

Planning, Taxi Licensing and Rights of Way Committee Report

Application No:	P/2017/0130	Grid Ref:	289762.46 242629.24
Community Council:	Llangamarch Wells	Valid Date:	Officer: 30/01/2017 Thomas Goodman
Applicant:	Mr Peter Smith & Mrs Lisa O'Neil Smith, Oak House Farm, Tirabad, Llangammarch Wells, Powys, LD4 4DU		
Location:	Oak House Farm, Tirabad, Llangammarch Wells, Powys, LD4 4DU		
Proposal:	Section 73 application to remove condition 3 of permission B/96/0182 relating to occupancy restrictions		
Application Type:	Application for Removal or Variation of a Condition		

Report Update

Please note that this report forms an update to the previous report circulated to Members.

Representations

Following the original Committee Report, a public consultations has been received which states the following:

"I have contacted your office today with regard to Oakhouse farm Llangammarch Wells as I am a prospective buyer of the farm that has been advertised for sale on UK land and farms through the agent James Dean.

I have made two appointments which were very difficult to arrange as claims were made that they could not take a viewing due to other commitments away from the farm and agreed for a Saturday appointment then within a few days cancelled the appointment because they were too busy lambing!!! To take the viewing which was a complete surprise and we had already employed someone to look after our farm for the day which we are currently tenants on in order to view the property.

The second appointment which has been made verbally and has not been confirmed to date in an email as requested, is for the 22nd April which I have noted is after the decision for lifting the current Agricultural tie which has been requested in a planning application to yourself.

I feel that if this restriction was put on to keep the holding available for the future to be farmed in keeping with the locality then we as purchasers would have fitted that criteria and it is not necessary to lift the tie currently on the property. Also if the route to achieve the lifting of this restriction involves innocent parties like ourselves who are genuine hard working farming people and we have put our lives on hold to view the property and go forward with such a purchase then this route of lifting the application should never be considered as a good

reason to lift the tie either now or in the future of any privately owned section 106 accommodation.”

Officer Appraisal

Members are advised to consider this application in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Principle of Development

UDP policy HP6 relates to dwellings in the open countryside. HP6 states that the removal of an occupancy condition or planning obligation will only be considered on the basis of realistic assessments of the continuing need for its retention and where genuine but unsuccessful attempts have been made to market the dwelling in connection with the existing use for a period of at least 12 months at a price that realistically reflects the existence of the occupancy condition.

Condition 3 of the permission B96/0182 states:

“The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

Reason: The dwelling is proposed for a site where a dwelling would not normally be permitted other than for agricultural or forestry purposes, and to ensure that the dwelling is available to meet the special needs of agriculture or forestry.”

Information submitted in support of the application demonstrates that the property has been marketed at various locations for the required time period as stated within policy HP6.

Powys County Council’s Property department has been consulted on the proposed development. The Officer has stated that the proposed development has now been marketed within the agricultural press as well as Rightmove and the Local Press. The property has been advertised in excess of 12 months. The property has been marketed at £450,000, James Dean Estate Agents have stated that a realistic asking price for this property without the occupancy restriction would be marketed in the region of £625,000. Despite the property being marketed for in excess of 12 months no offers have been made. However, the comments received from the member of the public as a prospective purchaser states that they have made attempts to view the property, but have been informed that the viewings were cancelled and could not view the property. Regardless of this information, the property has been appropriately marketed at a reasonable price for a continuous period in excess of 12 months and therefore meets the requirements of HP6.

Given that the property has been appropriately marketed for a continuous period exceeding 12 months, it is considered that there has been a genuine but unsuccessful attempt at marketing the dwelling. It is therefore considered that the proposed development satisfies the requirements of HP6 and therefore Condition 3 of the B/96/0182 application can be removed.

Section 106 Agreement

The original planning application (B/96/0182) also had a Section 106 Agreement which ties the agricultural dwelling to the land forming the agricultural holding. In determining a Section 73 application consideration must be given to the planning obligation that was originally applied to the consent.

It is no longer the practice to tie agricultural dwellings to the holding as it is considered that the rural enterprise dwelling condition is appropriate. As it is clear that unsuccessful efforts have been made to secure a future owner who meets the planning condition it would be unreasonable to re-issue the Section 106 Agreement tying the dwelling to the land.

Other Legislative Considerations

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

Equality Act 2010

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The above duty has been given due consideration in the determination of this application. It is considered that there would be no unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

Planning (Wales) Act 2015 (Welsh language)

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material unacceptable effect upon the use of the Welsh language in Powys as a result of the proposed decision.

Wellbeing of Future Generations (Wales) Act 2015

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that the proposed development is in accordance with the sustainable development principle through its contribution towards the well-being objectives.

Recommendation

This updated report should be read in conjunction with the previous report. Officers consider that the additional information supports the original recommendation and therefore it is considered that the recommendation of Consent remains.

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