



Appeal Decision

Hearing (Virtual) Held on 3 November 2021

Site Visit made on 4 November 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 9th December 2021

Appeal Ref: APP/K0235/W/21/3272973

Tenacres, Little Staughton Road, Colmworth, Bedfordshire MK44 2LB

- 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 Richard Stone against the decision of Bedford Borough Council.
 - The application Ref 20/02087/S73, dated 15 September 2020, was refused by notice dated 21 March 2021.
 - The application sought planning permission for "farmhouse without complying with a condition attached to planning permission Ref B/TP/78/1389, dated 8 January 1979".
 - The condition in dispute is No 4 which states that: *The occupation of the dwelling shall be limited to a person wholly or mainly employed, or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry, or a dependent of such a person residing with him.*
 - The reason given for the condition is: *The District Planning Authority would not permit the erection of a dwelling on this site unconnected with the use of adjoining land for agriculture/forestry/as a small holding.*
-

Decision

1. The appeal is allowed and planning permission is granted for farmhouse without complying with a condition attached to planning permission B/TP/78/1389 at Tenacres, Little Staughton Road, Colmworth, Bedfordshire MK44 2LB in accordance with the terms of the application, Ref 20/02087/S73, dated 15 September 2020, subject to the following conditions:
 - 1) The residential curtilage associated with the dwellinghouse shall be limited to the area included within the redline boundary shown on Revised curtilage plan 001.
 - 2) The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry, or in an equestrian enterprise or a dependent of such a person residing with him or her, or a widow or widower of such a person.

Background and Procedural Matters

2. The development is described in the application form and the appeal form as 'Farmhouse'. I have adopted the description of the development from the decision notice in the banner heading above, as this better describes the appeal proposal.

3. Outline planning permission was granted in 1979 for a farmhouse on land at Little Staughton Road, Colmworth. This was subject to several planning conditions relating to reserved matters and condition No 4 which limits the occupation of the dwelling to someone employed or last employed in agriculture or forestry, or a resident dependent of such a person.
4. Until the death of the former owner and occupier in 2015, the appeal property was occupied in accordance with the occupancy restriction. The appellant purchased the dwelling in 2018 and he currently occupies it with his family. However, he does not meet the requirements of the occupancy condition. Therefore, the appeal seeks to remove the occupancy restriction and thereby allow the property to be occupied on an unrestricted basis.

Main Issue

5. The main issue is whether the condition restricting the occupancy of the dwelling is necessary and reasonable.

Reasons

6. The appeal relates to a single storey dwelling constructed as a farmhouse in association with approximately 3.5ha of adjoining agricultural land and agricultural storage buildings (collectively, the holding). It is on the west side of Little Staughton Road, approximately 500m from the centre of Colmworth village. It has open countryside to 3 sides, including on the opposite side of the road and it shares its southern boundary with Meadowview, which is a residential dwelling. Tenacres is in the countryside for planning purposes.
7. 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. The Bedford Borough Local Plan 2030 Adopted January 2020 (the LP) is the development plan for the purposes of the appeal. LP Policy 7S sets out the types of development that may be supported in the countryside outside of defined Settlement Policy Areas, including rural workers' accommodation. Policy 68 supports rural workers' dwellings in the countryside subject to meeting listed criteria.
8. The removal of condition No 4 imposed on the original planning permission would effectively create a new open market dwelling. This is not a type of housing that is supported in the countryside. On this basis, the proposal would conflict with the Council's spatial strategy and its rural housing aims. However, the Council recognises that in certain circumstances the removal of an occupancy restriction condition may be justified. LP Policy 68 sets out that the dwelling would need to be surplus to the needs of the rural enterprise, there is no local need for rural workers' accommodation and that, following an appropriate marketing campaign, there has been no interest in its occupation.
9. The appellant purchased the dwelling together with the adjoining agricultural buildings and land. While I understand that the previous owner managed additional land in the area, the extent of the appellant's holding corresponds to the land in the original outline application. Therefore, the appellant's current holding is the rural enterprise for the purposes of the appeal.
10. The appellant suggests that the holding is too small to support a viable agricultural business. It would not be suitable to support an arable enterprise without additional land. An equestrian enterprise would similarly be likely to

require additional land for grazing and menage areas. However, not all rural businesses require large areas of land. In this regard, the holding may be suitable for intensive poultry or pig units, or high value horticultural or vegetable crops, albeit that such enterprises may require additional buildings. Moreover, the land and buildings are widely separated from the village such that proximity to residential properties does not appear to be a significant constraint to a rural enterprise in this location.

11. In any case, as was the case historically, the rural enterprise would not need to be restricted to the holding land. It could include land elsewhere, either owned or rented. Irrespective that the holding land may not lend itself to arable combining, it is agricultural land. There is little evidence that it could not be managed with additional land, if need be, as part of a viable rural enterprise.
12. The buildings are not in agricultural use and the land is managed by a local farmer. The income from the land does not provide a salary. I understand the appellant has planted some trees, but there is little evidence that this is part of a forestry business. He told the Hearing that he has been unable to find additional land in the area. However, he is not an agricultural worker and there is little evidence that he has attempted and failed to establish a rural enterprise in this location. Therefore, it has not been demonstrated that the dwelling is genuinely surplus to the needs of a viable rural enterprise.
13. The children of the former owner, who inherited the property following his death in 2015, considered the occupancy restriction and the poor condition of the property would be constraints to its sale and they were in the process of seeking to remove the condition. However, there is little evidence that the property was marketed unsuccessfully between 2015 and 2018. The former empty home status of the dwelling does not demonstrate a lack of demand for rural workers' accommodation in the area.
14. The prevailing rural land use in the area is agriculture. There is an associated need for agricultural workers' dwellings. The Council has granted 10 planning permissions for such dwellings within the last 10 years. Conversely, over the same period, there have been 3 applications to vary agricultural occupancy conditions. While 2 were approved, 1 was subject to a legal agreement to transfer the occupancy restriction to an alternative dwelling.
15. I understand that most if not all the permissions relate to established farming units with large land holdings. Moreover, in the case of livestock enterprises, there would be a demonstrable need for a worker to live on site for animal welfare reasons. Therefore, the planning permissions are not directly comparable to the appellant's holding. Even so, the greater demand for new rural workers' dwellings than for their removal from the housing stock demonstrates a continuing local need for rural workers' housing.
16. I understand the dwelling would be unlikely to meet the essential need of a livestock enterprise elsewhere. However, it is already a rural workers' dwelling. Its lack of close physical relationship with businesses elsewhere does not demonstrate it would not be suitable to be occupied by qualifying persons of such businesses such as farm managers, family members involved in a rural enterprise or persons retired from such an enterprise.
17. At the time of the Hearing, the property had been marketed for a 12 month period by a local estate agent and details were available on national property

listing websites. The sales particulars were sent to local farm businesses in November 2020 and the dwelling was advertised in the Farmers Weekly on 4 December 2020. The marketing material states that the dwelling is subject to an agricultural occupancy condition. The Council considers this is evidence that the dwelling has been widely marketed on terms reflecting the occupancy condition and for an appropriate length of time. I see no reason to disagree.

18. The marketing material includes 2 photographs which are the same oblique external view of the front of the property. This is in marked contrast to the submitted Rightmove listings of other properties, which include large numbers of photographs illustrating the front and rear of properties, the gardens and the internal accommodation. I appreciate that the appellant's wife had recently had a baby when the property was first marketed and she did not want the photographer in the house. Nevertheless, the absence of photographs does not show the property to a competitive advantage.
19. The dwelling is not being offered for sale with its existing access and its residential garden. Instead, the boundary plan has been drawn close to the rear and to both sides of the dwelling. The garage could not be used for its intended purpose. A buyer would be required to erect a close boarded fence around the dwelling and its garden, and to construct a vehicular access and parking area in the small front garden. Irrespective that the surrounding yard and land would be available by separate negotiation, the limited garden and close proximity of the boundaries and neighbouring uses to the dwelling, the absence of a garage and the need to undertake expensive works subject to planning permission, would cumulatively render the dwelling less attractive than properties without such constraints.
20. For the purposes of the marketing exercise, the dwelling has been valued and offered for sale independently of the agricultural land and buildings. It has been valued by 1 estate agent only, based on a rate of £358 per square foot for 146sqm gross internal living area and a lower rate for the garage and stores. A 30% reduction has been applied to reflect the agricultural occupancy restriction, resulting in a guide price of £450,000. The cost of the necessary fencing and the new access have not been accounted for in the guide price.
21. The parties agree that the rate per square foot is consistent with other properties for sale in the area. Nevertheless, the Council considers that the dwelling is not competitively priced. The gross internal area of the dwelling used to calculate the market value is significantly larger than the internal floor area indicated in the marketing brochure. This can be explained in part by the exclusion of the internal walls from the gross internal area. However, it has not been demonstrated that the internal walls of the relatively modern and modest dwelling account for the 36sqm difference. If the internal area in the calculation was reduced by this amount, the Council estimates that this would reduce the discounted value to somewhere around £350,000.
22. The Hearing was told that there is support for the market valuation independent of the internal area. In this regard, the property was valued in 2017 by 2 separate estate agents at £300,000-£350,000, including a reasonable deduction for the agricultural tie. However, there are no details of what was included in the earlier valuations or how much the market value of the dwelling was discounted. The dwelling has been refurbished and there has been house price growth since 2017. Nevertheless, in the absence of details, I

cannot be certain that the 2017 valuations are directly comparable or reliable to establish the current market or discounted value of the dwelling.

23. My attention has been drawn to properties for sale elsewhere in the area. The comparable properties suggested by the appellant are rural detached 3-4 bed dwellings on the market at £600,000-£850,000, the lowest value relating to a property subject to an occupancy restriction. On the basis of the details before me, these differ from the appeal property in a number of ways including their greater extent and standard of living accommodation, their markedly larger plot sizes with front and rear gardens, driveway parking and garages for multiple vehicles. There is little compelling evidence that these establish the guide price of the appeal property.
24. The Council's 2 suggested comparable properties are in Colmworth. They offer apparently similar extents of internal living accommodation, gardens, garages and driveway parking. They are unrestricted dwellings valued at £365,000 and £475,000. I accept that the appeal property may be decorated to a higher standard than these properties and its countryside location could attract a premium of perhaps 15%. Even so, and taking into account its constraints, neither the internal finish nor the rural location of the appeal property appears to account for its significantly higher market valuation compared to the properties in nearby Colmworth.
25. The brochure states that the surrounding yard and land is available by separate negotiation. While this may not be unusual, there is a lack of transparency and clarity in relation to the yard and land and there is no mention of the agricultural buildings. Moreover, while the appellant would be willing to sell the holding, he told the Hearing that it has not been valued and no price has been established. I understand that the dwelling has been marketed separately in order to establish the need for the occupancy condition. However, I cannot be certain that the way the dwelling has been marketed would not reduce the potential pool of purchasers.
26. The Rightmove marketing reports indicate that the property listing has been viewed online by a reasonably large number of people. However, there have been relatively few verbal enquiries. Two enquiries did not progress, presumably because they could not meet the agricultural occupancy restriction. However, the Hearing was told that there is currently a party interested in the dwelling and the land. Furthermore, on the basis that they are retired and in the process of selling an equestrian business, they may meet the definition of a rural worker for the purposes of LP Policy 68.
27. Consequently, it has not been demonstrated that the dwelling is surplus to the needs of the rural enterprise. It has not been demonstrated that there is no evidence of a continuing need for rural workers' accommodation in the locality. The dwelling has been widely marketed on terms reflecting the occupancy condition for an appropriate period of time. However, there is little evidence that the dwelling is competitively priced to sell. Moreover, there are a number of constraints that would reduce its attractiveness to potential buyers. Lastly, there is currently interest in the dwelling with its holding.
28. Therefore, on the basis of the evidence, I conclude that the appeal proposal would conflict with the housing strategy and rural housing aims of LP Policies 7S and 68. Consequently, a condition that restricts the occupancy of the dwelling to a rural worker is reasonable and it is necessary.

Other Considerations

29. When the appellant purchased the dwelling, it was on the empty homes register and it was in a poor state of repair. The appellant has refurbished and modernised the dwelling and he has brought an empty home back into use as a family dwelling. However, this carries little weight in favour of a scheme that would result in the loss of a rural workers' dwelling.
30. The appellant and his family, including his children, currently live in the dwelling. The children are of school age or younger and the older children attend school in Bedford. None of the family have medical conditions or disabilities. The appellant has family in the local area who assist with childcare.
31. If the appeal should fail, then the implications of the decision would be that the family would have to stop living in the appeal property. The Hearing was told that the appellant does not have any alternative accommodation and he cannot currently pass credit checks to rent a property. He is understandably concerned that the family could become homeless and that they would not be eligible for local authority support. The worst-case scenario would clearly be a significant adverse outcome and impact on the family. Having regard to Article 8 of the European Convention on Human Rights, this would be a significant interference with their human rights. In this regard, the best interests of the child must be a primary consideration, although not necessarily determinative, in the appeal.
32. It will be in the best interests of the children to have a permanent home where their health, education and general welfare needs would be met. Nevertheless, there is little evidence that those needs could only be met at this site. The appellant does not have a second home or alternative accommodation at the current time. However, while he may be currently unable to rent a property, there is little to suggest that, subject to selling the appeal property, neither he nor his wife would be able to secure alternative accommodation.
33. The Council explained that, if the appeal concluded that the occupancy condition was necessary, it would put the appellant on notice that it was likely to serve an Enforcement Notice (the EN). Based on the circumstances of the case, it would allow sufficient time for the appellant to relocate to alternative accommodation. The relevant time period would be established in consultation with the appellant, taking into account the matters raised. The appellant would have the opportunity to appeal the EN, including the timescales for compliance. The Council could also vary or it could extend the time for the EN if it considered that the appellant had taken genuine steps to sell the property and move, including that the marketing was genuine to facilitate the move. Furthermore, the Council would need to consider the best interests of the child including in deciding whether or not to take enforcement action.
34. The appellant was not reassured by the Council's considered setting out of the implications of the decision for his family. However, notwithstanding his concerns in relation to being made homeless, I am satisfied that this would not be the case. There is little compelling evidence that he would be unable to find alternative accommodation within a reasonable distance of the children's school and the extended family. He would be given a reasonable timescale to sell the property and to move to alternative accommodation. There would be opportunities to extend the timescale if genuine efforts to sell the property and to move had proved unsuccessful within the original timetable. On this basis, while moving house can be stressful and disruptive, neither the appellant's

personal circumstances nor the best interests of the child appear to indicate making a decision other than in accordance with the development plan.

Conditions

35. Section 73 of the Act sets out that if local planning authorities decide that permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant permission accordingly. If they decide that permission should be granted subject to the same conditions as the previous permission, they shall refuse the application. The Planning Practice Guidance sets out that decision notices for the grant of planning permission under Section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged.
36. In this case, I have found that the appeal proposal would conflict with the development plan. Therefore, a condition restricting the occupancy of the dwelling is reasonable and it is necessary to ensure the proposal does not result in an open market dwelling in the countryside unconnected with the use of adjoining land for agriculture, forestry or equestrian use in accordance with LP Policy 68 and the National Planning Policy Framework (the Framework). However, condition No 4 pre-dates the development plan and the Framework and it is not entirely consistent with the local and national planning policy. In accordance with the provisions of Section 73 of the Act, I will replace the condition subject of the appeal with a modified condition that meets the tests.
37. Conditions Nos 1, 2, 3 and 5 imposed on the original planning permission relate to reserved matters, the details of which were subsequently approved. They are not relevant and I have not imposed them on the planning permission.
38. The Council suggested conditions in the event the appeal was allowed. A condition requiring a scheme for boundary treatments and access details would have been necessary if I had deleted the disputed condition. This is because the removal of the occupancy condition would create an independent dwelling separate from the agricultural holding. As the dwelling will remain subject to an occupancy restriction and part of the holding, neither the fencing nor the access is required.
39. I have imposed a condition specifying the curtilage of the dwellinghouse. The plan submitted with the original outline application does not reflect the development at this site. Moreover, while the occupancy condition relates to the dwelling, the appeal site includes the dwelling, the agricultural sheds, a recent industrial-type building, storage containers and yard areas. Therefore, a condition specifying the plans is necessary in the interests of certainty.

Conclusion

40. For the reasons set out above, although I have not found in the appellant's favour in respect of the substantive case, the effect of modifying condition No 4 is to allow the appeal and grant planning permission on this basis.

Sarah Manchester

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Stone, appellant

Mr B Waine, Barry Waine Planning

Mr P Moore, Bletsoes Estate Agents

FOR THE LOCAL PLANNING AUTHORITY:

Mrs P Jewitt, Senior Planning Officer

Mr P White, Team Leader Planning Appeals and Enforcement

INTERESTED PERSONS:

Ms L McKenna, Bedford Council Democratic Services

Ms S Bartlett, Bedford Council Support Services