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# Appeal Decision

Hearing held on 4 May 2022

Site visit made on 4 May 2022

**by Diane Cragg Dip TP MRTPI**

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

**Decision date: 24 May 2022**

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## **Appeal Ref: APP/N2535/W/21/3281142**

### **Bleak Farm, Northorpe Road, Scotton, Gainsborough, DN21 3RB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) 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 Richard Bussell, Executor of the late John Kirman against the decision of West Lindsey District Council.
  - The application Ref 143045, dated 26 May 2021, was refused by notice dated 16 July 2021.
  - The application sought planning permission for replacement of existing farmhouse with bungalow without complying with a condition attached to planning permission Ref: W89/920/78, dated 21 November 1978.
  - The condition in dispute is No 2 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 of the Town and Country Planning Act 1971, or in 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: The site is in a rural area where it is the policy of the district planning authority, in the interests of safeguarding the rural character and appearance of the area, not to permit development unless it is required to meet a local agricultural need. Permission has been granted only in the light of local agricultural need.
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## **Decision**

1. The appeal is dismissed.

## **Preliminary Matters**

2. The emerging Central Lincolnshire Local Plan Review is at an early stage and, having regard to Paragraph 48 of the National Planning Policy Framework (the Framework), I attach limited weight to the policies within it.

## **Background and Main Issue**

3. Planning permission was granted for a detached bungalow as a replacement for an existing farmhouse in 1978 subject to an agricultural occupancy condition in the terms set out in the banner heading above. The appellant seeks to remove the occupancy condition on the basis that the bungalow replaced a previous farmhouse at the site that was not subject to an agricultural occupancy restriction.

4. The main issue is whether condition 2 restricting the occupancy of the bungalow is necessary and reasonable having regard to national and local planning policies and whether there is a demand for an agriculturally tied dwelling associated with the landholding or the local area.

## Reasons

### *Planning Policy*

5. The bungalow fronts Northorpe Road, it has a detached garage and a range of agricultural buildings adjacent to it. The property and the agricultural buildings are currently vacant. The appeal site is located beyond the last properties in Scotton village along Northorpe Road and is surrounded by agricultural fields.
6. In 1978 the farm holding consisted of 80 acres of owned land and 80 acres of tenanted land. Since Mr Kirman passed away some of the farmland has been sold, with approximately 9.8 hectares (24.26 acres) being retained and currently farmed under a farm business tenancy.
7. The development plan for the district is the Central Lincolnshire Local Plan (April 2017) (the CLLP) and the Scotton Neighbourhood Plan adopted 28 June 2021. Policy LP2 of the CLLP sets out the spatial strategy and settlement hierarchy for the district. Under Policy LP2, in the countryside development is restricted to, among other things, that which is demonstrably essential to the effective operation of agriculture, horticulture, forestry, outdoor recreation, transport or utility services and proposals falling under Policy LP55.
8. Policy LP55 allows development in a number of circumstances, including part B replacement dwellings provided that the original dwelling has not been abandoned, is not of architectural or historic merit or valuable to the character of the settlement or wider landscape, is a permanent structure, of a similar size and scale and located on the footprint, unless an alternative position would have notable benefits and have no adverse impact on the wider setting.
9. Part D of Policy LP55 supports new dwellings which are essential to the effective operation of those uses identified in Policy LP2 including agriculture. Such applications should be accompanied by evidence of the need for the dwelling having regard to a number of matters and will be subject to a restrictive occupancy condition. Policy 5 of the NP supports residential development outside the developed footprint of Scotton where the criteria in Policy LP55 part D are met.
10. These policies are largely consistent with the Framework where in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Isolated homes in the countryside should be avoided unless one of a number of circumstances apply, including where there is an essential need for a rural worker, to live permanently at or near their place of work in the countryside or the development would re-use redundant or disused buildings and enhance its immediate setting.
11. Further, the Council's spatial strategy and the Framework are broadly consistent with the reason for imposing condition 2 which states that the policy is 'not to permit development unless it is required to meet a local agricultural need'.

12. It was agreed at the Hearing that the bungalow is within the countryside for policy purposes, in an area where dwellings would not normally be permitted except in accordance with Policies LP2 and LP55 and would be termed 'isolated' in the context of Paragraph 80 of the Framework.
13. I acknowledge the appellant's view at the Hearing that Policy LP2 is not relevant to this variation of condition application, because section 73 applications only consider the disputed condition/s and therefore there is no development in the terms set out in section 55 of the Act. However, the outcome of granting a section 73 application would be that a new permission would be created for the same development without the agricultural occupancy condition applied. The effect of removing the condition would be the establishment of an unfettered dwelling in an area of countryside where such development would not normally be permitted. Therefore, as part of the locational strategy for development in Central Lincolnshire, I am satisfied that Policy LP2 is relevant to my considerations here.
14. The appellant contends that as a replacement for the previous farmhouse the bungalow accords with the criteria in Policy LP55 part B and paragraph 80 of the Framework and would be acceptable in principle without the restriction of an agricultural occupancy condition. There are letters of support which set out some of the site circumstances at the time of the 1978 application for the bungalow, and I acknowledge that the description of development refers to the bungalow being a replacement for a farmhouse. Nevertheless, from the limited available information, I cannot establish that the replacement of the farmhouse with the bungalow would have met the requirements of LP55 part B. In addition, the original application was not for the re-use of redundant or disused buildings and therefore could not have met the requirements of Framework Paragraph 80 (c).
15. The appellant has provided recent examples where replacement dwellings have been accepted in the countryside without the imposition of an occupancy condition. However, the criteria of Policy LP55 part B relies on the particular site circumstances. Whilst I accept that there have been sites where replacement dwellings have been supported, and not all these dwellings were on the direct footprint of the original building, as there is insufficient evidence to conclude that the original development at the appeal site would have complied with Part B of Policy LP55, these other decisions are of limited relevance.
16. I saw at my site visit that the bungalow and the surrounding land and buildings associated with it appear appropriate to accommodate an agricultural or forestry worker and any equipment they may own. Further, the appellant confirms that Mr Kirman operated the farm holding until his retirement and always complied with the agricultural occupancy condition. Consistent with the reasons for imposing the original condition, the CLLP sets out that agriculture plays a significant role in the local economy and provision is made in Policy LP55 part D for rural workers who are likely to need to reside in the locality.
17. Consequently, although condition 2 was imposed prior to the publication of the CLLP, the NP and the Framework I am satisfied that, having regard to the available evidence, it still serves a planning purpose in helping to maintain a supply of dwellings for people employed in agriculture and forestry. The existing condition is precisely worded and enforceable. It also remains

necessary and reasonable, as it restricts the occupancy of a dwelling which was permitted having regard to the local agricultural need, as evidenced by the letter from the Agricultural and Development Advisory Service (ADAS)<sup>1</sup>, in a location where residential development would not normally be permitted.

### *Demand*

18. The parties agree that there are no policies in the development plan or in the Framework which set out an approach to the removal of agricultural occupancy conditions. Even so, the Council advised the appellant that a marketing exercise for the property would be required to assess whether there is a demand for the agriculturally tied dwelling related to the particular holding or locally. This is an established approach to assessing the demand for such properties.
19. At the Hearing the appellant asserted that the bungalow and associated land and buildings are unsuitable for a new farming business because the land holding is too small to sustain a viable agricultural enterprise. However, little evidence that the land and buildings associated with the bungalow cannot be a viable agricultural proposition has been provided. Given that the site includes 9.8 ha of land and farm buildings, I am satisfied that it is reasonably foreseeable that the land could be used for agriculture. Whilst it may not be a large enough hectareage on its own to support arable farming, there is no evidence that the unit could not operate as a more intensive farm operation or additional land be rented, as per the original farming enterprise.
20. Further, even if the dwelling could not be used in association with the land and buildings for agriculture, in accordance with the terms of condition 2, it is appropriate to consider whether there is a demand for the bungalow with the agricultural occupancy restriction in place in the local area.
21. The appellant considers that it would be unethical to market the bungalow as one of the beneficiaries of Mr Kirman's estate would be occupying the property and there is no intention to sell it. However, as the proposed occupant cannot meet the requirements of the occupancy condition, I see no reason why it would not be appropriate to advertise the property for sale or rent specifying that it is subject to an agricultural occupancy condition. This is not an uncommon practice.
22. Further, in the absence of a marketing exercise, the appellant has not provided any other evidence that the potential for occupation in accordance with the condition has been assessed. The lack of a marketing exercise or any other assessment means that the demand for the property with the occupancy restriction in place remains un-tested.
23. Whilst the Council has no specific policy setting out an approach to the removal of agricultural occupancy conditions, without any evidence, I am unable to conclude that condition 2 is no longer necessary or reasonable.
24. Therefore, overall, I conclude that condition 2 restricting the occupancy of the bungalow is necessary and reasonable and in accordance with national and local planning policies. Further, in the absence of evidence to the contrary, I conclude that it has not been shown that there is a lack of demand for an

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<sup>1</sup> Appendix III of the appellant's statement of case ADAS letter dated November 1978.

agriculturally tied dwelling associated with the landholding or the local area. To remove the condition would conflict with Policies LP2 and LP55 of the CLLP and Policy 5 of the NP as set out above. It would also conflict with the Framework.

### **Other Matters**

25. I appreciate that the appellant's remit as the executor of Mr Kirman's estate is to maximise the estate's assets. However, the appellant's role is of limited relevance to the matters before me.

### **Conclusion**

26. For the reasons given above, condition 2 remains necessary and reasonable. Therefore, the appeal is dismissed.

*Diane Cragg*

INSPECTOR

### **APPEARANCES**

#### FOR THE APPELLANT:

Tori Heaton	DDM Agricultural
David Hardy	Squire Patton Boggs Solicitors

#### FOR THE LOCAL PLANNING AUTHORITY:

George Backovic	West Lindsey District Council
Martha Rees	West Lindsey District Council
Contanze Bell	Kings Chambers

#### INTERESTED PERSONS:

Mr Marris  
Robert Littlewood