

Appeal Decision

Site visit made on 13 September 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 11th October 2016

Appeal Ref: APP/P2935/W/16/3152788

Dukewilley, Allendale Road, Hexham, Northumberland NE46 2NJ

- 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 David Knowles, Towertop Limited against the decision of Northumberland County Council.
 - The application Ref 15/03904/VARYCO, dated 20 November 2015, was refused by notice dated 18 January 2016.
 - The application sought planning permission for conversion and change of use of existing garage into 2 no holiday lets without complying with a condition attached to planning permission Ref 20090566, dated 17 November 2009.
 - The condition in dispute is No 4 which states that: *"This permission relates to the provision of holiday accommodation. For the purposes of this condition, holiday accommodation is accommodation which shall not be occupied by the same person or group of persons for a period in excess of six weeks during any one calendar year. The accommodation hereby permitted shall not authorise the use of the proposed development for human habitation during the period of 2 consecutive weeks from 6th January each year, or such other consecutive time period of 2 weeks as may be agreed in writing by the Local Planning Authority. In order to facilitate the policing/enforcement of the foregoing, a register of occupiers of the premises to which this planning permission relates shall be made available to the officers of the Local Planning Authority upon request following 24 hours notice."*
 - The reason given for the condition is: *"To encourage tourism by ensuring that the properties are used for holiday accommodation only and to prevent their use as a second home or full-time permanent residential use in a location where such development would be inappropriate in accordance with Policy TM15 of the Tynedale District Local Plan."*
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Decision

1. The appeal is allowed and planning permission is granted for conversion and change use of existing garage into 2 no holiday lets at Dukewilley, Allendale Road, Hexham, Northumberland NE46 2NJ in accordance with the application Ref 15/03904/VARYCO, dated 20 November 2015, without compliance with conditions No 3 and No 4 previously imposed on planning permission Ref 20090566 dated 17 November 2009 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following new condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 09 07 001.
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- 2) No development shall take place until details of the proposed access road, including details of the materials to be used, has been submitted to and approved in writing by the local planning authority. Thereafter the surfacing of the access road shall be carried out in accordance with the approved details prior to first occupation of the development hereby permitted.

Preliminary Matters

2. The Council has made reference to several policies of the emerging Northumberland Local Plan Core Strategy Pre-Submission Draft which has yet to undergo examination in public. In accordance with Paragraph 216 of the National Planning Policy Framework (the Framework), I can afford only limited weight to those policies. I have, as it is incumbent on me to do so, determined the appeal in accordance with the relevant saved development plan policies of the Tynedale Local Development Framework Core Strategy 2007 (CS) and the Framework.
3. Planning permission for the conversion of an existing garage into 2 holiday lets (Ref 20090566) was granted in November 2009. Condition 4 requires that the properties are used only as holiday accommodation. The application subject to this appeal sought to remove Condition 4 to allow occupation of the properties as dwellinghouses. The original application form indicated that it was proposed to remove Condition 2. However, Condition 2 is a condition relating to the extent of the amenity area. It is clear from the evidence before me that the condition proposed to be removed is Condition 4, as set out in the banner heading above. The Council determined the application on that basis and so therefore shall I.
4. Although the original application did not propose to remove Condition 3 which relates to the approved plans, the plans submitted with this application include amendments to the originally approved scheme. Those amendments include the installation of dormer windows and revised glazing on the southern elevation. Such amendments appear to have been carried out during the conversion works. Section 73 is drafted widely and provides the power to attach new conditions or to attach modified versions of them. The amendments are relatively minor in nature such that the substance of the original scheme would not be significantly changed. The Council has raised no concerns with the proposed amendments. I have, therefore, taken into account the amendments and concluded that it is necessary to impose a modified version of Condition 3 to this decision.
5. As I observed on my site visit the conversion works have commenced but are not yet completed. Thus I have approached the appeal on the basis that the building may be lawfully used as holiday lets.

Main Issues

6. A recent Court of Appeal judgement of 11 May 2016 in respect of *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016]* was upheld. In this case, the Secretary of State successfully appealed against the judgment of the High Court of 31 July 2015. As a result, Government policy relating to affordable housing and tariff style contributions as expressed in the Written Ministerial Statement of 28 November 2014 is an important consideration. The Planning Practice

Guidance (PPG)¹ now advises that “contributions should not be sought from developments of 10-units or less”. This clearly establishes that Government policy does not require contributions to be sought in cases such as this. The Council has subsequently indicated within its appeal statement that it wishes to withdraw the third reason for refusal relating to the requirement for affordable housing. The matter is therefore no longer disputed.

7. On that basis, the main issues are:

- Whether the removal of the condition would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
- Whether the removal of the condition would result in a satisfactory form of development having regard to the principles of sustainable development.

Reasons

Inappropriate Development

8. The appeal site is located within the Green Belt. Paragraph 90 of the Framework states that certain forms of development are not inappropriate development in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. One of those forms of development is the re-use of buildings provided that the buildings are of permanent and substantial construction.
9. The building in question is clearly of permanent and substantial construction. There is no dispute between the parties regarding that matter and I have no reason to come to an alternative conclusion. The question of inappropriateness therefore turns on the effect on openness and the purposes of including land within the Green Belt.
10. I note the Council’s concerns regarding the requirements for two permanent residential dwellings in terms of parking, garaging, sheds, lighting, play equipment, washing lines and other garden paraphernalia. However, it seems to me that the effect arising from the use of the building as non-restricted dwellings would be little different.
11. The garden areas would not be particularly excessive in size and any domestic paraphernalia they would accommodate would be unlikely to have any material impact on openness. Indeed, holiday makers may well use the external area for parking and other external activities similar to permanent residents. As a result, I consider the change of use would have no discernable effect on the openness of the Green Belt.
12. The amended dormers would be relatively small, being set back considerably from the eaves and below the ridge of the roof. In addition, the glazing would not result in any physically increase in scale of the property. These would be, in my view, amendments to the originally permitted scheme that are *de-minimis* in their scale and extent. They would not, therefore, have any particular effect on the openness of the Green Belt.
13. Paragraph 80 of the Framework defines the 5 purposes of Green Belt. It includes the purpose to assist in safeguarding the countryside from

¹ Planning Practice Guidance – 23b-031-20160519

encroachment. The proposal seeks only to secure planning permission without the disputed condition and would not result in the extension of the footprint of the building or any change in its curtilage. The building would continue to be a dwellinghouse as it is now and the countryside within which the appeal site is located would remain unaffected. Consequently, the proposal would not lead to any encroachment of the countryside. Thus the proposal would not affect the purpose of the Green Belt as set out above. There is no suggestion it would conflict with the other purposes of Green Belt land set out in Paragraph 90.

14. As the proposal would not have a material effect on the openness of the Green Belt or conflict with the purposes of including land within it, I conclude that the removal of the condition would not constitute inappropriate development in the Green Belt. Accordingly, I consider the proposal would not conflict with the Framework. Having regard to the advice set out in the Framework, it is not necessary to consider whether very special circumstances exist in this instance.

Sustainability

15. The appeal site lies outside the built up area of Hexham and within the open countryside. A recent appeal decision (APP/P2935/W/15/3132986) was dismissed for 5 dwellings close to the appeal site. The Inspector in that instance noted that the site was located in a relatively accessible location, however, concluded that the development of new houses outside of the built up area would undermine the locational strategy set out in the CS and ultimately, that the proposal would not constitute a sustainable site for housing.
16. Whilst I have no reason to disagree with the previous Inspector or the appellant in this instance with regard to the accessibility merits of the appeal site, I agree that development of new housing in this location would run counter the sustainability aims set out in the Framework, in particular the advice set out in paragraph 55.
17. However, the development of new housing is not the situation here, and I must consider whether the sustainability objectives of the CS and the Framework would be compromised by the unfettered occupation of the properties as permanent residences rather than holiday lets.
18. Policy GD1 states that the main focus for development will be the main towns but that development in the open countryside will be limited to the re-use of existing buildings. Policy H1 seeks to provide for a full range and choice of housing types to meet the need of the full community. Policy H3 sets out a sequential approach to delivering new housing.
19. These policies are all consistent with the approach in the Framework to ensuring housing is focussed towards accessible and sustainable locations. However, it is evident from the policies that the approach to sustainability is a general one which applies to all development. Indeed there is nothing within those policies which suggest that the principles of sustainable development diverge whether one considers it within the context of holiday lets or permanent residential accommodation.
20. What is more, the principles of sustainable development set out in the Framework are a thread which runs throughout and applies to all development. As a result, I see no reason to conclude that the removal of the occupancy condition would compromise the objectives of the relevant development plan

policies. Nor would there be any tangible harm to the objectives of sustainable development as set out in the Framework.

21. I conclude, therefore, that the removal of the condition would result in a satisfactory form of development having regard to the principles of sustainable development. It would not, as a result, conflict with policies GD1, H1 and H3 of the CS or the principles of the Framework.

Conditions

22. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that are still subsisting and capable of taking effect.
23. For the reasons given above, Condition No 4 is not necessary. In addition, Condition No 3 in respect of approved plans is not necessary in its current form. Nevertheless, I consider a revised condition relating to the approved plans as suggested by the Council necessary to provide certainty over the extent of the development permitted.
24. The Council has suggested a condition be imposed which would require details of timber cladding to be submitted and agreed. However, the building is substantially complete and there is no evidence before me that the existing external finishes would have a harmful effect on the character and appearance of the area. Such a condition is not, therefore, necessary.
25. Neighbouring residents have expressed concerns regarding the condition of the shared access road, which is currently constructed to sub-surface level only. I agree that it is necessary in the interests of highway safety for the road to be surfaced to an appropriate standard.

Conclusion

26. For the reasons given above, and with regard to all other matters raised, I conclude that condition No 4 imposed on planning permission Ref 20090566 is not necessary. I also conclude that Condition No 3 imposed on planning permission Ref 20090566 is not necessary in its current form. Accordingly, the appeal should be allowed without compliance with Conditions No 3 and No 4, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the new conditions referred to above.

Jason Whitfield

INSPECTOR