

<b>APPEAL DECISION (DPEA)</b>
<b>Appeal Reference</b>
PPA-110-2315
<b>Planning Reference</b>
APP/2016/1152
<b>Planning Proposal</b>
Removal of Condition 6 (Restricted Occupancy) of Previously Approved APP/2014/1706 (Erection of Dwellinghouse, Change of Use of Temporary Accommodation to Holiday Accommodation, Extension to Stables to Form Hay Store, and Retrospective Consent for Car Port and Log Store)
<b>Summary of Decision</b>
The DPEA allowed the appeal and granted consent for the dwellinghouse without condition 6, however they added a condition requiring the applicant to demonstrate that the business has been re-established and a suitable business case has been made.
<b>Policy Issues</b>
The condition imposed by the DPEA is surprising, it effectively allows the house to be built subject to the principle of development being justified by condition. The Planning Service expressed concern to the DPEA about this approach when notified of their intentions, however the decision has been made and the condition has been attached to the appeal decision/consent.
The Planning Service do have concerns about how the applicant will comply with the condition, as effectively they are being required to revisit the principle of development and comply with current LDP Policy R2 by condition. This will present a very rare and unusual circumstance.
<b>Additional Points</b>
None.
<b>Actions</b>
None for Committee
<b>Note Decision</b>
Appeal allowed, consent for the dwelling has been granted, albeit a rather spurious condition to revisit the principle of development will have to be complied with.

## Appeal Decision Notice

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Decision by Amanda Chisholm, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-110-2315
- Site address: The Stables, Tilquhillie, Banchory, Aberdeenshire, AB31 6JS
- Appeal by Mr Victor Smith against the decision by Aberdeenshire Council
- Application for planning permission reference APP/2016/1152 dated 26 April 2016 refused by notice dated 22 July 2016
- The development proposed: to carry out the development without compliance with condition 6 imposed in the grant of planning permission APP/2014/1706 dated 26 August 2014 “that the occupancy of the dwelling house shall be limited to a person solely or mainly employed or last employed in the operation of the associated livery business; or a widow or widower of such a person”.
- Application drawings: A13016-01 Rev A, A13016-02 Rev B, and A13016-04
- Date of site visit by Reporter: 7 December 2016

Date of appeal decision: 28 June 2017

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## Decision

I allow the appeal and grant planning permission for the erection of a dwelling house, change of use of temporary accommodation to holiday accommodation, extension to the stables to a form hay store and retrospective consent for a car port and log store in accordance with the application APP/2016/1152 made on 26 April 2016, subject to the conditions listed at the end of the decision notice. Attention is drawn to the advisory notes at the end of the notice.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan, the determining issue in this appeal is whether the proposed house in the countryside is justified in the absence of the occupancy condition as imposed through condition 6.

2. The development plan comprises the Aberdeen City and Shire Strategic Development Plan (2014) and the new Aberdeenshire Local Development Plan, adopted on 17 April 2017. The proposal at appeal does not raise any strategic issues and falls to be assessed against the relevant provisions of the Local Development Plan. The policies in



the new Local Development Plan that are relevant to the appeal site are similar to those of the previous plan.

3. The appeal relates to an existing livery business (granted planning permission in 2009), comprising stables, an indoor school, an outdoor sand school, and temporary chalet accommodation. The temporary accommodation, to provide a 24-hour presence for animal welfare and security reasons, was approved in 2011 for a period of two years, to allow for establishment of the business. In 2014 Aberdeenshire Council granted planning permission for the erection of a dwelling house; change of use of the temporary accommodation to holiday accommodation; extension to the stables to form a hay store; and retrospective consent for a car port and log store. The appellant is seeking removal of condition 6, described above, as a necessary prerequisite to obtaining mortgage finance; this requirement has been confirmed by the mortgage lender. As the council was content that the other elements of the application accorded with the development plan, in this decision I focus on the issue of the dwelling house and the proposal to remove condition 6.

4. The Local Development Plan, while supporting sustainable development in the countryside, notes the need to manage development in a way that recognises the special character of different types of rural area. The council will generally restrict development proposals in the countryside area outwith the Aberdeen green belt and coastal zone to small-scale development that meets the criteria set out in Policy R2. Assessment of the proposal against Policy R2 indicates that, as it is for a new single dwelling on greenfield land not associated with retirement succession, the criteria of Policy R1 on special rural areas should be applied, despite the fact that it is not in the green belt.

5. Assessment of the proposal against Policy R1 indicates that its location in the countryside, particularly within the pressured Aberdeen Housing Market Area, would normally result in planning permission being withheld. However, Policy R1 permits the development of accommodation within the immediate vicinity of a place of employment where the presence of a worker is essential to the operation of the enterprise. From the evidence before me it is clear that, although not a primary industry, the livery business is an enterprise appropriate to the countryside and that, for it to operate, an on-site presence is required. This need was originally met by the temporary chalet in 2011 and was recognised by the council in its reasons for attaching condition 6 to the planning permission for the permanent dwelling house. Given the growth of the business between 2011 and 2014, I accept that, at the time that planning permission was granted, it would have been appropriate for the need for the on-site presence to be met by a permanent dwelling, which would also address the longer term requirements of the business.

6. I turn now to the occupancy condition. Scottish Planning Policy (2014), in paragraph 81, advises that the use of occupancy restrictions should be avoided in accessible or pressured rural areas, which in this case includes the Aberdeen Housing Market Area. This reflects the advice of the Chief Planner's letter, of 4 November 2011, that occupancy restrictions are rarely appropriate and so should generally be avoided, particularly because of the difficulties of obtaining a mortgage on a house with an occupancy restriction. This advice is particularly pertinent to this appeal. I have reviewed the policy tests provided in SODD Circular 4/1998 on *The Use of Conditions in Planning Permissions* and consider the

criteria “necessary” and “reasonable” to be most pertinent. In my view the imposition of condition 6 is an unreasonable restriction, given the implications for mortgage financing.

7. However, there is a question as to whether condition 6 is necessary. While Local Development Plan policy can be interpreted as making provision for permission in a case such as this, it is predicated on the need arising from the existence of a viable business. The Chief Planner’s letter of 4 November 2011 notes that it may be appropriate for the planning authority to consider the need for a house and to ask the applicant to make a business case, advising that, where the authority is satisfied that an adequate case has been made, it should not be necessary to use a planning obligation as a formal mechanism to restrict occupancy or use.

8. At the time of planning permission in August 2014, the appellant provided a business case for the long-term sustainability of the livery stables which was accepted by the council and I see no reason to doubt this. However, the information before me indicates that the livery business was suspended in March 2016 (as noted in many of the representations received by the council). The appellant has stated his intention to return the business to full operation alongside the currently operating agri-services business. While I do not doubt the appellant’s intentions in this regard, I do not have sufficient evidence (such as a refreshed business case) about the business’s long-term viability and therefore the need for a permanent dwelling. Given this change in circumstances I consider it necessary that the appellant demonstrate to the council that the business’s viability is such that the case for the dwelling house remains unchanged in the long term. I have therefore attached a condition to this effect, to ensure that the need for the dwelling is demonstrated in line with the requirements of Policy R1.

9. I have reviewed the new condition against the requirements of Circular 4/1998, as follows:

- the new condition is necessary and relevant, both to planning and the proposal, to ensure compliance with Policy R1 and, in consequence, the Local Development Plan;
- it is precise in its requirement that a business case be presented to the council and therefore enforceable;
- it is reasonable, given that the necessary evidence requires to be presented in support of the argument that the dwelling is required for the long-term viability of the business.

### Other matters

10. As well as the issue of material considerations, concern was expressed in representations to the council about setting a precedent for further planning applications for residential dwellings on the site. However, as each case is considered on its own merits and as my decision relates to the particular issues arising in this location, I do not consider that this should create any precedent in relation to existing planning policy.

11. There were also concerns that the site may be split or the dwelling sold in the future without being linked to the business. I agree that, without the occupancy condition, this

remains a possibility but note that the business would not be viable in the long term without the dwelling house. In the event that the house and business were split, and an application made for a new dwelling, this would fall to be considered in the context of the relevant development plan policies and any other material considerations which might apply.

## Conclusion

12. Drawing all of the above together, I conclude that planning permission for the development should be granted and that condition 6 should be removed, in line with Scottish Planning Policy and the advice from the Chief Planner. I accept that removal of the occupancy condition is a matter of concern for the planning authority and others, but consider that the obstacle to obtaining mortgage finance is otherwise insurmountable.

13. However, I must also keep in mind the rationale behind the council's original thinking: that the dwelling house would be inappropriate unless tied to the business. In this context I consider that compliance with Policy R1 can be appropriately secured through a new condition 6. This requires a clear justification for the house in the context of a currently operating livery business. With this condition, which I find to be in accordance with the terms of Circular 4/1998, I conclude that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission.

*Amanda Chisholm*

Reporter

## Conditions

(1) Landraising within the functional floodplain could affect the storage and conveyance capacity of the functional flood plain and increase flood risk elsewhere. Therefore, no landraising should be undertaken for the formation of the proposed access track.

*Reason: In order to ensure there is no increased risk of flooding within the 1 in 200 year flood risk area.*

(2) The development shall be served in accordance with the approved drawings and the following details:

- a) The maximum gradient of the first 5m of the access must not exceed 1 in 20.
- b) Prior to occupancy of development, first 10m of access (measured from edge of road) to be fully paved.
- c) Prior to occupancy of development, 4 Parking spaces, surfaced in hard standing materials shall be provided within the site.

*Reason: In order to ensure that the development is served by an appropriate standard of access and associated servicing in the interests of road safety.*

(3) That no development in connection with the permission hereby approved shall take place unless a finalised Energy Statement for the new house has been submitted to and approved in writing by the Planning Authority, including the following items:

- (i) Full details of the proposed energy efficiency measures and/or renewable technologies to be incorporated into the development.
- (ii) Calculations using the SAP or SBEM methods, which demonstrate that the reduction in carbon dioxide emissions rates for the development, arising from the measures proposed, will enable the development to comply with the Council's Supplementary Planning Guidance on Carbon Neutrality in New Developments. (In this case the development will achieve at least a Bronze Active rating under Section 7 of the Building Standards Technical Handbook.)

The development shall not be occupied unless it has been carried out in accordance with the approved details in the Energy Statement. The carbon reduction measures shall be retained in place and fully operational thereafter.

*Reason: To ensure this development complies with the on-site carbon reductions required in Scottish Planning Policy and the Council's Supplementary Planning Guidance - Carbon Neutrality in New Developments.*

(4) That permission for the self-catering holiday chalet hereby approved shall be for a limited period of five years from the date of this approval.

*Reason: In order to retain control over this temporary form of development and to enable the impact of the development on the amenity of the surrounding area to be reviewed.*

(5) That within one month of the date of the expiry of this permission the self-catering chalet hereby approved shall be removed and the site shall be restored all in accordance with a scheme of restoration which shall be submitted for written approval no less than three months prior to the expiry of the temporary planning permission.

*Reason: In order to ensure the timeous reinstatement of the site following the expiry of this temporary permission in the interests of the amenity of the area.*

(6) That no development of the dwelling house hereby permitted, including preparatory works, shall commence until the applicant has provided a suitable business case and demonstrated to the satisfaction of the council that the livery business has been re-commenced and has been in operation for a period of no less than 12 months.

*Reason: The site lies in an area where the development plan considers that new residential development is inappropriate unless specifically related to the essential needs of an associated employment use.*

(7) That no works in connection with the development hereby approved shall take place unless a scheme of hard and soft landscaping works has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:

- (i) Existing landscape features and vegetation to be retained.
- (ii) The location of new trees and hedges.

- (iii) A schedule of planting to comprise species, plant sizes and proposed numbers and density.
- (iv) The location, design and materials of all hard landscaping works including walls, fences and gates.
- (v) An indication of existing trees, shrubs and hedges to be removed.
- (vi) A programme for the completion and subsequent maintenance of the proposed landscaping.

All soft and hard landscaping proposals shall be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of the development or such other date as may be agreed in writing with the Planning Authority. Any planting which, within a period of five years from the completion of the development, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

*Reason: To ensure the implementation of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area.*

### Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).