



Appeal Decision

Hearing Held on 11 March 2020

Site visit made on 11 March 2020

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2020

Appeal Ref: APP/G2713/W/19/3242007 Tresanton, Ayton Road, Stokesley TS9 5JW

- 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 and Mrs John and Sue Marsay against the decision of Hambleton District Council.
 - The application Ref: 18/02447/MRC, dated 6 November 2018, was refused by notice dated 16 August 2019.
 - The application sought planning permission for erection of a dwelling house and private garage in connection with a market garden without complying with a condition attached to planning permission Ref: 2710B, dated 3 July 1963.
 - The condition in dispute is No 1 which states that: The occupation of the house shall be limited to persons employed or last employed in agriculture, as defined in section 221 of the Town and Country Planning Act, 1962, or in forestry, and the dependants of such persons.
 - The reason given for the condition is: the property is situated in a rural area where development should be restricted to that which is essential in the interests of agriculture.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling house and private garage in connection with a market garden at Tresanton, Ayton Road, Stokesley TS9 5JW in accordance with the application Ref: 18/02447/MRC dated 6 November 2018 without compliance with the condition previously imposed on the planning permission Ref: 2710B dated 3 July 1963.

Procedural Matters

2. 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.

3. The Council suggested at the Hearing that the operative part of the permission is 'in connection with a market garden' 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 would occur as a result of removing the condition, as the original planning permission granted consent for a dwelling house and private garage and the condition at dispute does not restrict the occupation of the dwelling in relation to the market garden, arguing that reference to the market garden is descriptive of the circumstances that applied at the time that consent was sought.
4. 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 the disputed condition does not tie the occupation of the dwelling to the market garden and as such the 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.

Background and Main Issue

5. Planning permission was granted in 1963 for the erection of a dwelling house and private garage in connection with a market garden ('the original permission'). This was subject to a single condition which limited the occupation of the dwelling to persons employed or last employed in agriculture, as defined in section 211 of the Town and Country Planning Act 1962, or in forestry, and the dependence of such persons (the agricultural occupancy condition, hereafter the 'AOC').
6. The reason given by the Council for the condition is that the property is situated in a rural area where development should be restricted to that which is essential in the interests of agriculture. The site remains outside of a recognised development limits and is therefore within the open countryside for planning purposes. Policy CP4 of the Hambleton Local Development Framework Core Strategy (April 2007) (the CS) seeks to restrict development in such locations to exceptional cases in respect of Policies CP1 and CP2 and, amongst other matters, where "it is necessary to meet the needs of farming, forestry, recreation, tourism and other enterprises with an essential requirement to locate in a smaller village or the countryside and will help to support a sustainable rural economy".
7. Paragraph 55 of the National Planning Policy Framework (the Framework) advises that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
8. The main issue is whether the disputed condition is reasonable and necessary, having regard to local and national planning policy concerning the provision of dwellings within the countryside, including for agricultural workers and with particular reference to the marketing of the property.

Reasons

9. The appeal site comprises a large four-bedroom detached bungalow together with a garage set within a garden and accessed via a private driveway in a predominantly rural area. The surrounding agricultural land no longer forms a market garden connected with the appeal property.
10. It is the Council's case that the property has not been marketed at an appropriate price and by appropriate methods to adequately demonstrate that there is no demand for a dwelling with an occupancy restriction.
11. Evidence presented at the hearing by the appellant showed that the property has been on the market since 7 February 2017, it is not disputed by the Council that this is a reasonable length of time to market the property and is longer than the 12 months that would usually be expected.
12. Furthermore, while both parties presented arguments and justification for a range of appropriate discounts, around 30%, that should be applied to the open market value (OMV) of the property to reflect the restrictions of the AOC, there is considerable disagreement between the parties with regards the OMV of the appeal property.
13. The appellant has submitted two separate valuations detailing evidence of comparable properties to justify an identified OMV of £800,000, significantly higher than the Council's OMV of £625,000 detailed within the Align Property Partners Valuation (Align) report.
14. The valuations provided by both parties have been produced by appropriately qualified and experienced firms and clear justification has been provided for the OMV in each case. I note that the valuations provided by the applicant have been prepared by two local firms with considerable experience of marketing properties in the area.
15. However, the details of the properties provided by each party to support their valuation are limited, making the comparison of the properties, standard of accommodation and location difficult.
16. At the hearing some time was given to the discussion of the price per square foot (psf) of the appeal property and of two similar properties sold nearby. The OMV of the appeal property identified by the appellant relates to approximately £300 psf, the sold price of the two properties near to the appeal site referred to by the appellant equated to approximately £285 psf for the first property sold in 2016 and £260 psf for the second property, the latter now being marketed again at £305 psf. While it was acknowledged that the price psf is not determinative of the OMV of a property it is nonetheless a useful guide and the evidence presented at the hearing broadly supports the OMV identified by the appellant.
17. Based on the evidence before me I find that while the OMV put forward by the appellant is to the higher end of that justified by the evidence presented, it is nonetheless an appropriate price upon which the AOC discount could be applied for marketing purposes.
18. The appeal property has been available on the market at a range of discounted prices, including for more than 12 months at a discount of 30% and most recently at a price of £525,000, representing a discount of approximately 35%

of the appellants OMV. Consequently, I find that on balance the property has been marketed at an appropriate price for a period of at least 12 months.

19. Turning to the methods employed by the appellants to market the property, the evidence before me shows that these have focused on online and digital methods including the agent's and national property listing websites.
20. Furthermore, the appellant has marketed the property in both the Yorkshire Post and Farmers Weekly. However, the appellant identified that these press adverts had not resulted in any new enquiries. The Council identified that these adverts had been placed after the application had been determined and highlighted the targeted advertising that publications like the Farmers Weekly brought over and above the general online marketing of site such as Rightmove.
21. Evidence submitted by the appellant shows that a total of 29 copies of the particulars were sent to interested parties and only 1 viewing secured. In the context of the duration of the marketing of the property these results are very limited. However, at the hearing evidence was referred to by the appellant regarding a "significant number of telephone enquiries" and it was clear that the property had been exposed to a wide range of interested persons but that in many cases the AOC had prevented the parties progressing their interest.
22. On the basis of the evidence before me I find that, the marketing has been sufficient to expose the property to any would be purchasers and I have no reason to conclude that any such interest has been deterred on the basis of the asking price.
23. For the reasons given, I conclude that the bungalow is no longer necessary to meet a need for agricultural worker's accommodation. I therefore conclude that the agricultural occupancy condition is no longer reasonable or necessary, having regard to the changed circumstances of the site and the and the absence of any demonstrated demand for the accommodation.

Planning Balance

24. The appeal building would not accord with Policy CP4 of the CS which seeks to restrict development in such locations to exceptional cases, and had only been justified originally on the basis of a particular need. However, that need no longer exists and no other occupier has been identified as a result of the marketing exercise undertaken by the applicant.
25. The bungalow is a well-established feature in the area and no longer serves its original purpose, and no significant further harm to the character of the countryside would now arise from its occupation by non-rural workers. Therefore, I conclude that material considerations justify making a decision other than in accordance with the development plan in this case.

Conditions

26. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The original permission was subject to a single condition, the AOC, and consequently there are no relevant conditions from the original planning permission to repeat.

Conclusion

27. For the reasons given above I conclude that the appeal should be allowed.

Mark Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr John and Sue Marsay	Applicants
Mr Tim Axe	Agent
Mr John Newhouse	Roseberry Newhouse
Mr Andrew Dickens	Robin Jessop Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Aisling O'Driscoll	Senior Planning Officer
Peter Jones	Planning Manager

DOCUMENTS

- 1 Updated best price guide