



## Agenda Item No. 7

# Appeal Decision

Hearing held on 3 March 2009  
Site visit made on 3 March 2009

by **Andrew Hammond** MA MSc CEng  
MIEE MRTPI

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

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Decision date:  
6 March 2009

### Appeal Ref: APP/R1845/A/08/2088427

### Sunset Nursery, Waggon Lane, Ismere, Kidderminster, Worcestershire DY10 3PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr S Saunders against the decision of Wyre Forest District Council.
- The application Ref 08/0698/FULL, dated 15 July 2008, was refused by notice dated 11 September 2008.
- The application sought planning permission for replacement of existing bungalow – “Sundown”, Waggon Lane, Ismere, Nr Kidderminster without complying with a condition attached to planning permission Ref WF. 285/80, dated 6 March 1980.
- The condition in dispute is No2 which states that: The occupation of the dwelling shall be limited to a person employed full time, or last employed full time locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 or in forestry, or a dependent of such a person residing with him (but including a widow or widower of such a person).
- The reason given for the condition is: The Council would not be prepared to permit the erection of a dwelling house on this site unconnected with the use of the adjoining land for agriculture or similar purposes.

### Decision

1. I dismiss the appeal.

### Main issue

2. The main issue in this appeal is whether it has been demonstrated that there is no long term need for an agricultural worker’s dwelling in the locality.

### Reasons

3. Sunset Nursery is located in the open countryside outside any defined settlement. Government policy, as expressed in *Planning Policy Statement 7: Sustainable Development in Rural Areas* (PPS7), is that the building of new houses in the countryside will need special justification.
4. Planning permission for the original dwelling at the nursery was granted in 1967 on the basis that the applicant had demonstrated a horticultural need for the dwelling. A condition was imposed restricting the occupancy of the dwelling to a person employed locally in agriculture. The dwelling was replaced in 1980, by the current 3 bedroom bungalow, with the condition in dispute being imposed.

5. The appellant explained that the nursery ceased being viable in 1997 and traded at a loss until 2002 when the business was closed. Sunset Nursery has been offered for sale and has been on the books of an estate agent at an asking price of £450,000 from 2005 to date.
6. PPS7 states, in Annex A paragraph 17, that local planning authorities should set out their approach to the removal of agricultural occupancy conditions. Wyre Forest Adopted District Local Plan (2004) (LP) Policy AG.3 states that the removal of an occupancy condition will only be permitted where it has been proven through the marketing of the property that there is no long term need for a dwelling on the unit or in the locality, for a person solely or mainly employed in agriculture or forestry, or a widow or widower of such a person, and any resident dependents.
7. The explanatory text to Policy AG.3 explains that convincing evidence will have to be provided and it should include evidence to demonstrate that the dwelling has been actively marketed for a reasonable period, at a price which reflects the existence of the occupancy condition, and that no interest has been expressed from within a reasonable travelling distance.
8. The appellant has produced a list of prospective purchasers of Sunset Nursery and a memorandum of sale at an agreed price of £425,000 but states that potential purchasers have been unable to find funds as the nursery is not deemed a viable business proposition.
9. It is not clear what the basis of the asking price is but the appellant states that it was valued at £250,000 in 2000, whilst still trading, and that, therefore, £450,000 is not unreasonable. However, in my opinion, it would appear that the valuation in 2000 would be on the basis of a going business concern. The glasshouses and associated nursery buildings are in a poor state of repair and it is clear that considerable expenditure would be necessary should someone seek to operate the business in the future.
10. Neither PPS7 nor the LP give any guidance on how to assess a reasonable market price which reflects the existence of an occupancy condition. However it is generally considered that the price should be at a significant discount on the value of an unencumbered property.
11. At the Hearing the Council produced estate agent's particulars of "The Spinney" Waggon Lane, a property next door but one to the appeal site, for sale with a price guide of £425,000. This property is not directly comparable to the appeal premises as it does not have the range of outbuildings but it is significantly larger and set in landscaped grounds of marginally smaller area than those of the nursery. The Council confirmed that "The Spinney" is not subject to an agricultural occupancy condition and the appellant stated that the "The Spinney" had been on the market for some 12 months.
12. I acknowledge that Sunset Nursery has the benefit of substantial brick built outbuildings as well as the glasshouses. However, no information has been provided as to potential uses or how these affect the value of the property. I consider that the range of glasshouses would only be of any significant value to a nursery or similar business, which the appellant states is not viable.

13. I therefore consider that a valuation of £450,000 does not reflect the existence of an agricultural occupancy condition, particularly given that "The Spinney" remains unsold at a lower asking price.
14. In addition no detailed information has been provided as to the marketing of the property and whether any of this was targeted to the agricultural or horticultural community.
15. I therefore consider that it has not been demonstrated that the dwelling has been actively marketed for a reasonable period, at a price which reflects the existence of the occupancy condition. I therefore conclude that the requirements of LP Policy AG.3 have not been met and that the appeal should be dismissed.

*Andrew Hammond*

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr C F Hodges  
Mr S Saunders

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FOR THE LOCAL PLANNING AUTHORITY:

Miss E Anning

Wyre Forest District Council

DOCUMENTS

- 1 Estate agent's particulars for "The Spinney" Waggon Lane, provided by the Council.