



Appeal Decision

Site visit made on 25 March 2003

by **Martin H Seddon** BSc DipTP MPhil MRTPI

an Inspector appointed by the First Secretary of State

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Date **23 APR 2003**

Appeal Ref: APP/E2001/A/02/1104141

Flatfield Lodge, Hull Road, Howden

- 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 Act for the development of land carried out without complying with a condition subject to which a previous outline planning permission was granted.
- The appeal is made by Mr and Mrs R Whitton against the decision of the East Riding of Yorkshire Council.
- The application (Ref: DC/02/04884/PLF/GOOLES), dated 18 July 2002, was refused by notice dated 11 November 2002.
- The application sought planning permission without complying with a condition attached to an outline planning permission (Ref: 2/452/82) dated 11 May 1983.
- The condition in dispute is no.4 which states that: *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 a person residing with him), or a widow or widower of such a person.* The reason given for the condition is that: *The site lies in an area where permission for development unrelated to the essential needs of agriculture and/or forestry would not normally be granted.*

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out in the Formal Decision below.

Preliminary Matters

1. In 2002 the Council issued a Certificate of Lawful Existing Development (Ref: DC/02/03228/CLE/GOOLES) which confirmed that the occupation of the dwelling by a person or persons not wholly or mainly employed in agriculture contrary to a condition attached to a planning permission was lawful. The Certificate was issued because the Council accepted that there had been a breach of condition 4 operating continuously for at least a 10 year period. In view of the breach of the condition which is the subject of this appeal, I shall determine the appeal in accordance with the provisions of Section 73A (2) (c) of the Act.

Main Issue

2. I consider that the main issue in this appeal is whether the proposal complies with development plan policy for agriculturally tied dwellings, and if not, whether there are any overriding material considerations.

Planning Policies

3. The development plan includes the Humberside Structure Plan and the Boothferry Borough Local Plan (East Riding of Yorkshire Area) 1999. The Council refer to policy

S7 of the Structure Plan in their appeal statement, but no details are provided.

4. Policy EN15 of the Local Plan advises that the Council will only remove an agricultural tying condition when satisfied that there is no further need for it, because the original reason for the dwelling is no longer appropriate, or there is no longer a need for tied dwellings in the locality. The Council would also need to be satisfied that attempts had been made to dispose of the property whilst subject to the condition. The Council's statement also refers to policies EN6 restricting development in the open countryside, and EN11 regarding the justified need for new dwellings associated with agriculture.
5. National planning policy guidance is set out in Planning Policy Guidance Note 7: *The Countryside-Environmental Quality and Economic and Social Development* (PPG7). Annex I advises on agricultural dwellings in the countryside.

Reasons

6. I have no reason to doubt that condition 4 was correctly imposed at the time of the initial determination of the proposed development. However, the appellants have provided no evidence that there is no further need for the condition because the original reason for the dwelling is no longer appropriate. Neither is evidence provided that there is no longer a need for tied dwellings in the locality. The appellants have also not demonstrated that attempts have been made to dispose of the property whilst subject to the agricultural tying condition. I therefore conclude that the proposal conflicts with Local Plan policy EN15.
7. Section 54A of the Act advises that the determination of applications shall be made in accordance with the development plan unless material considerations indicate otherwise. The existence of the Certificate of Lawfulness of Existing Development provides a fall-back position that the dwelling may be lawfully occupied without compliance with the terms of condition 4. This is a material planning consideration which I have to take into account.
8. The 6 tests for conditions are set out in Circular 11/95: *The Use of Conditions in Planning Permissions*. In view of the fall-back position, I consider that the condition which is the subject of this appeal is unenforceable. In this respect paragraph I20 of Annex I to PPG7 states that Councils may take enforcement action against breaches of occupancy conditions provided that the breach has not operated continuously for 10 years or more. The Certificate confirms that the Council have accepted that the breach took place continuously over this time period. I also consider that the condition is now unnecessary and it would be unreasonable to retain its imposition.
9. I therefore conclude on the main issue that although the proposal conflicts with development plan policy for agriculturally tied dwellings, the fall-back position because of the existence of the Certificate of Lawfulness of Existing Development is an overriding material consideration. I therefore propose to allow the appeal.

Conclusion

10. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed.

Formal Decision

11. In exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission to erect a detached bungalow and garage to be used in connection with horticulture at Cocked Hat Close, Howden in accordance with the application no. DC/02/04884/PLF/GOOLES dated 18 July 2002 without compliance with condition no.4 previously imposed on planning permission no. 2/452/82 dated 11 May 1983 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Information

12. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.
13. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Signature

INSPECTOR