

Briefing Note

2nd Homes Policy H14 in Emerging Purbeck Local Plan

Background

On 24 January 2019, David Fairbairn, the former Purbeck District Council's Solicitor, gave a legal opinion on the weight that can be given to emerging Purbeck Local Plan policies. Of particular interest is Policy H14 which seeks to restrict new homes in the Area of Outstanding Natural Beauty (AONB) to someone's principal home in an attempt to restrict second homes in the AONB.

The emerging policy also would apply to homes allowed across the District granted under Policies relating to small sites (Policy H8) and rural exception sites (Policy H12). No applications have been granted under these emerging policies since January.

On 30 January 2019, members of the then Purbeck Planning Committee resolved in relation to various applications being considered on that date, to apply a condition, as drafted by David Fairbairn to restrict the homes. The agreed condition has also been attached to various delegated decisions for new homes within the AONB.

Appeal Decisions

The Planning Inspectorate (PINS) have recently determined 3 separate appeals in the AONB which have all been allowed. All of these have considered the emerging policy but have declined to put the condition on (6/2018/0459, 6/2019/0019 and 6/2018/0556). All the inspectors indicated some possible concerns over the precision and enforceability of the condition that has been suggested; albeit without identifying the basis for such a view. More specifically they also raised concerns over the current justification for the condition which is based on Policy H14 of the emerging Purbeck Local Plan. In general terms, all considered that whilst the emerging Purbeck Local Plan is a material consideration, there were issues relating to its present status and the weight that could therefore be attached to the emerging policy. On the back of their findings, none found themselves able to support the imposition of the condition at the present time.

Planning Application 6/2018/0459 (Planning Inspectorate Reference APP/B1225/W/19/3220929) was for the erection of 2 dwellings at land adjoining 11 Bell Street in Swanage. A summary of this appeal was given at the September Eastern Area Planning Committee.

Planning Application 6/2019/0019 (Planning Inspectorate Reference APP/B1225/W/19/3229294) was for the erection of 1 dwelling at 61 Rabbling Road, Swanage. This was part of a linked appeal for 2 refusals for this site. Both the appeals were for a single dwelling on the site. One was for a chalet bungalow and the other was for a bungalow. The applications were both refused due to an adverse impact upon the character of the area and the chalet bungalow on impact upon a neighbour's light, privacy, noise and outlook. The bungalow was allowed as the inspector did not consider that the proposals would be harmful to the character of the area.

Planning Application 6/2018/0556 (Planning Inspectorate Reference APP/B1225/W/19/3227558) was for the demolition of an existing dwelling and the construction of three flats at 251 High Street, Swanage. In this case planning permission

was granted, but a condition was imposed which restricted the occupation of the flats to an occupier's only or principal home.

Since January 2019 the condition restricting the use to an occupier's only or principal home was applied to delegated and committee decisions equating to 41 new homes. Recently, within the last two weeks, the Council have received applications to remove the condition on applications relating to 34 dwellings.

Current Legal Advice

Based on the recent appeal decisions, the Council's Solicitor, Rob Firth, has advised that, should the planning committee wish to continue to apply this condition, it would need to have clear reasons and justification for doing so. The appeals are now potential material considerations to which any decision maker (including the Council's Planning Committees and any PINs inspector) will need to have regard to the extent they are relevant to a determination. In light of those inspectors' findings, the view is that, at the present time, the Council is unlikely to be able to sustain an argument in favour of incorporating the condition unless clearer evidence and justification can be produced to better support its inclusion. This is likely to include further substantive information to seek to explain why it is appropriate / desirable to apply this emerging policy now, explanation to distinguish these appeal decisions from future determinations and providing clearer justification.

It is, of course, also the case that any party at an appeal might potentially be at risk of a claim for costs if it was considered that it had acted unreasonably.

It must also be understood that, even with such further work, it cannot be assumed that the imposition of a condition restricting a home to someone's principal residence will always be justifiable / supported. Each planning application is determined on its own merits and therefore whether such a condition is appropriate will ultimately be a matter for the decision maker having regard to all relevant planning considerations.

If the planning committee wished to continue to apply this condition in advance of the adoption of the Purbeck Local Plan, it would need clear evidence to justify this.

Consequences of current position

The Examination in Public into the emerging Purbeck Local Plan is ongoing. The Planning Inspector's response to the plan, including policy H14, has not yet been received.

As the Local Plan progresses toward adoption, its policies potentially attract greater weight and this will itself provide opportunity to further review the planning circumstances relating to the imposition of a principal residence condition. Having regard to this comparatively short timeframe, it is not considered a sensible use of limited available resource to undertake any substantive further work at this present time to seek to support the current imposition of such a primary residence condition.

Nevertheless, regard will, of course, continue to be had to all circumstances relevant to the determination of every application, including the imposition of a condition pursuant to emerging policy H14. However, for the time being, pending further developments with the emerging Purbeck Local Plan and in the light of the recent inspectors' decisions, it is probably less likely that the condition will be used / recommended for inclusion.