
Appeal Decision

Site visit made on 19 November 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Appeal Ref: APP/R3325/W/20/3255645

Riverside Stables, Lovington, Castle Cary BA7 7PS

- 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 and Mrs D and S Bennett against the decision of South Somerset District Council.
 - The application Ref 20/01014/S73, dated 9 March 2020, was refused by notice dated 26 May 2020.
 - The application sought planning permission for "the continued use of bungalow without compliance with condition 4 of Decision notice 82773 dated 13.5.69 (Agricultural Occupancy Condition) without complying with a condition attached to planning permission Ref 30/88/2203, dated 14 September 1988".
 - The condition in dispute is No 2 which states that: *The occupation of the dwelling shall be limited to persons employed or last employed full time locally in agriculture as defined in Section 290 of the Town and Country Planning Act 1971 or in forestry or the keeping of horses for livery (including any dependants of such a person residing with him/her or a widow or widower of such a person).*
 - The reason given for the condition is: *The site is within an area where general residential development is not normally permitted and the District Planning Authority wish to ensure that the dwelling remains associated to the needs of agriculture.*
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Decision

1. The appeal is allowed and planning permission is granted for continued use of bungalow without compliance with condition 4 of Decision notice 82773 dated 13.5.69 (Agricultural Occupancy Condition) at Riverside Stables, Lovington, Castle Cary BA7 7PS, in accordance with the application Ref 20/01014/S73 dated 9 March 2020, without compliance with condition number 2 previously imposed on planning permission Ref 30/88/2203 dated 14 September 1988.

Main Issues

2. The main issue is whether the condition restricting the occupancy of the dwelling to agricultural, forestry or the keeping of horses for livery is necessary, reasonable and enforceable having regard to local and national planning policies which seek to restrict housing development in the countryside.

Reasons

3. The appeal site comprises a single storey detached dwelling, and includes a stable block with 6 stalls and large riding area. The appeal site is located approximately 1.1 miles north of the village of Lovington. The appeal site is a

rural location and outside of any settlement boundary, and thus is considered to be located within the open countryside.

4. Policy HG10 of the South Somerset Local Plan adopted March 2015 (LP) pertains to the removal of agricultural and other occupancy conditions. It states that planning permission for the removal of a restricted occupancy condition for an agricultural, forestry or other similar worker on a dwelling will only be given when several criterion are met. This includes evidence that there is no longer a continued need for the property on the holding or for the business, there is no long term need for a dwelling with restricted occupancy to serve local need in the locality and that the property has been marketed locally of an appropriate period (minimum 18 months) at an appropriate price and evidence of marketing is demonstrated.
5. I have been presented with no evidence that this marketing has taken place, and thus the proposal conflicts with policy HG10 of the LP. Removal of this condition would result in an unrestricted dwelling in the countryside. As such, I consider that the condition is both necessary and reasonable.
6. However, a certificate of lawfulness¹ has recently been approved in relation to the appeal site for the occupation of the dwelling without complying with Condition No 2. This follows a continuous breach of the occupancy restrictions by the appellants over a period of at least 10 years. This certificate and the benefits against enforcement action it provides would be transferable to any subsequent occupiers.
7. Consequently, the appeal property could be occupied in breach of this condition by any non-qualifying persons in perpetuity. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. In this instance the presence of the certificate of lawfulness is a material consideration which I give significant weight to.
8. I have carefully considered the contention made by the Council that they would be able to take enforcement action following any break in occupation, or that the occupation of the dwelling by a qualifying person would have the effect of breaking the continuity of the breach. The appellants have indicated that should the appeal site revert back to not having the benefit of the certificate of lawfulness, this would have the effect of significantly reducing the open market value of the property. Any qualifying person would be presented with an immediate impact on capital value. Given the potential risk to both the seller and a qualifying person means, in my view, that such a scenario is unlikely to happen.
9. The Council have drawn my attention to an appeal decision in Mid Devon² in which the inspector dismissed an appeal to remove an agricultural tie condition. In that instance there was a Certificate of lawful use, and whilst the inspector gave this weight, they did not conclude that the material considerations outweighed the harm to the development plan. I have not been presented with the full details of that case, nor the evidence which was in front of the inspector at the time the decision was made. In any event, that appeal site was in a different planning authority with different development plan

¹ LPA reference 19/03214/COL

² APP/Y1138/W/19/3229011

policies. I therefore consider that a direct parallel cannot be drawn between the two appeals. In any event, I have considered this appeal on its own merits.

Conclusions

10. For the reasons given above, I conclude the appeal should be allowed and Condition no.2 of the original planning permission is removed.

S Shapland

INSPECTOR