

Appeal by Mr Christopher Slaytor
Refusal of Planning Permission
by Staffordshire Moorlands District Council, Reference SMD/2016/0436, for
Removal of Condition 5 of Outline Planning Permission 9218 (Occupancy of the
Dwelling) at
Whympenny, Godley Lane, Dilhorne, Staffordshire ST10 2PF

STATEMENT OF CASE

1.0 Background

1.1 The above planning application for removal of an agricultural occupancy condition was refused by the Council's Planning Applications Committee on 8 December 2016, (meeting available to view on the Council's online webcast facility) and the formal decision notice (Appendix 1) issued the following day. Documents accompanying the planning application are Planning Statement by Mr Bruce Daniel BSc (Est Man) FAVA, FLAA, of Daniel and Sons (includes the outline planning permission reference 9218 dated 11 October 1972) and Site Location Plan CS02, copied at Appendix 2 and 3 respectively.

1.2 The marketing undertaken prior to the Appellant's purchase did not secure a sale to a suitable occupier. The report to the Committee (the Council will provide) recommended approval. The refusal notice however reflects the Committee's view that there had been 'insufficient up-to-date marketing of the dwelling', such that the dwelling 'would not comply' with housing policies for open countryside in the green belt, and also 'would not be in line' with the National Planning Policy Framework (NPPF).

1.3 The Appellant and his wife purchased Whympenny in March 2014, comprising a four bedroom dormer bungalow, modest garden to front and rear, and paddock land generally adjacent to the east and north, all amounting to 2 acres. The Council wrote to the Appellant in August 2015, advising that they may not meet the occupancy condition and seeking 'full details' of their employment. The Appellant replied that the land generates no income or profit, and could not provide a sustainable income on such a small parcel of land. The Council pointed to the 'option to apply to have the condition removed'.

2.0 Planning Issues

2.1 The substantive planning issues are:

- policy basis for decision making
- marketing
- validity of the agricultural occupancy condition

2.2 Policy Basis For Decision Making

2.3 The refusal notice is critical of the period where no marketing took place, but finds no flaw in the marketing that was undertaken prior to (and in fact beyond) the time that the Appellant purchased Whympenny. The notice does not, though, point to conflict with any Council policy or other guidance that explains the nature of marketing that would be judged as 'sufficient'. The Council has confirmed by e mail dated 16 May 2017 that it does not have such policy or guidance.

2.4 Policies identified in the decision notice are Core Strategy Policy R2 and SS6c but neither contains tailored guidance on the removal of an agricultural occupancy condition.

2.5 Section 9 of the NPPF 'Protecting Green Belt Land' also referenced in the refusal notice but also contains no such guidance.

2.6 Some Councils do provide such guidance and which might comprise requirements on: period of marketing; use of property agents; frequency of advertising; press and internet advertising; sales particulars circulation and display; positioning of 'for sale' board at the site. The absence of such guidance makes it difficult for the Committee to safely conclude 'on the hoof' that there had been 'insufficient up-to-date marketing' of the property.

2.7 Section 35 (1) (b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires a refusal notice to 'state clearly and precisely (their) full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant'. The Council has not met this requirement and deferral of the application by Committee would have allowed a tailored report explaining the marketing issues.

2.8 Marketing

2.9 The application demonstrates that reasonable effort had been made to find an appropriate purchaser of Whympenny.

2.10 Mr Daniel (Appendix 2) provided the various sales particulars by his firm and other local professional agents, and describes the full extent of marketing of the property. The report to Committee summarises this evidence at paragraphs 8.4 - 8.6, and concludes that marketing was appropriate, at prices significantly reduced for a considerable period, with no reasonable offers, such that:

'..... the agricultural occupancy condition can be removed and that this would not set a precedent'.

Mr Daniel's Planning Statement refers to:

- marketing by Bagshaws from 2007/8; sales particulars confirm £450,000 for land holding at 18 acres including Whympenny; agricultural occupancy condition specified on fourth page; one offer made to Executors in May 2008 of £375,000.
- marketing by John German prior to 2011; sales particulars confirm £500,00 for land holding at 14.5 acres including Whympenny; agricultural restriction specified on second page.
- marketing by Daniel and Sons from April 2011; joint agency basis with Bagshaws; sales particulars confirm £250,000 for Whympenny and two acre paddock only due to lack of demand for 14 acre unit with dwelling and to encourage expansion of neighbouring farms; agricultural occupancy condition specified on second page; file record of 10 viewings and conversations between April 2011 and September 2012, all unfruitful as interested parties withdrew when their advisers pointed to the implications of the occupancy condition, the exception being two qualifying offers for the whole 14.5 acres block at £320,000, apportioning a value for the bungalow and paddock at £170,000 which is considerably below market value.
- marketing by Daniel and Sons, and Bagshaws, from September 2012 to November 2013 on Daniel and Sons and Bagshaws websites as well as prominent 'For Sale' board at the property; sales particulars confirm reduced price of £220,000 for Whympenny and two acre block; agricultural occupancy condition specified on

second page; a number of enquiries but two refused finance due to the occupancy condition; sale to the current Appellant in November 2013 / completion in April 2014 at £220,000.

2.11 Mr Daniel concludes on the second page of his Planning Statement that '.... there were no offers from qualifying applicants throughout the period either from retired or active farm workers for the property with 2 acres and despite price reductions of 50% market value. The Committee report notes in paragraph 7.10 that the 37.5% reduction in April 2011 marketing was in fact greater than the 30% established by appeal decision elsewhere to reflect the occupancy condition.

2.12 Mr Daniel has at Appendix 4 provided evidence of additional marketing by his own and Bagshaws offices:

- fortnightly insertions in the well known local newspaper The Leek Post and Times from 20 April 2011 to 13 June 2011;
- simultaneous placements on the Daniel and Sons website;
- availability of property particulars at his offices at St Edward Street, Leek, and the Uttoxeter and Bakewell offices of Bagshaws;
- 'For Sale' boards positioned at Whympenny.

2.13 Mr Daniel confirms that the property remained on the market until March 2014 when the Contracts were exchanged at which time the Sale Board was removed and website entries taken down.

2.14 Bagshaws also confirm their own marketing of Whympenny, by e mail dated 31 March 2017 (see Appendix 5) to the Appellant, saying 'between 2005 an 2014, it was advertised in the local papers, on the internet, and cards were placed in office windows and at livestock markets'.

2.15 This evidence reflects the genuine efforts to secure a sale of Whympenny by reputable local property professionals with the appropriate local knowledge and expertise. The Council's Officers accepted this evidence without query. The marketing campaign was:

- more prolonged than is usual in such applications;

- designed and managed by reputable local professionals working together across their wide geographic area with much wider exposure to the agricultural sector than is usual;
- more flexible in the land and property offer than is usual;
- realistic in property valuations being reduced by greater margins than usual in such applications;
- publicised by a full range of measures that would maximise exposure to the agricultural community .

2.16 It is submitted that the quality of the marketing campaign was not undermined by the lack of marketing between April 2014 and July 2016 when the planning application was submitted. The period between the end of marketing and the submission of the application to remove the condition saw the Appellant realise, once in residency, that sufficient income from the land to meet the terms of the occupancy condition cannot be generated. Professional advice was then sought and a planning application compiled - inevitably taking some time. Indeed the webcast of the Committee meeting shows the Council's Legal Officer advising that there is 'no definitive answer' where there is a time delay between the end of marketing and submission to remove the occupancy condition. The Appellant should not be penalised where the Council has no relevant guidance and accepts there is 'no definitive answer'.

2.17 Two of the four public representations on the planning application come from local residents with close family connections with the previous owner of Whympenny, and a ongoing interest as beneficiaries until sold, and with an interest in purchase at the time. However neither they nor any other party emerged to secure a sale through the Executors. Two other residents make general comments. Common to all four is that, even with their obvious local knowledge, they do not identify anyone able to satisfy the condition, or provide any reason to suppose that additional marketing now will be any more successful than the several years previously .

2.18 The Council's webcast of the Committee meeting similarly shows that no Member of the Committee could offer any evidence of a potential occupier, or reason to suppose that fresh marketing now would achieve this.

The Committee webcast does provide further insight:

- The Planning and Legal Officers, and Chair of Committee, in agreement that had the application been submitted at the end of the last marketing period (2014) then the Council could not have resisted removal of the occupancy condition.
- Chair of the Committee noted the two periods of marketing between 2007-8 and 2011 -13 strengthens the officer recommendation for approval, observing that the Applicant had 'done the right thing in wrong order', and asks whether forcing the owners out would be in the interest of local people and the Council.
- Legal advice minuted (the Council will provide) that the Planning Inspector may consider the marketing as 'valid'.

2.19 The short period without marketing was not excessive or unreasonable, but had the planning application been submitted more quickly after marketing then the Committee was advised that removal of the condition could not have been resisted. Occupancy then would be exactly as it is today with the Appellant in residence. As such it is considered unreasonable, disproportionate and harsh to deny this to the Appellant but for the short passage of time without marketing.

2.20 Validity Of Agricultural Occupancy Condition

2.21 After fresh consideration for the purposes of this appeal, and with the benefit of legal advice, the validity of the agricultural occupancy condition cannot now be accepted. The dwelling has evidently been built without complying with condition no.1 of outline consent 9218 which states 'no development shall be started until full details of the following have been submitted to and approved by the Local Planning Authority....' The condition identifies the required details as site layout, plans and elevations of all buildings, and facing materials for walls and roofs. The time limit condition for submission of 'reserved matters' and commencement of development is also imposed. (see full decision notice at Appendix 2 Mr Daniel's Planning Statement) . The Council has no record of a reserved matters application or approval associated with outline permission 9218.

2.22 Given the Council's statutory duty to keep a Planning Register of applications and decisions, on 26 October 2016 the Council's Planning Support Officer responded (see Appendix 6) to enquiry by the Appellant that 'I have carried out a search on our records

and was not able to find the planning permission granting the full permission for the erection of the above property after the granted outline consent by Cheadle Rural District Council referenced 9218'.

2.23 Subsequently the Council's Senior Planning Enforcement Officer was requested to produce any relevant reserved matters application or decision related to outline 9218. Despite a lengthy exchange of e mails the Officer has been unable to produce any such evidence. His e mail of 17 March 2017 is copied in full at Appendix 7 and confirms he had made 'an assumption' that application form and drawings provided for application reference 9740 were the Whympenny reserved matters approval, but he 'can not see anything that makes it obvious they relate to reserved matters'. In fact the application form reference 9740 is clearly marked 'outline application only' thus wholly refuting any speculation that 9740 could be a 'new full application' - conceded in the same e mail that 'there is no evidence to suggest that was the case' and 'we are running out of possibilities'. He relies on a 'balance of probabilities' and 'onus on the applicant' approach, without accepting the Council's duty to keep proper records.

2.24 The Council cannot produce any planning reference, application document, decision notice, or anything else, that relates to any reserved matters submission for Whympenny.

2.25 Legal advice has been sought from Knights Professional Services Limited, an extract of which is at Appendix 8 which explains the rationale around the absence of any reserved matters application or decision, and confirms:

"If I am correct in my assessment then the dwelling when initially constructed would have been unauthorised and not subject to the agricultural occupancy condition set out on the face of the 1972 planning permission".

2.26 This legal advice supports the contention now that Whympenny was unauthorised immediately from its construction in the early 1970's and the occupancy condition could never have been live at any time. The passage of time since then means that the constructed dwelling is both free from any agricultural occupancy condition and immune from enforcement action.

2.27 The Whympenny case has similarities to that of the dwelling 'Edale' standing immediately adjacent to the south (see Appendix 3 Site Location Plan). In 2014

the Council approved an application for a Certificate of Lawfulness for Edale under reference SMD/2014/0414 as the agricultural occupancy condition had never been complied with at any time following construction in 1972. Thus the Council clearly has no insight as to whether such occupancy restrictions are being met throughout many decades afterwards, confirmed by its e mail dated 16 May 2017 that it has no database and undertakes no monitoring of the occupancy of such dwellings. 'Edale' may not be unique. Interestingly, one objector to the latest Whympenny application confirms having previously written to the Council about the Appellant's occupancy. The Edale application at around the same time however, quite conversely, generated no commentary from local residents or the Parish Council, and no prior referral to the Council. This is surprising given what, for Whympenny, is the claimed good local knowledge of objectors (see paragraph 2.17 above) and stated concern for the stock of agricultural dwellings. Two conclusions arise: firstly, the Council's concern about the marketing of Whympenny carries little weight given it did not enforce the occupancy condition and protect the agricultural dwelling at Edale over a 42 year period; and secondly, the lack of local concern about the breach of occupancy condition at Edale must reflect a lack of genuine need for agricultural dwellings in the area, otherwise those now concerned for Whympenny would have made the same interventions for Edale.

2.28 The Council's lack of insight into the validity of the occupancy condition before refusing permission for its removal is unreasonable and an application for costs will be submitted.

3.0 Conclusions

3.1 With no policy or guidance on the removal of occupancy conditions the Council's decision making was ad hoc. The Officer's full support was rejected for the very narrow reason that marketing was not 'up to date'. A very good quality, organised and professional marketing campaign had nevertheless been undertaken over a prolonged period, such that the short period when no marketing took place was of no consequence. Marketing failed to secure a sale to any purchaser meeting the occupancy condition. Local residents and Committee Members have no contrary evidence despite their significant local knowledge, and no party saw fit to intervene when the dwelling adjacent

was not being occupied in accord with an agricultural condition, reinforcing the view that there is no tangible and genuine local demand for such dwellings. Under these circumstances the occupancy condition can be safely removed.

3.2 The validity of the occupancy condition cannot now be accepted since the Council is unable to produce a relevant reserved matters application or approval despite its statutory duty to keep proper records. The construction of the dwelling was thus unlawful at the time, and an agricultural occupancy condition has therefore never been in place. As such the dwelling Whympenny is now immune from any enforcement action and there is no impediment to continued non agricultural occupation by the Appellant or any other party.

3.3 Three letters of support for this appeal are submitted at Appendix 9a), 9b) and 9c), two from residents of Godley Lane, Dilhorne, and one from the Executors of the Estate of Mr W K Challinor who obtained the outline planning permission 9218. The letters attest variously to the lengthy period that the house was for sale, the lack of interest from farm workers, and the efforts which the Appellant has made to refurbish and improve the dwelling.

3.4 It is respectfully requested that this appeal be allowed in order that the Appellant can continue to live in the dwelling and not be faced with the Council's suggested enforcement action to have him removed.

Michael Green Planning Services, 18 May 2017.