
Appeal Decisions

Site visit made on 5 July 2017

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 1 August 2017

The Stables, Brays Hill, Battle, East Sussex TN33 9NZ

Appeal A Ref: APP/U1430/W/16/3160311

- 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 Ms Yvette Fieldwick against the decision of Rother District Council.
- The application Ref RR/2016/1570/P, dated 9 June 2016, was refused by notice dated 4 August 2016.
- The development proposed is a change of use from holiday let to residential (Class C3) use (Retrospective).

Appeal B Ref: APP/U1430/Q/16/3167250

- The appeal is made under section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a Section 106 Agreement relating to RR/3003/1141/P.
 - The appeal is made by Ms Yvette Fieldwick against the decision of Rother District Council.
 - The application Ref RR/2016/1766/P, dated 9 June 2016, was refused by notice dated 23 August 2016.
 - The proposal is to discharge a Section 106 Agreement relating to RR/2002/1141/P to allow residential use.
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Procedural Matters

1. It is not disputed that the residential use has commenced and that the application for the change of use is made retrospectively under Section 73A of the Act.

Decision

Appeal A

2. The appeal is allowed and planning permission is granted for a change of use from holiday let to residential (Class C3) use at The Stables, Brays Hill, Battle, East Sussex TN33 9NZ in accordance with the terms of the application, Ref RR/2016/1570/P, dated 9 June 2016 and the site location plan Ref TCPS 622A submitted with it.

Appeal B

3. The appeal is allowed. The planning obligation, dated 2 January 2003, made between Rother District Council and Keith William Fieldwick and Yvette Dawn Fieldwick, no longer serves a useful purpose and is discharged.

Main Issues

4. The main issues are considered to be: what effect the change of use would have on the character and appearance of the countryside and the High Weald Area of Outstanding Natural Beauty (AONB); what effect permanent residential use would have on employment and the local economy; what effect permanent residential use would have on travel; whether any harmful impacts in these regards would be outweighed by a need for housing in the area and/or the personal circumstances of the Appellant.

Reasons

Character and Appearance

5. The development plan here includes Policy EN1 of the Rother Local Plan Core Strategy 2014 (the LP) which seeks amongst other things to protect the distinctive landscape character and settlement pattern of the AONB. LP Policy OSS4 seeks amongst other things that all development respects and does not detract from the character and appearance of the locality. Paragraph 115 of the National Planning Policy Framework (the Framework) is a material consideration and it accords great weight to conserving the landscape and scenic beauty of the AONB.
6. My attention has also been drawn to the High Weald AONB Management Plan (2014). That it is a material consideration but it lacks the weight which is afforded by statute to the development plan. Amongst other things Objective S2 seeks to protect the distinctive character of hamlets and farmsteads and the relationships between settlements.
7. The appeal property is part of a small group of dwellings on the west side of Brays Hill which are surrounded by rolling open countryside in the High Weald. It is of traditional vernacular construction clad in dark stained timber under a plain clay tile roof. As such it is characteristic of the farm buildings which make a positive contribution to the character of the designated AONB. No external alterations are included in the proposed change of use. The building is partially screened from the adjacent road by vegetation and is also set into ground which slopes down from the road. It is therefore little visible from the road. Some longer views may be available from the west. However it is a characteristic of this part of the High Weald to see dwellings and vernacular farm buildings of this type in isolated locations on hillsides or hilltops. The building would thus complement the visual landscape character of the AONB whether in use as a holiday let or as a dwelling.
8. The Council has acknowledged that the appearance of the building as a dwelling would remain very similar notwithstanding that there may be some additional visible domestic paraphernalia. However the Council has suggested that the settlement character would be disturbed because a new isolated dwelling would not ordinarily be permitted in this location. Nevertheless this would not be a new building and it would be occupied in close association with other long established dwellings. As such the change of use would not materially affect the relationship between this hamlet and former farmstead either with any other settlements or with the general settlement pattern of the AONB.

9. Authorised residential use would enable some works to be carried out to the building or within its domestic curtilage as permitted development which might affect the appearance of the property. However permitted development rights are more limited in the AONB and would already be applicable to other existing dwellings in the area. Government guidance is that such rights should only exceptionally be restricted. No request for a condition to limit permitted development rights has been made by the Council.
10. The application site includes a modest curtilage as outlined in red on the submitted site plan. The Appellant also owns or controls a larger area of land descending into the adjacent valley as edged in blue on the submitted plan. However that blue land would not become part of the domestic curtilage as the result of the determination of this appeal.
11. I conclude on this issue that the change of use would not materially affect the character or appearance of the countryside or the AONB and would not conflict with Policy EN1 or Policy OSS4 in that regard or with the relevant objectives of the High Weald AONB Management Plan.

Economic and Employment Impacts

12. LP Policy EC6 encourages provision for tourism activities and facilities provided amongst other things that: (iv) *'it does not involve the loss of tourism accommodation unless there is no prospect of its continued use'*. The policy wording is unclear as to what types of development are subject to that objective but I interpret it to include all proposals to change tourism accommodation to another use, as in this case.
13. The Appellant has been unable to provide documentary evidence to support the past tourism use but has claimed that tourism lettings ceased as long ago as 2005 when they were replaced by long term lets. Such lets would apparently not have been authorised either by the original planning permission or by the S106 obligation in which case there was breach of planning control. The property has been occupied as a residence by the Appellant since 2010 and it does not appear that it has been marketed for holiday use since at least that time and possibly since 2005.
14. The appeal property is located in beautiful countryside and within easy travelling distance by car of popular tourist destinations such as Battle and Hastings. The availability of tourism accommodation would support spending by tourists at shops, catering and other tourist facilities in the area. There is a lack of evidence before me to demonstrate that there is no prospect of continued use as tourism accommodation. There is therefore conflict with LP Policy EC6 and its objectives which include supporting the contribution of tourism to the local economy.
15. The Council has also suggested that there may be conflict with LP Policy EC3(i). LP Policy EC3(i) similarly seeks to protect land and premises used for employment including tourism use. However it is not clear in the policy wording whether that applies to all tourism uses or only to those that provide direct employment. Tourism accommodation would qualify as a tourism use but in this case one that would provide only minimal employment opportunities such as the management of bookings. That may occur either locally or at a distance. Any harm to direct local employment would be slight.

16. There is no financial evidence before me but I judge that the loss of tourism spending would be at least partially offset by year round local spending by permanent residents of the dwelling.
17. It is concluded on this issue that there would be some adverse economic impacts when compared to a resumed use as tourist accommodation and a literal conflict with development plan policies to protect and retain tourism accommodation. However any economic benefits from tourism use have not been realised during the last 7 (and possibly 12) years that the property has not been in use as tourism accommodation. Moreover the loss of local spending compared to a tourism use would be modest as there would still be year round local spending by permanent residents of the dwelling. Any direct effects on employment would be slight.

Travel Impacts

18. It is material that in order to promote sustainable development in rural areas, Paragraph 55 of the Framework provides that housing should be located where it will maintain or enhance the vitality of rural communities and that isolated new homes in the countryside should be avoided unless there are special circumstances. Such special circumstances are stated to include the re-use of redundant or disused buildings. In this case the proposals involves the reuse of an existing building which is not redundant but where the environmental and travel impacts would be less than if it were a proposal to erect a new isolated building.
19. The appeal property is located in Ashburnham which is a settlement characterised by scattered development of dwelling clusters or individual dwellings. There are few local facilities apart from a public house, a church, a village hall and a recreation ground. Public transport is scarce with no evidence of a daily or more frequent bus service. Most residents will thus necessarily rely on travel by car to access work, schools and facilities. However visitors using tourist accommodation would similarly be likely to rely on travel by car to access facilities or attractions.
20. There are no traffic generation estimates before me to compare holiday accommodation and residential use. But in my experience travel patterns would vary according to factors such as whether the dwelling is occupied by a people who are working or retired and whether there are children attending school. Nevertheless, as the occupiers of tourist accommodation would also generate movements then any marginal additional travel impact is likely to be smaller than if the dwelling were to be converted from another use.
21. It is concluded on this issue that there could be some adverse travel impacts associated with permanent residential use. However it appears that the tourism accommodation has not been in use as such for at least 7 and possibly 12 years. Moreover the potential harm from some additional movements by car is likely to be only modest and the impacts would not be severe in the terms of paragraph 32 of the Framework.

Housing Need and Personal Circumstances

22. It is a material consideration that Paragraph 47 of the Framework requires that local planning authorities maintain a 5 year supply of housing land. Paragraph 49 provides that relevant policies for the supply of housing should not be

considered up to date if the local planning authority cannot demonstrate such a supply. That engages paragraph 14 which provides in summary that where relevant policies are out of date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted. Footnote 9 provides an example of the latter policies as policies to protect the AONB.

23. The Council acknowledges that it lacks a 5 year supply of housing to meet identified needs. As at 1 October 2016 it only had 3.7 years of supply. Relevant policies for the supply of housing may thus be considered out of date. However the AONB policies are not out of date and they are consistent with the Framework.
24. There is no information before me to confirm how and when the housing shortfall in provision will be addressed. However, as 82% of the district is within the AONB it is likely that some provision of housing will be needed within the AONB to meet housing needs arising in the area. Whilst this development would contribute only a single dwelling, the development would be within an existing traditional building of modest scale and which is closely associated with a group of other dwellings. That would minimise the adverse impacts, particularly as compared to more substantial development schemes involving new or multiple buildings.
25. The Appellant has been living in the property since 2010, which is already 7 years ago. Whilst an enforcement notice against such occupation was served as long ago as 2012, the Council has itself suspended enforcement action on the grounds of the Appellant's personal circumstances.
26. The Appellant is established in the community and has some local support for her continued occupation. Neither has the parish council objected to the change of use. Conversely, if permission is refused and enforcement action carried out then the Appellant would lose her home.

Overall Conclusion

27. Personal circumstances may be temporary and they rarely outweigh other planning considerations. However I consider that in this case the overall conflict with the development plan and the associated adverse impacts that have been identified do not significantly and demonstrably outweigh the benefits of contributing to local housing needs in an area which lacks a sufficient supply of housing and of addressing the Appellant's personal need for housing. These are material considerations and special circumstances that here outweigh the conflict with the development plan and support the reuse of the building as an isolated home in the countryside.
28. I therefore conclude in respect of Appeal A that planning permission should be granted without conditions.
29. In respect of Appeal B the S106 planning obligation should be discharged as it would no longer serve a useful purpose.

Robert Mellor INSPECTOR