



# Appeal Decision

Hearing held on 5 March 2024

Site visits made on 4 and 5 March 2024.

**by Tamsin Law BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 March 2024**

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## **Appeal Ref: APP/P1045/W/23/3326816**

### **Sunnybrook, Whitelea Lane, Tansley, Matlock, Derbyshire, DE4 5FL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr George Neville against the decision of Derbyshire Dales District Council.
  - The application Ref is 22/01111/VCOND.
  - The application sought planning permission for an agricultural worker's dwelling without complying with a condition attached to planning permission Ref WED/0585/0355, dated 4 July 1986.
  - 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 (prior to retirement), in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act, 1971, (including any dependants 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 within an area where the erection of a dwelling for any other purposes would be unacceptable.*
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## **Decision**

1. The appeal is dismissed.

## **Preliminary Matters**

2. I undertook an unaccompanied site visit on the afternoon of 4 March 2024 to enable me to familiarise myself with the site. At that time, I viewed the site from Whitelea Lane, the access road to the site and from Knabhall Lane. I undertook a further site visit of the appeal site itself and immediate environs the afternoon of the hearing.

## **Main Issue**

3. Whether the disputed condition to limit the occupancy of the approved dwelling is necessary and reasonable, having regard to development plan policy and the National Planning Policy Framework.

## **Reasons**

4. The appeal site is located off Whitelea Lane. The site consists of a single storey detached dwelling associated with around 55 acres of pastureland. The bungalow is enclosed by post and rail fencing with a small wall on its roadside boundary. It is located approximately 350 metres to the south of the main farm and farmyard, Home Farm.

5. The dwelling was permitted to fulfil a need that had been demonstrated for a worker to live on site to support the agricultural enterprise at that time. The appellant puts forward that there is now no longer a need for the dwelling to be subject to condition No 3 of the permission, which restricts the occupation of the dwelling to people associated with agriculture or forestry in prescribed ways, due to its location away from the farmyard, and that recent barn conversions at Home Farm provide adequate on site accommodation for agricultural workers.
6. The original permission includes a planning obligation which ties the dwelling to an area of agricultural land. There was some dispute over the extent of the land, however during the appeal proceedings I was provided with evidence that confirmed the dwelling is tied to approximately 55 acres of land. Approximately 25 acres of this land adjoins the appeal site to the north. A section of approximately 30 acres is located to the north of Knabhall Lane, approximately 700 metres from the appeal site. Additionally the land includes a barn, which has now been converted to an open market dwelling.
7. Policy HC13 of the Derbyshire Dales Local Plan (2017) (Local Plan) relates to Agricultural and Rural Workers Dwellings. It states that proposals for the removal of restrictive occupancy conditions will only be granted where it can be demonstrated that a) the restriction has outlived its original purposes, and; b) there is no reasonable prospect of the dwelling being occupied by an agricultural or other rural based worker as demonstrated by a comprehensive marketing exercise which reflects the nature of the occupancy restriction.
8. There is common ground that the dwelling was marketed for sale at an appropriately discounted rate. It is also agreed that it had been marketed as suitable for forestry workers. However, the sales particulars did not advise that the property was tied to the 55 acres of land, and detailed only a modest garden area surrounding the dwelling. The appellant advised that prospective purchasers that came to view the dwelling were advised of the land.
9. At the Hearing the estate agent explained that they were experienced in marketing properties subject to occupancy restrictions. The estate agent advised that most interest for such properties comes from young farmers who do not have the finance to purchase such dwellings or hobby farmers who would not meet the occupancy restriction.
10. The evidence indicates that the estate agent received a number of enquiries relating to the dwelling, although I have not been provided with full figures and details. The appellant contends that none of the interested people would have satisfied the terms of the condition. As I do not have full details of these viewings, I cannot be certain that none of the interested people would not comply with the current terms of the condition. In any event, the property was marketed without the land, which could have appealed to a wider pool of agricultural and forestry workers.
11. When providing evidence for the appeal submission the estate agent was provided with details of the 30 acres to the north of Knabhall Lane, and advised that offering that land alongside the dwelling would not make a viable agricultural holding as the land does not have any buildings, yard or space to create one at the site. During the Hearing, when provided with the full extent of the land, including the barn conversion, the estate agents view was that the additional land would not increase numbers of potential purchasers. It was

their view at the Hearing that the land and barn conversion would be a burden to any future occupier and the potential sale price would be too expensive for an agricultural worker.

12. Whilst I have had regard to the estate agents opinion, no evidence in relation to future values or comparable marketing have been provided. Indeed, the dwelling with the land and barn conversion is a significantly different offer to the dwelling on its own. I am not therefore convinced that marketing the dwelling with these additional elements would not increase the numbers of people wishing to view and purchase the property. Additionally, I have not been provided with any evidence that such an offer in its own right would not be a viable agricultural enterprise. For example, the land could be farmed, buildings constructed and the barn conversion rented for additional income. In the absence of a marketing assessment, which includes these elements, I cannot be certain that the condition is no longer necessary.
13. During the Hearing the appellant advised that the land was not included in the sale of the dwelling as the land was still required for the functioning of Home Farm and its loss could be harmful to its viability. I have not been provided with any evidence of the functioning and viability of Home Farm as such I can only afford this limited weight. Moreover, without the land, it seems that a prospective purchaser would find themselves immediately in breach of the planning obligation, which may have been a deterrent in any prospective sale.
14. Additional dwellings are now located at Home Farm, which the appellant advised were within sight and sound of the farming operations and better located than the appeal dwelling to support the functioning of the farm. However, the appellant confirmed that these are unrestricted and could be rented or sold on the open market at any time. Whilst they may be occupied by farm workers currently, there is nothing to stop them being occupied by other people.
15. My attention has been drawn to a nearby appeal decision<sup>1</sup> where the Inspector raised concern that the Council could not evidence a demand for rural enterprise dwellings in the area. I have not been provided with full details of this case and I am unaware of any policy requirement that the Council should keep such information. In any event the appellants submission suggests that this was a dwelling that only had a garden associated with it and no land. Additionally, since that appeal was determined the Local Plan has been adopted and the National Planning Policy Framework (the Framework) updated. As such, the particulars of the case do not appear to be directly comparable and I have determined this appeal on its own merits.
16. Having reached the conclusions above, it has not been adequately demonstrated that there is not a continuing need for housing for persons employed or last employed in the locality in agriculture or forestry, condition No 3 is therefore necessary. Consequently, I find conflict with Policy HC13 of the Local Plan.

### **Other Matters**

17. During the Hearing the appellant raised concerns that the Council referenced the Framework in their reason for refusal without citing any specific

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<sup>1</sup> APP/P1045/W/15/3132139 determined on 19 February 2016

paragraphs. It was their view that the reason for refusal was therefore imprecise, and it was only during the Hearing that they could raise this issue. It is clear from the Council's submission that their reference to the Framework relates to the control of residential development within the countryside which is consistent with the spatial strategy.

18. A specific policy is contained within the Local Plan regarding the removal of occupancy conditions and this was cited within the Officer Report and the reason for refusal. Whilst explicit paragraphs are not quoted, the issue in this appeal relates to the marketing of the dwelling to ensure that a continuing need for such dwellings is no longer necessary. As such, I do not consider that a failure to cite specific paragraphs undermines the reason for refusal or is a reason for allowing the appeal.

### **Conclusion**

19. For the above reasons, there are no relevant material considerations, including the approach of the Framework, that would indicate a decision otherwise in accordance with the development plan. It is for this reason that the appeal should be dismissed.

*Tamsin Law*

INSPECTOR

### **APPEARANCES**

FOR THE APPELLANT:

John Church DIP TP FRTPI  
George Neville  
Simon Croft FNAEA MARLA

John Church Planning Consultancy  
Appellant  
Director of Fidler Taylor

FOR THE LOCAL PLANNING AUTHORITY:

Chris Whitmore MRTPI  
Dan Shipley  
Shaun Robson

Development Manager  
Business Support Assistant  
Interim Development Manager