



Appeal Decision

Site visit made on 20 March 2025

by **C Butcher BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8th April 2025

Appeal Ref: APP/W1850/W/24/3357638

Field View, Gorsty Pembridge, Herefordshire HR6 9JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Percival Smith against the decision of Herefordshire Council.
 - The application Ref 241368, dated 11 June 2024, was refused by notice dated 29 November 2024.
 - The application sought planning permission for a site for single residential agricultural workers dwelling without complying with a condition attached to planning permission Ref NW2001/3034/O, dated 29 November 2002.
 - The condition in dispute is No. 6 which states that: the occupation of the dwelling hereby approved shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants.
 - The reason given for the condition is: to meet the expressed agricultural need.
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Decision

1. The appeal is allowed and planning permission is granted for a site for single residential agricultural workers dwelling at Field View, Gorsty Pembridge, Herefordshire HR6 9JG in accordance with the application Ref 241368 without compliance with condition number 6 previously imposed on planning permission Ref NW2011/3034/O dated 29 November 2002, subject to the following condition: the occupation of the dwelling known as Lower Green Farm shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants.

Main Issue

2. The main issue is whether, based on the evidence before me, the condition is reasonable and enforceable.

Reasons

3. The construction of the dwelling was completed some time ago. In 2017, a Certificate of Lawfulness¹ (CoL) was issued on the basis that the dwelling had been occupied in breach of the relevant occupancy condition for a period in excess of ten years.
4. Section 171B of the Town and Country Planning Act 1990 is clear that, once the immunity period is satisfied, the taking of enforcement action is prohibited

¹ Council ref: 172179

thereafter. The fact that the property subsequently changed ownership does not alter that position.

5. I acknowledge that there is no substantive evidence before me that would enable me to conclude that the dwelling is no longer required for agricultural purposes. As such, the requirements of Policy RA4 of the Herefordshire Local Plan Core Strategy 2011 – 2031 have not been met. However, given that occupancy of the dwelling in breach of the condition is lawful, I can only conclude that the condition is no longer reasonable or enforceable. The existence of the CoL is therefore an issue that I must afford very significant weight to. In this instance, this matter outweighs the conflict with the development plan.

Conditions

6. Given that the dwelling has been built, the Council has confirmed that conditions 1 to 5 of the original permission have been discharged and do not need to be re-imposed as part of this appeal decision. I agree with that position.
7. However, I have re-imposed condition 7 which requires the dwelling known as Lower Green Farm to be occupied for agricultural purposes. I acknowledge the appellant's statement that Field View is now quite separate from Lower Green Farm and that the use of the latter property may have changed. However, the Council are of the view that the condition remains extant, and it is clear that its potential removal is outside of the remit of this appeal which relates only to condition 6. With this in mind, the removal of condition 7 would need to be the subject of a separate application.

Conclusion

8. For the reasons given, the appeal is allowed.

C Butcher

INSPECTOR