
Appeal Decision

Site visit made on 17 July 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 05 September 2017

Appeal Ref: APP/H1840/W/16/3164922

Hayloft, Low Hill, Hartlebury DY10 4HT

- 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 Andrew Jones against the decision of Wychavon District Council.
 - The application Ref W/16/02156/CU, dated 1 September 2016, was refused by notice dated 3 November 2016.
 - The application sought planning permission for change of use of the hayloft into holiday let accommodation and installation of septic tank without complying with conditions attached to planning permission Ref W/07/00569/CU, dated 25 September 2007.
 - The conditions in dispute are Nos 3 and 4 which state that: "*the change of use to holiday let shall be used for the purpose of holiday let accommodation and shall not be used for permanent residential occupancy or as a sole main residence for independent occupier/occupiers*" and "*the holiday let hereby approved shall remain as holiday let accommodation, which restricts periods of occupancy to a maximum of four weeks per letting period*".
 - The reason given for both conditions is: *The Council considers the building unsuitable for permanent private residential use.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted on the basis of a change of use from holiday let to residential dwelling. However, based on case law¹, the submitted evidence and my observations I consider that the Hayloft has the ability to afford to those who use it the facilities required for day-to-day private domestic existence. As such, the property would usually be treated as a dwelling house for planning purposes negating the need for a change of use planning application.
3. Nevertheless, there are conditions on the planning consent, W/07/00569/CU that restrict the occupation of the Hayloft. Consequently, even though the original application was submitted as an application for a change of use the appeal can be determined under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions Nos 3 and 4 of that permission. The main parties were given the chance to comment

¹ Gravesham BC v SSE and O'Brien [1983] JPL 306

on this matter and as such I do not consider that they would be prejudiced by my consideration of the appeal on this basis.

4. Reference has been made to the Council's Re-use of Rural Buildings Supplementary Planning Document but I have not been provided with a copy of this document and as such I give it little weight.

Main Issue

5. The conditions in dispute relate to a planning permission that was granted in September 2007 for the scheme of development in the heading above. The permission was subject to conditions that the conversion of the Hayloft be restricted to use as a holiday let. The building was subsequently converted.
6. The Council accepts that the conversion of the building to residential use as holiday accommodation is not 'inappropriate development' in the Green Belt as set out in the National Planning Policy Framework (the Framework). This state would not be altered by the deletion of conditions Nos 3 and 4.
7. Taking into account all of the above the main issue is whether the disputed conditions are reasonable and necessary having particular regard to whether this is a suitable location for an unrestricted permanent dwelling, development plan policies, the Framework and any other material considerations.

Reasons

8. The appeal site comprises a one/one and a half storey building, gravelled parking area and amenity space. The building is presently used as holiday accommodation. It is adjacent to other dwellings and is located on an unmade track off the A442 close to its junction with the A449.
9. Paragraph 12 of the Framework makes it clear that the statutory status of the development plan as the starting point for decision making has not changed. Development that conflicts with an up-to-date development plan should be refused unless other material considerations indicate otherwise.
10. The development plan includes the South Worcestershire Development Plan (SWDP) adopted February 2016. Policy SWDP 1 sets out the general presumption in favour of sustainable development. Policy SWDP 2 is a key policy of the development plan setting out the development strategy and settlement hierarchy. There is no dispute between the parties that the site is not within any defined development boundary as identified in Policy SWDP 2. Sites outside development boundaries are to be considered as open countryside where development will be strictly controlled.
11. The appellant considers that the proposal would comply with Part B of Policy SWDP 12 as he considers that the use as a holiday let is unviable. As such, he considers it would meet one of the requirements of Part C of Policy SWDP 2. However, even though it would appear that the holiday let has been marketed as available for use I cannot be certain that this meets the requirements of a marketing exercise under Policy SWDP 12 as I have not been provided with Annex F. Moreover, there is very limited evidence before me, such as financial accounts, in relation to the viability of the use. Furthermore, even though the appellant states that the majority of accommodation rentals are for longer terms rather than short term holiday stays there is little detailed evidence, other than colour-coded calendars, provided on this.

12. The appellant has drawn my attention to other developments including barn conversions that have been built or approved in the area and has stated that they were approved as they complied with Part E of Policy SWDP 12. However, I do not have the full details of the circumstances that led to these proposals being accepted and so cannot be sure that they represent a direct parallel to the appeal proposal. Moreover, as stated above I cannot be certain that the marketing evidence meets the requirements of Annex F and I have no evidence before me to indicate that the unrestricted residential use of the Hayloft is part of a farm diversification project. In any case, I am required to determine the appeal on its own merits.
13. Taking into account all of the above there is insufficient evidence in front of me to indicate that the proposal meets the requirements of Policy SWDP 12. Consequently, the proposal would not fall within one of the categories of development allowed by Part C of Policy SWDP 2 and as such it would be in conflict with this policy. Nonetheless, there are a number of other material considerations that I must take into account.
14. The Council have stated that they can demonstrate a 5 year supply of housing land (HLS) and this is not disputed by the appellant. In such circumstances, the Framework at paragraph 49 sets out that relevant policies for the supply of housing can be considered up-to-date and paragraph 14 of the Framework sets out a presumption in favour of sustainable development. For decision taking this means *'approving proposals which accord with the development plan without delay'*.
15. Summerfield is a Category 4B settlement that has a public house. The site is around 2km from Hartlebury a Category 1 settlement, which has services and facilities including a train station and there are services and facilities within the southern part of Kidderminster that are within 1-2km of the site. The A442 and A449 appear to be busy roads and they are mainly unlit but the A449 does have a pavement on one side. The site is within easy walking distance of the nearest bus stops and there is a regular service to Hartlebury, Kidderminster and Worcester.
16. From my observations at the site visit I consider that the services and facilities within Hartlebury and the southern part of Kidderminster would be within an acceptable cycling distance of the site and this mode of travel could be an option for some residents, although I accept that this would not be suitable for all. Moreover, there would be a choice of transport modes for future residents and paragraph 29 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. As such, I do not consider that the dwelling would be isolated in terms of paragraph 55 of the Framework. However, based on the evidence before me, I consider that for some of the time and for convenience reasons, occupiers would still tend to be dependent on travel by the private car to access day-to-day services and facilities in the wider area.
17. Nevertheless, I am also mindful that the proposal is only for a single dwelling and therefore traffic generation and greenhouse gas emissions attributed to its use would be limited. Moreover, the use as holiday accommodation would be likely to require the use of a car to visit local attractions and to utilise services and facilities. As a permanent residence, the building is quite small and thus possibly not attractive for a large household with multiple daily trips. On

balance, I consider that permanent residential use would be unlikely to generate materially more journeys than its approved use as holiday accommodation. However, this only indicates that the proposal would not result in substantial harm in respect of this matter.

18. Paragraph 55 of the Framework sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, the contribution one new dwelling would make to the vitality of the rural community would be small. Moreover, there is no evidence to suggest that the existing services and facilities close to the appeal site are under threat.
19. Although the re-use of redundant or dis-used buildings is supported as one of the special circumstances within paragraph 55, as the building has already been sympathetically restored and retained, the removal of the disputed conditions is not needed to secure the conversion or enhancement of the building.
20. There is reference to the conversion of agricultural buildings under permitted development rights. However, the building is within residential use and in the absence of any detailed information upon this issue it has limited weight.
21. I note that there were no technical objections from consultees to the scheme. However, a lack of harm in these respects is a neutral consideration and does not weigh for or against the scheme.

Overall Balance and Conclusions

22. As set out in S38(6) of the Planning and Compulsory Purchase Act 2004, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The location of the site outside of any defined development boundary would result in conflict with Policy SWDP 2. Accordingly the proposal would fail to comply with the development plan. The Framework establishes, as a core planning principle, that planning should be genuinely plan-led.
23. The appellants refer to the three dimensions of sustainable development set out in the Framework: economic, social and environmental. There would be economic benefits associated with the proposal including some additional local spend. However, these benefits would be limited and have to be balanced against the loss of the income and local spend associated with the holiday accommodation. As a result, I consider that the proposal would have a neutral impact in relation to the economic role.
24. Prospective occupiers would provide some support for local services. However, as stated above the contribution one new dwelling would make to the vitality of the rural community would be small. The proposal would provide a new dwelling which would make a small contribution to housing supply. The development would therefore have some limited social benefits.
25. In environmental terms the removal of the conditions would not involve any physical changes to the building and therefore there would be no change in terms of the character and appearance of the site. Moreover, the proposal would ensure the long term prudent use of a resource, an existing building. I have found that permanent residential use would be unlikely to generate

materially more journeys than its approved use as holiday accommodation. As such I consider that the proposal would be neutral in environmental terms.

26. However, the failure to comply with the development plan leads me to conclude that the proposal would not be sustainable development. There are no material considerations of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan. Taking all of the above into account I consider that the site is not a suitable location for an unrestricted residential use and the conditions in dispute remain both reasonable and necessary. Having regard to all other matters raised therefore, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR