

Appeal Decision

Hearing held on 5 March 2024

Site visit made on 5 March 2024

by H Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2024

Appeal Ref: APP/X1118/W/23/3327842

North Down Farm, North Lane, Bickington, Devon EX31 2JN

- 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 Mrs Carolyn Bennett against the decision of North Devon Council.
- The application Ref is 77141.
- The application sought planning permission for 'outline application, proposed farmhouse, land at North Lane, Bickington' without complying with a condition attached to planning permission Ref 2/86/258/27/1, dated 15 April 1986.
- The condition in dispute is No 4 which states that: *"The occupation of the dwelling hereby permitted shall be limited to a person 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 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: *"To ensure that the dwelling is occupied by persons connected with agriculture or forestry, as the site is located in open country where residential development would not normally be permitted."*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, a revised National Planning Policy Framework (Framework) was published on 19 December 2023. However, as any policies that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version of the Framework and new paragraph numbers in reaching my decision.
3. The appellant submitted late evidence¹ on 22 February 2024. Nevertheless, as this was not a lengthy document, the Council had the opportunity to consider it before the hearing. An opportunity was also given to interested parties to consider the document during the hearing. Therefore, my acceptance of it would not prejudice any parties.

¹ GTH Planning appeal – late evidence for North Down Farm, North Lane, Bickington, EX31 2JN, dated 21 Feb 2024

Main Issue

4. The main issue is whether the disputed condition is necessary and reasonable in relation to restricting the occupancy of the dwelling as an agricultural workers or forestry workers dwelling.

Reasons

5. The appeal site is located off North Lane. The site comprises an agricultural dwelling that consists of a detached bungalow and a detached double garage. The agricultural dwelling is sited south of a group of existing agricultural buildings with two intervening dwellings which are currently under construction. The dwelling is sited outside of any defined settlement boundary, and thus is located within open countryside for planning purposes.
6. Planning permission was originally granted for the appeal property in 1986 when the dwelling formed part of Woolmers Farm. The disputed condition was attached to the original planning permission², and it restricted the occupancy of the property to someone employed or last employed in agriculture or forestry. However, since the approval of the original application, the land and buildings which were previously connected to the appeal property are now in separate ownership. Accordingly, the farmstead and agricultural business has become disconnected from the appeal property. This means that the appeal site no longer forms part of the original agricultural enterprise.
7. Policy DM28 of the North Devon and Torridge Local Plan 2011-2031 (adopted 2018) (Local Plan) relates to rural worker accommodation. It states that "applications for the removal of occupancy conditions or ties on dwellings for rural workers will only be permitted where there is compelling evidence to demonstrate that such a restriction is no longer justified."
8. In respect of Policy DM28, it is necessary to consider whether a viable agricultural business could be run from the associated land. At the Hearing, the appellant asserted that the appeal site is too small to sustain a viable agricultural business. They consider that the appeal site's size, which is limited to around 0.38 acres of land, would not be suitable to support an agricultural enterprise without additional land. This was not disputed by the Council. Consequently, due to the site's constrained size, I would agree, there is no real prospect of a viable agricultural business being run from the appeal site.
9. At the hearing, the appellant also indicated that although agricultural operations still exist on land to the north of the dwelling at Woolmers Farm, there is currently no operational need for the agricultural dwelling to be retained to meet the needs of the adjacent farm. I am therefore satisfied that the dwelling is no longer required by the farm. Nevertheless, the disputed condition does not limit the occupancy of the dwelling to a specific holding and therefore, the need for agricultural dwellings in the wider area must also be considered.
10. Although the wording of Policy DM28 does not specifically refer to a marketing exercise, I agree with the Council that the supporting text to the policy is as important as the policy itself, as it gives information on how the policy and criteria within the policy have been formulated. It therefore should be taken into account when applying the policy. The supporting text of the policy, at

² Ref: 2/86/258/27/1, dated April 1986.

paragraph 13.156 of the Local Plan states that “to demonstrate that the dwelling is no longer required to accommodate rural workers, the Council will expect applications for the removal of occupancy conditions to be supported by strong evidence demonstrating no demand for the property in the locality. Applicants will be expected to submit information to show that the dwelling has been marketed, at an appropriate price reflecting the occupancy restriction, for a period of at least 18 months and that there was no demand for the property over that period.” Paragraphs 3.41 and 3.42 of the Council’s Rural Workers’ Dwellings Supplementary Planning Document (adopted 2020) (SPD) also sets out an approach to a marketing exercise. It is therefore entirely reasonable to expect a marketing exercise to be submitted with the application.

11. The appellant argues that Policy DM28 does not explicitly require a marketing exercise to be undertaken in all circumstances. The appellant also considers that it would be unethical to market the dwelling as there is no intention to sell it. However, there is nothing within the Local Plan or SPD to indicate that a marketing exercise would not be necessary in this instance. I also 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 and is a robust method for establishing if there is a demand in the local area for such properties.
12. At the hearing, the appellant confirmed that the appeal property had been valued by an experienced chartered surveyor that estimated the value of the property between £300,000 and £350,000, including the agricultural tie. The appellant suggests that this estimated value would mean that it would be beyond the average wages of an agricultural worker to secure a mortgage for the property. Nonetheless, to determine whether the estimated value is genuinely beyond the means of a qualifying individual, the dwelling would need to be placed on the market with a value reflecting the occupancy restriction to test the demand. It is clear from the evidence before me that this has not been done.
13. The appellant has provided a list of other properties in the locality for sale at a similar or lower value than the estimated value for the appeal property, suggesting that they would be a more affordable prospect for an agricultural or forestry worker. Nevertheless, the appellant’s estimated value has not been formally agreed with the Council, as per paragraph 3.42 of the SPD. Moreover, the appellant’s list of other properties does not demonstrate that there is no demand for an agricultural or forestry worker’s dwelling in this location.
14. The absence of a marketing exercise leaves me without evidence that a financially eligible agricultural worker or forester could not come forward. Additionally, the condition also allows occupation by somebody last employed in agriculture or forestry, which increases the likelihood of finding financially capable individuals. However, no targeted marketing efforts toward the farming community have been made to gauge the demand from other qualifying persons. Furthermore, the appellant has not provided any other evidence that there is no local demand for the property as a rural worker’s dwelling. Consequently, without a marketing exercise or alternative assessment, the demand for the property with the occupancy restriction remains untested.
15. It was put to me at the hearing that a marketing exercise is not necessary, due to the dwelling being sited near to the existing urban area of Bickington, and

new residential development being built to the south of the appeal site, following planning approval³. While this brings residential development closer to the appeal site, it does not necessarily mean that there would be no demand for an agricultural or forestry workers dwelling in this location and the appropriate evidence is not before me to fully justify why the condition is no longer necessary.

16. My attention was also drawn to a planning approval⁴ for the two dwellings sited to the north of the appeal site, which were approved during a time when the Council did not have a five-year housing land supply. At the hearing, it was confirmed that the Council now has a five-year housing land supply of 5.18 years, and therefore paragraph 11d of the Framework is not engaged. Moreover, as these other two dwellings were approved as unrestricted open market housing, they do not have an agricultural tie attached to them. This means that, unlike the appeal property, they do not form part of North Devon District's housing stock restricted for agricultural or forestry workers.
17. At the hearing the parties agreed that the appeal site is not isolated given its proximity to the residential area of Bickington and other nearby properties. It was also acknowledged that the site is located within a reasonable distance of local services and facilities. Furthermore, I accept that the use of the property as an open market dwelling would not result in any harm to the character and appearance of the area as the property is already present within the landscape. Nevertheless, these are neutral considerations that do not add weight in favour of the appeal.
18. The appellant has referred me to other appeal decisions⁵ where the Inspector allowed the removal of agricultural occupancy conditions. However, the Inspector noted that there had been 'significant amounts of new housing development such that the farm as it was is now part of the wider urban area and not in a rural area from where any latent demand for agricultural worker accommodation may exist.' Although a specific marketing exercise had not been undertaken, the Inspector concluded that it was not a requirement of planning policy. I therefore consider these other cases do not provide a direct comparison to the case before me, which is sited next to Woolmers Farm that continues to run as an agricultural enterprise. This other appeal site was also in a different planning authority with different development plan policies. Accordingly, I ascribe little weight to these other decisions and have considered the appeal on its own merits.
19. For the above reasons, I find that the evidence before me does not compellingly demonstrate that there is no longer a demand for an agricultural or forestry worker's dwelling in the locality. Removal of this condition would result in an unrestricted dwelling in the countryside. Consequently, the condition restricting the occupancy of the dwelling remains necessary, reasonable, and relevant to planning. To remove the condition would conflict with Policy DM28 of the Local Plan and paragraphs 3.41 and 3.42 of the SPD, the relevant requirements are set out above. The condition also complies with the remaining tests set out in paragraph 56 of the Framework and the advice set out in the Planning Practice Guidance.

³ Planning application ref: 56351.

⁴ Planning application ref: 74253

⁵ Appeal refs: APP/D3315/C/14/2218684 and 2218685.

Conclusion

20. For the reasons given above, condition 4 remains necessary and reasonable. Therefore, the appeal is dismissed.

H Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Laura Polley Planning agent for the appellant (GTH)

Andrew Preston Planning agent for the appellant (GTH)

FOR THE LOCAL PLANNING AUTHORITY:

Peter J. Rowan North Devon Council

INTERESTED PERSONS:

Alistair Miller

Jilda Miller

Alan Capps