
Appeal Decision

Hearing held on 23 August 2016

Site visit made on 23 August 2016

by J E Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

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

Decision date: 2 November 2016

Appeal Ref: APP/W1145/W/16/3149935

Forest Lakes, Marshall Farm, Woolsery, Bideford, Devon EX39 5QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Forest Lakes Ltd against the decision of Torridge District Council.
 - The application Ref 1/0101/2016/FUL, dated 29 January 2016, was refused by notice dated 4 April 2016.
 - The development proposed is described as a "Supervisory Lodge".
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Decision

1. The appeal is dismissed.

Main Issue

2. Whether there is a need for the proposed development taking into account national and local policies which seek to restrict new housing within the countryside and to support a prosperous rural economy.

Reasons

3. The appeal site lies within a larger area of land which accommodates existing holiday properties and has planning permissions for further holiday lodges and associated development. The proposal seeks permission for a timber lodge to be occupied as a permanent dwelling. The dwelling would be occupied in conjunction with development which has been permitted for holiday lodges. The appeal site is located over a mile from the village of Woolsery. Mr Cartwright, Managing Director of the appellant company, manages the appeal site from the Hartland Forest Golf Club (HFGC) site which lies to the north west of the appeal site.
 4. Although the appeal site address is given as Marshall Farm, there is no working farm at the site, the land and associated dwellings having been sold several years ago. Access to the appeal site is via a track which leads from an unclassified road. This track serves ten holiday properties or lodges which were first granted planning permission in 1990 and the subject of a subsequent permission in 1998. This later permission also included a building to accommodate a swimming pool. The swimming pool building has not been constructed. The ten existing properties and a fishing lake are now in various third party ownerships.
 5. Permission to build five further holiday lodges, an art studio and a maintenance shed was granted in 2009. The evidence indicates that work has started on
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building the maintenance shed although the lodges have not been constructed. In December 2015 permission was granted for a further nine holiday lodges. A Section 106 Agreement (the Agreement) requires that the nine lodges permitted in 2015, three of the five lodges permitted in 2009, the art studio, swimming pool, maintenance shed and fishing lake should not be sold separately from one another. The Agreement also requires the swimming pool be ready for use prior to the occupation of any of the twelve lodges included in the Agreement. A deed of variation dated 3 August 2016 to the Agreement brings a further holiday lodge, permitted in place of the art studio within the group of properties not to be sold separately from one another. The deed of variation also provides, should this appeal be allowed, inclusion of the supervisory lodge within the group.

6. The appellant made an application to the Council proposing that the Agreement be varied to add a restriction preventing occupation of the proposed supervisory lodge until five of the permitted holiday lodges were constructed. This application was refused and is not the subject of an appeal.
7. Against this background the appeal proposal seeks a supervisory lodge to be constructed close to the site of the maintenance shed and swimming pool building. The lodge would be a permanent residence for a site manager or supervisor and in appearance would be similar to permitted holiday lodges.
8. Paragraph 28 of the National Planning Policy Framework (Framework) sets out the need to support a prosperous rural economy and that planning policies should support economic growth in rural areas to create jobs and prosperity, taking a positive approach to sustainable new development. Amongst other matters, development plans should support sustainable rural tourism and leisure developments which respect the character of the countryside.
9. The Torridge District Local Plan¹ (the Local Plan) was adopted in 2004 and therefore pre-dates the Framework by several years. 'Saved' Policy ECD 6 of the Local Plan is concerned with tourist development and sets out various criteria for allowing such development. Amongst other matters, tourist development will be permitted where the tourist need is identified or the proposal is well related to existing tourism assets. ECD6 (2) expects development in the open countryside to bring significant economic benefits to the wider area or community and to explicitly demonstrate the scale and extent of such benefits. Taking into account Paragraph 215 of the Framework, I find that Policy ECD 6, whilst drawn more narrowly than Paragraph 28 of the Framework, is nonetheless supportive of tourism and leisure developments and so does not conflict with the Framework.
10. Paragraph 55 of the Framework addresses housing in rural areas. The Framework advises that isolated homes in rural areas should be avoided unless there are special circumstances. Whilst Woolsery is a village with a reasonable level of services, the appeal site is a considerable distance outside the village and is remote from the nearest public highway which in any event has not been shown to offer a public transport service. The Council's lack of a five year housing land supply results in the Council's housing policies being out of date. However a dwelling on the appeal site, in locational terms, would be dependent upon car borne transport for most day to day requirements other than employment related to the Forest Lakes site. As such the proposed dwelling

¹ Torridge District Local Plan 1997 – 2011 Adopted September 2004

would be an isolated home in the context of the Framework. In order to comply with Paragraph 55 an essential need for a rural worker, in this case a site manager or supervisor, to live permanently at or near their place of work in the countryside must be clearly demonstrated.

11. Local Plan Policy DVT2C addresses development in the open countryside. Paragraph 3.51B of the Local Plan explains that development outside rural settlements should be controlled strictly but a positive policy is needed for economic activity that respects the countryside. The policy allows certain types of development including identified types of tourist development.
12. The appellant's evidence sets out a number of roles which would be fulfilled by an on-site supervisor including the health and safety requirements associated with the swimming pool, checking in and out of lodge guests, general maintenance and security. However, it was acknowledged at the Hearing by the appellant that at present there is no need for a supervisory lodge on the site. From the evidence I heard, the current management and maintenance responsibilities for the Forest Lakes site is undertaken by the appellant and staff from the HFGC site. The appellant company's role in managing the existing holiday properties on the Forest Lakes site is limited as these properties are in other ownerships.
13. Although the HFGC and Forest Lakes sites are currently managed together the appellant indicates this may not continue to be the case although there is no definitive evidence before me to confirm this. The appellant advises that investment in the Forest Lakes site is unlikely without the certainty of an on-site year round managerial presence. However, there is no detailed business case before me regarding the current or previous proposals.
14. The appellant's case highlights the requirement in the Agreement linking occupation of the majority of the permitted lodges to the provision of the swimming pool. Investment in the construction of the lodges and pool without permission for the supervisory lodge is stated not to be viable. I have taken into account the planning history of the site and correspondence between the appellant and the Council which precedes this appeal. However, given the recent Agreement and its variation, it is perhaps surprising that the supervisory dwelling has not formed an integral part of previous proposals.
15. With regard to the need for on-site supervision for the swimming pool, I have noted the various comments and advice from the Council's health and safety officer, the appellant and potential insurers. The evidence points clearly to the need for there to be a responsible and appropriately trained person close to the pool when it is open for use. It was confirmed at the Hearing that there is not a requirement for a lifeguard to be present within the pool building. However, I agree that the required role requires a person who would be on the Forest Lakes site during the times the pool was open.
16. Based on experience, the appellant refers to hours of opening for the pool being in the order of 70 hours per week. However, the duration or timing of opening hours are not a requirement of either the planning permission or the S106 Agreement. Consequently, the opening hours would be within the control of the appellant or site operator, notwithstanding the business need to take into account the reasonable expectations of holiday makers. The cost of employing staff specifically to supervise use of the pool is stated to be unaffordable and combining this role with other staff duties is also raised as a

potential problem. The appellant points out that staff who may be working remotely on the site, such as a gardener, could not carry out a dual role of supervision of the pool. However, the evidence indicates a potential for up to two full time and six part time employees on the site. Given the ability to control pool opening hours and the pool's location within a secure building, the evidence is not sufficient to demonstrate there is a requirement for a permanent supervisory presence on the site as a consequence of the proposed pool.

17. The appellant suggests a dwelling is necessary to provide access to a land line telephone. Whilst a mobile signal may not always be available and therefore could not be relied upon in an emergency, Mr Cartwright confirmed that he has reserved capacity to have a land line installed at the site. The possibility of a land line telephone reserved for emergency calls only elsewhere on the site such as within the pool building or maintenance shed does not appear to have been fully considered.
18. There is no evidence that a 'round the clock' presence is required to provide on-site security. Whilst security may be required during future construction activity, this does not necessitate a permanent dwelling.
19. The supervisory roles and activities, even when considered cumulatively, do not justify a permanent dwelling on the site at the present time. There is therefore no existing requirement for the proposed supervisory lodge and I have reached my decision on this basis. It is therefore not for me in determining this appeal to speculate on future need for a supervisory lodge as this would be a matter for the Council in the first instance. Nonetheless, I have considered whether the absence of an existing need for a supervisory lodge could be addressed by condition.
20. A condition which precludes the commencement of the development applied for could prevent the development taking place and so conflict with the requirement to impose a time limit relating to implementation of the permission. Such a condition could therefore be considered unreasonable and fail to meet all the tests set out in the Framework. One of the Council's suggested conditions, in the event of the appeal being allowed, would prevent occupation of the proposed supervisory lodge before a given number of holiday lodges were ready for occupation. However, such a condition would not preclude the supervisory lodge being built. Whilst this would address a potential conflict with the time limit on a commencement of development, it would not remove the possibility of the lodge being built without there being an essential need for permanent on-site supervision.
21. The essential need for a permanent dwelling on the site to provide accommodation for an on-site manager has not been demonstrated and therefore the proposal would not comply with Local Plan Policy DVT2C. The proposal is not supported by Policy ECD6 as the evidence does not demonstrate the provision of the supervisory lodge would bring significant economic benefits to the area and the scale and extent of any such benefits has not been explicitly demonstrated. Whilst there are a number of development plan policies with which the proposal would not conflict, I find that these are not sufficient to outweigh the conflict with Policy DVT2C given the lack of proven need for the dwelling and the lack of support for the proposal arising from failure to comply with Policy ECD6.

22. The proposal would not comply with Paragraph 55 of the Framework as the essential need for a rural worker to be permanently resident on the site has not been demonstrated. Notwithstanding the support for the rural economy set out in Paragraph 28 of the Framework, the evidence does not show that the economic and social benefits of the proposal would significantly and demonstrably outweigh the environmental harm arising from a dwelling in this isolated location. Consequently, the proposal would not be sustainable development as defined in the Framework.

Conclusions

23. For the reasons given above and having taken into account all matters raised I conclude that the appeal should be dismissed.

J E Tempest

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Laura Davies Planning Officer, Torridge District Council

FOR THE APPELLANT:

Mr Alan Cartwright Managing Director, Forest Lakes Ltd

Ms Sally Byron-Johnson

DOCUMENTS SUBMITTED AT HEARING

- 1 List of persons notified of Hearing date and venue
- 2 Update from Council regarding emerging Local Plan
- 3 Additional suggested conditions from Council