



Appeal Decision

Hearing Held on 26 September 2019

Site visit made on 26 September 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/Y1138/W/19/3229011

Foxlea, Road from Burn Bridge to Chilton Gate Cross, Cadeleigh EX16 8RU

- 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 M Boxall against the decision of Mid Devon District Council.
 - The application Ref 18/01785/FULL, dated 19 October 2018, was refused by notice dated 8 February 2019.
 - The application sought planning permission for erection of an agricultural bungalow and garage without complying with a condition attached to planning permission Ref 84/000308/FULL, dated 23 February 1984.
 - The condition in dispute is (b) 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 (including any dependents 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: *'To ensure that the dwelling is reserved for persons connected with agriculture or forestry, as the site is located in open country where residential development would not normally otherwise be permitted'.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the determination of the planning application, the National Planning Policy Framework (the Framework) has been updated. References to the Framework within this decision relate to the latest version published on 19 February 2019.

Main Issue

3. The main issue is whether the condition restricting the occupancy of the dwelling to agricultural workers is necessary and reasonable, having regard to local and national planning policies which seek to restrict housing development in the countryside.

Reasons

4. Located within an area of rural character, the appeal site comprises a bungalow, known as Foxlea, which was constructed following the grant of planning permission in 1984, subject to a condition restricting the occupation of the dwelling to persons employed locally in agriculture or forestry. Despite its

proximity to a very limited number of mainly farm buildings, the property is physically separate and remote from the nearest settlement. It therefore lies within a location where residential development would not normally be permitted. Indeed, and taking into account the location of the site, I consider that the appeal property represents an isolated home in the countryside for the purposes of paragraph 79 of the Framework.

5. Whilst national and local planning policies have evolved since the imposition of the disputed condition, the fundamental aim of controlling development within the countryside remains. This is further emphasised by Policy COR18 of the Mid Devon Local Development Framework Core Strategy 2026¹ (CS) and paragraph 79 of the Framework, which only permits development in the countryside in restrictive circumstances, including housing essential to accommodate an agricultural/ forestry/ rural worker.
6. On this basis, the erection of a dwelling with unrestricted occupancy would be unlikely to be considered acceptable on the appeal site now. By enabling an open market dwelling in the countryside, the removal of the disputed condition would consequently appear at odds with the prevailing planning policy context, both at national and local levels, if it was not appropriately justified. Having regard to the location of the appeal site, condition (b) therefore remains reasonable and necessary.
7. In July 2017, the Council issued a Certificate of Lawful Use² (CLU), which confirmed that the dwelling had been continuously occupied by persons not employed in agriculture or forestry for more than 10 years, in breach of condition (b) of the 1984 permission. This prevents the agricultural occupancy condition from being enforced, unless and until there is a further breach of planning control, or some other material change in circumstances occurs. Therefore, the condition remains in force and could be enforced against, if it was being occupied by an agricultural or forestry worker in the future.
8. The appellant explained at the hearing that he previously intended to operate an agricultural business, but this was not considered to constitute a viable proposition, by reason of the size of the agricultural land associated with the dwelling and the level of investments required. I accept that no agricultural activities have taken place on the land owned by the appellant for more than 10 years, and that there may no longer be an operational need for the dwelling to be retained to meet the needs of this particular holding. Nevertheless, the disputed condition does not limit the occupancy of the dwelling to a specific holding and therefore, the need for agricultural dwellings in the wider area must also be considered.
9. In accordance with Policy DM10 of the Local Plan Part 3 - Development Management Policies³ (LP), which supports the provision of rural workers dwellings, subject to a number of criteria, the removal of agricultural occupancy conditions will only be permitted where there is clear evidence that there is no need for such conditions to remain in place. Paragraph 2.5 of Policy DM10 of the LP indicates that this would need to be demonstrated by evidence of marketing at an appropriate price for a period of at least 18 months and an assessment of the demand for rural dwellings in the area.

¹ Adopted July 2007.

² Local Planning Authority Reference 17/00822/CLU.

³ Adopted October 2013.

10. At the hearing, the estate agent confirmed that he was asked to provide a valuation of Foxlea, based on the existence and/or absence of a condition restricting the occupation of the property to an agricultural or forestry worker. The appeal premises have not however been subject to any marketing. The Council relies on the number of agricultural workers dwellings which have notably been approved within the last 5 years to conclude that there is an ongoing requirement for this particular type of accommodation in the local area. On the other hand, no assessment seeking to demonstrate the absence or limited demand for rural workers dwellings in the area has been submitted to counter the argument advanced by the Council.
11. The estate agent accepted that the existence of such a condition and/or CLU may have a slight effect on the saleability of properties, but in his experience, these considerations have no significant material impact upon the open market sale price of the property. This was illustrated at the hearing by the estate agent's references to a number of properties located in Devon, the majority of which appear to have been sold despite being tied to an agricultural occupancy condition. Whilst I have considered the information submitted in that regard, the circumstances of these properties are inevitably different and do not represent a direct parallel to the appeal site, particularly as it has not been subject to any marketing.
12. I note that the appeal property has been valued at a potential sale price in the region of £750,000, taking account of the existing CLU. The appellant argues that the sale of the property would not require any significant reduction in price despite the existence of an agricultural occupancy condition and that consequently, it would not be accessible to an agricultural worker. For these reasons, a marketing exercise is seen by the appellant as irrelevant. He also considers that the condition does not pass the 6 tests as referred to in paragraph 55 of the Framework. The discount required to reflect the agricultural occupancy condition was discussed, and the estate agent confirmed that a 10-15% discount was considered to be appropriate.
13. Nevertheless, these considerations all remain theoretical, unless the potential market for Foxlea as an agricultural or forestry worker's dwelling and at an appropriate price is tested. Setting the valuation price aside, the submitted evidence does not lead me to conclude that there is no realistic prospect of being a need or demand for agricultural dwellings in the area, particularly in the absence of any marketing exercise and at a price that reflects the agricultural occupancy condition.
14. I have had regard to appeal decisions APP/E6840/A/15/3124713 and APP/Y1138/W/18/3192972. In respect of the first decision, I note that the Inspector was provided with marketing evidence and, on this basis, was satisfied that there was 'no demand for this property from a rural enterprise worker'. The second decision was dismissed despite the existence of a CLU, and the Inspector's approach is similar to the one I have taken with this appeal. I would add, however, that I have determined this appeal on its individual planning merits.
15. For the above reasons, I find that the evidence before me is inconclusive to demonstrate with any certainty that there is no need for an agricultural or forestry worker's dwelling in the locality. In the absence of a condition restricting the occupation of the dwelling to agricultural or forestry workers, I

conclude that the development would fail to accord with the countryside protection aims of LP Policy DM10, CS Policy COR18 and paragraph 79 of the Framework. Hence, condition (b) of planning permission Ref No 84/000308 continues to be necessary and reasonable and indeed passes all of the six tests as stated in paragraph 55 of the Framework.

Conclusion

16. For the reasons detailed above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mike Boxall	Appellant
John Clarke	XL Planning
Hannah Cameron	XL Planning
Naomi Jackson	XL Planning
Graeme Biffen MRICS FAAV	Greenslade Taylor Hunt

FOR THE LOCAL PLANNING AUTHORITY:

Lucy Hodgson	Mid Devon District Council
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DOCUMENTS SUBMITTED AT THE HEARING

- 1 Best Price Guide of comparable properties with 0.5 miles of EX16 7AE, marketed between 26 June 2015 and 27 December 2016
- 2 Best Price Guide of comparable properties with 3 miles of EX17 4RW, marketed between 26 June 2018 and 27 September 2019
- 3 Sales Particulars of properties marketed by Greenslade Taylor Hunt
- 4 Sales Particulars of properties marketed by other estate agents, as advertised on www.rightmove.co.uk