



Appeal Decision

Hearing Held on 11 February 2020

Site visit made on 11 February 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal Ref: APP/P2365/W/19/3235297

Headlands, Hall Lane, Lathom, Ormskirk L40 5UW

- 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 Mrs Sheila Webster against the decision of West Lancashire Borough Council.
 - The application Ref 2019/0260/FUL, dated 13 March 2019, was refused by notice dated 12 June 2019.
 - The application sought planning permission for "Full application for the erection of an agricultural worker's bungalow" without complying with a condition attached to planning permission Ref 8/80/692, dated 17 September 1982.
 - 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 291(1) of the Town and Country Planning Act, 1971, or Forestry or a dependent of such person residing with him (but including a widow or widower of such a person)".
 - The reason given for the condition is: "The site lies in an area where the local planning authority are only prepared to permit the erection of a dwelling because of special agricultural needs".
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Decision

1. The appeal is allowed, and planning permission granted for the erection of an agricultural worker's bungalow at Headlands, Hall Lane, Lathom, Ormskirk L40 5UW in accordance with application Ref 2019/0260/FUL dated 13 March 2019, without compliance with condition 4, previously imposed on planning permission Ref 8/80/692 granted 17 September 1982, but still subject to the following condition:
 - 1) There shall be no direct access either pedestrian or vehicular between the site and Hall Lane 'B5240', all access both pedestrian and vehicular being obtained from the existing farm driveway. To that end a permanent wall, hedge or fence shall be maintained on the site frontage to Hall Lane.

Procedural matters

2. At the Hearing the Appellant's representative said he had not seen the representations made by interested parties. This was a letter from a valuer, acting on behalf the occupiers of a neighbouring farm holding. The Appellant's representative subsequently confirmed that he was satisfied that he had been

given adequate opportunity to make comments on this information at the event.

3. As agreed between the parties, I undertook an unaccompanied site inspection following the close of the Hearing. I was able to make a full observation of the appeal site from the highway.

Application for costs

4. Prior to the Hearing an application for costs was made by Mrs Sheila Webster against West Lancashire Council. This application is the subject of a separate Decision.

Background and main issue

5. The appeal dwelling gained planning approval in 1980. This was associated with an agricultural occupation need established through farming activity in connection with the adjacent Lower Park Farm. The appeal dwelling was occupied in 1983 by Mr and Mrs Webster, who largely lived there as a retired couple with their younger son. The main parties agree that the original agricultural need has since fallen away.
6. However, the main issue is whether it is reasonable and necessary for the dwelling to continue to be subject to condition 4, requiring occupancy by an agricultural worker, or one retired and/or their dependants, having regard to local and national policies.

Reasons

7. The development plan for the district includes the West Lancashire Local Plan 2012-2027 (2013) (LP). Policy GN4 of the LP includes the requirement that an agricultural worker's dwelling be retained for that purpose unless marketing can demonstrate that there is no demand for it. The policy requires the marketing to be adequate and that no reasonable offers are refused. The marketing strategy is set out by bullet points i, ii, and iii of the policy and requires a marketing period of 12 months. Accordingly, if this policy were satisfied the condition would no longer be reasonable or necessary. Paragraph 55 of the National Planning Policy Framework (The Framework) requires planning conditions to only be imposed where they are necessary, relevant to planning and the development, enforceable, precise and reasonable in all other respects.
8. Prior to making a Section 73 application the Appellant agreed with the Council the open market value (OMV) of the property. It was also agreed that a discount was necessary due to the restrictive condition and in order to generate interest in the market. The discount applied was 25% of OMV. This reflected general practice in such circumstances which suggests discounts of between 20-30%. The discount recognised the restriction the condition placed on a potential purchaser and its effect in reducing the size of the qualifying market.
9. Marketing commenced around March 2018; however, interest was limited and, in order to further incentivise the market, a further discount was applied to the asking price. This discounted market value was considered reasonable and agreed by both parties. However, as the Council indicated, valuation in such a situation is not a precise exercise. Accordingly, I would expect both parties to

enter into the marketing process with a degree of flexibility before arriving at a final appropriate market value and finding a qualifying purchaser. Equally, when the discounted price was agreed, it is reasonable to expect that both parties would be confident that the property had been sufficiently discounted to garner interest if any existed from the local market.

10. The marketing strategy was therefore agreed with the Council prior to its commencement. Marketing was undertaken from March 2018 and was still being undertaken on the day of the Hearing. I find that the marketing accords with the Council's policy requirement and appears to have been both robust and genuine in its efforts. Notwithstanding, evidence suggests that the marketing has generated limited interest from qualifying candidates and no offer has been made within the region of the discounted price.
11. A single offer was made to purchase the property by local farmers. However, the Appellant confirmed that this was significantly below the second discounted price. Therefore, although the marketing found some interest from an agricultural worker, I find that it was limited, and the offer made unrealistic and would result in a substantial undervaluation of the dwelling. In consideration of the marketing strategy as a whole and the discounted price, the results indicate that the dwelling in my view would have an extremely limited prospect of being occupied by an agricultural worker. I am satisfied that this process has therefore not illustrated demonstrable demand for an agricultural worker's dwelling. Furthermore, the offer if accepted would be a substantial discount from the initial market value and would not therefore be a 'reasonable offer'. Given the evidence before me, I am satisfied that the marketing exercise has shown no substantive interest in the dwelling.
12. Accordingly, the marketing process has satisfied the requirements of policy GN4 of the LP, which amongst other things seeks to retain an agricultural worker's dwelling unless marketing can demonstrate that there is no demand for the existing use.

Other matters

13. The National Planning Practice Guidance (the PPG) states that a Section 73 application requires a decision maker to only consider the disputed condition and not a complete reconsideration of the application¹. Accordingly, irrespective of the appeal site now being located within the Green Belt, the merits of the case principally relate to the objectives of policy GN4.
14. The Council identify that a farmer of the adjacent holding seeks to erect an agricultural worker's dwelling. The Council contend that the proposal would deprive an agricultural worker of access to an agricultural worker's dwelling within the local area. However, notwithstanding this contention, the marketing that has been undertaken in line with the requirements of Policy GN4 of the LP and for a robust period of time has not identified a qualifying person who has made a reasonable offer.

Conditions

15. The PPG also states that decision notices, for the grant of planning permission under section 73, should repeat the relevant conditions from the original planning permission that continue to have effect. The Council has identified

¹ Planning Policy Practice Guidance: Paragraph: 031 Reference ID: 21a-031-20180615

that three conditions of the original consent are relevant. These require the garage to not be used for business purposes, for the site to not have direct access onto the highway and for the dwelling to not be clad in artificial stone.

16. In discussion with the main parties I was unconvinced that the first and last conditions were still necessary or reasonable. There was no obvious or overt reason presented to explain why the garage would be susceptible to business use. Also, no compelling reason was given to explain why the brick bungalow would be especially vulnerable to recladding. However, with regard to the second condition, a further access would join a highway that is unlit, has a narrow pavement on one side and includes relatively fast-moving traffic. This condition is therefore necessary in the interests of highway safety.

Conclusion

17. Therefore, for the above reasons the appeal is allowed. The proposal would be in accordance with the development plan and no other material considerations indicate otherwise. I will therefore grant a new permission without the disputed condition but retain the non-disputed condition from the previous permission that would still have effect.

Ben Plenty

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr C Weetman BA(Hons) DMS MRTPI

CW Planning Solutions Ltd

Mr P Gilkes FRICS

Chartered Surveyor

Ms J Kerry

Mr M Webster

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Manley BSc(Hons) MRICS

Registered Valuer, West Lancashire
Borough Council

Ms E Woollacott BA(Hons) DipTP MSc MRTPI

Appeals Officer, West Lancashire
Borough Council

Mr M Loughran

Principal Planning Officer, West
Lancashire Borough Council

INTERESTED PARTIES:

Councillor E Pope