

**16. S73 APPLICATION - FOR THE VARIATION OF CONDITION 2 ON WED0882270 AT WHESTON BANK FARM, WHESTON BANK, TIDESWELL, BUXTON (NP/DDD/0820/0731 SPW)**

**1. APPLICANT: MR S HADFIELD**

**Summary**

2. The proposal seeks to vary the condition so it would no longer be required to be occupied as an essential workers dwelling for agriculture or forestry and instead proposes for it to be occupied in association with Hadfield joinery which also operates from the site. There are only very limited provisions for building new housing in the national park and this dwelling would not have been acceptable when it was permitted without being for an essential need for an agricultural worker. We have considered the case out forward but concluded that it should be refused due to the loss of the essential worker dwelling without properly demonstrating that the need for the dwelling in the locality has ceased.

**Site and Surroundings**

3. Whestern Bank Farm is located at the edge of Tidewell and accessed off Wheston Bank. It comprises an agricultural workers dwelling with a stone built barn currently housing Hadfield joinery there is also an outbuilding.
4. The site is within the designated Conservation Area. The land to the north of the site is open access land.
5. The dwelling is a bungalow with garage.

**Proposal**

6. The proposal seeks to vary the essential workers planning condition which imposes the agricultural or forestry workers restriction. To enable it to be occupied in association with Hadfield joinery instead.
7. The existing planning condition reads as follows –

*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 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.*

And the variation sought is as follows -

*The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed at Hadfield Joinery (or other such business operating from the building), Wheston Bank Farm (including any dependents of such a person residing with him), or a widow or widower or surviving civil partner of such a person.*

8. Officer Note: the definition of Agriculture under the 1971 Act is the same as that under the 1990 Act.

### **RECOMMENDATION:**

9. That the application be **REFUSED** for the following reasons -

1. **The proposed variation of the agricultural occupancy condition would result in the loss of an essential worker dwelling for agriculture or forestry. No evidence has been submitted to demonstrate that there is an essential functional need for the applicant to live onsite next to their business under the terms of DMH4 nor have reasonable attempts been made to allow the dwelling to be used by a person who could occupy it in accordance with the condition or that the long term need for the dwelling in the locality has ceased. In the absence of clear and convincing justification it is considered that the proposed variation of condition 2 is contrary to Core Strategy policies DS1, GSP4, HC1, HC2, Development Management policy DMH4 and the National Planning Policy Framework.**

### **Key Issues**

10. The key issues are:

- Whether the relevant condition meets the six tests within paragraph 55 of the Framework having regard to the Development Plan and other material considerations.
- Whether sufficient evidence has been submitted to justify the variation as suggested.

### **History**

1982: NP/WED/0822/0270 Outline planning permission was granted for the erection of an agricultural workers dwelling and garage. This has the condition proposed to be varied by the current application and also included a S52 legal agreement to prevent separate sale of the house from the land.

1983: NP/WED/383/98 Permission was granted for the reserved matters.

1990: Permission was granted for the removal of the S52 legal agreement on the basis that the planning condition was the most appropriate way to control the occupancy of the dwelling in this case.

2020: In August a new enforcement enquiry has been logged in relation to the potential unauthorised occupation of the agricultural workers dwelling

Officers note that the planning history does not appear to hold any permission for use of the barn on the site in association with Hadfield Joinery, the planning statement suggests the business has operated from the site for over 10years so it is likely to be immune from enforcement action.

### **Consultations**

11. Derbyshire County Council Highways – No objections
12. Tideswell Parish Council – No observations
13. Derbyshire Dales District Council – No response to date
14. Peak District National Park Authority Archaeology – No archaeological comments.

### **Representations**

15. 5 representations have been received, 4 of which are in support. The other representation received does not directly relate to the matters raised by this application.
16. Support is raised on the following grounds –
- a. Aware the applicants business has had problems with break ins in the past.
  - b. Thriving business that needs support and employs 2 other people.
  - c. The property no longer has any agricultural associations.

### **Main Policies**

17. Relevant Core Strategy policies: DS1, GSP4, HC1, HC2.
18. Relevant Development Management policies: DMH4.

### **National Planning Policy Framework**

19. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect, the revised version was published in 2019. The Government's intention is that the document should be considered as a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the Authority's Core Strategy 2011 and the Development Management Policies 2019. Policies in the Development Plan provide a clear starting point consistent with the National Park's statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and Government guidance in the NPPF.
20. Para 172 of the NPPF states that 'great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads.'
21. Para 55 of the NPPF explains that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
22. Para 77 In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.
23. Para 78 To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

24. Para 79 Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:
1. there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
  2. the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
  3. the development would re-use redundant or disused buildings and enhance its immediate setting;
  4. the development would involve the subdivision of an existing residential dwelling; or
  5. the design is of exceptional quality, in that it:
    - a. is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
    - b. would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

### Core Strategy

25. Policy GSP1 sets out the broad strategy for achieving the National Park's objectives having regard to the Sandford Principle, (that is, where there are conflicting desired outcomes in achieving national park purposes, greater priority must be given to the conservation of the natural beauty, wildlife and cultural heritage of the area, even at the cost of socio-economic benefits). GPS1 also sets out the need for sustainable development and to avoid major development unless it is essential, and the need to mitigate localised harm where essential major development is allowed.
26. DS1 provides the development strategy for the area it explains that in all settlements and the countryside conversion or change of use for housing is an acceptable preferably by re-use of traditional buildings.
27. The details of this provision is provided in the housing chapter of the core strategy and relevant to this proposal is policy HC1 and HC2.
28. Policy HC1 of the Core Strategy reflects the NPPF and allows for new residential development in the National Park, exceptionally, where it provides for key workers in agriculture, forestry or other rural enterprises in accordance with policy HC2 of the Core Strategy.
29. Policy HC2 deals with housing for key workers in agriculture, forestry or other rural enterprises and says:
- i. New housing for key workers in agriculture, forestry or other rural enterprises must be justified by functional and financial tests.
  - ii. Wherever possible it must be provided by re-using traditional buildings that are no longer required for their previous use.

- iii. It will be tied to the land holding or rural enterprise for which it is declared to be needed.

30. GSP4: Planning conditions and legal agreements

A. To aid the achievement of its spatial outcomes, the National Park Authority will consider the contribution that a development can make directly and/or to its setting, including, where consistent with government guidance, using planning conditions and planning obligations.

B. The National Park Authority's use of broader mechanisms will pay close regard to the advice of County and District Councils and other relevant service and infrastructure providers in each part of the National Park.

Development management policies

31. DMH4 provides the detailed criteria for assessment when an essential worker dwelling would be acceptable, including requiring that there is an essential functional need for the workers concerned, with a requirement that they need to be readily available at most times of the day and night, bearing in mind current and likely future requirements.

32. The pre-amble to DMH4 explains the following in paragraph 6.78:

*Most importantly, the provision of worker housing must be achieved in ways that conserve and enhance the National Park and reduce pressure for new development. If occupancy conditions are lifted and a new need for further worker accommodation then re-appears, it places avoidable and unnecessary stress on National Park landscapes. Therefore the Authority requires good evidence before permitting worker accommodation in the first instance, and before agreeing to the removal of occupancy conditions or legal agreements.*

33. Whilst the Development management policies document includes detailed criteria for removal of essential worker legal agreements the policy does not explicitly state it is relevant to removal of conditions. It does however provide a useful guide as to what would be required to prove such a condition is no longer necessary by way of material considerations.

34. DMH11 sets out the following

35. The removal of Section 106 Agreements on essential worker dwellings will not be permitted unless it can be demonstrated that:
  - (i) reasonable attempts have been made to allow the dwelling to be used by a person who could occupy it in accordance with the restriction; and
  - (ii) the long-term need for the dwelling in the locality has ceased and a temporary relaxation therefore serves no purpose.

Variation or Removal of Conditions

36. Section 73 of the Town and Country Planning Act 1990 provides that an application may be made for planning permission without complying with conditions applied to a previous permission. It is stated that local authorities may decide whether to grant permission subject to differing conditions (this can include imposing new conditions), remove the conditions altogether or refuse to alter conditions. Thus it is possible to apply for conditions to be struck out, or for their modification or relaxation. The section makes it clear that in considering such an application a Local Planning Authority may only consider the question of the conditions and not revisit the principle of the development.

37. Therefore, only the acceptability of the proposal in the context of the reasons for the imposition of the conditions falls to be considered in the determination of the current application. However, in terms of decision making, a section 73 application should be treated just like any other application, and due regard paid to the development plan and other material considerations.

**38. Assessment**

39. The relevant condition restricts the occupancy of the dwelling to an agricultural or forestry worker.

40. The reason given for the original condition now sought to be varied is as follows –

*a. Planning permission has been granted having regard to the agricultural need for a dwelling on this site. Because of its location away from the established settlement of the area and from the services and facilities which they have to offer, the local planning authority do not consider that the site would be acceptable for residential development in the absence of an essential agricultural need.*

41. The planning condition was imposed because the erection of a dwelling on this site would not have been acceptable in planning terms in the absence of an essential agricultural need. The condition has therefore been imposed for a proper planning purpose.

42. The applicant considers that the variation is a solution that would allow the applicant to lawfully occupy the dwelling while providing an alternative to secure the ongoing availability of the bungalow for a rural-based worker. They consider the planning benefit is to address the challenges people living in rural areas face in terms of housing supply and affordability and that an onsite presence will aid the security of the business. This falls very far short of a detailed appraisal to demonstrate that there is a genuine and essential functional need for the workers concerned to be readily available at most times of the day and night. The agent has explained that there is not an essential need for the worker to live on the site. The proposal is therefore contrary to Core Strategy Policy HC2 and DMH4.

43. The planning issue is somewhat underplayed in the planning statement by their position. Breaking the case down to its bare components, if allowed the community would lose an essential worker dwelling as the proposal has no such planning benefit.

44. Essential workers dwellings are one of the few exceptions available to achieve new housing in the National Park. In general new build open market housing is not accepted and such open market housing is only achieved via conservation aims such as conversion of heritage assets or redevelopment of sites to provide enhancements in a settlement. There is no exceptional provision in the development plan for housing for rural based worker that is not an essential worker under the terms of DMH4. The proposed relaxation of the condition has no real planning benefits for the community, so does not benefit from the provisions of the development plan for essential workers, for those reasons as there is no planning benefits recognised by the development plan, the proposal is more akin to an open market dwelling, and should be treated in the same category for purposes of the development plan.

45. As set out in the pre amble to DMH4 para 6.48 if occupancy conditions are lifted and a new need for further worker accommodation then re-appears, it places avoidable and unnecessary stress on National Park landscapes. Therefore the Authority requires good evidence before permitting worker accommodation in the first instance, and before agreeing to the removal of occupancy conditions or legal agreements.

46. The issue with the proposal is that there is no essential need under the terms of our policy DMH4 for the applicant to live next to their business, no essential functional need, as required by policy DMH4 and the business itself is not land based and could operate equally in any location without an associated residential use.
47. We consider that despite the conflict with the development plan, for the proposal to be varied as proposed then they would need to demonstrate that the condition is no longer required. And if that was proven then there should be no need to vary the condition as in that scenario it should just be deleted, and consideration taken if other conditions are necessary.
48. We have advised the applicant that the alternative to consider entire removal of the condition would need to be dealt with via a separate application as it is materially different to the proposal submitted and which has been consulted upon. And they have asked that this application be determined instead of withdrawing the application.
49. The application does not provide adequate evidence that the condition is no longer necessary.
50. For example, they have chosen not to market the dwelling with the appropriate market discount afforded to property restricted to agricultural workers. This would have demonstrated that reasonable attempts have been made to allow the dwelling to be used by a person who could occupy it in accordance with the restriction; nor have they proven that the long term need for the dwelling in the locality has ceased.
51. Instead the planning statement suggests the value of the whole site in 2016 of £300,000 means that the site would be out of the financial reach of agricultural workers and provided a snapshot of cheaper properties available on the market at the time of their search. As much of the site is occupied by Hadfield Joinery its likely that the property alone would attract a significantly lower price than the site taken as a whole. Either way its not been marketed to test and prove that the need for the dwelling has ceased in the locality. Such a marketing process is normal planning practice for applications such as this, so for this not to be submitted raises a significant weakness in their case.
52. It is also necessary to consider if there is any other support in the development plan for lifting or varying the condition as suggested, however there is not. HC1 of the core strategy sets out how the various forms of housing could be permitted and there is no provision for this proposal in HC1.
53. Relaxing the condition as proposed would mean the loss of an essential worker dwelling and that the National Park Authority would fail to achieve its spatial outcomes as set out in the Core Strategy and Development Management Policies. The proposal is considered to be contrary to Core Strategy policies DS1, GSP4, HC1, HC2 and Development Management Policy DMH4.
54. Amenity
55. The applicant also suggests that the planning condition is desirable in planning terms as the house and the buildings are so closely linked that to occupy the house independently of the business could represent an amenity issue.
56. We are not convinced that this is the case. However, if it were then the application would still need to demonstrate that the essential worker condition could be released and then if necessary such a restrictive planning condition could be used to create managers accommodation and tie the house to the business so they could not be sold separately.
57. The proposal does not raise any other amenity concerns.

58. Other material considerations

59. According to the planning statement the applicants purchased the property in March 2020 and have explained that they are currently not occupying the dwelling as they know they would be in breach of the existing planning conditions.

60. No planning permission has been found in relation to the use of the stone barn in association with Hadfield Joinery.

61. The applicants acknowledge that marketing the property remains an option. But they have not pursued it as they consider it to be overly onerous considering their proposal is to relax the condition rather than remove it in its entirety. As discussed above we do not agree with this position.

62. The tests for planning conditions.

63. The condition is relevant to planning as it controls the occupation of the dwelling to an agricultural or forestry worker to serve as an essential workers dwelling. The condition is relevant to the site as it controls the occupation of the dwelling on the site. The condition is reasonable as the dwelling approved was accepted on the basis of an essential functional need for an agricultural workers dwelling. The condition is precise in its wording and effect. The condition is enforceable and appears to have been complied with recently given the new owners have avoided occupying the property as they know they would otherwise be in breach of the condition. The condition is necessary as without the condition the dwelling would be an open market unrestricted dwelling and the variation proposed is not acceptable for the reasons set out earlier in this report.

64. **Conclusion**

65. Having regard to the policies of the development plan and the 6 tests for planning conditions as well as any other material considerations we consider the condition in its existing form is necessary and still serving a planning purpose, and varying it as proposed would be contrary to the policies of the development plan and there are no material considerations which suggest a decision should be made other than in accordance with the development plan. Therefore the application should be refused.

**Human Rights**

66. Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

67. Nil

68. Planning Officer – Steven Wigglesworth, Planner