The Planning Inspectorate

Appeal Decision

Site visit made on 17 October 2016

by P N Jarratt BA DipTP MRTPI

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

Decision date: 24 October 2016

Appeal Ref: APP/D0840/C/3147103
The White Cottage, Meaver Road, Helston, Cornwall, TR12 7DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr D Lagdon against an enforcement notice issued by Cornwall Council.
- The enforcement notice, numbered EN14/02257, was issued on 24 February 2016.
- The breach of planning control alleged in the notice is failure to comply with condition No 6 of a planning permission Ref PA10/06262 granted on 22 March 2011.
- The development to which the permission relates is the construction of a double garage with play room/utility room. The condition in question is No 6 which states that: "The garage/storage/utility/games room building shall not be used other than for purposes incidental to the enjoyment of the dwelling house known as 'The White Cottage' ". The notice alleges that the condition has not been complied with in that the storage/utility/games room part of the building now known as 'Blue Oyster' has been internally configured as a one bedroom independent residential unit for holiday letting.
- The requirements of the notice are:
  1) Cease the use of the building known as 'Blue Oyster' shown in the approximate position outlined in blue on the plan attached to the notice, for residential purposes.
  2) Remove all internal fixtures, fittings and walls that facilitate a residential use currently within the building known as 'Blue Oyster' shown in the approximate position outlined in blue on the plan attached to the notice, to comply with the internal layout shown in plan ref 'Plan 2' date stamped 6 June 2012 of the non-material amendment reference PA12/05326. Copy of the plan included.
  3) Remove all materials and debris from the land resulting from compliance with (1) and (2) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) of the Town and Country Planning Act 1990 as amended.

Formal Decision

1. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, condition No 6 of a planning permission Ref PA10/06262 relating to The White Cottage, Meaver Road, Helston, Cornwall, TR12 7DP granted by Cornwall Council is discharged and the following new condition is substituted. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the construction of a double garage with play room/utility room without complying with the said condition but subject to the other conditions attached to that permission and to the following new condition:

1. The occupation of the building hereby permitted shall be limited to holiday accommodation only and shall not be occupied as a person's sole or main place of residence. The owners/operators shall maintain an up-to-date register of the names of all the owners/occupiers, and of their main home addresses, and shall make this information available at all reasonable time to the local planning authority.

Relevant Planning History

2. A non-material amendment to planning permission Ref PA10/06262 for the construction of a double garage with playroom/utility room was approved subject to conditions in June 2012 (PA12/05326). The plans for the amendment showed the removal of the external doors, the insertion of a set of French doors and an additional window.

3. In response to a Planning Contravention Notice the owners confirmed that the current use of the building is that of a double garage, one bed holiday home and games room, that the use commenced in April 2014 and that the internal works were substantially completed in February 2013.

4. An application for a 'retrospective change of use from games room/utility room to a one bedroom annexe which will be used as a holiday home/overspill accommodation for family and friends' was withdrawn in November 2014.

The appeal site and its surroundings

5. The appeal site is within a small group of buildings in open countryside outside but not far from the village of Mullion. It is within the Lizard Area of Outstanding Natural Beauty (AONB). The property is an 'L' shaped single storey building comprising a double garage at the front and habitable accommodation to the rear, including a living room/kitchen with stove and pool table, and a bedroom with an en-suite shower room. The building is known as 'Blue Oyster' and is within the domestic curtilage of 'The White Cottage'.

The appeal on ground (b)

6. An appeal on this ground is that the breach of planning control has not occurred as a matter of fact.

7. The appellant contends that as the building has been configured as a one bedroom independent residential unit for holiday letting since its construction, the development undertaken is not that to which the condition relates. It is claimed that it is an alternative unfettered development to that approved and there has been no breach of condition.

8. The building in terms of size and external appearance accords with the amended plans approved in June 2012. It is self-contained and its use is that of a single dwelling house albeit as a games room for the owners when not being let as holiday accommodation. When the building had been completed in accordance with the non-material amended plans, the restrictive condition was engaged and commencing the use April 2014 brought about the breach of condition.

9. Where legal grounds of appeal are argued the onus of proof is on the appellant and the standard of proof is on the balance of probability. The appellant has not done this and has not referred to any relevant case law to support his

contention that no breach has occurred. Had there been any legal support for such an approach, a consequence could have been to make the whole building unauthorised and potentially open to enforcement action by the Council as it would not be immune from action on the basis of the passage of time.

10. As a matter of fact, a breach of condition has occurred and the appeal on this ground fails.

The appeal on ground (a) and the deemed planning application

11. I consider that the main issue in this appeal is whether the development accords with planning policies that seek to restrict new dwellings in the countryside.

12. The site is relatively close to Mullion which has a range of services and facilities, and is potentially within walking distance despite the absence of a continuous footpath and street lighting. Notwithstanding this, the appeal site and nearby buildings are physically and visually separated from Mullion. For the purpose of planning policy it is located in the open countryside. Paragraph 55 of the National Planning Policy Framework (the Framework) advises that new isolated homes in the countryside should be avoided unless there are special circumstances, whereas paragraph 28 supports sustainable rural tourism that benefits businesses in rural areas and respects the character of the countryside. This includes supporting the provision and expansion of tourist facilities in appropriate locations where identified need is not met by existing facilities in rural service centres.

13. The appeal site is not isolated, but is part of a small group of buildings. It is sufficiently close to the facilities in Mullion for it to be considered to be sustainably located. It provides tourist accommodation within one of the prime tourist destinations in Cornwall and utilises a building that already exists and it replaced previous buildings and a mobile home. As an existing building, its use has no additional visual effects on the character and appearance of the AONB.

14. The appellant has referred to 5 dwellings that have been constructed nearby although the Council points out that this was on the site of a former quarry and the development provides some affordable housing. Reference is also made to a number of other appeal decisions but these can be distinguished from this case due to the different circumstances surrounding these other cases.

15. The appellant also refers to the 5 year supply of housing land. However the Council's emerging Local Plan is at an advanced stage and the Fully Objective Assessed Need has been through examination and remains unchanged. The Council believes that a 5 year supply can be demonstrated against this target. Although I am able to attach considerable weight to the emerging plan, the housing land supply is not a significant issue in this appeal.

16. I consider that the use of the building for holiday letting is not harmful and that it accords with the relevant paragraphs of the Framework.

17. It is necessary to impose a condition limiting the occupation of the building to holiday accommodation to accord with housing policies under which permanent residential accommodation would not normally be permitted on the site.

18. I allow the appeal on ground (a).

The appeal on ground (f)

19. As I have allowed the appeal on ground (a), it is unnecessary for me to determine the appeal on ground (f).

P N Jarratt

Inspector