



Appeal Decision

Site visit made on 21 November 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 28 November 2017

Appeal Ref: APP/X1355/W/17/3180113

Land to the east of Ornsby Hill, Lanchester, Durham DH7 0QL

- 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 Terry McGiven (Holmside Developments Ltd) against the decision of Durham County Council.
 - The application Ref DM/16/01861/FPA, dated 1 June 2016, was approved on 27 January 2017 and planning permission was granted subject to conditions.
 - The development permitted is 8 No luxury holiday chalets, plus site management building with residential accommodation for site manager and associated site infrastructure, including revised site access and sustainable drainage system.
 - The condition in dispute is No 7 which states that: *"The lodges shall be occupied for holiday purposes only and shall not be occupied as any person's sole or main place of residence. The owners/operators of the site shall maintain an up-to-date register of the names of all owner/occupiers of individual lodges on the site, their occupation of the lodges and of their main home addresses and shall submit this information annually in January to the local planning authority. None of the lodges shall be occupied in any way between 7th January and 7th February in any calendar year"*.
 - The reason given for the condition is: *"To ensure an appropriate form of development in the countryside, in accordance with Policies GDP1, EN1, EN2, EN6, TO7 and TR2 of the Derwentside District Local Plan 1997 (saved 2009)"*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission reference number DM/16/01861/FPA was approved on 27 January 2017 for the erection of 8 No luxury holiday chalets and a site management building on the appeal site. The site falls within land defined as countryside. Planning permission was approved subject to a number of planning conditions including No 07 which states *"the lodges shall be occupied for holiday purposes only and shall not be occupied as any person's sole or main place of residence. The owners/operators of the site shall maintain an up-to-date register of the names of all owner/occupiers of individual lodges on the site, their occupation of the lodges and of their main home addresses and shall submit this information annually in January to the local planning authority. None of the lodges shall be occupied in any way between 7th January and 7th February in any calendar year"*.
3. The appeal is made on the basis that the appellant would like the last sentence of the above planning condition to be deleted. There is no disagreement in

terms of the wording of the rest of the planning condition. The appellant has commented that prohibiting occupation between 7 January and 7 February each year means that at this time they are denied an income from holiday lets. The appellant contends that the last sentence is not necessary and that with its removal the Council would still be able to ensure that the lodges were not occupied as any person's sole or main place of residence.

4. As this is an appeal which is made directly against a condition imposed on a planning permission, I am able to reverse or vary any part of the decision of the Local Planning Authority. However, I have no reason to disagree with the decision made by the Local Planning Authority to approve planning permission for the development and I have no concerns relating to the imposition of any of the other planning conditions.
5. The main issue is whether or not planning condition No 07 of DM/16/01861/FPA is reasonable and necessary in the interests of supporting sustainable rural tourism in the countryside and restricting occupation of the holiday lodges as a person's sole or main place of residence.

Reasons

6. I have considered the countryside location of the site, saved policies in the Derwentside District Local Plan 1997 (LP), and the tourism and housing policy aims of the National Planning Policy Framework (the Framework). There is no dispute between the parties that in planning policy terms it is necessary and reasonable to impose a planning condition which ensures that the lodges are occupied for holiday purposes only and not as a person's sole or main place of residence. I have no reason to disagree with this view taking into account the tourism, countryside and housing aims of the LP and the Framework.
7. Paragraph 206 of the Framework states that planning conditions should only be imposed where they are *"necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects"*.
8. I do not consider that in the absence of the last sentence of planning condition 07 the resultant wording of such a condition would be sufficiently precise or enforceable. Without such a sentence, it would not be clear what is meant by *"occupation for holiday purposes only"* or *"not occupied as any person's sole or main place of residence"*. The planning condition would be vague to the extent that it would be imprecise. Furthermore, without some additional control, I would have concerns about the enforceability of the proposed planning condition.
9. Given the above, I agree with the Council that the last sentence of condition No 07 is both reasonable and necessary. I acknowledge that it means that the lodges have to remain empty for a calendar month and hence the appellant cannot earn any income at this time. Nonetheless, there may be scope to address this issue by charging slightly more for hiring out the lodges for the rest of the year. In any event, whilst the lodges may not be available for tourism purposes for a full calendar year, this has to be balanced against the need to avoid them being used as sole or main residence. On this basis, I do not agree with the appellant that the existing condition significantly undermines the tourism aims of the LP and the Framework. I consider that the last sentence of planning condition 07 meets all of the six planning condition

tests laid out in the Framework. Without such control, I find that the proposed varied condition would be ambiguous.

10. On 5 October 2017 the appellant commented that he *"would be willing to consider a two week occupancy break for the business rather than a full calendar month"*. The existing calendar month restriction is necessary as this ensures that there is a very clear distinction between use of the lodges as holiday chalets rather than use as a person's sole or main place of residence. I therefore conclude that I do not consider that a two week break is acceptable.
11. Notwithstanding the above conclusion, I note that the appellant has stated that the reason for submitting the appeal is so that the lodges can be used all year round for holiday purposes. Therefore, and at my request, I asked the main parties for their without prejudice views on the possibility of deleting the last sentence of planning condition No 07 and replacing it with a sentence which would state *"none of the lodges shall be occupied by any one person for a period of exceeding 28 days in any calendar year"*. The inclusion of this suggested wording would ensure that there was no ambiguity in terms of use of the lodges as holiday homes as distinct from use as a sole or main residence and would also ensure that they could be used for holiday purposes every month of the year.
12. The appellant's agent responded to the above suggestion by stating that *"it appears that he may sell units to private owners and that there is the prospect of them being let by owners in turn for periods to prospective holiday makers, as well as being used by owners for holiday purposes. Any restrictions on occupancy may reduce the saleability of units, especially a 28 day-restriction. Therefore, this condition would not be appropriate from the client's perspective in such circumstances"*.
13. In conclusion, the existing planning condition is necessary, reasonable and enforceable. A two week occupancy restriction would not be acceptable for the reasons outlined above. The alternative suggested condition would have been acceptable, but the appellant has confirmed that this would not be acceptable to them for other reasons.

Other Matters

14. I have taken into account representations made by other interested parties. I note the objections made, but the majority of the comments have already been considered prior to the grant of planning permission No DM/16/01861/FPA. I have no good reason to reverse or alter planning permission No DM/16/01861/FPA.
15. I note that the Trustee of Lanchester Partnership considers that a planning condition should also include restricting lettings to periods of no more than 28 days. However, I am satisfied that planning condition No 07, as currently imposed, is acceptable. Notwithstanding this view, an alternatively worded planning condition, which referred to say a 28 day period, would also have been acceptable. Nonetheless, the appellant indicated that they did not want such a planning condition to be imposed.
16. I note that the occupier of 8 Ornsby Hill and Lanchester Parish Council have commented that condition No 07 should remain as currently drafted. For the reasons outlined in this decision, I concur with this view.

17. None of the other matters raised alter my conclusion on the main issue.

Conclusion

18. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR