

Appeal Decision

Site visit made on 27 September 2016

by Martin H Seddon BSc DipTP MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 October 2016

Appeal Ref: APP/Z2505/W/16/3150939

332a Willington Road, Kirton End, Boston, Lincolnshire, PE20 1NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Chris Fountain against the decision of the Boston Borough Council.
 - The application Ref: B/15/0370 dated 31 July 2015 was refused by notice dated 16 November 2015.
 - The application sought to remove conditions attached to planning permission Ref: B14/0250/88, dated 12 April 1988 for revised details of the construction of a detached bungalow.
 - The conditions in dispute are Nos.3 and 4. Condition No.3 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 dependents of such a person residing with him) or a widow or widower of such a person. Condition No.4 states that: The bungalow which is hereby permitted shall be occupied only in connection with the existing dwelling on the site and shall not be sold, leased, rented or otherwise disposed of or let as a separate dwelling.
 - The reasons given for the conditions are; Condition 3: This building is sited in an area in which buildings other than those connected with an agricultural need, would not be permitted. Condition 4: The additional dwelling unit hereby approved lies in an area where the local planning authority would not normally grant planning permission for new dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a detached bungalow at 332a Willington Road, Kirton End, Boston, Lincolnshire, PE20 1NU in accordance with the application Ref: B/15/0370 dated 31 July 2015, without compliance with condition number 4 previously imposed on planning permission Ref: B14/0250/88, dated 12 April 1988, subject to the following condition:
 3. The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any residential dependants.
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Main issues

2. The main issues are:

- the effect on the proposed removal of the planning conditions on the availability of accommodation for persons employed in agriculture and forestry and their dependants, and
 - whether the conditions comply with the 6 tests in paragraph 206 of the National Planning Policy Framework (the Framework).
3. The appellants have submitted a claim for an award of costs against Boston Borough Council. This is the subject of a separate decision letter.

Reasons

4. The appeal site is located in the open countryside, outside the village envelope for Kirton End. It comprises an access track from Willington Road, a large brick built bungalow, lawned area with trees, a number of vacant greenhouses and an outbuilding. The site is just over 1 hectare in area.
5. The original permission ref: B14/0250/88 indicated in the reasons for conditions that the bungalow was sited in an area where buildings other than those with an agricultural need would not be permitted. The Council has advised that agricultural habitation conditions are not normally removed unless it is shown that there is no longer an agricultural need for the dwelling on the particular holding or in the wider locality. The Council advises that the relevant adopted Local Plan policy CO5 has not been saved. It therefore places reliance upon paragraph 55 of the Framework regarding sustainable development in rural areas.

The particular holding

6. The appellant advises that the glasshouses are to be demolished as they are no longer fit for purpose. The application form indicates that the plant growing business closed due to the uneconomic viability of the product and the property has since been sold. The main reason given for the lack of viability of the business was the dated design of the glasshouses and small scale of the site. The glasshouses appear to differ in age and design. No structural survey has been submitted to support the contention that they are unsound and could not be repaired for re-use. I find that no compelling evidence has been submitted to indicate that some form of small scale horticultural business use would not be viable at the appeal site.

The locality

7. Although the appellant states that the property has recently been sold, no details have been provided of any interest shown in the property sale, including any interest from workers in agriculture. The appellant has examined the Council's planning register for the last 10 years and could not find any applications for new houses in the Kirton locality in association with agriculture. I note the appellant's view that there would be sustainability consequences for an agricultural worker being obliged to live at the appeal site and travel to work

elsewhere. Nevertheless, I find that no detailed evidence has been submitted to clearly demonstrate that there is no agricultural need in the locality. In this respect I note from the planning officer's report that Kirton Parish Council consider that there is a continued need for agricultural housing and that removing the conditions subject to appeal is not necessary.

8. Paragraph 206 of the Framework advises that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In relation to condition 3, I have found that there is no substantive evidence on which to conclude that the agricultural occupancy restriction is no longer necessary. The condition would meet the above tests for conditions in the Framework and should be retained. I have amended the wording of condition 3 in order to reflect current best practice.
9. Condition 4 relates to the "existing dwelling on the site". The Council cannot identify "the existing dwelling" and the appellant has offered no detailed evidence on the matter. The Council advised that the word "bungalow" should perhaps have read "annex" because the building appears to have been split into two residential units at one time. The Council has concluded that it may be accepted that condition 4 may have been imposed in error. Condition 4 is not mentioned in the Council's decision notice and reasons for refusal. It seems to me that the Council would have no clear basis to explain the rationale behind condition 4 and consequently it would be unenforceable. For that reason, condition 4 should be deleted.

Other Matters

10. The appellant advises that the justification for the application is that the Council cannot demonstrate a 5-year supply of housing land and the site would be an infill plot in a sustainable village with a new dwelling being erected opposite. Consequently, in the appellant's view, a new house would be permitted on the appeal site without the need for an agricultural tie. However, the appeal site is outside the village settlement limits and such a proposal would have to be tested against any relevant development plan policies, policies in the Framework including paragraph 55 and all other material considerations.
11. Paragraph 55 states, amongst other things, that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside. Although the bungalow is not particularly isolated I have found that there is insufficient evidence to demonstrate that the agricultural tie should be removed. In any event, it seems to me that the bungalow would contribute to the housing supply whether it was occupied on the current restricted basis or as market housing.
12. The appellant has referred to permission granted by the Council for a change of use from an office (Class B1) to residential (Class C3) and erection of a single storey extension at Yew Tree Nurseries, Ralphs Lane, Frampton. Whilst the site included polytunnels, was outside the village settlement limits and had been used for horticulture, the proposal did not involve a dwelling that had an agricultural habitation condition. The proposal was for the conversion and

extension of a commercial building and its particular circumstances were not the same as those in the current appeal before me.

Conclusion

13. All other matters raised have been taken into account. For the reasons given above condition 4 of permission ref: B14/0250/88 is deleted, but condition 3 is retained.

Martin H Seddon

INSPECTOR