The Planning Inspectorate

Appeal Decision

Hearing Held on 1 October 2019
Site visit made on 1 October 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/M9496/W/19/3233160
Back Tor, Mill Lane, Stoney Middleton S32 4TS

- 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 Jack Simpson against the decision of Peak District National Park Authority.
- The application Ref NP/DDD/0119/0047, dated 15 January 2019, was refused by notice dated 5 March 2019.
- The application sought planning permission to erect a dwelling without complying with a condition attached to planning permission Ref NP/BAR/673/40, dated 4 September 1973.
- The condition in dispute is No 5 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, or in forestry (including any dependents of such a person residing with him), or a widow or widower of such a person*.
- The reason given for the condition is: *Because of the location of the site which is away from the established settlement of the area and from the services and facilities which they have to offer, the local planning authority do not consider that the site would be acceptable for residential development in the absence of an essential agricultural need*.

Decision

1. The appeal is allowed and planning permission is granted to erect a dwelling at Back Tor, Mill Lane, Stoney Middleton S32 4TS in accordance with the application Ref NP/DDD/0119/0047, dated 15 January 2019 without compliance with the conditions previously imposed on the planning permission Ref NP/BAR/673/40 granted on 4 September 1973 by Bakewell Rural District Council under powers delegated to them by the Peak Park Planning Board.

Background and Main Issue

2. Planning permission for the erection of a dwelling at the appeal site was granted in 1973, subject to a number of conditions. Condition 5 restricted the occupancy of the dwelling to a person solely, mainly or previously employed in agriculture.

3. The dwelling has been constructed and occupied. In 2014, a Certificate of Lawful Use or Development (CLUD) was granted by the Authority[1] for its use as a dwellinghouse without complying with Condition 5, on the grounds that the

[1] LPA Ref NP/DDD/1014/1066

dwelling had been occupied without complying with Condition 5 since 21 October 1994.

4. The dwelling and some associated land and agricultural buildings was then sold to the appellant in 2015, in the knowledge that the aforementioned CLUD had been granted; the dwelling has been occupied in continuing breach of Condition 5 since this time.

5. In 2019 the Authority refused planning permission for the removal of Condition 5 because they considered that this would create an unrestricted market house in an unsustainable location in open countryside. The Authority stated that insufficient justification had been provided that the need for an occupancy-restricted dwelling in the locality no longer existed, or that reasonable attempts had been made to allow the dwelling to be occupied by a person in compliance with Condition 5.

6. Since this refusal, the Authority adopted the Development Management Policies Document (DMPD) in May 2019[2]. The Authority considers that policies in this document replace policies listed on its decision notice from the Local Plan (LP), which was adopted in March 2001.

7. The main issue in these circumstances is whether Condition 5 meets the six tests for planning conditions[3] contained in the National Planning Policy Framework 2019 (the Framework).

Reasons

8. There is no dispute between the parties that at the time the original planning permission was granted in 1973, Condition 5 would have met the six tests contained in the Framework.

9. However, at the present time, the dwelling is occupied in accordance with the aforementioned CLUD. Consequently, whilst the condition remains relevant to planning and to the development originally permitted, and is also precise in terms of its intention, it is not disputed that it is currently immune from enforcement action.

10. At the time that planning permission was refused by the Authority, Policy LH3 (replacement of agricultural occupancy conditions) of the LP was extant and directly addressed the circumstances where the removal of a restrictive condition, such as Condition 5, would be considered acceptable.

11. However, Policy LH3 of the LP is no longer extant following the adoption of the DMPD in May 2019. The Authority states that Policy DMH11 (Section 106 agreements) of the DMPD, replaces Policy LH3 on the basis of its intended outcome / aspiration[4]. Reference is made to paragraphs 6.78 and 6.129 of the supporting text of the DMPD, which refer to both conditions and s106 legal agreements, to support this position.

12. The wording of part E of Policy DMH11 is similar to the wording of part a) of Policy LH3. However, whilst Policy LH3 a) refers to both a 'condition' and an

[2] A copy of the Adoption Statement for the DMPD was provided by the Authority following discussions at the Hearing.
[3] Necessary; Relevant to Planning; Relevant to the development permitted; Enforceable; Precise and Reasonable in all other respects.
[4] *Section 106 Agreements* relates to planning obligations under s106 of the Town and Country Planning Act 1990.

'obligation', there is no mention of a 'condition' or 'conditions' anywhere in Policy DMH11 E), which only deals with the removal of s106 agreements.

13. It may have been the intention of the Authority for Policy DMH11 E) to deal with occupancy restrictions from both conditions and s106 agreements / planning obligations, in a similar manner to Policy LH3 a). However, conditions and s106 agreements are distinct from each other, which is recognised by the Authority in the separate references in paragraphs 6.78 and 6.129 of the supporting text of the DMPD. Policy DMH11 E) manifestly does not address the removal of restrictive planning conditions. It is not, therefore, relevant to this appeal and the specified requirements of Policy DMH11 E)[5] do not apply in this case.

14. The Authority also refers to Policy DMH11 D), which concerns the temporary release of an occupancy restriction conferred by a legal agreement. No such legal agreement exists in this case and the requirements of Policy DMH11 D) are also self-evidently not relevant to this appeal.

15. The Authority has a legal duty to conserve and enhance the landscape character of the National Park. In this area, agriculture makes a significant contribution to the landscape character. Appropriate housing in the countryside that is essential for agricultural workers can, therefore, help to conserve and enhance the landscape of the National Park.

16. Paragraphs 6.78 and 6.129 of the DMPD support the provision and retention of housing for essential workers in ways that conserve and enhance the National Park and reduce pressure for new development, using conditions and s106 agreements. If a restricted occupancy condition (or s106 agreement) were to be lifted and a need for further essential worker accommodation were to re-appear, it would *place avoidable and unnecessary stress on National Park landscapes*[6].

17. However, in this case, the CLUD and the continuing breach of the condition at the appeal dwelling means that such stress could arise now or in the future, regardless of whether the condition is removed.

18. Paragraphs 6.78 and 6.129 of the DMPD do not, therefore, relate to the particular circumstances of this appeal, where a CLUD for an unrestricted house has been granted and the use remains lawful. Accordingly, they are not directly relevant to the determination of the appeal and I give them very limited weight.

19. The Authority maintains that the dwelling remains suitable for an agricultural worker and could be occupied in such a way in the future and I would agree. In these circumstances, or should the dwelling be left vacant for a significant period of time, the lawful use of the dwelling would revert back to what it was with the original grant of planning permission and the condition would again meet the six tests.

20. However, a planning condition which restricts the occupancy of a dwelling to an agricultural worker, as the appeal condition does, would normally result in a reduction in the market value of the dwelling by some 30-35%. When the appeal dwelling was purchased by the appellant in 2015, no such reduction was

[5] (i) reasonable attempts have been made to allow the dwelling to be used by a person who could occupy it in accordance with the restriction; and (ii) the long-term need for the dwelling in the locality has ceased and a temporary relaxation therefore serves no purpose.
[6] Paragraph 6.78, supporting text to Policy DMH4 of the DMPD.

made given the existence of the CLUD and the dwelling was purchased at market price.

21. Therefore, were the appellant to sell the property at such a discounted rate in order to potentially attract an occupier who would comply with Condition 5, notwithstanding any normal variations in property prices, they would incur a significant loss relative to the price that they paid. It is unlikely that the appellant would choose to sell the dwelling in this way in these circumstances.

22. In any event, whilst it may be possible that the appeal dwelling could be occupied in the future by a person who complied with Condition 5, or that the appeal dwelling could be left vacant for a significant period of time, thereby extinguishing the CLUD, these situations are both hypothetical. They may not take place for a considerable period of time and may not take place at all.

23. At present, the appeal condition has no function with regard to the existing lawful use of the dwelling and is currently immune from enforcement action.

24. In these circumstances, whilst a case could be made that Condition 5 may become necessary and enforceable at some point in the future, it is not currently so and may never be. Consequently, it is also not reasonable for the condition to be maintained.

25. For these reasons Condition 5 is not necessary, enforceable or reasonable and so does not meet three of the six tests for planning conditions contained in the Framework. As such its removal would be acceptable.

Other Matters

26. The Authority refers to Policies DS1 (development strategy), HC1 (new housing) and HC2 (housing for key workers in agriculture, forestry or other rural enterprises) of the Core Strategy Development Plan Document 2011 (CSDPD) and DMH4 (essential worker dwellings) contained in the DMPD, which concern new housing / development in the National Park. Paragraph 79 of the Framework also concerns new housing in the countryside and is referenced by the Authority. However, given that no new housing development would be provided as a result of the appeal proposal, these policies are not relevant to its determination.

Conditions and Conclusion

27. In the event that the appeal were to be allowed the Authority has not suggested any conditions be attached to a grant of planning permission. In light of Government guidance and given the dwelling has been constructed, conditions 1, 2, 3 and 4 attached to the original grant of planning permission would not be necessary or reasonable. No other conditions would be needed to make the development acceptable in Planning terms.

28. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is allowed.

Andrew Parkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Caroline McIntyre	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Steven Wigglesworth MRTPI	Planning Officer, Peak District National Park Authority
Jane Newman	Head of Development Management, Peak District National Park Authority

DOCUMENTS SUBMITTED WHILE THE HEARING SAT

None.

DOCUMENTS SUBMITTED AFTER THE HEARING

Adoption Statement for the Development Management Policies Document (by the Authority). Due to the Authority making copies this was submitted shortly after the Hearing had closed but prior to the site visit.