



Appeal Decisions

Hearing held on 13 November 2019

Site visit made on 13 November 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal A Ref: APP/E2734/W/19/3234758

Hazel Head Farm, Mar Head Balk, Arkendale HG5 0RG

- 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 Glenn Bailey against the decision of Harrogate Borough Council.
 - The application Ref 19/00007/DVCON, dated 2 January 2019, was refused by notice dated 26 February 2019.
 - The application sought planning permission for construction of an agricultural worker's dwelling without complying with a condition attached to outline planning permission Ref 94/02286/OUT, dated 6 December 1994.
 - The condition in dispute is No 3 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, (including any dependants of such a person residing with him) or a widow or widower of such a person.
 - The reason given for the condition is: The development hereby approved would be unacceptable unless justified by the local needs of agriculture or forestry.
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Appeal B Ref: APP/E2734/W/19/3234759

Hazel Head Farm, Mar Head Balk, Arkendale HG5 0RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details under section 73 of the Town and Country Planning Act 1990 without complying with a condition subject to which the previous details were approved.
 - The appeal is made by Mr Glenn Bailey against the decision of Harrogate Borough Council.
 - The application Ref 19/00009/DVCON, dated 2 January 2019, was refused by notice dated 26 February 2019.
 - The application sought approval of reserved matters for erection of 1 no. agricultural worker's dwelling without complying with a condition attached to the reserved matters approval Ref 95/01481/REM, dated 14 May 1996.
 - The condition in dispute is No 3 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, (including any dependants of such a person residing with him) or a widow or widower of such a person.
 - The reason given for the condition is: The development hereby approved would be unacceptable unless justified by the local needs of agriculture or forestry.
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Decisions

1. Appeal A is allowed and planning permission is granted for construction of agricultural worker's dwelling at Hazel Head Farm, Mar Head Balk, Arkendale HG5 0RG in accordance with the application Ref 19/00007/DVCON, dated 2 January 2019, without compliance with the conditions previously imposed on the planning permission 94/02286/OUT, dated 6 December 1994.
2. Appeal B is allowed and reserved matters are approved for 1 no agricultural worker's dwelling at Hazel Head Farm, Mar Head Balk, Arkendale HG5 0RG in accordance with the application Ref 19/00009/DVCON, dated 2 January 2019, without compliance with the conditions previously imposed on the reserved matters approval Ref 95/01481/REM, dated 14 May 1996.

Procedural Matters

3. On the eve of the Hearing, the Council submitted a copy of a recent Court of Appeal judgement in *Finney v Welsh Ministers & Ors [2019] EWCA 1868* ('*Finney*'), which held that an application under Section 73 of the Act may not be used to obtain a varied planning permission when the change sought would require a variation to the terms of the "operative" part of the permission (i.e. the description of the development for which planning permission had been granted). In essence, the judgement states that a local planning authority must only consider the question of the conditions, and cannot consider the description of the development to which the conditions are attached.
4. The Council posited at the Hearing that the operative part of the permission is an 'agricultural worker's dwelling' and, having regard to *Finney*, the removal of the disputed condition would not be possible as it would result in a new planning permission for a development of a different nature to that originally approved, i.e. an open market dwelling. The appellant in response argued that no material change of use would occur as a result of removing the condition, as an agricultural worker's dwelling, though its occupancy is restricted, is still a Class C3 dwellinghouse¹, as would be an open market dwelling.
5. There is no request from the appellant to alter the description of development. As such, any new permission issued would still be for the same physical building, and still for a residential use, but without the specific restriction on occupancy engendered by the disputed condition. Having regard to the evidence submitted and arguments put to me, I am satisfied that removal of the condition would not be comparable to the situation in *Finney*, where the description of development was altered to avoid a potential conflict with the requirements of a replacement condition. As no replacement condition is proposed, such a conflict would not occur. Therefore, I am content that the proposals can be considered under Section 73 of the Act.
6. The Council is preparing the Harrogate Local Plan (HLP), which has undergone consultation on proposed Main Modifications (MMs) following Examination in Public. A number of policies of the HLP are referred to, including GS3 relating to development limits, which are subject to MMs and could yet change. As such, I afford limited weight to these policies in considering the appeals.
7. A Supplementary Statement of Common Ground was submitted on 8 November 2019 to which I have had regard in reaching my Decisions.

¹ As defined by The Town and Country Planning (Use Classes) Order 1987 (as amended)

Background and Main Issue

8. The appeal site is located towards the end of Mar Head Balk, a small lane leading from the main road through the village of Arkendale. Other dwellings exist to one side of the lane on approach to the appeal site with further dwellings directly opposite and four dwellings under construction beyond the appeal site on a former farmyard.
9. Outline planning permission was granted in December 1994 for construction of an agricultural worker's dwelling, with reserved matters approved in May 1996. The reason given for both conditions was that the development would be unacceptable unless justified by the local needs of agriculture or forestry.
10. When constructed, the dwelling was connected with an adjacent working farmyard. The appellant's evidence indicates that the farming operations ceased at the site in 2015 and the land formerly associated with the farm is now leased to a nearby farmer as part of an extensive holding. In addition, four dwellings have been granted planning permission and are under construction on the site of the former farm buildings.
11. Having regard to this background, the **main issue** in both appeals is whether the disputed conditions are reasonable and necessary, having regard to local and national planning policy concerning the provision of dwellings within the countryside, including for agricultural workers.

Reasons

Appeal B

12. The condition attached to the reserved matters approval is identical to that attached to the related outline permission. Both conditions relate to the same dwelling and impose the same limitation on occupancy. By the simple fact of duplication, one of the conditions is unnecessary and so fails one of the tests of conditions set out at Paragraph 55 of the National Planning Policy Framework (the Framework).
13. However, the Planning Practice Guidance² also states that conditions should only be attached to reserved matters decisions where they relate to one of the reserved matters being considered. The condition does not relate to any of the five reserved matters. As such it is also unnecessary for this reason and, irrespective of my findings in relation to Appeal A, the condition should be removed from the reserved matters approval.

Appeal A

14. The Council's decision notice cites conflict only with Policy SG3 of the Harrogate District Local Development Framework Core Strategy (February 2009) (the CS). This policy states that land outside of development and infill limits of settlements is classed as countryside, where strict control will be exercised over new development in accordance with national and local policy protecting the countryside.
15. The policy exceptionally supports certain types of development in the countryside, namely affordable homes for local people, rural building conversions, small scale community and employment facilities and sustainable

² Paragraph: 025 Reference ID: 21a-025-20140306

rural enterprises. From my reading of the policy, none of these criteria would be applicable to the appeal scheme where the result of removing the disputed condition would be an open market dwelling.

16. In terms of national policy, the Framework seeks to locate homes where they will enhance or maintain the vitality of rural communities, and that isolated homes in the countryside should be avoided. An exception to this is where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. The policy approach in the emerging HLP reflects the Framework. Policy HS9 states that new permanent isolated dwellings in the countryside will not be permitted unless it can be shown that there is an essential need for a rural worker to live permanently at or near their place of work.
17. Under the CS, Arkendale does not have a defined settlement boundary and as such is wholly within the countryside. I was told that a settlement boundary is proposed for Arkendale under the HLP. The appeal site would remain outside this proposed settlement boundary, though the appellant has made representations as part of the local plan consultation process in favour of amending the settlement boundary to include the appeal site. The parties have put arguments to me as to the likelihood of the boundary being adopted as consulted upon or as proposed by the appellant. Ultimately, no settlement boundary has yet been adopted for Arkendale, and as it is possible the proposed boundary could still change, I afford limited weight to this matter and have considered the appeal site principally on the basis that it presently lies in the countryside for the purposes of Policy SG3 of the adopted CS.
18. It is a central part of the appellant's case that the physical circumstances have changed since permission was granted, namely that the site is no longer set in the open countryside, but as part of the built-up area of the village. I saw on site that housing development is effectively continuous along the length of Mar Head Balk and continues along the main road into the heart of the village, which is within walking distance. Moreover, the dwellings under construction lie beyond the appeal site and further from the centre of the village. Therefore, notwithstanding the position of the site relative to any future settlement boundary, or that it is presently in the countryside in planning policy terms, I am satisfied that the dwelling forms part of the physical extent of the village. Given these circumstances, the dwelling is not isolated in terms of the Framework and the exceptions set out in Paragraph 79 are not applicable.
19. The Framework also recognises the intrinsic beauty of the countryside, and the central aim of Policy SG3 to protect the countryside from inappropriate development is broadly consistent with the Framework. The Council accepts that there would be no demonstrable harm to the character and appearance of the countryside, and in light of the established and new development surrounding the site, I have no reason to disagree. Moreover, the site is well located to the village, within walking distance of the local pub, church and bus stop and I find that the dwelling's location does not contribute to an unsustainable pattern of development. Conversely, it is located where occupants could maintain the vitality of the local community through use of local services. As such, there is no substantive evidence to suggest that the removal of the disputed condition would lead to demonstrable harm to the countryside either in visual or locational terms.

20. The Council's reason for refusal, however, states that the appellant has not provided evidence to demonstrate that there is no longer a special agricultural need for the dwelling within the countryside or the farming community. The Council's delegated report states that 'the main purpose of the condition is to ensure those working in agriculture where wages have historically been low, to have access to accommodation that meets their needs.' The Council therefore considers that there is a purpose to retaining the restriction because people involved in existing agricultural or forestry enterprises in the locality could live at the appeal building, and that in the absence of evidence to demonstrate no need exists, any loss of an agricultural worker's dwelling would increase pressure for agricultural worker's dwellings elsewhere.
21. However, there is no reference in either Policy SG3 or the supporting text of the CS to specific support for lower cost housing for agricultural workers. Policy SG3 does not include any reference whatsoever to dwellings for agricultural workers, let alone indicating support for them in terms of housing provision. Moreover, the thrust of Paragraph 79 of the Framework is restrictive rather than supportive, with dwellings for rural workers only permitted where an 'essential need' is demonstrated. Therefore, no policy basis has been put to me which protects agricultural workers' dwellings as a specific category of housing.
22. The Council also points to Policy HS9 of the emerging HLP as setting a robust justification for allowing an agricultural worker's dwelling. Despite the Council's contention that similar requirements should be applied where the removal of an occupancy condition is proposed, the emerging policy contains no requirements to that effect. Accordingly, I find that Policy HS9 is of limited relevance to the main issue before me.
23. The Council nevertheless argues that a suitable marketing exercise needs to be undertaken to establish if any interest exists from rural workers in the area. No such exercise has been undertaken by the appellant, and I recognise that marketing exercises often form part of the evidence in appeals of this nature. However, the Council conceded that there is no policy requirement or other guidance which stipulates that a marketing exercise is required to be undertaken in order to lift an agricultural occupancy condition. Moreover, at the Hearing, the Council was unable to indicate what size of area would reasonably constitute the locality in the sense it is used in the disputed condition. As such, there is no published information to advise an applicant that a marketing exercise is required, or what the parameters of such an exercise would be. In this respect, the proposal differs from that considered in an appeal decision referred to me in Winchester³ where a specific policy existed to address the removal of an agricultural occupancy condition.
24. In terms of the site itself, it is clear from the permission to redevelop the farmyard for housing that the enterprise which gave rise to the need for an agricultural worker's dwelling in the first instance no longer exists either physically or functionally, and so there is no demonstrable need for rural workers to live on the site and I am satisfied that the dwelling is therefore no longer required to provide such accommodation.
25. In terms of wider need, details of recent applications for agricultural worker's dwellings were presented at the Hearing. All of the examples given related to a specific need for an agricultural worker to live at the site. Therefore, it is

³ Appeal Ref APP/L1765/W/18/3211073 - Allowed 5 April 2019

reasonable to consider that the appeal dwelling would not have been suitable to meet any of these needs, given its distance from these other sites would likely hamper the ability of farm workers to get to the site quickly. Moreover, approval of ten dwellings in 2019 across a large district of some 1,305 sq km in area does not indicate to me a significant ongoing demand for agricultural worker's dwellings.

26. Given that the recent applications are based on specific locational needs, I do not share the Council's concerns that the loss of the appeal dwelling would directly lead to another dwelling being built in the countryside. Even if one is proposed, there are stringent criteria within emerging Policy HS9 and the Framework which must be met to achieve a new agricultural worker's dwelling in the countryside, which would provide the Council with a means to assess any future application on its merits.
27. Beyond these examples, the Council has provided little evidence of the current demand for dwellings close to the appeal site or on the background to farming in the area. Given the dwelling is physically within the village, with no associated land or buildings, and where no agricultural or forestry activity is connected to it, there is little to indicate such a need exists in this instance.
28. I understand that agricultural worker's dwellings, given their restrictions on occupancy, tend to attract a lower market value which makes them potentially more affordable for those working in agriculture or forestry, and because of that the Council sees value in retaining a supply of such dwellings. There is no evidence, however, such as from housing waiting lists, the evidence base of the ongoing local plan process or other sources, of the extent of such needs. Nor do I have substantive evidence, beyond anecdotal views that the rural areas around Harrogate are expensive, that affordability of dwellings for existing or retired agricultural or forestry workers is a particular problem in the locality.

Conclusions on Appeal A

29. In the absence of the disputed condition, the appeal site would be a market dwelling in the countryside, which would conflict with Policy SG3 insofar as it seeks to strictly control such development. However, it follows from the foregoing reasons that I find that the dwelling would not be an isolated dwelling in the countryside, it would preserve the character and appearance of the area and it would be located where local services could be supported and accessed by means other than the private car.
30. In addition, though not adding a new dwelling physically, the proposal would make an open market dwelling available to the general population, which would contribute, albeit very modestly, to the Borough's housing supply.
31. Moreover, on the evidence put to me, I find that the dwelling is no longer necessary to meet an essential need for an agricultural worker to live on the site, or for agricultural or forestry worker's accommodation in the locality.
32. These are material considerations which together justify making a decision other than in accordance with the development plan in this case. I therefore conclude that the agricultural occupancy condition is no longer reasonable or necessary and should be removed.

Conditions

33. In addition to the disputed conditions, a number of other planning conditions were imposed on the original permission and the reserved matters approval. However, all of the conditions attached to both decisions relate to matters dealt with during the construction of the dwellings and, apart from the disputed conditions, none require ongoing compliance in any matter. Therefore, I concur with the main parties that it is not necessary to re-impose any of these other conditions in the present circumstances.

Conclusion

34. For the reasons set out above, and having regard to all other matters raised, I conclude that Appeal A and Appeal B should be allowed.

K Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alyn Nicholls	Planning Agent
Freddie Humphreys	Counsel, King's Chambers
Deane Bailey	Brother of appellant
Lee Bailey	Brother of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Helen Goulden	Principal Planning Officer
Peter Atkinson	Solicitor

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of judgement in *Finney vs Welsh Ministers & Ors [2019] EWCA Civ 1868*
2. Note from appellant in response to *Finney* judgement