
Appeal Decision

Site visit made on 18 October 2016

by David Walker MA MRTPI

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

Decision date: 18 November 2016

Appeal Ref: APP/D3125/W/16/3156171

Chimney Farm Barns, Chimney, Aston, Bampton OX18 2EH

- 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 F Mitchell of FGA & CMI Mitchell against the decision of West Oxfordshire District Council.
 - The application Ref 16/04419/S73, dated 16 December 2015, was refused by notice dated 10 February 2016.
 - The application sought planning permission for conversion of existing redundant barns to form three holiday lets without complying with a condition attached to planning permission Ref W2001/0924, dated 13 September 2002.
 - The condition in dispute is No 4 which states that: The occupation of the accommodation provided shall be limited to holiday tenancies not to exceed 6 weeks (in each case).
 - The reason given for the condition is: The accommodation is provided on a site where development would not normally be permitted, and the nature of accommodation provided makes the units unsuitable for continuous residential occupation (Policy TM7).
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Decision

1. The appeal is allowed and planning permission is granted for conversion of existing redundant barns to form three holiday lets at Chimney Farm Barns, Chimney, Aston, Bampton OX18 2EH in accordance with the application Ref 16/04419/S73 made on the 16 December 2015 without complying with condition No 4 set out in planning permission Ref W2001/0924 granted on 13 September 2002 by the West Oxfordshire District Council, but otherwise subject to the conditions in the schedule at the attached Annex.

Preliminary Matters

2. Since the original permission referred to above was granted for the three holiday lets there have been subsequent permissions for individual units. I have determined the appeal only in relation to the original permission and the development that was authorised in that approval.
 3. The Council and interested parties have referred to policies contained within the emerging West Oxfordshire Local Plan 2031. The independent examination into the Plan has been suspended to allow the Council to undertake further work. As such the plan remains under preparation. As I have nothing before me to indicate the extent to which the policies referred to are the subject of unresolved objections the emerging plan can attract only limited weight, in line
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with the advice at paragraph 216 of the National Planning Policy Framework (the Framework).

Main Issue

4. Under the original permission the converted barns are subject to restrictions limiting occupancy only for holiday purposes. The proposal seeks the removal of condition No 4 of the original permission to allow the full-time permanent occupation of the units.
5. I therefore consider the main issue to be whether the restrictions on occupancy are necessary having regard to local and national policies for the conversion of rural buildings for residential use.

Reasons

6. The appeal buildings are located among a small grouping of buildings that make up the small hamlet of Chimney. Being accessed over a long stretch of narrow country lane there is no dispute between the parties that they are located within the open countryside. With the nearest services and facilities at the village of Aston some 2.3 km away the appeal buildings are evidently in an isolated position.
7. Planning policies in force at the time of the original permission sought to obtain the re-use of rural buildings for commercial purposes in preference to residential. Although the original permission dates from 2002 this approach remains within saved Policy H10 of the West Oxfordshire Local Plan 2011 adopted in 2006 (the Local Plan) and referred to in the reason for refusal.
8. Under saved Policy H10 the conversion of buildings for residential use is permitted in exceptional circumstances where the building is not suitable for re-use for employment, recreational or community uses, visitor facilities or tourist accommodation. It is a sequential test that only supports a residential use as a last resort to secure a building's retention. In dismissing two appeals¹ in 2006 and 2011 previous Inspectors have upheld the policy's requirements at the time of their decisions.
9. The Local Plan is an aged document, however, and the publication in 2012 of the Framework is a significant change in circumstances. Paragraph 55 of the Framework seeks to avoid isolated new homes in the countryside unless there are special circumstances. The re-use of redundant or disused buildings that lead to an enhancement to the immediate setting is one of the special circumstances identified.
10. Significantly, there is no national policy requirement for buildings to be converted for residential use to have exhausted the scope for alternative uses. Saved Policy H10 of the Local Plan can therefore no longer be regarded as being consistent with national policy. With reference to the advice at paragraph 215 of the Framework I attach significant weight to the policy of paragraph 55 as a material consideration, capable of outweighing the out-of-date policy of the Local Plan.

¹ Appeals Refs APP/D3125/A/05/1184127 and APP/D3125/A/11/2144225

11. Although the buildings have long since been converted to a residential use I have been pointed to the potential change to the intimate character of Chimney and its setting that could arise from their permanent occupation. Concerns raised surround the increase in resident population and associated traffic movements. This is to be balanced against the existing comings and goings of holiday makers and the transient nature of the existing use of the appeal buildings, however.
12. In this regard I have no technical evidence before me of harmful vehicle movements associated with the permanent occupation of the units. I am also mindful that the nearest neighbours have offered their support for the proposal in the anticipation it would reduce traffic and antisocial behaviour. With restrictions on future works that could otherwise be carried out without planning permission as I intend to secure by condition, I am satisfied that the proposal would not have a harmful effect on the setting of the appeal buildings.
13. While the Council and others have questioned the need for and sustainability of the proposal, the policies of the Framework taken as a whole set out the Government's view of what sustainable development means in practice for the planning system. It follows therefore that as I find the proposal to accord with paragraph 55 that it would result in a sustainable development under the terms of the Framework.
14. The appeal questionnaire also raises the issue of the setting of nearby listed buildings. With special regard to this matter, and in the light of the listing descriptions provided to me and the degree of separation between the appeal buildings and the designated heritage assets, and intervening physical features, I am satisfied that the setting would be preserved.
15. In conclusion, therefore, with regard to local and national policies for the conversion of rural buildings for residential use, I find the restrictions imposed by condition No 4 can no longer be considered necessary under the six tests for the use of conditions laid down at paragraph 206 of the Framework.

Conditions

16. 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.
17. 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 I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties
18. An additional condition suggested by the Council would result in permitted development rights being restricted. It is an approach that is not generally endorsed by the national Planning Practice Guidance. However, given the location of the development at the fringe of a small hamlet I agree that such works could harm the rural setting and should be controlled to ensure compliance with the terms of paragraph 55 of the Framework.

Conclusion

19. For the reasons given above, and with regard to the development plan read as a whole and to the Framework, I conclude that the appeal should be allowed.

David Walker

INSPECTOR

Annexe

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of five years from the date of the original permission which for the avoidance of doubt is 13 September 2001.
- 2) The development shall be carried out in accordance with the plans accompanying the application but as modified by the applicant's agent's letter dated 22nd August 2001.
- 3) Prior to the commencement of the development hereby approved a series of passing bays shall be constructed along the access road to Chimney, the precise siting and construction of which shall first be approved in writing by the Local Planning Authority and the said passing bays shall be retained as such thereafter.
- 4) All new works and works of making good shall be carried out in materials, and detailed, to match the adjoining original fabric except where shown otherwise on the approved drawings.
- 5) No demolitions, stripping out, removal of structural elements, replacement of original joinery or fittings and finishes shall be carried out except where shown and noted on the approved drawings.
- 6) Detailed drawings of the following items to a scale of not less than 1:20 shall be submitted to and approved in writing by the Local Planning Authority before work on that part of the development takes place; external joinery.
- 7) All new external joinery shall be painted or stained in a colour to be first approved in writing by the Local Planning Authority and retained in that colour.
- 8) A detailed schedule of materials including samples to be used in the making good of any part of the buildings together with fully annotated elevational details shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.
- 9) Development shall not begin until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority.
- 10) None of the holiday lets shall be occupied until works for the disposal of surface water drainage have been provided, to serve the development hereby permitted, in accordance with details first submitted to and approved in writing by the Local Planning Authority.
- 11) Prior to the commencement of development a 1:500 block plan showing parking and manoeuvring areas to serve the development shall be submitted to and approved in writing by the Local Planning Authority and the said approved details shall be constructed prior to first occupation of the holiday lets and retained as such thereafter.

- 12) That a detailed schedule of all hard surfacing materials proposed on the layout plan shall be submitted to and approved in writing by the Local Planning Authority before building work commences.
- 13) Prior to commencement of development details of the design and specification of all means of enclosure shall be submitted to and approved in writing by the Local Planning Authority.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development permitted under Schedule 2, Part 1, Classes A, B, C, D, E, and G, and Schedule 2, Part 2, Class A shall be carried out, namely:
 - the enlargement, improvement or other alteration of a dwellinghouse
 - additions etc to the roof of a dwellinghouse
 - other alterations to the roof of a dwellinghouse
 - porches
 - the provision within the curtilage of the dwellinghouse of:
 - (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
 - (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas
 - the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse; and
 - the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

End of schedule.