The Planning Inspectorate

Appeal Decision

Site visit made on 3 October 2016

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 29 December 2016

Appeal Ref: APP/J3720/W/16/3151035
Field House, Tithe Barn Lane, Hockley Heath, Warwickshire B94 5DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 M Moseley against the decision of Stratford on Avon District Council.
- The application Ref 16/00947/VARY, dated 16 March 2016, was refused by notice dated 10 May 2016.
- The application sought planning permission for the change of use from stables to holiday accommodation without complying with condition 3 attached to planning permission Ref 00/01126/FUL, dated 6 July 2000.
- The condition in dispute is No 3 which states that: "the conversion of the stable building, hereby permitted, shall be used for holiday accommodation purposes only, and shall not be occupied for permanent residential use at any time."
- The reason given for condition 3 is: "to comply with the operative policies of Stratford-on-Avon District Local Plan."

Decision

1. The appeal is allowed and planning permission is granted for change of use from stables to holiday accommodation at Field House, Tithe Barn Lane, Hockley Heath, Warwickshire, in accordance with application No 16/00947/VARY, dated 16 March 2016, without compliance with conditions 1 and 3 previously imposed on planning permission No 00/01126/FUL, dated 6 July 2000, but subject to condition 7 imposed on that permission, together with the other conditions imposed thereon so far as the same are still subsisting and capable of taking effect.

Procedural matters

2. The stables were converted following the grant of planning permission in 2000. In granting that permission, the Council sought to restrict occupation of the accommodation provided by means of a condition (condition 3). The appellant now wishes to secure use of the premises as permanent residential accommodation and seeks permission to carry out the development without complying with that condition. Based on the evidence of the Council, the building is already occupied in breach of condition 3. This is not disputed by the appellant. I have, therefore, dealt with the application under the provisions of S73A of the Town and Country Planning Act 1990.

3. In allowing this appeal, I am required to adopt the description of development as set out on the Council's original decision notice, namely change of use of stables to holiday accommodation. However, that creates an apparent anomaly, in that the appeal was made with the intention of being able to use the building as permanent residential accommodation, not holiday accommodation. Whilst I acknowledge that tension, it is not within my remit, as part of an appeal such as this, to alter the description of development.

4. Since the planning application was decided, the Council has formally adopted its Core Strategy[1]. As such, the policies within the Core Strategy hold full weight. The Council and the appellant have had the opportunity to respond to the relevant policies in this newly adopted plan. I have had regard to this in my reasons below.

Main Issue

5. In determining this appeal under S73A of the Town and Country Planning Act 1990, I am mindful of the advice in the Planning Practice Guidance[2] in relation to applications/appeals such as this which states that "…. under s73 the LPA must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application."

6. Paragraph 206 of the National Planning Policy Framework (the Framework) makes it clear that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In light of the forgoing, I consider that the main issue in this case relates to whether the disputed condition meets the tests for conditions set out at paragraph 206 of the Framework.

Reasons

7. The appeal site is within the Green Belt. There is no suggestion in the evidence before me that the development conflicts with any Green Belt policies, or that there are any implications in terms of effect on the character and appearance of the area, or on the living conditions of nearby residential properties. However, the appeal site is outside an existing settlement and thus, for planning purposes, lies within the open countryside.

8. The Council relies, in part, on paragraph 55 of the Framework. In seeking to enhance or maintain the vitality of rural communities, paragraph 55 requires that local planning authorities avoid isolated homes in the countryside unless there are special circumstances, including where the development would re-use redundant or disused buildings and would lead to an enhancement to the immediate setting. I have no reason to suppose, in this regard, that the re-use of the stables did not result in a local enhancement. The principle of general conversion of the original stables building is, therefore, supported in the Framework.

9. Policy CS.22 of the Core Strategy relates to economic development, promoting business development in sustainable locations indicating, among other things, that opportunities for business development will be provided in the countryside, in accordance with policy AS.10. Whilst policy AS.10 of the Core Strategy

[1] Stratford-on-Avon District Core Strategy (2011-2031) (adopted on 11 July 2016)
[2] Planning Practice Guidance ID 21a-031-20140306

allows for conversion to residential use of a redundant or disused building in open countryside, it specifies that residential use should, among other things, be the only viable use. I note, in this regard, that it is not part of the appellant's case that use of the building as holiday accommodation was unviable. There is conflict, therefore, with the Core Strategy in this regard.

10. Although the Council also suggests harm arising from the loss of holiday accommodation in terms of tourism within the district, such harm is not substantiated in any detail. Whilst the Framework seeks to support sustainable rural tourism that benefits businesses in rural areas and which respects the character of the countryside, no objective evidence is before me to demonstrate what contribution the holiday accommodation made to local tourism. It seems to me, given the modest size of the building, that any contribution in this regard, would have been very limited. I am not persuaded, therefore, that the development the subject of this appeal has, necessarily, a material adverse impact on the aims of the Stratford on Avon Destination Tourism Strategy referred to by the Council.

11. I fully accept the Council's view that occupation as a permanent dwelling runs contrary to policies CS.15 and CS.16 of the Core Strategy, which direct new development to existing built areas of the District. Moreover, whilst a local shop and some services and facilities are located approximately 1.6km away at Earlswood (a Category 3 village) with the appeal site lying within some 1.7km of the train station at Wood End, access is via Tithe Barn Lane. This is devoid of a footway or cycle lane. Notwithstanding the relatively short distances involved, I have significant reservations therefore, that cycling and walking represent a realistic option for occupiers of the accommodation. There is no suggestion either, that the site is well served by a local bus service.

12. On balance, I consider that occupiers are likely to rely on the private car in order to access day to day facilities, services and employment opportunities, rather than more sustainable transport modes. I recognise that holiday occupiers would, similarly, be reliant on private car travel, but they would not require access to, for example, health services, education or employment in the same way as for those occupying the building on a permanent residential basis, although I have no evidence before me to demonstrate that they would not generate a dissimilar number of traffic movements. I have no evidence either, of how the development might enhance or maintain the vitality of the rural community. There is conflict, therefore, with the Framework, which seeks to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, locating development in rural areas where it will enhance or maintain the vitality of rural communities.

13. In light of my findings above, I am satisfied, having regard to current policy and guidance, that there is a need for the disputed condition and that it is relevant to planning and to the development itself.

14. However, neither the disputed condition, nor any other condition attached to the permission, defines what is meant by the term 'holiday accommodation'. The Council suggests that, whilst it does not seek to impose specific restrictions on the length of holidays, it would be reasonable to assume that a holiday would be no more than six weeks and therefore anyone residing after this time would be in breach of the condition.

15. In support of the appeal, the appellant draws attention to a S73 appeal decision relating to a condition which sought to restrict occupancy of a converted barn to short-term holiday purposes[3]. In that case, the Inspector found that, in the absence of any limit on the length of the holiday periods that may be taken, or any requirement to, for example, record the use of the property, it could be occupied continuously by holiday makers. On that basis, he found that the condition failed to achieve the purposes of ensuring that the premises were used only for short-term holiday accommodation. I recognise that there is no reference to 'short-term' in the condition the subject of this current appeal. However, whilst each appeal is determined on its own merits, that decision does have some resonance with the appeal scheme before me.

16. In this case, with no limit on the term of any occupancy, there is nothing to prevent the building from being occupied continuously for an unlimited period of time. Moreover, the absence of any conditions that, for example, require that the accommodation not be used as a sole or main place of residence, and/or require maintenance of an up to date register of names, means that there is a little, if any material difference between long term holiday accommodation and permanent residential occupation, making the condition imprecise and practicably impossible to detect a contravention of the condition. It seems to me that it would be nigh on impossible for the Council to prove whether someone residing in the premises was doing so for a long term holiday or on a permanent basis. The condition therefore fails to achieve its purpose of restricting the premises to holiday accommodation, for, for example, maximum periods of around six weeks as suggested by the Council. As such, it does not meet the tests of precision or enforceability.

17. As it stands therefore, whether or not the condition was considered necessary in the light of relevant planning policies and guidance at the time, it is imprecise and unenforceable with the consequence that the building could be occupied continuously for an unlimited period of time as holiday accommodation. I am not persuaded, in this regard that, as a matter of fact and degree, there would be any discernible or material difference between holiday occupation on that basis and permanent residential occupation. On that basis, the condition serves no useful planning purpose and thus is not reasonable in all other regards.

Other matters

18. The Council can demonstrate a five year housing land supply which implies that there is not a need for additional housing. However, a five year housing land supply is not a moratorium on additional housing, especially where there is no material harm. I give little weight, therefore, to the argument that a permanent dwelling is not required in light of the Council's housing land supply.

19. The Council refers to a number of dismissed planning appeals relating to the removal of conditions limiting premises to holiday let accommodation, where Inspectors have found the developments to be within unsustainable locations. Whilst I have concluded similarly on the current proposal, in light of other considerations, I have found substantive reasons to conclude that the proposal does not result in undue harm. Those planning appeals, therefore, do not set a precedent for dismissing this appeal.

[3] APP/J3720/A/13/2201898 Barn Farm, Tysoe Road, Oxhill, Warwick

Conclusion and Conditions

20. For the reasons given above, I conclude on balance that the appeal should succeed.

21. The Council has suggested four additional conditions should the appeal be allowed, two of which relate to highways matters. The officer's report sets out that it is unclear whether the highway authority was consulted on the original planning application, but indicates that there are concerns about the transference of loose material from the access drive to the highway, and about adjacent hedgerows interfering with visibility at the junction of the access with Tithe Barn Lane. However, there is no substantiated evidence to demonstrate that use either as tourist accommodation or as a permanent dwelling has given rise to safety concerns in the past in terms of loose material on the highway. Moreover, based on the plan that accompanied the appeal application, it would appear that the appellant does not control the adjacent land and associated hedgerows to either side of the junction. The suggested condition requiring that the hedgerows be cut back would not, therefore, be enforceable.

22. The other suggested conditions sought the provision of wheelie bins and a water butt. No such conditions were imposed on the original consent and no policy support for the conditions is drawn to my attention. I am not persuaded, therefore, that they meet the test of necessity.

23. 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. As set out above, the disputed condition is already being breached. Thus there is no need to repeat the time limit on commencement of development (condition 1). However, it is not clear from the information before me whether the plans listed in condition 2 are still relevant. In addition, I have no information as to whether conditions 4 and 5, which relate to external materials, and condition 6, which relates to a scheme for the disposal of sewage, have been discharged. Condition 7 removed certain permitted development rights and applies in perpetuity. It seems to me that this condition remains relevant in connection with the appeal scheme. In the circumstances I shall, therefore, re-impose conditions 2, 4, 5, 6 and 7. Issues relating to whether conditions 2, 4,5 and 6 have been discharged would be for the appellant and the local planning authority to address.

R Walmsley

INSPECTOR