil the requirements and advertised on UK Land and Farms Website to ensure a more focussed approach;

- Our initial valuation and marketing, back in 2014, was to include the house and 1 acre of land at £1.7 m. We were not offering the additional land at this time. The house was then withdrawn shortly afterwards. In May 2016, with the agricultural restriction and the additional land being offered, we marketed the house at £1.45m. The adjustment made at this time for the whole, including the land, was a reduction of between 25% - 30%. As we have had little response, we have now further reduced the price to £1.3m.
- Since the price was adjusted there have been 4 viewings from which two parties expressed an initial interest, but they did not meet the criteria. The other two people who viewed the property, but did not express an interest, were also unable to fulfil the requirements of the agricultural restriction in any event; and,
- There was an initial 10% increase in virtual viewings following the price adjustment, but this has come back down again to previous levels.

7.3.7 Based upon this level of marketing it is considered that the steps now taken by the applicant are comprehensive and demonstrate that there is no demand for an agricultural worker or retired farmer. As such retention of this condition serves no purpose, no longer meeting the tests for imposing a condition.

7.4 Harm to the Green Belt and countryside character

7.4.1 The erection of a new building is inappropriate development in the Green Belt but one of the exceptions to this is a building for agriculture. Thus, the agricultural worker's dwelling originally permitted was not inappropriate development within the Green Belt. By the time, however, construction resumed on the dwelling in 2013 this was not for agriculture and so if it had not been for the lawfulness of this build (established under certificate 15/0523), it would have been resisted. Given this lawfulness, the size and use of the dwelling house now on the land, whether occupied by an agricultural worker or by the open market, has the same actual harm on the openness of the Green Belt and therefore the removal of this condition does not conflict with Green Belt policy. Similarly the impact on the character of the countryside remains the same.

7.5 Impact on residential amenities

7.5.1 The removal of this condition would not change the degree of impact on neighbours, as whether occupied by a family with agricultural connection or the open connection, the impact of the intensity of use remains the same. This proposal therefore complies with Policy DM9 (iii) of the CSDMP.

7.6 Other matters

7.6.1 The applicant has erected fencing to the rear boundary which has created a larger residential curtilage than shown on the application drawings, and historically accepted. The agent has explained that this fencing was erected lawfully under permitted development, not to define the garden but to provide security for the rear

of the dwelling. The applicant would be willing to provide additional boundary treatment, such as a hedgerow and/or picket fence to differentiate the garden area from the land beyond. It is therefore considered necessary to impose a condition to ensure that the residential curtilage be physically demarcated and returned to its historical permitted size. This is important as an enlarged curtilage would be harmful to the Green Belt.

- 7.6.2 This fencing has created a physical division from the other land in the applicant's ownership. However, this land has now been marketed in connection with the dwelling. Horses have been kept on this land to keep the grass under control. There is also an open sided barn where a boat has been stored for a temporary period and a mobile home on the land. The applicant understood the siting of the mobile home to be lawful but this is not correct and it has consistently been requested that this be removed off the land. According to the applicant this occupied mobile home is for security purposes whilst the main dwelling remains unoccupied. The applicant has assured officers that this mobile will be removed once the dwelling is sold. The applicant is also actively seeking alternative accommodation for the occupants. Officers are therefore awaiting the outcome of this application i.e. the applicant has been given the benefit of any doubt but in the event that the mobile home is not removed then the expediency of formal enforcement action will be considered. An informative will be added to the decision in respect of this matter.

8.0 ARTICLE 2(3) DEVELOPMENT MANAGEMENT PROCEDURE (AMENDMENT) ORDER 2012 WORKING IN A POSITIVE/PROACTIVE MANNER

In assessing this application, officers have worked with the applicant in a positive and proactive manner consistent with the requirements of paragraphs 186-187 of the NPPF. This included:

- a) Provided or made available pre application advice to seek to resolve problems before the application was submitted and to foster the delivery of sustainable development.
- b) Provided feedback through the validation process including information on the website, to correct identified problems to ensure that the application was correct and could be registered.
- c) Has suggested/accepted/negotiated amendments to the scheme to resolve identified problems with the proposal and to seek to foster sustainable development.
- d) Have proactively communicated with the applicant throughout the process to advise progress, timescale or recommendation.

9.0 CONCLUSION

- 9.1 The agricultural occupancy condition no longer meets the tests for imposing a condition and therefore its removal is justified.

RECOMMENDATION

GRANT subject to the following conditions:-

1. Within 3 months of the date of this permission the residential curtilage shall be reinstated so that the area is no larger than the authorised curtilage outlined in red on drawing no. 574-P-16-4B with details of the fencing, or other means of enclosure, first submitted and approved in writing by the Planning Authority. Thereafter there shall be no enlargement to the residential curtilage.

Reason: To retain control in the interests of the Green Belt and to comply with the National Planning Policy Framework.

2. There shall be no variation from the following approved plan 574-P-16-4B unless the prior written approval has been obtained from the Local Planning Authority.

Reason: For the avoidance of doubt and in the interest of proper planning and as advised in ID.17a of the Planning Practice Guidance.

Informative(s)

1. The applicant is advised that the mobile home situated on the applicant's land outlined in blue is unauthorised. In the event that this is not removed within 3 months of the date of this permission then the Local Planning Authority will consider the expediency of taking formal action to secure its removal.