The Planning Inspectorate

Appeal Decision

Hearing Held on 24 October 2017

Site visit made on 24 October 2017

by V Lucas LLB MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14th November 2017

Appeal Ref: APP/B3438/W/17/3176048
Whympenny, Godley Lane, Dilhorne, ST10 2PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr C Slaytor against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2016/0436, dated 13 July 2016, was refused by notice dated 9 December 2016.
- The application sought planning permission for a 'Farm workers dwelling on plot of land in field no 7414 opposite Wimpney Farm, Dilhorne, Staffs' without complying with a condition attached to outline planning permission Ref Cheadle R.D.C. 11th October 1972, dated 11 October 1972.
- The condition in dispute is No. 5 which states that: 'The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed locally in agriculture as defined in section 221 (I) of the Town and Country Planning Act, 1962, or in forestry, or a dependent of such a person residing with his (or including a widower of such a person)'.
- The reason given for the condition is: 'The site lies within the definitive North Staffordshire Green Belt in which development is not normally permitted except where it is required in the interests of agriculture, or for a use appropriate to a Green Belt'.

Decision

1. The appeal is allowed and planning permission is granted for a 'Farm workers dwelling on plot of land in field no 7414 opposite Wimpney Farm, Dilhorne, Staffs' at Whympenny, Godley Lane, Dilhorne, ST10 2PF in accordance with the terms of the application, Ref SMD/2016/0436, dated 13 July 2016, without compliance with condition No. 5 previously imposed on planning permission Ref Cheadle R.D.C. 11th October 1972, dated 11 October 1972, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Application for costs

2. An application for costs was made by Mr C Slaytor against Staffordshire Moorlands District Council and an application for costs was also made by Staffordshire Moorlands District Council against Mr C Slaytor. These applications are the subject of separate Decisions.

Preliminary Matter

3. The original 1972 application was made in outline. There is some dispute between the main parties as to whether a subsequent reserved matters application was ever received and approved by the Council. On that basis, the appellant contends that the appeal dwelling as constructed is unauthorised development and the condition in dispute is not therefore valid.

4. However, the original application to which this appeal relates was submitted to the Council to vary a condition, under s73. It was therefore made on the basis that the agricultural occupancy condition is in place. I cannot deal with the current appeal as though the original application made to the Council had been for a lawful development certificate as that is not what was applied for and that is not the appeal proposal before me. Although my determination of this appeal would not prevent the appellant from applying separately to the Council for a lawful development certificate on the grounds of appeal that they have put forward.

Background and Main Issue

5. Outline planning permission for the appeal dwelling was originally granted in 1972 with the disputed condition attached limiting the occupation of Whympenny to a person mainly or last employed in agriculture or forestry or a dependant of such a person. The appeal scheme seeks to remove condition No. 5. An application was made to the Council to remove the occupancy condition in 2007 and this was refused. However, that decision was not the subject of an appeal.

6. The condition in dispute was imposed at the time due to the appeal site being in the Green Belt. Since the original application was determined in 1972, the local and national policy framework has changed. I have therefore determined this appeal in relation to the up to date policies in place, specifically the Staffordshire Moorlands Core Strategy (CS) (Adopted March 2014) and the National Planning Policy Framework (Framework).

7. Taking the above into account, I therefore consider the main issue to be:

    - Whether it is reasonable and necessary to continue to impose the disputed condition, having regard to evidence relating to the need for an agricultural worker's dwelling on the holding and in the local area and to national and local policies relating to development in the Green Belt.

Reasons

Policy Background

8. Whympenny is a detached bungalow situated in Dilhorne and it is within the Green Belt. PolicySS6c of the CS seeks to ensure that strict control will be exercised over inappropriate development in the Green Belt allowing only for exceptions as defined by Government policy. Policy R2 of the CS defines the types of housing development that will be permitted in rural areas and includes reference to a dwelling that meets an essential local need, such as accommodation for an agricultural, forestry or other rural enterprise worker.

9. The Framework states that the construction of new buildings should be regarded as inappropriate development in the Green Belt. Exceptions to this

include buildings for agriculture and forestry; and limited infilling in villages (paragraph 89).

10. With regard to Green Belt policy, Policy SS6c refers to national policy and I shall therefore determine this issue in relation to paragraph 89 of the Framework. As the appeal property is a dwelling, there was agreement between the parties that it is not a building. Therefore the national Green Belt exception regarding agricultural and forestry buildings in not relevant to the appeal scheme.

11. Dilhorne does not have a settlement boundary and for the purposes of the development plan is washed over Green Belt. Dilhorne has two pubs, a church and a primary school along with numerous houses. The appeal dwelling is situated close to the school, being separated from it only by the neighbouring property. There is a small field between Whympenny and the neighbouring dwelling to the north before the line of dwellings continues again. On the opposite side of the lane to the appeal dwelling there are houses in both directions.

12. I am therefore in agreement with the main parties that Dilhorne is a village and that as the appeal property is so close to the primary school and the other dwellings with development extending on both sides of the lane beyond it, it is both visually and functionally within the village. The pattern of development of the village is linear and characterised by gaps in between dwellings made by open fields that border the lane. However, the appellant's agent asserted at the Hearing that whilst the appeal site is within a village as it was not within a continuous built up frontage that the development cannot be described as 'infill' for the purposes of Green Belt policy. On that basis, the relevant paragraph 89 exception does not apply and the construction of a new dwelling where the appeal dwelling is situated would be inappropriate development in the Green Belt as described in the Framework.

13. At the hearing the Council explained that policy R2 of the CS (which was referred to on the Decision Notice) was felt to be less relevant to the appeal scheme than Green Belt policy. Nevertheless, the policy confirms the approach of the development plan that in rural areas outside of settlement and infill boundaries, new housing will be restricted to certain types of development including accommodation for an agricultural or forestry worker. The policy is also generally consistent with paragraph 55 of the Framework in this regard.

14. Accordingly, the appeal dwelling is in a location where both local and national policy would normally restrict the construction of new buildings, except in specific defined circumstances. Therefore the original reason for imposing the disputed condition is still relevant and I shall now go on to consider whether it is reasonable and necessary to continue to impose it.

15. Paragraph 206 of the Framework advises that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

16. There is no specific local policy before me regarding how applications to remove agricultural occupancy conditions will be assessed by the Council. However, both main parties have referred to the demand for agricultural workers dwellings in the area and the marketing exercise undertaken that led

to the most recent sale of the appeal dwelling. I shall therefore take this evidence into account in my determination of this appeal.

Need for dwelling on the holding

17. Whympenny and the farmland which it was once associated with were sold in 2014 as separate units. There is therefore no longer any legal, physical or functional connection between the appeal dwelling and the farmland with which it was once connected. The land associated with the appeal dwelling amounts to approximately 2 acres and is not sufficient in size to generate any income or profit for the purposes of agriculture. Whilst the appellant has sought to plant Christmas trees on the land and keep chickens, this was spoken of as a hobby and I understand that these activities do not generate any specific income.

18. Therefore, based on the information before me, I conclude that there is no need for the appeal dwelling on the holding in relation to the original farm business. The Council did not dispute this at the Hearing.

Need for a dwelling in the local area

19. The appeal property was marketed for sale between 2005 and 2014 after which it was bought by the appellant. Marketing evidence submitted by the appellant shows that the dwelling and adjoining farmland were originally marketed as one unit at £450,000 rising to £500,000 prior to 2011. The occupancy restriction was referred to in the sale particulars. From 2011, the dwelling and an attached paddock were marketed separately from the adjoining 12.5 acres of farmland. Although I understand that marketing was undertaken with the caveat that the dwelling could not be sold separately first in case a local farmer should decide to make an offer to purchase both the land and dwelling as one unit.

20. The appellant's evidence from the estate agent responsible for marketing the property at the time states that without the occupancy condition, the value of the appeal dwelling and garden in 2011 was estimated to be around £340,000. If the paddock were to be included in the unit it was estimated the value would be approximately £400,000. However, taking the occupancy condition into account, the dwelling, garden and paddock were marketed at £250,000. This represented a reduced rate of around 37.5%. The farmland was valued separately at approximately £150,000 and marketed at this price.

21. I note the Council's observations that applying a 30% discount may be considered somewhat arbitrary and that the discounted value of a property with an agricultural worker occupancy condition should reflect local wages and the fact that a dwelling is within the Green Belt where planning policy generally seeks to restrict the construction of new buildings. However, there is no local policy basis or specific evidence before me that would support such an approach. The appellant's evidence from his land agent was based on his professional expertise on the housing market in the local area and this was used to determine the relative value of the appeal property at the time. Furthermore, the agent explained that the valuation of a property is not based on planning designations such as whether or not a dwelling is in the Green Belt but rather factors such as location and the size of the property concerned.

22. It is normally accepted that a reduction of 30% in the value of a property is reasonable to reflect the existence of an agricultural occupancy condition. The

Council were not able to offer an alternative figure or specific evidence that would support a different valuation basis. Furthermore, in this case the property was marketed at a 37.5% discount which was greater than the reduction one would normally expect in such cases. I am therefore satisfied that the appeal property was marketed at a reasonable discounted rate to reflect the agricultural occupancy condition.

23. The appellant's evidence states that four offers were made for the appeal dwelling in total between 2011 and 2013. Three offers were made for both the house and adjoining farmland. The total asking price for both when taken together at that time was £400,000. Two offers were made by people who would have qualified under the occupancy condition. However both were significantly below the asking price (£320,00 and £340,000). These offers were therefore not accepted.

24. One offer was made in August 2012 of £400,000 by a group of people, one of whom worked in agriculture locally. This was accepted by the sellers of the appeal property. However the buyers subsequently withdrew the offer.

25. The fourth offer of £220,000 was made by the appellant in 2013 for the dwelling and paddock. This was accepted and the property was eventually sold. However I understand that the property continued to be actively marketed by the vendor's estate agents up until contracts were exchanged in March 2014 with no other interested buyers having been forthcoming.

26. Accordingly, the appeal property was marketed for approximately 9 years in total. The evidence shows that the dwelling was marketed at a discounted price to reflect the agricultural occupancy condition and during that time no reasonable offers to buy the property were received from persons employed in agriculture or forestry. The one offer that was accepted was later withdrawn. In marketing the dwelling and adjoining land separately from 2011, the previous owners sought to increase the flexibility of the property such as making it suitable for a retired famer who did not wish to actively farm the adjoining land.

27. The evidence shows the dwelling was actively marketed by local estate agents with adverts being placed in the local paper, on the agents website, a 'For Sale' board outside of the property and the property particulars were available at offices in the nearby towns of Leek, Uttoxeter and Bakewell. Buyers were also made aware of the occupancy condition in the sale particulars. In 2014, the dwelling had therefore been continually marketed at a reduced price for approximately 9 years but it had not attracted a buyer employed locally in agriculture.

28. Since the appeal property was purchased in 2014, no additional marketing has taken place and this was referred to by Council members as a particular concern. At the hearing, the appellant explained that when he bought the property he planted some Christmas trees and had plans to keep some chickens. On that basis, he believed that he would comply with the occupancy condition when he bought the property. It was only brought to his attention that this may not be the case when the Council wrote to him regarding a potential breach of the occupancy condition in 2015 and 2016.

29. The letter from the Council in 2016 invited the appellant to apply to have the occupancy condition removed and an application was duly submitted a few

months later. These circumstances explain why there was a delay between the end of the marketing period for the appeal property and the submission of the application which is the subject of this appeal.

30. However, even if marketing of the appeal property had continued between 2014 and 2016 and up until the point an application was submitted, the appellant's estate agent stated at the hearing that during this time there was a slight improvement in local house prices that corresponded with a depression in the local agricultural economy. Therefore if anything, it is likely that the value of the appeal dwelling would have remained stable, if not increased slightly, whereas demand for the property to house an agricultural worker would have in all likelihood fallen. The Council were also not aware of any additional issues or circumstances that would have made it any more likely that the appeal property would have been sold to an agricultural worker during this time. Whilst I take the point that it may be slightly more difficult to find qualifying buyers in some rural areas, it is not reasonable to expect a seller to allow a property to remain vacant for long periods of time until one comes along. By any assessment, nine years is an excessive period of time to have continuously marketed a property for sale.

31. Drawing matters together, the evidence before me clearly points to a lack of demand for the appeal dwelling to provide accommodation for local agricultural or forestry workers.

32. In terms of applications for other agricultural workers dwellings in the area, the Council referred to an application that has been made approximately 100m away from the appeal site that at the time of the Hearing had not yet been determined. However, information submitted by the appellant at the Hearing from that applicant's agent shows that the dwelling has been applied for in connection with a lambing enterprise and that it is necessary for it to be situated within sight and sound of the livestock. Therefore even if Whympenny were available, it would not be suitable for the other applicant's purposes as it is too far away from the other farm. The appellant's agent also drew my attention to a small number of other applications for agricultural workers dwellings in the local area. Although the specific details are not before me, it would seem that only one application was approved by the Council. Based on the information before me, there does not appear to be a great deal of demand for agricultural workers dwellings in the local area.

33. The appellant's agent also referred to applications in the local area for Lawful Development Certificates resulting from dwellings with agricultural occupancy conditions being occupied for the necessary time by non-qualifying persons. Whilst this may suggest a lack of ongoing monitoring of compliance with the relevant conditions regarding these particular properties, I am not clear in what way it evidences a lack of demand for agricultural workers dwellings in itself as the properties presumably would not have been marketed as being available for rent or purchase by a qualifying person as they had been occupied for a period of 10 years or more and were not therefore 'available'.

34. Drawing matters together, whilst I acknowledge that the appeal site is in a location where local and national Green Belt policy would normally seek to restrict the construction of new dwellings except in specific defined circumstances, the fact is that the appeal dwelling has already been built and

has been there for several decades. Therefore any harm to the openness of the Green Belt, to which the Council has referred, has already occurred.

35. For the reasons set out above, I find that it has been satisfactorily demonstrated that there is no need to retain the dwelling for an agricultural or forestry worker at Whympenny or in the wider locality. I therefore accept that condition No. 5 has outlived its usefulness and its retention is neither reasonable nor necessary. To that extent, I see no conflict with policies in relation to the Green Belt in removing such an occupancy condition as it has been properly demonstrated that the need for it no longer exists and it ensures that the appeal property can be re-used as an open market dwelling and paragraph 90 of the Framework refers to the re-use of buildings in the Green Belt provided that the buildings are of permanent and substantial construction.

Conclusion

36. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed. I shall therefore grant a new permission to stand alongside the original permission but without the disputed condition.

37. As the appeal dwelling has already been constructed no additional conditions were considered necessary by the Council and I agree that none are needed, other than those still subsisting and capable of taking effect that were attached to the original 1972 permission.

V Lucas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Bruce Daniel, 66 Derby Street, Leek, ST13 5AJ

Mr Michael Green (MRTPI), Michael Green Planning Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ben Hurst (MRTPI), Planning Officer, Staffordshire Moorlands District Council

ADDITIONAL DOCUMENTS SUBMITTED AT THE HEARING

BY THE APPELLANT:

- An extract of the PINS appeal guide relevant to appeals concerned with the removal of an agricultural occupancy condition
- An email from Bagshaws relating to a separate application made by Mr R Challinor
- A map showing LDC applications in the local area relating to agricultural works dwellings
- A copy of planning permission reference SMD/2016/0515