The Planning Inspectorate

Appeal Decision

Hearing held on 16 April 2024

Site visit made on 16 April 2024

by Elaine Moulton BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Appeal Ref: APP/U2750/W/23/3336176
O.S. Field No. 6125, Park Farm, Brockfield, Warthill, York YO19 5XJ

- 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 Michelle Kendall against the decision of North Yorkshire Council.
- The application Ref is ZE23/00709/73A.
- The application sought planning permission for details of the construction of two agricultural workers dwellings without complying with a condition attached to planning permission Ref 3/142/13/PA, dated 6 April 1976.
- The condition in dispute is No 2 which states that: *The occupation of the dwellings shall be limited to persons solely or mainly employed or last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act, 1971 (including any dependents of such persons residing with them) or a widow or widower of such persons.*
- The reason given for the condition is: *The development hereby approved would be unacceptable unless justified by the local needs of agriculture.*

Decision

1. The appeal is allowed and planning permission is granted for details of the construction of two agricultural workers dwellings at O.S. Field No. 6125, Park Farm, Brockfield, Warthill, York YO19 5XJ in accordance with the application Ref ZE23/00709/73A, without complying with a condition attached to planning permission Ref 3/142/13/PA dated 6 April 1976 and subject to the following condition:

    1) The occupation of the dwelling known as Waters Edge shall be limited to a person solely or mainly working, or last working, in the locality in agriculture (as defined in Section 336 of the Town and Country Planning Act, 1990) or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependents.

Preliminary Matters, Background and Main Issue

2. Approval was granted in 1976 for the construction of two dwellings, now known as Waters Edge and Wisteria Rise. The approval was subject to condition 2 which restricts occupation of such dwellings to persons solely or entirely employed in agriculture, their widow or widower and any dependent. On 26 May 2023 a Certificate of Lawfulness (CLEUD) was granted which concluded that the occupation of Wisteria Rise without complying with the disputed condition was immune from enforcement action.

3. In the Council's decision notice, the proposal is described as the 'removal of condition 2 of approval 3/142/13/PA dated 6 April 1976 – agricultural condition', the effect of which would be the removal of the agricultural workers condition from both permitted dwellings. This would go beyond what the appellant is seeking. At the hearing the Council clarified that it had considered the agricultural occupation condition insofar as it relates to Wisteria Rise only, meaning it had considered a variation, rather than the removal, of the condition. I have determined the appeal on that basis.

4. The appeal proposal seeks to vary condition 2 of the original planning approval which was for two properties. I find that it is therefore more appropriate and accurate to use the site address as set out in that decision notice rather than that given in the planning application form relating to this appeal, which only refers to Wisteria Rise.

5. Paragraph 56 of the National Planning Policy Framework (the Framework) sets out that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The appellant seeks to argue that, given the CLEUD, the condition, insofar as it relates to Wisteria Rise, is no longer necessary, enforceable or reasonable.

6. The Council contend that the CLEUD does not outweigh the provisions of the Development Plan which requires evidence in relation to marketing to test local demand to demonstrate that the condition serves no purpose.

7. Taking the above into consideration, the main issue is whether or not condition 2 remains enforceable, reasonable and necessary, insofar as it relates to Wisteria Rise, having regard to local and national policies which seek to restrict housing development in the open countryside.

Reasons

8. Wisteria Rise is in the open countryside, outside Development Limits, where residential development is strictly controlled. Therefore, to accord with the spatial strategy of the Ryedale Plan – Local Plan Strategy (LP), only dwellings which are necessary to support the land-based economy and where there is an essential need are permissible. Wisteria Rise was permitted on that basis and the disputed condition was imposed to ensure that the dwelling remained available in perpetuity for use by an agricultural worker.

9. LP Policy SP21 states, amongst other things, that the lifting of occupancy restrictions, as proposed, will be carefully considered on a case-by-case basis where there is up to date documentary evidence that there is no demand for the accommodation in its current status.

10. There is no robust evidence within the appeal documents that demonstrates that there is an unmet demand for agricultural workers dwellings within the locality. However, at the hearing, the Council indicated that it annually receives 4 to 5 applications for agricultural workers dwellings within Ryedale. This suggests that there is a level of demand in the wider area. Furthermore, actual demand for the property from an agricultural worker has not been tested through marketing of the property for a period of 12 months, with reference to the agricultural workers restriction and the asking price appropriately reduced

to reflect such a restriction. It has not, therefore, been demonstrated that the proposal satisfies the requirements of LP Policy SP21.

11. Wisteria Rise no longer forms part of an agricultural holding, and the adjoining field is of an insufficient size to support a viable agricultural operation on its own. Furthermore, the dwelling is of a substantial size within generous grounds which is reflected in its valuation, which at the hearing was said to range from £700k to £1.8m without adjustment to reflect the agricultural occupancy condition. Accordingly, the value of the existing dwelling and land is such that it is reasonable to conclude that it would be unaffordable to an average rural worker. Nonetheless, it remains that insufficient detailed and conclusive evidence has been provided to demonstrate that there is no existing or foreseeable future demand for the dwelling with an attached occupancy condition. Such demand could be from retired farmers who may have the additional funds necessary to purchase the dwelling at full market value.

12. As such, there is no compelling basis for me to conclude that the condition is no longer necessary or reasonable in this regard.

13. It is common ground that following the granting of the CLEUD the property could, at this time, be occupied by anyone not employed or last employed in agriculture without the disputed condition being breached. Even so, the condition cannot be treated as being expunged as the CLEUD only confirms lawfulness at the time that it was issued.

14. The Council have advanced in the appeal documents that the condition may become enforceable again should the property be left vacant for a significant period of time. At the hearing the Council clarified its position and stated that vacancy alone would be insufficient, and that a higher threshold, such as abandonment, would need to be met for the condition to take effect again. This position is consistent with the High Court judgement *R (Ocado Retail Ltd) v Islington LBC* [2021] EWHC 1509 (Admin) referred to by the appellant at the hearing.

15. Whilst not occupied, I observed that the physical condition of the dwelling is such that it remains capable of occupation and has not been put to a new use. As such, there is no compelling evidence before me to lead me to conclude that it would be abandoned in the future and that the condition would become enforceable again for this reason.

16. It is agreed, however, that should Wisteria Rise be occupied by someone that complies with the occupation restriction, the condition would become enforceable in the event of a fresh breach. Nevertheless, the prospect of this happening is remote as the likely significant reduction in the value of the property that would result from such actions would mean that it would not make financial sense. It is noteworthy that at the hearing the parties were unable to provide examples of incidences where this had occurred, which supports this finding.

17. The Council has referred to two appeal decisions where the Inspector dismissed the appeal against the removal of an agricultural occupancy condition. I acknowledge the conclusions reached by those Inspectors and I also accept that the potential future occupation of the appeal property by a qualifying person would result in the occupancy condition becoming enforceable in future. Nonetheless, I consider that in this case there is no real prospect of the

condition becoming enforceable again for the reasons set out above. Consequently, in this case the existence of the CLEUD is a fallback position to which I apply significant weight.

18. Whilst acknowledging that LP Policy SP21 is unambiguous in its requirements for the lifting of occupancy conditions and that the proposal does not accord with such requirements, I find that the existing of the CLEUD to be an overriding consideration.

19. In conclusion, whilst condition 2 remains reasonable and necessary, having regard to local and national policies which seek to restrict housing development in the open countryside, it is not enforceable insofar as it relates to Wisteria Rise. Accordingly, it does not meet one of the relevant tests set out at paragraph 56 of the Framework. This is a material consideration that outweighs the harm that arises from the identified conflict with LP Policy SP21.

Conditions

20. Considering my findings, condition 2 of the original permission should be varied so that it would no longer apply to Wisteria Rise. In addition, having regard to the agreed Statement of Common Ground and the discussions at the hearing, I find that it is necessary to amend the wording of the condition to widen its scope to include forestry workers and to include reference to the occupation of the property by the surviving civil partner of the qualifying occupant.

Conclusion

21. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed, and a new planning permission is granted.

Elaine Moulton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neill Whittaker	Senior Planner, AFA Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Alan Goforth	Senior Planning Officer