



Appeal Decision

Hearing Held on 26 April 2021

Site visit made on 27 April 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th May 2021

Appeal Ref: APP/P2365/W/20/3263153

Meadow Farm, Sandy Way, Holmeswood, Rufford, Lancashire L40 1UF

- 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 Richard Parker against the decision of West Lancashire Borough Council.
 - The application Ref 2020/0084/FUL, dated 27 February 2020, was refused by notice dated 18 May 2020.
 - The application sought planning permission for Proposed Bungalow, Sandy Lane, Holmeswood, Rufford without complying with the sole condition attached to planning permission Ref 8/6/1481, dated 10 October 1952.
 - The condition in dispute states that: The bungalow shall be occupied, together with the four acres of land comprised in the curtilage of the site, the subject of this permission, by a person engaged on working the said land as a smallholding.
 - The reason given for the condition is: That approval to the erection of the bungalow in this isolated position on agricultural land is only granted to assist in reclaiming the land in the interests of agriculture.
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Decision

1. The appeal is allowed and planning permission is granted for Proposed Bungalow, Sandy Lane, Holmeswood, Rufford at Meadow Farm, Sandy Way, Holmeswood, Rufford, Lancashire L40 1UF in accordance with the application Ref 2020/0084/FUL without compliance with the sole condition previously imposed on planning permission Ref 8/6/1481 dated 10 October 1952 and subject to the following condition:
 - 1) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

Procedural Matters

2. The site is within the Green Belt and national and local policy seeks to guard against inappropriate development which would be harmful to the Green Belt. However, the dwelling already exists on the site and a potential change in occupancy from an agricultural to a non-agricultural worker would not be a material change of use or an act of development. Therefore, the question of inappropriateness within the context of the Green Belt is not relevant to this proposal.

3. Some concern was expressed at the Hearing by the appellant that the existing condition did not form an agricultural occupancy condition (AOC) given the condition omits the word agriculture and refers to a smallholding. However, the activities on the land that would result from the use of the site as a smallholding would fall under the definition of agriculture. Further, the appellant describes the proposal on the application form as the 'removal of agricultural occupancy condition'. It is therefore reasonable to treat the existing condition as such.

Application for costs

4. Prior to the Hearing an application for costs was made by Mr Richard Parker against West Lancashire Borough Council. This application is the subject of a separate decision.

Background and Main Issues

5. Planning permission was granted for a bungalow in 1952, Ref 8/6/1481. The appellant has sought to remove the sole condition on the grounds that it fails to comply with the condition's tests¹ contained in the National Planning Policy Framework 2019 (the Framework) and in Planning Practice Guidance (PPG). Each test needs to be satisfied for every condition applied.
6. The first main issue is whether the condition meets the tests for the use of conditions. The second main issue is whether it is justified that the dwelling is covered by an AOC and if so, what form this should take.

Reasons

The existing condition and the tests

7. The existing condition effectively limits the occupation of the bungalow to someone working the land as a smallholding. The current condition is unnecessarily restrictive in this requirement, given that larger farming enterprises are now more dominant than at the time the condition was imposed.
8. It also does not allow for occupation of the dwelling by a widow or widower of an agricultural or forestry worker, or by any resident dependants. As a result, the condition seeks to place unreasonable and restrictive demands on occupiers that under some circumstances, could unjustifiably see an occupant denied their home. As a result, it fails the test of reasonableness.
9. I have been mindful of the requirements of Article 1 of the First Protocol 'protection of property' to the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 when coming to this conclusion.

Whether an AOC is justified

10. The dwelling sits within Holmeswood which was agreed at the Hearing to form a settlement exhibiting a pattern of ribbon development, which hosts very limited services and facilities. It was also agreed that Holmeswood is not enclosed by a settlement boundary within the West Lancashire Local Plan (2013) (WLLP). Much of the settlement is spaced out along Holmeswood Road

¹ Planning Practice Guidance Paragraph: 003 Reference ID: 21a-003-2019072

to the north, although a number of properties front Sandy Way on its western side as it extends south.

11. The dwelling is accompanied by approximately 1.62ha of land. Much of this is covered by a grazed field, while there are various agricultural style buildings in varying states of repair at the western end of the site. On my site visit I observed a variety of animals grazing and pigs within an enclosure. The site had the feel and appearance of a smallholding.
12. The dwelling to which the application relates sits at the southern end of the run of houses on Sandy Way with a neighbouring property set closely to the north. A ditch runs along the southern boundary of the wider site, and beyond this to the south, the flat and open countryside opens up. The area is dominated by arable farmland.
13. As a result, the dwelling is not physically separate or remote from the settlement of Holmeswood and should not be considered 'isolated' in the context of Paragraph 79 of the Framework.
14. However, the overall character of the area is highly rural, and Policy GN1 of the WLLP clearly seeks to focus development, including housing, to locations within settlement boundaries. Under some circumstances it suggests that there could be support for affordable housing outside of them. The inference to be made is that the local plan does not offer broad support for open market housing outside of settlement boundaries.
15. Policy GN1 is a distinctive local policy aimed at promoting sustainable development and protecting the character of the countryside through, amongst other things, restricting the provision of market housing within it. I find it consistent with the Framework. I therefore conclude that, as a result of the location of the dwelling, an AOC is justified.
16. Amongst other things, Policy GN4 of the WLLP seeks to retain agricultural workers dwellings unless it can be demonstrated either that the use of the site for that purpose is no longer viable or suitable or if marketing of the land/property indicates there is no demand within that use.
17. The dwelling and the surrounding land appears appropriate to accommodate an agricultural or forestry worker and any equipment they may own. Agriculture plays a large part in the local economy and agricultural workers are likely to need to reside in the locality. It was also explained at the Hearing that the dwelling is currently occupied by Mr Parker (Junior) who is employed by his father, the appellant, who owns a larger arable enterprise in the area. This in itself indicates a form of demand for the dwelling for an agricultural worker.
18. I was advised at the Hearing that the property had been purchased approximately three years ago, the price including a discount to acknowledge the presence of an AOC.
19. Nothing indicates the dwelling has been recently marketed by the appellant therefore the demand for the property remains un-tested. There was disagreement between the parties as to whether the Council required a marketing exercise on the basis of the existing condition. Whilst I can understand the reluctance of the appellant to conduct a marketing exercise on the basis of the current condition given the deficiencies I have identified,

equally, no consideration appears to have been given to altering the condition to one which meets the tests and then undertaking a marketing exercise.

20. Overall, on the basis of the evidence before me, I cannot conclude that the use of the property for an agricultural worker is no longer viable or suitable or that marketing of the land/property indicates there is no demand within that use. An approval without an AOC would therefore fail to accord with Policy GN4 of the WLLP.

The revised condition

21. I have previously concluded that the existing condition fails the test of reasonableness. I am aware that the appellant wishes to maximise their options with the property for the future should it no longer be required for occupation by Mr Parker Junior. However, having considered all evidence before me, including the parties' representations at the Hearing, I have concluded that an AOC remains justified. The possibility of the imposition of a revised condition along the lines of that included was raised at the Hearing.
22. Permission is therefore granted subject to condition 1 which will broaden the condition and allow the occupation of the dwelling by a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, or any resident dependants.

Other Matters

23. It may be the case that some of the historic planning approvals for a dwelling at the site up to 1960 have not included an AOC. However, there is nothing to indicate that any of these approvals are extant. Further, I have made an up to date assessment on the need for such a condition and I therefore afford this matter limited weight.

Conclusion

24. For the reasons set out above, and having taken into account all other relevant matters, the appeal is allowed subject to the attached condition.

T J Burnham

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

J.M.G Woods	on behalf of the Appellant
Brian Legan Dip TP, DMS	on behalf of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Kerry Scanlon	West Lancashire Borough Council
Mark Loughran (Principal Planning Officer)	West Lancashire Borough Council