The Planning Inspectorate

Appeal Decision

Site visit made on 25 July 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date:18 August 2017

Appeal Ref: APP/P1133/W/17/3171860
Brightside, Woodland, Ashburton, Newton Abbott, Devon TQ13 7LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 as amended for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Nick Hague against the decision of Teignbridge District Council.
- The application Ref 16/01915/VAR, dated 7 July 2017, was refused by notice dated 21 September 2016.
- The application sought planning permission for the conversion of a barn to holiday accommodation without complying with a condition attached to planning permission Ref 05/03745/COU, dated 7 December 2005.
- The condition in dispute No 6 which states that: 'the premises shall be used for holiday accommodation and for no other purpose (including any other purpose in Class C3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987).'
- The reason given for the condition is: 'the proposal is only considered suitable for holiday accommodation and this is a location that would not be considered sustainable for permanent residential occupation'.

Decision

1. The appeal is allowed and planning permission is granted for the conversion of a barn to holiday accommodation at Brightside, Woodland, Ashburton, Newton Abbott, Devon TQ13 7LS in accordance with the terms of application Ref 16/01915/VAR, dated 7 July 2017, without compliance with condition 6 previously imposed on planning permission Ref 05/03745/COU, dated 7 December 2005, subject to the schedule of conditions in this decision.

Preliminary matters

2. The addresses given differ in the decision notice related to application Ref 05/03745/COU (the 'original permission') and Ref 16/01915/VAR (the 'current application'). However the location plans supporting those applications relate to the same barn, which is the subject of this appeal. The extent of the application site in the original permission and current application also differ. The Planning Practice Guidance (the 'Guidance') explains that in relation to appeals against conditions, consideration should only be given to the disputed conditions.[1] I have therefore disregarded any alternative plans.[2]

[1] Reference ID: 21a-031-20140306.
[2] The plans supporting the original permission are a site location plan, 2642.02A and 2642.03C.

3. The description of development in the banner heading above is taken from the original decision notice. However without condition 6, the original permission would enable the creation of an unrestricted dwelling in this location (holiday accommodation being a C3 use restricted via condition). The appellant and Council have approached application Ref 16/01915/VAR on this basis, and I have determined the appeal accordingly.[3]

4. This appeal follows a previous unsuccessful appeal, dated 4 June 2010, which also sought to implement application Ref 05/03745/COU without compliance with condition 6.[4] Whilst I have considered that appeal decision, taken in a different local and national policy context, I have nevertheless determined the appeal before me on its particular merits.

Main issue

5. The main issue is whether or not the disputed condition is appropriate, with regard to the suitability of the appeal site for an unrestricted dwelling.

Reasons

6. The appeal site is part of an agricultural field within the rural landscape. Other than the area being defined as 'open countryside' via policy S22 'Countryside' of the Teignbridge Local Plan 2013-2033 (adopted 6 May 2014, the 'Local Plan'), no protective designations related to landscape character apply.

7. A substantial historic stone barn, the subject of this appeal, falls near the vehicular access with the adjacent unnamed lane. Operational development associated with application Ref 05/03745/COU has been commenced but not completed. Therefore whilst permission exists for the use of the barn as holiday accommodation, it has never been used as such.[5] The barn, originally constructed for agricultural purposes, is therefore effectively disused.[6]

8. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The appellant does not make the case that the Council are unable to demonstrate a five year land supply of deliverable sites relative to needs, or by consequence that relevant policies of the Local Plan for the supply of housing are out-of-date.[7]

9. Policy S1A 'Presumption in favour of sustainable development' of the Local Plan essentially reiterates the approach in paragraph 14 of the National Planning Policy Framework (the 'Framework'). Subsequently policy S1 'Sustainable Development Criteria' of the Local Plan requires that development 'perform[s] well' against a number of criteria, including its accessibility by walking, cycling and public transport to nearby services and facilities.

[3] Whilst this would render the development different from that set out on the original application form, no party would be prejudiced by my taking this approach, including as appropriate publicity has been undertaken pursuant to the Town and Country Planning (Development Management Procedure) (England) Order 2015.
[4] Ref APP/P1133/A/10/2121316.
[5] As set out in the Council's officer report in relation to application Ref 16/01915/VAR.
[6] As noted by the inspector in appeal Ref APP/P1133/A/10/2121316, with no planning history of alternative uses identified within the Council's associated officer report pre-dating the original permission.
[7] With regard to paragraphs 47, 49 and 14 of the National Planning Policy Framework.

10. Policy S22 'Countryside' explains that outside of identified settlements development 'will be managed to provide attractive, accessible and biodiverse landscapes, sustainable settlements and a resilient rural economy'. In summary housing development in the open countryside is limited to that which is affordable, replacement dwellings, or related to the needs of rural workers.

11. The nearest schools, shops, and public transport services are at some distance from the appeal site. The appellant specifies the distance to the nearest settlements of Landscove and Broadhempston where such services and facilities are available as approximately 2 kilometres. Denbury is at a greater distance. Whilst it is possible to walk or cycle to Landscove or Broadhempston, their distance combined with the nature of the route to reach these settlements makes doing so inconvenient (being essentially along narrow winding rural carriageways enclosed by Devon banks without dedicated footways or lighting).

12. In this regard the proposal would conflict with policy S1 of the Local Plan in failing to 'perform well' in respect of accessibility, and by consequence with the overarching approach in policy S1A of the Local Plan. No argument has been advanced by the appellant that the proposal would accord with policy S22, notwithstanding that the proposal entails no physical alterations beyond those originally permitted.

13. Consistent with policies S1 and S1A of the Local Plan, paragraph 17 of the Framework reiterates that planning should take account of the different roles and character of different areas, and that patterns of growth should be actively managed to make the fullest possible use of public transport, walking and cycling. However the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas.[8] There is little evidence before me to indicate that the vehicular movements arising from the use of the barn as a dwelling as opposed to as holiday accommodation would be significantly greater.

14. Whilst paragraph 55 of the Framework guides against permitting isolated new dwellings other than in similar circumstances as set out policy S22 of the Local Plan, it also explains how housing should be located where it will enhance or maintain the vitality of rural communities. Whether for holiday accommodation or as an unrestricted dwelling, the use of the barn as such would have some social and economic benefits as occupants would make use of local services and facilities. The Planning Practice Guidance (the 'Guidance') reiterates the value of rural housing in this context.[9]

15. Furthermore, the proposal is effectively for the conversion of a barn to a dwelling. Whilst not determinative, there is no evidence before me to indicate that the proposal would fail to meet any limitations or conditions specified in Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO'), which enables the conversion of agricultural buildings to dwellings. Associated Guidance explains that Class Q is not subject to a test in relation to 'sustainability of location'.[10]

[8] In particular paragraph 29.
[9] Reference ID: 50-001-20160519.
[10] Reference ID: 13-108-20150305.

16. The proposal is not via Class Q of the GPDO. Nevertheless the support thereby given to the conversion of agricultural buildings to dwellings in general terms, and the qualified support in the Framework and the Guidance to the social and economic benefits of housing in rural areas carry moderate weight in favour of the proposal.

17. Turning to condition 6 specifically, paragraph 206 of the Framework sets out that planning conditions should only be imposed where they are, amongst other tests, necessary, enforceable, precise and reasonable. The Guidance gives further detail in respect of these requirements, and Annex A of Circular 11/95, which contains model conditions, remains extant.[11]

18. I accept the previous permission was granted on the basis of condition 6 applying. However the wording of the disputed condition contains no specific definition of holiday accommodation. The absence of a defined duration of 'holiday' in particular compromises its precision; it would be challenging to establish where holiday use ends and permanent occupation begins (and therefore to enforce any breach).

19. It is open to me to consider imposing an alternatively worded condition in this regard. However were I to do so, that would not alter the appellant's ability to implement permission 05/03745/COU in compliance with condition 6, which has shortcomings in respect of the relevant tests in the Framework.

20. Moreover were operational development to be completed in accordance with the original permission, and there is no indication that this is unlikely to occur, the accommodation created would comprise two upper floor bedrooms and a bathroom, and at ground floor level a lounge, utility room and kitchen. This accommodation would not be physically or functionally linked with, or dependent upon, any other nearby dwellings, buildings or uses.

21. In this context any condition restricting the use of the barn to holiday accommodation is likely to be challenging to enforce; the accommodation that could be created irrespective of the outcome of this appeal would afford occupants the necessary facilities required for independent day-to-day private domestic existence.[12]

22. I have identified above that the proposal would conflict with the relevant provisions of policies S1, S1A and S22 of the Local Plan. Certain elements of the Framework, the Guidance and Class Q of the GPDO offer some, albeit limited, support to the proposal. Whilst this support is insufficient to outweigh the conflict that would result from the development plan, condition 6 as it stands is compromised in terms of its precision and enforceability (both in respect of its wording, and with regard to the nature of the accommodation that could be established were the previous permission implemented).

Conclusion

23. For the above reasons, taken together the other material considerations in favour of the proposal outweigh the conflict arising with the development plan

[11] In particular Reference ID: 21a-003-20140306.
[12] With particular regard to the judgement handed down in Gravesham Borough Council v Secretary of State for the Environment & Anor [1983] JPL 307.

and justify allowing the appeal. These other material considerations are the support accorded to the benefits of the proposal via the Framework, the Guidance and the approach in Class Q of the GPDO, the nature of the development that could be undertaken by implementing the original permission irrespective of the outcome of the appeal, and the shortcomings with condition 6 in respect of its precision and enforceability. Having considered the development plan as a whole and the approach in the Framework, I therefore conclude that the appeal should be allowed.

Conditions

24. The Guidance sets out that decision notices for the grant of planning permission under Section 73 of the Town and Country Planning Act 1990 as amended should also reimpose relevant conditions from the original planning permission, unless they have already been discharged.[13] In the interests of clarity I have imposed a condition requiring compliance with the plans supporting the original permission.

25. As the development has been commenced, it is unnecessary to reimpose condition 1 of the original permission which related to the timing of implementation. I am satisfied, however, that in order to avoid adverse effects to the character of the historic barn or rural area, that it is appropriate in this instance to withdraw certain permitted development rights via condition.[14]

26. I understand that conditions 3, 4, 5, 7, 8 and 9 have been discharged by written agreement from the Council dated 8 March 2007 or via application Ref 05/03745/COND2, and as such it is unnecessary to impose these. To ensure that the appeal site may be continued to be used by roosting bats, all species of which are protected by legislation, I have imposed an associated condition.

27. In imposing conditions I have had regard to the tests within the Framework, the Guidance and relevant statute,[15] and have accordingly amended the wording of certain conditions without altering their aim.

Thomas Bristow

INSPECTOR

[13] Reference ID: 21a-031-20140306.
[14] With regard to the approach in Guidance reference ID: 21a-017-20140306. Schedule 2, Part 1, Class G of the Town and Country Planning (General Permitted Development) Order 1995, as was cited by the Council in condition 2 of the original permission, has now been subsumed within Schedule 2, Part 1, Class E of the GPDO.
[15] Including paragraph 206 of the Framework, Guidance Reference ID: 21a-004-20140306 and Article 35(1)(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be carried out in accordance with the following approved plans supporting application Ref 05/03745/COU: site location plan, 2642.02A and 2642.03C.

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order), no development permitted by Schedule 2, Part 1, Classes A, B, C, D, or E, or Schedule 2, Part 2, Classes A or C shall be undertaken in relation to the development hereby permitted.

3) Before the accommodation hereby permitted is first occupied, provision shall be made for the continuing use of the site by bats in accordance with details previously agreed in writing by the local planning authority. Such provision shall thereafter be maintained in accordance with the details thus agreed.