



VALE OF GLAMORGAN COUNCIL

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended)**

Section 78 Appeal

WRITTEN STATEMENT FOR HEARING

Appeal by Mr Peter Hayman

Site at Lettons House, Lettons Way, Dinas Powys

TOWN AND COUNTRY PLANNING (HEARING PROCEDURE) (WALES) RULES 2003

PLANNING INSPECTORATE REF. NO: APP/Z6950/A/16/3161658

VALE OF GLAMORGAN REF. NO: 2014/01033/FUL

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**Vale of Glamorgan Council,
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1. INTRODUCTION

- 1.1 This appeal relates to the decision of the Vale of Glamorgan Council to refuse planning permission for 'Re-submission of application for removal of modified agricultural/rural enterprise occupancy condition imposed on application 2011/0503/FUL in respect of the erection of existing 2 storey house' at Lettons House, Lettons Way, Dinas Powys.
- 1.2 The application was submitted on 2nd September 2014, and subsequently REFUSED planning permission on 13 May 2016 for the following reason:
1. Having regard to Policies HOUS5 - Agricultural or Forestry Dwellings; and HOUS6 - Agricultural Occupancy Conditions of the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011 and the guidance contained in Technical Advice Note (Wales) 6 'Planning for Sustainable Rural Communities', in Planning Policy Wales (Edition 8 – 2016) and Welsh Office Circular 016/2014 'The Use of Planning Conditions for Development Management', the applicant has failed to demonstrate that there is no longer any need for the dwelling to accommodate an agricultural or forestry worker, nor that there is not a realistic potential that the dwelling could be used to accommodate those eligible for affordable housing. As such Condition No. 1 of planning permissions 2011/0503/FUL, which limits occupation of the dwelling to that of a person employed or last employed in a rural enterprise or for the provision of accommodation for those eligible for affordable housing remains justified and has not outlived its usefulness. Accordingly, the proposal to remove this condition would be contrary to the above defined national and local policies including ENV1 - Development in the Countryside and HOUS3 - Dwellings in the Countryside of the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011, which seek to prevent the erection of dwellings in the countryside without an agricultural or forestry justification.

2. THE SITE AND ITS SURROUNDINGS

- 2.1 Details of the site and its context, details of the proposed development and the relevant planning history are all provided in the officer's report, which has previously been sent to PINS alongside the relevant local policies and guidance on 23rd November 2016.
- 2.2 The condition subject of this appeal, Condition 1 of 2011/0503/FUL, reads as follows:

" 1. 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.

Reason: 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 ENV1, HOUS3 and HOUS5 of the Unitary Development Plan."

3. RELEVANT PLANNING POLICIES

Local Planning Documents

- 3.1 Details of the relevant local and national planning policies are provided in the officer's report, save the additional policies and guidance outlined below. The officer's report has previously been sent to PINS alongside the relevant local policies and guidance on 23rd November 2016.
- 3.2 In the aforementioned officer's report, reference is made to Planning Policy Wales Edition 8 (2016). This document is now superseded by Edition 9 (2016). The policies referred to within the officer's report have been updated. The text of paragraph 2.8.4 is retained, but at Paragraph 2.14.4. The text of Chapter 9 as referred to in paragraphs 9.2.14 and 9.3.6 is retained. It is therefore considered that there have been no changes to Planning Policy Wales that are material to the determination of this application.
- 3.3 In addition to the above, Technical Advice Note (TAN) 2 – Affordable Housing, is considered relevant in assessing the eligibility of those compliant with the condition, whilst Welsh Office Circular 13/97: Planning Obligations is also of

relevance considering the grounds of appeal. TAN 2 also provides the following guidance in relation to off-site affordable housing contributions:

“12.5 The strong presumption is that affordable housing secured through planning obligations will be provided on the application site so that it contributes to the development of socially mixed communities. Development plans (or SPG) should set out the exceptional circumstances where provision may not need to be on an application site (for example where the management of the affordable housing cannot be effectively secured). In such instances, any off-site provision of affordable housing or a financial contribution in lieu of on-site provision must contribute towards the objective of providing affordable housing. This could be achieved by bringing existing housing back into use for affordable housing or supporting the delivery of affordable housing on another site (either for 100% affordable housing or another site where affordable housing is to be provided).”

4. THE LOCAL PLANNING AUTHORITY’S CASE

- 4.1 The Local Planning Authority (LPA) considers that the officer’s report prepared in respect of the original application is relevant to the determination of this appeal and provides a robust and clear analysis of the LPA’s case. It is not, therefore, considered necessary to repeat the arguments explored within the report, which should be considered as the basis of the LPA’s case. This report seeks to address any additional issues raised in the Appellant’s grounds of appeal.
- 4.2 The Appellant identifies four grounds of appeal, the first relates to the assessment of the application against relevant local and national policy. No specific policies are referenced at this stage, but the policies considered relevant by the LPA are outlined in the Officer’s report and Part 3 of this statement.
- 4.3 The second ground contends lack of need for rural enterprise dwellings and affordable housing within the locality, as demonstrated by the Appellant’s marketing of the property and failure to sell. The principal issue relates to whether sufficient evidence has been submitted to demonstrate that there is no longer any realistic need for this rural enterprise dwelling and whether the condition has thus outlived its usefulness. Having regard to the location, it is clear that planning permission would not have been granted then, or indeed now, without a clear justification and a condition to restrict the occupation to those eligible as rural enterprise workers, or if such need does not exist, to those in need of affordable housing.
- 4.4 In support of the application, the appellant submitted a valuation report produced by Morgan & Davies of Lampeter, Ceredigion in 2013. The estimated open market value was £595,000. The property was marketed locally at £495,000 with Watts and Morgan in 2011, subsequently reduced to £450,000 by early 2013 and is still being advertised at this price. The price appears to have been reached by reducing this open market estimation by 25%.

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- 4.5 The LPA considers that the Appellant has not demonstrated that the property has been made as attractive as possible to the qualifying market. The property has been marketed for a significant time, but at a price that is likely to be unaffordable to those eligible to occupy it. There has been interest in the property from several parties, although the majority from persons ineligible to occupy. A conditional offer from United Welsh Housing Association of £420,000 in c. September 2013, later withdrawn, some interest was also expressed by Newydd Housing Association, who ultimately considered the asking price too high to be viable for them. In addition, a very recent offer of £380,000 from Mr Davies and Ms Williams, who have stated that Mr Davies was a farmer compliant with the condition, has also been made. The aforementioned offers were not accepted.
- 4.6 The 'guide price' of £450,000 appears to have been reached by reducing the open market value by 25%, on the basis that this represents an average reduction in value resulting from the presence of an agricultural tie. It has not been reached by any robust assessment of the value of similarly tied properties in the locality. A reduction of 20 to 25% may represent a typical or average reduction, but does not take into account the property or local conditions. In a fairly rural location, outside of Dinas Powys, considerable interest can be expected on the open market given the proximity to Cardiff (relative, commutable by car). In areas such as this where market house prices are above average, a greater reduction would be required to make the property affordable to rural enterprise workers or those eligible under affordable housing criteria as outlined under TAN2. The asking price of £450,000 is seen as unaffordable to rural enterprise workers, to a degree that would put off potential eligible buyers. In addition, two housing associations have shown interest in the property, but no subsequent sale agreed.
- 4.7 The third ground states that the removal of the condition would not have a significant adverse effect on the supply of affordable housing in the Local Planning Authority's area. As highlighted in the Officer's report, TAN 6 encourages a broader occupancy condition that allows for the occupation of tied properties by those eligible for affordable housing, where the original rural enterprise need has ceased and it has been demonstrated there is no realistic prospect of occupancy by other eligible rural enterprise workers. The LPA considers that the removal of occupancy conditions where this lack of demand has not been demonstrated would be detrimental to the overall supply of affordable housing. It is an approach consistent with the aims of TAN2, which discourages the disposal of unoccupied affordable units on rural exception sites on to the open market. Moreover, the Officer's report outlines the LPA's case that there is an identified affordable housing need in the locality. Updated figures as of 22nd December, showing the breakdown of affordable rented accommodation in Dinas Powys, are provided in Appendix 2 and support the LPA's case.
- 4.8 The fourth ground relates to a proposal from the LPA that would offset the negative effects of the development by seeking a financial contribution towards the provision of a similar off-site affordable unit. The appellant contends there is no support for from national or local policy for seeking financial contributions as justification for lifting an occupancy condition. The LPA's reasoning for this approach in relation to this matter is outlined within the Officer's report.
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- 4.9 The Appellant had been in negotiations with United Welsh Housing Association, culminating in the withdrawn offer, and Newydd Housing Association had shown some recent interest but declined to make an offer considering the advertised price. The correspondence from Newydd Housing Association indicated that their anticipated costs would mean the property was only viable at a purchase price of around £300,000 to £350,000. In the opinion of the LPA, the provision of an off-site contribution towards a unit elsewhere, whilst releasing Lettons House and allowing the property to realise its open market value, was a reasonable mechanism to overcome both the LPA's policy objections and the cost burden to prospective social landlords to bring the property into DQR compliance. If the stated open market price of £595,000 was realised, the value of the sale to the Appellant would be very close to their £450,000 guide price and, in the opinion of the LPA, greater than the value of the property (to the restrictive market) as encumbered with the rural occupancy condition.
- 4.10 The LPA considers that the proposed contribution is both lawful and has a basis in national planning policy. As previously referred, TAN6 allows for the broadening of the eligibility criteria, and although the retention of the property with this condition would be preferable, a potential off-site contribution was put forward for consideration. No agreement was reached with the appellant. Planning obligations and contributions are a recognised practice for the delivery of affordable housing arising from new development. Welsh Office Circular 13/97: Planning Obligations sets out national policy for the use of planning obligations under Section 106 of the Town and Country Planning Act 1990. It states that the obligations must be necessary, relevant to planning, directly related to the development, fair and reasonable. This is supported by Section 123 of the Community Infrastructure Levy Regulations 2010 (as amended) The application seeks to remove a condition that would result in the loss of a potential affordable housing unit and the LPA considers that this approach is compatible with the tests of the circular and broader national policy.
- 4.11 It should be noted that this approach was proposed as a pragmatic solution that might have overcome the fundamental policy objections of the LPA arising from the removal of the restrictive occupancy condition. In addition to this, the LPA considers the Appellant must also demonstrate that there is no reasonable prospect of sale to persons eligible to occupy the property as a rural enterprise worker. The LPA considers the property has also been marketed at a price reached by only an arbitrary reduction, one that the appellant has been unwilling to reduce further to attract interest. There is no basis in national or local planning policy to suggest this is the correct and only approach to determine the value of rural enterprise dwellings. It is considered that the significant sum is likely to deter interest from most eligible persons. A recent offer of £380,000 is known to have been made, which has been rejected outright. It is noted this is significantly below the guide price, but the Appellant has not entered into any serious negotiations regarding the price, despite the keen interest. The Appellant has therefore failed to demonstrate that there is no longer any realistic prospect of sale to persons eligible as rural enterprise workers.

5. CONCLUSION

- 5.1 The LPA considers that the Appellant has failed to demonstrate that there is no longer a realistic need for a rural enterprise dwelling or an affordable housing unit in the locality. The valuation of the property has been reached through an arbitrary reduction, to a sum that is likely to be unaffordable to rural enterprise workers and the guide price has not been reduced for over three years in an attempt to generate interest. The Appellant has not entered into serious negotiations with an eligible interested buyer, despite on-going interest and a formal offer of purchase. The Appellant has also previously rejected a proposal from the LPA that would have allowed for release the property for sale on the open market whilst realising a similar and potentially better value to the vendor than the current guide price.
- 5.2 For the reasons detailed above, the Inspector is respectfully requested to dismiss this appeal.

6. LIST OF SUGGESTED CONDITIONS

- 8.1 Should the appointed Inspector be minded to allow this appeal, the Vale of Glamorgan Council does not consider that any additional conditions should be imposed.