
Appeal Decision

Site visit made on 7 December 2015

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 16 December 2015

Appeal Ref: APP/R3325/W/15/3030420

Lavender Green, Verrington, Wincanton, Somerset BA9 8BN

- 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 Mrs Maureen Foreman against the decision of South Somerset District Council.
 - The application Ref 15/00162/S73A, dated 13 January 2015, was refused by notice dated 10 April 2015.
 - The application sought planning permission for the occupation of a bungalow without complying with a condition attached to planning permission Ref 791810, dated 30 August 1979.
 - The condition in dispute is No 2 which states that: *'The occupation of the dwelling shall be limited to persons employed or last employed full time locally in agriculture as defined in section 290 of the Town and Country Planning Act 1971 or in forestry and the dependents of such persons'*.
 - The reason given for the condition is: *'Housing development in the locality should be restricted, in the interests of visual amenity, to the needs of agriculture or forestry'*.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an agricultural bungalow at Lavender Green, Verrington, Wincanton, Somerset BA9 8BN in accordance with the application Ref 15/00162/S73A, dated 13 January 2015 without compliance with condition number 2 previously imposed on planning permission Ref No 791810 granted on 30 August 1979 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Preliminary Matters

2. The dwelling is on land which in 1979 was known as Verrington Lodge Farm and is located at GR 370424/129048.
3. The bungalow is part of a holding that is said to extend to almost 1.62ha (4 acres) and which includes a range of agricultural buildings and a yard. The Council reports that there is an extant non-fragmentation legal agreement for the land and buildings although no copy has been supplied in evidence.
4. The Council does not dispute that the subject condition has not been complied with by the Appellant or her husband for more than 10 years. On 8 December 2014 a certificate of Lawful Use or Development was issued under reference

14/02116/COL. It provides that Mr & Mrs Foreman and future occupants who do not comply with the Agricultural Occupancy Condition are immune from enforcement action. The condition would only become enforceable against an occupier and subsequent occupiers if the dwelling were first to be reoccupied by someone who met all its requirements.

5. The Council advised the Inspectorate that it was not necessary for the Inspector to visit the site in order to determine the appeal. Consequently no accompanied visit had been arranged. Nevertheless I did visit the area and concluded that the subject dwelling is apparently not visible from any public place except at a considerable distance (from the vicinity of Wincanton Racecourse). I did not enter the site and do not consider it necessary to do so to determine the appeal.

Policy Context

6. The appeal is required by statute to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.
7. The relevant development plan is the South Somerset Local Plan (2006-2028). Policy HG10 provides in summary that an occupancy condition of this type will only be removed where it can be evidentially shown:
 - That there is no longer a continued need for the property on the holding or for the business;
 - There is no long term need for a dwelling with restricted occupancy to serve local need in the locality;
 - The property has been marketed locally for an appropriate period (minimum 18 months) at an appropriate price and evidence of marketing is demonstrated.
8. The supporting text advises that an appropriate price will normally be a discount of at least 35% against the open market price.
9. The National Planning Policy Framework (the Framework) is an important material consideration. Paragraph 55 provides amongst other things that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside. Paragraph 206 provides that planning conditions should only be imposed where they are:
 - necessary,
 - relevant to planning,
 - relevant to the development to be permitted,
 - enforceable,
 - precise and
 - reasonable in all other respects.

Main Issue

10. It is not disputed that the Appellant has not sought to market the property. Neither has the Appellant provided any evidence in relation to the other criteria of Policy HG10. The removal of the condition would therefore directly contravene the development plan. The main issue is whether there are material considerations which indicate that the appeal should be determined other than in accordance with the development plan, including whether the condition satisfies the Framework policy tests for planning conditions.

Reasons

11. Just as in 1979, national and local policy continues to restrain housing development in the countryside whilst allowing exceptions which include development for agricultural workers. The condition therefore remains relevant to planning and to the development permitted. It is also adequately precise. Whilst there is no definition of 'locally' it was not disputed for the purposes of the CLUD that the Appellant's employment in Sussex did not qualify.
12. There is no evidence that the condition is necessary for the subject holding. The holding is very small and thus is unlikely to be capable of supporting a full-time agricultural worker. Whilst there may be a need for full time agricultural workers on other holdings in the locality, there is no evidence from the Council to that effect. If there were the subject dwelling would provide little if any functional advantage over other dwellings in the nearby town of Wincanton. Neither would it become available to such workers unless first vacated by the Appellant and her husband. It would not offer any financial incentive for occupation by agricultural workers if it were only available at full market value.
13. It is clear that the condition is not enforceable so long as the Appellant and her husband continue to occupy the dwelling. Neither would it be enforceable against any future occupier unless they met the qualification requirements. However, as the Appellant points out, it is highly unlikely that a qualifying agricultural occupier would pay a full market price (potentially outbidding non-qualifying occupiers) if they then faced the prospect of an instance devaluation of the property when the occupancy condition again took effect for themselves and future occupiers. Neither would a bank or other lender be likely to lend money for such a purchase unless the potential occupier had a very large deposit to cover such a loss in value.
14. The Council suggests that the availability of the accompanying land and buildings may make the property of interest to someone wanting to work in agriculture. However if it could not support a full time business then it would only be attractive to someone working locally in another agricultural or forestry business, who would face the financial loss. Whilst it may be of interest to a hobby farmer with another source of income, they would not qualify under the terms of the condition in any event. There is no evidence before me that the non-fragmentation agreement prevents the land and buildings from being let to other occupiers or would prevent applications to change their use.
15. I can understand the resentment of members of the District and Town Councils that the Appellant has experienced a substantial gain in the value of her property by an apparently deliberate breach of the occupancy condition. However Parliament has determined that conditions should cease to be enforceable if they are breached for 10 years or more. The dwelling is out of

public sight and it would not be obvious to a neighbour or other observer whether or not there was a breach of condition. The only means of avoiding the abuse of such conditions would be by active monitoring of occupancy. This may require the interrogation the occupiers about their employment situation at intervals of less than 10 years.

16. In this case it does not appear that the condition was monitored whilst it remained enforceable. It would not be reasonable to retain a condition that is now unenforceable and is unlikely to become so in the future. Indeed the retention of the condition could make it less likely that a future occupier would be engaged in agriculture having regard to the financial implications.

Conclusion

17. For the above reasons it is concluded that the disputed condition does not satisfy the tests for conditions in that it is not enforceable, has not been shown to be necessary and its retention is not reasonable. These are material considerations why the appeal should be allowed, notwithstanding the conflict with the development plan.

Robert Mellor

INSPECTOR