The Planning Inspectorate

Appeal Decision

Hearing held on 23 April 2024

Site visit made on 23 April 2024

by A Veevers BA(Hons) PgDip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th May 2024

Appeal Ref: APP/U2750/W/23/3335422
Stonehaven, Heyshaw Road, Heyshaw, North Yorkshire HG3 4HD

- 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 73A 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 Alan Brown against the decision of North Yorkshire Council.
- The application Ref is ZC23/03368/DVCON.
- The application sought outline planning permission for erecting an agricultural workers dwelling without complying with a condition attached to planning permission Ref 6.65.27.B.OA, dated 10 July 1989.
- The condition in dispute is No.5 which states: *The occupation of the dwelling hereby permitted together with the occupation of the existing dwelling on the holding known as Knowle Garth Farm 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, or in forestry, (including dependents of such persons residing with them) or a widow or widower of such persons.*
- The reason given for the condition is: *To ensure that the dwellings are occupied by persons connected with agriculture or forestry, as the site is located in open countryside where residential development would not normally be permitted*.

Decision

1. The appeal is allowed and planning permission is granted for erecting an agricultural workers dwelling at Stonehaven, Heyshaw Road, Heyshaw, North Yorkshire HG3 4HD in accordance with the application Ref ZC23/03368/DVCON, without compliance with the conditions previously imposed on planning permission Ref 6.65.27.B.OA, dated 10 July 1989 but subject to the following condition:

   1) The development hereby permitted is that carried out in accordance with the application and details received by the Council on 23 May 1989.

Preliminary Matters, Background and Main Issue

2. Two different planning application references have been used by the parties for some of the planning permissions related to this appeal. At the Hearing the Council confirmed that this is due to administrative changes to the way planning applications are now referenced. For the avoidance of doubt, in my decision I have used the references indicated on the relevant decision notices.

3. Outline permission was granted in 1989 pursuant to Ref 6.65.27.B.OA for an agricultural workers dwelling at the appeal site, subject to seven conditions (the Outline Permission). Condition 5 restricted the occupancy of the main

farmhouse, Knowle Garth Farm, along with the appeal dwelling (Stonehaven) to a person employed, or last employed locally in agriculture or forestry and the dependants of that person. The appeal documents, including the application form and the Council's decision notice, refer to the removal of Condition 5, the effect of which would be the removal of the agricultural workers condition from both dwellings.

4. Whilst this may go beyond what the appellant is seeking, it is clear from the evidence presented in the written documentation that subsequent to the grant of outline permission, a further planning application Ref 6.65.27.C.PA, described as 'Relaxation of dual occupancy conditions' was granted in 1990. This permission effectively removed the agricultural occupancy condition from Knowle Garth Farm but retained the condition in respect of Stonehaven. Therefore, even if the unintended consequence of this appeal, should it be allowed, resulted in the removal of the agricultural occupancy restriction for both dwellings, it would not affect how Knowle Garth Farm could be used since the agricultural tie has already been removed for that dwelling. I have proceeded to determine the appeal on that basis.

5. On 17 April 2020 a Certificate of Lawfulness was granted which concluded that the occupation of Stonehaven without complying with Condition 5 of the Outline Permission was immune from enforcement action (Ref 20/00701/CLEUD) (the LDC). In the Statement of Common Ground both parties agree, for the purposes of this appeal, the relevant red edge plan should be that used for the LDC. However, that red edge excludes land around the dwelling, for example the driveway, garden and extensions to the dwelling.

6. The Planning Practice Guidance (PPG)[1] provides guidance on what plans and drawings must be submitted with a planning application. This says that as a minimum, applicants need to submit a 'location plan' that should be edged clearly with a red line and should include all land necessary to carry out the proposed development. A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site. However, because this appeal is for an application made under s.73A of the Act[2], in accordance with the DMPO[3], this type of application is not required to be accompanied by a plan which identifies the land to which the application relates. Therefore, the application before me is procedurally acceptable without a plan and I have determined the appeal on that basis.

7. During the Hearing, the appellant submitted a copy of an email from an estate agent advising that terms for the sale of a parcel of land associated with the appeal property (44.2 acres) had been agreed. This evidence has been provided late in the appeal process and beyond the timeframes of the Procedural Guide. However, the email confirmation of sale was dated only four working days before the Hearing, is relevant to the main issue, the particulars relating to the sale have been referenced in both main parties' written evidence and the Council did not object to the information being accepted into evidence. As such, I am satisfied that no party has been prejudiced by my consideration of this document as part of the appeal documentation.

[1] Planning Practice Guidance: Paragraph: 023 Reference ID: 14-023-20140306
[2] Town and Country Planning Act 1990 (as amended)
[3] Paragraph 7(1)(c) of the Town and Country Planning (Development Management Procedure (England) (Order) 2015

8. The site is located within the Nidderdale Area of Outstanding Natural Beauty (AONB). In November 2023, all designated AONBs in England and Wales became National Landscapes. However, the National Planning Policy Framework (the Framework) continues to refer to them as AONBs. In this decision I have used the term AONB, consistent with the evidence and the Framework. The legal designation and policy status of such areas is unaffected, whichever term is used.

Main Issue

9. Paragraph 56 of 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.

10. The main issue in this appeal is whether condition 5 of the Outline Permission remains necessary and enforceable, having regard to the local and national policies which seek to restrict housing development in the countryside and the need for rural workers dwellings in the local area.

Reasons

Necessary

11. The appeal dwelling is a detached bungalow which sits between Knowle Garth Farm and a group of farm buildings, at least one of which I observed was used for livestock. It shares an access with Knowle Garth Farm and is surrounded by pasture land. The dwelling is currently occupied by the appellant and is located within undulating open countryside.

12. Policies GS1 and GS2 of the Harrogate District Local Plan, March 2020 (HDLP) establish the Council's strategic approach to growth, including for the provision of new homes. These seek to direct new housing towards main settlements and those on key transport corridors, local centres, service villages and small-scale infill in smaller villages. The appeal site is not within the development limits of any of these identified areas, as set out in Policy GS3 of the HDLP. As such, in accordance with Policies GS2 and GS3, the site is part of the wider countryside where development would only be appropriate if permitted by other policies of the HDLP, a neighbourhood plan or national policy.

13. Policy HS9 of the HDLP refers to new isolated dwellings in the countryside for occupation by rural workers, and reflects the advice in paragraph 84 of the Framework. The justification text states that where permission is granted for a rural workers dwelling, it will be necessary to ensure that the dwellings are kept available for meeting this need and as such, any permission granted should be made subject to an occupancy condition.

14. While the relevance of Policies GS1, GS2 and GS3 is disputed by the appellant, they are pertinent to the appeal before me because the proposal would result in the creation of a new open market dwelling in a location that would generally be deemed unsuitable for such housing.

15. Although Policy HS9 provides no commentary in relation to the removal of an agricultural occupancy condition, further guidance is provided in the Rural Worker's Dwelling Supplementary Planning Document, 2021 (SPD). It was agreed by both parties at the Hearing that the SPD is a material consideration.

The SPD sets out that any application to remove an occupancy condition should be supported by evidence that the dwelling is not required to meet a long-term functional need or meet a wider local functional need. Such evidence would include details of the changes to the farming enterprise, setting out why the property is no longer required now and in the foreseeable future, with marketing evidence carried out over a 12 month period to show there is no local need for an agricultural dwelling in this location. This is to guard against the release of an agricultural worker's dwelling where a need still exists in the area. In such circumstances the removal of such a condition could result in further demand for housing in the open countryside.

16. I recognise that the original farming enterprise has changed and Stonehaven no longer forms part of the wider farm holding of Knowle Garth Farm. Evidence was presented at the Hearing to indicate that a sale had recently been agreed for 44.2 acres of land forming part of the Stonehaven farm holding. It was put to me that this land would therefore be severed from the current holding and the remaining 3.44 acres of land and buildings associated with Stonehaven and in active use at present would not support a viable agricultural business on its own. However, there is no evidence before me to support this claim.

17. Even if that is the case, the condition does not limit the occupancy of the dwelling to a specific holding. There may be a wider need for rural worker's housing in the area and the appeal property could potentially meet that need, particularly as the holding includes agricultural buildings.

18. At the Hearing, the Council confirmed that, in the last year alone, 9no. planning applications for new rural workers dwellings had been approved in the district. In the last 5 years, there had been 2no. approvals within 2 miles of the appeal site and 4no. approvals within 9 miles. Although no indication of the location or circumstances of these was provided, it demonstrates to me that there is an ongoing need for such accommodation. Furthermore, while the appellant explained that buildings and land forming part of the original holding have been separated, written evidence suggests that a recent application, albeit subsequently withdrawn, for an agricultural workers dwelling on land close to Stonehaven was sought by the appellant[4] and there is an ongoing enforcement investigation into the use of a residential caravan at the appeal site. This also lends weight to the potential need for a rural workers dwelling in the foreseeable future.

19. In order to test local demand for rural workers dwelling, the SPD requires evidence of marketing to demonstrate the dwelling cannot be sold or let at a price which reflects the occupancy restriction. No marketing of the property has been undertaken by the appellant who argues that the LDC nullifies the ability for the Council to currently enforce the condition and overrides the need to market the dwelling. The absence of a marketing exercise would not comply with guidance set out in the SPD and the Council contend that the LDC does not outweigh the requirement to market the property in order to demonstrate that the condition serves no purpose.

20. The appeal property is currently for sale. At the hearing, the appellant confirmed the guide price is £950,000, which also includes 3.4 acres of land and several operational farm buildings. The property has been advertised since December 2023 at full market value, though the sales particulars do include

[4] LPA Ref ZC23/02434/OUT

reference to the restrictive condition and the LDC which the appellant claims has been confusing to prospective purchasers.

21. Be that as it may, the appeal property lies in an area where I would envisage people are employed in agriculture. Therefore, it is reasonable to expect a local demand for agricultural workers dwellings, especially as the site includes farm buildings and in the absence of an appropriate marketing campaign that shows otherwise. While the appeal dwelling is larger than that advocated in the SPD, it pre-dates the SPD and no substantive evidence has been provided to indicate that its size would be unsuitable for a rural worker or their family.

22. In the absence of marketing evidence, the removal of condition 5 would in effect create an open market dwelling that would not normally be permitted in this location as it would not accord the Council's strategic development plan policies on housing. Also, insufficient evidence has been provided to show the dwelling is no longer needed to serve the needs of agricultural or forestry workers employed in the locality. Consequently, the condition continues to be necessary and so meets the relevant test of paragraph 56 of the Framework.

Enforceable

23. It is not disputed that following the granting of the LDC the property could be occupied by anyone not employed or last employed in agriculture or forestry, and that the condition currently provides immunity from being enforced, provided the dwelling continues to be occupied in breach of the condition. The LDC is a material consideration, and I have afforded it significant weight.

24. The Council, in granting the LDC must have been satisfied that the appellant was not employed in agriculture at that time. Nothing I have read leads me to conclude that it has been occupied in any different way since the LDC was granted and the appellant confirmed at the Hearing that he remains in full time occupation is as a fire fighter and his wife as a nurse, in breach of the condition, and has done so for many years.

25. Despite the LDC, it has been suggested that there are circumstances that might result in the condition becoming enforceable again. This is because the LDC only confirms lawfulness at the time that it was issued. The condition cannot therefore be treated as nullified simply because of the LDC. The dwelling could in theory be sold or rented to someone who complies with the condition, or a current or future occupier could engage in agricultural activity, thus meaning that the condition could become enforceable in the future.

26. Given that the site includes approximately 3.4 acres of land and farm buildings, which could be attractive to certain agricultural workers or hobby farmers, retired or otherwise, the lack of a marketing exercise means that I have no objective evidence before me that this is so unlikely to happen that it can be readily dismissed.

27. The appellant suggests the likelihood that an agricultural or forestry worker would purchase the appeal property is small due to the financial loss that would occur both to the appellant and any future purchaser.

28. The PPG[5] acknowledges that housing supply and affordability are challenges in rural areas. Dwellings subject to an occupancy condition can be more

[5] Paragraph: 009 Reference ID: 67-009-20190722

affordable for rural workers. That said, the LDC allows the property to be sold at full market value to a non-qualifying occupant. I have no evidence before me to suggest that £950,000 is an unreasonably high valuation having regard to the area and the particulars of the site. If the appellant sold the property at a price that reflected the occupancy condition, although the exact percentage is a matter of dispute between the parties, it could reduce the value of the property significantly, which would not make financial sense when considering the LDC offers the ability to sell at full market value.

29. Furthermore, even if the property was affordable to agricultural or forestry workers either currently employed or retired, it would be unlikely such a person would pay the full market value in the knowledge that upon occupation of the property the condition would become enforceable, which would most likely immediately reduce the value of the property.

30. Even though there is a reasonable prospect of a need for agricultural workers accommodation in the area, it has not been demonstrated why this need could not be met by other cheaper open-market dwellings in the area.

31. In this case, the LDC means that Condition 5 of the Outline Permission is currently unenforceable and, for the reasons given, is unlikely to become enforceable again in future. The condition therefore fails the statutory test for the imposition of planning conditions in paragraph 56 of the Framework and the PPG.

Other Matters

32. Various appeal decisions have been referred to me from both parties. Several of these decisions have been allowed where Inspectors have concluded that an LDC effectively renders an occupancy condition unenforceable. Whereas some have been dismissed where Inspectors have attached little weight to an LDC, on the basis that such a condition could become enforceable again in future.

33. Although there appear to be some similarities between those decisions and the proposal before me, the case-specific factors involved are quintessentially matters of planning judgement. Indeed, the fact that so many opposing decisions have been made indicates that each proposal must be assessed on its own merits, including the particular evidence put forward and circumstances of the site. I have arrived at a balanced judgement against the evidence submitted and the specific merits of this case. Those other decisions do not therefore change my conclusion on enforceability in this particular case.

34. The site is located within the Nidderdale AONB. Such areas are designated for the purposes of conserving and enhancing natural beauty and section 85(1) of the Countryside and Rights of Way Act 2000 places a duty upon me to have regard to these purposes in this decision. Paragraph 182 of the National Planning Policy Framework advises that 'great weight should be given to conserving the landscape and scenic beauty within AONBs which have the highest status of protection in relation to these issues.' However, in this current appeal as the building already exists, the change in occupancy would not itself result in a harmful effect on the AONB.

35. A Reserved Matters application was granted in 1991[6] pursuant to the outline permission that also included an agricultural occupancy condition. The

[6] LPA Ref 6.65.27.D.RM

appellant's application statement confirms that, should the appeal be allowed, a separate application would be made to the Council to remove that condition.

Conditions

36. The PPG indicates that all the conditions from the original planning permission that continue to have effect should be re-stated in the interests of clarity. Having regard to the agreed Statement of Common Ground and, given the dwelling is complete and occupied, I do not consider it necessary to re-impose those conditions, with the exception of one condition that refers to details submitted with the application, as this provides certainty of the site boundary.

Conclusion

37. For the reasons set out above, while I have found that Condition 5 is necessary having regard to planning policies which seek to restrict housing development in the countryside, for the reasons given above, it fails the test of enforceability set out in the Framework.

38. The appeal proposal would result in an open market dwelling located beyond the defined development limits, contrary to Policies GS1, GS2, GS3 and HS9 of the DHLP. However, the circumstances of the appeal site indicate that the decision should be made other than in accordance with the development plan.

39. I conclude, having regard to all other matters raised, that the appeal should be allowed and a new planning permission granted.

A Veevers

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neill Whittaker	Senior Planner, AFA Planning Ltd
Alan Brown	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Emma Howson	Senior Development Management Officer, North Yorkshire Council
Emma Walsh	Senior Development Management Officer, North Yorkshire Council

DOCUMENTS SUBMITTED AT THE HEARING

Copy of email from Lister Haigh (Yorkshire) Limited regarding agreed terms of sale for 44.2acres of land at Stonehaven, Heyshaw HG3 4HD dated 16 April 2024.