
Appeal Decision

Hearing held on 28 March 2017

Site visit made on 28 March 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 16th May 2017

Appeal Ref: APP/Q9495/W/16/3160490

1 and 2 Malt Kiln Cottages, Grizebeck, Kirkby in Furness,

Cumbria LA17 7XH

- 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 MK Supplies against the decision of the Lake District National Park Authority.
 - The application Ref: 7/2016/5094, dated 12 February 2016, was refused by notice dated 5 May 2016.
 - The application sought planning permission for conversion and refurbishment of redundant workshop into 2 live/work units without complying with a condition attached to planning permission Ref: 7/2014/5644, dated 21 November 2014.
 - The condition in dispute is No 1 which states that: The dwellinghouses hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her..... 'Locality' shall mean the administrative areas of the Parishes of Blawith & Subberthwaite; Broughton West; Claife; Colton; Coniston; Dunnerdale with Seathwaite; Hawkshead; Haverthwaite; Lowick; Satterthwaite; Torver; and those parts of the Parishes of Egton with Newland; and Kirkby Ireleth which are within the Lake District National Park.
 - The reason given for the condition is: To ensure that the resulting accommodation is occupied by persons with a defined local need in order to comply with Lake District National Park Core Strategy (Local Plan Part One) Policy CS18 and the accompanying Housing Provisions: Supplementary Planning Document. The provisions relating to armed forces personnel are in accordance with the Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion and refurbishment of redundant workshop into 2 live/work units or dwelling houses at 1 and 2 Malt Kiln Cottages, Grizebeck, Kirkby in Furness, Cumbria LA17 7XH in accordance with the application Ref: 7/2016/5094 dated 12 February 2016, without compliance with condition number 1 previously imposed on planning permission Ref: 7/2014/5644 dated 21 November 2014, and subject to the conditions set out in the attached schedule.
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Procedural matters

2. The condition in dispute is very lengthy and, therefore, in the header of my decision I have condensed the wording to include the main points at issue.
3. The planning application form and the decision notice issued by the Authority refer to "Variation of Condition 1 of planning permission reference 7/2014/5644 to include the Ulverston and Furness housing market area". Whilst this is correct, as the application was made under Section 73 of the Town and Country Planning Act, the application is for the original development, but subject to a different set of conditions. It was agreed at the hearing that it would be more accurate to use the original description of the proposal from the 2009 planning permission which was "Conversion and refurbishment of redundant workshop into 2 live/work units" but to add the words "or dwelling houses" to this in order to take into account the later planning permission which substituted a local occupancy condition, as both planning permissions are still extant.

Main Issue

4. The main issue in this appeal is whether it is necessary to restrict the occupation of the dwellings to persons within the locality defined by Condition 1 of Planning Permission Reference 7/2014/5644 in order to meet an identified local housing need.

Reasons

5. Numbers 1 and 2 Malt Kiln Cottages are a pair of dwellings formed from a former workshop building. At present they are configured as live/work units as set out in the original planning permission for their conversion which was granted in 2009. A further planning permission was granted in 2014 which varied the original planning permission, removing the condition restricting occupancy to live work units and imposed a condition restricting occupancy to a use as a principal home for persons with a local connection, living within an area defined by the condition. The area or locality defined by the condition corresponds with the "Southern Distinctive Area" of the National Park. The appeal proposal sought to amend this condition to include the Ulverston and Furness Housing Market Area (HMA) within the definition of the locality. Part of this HMA lies within the Southern Distinctive Area of the National Park whilst the remainder extends to the south beyond the administrative boundary of the National Park.

Is a local occupancy condition necessary?

6. Although the planning application sought to amend the wording of the condition on the previous 2014 planning permission to include a larger area from which occupiers of the dwellings could be drawn, as part of the grounds of appeal, the appellant has raised the question of whether a local occupancy condition is necessary at all.
7. The provision of housing in the Authority's administrative area is guided by Policy CS18 of the Lake District National Park Core Strategy 2010 (Core Strategy). Policy CS18 is permissive of new housing where it would contribute towards meeting an identified local need or local affordable housing need, and where it would help to redress the imbalances in the local housing market and would be secured for the purpose for which it was originally intended for the lifetime of the development. The supporting text to Policy CS18 makes it clear

that open market housing will not be permitted within the National Park, as second home ownership and use for holiday letting has created an imbalance in the housing market.

8. Core Strategy Policy CS18 has to be read alongside the Lake District National Park Housing Provision Supplementary Planning Document (SPD) which was adopted in 2014 and subsequently updated in 2016. The SPD sets out in more detail how Core Strategy Policy CS18 will be applied. The SPD re-iterates that new open market housing will not be permitted within the National Park.
9. The Planning Practice Guidance (the Guidance) states that conditions should help deliver development plan policy and accord with the requirements of the National Planning Policy Framework (the Framework). The development plan is clear that unfettered, open market, housing will not be permitted in order to ensure that housing is available to meet the housing needs of people within the local area and to redress the imbalance caused by second home ownership and use for holiday letting. This is consistent with the advice in the Framework. An unfettered permission would not meet this requirement and would be contrary to the development plan. Although the appellant suggests that a condition could be imposed restricting the occupation of the dwellings to a main or only home this would not address the matter of meeting local housing need.
10. I am mindful that the South Lakeland Strategic Housing Market Assessment 2014 (SHMA) identifies that in terms of four bedroom properties, supply and demand are equally matched and that, consequently, there is no current identified local need for properties of this size, which is borne out by the length of time that the properties have been unsuccessfully marketed. However, the Authority advised that the number of households in the National Park is expected to increase and it is necessary to plan for the longer term to ensure that development remains appropriate to market demand and meets the needs of local communities.
11. Although the Authority have not provided any substantive evidence in respect of the projected increase of households, this general position is not challenged by the appellant and on the evidence before me, I conclude that it is necessary to restrict occupancy of the dwellings to a defined area.

Extent of the defined area

12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise.
13. It is not in dispute between the parties that there is presently no local need for four bedroom properties within the area currently defined by the condition attached to planning permission reference 7/2014/5644. The SHMA identifies that there is only pressure on one bedroom properties. However, this was also the case when planning permission 7/2014/5644 was granted. In the officer's report in respect of that application this fact was recognised and it was stated that in the circumstances at that time, where it was clear that one bedroom properties could not be achieved on the site, that four bedroom houses would be appropriate. The SHMA has not been updated since that application was determined and there is no evidence that circumstances have changed in the intervening period.

14. Although there is not currently an identified local need for houses of this size, the dwellings, nonetheless, have been granted planning permission and are in existence, albeit unoccupied. Whilst the SPD contains a section on risk awareness that sets out that the Authority will not relax occupancy restrictions in the event that an applicant or developer cannot sell or rent properties in the timeframes they require and that, as local need will inevitably fluctuate over time, the Authority are focused on the long-term benefits, it does not set out what may be considered as reasonable timeframes for developments to be marketed. At the hearing the Council advised that, in other circumstances, one year could be considered a reasonable period for marketing. The appellant also advised that they would normally have an expectation that an unfettered development would sell within two years.
15. The properties have been marketed for in excess of both of these time periods and, if the locality were to be enlarged, it would not prevent people from within the currently defined locality from acquiring the properties. An enlarged area would still help to redress the imbalance in the local housing market by preventing loss of houses to second homes and holiday letting, which is a stated aim of Policy CS18, as it would not reduce the extent of the defined area within the National Park.
16. It is also not in dispute that the proposal does not wholly comply with the requirements of the exceptions set out in the SPD. The explanatory text to Policy CS18 states that all housing in the National Park must meet the identified local and local affordable needs of the locality, and the localities themselves are defined in the SPD.
17. The SPD sets out how Policy CS18 will be implemented. It states that the starting point will always be to restrict occupancy to defined localities. Nevertheless, it goes on to state that where reasonable justification for amending these is provided, changes to the defined localities can be made to ensure the locality is the most appropriate for that individual scheme and sets out a number of amendments that will be considered. Whilst the appeal proposal does not meet the criteria set out for amendments to the locality, it is nonetheless clear that the SPD does contemplate that localities can be amended, and the key question is whether the locality proposed is the most appropriate for the appeal scheme.
18. The potential catchment population for the scheme within the presently defined locality is approximately 6000. The marketing evidence shows that whilst there has been some interest in the properties, no inquiries have proceeded to offer. It is common ground that the marketing information is accurate and that the asking prices for the properties are reasonable. The application seeks to increase the defined locality to include the Ulverston and Furness Housing Market Area. Neither party has provided evidence as to by how much this would increase the potential pool of occupants, however, it would include the town of Ulverston, which both parties agree would significantly increase the population base of the defined locality.
19. Whilst noting the Authority's concern that the inclusion of Ulverston would significantly increase the number of potential occupiers of the properties who were not currently resident in the National Park, the Authority also confirmed that in this area there are unlikely to be parishes immediately adjoining the National Park Boundary that look towards the National Park to meet their

housing need. Whilst both parties agree that it would be possible to define a logical area that did not include Ulverston and that was more closely aligned with the criteria for amendments set out in the SPD, the appellant is of the view that a smaller area would not increase the pool of potential occupiers sufficiently to enable the appeal building to be occupied.

20. The appellant further suggests that because of the location of the appeal building on the very periphery of the National Park, occupants of the dwellings and other residents of Grizebeck would be more likely to look to Ulverston for access to employment and services than to service centres within the National Park, such as Consiton and Ambleside within the Southern Distinctive Area.
21. The Authority's position is that the starting point for defining localities in respect of local occupancy conditions is the Distinctive Areas set out in Core Strategy. Whilst these distinctive areas are based on a number of criteria, including landscape features, built environment and local service centres, they are not aligned with Housing Market Areas which the SHMA defines as "geographical areas defined by objectively assessed household demand and preferences for housing. They reflect the key functional linkages between places where people live and work." The Southern Distinctive Area contains part of three HMAs.
22. The appeal building is located only just within the National Park boundary, on the periphery of a settlement that lies almost entirely outwith the National Park. Due to the geography of the area, the transport connections to other settlements and the split between three HMAs, I would agree with the appellant's position that the future occupants of the properties are more likely to look to Ulverston for employment and services than to Consiton or Ambleside within the National Park, and which are located in different HMAs; and that persons currently resident in other parts of the Southern Distinctive Area are less likely to seek housing in Grizebeck.
23. I have considered the Authority's argument that the grant of planning permission would set a precedent for the relaxation of occupancy conditions elsewhere. However, no directly similar sites were put forward. Whilst there may be other properties with occupancy conditions close to the boundary of the National Park, the particular circumstances of this development, namely the refurbishment of an existing prominent building, which it was considered desirable to return to a viable use but where highway considerations result in accommodation of a size for which there is no identified local need, are unlikely to be repeated elsewhere. Each application and appeal must be considered on its own individual merits and a generalised concern of this nature does not of itself, justify withholding planning permission.
24. My attention has been drawn to a number of other proposals where planning permission has been granted subject to conditions which do not wholly meet the requirements of Core Strategy Policy CS18 or the SPD. I do not have the full details of these cases and so cannot be certain that the circumstances are the same. However, from the discussion at the hearing, they do not appear to be directly analogous to the case before me and, consequently, I have given only very limited weight to these.
25. Although the proposal does not wholly comply with the requirements of Policy CS18 of the Core Strategy or the exception requirements of the SPD, the circumstances set out above are material considerations that would justify

making a decision that did not accord with the policy requirements. Whilst the Authority state that they are not convinced that the material considerations override the adopted policy, there is no compelling evidence that increasing the extent of the locality would cause harm in terms of preventing the occupation of the premises by current residents of the national park, increase imbalances in the local housing market through an increase in second homes or holiday lets or that it would prejudice the Authority's housing strategy.

26. I therefore find that, whilst the proposed development would not wholly meet the requirements of Core Strategy Policy CS18 or the SPD, the material considerations set out above are such that they indicate it is not necessary to restrict the occupation of the dwellings to persons within the locality defined by Condition 1 of Planning Permission Reference 7/2014/5644 in order to meet an identified local housing need.

Conditions

27. I have had regard to the list of suggested conditions provided by the Council which includes any still operative or relevant conditions from the earlier permission. As set out above, it is necessary to restrict the occupation of the dwellings to persons with a local connection. Due to the configuration of the building and its relationship with other nearby properties it is also necessary for certain windows to be fitted with opaque glazing or fixed closed. I have amended the wording of one of the suggested conditions slightly as when I visited the site I saw that the opaque glazing has already been installed in the relevant windows. Due to the limited amount of in curtilage parking available and the proximity of the building to the main road it is also necessary in the interest of highway safety to ensure that the garage doors retain the current concertina method of opening.
28. The appellant suggests that the conditions relating to measures preventing surface water runoff onto the highway and parking arrangements have been complied with, however, I have no evidence that these have been discharged and therefore I have re-imposed these.

Conclusion

29. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the conditions discussed above.

John Dowsett

INSPECTOR

Schedule of conditions

- 1 The dwellinghouses hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her.

The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether this condition is being observed.

In this condition the following definitions apply:

'Person with a Local Connection' means an individual who before taking up occupation of the dwelling satisfies one of the following conditions:

- (1) The person has been in continuous employment in the Locality defined for at least the last 9 months and for a minimum of 16 hours per week immediately prior to occupation; or
- (2) The person needs to live in the Locality defined because they need substantial care from a relative who lives in the Locality defined, or because they need to provide substantial care to a relative who lives in the Locality defined. Substantial care means that identified as required by a medical doctor or relevant statutory support agency; or
- (3) The person has been continuously resident in the locality defined for three years immediately prior to:
 - a) Needing another dwelling resulting from changes to their household, including circumstances such as getting married, divorced, having children, or downsizing.
 - b) Undertaking full-time post-secondary education or skills training and is returning to the locality defined within 12 months of its completion, or
 - c) Being admitted to hospital, residential care or sentenced to prison, and are returning to the locality defined within 12 months of their discharge/release, or
- (4) The person is a person who –
 - a) Is serving in the regular forces or who has served in the regular forces within five years prior to occupation;
 - b) Has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where –

- i. The spouse or civil partner has served in the regular forces; and
 - ii. Their death was attributable (wholly or partly) to that service; or
- c) Is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service

'Locality' shall mean the administrative areas of the Parishes of Blawith & Subberthwaite; Broughton West; Claife; Colton; Coniston; Dunnerdale with Seathwaite; Hawkshead; Haverthwaite; Lowick; Satterthwaite; Torver; and those parts of the Parishes of Egton with Newland; and Kirkby Ireleth which are within the Lake District National Park, and the Ulverston and Furness Housing Market Area.

An 'Only or Principal Home' is a dwellinghouse which is occupied continuously for a minimum period of six months in every twelve month period. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation.

The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this condition.

- 2 The window in the west elevation, and the 6 easternmost windows on the north elevation of the building, shall be glazed with obscure glass to meet Pilkington Glass Obscuration Level 5 and, notwithstanding the provisions of Section 55(2)(a)(ii) of the Town and Country Planning Act 1990, no other type of glass shall be fitted to the said windows without the prior written approval of the Local Planning Authority.
- 3 The first floor window in the west gable elevation shall be permanently fixed shut and retained as such for the lifetime of the development.
- 4 Details of all measures to be taken by the applicant/developer to prevent surface water discharging onto or off the highway shall be submitted to and approved in writing by the Local Planning Authority. Any approved works shall be implemented prior to the development being occupied and shall be maintained operational thereafter.
- 5 The use shall not be commenced until the access and parking requirements have been constructed in accordance with the approved plan. Any such access and/or parking provision shall be retained and be capable of use when the development is completed and shall not be removed or altered without the prior consent of the Local Planning Authority.

- 6 The garage doors to the south elevation shall maintain their concertina method of opening, and this method of opening shall be retained for the lifetime of the development.

APPEARANCES

FOR THE APPELLANT

Jonathan Powell	Barrister for the appellant
Neil Henderson	Planning Consultant, H&H Land and Property
David Ross	Appellant
Jennifer Barker	Assistant to the appellant

FOR THE LOCAL PLANNING AUTHORITY

Jackie Ratcliffe	Planning Officer - Lake District National Park Authority
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DOCUMENTS SUBMITTED AT THE HEARING

1. Extract from Lake District National Park Development Control Committee Minutes from 3 February 2016
2. Committee report in respect of planning application 7/2015/4083
3. Plan showing Parish Boundaries, South Distinctive Area, and Ulverston and Furness Housing Market Area.