



Appeal Decision

Hearing held on 20 June 2024

Site visit made on 20 June 2024

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/A4710/W/23/3331501

Badgerfields Farm Badger Lane, Blackshaw Head, Hebden Bridge HX7 7JX

- 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 Gordon Whitaker against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref is 23/00558/REM.
 - The application sought planning permission for detached bungalow without complying with a condition attached to planning permission Ref 89 01208, dated 6 July 1989.
 - The condition in dispute is No 12 which states that: *"The occupation of the dwelling shall be limited to a person employed at the adjacent farm or, when longer so required, to a person wholly or mainly employed, or last employed in the parish of Blackshaw in agriculture (as defined by Section 290 of the Town and Country Planning Act 1971) or in forestry or a dependent of such a person residing with him (but including a widow or widower of such a person)."*
 - The reason given for the condition is: *"The site lies in an area unallocated for development in the green belt where the Local Planning Authority normally resists residential development except in the interests of agriculture."*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application subject to this appeal sought to remove an occupancy condition from a reserved matters approval. However, there is an identical occupancy condition on the related outline planning permission, Council reference 88/01763/OUT. I raised this matter at the hearing. The appellant confirmed that it was the intention to remove the condition from the planning permission as a whole. The Council confirmed that if I were to allow the appeal and remove the condition, it would not consider it reasonable to enforce against the identical condition attached to the outline planning permission.
3. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. The Council and the appellant have been given the opportunity to comment on the revised Framework. I have had regard to the revised Framework in my decision.

Main Issue

4. The main issue is whether the condition restricting the occupancy of the dwelling is necessary and reasonable.

Reasons

5. The appeal property is a detached bungalow located adjacent to a farmyard in open countryside. The dwelling is located in the Green Belt. The dwelling is subject to an occupancy condition which the appellant now seeks to remove, so that the dwelling can be sold as an open market dwelling.
6. The parties agree a new unrestricted dwelling in the Green Belt would be inappropriate development as set out in paragraph 154 of the Framework and Policy GB1 of the Calderdale Local Plan 2018/19 – 2032/33 Written Statement Adopted March 2023 (LP). The Council assert that the very special circumstances that outline planning permission for a dwelling in the Green Belt was granted in 1988, was due to an evidenced need for a dwelling to meet the requirements of the appellant who was working in agriculture at the adjacent farm, which I am informed equates to 17.64 acres in area. The appellant and the Council agree that the 'adjacent farm' referred to in the condition is that outlined in blue on the site location plan submitted with the application that is subject to this appeal.
7. The Council sets out in its delegated report the sort of evidence that it considers is required to demonstrate that there is no longer a need for a rural worker's dwelling. The guidelines include a valuation and marketing exercise ensuring that the price advertised at is reflective of the restrictive nature of the occupancy condition and that it is marketed for a reasonable length of time and in a range of media. It is confirmed by the Council that the guidelines set out are not contained within any development plan policy requirement or any adopted supplementary planning documents. Nevertheless, in my experience, this is an established approach to assessing the demand for such properties.
8. The appellant confirmed at the hearing that he has farmed the land adjacent to the dwelling continuously since the dwelling was built and continues to do so currently. Whilst it is the appellant's aim in the future to downsize and move from the property, at the present time there is no intention to sell the farm and therefore no valuation or marketing has taken place.
9. The appellant asserts that the occupancy condition is too severe, and it would not be possible to market the dwelling successfully with the condition attached. It was also suggested that the marketing process would be intrusive for the appellant and that it would result in those initially interested contacting the Council for more information on the occupancy condition requirements, causing the Council additional work. Whilst I understand the reasoning behind this approach, it is not uncommon practice to carry out marketing to test the demand for such properties.
10. Concerns were raised about the reduced financial value that the property would attract with the occupancy condition attached. I understand that it would not be as profitable for the appellant, but marketing in such a way is an established practice and is required to assess demand for the restricted property.
11. It would be feasible for the condition to be complied with, if someone was to purchase the dwelling and the adjacent farm, and that person lived in the

dwelling and was employed on the land. As set out above, there is no evidence before me, such as a marketing exercise which has demonstrated that this could not be a possibility in the future.

12. The appellant asserts that due to the size of the holding, sheep farming is no longer a viable option. The Council contend that some modern farming enterprises do not require extensive areas of land, so the current size of the holding does not necessarily mean that it could not be a viable option for other forms of agriculture, particularly given the broad definition of agriculture set out in the Town and Country Planning Act 1971. I agree that the term agriculture does cover a relatively wide range of operations, although I also understand it will depend on the constraints of an individual holding as to what can be carried out on it. Nevertheless, in the absence of any assessment, there is no evidence that the appeal property could not be used for alternative agricultural operations.
13. Mr and Mrs Whitaker both confirmed that they had employment with the Borough Council alongside the farm for a considerable number of years, roles which they have both since retired from. I have no reason to doubt this, and I understand that farming enterprises can be unpredictable in terms of income. It was stated at the hearing that the transition away from the different payment schemes that were previously in place for farming has also had a detrimental effect on the financial viability of the farm. Nevertheless, I have not been provided with any robust information that evidences the financial viability of the farming enterprise.
14. I understand that circumstances have changed since the dwelling was built. The appellant confirmed at the hearing that initially when the dwelling was applied for there was additional rented land equating to 92 acres elsewhere, involved in the farming enterprise that is no longer rented and hasn't been for some time. I acknowledge therefore that the land associated with the farming enterprise has reduced, and so it is likely to be less viable than it was. Nonetheless, as set out above, without any agricultural assessment I cannot be sure that alternative agricultural uses could not be viable here.
15. The latter part of the condition would only become relevant if the person living in the dwelling was no longer employed on the farm adjacent. In that case, the person occupying the dwelling would be required to be a person wholly or mainly employed or last employed in the parish of Blackshaw in agriculture or forestry, or their dependents.
16. The appellant suggested there are a limited number of people now employed in agriculture locally and that there is no one from nearby agricultural enterprises who would want to purchase the dwelling. Nonetheless, I have not been provided with any robust evidence in this regard. To the contrary, the Council identified that it is currently assessing a planning application for a new rural worker's dwelling in the parish of Blackshaw which has yet to be determined. This would suggest there is a need for at least one rural worker's dwelling in the parish.
17. I recognise that a Lawful Development Certificate for an existing use was granted by the Council in respect of the appeal property in January 2004. This confirmed that at that point in time the Council considered that a bed and breakfast use had been run for a period of 10 years at the dwelling. Mrs Whitaker confirmed at the hearing that the bed and breakfast provided a

valuable additional source of income and that it was run alongside the farm. It was also confirmed that the bed and breakfast use ceased in 2019.

18. The issuing of a Lawful Development Certificate indicates the situation at a particular point in time. As stated previously it was confirmed at the hearing that the appellant has farmed the land adjacent continuously since the dwelling was built and that the bed and breakfast use has not been operational for some years, whereas the agricultural use persists.
19. The Council stated at the hearing that if it was to impose a condition on a rural worker's dwelling now, it would refer to the locality rather than a specific parish. I accept that the wording of the condition could be improved. Nevertheless, the condition, as worded, still serves a planning purpose, in helping to maintain a supply of dwellings for people employed in agriculture and forestry, associated with the landholding or the parish.
20. I therefore find, based on the information before me, that insufficient evidence has been provided to demonstrate that the dwelling is no longer required for an agricultural or forestry worker. The lack of a marketing exercise or any other assessment means that the demand for the property with the occupancy restriction in place remains un-tested.
21. Consequently, having regard to the reasons for imposing the condition and the lack of substantive evidence to justify its removal, I find it remains necessary and reasonable. I find that the removal of the condition would be at odds with the overarching aim of Policy GB1 of the LP which seeks to avoid inappropriate development in the Green Belt.

Other Matters

22. The appellant contends that there are buildings within the adjacent farmyard that could be converted under permitted development rights under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). I witnessed the agricultural buildings referred to during my site visit, which all appeared in active agricultural use at the time. There are no consents under prior approval before me to suggest what those schemes would involve. Even if a scheme under prior approval was advanced in the future, it would not relate to the appeal property directly and therefore would not provide a fallback position in respect of this case.
23. The appellant suggested that there are no other dwellings nearby with the same type of condition. Be that as it may, I must deal with the proposal before me on its individual merits.
24. I recognise the support provided from interested parties including the Parish Council and I have no reason to doubt the contribution that Mr and Mrs Whitaker have made to the local community over the years. However, for the reasons set out above and based on the evidence before me, I conclude the condition remains necessary and reasonable.
25. I note reference to the council tax banding in respect of the appeal property and whether this should have been applied differently given the occupancy condition. Nevertheless, this is a process that sits outside of the planning system.

Conclusion

26. For the reasons set out above, condition 12 remains necessary and reasonable. Therefore, the appeal is dismissed.

G Dring

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Richard Turner	Agent
Mr Gordon Whitaker	Appellant
Mrs Miriam Whitaker	Appellant's Wife

FOR THE LOCAL PLANNING AUTHORITY:

Gillian Boulton	Planning Officer
Kate Mansell	Principal Planning Officer

INTERESTED PARTIES:

Mr Andrew Horn	Appellant's Neighbour
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