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## Appeal Decision

Site visit made on 1 March 2021

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 March 2021**

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### **Appeal Ref: APP/Q9495/W/20/3258317**

### **West Kellet, Silecroft, Millom LA18 4NU**

- 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 Stella Mansergh against the decision of Lake District National Park Authority.
  - The application Ref 7/2020/4019, dated 20 February 2020, was refused by notice dated 17 April 2020.
  - The application sought planning permission for the change of use of barn to dwelling without complying with a condition attached to planning permission Ref 7/83/4105, dated 13 December 1983.
  - The condition in dispute is No 2 which states that: the dwelling shall not, except with the consent of the Local Planning Authority, be used except as a sole or main residence and only by persons employed, about to be employed or last employed locally together with their dependants living with them; the widows or widowers of such persons together with their dependants living with them. "locally" shall mean the administrative area of Copeland. "main residence" shall mean a dwelling which is occupied for more than half of every year.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use of barn to dwelling at West Kellet, Silecroft, Millom LA18 4NU in accordance with the application Ref 7/2020/4019 dated 20 February 2020, without compliance with condition numbers 1, 2 and 5 previously imposed on planning permission Ref 7/83/4105 dated 13 December 1983 and subject to the following conditions:
  - 1) The existing barn walls shall be reduced to a height of 2m as indicated on the submitted plan.
  - 2) The roof of the barn shall be retained in local slates as indicated on the submitted plan.

### **Main Issue and Preliminary Matters**

2. Planning permission for the conversion of the existing building into a dwelling was granted in 1983 and included a 'local occupancy' condition. The Authority's evidence indicates that the reason for the condition is to retain and support vibrant and sustainable communities.

3. The main issue of the appeal is whether the condition is reasonable and necessary having regard to relevant local and national policies and any material considerations.

### **Reasons**

4. Policy CS18 of the Lake District National Park Core Strategy (2010) (CS) and the provisions of the Housing Provision Supplementary Planning Document (the SPD) supports the provision, in perpetuity, of new housing to meet an identified local need whether or not that housing is created by new building or changes or use. I have no substantive evidence before me to suggest that there is no identified local need for housing and the effect of deleting the condition would be to create an unrestricted new house. As such, the proposal to delete the disputed condition is contrary to policy CS18 of the CS and the SPD.
5. However, the Appellant's Statement of Case details that since conversion, the appeal property has been used for holiday lets and short term lets to persons not from the local area and not working locally. As such the deletion of the disputed condition would not result in the loss of a dwelling that currently fulfils an identified local need.
6. I note that the Appellant has provided evidence of the Council's intention not to enforce the disputed condition and of sustained non-compliance with the condition. Furthermore, paragraph 2.1 of the Council's Statement of Case confirms that "Following correspondence with the appellant it was concluded that the breach of planning control was immune from enforcement action."
7. Unfortunately, within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the disputed condition is now immune from enforcement action as a result of a sustained period of non-compliance. If the appellant wished to ascertain whether the use of the dwelling without compliance with condition 2 is lawful, the correct course of action would be to make an application under section 191 of the Act, otherwise referred to as an application for a lawful development certificate.
8. I understand that there were discussions between the parties prior to the application, from which this appeal relates, being submitted. It is therefore disappointing that an application for a certificate of lawfulness was not sought at that time, which given the statements made by the Council and Appellant would presumably have been granted, thus saving all involved the cost and time of the unsuccessful application and this subsequent appeal. Nonetheless the evidence and statements referred to previously are material considerations and I give them significant weight.
9. Furthermore, the wording of the disputed condition lacks precision and would be difficult to enforce. Consequently, it is unlikely that the condition would comply with paragraph 55 of the National Planning Policy Framework and Planning Practice Guidance paragraph 003 Reference ID: 21a-003-20190723, Use of Planning Conditions. This is a material consideration which weighs in favour of the proposal and to which I attach significant weight.

10. Therefore, based on the evidence before me I find that the disputed condition cannot be reasonably enforced, has not in practice secured local needs housing and based on both the Council's and the Appellant's comments is unlikely to do so in the future. The condition therefore serves no useful purpose.
11. Consequently, while the removal of the disputed condition would in principle conflict with the Development Plan and specifically Policy CS18 of the CS, and the provisions of the SPD, I find that the material considerations referred to previously outweigh this conflict and as such I find that the condition is not reasonable or necessary.

### **Conditions**

12. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
13. Condition 1, a standard time limit condition is no longer necessary as the permission has now been implemented. Condition 2 is the disputed condition. Condition 4 refers to materials as indicated on the submitted plan, as the construction of the dwelling is complete this condition is no longer necessary. Condition 3 refers to the retention of the slate roof, a characteristic of the area and therefore still necessary. Condition 5 refers to the need to reduce the barn walls to a height of 2m as indicated on the submitted plans. As referred to previously it is not clear whether or not this condition has been complied with or the reasons for this condition. Nonetheless the Council saw fit to impose the condition at the time of granting planning permission and I have no substantive evidence before me to suggest that the condition is no longer relevant. In the interests of clarity and certainty I have therefore retained this condition.

### **Conclusion**

14. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

*Mark Brooker*

INSPECTOR