



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 29/06/21

gan J Burston, BSc MA MRTPI AIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 26/7/21

Appeal Decision

Site visit made on 29/06/21

by J Burston, BSc MA MRTPI AIPROW

an Inspector appointed by the Welsh Ministers

Date: 26/7/21

Appeal Ref: APP/E6840/A/21/3274383

Site address: Bushes Farm, Earlswood, NP16 6RH

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Harry against the decision of Monmouthshire County Council.
- The application Ref: DM/2020/00881 dated 6 July 2020, was approved on 5 March 2021 and planning permission was granted subject to conditions.
- The development permitted is "*Removal of condition 1 from planning consent 2314 (date of decision 01/09/1975): Occupation of the proposed bungalow shall be limited to a person employed or last employed wholly or mainly locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or a dependant of such person residing with him.*"
- The conditions in dispute is No 1 which states that:
"*The occupancy of the dwelling shall be restricted to those:*
a) *solely or mainly working or last working on a rural enterprise in the locality where there is/was a defined functional need; or if it can be demonstrated that there are no such eligible occupiers, to those;*
b) *who would be eligible for consideration for affordable housing under the local authority's housing policies: or if it can be demonstrated that there are no persons eligible for occupation under either a) and b);*
c) *widows, widowers or civil partners of the above and any resident dependants.*"
- The reason given for the condition is:
"*To meet the needs of other rural enterprises or persons seeking affordable housing in the locality if it is no longer needed by the original rural enterprise in accordance with Technical Advice Note (TAN)6 Planning for Sustainable Rural Communities (2010).*"

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission¹ was granted at the appeal site in 1975 for the construction of a bungalow. This permission was granted subject to a number of planning conditions, one of which was to restrict the occupancy of the bungalow to "*a person employed or last employed wholly or mainly locally in agriculture as defined in Section 290(1) of*

¹ Planning permission reference 2314.

the Town and Country Planning Act 1971, or a dependant of such person residing with him”.

3. On the 6 July 2020 an application² was made to the Council to remove or vary the planning condition set out above under section 73 of the Town and Country Planning Act 1990 (the Act). The Council approved the planning application on 5 March 2021 by varying the aforementioned condition to reflect the model occupancy condition set out in Technical Advice Note 6: Planning for Sustainable Rural Communities (TAN6).
4. This appeal seeks to remove condition¹ attached to planning permission DM/2020/00881. The removal of this condition would mean that the dwelling would become unencumbered and could be occupied by any persons.
5. The Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management (the Circular), establishes six tests to ensure the validity of planning conditions, namely: necessary; relevant to planning; relevant to the development permitted; enforceable; precise; and reasonable in all other respects. In this respect the Circular also states at paragraph 3.2 that *“In considering whether a particular condition is necessary, local planning authorities should ask themselves whether planning permission would have to be refused if a condition were not imposed, or if it would be expedient to enforce against a breach of the condition.”*
6. Accordingly, the main issue in this case is whether the disputed condition is reasonable and necessary, having regard to national planning policy concerning the provision of dwellings within the countryside.

Reasons

7. The appeal site comprises a bungalow, set in grounds amounting to some 0.25 acres. The dwelling lies within the settlement of Earlswood, however it is remote from other houses and is located in the open countryside for planning purposes.
8. The appellant has set out that the appeal property was essentially abandoned over 12 years ago and productive agricultural use of the land adjoining the bungalow ceased in 1989. Since this date there have been incremental sales of land parcels which were formerly connected to it. Moreover, some of the land neighbouring the site is designated as a SINC³ which limits the agricultural activities that can be conducted on it. Having been unoccupied for over 12 years the bungalow is now in a poor condition. Whilst the appellant has tried to undertake the repair work himself funding for it has not been viable given the occupancy condition.
9. Planning Policy Wales, edition 11 (PPW) establishes promoting and diversifying our rural economy as a key issue to ensure it is fit for the future and economically sustainable while ensuring that unnecessary development in the countryside is controlled. Moreover, PPW paragraph 4.2.37 states that *“In order to ensure that rural enterprise dwellings are retained for their intended purpose a condition restricting the occupancy of the property must be applied. Rural enterprise dwellings should also be classified as affordable housing as defined in TAN 2: Planning and Affordable Housing, to ensure that the dwelling remains available to meet local affordable housing need should the original justification cease to exist.”*

² Planning Permission reference DM/2020/00881

³ Sites of Importance for Nature Conservation

10. The Practice Guidance⁴ accompanying TAN 6 states in paragraph 1.6 that “*the underlying objective of limiting sporadic development in the countryside remains unchanged, but the Welsh Government has recognised that there is a wider concern in respect of access to appropriate and affordable housing on the part of the rural community*”
11. From the evidence before me it would seem apparent that the original functional agricultural justification for the appeal property has ceased, and the SINC designation would further curtail rural enterprise activities. Nonetheless, the occupancy condition is aimed at ensuring that the dwelling is kept available to meet a need for such accommodation, not just in relation to the holding but in the locality.
12. It is accepted that the property has been marketed for an extensive period of time and a ‘for sale’ board was still in place at the time of my site visit. Nonetheless, only a short period of time has elapsed since the occupancy restriction was expanded to enable occupation by rural enterprises workers and those who met the Council’s affordable housing criteria. It may be the case that people who previously showed an interest in the property may now be eligible and, in my view, the length of time the property has been marketed under these new conditions is insufficient to demonstrate a lack of demand from rural enterprise workers or those that meet the affordability criteria. I accept that only a small number of offers were made, but this indicates some demand for properties of this type, and I do not consider it can be said that there is no demand or interest.
13. Moreover, the Council and the appellant provided an indication of the level of demand for rural workers dwellings. Whilst it is clear not all applications made are approved, I can see that a number were. This indicates to me that there is a level of demand and need for rural enterprise dwellings in the area.
14. It is apparent that the Council are always looking for affordable accommodation and would consider any options available to help meet wider housing need. The appellant has approached Affordable Housing Providers (AHP) prior to submitting the planning application⁵ and the responses were negative partly due to the funding of the necessary renovations and because of the restrictions placed on the original planning permission. I am unaware if any research has been undertaken following the revision of the condition in dispute. In this respect, the imposition of the revised occupancy condition would give AHP the comfort of a suitable planning permission. The appellant also claims that the renovation and purchasing costs of the property make it unsuitable for affordable housing when taking into account the Welsh Government’s ‘Acceptable Costs Guidance’. Nonetheless, the Guidance is also flexible in its approach where costs are justified in the light of local conditions and housing need.
15. I have taken into account the appellant’s assessment of whether or not the property is ‘affordable’, including the ability to meet lifetime home standards. However, I do not consider that sufficient market research has been undertaken to ascertain, whether there would be any interest in the appeal property from anyone who meets the terms of the disputed condition. Consequently, I am unable to determine that there is no need for the disputed condition to be retained to ensure that a sufficient mix of accommodation is available in the locality.

⁴ Practice Guidance Rural Enterprise Dwellings – Technical Advice Note 6 Planning for Sustainable Rural Communities, December 2011.

⁵ Planning Permission reference: DM/2020/00881

16. To my mind the disputed condition remains to have a useful functional purpose in providing rural enterprise worker accommodation in the locality or for their dependents or to those who would be eligible for affordable housing. Thus, the removal of Condition No 1 would be contrary to PPW and TAN 6, which emphasises the value of the existing stock of restricted dwellings in avoiding the need for further dwellings in the countryside.
17. I conclude on this main issue that it remains necessary to retain the condition. In the circumstances, the condition is fair and reasonable and meets the other tests prescribed for planning conditions.

Other matters

18. The appellant has made particular reference to an appeal⁶ where the Inspector allowed the lifting of occupancy restrictions. However, I have limited detail of this case and I am unable therefore to determine whether they are reasonable comparisons to the proposal before me here. Nevertheless, it seems to me that, whilst it may have been determined in the same national and local policy context, it took into account a Certificate of Existing use or Development. As such I can afford this example little weight and, in any event, I have determined this appeal on its own merits.
19. I have also read with interest a number of other appeal decisions⁷. However, these were in different Council areas to this case, thus taking into account alternative planning policy considerations. Furthermore, the Inspectors had to consider the individual circumstances of the case, as I have done here. As such I can afford these decisions little weight.
20. I also acknowledge the planning permissions referred to. Similarly, I have limited detail of these cases and I am unable therefore to determine whether they are reasonable comparisons to the proposal before me here and, in any event, I have determined this appeal on its own merits.

Conclusion

21. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

J Burston

INSPECTOR

⁶ Appeal decision APP/E6840/A/15/3124713

⁷ Appeal decisions: APP/D6820/A/13/2205356; APP/T6850/A/14/2229039; APP/Z6950/A/16/3161658; APP/M6825/A/16/3153602.