
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 23/11/20

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

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 16th December 2020

Appeal Decision

Site visit made on 23/11/20

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

an Inspector appointed by the Welsh Ministers

Date: 16th December 2020

Appeal Ref: APP/T6850/A/20/3252618

Site address: Bron Heulwen, Bettws Cedewain, Newtown, SY16 3LF

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 Phillip Davies against the decision of Powys County Council.
 - The application Ref: 19/1545/REM dated 22 September 2019, was refused by notice dated 26 November 2019.
 - The application sought planning permission for the erection of an agricultural dwelling (outline), installation of septic tank, construction of vehicular access and alteration to existing access without complying with a condition attached to planning permission Ref: M24790 dated 10 October 1994.
 - The condition in dispute is No. 4 which states: "*The occupation of the proposed dwelling shall be limited to a person solely or mainly employed, or last employed prior to retirement, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any dependents normally residing with such person*".
 - The reason given for the condition is: "*It is the approved policy of the local planning authority not to permit residential development outside settlements in the absence of special agricultural needs and this permission is granted specifically to provide accommodation for a person employed in agriculture*".
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Decision

1. The appeal is allowed and the planning permission Ref: M24790 granted on 10 October 1994, is varied by deleting condition No. 4.

Main Issue

2. Whether or not there is a continuing need for the occupation of Bron Heulwen to be restricted, having particular regard to the need for an agricultural workers' dwelling in the area.

Reasons

3. The appeal property is a large detached dwelling located in a relatively isolated location in open countryside some three kilometres from Newtown. Planning permission was granted in 1994 for the dwelling as it was justified at the time as
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being necessary to house an agricultural or forestry worker. That was reflected in the imposition of the disputed condition which aimed to ensure that future occupation of the dwelling was only by qualifying agricultural or forestry workers (or retired workers) and their dependants. Bron Heulwen 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 dwelling 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 conditions¹ 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 guidance² 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 Certificate of Lawful Existing Use or Development (CLEUD)³ for continued residential use of the appeal dwelling in breach of the agricultural occupancy restriction condition. 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 appeal decisions⁴ and a number of decisions made by English Local Planning Authorities which have approved the removal of occupancy conditions.

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

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

³ Powys County Council reference: 19/1188/CLE granted on 18 September 2019

⁴ APP/Y9507/W/16/3147251 and APP/M9496/W/19/3233160

7. The Council has also cited an appeal decision⁵ where the Inspector dismissed the appeal against the removal of an agricultural occupancy condition. I have noted the conclusions made by the Inspector in that appeal 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 of the appeal property complying with the agricultural occupancy condition, although not impossible, is very slight mainly due to the financial loss that would ensue to the sellers.
8. I have not been provided with any evidence relating to professionally prepared marketing or valuation material or been provided with an actual valuation for the appeal property. Notwithstanding this, I saw that it is a large detached dwelling set within spacious grounds and a fall in value of approximately 30%, which is the typical reduced valuation for a dwelling subject to an occupancy condition, would likely lead to a significant drop in the value of the house. Given the risk of such a financial loss 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 highly likely that the Appellants would sell the house on to another non-qualifying person rather than an agriculture or forestry worker.
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. I afford significant weight to the CLEUD and regard the ability to occupy Bron Heulwen 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

11. 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.
12. 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 Bron Heulwen.

Richard Duggan, INSPECTOR

⁵ APP/P9502/A/17/3178153