Blackthorne Barn
Little Gillmans Farm
Billingshurst

S.73 Condition 9, BL/76/99
Planning Statement
0277

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1. Introduction

1.1 This is an application under s73 of the Town and Country Planning Act 1990 ('***the 1990 Act***') for the removal of Condition 9 to planning permission BL/76/99 ('***the Permission***') ('***Condition 9***') in relation to the area outlined in red on the attached plan at Blackthorne Barn, Little Gillmans Farm, Marringdean Road, Billingshurst ('***the site***'). Condition 9 imposes an occupancy condition limited to agricultural or forestry workers (as further explained below). Enquiries with the Council confirm that the restriction is not subject to a s106 legal agreement. As such the only control placed on occupancy is Condition 9. The local planning authority is Horsham District Council (***'the Council***').

1.2 The site now lies within an area of volume housebuilding rendering the land neutralised from agricultural use. This is a radical change from the situation when Condition 9 was originally imposed under the Permission. At that point the site lay within a farm set in open countryside and the relevant local policies at the time set out that development would not usually be allowed except in connection with agricultural and forestry purposes. Over time, the land holding has largely been subject to housing development and the Site reduced down in scale to 2 acres only. The condition is now obsolete by reason there is no land holding associated with the agricultural dwelling. Plus the Site is of such a value that rental of the property by agricultural and forestry workers is not achievable.

1.3 Where a special need for an agricultural worker is demonstrated, it has been and remains the case that the occupancy of the relevant property is restricted to ensure that it is occupied in compliance with the associated and demonstrated need, and is retained as available property to meet wider compliant needs in the interest of reducing the unnecessary proliferation of residential property in the open countryside.

1.4 Prior to the introduction of the National Planning Policy Framework ('***Framework***'), national policy guidance referred specifically to occupancy conditions and to the appropriate assessment of continuing demand for agricultural accommodation where the release of such conditions was sought. The Framework no longer makes specific reference to this issue. If special circumstances need to be demonstrated in order to allow a dwelling against the general restriction of development in the countryside, the converse must equally be the case, and special circumstances demonstrated for a restricted property to enter the general open market housing stock.

1.5 It continues to be the case that appropriate market testing frequently remains a central aspect of the demonstration of the absence of need for the occupation of a dwelling in compliance with the restrictive condition. In these circumstances an absence of 'demand' is taken as a proxy for the absence of 'need'. Market testing would only apply were there to be no continuing need for a dwelling on the holding with which it was associated at the time of the granting of planning permission.

1.6 Where a restricted property is placed on the market for sale in accordance with Trading Standards and GDPR requirements, 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 on occupancy. The normal period of market testing adopted is 6 to 12 months.

1.7 The introduction of the Framework was intended to scale down the volume of material relating to planning policies. However, unless expressly indicated, this does not necessarily imply that all previous guidance is now irrelevant. Immediately prior to the adoption of the Framework, guidance on the removal of agricultural occupancy restrictions was to be found in Annex A to Planning Policy Statement 7 'Sustainable Development in Rural Areas' (2004). This guidance included the comment that, where dwellings were no longer necessary, they "***should not be kept vacant, nor should their present occupants be unnecessarily obliged to remain in occupation simply by virtue of planning conditions which have outlived their usefulness***".

1.8 Paragraph 56 to the Framework goes on to explain that planning conditions should be kept to a minimum. The Planning Practice Guidance at paragraph 003 explains the sixe test planning conditions must adhere to:

"Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

1.9 The restrictive condition no long meets the ‘six requirements’ for a valid condition and is consequently invalid. It should therefore be removed as further set out below.

2. Background

Permission BL/76/99

2.1 Application BL/76/99 was approved for the erection of one bungalow at the site. At that point the site lay within a farm/agricultural unit in countryside on the edge of Billingshurst. Condition 9 to the Permission stated:

“*The occupation of the dwelling shall be limited to a person solely employed or, retired and last employed in the locality in agriculture as defined in Section 336(1) of the Town and Country Planing Act 1990, or in forestry, including any dependants of such a person residing with him or her or a widow or widower of such a person.*

Reason: The site lies in an area where, in accordance with the policies principally in the Structure Plan development unrelated to the essential needs of agriculture or forestry would not normally be permitted.”

2.2 Since then, the planning system and context has changed substantially. The Structure Plan referred to above is no longer in force and arguably on that basis alone, the reason for Condition 9 no longer subsists and Condition 9 does not meet the tests for a valid condition as further set out below. Furthermore, and as set out below, planning decisions and policies have radically changed to allow for volume housebuilding around the site. Therefore the situation is now radically different and the area certainly can no longer be said to be one where “development unrelated to the essential needs of agriculture or forestry would not normally be permitted”.

2.3 Historic plans are included with this application that demonstrate the relationship between the bungalow and the agricultural unit at the time Condition 9 was imposed. The plan stamped ‘Approved 12 Aug 1999’ in relation to BL/76/99 shows the access and location of the bungalow outlined in red and the wider agricultural unit outlined in blue.

Permission DC/10/0939

2.4 Application DC/10/0939 was permitted on appeal for development at Land South of Groomsland Drive and Gillmans Industrial Estate for the erection of 150 dwellings. The appeal decision ref APP/Z3825/A/11/2151842 ('***the Appeal Decision***') summarised the reasoning as follows:

"*Conclusions*

70. I conclude that although the site lies outside the defined settlement boundary of Billingshurst and so its development would be contrary to local, regional and national policies for the protection of the countryside for its own sake, there is an overriding need for housing development in the Horsham District and for affordable housing in particular, to be constructed before the production of the revised Core Strategy, which this development would meet. With the conditions imposed it would have an acceptable effect on the character and appearance of the area and on the living conditions of neighbours. With the obligations in place, it would mitigate its effects on local infrastructure. The appeal is therefore allowed."

2.5 This appeal decision constituted a radical change in circumstances in the planning context applying to the site and the agricultural unit within which it sat.

Policy SD11 of the Local Plan

2.6 The Horsham District Planning Framework (November 2015) ('***the Local Plan***') states:

"*Land South of Billingshurst - Policy SD117.72*

7.72 Billingshurst is a small town/large village located six miles to the south west of Horsham along the Arun Valley railway line. The historic core of the village is built around the crossroads of the A29 and A272, with more recent, suburban developments surrounding this.

7.73 Billingshurst benefits from a wide range of local services and facilities, including primary schools, the Weald Secondary School, dentist and doctors surgeries, local convenience stores, comparison shopping, leisure facilities, pubs and local restaurants. There is also a train station to the south of the village centre with trains running to London and Horsham.

7.74 An application for 50 units recently permitted to the south of the village, has

left the area to the south east of the site vulnerable to development. A plan led approach enables a comprehensive development of this site and adjoining sites which provides an opportunity to create a landscape buffer to the south of the village providing a clear transition into the open countryside and a strong defensible boundary to the settlement edge. The site is well connected in terms of the existing transport network and benefits from access to the facilities and services on offer in the locality. Surface water flooding is an issue locally and development of the site should make the most of opportunities to manage flood risk. Consideration of impacts on the Mens SAC in relation to Barbastelle bats may also be a consideration."

2.7 It then goes on to set out Policy SD11:

"*Strategic Policy: Land South of Billingshurst*

Two parcels of land located to the south of Billingshurst are allocated for housing development and associated infrastructure to accommodate around 150 dwellings. This land comprises the area west of Marringdean Road to the south of Blackthorn Avenue and land to the west of the recently approved A2 Dominion site.

Development of this area will be required to deliver the necessary infrastructure, facilities and services to meet the needs of the community. The development will be designed at an appropriate density and layout which relates to the existing settlement and provides convenient links to existing facilities and services. The development shall be programmed in order to enable its completion by 2031.

Housing Need

1. The development shall provide around 150 homes with a mix of dwelling sizes, types and tenures to reflect local need.

Landscape & Heritage

2. The design shall ensure that there is a landscape buffer to the south of the village providing a clear transition into the open countryside and a strong defensible boundary to the settlement edge; and

3. The design and layout will preserve and recognise existing sensitive heritage

assets and their settings, including the listed Great Gillmans Farmhouse, as well as conserving and enhancing the biodiversity and positive landscape qualities of the site."

2.8 As can be seen, the policy position is therefore radically different to the situation when Condition 9 was imposed. The site and the agricultural unit within which it sits are not allocated for residential development, and the creation of a new defensible settlement boundary is envisaged, within which the site would sit.

Permission DC/15/0896

2.9 Subsequently, application DC/15/0896 was permitted for a residential development of 87 dwellings, including 30 affordable units, together with associated open space, landscaping and creation of a new vehicular access from Marringdean Road. The Committee Report in relation to the application stated as follows amongst other things:

"*DESCRIPTION OF THE SITE*

1.17 The application site comprises a single agricultural field with an overall area of 5.34 hectares. The site, which is within Flood Zone 1, is located approximately 0.8 km to the south of Billingshurst railway station and 1.6 km from the town centre. The nearest bus stops are located in Natts Lane, approximately 400 metres from the application site. The stops are served by bus service 100, which provides hourly services between Horsham and Burgess Hill.

1.18 The application site, together with a smaller area of land to the west (and at the rear of Great Gillmans Farm) has been allocated for housing by Policy SD11 of the HDPF. Policy SD11 identifies that the sites, in combination, could deliver 'around 150 no. dwellings.'

1.20 …Beyond Marringdean Road, and on the eastern side of the highway is a development known as Kingsfold Close, a residential cul-de-sac of 12 no. detached, two storey dwellings. The properties are constructed from a combination of red and brown brick with first floor tile hanging. The dwellings are set on spacious plots, with landscaped front gardens.

1.21 To the south of the site is a farm and open countryside. The northern side of

the site is bordered by a private, single lane driveway, which provides access from Marringdean Road to Great Gilmans Farm House, a Grade II Listed Building. The farm house, which is located to the west of the application site, is a seventeenth century, timber framed building with casement windows. The two storey building has a painted brick ground floor with timber weather boarding at first floor level. The property has a hipped, tiled crown-post roof. The property has been extended in recent years through the provision of a single storey side extension.

1.22 Great Gillmans was built as part of Little Gillmans Farm, which also included Blackthorne Barn and agricultural fields. It is a typical example of the historical fixed farmsteads found around Billingshurst. Great Gillmans is significant in respect of its architecture and historic interest, in so far that it had an important role (together with other farmsteads) in the development of Billingshurst as a farming village. Its setting is also of significance, in that its substantial lands and rural views are typical of a historical farmstead in Billingshurst.

1.23 The farmhouse is now positioned within a site measuring approximately 3.3 acres, comprising 4 no. paddocks, stables, planted gardens and an enclosed courtyard, with a swimming pool and outbuilding. The agricultural function of the farmhouse has now ceased and the property is now used as a residential dwelling, with facilities for keeping and exercising horses.

1.25 To the north of the site, planning permission reference DC/10/0939 (which was allowed, on appeal, in 2011), granted consent for 150 no. units. The scheme, which is currently being built-out and is nearing completion, is accessed from Marringdean Road…

1.26 50 no. residential units have also been approved to the west/north-west of the application site, at the rear of the Grade II Listed Great Gilmans Farm. These dwellings, which were approved in 2013 under planning reference DC/13/2379, would be accessed from the development approved by DC/10/0939, as described above. The dwellings would wrap around the rear boundary of Great Gilmans Farm and its associated outbuildings.

1.27 To the north-east of the application site, and on the eastern side of Marringdean Road, planning permission reference DC/13/0147 (which was allowed on appeal) granted consent for the erection of 46 no. residential properties, together with a new access onto Marringdean Road. This application is currently

being built out. Beyond this development, planning permission reference DC/11/2385 granted consent for a further 46 no. dwellings, accessed from the easternmost end of Daux Avenue. The consent includes alterations to the Natts Lane/Marringdean Road/Lower Station Road/Daux Avenue junctions in order to improve visibility for drivers pulling out onto Daux Avenue."

Permission DC/16/0274

2.10 Application DC/16/0264 was approved for development of the land south of Marringdean Acres so as to accommodate 51 dwellings together with associated access road, car parking, landscaping and open space.

"*DESCRIPTION OF THE SITE*

1.6 The site comprises a rectangular site allocated in the HDPF for residential development (Policy SD11), lying alongside existing residential development under construction to the south of Billingshurst…

1.8 The site lies outside the settlement boundary, but is identified by policy SD11 as being capable, when combined with a second site lying to the west of Marringdean Road, of providing a total of around 150 dwellings and associated infrastructure by 2031…

[…]

Principle

6.2 The principle of residential development at the site is established by Policy SD11 of the HDPF. In combination with the site immediately to the west of Marringdean Road, the application site is expected, by Policy SD11 to deliver around 150 dwellings.

6.3 The larger of the two sites (planning application reference DC/15/0896 Kingslea Farm) proposes 87no. dwellings and a committee resolution exists to grant permission for these units upon completion of a legal agreement. Together with the 51 units proposed on this site the two sites will combine to provide 138 dwellings…"

2.11 In view of the decisions and policies above, the site can now be said to lie within the built up area of Billingshurst, as defined by the new development set in train by the Appeal Decision and Policy SD11 of the Local Plan.

Permission DC/22/0843

2.12 Application DC/22/0843 sought a non-material amendment to previously approved application DC16/0274 to allow for amendments to the site's drainage.

Need and affordability

2.13 A valuation has been undertaken by Batchellor Monkhouse and their report dated 05 February 2024 is provided on a confidential basis which brings into question whether the property would be likely in any case to be affordable to agricultural workers at many multiples of the common agricultural wage. The Applicant's position is that it would not be and therefore Condition 9 is also redundant on this basis.

3. Legal Framework

3.1 Section 70(1)(a) of the Town and Country Planning Act 1990 (as amended) enables the local planning authority in granting planning permission to impose "such conditions as they think fit". This power needs to be interpreted in light of material considerations such as the Framework, supporting guidance on the use of conditions, and relevant case law.

3.2 Paragraph 55 of the Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

3.3 Paragraph 56 then goes on to specify 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. The latter are the 'six conditions' required for a valid condition.

3.4 Planning Policy Guidance ('PPG') on the use of planning conditions states at paragraph 001:

"When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls."

3.5 Paragraph 023 states:

"***Does the local planning authority need to give reasons for imposing conditions?***

Clear and precise reasons must be given by the local planning authority for the imposition of every condition."

3.6 In relation to amendments, the PPG states:

"***How can a proposal that has planning permission be amended?***

When planning permission is granted, development must take place in accordance with the permission and conditions attached to it, and with any associated legal agreements.

New issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted. Where less substantial changes are proposed, there are the following options for amending a proposal that has planning permission:

- ***Making a non-material amendment***
- ***Amending the conditions attached to the planning permission, including seeking to make minor material amendments…***

[…]

…How are the conditions attached to a planning permission amended?

In contrast to section 96A, an application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying

or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission."

4. Submissions

4.1 From the planning history set out above, it is clear that the rationale behind the imposition of Condition 9 no longer exists, and therefore the 'six conditions' that must be met for a condition to be valid are no longer made out. Condition 9 is a relic of a former era. The Structure Plan referred to in the stated reasons is no longer in place and on that basis alone Condition 9 can be considered invalid. Furthermore, since the imposition of Condition 9, the physical and policy context of the site has radically transformed. The surrounding area is allocated for residential development under the current Local Plan, much of which has been built out. Even putting aside the fact that the Structure Plan referred to in Condition 9 is no longer in place, the wider rationale simply does not apply as the site is no longer in an area where development would not usually be allowed except in connection with the essential needs of agriculture and forestry. Furthermore, even were it still considered that Condition 9 could somehow be justified, as stated above, the site would be highly unlikely to be affordable for agricultural occupancy in any case. In that context, it cannot be considered necessary, reasonable or fair and practicable for Condition 9 to remain in place and it should be removed.

4.2 The applicant wishes to remove the occupancy condition on the basis that its requirements no longer fulfil a legitimate planning purpose. The dwelling at the Site has not been required to provide accommodation for a rural worker for at least at least the 7 years preceding this application which equates to the time the property has been in the Applicant's ownership.

4.3 Full-time employment relates to a rural worker employed for 2,200 hours (275 Standard Man Days). A standard man day (SMD) relates to an 8 hour day. However, as there is no possible agricultural activity due to there being no land the calculations are purely for information. It is therefore considered that there is no foreseeable requirement for a rural worker to live on the site, and there has been no such full time need. This would not be a viable agricultural enterprise.

4.4 Traditionally a marketing exercise would be carried out to demonstrate that there

is no longer the need for an agricultural worker's dwelling in the locality, however trading standards mean that it is now illegal for a property to marketed for sale when it is not genuinely for sale.

4.5 There is no need for this accommodationto exist for an agricultural, forestry or equestrian worker local to the application site.

5. Conclusion

5.1 In view of the six requirements for a valid condition and the factual and policy context, Condition 9 can no longer be regarded as valid and must be removed.