

## Appeal Decision

Hearing held on 21 March 2017

Site visit made on 21 March 2017

**by Stephen Hawkins MA MRTPI**

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

**Decision date: 13 April 2017**

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### **Appeal Ref: APP/X1118/W/16/3149117 Higher Dodyard, Chulmleigh, Devon**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mr John Crocombe against North Devon District Council.
  - The application Ref 59787, is dated 23 July 2015.
  - The development proposed is an outline application for an agricultural worker's permanent supervisory dwelling.
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### **Decision**

1. The appeal is allowed and planning permission is granted for an agricultural worker's permanent supervisory dwelling at Higher Dodyard, Chulmleigh, Devon in accordance with the terms of the application, Ref 59787, dated 23 July 2015, subject to the conditions in the schedule at the end of this decision.

### **Application For Costs**

2. An application for costs was made by Mr John Crocombe against North Devon District Council. This application is the subject of a separate decision.

### **Procedural Matters**

3. At the hearing it was confirmed that the application had been made in outline with all matters reserved for future consideration. The submitted plans showing the siting of the proposed dwelling, its overall height and cross-sections had therefore been provided for illustrative purposes only. I have determined the appeal on that basis.
  4. The appellant confirmed that the appeal site had no postcode and that the application form was therefore incorrect. Accordingly, I have omitted the postcode from the banner heading in the interests of accuracy.
  5. The description of the proposed development in the banner heading is taken from the application form and makes reference to an outline application. I have deleted that reference from my formal decision as it is superfluous.
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## Main Issues

6. The main issues in this appeal are:

- Whether there is an essential need for an agricultural worker to live permanently at their place of work in the countryside, and;
- If so, whether it is necessary for the appellant to enter into a Planning Obligation to prevent the proposed dwelling from being disposed of separately from the farm holding.

## Reasons

*Whether there is an essential agricultural need for the proposed dwelling*

7. The appellant is a partner in a large mixed farming enterprise mainly comprising land owned by three family members. At the hearing, it was explained on behalf of the appellant that the nature and scale of the enterprise remained similar to that described in the submitted *Agricultural and Rural Business Appraisal* dated February 2015. In summary, this states the holding comprises approximately 1500 sheep and 500 cattle with around 90 hectares given over to various arable crops. In total, the land holding is around 420 hectares, approximately 390 hectares of which is owned by the partners in the enterprise, the rest being rented. The land is in separate blocks. There are currently two dwellings on the holding, located adjacent to a substantial range of agricultural buildings at Parsonage Farm at the centre of the farm operations. The proposed dwelling would be located on the Higher Dodyard block of the holding, which comprises around 80 hectares to the north east of Parsonage Farm. It would be sited adjacent to a complex of existing farm buildings and would be occupied by the appellant's son, who is currently living in rented accommodation in Chulmleigh.
8. It is common ground between both main parties that there is a functional need for an additional agricultural worker to live on the holding in this location. I have not found anything which would support reaching a different conclusion.
9. The holding is long-established and financially sound. There is no suitable existing or alternative accommodation available. The proposed dwelling would be related to the whole of the holding and closely related in terms of its siting to the farm buildings. Consequently, the proposed dwelling would accord with criterion 1(a)-(c) and part of criterion (d) in saved Policy HSG9 of the adopted *North Devon Local Plan* (LP). As this is an outline application, the remainder of criterion (d) concerning the design of the proposed dwelling as well as criterion (e) concerning its size in relation to the established need, would be considered at reserved matters stage. An agricultural occupancy condition would ensure that the proposed dwelling is kept available for agricultural workers on the holding or in the locality in the future, to accord with criterion 2.
10. As there is essential need for a rural worker to live permanently at their place of work in the countryside, the proposed dwelling would be consistent with paragraph 55 of the National Planning Policy Framework (the Framework) and it would promote the development of an agricultural business, consistent with paragraph 28 of the Framework.
11. Both main parties made reference to the emerging North Devon and Torridge Joint Local Plan, which I was told has reached Examination stage. However, I

was not referred to any specific policies relevant to the appeal. Therefore, I can only give the emerging plan limited weight.

*Whether a Planning Obligation is necessary*

12. The Council considers that due to its siting, the proposed dwelling would be capable of being sold off separately from the majority of the holding in future. It could be marketed at a price that, even when discounted to reflect the occupancy condition, would still be unaffordable for most agricultural workers, based on the current house prices of properties of comparable size. In turn, this would create pressure to remove the occupancy condition on the basis that it was no longer necessary, leading to an isolated open market dwelling in the countryside.
13. Whilst the Council accepted that the appellant currently had no intention of selling the proposed dwelling, it pointed out that planning permission runs with land and circumstances could change in future. The Council considered that the history of dwellings being sold off from the holding, albeit many years ago, were an indicator of what might happen in this regard. The Council explained at the hearing that it had received about 5 applications per year over the past 5 years for the removal of agricultural occupancy conditions.
14. A Planning Obligation had therefore been sought by the Council to tie the proposed dwelling to the holding. The Council referred to the accompanying text of LP Policy HSG9 and the adopted *Agricultural, Forestry & Other Essential Occupational Dwellings Guidance Supplementary Planning Document (SPD)*, which both support the use of an Obligation to restrict separation of a dwelling and buildings from the land, in order to prevent fragmentation of a viable farm unit for which a dwelling has been permitted. The Council also cited a similar policy in another Council's recently adopted Development Plan<sup>1</sup> to show that its approach in this matter is consistent with that of other planning authorities. At the hearing, the Council confirmed that an Obligation would normally be sought unless the proposed dwelling was integrated with the farm holding. Conversion of an existing building within a farmyard was suggested as an example of where an Obligation might not be sought.
15. I understand that no draft Obligation had been produced in relation to the current application, although a draft had been produced by the Council in relation to a previous application. On behalf of the appellant, it was suggested that an Obligation along the lines previously proposed would be unnecessarily restrictive, as it would adversely affect the ability of the business to buy and sell land, it might force the sale of the business in the event the appellant passed away and that due to the unusually large scale of the holding, this could lead to its subdivision.
16. However, a more 'flexible' form of Obligation had been mooted by the Council in their statement and its likely requirements were expanded upon at the hearing. This included a straightforward process to vary the land associated with the Obligation, the Council's consent to not unreasonably be withheld and a 'deemed consent' provision where the Council did not respond within a specified period. The Council considered that such an Obligation need not unduly delay the sale and acquisition of land or unnecessarily restrict the operation of the business. The Council explained that variation requests were

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<sup>1</sup> Policy E4 of the East Devon Local Plan.

unlikely to be refused, provided the extent of the land associated with the holding meant that it remained viable and capable of supporting its associated dwellings.

17. On behalf of the appellant, concern was still expressed as to how the Obligation would work in practice, in particular in relation to any future sale of larger blocks of land. The effectiveness of any dispute resolution mechanism in relation to the impact on the business was questioned. Whether the appellant would incur further costs as a result of their inability to reclaim VAT under the DIY Housebuilders Scheme in the event the Obligation was entered into, also remained unclear.
18. In the absence of further information, including any draft of the Obligation it is not possible to examine the above matters in greater detail. However to my mind, the approach suggested by the Council would appear to address most of the appellant's initial objections, as it would not unduly restrict his ability to acquire land and dispose of parts of the holding in future. Further, whilst the Council was unable to be definitive, it did suggest that the ability to claim back VAT would be unfettered by the Obligation. The above indicates that the differences between the parties over the form and wording of the Obligation might largely have been capable of being resolved had negotiations continued. Nevertheless, the above is not conclusive of an Obligation being necessary to make the development acceptable.
19. On behalf of the appellant, it was explained that the location of the proposed dwelling had been chosen in order to be to be within 'sight and sound' of the farm buildings whilst being separate from the farmyard, in order to accommodate a suitable, safe living environment for an agricultural worker and their family and to ensure that future visitors and deliveries to the proposed dwelling did not conflict with farming activities. It was pointed out that there had not been any dwellings on the Higher Dodyard block in living memory and that in practice, the block would still require a dwelling even if the holding were ever split in future. Notwithstanding this, it was stressed that the history of the holding pointed to its continued expansion over many years and the farming business was planning to continue to operate in its current form as far as could be seen ahead. I did not see or hear anything which offered a different explanation in relation to the above matters.
20. The Council suggested that due to the likely size of the proposed dwelling and its location in relation to other holdings, it might be unaffordable for many agricultural workers and there might be limited interest from agricultural businesses in the locality in the event it was marketed for sale in the future. However, I also heard evidence on the appellant's behalf which suggested that it would not make financial sense to sell the proposed dwelling separately, as without a substantial block of the holding land attached it would have a significantly lower value. The Council accepted that there were good reasons for the siting and access arrangements of the proposed dwelling and it did not contradict the comments made on the appellant's behalf regarding the practicalities or the valuation considerations of any possible future sale.
21. In my view, due to its proximity to the farm buildings and the proposed access arrangements, which would involve sharing the existing access from the public road almost up to the farmyard, the proposed dwelling would form a part of the farmyard complex from a physical and a functional perspective. The Council

said that properties had been sold off on other holdings which, as in the case of the proposed dwelling, were close to working farm buildings. Nevertheless, in my experience the close relationship to the farm buildings which are primarily used for housing livestock, is likely to be a significant constraint on the practicality of disposing of the proposed dwelling separately from the farm complex. This is because such a location is likely to have an adverse effect on the value of a separate dwelling as well as creating potential for conflict between any future separate occupiers and the use of the farm buildings. Consequently, whilst the proposed dwelling would not be located within the farmyard, in my view to all intents and purposes it would form an integral part of the farm complex and it would be difficult in practice to separate it off from the holding.

22. The number of planning applications received by the Council in respect of the removal of occupancy conditions may be an indicator of the potential scale of the risk to which it seeks to avoid in this case. However, little evidence was put forward to dispute the comments made on the appellant's behalf that the circumstances in many of those cases were likely to be very different to the appeal scheme, in particular in relation to the likely modest scale of the holdings and also the wording of the occupancy conditions, which may not reflect the modern model. The Council also accepted that historically, some agricultural dwellings had been erected in circumstances and locations which made them more exposed to the risk of being sold off at a later date.
23. I accept that without an Obligation there is still some risk of the proposed dwelling being sold off separately from the holding in future. However, taking all of the above matters into account, in my view it would be unlikely to be practical to do so. Consequently, permitting the proposed dwelling without an Obligation is unlikely to lead to the fragmentation of a viable farm unit or pressure for further rural dwellings. Therefore, in this case the absence of an Obligation would not be inconsistent with the objectives of the SPD.
24. Accordingly, I find that the Obligation is not necessary to make the development acceptable in planning terms and it would therefore fail the tests in Section 122(2) of the Community Infrastructure Regulations 2010, which are reiterated in paragraph 204 of the Framework.
25. I have been referred by both parties to appeal decisions in areas administered by neighbouring authorities where an Obligation to prevent an agricultural worker's dwelling from being disposed of separately was found to be unnecessary<sup>2</sup>. However, the circumstances in each of these cases were different to the appeal scheme and they do not indicate any form of general principle as to when an Obligation should or should not be used. The Council has also referred to an appeal decision in another authority which an Inspector concluded that an Obligation was necessary<sup>3</sup>. Nevertheless, the circumstances in that case, which involved an unusually large dwelling in relation to the needs of the holding, are not directly comparable with the appeal scheme.

## Conditions

26. In addition to the standard outline conditions concerning the submission and approval of the reserved matters, and the timescales for their submission and

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<sup>2</sup> References APP/Y1138/A/13/2200238, APP/W1145/A/09/2099322, APP/W1145/A/07/2049046.

<sup>3</sup> APP/C1435/A/13/2192117.

implementation of the permission, I have also imposed an agricultural occupancy condition for the reason explained at paragraph 9 above. Where necessary, I have amended the wording of the suggested conditions to ensure that they meet the tests in paragraph 206 of the Framework.

### **Conclusion**

27. An essential need has been demonstrated for the proposed dwelling and it would accord with the Development Plan and the Framework. However, a Planning Obligation is not necessary to make the development acceptable. Accordingly, the absence of an Obligation would not be inconsistent with the SPD.
28. For the reasons given above I conclude that the appeal should be allowed.

*Stephen Hawkins*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) 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 resident dependants.

## **APPEARANCES**

### **FOR THE APPELLANT:**

Ms Phoebe Millar     Robert H Hicks & Co.

Mr Robert Hicks     Robert H Hicks & Co.

Mr John Crocombe Appellant.

### **FOR THE COUNCIL:**

Mr Graham Townsend     Planning Delivery Team Leader.

## **DOCUMENTS**

### **SUBMITTED AT THE HEARING:**

1. Signed Statement of Common Ground.
2. Land ownership plan.
3. Extracts from Adopted North Devon Local Plan.
4. North Devon District Council: Agricultural, Forestry & Other Essential Occupational Dwellings Guidance Supplementary Planning Document- Adopted 2009.
5. List of suggested planning conditions.
6. Council's written response to application for costs.