



Appeal Decision

Hearing held on 11 June 2024

Site visit made on 11 June 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/W3330/W/23/3326347

Burrow View, Burrow Lane, Ashbrittle, Wellington, Somerset TA21 0JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr M Beard against the decision of Somerset Council.
 - The application Ref is 01/22/0013.
 - The application sought planning permission for erection of agricultural workers dwelling without complying with a condition attached to planning permission Ref 01/89/006, dated 1 August 1990.
 - The condition in dispute is No 07 which states that: 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 290(1) of the Town and Country Planning Act 1971, or in forestry or a dependent of such a person residing with him or her or a widow or widower of such a person.
 - The reason given for the condition is: The site is in an area where the local planning authority's policy is to restrict new residential development to that required to meet the needs of agriculture or forestry.
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Decision

1. The appeal is allowed and planning permission is granted for erection of agricultural workers dwelling at Burrow View, Burrow Lane, Ashbrittle, Wellington, Somerset TA21 0JB in accordance with the application Ref: 01/22/0013, without compliance with condition number 07 previously imposed on planning permission Ref: 01/89/006 dated 1 August 1990.

Applications for costs

2. An application for costs was made by Mr M Beard against Somerset Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The appeal site comprises of a bungalow and its garden. It is adjacent to other farm buildings and surrounded by fields. There is no dispute between the main parties that the appeal site is located in the open countryside where national and local policy, including CP8 of the Taunton Deane Adopted Site Allocations and Development Management Plan, adopted December 2016 (SADMP), seeks to restrict residential development.
4. The original planning permission for the property, now known as 'Burrow View' was granted on the basis that the site was in the open countryside. A functional

need for a dwelling to serve the agricultural enterprise had been demonstrated and it was granted subject to a restrictive occupancy condition (No. 07).

5. The main issue in this appeal therefore is whether the condition is necessary and reasonable having regard to Policy H1A in the SADMP.

Reasons

6. Policy H1A permits the removal of such conditions where: i) the dwelling is no longer needed on that unit for the purposes of agriculture or other rural based enterprises; ii) there is no current demand for dwellings for agriculture or other rural based industries in the locality; and, iii) the dwelling cannot be sold or let at a price which reflects its occupancy condition for a reasonable period to be agreed with the local planning authority. I will consider each of these in turn.

Whether the dwelling is no longer needed on the unit for the purposes of agriculture or other rural based enterprises

7. The original holding was subdivided in 2017 at which time the appellant bought the appeal property, the adjacent buildings and some land. The appellant has resided in the dwelling and undertaken works to convert an adjacent building to a dwelling under Class Q¹.
8. There is no dispute between the parties that the earlier subdivision of the holding has resulted in the dwelling no longer being required for the purposes of agriculture on the holding, and with a lack of substantive evidence to the contrary, I see no reason to disagree.
9. At the hearing, the Council confirmed that the wording of the condition, would not permit persons employed in other rural based enterprises, outside of agriculture or forestry, to lawfully occupy the dwelling and I agree.
10. Accordingly, I find that the dwelling is no longer needed on the unit for the purposes of agriculture and could not lawfully be occupied for the purposes of other rural based enterprises. As a result, no conflict arises with subsection i) of Policy H1A of the SADMP.

Whether there is no current demand for dwellings for agriculture or other rural based industries in the locality

11. The supporting text to Policy H1A defines 'local area' as being within a 10-15 minute drive time. At the hearing, the Council confirmed that 'locality' in criteria ii) of the Policy should be taken to have the same meaning.
12. Table 1 in the appellant's appeal statement shows the results of a search of all the planning permissions granted by the Council for rural worker dwellings in the neighbouring parishes, and within a 15-minute drive of the appeal site, from 1990 to the present day. However, this indicates that new dwellings have largely been permitted within sight and sound of the associated agricultural buildings and therefore, the appeal dwelling would not have satisfied the functional need on those holdings.
13. At the hearing, the Council agreed that marketing the property was an appropriate mechanism to indicate whether there was wider demand for agriculturally tied properties in the local area. This would attract rural workers

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

and those retired workers, who do not have a requirement or need to live on a particular holding.

14. The appeal property has been marketed for sale since February 2021. The evidence presented by the appellant indicates that of the 177 initial enquiries, 19 met the basic criteria for the occupancy condition. However, at the hearing, the appellant explained that further rigorous checks are carried out before viewings are arranged and that subsequently, only those fully meeting the occupancy condition would be permitted to view the property. This resulted in five viewings, but no offers were forthcoming.
15. The appellant has not provided evidence of the reason why none of those five made offers. However, at the hearing it was put to me that purchasers would find it difficult to obtain a mortgage from high street lenders for a property with an agricultural occupancy condition and that there were increased costs of such mortgages where lenders assessed the risk to be greater. It was put to me that the lack of offers was likely to be down to the inability of potential purchasers to finance the purchase. I return to this issue in Paragraph 23 below.
16. At the hearing, the interested party stated that the appellant had not gone far enough in establishing whether there was a demand for the dwelling, particularly in terms of a search of the Local Housing Register. The appellant confirmed that they would not have access to such information and in any event this would serve to demonstrate a need for affordable housing rather than a rural dwelling with restricted occupancy. If there was such a need, they argued, the Council could have presented that information to the appellant or demonstrated the need within their appeal submissions.
17. The parish council say in their submission that there is evidence of agricultural workers only finding affordable properties in cheaper urban areas and commuting to work. The Council were unaware of such evidence and the interested party conceded that this was likely to be anecdotal.
18. The sales particulars for the property did not specifically reference that the occupancy restriction would permit forestry workers nor that occupation by workers in other rural based industries may be appropriate. This could have prevented some interested parties from coming forward. However, I accept the appellants point that it is not uncommon for persons in other rural based industries to seek clarification from an estate agent as to whether they would comply with any restriction. However, in the case of the appeal property, no such requests were received.
19. Before concluding on criteria ii) of Policy H1A, it is necessary for me to consider the marketing of the property in further detail.

Whether the dwelling cannot be sold or let at a price which reflects its occupancy condition for a reasonable period to be agreed with the local planning authority

20. There is no definition in Policy H1A of 'reasonable period' but paragraph 1.3.7 of the supporting text indicates that marketing is required for a minimum of 12 months. At the hearing, the Council agreed that 12 months would be a reasonable period. In this case, marketing had taken place over a 19 month period prior to the submission of the planning application, and at the time of the Hearing, the property continued to be marketed. Marketing had therefore been undertaken over a three year period and at a time when the market has been

buoyant. Notwithstanding that there would have been some disruption to the marketing period arising from Covid lockdowns, I am satisfied that marketing has taken place for a reasonable period as required by criteria iii) of Policy H1A.

21. There was no dispute between the Council and the appellant that a 30% reduction on the open market value was an 'industry standard' and was an appropriate reduction to reflect its occupancy condition. However, the Council's case is that the value of the property was high when compared to other properties for sale in the local area and the lack of an offer arising from the five viewings undertaken was down to price. The Council provided a list of six properties being marketed in the local area as of 30 May 2024 and applied a 30% reduction to the sales price. This resulted in five of the properties being below the asking price of the appeal property. This they say, was more probably the reason why no offers had been made from any of the five people viewing the property as set out above.
22. However, in my view it is difficult to draw direct comparisons with other properties based on floorspace and number of bedrooms alone. There are many other factors which determine the value of a property including its location and age. I find the fact that two estate agents have marketed the property at approximately the same price to be a more compelling argument in respect of the value of the appeal property.
23. Moreover, I cannot draw the same conclusion as the Council in respect of why no offers to purchase the appeal property were made. It was unhelpful not to be presented with evidence of the reasons why prospective purchasers did not make an offer, but had the sales price been a barrier to anyone wishing to purchase the property, a lower offer could have been made.
24. The appellant confirmed that they had not sought to let the property as they needed to sell it and they conceded that the marketing strategy had not been agreed with the Council. However, the Council's committee report indicates that the case officer was satisfied with the extent of marketing having taken place and that it was competitively priced in comparison to other properties in the area. This suggests to me that had the appellant approached the Council with their marketing strategy, in all likelihood, it would have been agreed.
25. Whilst I have some sympathy for the view expressed by the interested party that it would be unlikely that a person employed in the locality in agriculture would have the means to purchase the property or be able to get a mortgage, I do not share the view that this suggests that the property has been marketed at the wrong price. Criteria iii) of Policy H1A requires that it is marketed at a price which reflects the occupancy condition, not at a price which is affordable to agricultural workers. I also do not share the view that occupation of the property by a retired farmer who has sold their assets was not the intention of the occupancy condition. The condition specifically permits occupation by those last employed in the locality in agriculture. There was no requirement for it to be affordable or for its occupation to be limited to low-income workers.
26. Taking criteria ii) and iii) of Policy H1A of the SADMP together and based on the evidence presented to me in this case, I am satisfied that the appellant has sufficiently evidenced a lack of current demand for dwellings for agriculture or other rural based industries in the locality. I am also satisfied that the property has not sold despite being marketed at a price which reflects its occupancy condition for a period in excess of three years.

Overall Policy Findings

27. On the evidence before me, both written submissions and evidence presented at the Hearing, I find that the appeal property is no longer needed on the unit for the purposes of agriculture, there is a lack of current demand for dwellings for agriculture or other rural based industries in the locality and that the dwelling cannot be sold at a price which reflects its occupancy condition despite the somewhat lengthy marketing period. I find that the requirements of Policy H1A of the SADMP in relation to the removal of the occupancy condition have been met and accordingly, the condition is no longer reasonable or necessary.

Other Matters

28. The appeal site is located within the fluvial catchment of the Somerset Moors and Levels Ramsar. The special interest features of the Ramsar, including its ditches, rhynes, aquatic vegetation and assemblages of plants and birds, are considered unfavourable or at risk from the effects of eutrophication caused by excessive phosphates largely derived from the discharge from waste water treatment works. The Council conclude in the Committee Report that the removal of the condition would have no effect on the level of discharge of waste water from the property. Accordingly, the appeal proposal would have no impact either alone or in combination, on the levels of phosphates discharging to the Ramsar and there is no evidence to the contrary. As such, I am satisfied that an appropriate assessment under Regulation 63 of the Habitats Regulations 2017 in terms of the impact of the proposal on the Ramsar is not required.

29. My attention was drawn to an appeal decision². However, in that case there was no substantive evidence of a marketing exercise having been carried out and therefore the circumstances surrounding that case were markedly different from those before me.

30. The Council have granted planning permissions for two extensions to the property³. I was told at the Hearing that both have been implemented but only the earlier permission has been completed. Even if this has had the effect of increasing the value of the property, that was for the Council to consider at the time the permissions were granted and is not a matter for this appeal.

31. It was put to me at the hearing that if I were minded to allow the appeal, a financial contribution towards the provision of rural affordable housing elsewhere should be sought via a planning obligation. I do not have a signed obligation to that effect before me. Given my conclusions on the main issue, one would not be necessary to make the development acceptable in planning terms. To require one would not meet the tests set out Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

Conditions

32. The Planning Practice Guidance makes it clear that decisions under section 73 should restate the relevant conditions imposed on the earlier permission unless they have already been discharged. No conditions were proposed by the Council in their appeal submissions.

² Appeal Ref: APP/W3330/W/22/3294420

³ LPA Ref: 01/18/0008 – Erection of single storey extension and conversion of integral garage to gym and LPA Ref: 01/19/0006 – Erection of single storey extension and conversion of garage

33. At the hearing however, the Council suggested that the condition the subject of this appeal, could be amended to widen the permitted occupation of the dwelling to persons employed in other rural based industries in the locality. The parish council submissions indicate that the occupancy condition could be transferred to another property at Burrow View.

34. However, I have found that the appeal proposal accords with Policy H1A of the SADMP and therefore amending the condition as the council suggests or imposing an occupancy restriction on another property would fail the test of reasonableness.

Conclusion

35. The appeal scheme would adhere to the development plan and there are no material considerations which indicate otherwise. Accordingly, for the reasons given above, I conclude that the appeal should succeed.

Alison Fish

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs H Cameron	Director of HC Planning Ltd
Mr T Bennett	Regional Director for Fine and Country
Mr M Beard	

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Pick	Planning Officer
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INTERESTED PARTIES:

Cllr G Wren

DOCUMENTS PRESENTED DURING THE HEARING

DOC 1	Sales particulars
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