

Parish:	Hockwold cum Wilton	
Proposal:	Removal of Condition 3 of planning permission 05/00836/F: Construction of dwelling and double garage.	
Location:	Garner Blast Cowles Drove Hockwold cum Wilton Norfolk	
Applicant:	Mr Derek Garner	
Case No:	18/01607/F (Full Application)	
Case Officer:	Mrs N Osler	Date for Determination: 29 October 2018 Extension of Time Expiry Date: 8 March 2019

Reason for Referral to Planning Committee – Referred by the Assistant Director

Neighbourhood Plan: No

Case Summary

The application seeks the removal of a condition restricting the occupation of the dwelling to those employed at the adjacent, but no longer operational, shot blasting business (Garner Blast).

Key Issues

Principle of Development
Other Material Considerations

Recommendation

APPROVE subject to appending a condition requiring reversion of the existing ‘bungalow’ back to an office within three months of the first occupation of the application dwelling.

THE APPLICATION

The application seeks removal of Condition 3 appended to the original 2005 permission (05/00836/F) which stated...*first occupied by Mr D Garner, trading as Garner Blast. Thereafter, the occupation of the dwelling shall be limited to a person solely or mainly working in the adjacent shot-blasting business, and any widow or widower of such person and any resident dependants*’.

Removal of this condition would result in an unrestricted dwelling in the countryside, although the history and specific circumstances of this case need consideration.

SUPPORTING CASE

Planning approval was granted in 2005. At this time Garner Blast was a thriving business and had been run for some years by the applicant / land owner Derek Garner. The dwelling has, since the approval, has continued to be constructed and is now practically complete. Mr Garner pays rates accordingly.

In the 13 years that have passed Mr Garner has now gone past the age of retirement and, therefore, no longer runs Garner Blast. The business, since Mr Garner's retirement, has been closed.

A concerted effort was made by Mr Garner to sell Garner Blast. Mr Garner employed Chilterns estate agents to market and try to sell Garner Blast, which they did, from 9th May 2015 to 29th June 2017 (over 2 years). There was insufficient interest for a sale to be agreed. This period is well over the 1no. year that planning policy dictates for an attempt of sale of business in this situation.

It is for the above reasons that I believe planning protocol has been followed and that condition no.3 on the original planning approval should now be removed.

PLANNING HISTORY

05/00836/NMA_2: Application Refused: 07/09/18 - Non-material amendment to planning permission 05/00836/F: Construction of dwelling and double garage - Garner Blast

05/00836/F – Construction of dwelling and double garage at Garner Blast – Committee Approval June 2005

04/02650/F: Application Refused (Committee): 26/01/05 - Construction of dwelling - Garner Blast

2/03/0231/F: Application Refused: 20/05/03 (Committee) - Construction of dwelling house

2/95/1673/O: Application Refused: 16/01/96 - Site for construction of bungalow in connection with grit blasting business - Garner Blast; Appeal Dismissed 30/10/96

RESPONSE TO CONSULTATION

Parish Council: The Parish Council voted to support lifting the restriction of condition 3 if there was a new condition applied that would tie the house to the land, and the land to agricultural use. The Parish Council is concerned about the protection of agricultural lands in our parish. This vote was not unanimous and was passed with reservation.

Highways Authority: NO OBJECTION

CSNN: NO OBSERVATIONS in relation to this application

REPRESENTATIONS

None received at time of writing report.

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LDF CORE STRATEGY POLICIES

CS01 - Spatial Strategy

CS02 - The Settlement Hierarchy

CS08 - Sustainable Development

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM1 – Presumption in Favour of Sustainable Development

DM2 – Development Boundaries

DM6 - Housing Needs of Rural Workers

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

PLANNING CONSIDERATIONS

The main issue in the determination of this application is the principle of removing Condition 3 of application 05/00836/F which restricts the occupation of the dwelling to *be first occupied by Mr D Garner, trading as Garner Blast. Thereafter, the occupation of the dwelling shall be limited to a person solely or mainly working in the adjacent shot-blasting business, and any widow or widower of such person and any resident dependants*.

Essentially removal of this condition would result in an unrestricted dwelling in the countryside.

Principle of Development

Local Plan Policy DM6 – Housing needs of rural workers states, in relation to existing occupational dwellings, that:

- Preference will be given to retaining agricultural or other rural based occupancy dwellings where there is a local identified need.
- Proposals for the relaxation or removal of agricultural occupancy conditions will only be permitted where the applicant can demonstrate that:
 - (a) The dwelling has been occupied in accordance with the terms of the occupancy condition for a minimum of 5 years; and
 - (b) There is no longer a need for the dwelling by those working, or last working, in the locality in agricultural, forestry or a rural enterprise, established by evidence of marketing (including the provision of details of an independent market valuation reflecting the occupancy condition, as well as all viewings and offers made) for a 12 month period at a price that reflects the occupancy condition.

Although the dwelling was permitted in June 2005, the dwelling remains unfinished, although it is now largely complete. However, in November 2014 Garner Blast ceased trading and Mr Garner retired. As such the business referred to in Condition 3 (Garner Blast) no longer

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exists. As such this condition cannot be complied with, and whilst it is clearly contrary to policy DM6 the fact of the matter is that the business to which the house is tied does not exist.

The Parish Council would like to see the restriction changed to tie the dwelling to agriculture. However, without a rural enterprise to tie it too this would fail the conditions tests laid down in the NPPG.

In relation to (b), the dwelling has been marketed, but unfortunately after seeking advice from our Property Services Department at a value higher than they believe reflects the occupancy condition.

The proposal is clearly therefore contrary to both elements of this policy. However, even if the dwelling was marketed for a further period at a figure the LPA considers more appropriate, full compliance with this policy would still not be achievable as it would fail on (a).

Other Material Considerations

However, and of significant bearing to this application, is that Mr Garner has been living in the office of the adjacent redundant business site (Garner Blast) for well in excess of four years (basically on a 'temporary' basis whilst the main dwelling was being built). As such the occupation of this building, which to all intents and purposes has been fitted out as a dwelling, is now lawful due to the passage of time. From here on in, this unit will be referred to as 'the bungalow'.

This has led to the situation where on the wider site (the application site and redundant business site which is included in blue land and can therefore be controlled by condition) there are two dwellings; one unrestricted (the bungalow) and one restricted (the main dwelling).

As such, regardless of the outcome of this application, the wider site would accommodate an unrestricted dwelling (the bungalow) as well as a restricted dwelling (the main dwelling). The latter would not be able to be occupied if the condition is not lifted.

Looking at the bigger picture, the LPA considers the most pragmatic way forward is to allow the lifting of condition 3 on the main dwelling on the basis that within three months of the main dwelling being occupied the bungalow is reverted back to an office. This would result in the site having only one dwelling; the unrestricted main dwelling.

The alternative, not to lift the condition and not to control the reversion of the bungalow back to an office, would retain the status quo i.e. one unrestricted dwelling and one restricted dwelling. This scenario could potentially result in an empty dwelling (the main dwelling) when both national and local planning policy and guidance is seeking to increase housing stock. Furthermore it would not only be unreasonable of the LPA to retain a condition that we know cannot be met, but it would be unlawful.

Crime and Disorder

There are no specific crime and disorder issues arising from the proposal.

CONCLUSION

In summary:

- Condition 3 cannot be complied with because the business that the condition refers to does not exist;
- To append a condition that cannot be enforced, or in this instance not lifting such a condition, would be unreasonable as it would result in a breach of condition as soon as the property is occupied;
- Whilst there is a history of permitted dwellings tied to rural enterprises down Cowles Drove, the LPA is not aware of any need at this moment in time (i.e. there are currently no outstanding applications for dwellings in this location). As such to append a condition requiring the dwelling to be tied to an unknown business or need would fail the conditions tests laid down in National Planning Policy Guidance (PPG);
- The wider site currently accommodates two dwellings; one restricted and one non-restricted;
- The proposal to allow the lifting of condition 3, together with reversion of the bungalow back to an office (which the applicant has agreed to), seems the most pragmatic way forward.

It is therefore recommended that this application be approved subject to the following condition:

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition: Within three months of the first occupation of the dwelling labelled 'Dwelling House' and contained within the red line site boundary of the Site Location Plan received on 19 December 2018, the dwelling labelled 'Dwelling Bungalow' contained with blue land on the same Site Location Plan shall revert back to an office in accordance with a scheme to be agreed in writing by the Local Planning Authority prior to the first occupation of the dwelling labelled 'Dwelling House' and shall thereafter be used only as an ancillary office in association with any lawful business operating from the site previously known as Garner Blast.
- 1 Reason: For the avoidance of doubt and to ensure that the use of the bungalow reverts to its intended use as an ancillary office and that there is only one dwelling on the wider site in accordance with the NPPF and Development Plan.