



Appeal Decision

Site visit made on 18 September 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/D0121/W/19/3228060

Glen Farm, Sandy Lane, Lower Failand BS8 3SE

- 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 Brinkgreen Ltd against the decision of North Somerset Council.
 - The application Ref 18/P/4984/FUL, dated 28 November 2018, was refused by notice dated 23 January 2019.
 - The application sought planning permission for demolition and removal of agricultural buildings and change of use of redundant farm buildings to form a dwelling with garaging at Glen Farm, Sandy Lane, Abbots Leigh without complying with a condition attached to planning permission Ref 1361/91, dated 11 October 1991.
 - The condition in dispute is No 4 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 of the Town and Country Planning Act 1990, or in forestry, or a dependant of such a person residing with him or her, or a widow or widower of such a person.
 - The reason given for the condition is: But for the special needs of local agriculture or forestry, the policy of the District Planning Authority would be to refuse permission for this dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition should be removed, having regard to the provisions of the development plan and other material considerations.

Reasons

3. Policy DM46 of the Development Management Policies, Sites and Policies Plan Part 1 (2016) relates to rural workers dwellings. The aim of the policy is to restrict isolated residential development in the countryside unless there are special circumstances such as essential rural workers dwellings. Based on the evidence before me, the removal of the condition would result in a direct conflict with the development plan as it would result in an open market dwelling in the countryside. In this respect, the condition remains necessary, and consequently, this weighs heavily against the appeal.
4. However, the appellant does not seek to contest the requirements of the policy. Instead, their case rests on the length of time that the appeal site has been occupied in breach of condition 4. The appeal has been accompanied by a

statutory declaration which states that the dwelling was occupied contrary to the requirements of the condition from 1997 until 2017. The Council does not dispute this declaration and as a consequence, the appellant considers that the condition is no longer enforceable due to the longstanding breach that they have identified.

5. However, the dwelling is currently unoccupied, and this situation has existed for a length of time that is not insignificant. Consequently, despite the previous length of occupation in breach of the condition, it is a breach that has now ceased. In addition, a recently submitted lawful development certificate was refused by the Council because the property was vacant and therefore the use for which lawfulness was sought, was not ongoing.
6. The appeal has been accompanied by a number of appeal decisions which all relate to the enforceability or otherwise of similar conditions for the same reasons advanced by the appellant. Whilst these relate to different Councils, from the evidence before me, the aims of the contested conditions were all broadly the same. However, the decisions that are before me all relate to cases whereby lawful development certificates had been granted to establish an alternative lawful use, thereby restricting the ability to enforce against the relevant conditions. Consequently, these certificates represented material considerations of substantial weight in the assessment of the appeals. Nevertheless, such a scenario does not present itself in this appeal. I am therefore satisfied that the appeals are materially different in their nature.
7. The use of the site by the appellant in breach of the condition may not have been abandoned and the appellant may reoccupy the site in the same manner should they choose to. In addition, the property value with an agricultural tie would be most probably less than if it were an open market dwelling and this difference in value could affect future occupation. However, as identified above, the use of the property in breach of the condition has ceased and no alternative lawful use has been established. Consequently, however the property is next occupied, in my view there is no compelling evidence before me to suggest that the condition could not be enforced against if necessary.
8. Consequently, having regard to the provisions of the development plan and other material considerations, I conclude that the condition should not be removed.

Conclusion

9. The condition fulfils a necessary planning function and for the reasons identified above, I am satisfied that it could still be enforced against. In addition, it accords with the other tests for the imposition of conditions as set out within the National Planning Policy Framework. Accordingly, the appeal is dismissed.

Martin Chandler

INSPECTOR