



## Appeal Decision

Site visit made on 3 October 2023

**by Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 26 October 2023**

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**Appeal Ref: APP/L1765/C/22/3313363**

**Land at Greenclose also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton, Hampshire, SO32 2DA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Newbury against an enforcement notice issued by Winchester City Council.
  - The notice was issued on 15 November 2022.
  - The breach of planning control as alleged in the notice is without planning permission the occupation of the dwelling Greenclose by a person who does not meet the requirements of condition 3 of application 86/01902/OLD which 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 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 or widower of such a person."*
  - The requirements of the notice are to cease the occupation of the property by persons not complying with condition 3 of application 86/01902/OLD.
  - The period for compliance with the requirements is twelve months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### Decision

1. It is directed that the enforcement notice be corrected by substituting the plan attached thereto with the plan attached to this Decision and in paragraph 2 ("the land affected") substituting "edged red" with "edged black". Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

### Preliminary Matter

2. Along with the dwelling and its associated grounds, the plan attached to the enforcement notice encompasses a substantial area of land within that edged red affected by the notice, including a barn and a field. In my view, this plan does not specify the precise boundaries of the land to which the notice relates. Firstly, since condition 3 attached to planning permission reference 86/01902/OLD applies to the dwelling, it has limited relevance to the majority of the land within the red edged area. Second, the land containing the barn and field is largely separate, physically and functionally, from the dwelling and its grounds and although in the same ownership, as a matter of fact and degree is in a separate planning unit. Therefore, having first sought the views of the main parties I shall correct the notice by substituting the plan attached thereto with the one found at the end of this decision, which excludes land other than the dwelling and its grounds from that affected by the notice. There is also a

consequential correction in the description of the affected land in the notice. I am satisfied that there would be no injustice to either the appellant or the Council.

### **Ground (d) appeal**

3. The ground of appeal is that it was too late to take enforcement action against the breach of planning control alleged in the notice. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
4. The appeal site contains a detached bungalow. The bungalow was erected following the grant of the above-referenced planning permission on 27 November 1986. Condition 3 restricts occupation of the bungalow to a person solely or mainly employed or who was last employed in the locality in agriculture or in forestry or a dependant of such persons residing with him, including the widow or widower of such a person.
5. Where, as in this appeal, the breach of planning control alleged is a failure to comply with a condition subject to which planning permission has been granted, s171B (3) of the 1990 Act provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In this respect any ten-year period is relevant, not just that immediately preceding the date of the notice.
6. The appellant's case is that occupation of the bungalow since 1989 onwards has continuously been in breach of condition 3. In particular, the appellant claimed that one of the occupiers was not solely or mainly employed in agriculture at the time that they passed away in 1990 and that their surviving spouse, who continued to occupy the bungalow up until shortly before passing away in 2013, therefore did so in breach of the condition. The appellant went on to claim that since March 2014, when they acquired the bungalow, the breach of condition has continued.
7. The appellant did not explain how they came to be aware of events at the bungalow and the circumstances of the former owners and occupiers. There is no suggestion that the appellant had occupied the bungalow at any time prior to acquiring it. Nor, as far as I have been made aware, did the appellant have any close association with the bungalow or the former owners or occupiers, or reside or work nearby, before its acquisition. As the information supplied by the appellant therefore appears to not be derived from personal recollections or experience but to come second-hand from another source, I cannot reasonably be assured of its accuracy. Consequently, this information can only be afforded limited weight.
8. Further, the Council drew my attention to correspondence from former owners of the bungalow which cast significant doubt on the appellant's claim. The former owners described events at the bungalow and the circumstances of the occupiers between 1988 until the sale to the appellant. The former owners dispute the claim that condition 3 was breached at any time during their ownership and went on to explain why they consider that the previous occupiers, who were close relatives, complied with the condition. The former owners provided a direct first-hand account of events at the bungalow prior to its acquisition by the appellant. Their account is detailed and contradicts the

explanation offered by the appellant. There is no sound reason why I should not attach considerable weight to the former owners' evidence.

9. Therefore, based on the available evidence and on the balance of probability, the appellant has been unable to show that it was too late to take enforcement action against the breach of planning control in the notice and the ground (d) appeal fails.

## **Ground (a) appeal**

### **Main Issue**

10. The main issue in this ground of appeal is whether it has been shown that the dwelling is no longer needed for agriculture or forestry in the locality.

### **Reasons**

11. The bungalow occupies a countryside location. The stated reason for condition 3 makes it clear that permission would not have been granted for the bungalow other than to meet a need for agriculture or forestry. Policy DM11 of the Winchester Local Plan Part 2 (LP) states that occupancy conditions on essential rural workers' dwellings will only be removed where the long-term need for the dwelling has ceased and there is no evidence of a continuing need for housing for workers solely or mainly employed in agriculture or forestry on the holding or in the surrounding area. Policy MTRA 4 of the Winchester Local Plan Part 1 is of limited relevance, as no new development in the countryside is involved.
12. There is no firm evidence to show that the removal of condition 3 would meet the requirements of LP Policy DM11 set out above. Whether the bungalow and adjacent land remain part of an agricultural holding is not determinative of the continuing need for condition 3; the condition would still be complied with if the bungalow were to be occupied by a person or persons employed in the locality in agriculture or in forestry.
13. No details were supplied of efforts made to appropriately market the bungalow over a sustained period, either for rent or sale, at a value accurately reflecting the occupancy condition. Such evidence could have assisted in demonstrating whether there was still a continuing need for residential accommodation for agricultural or forestry workers in the locality. The appellant argued that local farms were of insufficient size to support further residential accommodation for their workers. However, there is no firm evidence, for example obtained following a survey of the owners or operators of local farming enterprises to ascertain their present and future accommodation needs, which would show that this is indeed the case.
14. The appellant also argued that the likely purchase price would make the bungalow unaffordable for many agricultural or forestry workers. Even so, in the absence of clear and compelling evidence showing otherwise, I am not persuaded that there would have been a lack of interest in purchasing or renting the bungalow whilst complying with condition 3, had it been put on the market. Also, it is not clear why the bungalow would be likely to be vacant for up to two years in the event the appeal is dismissed.
15. I acknowledge that the location of the bungalow, with limited access to public transport and local services and facilities, might discourage some older prospective purchasers or tenants. Nevertheless, that on its own is not a

sound reason for removing the condition, as it could easily be repeated. In any event, it is not unreasonable to expect that a good number of rural workers would wish to continue to reside in the countryside once retired. Whilst occupancy conditions on some residential properties in the surrounding area might have been removed, in the absence of further details it is not possible to ascertain the similarity or otherwise with the circumstances in this appeal.

16. Since a lack of a continuing need for the bungalow for the purposes of agriculture or forestry in the locality has not been demonstrated, the removal of condition 3 would not accord with LP Policy DM11 and there is conflict with the Development Plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan.

### **Conclusion**

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

*Stephen Hawkins*

INSPECTOR



## Plan

This is the plan referred to in my decision dated: 26 October 2023

by **Stephen Hawkins MA, MRTPI**

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Scale: Not to scale

