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# Appeal Decision

Site visit made on 9 November 2010

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 22 December 2010**

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## **Appeal Ref: APP/C2708/C/10/2128133**

### **New Laithe Barn, Wigglesworth BD23 4RS**

- The appeal is made by John Royals Moon under section 174 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against an enforcement notice issued by Craven District Council.
- The notice (Ref 410/09) was issued on 26 April 2010.
- The breach of planning control alleged in the notice is a failure to comply with Condition 2 of permission Ref 5/36/9/C dated 17 August 1999, which varied Condition 6 of permission Ref 5/36/9 dated 6 November 1989.
- Permission Ref 5/36/9 authorises the conversion of the barn to form two holiday cottages and Condition 2 of permission Ref 5/36/9/C states that the cottages shall be used as holiday accommodation only.
- The reason given for imposing Condition 2 is that the barn is unrelated to other dwellings and is within a Special Landscape Area where permission would not normally be granted for residential use of an isolated building.
- The notice alleges that Condition 2 has not been complied with because the barn is being used as a permanent residence.
- The requirement of the notice is to cease to use the barn otherwise than as holiday accommodation.
- The period specified in the notice for compliance with this requirement is 12 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

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## **Decision**

1. I allow the appeal, direct that the enforcement notice be quashed and grant planning permission on the application deemed to have been made by section 177(5) of the 1990 Act as amended for the conversion of the barn at New Laithe, Wigglesworth BD23 4RS to form two holiday cottages, without complying with Condition 2 subject to which permission Ref 5/36/9/C was granted on 17 August 1999, but subject to the other conditions imposed on permission Ref 5/36/9/C and to the conditions imposed on permission Ref 5/36/9, so far as the conditions imposed on these permissions are still subsisting and capable of taking effect, and subject to the following new conditions:-
  1. The cottage on the western side of the barn shall be used as holiday accommodation only.
  2. The occupation of the cottage on the eastern side of the barn shall be limited to a person solely or mainly working, or last working, in the

locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependents.

## **Reasons for the decision**

### *Procedural issues*

2. Procedural issues have been raised in the representations and in the exchange of correspondence since the site visit. I am therefore setting out the position as I see it, to explain how I have dealt with the appeal and to assist the parties.
3. The two holiday cottages were converted in 2006 to a use as one permanent residence in breach of Condition 2 and the allegation in the notice is directed at this breach. The only planning application before me is an application to carry out the development previously approved (i.e. the conversion of the barn to form two cottages) without complying with Condition 2 and I am unable to change the details of the approved development. The application is like the one submitted in 1999 and on approval new conditions can be imposed in place of Condition 2 provided they meet the usual tests.
4. The notice did not require the barn to be put back to two cottages and it was not open to me to require this, because to have done so would have caused injustice by making the notice more stringent. The planning consent I have granted is permissive and there is no requirement to implement it. Condition 2 remains in force at present, since I have not discharged it, and the quashing of the notice does not prevent the taking of further enforcement action within the time limit specified in section 171B(4)(b) of the 1990 Act as amended.
5. The appellant's application to the Council for permission to use the whole of the barn as one agricultural worker's dwelling has been refused, following failure to reach agreement on a section 106 obligation. I am unable to deal with his request that I should grant consent for this proposal, since this is not an application that is before me. He may wish to resubmit the application to the Council, and to exercise his right of appeal, and it is not appropriate for me to comment on the merits of the proposal. As far as the application before me is concerned, the Council have not raised concerns about the size of the cottages individually as agricultural workers' dwellings or about the adequacy of the standard agricultural worker's condition in the event of the appeal being allowed, and I am satisfied that no such concerns arise.

### *Planning merits*

6. The main issues are whether, having regard to current countryside protection policies and other material considerations, the development previously approved should continue without Condition 2 and without any new conditions or should continue with Condition 2 as it is or with new conditions.
7. If the development previously approved were allowed to continue without the condition and without a new condition, it is likely that each of the cottages could be lived in as a permanent dwelling by anyone, since the use of the term "holiday" in the description of the development would probably be insufficient on its own to restrict occupation without a supporting condition. That would be contrary to Government policy set out in Planning Policy Statement 4 (PPS4), which was issued in 2009 and replaced parts of Planning Policy Statement 7

- (PPS7). PPS4 supports the re-use of rural buildings for economic development purposes, but discourages residential re-use in isolated locations such as this. Policy H8 of the Craven District (Outside the Yorkshire Dales National Park) Local Plan is more favourable to residential conversions, but this policy was adopted in 1999, well before the issue of PPS4 and PPS7. Criterion 1 of the policy would nevertheless not be complied with since there is insufficient evidence that the cottages could not continue in use as holiday accommodation or be used for another business purpose.
8. The Council have accepted that an additional agricultural worker's dwelling is needed on the farm. The functional and financial tests in PPS7 and the criteria in Local Plan Policy ENV1 have all been met. Either of the cottages would meet the need, since each of them is well placed in relation to other farm buildings and would provide adequate living accommodation. The appellant has indicated that if the appeal succeeds to the extent that one of the cottages can be used as an agricultural worker's dwelling, he would prefer it to be the one on the eastern side and I have no reason to disagree.
  9. I conclude on the planning merits that the development previously approved should not continue without Condition 2 and without any new conditions, because the unrestricted occupation of the cottages would be harmful to the objectives of national and local countryside protection policies. There is, however, sufficient justification to allow one of the cottages to be used as an agricultural worker's dwelling instead of as holiday accommodation and the appeal succeeds on ground (a) to this extent.
  10. I have therefore authorised the continuation of the development previously approved without compliance with Condition 2, but subject to new conditions that restrict the use of the cottage on the western side of the barn to holiday accommodation and the one on the eastern side to an agricultural worker's dwelling. The new conditions have been imposed in order to protect the open countryside from isolated general-purpose housing development that would be harmful to its character and appearance.

*D.A.Hainsworth*

INSPECTOR