
APPLICANT: MR STEVEN HARDWICK

Site and Surroundings

Warren Farm is a detached bungalow located on the northern side of Bar Road to the east of the designated Local Plan settlement of Curbar.

Proposal

The current application has been made 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 relevant condition is an agricultural occupancy condition attached to NP/BAR/673/23 dated 4 September 1973.

The relevant condition states:

The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed, in the locality in agricultural as defined in section 290(1) of the Town and Country Planning Act, 1971 or in forestry (including any dependents of such a person residing with him), or a widow or widower of such a person.

The reason given for the condition is:

Because of the location of the site which is away from the established settlement of the area and from services and facilities which they have to offer, the local planning authority do not consider that the site would be acceptable for residential development in the absence of an essential agricultural need.

The application is a resubmission of planning application seeking to remove the same condition refused planning permission earlier in 2009 by the Authority’s planning committee. The applicant states he has withdrawn a subsequent appeal against the refusal to allow the Authority to reconsider the proposal.

Key Issues

- whether the condition has outlived its usefulness, taking into account advice in Annex A of Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) concerning the removal of agricultural occupancy conditions and Policy LH3 of the Peak District National Park Local Plan.

History

1973 Outline planning permission granted for agricultural worker’s dwelling at Warren Farm subject to an agricultural occupancy condition (NP/BAR/673/23)

1980 Reserved matters approved (NP/WED/976/380). The agricultural occupancy condition was restated on the Planning Decision Notice.

1986 Prior notification submitted for a general purpose shed at Warren Farm.
1989 Application for planning permission for extension to Warren Farm withdrawn prior to determination.

2008 Planning permission refused for erection of garage

2008 Planning permission granted for erection of garage and store (NP/DDD/0408/0332)


2009 Undetermined application seeking amendments to the approved plans attached to NP/DDD/0408/0332

Consultations

Highway Authority – No objections

District Council – Raise concerns that the property has not been marketed effectively

Parish Council – Object for the following reasons:

- concerned that reasonable attempts have not been made to find a person who could occupy the dwelling in compliance with the condition and that the property has not been otherwise marketed effectively
- concerned that the assessment of habitable space is inaccurate and that the breach of condition has not been reported accurately in the submitted application.

Representations

The Authority has received nine letters of support for the current application. Issues raised include the following:

- the original condition was imposed incorrectly;
- the condition has otherwise been breached for a period of more than ten years;
- the condition is no longer required because there is no demand for agricultural workers’ dwellings in the local area;
- reasonable attempts have been made to find a person who could occupy the dwelling in accordance with the condition;
- the property would otherwise be unsuitable as holiday lets and unaffordable to local people on a low or moderate income.

The Authority has received eight letters of objection to the current application. Issues raised include the following:

- the original condition was imposed correctly;
- the condition has not been breached for a continuous period of more than ten years;
- the condition is still required because the submitted details do not demonstrate there is longer a demand for the dwelling with the condition intact;
- reasonable attempts have not been made to find a person who could occupy the dwelling in accordance with the condition; and
- the property would otherwise be more affordable if the habitable floor space was calculated with reference to that which complied with building regulations.
All letters are available to view on the public file. All material planning considerations relevant to the current application and raised in representations to the Authority are addressed in the report below.

Main Policies

Annex A of Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7)

Relevant Local Plan policies include: LH3

Comment

In this case, no application for a Certificate of Lawfulness of Existing Use or Development has been made and there is insufficient evidence within the submitted details to demonstrate that the condition has continuously been breached for a period of more than ten years prior to the current date. There is also insufficient evidence to demonstrate that the condition was inappropriately imposed especially taking into account permission would otherwise have been refused for a newly built dwelling to meet general demand in this location. In any event, even if the condition was wrongly imposed or had been breached, or indeed is currently being breached, the key issue remains whether the agricultural occupancy condition has outlived its usefulness taking into account the advice in paragraph 17 of Annex A to PPS7 and in Local Plan policy LH3. This stance is supported by a very recent appeal decision relating to a refused s.73 application for removal of an agricultural occupancy condition at Trogues Farm, Wensley (APP/M9496/A/09/2098734).

Paragraph 17 of Annex A of PPS7 provides that dwellings subject to an agricultural occupancy condition should not be kept vacant, nor should their present occupants be unnecessarily obliged to remain in occupation simply by virtue of planning conditions restricting occupancy which have outlived their usefulness. Local planning authorities should set out their policy approach to the retention or removal of such conditions. Local policies should be based on an up to date assessment of the demand for farm (or other occupational) dwellings in the area, bearing in mind that it is the need for a dwelling for someone solely, mainly or last working in agriculture or forestry in an area as a whole, and not just on the particular holding, that is relevant.

Local Plan policy LH3 provides that the removal of an agricultural occupancy condition will not be permitted unless it can be demonstrated that reasonable attempts have been made to allow the dwelling to be used by a person who could occupy it in accordance with the restriction and the long term need for the dwelling in the locality has ceased (LH3(a)(i) and (ii)).

The Authority’s Annual Monitoring Report 2006/07 identifies 118 completions of agricultural workers dwellings between 1991/1992 and 2006/2007 compared to an estimated 54 identified in the Structure Plan over the same period and estimates that a further 62 would be completed over the following 8 years up to 2015. There is also further evidence of a continuing need for new agricultural dwellings in the National Park. The Authority has granted planning permission or approved reserved matters for at least eight new farm workers dwellings in various locations within the National Park during 2008. This year, a further three new farmer worker’s dwellings are awaiting finalisation of s.106 legal agreements prior to permission being issued.

Officers accept that the new dwellings referred to in the Monitoring Report or recently granted planning permission may not be in comparable locations or be comparable dwellings to the bungalow at Warren Farm, nevertheless they indicate a need for agricultural workers dwellings in the National Park. It should also be noted compliancy with an agricultural occupancy condition is less onerous than meeting the financial and functional tests in Annex A to PPS which would be required to justify a newly-built farm worker’s dwelling. Therefore, the application can not be considered to be compatible with LH3(ii) unless retaining the tie offered no advantages to the farming community.
In this respect, the current application includes details of a valuation of the property completed by a suitably qualified surveyor which suggests a value in excess of £500,000 with the occupancy restriction in place and taking into account the current condition of the bungalow and the substantial garage block granted permission in 2008. Although officers accept that this price may not be affordable to the average farm worker, the property would still need to be marketed effectively to demonstrate there would be no interest in the property by persons who could occupy it in accordance with the agricultural occupancy condition. This stance is supported by the recent appeal decision referred to previously in this report and recent case law reiterates the onus is on the applicant to demonstrate an absence of need\(^1\).

Details with the submitted application indicate the property was advertised for let for 6 months during a period defined by the applicant as 2007/2008 in the Peak Advertiser. The applicant states that no indication of monthly rent was given in any of the twelve advertisements but the advertisements clearly stated the property was subject to an agricultural occupancy condition. However, the property does not appear to have been offered for sale. The submitted details do not suggest otherwise.

Therefore the marketing undertaken by the applicant does not conclusively demonstrate that there is no interest in the property by persons who could occupy it in accordance with the restriction and would wish to buy the property outright. Taking into account the evidence of continuing demand for agricultural worker’s dwellings in the National Park; officers are unable to conclude that the condition has outlived its usefulness. Therefore, the current application does not meet the requirements of Local Plan policies LH3(a)(i)and(ii) and any consent would be incompatible with advice in Annex A of PPS7. Consequently, it is not necessary to consider whether the provisions of LH3(b) would be otherwise appropriate in this case. Therefore, the suitability of the property for a local needs dwelling or holiday let does not strike at the key issues in the determination of the current application. This stance is supported by the recent appeal decision noted previously which also fully supports a recommendation of refusal in this case.

Conclusion

It is the need for a dwelling for someone solely, mainly or last working in agriculture or forestry in an area as a whole, and not just on the particular holding, that is most relevant to the current application. The submitted details fail to substantiate the claim there is no interest in the property by persons who could occupy it in accordance with the restriction by failing to demonstrate that the property has been marketed effectively. Therefore, many of the points whether raised in the submission, evidence prepared for the withdrawn appeal, previous and ongoing correspondence between the Authority and the applicant, in representations and in other correspondence do not address the key issues in the determination of the current application; namely whether the agricultural occupancy condition has outlived its usefulness with reference to advice in PPS7 and Local Plan policy LH3.

Points raised including the circumstances of the original imposition of the condition, compliancy with the condition, the habitable floor area of the bungalow, and the appropriateness of any future use of the property either as holiday lets or affordable dwelling do not outweigh or offset the fact that the current application is premature until the property has been marketed for sale for a reasonable period rather than solely for rent. In the absence of any evidence that the property has been marketed for sale in the last twelve months, officers are unable to conclude that the condition has outlived its usefulness. Consequently, in accordance with the advice in paragraph 17 of Annex A to PPS7 and Local Plan policy LH3, there is no other option but to recommend that planning permission should be refused for the current application.

\(^1\) Ellis vs CLG and others (2009)
Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

RECOMMENDATION:

That the application be REFUSED for the following reasons:

1. The current application fails to meet the requirements of Local Plan policy LH3(a)(i) and Local Plan policy LH3(a)(ii) and any consent would be incompatible with advice in Paragraph 17 of Annex A of PPS7.

List of Background Papers (not previously published)

Nil