



Appeal Decision

Hearing Held on 12 January 2022

Site visit made on 17 January 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2022

Appeal Ref: APP/Q9495/C/19/3230973

Land at 1 High Knott Barn, Ings, Kendal, LA8 9PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Stephen Elliott against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice was issued on 9 May 2019.
- The breach of planning control alleged in the notice is failure to comply with condition No 5 of a planning permission Ref 7/2018/5030 granted on 25 May 2018.
- The development to which the permission relates is the redevelopment of agricultural building to two local needs dwellings.
- The condition in question is No 5 which states that: The dwellinghouse(s) hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her. The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether this condition is being observed. In this condition the following definitions apply: 'Person with a Local Connection' means an individual who before taking up occupation of the dwelling satisfies one of the following conditions: (1) The person has been in continuous employment in the Locality defined for at least the last nine months and for a minimum of 16 hours per week immediately prior to occupation; or (2) The person needs to live in the Locality defined because they need substantial care from a relative who lives in the Locality defined, or because they need to provide substantial care to a relative who lives in the Locality defined. Substantial care means that identified as required by a medical doctor or relevant statutory support agency; or (3) The person has been continuously resident in the locality defined for three years immediately prior to: a) Needing another dwelling resulting from changes to their household, including circumstances such as getting married, divorced, having children, or downsizing. b) Undertaking full-time post-secondary education or skills training and is returning to the locality defined within 12 months of its completion, or c) being admitted to hospital, residential care or sentenced to prison, and are returning to the locality defined within 12 months of their discharge/release, or (4) The person is a person who – a) Is serving in the regular forces or who has served in the regular forces within five years prior to occupation; b) Has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where - i. The spouse or civil partner has served in the regular forces; and ii. Their death was attributable (wholly or partly) to that service; or c) Is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service. 'Locality' shall mean the administrative areas of the Parishes of: Broughton East; Cartmel Fell; Crook; Crosthwaite and Lyth; Helsington; Kentmere; Lakes; Longsleddale; Skelwith; Staveley in Cartmel; Staveley with Ings; Underbarrow and Bradleyfield; Lindale and Newton-in-Cartmel; Windermere; Witherslack; Meathop and

Ulpha; and those parts of the Parishes of Fawcett Forest; Strickland Ketel; Strickland Roger; and Whitwell and Selside which lie within the administrative area of the Lake District National Park. An 'Only or Principal Home' is a dwellinghouse which is occupied continuously for a minimum period of six months in every twelve-month period. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation. The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this condition.

- The notice alleges that the condition has not been complied with in that the dwelling is being occupied by a person without a Local Connection and it is not the occupiers Only or Principal Home.
 - The requirement of the notice is to permanently cease to occupy the dwelling otherwise than in accordance with planning permission reference 7/2018/5030.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - This decision supersedes that issued on 1 June 2021. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.
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Formal Decision

1. It is directed that the enforcement notice be varied by deleting all the words in the allegation in section 3 and substituting the words "Occupation of a dwelling not in accordance with Condition 5 attached to planning permission reference 7/2018/5030" instead.
2. Subject to this variation the appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, Condition 5 attached to planning permission Ref 7/2018/5030, granted on 25 May 2018 by Lake District National Park Authority, is discharged and the condition cited in the attached 'Condition Schedule' at the end of this decision letter is substituted instead.
3. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the redevelopment of agricultural building to two local needs dwellings without complying with Condition 5, but subject to the other conditions attached to planning permission Ref 7/2018/5030 and the new condition cited in the attached 'Condition Schedule' at the end of this decision letter.

Procedural Matters

4. The original appeal decision was challenged under s289 of the Act. The Consent Order of the High Court confirmed that the previous decision letter contained an error of law in that the Inspector determined that Condition 5, as imposed, remained appropriate but failed to give reasons why a proven need for 4+ bedroom houses in the geographical area of South Lakeland District Council justified the imposition of that condition, which related to a smaller geographical area (as defined by the 'Locality'). The Court ordered that the matter be remitted for a re-hearing and redetermination in accordance with these findings.
5. On this basis the focus of my approach will be to address the shortcomings in the previous decision letter as identified by the High Court, specifically,

whether the position with regard to local need justifies the imposition of an occupancy condition and if so, how that condition should be worded. The outcome of these considerations will inform whether the condition meets the legal and policy tests for conditions.

6. Outside the scope of the Court Order are the findings of the previous Inspector with regard to the appeals on grounds (f) and (g). Accordingly I consider that it would not be appropriate for me to re-consider these aspects of the previous appeal decision that have not been challenged. The parties raised no objection to this approach at the Hearing.
7. In the event that I decide that planning permission ought not to be granted for the development, without an occupancy condition, the wording for an alternative occupancy condition has been advanced by the appellant for consideration. Accordingly I need to deal with this under ground (a), rather than ground (f), as suggested by the appellant, and amongst other things consider whether this outcome could be achieved by granting planning permission "in relation to the whole or any part" of the matters alleged in the notice.
8. The appellant confirmed at the Hearing that he no longer proposes a further amendment to the condition to allow for the short term / holiday use of the property.
9. The parties agreed at the Hearing that, in accordance with the findings of the previous Inspector, it would be appropriate to abbreviate the description of the alleged breach to read "Occupation of a dwelling not in accordance with Condition 5 attached to planning permission reference 7/2018/5030". I agree that this would not result in injustice.

Reasons

The validity and merits of a planning condition to control local occupancy

10. It was evident from my site visit that the layout of the property was consistent with that found by the previous Inspector, with 5 bedrooms and an office (shown as Gym / Bedroom 6 on the approved plans). It seems to me that, because of the size of the property, there would be flexibility in terms of the precise use of some of the spaces described as bedrooms, such that the property may remain attractive as a 4-6 bedroom unit. It is not therefore material to my findings that no evidence has been presented of a specific need for a 6-bedroom property.
11. The Council's approach to controlling the occupation of new housing is set out in Policy 15 of the Lake District National Park Local Plan 2021 (LP). This policy seeks to increase the supply of homes to meet local community need; that contribute towards helping communities remain vibrant and resilient and that achieve a better balance in the housing market. New permanent homes that, amongst other things, are secured for permanent occupation, with eligibility restricted to a geography that is tailored to local circumstances will be supported. The policy states that open market housing will not be supported.
12. The explanatory text to the policy sets out that there is immense pressure on the existing housing stock in many areas of the Lake District, due in part to the purchase of second homes, with a significant amount of existing housing unfettered by occupancy controls. It says that earnings in many rural parts of

the Park are lower than in neighbouring urban areas, due to a lack of large industry and greater levels of agriculture and tourism. This makes it difficult for people relying on local wages to compete for housing in an open market.

13. The Council's Housing Supplementary Planning Document 2021 (SPD) sets out various 'local connection' criteria that will be used to identify eligibility. These criteria include, as a starting point, a requirement to be in continuous employment within the defined Locality for at least the last 9 months and for a minimum of 16 hours per week. However the SPD recognises that there could be scope to extend the 'Locality', in a number of defined ways, where reasonable justification is provided for doing so. The appeal site is identified as falling within the Central and SE Locality which comprises various parishes within this part of the National Park.
14. The above raises the question whether the current level of occupancy restriction as set out in Condition 5 would be appropriate, having regard to local circumstances. If it is not, then is it the case that a lesser degree, or indeed any degree of occupancy restriction would be justified in this case?
15. The appellant's evidence refers to the outcome of a recent exercise where the property was marketed for sale from July 2021. The Council confirmed at the Hearing that it does not take issue with the advertised value of the property adequately reflecting the inclusion of the occupancy condition. Despite views to the contrary being put by Dr Gibbs, I am not presented with persuasive evidence to support this contrary position.
16. This exercise apparently resulted in a cash offer being made for the property. However, from the information provided by the appellant and the Council it is uncertain whether the prospective purchasers would meet the existing occupancy criteria specified in the condition. Accordingly I find that the outcome of this exercise, in itself, neither weighs in favour of nor against the inclusion of the condition as currently worded.
17. I acknowledge that Dr Gibbs suggested local interest in purchasing the property would have been greater had physical signage been used in the vicinity to advertise the sale, and had there not been the deterrent of the pending 'second' appeal decision at this time. However I consider that access to estate agent offices and internet browsing would account for a significant majority of potential purchasers, with the possibility of any offer being subject to the outcome of the appeal. I do not therefore consider that these factors are likely to have been prejudicial to the marketing exercise.
18. In terms of evidence of local housing need, consideration was given at the Hearing to the significance of findings in the South Lakeland Strategic Housing Market Assessment 2017 (SHMA), which provides an assessment of future housing needs for the 2016 – 2036 period. Consideration was also given to the Staveley with Ings and Kentmere Parish Housing Needs Survey Report 2015 (HNSR).
19. The appeal site falls within both of the study areas. However the SHMA covers a significantly more extensive area than the 'Locality' defined as part of the planning condition, encompassing part of the Lake District National Park (LDNP) further to the west, the Kendal and Ulverston areas along with their rural hinterlands, and part of the Yorkshire Dales National Park. Conversely

the HNSR focuses on a smaller number of Parishes than the total that make up the 'Locality'.

20. The Council's case is that the SHMA confirms a need for 4+ bedroom homes, suggesting that new market properties of this size should comprise 15-20% of the mix. The appellant, whilst accepting that the SHMA demonstrates need in principle, cautions that the figures cited by the Council assume higher levels of in-migration. The appellant considers that the growth figure cited of 5.2 per cent, equivalent to 86 dwellings, better reflects the standard methodology used when planning for population and household growth.
21. It seems to me, even if accepting this lower level of need identified in the SHMA as the appropriate projection, and also that need appears to be significantly greater for smaller 2- and 3-bedroom properties, that it nevertheless demonstrates a degree of market need within the study area for larger properties. Whilst I acknowledge this does not account for the supply of dwellings since publication of the SHMA, I am not provided with any better evidence of the level of need within the assessment area, or to contradict the notion that there remains a market need for larger properties. This said, I am mindful that this finding does not directly translate to justification for the smaller geographical area, subject to the occupancy condition.
22. The HNSR identifies a need for a relatively small number of 4+ bedroom market homes within that study area. However it was accepted by the Council that this study provides a 'snapshot' position and was generally considered to have a five-year life span. I therefore attach limited weight to the findings of this particular study, in terms of justifying the occupancy restriction as currently cited.
23. For the above reasons I am not persuaded that the evidence and rationale for wording the condition to restrict occupancy to the currently defined Locality is sufficiently robust. In these circumstances the Council has set out alternative wording for the description and definition of 'Locality' that it would wish to see applied instead. In order of preference the Council suggests altering the definition to cover the Central Lakes sub-market area, as defined in the SHMA, followed by extending it to cover the South Lakeland District Council area within the National Park.
24. This questions the justification for a more geographically confined 'Locality' than the entirety of the SHMA area, on which the finding of a local need for larger homes is based. It seems to me that part of the answer is the concern expressed within the explanatory text to Policy 15 of the LP regarding difference in earnings making it difficult for people relying on local wages to compete for housing in an open market. It suggests a justification for excluding from the Locality more urbanised areas, such as Kendal and Ulverston, where the policy indicates people are likely to have earnings higher than those working in the National Park. In addition to this I am not provided with evidence to indicate that other areas within South Lakeland, but outside the LDNP, look to the National Park to satisfy their housing needs. This would seem to justify excluding these further areas from the Locality.
25. Drawing the above considerations together, whilst clearly not an exact science, it seems to me that extending the Locality to cover the South Lakeland area within the National Park would allow for a reasonable compromise to reconcile

the tension between avoiding a too tightly defined Locality and controlling the market effectively in recognition of evidence of local housing need.

26. By way of alternative the appellant advances the following condition wording to allow occupation,

"by a person with a Local Connection as his or her main residence or the widow or widower of such a person, and any dependants of such a person living with him or her.", with the definition of Local Connection updated to include,

"(1) A person (and their immediate family) who can demonstrate a permanent job contract or valid business interests that require them to undertake paid employment for a minimum of 16 hours per week within the County of Cumbria".

27. The appellant considers that unless the wording of the condition is relaxed in this way, or the condition is removed altogether, it would undermine the ability of economically active people to relocate. He considers that relaxation would be consistent with part of Policy 02 of the LP which refers to enabling development that contributes to a prosperous economy and vibrant, sustainable settlements. Moreover the appellant argues that the relatively high value of the appeal property, even with the occupancy condition imposed, means that it would be unattainable for a vast majority of people. In these circumstances the property would not be serving local need in any event.
28. I have also taken into consideration that, prior to the more restrictive wording being adopted, the Authority was itself contemplating the use of a similarly phrased, less restrictive, form of wording to define the Locality within the recently adopted SPD. This was subject to public consultation with a justification that it may benefit the local economy and help to ensure more vibrant communities.
29. However, whilst the SHMA evidence indicates the need for a relatively small number of larger dwellings within the South Lakeland District Council study area, it does nevertheless indicate that a need exists. Also whilst those with the ability to purchase the property may be relatively few in number it does not mean they do not exist. I acknowledge that my colleague previously drew a similar conclusion to this, albeit in relation to a site in a different part of the LDNP¹. The objective of Policy 15, in responding to 'local need', goes beyond simply the provision of affordable housing. Whilst I have taken into consideration the appellant's points regarding recommended income to house price ratios, I am mindful that existing assets may be available to some households which serve to reduce borrowing requirements.
30. I am mindful that it appears to be undisputed that other dwellings within the small cluster around High Knott are occupied subject to the existing occupancy condition; also that the 2021 marketing exercise, in relation to the appeal property, was undertaken only for a relatively short period of time and could have captured 'eligible' purchasers had it gone on for longer.
31. Under the circumstances, I am not persuaded that there is a compelling case to impose an occupancy condition with a more liberally defined 'Locality' than that which I have identified above; or indeed to remove such a condition altogether, given that Policy 15 of the LP expressly seeks to avoid open market housing.

¹ Appeal Ref APP/Q9495/W/18/3200558

32. I have also had regard to the appellant's points, undisputed by the Council, that in granting planning permission originally the Council did not expressly consider the need for a dwelling of this size; also that the proportion of second homes within Hugill parish, where the appeal site is located, is relatively low. However this does not pre-empt consideration of the need or otherwise for an occupancy condition going forward, or contradict the finding that a local need exists.
33. An appeal decision was drawn to my attention by the appellant where the Inspector allowed the Locality to be extended outside the National Park to include the Ulverston and Furness housing market area². However I note that in that case the supply and demand for four-bedroom properties was found to be equally matched. Moreover it was found that the peripheral location in the National Park meant that residents were more likely to look outside the National Park to Ulverston for employment and services. The circumstances of that case therefore differ from the present one and it does not automatically follow that planning permission should be granted in this case.
34. The available evidence does not translate into an easily identifiable 'Locality'. However, on balance, I conclude that to relax the wording of the occupancy condition such that the qualifying Locality is consistent with the South Lakeland District Council area, within the National Park, would accord with the objectives of Policy 15 of the LP to tailor geography to local circumstances, with guidance in the SPD and with the development plan, when read as a whole. In my judgement, the evidence does not discount the existence of local need in this area and I am not persuaded that the occupation of the property, subject to this level of restriction, would be unachievable.
35. On this basis, and when considering the objectives of Policy 15 of the LP, I consider that the condition, worded in this way, would meet the tests of necessity and reasonableness.
36. The Council states that the intentional unauthorised nature of the development is a material consideration in line with Government policy, that should be given adverse weight. The appellant has indicated that prior to purchasing the property he understood the condition was not applicable due to the financial problems faced by the property vendor. I am also mindful that the Act makes provision for planning enforcement that is remedial rather than punitive. In light of these considerations, the suggestion that the breach was intentional and should attract adverse weight is not compelling.

The appeal on ground (c)

37. The appeal is that the matters stated in the notice do not constitute a breach of planning control. The basis of the appellant's claim in this regard is that Condition 5 is invalid, and therefore unlawful, as it fails to meet the various legal and policy tests for planning conditions.
38. The legal tests are that the condition should be imposed for a planning purpose and no other purpose, however desirable; fairly and reasonably related to the development permitted; and not so unreasonable that no reasonable planning authority could have imposed it.

² Ref APP/Q9495/W/16/3160490

39. The policy tests for conditions, some of which overlap with the legal tests, are necessity, relevance to planning and to the development permitted, enforceability, precision, and reasonableness in all other respects.
40. For the reasons set out in the preceding section I am satisfied, on the evidence before me, that a 'local need' for the property cannot be ruled out, and that the property is capable of meeting a local need. I have no reason to disagree with the previous Inspector's findings that the condition is not so imprecise as to be unreasonable; that it can be enforced and its meaning is clear to anyone seeking to understand the restrictions. I am satisfied that the principle of a local occupancy condition would in this case be reasonable, in the context of adopted policy objectives, and would meet the legal and policy tests referred to above. Such a condition would not be invalid and therefore unlawful.
41. The appellant argues that the provision in Condition 5 relating to the Armed Forces did not meet the legal tests as it was not for a planning purpose. I agree with the previous Inspector that this element of the condition is not determinative and is capable of being a planning consideration. Whilst I shall consider the merits of this element of the condition in the following section of my decision, I concur with the previous Inspector that Condition 5 would not be rendered unreasonable in its entirety by its inclusion. The condition as a whole was imposed for a planning purpose.
42. Notwithstanding that the appellant sets out that he proposes to expand his existing business interests in the Cumbria area and establish a permanent home there, he accepts the dwelling was occupied in breach of the requirements of the condition. I conclude that there has been a breach of planning control, and it follows that the ground (c) appeal must therefore fail.

The appeal on ground (a)

43. The ground of appeal is that planning permission should be granted for the matters stated in the notice as a breach of planning control. As identified in the previous Inspector's decision letter, the deemed planning application is for the dwelling without the condition being enforced against.
44. For the reasons given above I consider that a local occupancy condition which restricts the relevant Locality to an area corresponding to the South Lakeland District Council area within the National Park would be appropriate.
45. I concur with the Council's view that to ensure the condition is applied robustly, one of the restrictive criteria should be that the occupier would need to demonstrate a period of stable and substantial employment within the Locality prior to taking up occupation of the property. Therefore the inclusion of a requirement to be continuously employed within the Locality for at least 9 months and for a minimum of 16 hours per week immediately prior to taking up occupation would be appropriate.
46. I find that it would be reasonable to include clarification within the condition that the obligations therein are not binding on a mortgagee, in the interests of debt finance.
47. The appellant raises the concern that the eligibility criteria include a connection with the Armed Forces. Whilst, as set out above, I concur with the previous Inspector that this is capable of being a planning consideration, the Council's reason for including the criterion relates to the allocation of housing by a local

housing authority, as distinct from a local planning authority. I am not persuaded that a demonstrable connection between the Armed Forces and local need has been made out in this case. I therefore propose to omit this criterion.

Conclusion

48. For the reasons given above I conclude that the appeal should succeed on ground (a) and that the enforcement notice should be quashed. I propose to discharge the condition the subject of the notice, and to grant planning permission on the application deemed to have been made for the development previously permitted without complying with the condition enforced against, but subject to a new condition as set out in the schedule below. The appeals on grounds (f) and (g) do not therefore fall to be considered.
49. Where an appeal against a notice to enforce conditions is allowed on its merits but a new condition is required, the disputed condition can be discharged and the new one substituted using powers under s 177(1)(b) and s177(4). The deemed planning application made under s177(5) also provides for a grant of a fresh permission subject to conditions. The new condition must be imposed on the new and old permissions, so as to avoid confusion as to which has been implemented. I have worded the formal decision accordingly.

Roy Merrett

INSPECTOR

CONDITION SCHEDULE

The dwellinghouse hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her.

In this condition the following definitions apply:

'Person with Local Connection' means an individual who satisfies one of the following conditions:

- (1) The person has been in continuous employment in the Locality defined for at least the last 9 months and for a minimum of 16 hours per week immediately before taking up occupation; or
- (2) The person needs to live in the Locality defined because they need substantial care from a relative who lives in the Locality defined, or because they need to provide substantial care to a relative who lives in the Locality defined. Substantial care means that identified as required by a medical doctor or relevant statutory support agency; or
- (3) The person has been continuously resident in the Locality defined for three years immediately prior to: a) Needing another dwelling resulting from changes to their household (including circumstances such as getting married/divorced, having children, or downsizing). b) Undertaking full-time post-secondary education or skills training and is returning to the Locality defined within 12 months of its completion, or c) Being admitted to hospital, residential care or sentenced to prison, and are returning to the Locality defined within 12 months of their discharge/release, or
- (4) The person is a former resident who lived in the Locality defined for three years and then lived outside the Locality defined for social and/or economic reasons and is returning to live in the Locality defined within three years of the date of their departure.

'Locality' shall mean the area that, at the date of the decision, falls within the administrative area of South Lakeland District Council which lies within the administrative area of the Lake District National Park.

An 'Only or Principal Home' is a dwellinghouse which is occupied continuously for a minimum period of six months in every twelve-month period. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation.

The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this condition.

END OF CONDITION SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Paul Tucker QC of Counsel - Advocate

Caroline Payne – Principal witness

Stephen Elliott – Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Clutten of Counsel – Advocate

Ben Long – Area Planner

Julie Birkett – Area Planner

INTERESTED PERSONS:

Dr Jonathan Gibbs – Local resident

Documents presented after the Hearing:

1. Suggested wording for alternative occupancy conditions