
Appeal Decision

Site visit made on 27 March 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 25 July 2017

Appeal Ref: APP/J3530/W/16/3161862

The Button Moon and Mushroom Inn, High Road, Swilland, IP6 9LR

- 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 Mrs E Gavin against the decision of Suffolk Coastal District Council.
 - The application Ref DC/16/2148/VOC, dated 23 May 2016, was refused by notice dated 6 September 2016.
 - The application sought planning permission for Change of use from an Annex/Ancillary accommodation to an independent dwelling without complying with a condition attached to planning permission Ref DC/15/0529/FUL, dated 14 May 2015.
 - The condition in dispute is No 3 which states that: *'The unit known as 'The Button' shall not be rented out or occupied by any persons other than a relative, employee or parent of the householder/owner of the Moon and Mushroom Public House or his/her spouse, until a written undertaking from the owner of The Moon and Mushroom Public House has been submitted to and approved by the Local Planning Authority. This undertaking shall state that 'The Button' shall be retained in the same ownership as The Moon and Mushroom Public House and not be sold independently unless otherwise approved in writing by the Local Planning Authority'.*
 - The reason given for the condition is: *'To safeguard the residential amenity of the existing and future occupants of The Button, and the future viability of the Public House'.*
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from an Annex/Ancillary accommodation to an independent dwelling without complying with a condition attached to planning permission Ref DC/15/0529/FUL, dated 14 May 2015 at The Button Moon and Mushroom Inn, High Road, Swilland, IP6 9LR in accordance with the terms of the application, Ref DC/16/2148/VOC, dated 23 May 2016, subject to the conditions in Annex A.

Application for costs

2. An application for costs was made by Mrs E Gavin against Suffolk Coastal District Council. This application will be the subject of a separate Decision.

Background and Main Issues

3. In 2002 planning permission was granted for the use of the existing outbuilding at the public house as ancillary accommodation. This was subject to a restrictive condition to prevent the occupation or letting as a separate dwelling.
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The 2015 application was also made for the change of use from annex/ancillary accommodation to an independent dwelling. This was also granted planning permission subject to a restrictive condition. The current proposal seeks occupation of the unit without compliance with this condition, namely as an independent dwelling. Accordingly the main issues are:

- Whether the condition is necessary and reasonable having regard to: the effect of the provision of an independent dwelling in this location; living conditions for occupiers of the unit with particular regard to noise and disturbance and provision of garden space; and the effect on the operation of the Moon and Mushroom.

Reasons

4. The Planning Practice Guidance (PPG) is clear 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 application¹*'. In this case this would be living conditions and future viability of the public house. However, as the Council's decision refers to the provision of a dwelling in the countryside I address this matter briefly first.
5. Swilland does contain a small group of dwellings that are clustered along High Road. The appeal building does sit immediately adjacent to this. Nevertheless, for the purposes of the application of planning policy the building is located within the countryside. Conversion of the building to form 'ancillary accommodation' was granted in 2002. Therefore the key issue is whether there would be harm from allowing the residential use to be independent.
6. Physically the building in question (The Button) is separate from the Moon and Mushroom. Access is taken from an independent entrance from High Road. There is a separate garden area to the rear of the building. In addition the appellant states that it has a separate address and utilities, albeit no evidence of this is submitted. Furthermore, the building is already in a residential use with a separate garden area and pedestrian access. As such there would be no additional physical impacts if the occupation was not linked to the Moon and Mushroom.
7. In terms of location the Button would be no less sustainable than any of the existing dwellings in Swilland. In addition, as the appellant points out, there are some, albeit limited, services in the locality and access to a bus service. As such in this regard the site location would not count against the proposal.
8. The Council are also concerned about the resulting relationship between The Button and the public house should the condition be removed and the occupiers have no tie to the public house. In turn it is concerned that if the public house had an adverse effect on the living conditions of The Button then this will impact on the ability of the public house to operate fully as a key service facility. As the two issues are closely linked I have considered them together.
9. The Button has an area of garden between its front elevation and the public house. It also has a small patio area to its rear. There is a window in the rear elevation of the pub that faces toward this garden area of the Button. There is a trellis in place on the shared boundary and the window does not appear to relate to a habitable area. There are also fans associated with kitchen

¹ ID 21a-031-20140306

extraction and chiller units. The appellant has considered the relocation of the chiller units. The submitted noise and nuisance impact assessment considers these. It is clear from the submission made that the impacts from the chillers can be mitigated to an acceptable level. Two alternative suggestions are made and this could be controlled by use of an appropriately worded condition.

10. The second issue relates to the future functioning of the public house. The primary seating area is located to the front as is the main entrance and exit. As such external noise from coming and going of customers would be on the side away from the Button. Furthermore operationally the main areas of the building in public use are also located furthest from the Button. There is reference made to the future use of the Moon and Mushroom for amplified music. I have no information that this has been the case or that the appellant intends to do this in the future. Overall, for these reasons, I do not consider that to remove the disputed condition would necessarily harm the future operation of the public house. Development Management Policy DM30 seeks to resist the loss of key facilities through their redevelopment or change of use. The scheme would not impact on the floor space of the pub. In addition there is no suggestion that the public house relies on the Button to be viable.
11. The Planning Practice Guidance (PPG) is clear that conditions which modify a development and make it substantially different to that set out in the application should not be used. Furthermore, where the condition would nullify the benefit of the permission then it should not be imposed. It is clear that if without the condition there would be significant adverse effects this would indicate that permission should have been refused. In this case the documents I have from the Council indicate that the members of its planning committee sought to grant planning permission for the development described as '*Change of use from an Annex/Ancillary accommodation to an independent dwelling*²'. However, they went on to approve it subject to a condition that required '*...an appropriate agreement that 'The Button' shall only be rented or used as a holiday home rental and remain in the same ownership as The Moon and Mushroom Public House, Swilland...'*'.
12. This approach effectively nullifies the planning permission the committee sought to grant. In this regard it is in clear conflict with the advice of the PPG and should not have been imposed. Furthermore I have found no significant adverse effects from its removal. Therefore, for all of these reasons, the condition is neither reasonable nor necessary and would not meet the tests set out in paragraph 204 of the National Planning Policy Framework. I therefore conclude that the retention of the condition would not be necessary or reasonable and its removal would not be in conflict Suffolk Coastal Local Plan policies DM23, DM30, SP1, SP19, DM3, DM4 and DM13 and it would not conflict with the Framework in so far as it seeks to safeguard the amenity of existing and future occupants of land and buildings and the future viability and operation of key facilities such as public houses.

Conditions

13. The Council has suggested a number of conditions which it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of the Framework and Planning Practice Guidance and for clarity some of the proposed wording is amended. Conditions are necessary that relate to the

² LPA ref DC/15/0529/FUL

time limits and the approved plans. Section 73 cannot be used to extend the time limit. As such the condition is worded accordingly. In addition it does give the power to attach new conditions that are relevant. Therefore, to protect the living conditions of future occupiers of the Button as an independent dwelling the conditions suggested for relocation of the ventilation and refrigeration and the filling in of the existing ground floor window are both reasonable. I appreciate that the Councils environmental health response suggested that future amplified music should be controlled. However, this was not in the suggested conditions submitted with the appeal, seeks to control future operation of the public house and would not be reasonable.

Conclusion

14. For the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

Annex A – Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1822/01/2A and planning statement received 11 February 2015 and letter dated 7 May 2015.
- 3) The development hereby permitted shall not be commenced until a scheme for the relocation of the ventilation and refrigeration equipment on the rear elevation of the public house has been submitted to and agreed in writing to the local planning authority. Development shall be carried out in accordance with the approved details prior to occupation of the Button as an independent dwelling.
- 4) Details of a scheme to fill the ground floor level window on the lean to on the rear elevation of the public house shall be submitted to and approved in writing by the local planning authority before the building is occupied as an independent dwelling. Development shall be carried out in accordance with the approved details.