
Appeal Decisions

Site visit made on 25 October 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 14 November 2016

Appeal A - Ref: APP/J3720/W/16/3153502

Windmill View, Manor Farm, Ladbroke, Southam, Warwickshire CV47 2DF

- 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 Mrs Janet Moore against the decision of Stratford on Avon District Council.
 - The application Ref 15/03587/VARY, dated 1 October 2015, was refused by notice dated 30 November 2015.
 - The application sought planning permission for Change of use and alterations of existing cart sheds to form 2 holiday homes without complying with a condition attached to planning permission Ref 00/00870/FUL, dated 16 June 2000.
 - The condition in dispute is No 2 which states that: 'The development hereby permitted shall be used solely for the purpose of holiday accommodation and for no other purpose whatsoever including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order'.
 - The reason given for the condition is: 'For the avoidance of doubt and to comply with the policies of the District Planning Authority'.
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Appeal B - Ref: APP/J3720/W/16/3153522

Robin Cottage, Manor Farm, Ladbroke, Southam, Warwickshire CV47 2DF

- 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 Mrs Janet Moore against the decision of Stratford on Avon District Council.
 - The application Ref 15/03595/VARY, dated 1 October 2015, was refused by notice dated 30 November 2015.
 - The application sought planning permission for Conversion of agricultural barn to 2 holiday homes without complying with a condition attached to planning permission Ref 03/02558/FUL, dated 1 October 2003.
 - The condition in dispute is No 3 which states that: 'The use of the development hereby permitted shall be restricted to short-term holiday purposes only and shall not be occupied at any time as permanent residential accommodation'.
 - The reason given for the condition is: 'To prevent the permanent residential occupation of the site which would be contrary to Council policy'.
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Decisions

Appeal A – Ref: APP/J3720/W/16/3153502

1. The appeal is allowed and planning permission is granted for Change of use and alterations of existing cart sheds to form 2 holiday homes at Windmill View, Manor Farm, Ladbroke, Southam, Warwickshire CV47 2DF in accordance with the application Ref 15/03587/VARY dated 1 October 2015, without compliance with condition number 2 previously imposed on planning permission Ref 00/00870/FUL dated 16 June 2000 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 condition set out in Appendix A to this decision.

Appeal B – Ref: APP/J3720/W/16/3153522

2. The appeal is allowed and planning permission is granted for Conversion of agricultural barn to 2 holiday homes at Robin Cottage, Manor Farm, Ladbroke, Southam, Warwickshire CV47 2DF in accordance with the application Ref 15/03595/VARY dated 1 October 2015, without compliance with condition number 3 previously imposed on planning permission Ref 03/02558/FUL dated 1 October 2003 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 condition set out in Appendix A to this decision.

Preliminary Matters

3. As set out above my decision covers 2 appeals. Although the appeals relate to different buildings they are located in the same group of buildings and raise similar issues. I have considered each appeal on its individual merits. However, to avoid duplication I have dealt with the two appeals together, except where otherwise indicated.

Main Issues

4. The main issues are whether the conditions that would be removed are:
 - (a) necessary in the interests of sustainable development having regard to the location of the appeal sites in the countryside;
 - (b) necessary in the interests of highway safety; and
 - (c) precise and enforceable.

Reasons

Background and policy context

5. Windmill View and Robin Cottage are within a group of former farm buildings which have been converted under various planning permissions. The Appellant has stated that whereas 9 units of accommodation were originally created which were subject to 'holiday let' conditions, several Lawful Use Certificates have been granted which collectively confirm that 7 of the units may be used on an unrestricted basis as dwellings. Appeals A and B concern the 2 remaining units.
6. Appeal A concerns Windmill View which is one of 2 units covered by planning permission 00/00870/FUL, condition 2 of which restricted the use of both units to holiday accommodation. In 2012, the Council granted a 'Lawful Use Certificate' which confirmed that the other unit covered by permission

00/00870/FUL, known as Horseshoe Cottage, may be lawfully used as a dwelling without the restriction set by condition 2. The issues in dispute in appeal A therefore focus on whether condition 2 on permission 00/00870/FUL should continue to apply to Windmill View.

7. Appeal B concerns Robin Cottage which is one of 2 units covered by planning permission 03/02558/FUL, condition 3 of which restricted the use of both units to short term holiday use. In 2015, a Lawful Use Certificate was granted on appeal which confirmed that the other unit subject to permission 03/02558/FUL, known as Kings Barn, may be lawfully used as a dwelling without the restriction set by condition 3. The issues in dispute in appeal B therefore focus on whether condition 3 on permission 03/02558/FUL should continue to apply to Robin Cottage.
8. I have determined the appeals having regard to paragraph 206 of the National Planning Policy Framework (the 'Framework'), which states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable.
9. The Council adopted the Stratford-on-Avon Core Strategy (SoACS) after it determined the applications subject to appeal but before the parties submitted their final comments. Given the status of the SoACS as a recently adopted, post Framework, development plan I have given it substantial weight in my decision.

Sustainable development

10. Manor Farm is located at the end of a long and unlit drive in open countryside, about 1.25 kilometres from the village of Ladbroke. The SoACS identifies Ladbroke as a Category 4 service village, in which development will be substantially contained within the settlement. Whilst Windmill View and Robin Cottage are grouped with other dwellings at Manor Farm, given the distance between Manor Farm and Ladbroke and other settlements in the area I consider that the whole complex at Manor Farm is in an isolated position in the countryside. Due to this isolated position, many of the trips generated to and from the complex are likely to be by car.
11. Paragraph 55 of the Framework requires local planning authorities to avoid isolated new homes in the countryside unless there are special circumstances. Under Policy AS.10(d) of the SoACS the conversion of buildings to form new dwellings in isolated locations can be acceptable provided in summary the buildings are redundant or disused, are of architectural merit, residential is the only viable use and the building is capable of conversion in a manner which is appropriate to its setting. Paragraph 55, bullet point 3 of the Framework allows new isolated homes to be created where the development would re-use redundant or disused buildings and enhance the immediate setting of the site.
12. The conversion works at Windmill View and Robin Cottage have been carried out to a high quality and there is no evidence to suggest that the schemes subject to permissions 00/00870/FUL and 03/02558/FUL did not enhance the setting of buildings of architectural merit. However, the submitted evidence does not demonstrate whether the buildings were disused or redundant or that residential use constituted the only viable use. It has therefore not been shown that the schemes subject to permissions 00/00870/FUL and

03/02558/FUL met all the requirements related to the creation of isolated new homes through conversion of existing buildings as identified in Policy AS.10(d) of the SoACS and the Framework.

13. Use of the units subject to appeal A or B either as unrestricted dwellings or as 'holiday lets' would involve journeys being made for example to shops, leisure facilities and other services. As there are no restrictions governing when the 'holiday let' use may operate these trips may already occur at any time of year.
14. However, an unrestricted residential use could also involve for example a daily commute to work. Furthermore, the figures drawn from the TRICS database¹ referred to by the Appellant indicate that whereas a holiday let use only generates an average of 1.8 car based trips per day, a dwelling generates an average of 4.9 trips per day. Although the level of traffic generation could be affected by the small size of the units subject to the appeals, the figures indicate that the change to unrestricted dwelling use would substantially increase the number of car based trips to and from the units. Whilst this increase would be limited when compared to the traffic generated by the Manor Farm complex as a whole, this would not reduce the numbers of car borne trips caused by the appeal proposals themselves.
15. The Council has not identified any local policies which indicate that existing 'holiday lets' should be retained in this use. However, removal of the conditions would mean that the sites would no longer be likely to contribute to visitor numbers, and hence visitor spending, in the area. In the absence of evidence demonstrating that 'holiday let' use is not viable, and in the context of the reference to viability in Policy AS.10(d) of the SoACS, this represents a material weakness of the appeal proposals.
16. The proposals would each if implemented add one dwelling to the supply of housing in the area and could help to meet local housing needs. They would therefore help to meet the Government's objective of boosting significantly the supply and choice of housing. These benefits, however, need to be considered in the context of the Council's view, which has not been refuted by the Appellant, that it can demonstrate a 5 year supply of deliverable sites for housing development as required by paragraph 47 of the Framework and of the small scale of the proposals. Whilst persons living in the dwellings would contribute to the local economy by spending money on local services, this point would also apply to housing which is in less isolated locations.
17. As stated by existing residents of other units within Manor Farm, the appeal proposals would lead to there being less transient occupancy of Windmill View and Robin Cottage. This could improve the vibrancy and sense of security within the community in this location. However, whilst these points are material, given the lack of firm evidence that occupation of the units as 'holiday lets' would pose a security risk or cause substantial disturbance compared to the proposed unrestricted dwelling use they carry limited weight.
18. The removal of the 'holiday let' conditions would not lead to any material change to the visual appearance of the Manor Farm complex or to biodiversity. However, these points do not mean that the conditions subject to appeal are not needed in the interests of sustainable development as a whole.

¹ TRICS (Trip Rate Information Computer System) is a database of trip rates for developments used in the United Kingdom for transport planning purposes

19. I have noted the other appeal decisions referred to by the parties which have come to different conclusions for and against the removal of 'holiday let' conditions in different cases. However, each case is different in terms of the locations and details of the proposals, the policy context and the available evidence. Other appeal decisions referred to (for example those concerning Arden Hill Farm) also pre-date the adoption of the SoACS, which must, due to its recent adoption, be given substantial weight in my decision. I have in any event considered the current appeals on their own merits on the basis of the evidence which has been put to me.
20. The Appellant has drawn my attention to the Permitted Development rights which now exist to change the use of an agricultural building to a dwellinghouse. However, the buildings subject to appeal are no longer in agricultural use and the number of un-restricted dwelling uses which now exist within Manor Farm already substantially exceeds the limit of 3 dwellings that could now be developed under these Permitted Development rights².
21. For the reasons set out above I conclude that removal of the conditions subject to appeal would increase the pressure for car based journeys to and from this isolated location in the countryside and thereby cause harm to the environmental dimension of sustainable development defined in paragraph 7 of the Framework. In the absence of evidence that 'holiday let' use is not viable this harm would outweigh the contribution that the proposals would make to housing supply and other sustainability matters which I have referred to. The conditions subject to appeals A and B are therefore both necessary in the interests of sustainable development having regard to the location of the appeal sites in the countryside.

Highway Safety

22. The driveway leading to the Manor Farm complex runs off Harbury Road which links Ladbroke village with the B4451 to the west. Whilst Harbury Road is subject to a 30 mile per hour speed limit at this point, the limit changes to 60 miles per hour a short distance further to the west.
23. The Manual for Streets³ advises that where vehicles are travelling at 30 miles per hour visibility splays of at least 43 metres should be provided when measured from a point which is 2.4 metres back from the near edge of the public highway carriageway. The available splay looking eastwards from the access onto Harbury Road is about 10 metres and that looking westwards measures about 40 metres at most and is interrupted by a telegraph pole. The visibility in both directions but particularly to the east is therefore restricted.
24. Furthermore, the TRICS data referred to earlier indicates that removal of the conditions subject to appeals A and B would increase the amount of vehicular traffic to and from the site compared to that which would result from the permitted 'holiday let' uses. Whilst the proportionate overall increase in the use of the access would, having regard to the traffic serving the other 7 units at Manor Farm and the permitted dwelling at Rectory Farm be limited it would nevertheless be an increase. Due to the narrow and lengthy nature of the access track there is also scope for conflict between vehicles entering and

² Under Class Q.1(c) of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 no more than 3 dwellings within the same agricultural unit can be developed under Class Q.

³ Table 7.1 of 'Manual for Streets', Communities and Local Government/Department for Transport 2007

leaving the site. Although I am not aware of any accidents having taken place along the nearby highway this does not mean that the access has adequate visibility.

25. On the basis of the evidence which has been submitted, I conclude that the conditions subject to appeals A and B are necessary in the interests of highway safety.
26. I accept that the Highway Authority advised that the proposed conversion of an agricultural building at Rectory Farm to a dwelling subject to planning application 15/00157/FUL would be acceptable. However, whilst that site is alongside the access to Manor Farm I do not have any substantive details of that proposal before me or of any analysis which underpinned the Highway Authority's response. In any event, the proposals which are before me would, according to the available evidence lead to a further material increase in the use of an access with substandard visibility.

Precision and enforceability

27. The 'holiday let' conditions on permissions 00/00870/FUL and 03/02558/FUL contain no limit on the length of the holiday periods which may be taken at the units, or any requirement to record the period of each holiday use. The meaning of the term 'permanent residential accommodation' in condition 3 of permission 03/02558/FUL is also unclear as a person could occupy the premises as their main residence without the arrangement being permanent. As a result the conditions lack precision and could give rise to enforcement difficulties if a person or persons occupy either unit for a substantial length of time. However, it is possible to address this by replacing the existing conditions with a new condition worded as is set out in one of the other appeal decisions referred to by the Council⁴.

Other Considerations

28. As an entirely new permission would be granted if I were to allow the appeal, I have also considered the other conditions attached to permissions 00/00870/FUL and 03/02558/FUL. The Council has indicated and I agree that conditions 1, 4 and 5 on permission 00/00870/FUL and 1,2,4,5 and 6 on permission 03/02558/FUL are no longer capable of taking effect. Whilst conditions 3 on permission 00/00870/FUL and 7 on permission 03/02558/FUL, which remove Permitted Development rights, refer to legislation which has now been replaced, as they also refer to successor legislation they can still take effect. I agree that they are still needed to ensure that the visual character of the former farm buildings is preserved.

Conclusion

29. I have found that conditions 2 on permission 00/00870/FUL and 3 on permission 03/02558/FUL are both necessary in the interests of sustainable development having regard to the location of the appeal sites in the countryside, and in the interests of highway safety.
30. I have also found that the wording of these conditions is imprecise. However, as both conditions satisfy the test of being necessary, it would not be appropriate to allow the appeal without replacing them. I have therefore

⁴ Ref: APP/J3720/A/13/2204601

allowed the appeals and granted planning permission to carry out the developments without complying with conditions 2 on permission 00/00870/FUL and 3 on permission 03/02558/FUL, but replaced each of these conditions with a more precisely worded condition.

Jonathan Clarke

INSPECTOR

APPENDIX 1

NEW CONDITION TO REPLACE CONDITION 2 ON PLANNING PERMISSION 00/00870/FUL AND CONDITION 3 ON PLANNING PERMISSION 03/02558/FUL

- 1) The development hereby approved shall only be used for holiday accommodation purposes and not for any other residential use falling within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or any Statutory Instrument revoking and re-enacting that Order with or without modification. For the avoidance of doubt 'any other residential use' includes a person's or persons' main residence, or a permanent residential unit of accommodation.