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## Appeal Decision

Hearing Held on 22 October 2019

Site visit made on 22 October 2019

**by M Bale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 October 2019**

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**Appeal Ref: APP/D0840/W/19/3229734**

**Sea Breezes, Road from Mawgan Porth Hill to Mawgan Porth Holiday Park, Mawgan Porth, Newquay TR8 4BG**

- 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 Richard Rawlings against the decision of Cornwall Council.
  - The application Ref PA19/00212, dated 10 January 2019, was refused by notice dated 20 March 2019.
  - The application sought planning permission for the erection of farmhouse and garage without complying with a condition attached to planning permission Ref 89/13/01541/F, dated 25 October 1989.
  - The condition in dispute is No. 3 which states that: the occupation of the dwelling hereby permitted shall be limited to a person wholly or mainly employed or last so employed, in agriculture (as defined by Section 290(1) of the Town and Country Planning Act 1971), or in forestry or a dependant 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.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of farmhouse and garage at Sea Breezes, Road from Mawgan Porth Hill to Mawgan Porth Holiday Park, Mawgan Porth, Newquay TR8 4BG in accordance with the application Ref PA19/00212, dated 10 January 2019, without compliance with the conditions previously imposed on planning permission Ref 89/13/01541/F, dated 25 October 1989.

### Main Issue

2. Whether the disputed condition is necessary, with particular regard to the need for an agricultural worker's dwelling in the location of the appeal site.

### Reasons

3. Sea Breezes was originally permitted as an agricultural worker's dwelling, although over the years the land holding associated with the dwelling has reduced in size. There is no dispute that there is now insufficient land at the holding to generate a functional need for a dwelling at the site, or to create a viable agricultural enterprise.

4. The site is in a countryside location where an unrestricted dwelling would not ordinarily be permitted under Policy 7 of the Cornwall Local Plan 2010-2030 or the National Planning Policy Framework (the Framework). However, the proposal is not to erect a new dwelling and this appeal will turn on whether there is a continuing need for the disputed condition.
5. At the present time, the dwelling is fulfilling the accommodation needs of the appellant as a retired farm worker, but for personal reasons he would like to leave the property. Although no longer part of Government policy, the parties agree that guidance in former Planning Policy Statement 7, Annex A which related to agricultural, forestry and other occupational dwellings, remains relevant. This included advice<sup>1</sup> indicating that dwellings should not be kept vacant or occupiers unnecessarily obliged to remain simply by virtue of occupancy conditions which have outlived their usefulness.
6. There have been a number of applications for agricultural workers dwellings in the area around the appeal site in the last 5 years. However, at the hearing, the Council did not dispute the appellant's assertion that in each of those cases, the Council's Land Agent had concluded that the need justifying those dwellings arose at the particular site and could not be met by other dwellings in the locality. Therefore, whilst these other applications may demonstrate a need for agricultural dwellings generally, and even if the term locality was drawn widely, I find that Sea Breezes is unlikely to fulfil a specific functional need to accommodate a worker, should it arise on another farm.
7. The dwelling could be occupied by a worker employed in agriculture but where there was not a need for them to be resident on a particular farm holding. However, there is no dispute that the value of Sea Breezes, which has been extended over the years and now includes an indoor swimming pool, is so high that it would be unaffordable to a worker on an agricultural wage unless they had substantial savings or had inherited a large sum of money.
8. The appellant's verbal evidence that there were numerous other 3 bedroomed properties within a small radius of the appeal site that were significantly cheaper and so more affordable to an agricultural worker was not disputed by the Council. Whilst agricultural workers may have access to restricted properties and so need not necessarily look to the unrestricted open market, there is no clear reason that they would not do so if suitable, more affordable dwellings were available there.
9. The dwelling could also be occupied by a retired farm worker and such could allow that worker to vacate another property elsewhere. At the hearing, the Council suggested that one of the purposes of an agricultural occupancy condition was to assist the agricultural community. Given the often low wages in the agricultural sector, I can see that having a pool of dwellings where restrictive conditions act to suppress property values could enable some retired farm workers to purchase dwellings when they may not otherwise be able to do so on the open market.
10. However, as with those employed in agriculture now, given its undisputed high value, even encumbered by the occupancy condition, Sea Breezes would only be available to retired farm workers with significant additional funds. Those able to purchase a property at such a value would have access to a substantial

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<sup>1</sup> At paragraph 17.

number of other properties within the housing market and so would be unlikely to be precluded from securing a dwelling.

11. I appreciate that property prices in the area are high and that the value of a restricted dwelling would be relative. However, the evidence does not suggest that cheaper or comparably valued properties are not available. In that regard, the condition would only serve to allow a farm worker access to a wider housing market, rather than assisting the agricultural community in accessing the housing market generally. This may be attractive to parts of the agricultural worker's community, but it is not necessary to meet their needs.
12. Notwithstanding the above, the main area of dispute between the parties is whether it is necessary to market the property. Marketing has not taken place. The Council directed me to a number of appeal decisions where it has been found that marketing is essential to establish whether a need exists.
13. In cases at Hay Nurseries<sup>2</sup> and Colrose<sup>3</sup>, Inspector's concluded that without marketing it was not possible to demonstrate that the restrictive conditions were not necessary. Whilst it had been suggested in the Colrose case that the value of the property was beyond the reach of an agricultural worker, it was found this could only properly be tested through marketing.
14. However, I note that the dwellings at both Hay Nurseries and Colrose were smaller and less than half the anticipated value of Sea Breezes. Whilst they may be in lower value housing market areas, they would not be so far in excess of that which an agricultural worker may be able to afford as the appeal property. I can, therefore, appreciate that a marketing exercise may reveal an unmet need in those cases.
15. It may well be that a test of whether Sea Breezes is truly beyond the means of an agricultural worker can similarly only be tested by marketing. However, in the present case, the condition does not moderate the price to that which would put it below other potentially suitable properties in the area such that it may be needed to ensure the availability of housing to agricultural workers.
16. In a more recent case at The Lawns Farmhouse<sup>4</sup> marketing had taken place, but it was found that the marketing exercise was inadequate to have satisfactorily found that there was no demand. Although higher in value than Hay Nurseries and Colrose, it was still anticipated to be below that of Sea Breezes. Moreover, the Inspector at The Lawns Farmhouse also found that, whilst the appellant's business activities at the site had moved away from livestock towards a dairy business, a significant land holding remained associated with The Lawns Farmhouse such that the need for a dwelling at the site in the future could not be ruled out. The overall situation at The Lawns would, therefore, appear to be very different to the present case.
17. There are other cases<sup>5</sup>, referred to by the appellant, when marketing was found not to be required. Such an approach is not unprecedented, therefore, where the particular evidence and circumstances of the case dictate.

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<sup>2</sup> APP/D0840/W/16/3153920

<sup>3</sup> APP/D0840/W/16/3155923

<sup>4</sup> APP/D0840/W/19/3220751

<sup>5</sup> Such as APP/X2410/W/16/3143751, APP/D0840/A/12/2168539, APP/D3315/C/14/2218684 & 2218685

18. In the present case, two estate agents<sup>6</sup> have suggested that selling agriculturally restricted dwellings is problematic as the demand is low. However, whilst those employed in agriculture are a small percentage of the overall population, there are still a sizeable number in the area. Accordingly, as the estate agents have not ruled out the possibility of finding a purchaser, I can accept that a rigorous marketing exercise could root out some demand in the market and that marketing may be the only robust way to thoroughly test such demand.
19. However, even if a purchaser could be found, the particular circumstances of this case where the high value of the property means that somebody with the ability to purchase it also has access to the wider open market, mean that the condition no longer serves a useful purpose in providing access to housing for the agricultural worker's community. Nor is there any compelling evidence that it would serve another useful purpose.
20. I acknowledge that some of the arguments presented could be repeated elsewhere. However, given that I have been presented with earlier decisions where marketing has and has not been deemed necessary, I am satisfied that each case is dependent on the specific circumstances at play. Even if the condition were to be amended to allow occupation by other, non-agricultural, rural workers that may be permissible under current local and national policy, there is no substantive evidence that this would lead me to a different conclusion.

### **Other conditions**

21. At the hearing, the Council confirmed that the other conditions previously imposed on planning permission ref 89/13/01541/F had outlived their useful purpose. There was some debate about whether condition No. 4 that required the grey roof covering to be retained in perpetuity should be re-imposed, particularly given the site's location within an Area of Great Landscape Value. However, at the site visit I noted that the appeal site is located close to a number of other buildings, including a mobile home site where structures have a variety of roof coverings. Therefore, I find that no demonstrable harm would arise if this condition were not re-imposed.

### **Conclusion**

22. For the reasons given above, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition or the other conditions imposed on the original permission.

*M Bale*

INSPECTOR

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<sup>6</sup> Letters from Lodge & Thomas and Jefferys appended to WM Bunt (3 January 2019) Report In Relation to an Application for Removal of the Agricultural Occupancy Condition: Sea Breezes, Mawgan Porth, Newquay, Cornwall TR8 4BG (Ref WMB/JEH)

## **APPEARANCES**

### **FOR THE APPELLANT:**

Christopher Tofts – Solicitor (Stephens Scown)  
Mark Bunt – Chartered Surveyor (Kivells)  
Richard Rawlings

### **FOR THE LOCAL PLANNING AUTHORITY:**

Jack Bromley – Development Officer  
James Holman MRICS MRTPI FAAV – Principle Development Officer

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Signed Statement of Common Ground
- 2 Summary of appeal decisions re: marketing, prepared by Christopher Tofts.