
Appeal Decision

Site visit made on 26 October 2016

by Zoe Raygen Dip URP MRTPI

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

Decision date: 29 November 2016

Appeal Ref: APP/D2510/W/16/3157006

The Old Vicarage, Grove Road, Theddlethorpe LN12 1PD

- 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 Mr G Jones against the decision of East Lindsey District Council.
 - The application Ref N/179/01140/16, dated 10 May 2016, was refused by notice dated 26 July 2016.
 - The development proposed is residential use (Use Class C3) with ancillary short term letting for a period not exceeding 90 days in any calendar year.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the residents of Glebe Cottage with particular regard to noise and disturbance.

Reasons

3. The Old Vicarage is a large ten bedroom, two storey house with a single storey extension which is set back from Grove Road. To the rear of the building is an extensive paved seating area and a large outbuilding housing a pool and leisure facilities. To the north east is Glebe Cottage which is in residential use and sited further back from the Old Vicarage. Boundary treatment between the two properties is formed by a hedge and mature trees.
 4. The appellant purchased the property to be his main residence, but due to being out of the country for periods of time he is seeking to use the property for residential use with short term holiday letting not exceeding 90 days per year.
 5. The Old Vicarage is close to the coast but within the open countryside. It is accessed from a long narrow track which serves a small number of scattered buildings. As such it is relatively isolated and I found it to be a quiet peaceful location with little passing traffic.
 6. The large size of the house together with the outdoor facilities would suggest that it would be particularly attractive to larger groups of people and family gatherings. The outside facilities are close to Glebe Cottage and given the quietness of the area, their use by a number of people would have the potential to be particularly noisy. As the occupiers would be on holiday, it is also likely
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that they may use the outdoor facilities in the evening with no restriction on hours and therefore cause noise and disturbance when neighbouring occupiers may reasonably expect quietness.

7. I note that the use of the Old Vicarage for a holiday let has been considered under appeal ref APP/D2510/C/14/2222553. The Inspector deemed at that time that the use of the property for holiday lets would be harmful to the living conditions of the occupiers of Glebe Cottage particularly from the letting of the property to large groups especially those for groups of friends for parties and celebratory occasions. There was nothing that I saw on site that would lead me to disagree with this view.
8. The appellant has applied for the use of the property for up to 90 days a year based on the document Policy on Short Term Use of Residential Property in London 2015, which supports the use of residential properties for short term letting purposes to a maximum of 90 days in a calendar year. Nonetheless, given the particular circumstances of the siting of the Old Vicarage in relation to Glebe Cottage, its size and facilities available, means that even if the property was only used for 90 days a year for holiday lets this would not overcome the potential for unacceptable noise and disturbance to be caused on those days.
9. The appellant has stated that the vast majority of persons renting the property are families with children. He has proposed that conditions be used to ensure that the property is not let to single sex groups or for the purposes of stag or hen parties. Marketing material would be amended to advertise such a restriction. Furthermore, a condition requiring a register to be kept of the name and address of each person making bookings would be the subject of a condition.
10. However, it is not only single sex gatherings that have the potential to cause harm. Any large gathering of people for celebratory occasions could equally cause noise and disturbance to the occupiers of the neighbouring property. Given the size of the Old Vicarage a condition restricting large gatherings at the property would not satisfy all the tests of paragraph 206 of the National Planning Policy Framework (the Framework). In particular it would not be enforceable or reasonable in all other respects.
11. The appellant refers to the fact that the occupier of the neighbouring property has never produced independent objective evidence of noise nuisance. Furthermore, there has been no monitoring of the property by Environmental Health Officers. However, the view of the Inspector on the previous appeal based on evidence from the occupiers of Glebe Cottage was that their quality of life had been and would be adversely affected. From my observations on site I would concur with that view.
12. The appellant also refers to a Court of Appeal judgement where Lord Justice Vos approved the decision of Judge Coltart in a case involving noise brought by Susan and James May against Beatrice Drew Trust. The Judge stated that *"everyone must put up with a certain amount of discomfort and annoyance caused by the legitimate activities of his neighbours"*. Whilst I do not disagree with those principles, in this instance, I have found that, given the specific characteristics of the property, the noise and disturbance caused by large gatherings would be harmful to the living conditions of neighbouring occupiers. Furthermore, the letting of the property for holiday purposes does not have planning permission

and therefore the occupiers of Glebe Cottage may reasonably expect the property to be occupied as a family dwelling.

13. The Council raise Case law¹ in relation to the differences between dwelling houses and properties used for holiday lets. The appellant considers that this Case shares few similarities to the current appeal. While there may be differences, the significant issue is that although a matter of fact and degree, based on the particular circumstances of each case, there are potentially differences in occupation of a property between a family dwelling and a holiday let. For example the patterns of arrivals and departures with associated traffic movements would be different. Occupation by a family is more likely to involve not all of the bedrooms being occupied at the same time. While families would have parties and gatherings such events would be more frequent with holiday lettings. Finally, people on holiday are more likely to have a potential lack of consideration for their neighbours. Bearing this judgement in mind, in this instance as the property is so large, I cannot agree that occupation by a family would be no different to a holiday let.
14. The appellant considers that he could use the property on an ancillary basis as a holiday let without the need for planning permission. However, the Council advise that condition 2 of planning permission N/179/01962/06 restricts the use of the property to a single dwelling house only and no other use within Class C3 including as commercial holiday letting. The reason for the condition is given as the risk to human life from a flooding event. I am aware that the Inspector on the previous appeal found that flood risk is not a reason to preclude the mixed use of the property. However, this does not mean that the condition has been removed. Therefore, currently the property cannot be used for holiday letting purposes even on an ancillary basis.
15. The appellant states that Condition 2 is ambiguous and unenforceable. However in my opinion the meaning of the condition is clear and restricts the use of the property to a dwelling house only. The fact that the property has been the subject of enforcement action and monitoring by the Council suggests that the condition is enforceable.
16. For the reasons above I conclude that the proposal would be harmful to the living conditions of the residents of Glebe Cottage with particular regard to noise and disturbance. It would therefore be contrary to saved Policy A4 of the East Lindsey Local Plan Alteration 1999 and paragraphs 9, 17, 58 and 123 of the Framework. These require that development should be good quality that does not unacceptably harm the general amenities of people living nearby and avoids noise from giving rise to significant adverse impacts on health and quality of life.

¹*Moore v Secretary of State for Communities and Local Government & Suffolk Coastal DC* [2012] EWCA Civ 1202.

Other matters

17. The appellant also refers to the contribution that holiday makers at the Old Vicarage would make to the viability of the local pub which is close to the appeal site. Without this custom it is suggested that there would be a negative impact on the economic viability of the community facility. However, I have been supplied with no evidence of such an outcome. In any case, I am not convinced that loss of trade for 90 days a year associated with the holiday let would affect trade to a degree that would be significantly harmful to local economic development. Moreover, there is no guarantee that users of the Old Vicarage would frequent the pub. I therefore give this suggestion very limited weight.
18. The appellant alleges that pre-application advice provided by the Council suggested that the use of the Old Vicarage for holiday lets on a limited basis would be acceptable. However, I have no evidence of this in writing. Furthermore, I have no reason to suggest the alleged advice was anything other than informal advice that would not, in any case, have prejudiced the Council's decision on a subsequent planning application. In any event, it falls to me to assess the merits of the proposed use.
19. The appellant states that the Council did not raise the matter of the restriction applied by Condition 2 of N/179/01962/06 within their pre application discussions but have now included it within their appeal statement. As a result, he has not had the opportunity of a fair hearing and a real opportunity to present his case and equality of arms. He refers to case law in support of this stance ². Furthermore he considers that the Council has breached Article 6(1) and Article 1 of the First Protocol of the Human Rights Act in this respect.
20. However, the appellant has had the opportunity to address this point in his final comments and also makes reference to it in his appeal statement. Therefore I consider that he has had opportunity to address the issue of Condition 2 and therefore there has been no breach of the requirements of Article 1 and Article 6(1) of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998.
21. The appellant has included a large amount of information regarding the alleged behaviour of the occupiers of Glebe Cottage. However this is not a matter that I can consider as part of this appeal.

Conclusion

22. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR

² *Ridge v Baldwin* (1964) AC40, *Fraser v State Services Commission* (1984) 1 NZLR116 at 121 per Cook LJ, *R v Parole Board ex-parte West* (2005) UKHL4