
Appeal Decision

Site visit made on 8 May 2018

by Jameson Bridgwater PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st May 2018

Appeal Ref: APP/H1840/W/18/3196410

The Old Orchard, Haselor Lane, Charlton WR11 2QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Nick Brennan against the decision of Wychavon District Council.
 - The application Ref 17/02520/OUT, dated 20 December 2017, was refused by notice dated 15 February 2018.
 - The application sought planning permission for a dwelling without complying with a condition attached to planning permission Ref W/83/1345/O, dated 19 January 1984.
 - The condition in dispute is No 6 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 290 (1) of The Town and Country Planning Act 1971, or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person'.
 - The reason given for the condition is: 'The Council would not be prepared to grant consent for the erection of a dwelling/siting of a caravan on this site, unconnected with the use of the adjoining land for agricultural or similar purposes'.
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Decision

1. The appeal is allowed and planning permission is granted for a dwelling at the Old Orchard, Haselor Lane, Charlton WR11 2QZ in accordance with the application Ref 17/02520/OUT made on the 20 December 2017 without complying with condition No 6 set out in planning permission Ref W/83/1345/O granted on 19 January 1984, subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Promap 1:2500 scale Location Plan.

Application for costs

2. An application for costs was made by Mr and Mrs Nick Brennan against Wychavon District Council. This application is the subject of a separate decision.

Main Issue

3. The main issue in the appeal is whether the proposal complies with policies for agricultural workers dwellings and, if not, whether there are any overriding material considerations.

Reasons

4. The appeal site comprises the property known as The Old Orchard, Haselor Lane, Charlton and its associated land. The appeal seeks the removal of an agricultural occupancy condition imposed on the original outline planning consent for the dwelling.
5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The South Worcestershire Development Plan is the development plan for the appeal site and the surrounding area.
6. Policy SWDP 2 sets out the development strategy and settlement hierarchy for the District, it seeks to direct new development to the most sustainable locations and seeks to restrict development in the countryside. The policy sets out that in the open countryside, development will be strictly controlled and will be limited to dwellings for rural workers, employment development in rural areas, rural exception sites, buildings for agriculture and forestry, replacement dwellings, house extensions, replacement buildings and renewable energy projects.
7. Therefore, based on the evidence before me, the removal of Condition No 6 would result in an open market dwelling in the open countryside. As such, the proposal would be in conflict with Policy SWDP 2 of the South Worcestershire Development Plan.
8. Notwithstanding this, the appellants have submitted a lawful development certificate (CLEUD) granted on appeal¹ in relation to the Old Orchard for the occupation of the dwelling without complying with Condition No 6. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. The certificate is unfettered and the benefits it provides would be transferable to subsequent occupiers. The appeal property could consequently be occupied in breach of condition No 6 by any non-qualifying person in perpetuity. As such, the fallback position advocated by the appellant is viable.
9. I have carefully considered the Council's representations and I accept that the potential future occupation of the Old Orchard by a qualifying person would have the effect of breaking the continuity of the breach, thereby reinstating the occupancy restrictions. However, based on the evidence before me I consider this to be highly unlikely and in reality no more than a theoretical possibility. Therefore, whilst Condition No 6 was necessary to achieve the purpose for which it was originally intended, the CLEUD has the effect of making it unenforceable for all practical purposes.
10. Therefore, I afford significant weight to the CLEUD (fallback position) and regard the ability to occupy the Old Orchard in breach of condition No 6 as a material consideration which would, in this specific circumstance clearly outweigh the harm I have identified. Consequently, it is no longer necessary or reasonable to continue to require the property to be occupied by qualifying persons.

¹ APP/H1840/X/17/3178558

Conditions and conclusion

11. The other 7 remaining conditions attached to the original permission related to the construction of the dwelling and have long since been carried out and therefore do not need to be reapplied. However, it is necessary for certainty, to define the location plan with which the scheme should accord.
12. For the reasons given above, and with regard to the development plan read as a whole, I conclude the appeal should be allowed.

Jameson Bridgwater
INSPECTOR