The Planning Inspectorate

Appeal Decision

Site visit made on 30 January 2018

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2018

Appeal Ref: APP/H1840/W/17/3188221
Little Acre, Evesham Road, Church Lench, Evesham, Worcs WR11 4UB

- 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 Mrs Christine Pugh against the decision of Wychavon District Council.
- The application Ref 17/00809/FUL, dated 13 April 2017, was refused by notice dated 22 June 2017.
- The application sought planning permission for change of use from agricultural store to holiday accommodation without complying with a condition attached to planning permission Ref W/10/01757/CU, dated 13 September 2010.
- The condition in dispute is No 2 which states that: *The self-contained accommodation hereby approved shall only be used for the purpose holiday let accommodation only and shall not be occupied for more than 4 weeks in any one year (here meaning 1st January - 31st December in the same year) by the same tenant or group of tenants. The holiday let units shall not be used for permanent residential occupancy nor as a sole main residence*.
- The reason given for the condition is: *To ensure the unit is retained for short term holiday lets only and does not become separate permanent residences, in compliance with policies ECON19 and RES7 of the Wychavon District Local Plan (June 2006)*.

Decision

1. The appeal is dismissed.

Procedural matters

2. The application form described the proposal as "change of use from holiday accommodation to dwelling", and this was used by the Council on its decision notice and by the appellant on the appeal form. However, in submitting its Statement of Case the Council referenced a recent appeal decision[1] relating to a similar case at Hartlebury in the same Council area.

3. My colleague in that case pointed out where a property has the ability to afford to those who use it the facilities required for day-to-day private domestic existence Case Law[2] has indicated the property would usually be treated as a dwellinghouse. As such, there is no need for a change of use application. I agree with this proposition.

[1] APP/H1840/W/16/3164922
[2] Gravesham BC v SSE and O'Brien [1983] JPL 306

4. As with that case, the planning permission allowing the use for this appeal property as a dwellinghouse (W/10/01757/CU) has a condition restricting the occupancy. Consequently the appeal can be determined under Section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with the relevant condition, No 2. The Council indicated that it had no objection to me proceeding with the appeal on this basis.

5. The appellant was able to, and did, make comments on the Council's Statement of Case, and were also advised that it was my intention to deal with the appeal on this basis. I am therefore able to conclude that no injustice or prejudice would occur if I were to deal with the appeal on that basis.

6. As well as not complying with the relevant condition I also note that there are physical differences between the condition of the building on the drawing entitled "Survey of Existing" and that entitled "Proposal". Externally these are the installation of four rooflights low down in the roof plane on both of the long sides. Internally various works are also shown. As an unaccompanied site visit I only saw the site from public land on Evesham Road, but I could see that the rooflights on what is marked as the south elevation had been installed.

Main Issue

7. Given the above, the main issue is whether the relevant condition is reasonable and necessary having particular regard to whether this is a suitable location for an unrestricted permanent dwelling taking proper account of the development strategy for the area, including whether the location of the site is such that the need to travel would be minimised and the use of sustainable transport modes maximised.

Reasons

8. The appeal property is situated in the middle of an open area of grassland, with an access off Evesham Road. Although there are dwellings to north and south the property is located well away from any settlement or other grouping of dwellings. Rather any development in the area is very sporadic in nature and, in my judgement, as a matter of fact and degree, the location is isolated.

9. The development plan for the area includes the South Worcestershire Development Plan (the DP). Policy SWDP1 of the DP sets out overarching sustainable development principles, including that the Council will take a positive approach to development that reflects the presumption in favour of sustainable development as contained in the National Planning Policy Framework (the Framework). Policy SWDP2 sets a development strategy and settlement hierarchy which from the top of the hierarchy in Worcester, goes through Urban areas to the Rural Areas in Category 1, 2 and 3 villages and finally lower category villages. Policy SWDP4 indicates that proposals must demonstrate they offer sustainable travel choices.

10. I will deal first with the need to travel. Whether occupied as a holiday let or permanently the location of the appeal building is such that the need to travel would be approximately the same. However occupied there would be the need to travel; as a holiday let to visit tourist attractions in the area or to go shopping or to other facilities. As a permanent dwelling the journeys would be different, since they might be to places of employment or education, but they

too would exist. Overall, the number of journeys would be similar as would the need to travel. As such I conclude that the condition is not necessary to minimise the need to travel. The removal of the condition would therefore comply with Policy SWDP4 of the DP as set out above.

11. The appellant considers that the property has no sustainable future as holiday accommodation. She argues that the development plan is silent on the conversion of rural buildings and not in accordance with paragraph 55 of the Framework which permits as the re-use of redundant or disused buildings and would lead to an enhancement of the immediate setting. The Council, on the other hand, indicates that it considers by setting out the limitations as those categories of development which are permitted in the open countryside, the plan is not silent; rather this change of use is not permitted.

12. In my view the Council's interpretation is to be preferred. Where a policy has passed examination and been found sound post publication of the Framework, even if it would appear to be in some way inconsistent with the Framework, it should be given full initial weight unless there has been some other subsequent material change in circumstance. This is because it must have been drawn up having regard to national policies and advice contained in guidance by the Secretary of State[3], including the Framework, and examined on that basis[4] taking local circumstances into account (paragraph 10 of the Framework). It is not the purpose of a Section 78 appeal to reconsider that matter, as the planning system is to be plan led. There have been no material changes in circumstances since the plan was adopted.

13. I note that Policy SWDP12, which is one of the limited range of circumstances allowed by Policy SWDP2, does permit the conversion of buildings to assist as part of a farm diversification project. I also note that Policy SWDP12 also indicates that permission for a dwelling associated with a farm diversification project will only be granted where a marketing exercise has shown that employment, tourism, leisure and recreation uses are unviable. Although I have not been provided with policies which permit these uses, it is reasonable to assume that, at least by implication, the Council is favourably disposed to such uses.

14. I therefore conclude that the development plan is not silent on the conversion of rural buildings, and that as the use without the relevant condition is not included within the list of exceptions the proposal is not permitted under the terms of Policy SWDP2 and this weighs against the proposal, given that the planning system is to be plan-led.

15. The appellant has put forward a number of other considerations in support of the appeal. She references the three dimensions of sustainable development set out in paragraph 7 of the Framework. In respect of the economic role the building exists and so any construction benefits would be very limited. As an unrestricted dwelling any occupier would be likely to be economically active in the local area, but so to would the occupiers of any holiday let. Clearly it will depend on how much of the year any holiday accommodation was let, but assuming a reasonable level of occupation any change, and thus benefit, would be limited.

[3] Section 19(2)(a) of the Planning and Compulsory Purchase Act 2004 (as amended) (the 2004 Act)
[4] Section 20(5)(a) of the 2004 Act

16. From a social perspective there would be the addition of another permanent dwelling, for those at whatever stage of life, but again this would be balanced by the loss of tourist accommodation with the well-being holidays provide to occupiers. Again the benefits would be limited. Finally, from an environmental perspective the effects with and without the condition would be very similar, and I consider that this would be neutral in the overall balance.

17. The appellant maintains the use as holiday accommodation is not viable, and I have been provided with some marketing information to support this. In particular she references the reasoned justification for Policy SWDP12 of the DP which says employment sites that fall vacant should be actively marketed before their conversion to an alternative use such as residential. However, as set out above, the existing use is not an employment site and consequently this paragraph is not directly relevant.

18. Having said that, I do see the parallels that the appellant is making. But even then, I do not have any evidence to show that the marketing guide price was realistic, or beyond advertising in a newspaper what other efforts have been put into marketing the property as an investment as tourist accommodation. I can therefore give this only limited weight.

19. The appellant has referred to her personal circumstances. While I have every sympathy with these circumstances they are inevitably temporary in nature but the effects of the proposal would be permanent. I therefore can only give these personal circumstances limited weight.

20. The appellant has indicated that the property might remain vacant if this appeal were to be dismissed leading to the site becoming detrimental to the character of the area. However, there are powers available to the Council to deal with the condition of land should it adversely affect the amenity of an area.

21. The appellant has referred to permitted development rights which permit the change of use of agricultural buildings to dwellings subject to a prior approval process. However, as the building is already a dwelling, even if its occupancy is restricted, this is not material in considering whether the condition in question should be maintained.

22. The determination of this appeal should be in accordance with the terms of the development plan unless other material considerations indicate otherwise. In this regard the removal of the conditions is contrary to the development plan in that it would not fall within those limited range of exceptions allowed for under Policy SWDP2. I have looked at the material considerations put forward by the appellant in support of the appeal, but conclude that they are individually and/or collectively insufficient to outweigh the presumption of the development plan.

Conclusion

23. For the reasons given above I conclude that the appeal should be dismissed.

R J Jackson

INSPECTOR