



Appeal Decision

Hearing held on 1 February 2023

Site visit made on 1 February 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2023

Appeal Ref: APP/D0840/W/22/3304612

Kerris Vale, Kerriers Road, Inches, Bodmin, Cornwall PL30 5LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Phillip Vincent against the decision of Cornwall Council.
 - The application Ref PA22/02666, dated 16 March 2022, was refused by notice dated 6 May 2022.
 - The application sought planning permission for erection of agricultural dwelling without complying with a condition attached to planning permission Ref 6/87/0720/OOP, dated 6 July 1987.
 - The condition in dispute is No 5 which states that: "The occupation of the dwelling hereby permitted shall be limited to a person wholly or mainly employed or last so employed, locally in agriculture, as defined by Section 290(1) of the Town and Country Planning Act 1971, or in forestry or a dependent of such a person residing with him including a widow or widower of such a person".
 - The reason given for the condition is: "The site is within a rural area in which it is intended to provide primarily for the needs of agriculture".
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Decision

1. The appeal is allowed and planning permission is granted for erection of agricultural dwelling at Kerris Vale, Kerriers Road, Inches, Bodmin, Cornwall PL30 5LR in accordance with the application Ref PA22/02666 made on the 16 March 2022 without compliance with the conditions previously imposed on the planning permission Ref 6/87/0720/OOP granted on 6 July 1987 by Cornwall Council.

Background and Preliminary Matters

2. The appeal application was submitted as a full planning application. Nonetheless, it seeks to remove a condition attached to an earlier planning permission, Ref 6/87/0720/OOP dated 6 July 1987 (Planning Permission). I have therefore dealt with the appeal under s73A of the Town and Country Planning Act 1990, which provides the appropriate procedure for such an amendment. This approach is consistent with the case of *Freddie Reid v SSLUHC*¹, which established that the removal of a condition cannot result in a conflict with the description of development, because there is no condition remaining to conflict with the description.

¹ *Freddie Reid v SSLUHC* [2022] EWHC 3116 (Admin)

3. The appeal follows the approval of a Certificate of Lawfulness for Existing Use or Development (LDC), which was issued by the Council under Ref PA21/04318 on 5 August 2021. The LDC confirmed that, as at the date of application, the appeal dwelling had been occupied continuously for at least 10 years, by a person or persons not solely or mainly employed in agriculture or forestry, in breach of condition 5 of the Planning Permission. As long as the dwelling continues to be occupied in breach of the condition, it will therefore remain immune from enforcement. This factor is addressed in more detail in the reasoning to this decision.
4. Notwithstanding condition 5 (which is the subject of this appeal), the Planning Permission was subject to four other conditions. The parties have suggested that none of these conditions remain necessary, as they are no longer needed to procure the acceptability of the development. Specifically, conditions 1, 2, 3 and 4 required the submission and approval of reserved matters, and prescribed the associated timetable for reserved matters approval, as well as implementation of the development. Given that the dwelling is complete and now long-established, these matters have already been addressed. In turn, I agree that the remaining conditions do not need to be reimposed, as they would no longer serve a useful purpose, nor would they continue to meet the test of necessity.
5. During the Hearing, the appellant submitted a delegated officer report, which related to a planning permission granted by the Council (Ref PA19/10208) for the removal of an agricultural occupancy condition. An LDC was a determining factor in the Council's consideration of this application. Given the substantive similarities between this application and the present case, it is relevant to the main issues of this appeal. Whilst the evidence has been submitted late, the case in question has been referenced in the appellant's written evidence, which means the Council should have been aware of it. The Council has also not objected to the officer report being accepted into evidence. I am therefore satisfied that I can accept this evidence without undue prejudice to the main parties. I have proceeded on this basis.

Main Issue

6. The main issue is whether condition 5 of the Planning Permission remains necessary, enforceable and reasonable, having regard to the development plan, the need for rural worker dwellings in the local area and other material considerations.

Reasons

Background

7. The appeal property comprises a detached bungalow with open land to the rear, which is located along the northern side of Kerriers Road. The property lies outside of any defined settlement, and is deemed to be within the open countryside as per the Cornwall Local Plan (2010 – 2030) (Local Plan). Whilst the dwelling was first permitted in conjunction with a neighbouring farm enterprise, the two have since been severed. The parties agree that the dwelling is no longer needed in connection with a specific rural enterprise.

Necessity

8. Development of new homes within the countryside is strictly controlled under the Local Plan. Policy CP7 prescribes a limited number of circumstances where new homes may be permitted in countryside locations, which include homes for “full time agricultural and forestry and other rural occupation workers where there is up to date evidence of an essential need of the business for the occupier to live in that specific location”. Whilst Policy CP7 post-dates the development, the appeal dwelling was originally consented on a similar policy basis.
9. Policy CP7 does not provide any steer on how applications for the removal of agricultural occupancy conditions should be addressed. Nonetheless, the parties accept that development of a new home in the same location as the appeal property would be unlikely to be acceptable, unless it were to meet one of the exceptions for development of new homes in the countryside prescribed by Policy CP7. The Council alleges that the acceptability of the dwelling’s countryside location with regard to Policy CP7 therefore remains wholly contiguous with it meeting a general need for rural worker dwellings in the locality. Indeed, the Council’s record of planning applications for new rural worker dwellings over recent years does demonstrate that demand for such dwellings within the Council’s area remains.
10. The appellant has not sought to demonstrate an absence of need for rural worker dwellings in the locality. Nonetheless, the dwelling has been marketed for sale since May 2022, most latterly with a guide price of £750,000. On account of the LDC, the property has been marketed at full market value, without any concession for the agricultural occupancy condition. During the Hearing, the appellant indicated that the property was under offer, at a level just below guide price. Whilst the marketing exercise undertaken by the appellant appears to demonstrate demand for the appeal property itself, this is not indicative of general demand for rural worker dwellings within the area, as the prospective purchasers would not necessarily meet the criteria of the agricultural occupancy condition.
11. Of 65 properties being marketed for sale within a three mile radius of the appeal property, the guide price for the appeal property is one of the highest. In turn, even if a rural worker were interested in purchasing the appeal property and able to afford it, then they would also be in a position to afford numerous other comparable properties within close proximity. The same would be true even if the property were marketed at a discounted price to reflect the existence of the LDC. It is therefore arguable that the appeal property is not strictly needed to meet the needs of rural workers in the area, as irrespective of the appeal dwelling, any potential purchaser would not be short of alternative options for new homes, with or without an agricultural tie.
12. On this basis, whilst I acknowledge there is an ongoing general need for rural worker dwellings in the area, on the available evidence, I am not persuaded that the appeal property serves to help meet that general need. As already highlighted, the appeal property is also not tied to any particular rural enterprise, and so does not meet a specific need for such dwellings within the locality. Notwithstanding the content of Policy CP7 of the Local Plan with regard to proposals for new homes in the countryside and paragraph 80 of the National Planning Policy Framework (2021) (Framework) which seeks to

prevent isolated homes in the countryside, I therefore consider that the condition no longer meets the test of necessity.

Enforceability

13. On account of the LDC, condition 5 of the Planning Permission is currently immune from enforcement. Nonetheless, the condition could “bite back” if the property were ever to be occupied in future by someone who satisfied the occupancy condition. As highlighted by the Council, this could include someone retired from the agricultural or forestry industry. The condition could also conceivably bite back if a period of vacancy were to interrupt the continuous breach of condition. Notwithstanding the current position, it is therefore possible that the condition could become enforceable at some point in the future.
14. Nonetheless, provided that the breach continues (uninterrupted), the property could be occupied by anyone, irrespective of whether they satisfy the occupancy criteria. In turn, the existence of the LDC means that the property could potentially be sold at full market value, as occupation of the property is currently unrestricted. It follows that the appellant is unlikely to accept a substantially discounted price for the property, as it is unlikely to be in their financial interests to do so. Moreover, anyone satisfying the occupancy condition would be unlikely to pay full market value for the appeal property, as on acquisition and subsequent occupation of the dwelling, condition 5 would bite back, and the property would see a corresponding reduction in value. Once again, this would defy financial logic.
15. On this basis, whilst the condition could theoretically become enforceable in future, the likelihood of this happening is very remote. Indeed, it is much more likely that the occupiers of the property would seek to ensure the continued breach of condition, given the impact on the value of the dwelling if the condition were ever to bite back.

Framework and Planning Practice Guidance

16. As set out above, I consider that the condition no longer meets the test of necessity. Moreover, the condition is currently unenforceable, and is unlikely to become enforceable again in future. In turn, the continued imposition of the condition would be unreasonable, as it no longer serves a useful purpose. The condition therefore no longer meets the requisite statutory tests for the imposition of planning conditions, as set out in the Framework and Planning Practice Guidance (PPG).

Other Matters

17. Numerous appeal decisions have been cited by each of the main parties in support of their respective evidence. The approach taken by Inspectors in these appeals, specifically with regard to the existence of an LDC and their materiality to the removal of an agricultural occupancy condition, varies considerably. Indeed, the appellant has cited several examples where Inspectors have concluded that an LDC effectively renders an occupancy condition unenforceable, and therefore also unnecessary. Conversely, the Council has cited examples where Inspectors have attached little weight to an LDC, on the basis that such a condition could become enforceable again in future.

18. Notwithstanding these differences, there is some commonality between Inspectors with regard to the factors that may impact the weight to be afforded to an LDC. These include the likelihood of the condition ever biting back, the need for rural worker dwellings in the locality and how this has been evidenced, and the value of the relevant property. As outlined above, these factors are all pertinent to the conclusions I have reached, and the materiality of the LDC with regard to this appeal.
19. Whilst the Council has queried whether a purchaser would be able to secure mortgage finance for the full market value of the appeal property, this factor would fall outside of the planning merits of the decision.

Conclusion

20. Condition 5 of the Planning Permission no longer meets the tests of necessity, enforceability or reasonableness, as set out in the Framework and the PPG. The appeal should therefore be allowed, and the Planning Permission is varied by removing condition number 5, as well as all other redundant conditions previously attached.

James Blackwell

INSPECTOR

Appearances

FOR THE APPELLANT

Gareth Stent BA Hons Dip TP MRTPI, AFA Planning (Agent)

Phillip Vincent (Appellant)

FOR THE COUNCIL

James Holman MRICS MRTPI FAAV (Cornwall Council)

Samuel Fuller (Cornwall Council)