
Appeal Decision

Site visit made on 19 November 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 6th January 2025

Appeal Ref: APP/W0530/C/23/3324211

Cherry Trees, Iram Drove, Priest Lane, Willingham, CAMBRIDGE, CB24 5HZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Billy Jamie Hancock against an enforcement notice issued by South Cambridgeshire District Council.
 - The notice was issued on 17 May 2023.
 - The breach of planning control as alleged in the notice is Without planning permission:
 - a) the occupation of the land in breach of C/0012/67, condition 1 which requires: "the occupation of the dwelling shall be limited to persons employed locally in agriculture as defined in section 221 of the Town and Country Planning Act 1962 or in forestry, and the dependents of such persons."
 - The requirements of the notice are: (i) Cease to occupy the dwelling and land.
 - The period for compliance with the requirement is 12 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by deleting Requirement (i) and replacing it with "(i) Cease the occupation of the dwelling by person(s) other than those employed locally in agriculture as defined in section 221 of the Town and Country planning act 1962 or in forestry, and the dependents of such persons."
2. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The purpose of the notice is clearly to remedy the breach of planning control. Where the breach of planning control is a failure to comply with a condition on a planning permission, the appropriate requirement is to make the development comply with the terms of the planning permission. Accordingly, rather than a requirement to cease to occupy the dwelling and land altogether, the requirement should be to cease to occupy the dwelling except in accordance with the occupancy condition. I shall therefore vary the requirement in that way, which I can do without injustice to the parties.

Reasons

4. The appeal property is in the countryside outside of any defined settlement. There has long been strict control of new dwellings in the countryside, one

exception being where it can be demonstrated that there is an essential need for accommodation for a rural worker. In these circumstances, a condition is normally imposed to ensure that the dwelling is kept available for meeting this need. While the needs of an individual enterprise may have justified the new dwelling, one purpose of the occupancy condition at issue here was to ensure that the dwelling is kept available to meet the needs of other farm or forestry businesses in the locality if it is no longer needed by the original business, thus avoiding a proliferation of dwellings in the open countryside.

5. Consistent with this overall approach, Policy H/19(4) of the South Cambridgeshire Local Plan 2018, part of the development plan for the District, provides that the relaxation of an occupancy condition will only be permitted where it can be demonstrated that:
 - i. There is no longer a continued need for the dwelling on the site/holding or for the enterprise, or to house surviving partners and any resident dependents;
 - j. There is no long term need for a dwelling with restricted occupancy to serve need in the locality;
 - k. The property has been marketed locally for a reasonable period (minimum 12 months) at a price which reflects the existence of the occupancy condition.
6. All of these criteria must be met. It is common ground that the dwelling is no longer linked to a specific enterprise, hence the main issues are whether it has been shown that there is no longer an existing need for dwellings for agricultural or forestry workers in the locality, and whether an appropriate marketing exercise has been undertaken. Obviously the criteria (k) marketing exercise would also serve as evidence for the criteria (j) requirement.
7. Evidence of marketing was provided to the Council in relation to an application, subsequently withdrawn, to remove the condition in January 2017. That evidence has not been produced in this appeal, but it is referred to by the Council in broad terms. The property was apparently on the market between 2014 and 2017 with two local estate agents, and nationally on web-based sites, initially at £499,995 and then reduced in August 2016 to £459,995, without interest shown by anyone who could satisfy the condition. However, there is no evidence to show that either price reflected the existence of the occupancy condition, a key requirement for satisfying criterion (k). Nor is there any evidence of marketing since the 2017 application, notwithstanding that a further application¹ was made in July 2023. It is reasonable to expect that any testing of market conditions be relatively recent, and furthermore that evidence be adduced to support any assertion that the property has been marketed at a price that appropriately reflects the occupancy condition. In the absence of such testing and evidence I find that Policy H/19(4) criterion (k) is not met.
8. So far as criterion (j) is concerned, the appellant also relies upon a search of the Council's planning records for new agricultural dwellings, which they say shows that very few, if any, such applications have been made in the past 5 years. However, such applications are enterprise-specific and do not necessarily indicate a lack of demand generally for rural worker

¹ Ref. No: 23/02975/S73

accommodation. The appellant also refers to changes in agricultural practices since the original permission was granted, noting among other things that there is a declining workforce, relatively low wages and a decline in demand for on-farm live-in employment, with most people working on surrounding land being contract workers who came in on a job-by-job basis. I acknowledge that farming and land-based employment patterns have undoubtedly changed since the original permission was granted, but the Local Plan was adopted relatively recently and can be expected to reflect current circumstances. In this case the evidence falls well short of demonstrating that there is no longer an existing need for dwellings for agricultural or forestry workers in the locality, so criterion (j) of Policy H/19(4) is also not met.

9. As such the removal of the occupancy condition would conflict with Local Plan Policy H/19. The property has been occupied by the current tenants who do not meet the condition since 2017, and it is argued that, if vacant it would remain so, there being little prospect of a new owner or tenant being found while the condition remains in place. But if that was the case it is likely that policy compliance could be demonstrated. At present it is mere assertion and not supported by evidence. Accordingly, the proposed development would not accord with the adopted development plan when considered as a whole and there are no material considerations which indicate a decision otherwise than in accordance with it. The appeal on this ground cannot therefore succeed and the deemed planning application must be refused.
10. I acknowledge that refusing planning permission and upholding the notice means that the current tenants will need to seek alternative accommodation if they cannot meet the condition, and that amounts to interference with their rights in the context of Article 8 of the First Protocol of the European Convention on Human Rights. However I do not consider that the effect on the occupiers of upholding the notice, which is subject to a reasonable compliance period, would be disproportionate in the light of the legitimate aims of the national and local policies aimed at maintaining strict control over development in the countryside.

Paul Dignan

INSPECTOR