The Planning Inspectorate

Appeal Decision

Hearing Held on 8 August 2017

Site visit made on 8 August 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 4th September 2017

Appeal Ref: APP/Y2003/W/17/3172194
Dansfield, Clarkes Road, North Killingholme, Immingham, North Lincolnshire DN40 3JQ

- 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 David Chapman against the decision of North Lincolnshire Council.
- The application Ref PA/2016/1431, dated 31 August 2016, was refused by notice dated 24 October 2016.
- The application sought planning permission to erect a bungalow for agricultural worker without complying with a condition attached to planning permission Ref GB/570/66, dated 1 December 1966.
- The condition in dispute is No 1 which states that: *The occupation of the dwelling shall at all times be limited to persons whose employment or latest employment is or was employment in agriculture as defined by Section 221(1) of the Town and Country Planning Act, 1962 and including also the dependents of such persons as aforesaid*.
- The reason given for the condition is: *The Local Planning Authority would not be prepared to permit the erection of a dwelling on this site unconnected with the use of the adjoining land for agriculture.*

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form did not include a declaration date. The date given above is that on the appeal form and decision notice. It was confirmed at the hearing that this was the correct date for the application.

Main Issue

3. The main issue in this case is whether condition 1 remains reasonable and necessary with regard to relevant local and national planning policies on development in the countryside, with particular regard to whether a need exists for an agricultural dwelling in this location.

Reasons

4. The appeal relates to a five bedroomed bungalow constructed following the grant of planning permission in 1966. The dwelling sits alongside open fields which remain part of an associated holding of around 6 hectares (15 acres).

The vicinity of the site includes a number of other farm buildings and agricultural land which were ostensibly once part of the same holding, but have subsequently been sold. Save for the striking visual presence of an oil refinery that dominates the skyline to the east of the site, the immediate area around it still retains a largely rural agricultural character.

5. I was informed at the hearing that the appellant lives at the property and is still involved to some extent in farming the remaining land. There was no dispute between the parties that whether or not the appellant is currently fully employed, semi-retired or retired there is no breach of the condition. The appellant has no current intention of selling the property. The reason given for removing the condition in such circumstances is to ensure that there would be no restrictions or uncertainty at such time when the personal circumstances of the appellant change. Moreover, the appellant considers that as the dwelling has been in place for around 50 years, changes to the farm holding and to the area in the vicinity of the site mean this condition is no longer necessary or relevant.

6. National and local planning policies have changed since the original decision and imposition of the condition. Although the fundamental aim of controlling development in the open countryside is largely retained, subsequent policies and guidance have acknowledged that circumstances can change and occupancy conditions that have outlived their usefulness should not be retained. The National Planning Policy Framework (the Framework) gives no specific guidance on applications for the removal of agricultural occupancy conditions. However, paragraph 55 recognises that isolated homes in the open countryside should be avoided unless there are special circumstances, including an essential need for a rural worker to live permanently at or near their place of work in the countryside.

7. The site lies well outside the defined boundary of North Killingholme and for the purposes of national and local policy is considered to be in the open countryside. North Lincolnshire Core Strategy (CS)(2011) policies CS2 and CS3 are clear that development outside settlements is only appropriate where it is essential to the functioning of the countryside, including uses relating to agriculture. This approach is consistent with the requirements of the Framework. While there are a scattering of buildings along Clarkes Road, the site feels remote from the main settlement. In addition, there is nothing before me to suggest the site is well served by a range of everyday services or facilities which are easily accessible by walking, cycling or public transport.

8. For the purposes of the Framework, I consider the dwelling to be functionally 'isolated' and thus 'special circumstances' would have to apply. The development of the oil refinery or other changes to the village do not alter my view on this. Taking both local and national policies into account, it would be reasonable to assume that permission for a new dwelling in this location would only be granted if there were an essential need for it and would be subject to an occupancy condition. Without justification, removal of the condition would result in a dwelling at odds with both local and national policy. I find therefore that the condition is not unnecessary or unreasonable as a result of the location of the dwelling or its relationship with nearby settlements.

9. The main policy guidance in terms of the removal of the condition is from the North Lincolnshire Local Plan (LP)(2003) Policy RD12. This sets out that the

removal of the condition will not be permitted unless it can be shown that there is no longer a justified need for an agriculturally tied dwelling on the holding and that there is evidence of attempts to sell the dwelling at a price which reflects the effect of the occupancy condition on the property market for 12 months prior to the application being made. While this policy predates the Framework, its intentions are consistent with the overall aims and objectives of the Framework and thus I have given it significant weight in my decision.

10. The apparent lack of a functional need for a tied dwelling results from the sale of much of the land associated with the original farm over a number of years. It was confirmed at the hearing that what farming activity currently takes place on the remaining land would not need to have somebody permanently living on the site. Furthermore, the agricultural activities taking place on the land that has been sold do not require a permanent presence at this dwelling. The Council has accepted this argument and, while the written evidence before me in this regard is not detailed, there is nothing to suggest that I should come to a different conclusion. From my own observations, it would be difficult to argue that the scale of the holding or the amount of cattle grazing on the land would necessarily justify a permanent presence.

11. The restriction imposed does not however limit the tie solely to the associated landholding, thus the need for agricultural dwellings in the wider area must also be considered. In my experience, it is not unusual for local authorities to expect marketing exercises to be carried out to address this. The appellant has not carried out the marketing exercise required by Policy RD12 on the basis that to do so while having no intention to sell would represent providing misleading information to consumers. The appellant argues this would contravene the Consumer Protection from Unfair Trading Regulations (2008), which came into force in 2014. The Council has not disputed this assertion.

12. In lieu of the property being marketed, the appellant has carried out an alternative form of assessment of local need to demonstrate compliance with the policy. This involved writing to some 32 businesses within a 10km radius with a questionnaire asking whether there would be any interest in a tied dwelling in the local area. The questionnaire put forward three questions. In summary, these were whether the respondent wished to buy an agricultural property, how far from their current business address they would be willing to consider buying such a property and what the maximum budget would be. It did not identify the property in the first instance.

13. There are some limitations in the scope of this exercise and I have concerns as to whether it can realistically act as a robust proxy for the more traditional approach of placing the property on the open market. Firstly, while there is nothing before me to suggest the 32 businesses invited to respond is not a fair reflection of agricultural businesses within the catchment area used, a direct and focussed mail drop is unlikely to reach the same number of potential purchasers as being marketed in a relevant publication or online. The exercise was essentially closed to anybody outside those who received a letter.

14. As a result of this, the exercise may not have captured all potential occupiers of the dwelling. The condition does not, for example, exclude retired agricultural workers from living at the dwelling. There is also some doubt as to whether the exercise could have adequately captured the potential for individual employees at any of the businesses consulted who might wish to buy a

dwelling with such a condition in place. The 10km threshold was selected to represent the likely local market. Nonetheless, while it might be less likely for a business to consider buying a dwelling that is some distance from its main operations, individual employees or retired workers may not be as restricted in the scope of their search. While the appellant may not consider it likely that such potential buyers would come forward, it is nonetheless a possibility not addressed by the exercise.

15. The results of the exercise only represent a snapshot of potential interest. This compares poorly with the requirements of the policy, which expects the property to be marketed over a period of time. The short term nature of the appellant's approach does not allow for medium or long term changes in local circumstances or demands to be taken into account. Nevertheless, the exercise still resulted in four expressions of interest in buying a tied property. The appellant suggests interest waned when more details of the dwelling were provided. As there is no current intention to sell, it is not clear how such interest would have been followed up in any event. Irrespective of this, the fact remains that there was at least some general interest in the potential for a tied dwelling which indicates there remains some general demand for dwellings of this type in the area.

16. The appellant argues that this approach has been accepted in other authority areas as a proxy for marketing where there has been no intention to sell the property. While this may be true, each case must be considered on its own merits. In order to meet local and national policy objectives, I consider that any alternative approach to that identified in the policy would have to provide results that were at least comparable to a traditional marketing exercise. I recognise that none of the respondents ostensibly wished to proceed with their interest in the property itself. However, owing to the somewhat limited scope of the exercise I do not consider this to be definitive proof that a more extensive marketing exercise would not have achieved different results, or that what has been produced meets the same standard of evidence as marketing the dwelling. It does not in my view provide the necessary level of comfort needed that there would be no demand or interest in the property.

17. The appellant's agent does not consider that a marketing exercise would bear fruit as, in his experience, such dwellings are extremely difficult to sell owing to the limited market. This view was reiterated at the hearing, though Mr Houlden also accepted that while the property might prove very difficult to sell he could not go as far as to say it would be impossible. In light of the evidence before me and the objectives of local and national policy, I consider this to be a distinction of some importance. The number of people identified as working in agriculture in the district might not be significant as a proportion of the overall population and may be dwindling. However, while this confirms there is a relatively small market, in itself this is not strong evidence of there being no possible need or demand for an individual tied dwelling in this location. Indeed, the interest shown from the appellant's own exercise, albeit limited, contradicts the view that there is an inherent lack of demand for such properties.

18. Both parties were able to cite limited examples of sales or new permissions for agricultural dwellings and of cases where conditions have been removed or where sales of tied dwellings have not taken place following marketing of the property. This evidence is not particularly strong or conclusive in favour of

either argument. Nevertheless, it does not lead me to conclude that there is no realistic prospect of there being some need or demand for such a dwelling.

19. Turning to the issue of affordability, the appellant has suggested that the estimated price of £175,000 would be beyond the reach of an average agricultural worker with a salary of around £18,000 per annum. The Council does not dispute the value put on the dwelling, but there is no corroborative evidence before me that indicates this is a realistic price for dwellings in this location with or without the 30% discount resulting from the condition. Nonetheless, broad assertions comparing salaries with values does not represent a robust analysis of affordability. As with the conclusions on the size of the potential market, such generalisations rule out specific individuals who may have the means to purchase this dwelling.

20. Moreover, marketing the property would allow for more robust testing of the value and may even allow negotiations to take place which might result in a lower price and facilitate a sale. It does not seem to me that a value of £175,000 is so high, or the property unduly large, to necessarily exclude any and all potential purchasers. The exercise carried out by the appellant also does not appear to indicate that it was the price of the dwelling which put any of the interested parties off. The evidence provided does not therefore demonstrate to any degree of certainty that the dwelling would not be affordable.

21. While I recognise that my analysis involves a certain level of speculation about potential purchasers or other uncertainties, it is no more so than the evidence put forward by the appellant. In my view, this only serves to demonstrate that there is insufficient substantive evidence before me to be able to conclude with any certainty that there would be no demand or that the property would not be affordable.

22. The current intention not to sell the property may make compliance with Policy RD12 more difficult in light of the apparent risk of contravening Trading Regulations. Nonetheless, this is a somewhat self-imposed limitation which may not always be in place. I sympathise with the appellant's wish to have some clarity over the restrictions placed on the property. However, there is nothing to suggest that the current condition is in any way compromising their ability to stay in occupation of the dwelling. There is therefore no immediate or urgent need to remove the condition or any personal circumstance that might outweigh my concern over the limitations of the evidence provided. The dismissal of this appeal would also not prevent a future application from being made should new evidence become available or circumstances change.

23. The lack of a marketing exercise results in conflict with LP Policy RD12 and, taking all above matters into account, I do not consider that sufficient evidence has been provided to demonstrate the agricultural occupancy condition is no longer needed in this location.

Conclusion

24. For the reasons given above I conclude that condition 1 remains both necessary and reasonable and that accordingly the appeal should be dismissed.

S J Lee INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Houlden	DDM Agriculture
Will Whitaker	DDM Agriculture

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Willerton	North Lincolnshire Council

DOCUMENTS SUBMITTED FOLLOWING THE HEARING*

1. North Lincolnshire Core Strategy (2011) Policies CS2 and CS3
2. North Killingholme Inset Map

(* Requested at the hearing, and provided to myself and other parties by email the following day)