
Appeal Decision

Hearing Held on 29 August 2019

Site visit made on 29 August 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2019

Appeal Ref: APP/D0840/W/19/3220751

The Lawns Farmhouse, access to The Lawns Farmhouse, Cardinham, Bodmin PL22 0LW

- 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 F Clarke against the decision of Cornwall Council.
 - The application Ref PA18/08307, dated 29 August 2018, was refused by notice dated 8 November 2018.
 - The application sought planning permission for erection of agricultural dwelling house without complying with a condition attached to planning permission Ref 91/0337, dated 11 July 1991.
 - The condition in dispute is No 4 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 336(1) of the Town and Country Planning Act 1990, or in forestry or a dependent 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.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether condition 4 remains reasonable and necessary with regard to local and national planning policies for development in the countryside, with particular regard to whether a need exists for an agricultural worker's dwelling in this location.

Reasons

3. The appeal site relates to a 4-bedroom property constructed following the grant of planning permission 91/0337. The appeal property is accessed off a private lane with a stable block near it. The majority of the surrounding land comprises open agricultural fields with occasional properties and buildings associated with the dairy business to the west. The appellant considers that the disputed condition no longer serves any useful purpose, including due to changes to the farm holding, dairy business, agricultural employment levels, and affordability of the dwelling for agricultural workers.

4. The land associated with the wider holding extends to over 400 acres. It was stated that approximately two thirds of the land are currently let out on yearly contracts to several tenants. The appellant continues to farm the remaining land. I was told that many of the former agricultural buildings had been converted to use associated with the dairy business and that the land is generally used for arable farming and growing feed. The appellant confirmed that the dairy herd were sold in 2001. There have been changes to the size and management structures of the dairy business since a now lapsed permission was granted for an additional dwelling to be used as manager's accommodation in 2000 (00/00925/OUT).
5. While national and local planning policies have changed since the condition was imposed, the fundamental aim of controlling development in the countryside is essentially retained. No specific guidance is provided in the National Planning Policy Framework (Framework) or the Cornwall Local Plan Strategic Policies 2010-2030 (LP) on the removal of agricultural occupancy conditions.
6. Policy 1 of the LP sets out a presumption in favour of sustainable development. The spatial strategy for the area is provided in Policy 2 of the LP and Policy 3 sets out the role and function of places. These state that new development should provide a sustainable approach to accommodating growth, maintaining the dispersed development pattern of Cornwall and provide homes and jobs based on the role and function of each place. Strategic scale growth is to be accommodated in the main towns and city where they can best support regeneration and sustainable development. They also seek to maintain and respect the special character of Cornwall and assist the creation of resilient and cohesive communities. The appeal site is located outside of the main towns identified in the LP.
7. Policy 7 of the LP states, among other things, that new homes in the open countryside will only be permitted where there are special circumstances. This is to ensure that development occurs in the most sustainable locations. One of the exceptions is where there is an essential need for full time agricultural and forestry and other rural occupation workers to live in that specific location.
8. The site is within an Area of Great Landscape Value (AGLV). Policy 23 of the LP states that within AGLVs the primary objective is conservation and enhancement of their landscape quality and individual character.
9. The above policy approach is generally consistent with the Framework that advises that the intrinsic character and beauty of the countryside should be recognised. It is also consistent with the aim to avoid the development of isolated homes in the countryside unless certain circumstances apply, including where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
10. Paragraph 55 of the Framework states that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
11. At the Hearing the parties agreed that the dwelling is isolated in the context of paragraph 79 of the Framework and that a dwelling with unrestricted occupancy would be unlikely to be permitted at the appeal site under current policies. Given the primarily undeveloped nature of much of the nearby land

and the separation between the site to other buildings and dwellings I have reached the same finding. Therefore, having regard to relevant local and national policy, I consider that the removal of the condition, without justification, would result in a dwelling at odds with the prevailing policy context in terms of the location of the appeal property.

12. The appellant asserts that the use of the property for agricultural occupancy purposes does not serve a useful purpose. There have been changes to the shift pattern at the dairy business to ensure that the site is staffed 24-hours a day. There have also been changes to the monitoring culturing which do not require a manager or other employee to live on or near the site for the dairy business. I was told that there is no intention to alter the current arrangements which are partly dictated by British Retail Consortium standards. The appellant indicated that due to the current short term contracts and arable farming taking place, the land does not require a worker to reside at or near the site. Moreover, there are already dwellings on the land, including one subject to an agricultural occupancy condition.
13. However, the agricultural holding still extends to some 178ha and is of a size and scale which could potentially justify the agricultural need for the dwelling. Nonetheless, there is no cogent evidence before me regarding the day to day functioning of the agricultural operations. Similarly, there is scant information concerning the existing management practices. This is particularly the case for those letting the land. Details of their agricultural activities, how these may develop in the future and the number of employees involved are absent. Moreover, while it is not currently intended to do so, management practices could change in the future. Consequently, there is insufficient evidence before me to conclude that there is not an existing or future need for an agricultural worker's dwelling associated with the existing businesses or land.
14. The condition does not limit occupancy to any particular holding and so I must assess whether there is a need for an agricultural dwelling in the wider area.
15. In terms of the wider need, no specific details have been provided to indicate the level of existing stock of restricted properties in the area. It was suggested that the number employed locally and nationally in agriculture may have declined since the appeal property was built; although no specific details have been provided. The party's evidence of wider need focusses on the extent to which the property has been marketed.
16. The Council does not have any specific policies or guidance on the duration or marketing requirements for cases such as this. At the Hearing they confirmed that they are satisfied with the duration of the marketing, which has been for more than 2 years, as am I. However, for the reasons set out below, I am concerned that the overall marketing strategy in this case had deficiencies and has not fully tested the market for dwellings with such a restrictive occupancy condition.
17. Although the dwelling is subject to an occupancy condition, Mr Bartlett of the Property Shop confirmed that the marketing strategy had not been different to that of an open market property. The dwelling has been marketed in the estate agent offices and on various online property websites. While many people may now rely on online property searches, the appeal site is an agricultural property for which there will be a more limited and specific market. It appears that the websites used in the marketing undertaken are predominantly for general

residential property and there is no evidence that they have search categories specifically for tied dwellings.

18. Furthermore, the property has not been advertised in any specialist agricultural publications, whether online or in traditional format. It was suggested by the appellant and his representatives that there are relatively few agricultural dwellings advertised in such media and its readership is limited. Notwithstanding this, it seems to me that a more targeted advertising strategy, including in publications read by the farming community, would offer some potential as a resource to find another compliant occupier for the appeal property. Moreover, while there had been advertisements in the local press, these have not been frequent or throughout the time of marketing.
19. The Council considered that there are more suitable estate agents locally and highlighted a lack of similar properties being marketed by the chosen agent. Nevertheless, the Council were not able to provide details of similarly restricted properties marketed by any other agents for comparison or any other comprehensive evidence to substantiate their concerns. I was told that The Property Shop have 2 local offices and that they have considerable knowledge of the local housing market. This included having sold a property relatively close to the appeal site twice in the last 10 years, although this was of a different nature to the appeal property. I also heard that they have previously dealt with similarly priced properties as well as those with occupancy conditions.
20. There is little evidence that the estate agents themselves are unsuitable to market this type of property. Nonetheless, for the reasons set out above, the lack of bespoke targeted advertising has prevented the market being properly tested.
21. While the Council have suggested the sale price is excessive, it has not carried out any valuation of its own and agreed that the level of discount applied for the occupancy restriction, 30%, was appropriate. A list of properties from the surrounding area has been provided which they consider to be superior and marketed at a similar price. Nevertheless, at the Hearing the Council were not able to highlight any directly comparable properties and I have not been provided with the full details of these.
22. Mr Bartlett indicated that many of the examples provided were not comparable, having a more urban location. However, he had visited and provided a valuation for one property (Redlake). This was marketed for £475,000 and it was indicated that an offer had recently been accepted, although the agreed price was not known. He stated that while the appeal property was smaller than Redlake, it is in a better condition internally and required less work.
23. I was told that the appeal property has received numerous views on the websites on which it has been marketed and that there have also been further enquiries by phone. While it has been on the market for more than 2 years, I heard that there have been no offers on the property. Despite this, there have been no price reductions as the appellant considered the asking price to be fair.
24. In terms of the valuation and asking price, there is little firm evidence before me, such as comparable sales data of actual selling prices by either party. While there is no compelling evidence to indicate that the asking price is not

broadly acceptable, the lack of a price reduction means the market has not been tested at a lower level or with any apparent flexibility.

25. Additionally, while marketed for sale for more than 2 years, the property has not been marketed for rent at any stage. At the Hearing it was suggested that a rent would be in the region of £1,200-1,400 per month and that this would again be too high for an agricultural worker. Notwithstanding this, this avenue has not been explored. The rental market for agricultural dwellings represents an alternative source of future occupiers that has not been tested.
26. Furthermore, I acknowledge that the location and characteristics of the property results in a price that may be unaffordable for persons on the basic agricultural wage and the borrowing implications of the condition. Nevertheless, the condition allows for the occupier to be mainly or last employed in agriculture. Therefore, occupation could be by someone with other income sources available or a retired farmer.
27. Cases have been cited where occupancy conditions have been removed where a compliant purchaser has not been identified. Nonetheless, I have not been provided with full details of these schemes. Therefore, I cannot be sure that they represent a direct comparison to the one before me. In any case, as I have done here, each proposal should be assessed on its own merits.
28. In any event, the condition does not limit the occupancy of the property to the specific holding. It was agreed by parties at the hearing that there are no physical or practical constraints to suggest that the dwelling is unsuitable for the occupation by a person compliant with the condition.
29. Taking into account the above, there is insufficient substantive evidence before me to demonstrate that there is no realistic prospect of there being some need or demand for an agricultural workers dwelling at the holding and in the wider area. The potential market for the appeal dwelling as an agricultural or forestry worker's dwelling has not been sufficiently tested.
30. The property is already in place and there would be no additional impacts on the landscape appreciation. Moreover, I acknowledge that an occupier compliant with the condition may have similar travel patterns to those who would not. Nonetheless, in the absence of appropriate justification, the removal of condition 4 would be at odds with local and national planning policies for development in the countryside.
31. Consequently, for the reasons stated above, and in the absence of cogent evidence to the contrary, I consider that Condition 4 remains reasonable and necessary. The proposal would, therefore, be contrary to Policy 7 of the LP and the Framework, the relevant requirements of which are set out above.

Other Matters

32. I appreciate the appellants' desire to maximise their options for the future, that the removal of the condition would increase the value of the property as an asset to him and that there are different tax implications. However, personal circumstances can very seldom outweigh general planning considerations and in this case do not outweigh my findings in relation to the main issue above. Moreover, the dismissal of this appeal would not prevent another application being made to remove the condition, should relevant new evidence become available.

33. The removal of the condition would make the property available to the open market and I heard that it will become unoccupied in the near future. Nonetheless, while I acknowledge interest in the property from those not complying with the occupancy condition, the evidence before me does not suggest there is a lack of open market housing in the area.
34. While the presumption in favour of sustainable development as set out in paragraph 11 of the Framework is referred to, it has not been shown that the development plan is out of date and removal of the condition would conflict with the relevant plan policy.

Conclusion

35. For the reason given above, I conclude that condition 4 remains both necessary and reasonable. Therefore, the appeal should be dismissed.

Stuart Willis

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Bill Francis Clarke	Appellant
Francis Henry Clarke	Appellants' son
Chloe Pitt	Laurence Associates
Ritchie Bartlett	The Property Shop

FOR THE LOCAL PLANNING AUTHORITY:

James Holman (MRICS, MRTPI, FAAV)	Cornwall Council
Mark Evans	Cornwall Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Statement of Common Ground