



Appeal Decision

Site visit made on 2 July 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

Appeal Ref: APP/Z1510/W/19/3226123

Seeview Cottage, Teal Cottage and Gameskeepers Cottage, Spains Hall Road, Finchingfield CM7 4NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 P and J Teale against Braintree District Council.
 - The application Ref 18/02110/VAR is dated 27 November 2018.
 - The application sought planning permission for the erection of a building comprising three no. holiday lets, complete with parking and associated works without complying with a condition attached to planning permission Ref 13/01485/FUL, dated 27 March 2014.
 - The condition in dispute is No 3 which states that: The accommodation hereby permitted shall only be occupied on the following basis:
 - i. The units shall be occupied for holiday purposes only;
 - ii. The units shall not be occupied as a person's sole, or main place of residence;
 - iii. The units shall not be occupied by any leasee, tenant or guest for any period exceeding 28 days consecutively, or cumulatively within any calendar year;
 - iv. The units shall not be sold, transferred, or otherwise disposed of except by way of a disposal comprising the whole of the site edged in red on the approved plans;
 - v. The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of all units on the site, and of their main home addresses, and shall make this information available to the Local Planning Authority at all reasonable times on request.
 - The reason given for the condition is: The site lies in a rural area where development other than for agricultural purposes is not normally permitted.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a building comprising three no. holiday lets, complete with parking and associated works at Seeview Cottage, Teal Cottage and Gameskeepers Cottage, Spains Hall Road, Finchingfield CM7 4NG in accordance with application Ref 18/02110/VAR without compliance with condition number 3 previously imposed on planning permission Ref 13/01485/FUL, dated 27 March 2014 but subject to the conditions in the attached schedule.

Procedural Matters

2. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. The Council has set out reasons for refusal within its appeal statement

and I have treated those concerns as the basis of the decision the Council would have made, had it been empowered to do so.

3. During the course of the appeal a decision was issued by the Secretary of State regarding appeal reference APP/Z1510/W/18/3197293. The parties have had the opportunity to comment on this as part of the appeal. I have taken it into account in reaching my decision and am satisfied that this has not prejudiced either party.
4. The development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011). It is on the basis of these adopted policies that I have based my decision. The Publication Draft Local Plan has been submitted for examination but remains unadopted. I therefore afford the emerging policies limited weight.
5. I have been provided with a copy of a Unilateral Undertaking (UU) dated 27 March 2014 in relation to the site. Since the appeal before me seeks to vary the permission to which the UU relates, the requirements of the UU, where outstanding, would still be binding. I have dealt with the appeal on this basis.

Main Issues

6. The main issues are whether the condition restricting the use of the accommodation to a holiday let is reasonable or necessary having regard to the suitability of the site for residential accommodation bearing in mind access to local shops, community facilities and bus services and local and national planning policy and the effect upon rural tourism and the rural economy.

Reasons

7. Finchingfield is an attractive village with traditional buildings set around a village green and duck pond. The appeal site is located on the edge of the village, and comprises a substantial single storey building which is divided into three separate units of accommodation, each with its own facilities which would enable independent living. I therefore consider the appeal site to comprise three units of residential accommodation. A 'For Sale' board was present at the time of my site visit.
8. The appellants are seeking the removal of Condition 3 which restricts the occupancy of the building to short term holiday purposes only. The Council has drawn my attention to a report, Economic Impact of Tourism 2017 Results, by Destination Research, which indicates the value of tourism to Braintree and the employment that it supports.
9. I acknowledge that the Council approved the appeal building on the basis that the proposal would accord with policies that seek to promote the rural economy and new tourist facilities. In particular Policy RLP 46 of the Braintree District Local Plan Review (LPR)(2005) which sets out the Council's policy on tourist accommodation. The National Planning Policy Framework (the 'Framework')(2019) also sets out that decisions should enable sustainable rural tourism. However, these policies do not seek to prevent the loss of tourist accommodation.
10. The appeal site is located just outside the defined village envelope within the Braintree District Council Local Development Framework Core Strategy (Core Strategy)(2011) and for the purposes of applying planning policy is located in

countryside. Policy CS5 of the Core Strategy seeks to restrict development outside village envelopes to uses appropriate to the countryside, in order to protect the landscape character of the countryside, amongst other things. Policy RLP 2 of the LPR similarly seeks to direct new development to areas within Town Development Boundaries and Village envelopes.

11. The removal of condition 3 would allow the permanent occupation of the dwellings which, I accept, would be likely to increase vehicle movements compared with the holiday lets which have experienced voids in occupancy. However, although the appeal site is located in countryside, given the proximity of the site to the settlement, the facilities of Finchingfield would be accessible by foot. The village is also served by buses which would enable future occupants of the appeal site to use public transport to meet some of their day-to-day needs. I therefore afford the conflict with policies CS5 and RLP2 limited weight.
12. The removal of condition 3 could result in the loss of three units of holiday accommodation. Policy RLP 38 of the LPR allows the conversion of rural buildings to residential use where the applicant has made every reasonable effort to secure suitable employment or community re-use, amongst other things. The appellants dispute the relevance of Policy RLP 38 as the appeal site is already in residential use. Conversion, in its ordinary sense, means the act or process of changing something from one form, use or system to another. Whilst I agree that there would be no change of use, the removal of condition 3 would enable the building to be changed from a holiday let to permanent residential accommodation. I therefore agree that the Policy has relevance to the appeal before me.
13. The appellants assert that the business is no longer viable and have provided evidence to show that the business has been operating at a loss over the last two years. I have been provided with evidence from both the Council and appellants regarding the pricing of the holiday lets and, whilst cheaper accommodation is available, I am not persuaded that they are overpriced given the size and type of accommodation provided by the appeal site.
14. The Council has drawn my attention to appeal decision APP/L3815/W/17/3188757 which considered whether reasonable steps had been taken to secure an alternative commercial use. In this case, the properties had been valued without the occupancy restriction and as such it was concluded by the Inspector that the marketing was not sufficient to demonstrate that there is no proven demand for holiday cottages. However, I do not consider this to be comparable to the appeal scheme before me.
15. The appeal property has been marketed for sale for over a year, during which time the sale price has been lowered twice. The property has failed to sell during this time despite the property being marketed below the valuation guide price which was based upon the market value of three holiday lets with a restrictive occupancy condition. I believe that this is a reasonable period within which to determine whether or not there is an alternative viable commercial use could be secured for the property.
16. Taking into account the matters above, I consider that reasonable effort has been made by the appellants to secure suitable employment use. Consequently, there would be no conflict with Policy RLP 38 in this regard. I do not consider that the removal of the occupancy restriction would harm the

economy since it is highly unlikely that the appellant would choose to continue to operate the property at a loss. As such, any contribution that the accommodation makes towards economy would be likely to be lost anyway.

Other Matters

17. The appeal site is just outside the Finchingfield Conservation Area (FCA), within which are a number of listed buildings. I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the FCA. Since the appeal scheme before me would not involve built development, there would be no harm to the setting of the FCA as a result of the proposal.
18. The Council has made reference to Policy CS8 of the Core Strategy, which relates to the effect of development on the natural environment and biodiversity, within its reason for refusal. However, since the building has already been built, this policy has not been determinative in my consideration of the appeal.
19. Concern has been raised that removal of the condition would set a precedent. No other specific sites with the same attributes as that of the appeal site have been brought to my attention. Furthermore, I must consider the appeal on its own merits.
20. Concern has been raised that the reason for building the holiday lets was to bypass planning requirements for a residential dwelling. It has also been asserted that the appellants are currently living in the holiday lets. However, in determining the appeal I can only have regard to the planning merits of the case, so am unable to give any weight to these particular concerns.

Conclusion

21. For the reasons set out above I conclude that there would be no significant harm arising from the removal of condition 3 and the appeal should therefore be allowed. I will grant a new planning permission without the disputed condition but retaining those non-disputed conditions from the previous permission that appear to still be relevant.
22. Conditions relating to the commencement of development, plans and materials, trees, ecology, construction and demolition and contamination are not needed since the development has already been carried out. An application, reference 15/00093/DAC, submitted to the Council for approval of details reserved by condition nos. 4, 5, 7, 8, 12, 13a, 13b, 13c, 13d, 16 and 18 of planning permission 13/01485/FUL was granted by the Council on 11 May 2015. Where conditions require the submission of a scheme and subsequent on-going compliance, I have referenced the details approved under 15/00093/DAC.
23. The Planning Practice Guidance (PPG) advises that conditions restricting permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Given the proximity of the appeal building to the Conservation Area and a number of listed buildings, I consider that it is reasonable to remove permitted development rights for external alterations, extensions and curtilage buildings, however, it is not reasonable or necessary to remove all of the permitted development rights in the Town and

Country Planning (General Permitted Development) (England) Order (as amended) 2015 and for that reason I have modified the condition accordingly.

M Savage

INSPECTOR

Schedule of Conditions

1. The windows and doors shall be retained in accordance with the details approved under application reference 15/00093/DAC.
2. All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the local planning authority.
3. The access shall be maintained with a 2.4 metre parallel band visibility splay as measured from and along the nearside edge of the carriageway. The area within the splay shall be kept clear of any obstruction exceeding 600mm in height at all times.
4. The vehicular turning facility shall be retained in accordance with the details approved under application reference 15/00093/DAC and shall be kept free from obstruction within the site at all times for that sole purpose.
5. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
6. The means to prevent the discharge of surface water from the development onto the highway shall be retained at all times in accordance with the details approved under application reference 15/00093/DAC.
7. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(or any Order amending, revoking and re-enacting that Order) no enlargement of any of the building or the provision of any building within the curtilage of the building, as permitted by Class A or E of Part 1 of Schedule 2 of that Order shall be carried out without the prior express grant of planning permission.

End of Schedule