



Appeal Decisions

Site visit made on 18 July 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2023

Appeal A Ref: APP/D1265/W/22/3307376

Reeds Barn Farmhouse, Reeds Barn, Hawkchurch EX13 5UN

- 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 Taylor against the decision of Dorset Council.
 - The application Ref P/VOC/2021/05396, dated 8 December 2021, was refused by notice dated 7 June 2022.
 - The application sought planning permission to develop the land by the erection of a dwelling for agricultural worker without complying with a condition attached to planning permission Ref 1/W/92/000137, dated 8 September 1992.
 - The condition in dispute is No 8 which states that: The occupation of the dwelling hereby permitted and the existing farmhouse known as Reeds Barn Farmhouse in the ownership of the applicants shall be limited to persons solely, or mainly, employed or last employed prior to retirement in the locality in agriculture as defined in Section 336 – (1) of the Town and Country Planning Act 1990, or in forestry (including any dependants of such a person residing with him/her) or a widow or widower of such a person.
The reason given for the condition is: The site is in an area where new dwellings would be contrary to the provisions of the approved Structure Plan and normally would not be permitted except where there is an overriding need in the interests of agriculture or forestry.
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Appeal B Ref: APP/D1265/W/22/3307378

Reeds Barn Farmhouse, Reeds Barn, Hawkchurch EX13 5UN

- 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 Taylor against the decision of Dorset Council.
 - The application Ref P/VOC/2021/05395, dated 8 December 2021, was refused by notice dated 18 May 2022.
 - The application sought planning permission erect house for agricultural worker without complying with a condition attached to reserved matters Ref 1/W/92/000419, dated 29 September 1992.
 - The condition in dispute is No 5 which states that: The occupation of the dwelling hereby permitted and the existing farmhouse known as Reeds Barn Farmhouse in the ownership of the applicants shall be limited to persons solely, or mainly, employed or last employed prior to retirement in the locality in agriculture as defined in Section 336 – (1) of the Town and Country Planning Act 1990, or in forestry (including any dependants of such a person residing with him/her) or a widow or widower of such a person.
 - The reason given for the condition is: The site is in an area where new dwellings would be contrary to the provisions of the approved Structure Plan and normally would not be permitted except where there is an overriding need in the interests of agriculture or forestry.
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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Applications for costs

3. An application for costs has been made by Mr Taylor against Dorset Council. This application is the subject of a separate decision.

Background and Main Issue

4. Permission granted under section 73 (S.73) of the Town and Country Planning Act 1990 (TCPA) takes effect as a new, standalone permission to carry out the same development as previously permitted subject to new or amended conditions.
5. As set out above there are two appeals on this site. They differ in that 'Appeal A' refers to an outline planning permission¹, while 'Appeal B' refers to the following reserved matters². Both seek to remove an agricultural occupancy restriction from Reeds Barn Farmhouse. Notwithstanding, there is only one planning permission (the planning permission) relating to the two appeals as the outline permission and the reserved matters approval are both parts of the same planning permission. The reserved matters conditions form part of the conditions of the single planning permission. Therefore, to avoid duplication, I have dealt with the schemes together, except where indicated otherwise.
6. Taking account of the reasons for refusal and the reasons for conditions, the main issue in these appeals is whether the condition restricting the occupancy of the dwelling known as Reeds Barn Farmhouse is necessary and reasonable.

Reasons

7. The planning permission related to the erection of a single agricultural workers dwelling (now known as Orchard View). However, as part of the planning permission, a condition was imposed restricting the occupancy of both the new dwelling, and that of an existing dwelling (Reeds Barn Farmhouse) to persons solely, or mainly, employed or last employed prior to retirement in the locality in agriculture, or in forestry (including any dependents of such a person residing with him/her) or a widow, or widower of such person.
8. The appellant has drawn my attention to a wide range of caselaw in relation to both the legality of planning conditions (including *Newbury District Council v Secretary of State for the Environment* [1981] A.C. 578) and the operation of S.73 to which I have had regard. It is put to me that it was unreasonable for the Council to impose conditions restricting occupancy on both dwellings as it did not relate fairly and reasonably to the development permitted, it was imposed for an ulterior purpose and is unreasonable.

¹ 1/W/92/000137

² 1/W/92/000419

9. It is possible, as a matter of law, for conditions to be imposed for regulating the use of land within the control of the applicant whether or not it is part of the application. This is in accordance with s.72(1) of the TCPA which provides as follows:

(1) Without prejudice to the generality of section 70(1), conditions may be imposed on the grant of planning permission under that section—

(a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission.
10. In relation to the restriction of occupancy to the existing dwelling, the appellant has referred to *Kember v Secretary of State for the Environment [1982] JPL 383* as authority for the fact that such a condition cannot be imposed. This case related to a challenge to a decision to grant permission subject to a condition that the house and a nearby cottage presently occupied by the applicants be occupied by persons employed in agriculture. In that case the Judge considered that the decision did not demonstrate that the condition was imposed for the purpose of, or in connection with, the development authorised by the permission.
11. However, the judgement does not suggest that such a condition could never be imposed, only that, in the specific circumstances of the case, it appeared that the condition was imposed so that the property should not be lost from the stock of agricultural properties, rather than because it was expedient for the purposes of, or in connection with the development authorised by the permission.
12. *Hall & Co. Ltd. v. Shoreham-by-Sea UDC [1964]* has also been brought to my attention in relation to conditions requiring land to be given up. In that case, conditions required an applicant to construct a road on their own land and dedicate it to the public without compensation. The planning permission, or indeed the conditions the subject of these appeals, did not go as far as to seek that land is given up, but to restrict occupancy, thereby limiting the relevance of this judgement.
13. My attention has also been brought to the policy context at the time of the granting of the planning permission, as well as, so far as available given the time period that has passed since the granting of the planning permission, the Council's considerations at the time including an agricultural appraisal (AA). The appellant has stated that PPG7 was in effect when the planning permission was granted which referred to the scope for imposing occupancy conditions not only on the dwelling itself, but also on any existing dwellings on the agricultural unit. The reason for this given within PPG7 was in order to protect the countryside against the risk of pressure for new houses. Whilst I accept that this was not carried forward to future national policy or guidance, including Circular 11/95 or the Planning Practice Guidance, it was nevertheless the case at the time of the Council's determination.
14. I accept that it would have been possible for the appellants to occupy the new dwelling and sever Reeds Barn Farmhouse from the holding or allow its unrestricted occupation. In such an instance, the requirement for an additional

agricultural workers dwelling as presented in the original planning application would still be present, constraining the ability for the Council to resist any further planning application. In effect these circumstances could result in a net 'new' additional unrestricted dwelling in the countryside, albeit this being an existing dwelling.

15. It is also put to me that the Council did not make a robust assessment at the time of the original planning application as to if there was a functional need for more than one full time worker to live at or near the holding, or the availability of dwellings in proximity to the site. The AA did refer to the lack of availability of other properties in the surrounding area. The AA also stated that the farm business required the full-time attention of at least two persons, with one residing at the farm, with the other in the locality to readily assist with any emergencies. Whilst stated in the AA to be 'desirable', this is in relation to a second worker living on the holding, and the AA continues that the worker would normally be expected to live in the immediate vicinity.
16. Given the period of time that has passed, it is not unexpected that the evidence of the Council's detailed considerations is vague, and I accept there is minimal detail in relation to the availability of other properties in the locality at that time. However, the Council clearly sought to ensure, through the imposition of the conditions, that the application did not result in additional unrestricted dwellings in the countryside contrary to the development plan and national guidance and sought to reflect a demonstrated need for rural worker accommodation in the locality associated with the holding.
17. Although the application did relate to the erection of a house for agricultural workers which was not Reeds Barn Farmhouse, the potential for future unrestricted dwellings in the countryside and the requirement of accommodation for two workers at, or in the locality combined with lack of existing accommodation in the locality, appears to have been a material consideration within the determination of the application.
18. Nothing in the evidence that is before me leads me to find that the Council sought to unfairly and unreasonably impose the conditions, or that they were not in relation to a planning purpose associated with the development permitted, particularly given the policy context and guidance of PPG7 at the time of the determination.
19. I note the appellant's contention that 'there is no need to explore or review current policy or material considerations'. Nevertheless, notwithstanding the original justification for the imposition of the conditions, which is a material consideration, I am required under S.73 to consider whether the conditions are justified in the circumstances existing at the time of the determination of this appeal, in light of the current legislative and policy context as detailed within *Sevenoaks DC v Secretary of State for the Environment and Geer [1994] 5 WLUK 320*.
20. If the appeals were to be successful, the effect would be to create a new unrestricted dwelling in a location outside of any development boundary. Policy INT1 of the West Dorset, Weymouth & Portland Local Plan 2015 (LP) sets out a presumption in favour of sustainable development. LP Policy SUS2 sets out the distribution of development in the region stating that outside development boundaries, development will be strictly controlled, having particular regard to

the need for the protection of the countryside and environmental constraints, and be restricted to amongst other things, rural worker's housing.

21. LP Policy HOUS6 provides criterion of residential development outside defined development boundaries which include new housing for rural workers, provided it can be demonstrated there is an essential need for a worker to live at or near their place of work.
22. I note that the appellant had previously sought to remove the conditions the subject of these appeals in 2018. However, this was refused as the Council considered that there was still an agricultural need for a rural workers dwelling in the locality. Nonetheless, the appellant has not argued that the need no longer exists for a second agricultural workers dwelling within these appeals and no substantive supporting evidence is before me in this regard. Consequently, it has not been demonstrated that there is no longer a continuing need for rural workers' accommodation in the locality.
23. Accordingly, on the basis of the evidence before me, I conclude that the disputed conditions restricting the occupancy of the dwelling are reasonable and necessary to ensure the proposal does not result in an unrestricted dwelling in the countryside and meet the appropriate tests as referenced within the PPG. There would be conflict with the housing strategy and rural housing aims of LP Policies INT1, SUS2 and HOUS6, the purposes of which I have previously outlined. This is consistent with the Framework which aims to avoid the development of isolated homes in the countryside.

Other Matters

24. In respect of Appeal B, S.73 applications can be used in respect of reserved matters as conditions included in a reserved matters approval are an intrinsic part of the grant of the planning permission notwithstanding that the reserved matters approval is not a planning permission in its own right. However, for the reasons previously provided I have found that a condition restricting occupancy is required, and whilst the reserved matters condition may replicate that within the outline permission, they both relate to a single planning permission. Therefore the removal of the reserved matters condition would have no practical effect on the extent of the permission.
25. The appeal proposals would not conflict with the 'operative' part of the existing planning permission. I also accept that a suitably worded condition could be imposed to ensure that Orchard View is restricted to occupancy for rural workers. However, this would not overcome the aforementioned harm and development plan conflict I have found above.

Conclusion

26. For the reasons given above, I find that the proposals would conflict with the development plan, read as a whole. No material considerations, individually or cumulatively, indicate that a decision should be taken otherwise than in accordance with it. Therefore, appeals A & B are dismissed.

S Harrington MA MRTPI

INSPECTOR