



Appeal Decision

Hearing held on 15 October 2024

Site visit made on 15 October 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/D0840/W/23/3335267

Trelewick, St Allen, Truro, Cornwall TR4 9QU

- 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 Mrs Marlene Burley against the decision of Cornwall Council.
 - The application Ref is PA23/01480.
 - The application sought planning permission for the erection of a farmworker's dwelling and garage without complying with a condition attached to outline planning permission Ref 8900375, dated 10 May 1989.
 - The condition in dispute is No 04 which states that: *The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly employed or last employed locally in agriculture as defined in section 290 of the Town and Country Planning Act 1971, or forestry or a dependant 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 is within a rural area in which it is intended to provide primarily for agriculture.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a farmworker's dwelling and garage at Trelewick, St Allen, Truro, Cornwall TR4 9QU in accordance with the application Ref PA23/01480, without compliance with the conditions previously imposed on outline planning permission Ref 8900375, dated 10 May 1989.

Applications for Costs

2. An application for costs has been made by Mrs Marlene Burley against Cornwall Council. This is the subject of a separate decision.

Preliminary Matters

3. In the banner head and decision above, I have used the address as agreed to by the main parties in the Statement of Common Ground as it more succinctly reflects the property's location.
4. The appeal site is located within the catchment of the Penhale Dunes Special Area of Conservation (SAC) and the Fal and Helford SAC. Although not a reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC. Comments were sought from the main parties and I have taken them into account in my reasoning. Therefore, neither party would be prejudiced by this matter being dealt with as a main issue.

Background and Main Issues

5. Outline planning permission for a farmworker's dwelling was granted in 1989, subject to several conditions. These included a condition restricting the occupancy of the dwelling to a person solely/mainly employed or last employed locally in agriculture or forestry, or a dependant thereof. All other matters reserved by the outline permission were approved in 1990¹. The four-bedroom farmhouse has also been extended to provide additional ground and first-floor accommodation. It sits within a generously sized, mature garden area.
6. The appellant owns approximately 95 acres of land in the surrounding area. However, this land is not tied to the appeal site or the farmhouse. Its agricultural use has declined significantly over the last decade as the appellant's farming business has been scaled back.
7. The appellant and her husband have now retired. Although the occupancy restriction does not preclude them from continuing to live in the dwelling, due to their age and health, the size of the property and garden have become a burden. The appellant and her husband have now moved into a bungalow within the local area and the property is vacant. The removal of the occupancy restriction from the outline permission is being sought so the property can be sold on the open market.
8. Consequently, the main issues are:
 - whether the occupancy condition is reasonable and necessary having regard to the local development strategy, the National Planning Policy Framework (the Framework) and the need for agriculture or forestry worker's accommodation in the area; and
 - whether the proposal would be likely to have a significant effect on the integrity of the Penhale Dunes and the Fal and Helford SACs, with particular regard to recreational disturbance.

Reasons

Occupancy

9. Policy 3 of the Local Plan² sets out the role and function of places across the county, directing the majority of development towards the main towns where a range of services and facilities are available, thus protecting the open countryside from inappropriate development. Policy 7 of the Local Plan sets out the special circumstances where new homes in the open countryside will be permitted, with the supporting text defining open countryside as the area outside the physical boundaries of existing settlements (where they have a clear form and shape). This broadly reflects the Framework's approach to avoiding the development of isolated homes in the countryside.
10. However, whilst the intent of these approaches is to avoid the proliferation of new homes in the countryside where access to services and facilities is limited, the appeal scheme relates to an existing, rather than a new, dwelling. Therefore, whilst the appeal site is located in the open countryside and the dwelling is physically separate or remote from a settlement to be considered

¹ Council application no: 8902913

² Cornwall Local Plan 2010-2030 (the Local Plan)

isolated when applying the definition as per the Braintree decision³, it would not result in a new home in the countryside. Moreover, as the farmland is not tied to the farmhouse, even if the occupant complied with the condition, they could still need to travel to work and to access services and facilities. Consequently, the appeal does not turn on Policy 7 of the Local Plan.

11. Moreover, there are no policies within the Local Plan or the Framework which relate specifically to the circumstances where the removal of an agriculture or forestry worker's occupancy condition would be acceptable. Whilst the Council referred to guidelines currently being prepared, these have not been finalised and I have no details before me regarding the contents. Instead, I have been directed to the guidance within Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7), in particular, Annex A, and paragraphs 102-105 of Circular 11/95: Use of conditions in planning permission. Although no longer extant, having been replaced by the 2012 version of the Framework, the main parties agree the guidance contained within these documents remains sound.
12. PPS7 advises that dwellings with occupancy restrictions should be kept available to meet the need for agricultural workers as long as such need exists. They should not, however, be kept vacant, nor should their present occupants be unnecessarily obliged to remain where such a restriction has outlived its usefulness. Circular 11/95 advises that the removal of an occupancy condition will not be appropriate unless it is shown that the existing need for agricultural workers in the locality no longer warrants reserving the house for that purpose. Like other Inspectors on similar appeals at Barnhayes⁴ and The Lawns Farmhouse⁵, I have no reason to dispute the soundness or relevance of the advice relating to agricultural dwellings therein.
13. To determine whether or not the occupancy restriction remains reasonable and necessary, the Council stipulates this should be tested by marketing the property for sale as either a working holding (including the farmland) or as a home for a retired rural worker. During the hearing, it was indicated that a period of 9-12 months should be the minimum marketing period. However, no relevant policy, supplementary planning document or other adopted guidance has been provided setting out this recommendation. Nor does it form part of the guidance set out in PPS7 or Circular 11/95. Given this and the lack of a marketing definition, the onus is, therefore, placed on the decision-maker to judge the length of the marketing period appropriate or if there are alternative ways to assess whether the condition is reasonable and necessary.
14. A guide price for the property was obtained in February 2023⁶, taking into account the likely negative impact of the occupancy condition. Based on the appellant's calculation of the average agriculture or forestry worker's income this would be significantly beyond what such a worker would be able to afford, without a substantial deposit or sizeable funds. The Council has not disputed this calculation, the guide price or the reduction percentage applied to account for the occupancy condition. Nor has the County Land Agent undertaken a separate valuation.

³ *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610

⁴ APP/F1230/W/17/3178024

⁵ APP/D0840/W/19/322.751

⁶ Letter from Lillicrap Chilcott, dated 13 February 2023

15. Although I have been presented with the sales particulars of another farmhouse near Truro with a similar guide price yet unfettered by an occupancy condition, this relates to a Grade II listed building which requires refurbishment. Both these factors will affect the guide price. The appeal property is not listed and based on my observations during my site visit, requires minimal refurbishment. Therefore, it is not directly comparable with the appeal property.
16. The results from a search of properties for sale of a similar size to the appeal farmhouse, without an occupancy restriction, including those located in a countryside setting, within three miles of the appeal site have also been provided by the Council. However, any direct comparisons between these properties and the appeal farmhouse are limited given the lack of details provided, particularly relating to the factors which influence their value⁷. This evidence does not, therefore, indicate the guide price of the farmhouse is unreasonable.
17. During the determination period of the application, the appellant verbally confirmed that the property was marketed for sale, with and without the farmland, by an agent for at least six months. Limited substantive evidence has been provided regarding the marketing, including a definitive timescale and advertising locations, although a copy of the sales brochure, which notes the occupancy restriction has been presented. Whilst unverified, it has been indicated that three buyers viewed the property. However, no offers were received on the appeal property nor the wider landholding.
18. Although there is nothing to prevent a prospective buyer from submitting an offer at a lower amount, the target market for the property with the occupancy condition in place relies largely on an existing or retired agriculture or forestry worker with substantial funds. As such, this is a narrow market. Therefore, even if the marketing period had been extended by three or six months, the likelihood of the property being sold during that additional time is low. Additionally, a reduction in the guide price would not have guaranteed a sale nor, in all probability, be of a scale sufficient to bring it to a level affordable to an average agriculture or forestry worker.
19. The marketing of a property represents one, and potentially the most obvious, way of testing the need and demand for an agriculture or forestry worker's dwelling. However, it is not the only method to do so. Reference has been made by the Council to several approved applications for agriculture or forestry worker's dwellings within a 15-minute drive of the appeal site. These relate to decisions issued by the Council between 2009 and 2023. Notwithstanding the limited information before me regarding these cases, following the discussions during the hearing, only three demonstrate some relevance to the proposal before me⁸. No agriculture or forestry worker dwelling applications have been submitted to the Council within the Parish of St Allen in the last decade. This does not, therefore, demonstrate that there is an unmet need for agriculture or forestry workers' accommodation in the area, even if it were affordable to such a worker.

⁷ Such as location, adjoining uses and proximity to services and facilities, condition or need for modernisation, age and appearance

⁸ Ref: PA15/09016 – Penwartha Barton, Ref: PA15/04926 – Shepherd's Farm and Ref: PA22/02263 – Taranto Stud

20. My attention has been drawn to the results from a search of properties for sale which indicate that there are more modest dwellings without an occupancy restriction within a mile of the appeal site. Some of these may also be, mathematically, beyond the affordability of an agriculture or forestry worker. Nonetheless, given the substantial price difference between these properties and the appeal farmhouse, they would be significantly closer to what such a worker could afford.
21. Other appeals at Hay and St Cleer⁹ have been provided by the Council to demonstrate the necessity of a marketing exercise. Nonetheless, these relate to properties with significantly lower values than the appeal farmhouse, even when taking into account the age of these decisions. Additionally, in the case of St Cleer, it was indicated that four new agricultural dwellings had been approved in the parish during the preceding six years. This represents a measurably different context than within the Parish of St Allen as indicated above.
22. The appellant's wider landholding comprises an area which, based on the evidence before me, is typical for Cornwall. Whilst no longer in agricultural use, limited substantive evidence has been provided to demonstrate its size, location and condition could not support another enterprise. However, as no other enterprise is before me, whether a future enterprise working the land would require an agriculture or forestry worker's dwelling is unclear. Therefore, even the removal of the occupancy restriction on the appeal property would not necessarily lead to an agriculture or forestry worker's dwelling planning application. A similar scenario would exist should the appellant sell off the farmland and the occupancy restriction on the farmhouse continue. Notwithstanding this, any such proposal would need to demonstrate the essential need for a new dwelling in this specific location, in compliance with Policy 7 of the Local Plan.
23. I conclude that the occupancy condition is not reasonable or necessary having regard to the local development strategy, the Framework and the need for agriculture or forestry worker's accommodation in the area.

Integrity of the SACs

24. SACs are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). The special interest of the Penhale Dunes SAC results from the significant presence and/or the best example in the United Kingdom of various dune types and habitats supported. Encompassing two drowned river valleys, the special interest of the Fal and Helford SAC relates to the variety of types of habitats which have been created, including mudflats, sandbanks, saltmarshes, reefs and rocky shores.
25. Both SACs are vulnerable to various recreational pressures, including trampling, erosion, disturbance of species, fly-tipping and fires, amongst others, which can threaten the special interest or qualifying features of the designated sites. As development that leads to a net gain in dwellings would increase the number of people living and using the area for recreational purposes, pressure from recreational disturbance would also increase.

⁹ APP/D0840/W/16/3153920 and APP/D0840/W/16/3155923

26. However, as the removal of the occupancy condition would not result in a net gain in dwellings, the proposal would not cause any likely significant effects on the designated sites, either alone or in combination with other plans and projects. Therefore, an appropriate assessment is not required and I conclude that the development would not result in an adverse effect on the integrity of the SACs and accords with the Habitat Regulations. Additionally, I find no conflict with Policy 23 of the Local Plan which sets out the mitigation of recreational impacts on the SACs.

Other Matters

27. My attention has been drawn to the planning history of the appellant's wider landholding, including the erection of an agricultural barn (retrospective) and the change of use of agricultural barns to dwellings (prior approvals). These relate to the appellant's wider landholding and, therefore, are not a matter for this decision.

Conditions

28. As the dwelling and garage have been constructed, many of the conditions on the original permission have outlived their useful purpose, including those relating to the approval of reserved matters, standard time limits, materials and site access. These have not been imposed within my decision above.
29. Although there are no provisions under section 73 to grant a new approval of reserved matters, I can grant a full rather than a further outline permission, incorporating any conditions from the reserved matters approval that remain relevant and necessary. The potential for adopting this approach was discussed during the hearing, with neither party objecting.
30. As the farmhouse has been constructed and subsequently extended, I don't need to impose a standard plan condition. Whilst the stationing of caravans on the site was restricted on the original permission, no caravans were being kept on the property when I undertook my site visit. Additionally, no compelling reason was presented to me during the hearing for this condition to be imposed on my decision.
31. Given its size and layout which enables vehicles to enter and leave the site in a forward direction, it is not necessary to impose a condition regarding the existing driveway and hardstanding close to the garage. No demonstrable harm has been presented to me should the farmhouse, including its roof, be enlarged, improved or altered. Therefore, it is not necessary for permitted development rights relating to Classes A and B, as originally imposed, or Class E as referenced during the hearing, to be restricted.

Conclusion

32. For the reasons given above, I conclude that the appeal should be allowed and I grant a new planning permission with the removal of the disputed condition. As no other conditions appear to be relevant from the original permissions, these have not been imposed.

Juliet Rogers

INSPECTOR

APPEARANCES

For the Appellant:

Mrs Marlene Burley	Appellant
Mr Trevor Burley	Appellant's Husband
Mr Christopher Tofts	Partner, Stephens Scown LLP

For the Local Planning Authority:

Mrs Niamh Ashworth	Senior Development Officer, Cornwall Council
Mr James Holman	Principal Planning Officer, Cornwall Council