



Appeal Decisions

Hearing held and site visit made on
4 May 2010

by **David Pinner** BSc (Hons) DipTP MRTPI

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

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Decision date:
11 May 2010

Appeal Ref: APP/T2350/C/09/2115475

Lower Monubent Farm, Hellifield Road, Bolton-by-Bowland, Clitheroe, BB7 4LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Howard John Berry against an enforcement notice issued by Ribble Valley Borough Council.
- The notice was issued on 1 October 2009.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the agricultural building from agricultural use to a mixed use of agricultural and residential use as a permanent dwelling.
- The requirements of the notice are to cease using the building for residential purposes and remove all domestic furniture and fittings to allow for the whole building to be used for its authorised agricultural purposes.
- The period for compliance with the requirements is one year from the date when the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Appeal Ref: APP/T2350/A/09/2115328

Lower Monubent Farm, Hellifield Road, Bolton-by-Bowland, Clitheroe, BB7 4LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Howard John Berry against the decision of Ribble Valley Borough Council.
- The application Ref: 3/2009/0352, dated 27 April 2009, was refused by notice dated 10 September 2009
- The development proposed is retention of agricultural workers dwelling and residential curtilage for a temporary period of three years.

Summary of decisions

1. I allow the appeals, quash the enforcement notice (as varied) and grant planning permission subject to conditions as set out in the Formal Decision below.

Preliminary matters

2. It was agreed by the parties at the hearing that the enforcement notice and the planning application that led to the s78 appeal both relate to the same

development. The use of the word "permanent" in the enforcement notice was intended to refer to the fact that the dwelling is the appellant's only residence and should not be regarded as conflicting with the word "temporary" in the planning application. The reference to the retention of the development in the s78 appeal is incorrect, since "retention" is not an act of development as defined in s55 of the Act, hence s63 of the Act (which refers to retention of works etc and continuation of uses) was repealed and replaced with s73A. The proposal therefore needs to be expressed in terms that make it clear that permission is being sought for development that has already been carried out.

3. A further point of discussion was whether the use of the building was correctly described as a mixed agricultural and residential use given that an identifiable part of the building was in use for residential purposes as a separate planning unit. It was agreed that the enforcement notice should be varied to refer to the change of use of part of the agricultural building to a separate residential use, rather than the use of the building as a whole having been changed to a mixed use. I am satisfied that I can make the necessary corrections, variations and redescriptions without causing injustice to either party.

Background

4. The appellant and his wife are both from farming families although the appellant has been involved in agricultural contracting for the last 20 years. His wife has considerable experience in breeding and rearing horses.
5. In 2005, they purchased Lower Monubent Farm, which comprised a house subject to an agricultural workers' condition and a relatively small amount of land. They ran it as a hobby farm, with the agricultural contracting remaining the main source of income.
6. In 2007, because of a large debt owed to them that had been defaulted on, they had no option other than to sell Lower Monubent Farm Cottage to avoid bankruptcy. They first applied to have the agricultural occupancy condition lifted, but the application was unsuccessful because they had not marketed it as an agricultural dwelling for a sufficient period. They did not have time to market it any longer, so it was sold as an agricultural workers' dwelling.
7. Nevertheless, the funds raised were enough for them to clear their debts and also to invest further in the proposed agricultural/equestrian business by the purchase of additional land. After the sale of their house, they converted part of the portal frame agricultural building on the land to provide living accommodation. It is this living accommodation that is the subject of these appeals.

Reasons

8. The appellant and his wife wish to develop a mixed rural enterprise based on sheep rearing, contract rearing of cattle, horse keeping and breeding and agricultural contracting. It is intended that the agricultural contracting element would diminish as the other elements grow. The Council accepts that the appellants have the necessary experience and expertise to develop the business, that the proposed livestock elements of the business would require more than one full time agricultural worker, that there is a functional need for

someone to live on site and that there is no other suitable residential accommodation that would meet that need.

9. Relevant local policies reflect national policy regarding occupational dwellings in the countryside and in this respect, the Council has two areas of concern. First, the fact that the appellants previously sold a dwelling that would have met their needs and second, that the enterprise has not been planned on a sound financial footing.
10. The projected income and expenditure from the livestock based elements of the enterprise were discussed fully at the hearing and I was able to gauge the extent of disagreement between the parties. The Council's view is that the agricultural contracting element of the business should not be taken into account at all because it does not meet the definition of agriculture, does not necessarily require a rural location and does not contribute to any functional need for a dwelling. In his financial projections, the appellant had made no allowance for repairs and renewals of tractors and machinery because these would be freely available to him from the agricultural contracting arm of the business. Any notional costs of agricultural contracting services would be offset by the notional rent that would be charged to the agricultural contracting business for the use of the land and buildings for storage and as workshop space. The Council did not agree that such notional non-agricultural income should be factored into the agricultural aspects of the enterprise and that it could only be those agricultural aspects (including the horse related business) that would provide any justification for a dwelling. Thus, on the appellant's figures, the agricultural aspects of the business would provide an overall profit a little short of the average wage for a full time worker, whereas on the Council's figures, the profit would be only a little more than half of the average wage for a full time worker. The agricultural contracting side of the overall business would provide sufficient additional income for the appellant and his family to enjoy a reasonable standard of living.
11. The advice in Annex A of Planning Policy Statement 7 *Sustainable Development in Rural Areas* (PPS7) effectively provides the policy background for this proposal. However, it is not to be taken out of context with the thrust of the PPS as a whole. Amongst other things, this recognises that diversification into non-agricultural activities is vital to the continuing viability of many farm enterprises (paragraph 30) and that equine related activities can fit in well with farming activities and help to diversify rural economies (paragraph 32). Paragraph 2 of Annex A says that the aim of scrutinising applications for occupational dwellings in the countryside is to detect attempts to abuse the concession that the planning system makes for such dwellings. Paragraph 15 applies the same stringent levels of assessment that apply to agricultural workers' dwellings to other occupational dwellings in the countryside. Paragraph 5 advises that the recent sale of a dwelling could constitute evidence of lack of agricultural need.
12. Starting with the Council's concern about the relatively recent sale of the agricultural workers' dwelling, I am satisfied that this was brought about by force of circumstances and was undertaken as a last resort by the appellant. After the sale, the appellant was able to rent the dwelling back off the new purchaser for a while before he moved into the dwelling now enforced against. The proceeds from the sale were ploughed back into the enterprise through the

purchase of additional land. In these particular circumstances, there is nothing about the sale of the previous dwelling that suggests a lack of need for a dwelling to serve the enterprise, especially as the appellant has continued to live on the holding following the sale. The Council accepts that the sale of the former dwelling was not done in an attempt to abuse the concession made by the planning system for occupational dwellings. They also accept that there is a functional need for a dwelling that could not be met by any existing dwelling. I conclude that the sale of the dwelling does not suggest a lack of need for a dwelling and should therefore not be a factor that weighs against the granting of planning permission for a dwelling to serve the needs of this enterprise.

13. The second of the Council's concerns is that the enterprise has not been planned on a sound financial basis. In this regard, they are not prepared to accept that the appellant's agricultural contracting activities can contribute to the overall viability of the enterprise and that it is only the agricultural and equestrian activities that can justify a need for a dwelling. I would agree insofar as the functional test is concerned that agricultural contracting does not justify an occupational dwelling. However, in this case the agricultural contracting forms no part of the accepted functional need for a dwelling.
14. The financial test has to be met because otherwise the enterprise would be unsustainable. If a dwelling had been permitted under such circumstances, the likelihood is that the enterprise would fail and a dwelling in the open countryside would then exist with no enterprise to justify it. There would be pressure to lift any occupancy condition and the end result would be an unrestricted new dwelling in a location where none should have been permitted.
15. Whilst the tests set out in Annex A of PPS7 are specifically aimed at agricultural enterprises, paragraph 15 applies similar considerations to other occupational dwellings. It seems to me that a mixed enterprise based on agriculture, equestrian activities and agricultural contracting as we have in this case, can be regarded as an appropriate rural enterprise and still falls within the ambit of Annex A. The agricultural contracting aspect of the enterprise uses the same sort of equipment as would be expected to be found on a farm and it is very common for such businesses to be run from working farms. Nothing in PPS7 appears to discourage this sort of diversification and the Council has made no suggestion to the effect that the appellant's agricultural contracting activities are unacceptable in this location. I consider that it would be legitimate to take it into account as part of the financial appraisal of a mixed rural enterprise, particularly where, as here, at least one full time worker is required for the livestock elements of the enterprise and the functional need for a dwelling is entirely related to the agricultural and equine related activities. I am supported in this stance by the advice in PPS7 that non-agricultural activities can be vital to the sustainability of many farm enterprises.
16. With the income from the agricultural contracting taken into account, it is clear that the mixed enterprise which the appellant wishes to establish would provide sufficient income to be sustainable. The appellant and his wife clearly have the expertise and experience to develop the enterprise and their current level of investment in it is a clear sign of their commitment to developing an enterprise that has agriculture and equine related activities at its heart. The dwelling they have created is functional and so integrated into a modern agricultural building

and the building restored to its former condition (or such condition as may have been previously agreed in writing with the local planning authority) on or before the end of a three month period after the expiry of this three-year temporary period;

- 2) the occupation of the dwelling shall be limited to a person solely or mainly working, or last working, at Lower Monubent Farm in the mixed agricultural, equestrian and agricultural contracting enterprise, or to a person solely or mainly working in the locality in agriculture or forestry, including, as the case may be, a widow or widower of such a person, and to any resident dependants.

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22. I allow the appeal, and grant planning permission for the development already carried out, namely the change of use of part of the agricultural building on the land to form a workers' dwelling with residential curtilage at Lower Monubent Farm, Hellifield Road, Bolton-by-Bowland, Clitheroe BB7 4LY, in accordance with the terms of the application, Ref: 3/2009/0352, dated 27 April 2009 and the plans submitted with it, subject to the same conditions 1) and 2) as set out above in respect of the s174 appeal.

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that I doubt that it could be regarded as having independent existence. That is further evidence that this is a genuine scheme for a viable rural enterprise and in no way an attempt to abuse the concession made by the planning system for occupational dwellings in the open countryside.

17. If the appellant and his family could not live on site, they could not develop the agricultural and equine elements of the enterprise. I see no good reason to deny the appellant at least an opportunity of developing the business as he has set out. To do so would mean that his investment in additional land would have been wasted, since it is accepted that the proposed livestock elements of the enterprise require the permanent on-site presence of a full-time worker. I therefore conclude that the proposals are acceptable, on a temporary basis initially, and do not conflict with national policy for temporary occupational dwellings as set out in Annex A of PPS7.

Conditions

18. As the functional need for a dwelling is prospective rather than existing, it is necessary to make the planning permission temporary to see whether the proposed agricultural and equestrian aspects of the enterprise can be developed as intended. The three-year period requested is in accordance with the advice in Annex A of PPS7. It is also necessary to impose an occupancy condition because a new dwelling in this location can only be justified by an occupational need. I have worded the conditions as necessary to reflect the fact that the residential use could not end instantly upon expiry of the three year period and that it would not be necessary to re-instate the agricultural use of the part of the barn involved (it could be left vacant). I have worded the occupational condition to reflect the specific nature of the proposed enterprise.

Conclusions

19. I conclude that the scheme is acceptable for a temporary period and planning permission will be granted and the enforcement notice quashed. There is therefore no need for me to consider the s174 appeal on grounds (f) and (g).

Formal decisions

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20. I direct that the enforcement notice be varied by the deletion of the alleged breach of planning control (Paragraph 3) and its substitution by the following allegation:

"Without planning permission, the change of use of part of the agricultural building on the land to form a dwelling with residential curtilage"

21. Subject to that variation, I allow the appeal and quash the enforcement notice. I grant planning permission on the application deemed to have been made for the development already carried out, namely the change of use of part of the agricultural building on the land to form a workers' dwelling with residential curtilage at Lower Monubent Farm, Hellifield Road, Bolton-by-Bowland, Clitheroe BB7 4LY, subject to the following conditions:

- 1) the permission hereby granted shall be for a limited period of three years from the date of this decision. The residential use shall be discontinued

APPEARANCES

FOR THE APPELLANT:

Alan Kinder	Appellant's agent
Howard Berry	Appellant
Philippa Berry	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Colin Sharpe	Senior Planning Officer, Ribble Valley Borough Council
David Ensor	Senior Assistant Land Agent, Lancashire County Council

DOCUMENTS

- 1 List of those present at the hearing
- 2 Council's letter of notification of the appeal and list of those notified

