

**LOCATION:** BOURNE HOLDINGS, BROADWAY ROAD, WINDLESHAM, LIGHTWATER, GU18 5SH

**PROPOSAL:** Removal of condition 7 of 94/0998 requiring agricultural occupancy of bungalow at Bourne Holdings and discharge of section 52 agreement under 87/1324 restricting use of the site to agriculture and the parking of two HGV vehicles.

**TYPE:** Relaxation/Modification

**APPLICANT:** Ms Gostage

**OFFICER:** Ross Cahalane

The application would normally be determined under the Council's Scheme of Delegation, however, it has been called in for determination by the Planning Applications Committee at the request of Cllr Gandhum, as the property is subject to an agricultural tie.

## **RECOMMENDATION: GRANT**

### **1.0 SUMMARY**

- 1.1 This application seeks permission for the removal of Condition 7 of 94/0998 requiring agricultural occupancy of the bungalow at Bourne Holdings. This condition requires occupants of the dwelling to be employed locally in agriculture or in forestry. The application also seeks discharge of the Section 52 legal agreement under 87/1324, which restricts the use of the site as a whole to agriculture and the parking of two HGV vehicles. No operational development is proposed.
- 1.2 The report concludes that as no interest from persons compliant with the occupancy terms required by the planning condition has been identified through the marketing of the property for sale, Bourne Holdings no longer requires an imposed occupancy condition as part of 94/0998. The dwelling no longer forms part of an agricultural holding since 2007, nor is it considered required for occupation by a person employed in agriculture in the local area. Given that the Agricultural Occupancy Condition (AOC) is no longer considered necessary, it is considered that the Section 52 agreement should be revoked as it duplicates the normal planning control process and has now outlived its purpose, due to the cessation of the agricultural and haulage business uses. No operational development is proposed under this application and therefore, the removal of the AOC and revocation of the Section 52 agreement causes no further harm to the Green Belt, countryside character or residential amenities.
- 1.3 The AOC and Section 52 agreement therefore clearly no longer meet the current NPPF requirements and as such, it is recommended that this application to remove the AOC and revoke the Section 52 agreement be granted.

### **2.0 SITE DESCRIPTION/HISTORY**

- 2.1 The application site is located on the western side of Broadway Road, with the buildings set back at some distance from the highway and accessed by a private laneway. The 3-bed bungalow dwelling benefits from a residential curtilage extending to 0.3 hectares (0.7 acres), a side conservatory extension, outbuilding and rear swimming pool. The site

as a whole extends to 2.02 hectares (5 acres), with 1.3 hectares (3.1 acres) of grassland in three grazing paddocks, and a range of buildings within a rear yard area extending to 0.2 hectares (0.6 acres). The application site is in a rural location within the Green Belt, detached from and beyond any defined settlement boundary, between the villages of Lightwater and Windlesham.

- 2.2 The farm is jointly owned by the applicant and her mother, who also reside in the bungalow. The applicant's deceased father purchased Bourne Holdings in the 1970s when it was separated from the neighbouring Lee Lane Farm, and at the time was also used as a small scale haulage business which due to subsequent changes in licensing regulations, was licensed to operate from Bourne Holdings. This led to the submission of application 87/1234, granted in 1989 subject to the completion of the Section 52 Agreement restricting the use of the site to agriculture and the parking of only two HGV vehicles.
- 2.3 In 1991, the family received temporary planning permission for the siting of an agricultural worker's dwelling in association with the livestock business (90/1035), and permission was granted in 1995 for the existing permanent dwelling (94/0998). At this time, the farm rented 8 hectares (20 acres) of grazing land in Bagshot Park for a herd of 20-30 cattle. The applicants also kept 60 sows, calves, turkeys and hens on the application holding.
- 2.4 The land at Bagshot Park ceased to be rented and the number of cattle was reduced and concentrated on the 1.3 hectares at Bourne Holdings. The Planning Statement details that in 2007, the herd had reduced to a maximum of five cattle kept on the holding. In 2007 there was an outbreak of Foot and Mouth Disease in the local area and the remaining cattle were removed from Bourne Holdings. As such, all agricultural activities ceased in 2007.
- 2.5 In 1996, the haulage business was changed to a removal business (Lightwater Removals), run by family members. The removal business operated from the existing yard and buildings sited at the rear of the application site, with parking for the two removal lorries and smaller vans in the compound area. The former agricultural buildings were used for storage associated with the removal business. The removal business operated on site up until the death of the applicant's father in 2015.

### **3.0 RELEVANT PLANNING HISTORY**

- 3.1 87/1324 Use of land for the purposes of parking two 28 ton heavy goods vehicles in connection with (1) A haulage business and (2) The conveyance and supply of animal feedstuffs.  
  
Decision: Granted (implemented)
- 3.2 90/1035 Siting of a mobile home for occupation by an Agricultural worker.  
  
Decision: Granted (implemented)
- 3.3 94/0404 Retention of mobile home for an agricultural worker for further 5 years.  
  
Decision: Granted

- 3.4 94/0998      Erection of three bedroom bungalow following removal of existing mobile home.

Decision: Granted (implemented)

#### **4.0      THE PROPOSAL**

- 4.1      Permission is sought for the removal of Condition 7 of 94/0998 (approved 4 April 1995) requiring Agricultural Occupancy of the bungalow of Bourne Holdings. This condition requires occupants of the dwelling to be employed locally in agriculture or in forestry as defined in Section 119(1) of the Town and Country Planning Act. It states:

*“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 336 of the Town and Country Planning Act 1990, or in forestry, or a dependant of such a person residing with him or her, or a widower of such a person.”*

- 4.2      The application also seeks discharge of the Section 52 legal agreement under 87/1324, which restricts the use of the site as a whole to agriculture and the parking of two HGV vehicles. Under the Town and Country Planning Act 1990, Section 52 agreements were replaced by Section 106 agreements, and this is the procedure still in use today.
- 4.3      No operational development is proposed. The dwelling is now occupied by the applicant and her mother who, as a widow of the original agricultural occupier, complies with Condition 7 of 94/0998, but now wishes to downsize to a smaller property.
- 4.4      The following has been provided in support of the application:
- Planning Statement outlining the justification of the proposal
  - Supporting Statement from a Chartered Surveyor - including evidence of the site marketed for sale (see Section 7.3 below)
  - Statutory Declaration from the applicant's mother to confirm the relevant site history

#### **5.0      CONSULTATION RESPONSES**

- 5.1      Windlesham Parish Council:      No objection subject to the following: Assuming that the application meets the relevant required timescale criteria to consider removal of the condition.
- 5.1      Council Agricultural Consultant: No objection [*see Section 7.3*]

#### **6.0      REPRESENTATION**

- 6.1      At the time of preparation of this report, one objection on behalf of the Charitable Trust of Windlesham Arboretum (adjoining the site) has been received, raising the following concerns:

Removal of agricultural occupancy condition (AOC)

- Marketing exercise is fundamentally flawed

- Asking prices too high, then not stated following reduction
- Advice of agents to reduce price further was not followed
- No sale board was erected at the property
- Some brochures did not mention the AOC
- From the offers received and subsequently withdrawn, it appears it was marketed as a normal house and not with the AOC
- Information makes no reference to specialist advertising targeting agricultural employees
- House was never offered separately from the land
- S52 legal agreement does not prevent separation of house from land
- Just because it has not been used as agriculture does not prove that the holding is redundant
- Property no longer on market – no genuine intent to sell for agriculture  
*[See Section 7.3]*
- Lifting of AOC will encourage others to use the system to make substantial profit  
*[Each application must be considered on its own site-specific planning merits]*

#### Removal of Section 52 legal agreement

- Argument that Section 52 agreement is outmoded or irrelevant is incorrect
- Statement that the adjoining Arboretum is no longer open to the public is incorrect
- Windlesham Arboretum Charitable Trust wishes to protect its immediate environment – concerned that removal of Section 52 agreement will increase the risk of the site developed in a manner detrimental to the Arboretum
- Section 52 agreement gives protection against unauthorised activities in the Green Belt
- No explanation has been given as to why removal of Section 52 agreement is sought
- No need or obligation for Council to remove Section 52
- Existing site is even more vulnerable and more, not less, control of the land should be sought
- Site has been subject of unlawful and unauthorised uses such as tipping (material still present); works on the flood plain; construction and use of buildings not for agriculture; and, carrying out of non-agricultural businesses – should give pause for thought as to what might happen in the future

- Lack of transparency about the intentions of the site is concerning

*[See Sections 7.4 and 7.5]*

- Change of use application from agriculture needed to justify its removal

*[The Section 73 procedure subject of this application allows for consideration of this, as outlined in Section 7.3]*

## **7.0 PLANNING CONSIDERATION**

- 7.1 The application proposed is considered against the policies within the Surrey Heath Core Strategy and Development Management Policies Document 2012 (CSDMP), and in this case the relevant policies are Policies CP1, DM1 and DM9. The revised National Planning Policy Framework 2018 (NPPF) is also a material consideration to the determination of this application. Paragraph 55 of the NPPF states that:

*“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”*

- 7.2 This Agricultural Occupancy Condition should therefore only be retained if it can be demonstrated to still meet the six tests. The following issues, relevant to the determination of the application, should therefore be considered against these tests:

- Agricultural occupancy need;
- Need for Section 52 legal agreement; and,
- Impact on the Green Belt, countryside character and 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 79 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 1995, there was a genuine and demonstrable need, and thus the agricultural occupancy condition (AOC) was both reasonable and necessary. In terms of the existing need on the holding, although the widow of the original agricultural worker still lives on site, the site has not been used for agriculture since 2007 as this was the last year livestock kept at Bourne Holdings following the outbreak of Foot and Mouth Disease. The Council's Agricultural

Consultant has advised that the size of the holding is small scale and is unlikely to be sufficient to meet the requirements for a sustainable and viable agricultural business. It is therefore accepted that there is no existing functional need for an agricultural worker's dwelling on the holding.

- 7.3.3 Nonetheless, it continues to be the case that appropriate marketing remains a central aspect of the demonstration of the absence of a wider need for the occupation of a dwelling in compliance with the AOC. The Council's Agricultural Consultant has advised that where a restricted property is placed on the market for sale, the practice which has been adopted over many years is that it be valued as an open market property, and then to discount that valuation by 25%-30% to reflect the constraint of the AOC. It is also advised that the normal period of market testing is 6-12 months.
- 7.3.4 The applicant has made reference to the April 2017 Appeal Decision relating to Hawk Farm, Church Lane, Bisley, Woking (APP/D3640/W/16/3165312) for the removal of an AOC from a 1979 permission (see Annex A for a copy of this appeal decision). Whilst each proposal must be assessed on its own merits, this decision provides useful guidance on how to assess such a proposal, particularly in terms of reasonable marketing processes. The Hawk Farm Appeal Inspector makes reference in paragraph 13 to the marketing period, which in the case of Hawk Farm was six months, and it was considered that a longer marketing period would not have resulted in more interest. The Inspector noted that Hawk Farm had been reasonably marketed.
- 7.3.5 Bourne Holdings was marketed for 22 months. The applicant first marketed the holding through Chancellors for £2million in May 2016, and it appears that there was limited understanding of the agricultural occupancy condition. Appendix 1 of the applicant's surveyor's Supporting Statement includes the Property Particulars and an Activity Statement up to December 2016. There were five viewings (with a second viewing for one interested party) but no offers were received.
- 7.3.6 In the meantime, Strutt and Parker were instructed in October 2016, originally marketing the property at £1.5million and reducing to £1.25million in April 2017. Appendix 2 of the surveyor's Supporting Statement includes a summary of applicant interest and shows that 110 applicants were sent details, with six applicants making an offer. Three offers were rejected, two were unable to proceed due to the occupancy condition and one was unable to secure funding due to the occupancy condition.
- 7.3.7 Strutt and Parker provided a letter dated 31 July 2018 (in Appendix 4 of the surveyor's Supporting Statement) detailing the breakdown of valuing the house and land and buildings. The original marketing campaign of £1.5million was calculated as £850,000 for the house and £650,000 for the land and buildings; the £1.25million total value was calculated as £750,000 for the house and £500,000 for the land and buildings. The house has never been marketed separately from the land and buildings. Based on market conditions in July 2018, they placed a value on the property as a whole as £1million, however it has not been marketed at this price.
- 7.3.8 Pelhams, specialising in Equestrian and Country Property, were instructed in July 2017 and marketed the holding at £1.25million and included marketing it on the UK Land and Farms website. Appendix 3 of the surveyor's Supporting Statement includes marketing results which details 10 applicants made direct contact, none of which would be able to occupy the dwelling in compliance with the occupancy condition. Four applicants made offers which were withdrawn due to the occupancy condition.

Concern has been raised in respect of the lack of a sales board outside of a property. However, paragraph 13 of the Hawk Farm appeal also states that the lack of a sale board is not an uncommon occurrence and therefore does not have any significant bearing on whether the property would be attractive to a suitable occupier.

- 7.3.9 A search of applications received by the Council since 2015 is another indicator and shows one application for a rural worker's dwelling (excluding equestrian related applications) - a dwelling at Hook Meadow, Philpot Lane which was refused and dismissed at appeal. This demonstrates there is only a very small demand for such dwellings across the Borough where the amount of farmland is limited. In addition, there have been two applications to remove agricultural occupancy conditions within the Borough - the aforementioned Hawk Farm which was allowed on appeal in 2017 and Pinegrove Farm which was approved by the Council in 2017.
- 7.3.10 In light of the above and given that no interest from persons compliant with the occupancy terms required by the planning condition has been identified through the marketing of the property for sale between June 2016-April 2018, the Council's Agricultural Consultant has concluded that Bourne Holdings no longer requires an imposed occupancy condition as part of 94/0998. The dwelling no longer forms part of an agricultural holding since 2007, nor is it considered required for occupation by a person employed in agriculture in the local area. As such, it is considered that the retention of this condition serves no purpose, as it no longer meets the tests for imposing a planning condition as outlined in Para 55 of the revised NPPF.

#### **7.4 Need for Section 52 legal agreement**

- 7.4.1 The applicant's Planning Statement explains the reasons for seeking the removal of the Section 52 legal agreement attached the 87/1324 permission granted in 1989 for the use of the land for a haulage business, which restricts activities on the land as follows:
1. *The land is not to be used for any purpose other than agriculture and the parking of two goods vehicles;*
  2. *No tipping of materials other than topsoil is to take place on the land;*
  3. *No building other than a building reasonably required for agricultural purposes is to be erected on the land; and,*
  4. *No more than two goods vehicles are to be kept on the land.*
- 7.4.2 As already outlined in Para 2.5 above, in 1996 the haulage business forming one part of the lawful use of the site was changed to a removal business (Lightwater Removals), run by the applicant's family members. This removals business ceased operation in 2015. As also outlined in Section 7.3 above, although the widow of the original agricultural worker still lives on site, the site has not been used for agriculture since 2007. In this respect, the Section 52 agreement has been in breach for many years and the applicant therefore contends that this agreement has outlived its purpose.
- 7.4.3 The Planning Statement argues that in respect of the other Section 52 restrictions, namely preventing tipping and carrying out any building operations on site, these activities can be controlled through the normal planning process and therefore, there is no need for this to be expressly controlled through a legal agreement.

7.4.4 It is therefore argued that meeting the terms of this agreement is an unnecessary requirement that serves no useful purpose, as it does not meet Para 56 of the NPPF, which states that planning obligations (i.e. the Section 52 agreement subject of this application) must only be sought where they meet the following tests:

- a) *necessary to make the development acceptable in planning terms;*
- b) *directly related to the development; and*
- c) *fairly and reasonably related in scale and kind to the development.*

The applicant therefore contends that the existing Section 52 agreement would fail to comply with the above NPPF requirements, as the purpose of the agreement duplicates the normal planning control process and as the agricultural and haulage business uses have ceased, this agreement has now outlived its purpose.

7.4.5 In light of the above and given that the Agricultural Occupancy Condition is no longer considered necessary, it is considered that the Section 52 agreement can be revoked as it clearly no longer meets the above NPPF requirements. This would not preclude the Council from taking planning enforcement action, if necessary, against any subsequent unauthorised use or development within the site. The concerns regarding historical tipping of the land are noted. However, any future tipping would require additional planning permission if it would materially alter the land levels. Tipping on the land would also be controlled under separate Environment Agency and environmental health legislation.

## **7.5 Impact upon the Green Belt, countryside character and residential amenities**

7.5.1 No operational development is proposed under this application. Therefore, the size and use of the existing dwelling, whether occupied by an agricultural worker or not, has the same actual harm on the openness of the Green Belt. Consequently, the removal of this condition does not conflict with Green Belt policy. Similarly the impact on the character of the countryside remains the same. Turning to the Section 52 legal agreement, although this has been in breach for many years due to the cessation of the haulage business, this is considered to form a benefit to the Green Belt and surrounding rural character.

7.5.2 The removal of the AOC condition would not change the degree of impact on neighbours or the adjacent Windlesham Arboretum land, as whether occupied by a family with agricultural connection or not, the impact of the intensity of use remains the same. The revocation of the Section 52 legal agreement would also not prejudice the amenity of surrounding neighbours and uses, as the Council could still take planning enforcement action, if necessary, against any subsequent unauthorised use or development within the site. This proposal therefore complies with Policy DM9 (iii) of the CSDMP.

7.5.3 As already mentioned, any future tipping would require additional planning permission if it would materially alter the land levels. Tipping would also be controlled under separate Environment Agency and environmental health legislation.

7.5.4 Condition 8 of the 94/0998 permission for the existing bungalow removes permitted development rights for extensions, garages and other buildings. For clarity and given the location within the Green Belt, this condition will be re-imposed. Associated to this the applicant has been requested to provide a plan defining the residential curtilage. An update on this matter will be provided at the meeting.

## **8.0 CONCLUSION**

- 8.1 As no interest from persons compliant with the occupancy terms required by the planning condition has been identified through the marketing of the property for sale between June 2016-April 2018, the Council's Agricultural Consultant has concluded that Bourne Holdings no longer requires an imposed occupancy condition as part of 94/0998. The dwelling no longer forms part of an agricultural holding since 2007, nor is it considered required for occupation by a person employed in agriculture in the local area. As such, retention of this condition serves no purpose, as it no longer meets the NPPF tests for imposing a planning condition.
- 8.2 Given that the Agricultural Occupancy Condition (AOC) is no longer considered necessary, it is considered that the Section 52 agreement should be revoked as it duplicates the normal planning control process and has now outlived its purpose due to the cessation of the agricultural and haulage business uses. The AOC and Section 52 agreement therefore clearly no longer meet the current NPPF requirements and as such, it is recommended that this Section application to remove the AOC and revoke the Section 52 agreement be granted.

## **9.0 WORKING IN A POSITIVE/PROACTIVE MANNER**

- 9.1 In assessing this application, officers have worked with the applicant in a positive, proactive and creative manner consistent with the requirements of paragraphs 38-41 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.

## RECOMMENDATION

GRANT subject to the following conditions:-

1. This permission related to the following approved plans:

Block plan received on 07 August 2018.

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

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order) no further extensions or roof additions to the existing dwelling of Bourne Holdings shall be erected under Schedule 2, Part 1, Class A or Class B of that Order; and no buildings, enclosures, pools or containers incidental to the enjoyment of a dwelling house shall be erected under Schedule 2, Part 1, Class E of that Order; without the prior approval in writing of the Local Planning Authority.

Reason: To enable the Local Planning Authority to retain control over the enlargement, improvement or other alterations to the development in the interests of visual and residential amenity and to accord with Policies CP1, DM1 and DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012 and the National Planning Policy Framework.

Informative(s)

1. Decision Notice to be kept DS1