



Appeal Decision

Site visit made on 6 August 2020

by **M Seaton DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/H0928/W/20/3253174

Land adjacent to Blencathra Barn, Newton Reigny, CA11 0AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr and Mrs Artie Chambers against the decision of Eden District Council.
- The application Ref 19/0595, dated 9 August 2019, was approved on 28 November 2019 and planning permission was granted subject to conditions.
- The development permitted is the construction of new residential dwellings.
- The condition in dispute is No 7 which states that:
The occupation of any the approved dwellings at Land Adjacent to Blencathra Barn, Newton Reigny shall be limited to a person(s) with a local connection to the locality, or a widow or widower of such a person, or any resident Dependants. Locality refers to the parish and surrounding parishes.
In the first instance, if a property has been actively marketed for at least six months and an occupier cannot be found then the definition of locality will be extended out to include the County of Cumbria.
A person with a local connection means a person who meets one of the following criteria:
 - *The person lives in the locality and has done for a continuous period of at least three years.*
 - *The person works permanently in the locality for a minimum of 16 hours per week. Where a person is employed in an established business that operates in multiple locations, their employment activities should take place predominantly inside the locality.*
 - *The person has a firm offer of permanent employment, for a minimum of 16 hours per week in an already established business within the locality.*
 - *The person has moved away but has a strong established and continuous links with the locality by reason of birth or long-term immediate family connections.*
 - *The person needs to live in the locality because they need substantial care from a relative who has lived in the locality for at least three years, or needs to provide substantial care to a relative who has lived in the locality at least three years. Substantial care means that identified as required by a medical doctor or relevant statutory support agency.*
- The reason given for the condition is:
To provide housing to meet local needs and support the village in accordance with policy HS2 of the local development plan.

Decision

1. The appeal is allowed and the planning permission Ref 19/0595 for the construction of new residential dwellings on Land adjacent to Blencathra Barn, Newton Reigny, CA11 0AY granted on 28 November 2019 by Eden District Council, is varied by deleting condition No. 7.

Background and Main Issue

2. The appeal site is located within the village of Newton Reigny which is set to the north-west of Penrith. The site is set back from the road through the village to the rear of existing residential development and curtilages. The site was in a generally overgrown and poorly maintained condition, albeit that I have noted the appellant's reference to continual fluctuations of the site's condition between being overgrown and maintained.
3. Outline planning permission was granted on the appeal site for the conversion of barns and outbuildings and the development of a single bungalow (*LPA Ref. 89/0104*), with a reserved matters application subsequently approved in April 1993 (*LPA Ref. 92/0640*).
4. Policy H2 '*Housing in the Smaller Villages and Hamlets*' of the Eden Local Plan 2014-2032 (the Local Plan), indicates that local occupancy conditions will be applied to residential development on greenfield sites, whilst such restrictions will not be applied on sites where suitable housing comes forward on previously developed land.
5. In determining the planning application, the Council concluded that the site for the development of 3 no. dwellings met the definition of greenfield land and accordingly imposed a local occupancy condition on the planning permission. However, it is the appellant's contention that the appeal site meets the criteria for being defined as previously developed land, and that the condition as applied is therefore unreasonable.
6. Hence, the main issue is whether the condition is reasonable or necessary, having regard to the requirements of the housing policies of the Development Plan.

Reasons

7. In considering the definition in land use terms of the appeal site, my attention has been drawn to Section 56 of the Town and Country Planning Act 1990 (The Act) which defines the commencement of development, and the definition of previously developed land found in the National Planning Policy Framework 2019 (the Framework).
8. In addressing Section 56 of The Act, the appellant contends that the extent of works undertaken including alterations to the levels of the plot to facilitate drainage and the excavation of a driveway, would meet categories b), d) and e) of Section 56. Whilst there is no evidence adduced of the foundations of the building having been laid and I note the Council's contention regarding the apparent failure to adhere to the layout of the approved access and the appellant's response, I see no reason to disagree with the conclusion of the main parties that a commencement of development has taken place. However, while the planning permission for the development of the site for a bungalow is extant, this is not necessarily sufficient to define the land as having been previously developed.
9. The definition of previously developed land clearly requires land to have been occupied or previously occupied by a permanent structure, which taking the current appeal site on its own, is not the case. However, having regards to the definition in full, previously developed land may also be regarded as including

the curtilage of any developed land with the assumption that the whole curtilage should not necessarily have been developed.

10. The original planning permission included the conversion of the barns. These have now been completed and this element of the permission enacted. I therefore conclude that it must be reasonable to consider the appeal site as having formed a part of the development curtilage of land which had therefore been occupied by a previous structure in the form of the barns as now converted. This would accord with the Framework's definition of previously developed land and would indicate the Council's assessment of the site as greenfield land to be incorrect.
11. I accept that the works to extend drainage onto the plot and install ducting for electricity and water pipe connections must correctly be described as fixed surface infrastructure. However, these works would not also fall within a reasonable definition of permanent structures for the purposes of defining previously developed land, as there is a clear and separate distinction drawn between the two terms in setting out the definition. However, this does not change my conclusions about the appeal site forming part of the curtilage of developed land.
12. The appellant has also referred me to the possibility of a fall-back position with regards the extant planning permission for the development of the bungalow on the appeal site which would not be restricted by virtue of a local occupancy condition. I have had regard to the caselaw insofar as establishing the likelihood of a valid fallback position. This needs to be judged to be both realistic and for there to be a reasonable possibility of development occurring. In this instance, I can see no reason to disagree with the appellant's contention that it is entirely conceivable that the bungalow would ultimately be constructed, particularly in light of the appellant's concerns over viability of the delivery of the 3no. dwellings with a local occupancy restriction.
13. Furthermore, I accept the appellant's point that irrespective of the conclusions as to whether or not the appeal site was previously developed land, upon the completion and development of the bungalow the appeal site would reasonably be regarded as previously developed land. As such, the site could therefore be redeveloped again at a later date for 3No. dwellings in accordance with Policy H2 of the Local Plan without the need for a local occupancy restriction. I find that the fallback position weighs further in support of the proposed development proceeding without the condition requiring local occupancy.
14. As a consequence, I am satisfied on the basis of the submissions that the appeal site must reasonably be described as previously developed land. Therefore, the proposed development without the local occupancy condition would accord with the provisions of the policy. The imposition of the condition would be unreasonable and unnecessary having regard to the requirements of the housing policies of the Development Plan.

Other Matters

15. I have had regard to the comments and objections of interested parties received during the course of the appeal, including concerns that the units are to be proposed as holiday cottages and that there remains a real need for new housing to meet local needs. There is no evidence before me that the properties are for occupation as holiday accommodation, which in any event

would be a matter that the Council would be able to control. Furthermore, whilst I acknowledge the identified local housing needs, the proposed development would not be required by the policies of the adopted Development Plan to make provision for local occupancy rather than for market housing.

16. I note the concerns raised about the development's effect on trees, living conditions, the character and appearance of the area and highway safety. However, these are not disputed matters in this appeal and in light of the planning permission which has already been granted by the Council establishing the acceptability of the principle of development.
17. I have had regard to the parties respective positions about the availability of evidence provided as part of the planning application and now as part of the appeal, but the Council has, in any event, stated that the evidence forming part of the appeal did not alter their position on the case.

Conclusion

18. For the reasons given above, I conclude that the appeal must succeed and the disputed condition should be deleted.

Martin Seaton

INSPECTOR