

## Appeal Decision

Hearing held on 6 December 2016

Site visit made on 6 December 2016

**by Kevin Gleeson BA MCD MRTPI**

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

**Decision date: 23 December 2016**

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**Appeal Ref: APP/D0840/W/16/3155923**

**Colrose, Tremellick, St Cleer, Liskeard, Cornwall PL14 6RP**

- 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 Mrs R A Bratchley against the decision of Cornwall Council.
  - The application Ref PA15/10598, dated 27 October 2015, was refused by notice dated 6 January 2016.
  - The application sought planning permission for the erection of one agricultural dwelling and construction of vehicular access on land part No. 1254 (O.S. Map Second Edition 1907) of the Parish of St Cleer without complying with a condition attached to planning permission Ref 5/76/0828/9 dated 1 November 1976.
  - 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 dependant 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 dismissed.

### Procedural Matters

2. When the Council made its decision the development plan comprised the saved policies of the Caradon Local Plan, 1999 and the Caradon Local Plan First Alteration, 2007. Subsequently, the Cornwall Local Plan Strategic Policies, 2010-2030 has been adopted and the Council confirmed that the policies referred to in the Council's reason for refusal were no longer saved. Consequently the Council now relies on the Cornwall Local Plan in relation to this appeal.
3. At the hearing the appellant confirmed agreement to the draft Statement of Common Ground prepared by the Council and dated 14 November 2016.

### Main Issue

4. Based on the discussion at the hearing I consider the main issue to be whether a condition restricting occupancy of the dwelling to an agricultural/forestry occupier is necessary and reasonable.
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## Reasons

5. The appeal site is located within the open countryside and comprises a detached dwelling and garden. Planning permission for the house was granted in 1976 as an agricultural dwelling to serve Tremellick Farm with a holding of approximately 160 acres. The appellant occupies the property in compliance with condition No. 5 and wishes to have the occupancy condition removed to enable her son, who does not work in agriculture or forestry, to inherit and occupy the property.
6. Policy 7 of the Cornwall Local Plan states that the development of new homes in the open countryside will only be permitted where there are special circumstances. One of the situations in which new dwellings will be permitted is for full time agricultural, 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. Although this policy relates to new development it confirms that the thrust of development plan policy is to protect the countryside and residential development would not normally be permitted apart from in exceptional circumstances.
7. In addition paragraph 55 of the National Planning Policy Framework, (the Framework) advises that new isolated homes in the countryside should be avoided 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. The appeal property was only permitted by virtue of an exemption for agriculture or forestry workers and therefore reflects the objectives of paragraph 55 of the Framework.
8. Development plan policy and the advice in the Framework both aim to prevent unacceptable and unsustainable development in the countryside but neither deals directly with the main issue regarding whether the agricultural occupancy condition is necessary and reasonable. In the absence of a specific development plan policy or supplementary planning guidance on this matter, now that Policies CL4 of the Caradon Local Plan, 1999 and Policy HO7 of the Caradon Local Plan First Alteration, 2007 are no longer saved, it was accepted by the main parties that the approach adopted in Annex A of Planning Policy Statement (PPS) 7: Sustainable Development in Rural Areas provided an appropriate approach to the consideration of an agricultural occupancy condition.
9. Whilst Annex A of PPS 7 is no longer extant, having been replaced by the Framework, I accept that the approach which it sets out provides an appropriate way in which to address the main issue. In line with Annex A of PPS7 present occupants of dwellings with an agricultural occupancy condition attached should not be unnecessarily obliged to remain in occupation simply by virtue of planning conditions restricting occupancy which have outlived their usefulness. The principle that local planning authorities should set out their policy approach to the retention or removal of occupancy conditions based on an up to date assessment of the demand for farm dwellings in the area as a whole and not just the particular holding is also appropriate.
10. I was told at the hearing that by the mid-1980s the farm land associated with Tremellick Farm had been sold and the house had not been connected with an agricultural holding since that time. The absence of farm land associated with the appeal property may result in a lack of interest from potential purchasers

seeking to establish a new agricultural business but this only partly addresses the question of a potential wider interest in the property.

11. Whilst the dwelling is not required in association with an existing holding it has not been demonstrated that there is no demand for the property from others currently employed in agriculture or forestry, for instance arising from the restructuring of farming operations locally. Evidence presented by the Council indicated that within the Parish of St Cleer there had been four new agricultural dwellings approved since 2010 which is a significant number and suggests that there could be demand for the appeal property if it were put to the market. Furthermore, it has not been demonstrated that there would not be demand for the property from retired agricultural workers. Additionally, I have not been presented with evidence of applications to remove agricultural worker conditions locally which might indicate a lack of need.
12. I understand that the appellant does not wish to undertake marketing of the property when she has no intention of selling the property at present. However, without a marketing exercise at a price which reflects the occupancy restriction it is not possible to demonstrate that the condition is no longer necessary. Whilst recognising the appellant's wish to maximise the value of her estate for the benefit of her family these personal circumstances do not outweigh the conflict with the development plan policy.
13. The appellant indicated that the County Land Agent had made no effort to ascertain whether there was a need for the property among the wider agricultural community. Information from the County Land Agent and other sources may have been helpful in determining demand but it is for the appellant to provide evidence to demonstrate that there is no longer a need for the agricultural occupancy condition. The appellant has made enquiries locally within the farming community to ascertain whether there is any interest in the property but the extent of this exercise is not sufficient to demonstrate that there is no need in the area for an agricultural workers' dwelling.
14. The appellant provided an independent valuation of the property which indicated a value of £210,000 with the occupancy condition and an open market value of £300,000, equating to a 30% reduction in value with the condition. The Council accepted that this reduction was reasonable and I have no evidence to the contrary. It was suggested by the appellant that the value even with the agricultural occupancy condition would make it difficult for an agricultural worker to secure a mortgage. However, whether or not the value would mean that the property was beyond the means of an agricultural worker or a retired qualifying person would need to be substantiated through marketing the property.
15. Insufficient evidence has been provided to demonstrate that the dwelling is no longer required for an agricultural or forestry worker in the area and no marketing has been undertaken to indicate whether or not there is a need for the dwelling for such occupiers. I also note that planning permission was originally granted for the dwelling to contribute to the needs of farming and the rural economy in perpetuity and I attach considerable weight to this matter.
16. Notwithstanding the appellant's view that it would be unreasonable to enforce the condition when agricultural workers are unlikely to be able to afford the property, it has not been demonstrated that the condition is no longer necessary and reasonable. The proposal therefore conflicts with Policy 7 of the

Cornwall Local Plan which seeks to protect the agricultural housing stock and prevent the proliferation of residential properties in the countryside.

### **Other Matters**

17. The appellant referred to recent changes in legislation which allow the change of use of agricultural buildings to dwellings utilising permitted development rights. Whilst acknowledging the effect of this measure I have to consider the proposal before me.

### **Conclusion**

18. I have not been presented with evidence which indicates that the dwelling could not continue provide accommodation related to agriculture or forestry. Having taken account of all the other matters raised at the hearing including the personal circumstances of the appellant I find that the appeal should be dismissed.

*Kevin Gleeson*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT

Rosalyn Ann Bratchley

Appellant

Ken Horsley

MAH Building Services Ltd.

FOR THE LOCAL PLANNING AUTHORITY

Jim Lee

Cornwall Council

**DOCUMENTS SUBMITTED AT THE HEARING**

1. Extract from Cornwall Local Plan, 2016: Policy 7: Housing in the Countryside.