



## Appeal Decision

Site visit made on 30 January 2024

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 28 February 2024**

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**Appeal Ref: APP/L3245/W/23/3328508**

**Reaside, B4364 From Clee Brook Bridge To New House Farm Junction, Neenton, Bridgnorth, Shropshire WV16 6RL**

- 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 & Mrs Bryan against the decision of Shropshire Council.
  - The application Ref 23/01429/VAR, dated 29 March 2023, was refused by notice dated 31 July 2023.
  - The application sought planning permission for erection of an agricultural workers dwelling and formation of vehicular access without complying with a condition attached to planning permission Ref 4/72/1072, dated 16 August 1972.
  - The condition in dispute is No 3 which states that: Occupation of the dwelling shall be limited to a person employed, or last employed, locally full time in agriculture as defined in Section 290 (1) of the Town and Country Planning Act, 1971, or forestry, or a dependent of such a person residing with him (but including a widow or widower of such a person).
  - The reason given for the condition is: The erection of a dwelling for normal residential purposes would be isolated and sporadic in a rural area and would not be permitted.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) accompanied by a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS and none of the revisions to the Framework would appear to be material to this appeal. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

### Main Issue

3. Permission was granted for the appeal property in 1972, with an agricultural occupancy condition (condition 3). There is no dispute regarding the overall acceptability of removing the condition, but the Council consider that its removal would necessitate the payment of an affordable housing contribution. The appellants have not agreed to such a payment.

4. The main issue, therefore, is whether the removal of condition 3 would give rise for the need to make a financial contribution for affordable housing.

### **Reasons**

5. Policy CS11 of the Shropshire Core Strategy (CS) (2011) requires all new open market housing development to make appropriate contributions to the provision of local needs affordable housing. Furthermore, the Council's Type and Affordable Housing Supplementary Planning Document (SPD) (2012) is clear that the removal of an occupancy condition effectively creates a new market dwelling and that an appropriate contribution will be required towards local needs affordable housing at the prevailing affordable housing target rate. The CS and SPD are therefore unambiguous that where occupancy restrictions are agreed to be removed, an affordable housing contribution will be required.
6. Reaside is a detached dwelling which is located just outside the small village of Neenton. The Framework indicates that the provision for affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas where policies may set out a lower threshold of 5 units or fewer. Designated rural areas are defined by the Framework as National Parks, Areas of Outstanding Natural Beauty (AONB) (recently rebranded as National Landscapes) and areas designated as 'rural' under Section 157 of the Housing Act 1985.
7. Whilst not in a National Park or AONB, Neenton is a designated protected rural parish under Section 157 of the Housing Act 1985. The dwelling is therefore situated in a designated rural area where the Framework is clear that a local planning authority may choose to set its own lower threshold for affordable housing contributions.
8. The appellant highlights that the CS predates the Framework and West Berkshire court of appeal decision in 2016<sup>1</sup>. Shropshire Council has a five year land supply and the CS housing policies are therefore not considered to be out of date. They do not conflict with the Framework which is clear that affordable housing contributions can be sought in designated rural areas at a threshold of 5 units or fewer. Furthermore, Policy MD7a of the Site Allocations and Management of Development Plan (2015) (SAMDev) is clear that the policy requesting an affordable housing contribution when an agricultural occupancy condition is to be removed relates to dwellings permitted prior to the adoption of the CS in 2011. The fact that the dwelling predates the CS, the Berkshire decision and the Framework would not exempt it from the affordable housing contribution requirement.
9. My attention has been drawn to a recent appeal decision at Longville Arms<sup>2</sup> regarding the conversion of holiday lets to a dwelling. The Inspector concluded that as the site was in a designated area, the removal of the condition would give rise to a need for a financial contribution to affordable housing. Reaside is also in a designated rural area. My conclusion is consistent with this decision.
10. Recent decisions where an affordable housing contribution was not required despite the removal of an agricultural workers occupancy restriction condition have also been brought to my attention. However, their circumstances are not

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<sup>1</sup>Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council CI/2015/2559 (2016) EWCA Civ 441

<sup>2</sup> APP/L3245/W/20/3254576

directly comparable with those which apply in this appeal. Punch Bowl Farm<sup>3</sup>, for example, does not lie within a designated rural parish, and so the threshold for affordable housing contributions would not be the same. The application at The Old Dairy<sup>4</sup> involved a curtilage listed building and as such different policy requirements and exemptions apply.

11. In January 2023 the Council granted a Certificate of Existing Lawful Use or Development (CLEUD) for the occupation of the dwelling in breach of the disputed condition (No 3). The Council was satisfied that, on the balance of probabilities, the dwelling had been used as a dwelling house in excess of ten years in breach of the agricultural occupancy condition. The Council states that, as a result, the development is immune from enforcement action in relation to the breach of the agricultural occupancy condition and hence is lawful. The CLEUD is a material consideration, and I have afforded it significant weight.
12. However, whilst acknowledging that the dwelling benefits from a CLEUD, the development plan policies and SPD are unambiguous that where occupancy restrictions are agreed to be removed, an affordable housing contribution will be required. The SPD indicates specific exceptions from the definition of 'new open market Housing' for the purpose of making affordable housing contributions. Despite having a CLEUD, the proposal does not fall under any of the exemptions listed.
13. My attention has also been drawn to a number of appeal decisions relating to properties which had also been granted CLEUDs<sup>5 6 7 8 9</sup> and where the relevant Inspectors had allowed the removal of the agricultural occupancy condition, finding it to be no longer necessary or reasonable in light of the CLEUD. However, none of these appeals had a requirement for an affordable housing contribution should the condition be removed. The highlighted cases were generally concerned with the appropriateness of the removal of the agricultural occupancy condition and whether it was still a necessity for the properties to be occupied by qualifying persons. In this appeal, there is no dispute that the agricultural occupancy condition could be removed and is no longer necessary. The dispute is whether the affordable housing contribution is required, and as the appeal decisions brought to my attention do not consider this requirement, they are not directly comparable to this case.
14. National Planning Practice Guidance requires that planning obligations must meet requisite statutory tests. They must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
15. The requirement of an affordable housing contribution resulting from the removal of the agricultural occupancy condition would meet the statutory tests. The obligation would be acceptable in planning terms, as the adopted development plan policies require such a contribution. The obligation would be directly related to the appeal property, and whilst appreciating that the

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<sup>3</sup> 20/04578/VAR

<sup>4</sup> 18/03241/VAR

<sup>5</sup> APP/T6850/A/20/325618

<sup>6</sup> APP/D0840/W/22/3304612

<sup>7</sup> APP/E2001/A/02/1104141

<sup>8</sup> APP/Y9507/W/16/3147251

<sup>9</sup> APP/E2001/W/17/3170529

contribution would place a financial burden upon the appellant, little evidence has been provided to demonstrate that the amount required is not of an appropriate scale.

16. I consider that the CLEUD does not outweigh the conflict with the development plan in this instance. The planning obligation meets the required statutory tests, and in the absence of a section 106 agreement that would secure an affordable housing contribution the proposal would be in conflict with Policy CS11 of the CS, Policy MD7a of the SAMDev and guidance contained within the SPD. Consequently, a planning obligation to secure an affordable housing contribution is necessary to justify the removal of condition 3.

### **Conclusion**

17. For the reasons given above, in the absence of a planning obligation to secure an affordable housing contribution, the removal of condition 3 would result in the development being in conflict with the development plan as a whole. The material considerations in this case do not outweigh that finding. Consequently, the appeal is dismissed.

*L C Hughes*

INSPECTOR