The Planning Inspectorate

Appeal Decision

Site visit made on 3 March 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 MARCH 2023

Appeal Ref: APP/A2525/W/22/3299204
Belvedere, Blazegate, Lutton, Spalding PE12 9HJ

- 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 conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr D Carnell and Miss A Towler against the decision of South Holland District Council.
- The application Ref HO6-0892-21, dated 20 August 2021, was refused by notice dated 30 November 2021.
- The application sought planning permission for the erection of dwelling with garage and access, without complying with a condition attached to planning permission Ref H6/639/80, dated 20 August 1980.
- The condition in dispute is No. 3 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 290(1) of the Town and Country Planning Act 1971, or a dependent of such a person residing with him, or a widow or widower of such a person.
- The reason given for the condition is: The site is in a rural area where it is the policy of the Local Planning Authority not to permit residential development except in the interests of agriculture of where related to the use of the land. The circumstances of this case relate to an agricultural need, and permission is therefore confined to it.

Decision

1. The appeal is allowed and planning permission is granted for the erection of dwelling with garage and access, at Belvedere, Blazegate, Lutton, Spalding, PE12 9HJ in accordance with the terms of the application, Ref HO6-0892-21 dated 8 November 2021, without compliance with condition 3 previously imposed on planning permission H6/639/80 dated 20 August 1980.

Background and Main Issue

2. The appeal property was constructed under a 1980 planning permission which includes an agricultural occupancy condition, requiring in summary that occupation shall be limited to a person mainly employed locally in agriculture. The appeal proposal is to remove this condition, which would allow the sale of the property on the open market.

3. The main issue is whether the condition is necessary and reasonable in order to safeguard the property for agricultural occupancy, having regard to the local development strategy for the area, and evidence relating to marketing the property for sale.

Reasons

4. The appeal property is a detached bungalow fronting onto Blazegate. It has spacious gardens, and is set within open fields and adjacent to one other

dwelling. The site is not within a settlement as defined by the South East Lincolnshire Local Plan (SELLP) 2011-2036 (2019). Consequently, it is classified as being within the countryside. Policy 1 of the SELLP identifies that development in the countryside will be permitted that is necessary in such a location, or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits. The appellants do not argue that the dwelling would meet any of these requirements if the agricultural condition were removed.

5. The imposition of conditions must reflect the 6 tests outlined in paragraph 56 of the National Planning Policy Framework ('the Framework') (2021) and the Planning Practice Guidance. The Council has an Agricultural Workers' Dwellings and Occupancy Conditions Policy Guidance Note ('the Note') (2006) which explains the criteria which must be satisfied in order to remove occupancy conditions from an agriculturally tied property, in order to demonstrate that there is no longer a need for the dwelling in the locality. While the note predates the current development plan and the Framework, both parties refer to it. I have had regard to the Note insofar as it is a useful guide in determining whether the 6 condition tests are met, and in setting out the Council's approach to applications for the removal of occupancy conditions, including assessing matters relating to marketing and sales value.

6. The appellants argue that attempts to sell the house show that there is no realistic demand for it from anyone meeting the requirements of the condition. The property was marketed consistently online via nationally recognised property websites for at least 12 months commencing in September 2020, plus via the websites of the instructed sales agency which specialises in the sale of rural properties, and in their local office window. Offers also continued to be considered by the appellants for a short period after this formal marketing. The sales particulars identified the existence of the agricultural occupancy restriction. The dwelling is also not linked with farmland which would be much more aligned with a specialist agricultural market and perhaps require more targeted advertising. I therefore find that the type and length of marketing undertaken to be acceptable overall.

7. The property was initially marketed for sale in September 2020, and the sales agent identified an ongoing high level of interest. However, while interested parties believed they had suitable employment links to agriculture, the majority were subsequently found to not be eligible. The appellants accepted a formal offer in September 2020 which led to abortive legal costs for this reason, and similarly parties making a formal offer in January 2021 did not qualify.

8. Further offers were made and valuations undertaken, with the most recent estate agency property valuations undertaken in October 2021. Excluding the existence of the occupancy condition, these suggested open market values of £495,000 and £475,000, with a resulting average of £485,000. The Council has not disputed these, or provided any alternative formal valuation.

9. The parties agree that an agricultural occupancy condition lowers the value of a property from its open market price, but disagree as to the reasonable level for such a reduction. The Note sets out that at the time of writing, the Council's analysis of national appeal decisions suggested that marketing at around 30% below open market value was realistic, whereas attempts to promote policies which seek greater reductions up to and including 50% were unrealistic and

rarely achieved the support of the Inspectorate. However, it does then go on to require evidence of marketing at a value which would normally be expected to fall in the range of 25-40% below open market value.

10. For a more current position on value of properties with agricultural habitation conditions, the appellants have provided an information sheet from a rural property services company. While this suggests the discount value to be 5-28%, I only give this limited weight as I do not have benefit of the data or date range behind this statement. However, I have little other evidence to the contrary. Overall, I find a figure of around 30% appears to be reasonable.

11. The appellants consider that a reduction of more than 30% would be unreasonable. They therefore set a final new asking price of £339,500 in October 2021, to reflect a 30% reduction from £485,000. An interested party who had previously made offers, subsequently offered £312,500. This was refused by the appellants, in part on the basis that they regarded it as too far below the asking price.

12. However, the offer was considered reasonable by the Council, who thus refused the appellants' application to remove the condition. This was on the basis that £312,500 was only approximately 8% below the asking price, only approximately 5% less than the valuation from August 2021 taking into account a reduction due to the condition, that demand for properties with an agricultural condition is very limited, and that one of the valuations stated that sensible offers should be given consideration.

13. The Council has not provided any evidence that 8% lower than the (already adjusted) asking price was a generally accepted level of reduction in the local area. The appellants have provided evidence collected in late October and November 2021 from 2 estate agents on their most recent sales prices versus asking prices, which display a much lower range and average (excepting an outlier specifically identified as such). While this evidence is not especially detailed, alongside the absence of any evidence to the contrary I find it sufficiently convincing to conclude that an 8% offer below the asking price was not reasonable in that market, notwithstanding any occupancy condition.

14. Furthermore, £312,500 would be nearly 36% lower than the agreed open market value average of £485,000. While I have identified above that determining a specific value drop imposed by the condition is inevitably a matter of judgement, based on the evidence before me for the specific circumstances of this case, I find this to be too low in this instance.

15. Moreover, while the Council argue that the person making the offer complied with the condition, that is disputed by the appellants, based on a job described as 'game keeper/general farm and relief lorry driver' and advice received from their solicitor[1]. On the limited evidence before me I cannot be sure that the person making the offer would have met the requirements of the condition, and this casts some further doubt on the extent to which the offer received shows a genuine need for the dwelling to accommodate a farm worker.

16. Ultimately, because I have determined that the offer was financially insufficient, I do not need to set a definitive position as to whether the interested party would have complied with the condition. I find overall that the

[1] Appellant's Statement, Appendix 9

appellants have acted reasonably in not accepting the final proposed offer for the property's purchase.

17. In conclusion therefore, when viewed as a whole the evidence suggests that the condition is no longer necessary and reasonable in order to safeguard the property for agricultural occupancy, having regard to the local development strategy for the area, and evidence relating to marketing the property for sale. The Council considers that the proposal conflicts with policy 1 of the SELLP. However, this policy is concerned with the spatial strategy and areas where development is to be directed. While it restricts development in the countryside, the appeal property has already existed for many years, and so the question for me is whether the condition serves a useful purpose. Given my conclusion that the condition is no longer necessary, I find no conflict with policy 1. That is the only policy drawn to my attention in this case, and I conclude that there is no conflict with the development plan as a whole. I take a similar approach to considering paragraph 80 of the Framework in its reference to the development of isolated homes in the countryside.

Conditions

18. A condition to specify the approved plans is not necessary in this instance as the property has existed for a number of decades. The Planning Practice Guidance identifies that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Condition 2 required submission of reserved matters drawings pre-commencement, and condition 4 related to laying out of the driveway pre-commencement, both of which I believe have been carried out and therefore are no longer necessary.

Conclusion

19. For the reasons given above I conclude that the appeal is allowed. I will grant a new planning permission without the disputed condition and the other conditions which are no longer applicable.

L Hughes

INSPECTOR