



Appeal Decision

Hearing held on 12 March 2024

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21st March 2024

Appeal Ref: APP/Y1138/W/23/3325463

Exeridge Farm, Road From Hamslade Cross To Oakford Bridge, Bampton, Devon EX16 9JA

- 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 without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Chris Clark against the decision of Mid Devon District Council.
 - The application Ref is 23/00633/FULL.
 - The application sought planning permission for the erection of a farmhouse at Part O.S. 7352, Valeridge, Oakford Bridge, Oakford without complying with a condition attached to planning permission Ref 4/39/80/1078, dated 17 June 1980.
 - The condition in dispute is (e) which states that: *The dwelling hereby permitted shall be occupied only by persons employed or last employed full time in agriculture or agricultural work as defined by Section 290 of the Town and Country Planning Act 1971 and the dependents of such persons as aforesaid.*
 - The reason given for the condition is: *To ensure that the dwelling is occupied by persons connected with agriculture or forestry, as this site is located in open country where residential development would not normally be permitted.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a farmhouse at Part O.S. 7352, Valeridge, Oakford Bridge, Oakford in accordance with the application Ref 23/00633/FULL, without compliance with conditions (a), (b), (c), (d) and (e) previously imposed on planning permission Ref 4/39/80/1078, dated 17 June 1980, but subject to the following condition:

(1) The development hereby permitted is that carried out in accordance with the revised drawings submitted on the 8th July 1980 and the revised 1:500 block plan submitted on the 19th August 1980.

Preliminary Matters

2. I saw the general area around the appeal site on the day before the hearing. At the hearing all parties agreed that there was no need for me to see the site itself, given the nature of the case.
3. A revised version of the National Planning Policy Framework (the Framework) was published after the appeal was lodged. The parties have been able to comment on this and I have determined the appeal on this basis.

Background and Main Issue

4. The proposal relates to an existing dwelling, now known as Exeridge Farm, located in countryside. The original planning permission for the dwelling is subject to condition (e), which restricts its occupation to persons employed or last employed full time in agriculture. The appellants seek to remove this condition.
5. Paragraph 56 of the Framework states that planning conditions should be kept to a minimum and, relevant to this appeal, only imposed where they are enforceable and necessary. Accordingly, the main issue is whether condition (e) is enforceable and necessary, having regard to planning policies which seek to restrict housing development in the countryside.

Reasons

Enforceability

6. In 2008, a previous owner of the property was granted a Certificate of Lawfulness (CLEUD)¹ for the existing use of the dwelling in non-compliance with condition (e). As such, it is common ground that the property can be occupied by anyone not employed or last employed in agriculture, and that the condition cannot currently be enforced.
7. Despite the CLEUD, it has been suggested that a lengthy period of non-occupancy, for instance during a change of ownership of the dwelling, might result in the condition becoming enforceable again. This is because the CLEUD only confirms lawfulness at the time that it was issued. The condition cannot therefore be treated as expunged, simply because of the CLEUD.
8. However, in *Ocado*², the Court found that the right accrued would not be lost merely because that right is not subsequently exercised. Loss of that right would instead require a much higher threshold to be met for the condition to become alive again. This could include abandonment or another supervening event. The tests of abandonment³ include the physical condition of the dwelling, the length of time unused, any other use, and the owner's intentions. The dwelling is currently occupied, and I have very little reason to believe that it would be abandoned in the future.
9. The condition could become enforceable in certain circumstances. The dwelling could in theory be sold or rented to someone who complies with the condition, or a current or future occupier could engage in agricultural activity, thus meaning that the condition could become enforceable in the future in the event of a fresh breach. At the hearing, I was told of an incidence where this had occurred. However, the prospect of this scenario is in my judgement remote. This is because it would not make financial sense, given the likely significant reduction in the value of the property that would result from such actions.
10. A third party has suggested that the appellants were previously employed in agriculture and therefore comply with the condition. If so, this may well have been sufficient to supervene the CLEUD on the basis that the condition would not now be breached. However, I have no substantive evidence to support this

¹ LPA reference 08/01698/CLU

² R (Ocado Retail Ltd) v Islington LBC [2021] EWHC 1509 (Admin)

³ Castell-y-Mynach Estate v Secretary of State for Wales [1985] JPL 40 referred to in *Ocado*.

allegation, which the appellants deny. The Council has not pursued this and I see no reason to disagree.

11. At the hearing, the Council accepted that there was no significant likelihood of the condition becoming enforceable again. For the reasons given, I consider that, whilst not impossible, such circumstances are in fact highly unlikely. Consequently, condition (e) is not in practice enforceable, and so it fails this test of Framework Paragraph 56.
12. Various appeal decisions have been referred to me. At Cheriton Bishop⁴ and Cadleigh⁵, other Inspectors have found that similar CLEUDs did not provide immunity from enforcement action and that the relevant occupancy condition remained in force. However, these decisions pre-date the findings of *Ocado*. Nor is it clear that this caselaw was before the Inspector in Wrantage⁶, where the appellant accepted that a vacancy may have constituted a cessation of the breach. The other cases cited by the Council did not involve a CLEUD, and so are of limited relevance. The decisions do not therefore change my conclusion on enforceability, which is based on the specific merits of this case.

Necessity

13. To preserve the character and appearance of the countryside, Policy S14 of the Mid Devon Local Plan Review (MDLPR), adopted July 2020, restricts development to that which is appropriate to the countryside, such as housing essential to accommodate a rural worker. Framework Paragraph 84 similarly allows such housing where it would otherwise be resisted. As such, the planning policy background remains essentially unchanged from the time that the condition was imposed.
14. MDLPR Policy DM8 permits the removal of a rural worker occupancy condition only where strong evidence shows no need for the condition, such as the marketing of the property and an assessment of demand for such dwellings in the area. Details of agricultural dwellings proposed locally have been submitted by the Council and the existence of some level of demand for such properties locally is not disputed. The Planning Practice Guidance⁷ acknowledges that housing supply and affordability are challenges in rural areas.
15. At the hearing, information was provided about the high value of the dwelling, albeit reflecting the position a few years ago, when it was purchased by the appellants. I also heard details of low agricultural wages. As such, even with the condition in place, the dwelling was said by the appellants to be unaffordable to a rural worker.
16. However, I have no substantive evidence, such as a marketing exercise and detailed assessment, to conclusively demonstrate that the dwelling would not be able to meet local demand from agricultural workers. Such marketing has taken place in similar circumstances⁸, and so can presumably take place without the risk of property misdescription suggested by the appellants.

⁴ APP/Y1138/W/18/3192972

⁵ APP/Y1138/W/19/3229011

⁶ APP/W3330/W/22/3296806

⁷ Paragraph: 009 Reference ID: 67-009-20190722

⁸ For example, APP/D0840/W/22/3304612.

17. In the absence of such evidence, the removal of condition (e) would in effect create an open market dwelling that would not normally be permitted in this location. As such, it would conflict with MDLPR policies S14 and DM8, as well as Framework Paragraph 84. Consequently, I have little reason to doubt that the condition continues to be necessary and so meets the relevant test of Framework Paragraph 56. This does not however change my conclusion in respect of the test of enforceability.

Conditions

18. Notwithstanding condition (e) which is the subject of this appeal, the planning permission was subject to four other conditions. Condition (b) required development to take place in accordance with the approved plans. To define the consent and for the avoidance of doubt, I have re-worded it (as condition 1) to reflect the fact, agreed by all parties, that development has taken place.
19. Condition (a) requires that development must begin no later than five years from the date of the permission. As the dwelling has been built and is now long-established, this condition is no longer required.
20. Condition (c) relates to the provision of a garage, hardstanding, parking space and vehicular turning space and requires them to be kept permanently available. The reason for the condition is to ensure adequate off-street parking. I understand that vehicular parking and turning arrangements may well have evolved from those originally approved. In any case, the dwelling is a considerable distance from the highway, accessed by a private track. As such, provision of these facilities is essentially a private matter rather than one of relevance to the public interest and the highway. Consequently, I see no reason to retain this condition.
21. Condition (d) refers to the planting of trees and shrubs in accordance with details to be approved by the Local Planning Authority (LPA). Replacement of the trees and shrubs, and lopping, felling or interfering with the trees also requires approval of the LPA. In making these requirements, in perpetuity, this imposes a particularly excessive requirement on the householder. In any case, the dwelling and its landscaping is now well established. As such, I consider that this condition is no longer necessary.

Conclusion

22. Although I have found that condition (e) is necessary having regard to planning policies which seek to restrict housing development in the countryside, for the reasons given above, it fails the test of enforceability set out in the Framework. The appeal should therefore be allowed and the planning permission varied by removing conditions (a), (b), (c), (d) and (e), but subject to condition 1.

O Marigold

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Swain (agent)
Chris Clark (appellant)
Fiona Clark (appellant)

FOR THE LOCAL PLANNING AUTHORITY:

John Millar (Area Team Leader)
Yvonne Dale (Planning Officer)