



Appeal Decision

Hearing held on 11 June 2024

Site visit made on 11 June 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2024

Appeal Ref: APP/U2750/W/24/3341885

Lodge Farm Bungalow, Wistow Lordship, Selby, North Yorkshire

YO8 3RS

- 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 that Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by J Holmes against the decision of North Yorkshire Council.
 - The Application Reference: ZG2023/0587/S73, dated 17 June 2023, was refused by notice dated 7 March 2024.
 - The application sought planning permission for the erection of a bungalow to replace existing farmhouse without complying with a condition attached to planning permission Ref: 8/36/31/PA, dated 27 October 1976.
 - The condition in dispute is No. 7 which states that: *The occupation of the dwelling shall be limited to a person solely or mainly employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 including any dependants of such a person residing with him or a widow or widower of such a person.*
The reason given for the condition is: *The development hereby approved would be unacceptable unless justified by the local needs of agriculture.*
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a bungalow to replace existing farmhouse at Lodge Farm Bungalow, Wistow Lordship, Selby, North Yorkshire YO8 3RS without complying with a condition attached to planning permission Ref: 8/36/31/PA, dated 27 October 1976, in accordance with the terms of the application, Ref: ZG2023/0587/S73, dated 17 June 2023, and subject to the following condition:
 1. No structure, fence, or hedge above 1 metre shall be allowed along the frontage of the site from the proposed access to the eastern extremity of the site.

Main Issues

2. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for residential development having regard to the development plan and access to shops, services, employment opportunities, and other facilities; and
 - Whether the disputed condition is necessary in order to provide a dwelling for a rural worker to live at or near their place of work.

Reasons

3. The appeal building is a bungalow dwelling for which outline planning permission was granted on 27 October 1976. An application for Reserved Matters for the details of the proposal was subsequently approved on 4 May 1977. The new dwelling was a replacement for an existing farmhouse.
4. At the time when planning permission was granted, the appeal site was part of a working farm. Planning permission was granted subject to a condition which restricted the occupancy of the dwelling to a person solely or mainly, or last, employed in the locality in agriculture, including any dependants residing with them, or the widow or widower of such a person. It is this condition which is now in dispute.
5. Although the proposal is framed as an application to remove or vary a condition of an existing planning permission, the practical effect of allowing a planning application made under Section 73 of the Town and Country Planning Act 1990 (as amended) (hereinafter, the Act) is that an entirely new planning permission comes into existence for the development. This new permission is subject to a different set of conditions from the original planning permission.
6. Planning conditions are used to enable development to proceed where it would otherwise have been necessary to refuse planning permission. The reason given for the imposition of the disputed condition is that a new dwelling would have been unacceptable in that location unless it was justified by the local needs of agriculture.
7. The question for this appeal is, therefore, would an unrestricted, open market, dwelling be acceptable in this location having regard to the provisions of the development plan, or is the disputed condition still necessary to make the development acceptable.

Whether the appeal site is a suitable location for residential development

8. Policy SP2 of the Selby District Core Strategy 2013 (the Core Strategy) sets out a spatial strategy for the area. This seeks to focus new development on towns and more sustainable villages.
9. The appeal site is located in the countryside to the north of the built up area of Selby. It is beyond the development limits for Selby and not within the development limits of any other settlement. In such areas, Policy SP2 sets out that development will be limited to the replacement or extension of existing buildings; the re-use of buildings, preferably for employment purposes; well designed new buildings of an appropriate scale; development to meet rural affordable housing need; or in other special circumstances.
10. Policy SP2 allows for the replacement of existing buildings in the countryside. On its face, planning permission 8/36/31/PA was for a bungalow to replace an existing farmhouse at lodge farm. The permission included a condition that required the previous farmhouse to be demolished.
11. Beyond the copies of the decision notices provided, there is no evidence before me in respect of that planning application, or the physical appearance and condition of the dwelling it was proposed to replace. There is similarly no conclusive evidence in respect of whether the previous dwelling was subject to

- an occupancy condition. Nor is there any evidence regarding the provisions of any policies in the development plan that was in force at the time when the planning application was determined.
12. What is known is that at the time planning permission 8/36/31/PA was granted, Lodge Farm was an operational agricultural enterprise, and the proposal was to provide accommodation for the farmer. From the wording of the reason given for imposing the disputed condition, it is also clear that, notwithstanding that the proposal was to replace an existing dwelling, the local planning authority at the time only considered that the proposal was acceptable if that dwelling was occupied by an agricultural worker.
 13. Whilst Policy SP2 is permissive of replacement buildings in the countryside, Part A (c) does not specifically reference replacement dwellings. Within this context it is thus first necessary to consider whether a new, open market, dwelling would be acceptable on this site.
 14. The supporting text to Policy SP2 sets out that the Council will resist new isolated homes in the countryside unless there are special circumstances. These circumstances include, among others not relevant to this appeal, the essential need for a rural worker to live permanently at or near their place of work in the countryside or where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting. The wording of the supporting text echoes the wording of Paragraph 55 of the 2012 version of the National Planning Policy Framework (the Framework), which is now restated in broadly the same terms in Paragraph 84 of the December 2023 version of the Framework.
 15. The supporting text to a Policy does not part of the policy nor does it have the force of policy. Nevertheless, it is relevant to the interpretation of the policy to which it relates.
 16. It is not argued that the appeal building is redundant or disused. When Policy SP2 is read in conjunction with its supporting text, the appeal site would not be a location where the Council would normally grant planning permission for new, open market, residential development.
 17. In the context of Paragraph 84 of the Framework, the word "isolated" in the phrase "isolated homes in the countryside" means a dwelling that is physically separate, or remote from, a settlement¹. What constitutes a settlement is not defined in either the Framework, or elsewhere in legislation.
 18. Attached to the appeal building is an annexe to the bungalow that is in separate use as a dwelling. This has the benefit of a Certificate of Lawfulness for use as separate dwelling. Close to the appeal building are two further dwellings converted from former farm buildings. A number of other former farm buildings adjacent to and opposite the appeal building are being used for various commercial purposes. A short distance to the south east there is a pair of semi-detached houses known as Lodge Farm Cottages.
 19. The site is located approximately 1.6 km by road beyond the edge of the built up area of Selby. It is accessed via Monk Lane and Lordship Lane. Lordship

¹ See *Braintree District Council v Secretary of State for Communities and Local Government, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610

lane is unlit and has no footways. Monk Lane only has streetlighting and a footway once it enters the built up area. These roads are subject to the national speed limit of 60mph until they reach the edge of Selby where a 30mph speed limit takes effect.

20. The appeal building is part of a grouping of buildings, including the former barns now converted to dwellings and the other repurposed former agricultural buildings, surrounded by countryside. However, the group is perceived as a converted farm steading and does not have the appearance of a hamlet or other small settlement. There are several other similar groupings of buildings in the area between Selby and the village of Wistow but the degree of separation between these is too great to realistically be termed a dispersed settlement which includes the appeal site. The appeal site is therefore physically separate, and remote from, a settlement.
21. The closest food shop is small supermarket co-located with a petrol filling station on Bondgate, approximately 2.5km by road from the appeal site. The town of Selby has a wide range of shops, services and facilities although these are at a greater distance.
22. There are no public transport routes which serve the vicinity of the site, with the closest bus stops located on Bondgate just to the south of its junction with Monk Lane and Wistow Road approximately 1.9km from the site. This is beyond what would be a reasonable walking distance from the appeal site, particularly given the nature of the roads that would have to be used to reach them.
23. Although there may be an informal track across the farmland to the south of the appeal building which could be used to walk to Selby, this is neither surfaced nor lit, nor is it sign posted and it does not appear to be a Public Right of Way in the vicinity of the appeal site. From what I saw when I visited the appeal site and the surrounding area, this route would not be shorter or more direct than using the existing roads.
24. The terrain in the area is largely flat and it would be possible to access shops, services, and employment opportunities by cycling. However, again due to the nature of the highway beyond the built up area with a restricted width and no lighting this would not be an attractive option for regular travel, particularly during the winter months when daylight is restricted.
25. Whilst the Framework recognises that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas, the location of appeal site is such that the opportunities to use alternative means of transport are very restricted with little possibility that the situation will change in the future. The occupiers of the dwelling would therefore be almost wholly reliant on use of the private car or other private motor vehicle for their day to day transport requirements.
26. I therefore find that having regard to the development plan the appeal proposal would result in an isolated dwelling in the countryside and would not be a suitable location for residential development. It would conflict with the relevant requirements of Policy SP2 of the Core Strategy in this respect.

Whether the disputed condition is necessary

27. That the appeal site is not a suitable location for new residential development has to be taken in the light that the appeal building exists and has done so for over 40 years. Whether it can be occupied as an open market dwelling is, therefore, dependant on whether it is still required to provide housing for an agricultural worker.
28. Although the appeal building was originally built and occupied as part of a working farm, the evidence indicates that that use ceased around 2013 and the associated land and farm buildings were subsequently sold to other parties. It was, however, clear from the site visit that the land in the vicinity of the appeal site and in the wider area is still actively farmed.
29. The appellant's Statement of Case mentions that the appeal building has not been occupied for farming purposes for more than ten years. However, it is not strenuously argued, or supported by substantive evidence, that the use for general residential occupation has become lawful. In any event, it is not within my remit within the context of an appeal under Section 78 of the Act to determine whether, or not, a use is lawful.
30. The Council does not have a specific policy regarding agricultural workers dwellings, nor does it have any guidance in respect of the lifting of agricultural occupancy conditions. At the hearing, the Council clarified that when considering applications to lift an occupancy condition, normally, it would expect to see evidence that the property had been advertised for a period of 12 months with the occupancy condition made clear and a discount of 30% applied to the asking price for qualifying individuals.
31. The Council also confirmed that it would not consider other rural workers, not employed in agriculture, as meeting the requirements of the condition. It additionally confirmed that retired agricultural workers from outside the area would also not be eligible.
32. It is agreed that various forms of marketing have been carried out to advertise the property for sale between 2016 and 2020 and between 2021 and 2023. The Council state that in the period 2016 to 2020 the property was offered for sale as an open market property. The appellant has set out that they were unaware of the occupancy condition until 2020. Consequently, this period of advertising should be discounted.
33. Various reports have been submitted that set out the history of marketing of the property from August 2021 to the present. These state that the property was advertised in a local estate agent's office and on the estate agent's website as well as on several national property websites that host property details from numerous estate agents (Rightmove, Zoopla, and On the Market). The property was also advertised on one occasion in the publication 'Farmer's Weekly'. An estate agent's "For Sale" board was also displayed at the property itself. No copies of any sales particulars have been provided with the appeal submissions.
34. The marketing reports indicate that over the period covered in detail from August 2021 to October 2023 there were some 17 enquiries regarding the property of which 9 were referred to the Council to determine whether they

- met the occupancy condition. None did. The remaining enquiries were not pursued due to the occupancy condition. The reports also indicate that the asking price has been reduced on three occasions. The Council stated at the hearing that it is satisfied that the asking price is reasonably reflective of the property market in the area.
35. It was generally agreed between the parties at the hearing that average annual wage for an agricultural worker is between £23,000 -30,000. Even with the 30% discount applied the current asking price for the two properties of £420,000 may be unaffordable for many agricultural workers if assuming a single mortgage applicant. However, this does not take into account any contribution from a partner of the agricultural worker. The wording of the condition would not preclude occupation by an agricultural worker whose partner did not work in agriculture and had a higher income². In addition, retired farmers would also qualify. Consequently, I do not consider that the property would necessarily be unaffordable to an agricultural worker, although I do accept that the cost may have deterred some from making enquiries.
36. From August 2021 to October 2021 the appeal building was marketed separately from the Annexe. After October 2021 both properties were marketed together with the occupancy condition and a 30% reduction for qualifying buyers mentioned. It was confirmed at the hearing that the bungalow and the annexe are still being marketed together.
37. The Council consider that Lodge Farm Bungalow should have been marketed separately from the annexe as the evidence submitted with the 2023 application for a Lawful Development Certificate in respect of the Annexe showed that it became immune from enforcement action in 2020. However, at the time that the second phase of marketing began there was no Lawful Development Certificate, and the evidence indicates that the properties were marketed together from October 2021 following advice from the Council. The Lawful Development Certificate was not granted until July 2023, after the application which now forms the subject of this appeal was submitted.
38. Although no copies of sales particulars have been submitted with the appeal documents, it is clear from the summary of activity in respect of the second marketing period that prospective purchasers were aware of the occupancy condition from the outset of that stage of marketing. Whilst the appeal building and the annexe have been marketed together, the evidence indicates that neither this fact, nor the asking price have prevented interest from potentially eligible purchasers, notwithstanding that ultimately the council did not consider that they qualified.
39. It is clear that the nature of farming operations in the area has changed over time with a reduction in the number of smaller farms as a result of consolidation into larger units. I am advised that farming in the area is predominantly arable rather than livestock focussed. Larger, more mechanised, arable units require less labour than livestock or mixed units.
40. The marketing evidence indicates that there is some interest in the property as an agricultural workers dwelling, notwithstanding that ultimately the Council determined that the prospective purchasers did not satisfy the terms of the

² See *Shortt v Secretary of State for Communities and Local Government* [2015] EWCA Civ 1192

condition. Although the nature of farming in the area has altered and potentially fewer people are involved in agricultural work, at the hearing the Council set out that it receives 2 or 3 applications for rural workers dwellings annually in the former Selby District Council area. There is therefore some evidence of demand for suitable accommodation.

41. However, in the case of this property, despite being marketed for approximately 2 years prior to the submission of the application, a suitable qualifying buyer has not been found that would meet the occupational and locational requirements of the condition.
42. The wording of the condition, restricting occupation solely to persons employed in agriculture limits the potential available occupiers by excluding other rural workers. Both the supporting text to Policy SP2 and Paragraph 84 of the Framework uses the slightly broader term "rural worker" in the exception for isolated homes in the countryside.
43. The annexe could, technically, be severed from the main house and the two properties sold independently of one another. This would reduce the asking price for Lodge Farm Bungalow. Nevertheless, the physical relationship between the two dwellings might act as a deterrent to potential purchasers of the annexe as a separate entity. Some windows in the annex are located directly on the boundary with Lodge Farm Bungalow. One of these is a bedroom which is directly overlooked from the garden of the bungalow.
44. From the evidence before me and from what I heard at the hearing I am satisfied that there have been genuine efforts made to market the property with the occupancy condition in place. Although the surrounding area is clearly still farmed, and the property itself would not necessarily be unaffordable to an agricultural worker, the overall size of the property, the very specific nature of the occupation permitted by the condition, and the requirement for that occupation to be in the locality severely limits the potential purchaser pool for the premises. Whilst I do not have details of all of the enquiries made, what is clear from the evidence is that of 9 enquires made over the marketing period and referred to the Council, none were considered to meet the requirements of the condition.
45. Within this context, I find that, in this case, the condition is no longer necessary to ensure that the dwelling is available to meet the housing requirements of agricultural workers in the locality.

Planning Balance

46. I have found that the appeal site would not be a suitable location for residential development and would conflict with Policy SP2 of the Core Strategy.
47. Section 38(6) of the of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise.
48. In this case, whilst the location is not one in which the Council would normally allow residential development, the appeal building was permitted in 1976 as it was considered at that time to be necessary to provide housing in connection with an agricultural enterprise. It was constructed and used as such for

approximately 35 years until the agricultural use ceased. The dwelling nonetheless remains. I am satisfied that the appellant has made reasonable and legitimate efforts to market the building and attract a purchaser who would meet the terms of the occupancy condition but has been unable to do so. Consequently, I have found that the occupancy condition is, in the case of this particular building, no longer necessary to meet the needs of an agricultural worker.

49. The Framework seeks to boost the supply of housing and both the Framework and Policy SP2 are broadly supportive of the re-use of existing buildings. Together, these factors would amount to material considerations which are sufficient to indicate that planning permission should be granted, notwithstanding that the proposal would conflict with the development plan.

Conditions

50. Planning Permission Ref: 8/36/31/PA was granted subject to a number of conditions. These included the submission of details of the reserved matters for approval, timescales for the commencement of development, the construction of the access across the highway verge, the provision of a turning area within the site, a restriction on the height of structures and vegetation in the vicinity of the access and a requirement that the previous farmhouse on the site be demolished. I am satisfied that the majority of these conditions have either been satisfied or are no longer relevant.
51. Condition 5, relating to the height restriction on structures and vegetation in the vicinity of the access is, however, an on-going operational condition. Both parties agree that this condition would still be required in the interests of highway safety. From what I saw when I visited the site, I would concur with this. Although Lordship Lane is lightly trafficked, it is nonetheless still necessary to ensure that the visibility of drivers entering the carriageway from the site is not obstructed, particularly as the site access is located close to a sharp bend in the road. I have therefore re-imposed that condition.

Conclusion

52. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Chris Holmes Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Elizabeth Maw Senior Planning Officer, North Yorkshire Council
Mr Gareth Stent Principal Planning Officer, North Yorkshire Council