The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 13 September 2017

Appeal Ref: APP/J1860/W/17/3172423
Land at (OS 7848 6240), Ockeridge, Wichenford, Worcestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr & Mrs E Hall against the decision of Malvern Hills District Council.
- The application Ref 16/01018/FUL, dated 4 July 2016, was approved on 13 January 2017 and planning permission was granted subject to conditions.
- The development permitted is proposed change of use of land for the stationing of two shepherds huts and one log chalet for holiday use.
- The conditions in dispute are Nos 8,16,19 and 20 which state that:
  (8) Prior to the change of use of the application site the existing vehicular access onto the adjoining highway shall be permanently closed. Details of the means of closure and reinstatement of this existing access shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of work on the development hereby approved.
  (16) No holiday chalet or hut on the land shall be occupied until the existing manure heap has been relocated to a position agreed in writing with the local planning authority. The manure heap shall thereafter remain in that position unless otherwise agreed in writing with the local planning authority and manure shall not be stored elsewhere on the site.
  (19) The occupancy of any holiday accommodation units hereby approved shall be for short let holiday residential use only, and no person, group of persons, or family shall occupy any hut for a period exceeding 28 days in any 3 month period.
  (20) The holiday accommodation units shall not be occupied in connection with or ancillary to the use of the adjacent equestrian activities.
- The reasons given for the conditions are:
  (8) To ensure the safe and free flow of traffic using the adjoining County highway in accordance with Policies SWDP4 and SWDP21 of the South Worcestershire Development Plan.
  (16) In the interests of the amenities of the holiday unit occupants and in accordance with policies SWDP21 and SWDP31 of the South Worcestershire Development Plan.
  (19) To ensure that the holiday let units are not used for permanent residential occupation which, given the open countryside location would represent an unsustainable form of development in accordance with Policies SWDP1 and SWDP2 of the South Worcestershire Development Plan.
  (20) To restrict the number of large vehicles or vehicles with trailers using the surrounding highway network and in the interest of highway safety and to control any development of a commercial activity in open countryside in accordance with policies SWDP4 & SWDP36 of the South Worcestershire Development Plan.

Decision

1. The appeal is allowed and the planning permission Ref 16/01018/FUL for proposed change of use of land for the stationing of two shepherds huts and one log chalet for holiday use at Land at (OS 7848 6240), Ockeridge, Wichenford, Worcestershire granted on 13 January 2017 by Malvern Hills District Council, is varied by deleting conditions 8,19 and 20.

Application for costs

2. An application for costs was made by Mr & Mrs E Hall against Malvern Hills District Council. This application is the subject of a separate Decision.

Procedural Matter

3. During the course of the appeal, the appellants advised that they no longer wish to appeal against condition 16, which they indicate has been discharged. Therefore, I have not considered that condition in my decision.

Main Issues

4. The main issue is whether the conditions are necessary, reasonable, precise and relevant to the development with particular regard to highway safety, sustainability and the rural character of the area.

Reasons

5. The appeal site lies just north-west of Ockeridge Cross and forms part of a pasture paddock. It is in a rural location with some roadside residential development to the west but otherwise surrounded by open countryside.

6. The relevant planning permission[1] includes consent for a new access to be created off the classified road (C2241) which runs along the eastern boundary of the site. It was in the process of construction during my site visit. There is already an access to the site to the north east at the Ockeridge Lane/Well Lane junction which leads to an existing manege and stable block.

7. Condition 8 requires the existing access to be closed off. The Council advises that the highway authority, Worcestershire County Council (WCC), commented during the course of the application that the existing site access is unsuitable to accommodate any additional traffic and should, therefore, be permanently closed. The Council stated that the highway authority will provide additional justification in its own appeal submission.

8. WCC states that any increase in use of the existing access would raise a serious cause for concern in terms of highway safety. It estimates that the three holiday lets would each be likely to generate in the region of four vehicle movements per day. The WCC appeal submission states that whilst the proposed new access is acceptable in terms of highway safety, *'the "Parking Spaces and Access Point" drawing submitted in support of the application 16/01018/FUL shows the parking spaces located in very close proximity to the existing site access and remote from the new access point, with no physical division between the parking spaces and the existing access to prevent its increased used by traffic generated as a result of holiday use.'* It is on that

[1] Ref 16/01018/FUL

premise that the highway authority considers the closing of the existing site access is necessary and reasonable.

9. However, there is no drawing with that title in the submitted plans referred to in the condition 2 of the extant permission. The 'Site Layout' plan, Drawing Number – HA330-001, which is cited in condition 2, as one of the plans which the development shall be carried out in accordance with, shows the chalet and two shepherd huts in the south western corner of the field, with three parking spaces, immediately adjacent to the new driveway and access. The Council Officer's report also states that during the course of the application, following initial concerns raised by the highway authority, the proposal was amended so that the use of the existing access for parking purposes was removed. Therefore, it appears that the highway authority's comments in their appeal submission may have been based on a misconception of the proposed location of the holiday units, which are next to rather than remote from the new access point.

10. Whatever the case, it seems to me that occupants of the chalet and two shepherds huts would be likely to use the new access immediately adjacent to them rather than the existing access to the north east which is further away. Therefore, although there is no physical separation from that existing access, I consider it unlikely that there would be significant additional traffic generated by users of the three holiday units.

11. Furthermore, the condition seeks to close a pre-existing access, which although within the bounds of the appeal site, is away from the area where the shepherd huts, log cabin and new access are sited and not directly associated with the main proposed acts of development on the site. Its closure would not directly affect the suitability of the new access in terms of its highway safety. Therefore, it is not clear to me that it has been demonstrated that the condition is 'relevant to the development permitted', which is one of the six tests referred to in paragraph 206 of the National Planning Policy Framework.[2]

12. Although the highway authority refers to a lack of adequate visibility at the existing access, no further detailed or persuasive explanation or evidence has been provided about traffic volumes or any accidents that have occurred to support the case that the current or future use of the access is undesirable. The Council says: *'The retention of a single access point to the land is desirable insofar as it avoids the proliferation of accesses in close proximity along this classified road (C2241).'* However, it seems to me that the existing access is a reasonable distance away from the new access. The Council and highway authority are satisfied that the new access has sufficient visibility splays and will not be detrimental to highway safety. Therefore, I am not convinced, on the basis of the evidence before me, that the addition of a new safe access to the south-west of the pre-existing access would have an adverse effect.

13. Closing the existing access to the equestrian facilities to the north of the site would also have the, in my view, undesirable consequence of directing any equestrian traffic to the new access in close proximity to the holiday units. That could, in itself, be detrimental to the living conditions of users of the holiday accommodation and, given that there could be children playing in the vicinity of the log cabins and shepherd's huts, could adversely affect the safety of holiday makers.

[2] Published March 2012

14. Overall therefore, I do not consider that the condition is necessary, reasonable or relevant to the development in respect of highway safety. It follows that removing the condition would not bring the development into conflict with policies SWDP 4 or SWDP 21 of the South Worcestershire Development Plan (SWDP)[3], which, amongst other things, seek to ensure that development proposals address road safety and that vehicular traffic from the development should be able to access the highway safely. Neither would it conflict with paragraph 32 of the Framework, which contains a similar requirement.

15. Condition 19, restricting the period of occupation of the three holiday-let units to 28 days in any three month period by the same person, group of persons or family, is intended, according to the Council, to ensure that the units are not used for permanent residential occupation in an isolated countryside location.

16. The planning permission is subject to two other conditions, 11 and 13, which are also intended to prevent permanent residential occupation. Condition 11 requires the keeping of an up-to-date register of occupiers and their main home addresses, to be made available to the local planning authority on request. Condition 13 explicitly states that the accommodation *'shall only be used for holiday accommodation purposes and not for any other residential use falling within Class C3 of the Town and Country Planning Use Classes Order 1987 (or any Order revoking or re-enacting that Order with or without modification). Note: "any other residential use" would include a person or persons' a (sic) main residence, or a permanent residential unit of occupation.'*

17. It is accepted by both parties that permanent residential use should be prevented at this relatively isolated rural location as it would conflict with the overarching principles of sustainable development and the Council's development strategy contained in policies SWDP 1 and SWDP 2 of the SWDP. The issue is, therefore, whether the further condition restricting periods of such occupation to 28 days is necessary and reasonable to support the other two other conditions in achieving that aim.

18. The appellant refers to a similar planning permission[4] granted in March 2016 by the Council for the change of use of agricultural land for the siting and installation of two log cabins for holiday use. A copy of that permission has been provided and it contains two conditions which are identical to conditions 11 and 13 in the permission subject to this appeal. However, there is no additional condition equivalent to the '28-day occupancy restriction' contained in condition 19. Therefore, it appears that in that recent case the Council was satisfied that the two conditions were sufficient to comply with the SWDP and to avoid permanent residential occupation at an unsuitable location and, by implication, that they could be enforced.

19. Notwithstanding that sites and planning applications all have some differences and their individual characteristics, it is reasonable for people to expect similar proposals in the same area, judged against the same development plan, to be decided on a relatively consistent basis including in respect of the types of conditions attached to them, unless the Council can make a clear case for a difference in approach. I note that the Council has not referred to that planning permission or provided an explanation of why it is now finds that that those two standard conditions, previously considered sufficient for a similar

[3] Adopted February 2016
[4] Ref: 15/01545/FUL

development, need to be supplemented by an additional '28-day occupancy condition'. No evidence has been provided to suggest that conditions 11 and 13 have been found insufficient in other similar scenarios and that a supplementary condition is required in this case.

20. It is also noted that the original Council Officer's Report did not include condition 19 in its recommended conditions. It resisted requests from both Parish Councils for some type of 'seasonal occupancy' condition preventing all year round use, referring to guidance contained in the *'Good Practice Guide on Planning for Tourism'* (the Guide) and an appeal decision issued in 2012, relating to a site at Coppice Leisure Park[5], where an Inspector allowed the removal of such a condition. Although the Guide has been superseded by the Framework and a seasonal condition is different from the 28-day occupancy condition at issue, the Council Officer appears to have been satisfied that conditions 11 and 13 would be sufficient to prevent permanent residential occupation. I share that view. It appears that condition 19 was added following consideration by the Council's planning committee.

21. In its appeal statement supporting the condition, the Council cites an appeal decision concerning the siting of up to five traditional shepherd's huts at Land at Rydal Hall in Cumbria.[6] Whilst a condition similar to condition 19 is imposed in that appeal decision, it is a standalone condition referring to holiday use and is unsupported by any other conditions. Although that condition may be appropriate in some circumstances, in the appeal before me the question is whether it is necessary in addition to conditions 11 and 13, which are not contested. Furthermore, whether the condition is reasonable in that context or excessive.

22. The appellants express concern about the effect of such a restrictive condition on the viability of the business. Whilst, many potential occupiers may be likely to stay for shorter periods, there is a possibility that some may wish to stay longer than the permitted period of 28 days, which they would be unable to do. Paragraph 19 of the Framework advises that: *'The Government is committed to ensuring that the planning system does everything it can to support sustainable growth. Planning should operate to encourage and not act as an impediment to sustainable growth.'*

23. On balance therefore, I consider that condition 19 is not necessary and reasonable and that adequate protection is provided by conditions 11 and 13 against permanent residential occupation. Therefore, the principles of sustainable development and the Council's development strategy, expressed in policies SWDP 1 and 2 of the SWDP, would not be compromised by the removal of the condition.

24. Condition 20 requires that the holiday units are not occupied in connection with or ancillary to the use of the adjacent equestrian activities. In my view, the condition is insufficiently precise. What would constitute *'ancillary use to the use of the adjacent equestrian activities'* could in practice prove to be a matter of some debate.

25. The reason provided for the condition in the planning permission is twofold. It refers to a wish to restrict the number of large vehicles and vehicles with

[5] APP/J1860/A/11/2165323
[6] APP/Q9495/W/15/3119176

trailers using the surrounding highway network in the interest of highway safety. However, the separate appeal submission from the highway authority makes no reference to this condition or that aspect. In its discussion of condition 8 it makes no specific reference to the size or type of vehicles being a particular issue in itself. In any event, the existing access to the equestrian facilities is not subject to any specific restriction regarding the volume or type of vehicles using it and the amount of additional traffic likely to be generated by 3 holiday lets is relatively limited and could be safely accommodated within the local highway network.

26. The District Council's appeal statement does not elaborate on the alleged specific harmful effect of larger vehicles or vehicles with trailers. The appeal site is in a rural location where agricultural vehicles or indeed larger vehicles with trailers could be expected to use the surrounding road network. Given that the new access for the development has been approved and meets highway safety requirements, the need for the condition on the basis of highway safety has not been demonstrated and I cannot see a justification for it in that respect.

27. The second aspect of the reason given for condition 20 is to control any development of a commercial activity in the open countryside. The Council's appeal statement refers to the scale of commercial activity and submits that the condition would ensure that the level of such activity would be appropriate to the rural character of the area.

28. With regard to controlling commercial activity, it is accepted by all parties, including Little Witley Parish Council, that the manege and stable block to the north is for private recreational use and that there is no planning permission for any commercial activity for the equestrian facilities.

29. SWDP polices SWDP 4, regarding highway safety, and SWDP 36 which deals with Static and Touring Caravans, Chalets and Camping Sites are cited in the reasons for the condition. I have considered the highway safety aspect above, but I cannot see any reference in SWDP 36 to seeking to control commercial activities. Rather, its reasoned justification refers to the great benefit that such sites can have to the local economy. Paragraph 28 of the Framework says that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to new sustainable development and to promote the development and diversification of agricultural and land-based businesses. Those aspirations are also reflected in parts of SWDP policies SWDP 8 and 12, referred to by the appellants.

30. Given that the development is restricted to a total of three holiday lets and, according to the Council, there is no planning permission for the commercial use of the equestrian facilities to the north, I do not see that condition 20 is necessary, sufficiently precise or reasonable. Moreover the specific nature of the alleged potential harm to the rural character of the area is not explained in any detail. It is clear from the original Council Officer's report that issues of character and appearance were carefully considered as part of the original approval and are protected by a number of other conditions attached to the original permission. Again, I also note that condition 20 was not one recommended in the original Council Officer's Report. I am also conscious that

the Planning Practice Guidance (PPG) stresses that conditions should be kept to a minimum wherever possible.[7]

31. Therefore, I consider that no significant harm would result from the removal of condition 20. Consequently, the development would still, even without the condition, be in accord with policies SWDP 4 and SWDP 36 of the SWDP.

Conclusion

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

Jonathan Tudor

INSPECTOR

[7] ID21a-018-20140306