



Appeal Decision

Site visit made on 4 February 2025

by **S Harrington MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 February 2025

Appeal Ref: APP/D0840/W/24/3348575

Carnello Farm, Burthallan Lane, St Ives, Cornwall TR26 3AA

- 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 & Mrs Mark & Gill Stainton against the decision of Cornwall Council.
 - The application Ref is PA24/01691.
 - The application sought planning permission for completion and extension of building to provide staff accommodation and dwelling to be used in association with boarding kennels without complying with a condition attached to planning permission Ref 1/87/P/0007/F, dated 09 February 1988.
 - The condition in dispute is No 5 which states that: The occupation of the dwelling shall be limited to a person or persons wholly or mainly employed in the approved Boarding Kennels and all caravans on the site shall be removed within three months of the dwelling being occupied.
 - The reason given for the condition is: The site is within a rural area in which it is intended to provide primarily for the needs of agriculture and permission is granted to meet the special needs of the applicant and in the interests of visual amenity.
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Decision

1. The appeal is allowed and planning permission is granted for completion and extension of building to provide staff accommodation and dwelling to be used in association with boarding kennels at Carnello Farm, Burthallan Lane, St Ives, Cornwall TR26 3AA in accordance with the application Ref PA24/01691, without compliance with the conditions previously imposed on planning permission Ref 1/87/P/0007/F dated 09 February 1988.

Background and Main Issue

2. Planning permission has previously been granted for the completion and extension of building to provide staff accommodation and dwelling to be used in association with boarding kennels. The planning permission included condition 5 (the condition), which restricted the occupancy of the dwelling as well as requiring the removal of all caravans on the site. The boarding kennels has not operated as such for a number of years, and the removal of the occupancy condition is sought to enable the dwelling to be occupied without restriction.
3. The main issue is whether condition 5 is reasonable and necessary, having regard to the local development strategy and the need for a rural worker dwelling at the appeal site.

Reasons

4. Planning permission was granted in March 1979 for 'construction of administrative building and conversion of agricultural buildings to kennels', with further temporary

permissions being granted for the siting of a caravan, the latter of which I am told allowed for overnight occupation without which the boarding kennels could not operate. I have no substantive evidence that boarding kennels were not operating at the time of the granting of permission the subject of this appeal.

5. The condition refers to 'the approved boarding kennels'. Given the planning permission relates to a specific area of land as detailed within the decision notice, the existing planning permission at the site for kennels, and the operative part of the planning permission referring to the dwelling being used in association with boarding kennels, I do not find that this leads to any ambiguity.
6. Furthermore, although there is reference to 'the applicant' in the condition reason, the wording of the condition does not refer to the applicant or imply that it is restricted to a personal permission, but clearly states "a person or persons wholly or mainly employed".
7. Nothing in the evidence that is before me leads me to find that the Council sought to unreasonably impose the condition, that it was not in relation to a planning purpose associated with the development permitted, imprecise or unenforceable with the reasoning for the condition being clear.
8. Notwithstanding the original justification for the imposition of the condition, I am required under S.73 of the Town and Country Planning Act 1990 (as amended) (S73) to consider whether the condition is justified in the circumstances existing at the time of the determination of this appeal, in light of the current legislative and policy context.
9. The appeal site is located in the countryside outside, albeit close to, the settlement of St.Ives. In such locations, Policy 7 of the Cornwall Local Plan Strategic Policies 2010-2030 (LP) only permits new homes where there are special circumstances including, amongst other things, occupation by full time agricultural and forestry and other rural occupation workers.
10. However, the proposal relates to an existing, rather than a new dwelling. Therefore, despite its location, it would not result in a new home in the countryside. Furthermore, based on the evidence before me, the LP does not specifically address the circumstances where the removal of an occupancy condition of this type would, or would not, be acceptable. Consequently, the appeal does not turn on LP Policy 7, but whether there is a continuing need for the disputed condition.
11. The Council's Land Agent indicates that the kennels haven't operated as such for a period in excess of 10 years, and indeed I observed that some of the kennel buildings are in a poor state of maintenance and being utilised for domestic storage, with a further kennel building in a dilapidated state.
12. A use may be regarded as existing even if it is dormant or inactive. However, the concept of abandonment applies when a building or land remains unused for a considerable time, in such circumstances that a reasonable person might conclude that the previous use had been abandoned. Established criteria for abandonment includes the physical condition of the land or building; the period of non-use; whether there has been any other use; and the owner's intentions as to whether to suspend the use or to cease it permanently.

13. Given the poor condition of the buildings, the period of time the kennels haven't operated, lack of alternative use aside from domestic storage and the owners' intentions as evidenced by the submission, the evidence leads me to the conclusion that the commercial use of the land had been abandoned prior to the current application being made.
14. The Council suggest that to determine whether or not the occupancy restriction remains reasonable and necessary, the property should be marketed for a minimum period of 12 months. However, no relevant policy, supplementary planning document or other adopted guidance has been provided setting out this recommendation. Moreover, whilst LP Policy 5 does refer to marketing, this relates to business use as opposed to an occupancy condition, which in any case I have identified has been previously abandoned.
15. Whilst the marketing of a property represents one way of testing the need and demand for rural workers dwellings, in this particular instance, given the occupancy condition is precise in that it restricts occupancy to those employed at the boarding kennels, I am not convinced such a marketing exercise would be beneficial.
16. Furthermore, even if the condition were varied to allow occupancy of the dwelling for other rural workers, there is no evidence before me to demonstrate that there are any other rural enterprises in the immediate area which would benefit from the proximity of the appeal dwelling to its operations, particularly given the high value of the property which has not been refuted.
17. Therefore, I conclude the condition is not reasonable or necessary having regard to the local development strategy and the need for a rural worker dwelling at the appeal site. The continued imposition of the condition would be unreasonable, as it no longer serves a useful purpose. The condition therefore no longer meets the requisite tests for the imposition of planning conditions, as set out in the National Planning Policy Framework.

Other Matters

18. An application under S73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission. However, in this instance the proposal seeks the removal of a condition. As such, the operative part of the permission remains intact, albeit in an unconditioned way and I see no reason, given the operative part of the permission refers to a dwelling, that permission cannot be granted for the development as set out in the description without the condition attached.

Conditions

19. The Planning Practice Guidance sets out that decision notices for the grant of planning permission under S73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged.
20. Given the dwelling is complete, conditions 1 to 4 have outlived their useful purposes and are no longer necessary, and I have not imposed them on the planning permission. Furthermore, caravans referred to within condition 5 have been removed, and therefore a condition requiring their removal is no longer necessary.

21. Policy H2 of the St Ives Area Neighbourhood Development Plan 2015-2030 seeks to ensure that occupancy of new dwellings is restricted as a principal residence. However, as the proposal would not result in a new dwelling, such a planning condition restricting occupancy to a principal residence is not necessary or reasonable.

Conclusion

22. For the reasons given above, I conclude that the appeal is allowed. I will grant a new planning permission without the disputed condition, or the other conditions imposed on the original permission.

S Harrington

INSPECTOR