

COMMITTEE REPORT

Date: 9 January 2020 **Ward:** Osbaldwick and Derwent

Team: East Area **Parish:** Dunnington Parish Council

Reference: 19/01309/FUL

Application at: Cedar House York Road Dunnington York YO19 5LF

For: Removal of condition 3 (agricultural occupancy restriction) of planning permission reference 8/03/396/PA dated 12 March 1992

By: Mr And Mrs Barnes

Application Type: Full Application

Target Date: 14 January 2020

Recommendation: Refuse

1.0 PROPOSAL

1.1 The application seeks the removal of condition 3 (agricultural occupancy restriction) from planning permission 8/03/396/PA, granted by Selby District Council on 12 March 1992. The condition states:

1.2 'The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990, or in forestry, including any dependants of such a person residing with him, or a widow or widower of such a person.'

Reason: The development hereby approved would be unacceptable unless justified by the local needs of agriculture.

1.3 The application has been called-in by Councillor Warters who supports the proposal and notes that the property should be brought back in to use.

2.0 POLICY CONTEXT

Publication Draft February 2018

GB1 – Development in the Green Belt

Development Control Local Plan - Approved April 2005

GB1 – Development in the Green Belt

GB8 – Occupancy conditions for agricultural or forestry dwellings

3.0 CONSULTATIONS

Public Protection

3.1 No response received.

Dunnington Parish Council

3.2 No response received.

4.0 REPRESENTATIONS

Neighbours and publicity

4.1 No representations received.

5.0 APPRAISAL

KEY ISSUE: Whether the need for the agricultural occupancy condition remains.

National Planning Policy Framework

5.1 Central Government guidance is contained in the National Planning Policy Framework ("NPPF" – February 2019). Paragraph 11 establishes the presumption in favour of sustainable development, which runs through both plan-making and decision-taking. In decision-taking this means approving development proposals without delay that accord with an up-to-date development plan. In the absence of relevant development plan policies or where they are out-of-date, permission should be granted unless policies in the Framework that protect areas or assets of particular importance, including land designated as Green Belt, provide a clear reason for refusing the proposed development or any adverse impacts of doing so would significantly or demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

5.2 Para.77 of the NPPF states that 'In rural areas, planning policies and decisions should be responsive to local circumstances and support housing development that reflect local needs'. Para.79 refers directly to rural workers' dwellings which, it states, can be a circumstance that justifies the provision of an isolated home in the countryside.

Planning Practice Guidance - Use of planning conditions

5.3 This guidance states that conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need. Conditions should meet the six tests identified in para.55 of the NPPF, i.e. they should be necessary; relevant to

planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

Development Plan

5.4 Section 38(6) of the Planning and Compensation Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for York, relevant to the determination of this application, comprises the retained policies in the Yorkshire and Humber Regional Spatial Strategy ("RSS") saved under the Regional Strategy for Yorkshire and Humber (Partial Revocation) Order 2013. These policies, YH9(C) and Y1(C1 and C2), relate to York's Green Belt and the key diagram, Figure 6.2, insofar as it illustrates the general extent of the Green Belt. The outer boundary of the Green Belt is defined as being 'about 6 miles' (10km) from the York city centre. As the site is approximately 6km from the city centre, it is considered to fall within the general extent of the Green Belt. It should further be noted that the site was in the Green Belt in 1992 when the dwelling was approved and that Green Belt policy has not fundamentally changed since that time.

Development Control Local Plan Incorporating the Fourth Set of Changes April 2005 (DCLP)

5.5 Policy GB8 of the DCLP states:

'Occupancy conditions will be attached to all new agricultural or forestry dwellings to ensure occupancy is directly related to the continued functioning of agricultural/ forestry units in the locality.

Removal of an occupancy condition will only be granted where it can be demonstrated that there is no longer a need for the accommodation on the holding or in the locality. A detailed assessment will be required to support such an application.

Where a second dwelling has been granted permission on the same holding, the removal of an existing occupancy condition from the original dwelling will only be considered appropriate in exceptional circumstances.'

Emerging Local Plan

5.6 Relevant policies are set out in section 2 above. The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications. The site lies within the general extent of Green Belt on the Proposals Map that accompanies the emerging 2018 Plan.

SITE AND PLANNING HISTORY

5.7 The application relates to a detached property with garden and land extending to 5.8 acres in total located on the edge of Dunnington. The property sits within large

landscaped garden, with an area of Christmas tree plantation to the side and a further area of land on the opposite side of York Road. There is an agricultural building on both parcels of agricultural land.

5.8 On 12 March 1992, planning permission ref: 8/03/116C/PA was granted by Selby District Council for erection of a dwelling on the site. Planning permission was granted subject to an agricultural occupancy condition (condition 3) as detailed in paragraph 1.2 above.

5.9 Condition 3 was originally satisfied by the fact that Mr Paul Barnes, who occupied the property with his family, worked in the associated Christmas tree business. The land pertaining to the business was at Grimston Bar, Dunnington water tower and the plot of land opposite the property on York Road. The property was subsequently occupied by Mr Barnes' widow and dependent, also in accordance with condition 3. The final crop of Christmas trees was harvested in 2018. The agricultural land belongs to Mr Cyril Barnes who operated the business while Cedar House is in the ownership of his daughter in law.

APPRAISAL

5.10 Condition 3 on the 1992 permission restricts the occupation of the dwelling to persons solely or mainly employed or last employed in agriculture or forestry and was imposed to justify development within the Green Belt which would otherwise have been unacceptable. The dwelling was occupied by Mr Paul Barnes and his wife. Following the death of Mr Barnes, Mrs Barnes continued to live in the property while the business was run by Mr Cyril Barnes. Mrs Barnes now wishes to sell the property without encumbrance, and owns the house and garden amounting to land of approximately 1 acre. The land to the side and across York Road is owned by her father in law. The application seeks to remove the agricultural occupancy condition to allow sale of the property on the open market. It has been marketed for a period of approximately 24 months as a property with an agricultural occupancy restriction.

5.11 Appeal decisions normally conclude that a discount of 30-35% of the unencumbered market value is reasonable to reflect the depressant effect of the condition. The application provides details of the marketing exercise that was undertaken. The estate agent initially valued the property free of the agricultural occupancy restriction at approximately £750,000, giving a value with the occupancy condition of around £695,000. This was based on an 8% reduction from the full market value. This is significantly less of a reduction than the normally expected 30-35% reduction, which would give a value of around £525,000. The property was advertised from June 2017 until September 2017 at £695,000, when it was then reduced to £625,000 (a reduction of approximately 17% from the full market value) on the estate agent's website, Right move and On the Market, as well as the agent's offices across Yorkshire and in the Yorkshire Post. A "for sale" board was erected at the property and on the A1079.

5.12 Mr Cyril Barnes then allowed some of his land adjacent to the property to be included in the sale, increasing the total site size to approximately 6 acres, and in January 2018 the property was revalued with the additional land at £860,000 (there is no indication of the reduction included to allow for the agricultural occupancy condition). The price was subsequently reduced in June 2018 to £760,000. Over this 2 year period, data provided from Rightmove indicated that the property had significantly more on-line viewings than would normally be expected and more than 100 direct enquiries. This resulted in 6 offers being made for the property, 5 by people who would have satisfied the agricultural occupancy condition. The offers were:

October 2017 - £390,000 (house at £625,000)

January 2018 - £535,000 (house and land at £860,000)

March 2018 - £600,000 (house and land at £860,000)

July 2018 - £550,000 (house and land at £760,000)

August 2018 - £450,000 (house and land at £760,000)

August 2018 - £560,000 (house and land at £760,000)

5.13 An on-line search would suggest that the valuation for the property would be overly optimistic even given the attractive setting of the property and its size. Only one property within a 0.5 mile radius of the site has ever sold at a comparable price and this would have been without the agricultural occupancy restriction. The reduction in price to allow for the agricultural occupancy condition is also on the low side being only in the region of 17% in September 2017. As such it is considered that the asking price for the property has generally been over-inflated. Based on a more realistic reduction of 30%, the original price would more realistically have been £525,000. It is possible that people who could have complied with the condition did not pursue their interest due to the over-inflated nature of the asking price. It also appears that the addition of the extra parcel of land has merely complicated matters and further inflated the asking price beyond the worth of the site.

5.14 It is noted within the marketing report that issues with the layout of the property may have deterred certain purchasers as the ground floor is not on a single level. This is considered by the marketing agent to have deterred older purchasers who may otherwise have had the funds to purchase the property. It is not indicated within the report how this constraint is reflected in the property's valuation but may be considered as another indication of the over-valuation of the property.

5.15 The marketing agent has also made comment on the economic viability of the land. They note that there is no existing business and so to recreate a business would entail starting from scratch. A crop of Christmas trees takes a minimum of 5 years to become saleable, although the optimum size requires 8 years growth.

During that time the crop incurs planting and maintenance costs before producing any return. Capital equipment, costing in excess of £50,000 is also required. An additional source of income is therefore essential, in the interim, together with sufficient capital to fund stock and equipment. It should further be noted that horticulture and the growing of Christmas trees is undertaken by a relatively small number of operators in any one area. Most will know their competitors and Mr C Barnes has an excellent reputation and is well known in this field of expertise. Despite this he has had no interest from third parties to buy the business, hence the eventual closure. This lack of interest underlines the difficulty of operating such a business on a standalone basis, without a subsidy from other operations. Of more fundamental relevance is the fact that growing any type of crop and most agricultural operations require land. As referred to above Mrs Kerry Barnes does not have ownership or control of any land other than the site of Cedar House or the resources to create a viable economic agricultural unit. Viable economic units on small acreages require a high level of capital investment to create intensive growing conditions.

5.16 Clearly the business which provided the original justification for the dwelling no longer exists and the property does not have a land holding sufficient to run an agricultural business to support future residents. There is therefore no requirement for accommodation for agricultural workers connected with the holding itself. Further, given the current average annual pay for a farm worker based on DEFRA figures of around £25,000-£35,000, the cost of the property, even with the agricultural restriction, is likely to be beyond the means of an agricultural worker based on the traditional mortgage lenders income multiplier. A recently approved planning application 19/00796/FUL for removal of an agricultural occupancy condition on a property in Holtby (Holtby Grange Bungalow) accepted that earnings of £35,000 a year, typical for a farm manager, would equate to a mortgage offer of £140,000 and earnings of £25,000 a year, typical for a farm worker, would equate to a mortgage offer of £100,000. Both sums would be far below that needed to purchase the property even at a more realistic value.

5.17 There is no indication in the emerging Local Plan nor in the NPPF or Planning Practice Guidance on how to assess applications for the removal of agricultural occupancy conditions. It is, however, pertinent to consider whether the condition still meets the 6 tests as described in para.55 of the NPPF. To that extent it should be considered whether the condition is necessary, relevant to planning and to the development, is enforceable, precise and reasonable in all other respects. Clearly the condition is relevant to planning and to the development; a standard wording is used which is precise and enforceable (and has not been challenged since it was imposed in 1992); so the test would be, is the condition still necessary and reasonable.

5.18 When considering the necessity of the condition there is, as stated above no indication in policy as to what considerations are appropriate. There is an established process whereby, as explained above, it is necessary to demonstrate that the process of marketing the property at an appropriate discount, and for an extended length of time, has been followed. It is noted that, on appeal, inspectors have generally upheld that a discount of 30-35% of the unencumbered market value is reasonable to reflect the depressant effect of the condition. Inspectors have also found that the quality of the dwelling itself is not sufficient reason to reduce the discount and, in fact, in some instances inspectors have considered that it would be appropriate to increase the discount on such properties to make them more in line with the local agricultural market.

5.19 There is a historical precedent in relation to the applications for the removal of the agricultural occupancy condition at Holtby Grange Bungalow (referred to in para.5.17 above), which were refused for failing to demonstrate a lack of demand for an agricultural workers' dwelling and then for failing to demonstrate marketing at a realistic price. The property was originally marketed with a reduction of 21% from the full market value, which officers considered to be insufficient to reflect the occupancy restriction. It was also noted that offers that had been made by people who would probably have met the restriction, but at approximately 30% reduction from the market price, were considered too low and were rejected. In 2018 the property was subsequently marketed with a more realistic reduction of 25%-29%. No offers were received and it was at this point that permission was granted for the removal of the agricultural occupancy condition. It is considered, therefore, that officers are being entirely consistent in requiring the application property to be marketed at a more realistic price, and with a more realistic reduction, than has so far been undertaken.

6.0 CONCLUSION

6.1 It is considered that the property has not been marketed at a realistic price which reflects the depressant effect of the agricultural occupancy condition, and therefore failed to demonstrate that the condition is no longer necessary or reasonable. At this time it is considered that it would be premature to remove the condition until it has been adequately demonstrated that there is no demand for the property as an agricultural workers' dwelling and it recommended that the application is refused.

7.0 RECOMMENDATION: Refuse

1 The Local Planning Authority considers that the applicant has failed to demonstrate that condition 3 (agricultural occupancy restriction) of planning

permission 8/03/116C/PA, which was considered necessary at that time to justify the erection of a new dwelling within the Green Belt, is no longer necessary. In particular, the applicant has failed to demonstrate a lack of demand for the property with the occupancy restriction by failing to market the property at a realistic price for a sustained period. The proposal is therefore contrary to para.79 of the NPPF, GB1 of the emerging Local Plan and GB8 of the Development Control Local Plan incorporating the 4th set of changes (April 2005).

8.0 INFORMATIVES:

Contact details:

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