



Appeal Decision

Hearing Held on 16 July 2019

Site visit made on 16 July 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2019

Appeal Ref: APP/X1118/W/19/3220575

Horwood Farm, Horwood, Bideford EX39 4PE

- 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 Mrs I Steer against the decision of North Devon District Council.
 - The application Ref 65170, dated 27 June 2018, was refused by notice dated 14 September 2018.
 - The application sought planning permission for a 'proposed farm bungalow and access' without complying with a condition attached to planning permission Ref 17822, dated 15 February 1973.
 - The condition in dispute is Condition (i) which states that: The dwelling hereby permitted shall be occupied only by persons employed or last employed locally in agriculture as defined by Section 290 of the Town and Country Planning Act, 1971, and the dependents of such persons as aforesaid.
 - The reason given for the condition is: To ensure the dwelling is occupied by persons connected with agriculture.
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Decision

1. The appeal is allowed and planning permission is granted for a farm bungalow and access at Horwood Farm, Horwood, Bideford EX39 4PE in accordance with the application Ref 65170, dated 27 June 2018, without compliance with the conditions previously imposed on the planning permission Ref 17822, dated 15 February 1973.

Preliminary Matters

2. Since the Council's determination of the application, the Council has adopted the North Devon and Torridge Local Plan 2011-2031 (the LP) in October 2018. At the hearing the Council confirmed that Policy HG11 of the Adopted North Devon Local Plan 1995-2011 (July 2006), referred to in its decision notice, has been superseded. Accordingly, I have not had regard to it in reaching my decision.
3. As the dwelling has been constructed, I have omitted the word 'proposed' in the description of development in the formal decision above.

Background and Main Issue

4. Planning permission was granted in 1973 for the erection of an agricultural worker's dwelling in connection with activities being carried out at Horwood Farm ('the original permission'). This was subject to a number of conditions

including one which limited the occupation of the dwelling to a person employed, or last employed, locally in agriculture (including any dependants of such a person) (the agricultural occupancy condition, hereafter the 'AOC').

5. The reason given by the Council for the condition is that permission was granted solely because the dwelling was required to house a person employed in agriculture. The site remains outside of a recognised development boundary and is therefore within open countryside for planning purposes. Policy DM28 of the LP supports provision of rural workers' dwellings in the countryside where an essential operational need for a full time worker to be resident at or near the place of work can be demonstrated, and subject to other criteria. The policy permits the removal of an occupancy condition only where there is compelling evidence to demonstrate that such a restriction is no longer justified.
6. The supporting text of the policy, at paragraph 13.156 of the LP, states that to demonstrate that the dwelling is no longer required to accommodate rural workers, the Council will expect applications for the removal of occupancy conditions to be supported by strong evidence demonstrating no demand for the property in the locality. Applicants will be expected to submit information to show that the dwelling has been marketed, at an appropriate price reflecting the occupancy restriction, for a period of at least 18 months and that there was no demand for the property over that period.
7. Paragraph 55 of the National Planning Policy Framework (the Framework)¹ advises that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
8. As such, the **main issue** is whether the disputed condition is reasonable and necessary, having regard to the evidence of need for rural workers' dwellings in the area.

Reasons

9. The appeal site comprises a large, four bedroom bungalow set back from the road with a detached garage and another outbuilding, and a residential garden to the side and rear. The site also comprises a field immediately to the rear and side of the dwelling measuring some 12 acres in total, including the grounds of the house.

Needs of the farming enterprise on the site

10. When constructed, the dwelling was connected with Horwood Farm, the farmyard and buildings of which are located immediately adjacent to the appeal site. This farm extended to some 140 acres. However, in 2008, the appellant sold all but the dwelling and the adjacent field, and the dwelling is no longer associated with the operations at Horwood Farm. In terms of the appeal site, the appellant argues that there is insufficient land and an absence of appropriate buildings for livestock to enable anyone to sustain an agricultural enterprise. It was explained that the site is too small for dairy farming. The appellant provided evidence of estimated earnings from the holding based on the maximum number of sheep which could be farmed, which would not be sufficient to earn a living from the operations. These figures were not specifically challenged by the Council.

¹ Published February 2019

11. At the hearing, the Council accepted that, were a new dwelling to be proposed on the site to accommodate a rural worker, it would be difficult to justify a need for one, based on the size of the site. However, the Council points to other potential operations, such as horticulture or use as a small holding, being possible on the site. However, nothing in evidence indicated there to be a likelihood of this taking place, or that even if it did, that it would be essential for a rural worker to be present on site all of the time so as to justify retention of the condition on that basis.
12. Moreover, I was not furnished with evidence of a need for a rural worker on the remaining Horwood Farm. Indeed, the fact that it has operated since 2008 without the benefit of the dwelling indicates that there is not an essential need for a rural worker to be there at all times. I also heard from the appellant evidence of the general decline in persons employed in agriculture due to factors such as increased mechanisation and consolidation of smaller farms into larger enterprises. Such general trends were not disputed by the Council.
13. I agree with the Council that it would be possible for someone to comply with the condition by occupying it and using the land for horticulture. However, there are no agricultural operations existing on the site generating a need for a rural worker to be present, and on the evidence I heard, it is very unlikely that a viable operation could be sustained on the site itself. Therefore, there is no substantive evidence that there is a need for rural workers to live on the site, or at the adjacent farm, and I am satisfied that the bungalow is therefore no longer required to provide such accommodation. As such, it is necessary to consider whether there is evidence of a wider demand for a rural worker's dwelling in the local area.

Marketing Exercise

14. The property, including the adjacent land, has been marketed with reference to the AOC, since March 2017, initially at £575,000, before being reduced to £525,000 in October 2017. There is no dispute between the parties that the price at which the property has been marketed is reasonable and takes sufficient account of the AOC in place.
15. The appellant's marketing evidence indicates that a range of actions were taken, including a window card in the Barnstaple office, online listings on national websites, email correspondence to 'matched' parties on the estate agent's database, and advertising in local newspapers. Despite the marketing exercise, only 7 viewings were generated by 6 parties, but no offers were forthcoming at the point the application was submitted.
16. It is common ground between the parties that the marketing campaign has been wide enough to expose the property sufficiently to the market, and I have no evidence to suggest otherwise. I am therefore satisfied that the length and type of marketing undertaken has been appropriate.

Whether local demand exists

17. Before the hearing, I requested the Council provide details of any recent applications in the local area for rural workers' dwellings, or applications to remove existing AOCs. Each of the five examples related to the removal on an AOC. Of these, one was due to the property now lying within a settlement boundary, two were cases where lawful development certificates had been

issued confirming conditions had been breached for more than 10 years, and in the two cases refused, appropriate marketing had not been undertaken. As such, these examples are of limited relevance to the present case. However, the Council did not provide any examples of applications for new agricultural workers' dwellings in the local area, or indications of numbers of applications. Though this is not itself conclusive, it is suggestive that there is not significant unfulfilled demand for agricultural workers' accommodation in the locality.

18. Moreover, I heard evidence that, at the asking price, the property would be beyond the financial means of most agricultural workers, the average earnings of which were said to be around £18,000 per annum. The Council accepted that the asking price was high for the target market of agricultural workers. Although the property was not marketed for rent, the appellant pointed to potential rental rates being prohibitive for agricultural workers. Given the lack of marketing for rent has not been raised as an issue by the Council, this seems to me an acknowledgement of a lack of potential tenants seeking a property in the area.
19. An offer was made in July 2018, during the application, to purchase the property at the asking price of £525,000 from a couple who indicated that they intended to 'resume sheep farming as our occupation.' The Council regard the offer as genuine and evidence of a demand for a rural worker's dwelling.
20. It was explained to me that the estate agent queried the potential purchasers over their ability to comply with the AOC as the discounted sale price can invite speculative offers from parties seeking to remove the condition and sell the property at a higher price. It was revealed that the prospective purchasers were not employed in agriculture at the time and did not own any livestock, raising doubt for the appellant that they could comply with the AOC. I heard the offer was not accepted and no subsequent dialogue has taken place to suggest this party retains an interest in purchasing the property. The appellant considers this demonstrates the offer was not genuine and should not be considered to have interrupted the marketing period.
21. Whilst the Council considers the appellant's concerns speculative and that there was no evidence the purchasers would not follow through with their intentions, I understand the concerns of the appellant with taking the prospective purchasers at their word, and in my view, the seeking of assurances from the potential purchasers as to their ability to comply with the AOC was a reasonable course of action to protect the vendor's interests, given the potential financial consequences, and the evidence presented which suggested the difficulty in making a living from the land.
22. Given the prospective purchasers' responses to the estate agent's questions did not offer any significant detail on how they would make a living in agriculture, their subsequent lack of correspondence in the intervening months between their offer and the hearing, and the fact that negotiations had not progressed further, it is my view that this was not a genuine offer and does not satisfactorily evidence demand for a rural worker's dwelling in the local area.
23. Moreover, the Council's view that following this offer the marketing period should be restarted for another 18 months is, to my mind, an onerous requirement which would effectively disregard the previous 16 months where no genuine offers were forthcoming. Taken with the subsequent period of almost 12 months between the offer in July 2018 and the hearing in July 2019,

within which no other offers of any substance have been made, I am satisfied that the appellant has demonstrated that there is no local demand for the property as a rural worker's dwelling.

24. In coming to a view, I have also had regard to the appeal decision² submitted in evidence by the appellant at the hearing. This decision related to a proposal to remove an AOC at a property in the neighbouring district of Torridge. Though on its face, the proposal appears to have similarities with the appeal before me, I am not furnished with the full particulars of this case, and the decision suggests there are evident differences in terms of the location, asking price and the appellant's circumstances. Accordingly, I ascribe limited weight to this decision and have considered the appeal on its own merits.

Conclusions on main issue

25. In the absence of the AOC, the appeal site would be an isolated dwelling in the countryside, which Policy ST07 of the LP normally seeks to strictly control, in line with Paragraph 79 of the Framework. However, Policy DM28 represents an exception to this general approach as it expressly provides for both the provision of rural workers' dwellings in the countywide and allows for AOCs to be removed where this can be justified. It follows from the foregoing reasons that I find the requirements of Policy DM28 of the LP have been satisfied and the removal of the condition would not result in the loss of a property for which there is an essential need for people working in agriculture. As such, the proposal would accord with the development plan taken as a whole.

Planning Conditions

26. In addition to the disputed condition, a number of other planning conditions were imposed on the original permission. However, in view of their nature and the time lapse since they were imposed, I concur with the Council that it is not necessary to re-impose them in the present circumstances.

Conclusion

27. For the reasons set out above, and having had regard to all other matters raised, I conclude the condition restricting occupancy of the appeal site is no longer reasonable or necessary to meet an essential need for a rural worker to live at or near their place of work.
28. The appeal is therefore allowed.

K. Savage

INSPECTOR

² APP/W1145/W/17/3168619

APPEARANCES

FOR THE APPELLANT:

Alaister King-Smith

Stags Planning Services

Lydia Cox

Stags Planning Services

FOR THE LOCAL PLANNING AUTHORITY:

Roger Bagley

North Devon District Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Policy ST07 of North Devon & Torridge Local Plan (2011-2013)
2. Copies of 5 no. decisions of North Devon District Council related to removal of agricultural occupancy conditions
3. Copy of appeal decision – APP/W1145/W/17/3168619
4. Screenshot of estate agent's records relating to the offer to purchase Horwood Farm
5. Copy of Site Location Plan

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Copy of Policies Map 54 – Lower Lovacott
2. Copy of Policies Map 55 – Newton Tracey