
Appeal Decision

Hearing held on 17 May 2017

Site visit made on 17 May 2017

by H Porter BA(Hons) PGDip IHBC

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

Decision date: 09 June 2017

Appeal Ref: APP/W1145/W/17/3168619

Brambley Barton, Shebbear, Beaworthy, Devon EX21 5HN

- 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 D Johns against the decision of Torridge District Council.
 - The application Ref 1/0795/2016/FUL, dated 5 August 2016, was refused by notice dated 11 October 2016.
 - The application sought planning permission for an agricultural dwelling at Backway Farm, Shebbear, N Devon without complying with a condition attached to planning permission Ref 1/1146/96/50/0010 dated 16 September 1996.
 - The condition in dispute is No 1 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 336(1) of the Town and Country Planning Act 1990 or in forestry, including any dependant of such person residing with him or her, or a widow or widower of such a person'.
 - The reason given for the condition is: 'It is the policy of the Local Planning Authority to refuse to permit new dwellings in the open countryside unless there is a proven long term agricultural need'.
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Decision

1. The appeal is allowed and planning permission is granted for the agricultural dwelling at Backway Farm, Shebbear, N Devon without complying with Condition 1 previously imposed on planning permission 1/1146/96/50/0010, dated 16 September 1996, but subject to the other conditions imposed thereon, so far as the same are still subsisting and capable of taking effect.

Procedural Matters

2. The original planning application form supplied to the Inspectorate was unsigned and undated. This matter was raised at the Hearing and a signed copy, dated 5 August 2016, was provided; as well as a signed Statement of Common Ground. As the dwelling, subject of this appeal, has already been constructed, I have omitted 'proposed' from the description of what planning permission has been granted for.
 3. At the appeal Hearing, the Council confirmed that the emerging North Devon and Torridge Local Plan Development Plan Document has not progressed since the application was determined, consequently the Saved Policies of the
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Torridge District Local Plan 1997 – 2011, adopted 2004 (the Local Plan) will be the policies relevant to my decision. Both parties agreed that the Supplementary Planning Guidance on Agricultural Dwellings and Occupancy Conditions, 2000 is no longer in use; accordingly it has been afforded no weight in this decision. The Council also confirmed that Torridge District cannot currently demonstrate a 5-year supply of housing land. Subsequent to the Hearing, both parties have agreed that the Supreme Court judgement¹ does not have any material implication on the appeal case.

Main Issue

4. The main issue is whether the condition is reasonable and necessary in order to meet an essential need for a rural worker to live at or near their place of work.

Reasons

5. Brambley Barton is a five-bedroom, two-storey detached dwelling set within its own garden plot, situated across a narrow country lane from Backway Farm. The dwelling was built in the late 1990s, on the basis that it was justified to meet the need for an agricultural worker to enable the efficient operation of Backway Farm. At that time, the appellant was a partner and working full-time at Backway Farm, with an increasingly active role in its management. The agricultural occupancy condition was imposed on the original permission in order to comply with the relevant planning policy at that time, which sought to restrict new dwellings in the open countryside unless there is a proven long-term agricultural need. Since its construction, the appellants occupied Brambley Barton, continuing an ongoing role in the Backway Farm dairy operation up until 2014. At that point, the appellants left the area and commenced marketing the property for sale in early 2015, leaving the dwelling unoccupied.
6. Saved Policy HSC9 of the Torridge District Local Plan, 2004 (the Local Plan) contains two criteria that must be satisfied in order for an occupancy condition to be removed. Criterion a) seeks to establish that there is no longer an operational need for the dwelling; criterion b) relates to the likely absence of a recurrent need in the long-term having to be demonstrated adequately. All applications are required to have completed a realistic assessment of local demand, undertaking appropriately targeted marketing at a price that reflects the occupancy condition, for a minimum of two years.

Operational need

7. At the Hearing, the appellant explained that Backway Farm is now principally managed by his brother, who resides in the main farmhouse; while his father, since retired, lives in the village. It was also explained at the Hearing that the appellants no longer have any involvement in Backway Farm, though it remains a large operation with a substantial acreage and stock. That said, it was also explained that over the past 20 years, there have been significant changes in the way dairy farms are managed; with machinery and automation reducing the day-to-day operational and labour requirements. To my mind, the combination of these factors amounts to a compelling change in the need for a second substantial dwelling that had been necessary to satisfy the operation requirements of Backway Farm some two decades ago.

¹ [2017] UKSC 37 *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLEG v Cheshire East Borough Council*

Marketing and valuation

8. In terms of property valuations, it is evident that the exercise is not an exact science. However, the appellants sought three independent valuations on Brambley Barton, by experienced local land agents. At the Hearing, the valuer appearing for the appellant explained the approach to valuing tied properties, which assesses comparable open-market dwellings in the area, taking the closest in size and reducing the asking price in the region of 25 -30%. This approach was taken at the appeal property and I am satisfied that the 25% reduction was based on appropriate evidence. The property was initially marketed at £275,000, in the middle of the upper and lower of the three valuations given. The two price reductions at £10,000 increments, took the final asking price close to the lower valuation figure. From the evidence provided, it seems to me that the asking price was fair, informed by independent expert advice and reflective of both the site-specific circumstances and the occupancy restriction.
9. It was explained at the Hearing that the predominant type of farming in the local area is dairy, and the duties of a worker on a higher wage in that industry would usually involve being either on-site or very close to their herd. Within this context, the appellants' land agent also wrote to nearby farmers, within a 5 mile radius of Brambley Barton. I consider the approach taken was appropriate for the specific local circumstances. Moreover, Brambley Barton has continued to be marketed in the intervening months since the planning application was submitted. Without speculating whether prospective buyers may be waiting to know the outcome of this appeal, the property has now been continually marketed for in excess of 24 months. Taken with the on-line marketing and the agent's register of interested persons, I consider that the property was marketed over an appropriate timescale.

Assessment of local demand

10. At the Hearing, the Council provided a list of applications submitted for agricultural workers' dwellings within the past two years. This list shows that, over the whole of Torridge District, just ten permanent agricultural workers' dwellings have been permitted; only two of which are in Parishes neighbouring Shebbear, and none within Shebbear itself. Whilst this suggests that the demand for new properties to serve the needs of agricultural workers is small, it does not amount to conclusive evidence that there is no demand for existing properties.
11. The main purpose of the condition is to ensure that those working in agriculture, where wages have historically been low, have access to accommodation that meets their needs. However, even at 30% below its usual market value, Brambley Barton would be expensive in comparison with other agricultural workers' dwellings that might come on the market. There may be agricultural workers in the locality; however, it is only those on a higher farming salary who would reasonably be able to afford Brambley Barton. While I accept that the property could be bought by someone outside agriculture, for occupancy by a tenant, who would have to be a rural worker, the rental price would likewise be comparatively high. Furthermore, the Council's advice not to market the property for rental indicates to me that there would be a very limited pool of prospective tenants in the locality. The Council made the case that the disputed condition allows for a retired agricultural worker. However,

the size, rural location and relatively high cost of Brambley Barton would, in my judgement, be a disincentive to a retired rural worker, even if the targeted marketing exercise had extended to neighbouring Parishes.

12. The Council considered the offer made by a prospective purchaser, who seemingly complied with the agricultural occupancy restriction, as evidence of a local demand. I do not wish to speculate on the reasons why this person was not compelled to proceed with the purchase of Brambley Barton, however, the requests of the agent in the interest of securing a proceedable sale, seem entirely justified. I accept that the offer of £248,000 was very close to the lower valuation and only £7,000 under the final asking price. However, rather than show any deliberate unwillingness to move forward with the offer, it appears that the necessary information, including proof of funds as well as compliance with the condition, was not forthcoming. Moreover, the person who made the offer has known about the appeal and responded to the appeal. The property has remained on the market, therefore there has been the opportunity to re-open dialogue with the agent in the time that has elapsed since the consultation response letter was written.
13. Overall, I consider the market testing exercise has been suitably undertaken, at a realistic value reflecting the occupancy condition, and reveals that there is no local demand for the appeal site, and a likely absence of a recurrent need in the long term. Therefore, in this instance, the requirements of Saved Policy HSC9 have been satisfied to the extent that lifting the occupancy condition would not result in the permanent loss of access to the type of property needed by those working in agriculture.

Planning Balance

14. Removing the agricultural occupancy condition would result in an isolated home in the open countryside, which, without any special circumstances, paragraph 55 of the National Planning Policy Framework (the Framework) seeks to restrict. While it pre-dates the adoption of the Framework, the essence of Saved Policy DVT2C of the Local Plan is consistent with it, insofar as it aims to protect the character and appearance of the countryside while allowing for sustainable economic activity. That said, the Council are currently unable to demonstrate a 5-year supply of deliverable housing sites and paragraph 49 of the Framework sets out that the relevant policies for the supply of housing should not be considered up-to-date. The primary purpose of paragraph 49 is to trigger the operation of the tilted balance in paragraph 14 of the Framework, favouring a narrow interpretation of policies for the supply of housing.
15. Located over two miles from the village of Shebbear, the dwelling is well outside the nearest settlement boundary, and is visually and functionally linked with the surrounding open countryside. While Shebbear is a little over two miles away, and offers many essential services, accessing these would be principally by private car. However, Brambley Barton was constructed as a family home, and while one occupant worked at the adjacent farm, the rest of the household would have travelled to school, to work or to shop by car. There may be a small increase in vehicular journeys as a result of lifting the occupancy condition; however, the increase would be minimal and would not have an adverse impact on the character of the countryside.
16. On the other hand, the appeal property has stood empty for some four years and its condition could worsen. There would be merit in re-using an existing

building, in supporting services in the nearby village, and in making a small yet still beneficial contribution to the supply of housing in the district. Balanced against the disadvantages of an isolated location, in the context of paragraph 14 of the Framework, I do not consider the adverse impacts would significantly outweigh the benefits.

Other matters

17. There is local concern in relation to the proximity of Brambley Barton to Backway Farm, and the potential impact on the living conditions of future occupiers in terms of disturbance from the farming activity. While there is a very close physical relationship between Brambley Barton and Backway Farm, a prospective purchaser would be fully aware of the extant situation. Without any substantive information regarding the situation mentioned in the third party comments, I can attach only little weight to this matter.

Conclusion

18. For the reasons given above, I do not consider that the condition restricting occupancy of the appeal site is reasonable and necessary in order to meet an essential need for a rural worker to live at or near their place of work. The resultant dwelling would accord with the policies in the Framework and development plan taken as a whole. The appeal should be allowed.

H Porter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Johns	Appellant
Lucy Johns	Appellant
Peter Rowan	Planning Consultant
Mark Bunt	BSc MRICS FAAV Kivells
Jack Spires	FRICS FAAV Qualified Valuer, Stags

FOR THE LOCAL PLANNING AUTHORITY

Sarah Boyle BSc (Hons)	Planning Officer
Stephen Belli PGDip RTPI	Agency Planner
Councillor David Hurley	Torridge District Council, Ward Member

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground, signed and dated 17 May 2017
- 2 Signed and dated Declaration page from original planning application
- 3 List of applications to Torridge District for agricultural workers' dwellings in the past two years
- 4 List of applications for removal of agricultural occupancy conditions in Torridge District in the past two years
- 5 Google satellite view of Backway Farm and appeal site
- 6 Google satellite view of Backway Farm and wider context
- 7 Ordnance Survey map of appeal site and Backway Farm, NTS
- 8 Ordnance Survey of Torridge District showing Wards and Parishes
- 9 Statement on valuation and marketing from Jack Spires, Stags, 16 May 2017
- 10 Statement on valuation, offer and need from Mark Bunt, Kivells
- 11 Email correspondence between Mark Bunt, Kivells and Larry Bond of Bond Oxborough Philips confirming agricultural tie, 11 May 2017