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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 26/10/20

gan **Richard Duggan, BSc (Hons)**  
**DipTP MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 17<sup>th</sup> November 2020**

## Appeal Decision

Site visit made on 26/10/20

by **Richard Duggan, BSc (Hons) DipTP**  
**MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 17<sup>th</sup> November 2020**

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**Appeal Ref: APP/T6850/A/20/3249158**

**Site address: Coed-Y-Dinas, Mochdre, Newtown, SY16 4LA**

**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 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr. & Mrs. E. I. and S. D. Rowlands-Jones against the decision of Powys County Council.
  - The application Ref: 19/1071/REM dated 02 July 2019, was refused by notice dated 24 September 2019.
  - The application sought planning permission for a bungalow and access without complying with a condition attached to planning permission Ref: 16030 dated 16 April 1974.
  - The condition in dispute is No. 1 which states: "*The occupation of the bungalow shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry (including any dependants of such a person residing with him) or a widow or widower of such a person*".
  - The reason given for the condition is: "*Planning and Highway Considerations*".
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### Decision

1. The appeal is allowed, and the planning permission Ref: 16030 granted on 16 April 1974, is varied by deleting condition No 1.

### Main Issues

2. The main issues are: whether or not there is a continuing need for the occupation of Coed Y Dinas to be restricted, having particular regard to the need for an agricultural workers' dwelling in the area, and whether or not the condition meets the tests prescribed for conditions in national guidance.

### Reasons

3. The appeal property is a detached bungalow located in a relatively isolated location in open countryside some 2.5 km from Newtown. Planning permission was granted in 1974 for the bungalow as it was justified at the time as being necessary to house an agricultural worker. That was reflected in the imposition of the disputed condition which aimed to ensure that future occupation of the bungalow was only by qualifying
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agricultural workers (or retired workers) and their dependants. Coed Y Dinas now has no links with any adjoining agricultural land which is now in separate ownership and it is not 'tied' to any land other than its own garden. The issue before me therefore turns on whether there is a continuing need for the property to be restricted by the disputed condition.

4. Policy H1 of the Adopted Powys County Council Local Development Plan (LDP) sets out the type of housing development that would be permitted in the open countryside, which includes "*where the development relates to a need for housing which meets current national policy on housing in the open countryside*". It is clear that the appeal bungalow would not be permitted in this location today unless it met an essential rural enterprise need in line with national policy and guidance. Therefore, at this time the grant of permission without the disputed occupation condition would be contrary to Policy H1 of the development plan.
5. National guidance on planning conditions<sup>1</sup> says that, where a rural enterprise occupancy condition has been imposed, it will not be appropriate to remove it on subsequent application unless it is shown that the existing need for such dwellings for rural enterprise workers in the locality no longer warrants reserving the house for that purpose. Additional national guidance<sup>2</sup> says that the longstanding mechanism for demonstrating the absence of need has been market testing, and evidence of effective market testing will be required over a reasonable period, usually at least 12 months. The critical aspects of market testing are that: the availability of a property is advertised in such a manner that compliant purchasers or tenants are likely to be made aware of it; and the price or rent attached to a property reflects the restrictive occupancy requirement. Notwithstanding the clear National Guidance on such matters the Appellant has not provided any evidence in this regard. Therefore, it has not been demonstrated that there is no longer a need for the retention of the property as an agricultural workers' dwelling, contrary to the development plan and national policy and guidance.
6. The property has been unlawfully occupied for over 10 years, and a successful application was made for a lawful development certificate (CLEUD)<sup>3</sup> for continued residential use of the appeal dwelling in breach of the agricultural occupancy restriction condition<sup>4</sup>. As such, the Appellant relies on the argument that the condition does not meet the tests prescribed for planning conditions within Circular 16/14 as it is no longer enforceable and should be removed. To that effect, the Appellant has referred me to 7 appeal decisions to illustrate this, and to other planning applications where the Council has approved the removal of occupancy conditions.
7. The Council has also cited a decision<sup>5</sup> where the Inspector dismissed the appeal against the removal of an agricultural occupancy condition. Whilst I have noted the conclusions made by the Inspector in that appeal, it appears that the future occupancy of the appeal property in that case had not been mapped out to the Inspector. In

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<sup>1</sup> Circular 16/14 'The Use of Planning Conditions for Development Management'

<sup>2</sup> Practice Guidance Rural Enterprise Dwellings - Technical Advice Note 6 Planning for Sustainable Rural Communities December 2011

<sup>3</sup> Certificate of Lawful Existing Use or Development (CLEUD)

<sup>4</sup> Powys County Council reference: 19/1070/CLE granted on 9 August 2019

<sup>5</sup> APP/P9502/A/17/3178153

comparison, the Appellants in this current appeal have provided a signed and dated Personal Statement which confirms that the Appellant's son, who is their successor in title, would ensure that the property would not become vacant and would continue to be occupied by persons not employed in agriculture, or that the son would himself live in the property. Therefore, the breach is likely to continue indefinitely and will therefore not be enforceable for the foreseeable future due to the CLEUD and the immunity afforded to the Appellants at the current time and to their son or another non-qualifying occupier in the future.

8. The Personal Statement also confirms that the Appellants would not sell the property to anyone who complied with the occupancy condition due to the immediate loss in the value of the property. The Appellants state that the property has been valued at £240,000 - £250,000, but taking into account the agricultural condition the value would be in the region of £175,000 - £180,000, a fall in value of approximately 30% which is the typical reduced valuation for a dwelling subject to an occupancy condition. Whilst I have not been provided with any evidence relating to professionally prepared marketing or valuation material, I have no reason to doubt these approximate valuations, and the Council has not put forward any evidence to counter these valuations. Given the risk of such a loss in the value of the house that would confront the sellers and a qualifying person, I am of the opinion that this is a scenario that is very unlikely to arise at least for the foreseeable future. It is also highly likely that the Appellants would sell the house on to another non-qualifying person and not as an agriculture or forestry workers property.
9. The CLEUD is unfettered and the benefits it provides would be transferable to subsequent occupiers. Therefore, it is clear that the condition is not enforceable as long as the Appellants continue to occupy the dwelling, and neither would it be enforceable against any future occupier unless they met the qualification requirements. The appeal property could consequently be occupied in breach of the condition by any non-qualifying person in perpetuity.
10. Notwithstanding this, I have carefully considered the Council's representations and I accept that the potential future occupation of the appeal property by a qualifying person would have the effect of breaking the continuity of the breach, and the occupancy condition would again apply and would be enforceable. However, in my opinion, the likelihood of any future occupiers complying with the agricultural occupancy condition, although not impossible, is very slight.
11. I afford significant weight to the CLEUD and regard the ability to occupy Coed Y Dinas in breach of the disputed condition as a significant material consideration which would, in this specific circumstance, clearly outweigh the conflict with the development plan. Consequently, the condition does not meet the 6 tests prescribed in national guidance, and it is no longer necessary or reasonable to continue to require the property to be occupied by qualifying persons.

## **Conclusions**

12. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of building healthier communities and better environments.

13. For the reasons given above and having regard to all other matters raised I conclude that the appeal should succeed. This means that there are now no restrictions on the occupation of Coed Y Dinas.

*Richard Duggan*

INSPECTOR