



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 02/02/16
Ymweliad â safle a wnaed ar 01/02/16

gan **Anthony Thickett BA (Hons) BTP
Dip RSA MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/02/16

Appeal Decision

Hearing held on 02/02/16
Site visit made on 01/02/16

by **Anthony Thickett BA (Hons) BTP Dip
RSA MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 11/02/16

Appeal Ref: APP/E6840/A/15/3124713

Site address: Tyr Berllan, Llangwym, Usk, NP15 1HB

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 & Mrs D Anstey against the decision of Monmouthshire County Council.
- The application Ref DC/2014/01163, dated 1 October 2014, was permitted by notice dated 23 June 2015.
- The application sought planning permission for an agricultural workers' dwelling without complying with condition 5 of outline planning permission Ref A26974, dated 7 August 1986.
- The condition in dispute is No. 1 which states that:
The occupancy of the dwelling shall be restricted to those:
 - 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:*
 - 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) or (b);*
 - widows, widowers or civil partners of the above and any resident dependants*
- The reason given for the condition is:
To ensure that the dwelling is kept available to meet the housing needs of rural workers and local people in need of affordable housing.

Decision

- The appeal is allowed and the planning permission Ref DC/2014/01163 for an agricultural workers' dwelling without complying with condition 5 of planning permission Ref A26974, dated 7 August 1986 at Tyr Berllan, Llangwym, Usk, NP15 1HB granted on 23 June 2015 is varied by deleting condition 1.

Background

- The dwelling to which this appeal relates was granted outline planning permission in 1986 subject to a condition which limited occupancy to someone employed or last employed in agriculture (condition 5 of A26974). I heard that the same condition was placed on the subsequent reserved matters approval (condition 5 of A31210). In 2012 the Council issued a Certificate of Existing Use or Development which certified that the applicants had demonstrated that the dwelling had been occupied in breach of

the occupancy condition for more than 10 years (DC/2012/00518). Notwithstanding the terms of the certificate, the conditions remained on both the outline planning permission and the reserved matters approval, hence the application to remove the condition which has resulted in this appeal.

3. Condition 5 of outline planning permission A26974 said: *'The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 or in forestry (including any dependents of such persons residing with him) or a widow or widower of such a person'*. Whilst the Council granted permission for the variation of condition 5, in doing so it imposed condition 1 as set out above. It is this condition which is at issue.

Procedural Matter

4. The description of development given on the application form sets out condition 5 of A26974. The Council's description on the decision notice is: *'Removal of condition 5 of planning permission A26974'*. I consider that the description I have used in the heading and decision above better reflects the proposal and I do not consider that using this description prejudices the interest of any party.

Main Issues

5. The main issues are:
 - whether condition 1 of planning permission DC/2014/01163 complies with the advice in Circular 16/14 *'The Use of Planning Conditions for Development Management'* and,
 - whether the removal of condition 1 of planning permission DC/2014/01163 complies with national and local policies designed to protect the countryside.

Reasons

Circular 16/14

6. Circular 16/14 sets out 6 tests for planning conditions; these are that conditions should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Paragraph 3.2 of the Circular advises that, in considering whether a condition is necessary, decision makers should ask themselves, amongst other things, whether it would be expedient to enforce against a breach of the condition.
7. At the Hearing the Council accepted that the effect of the Certificate was that the Council could not take enforcement action against occupancy of the dwelling by someone not employed or not last employed in agriculture. Although it has replaced the original condition with the modern version which refers to workers employed by a rural enterprise, the Council also conceded at the Hearing that the effect of the Certificate is that it cannot enforce against the occupancy of the dwelling by the appellants nor can they enforce compliance should they sell to a person not working or who did not last work on a rural enterprise.
8. The Council argue that the condition may bite again should the dwelling be occupied by someone working or who last worked on a rural enterprise or if the dwelling became vacant for a period. The Council was not able to specify how long that period should be but certainly not the usual brief vacancy between a seller leaving and a vendor moving in. Whether this is right or not is a moot point in my view as the

Council accepts that, in the circumstances of this case, it could not enforce compliance with condition 1 of planning permission DC/2014/01163 should the appellants sell their property to someone who does not qualify under the terms of the condition.

9. The Council argue that imposing the condition complies with the advice in Technical Advice Note 6 '*Planning for Sustainable Rural Communities*' (TAN 6) but regard must be had to particular circumstances of each case and the advice in Circular 14/16. In this case the condition cannot be enforced and should not have been imposed. Consequently, the appeal succeeds and I need go no further¹. However, I will address the second main issue.

Countryside policy

10. Tyr Berllan lies in an isolated location within the open countryside wherein new housing is strictly controlled and there is no dispute that it was necessary to impose the original occupancy condition. Policy S1 of the Monmouth Local Development Plan 2011 -2021, adopted February 2014 (LDP) states that in the open countryside new dwellings will be restricted to, amongst other things, dwellings necessary for agriculture, forestry or other appropriate rural enterprises. The appellants argue that there is no demand from agricultural workers for their house and so the occupancy condition should be lifted as it is no longer justified. The LDP is silent with regard to how applications to remove agricultural occupancy conditions should be determined but policy and guidance can be found in Planning Policy Wales (PPW), TAN 6 and its companion Practice Guidance Note '*Rural Enterprise Dwellings*'.
11. With regard to need, the Practice Guidance says that where it is proposed to remove an occupancy condition it will be necessary to demonstrate that there is no longer a rural enterprise need for the dwelling or a local affordable housing need in the area. It goes on to say that in order to demonstrate this, the property should be advertised for at least 12 months in a manner that compliant purchasers or tenants would be aware of it and at a price which reflects the occupancy restriction. The Practice Guidance advises that traditionally agricultural dwellings have been marketed at 70 to 75% of their open market value.
12. The dwelling has been on the market since July 2013. It has not been advertised in local newspapers or specialist farming publications and I agree with the Council that it would have been helpful had this been done. However, from what I have seen and heard, I am satisfied that the on-line marketing carried out is sufficient to show that the property would have come to the attention of any persons able to satisfy the terms of the occupancy condition who may have been interested or needed a house in the locality.
13. The property has been marketed with a guide price of £425,000. The appellant's estate agent stated at the Hearing that the price of comparable properties (size and proximity to the M4/A449) without a tie is between £620,000 to £680,000. The guide price of £425,000 represents a discount of between 62 to 68% of the open market value. The Council commissioned a valuation report which valued the house at £500,000. The author states that she had regard to sales evidence within the locality and surrounding area but no details are provided of the types or locations of the properties considered.

¹ As an aside it should also be noted that the condition used in this case does not reflect the latest guidance in the Practice Guidance note '*Rural Enterprise Dwellings*' (paragraph 8.12)

14. The lack of information with regard to whether the properties used by the Council's consultant were comparable in size or location limits the weight I can give to that valuation. The Council point to a similar sized house in the area being priced at £425,000. However, I heard at the Hearing that that house is not as well located with regard to transport links, an important determinant of market value. The appellant's agent demonstrated a sound knowledge of the local market and I find her evidence to be more persuasive. Consequently, I am satisfied that the guide price of £425,000 properly reflects the occupancy restriction and that the marketing exercise has demonstrated that there is no demand for this property from a rural enterprise worker.
15. The Practice Guidance advises applicants to seek assistance from the local planning authority with regard to affordability criteria. I heard that the Council has a long waiting list for affordable housing. However, although the dwelling could provide accommodation for a large family, the Council accepted at the Hearing that no assessment has been made as to whether the house would be suitable in terms of its location. The Council also conceded that the house is unlikely to be attractive to a registered provider of affordable housing.
16. I acknowledge that the aim of national policy is to retain rural enterprise dwellings as affordable dwellings but in this case it appears highly unlikely that the dwelling would be suitable to satisfy a local need. I conclude therefore, that the removal of condition 1 of planning permission DC/2014/01163 complies with national and local policies designed to protect the countryside.

Conclusions

17. The Council argue that the number of applications it has received for rural enterprise dwellings over the last few years points to a demand for such accommodation. It is also concerned that allowing this appeal and removing the occupancy restriction would threaten its ability to retain its stock of rural enterprise dwellings. I have neither seen nor heard anything to suggest that the appeal dwelling would have been suitable to serve another enterprise (and the marketing evidence suggests not). Further, I have reached my conclusions based on the specific circumstances of this case. Those being the accepted implications of the Certificate of Existing Lawful Use or Development and the marketing evidence referred to above.
18. For the reason given above and having regard to all matters raised, I conclude that the appeal should be allowed.

Anthony Thickett

Inspector

APPEARANCES

FOR THE APPELLANT:

S Griffiths	RCA Generation
J Mundy	Elstons
S Anstey	Tyr Berllan
D Anstey	Tyr Berllan

FOR THE LOCAL PLANNING AUTHORITY:

K Young	Monmouthshire County Council
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Documents submitted at the Hearing

- 1 Summary of Nicholson v Secretary of State for the Environment and Maldon District Council (Admin 14/8/1997)
- 2 DVS Valuation Report