



Appeal Decision

Site visit made on 4 June 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2019

Appeal Ref: APP/E2001/W/19/3224732

Herrington Park, Main Street, Sutton Upon Derwent, York YO41 4BT

- 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 and Mrs Mark Robb against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/18/01330/VAR/WESTWW, dated 18 April 2018, was refused by notice dated 8 October 2018.
 - The application sought planning permission for the erection of one holiday lodge without complying with conditions 2 and 12 attached to planning permission Ref DC/15/02168/PLF/WESTWW, dated 7 September 2015.
 - The conditions in dispute are Nos 2 and 12 which state that:
Condition 2: The lodge shall be occupied for holiday purposes only.
Condition 12: The development hereby permitted shall be carried out in accordance with the following approved plans: 15.1766-01 Revision A – Location Plan, 15.1766-02 Revision E – Site Plan, 15.1766-03 Revision D – Sketch Plan, 15.1766-104 Revision B – Roof Plan, 15.1766-05 Revision E Sketch Elevations 01, 15.1766-06 Revision E – Sketch Elevations 02 Section A-A.
 - The reasons given for the conditions are:
Condition 2: This condition is imposed to ensure that the approved holiday accommodation is not used for unauthorised permanent residential occupation.
Condition 12: This condition is imposed for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development on the application form refers to varying Condition 12 only. However, on the basis of the information before me, and having regard to the appeal form and decision notice, it is clear that the Council determined the application as a variation to Conditions 2 and 12 of 15/02168/PLF/WESTWW and I have done likewise.
3. On 19th February 2019 the Government published an updated revised National Planning Policy Framework (the Framework). In relation to the main issues in this appeal, Government policy has not materially changed. Accordingly, no parties have been prejudiced by my having regard to it.

Background and Main Issues

4. In 2012, the appellant secured planning permission to remove conditions pursuant to a 2007 application, which related to a log cabin for holiday use at Herrington Park (herein referred to as lodge 9) to allow it to function as a warden's lodge. In 2018, an application to vary the 2012 permission, to allow lodge 9 to be used solely for holiday purposes was subsequently approved¹. Consequently, lodge 9 can now be used either as a warden's lodge, for permanent residential occupation, or for holiday purposes.
5. In September 2015², planning permission was granted for a further holiday lodge, a six-bedroom unit (herein referred to as lodge 10, the appeal site). This was subject to a number of conditions including No 2, that it be occupied for holiday purposes only and also Condition 12 that it be carried out in accordance with the approved plans. The lodge has yet to be built. This appeal follows the Council's decision to refuse an application to vary these conditions³, the outcome of which would be to undertake design alterations and to allow the use of the lodge for warden's accommodation.
6. The Council do not raise any objection to the variation of Condition 12 within the reason for refusal. It considers the alterations to the appearance of lodge 10 to be minor. Its footprint would remain as originally approved by the 2015 permission. Externally, a mono-pitch roof would be replaced with a flat roof and the window and door arrangements would be modified. From my observations on site and the plans, I have no reason to disagree with the Council on this point. Lodge 10 would be lower in height as a result of the amendments and it would be constructed of timber cladding and render as previously approved. It would also be set comfortably within the plot.
7. However, the changes would include facilities associated with its use as warden's accommodation, such as a mower store, reception and linen room. For this reason, they would not be severable from Condition 2. It would therefore not be appropriate to split the decision to allow one part of the scheme relating to Condition 12. Nevertheless, for the avoidance of doubt, my consideration of this appeal relates only to Condition 2.
8. In this regard, without a mechanism to limit Herrington Park to one unit for use as warden's accommodation, the effect of the appeal proposal would be to allow the appellants to use both lodges 9 and 10 as warden's accommodation.
9. Consequently, the main issues in this appeal are (i) whether Condition 2 is necessary with particular regard to whether the proposal would be suitable in this countryside location, having regard to local and national planning policy and the existing permission for warden accommodation elsewhere on the site and (ii) whether, in the absence of Condition 2, adequate provision would be made to mitigate any harm which may arise.

¹ Council Ref: 07/05593/PLF, 12/03613/PLF and 18/01314/VAR

² Council Ref: 15/02168/PLF

³ Council Ref: 18/01330/VAR

Reasons

Whether the proposal would be suitable in the countryside

10. Herrington Park is an established holiday park presently occupied by eight holiday lodges and a warden's lodge. In its entirety, it lies to the east of residential properties that front Main Street, a primary route running through the village of Sutton upon Derwent from which the site access is taken via a long driveway. These existing houses are mostly detached, typically with generous rear gardens. The holiday park has a long planning history dating back to at least 2002, which includes extant permissions for further holiday lodges to the north of the current site⁴.
11. The appeal plot is a piece of land that is bounded to the north, south and west by the gardens of houses on Main Street and to the east by the current holiday lodges, from which it is separated by an established hedgerow/planting. The appeal proposal would result in the construction of a 3-bedroom single storey warden's lodge. The appeal site and the wider holiday park are outside the development limits of the village. Consequently, for the purposes of planning policy, they are in the countryside.
12. Policy S4 of the East Riding Local Plan 2012-2029 (2016) (ELRP) identifies eleven forms of development that would be supported in the countryside. It clarifies that new dwellings for permanent residential occupation will be permitted only in specific circumstances. This includes agricultural, forestry or other rural-based occupational dwellings subject to demonstrating an essential need. Given its location within the countryside, the principle of Condition 2, relating to how the lodge would be used, is both reasonable and necessary.
13. The supporting text to Policy S4 of the ERLP advises that for dwellings required to support a rural activity, it should be supported by, amongst other matters, a clear functional need for a full-time worker to be employed on the unit and that the need for the dwelling cannot be met by an existing dwelling that is suitable and available.
14. The site already benefits from the opportunity to use lodge 9 as warden's accommodation. I have no evidence before me to suggest that two warden's lodges would be required on the site. Consequently, in the absence of a mechanism to ensure that only one unit on the site can be occupied as warden's accommodation at any one time, the need for lodge 10 as a warden's lodge has not been established as lodge 9 is suitable and available.
15. Accordingly, to vary Condition 2, to permit the use of lodge 10 as a dwelling for the warden, and thereby for permanent residential occupation, would fail to represent a rural based occupational dwelling where an essential need for its location within the countryside has been demonstrated.
16. For these reasons, I conclude that Condition 2 is necessary and without a mechanism to ensure that only one unit on the site can be occupied as warden's accommodation at any one time, the proposal would result in residential accommodation that would be occupied permanently and the need for such a dwelling can be met elsewhere on the site. It would represent an unsuitable location for the development of a new dwelling such that it would be harmful to the intrinsic character of the countryside. It would therefore be

⁴ Council Ref: 16/0862/PLF and 17/02332/PLF

contrary to Policy S4 of the ERLP, which sets out the specific circumstances for supporting development in the countryside. It would further conflict with guidance within the Framework which seeks to avoid the development of isolated homes in the countryside except in particular circumstances, such as meeting the needs of a rural worker.

Mechanisms that might mitigate any identified harm

17. Paragraph 54 of the Framework advises that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
18. In relation to lodge 9, the 2018 permission to restrict its use to holiday accommodation has the effect of being a new permission. However, the 2012 permission, which states at Condition 1 that lodge 9 shall be occupied for holiday purposes or for warden's accommodation, remains extant.
19. A planning condition cannot formally revoke an extant planning permission. Furthermore, I concur with the Council that Herrington Park has an extensive planning history. Paragraph 55 of the Framework clarifies that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In this case, there is not a single red line boundary to which a condition limiting the site to only one unit as warden's accommodation could reasonably be attached and be enforceable.
20. However, a binding obligation, to discontinue the use of plot 9 as a warden's lodge, could ensure that no more than one lodge was in use as wardens' accommodation on the site at any one time. In this regard, a planning obligation, whether in the form of a bilateral or a unilateral undertaking, would be necessary to make the development acceptable in planning terms. It would also be directly related to the development and fairly and reasonably related in scale and kind.
21. A Draft S106 Agreement has been provided, which broadly sets out a mechanism which could prevent the appellants from occupying lodge 10 as warden's accommodation until the use of lodge 9 has ceased for such purpose. However, it is in draft form and it is unsigned by the relevant parties. Consequently, as an unexecuted nor certified obligation, it is not binding, and I can afford it no weight as a result.
22. As an alternative, the appellant has cited three examples where restrictive conditions have been used on holiday home sites. In relation to the Oakwood Holiday village, the decision relates to a non-material amendment rather than an application to vary a condition. At Kingfisher Hall and Florida Keys Park Lodges, unlike the appeal site, the decisions appear to relate to a single red line boundary, so that the conditions are enforceable.
23. I appreciate that Condition 10 of 17/02332/PLF refers to two earlier applications on the appeal site, with presumably different red lines but this is not a restrictive occupancy condition. Instead, Condition 10 relates to the phasing of works across the wider holiday park. For these reasons, I do not find

them to be directly comparable. In any event, I must assess the appeal proposal on its individual merits.

24. For the reasons set out above, I conclude that in the absence of an enforceable mechanism such as a planning obligation under Section 106 of the Town and Country Planning Act, the identified harm would not be avoided or mitigated so as to make an unacceptable proposal acceptable. An obligation could ensure that there would be only one unit within Herrington Park to be occupied as permanent residential accommodation for a warden, for which a need has previously been established. Without it, the proposal would represent an unsuitable location for a lodge that would be occupied permanently.

Other Matters

25. I recognise the appellants' concern about the cost of entering into a planning obligation. However, I have nothing before me to evidence the costs involved and, in any event, I consider that an obligation would be necessary to make an otherwise unacceptable development acceptable.
26. I also note their concerns about the Council's handling of the application and whether or not it concealed an intention to require a planning obligation. However, in my determination of this appeal, I must have regard only to the planning merits of the appeal.
27. In relation to the use of permitted development rights on Herrington Park, I have nothing before me to indicate how these would address the appellant's needs in relation to the main issues in this appeal. It is therefore not a matter that weighs in favour of the proposal.
28. I acknowledge the third-party representation that lodge 10 as originally approved was of a sufficient size and design to be accessible to all. However, it is evident that lodges with level access have subsequently been approved on the site and there is no evidence before me to suggest that the needs of all could not be met. These other matters do not, therefore, lead me to a different conclusion.

Conclusion

29. Taking all these matters into account, for the above reasons, I conclude that the appeal should be dismissed.

Kate Mansell

INSPECTOR