

Agenda Item A7	Committee Date 8 January 2018	Application Number 17/00939/VLA
Application Site Berrys Farm Conder Green Road Conder Green Lancaster	Proposal Variation of legal agreement attached to planning permission 02/00416/CU to allow the properties to be used for unrestricted residential use	
Name of Applicant Mr T And E Lawson	Name of Agent Mrs Melanie Lawrenson	
Decision Target Date 19 September 2017	Reason For Delay Awaiting further information and Committee call in	
Case Officer	Mrs Eleanor Fawcett	
Departure	No	
Summary of Recommendation	Refusal	

(i) Procedural Matters

This form of development would normally be dealt with under the Scheme of Delegation. However, a request has been made by Councillor Charles for the application to be reported to the Planning Committee on the basis that concern that refusal would result in a further loss of rural housing when it is desperately needed.

1.0 The Site and its Surroundings

1.1 The site is located on Conder Green Road, approximately 2 kilometres to the west of Galgate and 0.75km to the southeast of Conder Green. It relates to a former barn, which has been converted to two properties, and lies within a complex of former farm buildings, which includes a farmhouse. There are two separate dwellings to the northwest of the farm complex, Westberry and Conder House. To the east is a small certified caravan site associated with the farm complex. Beyond the site and adjacent buildings is agricultural land.

1.2 The site is located within the Open Countryside, as identified on the Local Plan Proposals Map. It is also within Flood Zone 3 and a public footpath crosses the field to the south of the site.

2.0 The Proposal

2.1 This application seeks to discharge the legal agreement attached to planning application 02/00416/CU for the conversion of the barn to two holiday cottages. The agreement contains a series of occupancy options including:

- The restriction of the occupation as holiday accommodation by individuals or connected groups for a period not exceeding eight weeks in any one calendar year; or
- The occupation by a student (with his/her family) on a full time further education course restricted to no more than 40 weeks in any one academic year; or
- The accommodation not to be used as permanent residential units unless occupied by the immediate family of the owners.

3.0 Site History

3.1 The most relevant consent is 02/00416/CU, which relates to the conversion of the barn to two dwellings. In 2006, consent was also granted for the conversion of other traditional barns to two units of holiday accommodation. The use of these was restricted by way of condition on the planning consent to holiday let accommodation only, not as a sole or principle residence, not as a second home, not to be let to any person or connected group of persons for a period exceeding eight weeks in any one calendar year, and not to be sold or severed from the main farm unit. A recent application for a lawful development certificate was submitted in relation to these other two units of holiday accommodation, for the use as unrestricted residential properties. This was refused as the evidence was not sufficient to satisfactorily demonstrate that the buildings had been used as a dwelling house, in breach of conditions of planning permission 06/00664/CU, for a continuous period of not less than 10 years before the date of the application. It is understood that these have been occupied by the applicants of the current application.

3.2 The planning history in relation to the farm complex is set out below.

Application No.	Proposal	Decision
17/00894/ELDC	Existing Lawful development certificate for the use of the buildings known as Stable End and New Croft as single residential dwellings (falling within Use Class C3) in breach of conditions of planning permission 06/00664/CU	Refused
15/01105/FUL	Erection of a detached reception/office building (in relation to the camping/caravan site)	Approved
09/00024/CU	Change of use of agricultural land to form commercial fishing lake	Approved
08/01227/FUL	Change of use of agricultural land to form commercial fishing lake	Withdrawn
06/00664/CU	Change of use and conversion of farm buildings into two holiday units.	Approved
02/00416/CU	Change of use and conversion of barn to form two holiday units.	Approved
99/00755/FUL	Erection of a stock building	Approved
1/83/0725	Outline application for one detached bungalow for agricultural worker	Refused
1/82/1137	Outline application for the erection of a detached bungalow for an agricultural worker	Refused

4.0 Consultation Responses

4.1 Given the nature of the application, no consultations were required.

5.0 Neighbour Representations

5.1 No representations have been received.

6.0 Principal National and Development Plan Policies

6.1 National Planning Policy Framework (NPPF)

Paragraphs 7, 14 and 17 – Sustainable Development and Core Principles
Paragraph 32 – Access and Transport
Paragraphs 49 and 50 – Delivering Housing
Paragraphs 56, 58 and 60 – Requiring Good Design

6.2 Local Planning Policy Overview – Current Position

At the 20 December 2017 meeting of its Full Council, the local authority resolved to publish the following 2 Development Plan Documents (DPD) for submission to the Planning Inspectorate:

- (i) The Strategic Policies and Land Allocations DPD; and,
- (ii) A Review of the Development Management DPD.

This enables progress to be made on the preparation of a Local Plan for the Lancaster District. The DPDs will be published in February, after which there will be a 6 week period for representations

prior to the submission of the documents to the Planning Inspectorate for independent Examination. If an Inspector finds that the submitted DPDs have been soundly prepared they may be adopted by the Council, potentially in late 2018.

The **Strategic Policies and Land Allocations DPD** will replace the remaining policies of the Lancaster District Core Strategy (2008) and the residual 'saved' land allocation policies from the 2004 District Local Plan. Following the Council resolution in December 2017, it is considered that the Strategic Policies and Land Allocations DPD is a material consideration in decision-making, although with limited weight. The weight attributed to this DPD will increase as the plan's preparation progresses through the stages described above.

The **Review of the Development Management DPD** updates the policies that are contained within the current document, which was adopted in December 2014. As it is part of the development plan the current document is already material in terms of decision-making. Where any policies in the draft 'Review' document are different from those adopted in 2014, and those policies materially affect the consideration of the planning application, then these will be taken into account during decision-making, although again with limited weight. The weight attributed to the revised policies in the 'Review' will increase as the plan's preparation progresses through the stages described above.

6.3 Lancaster District Core Strategy (adopted July 2008)

SC1 – Sustainable Development
SC5 – Achieving Quality in Design

6.4 Lancaster District Local Plan - saved policies (adopted 2004)

E4 – Countryside Area

6.5 Development Management Development Plan Document (adopted July 2014)

DM8 – The re-use and Conversion of Rural Buildings
DM20 – Enhancing Accessibility and Transport Linkages
DM21 – Walking and Cycling
DM28 – Development and Landscape Impact
DM35 – Key Design Principles
DM41 – New Residential Development
DM42 – Managing Rural Housing Growth

7.0 Comment and Analysis

7.1 The main issues to be considered in the determination of this application are:

- Principle of permanent residential accommodation
- Flood risk

7.2 Principle of permanent residential accommodation

7.2.1 The application seeks consent to discharge the legal agreement attached to the planning approval in 2002, which restricts the occupancy of the two units to short term holiday lets, students (with families) or for the immediate family of the owners. This would mean that these could not be occupied on a permanent basis for residential use, except by the immediate family of the owners. Policy SC1 of the Core Strategy requires new development to be as sustainable as possible, in particular it should be convenient to walk, cycle and travel by public transport to homes, workplaces, shops, schools, health centres, recreation, leisure and community facilities. Policy DM20 of the Development Management DPD sets out that proposals should minimise the need to travel, particularly by private car, and maximise the opportunities for the use of walking, cycling and public transport. Policy DM42 sets out settlements where new housing will be supported and that proposals for new homes in isolated locations will not be supported unless clear benefits of development outweigh the dis-benefits.

7.2.2 The application site is located in the open countryside, divorced from any of the villages identified in policy DM42. It lies approximately 2 kilometres to the west of Galgate and 0.75km to the southeast of

Conder Green, by road. There are services in Galgate and there is a bus stop and public house at Conder Green. However, between the site and these locations there are no footways or street lighting and sections of the road are very narrow and enclosed, with high hedges at both sides and limited verges. This will limit pedestrian movements along the road, particularly in the evenings and winter months, and it is therefore likely that someone living in this location would be heavily reliant on private transport to reach services. As such, the site is considered to be within an unsustainable location where new residential development would not usually be supported.

- 7.2.3 Paragraph 55 of the NPPF sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities, and local authorities should avoid new isolated homes in the countryside unless there are special circumstances. One of these is the re-use of redundant or disused buildings where it would lead to an enhancement to the immediate setting. The properties were converted from a barn to form holiday accommodation to support the farm business. It is understood that the properties are currently being occupied as permanent residential dwellings, contrary to the legal agreement. As the building is in use, and has consent for the holiday use and by students with families, it cannot be considered to be redundant or disused. In addition, it is not considered that the use as permanent residential accommodation would lead to an enhancement of the setting of the building and would more likely cause harm as a result of increased domestic paraphernalia. However, it is acknowledged that the legal agreement allows the use by immediate family members on a permanent basis.
- 7.2.4 The agent has set out that if the legal agreement is enforced, the units would be redundant due to the lack of market for this type of holiday accommodation. There has been a recent appeal decision for a similar proposal at Old Waterslack Farm near Silverdale. The change of use had been implemented, although the applicant indicated that the units were currently being used as permanent dwellings and not as holiday lets. It was argued that the use as holiday lets was redundant due to the limited demand for such a use in this area, and as they were already being used as permanent dwellings they were technically disused as holiday lets. However, the Inspector's report set out that no substantive evidence had been provided to support the claim that there was limited demand for holiday lets in the area, or to show that despite reasonable marketing of the units, occupancy levels were such that the lawful use was unviable. It was therefore concluded that the units were considered not to be redundant or dis-used buildings, would add unnecessarily to sporadic development in the countryside, would fail to achieve any significant economic, social and environmental benefits and as a result it would not represent a sustainable form of development.
- 7.2.5 In relation to the current application, the submission sets out that a while after Conder Side and Berry's View had been converted, it became clear that the student rental market had declined, with Lancaster University investing heavily in the construction of private student accommodation between 2004-2006 and the holiday use could not make a viable and recurrent profit due to lack of demand. On that basis, the brothers decided to rent them out on a residential basis, rather than leave them empty. This slightly contradicts the evidence that one of the brothers lived in Berry's View before moving into one of the holiday units granted by the 2006 consent. This first occupation was in accordance with the legal agreement, but not the occupation of the other property. Further information was requested from the agent in terms of any marketing that took place at the time, in addition to evidence to demonstrate that there is no demand for holiday accommodation at present. In response to this, the agent has set out that the applicants became aware soon after permission was granted for the conversion of the building for holiday use or student accommodation that this was not an economically viable business option and were aware of the consistent attempt made by at Sellerley Farm to rent out their holiday cottages. However, despite this, they still proceeded to apply for permission to convert some other buildings to two holiday units and went on to convert these. No evidence has been provided of any marketing being undertaken.
- 7.2.6 The agent has also set out that it is clear that the recent surge of applications to convert holiday cottages to residential use is a result of the lack of market for holiday accommodation. At the time, many farms in this area converted redundant farm buildings into holiday accommodation as farm diversification and at the time, converting redundant barns to residential use was contrary to planning policy. The agent has accepted that the applicants ran a caravan holiday business from the site but have set out that this was very small, and the type of holiday is not comparable to that which a cottage would provide. It has been advised that an estate agents/chartered surveyors have been contacted on an informal basis to ask about the viability of this type of holiday accommodation in this location and that their response indicated that they believe that the "market for holiday properties in

this area is small with the majority of purchasers are more interested in the static caravan market than the barn conversion market as the return on investment in terms of the letting market is also small too.” However, this appears to relate to selling the units rather than them being let for holiday accommodation. On the basis of the above, it is considered that the lack of demand for holiday accommodation in this area has not been demonstrated.

7.2.7 Whilst there is no timescale to enforce against a breach of a legal agreement, in contrast to a planning condition, evidence in relation to the occupation of the two units has been provided and taken into consideration in the assessment of the proposal. There have been a couple of other cases where there has been clear continued occupation over 10 years and this has been taken into consideration in determining whether the legal agreement still serves a useful purpose. From the evidence provided, it is considered that occupation, in breach of the legal agreement, for a continuous period of more than 10 years has not been demonstrated. Mr E Lawson appears to have originally lived in Berry’s View, which would be in compliance with the agreement. However, the evidence of when he moved to a holiday unit granted under the 2006 consent is contradictory and appears to be sometime in 2008, which would not demonstrate 10 years. In relation to the other property, Conder Side, the evidence does show that occupation started more than 10 years ago, but not continually. There are some contradictions within the evidence and some extensive gaps in its occupancy that could be up to 2 years. Whilst the applicants have suggested that these gaps were likely to have been significantly shorter, no substantive evidence has been provided to demonstrate this. In summary, despite concerns being raised to the agent no evidence has been submitted to prove continuous occupancy of 10 years.

7.2.8 The discharge of the legal agreement would result in two new dwellings in the open countryside, divorced from services with occupiers significantly reliant on private transport. Although the building currently has a holiday accommodation use, this is less intensive and it is accepted that this type of accommodation is often located in less sustainable locations. It is acknowledged that the legal agreement allows the use by students with families and also by immediate family members of the applicants and it appears that this was to give the applicants some flexibility. It is specific in that it relates to students with families, rather than just individual or groups of students, possibly if it was identified that it was difficult to rent accommodation close to the university for this group of people. At the time of the application, there was a farm operation so, although not restricted to a farm worker, it would have allowed family members within the enterprise to live on the site in the converted building. Despite this ability within the agreement, the two applicants have chosen to live in the barns converted under the 2006 consent to holiday accommodation and, according to the evidence provided, converted these knowing that there was no demand for holiday accommodation.

7.2.9 There have been some recent cases that discuss the definition of ‘isolated’ in terms of the application of paragraph 55 of the NPPF. The building is within a group of other buildings, which includes some dwellings, so it could be considered to not be isolated in terms of the dictionary definition. However, at the heart of the NPPF is a presumption in favour of sustainable development and the relevant section on housing also sets out that this should be located where it will enhance or maintain the vitality of rural communities. The site is located quite close to recreational routes and as such the holiday use is likely to support local services, such as cafes and pubs, particularly around Glasson Dock and Conder Green. It is unlikely that the use as a permanent residential accommodation would strengthen this, and could have the opposite impact. Given the divorced location from services, and the nature of the surrounding road network, the removal of the planning obligation would result in an unsustainable form of development and is therefore contrary to local and national policy as set out above. Therefore, it is considered that the legal agreement continues to serve a useful planning purpose. It should also be noted that there have been two other appeals within the District for the removal of holiday occupation restrictions that have also been dismissed, primarily for reasons of sustainability. Therefore it would be inconsistent to take a different view with regards to this proposal.

7.3 Flood risk

7.3.1 The site is located within Flood Zone 3, which is land identified as being at the highest risk of flooding. The site already provides accommodation, however it could be argued that the flood risk is increased as the proposal would result in permanent occupation rather than being a more occasional holiday use. However, the legal agreement allows for a longer period of occupation in terms of the student accommodation, and for permanent occupation by an immediate family member. Therefore it would be difficult to argue that the removal of the legal agreement would increase the flood risk.

8.0 Planning Obligations

- 8.1 The application seeks to discharge the existing planning obligation restricting the occupancy to holiday use and the farm operation.

9.0 Conclusions

- 9.1 The removal of the restrictions on the properties would result in two unrestricted dwellings in open countryside, divorced from services, which is considered (nationally and locally) to represent unsustainable development. The building is not redundant or disused and the proposal would not result in an enhancement to the setting. It is therefore considered that the proposal fails to comply with the exceptional circumstances set out in paragraph 55 of the NPPF in order to justify a new dwelling in this isolated location within the countryside. Even if this part of paragraph 55 is discounted as the building is not isolated in the sense that it is within a group of buildings, it is isolated in terms of its location to services and is therefore considered to not represent a sustainable form of development and the building has a permitted use which is considered acceptable in this location.
- 9.2 The Council cannot currently demonstrate a five year supply of deliverable housing sites. As such, in line with paragraph 49 of the NPPF, Policy DM42 may be considered not to be up to date. Paragraph 14 sets out that at the heart of the NPPF is a presumption in favour of sustainable development and where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies indicate development should be restricted.
- 9.3 There are three dimensions to sustainable development: economic, social and environmental. The proposal would provide some income in terms of the rental of the properties, but this would also be provided by the use of holiday accommodation. There would be no environmental benefits as the building already has a use. The proposal would provide two additional dwellings and contribute to the range of housing available in the local area, however, occupants would be significantly reliant on private transport to reach services and therefore would not be contributing to either the social or environmental dimensions of sustainable development. Therefore, on balance, it is considered that the adverse impacts in terms of a new dwelling in the open countryside, divorced from services, would significantly and demonstrably outweigh the very limited benefits when assessed against the policies in the NPPF taken as a whole. Therefore the proposal is not acceptable in light of the presumption in favour of sustainable development and it is therefore considered that the legal agreement continues to serve a useful planning purpose and hence should not be discharged.

Recommendation

That the legal agreement attached to planning permission 99/00304/CU remains unvaried as it still serves a useful purpose, and the application **BE REFUSED** for the following reasons:

1. The site is located within the open countryside, divorced from key services and facilities and as such it is considered to be unsustainable in terms of its location. There are considered to be no special circumstances, in this instance, to justify two new dwellings in this unsustainable location, which would result from the discharge of the planning obligation. The proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework, in particular the Core Planning Principles and Section 6, Policy SC1 of the Lancaster District Core Strategy and Policies DM20 and DM42 of the Development Management Development Plan Document.

Background Papers

None