



Appeal Decision

Site visit made on 20 November 2017

by K Taylor BSc (Hons) PGDip MRTPI

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

Decision date: 15 January 2018

Appeal Ref: APP/D0840/W/17/3180021

Burleigh Cottage, North Coast Holiday Cottages, New Portreath Road, Redruth TR16 4QL

- 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 M Hitchen against the decision of Cornwall Council.
 - The application Ref PA17/03305, dated 4 April 2017, was refused by notice dated 12 June 2017.
 - The application sought planning permission for the change of use and extension of an existing domestic storage building to a holiday let without complying with a condition attached to planning permission Ref PA12/01838, dated 28 June 2012.
 - The condition in dispute is No 4 which states that: The development hereby permitted shall be used as holiday accommodation only and shall not be occupied as a person's sole or main place of residence. The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of each individual unit on the site, and of their main home address, and shall make this information available at all reasonable times to the Local Planning Authority.
 - The reason given for the condition is: To accord with development plan housing policies under which permanent residential accommodation would not normally be permitted on the site and the accommodation, by reason of its construction and/or design, is unsuitable for continuous occupation and in accordance with the aims and intentions of Policy 13 of the Cornwall Structure Plan 2004.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use and extension of an existing domestic storage building to a holiday let at Burleigh Cottage, North Coast Holiday Cottages, New Portreath Road, Redruth TR16 4QL in accordance with the application Ref PA17/03305, dated 4 April 2017, without compliance with condition number 4 previously imposed on planning permission Ref PA12/01838, dated 28 June 2012 and subject to the conditions in the attached schedule.

Background

2. In June 2012 the Council granted planning permission for the change of use a pre-existing domestic storage building to a holiday let. The development included an extension. The permission was subject to a condition that the development could only be used for the purposes of holiday accommodation. The appellant wishes to operate in non-compliance with this condition.
3. The appeal building is located within a site which contains a number of buildings. Most of these are used for holiday accommodation, much of which has been created as new build development rather than through the conversion of existing buildings.

Main Issues

4. Although the reason for imposing the condition referred to the construction and/or design of the accommodation being unsuitable for continuous occupation, this does not now comprise part of the Council's concerns. During my site inspection I saw nothing that would make the building unsuitable for continuous occupation. With this in mind the main issues are whether the condition is reasonable and necessary so that the development would accord with the development plan housing policies having regard to its location in the open countryside, its proximity to services and facilities, and the effect on the local economy.

Reasons

The development plan housing policies

5. The appeal site is located outside of any defined settlement and it is therefore within the open countryside. Policy 7 of the LP only allows the development of new homes in the open countryside where there are special circumstances. One of these is where the development relates to the reuse of a suitably constructed redundant, disused or historic building that is considered appropriate to retain and would lead to the enhancement of the immediate setting. A policy within the National Planning Policy Framework (the Framework) has similar aims.
6. Policy 7 also requires that the building to be converted has an existing lawful residential or non-residential use and be ten years old or greater. Aerial photographs show that a building was erected on the site sometime between 2001 and 2005. The Council has provided a photograph, said to be taken in November 2007, which shows a block built building at the site. It is notably smaller in length than the building that currently exists on site. A further photograph has been provided, which the Council state was taken in 2011 during an investigation into an alleged breach of planning control. This shows significant areas of new blockwork and a new roof structure in the process of being constructed. A later photo shows the building after the works were completed with the long elevation finished in stone work.
7. The Council suggest that, due to the extent of the works, and an increase in the size of the building, this went beyond a refurbishment and it was tantamount to a new incidental building. This view, however, does not tally with the planning history for the site. The 2012 permission was granted for a change of use and extension of an existing building to a holiday let. The wording of the reason for approval suggests that, at that time, the Council considered that the alterations which had been carried out were an improvement to an existing building. There is no suggestion that it was considered to be a new structure. Based on the evidence available I consider that the building is greater than ten years old. There is nothing in the Policy that suggests that alterations, even if they are significant, cannot have been made to the building within that 10 year period.
8. The Policy does not require that the current lawful use of the property has been in existence for ten years or greater, but simply that the building has an existing lawful use. The supporting text says that "... buildings should have been erected and used for the purpose for which it had a lawful use for at least ten years before they will be considered for conversion in line with this policy". The wording of this text would not preclude a building which has been used for several different lawful purposes over the relevant 10 year period.

9. By granting the 2012 permission the Council clearly accepted the building had a lawful use and I have no reason to reach a different view. The evidence shows that, prior to the holiday let use, the building was incidental to the residential use of a house at the site, which also appears to have been a lawful use. Taken together, on the balance of the available evidence, this policy requirement would be met.
10. The Council has submitted a Certificate of Lawfulness for Existing Use or Development (dated 11 November 2011). This confirms that the use of a building as a dwelling (and the associated domestic curtilage) was lawful. That relates to a separate building. There is an area of overlap between the land which the certificate relates to and the appeal site, but the appeal building is not within this overlapping area. This does not have any relevance to the Policy test which only requires that the building should have an existing lawful residential or non-residential use. For the reasons set out above, the appeal building does have an existing lawful use and it also did at the time planning permission was granted for the change of use to a holiday let. The certificate does not alter this.
11. It can be seen from the reason for approval, within the decision notice for the original application, that the works undertaken to the building had resulted in an improvement to its appearance. Those works had already taken place, but the Council has confirmed that they formed part of the original development. It is therefore clear that the development resulted in an enhancement to the immediate setting. As consent was granted for the conversion of the building, this suggests its former use had become redundant and it must be the case that the Council considered that it was an appropriate building to be retained.
12. Neither Policy 7 nor the Framework requires that, where a new home in a countryside location is created through the reuse of a building, it should be restricted to holiday accommodation. The use of the building as a home, without a holiday occupancy condition, would therefore comply with this Policy.
13. The site is not located adjacent to any settlement and public transport options appeared to be limited. As such, occupants of a dwelling in this location are likely to be reliant on a private motor vehicle for many of their journeys.
14. Policies 2 and 3 of the LP set out the Council's development strategy and settlement hierarchy, with Policy 7 seeking to restrict new isolated homes in the countryside unless one of the special circumstances applies. For the reasons set out above, the development, free from any occupancy condition, would accord with this Policy and the aims of the Framework which seek to reuse existing resources, including through the conversion of existing buildings. The Framework accepts new isolated homes in the countryside if they are reusing a redundant building, and Policy 7 expresses no caveats in this regard on the conversion of redundant buildings. Moreover, I am mindful that the lawful use allows the site to be used as holiday accommodation. Taking these factors together, in relation to proximity to services, there would be no conflict with Policies 2 or 3 of the LP or paragraph 55 of the Framework.
15. Tourism is an important element of the economy in Cornwall. Policy 5 of the LP allows for the provision of new, and the expansion of existing, tourism facilities. I note the Council's concern that the loss of the appeal building as tourist accommodation could have detrimental effects on the local economy. However I have not been provided with any substantive evidence that the loss of a

single unit of holiday accommodation would result in harm to the rural economy. The use of the building as a dwelling, not associated with a holiday use, would also have some positive benefits to the economy. The development must be considered having regard to the local plan taken as a whole. As Policy 7 allows for the conversion of buildings to homes, free from any holiday occupancy condition, there would be no conflict with the development plan. As such, on the evidence before me, any associated effects on the tourism economy would not outweigh the general accordance of the development with the local plan.

16. Policy 13 of the Cornwall Structure Plan formed part of the development plan when the original application was determined and allowed for the reuse of buildings for tourism purposes. Previous and updated guidance also refers to occupancy conditions for tourist accommodation. However I must determine the appeal having regard to the current development plan. In light of the substantive planning merits of the case the tourism guidance referred to does not make the occupancy condition necessary.
17. I therefore conclude that the condition is not reasonable or necessary in respect of the Council's housing policies having regard to the location of the site in the open countryside, its proximity to services and facilities, and the effect of the development on the local economy. There would be no conflict with Policies 2, 3 or 7 of the LP or the aims of the Framework.

Other matters

18. The Council has referred to a number of appeal decisions relating to the wider site. Two of the decisions¹ appear to relate to new build accommodation and therefore those cases, and the policy considerations, would be materially different. From the limited information I have been provided with it appears that the remaining cases may have included an element of conversion and holiday occupancy conditions have been applied. For one of the sites², the reason for the condition included reference to amenity reasons, which does not apply in this case.
19. I have only been provided with short extracts from these decisions and as such I cannot be certain of the full reasons for each of those decisions, nor has the date of the decisions been provided and so different planning policies may have been in place at the time. Without additional context I cannot draw any firm conclusions as to how comparable those cases are to the appeal site including the final appeal decision referred to³. As such these other decisions do not alter my findings on the main issues in this appeal.
20. The building has a well defined curtilage and this area had the appearance of a domestic garden. The use of the building as permanent accommodation, rather than for holiday purposes, would not result in a significant change in the character of this area or a significantly more urban appearance than currently exists. The Council's concern that the removal of the condition is likely to result in the provision of incidental domestic buildings is unfounded as a condition on the original permission removes permitted development rights for the erection of such buildings. Therefore control over this remains with the Council.

¹ APP/D0840/A/14/2218665 & APP/D0840/W/16/3159565

² APP/D0840/C/11/2166387 & APP/D0840/A/11/2162856

³ APP/D0840/W/15/3004686

21. The appellant's case for seeking to have the condition removed is focused on matters of the viability of the wider site as well as some works to the building that have been identified as being required. In this regard reference has been made to an application to remove holiday occupancy conditions at another site. I note this, as well as the Council's and other interested parties' representations on these matters. However, for the reasons given above, the development, without the occupancy condition, would accord with the development plan. It is therefore not necessary that I consider these matters.
22. I also note the concerns in respect of precedent and the implications for the wider site. However, as much of the holiday accommodation is purpose built different planning considerations would apply. The development would not result in the provision of any affordable housing; however there is no policy requirement that proposals of this scale provide any. This factor therefore does not weigh against the development.

Conditions

23. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission.
24. As the building works have already been completed a condition requiring that the development is carried out in accordance with the plans is no longer necessary. It is necessary that adequate parking is retained for the occupiers of the building, as the parking area has already been provided I have amended the wording accordingly.
25. I have no evidence that the condition removing permitted development rights for extensions and development within the curtilage of the building is no longer necessary and so I have re-imposed it. I have, however, updated the wording so it refers to the current legislation.

Conclusion

26. The development would accord with the development plan when it is considered as a whole, this being so it would also amount to sustainable development. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission should be granted without the disputed condition.

K Taylor

INSPECTOR

Schedule of conditions

1. The parking area shall be retained in accordance with the drawing labelled A-501/04-P-00-Plan and such areas shall be kept available at all times for the parking and turning of vehicles.
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 within Classes A, B, C, D and E of Part 1 of Schedule 2 to the said Order shall be carried out without the express grant of planning permission, namely:
 - the enlargement, improvement or other alteration of the dwellinghouse;
 - the enlargement of the dwellinghouse consisting of an addition or alteration to its roof;
 - any other alterations to the roof of the dwellinghouse;
 - the erection or construction of a porch outside any external door of the dwelling; and
 - the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.