



Appeal Decision

Hearing held on 19 May 2021

Site Visit made on 20 May 2021

by **J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/F4410/W/20/3256234

2 Warning Tongue Lane, Cantley, Doncaster DN4 6TD

- 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 Shaw of Quick Skips against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 19/02778/FUL, dated 9 November 2019, was refused by notice dated 4 June 2020.
 - The application sought planning permission for the 'erection of bungalow' without complying with a condition attached to planning permission Ref. DC.8139, dated 7 November 1967.
 - The condition in dispute is condition No 3 which states: "*The occupation of the dwelling shall be limited to a person employed, or last employed, locally in agriculture as defined in Section 221(i) of the Town and Country Planning Act 1962 or forestry or a dependant of such a person residing with him /but including a widow or widower of such a person*".
 - The reason given for the condition is: "*It is the intention of the Local Planning Authority to include the site in a rural zone in which general residential development would not be permitted.*"
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the hearing, the Council confirmed that it no longer contests the issue of the redline boundary which formed the first limb of its reason for refusal. The parties are in agreement that a plan is not necessary given the nature of the proposal. I agree, as the regulations¹ do not require a location plan or any other drawings to be submitted as part of an application made pursuant to section 73 of the Act². I have therefore only referred to the submitted plans as a means of identifying the appeal site's location.
3. The Council are currently in the process of producing the Doncaster Local Plan 2015-2035 (the emerging DLP). This emerging plan is at an advanced stage of production, nearing the end of the examination process with the consultation on the proposed main modifications having recently been concluded. I will therefore consider any relevant policies in the emerging DLP in light of the advice set out in paragraph 48 of the National Planning Policy Framework (the

¹ Part 3, 7(1)(c) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)

² The Town and Country Planning Act 1990 (as amended)

Framework) which states that weight can be given to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency to the Framework.

Main Issue

4. The main issue is whether a condition restricting the occupancy of the dwelling is necessary and reasonable.

Reasons

5. The appeal relates to a derelict dormer bungalow that is accessed via a long narrow track and sits alongside a small cluster of derelict agricultural buildings as part of a larger parcel of land extending to approximately 1.5 hectares. The site lies beyond the settlement of Bessacarr, a residential suburb of Doncaster, within the countryside as defined by the development plan.
6. Planning permission was granted for the dormer bungalow in November 1967 to serve as a rural worker's dwelling for a small poultry farm at the site. The poultry business has long since ceased operating and the dwelling is understood to have been vacant for the last 10 years or so, falling into a state of dereliction, with all of its doors and windows having been removed and a large area of its roof covering missing. The property has also been subject to vandalism and fire damage.
7. The appellant seeks to remove condition 3 attached to the original planning permission which restricts the occupancy of the dwelling to a person employed or last employed locally in agriculture or forestry, or a dependant of such a person and including a widow or widower of such a person. The removal of the condition would in effect provide a new open market dwelling in a rural location. The appellant does not meet the requirements of the condition and has indicated his desire to redevelop the site to provide a home for him to live in.
8. In policy terms, the appeal site lies within an area designated as a Countryside Protection Area (CPA) by Saved Policy ENV2 of the Doncaster Unitary Development Plan 1998 (the UDP) which seeks to, amongst other things, safeguard the countryside from encroachment; provide an attractive setting for towns and villages; to retain land in agriculture, forestry and nature conservation uses; and, to help sustain rural communities and a diverse rural economy. Saved Policy ENV 4 sets out a restrictive approach to development within the CPA, except for certain specific types of development that would not prejudice the purpose of the CPA. Policy CS3 of the Doncaster Core Strategy 2012 (the DCS) reaffirms the protection of the CPA, providing support for development that would be appropriate to a countryside location and would protect and enhance the countryside for the sake of its intrinsic character and beauty.
9. The removal of the condition to allow an unrestricted dwelling at this rural location would not constitute one of the supported types of development within the CPA as set out in Policy CS3 of the DCS or Saved Policy ENV4 of the UDP and thereby would be contrary to these policies. Moreover, in doing so, the proposal would conflict with the Council's overall spatial strategy, undermining the plan-led approach to development. Consequently, the original condition to

restrict the occupancy of the dwelling is therefore necessary and reasonable having regard to relevant local and national policy.

10. It is common ground between the parties, and was confirmed at the hearing, that Saved Policy ENV 4 of the UDP is out of date because it sets out a more restrictive approach to development in the countryside than that advocated by the Framework. I agree that Saved Policy ENV 4 is more restrictive, and therefore is not entirely consistent with the Framework. Accordingly, the weight of this policy is limited and so too is any conflict with it.
11. The appellant is of the view that Policy CS3 of the DCS is also out of date and has drawn my attention to an appeal decision³ to support this view. However, in that case the Inspector gave limited weight to UDP Policy ENV 4, as I have also done in this case, but she did not conclude that Policy CS3 was out of date. I find that the approach to the protection of the countryside as set out in policy CS3 of the DCS is broadly consistent with the Framework which recognises the intrinsic character and beauty of the countryside and that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Accordingly, any conflict with this policy attracts substantial weight.
12. Policy ENV 5 of the UDP states that an occupancy condition will not normally be removed unless it can be clearly demonstrated that that the long term land use need for the condition no longer exists in the locality. The supporting text to the policy advises that in order to justify the removal of such a condition it would need to be demonstrated that the condition has outlived its usefulness and that appropriate and satisfactory measures have been taken to sell or pass on the dwelling with the condition attached.
13. This policy approach is reaffirmed in Policy 8 of the emerging DLP which states that the removal of occupancy conditions on dwellings will only be permitted in exceptional circumstances where it can be demonstrated, via an independent report, that: A) there is no longer a long-term need for the dwelling on the particular enterprise on which the dwelling is located; and, unsuccessful attempts have been made to sell or rent the dwelling at a price that takes account of the occupancy condition. While this policy is yet to be adopted, there are no unresolved objections relating to it. There is no policy equivalent set out in the Framework, but I consider that the approach is not inconsistent with the general trust of national policy regarding rural housing and the countryside. I therefore attach moderate weight to this policy in my consideration of the appeal.
14. The appellant asserts that the use of the dwelling for agricultural occupancy no longer serves a useful purpose as the site is unsuitable for a new farming business because the land holding is too small to sustain an agricultural enterprise, the land is of a poor quality and poorly drained, and the buildings are in a semi-derelict state. To support this view, they have provided a letter from a Chartered Surveyor who suggests that the site does not offer any potential for agricultural use. It was also suggested at the hearing that an intensive agricultural use in such close proximity to residential properties may adversely affect the living conditions of nearby residents, limiting the potential for the erection of new agricultural buildings or facilities.

³ APP/F4410/W/18/3213988

15. However, not all agricultural businesses require a large land holding to establish a viable business, indeed at the hearing it was suggested that the site may be attractive for a horticultural business or a micro-farm enterprise, both requiring a much smaller area of land to sustain their operations. There is no persuasive evidence to suggest that the land quality or drainage issues would hamper the productive use of the land. I accept that the site is likely to require investment from any potential rural enterprise, but I am not convinced that this, nor its proximity to nearby residential occupiers, renders it an unattractive prospect to serve as an agricultural enterprise. Consequently, there is insufficient evidence before me to conclude that there is no longer a need for an agricultural worker's dwelling at this location to support the use of the land.
16. I understand that the appellant does not wish to market the property when he has no intention of selling the site and has aspirations to live at the site. However, in the absence of a marketing exercise at a valuation that reflects the occupancy restriction it is not possible to demonstrate that the condition is no longer necessary or reasonable.
17. The property, including the surrounding land, was independently valued in October 2020 providing a full market valuation in the region of £400,000 to £450,000. In addition, I have been provided with estimates ranging from £280,000 to £300,000 for works required to bring the property back into a habitable state. With a 30% discount to account for the occupancy restriction, the appellant estimates that a potential purchaser would need to have available finance in the region of £580,000 to purchase the property and renovate it to an acceptable standard. In this regard, the appellant submits that the valuation and renovation costs would be beyond the average wages of an agricultural worker or retired agricultural worker to secure a mortgage for the property.
18. However, no evidence has been submitted to substantiate the level of works required to bring the property back into a habitable state and at the hearing the appellant confirmed that the estimates appeared to be excessive. I cannot therefore be sure that the works and their associated costs are the minimum necessary to renovate the property to an acceptable habitable standard. In any case, whether or not the estimated value and cost of works would mean that the property was beyond the means of an agricultural worker or other qualifying person could only be substantiated by placing the property on the open market, at a value to reflect the occupancy restriction, and testing the demand.
19. The appellant has provided a list of other properties in the locality for sale at a lower value than the appeal site, suggesting that they would be a more attractive and affordable prospect for an agricultural worker. Nevertheless, this does not demonstrate that there is no need for an agricultural worker's dwelling at this location.
20. It is also suggested that the neglected state of the property and its prolonged vacant state emphasises the lack of need for an agricultural worker's dwelling. However, I understand that when the appellant purchased the property in 2017 it had not been marketed as an agricultural worker's dwelling and therefore its potential as such was not made known.
21. Overall, insufficient evidence has been put forward to demonstrate that the dwelling is no longer required for an agricultural or forestry worker in the locality and no marketing has been undertaken to indicate whether or not there

is a need for the dwelling for other qualifying persons. It was put to me at the hearing that there is no need for such marketing, due to the information provided above. However, extensive marketing targeted at the farming community would move the exercise away from a theoretical exercise based on assumptions to a more practical and evidence-based exercise.

22. The parties agree that the appeal site is not isolated given its proximity to the residential area of Bessacarr and other nearby properties. It was also acknowledged at the hearing that the site is located within a reasonable distance of a limited number of local services. Furthermore, I accept that the use of the property as an open market dwelling would not result in any harm to the character and appearance of the area as the building is already present within the landscape. However, these are neutral considerations that do not add weight in favour of the appeal.
23. In support of the appeal the appellant has referred me to several appeal decisions⁴ where Inspectors allowed the removal of agricultural occupancy conditions. However, these other cases were in other parts of the country with differing site-specific circumstances and with different policy considerations. Therefore, I consider that these other cases do not provide a direct comparison to the case before me.
24. Consequently, for the reasons given above, and in the absence of cogent evidence to the contrary, I consider that a condition restricting the occupancy of the dwelling remains necessary and reasonable. To remove the condition would be contrary to Saved Policies ENV 4 and ENV 5 of the UDP, Policy CS3 of the DCS and emerging DLP Policy 8, the relevant requirements of which are set out above. The condition also complies with the remaining tests set out in paragraph 55 of the Framework and the advice set out in the Planning Practice Guidance.

Conclusion

25. There are no material considerations that indicate a decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

J M Tweddle

INSPECTOR

⁴ Appeal Ref: APP/D0840/W/19/3329734, APP/D0840/W/18/3207828 and APP/E2734/W/19/3234758

APPEARANCES

FOR THE APPELLANT:

Mr Gareth Stent BA(Hons) Dip TP MRTPI, Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Richards, Principal Planning Officer, Doncaster Metropolitan Borough Council

INTERESTED PARTIES:

None