



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 14/02/17

Ymweliad â safle a wnaed ar 14/02/17

gan Joanne Burston BSc MA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 23.03.2017

Appeal Decision

Hearing held on 14/02/17

Site visit made on 14/02/17

by Joanne Burston BSc MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 23.03.2017

Appeal Ref: APP/Z6950/A/16/3161658

Site address: Lettons House, Lettons Way, Dinas Powys CF64 4BY

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 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 Peter Hayman against the decision of The Vale of Glamorgan Council.
 - The application Ref 2014/01033/FUL, dated 29 August 2014, was refused by notice dated 13 May 2016.
 - The application sought planning permission for *variation of agricultural occupancy condition imposed on appl 79/0067 on appeal (Ref P72/569), in respect of the erection of a two storey house for a Nursery Manager at Lettons House, Lettons Way, Dinas Powys* without complying with a condition attached to planning permission Ref 2011/0503/FUL, dated 27 July 2011.
 - The condition in dispute is No 1 which states that: "*The occupancy of the dwelling shall be restricted to: a) A person solely or mainly working, or last working on a rural enterprise in the locality, or a widow, widower or surviving civil partner of such a person, and to any resident dependants; or, if it can be demonstrated that there are no such eligible occupiers: b) A person or persons who would be eligible for consideration for affordable housing under the Local Authority's housing policies, or a widow, widower or surviving civil partner of such a person, and to any resident dependants.*"
 - The reason given for the condition is: "*A dwelling in this rural location would not be permitted unless justified in terms of being necessary for the equestrian enterprise, and to ensure the development accords with Policies ENV 1, HOUS 3 and HOUS 5 of the Unitary Development Plan.*"
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Decision

1. The appeal is allowed and planning permission Ref 2011/0503/FUL, granted on 27 July 2011, by the Vale of Glamorgan Council, is varied by deleting condition 1.

Application for costs

2. At the Hearing an application for costs was made by Mr Peter Hayman against The Vale of Glamorgan Council. This application is the subject of a separate Decision.
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Procedural Matters

3. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is consistent with the sustainable development principle as required by section 8 of the WBFG Act.

Background and Main Issue

4. The appeal property relates to a 5-bedroom dwelling with approximately 0.3ha (0.81 acres) of land. Application ref 2011/00503/FUL sought to vary the occupancy condition to widen the criteria in line with the advice in Technical Advice Note 6 (TAN 6) 'Planning for Sustainable Rural Communities', issued in 2010. This application was subsequently approved.
5. The appellant began trying to sell Lettons House in April 2011; however, he states that he has received no acceptable offers from any person that would fulfil the occupancy criteria. Accordingly, the planning application which is the subject of this appeal sought to remove the occupancy condition as set out in permission ref 2011/00503/FUL in its entirety. In response, the Council state that there is a demand for agricultural workers and affordable dwellings in the area, and that the marketing of Lettons House has not been carried out at a realistic price to demonstrate otherwise.
6. Taking this into account, and also the original reason for the condition, the main issue is therefore: Whether or not there is a continuing need for the occupation of Lettons House to be restricted, having particular regard to the need for Rural Enterprise Worker's dwellings and affordable housing in the area.

Reasons

7. The appeal property was built in the 1980s to serve as a manager's house for the adjacent plant nursery. However, the appellant confirms that this tie was severed when the nursery was sold, roughly 16 years ago, when Mr Hayman retired. The house now has no links with the adjoining land which is now in separate ownership. It is not 'tied' to the business, the adjacent buildings, or any land other than its own garden. The issue before me therefore turns on whether there is a continuing need for its retention for occupation by rural enterprise workers employed, or last employed in the locality (and their dependants). Or a person or persons who would be eligible for consideration for affordable housing under the Local Authority's housing policies (and their dependants).
8. Occupancy conditions that have outlived their usefulness should not be retained. Assessing whether there is a continuing need for their retention by a person solely or mainly working, or last working on a rural enterprise in the locality, or persons eligible for consideration for affordable housing will entail a consideration of the present need for a dwelling in the locality. In an attempt to demonstrate this, it will normally be for the appellant to show that the dwelling is being offered for sale for a reasonable period at a price which reflects the existence of the condition.
9. With regard to valuation, the Vale of Glamorgan Unitary Development Plan (UDP) offers no guidance on how to assess a realistic market price which reflects the existence of an occupancy condition. However, it is generally recognised that the price should be at a considerable discount from its unencumbered valuation. At the

Hearing reference was made to the guidance accompanying Technical Advice Note 6 (TAN6) and a letter from the Welsh Government, which sets out that the price or rent of the property should reflect the occupancy restrictions, generally around 70 to 80% of their open market value. Nonetheless, I also accept that it is up to the local authority to justify their position if requesting a higher or lower figure than the 'typical' percentage. In this respect the Council contend that such a broad brush approach is unrealistic and does not take into account the property and its condition, local demand, supply or the local housing market. However, the Local Planning Authority has not sought any independent professional advice on the value of the appeal property, nor does it seem to me that they have undertaken any inspection of the property or any other similar local properties which may have provided a useful comparison.

10. The appellant and United Welsh Housing Association commissioned an independent valuation report which valued the house at £595,000. The Council did not disagree with this valuation. To reflect the occupancy condition the property was offered for sale at £495,000 and reduced to £450,000 in February 2012, which at the lower price represents an approximate discount of 25% to reflect the TAN 6 guidance. Given that Lettons House is a large property set in attractive, secluded grounds, I find no reason to dispute the validity of the £450,000 discounted sale price of the property.
11. The Council says there is a significant need for rural enterprise dwellings in the locality, and I accept that it receives a number of applications for new rural enterprise dwellings. However, as was confirmed by the Council, the majority of these were required on existing agricultural holdings to meet the particular functional needs of the rural enterprise. Additionally to my mind, the demand for a dwelling with no land away from a holding or a rural enterprise, even if within a tolerable travelling distance, is likely to be much more limited. Indeed, information provided by the appellant demonstrates that within the local area there are 3 other properties for sale with a similar occupancy restriction which have not yet sold since they were brought onto the market¹ (Doc 5).
12. This lack of demand is further evidenced by the appellant's marketing exercise. At the Hearing the Council confirmed that despite some misgivings, the process of marketing had been broadly acceptable. Based on the information provided, I find no reason to disagree. Lettons House has been marketed for sale by a local estate agent, and advertised on several local and national property websites. Whilst there has been significant interest in the property only a small number of potential purchasers fulfilled the rural enterprise tie and of these only Mr Davies and his partner Ms Williams made an offer on the property. However, the appellant confirmed at the Hearing that the most recent offer of £390,000 put forward by Mr Davies was still significantly under the asking price.
13. At the Hearing Mr Davies and Ms Williams spoke of their interest in the property, the offers they had made and their personal circumstances which enabled them to meet the occupancy restrictions. The appellant stated that Mr Davies and Ms Williams were not to a position to buy the property due to the sale of their own house and no evidence of a mortgage offer, he also stated that his own enquiries with Principality Building Society highlighted that they would not consider a mortgage on a property

¹ First property put on the market on 23 July 2016. Second property 28 January 2015. Third property September 2016.

with an occupancy restriction. However, no evidence was before me to confirm the buying status of Mr Davies and Ms Williams either way.

14. Nonetheless, the evidence available to me supports the contention that, in all the relevant circumstances, the property has been fairly, appropriately and consistently offered to the market over a sustained period to demonstrate that there is no interest from qualifying occupiers at the asking price. In my view there is little likelihood of this large house being within the range of many rural enterprise workers, nor even a farm manager. Nor, for the same reason, would it be attractive to most retired farmers.

Affordable Housing

15. The appellant contacted Registered Social Landlords who operate in the local area. From this approach United Welsh Housing Association made an offer on the property, but this was subsequently withdrawn due to, amongst other matters, funding and conversion cost issues. Newydd Housing Association also viewed the property, but stated that it was not suitable for them. The Council's Affordable Housing Enabler also conceded that *"having assessed the size, design and location of the house in question in relation to the established housing need in the Dinas Powys area, I have to conclude that we would not be able to make constructive use of the property as an affordable housing unit"*.
16. Nonetheless, the Council brought several documents to my attention including its 'Local Housing Market Assessment 2015' 'Draft Affordable Housing Supplementary Planning Guidance 2015 (SPG)' and 'Viability Update Report' to support its approach to affordable housing demand in the local area. Whilst I accept that the Council requires a substantial number of affordable homes and that Dinas Powys is an area of highest need, the Council's approach in this case is based on emerging guidance and policy. In view of the stage of the preparation of the emerging local plan and SPG and given the examining Inspector's comments regarding affordable housing provisions, the LDP policies are, therefore, not yet a certainty. Accordingly, I afford the SPG and LDP limited weight in my consideration of this appeal.
17. In any event, given the size and resulting value of the property, allied to its maintenance costs, I am of the opinion that Lettons House would not be a suitable property to be regarded as an affordable dwelling to purchase or rent. Accordingly, whilst the aim of national policy is to retain rural enterprise dwellings as affordable dwellings, in this case it appears highly unlikely that the dwelling would be suitable to satisfy a local need.

Conclusion on Main Issue

18. In conclusion, I find that exceptional and changed circumstances have been demonstrated in this case. In my view no convincing evidence has been put forward to indicate that the continued occupation of Lettons House should be restricted to rural enterprise workers or those seeking affordable housing. As such, I find no conflict with: TAN 6 and its supporting practice guidance. Neither would it conflict with UDP Policies ENV 1; HOUS 3; and HOUS 6, which relate to, amongst other matters, development in the countryside for which a rural location is essential and the removal of agricultural occupancy conditions.
19. In reaching this conclusion I have noted those other appeal decisions brought to my attention. However, each case is different and has to be considered on its individual merits, as I have done.

Other Matters

Financial contribution

20. The Council stated that a financial contribution, delivered by a s106 agreement, is required towards affordable housing if the disputed condition is removed and if the house is not deemed suitable for transfer into the affordable housing stock. It is asserted that to sell Lettons House, without the restrictive occupancy condition, would be tantamount to the creation of a new dwelling. The Council assert that a s106 agreement would be a pragmatic solution in this case which would be combatable with its emerging LDP, the test of Welsh Circular 13/97: Planning Obligations, and national planning policy and regulation.
21. Whilst I can appreciate the enthusiasm of the Council to realise their objectives in respect of affordable housing with all possible speed, there are no adopted development plan policies in place to facilitate such a contribution. Indeed, TAN 6 states that "*planning authorities should employ all available policy approaches in an innovative way*" (my emphasis) and TAN 2 states that "*Housing strategies and development plans set the context and objectives for delivering affordable housing and must be seen to be implemented*".
22. Given the circumstances in this case it is not necessary for the appellant to make a contribution towards affordable housing.

Conclusion

23. Therefore, for the reasons given above, and having regard to all matters raised, I have allowed the appeal and removed the occupancy condition from the 2011 permission. This means that there are now no restrictions on the occupation of Lettons House.

Joanne Burston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr L Forse Agent, Boyer Planning
Ms N Pindham Counsel, No5 Chambers
Mr R Jones Watts and Morgan
Mr P Hayman Appellant
Mr D Hayman Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Rowlands Vale of Glamorgan Council, Appeals and Enforcement Officer
Mrs J Moss Vale of Glamorgan Council, Appeals Team Principal Planner
Ms C Pugh Vale of Glamorgan, Principal Planner, Development Control

INTERESTED PARTIES:

Mr D Watts Local Resident
Mr M M^c Guire Local Resident
Mr M Lewis Local Resident
Mr D Davies Interested party
Ms C Williams Interested party

DOCUMENTS SUBMITTED AT THE HEARING:

Doc 01 Council's neighbour notification letter and list of those notified.
Doc 02 Map of the local area, submitted on behalf of the appellant
Doc 03 Property details, submitted by Ms C Williams
Doc 04 Letter dated 21 December 2016, submitted by Ms C Williams
Doc 05 Notes taken from Planning Committee meetings, submitted by Mr Watts
Doc 06 Property details, Submitted by Mr C Lewis