

Signed (authorised Officer(s)):

BAADS FARM, PETERCULTER

REMOVAL OF CONDITION 1 (CONTROL OF OCCUPANCY) FROM PLANNING PERMISSION REF:P120873

For: Mrs Diane Cheyne

Application Type : Section 42 Variation
Application Ref. : P141149
Application Date : 07/08/2014
Advert : Can't notify neighbour(s)
Advertised on : 27/08/2014
Officer : Gavin Clark
Creation Date : 23 September 2014
Ward: Lower Deeside (M Boulton/A Malone/M Malik)
Community Council: Comments

RECOMMENDATION: Refuse

DESCRIPTION

The site is located in the countryside some 3.5km to the north west of Peterculter, to the east of Baads and a group of houses known as Hillcrest Courtyard. The site comprises unused agricultural land, extends to 2.3 hectares and is located to the east of Hillcrest Courtyard. In general, the surrounding land to the north and south rises gently up to the site, which is located on the crest of the hill. To the north, east and south are fields, while to the west and across an access track are six houses. Access to the site is initially via a 350 metre long tarred, single track, private road that serves seven houses and an agricultural shed and then along an unsurfaced track for a further 80 metres.

RELEVANT HISTORY

An application for planning permission (Ref: 140187) was refused under delegated powers in March 2014 for the removal of Condition 1 (Control of Occupancy) from Planning Permission Ref: 120873. The current application relates to the same proposal, but with further justification provided via the applicants solicitor and chartered surveyor.

Planning permission (Ref: P110648) was approved by Planning Committee, against officer recommendation on the 11th October 2011 for the erection of a

residential dwelling, garage and associated stud farm. Conditions were applied to the planning permission restricting the occupancy of the house to a person employed full time in the stud farm business and the dependants, widow or widower of such a person, the phasing the development to ensure that the stables and associated infrastructure are constructed and available for use prior to the commencement of the construction of the house and garage, restricting the hours of construction, requiring the submission of schemes of all external lighting and drainage/sewage facilities, the submission of samples of all external finishing materials and the provision of landscaping and tree planting on the site.

Planning permission (Ref: 120873) was approved under delegated powers on the 27th July 2012 for a variation to condition 7 to allow for the disposal of sewage effluent by means of a suitable primary and secondary treatment system as designed by a qualified engineer.

PROPOSAL

This application is submitted under the provisions of Section 42 of the Town and Country Planning (Scotland) Act 1997, and seeks deletion of Condition 1 of planning permission P120873.

Condition 1 states: *“that the dwelling house hereby granted planning permission shall not be occupied by any person other than a person employed full-time in the stud farm hereby granted planning permission and the dependants, widow or widower of such a person in accordance with the planning authority's policy of restricting isolated developments in the countryside unless specifically required in connection with an essential rural occupation”*. The reason for the above condition was to preserve the amenity and integrity of the Green Belt and in accordance with Policy 28 of the Aberdeen Local Plan.

Supporting Documents

All drawings and the supporting documents listed below relating to this application can be viewed on the Council's website at -

<http://planning.aberdeencity.gov.uk/PlanningDetail.asp?ref.=141149>

On accepting the disclaimers enter the application reference quoted on the first page of this report.

- Letter from Solicitor (Gavin Bain & Company) – dated 25th July 2014
- Letter from Solicitor (Gavin Bain & Company) – dated 14th January 2014
- Letter from Chartered Surveyor (Shepherd's0 – dated 15th May 2014
- Supporting Statement – Suller and Clark Planning Consultants
- Supporting Statement – from Architects – dated 11th March 2014

CONSULTATIONS

Roads Projects Team – no observations

Environmental Health – no observations

Enterprise, Planning & Infrastructure (Flooding) – no observations

Community Council – Culter Community Council have objected to the application for the following reasons:

1. The proposal would be contrary to the Green Belt policies within Scottish Planning Policy and also Policy NE2 (Green Belt) of the Aberdeen Local Development Plan;
2. Concerns about the use of sections of SPP which are aimed at rural areas outside of Green Belts and that the proposal is also reliant on advice from the Chief Planner, which was aimed primarily at developments located out with the Green Belt.

REPRESENTATIONS

Four letters of objection have been received. The objections raised relate to the following matters –

1. Removal of the occupancy condition would permit the dwellinghouse to be occupied by persons not associated with the stud farm business;
2. That Condition 2 of the planning consent requires that the stud farm is brought into use before any construction of a dwellinghouse or garage, there appears to be no progress in this regard;
3. The proposal would set an undesirable precedent for future development, in that a further dwellinghouse may be required for the operation of the stud farm business;
4. Concerns in relation to increases in traffic as a result of development; as well as safety and noise;
5. The materials of the proposed dwellinghouse would be out of keeping with those in the surrounding area;
6. Concerns in relation to drainage;
7. The proposed development would have a negative impact on the surrounding landscape;

PLANNING POLICY

National Policy and Guidance

Scottish Planning Policy

Paragraph 49 of Scottish Planning Policy states that for most settlements, a green belt is not necessary as other policies can provide an appropriate basis for directing development to the right locations. However, where the planning authority considers it appropriate, the development plan may designate a green belt around a city or town to support the spatial strategy by:

- directing development to the most appropriate locations and supporting regeneration;
- protecting and enhancing the character, landscape setting and identity of the settlement; and
- protecting and providing access to open space.

Paragraph 51 advises that the spatial form of the green belt should be appropriate to the location. It may encircle a settlement or take the shape of a buffer, corridor, strip or wedge. Local development plans should show the detailed boundary of any green belt, giving consideration to:

- excluding existing settlements and major educational and research uses, major businesses and industrial operations, airports and Ministry of Defence establishments;
- the need for development in smaller settlements within the green belt, where appropriate leaving room for expansion;
- redirecting development pressure to more suitable locations; and
- establishing clearly identifiable visual boundary markers based on landscape features such as rivers, tree belts, railways or main roads³⁰. Hedges and field enclosures will rarely provide a sufficiently robust boundary.

Aberdeen City and Shire Structure Plan

Provides a spatial strategy for development, to ensure the right development in the right place to achieve sustainable economic growth which is of high quality and protects valued resources and assets, including built and natural environment, which is easily accessible.

Aberdeen Local Development Plan

Policy NE2 – Green Belt: No development will be permitted in the green belt for purposes other than those essential for agriculture, woodland and forestry,

recreational uses compatible with an agricultural or natural setting, mineral extraction or restoration or landscape renewal.

There are a number of exceptions which apply. Proposals for development associated with existing activities in the green belt will be permitted but only if all of the following criteria are met:

- The development is within the boundary of the existing activity.
- The development is small-scale.
- The intensity of activity is not significantly increased.
- Any proposed built construction is ancillary to what exists.

Other Relevant Material Considerations

Letter from Chief Planner– Occupancy Restrictions & Rural Housing, 04.11.2011

The letter clarified the Scottish Government's view on the use of conditions or planning obligations to restrict occupancy of new rural housing. It stated that a number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated with the current economic situation. Some people have found it difficult to obtain a mortgage, others to sell the house, or have the restriction lifted, when they are forced by necessity to move, noting that the use of occupancy restrictions introduces an additional level of complexity (a potential expense) in the process of gaining planning permission for a new house.

The letter states that the Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided. However, the letter continues to state that in areas, including Green Belts, where...there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there is a sound case for a more restrictive approach.

EVALUATION

Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) requires the planning authority in determining the application only to consider the question of the condition(s) subject to which the previous planning permission should be granted. The planning authority has the option to approve the permission subject to new or amended conditions or to approve planning permission unconditionally. Alternatively the planning authority can refuse the application, which would result in the conditions on the original application remaining.

Background

Planning permission was granted on the 11th October 2011 for the erection of a dwellinghouse at Baads Farm. Whilst the site was located within the Green Belt, where policies are generally restrictive, it was judged that a house was required to support the proposed stud farm business, which was to be relocated from another site out with the city boundary. The application was approved against officer recommendation on the basis “that the application was not contrary to Policy 28 of the Local Plan as the proposed buildings would not be higher than the others in the landscape and the proposed business was an agricultural activity within Policy 28”.

Conditions were applied to the planning permission restricting the occupancy of the house to a person employed full time in the stud farm business and the dependants, widow or widower of such a person, the phasing the development to ensure that the stables and associated infrastructure are constructed and available for use prior to the commencement of the construction of the house and garage, restricting the hours of construction, requiring the submission of schemes of all external lighting and drainage/sewage facilities, the submission of samples of all external finishing materials and the provision of landscaping and tree planting on the site.

An application to remove condition 1 was submitted and subsequently refused in March 2014, as the deletion of the policy would mean that the proposal would be contrary to Policy NE2 (Green Belt) of the ALDP as well as Scottish Planning Policy. The current application provides additional justification from the applicant’s solicitor and estate agent in order to justify the removal of Condition 1. The reasoning for this refusal was as follows:

“The proposed deletion of Condition 1 of planning permission P120873, relating to occupancy, is contrary to Scottish Planning Policy and Policy NE2 (Green Belt) of the Aberdeen Local Development Plan, which seek to protect the integrity of Green Belts and, in particular, seek to avoid the granting of individual planning permissions to prevent the cumulative erosion of a green belt. If it were not for the specific individual requirements of the business the house would not have complied with planning policy and ultimately refused. The removal of this condition would undermine the policies which seek to protect the integrity of the Green Belt which seeks to safeguard against unsustainable development and suburbanisation of the area. It was judged necessary to impose Condition 1 to ensure that the development complied with planning policies. It is judged that Condition 1 meets the tests set out in Circular 4/1998. The advice in the letter from the Chief Planner (04.11.2011) has been considered. The proposal to delete Condition 1 is considered unacceptable in planning policy terms.”

Supporting Documents/ Statement

The applicant has submitted a statement in support of their application for the removal of condition 1. The statement covered the following points:

Letter from Gavin Bain & Co – dated 25th July 2014 & 14th January 2014

- Advises that mortgage lenders are reluctant to lend on land/ property which is effectively “tied” – which is the case with the insertion of the occupancy condition, they also advised that that even if lenders were willing to lend, then potential purchasers are reluctant to proceed to buy such properties which are subject to such ties as when they come to sell, the market available to them is restricted. They indicated that the property had been marketed without success since the 29th April and whilst some interest was shown this was removed once they were made aware of the restrictive occupancy condition;

Letter from Shepherd – dated 15th May 2014

- Advises that the condition severely restricts the potential occupation of the property if it were to be constructed. Also confirmed that a number of mortgage lenders would be unwilling to lend due to restriction and as a result any future purchasers would be restricted to cash buying stud farmers, which would render the property virtually unsalable.

Supporting Statement: Suller and Clark;

- Advises that there has been a material alteration in the circumstances in that the applicants have found it impossible to achieve finance for the build with the occupancy restriction in place. This was confirmed in a supporting document from the applicant’s solicitor dated 14th January 2014;
- That given the current circumstances, the development of the stud farm falls within “a recreational use compatible with an agricultural or natural setting”;
- The statement makes reference to Scottish Planning Policy, PAN 73, the Aberdeen Local Development Plan, Circular 4/1998 and advice from the Chief Planner.

Comments with regards to the Supporting Statement:

The supporting statement gave a detailed account of the history and the reasoning behind the application for the removal of the condition. The supporting letter did not state that achieving finance would be impossible, but advised that mortgage lenders are reluctant to lend on land/ property which is effectively tied.

It is also unclear from the correspondence submitted from Gavin Bain & Co, as to the exact number and nature of financial institutions which were approached, and to what extent they were made aware that a Section 75 Agreement could include a clause which would allow for the discharge of any restriction of sale, were a lending bank or building society to be faced with the agricultural business going into bankruptcy. It is also unclear as to why the property was marketed, as the original proposal was specifically for the current applicant, who required the premises to relocate her business from a site near Drumoak.

The supporting statement from Suller and Clark appears to contradict that statement from Gavin Bain & Co, as this makes reference to the applicants finding it difficult to finance the project, whereas Gavin Bain appears to indicate that the applicants have found it difficult to sell the site.

In relation to the comments from Shepherds, they appear to refer to two mortgages lenders out of a multitude of potential lenders. They did not provide any written/ documented evidence of responses from the two lenders.

The specific reference to Scottish Planning Policy in the supporting statement is not considered to be of particular relevance in this instance. The site is not located within a rural community, and would not be classed as a "fragile or dispersed community". Planning Advice Note (PAN) 73: Rural Diversification is also considered to be of little relevance, which relates mostly to the "remote rural" areas of Scotland. The site itself is not in a remote location, and in addition, the surrounding area does not suffer from depopulation.

The proposal relates to the discharge of the condition, which would essentially allow an application for a dwellinghouse within the green belt with no restrictions. The proposal is not considered to accord with the terms of the policies of the Aberdeen Local Development Plan. For the reasons mentioned elsewhere in this report the proposal fails to accord with Policy NE2 (Green Belt).

The Chief Planners letter and the relevance of Circular 4/1998 are discussed elsewhere.

Main Issues:

Policy NE2 (Green Belt) permits only certain types of development within the Green Belt. In their determination of the original planning application, the Planning Development Management Committee accepted the principle of the dwellinghouse and associated stud farm business. Although granted in 2011 no works have yet begun on site. Condition 2 of this consent would ensure that the stud farm would be constructed, completed and brought into use prior to the commencement of the construction of the dwellinghouse.

Although the guidance from the Chief Planner in November 2011 emphasised that occupancy restrictions in relation to houses in the countryside are rarely appropriate and therefore should generally be avoided, it nevertheless clearly stipulated that in Green Belt locations there is a sound case for a more restrictive approach. The letter from the Chief Planner therefore implies that a restrictive approach can be considered appropriate where significant pressure for housing development exist.

The applicants advise of the requirement to remove the condition due to difficulties in obtaining a mortgage on site due to the occupancy condition. The dwellinghouse was essentially granted planning permission in association with the stud farm business. If it were not for the associated business, then it is highly unlikely that planning permission would have been granted as the application would not have complied with the development plan. In effect, it is the associated stud farm business that allowed the dwellinghouse to be granted in this location.

The letter from the Chief Planner notes that the use of occupancy restrictions introduces an additional level complexity in the process of gaining planning permission for a new house. If the Planning Authority deleted the condition it would result in there being no tie of the dwelling to the stud farm. The house could be sold onto another party without the business and there would be no control over this. The site is considerably open in terms of the countryside, it is not within the existing settlement, and lies within the Green Belt. There is considerable pressure for housing within the Green Belt, and it is the development of individual sporadic houses which is seen to cause the suburbanisation and increase in car borne commuting which is judged unsustainable. Scottish Planning Policy states that the cumulative erosion of a green belt's integrity through the granting of individual planning permissions should be avoided.

Whether Condition 1 meets the tests set out in Circular 4/1998

Circular 4/1998 sets six tests which all planning conditions should meet. Conditions should only be imposed where they are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise and reasonable in all other respects.

It is considered that Condition 1 meets the test of necessity as it is required to ensure compliance with the Development Plan. Planning conditions which restrict the occupation of properties to business are commonly used by planning authorities where otherwise they could not be supported, and they are referred to in paragraph 99 of the Circular. Conditions tying the occupation of dwellings to that of separate buildings (e.g. requiring a house to be occupied only by a person employed by a nearby garage) should be avoided. However, exceptionally, such conditions may be appropriate where there are sound planning reasons to justify them, e.g. where a dwelling has been allowed on a site where permission would

not normally be granted. To grant an unconditional permission would mean that the dwelling could be sold off for general use which may be contrary to development plan policy for the locality.

Condition 1 is relevant to planning, given that it is required to control the use of the land, it is relevant to the development permitted, is enforceable, precise and is considered to be reasonable in all other respects. As a result the condition meets the six tests.

To ensure that the dwelling remains available to meet the identified need, it may therefore be acceptable to grant permission subject to a condition that ties the occupation of the new house to the existing business. It is therefore judged that the Condition meets the tests specified in the Circular.

Issues Raised in Letters of Representation/ Community Council

The issues raised by the Community Council, relating to accordance with Policy NE2 (Green Belt), Scottish Planning Policy, Circular 4/1998 and the Chief Planners Letter have been addressed elsewhere within this report.

In terms of issues raised in letters of representation, the removal of the occupancy condition has already been addressed. Granting of permission would result in an undesirable precedent for future development, and it is also noted that the stud farm would need to be in place prior to the dwellinghouse

The principle of development (particularly relating to design, traffic, drainage and materials) are not matters to be considered as part of this application, which relates to the variation of Condition 1 only.

Conclusion:

In conclusion, no new information/ justification has been submitted which would alter the previous decision by the Planning Authority to refuse permission for the removal of Condition 1. The reasons for that decision continue to be valid and relevant and thus the Council's position remains that given the advice from the Chief Planner, Scottish Planning Policy and Policy NE2 (Green Belt) it is considered that Condition 1 is necessary, and ties occupancy of the house to the proposed stud farm. Planning policies within the Green Belt seek to protect their integrity and in particular seek to avoid the granting of individual planning permissions to prevent the cumulative erosion of a green belt. If it were not for the specific individual requirements of the business the house would not have complied with planning policy. If the Condition is deleted, there would be no longer be a tie between the dwellinghouse and the stud business. The house could be sold off separately from the business.

RECOMMENDATION

Refuse

REASONS FOR RECOMMENDATION

The proposed deletion of Condition 1 of planning permission P120873, relating to occupancy, is contrary to Scottish Planning Policy and Policy NE2 (Green Belt) of the Aberdeen Local Development Plan, which seek to protect the integrity of Green Belts and, in particular, seek to avoid the granting of individual planning permissions to prevent the cumulative erosion of a green belt. If it were not for the specific individual requirements of the business the house would not have complied with planning policy and ultimately refused. The removal of this condition would undermine the policies which seek to protect the integrity of the Green Belt which seeks to safeguard against unsustainable development and suburbanisation of the area. It was judged necessary to impose Condition 1 to ensure that the development complied with planning policies. It is judged that Condition 1 meets the tests set out in Circular 4/1998. The advice in the letter from the Chief Planner (04.11.2011) has been considered. The proposal to delete Condition 1 is considered unacceptable in planning policy terms and no sufficient justification has been submitted from the previous refusal (Ref: 140187) in order to justify the removal of the Condition.