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# Appeal Decision

Hearing held on 17 January 2023

Site visits made on 16<sup>th</sup> and 17<sup>th</sup> January 2023

**by J Williamson BSc (Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 March 2023**

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## **Appeal Ref: APP/U2370/W/22/3295914**

### **Oak Dene Farm, Head Dyke Lane, Pilling PR3 6SJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission 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 appeal is made by Mr A Moss against the decision of Wyre Borough Council.
  - The application Ref 21/01469/FUL, dated 14 December 2021, was refused by notice dated 14 February 2022.
  - The application sought planning permission for bungalow and garage without complying with a condition attached to planning permission Ref 02/79/01982, dated 31/01/1980.
  - The condition in dispute is number 2 which states that: *The occupation of the dwelling shall be limited to a person solely [sic] 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: *The Local Planning Authority would not be prepared to permit the erection of a dwelling on the site unconnected with the use of the adjoining land for agricultural purposes.*
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### **Decision**

1. The appeal is dismissed.

### **Preliminary Matters**

2. I have listed below, within the last section of the document, additional information that was submitted prior to, during and after the hearing. I have had regard to all this information in reaching my Decision.

### **Main Issue**

3. The main issue is whether it is reasonable and necessary for condition 2 of application Ref 02/79/01982 to be retained, having regard to relevant local and national planning policies.

### **Reasons**

4. The site comprises a detached bungalow approved under application Ref 02/79/01982 with condition 2, a restrictive occupancy condition, attached. The dwelling/appeal site is positioned within the north-western corner of land identified within the ownership of the appellant. This land covers an area of around 5 ha and corresponds with the site boundary of planning application Ref 20/00697/FULMAJ, which granted permission for change of use from agricultural to private equestrian use. The north-western corner of the land

includes the building identified on the plans associated with the change of use application and several other outbuildings. The land beyond the area where the buildings are located consists of open fields, sub-divided by post and rail fencing.

5. Both parties consider that the change of use application has been implemented. Information provided at the Hearing and observations made during my site visit, lead me to conclude that implementation of the change of use has begun. I say begun, as I observed areas of the building and the surrounding land were not being used solely for equestrian purposes.
6. Thus, the building identified on the plans of the change of use application was only partially being used for equestrian purposes. A significant section of the building had animals associated with agriculture in it, including alpacas<sup>1</sup> and several sheep, pigs, and goats. There was equipment and food stored in the central area of the building, which potentially served all the activities being undertaken within the site to which the change of use application relates, not just the equestrian use. A building attached to the rear of the building specified in the change of use application was being used as dog kennels. A small number of sheep were grazing in the fields, and numerous water birds were being kept on site.
7. I appreciate that although the approved change of use application appears not to have been fully implemented, full implementation could still occur. Notwithstanding, what I observed during my visits indicates that the site may still have the potential to be used for agricultural purposes, a matter I shall return to below.
8. The dwelling is occupied by the appellant and his parents. The appellant has a health condition which constrains his movements. A key reason for the parents wanting to have condition 2 removed is to provide as much security as possible for their son's future. The Council are satisfied that the dwelling is currently occupied in accordance with the requirements of the condition.
9. Although the condition is a restrictive occupancy condition it does, nevertheless, allow for occupation of the dwelling by a range of people, not just someone currently employed in agriculture or forestry. This needs to be borne in mind within the context of considering the extent of potential occupiers of the dwelling.
10. Other factors to bear in mind are the phrases "*in the locality*", stated in the condition, and "*adjoining land*", stated in the reason. Although the parties did not agree entirely on where the boundary of the "*locality*" lies, with the Council concluding that any such assessment would be done on a case-by-case basis, there was agreement that "*locality*" broadly refers to the area known as Pilling, taking account of, among other things, the village, settlement, and parish boundaries. Additionally, parties agreed that the reference to "*adjoining land*" isn't confined to land immediately around the dwelling.
11. The key development plan policy against which the proposal is to be assessed are HP7, specifically section 7, and SP4 of the Wyre Local Plan (2011-2031), adopted in 2019, (the LP). I note that the appellant refers to sections 1-6 of Policy HP7 in support of the proposal. However, sections 1-6 specifically relate

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<sup>1</sup> It was stated by the appellant's father at the Hearing that the appellant had 28 alpacas on the site.

to new agricultural workers dwellings, which the proposal isn't. I therefore give little weight to sections 1-6 of Policy HP7 in respect of appraising the proposal before me.

12. Section 7 of HP7 states

*Where existing dwellings are subject to conditions restricting occupancy, applications to remove such conditions will not be permitted unless it can be demonstrated that:*

- a) The essential need which originally required the dwelling to be permitted no longer applies in relation to the land holding of the original source of employment and the dwelling will not be required similarly in the longer term; and*
- b) Reasonable attempts have been made to dispose of the dwelling for occupation in compliance with the original condition.*

The proposal must satisfy all elements of section 7 of the policy to accord with it.

13. Parties agreed at the Hearing that point a) of section 7 of the policy has 2 parts. Part 1 being "*the essential need which originally required the dwelling to be permitted no longer applies in relation to the land holding of the original source of employment*"; and part 2 being "*and the dwelling will not be required similarly in the longer term.*" There was broad agreement between the parties regarding the meaning of part 1, but there was no firm agreement on the meaning of part 2.
14. To my mind, part 2 refers to something different from, but similar to, what is referred to in part 1, ie the dwelling being required for a reason similar to it being required in association with the land holding, but distinguishable from that. A similar requirement would be the dwelling being required by someone within the "*locality*" who satisfies the occupancy condition. Bearing in mind that parties agreed that the reference to "*adjoining land*" in the reason given for condition 2 isn't confined to land immediately around the dwelling, I have applied this interpretation in reaching my Decision.
15. The appellant contends<sup>2</sup> that much of the land associated with Oak Dene Farm at the time the dwelling was approved has been sold off. I have no evidence to the contrary. However, I note that the plans associated with the original permission show that the area of land associated with the farm was only around a third larger than the area of land still in the ownership of the current occupants of the dwelling. Hence, the land holding was not extensive when planning permission for the dwelling was originally granted.
16. The appellant further contends that as the land and the buildings within the site owned by the current occupants of the dwelling have been granted planning permission for change of use to private equestrian, there is no longer any agricultural land or buildings associated with the dwelling.
17. For these reasons the appellant considers that point a) of section 7 of Policy HP7 is satisfied. However, I disagree with this conclusion, for reasons I shall outline below.

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<sup>2</sup> Paragraph 5.1 of the Supporting Statement dated 1<sup>st</sup> December 2021.

18. In the immediate, I accept that it is reasonable to conclude that should planning permission Ref 20/00697/FULMAJ be fully implemented, then part 1 of point a) would be satisfied, ie the essential need no longer applies to the land holding of the original source of employment. However, I consider it may still be possible, "*in the longer term*", for the dwelling to still be required in association with most of the land holding that provided the original source of employment. Additionally, even if the dwelling is no longer required in association with the land holding of the original source of employment, this does not address the requirement of part 2 of point a).
19. It was accepted by the appellant at the Hearing that it would be highly unlikely the current occupants of the dwelling/owners of the land which has been granted change of use to private equestrian, would wish to separate the 2 entities, ie selling the dwelling and retaining the building and land to which the private equestrian use applies. Therefore, the most likely scenario, in my opinion, and one to which I attach considerable weight, is that the dwelling along with the land and building with private equestrian use would be sold as one package. This would mean that a future owner, should the property be sold, would have around 5 ha of land, associated buildings, and a dwelling.
20. I acknowledge that planning permission would be required to formally change the use of the land and building back from equestrian to agricultural use. However, as indicated by the Council at the Hearing, LP policies would readily support such a change of use. Although I cannot comment in a manner that would prejudice the outcome of any such future planning application, I attach considerable weight to the possibility of the future use of the site being returned to agricultural use, should an application be made.
21. I accept the appellant's contention that an agricultural unit of 5 ha would limit the nature and extent of agricultural activities that could be undertaken on the site, which could limit the amount of profit derived from the unit. However, as indicated by the appellant in his statement<sup>3</sup>, a view that was reiterated at the Hearing, a unit of 5 ha in size does not mean there would be no agricultural activities that could be undertaken on the site. Nor can it be concluded therefore, that there would be no agricultural activities that could be undertaken profitably on the site.
22. For example, as noted above, the appellant is currently keeping alpacas on the site, along with several other agricultural animals. I do not know if the site is of a size that could accommodate the number of alpacas, or a combination of alpacas and other agricultural animals, required to make a profit. However, I have not been persuaded by the appellant's evidence that the site could not operate in some form as a successful agricultural holding.
23. Therefore, it is possible that there could still be an essential need for the dwelling for the purposes of operating an agricultural unit on land that formed part of the "*land holding of the original source of employment*".
24. The appellant considers that as the property was on the market for around 2 years prior to being purchased by the current owners/occupiers in 2015, this indicates that there was little demand in the "*locality*" for the property to be purchased by someone who satisfied the condition. The appellant also

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<sup>3</sup> Paragraph 6.5 of the Statement of Case dated 28<sup>th</sup> March 2022.

- suggests, partly with reference to the Pilling Parish Plan 2004, that the need for agricultural workers dwellings in the area has not been identified.
25. However, the Pilling Parish Plan 2004 is substantially dated and is not an adopted part of the LP. As such, I attach very limited weight to it. Furthermore, it is not usual for housing needs assessments carried out to inform the LP to identify the housing needs of agricultural workers as a distinct category.
  26. The appellant asserts that the most recent estimated market value of the dwelling, £714,000, and likely rental fee, would make the dwelling unaffordable, to purchase or rent, to an agricultural worker in the "locality", considering the average salaries of agricultural workers in the North West. The appellant emphasises the issue of affordability with reference to research carried out by North Star<sup>4</sup>, which indicates that many people would not be able to afford to meet their housing needs in the private sector in the Wyre area.
  27. I acknowledge that the latest market value and rental fee of the dwelling are considerable sums and that many people in the Wyre area may not be able to afford to meet their housing needs in the private sector. However, as pointed out by the Council at the Hearing, the property ultimately did sell to someone who satisfied the condition and was also able to afford the purchase back in 2015. Furthermore, it is around 7 years since the property was last on the market. This is a lengthy period, during which time associated factors could have changed.
  28. The appellant accepts that the property has not been marketed for sale since it was purchased by the current occupants in 2015. The fact that it hasn't been marketed for sale is understandable, given that the property is currently occupied in accordance with the condition, it meets the health needs of the appellant, and, as was made clear at the Hearing, the current occupants have no intention of selling the property soon as they wish to transfer it to their son, the appellant.
  29. I accept that Policy HP7 does not specify that marketing needs to be undertaken. However, this is a recognised means of gauging whether the dwelling could be disposed of in compliance with the original condition.
  30. The dwelling is located within a rural area, with access to agricultural employees. Notwithstanding, as noted, condition 2 allows for occupants other than someone currently employed in agriculture or forestry. For the reasons outlined, I consider that it has not been demonstrated that the dwelling is not, and would not, be required in the "locality" by someone who satisfies the condition. I therefore conclude that part 2 of point a) of section 7 of Policy HP7 has not been satisfied. Consequently, point a) has not been satisfied.
  31. The appellant considers point b) of section 7 of Policy HP7 is redundant, due to some of the factors outlined above. However, I disagree with this conclusion for the same reasons that I have concluded that point a) has not been satisfied.
  32. Although it is understandable why the current owners/occupiers have not marketed the property for sale in recent times, I do not consider the circumstances outlined amount to "*reasonable attempts ...[having]...been made to dispose of the dwelling for occupation in compliance with the original condition*", as required by point b) of section 7 of Policy HP7.

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<sup>4</sup> See 'Additional Information...' section at the end of the Decision Letter

33. The appellant drew my attention to case law and an Inspector colleague's Decision on a previous appeal. Both cases are similar. They relate to approvals for the conversion of a single dwelling into 2 self-contained units, with an agricultural/forestry occupancy condition attached. Both buildings were subsequently converted back to single dwellings. The conclusion reached was that if a material change of use had occurred then any conditions attached to the original permission would no longer apply. Although I have not been provided with the details of either case, I appreciate the conclusions reached. However, the cases are not comparable to the one before me as there has not been a material change of use of the dwelling of concern here. I therefore consider that condition 2 still applies.
34. Policy SP4 of the LP broadly states that the open and rural character of the countryside will be recognised for its intrinsic character and beauty; and development which would adversely impact on the open and rural character of the countryside will not be permitted, unless it is demonstrated that the harm to the open and rural character is necessary to achieve substantial public benefits that outweigh the harm. Sub paragraph 174 b) of the National Planning Policy Framework (the Framework) also advises that planning policies and decisions should contribute to and enhance the natural local environment by, among other things, recognising the intrinsic character and beauty of the countryside.
35. Removing condition 2 would result in the presence of an open market dwelling within the countryside, which I consider would be harmful to its open, rural character and therefore its intrinsic character and beauty. It has not been demonstrated by the appellant that such harm is necessary to achieve substantial public benefits that would outweigh the harm.
36. In light of all the above, I conclude that it is reasonable and necessary for condition 2 of application Ref 02/79/01982 to be retained, to protect the open, rural character of the countryside and therefore its intrinsic character and beauty, having regard to relevant local and national planning policies. The proposal would not accord with LP policies HP7 and SP4 or advice in paragraph 174 of the Framework.

### **Other Considerations & Planning Balance**

37. As noted above, the appellant has a health condition which constrains his movements. He has become familiar with the layout of the dwelling and the surroundings and moving home would therefore cause disruption and uncertainty. I appreciate such personal circumstances. However, the evidence does not suggest that moving home would be impossible. I therefore attach only limited weight to this matter and consider that it is not a factor that outweighs the harm I have found should condition 2 of application Ref 02/79/01982 be removed.

### **Other Matters**

38. The matter of what planning permission Ref 20/00697/FULMAJ grants permission for, taking account of the description of development and the site edged red, was discussed at the Hearing. The appellant suggested that one interpretation is that all the buildings within the site edged red have been granted private equestrian use, including the dwelling. The Council did not agree with this interpretation.

39. It is beyond my powers to provide a legal view. However, to my mind, all the documents associated with the application need to be borne in mind to inform an interpretation. From my reading of the documents, the plans only identify one building for which a change of use was sought, ie the largest building within the site. Change of use of the dwelling was not sought.
40. Additionally, (although I accept that an advisory note is not a condition), the Council's decision notice includes an advisory note clearly stating that the dwelling within the site boundary is subject to a restrictive occupancy condition and that removal of it would require a planning application. Furthermore, copies of an exchange of emails between the appellant and the Council, submitted by the appellant at the Hearing, clearly show that the Council considered the dwelling not to form part of the application, even though it remained within the site edged red. In the absence of a legal opinion, my view is that the dwelling did not form part of planning application Ref 20/00697/FULMAJ, and therefore its use remains as a dwelling.
41. The matter of whether the appellant satisfies condition 2 of application Ref 02/79/01982 was discussed at the Hearing, broadly in the context of whether he qualifies as being a dependant of the owners/occupants of the dwelling, and therefore whether he meets the requirements of condition 2. Although views were expressed, no definitive conclusion was reached. If the appellant wishes to pursue this matter, I advise seeking advice, including liaising with the Council.

### **Conclusion**

42. For the reasons outlined, I conclude that the appeal is dismissed.

*J Williamson*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Terry Prideaux - RBA Town Planning

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Robert Clewes – Principal Planning Officer, Wyre Borough Council

### **OTHER INTERESTED PERSONS:**

Mr John Moss – Father of appellant

Ms Samantha Loy – Planning Officer, RBA Town Planning

Miss Hannah Dodgson – Planning Officer, Wyre Borough Council

### **ADDITIONAL INFORMATION SUBMITTED PRIOR TO/AT/FOLLOWING THE HEARING:**

- Statement of Common Ground
- Confirmation of benefits the appellant is entitled to (personal Independence Payment and Council Tax) due to personal circumstances
- Details related to approved applications 02/79/01982 and 20/00697/FUL
- Copies of several other appeal decisions, submitted by the Council
- The appellant submitted a package of information that included: a) a plan of the building that was granted change of use to equestrian, b) copies of email exchanges between the appellant and the Council relating to the site edged red, and the presence of the dwelling within the site, regarding application Ref 20/00697/FULMAJ; c) references to 2 appeals, d) extracts for the Pilling Parish Plan, and extracts from a document produced by North Star related to housing need and affordability in the Wyre area.
- Agreed wording of a condition, in the event of the appeal being allowed.

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