
Appeal Decision

Site visit made on 9 May 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 20 June 2017

Appeal Ref: APP/A3010/W/17/3169083

**Barcroft House, Main Street, Clarborough, Retford, Nottinghamshire
DN22 9NJ**

- 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 James O'Reilly against the decision of Bassetlaw District Council.
 - The application Ref 16/01304/COU, dated 9 September 2016, was refused by notice dated 25 November 2016.
 - The development proposed is to use an already existing building, with no further development needed, as an annexe/day room.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would result in the loss of a commercial premises and whether it is demonstrated that there is no reasonable prospect of it being a viable business in accordance with local planning policy.

Reasons

3. The appeal site is located outside of the development boundary of Clarborough and has developed over time in terms of the amount of buildings allowed in association with the commercial nursery on the wider site. The building the subject of this appeal is adjacent to the A620 which is the main route through Clarborough, the edge of which is about 200 metres to the north. Access to the site and building is from automated gates and therefore there is no public access.
 4. Policy CS9 of the Bassetlaw Core Strategy and Development Management Policies document (CS) states that development which results in the loss of premises currently or previously used for services or facilities will not be supported unless there is evidence that the service or facility is no longer viable and there is no reasonable prospect of it being retained or resurrected. Furthermore, the policy states that proposals will be expected to demonstrate that all reasonable efforts have been made to sell and let the site or premises for its existing use or another service or facility use at a realistic price for a period of at least 12 months.
 5. I have had regard to the letter of Fisher German for the appellant. Whilst I appreciate that the letter provides expert opinion on the potential viability of
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the building's future use, it does not provide any substantive evidence of marketing being undertaken and any financial information which would support the appellant's case. As a result, I find that the letter does not provide any specific evidence on viability, as required by Policy CS9 of the CS.

6. The appellant argues that the existing farm shop use is incorrect as the conditioned use restricts sales to produce grown on the holding, fresh fruit and vegetables. It is argued that the premises have never been a farm shop in the true sense of the definition as such a shop would also sell meat and other associated produce. Therefore, the appellant states that the premises have a restrictive use which does not authorise general retail. As a result, this has an adverse impact on the potential letting or sale of the building for commercial or retail use. This is reiterated in the Fisher German letter which sets out the view that it is not anticipated that an occupier would take on the building with such a limited planning use. Notwithstanding this, I find that the existing use as a farm shop is correct and, as such, Policy CS9 has been correctly applied in this case.
7. I appreciate that the presence of the Spar shop in the village would have some effect on the farm shop business, given its location and opening hours. However, I find that such an impact has not been sufficiently assessed or evidenced to support the appellant's case and meet Part C of Policy CS9.
8. From what I have seen and read, there is no substantive evidence that marketing was undertaken to offer the opportunity to let or sell the premises or that the farm shop is unviable. Moreover, no financial information has been submitted to support the argument of unviable use of the appeal property. As a result, I find that a full assessment of the viability of the building for commercial and retail uses could not be undertaken at the application stage and that this weighs against the proposal. Furthermore, I note that such information has not been provided in this appeal.
9. The appeal building is located approximately 30 metres distant from the appellant's dwelling. It is argued that this would further hinder the successful letting or selling of the premises as a commercial enterprise to a separate user due to the potential adverse impact on residential amenity. Notwithstanding this, I find that such an impact would also be the case were the enterprise to continue to be undertaken by the appellant.
10. I note that the proposal would provide day accommodation as an annexe to the existing dwelling for the appellant, Mr O'Reilly's disabled brother. Furthermore, I appreciate that its intended purpose is to provide a level of independent living. In addition, I note that the proposal would not alter the external appearance of the building and therefore would not harm the character and appearance of the surrounding area. Notwithstanding this, it would represent a change of use to housing in a location outside of defined settlement limits and would result in the loss of a commercial enterprise and premises.
11. I acknowledge the appellant's point that were the proposed change of use not allowed then the building would lay vacant and fall into disrepair. As such, the appellant states that it would have an adverse effect on the appearance of the surrounding area. Whilst I find this approach to be unlikely as it would not be in the interests of the appellant, it is nevertheless a matter for the appellant. In any event, there are means of ensuring that the appearance of a building is

maintained other than by changing its use. As a result, this has limited weight in my determination of this appeal.

12. I met the appellant, Mr O'Reilly and his brother during the site visit and appreciate the personal circumstances which have led to the proposal. Notwithstanding this, Mr O'Reilly's brother stated that visitors would potentially sleep overnight at the appeal building due to the distances they would be travelling. This seems to me to be contrary to the appellant's case that the building would not be for overnight use. As a result, these comments raise doubts that the property would be used solely as a day room. Such concerns are exacerbated by the standard of facilities installed within the appeal property, particularly in the bathroom and kitchen. These are fully functioning and of a residential nature, rather than ancillary. I acknowledge that occupancy could be controlled by a planning condition. However, I am not persuaded that this would satisfactorily address my concerns on this matter.
13. I have had due regard to the above and to all other material considerations. Moreover, I acknowledge the personal reasons and the importance of the proposed change of use to the appellant's family. However, I find that none of the benefits of the scheme, or the special circumstances outlined, when considered individually or cumulatively, would outweigh the harm I have identified and the non-compliance with Part C of Policy CS9.
14. Consequently, I conclude that the proposal would result in the loss of a commercial property. There is no substantive evidence to indicate that adequate and effective marketing of the property at a reasonable price has taken place in order to keep it in a viable use. Therefore, the proposal would be contrary to Policy CS9 of the CS. Amongst other matters, this policy seeks to ensure that proposals demonstrate that a reasonable attempt has been made to let or sell the premises as a commercial concern for a period of at least 12 months.

Conclusion

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

Andrew McCormack

INSPECTOR