



Appeal Decision

Site visit made on 2 October 2023

by S Leonard BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th October 2023

Appeal Ref: APP/D0840/W/23/3318576

Tregarthen Vean, Broads Lane, Mylor Downs, Cornwall TR11 5UL

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Sean Williams (executors of the estate of the late Mrs Julie Bernadette Williams) against the decision of Cornwall Council.
 - The application Ref PA22/10999, dated 9 December 2022, was refused by notice dated 24 February 2023.
 - The application sought planning permission for erection of dwelling and garage without complying with a condition attached to planning permission Ref PA16/1463/91, dated 10 December 1991.
 - The condition in dispute is No 6 which states that: *The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly employed or last employed locally in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990, or forestry or a dependant of such a person residing with him, including a widow or widower of such a person.*
 - The reason given for the condition is: *The site is within a rural area in which it is intended to provide primarily for agriculture.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of dwelling and garage at Tregarthen Vean, Broads Lane, Mylor Downs, Cornwall TR11 5UL in accordance with the application Ref PA22/10999, dated 9 December 2022, without complying with condition No 6 previously imposed on planning permission Ref PA16/1463/91, dated 10 December 1991, and subject to the following condition:
 - 1) This permission hereby granted shall be implemented only in lieu of, and not in addition to, permission granted by decision Ref 87.01910 dated 9 March 1988.

Procedural Matters

2. In accordance with advice contained in the Planning Practice Guidance (the PPG)¹, following a review by the Council of the appellant's appeal submission documents, the Council confirmed that it no longer wished to defend the appeal.
3. In light of the above, the appellant confirmed that it wished to withdraw its application for costs.

¹ Paragraph 049 Reference ID: 16-049-20140306

4. I have dealt with the appeal accordingly, and there is no requirement for me to issue a separate costs decision to accompany this appeal decision.

Background

5. The Council refused planning permission for the appeal proposal for the following reason:

'It is not sufficiently demonstrated, given the absence of any marketing exercise, that there is no longer any demand for the existing dwelling as a property for agricultural occupancy. The site is located in the open countryside where unfettered residential development would not ordinarily be supported. As such, the condition continues to be reasonable and necessary in the interests of preventing the proliferation of unrestricted residential development in the open countryside for which no overriding justification is provided. The application is therefore contrary to policies 1, 2, 3 and 7 of the Cornwall Local Plan Strategic Policies 2010-2030 and policies 1 and 2 of the Mylor Parish Neighbourhood Development Plan 2020 – 2030'.

6. As such, the main issue is that of whether the agricultural tie continues to serve any useful planning purpose.
7. In refusing the application, the Council initially considered that a marketing exercise would be necessary to prove that this would not be the case. Having regard to the appeal evidence submitted by the appellant, the Council has conceded that the agricultural occupancy condition can be removed on the basis of the information provided by the appellant, which does not include a marketing report in respect of the appeal property.
8. Having regard to the evidence before me, I find no reason to disagree. In coming to this view, I have taken into account a number of appeal decisions referred to by the appellant² which include conclusions that are directly relevant to the determination of this appeal.
9. I have noted that the dwelling is of a substantial size and has recently been professionally valued at £1.5 million, taking into account the agricultural occupancy condition. Also, only approximately 12 acres of traditional farmland remain in association with the site (currently tenanted for arable farming use). This is not of such a size that it would be able to support a rural worker buying the property, nor would it, in itself, justify an agricultural dwelling on the site.
10. I find that the value of the existing dwelling is such that it would make it unaffordable to an average rural worker on a typical agricultural wage seeking to make a living off a holding of this size, unless they had the benefit of substantial savings. As such, the property would realistically only be affordable to retired farmers with significant additional funds, which would not accord with the purpose of the rural worker's condition.
11. Moreover, the evidence before me is that smaller, less expensive dwellings, which would be more suited, affordable, to agricultural workers are available for sale within nearby settlements within 2 miles of the appeal site. There is

² APP/D0840/W/19/3229734, APP/F1230/A/09/2100823, APP/D3315/C/14/2218684 & 2218685, APP/X2410/W/16/3143751, APP/D0840/A/12/2168539, APP/F1230/W/17/3178024, APP/H1840/A/12/2173149, APP/Z3825/W/17/3175902, APP/P0119/W/18/3195171 and APP/D3640/W/16/3165312

also evidence that there has been no demand for new agricultural dwellings within the appeal site and neighbouring parishes over the past 5 years.

12. Having regard to the above, I concur with both main parties that the agricultural tie does not continue to serve any useful planning purpose.

Conditions

13. I have considered whether the remainder of the conditions attached to the original planning permission, other than that which is the subject of this appeal, should be applied to the new permission, having regard to the tests set out in Paragraph 56 of the *National Planning Policy Framework 2023* and the PPG.
14. Both main parties consider that conditions 2, 3, 4 and 7 remain relevant. I consider condition 1 (standard time limit for commencement), 3 (carried out in accordance with approved plans) and 5 (pre-commencement submission of material sample for approval) to be no longer relevant since the dwelling has been in existence for a substantial length of time.
15. Condition 2 prevents the implementation of the dwelling in conjunction with a dwelling approved nearby under permission Ref 87.01910. The Council has confirmed that the positions of both approved dwellings do not overlap, and that it cannot be certain that the unimplemented consent is not extant. Accordingly, I find that this condition remains relevant, having regard to the rural location of the site and national and development plan policies restricting new housing in the countryside.
16. Conditions 4 and 7 remove permitted development rights associated with dwellinghouses, including the conversion of the garage. Such conditions are often associated with ensuring rural worker's dwellings remain of a size which are appropriate to that type of occupancy, and protecting the character and appearance of the countryside and neighbouring living conditions. Given that condition 6 will no longer apply, and noting that the dwelling is well screened from the public realm and sits within spacious grounds some distance away from the nearest residential neighbours, I do not consider these conditions would serve any useful purpose in this instance. I have therefore not re-applied them to the new permission.

Conclusion

17. For the above reasons, I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed condition, and subject to the original condition No 2.

S Leonard

INSPECTOR