The Planning Inspectorate

Appeal Decision

Site visit made on 8 May 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 22nd May 2017

Appeal Ref: APP/X1545/W/16/3165877
The Barn, Mope Lane, Wickham Bishops, CM8 3JP

- 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 K Walter against the decision of Maldon District Council.
- The application Ref FUL/MAL/16/00782, dated 7 July 2016, was refused by notice dated 8 December 2016.
- The application sought planning permission for the change of use of existing rural building from stables to self contained holiday accommodation without complying with conditions attached to planning permission Ref APP/X1545/A/11/2160940, dated 9 March 2012.
- The conditions in dispute are Nos 2 and 3 which state that:
  2) *The holiday accommodation shall not be occupied by the same person or persons for more than 28 days at a time within any six week period; and*
  3) *The owners/operators shall maintain an up to date register of the names of all persons who stay within the approved holiday accommodation on the site, the duration of their stay, and an indication of their main homes address by way of road name and town, and shall make this information available at all reasonable times to the local planning authority.*
- The reason given for the conditions is:
  To prevent the permanent residential use of the site and to ensure that the use is appropriate to the area in accordance with Policy BE1 of the adopted Maldon District Replacement Local Plan.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of existing rural building from stables to self contained holiday accommodation at The Barn, Mope Lane, Wickham Bishops, CM8 3JP in accordance with the application Ref FUL/MAL/16/00782 dated 7 July 2016 without compliance with the conditions previously imposed on the planning permission Ref APP/X1545/A/11/2160940 dated 9 March 2012.

Procedural Matters

2. The original application Ref FUL/MAL/11/00531 was refused by the Council and allowed by appeal Ref APP/X1545/A/11/2160940, dated 9 March 2012. The permission restricted the use of the resultant house to holiday accommodation due to conditions 2 and 3, which respectively imposed time limited occupancy (i.e. holiday occupancy) of the house and required a register of those staying to be kept. The conversion of the building to a house has been completed and it is not in dispute that the conditions have been adhered to, albeit the house has been used by the appellant, his family and friends only and has not made

available to the holiday let market. The building was originally constructed following planning permission for a stable building, however it is understood it was never used as such before being converted to the house permitted by APP/X1545/A/11/2160940.

3. The Council says that it referred in error to saved Policies REC20 and CC19 of the adopted Maldon District Replacement Local Plan 2005 (MDRLP) in its reasons for refusal for application Ref FUL/MAL/16/00782. I am advised that the relevant policies are REC21 and CC21 and I have considered the appeal on this basis.

4. The MDRLP pre-dates the National Planning Policy Framework (the Framework) and the emerging Maldon District Local Development Plan 2014 – 2029 (LDP) is at an advanced stage of preparation but the examination is yet to be concluded. I have therefore ascribed weight to relevant saved and emerging policies for the purposes of this appeal in my reasoning on the main issues, having regard to Paragraphs 215 and 216 of the Framework.

Main Issues

5. Having regard to the background above and the evidence before me, the main issues are:

    i. The effect of the removal of the conditions on settlement strategy and accessibility to services; and

    ii. The effect of the removal of the conditions on the provision of tourist accommodation in the area.

Reasons

Settlement strategy and accessibility to services

6. The existing house, known as The Barn, is situated on a rural lane a short distance from the village of Wickham Bishops, where there are a number of local facilities available, together with access to bus services. There is no dispute that the site falls outside the defined development boundary of the village, as set out in saved Policy S1 of the MDRLP. This policy sets out the adopted settlement strategy for the district in conjunction with saved Policy S2 of the MDRLP. Policy S1 is not referred to in the Council's reasons for refusal, but I have been provided with a copy. Policy S2 is clear that outside development boundaries the countryside will be protected for its own sake. Saved Policy H1 reinforces this approach by controlling the provision of new housing outside development boundaries. However, these policies are not wholly consistent with the Framework, which makes provision for some development in the countryside. As a result, I afford moderate weight to this settlement strategy for the purposes of this appeal.

7. A similar, but more positive, general approach of settlement hierarchy and defined settlement boundaries is being carried forward in emerging Policy S8 of the LDP. While the examination of the LDP is not yet concluded I am advised that policies relevant to this appeal are not expected to be changed and on that basis I afford these emerging policies significant weight in this appeal. It is apparent that the permanent residential use of The Barn would not fall directly within any of the criteria a - m set out in emerging Policy S8, and neither would

it form part of a garden suburb or strategic allocation. Nonetheless, the house exists in an out of settlement location, albeit subject to occupancy restriction.

8. At face value therefore, the proposed removal of conditions 2 and 3 would result in an independent dwelling contrary to both the adopted and emerging settlement strategies. However, the specific circumstances are such that the effects of the removal of the conditions, thus facilitating the permanent residential occupation of The Barn, would be extremely limited. The house is complete and has been occupied by the appellant, family and friends, albeit not constantly by any one person so as to breach condition 2. The property is set between other large, residential properties in substantial grounds, and as such is generally consistent with the pattern of development in its immediate environs. Furthermore, the current undisputed permitted use is as a C3 dwellinghouse, albeit with occupancy restrictions, and it is apparent that the house has been completed with all the day to day facilities necessary for permanent residential occupation.

9. Saved Policy CC21 presumes against the residential reuse of rural buildings outside development boundaries, favouring economic reuses, except where certain criteria are met. Policy CC21 is of limited relevance in this instance since the residential conversion of the building has already been permitted and completed. Nevertheless there would be no specific conflict with relevant criteria of that policy arising from the removal of the conditions.

10. The Barn is situated within a reasonable walking or cycling distance of the village, being situated approximately 200m from the existing development boundary. While Mope Lane is unlit and has no footway, it appears only lightly used, and I saw no vehicles using it during my site visit. Church Road, which leads to various village facilities, and benefits from grass verges and footways in parts, is a short distance away. As a result, while the site is not within the development boundary, I do not consider it to be isolated or remote in functional or visual terms.

11. I accept that, given the generally rural nature of the wider area, many day to day journeys from The Barn would be likely to be taken by private car, as would also be likely to be the case with holiday restricted occupancy. However, other modes of transport would be available to residents and as such I concur with the Inspector in appeal APP/X1545/W/15/3140362, in relation to the adjacent site at Little Hill Farm, that this is a relatively sustainable location. I therefore consider that the proposal would not conflict with emerging Policy S1 of the LDP, which sets out key principles in relation to sustainable development.

12. Due to the specific circumstances of the case and the location and nature of the building and the site, its occupation on a permanent residential basis would not amount to harm to the overriding settlement strategy, which generally seeks to direct development to sustainable locations and protect the intrinsic character and beauty of the area. The house would also have reasonable accessibility to services. I therefore conclude that the effect of the removal of conditions 2 and 3 would not result in any significant harm in relation to settlement strategy and accessibility to services. The proposal would not conflict with saved Policy CC21 of the MDRLP, but would conflict with saved Policies S2 and H1 of the MDRLP and emerging Policies S1 and S8 of the LDP, the relevant requirements of which are specified above.

Tourist accommodation

13. It is apparent from the evidence before me that The Barn has never been offered on the holiday letting market and that its occupation has been limited to the appellant's family and friends only. As a result it has never made any significant contribution to the provision of holiday accommodation or the local tourism economy. As a result the removal of the conditions would not conflict with saved Policy REC21 of the MDRLP, which seeks to resist the change of use of tourist accommodation to non-tourism uses where this would have a materially detrimental effect on the long-term tourism potential of the District. Furthermore, Policy REC21 specifically refers to hotels, holiday parks, chalets, camping and caravan sites, rather than holiday houses.

14. Emerging Policy E5 of the LDP supports tourism related development and also seeks to discourage change of use to non-tourism uses, except where certain criteria are met. In this case, while there may have been no technical breach of the conditions, there has essentially never been an active tourism use from which to change the use. As a result, criteria a – c of Policy E5 are of very limited relevance to this case, however it is clear that no significant loss of tourism facilities would result from the proposals for the reasons given above.

15. While I acknowledge that tourism makes a significant contribution to the district's economy, the removal of the conditions in the particular circumstances of this case would have no material impact on the growth of local tourism or the existing provision of holiday accommodation, particularly given that the proposal relates to a single house that has never been part of the open market tourist offer. I therefore conclude that the proposed removal of the conditions would have no significant adverse effect on the provision of tourist accommodation in the area and there would be no conflict with saved Policy REC21 of the MDRLP or emerging Policy E5 of the LDP, the relevant requirements of which are set out above. These policies are generally consistent with the requirements of the Framework and I have afforded them significant weight for the purposes of this appeal.

Other Matters

16. It has been suggested that the appellant never had any intention other than residential use for The Barn, choosing not to make it available for holiday lets and, on that basis, allowing the appeal may set a precedent for similar action elsewhere. I cannot know what the appellant's intentions were. Nonetheless, it is necessary for me to determine the appeal on the basis of the evidence and the merits of the case currently before me, and any subsequent application or appeal relating to similar development must also be considered on its own merits. Moreover, there is no significant evidence before me that such a scenario is particularly likely to occur. Therefore, the issue of precedent carries very limited weight in favour of the Council's case, which does not outweigh my findings above.

17. The Council advises that it can currently demonstrate a five year supply of deliverable sites for housing. This position has not been significantly countered by the appellant and on the evidence before me I see no reason to draw a different conclusion for the purposes of this appeal. I note the Council's view that the supply position means that there is no need for an additional dwelling in the location proposed. There is no evidence before me that the demonstration of five years' supply should equate to a cap on housing

provision. Furthermore, there would be no net gain of units as the house already exists, albeit with restricted occupancy. Notwithstanding, the provision of one dwelling would anyway only have a very modest effect on local housing supply. Therefore the current five year supply position, whether positive or negative, does not carry any significant weight for or against this appeal.

18. The Council has provided appeal decision APP/X1545/W/16/3154913. While there are some parallels with this case including that the proposal included a dwelling outside a development boundary, other significant factors including the existing use and site context are materially different. My findings above are therefore not outweighed.

19. The appeal form indicated an application for costs was to be made. However, no such application was submitted with the initial or subsequent appeal documents.

Conditions

20. The Council has suggested two conditions should be attached in the event of the appeal being allowed. The first relates to the curtilage of the building and associated boundary treatments. I saw during my visit that the site corresponds to that that identified on the submitted location plan 16.3663/M002. The boundaries are principally treated with existing hedges, with the exception of the brick walls and metal gates at the entrance to the property. The Council and other interested parties have not raised any significant concerns about the existing boundary treatments. I therefore consider the proposed condition unnecessary in this instance.

21. The second suggested condition relates to parking and manoeuvring space within the site. It was apparent during my visit that there is sufficient parking and turning space on site for a number of vehicles and given the gradient of the access and length of the drive it is unlikely that drivers would choose to enter or leave the site other than in forward gear. Therefore, a condition to this effect is also unnecessary. A condition relating to the commencement of development is not required since the conversion of the barn to a house has already been carried out.

Conclusion

22. Notwithstanding that the given description of the development relates to holiday accommodation, as this description is carried forward from the earlier permission, the effect of permission without conditions 2 and 3 imposed would be that the existing house may be occupied as a permanent residential dwelling without time-limited occupancy restrictions. While this would not accord with the development plan due to the conflict with Policies S2 and H1 of the MDRLP, and there would also be conflict with Policies S1 and S8 of the emerging LDP, in my view this is a case where material considerations indicate that permission ought to be granted and no significant harms would arise, notwithstanding the policy conflicts identified. Therefore, for the reasons given above, and having regard to all matters raised, I conclude the appeal should be allowed. I will therefore grant a new planning permission without the disputed conditions.

Catherine Jack

INSPECTOR