

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No:	DM/14/03652/VOC
FULL APPLICATION DESCRIPTION:	Removal of condition 7 of permission 6/2010/0083/DM (occupancy condition)
NAME OF APPLICANT:	Mr Douglas Fox Glencrest
ADDRESS:	Butterknowle County Durham DL13 5LW
ELECTORAL DIVISION:	Evenwood
CASE OFFICER:	Tim Burnham Senior Planning Officer 03000 263963 tim.burnham@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

1. The application relates to a recently built and yet to be occupied bungalow, which is now called Camphill. Camphill bungalow was granted outline approval by the South West Planning Committee in May 2010 to provide proprietor/manager accommodation to the adjacent Glencrest Kennels and Cattery and thereby allow the current management to retire and remain in their existing bungalow Glencrest. The new bungalow sits to the north of Copley Lane and to the south of the main kennel buildings. The site is within the countryside and outside of any settlement boundary. The settlement of Copley lies to the west while the settlement of Butterknowle lies further to the north east. Because of its countryside location and business justification, the application was granted approval subject to an occupancy condition (no.7), which stated that:

2. *“The occupation of the dwelling hereby approved shall be limited to a person solely or mainly employed in connection with the kennels/cattery or agriculture, or solely or mainly last employed, in the locality in agriculture as defined by section 336 of the Town and Country Planning Act 1990 or forestry, or a widow or widower of such a person, and to any resident dependents”*

3. This application seeks the complete removal of this condition to allow unrestricted occupancy.

4. The application has been referred to committee by Cllr George Richardson on the basis that the business is shortly to close due to insufficient trade because of the abundance or such businesses possibly rendering the condition obsolete.

PLANNING HISTORY

5. From 1979 to 1985 planning approvals were granted for the erection of Kennel and Cattery buildings. In 1997 permission was refused for the erection of a building for dog accommodation. Planning approval was granted in 2000 for change of use of small animal rooms into an office. In 2009 an outline application for a managers dwelling was refused. In 2010 outline planning approval was granted for the erection of one dwelling to provide proprietor/manager accommodation. The reserved matters of access, appearance, landscaping, layout and scale relating to the outline application were agreed in 2011. The dwelling was constructed during 2013 and 2014 and has yet to be occupied.

PLANNING POLICY

NATIONAL POLICY

6. On March 27th 2012 the Government published the National Planning Policy Framework (NPPF). However, the NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.

7. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.

8. **NPPF Part 6 - Delivering a wide choice of high quality homes.** Paragraph 55 states that isolated homes in the countryside should be avoided unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

LOCAL PLAN POLICY:

9. Teesdale District Local Plan.

10. **H6 New dwellings in the countryside** – This Policy states that new dwellings will not be permitted within the Countryside unless essential to the needs of agriculture or forestry and provided the need cannot be accommodated in a nearby town or village. Such properties would also be restricted by agricultural occupancy conditions.

11. **H8 Removal of Agricultural Occupancy restrictions** –This Policy states that the removal of agricultural occupancy conditions will only be permitted where the property has been occupied in accordance with the condition for at least 5 years, where at least one year's marketing has taken place and details of any offers should accompany the application.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.durham.gov.uk/article/3271/Teesdale-Local-Plan>

RELEVANT EMERGING POLICY:

The County Durham Plan

12. The emerging County Durham Plan was submitted in April 2014 and the main body of the plan has been examined in public. In accordance with paragraph 216 of the NPPF, decision takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF.

13. **Policy 35 Development in the Countryside** is of some relevance.

In relation to a residential dwelling in a countryside location, this Policy may consider this acceptable where it would be considered necessary for the efficient or the continued viable operation of agriculture, horticulture, forestry, and/or other appropriate land based businesses, including the diversification of activities on existing farm units which do not prejudice the agricultural use.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://durhamcc-consult.limehouse.co.uk/portal/planning/ps/psdlp>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

14. Lynesack and Softley Parish Council have raised no objection to the application.

INTERNAL CONSULTEE RESPONSES:

15. There have been no consultations in relation to this application

PUBLIC RESPONSES:

16. The application has been advertised by way of site notice. No responses have been received.

APPLICANTS STATEMENT:

17. Mr & Mrs Fox established the Glencrest Kennels and Cattery in a Copley little over 34 years ago in 1980, and it developed into a well-regarded business attracting custom from throughout the region. As recently as the start of 2010 they were planning forward for the future of the business by seeking and gaining planning permission for a new dwelling associated with the business in which a proprietor/manager could live, as they saw a transition being necessary in future years as they became older and were obliged to take a step away from the business.

18. As part of their forward planning, they were also aware over recent years of the ever-increasing demands placed on them for the continuous upgrading of the animal accommodation and facilities to meet licensing requirements. Whilst this investment requirement was built into their future planning, what Mr & Mrs Fox could not have foreseen was what has been a relatively speedy decline in their health, both suffering from a number of conditions which have greatly reduced their ability to function as an integral part of the

kennels/cattery operations, and these circumstances have coincided with a significant impact on the business due to the economic conditions which have impacted particularly severely on the north-east region, this being very clearly manifested in relation to people's ability to take holidays as they used to. If people with pets are not holidaying, particularly abroad, then they have little or no need for a boarding kennels/cattery and when they do, Mr & Mrs Fox have found that often long-term clients of theirs find other kennels/catteries perhaps closer to the main centres of population, rather than travelling out to Copley.

19. Thus whilst Mr & Mrs Fox have assiduously sought to plan for their future, the two unpredictables of the nature of the recession and their decline in health has significantly impacted on the business such that they have been obliged to now close the kennels/cattery to any new business, and they are presently winding down with only around half a dozen cats remaining on the premises as a result of earlier commitments. Mr & Mrs Fox feel that they could not have anticipated their current circumstances which have effectively conspired against their earlier future planning, and thus they would now request the Planning Committee to sympathetically consider their application to remove the occupancy condition relating to their new dwelling and enable them to live in the property which has been designed to recognise their health conditions and to maintain a decent quality of living.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at http://plan-1:8080/IDOXSoftware/IG_search?app_id=1002&FormParameter1=DM%2F14%2F03652%2FVOC

PLANNING CONSIDERATIONS AND ASSESSMENT

20. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of the removal of the condition.

Policy Background

21. The condition in question restricts occupation of the dwelling to persons employed at the kennels, or in agriculture and therefore both Policies H6 and H8 of the Teesdale Local Plan are relevant.

22. In this respect Policy H6 details that a new dwelling will not be permitted in the countryside unless it can be shown to be essential in any particular location to the needs of a countryside use (generally agriculture or forestry but accepted as a kennel use in this instance) that cannot be accommodated by existing dwellings and where a firm and robust financial justification is put forward. The original permission for the dwelling was granted on the basis that it met these criteria.

23. Policy H8 relates further to the removal of agricultural occupancy restrictions. It states that the removal of agricultural occupancy conditions will only be permitted where the property has been occupied under the condition for at least 5 years, where the property has been marketed thoroughly for at least one year and where details of any offers accompany the application. The supporting text to Policy H8 relates to the removal of agricultural occupancy conditions. It states that:

24. *The Local Planning Authority will not normally consent to the removal of agricultural occupancy conditions. If such conditions were to be removed it would encourage disposal of dwellings out of the agricultural sector, reducing the stock of houses available for agricultural works and create demands for further houses to be built in the countryside. Such conditions will only be removed if it can be established that the long terms needs for agricultural workers dwellings in the area no longer warrant retention of the house for farm worker or dependant, and that the property has been marketed thoroughly and realistically.*

25. The National Planning Policy Framework is relevant at Paragraph 55. It states that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside.

26. There is no specific policy relating to removal of occupancy restrictions in the Emerging County Durham Plan. Policy 35 relates more generally to development within the Countryside development, which is only considered acceptable where the development proposals are considered necessary for the efficient or the continued viable operation of agriculture, horticulture, forestry, and/or other appropriate land based businesses. This policy however, while part of the decision making process, should only be afforded limited weight at this time.

Principle of the removal of the condition

27. The outline application establishing the principle of the dwelling on this site in the countryside was approved in 2010, subject to the imposed occupancy restriction in line with Teesdale Local Plan Policy H6. The whole argument behind the application was that the new dwelling would allow the current owners to retire from the business and remain in the existing bungalow (Glencrest) that they had lived in for 31 years and which had become adapted to their health requirements, while the new dwelling would provide the necessary on-site accommodation (to meet licence requirements) for any new management. They argued strongly that the business would have to close should approval not be granted for the additional manager's dwelling. Members of the Planning Committee accepted the argument that granting approval of the new dwelling would mean the continued operation of the business with associated retention of jobs and positive (albeit modest) economic impact in the local area.

28. However, now on immediate completion of the dwelling, and contrary to their previous assertions that the dwelling was required to save the business on their retirement, the applicants are seeking to close the business and remove the occupancy restriction on the new dwelling to allow its unrestricted occupancy. The application states that this is because of falling profits and need for additional investment to bring the kennel facilities up to modern standards, which makes the business unviable. In support, the application provides accounting details of the last 6 years showing variable levels of net profit over each year.

29. It is apparent from these figures that the business has still remained profitable in each of those years and it is noted that the business survived the recession of 2008 and 2009, achieving its highest net profit during that difficult period in 2009. The application suggests the reason for declining profits since is the establishment of other kennels in the area and general lack of demand.

30. However, while there may be other similar businesses in the wider area, competition in business is not unusual and it is apparent from the application details that ill health is likely to have affected the current owners' ability to be as fully committed to the business as they were previously. In addition, there has not been the necessary investment made to keep the facilities up to standard and competitive with other similar businesses. There are also no details provided of how and whether the business has been sufficiently and competitively

advertised. It is considered likely that the combination of these factors have contributed to the falling profits. This does not mean that the business couldn't be more successfully operated by someone else more able to commit time, enthusiasm and investment into moving the business forward. That was after all the intended plan from the start with the current owners always stating their intention to retire from the business and new owners taking over.

31. The dwelling has been constructed in full knowledge of the financial situation of the business and awareness of the occupancy condition. The occupancy condition was also specifically worded to include occupation by an agricultural worker in the event that the kennels closed, but this has not been evidenced as an option that has been explored before seeking to remove the restriction.

32. The proposal is therefore in direct conflict with Teesdale Local Plan Policy H8, which requires evidence of marketing carried out before considering removal of an agricultural occupancy condition. While there is no longer any specific requirement for marketing under the NPPF, it remains a reasonable approach and relevant to any rural commercial occupancy restriction on dwellings in the countryside given the NPPF's continued presumption against isolated dwellings in the countryside, except where there is an essential need for a rural worker to live at or near their place of work.

33. Removal of the condition at this time would be likely to jeopardise the prospects of any interest in the business because it is a licence requirement of any kennels/cattery that there has to be permanent residential presence on the site. Even in the unlikely event there is interest in the business without a dwelling, it could lead to proposals for another dwelling on site to satisfy the licence requirements, because neither of the two existing dwellings would be available. Further, there is also no guarantee that the business will be closed down, although removal of any tied dwelling would likely seal its fate, but until it has and all associated buildings are removed, there will always remain potential for proposals for a new manager's dwelling on the site with a resultant harmful impact on the openness and character of the rural landscape. It is therefore considered that the application to remove the condition has come too soon before closure of the business.

34. Previously the applicants argued strongly that they wanted to stay in their current dwelling on retirement, but it is noted that Glencrest is up for sale. If it is the case now that the applicants want to live in the new dwelling, they could do so in compliance with the condition with the option existing (subject to the agreement of the LPA and the completion of the necessary legal agreements) to transfer the occupancy tie over to Glencrest by S106 legal agreement, but that is not part of this application.

Other issues

35. There are no other issues of significance raised by this application as no physical development is proposed. It is not considered that any new highways related issues would be introduced in relation to the use of the dwelling without the condition, with Highways Development management raising no objection to the previously approved application for the bungalow.

CONCLUSION

36. It was fairly recent in 2010 that the original outline approval was granted on the basis of strong arguments made that the business would have to close should approval not be granted for the additional manager's dwelling. Now on completion of the dwelling, the owners state they intend to close the business anyway because it is not viable. However, it is considered very likely that personal factors and lack of investment have contributed to the

decline of the business. It was always the applicants' intention to retire from the business and have someone else take over its management and it is possible that new owners could inject the enthusiasm and investment needed to move what is still a profitable business forward. If the occupancy condition was removed at this stage it would be likely to jeopardise the prospects of any interest in the business because it is a licence requirement of any kennels/cattery that there has to be permanent residential presence on the site and none of the two existing dwellings would be available. Conversely, it could also result in proposals for another manager's dwelling on the site if the business was taken over by another party with none of the existing dwellings being available. This would only cease to be a concern after the business closed and if all buildings were subsequently removed from the site, thereby removing any potential demand for another manager's dwelling.

37. However, condition 7 is not purely limited to occupancy in relation to the kennels, it also allows occupancy by an agricultural worker and there is no evidence of any marketing carried out to determine whether there is demand in this respect.

38. If the applicants wish to move from Glencrest into the new dwelling there are other options which could secure the transfer of the occupancy restriction to Glencrest if they so wished, but that would require a separate application and legal agreement.

39. In conclusion, it is considered that there is currently insufficient justification for removal of the condition as proposed that would, if allowed, result in an un-restricted residential dwelling in a countryside location where new dwellings would not normally be permitted. The proposal to remove the occupancy condition from the property is therefore, at this stage, contrary to Teesdale Local Plan Policy H8 and the aims of the NPPF in respect of the special circumstances to justify unrestricted houses in the countryside.

RECOMMENDATION

That the application be **REFUSED** for the following reason;

40. There is insufficient justification for the proposed removal of the occupancy condition, which was required because of the location of the dwelling in the countryside where un-restricted dwellings would not normally be permitted, particularly when the business is not yet closed and no evidence has been submitted to demonstrate that the property has been marketed for agricultural occupancy. The proposal therefore fails to meet the requirements of Teesdale Local Plan Policy H8 to remove occupancy conditions and is contrary to the fundamental aims of the NPPF in respect of the special circumstances to justify houses in the countryside (paragraph 55).

BACKGROUND PAPERS

Submitted application form, plans supporting documents and subsequent information provided by the applicant.

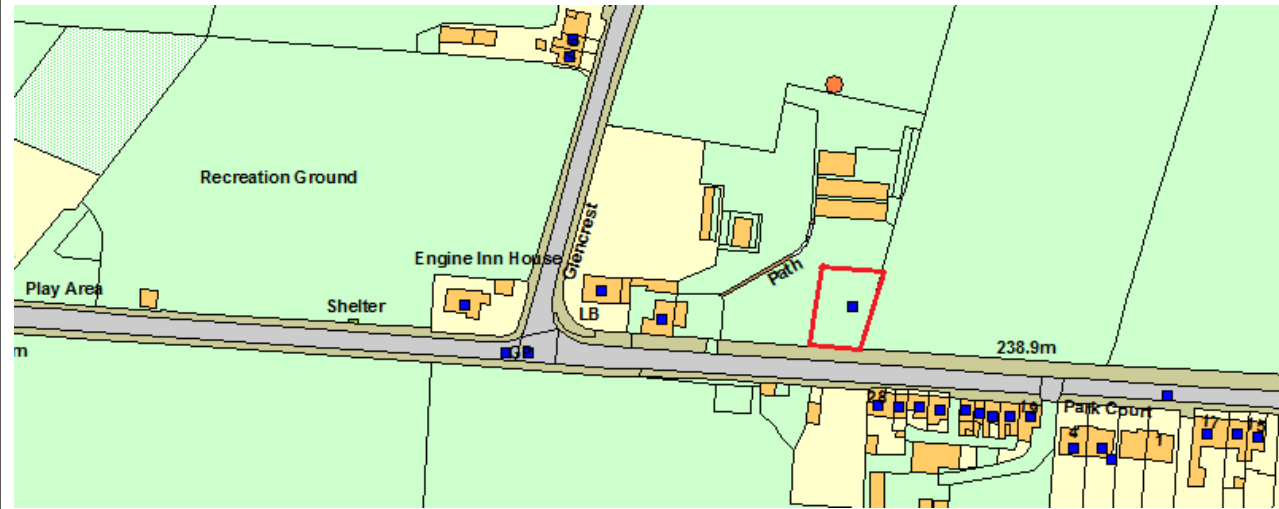
The National Planning Policy Framework (2012)

National Planning Practice Guidance Notes

Teesdale Local Plan

The County Durham Plan (Submission Draft)

Statutory consultation response



Planning Services

Removal of condition 7 of permission
6/2010/0083 (occupancy condition)

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