



Appeal Decision

Site visit made on 24 June 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2019

Appeal Ref: APP/D2510/W/19/3226307

The Stables, Sinclairs Mill, Belle Isle, Dogdyke, Lincolnshire LN4 4UU

- 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 Ms S Brailey and Mr M Craddy against the decision of East Lindsey District Council.
- The application Ref S/035/01833/18, dated 11 September 2018, was refused by notice dated 20 November 2018.
- The application sought planning permission for change of use and alterations to a redundant restaurant with a flat over to form 4 flats with balconies including demolition of part of the restaurant and a conservatory, change of use, alterations and extension to attached office, store and toilets to form a holiday cottage and provision of parking spaces without complying with conditions attached to planning permission Ref S/035/02822/05, dated 15 February 2006.
- The conditions in dispute are Nos 2 and 3 which state that:
 - 2) There must be no more than 5 units of accommodation as shown on the submitted plans and there must be no further subdivision of the buildings whatsoever.

The reason for the condition is: to safeguard adequate levels of privacy and amenity and to comply with Policy A4 of the East Lindsey Local Plan Alteration 1999.

- 3) The single storey building must only be used or occupied for holiday purposes and must not be used or occupied as either a temporary or permanent place of residence whatsoever.

The reason for the condition is: the building has inadequate privacy and outdoor amenity for residential occupation and to comply with Policy A4 of the East Lindsey Local Plan Alteration 1999.

Decision

1. The appeal is allowed and permission is granted for change of use and alterations to a redundant restaurant with a flat over to form 4 flats with balconies including demolition of part of the restaurant and a conservatory, change of use, alterations and extension to attached office, store and toilets to form a holiday cottage and provision of parking spaces, without complying with conditions no 2 and no 3 attached to planning permission Ref S/035/02822/05, dated 15 February 2006, subject to the following condition:
 - 1) Floor levels in the ground floor accommodation must not be lowered to less than their levels as existing at the time the submitted Flood Risk Assessment was carried out.

2. The appellants raise an issue regarding the Council's handling of the application. As I understand matters, the point relates to the terms of Section 73 of the Act¹, which states that where a planning authority determines that it only wishes to grant planning permission subject to the same conditions as those previously it should refuse permission. In this case, the Council has determined that it does not agree to the removal of planning condition no 3 but considers that it should be retained for a different reason to that used in the existing condition.
3. The appellants contend that this amounts to revisiting the original permission and is therefore outside the scope of the powers under Section 73. They refer to a recent High Court decision² which related to the extent to which planning conditions can be varied without fundamentally changing the nature of the original permission.
4. However, the requirement to attach a reason to a planning condition is not imposed by the Act, but rather through secondary legislation³ and I can see no reason why the Council could not have determined the application in the way that it has.

Background

5. The application subject of the appeal seeks approval for the removal of both condition no 2 and condition no 3 of the original planning permission granted in 2006, under which the appeal property was approved as holiday accommodation. The 4 flats, also covered by the consent, were not subject to the holiday use restriction. Condition no 2 prevented any increase in the number of units covered by the permission. It is common ground that the condition is unnecessary, since any subdivision of the property would require planning permission. I see no reason to disagree. Condition no 3 is, though, in dispute between the main parties and is therefore subject to my consideration.
6. There is no objection to the use of the property as a dwelling due to its size or amenities, or its relationship to the surrounding properties. The Council has refused permission to remove condition no 3 since it considers that the location is unsuitable for an unrestricted dwellinghouse due to its level of access to service by means other than the private car.

Main Issue

7. Given the above, the main issue in the appeal is whether or not the disputed condition is reasonable and necessary, concerning whether the proposal would be in a suitable location for housing, with regard to the accessibility to local services.

Reasons

8. The appeal property (the property) is a small single storey building with a pitched roof. It is situated between housing at 1,2 and 3 Sinclair Cottages and Sinclairs Mill, converted to housing under the planning permission forming the subject of the appeal. The property has a small amenity area to the front and a somewhat restricted outlook due to its physical attachment to other buildings.

¹ The Town and Country Planning Act 1990 (as amended)

² Finney v Welsh Minister [2018]

³ The Town and Country Planning (Development Management Procedure) (England) Order 2015

9. A short distance from the property there is a boatyard, marina, pub, holiday park and the River Witham. Whilst the services at Belle Isle are limited and do not include a shop, it is located approximately 2 miles (3.2km) from the town of Coningsby, where there is a good range of shops and other services.
10. The East Lindsey Local Plan Core Strategy⁴ (the Core Strategy) contains policies which seek to ensure that development is steered towards suitable locations, in accordance with the Framework⁵. The Council refers to Policies SP1 and SP3 in its reason for refusal. These are strategic policies for directing housing growth within the larger towns and villages; they provide some overarching context for how development is to be distributed in the Council area.
11. Windfall development within medium and small villages is covered by Policy SP4. However, as Belle Isle is not included within the list of small villages included in Policy SP1, the recognition that the conversion of run down and empty buildings may be acceptable within small villages under Policy SP4 does not apply to the property.
12. It is possible to walk from the property to Coningsby. The route into the town is direct but there is no segregated footpath, and given the distance it is far more likely that a resident would use a car, taxi or public transport. However, it would be a comfortable cycle ride.
13. There is a regular and very quick bus service both to and from Coningsby Mondays to Saturdays. However, there is no Sunday service, and on weekdays there is no bus to Coningsby before around 8.30am, and no return service after tea time weekdays and Saturdays. It is also possible to get to Boston via a relatively short bus journey, where there is also a good range of services. Based on my experience of other proposals located in rural settlements this represents a good level of access to public transport and depending on the destinations and preferred times of travel the bus would provide a viable alternative to private car use for residents.
14. The Council refers me to 2 appeal decisions in support of its position. The first concerns a proposal, the Sleaford case, to remove a planning condition restricting a development of static caravans to holiday use only⁶. The Inspector addressed, amongst other things, the issue of the use of non-car modes of transport and whether the site would be accessible to the main built up area. The Inspector also considered that public transport links to the site and further afield would not be well matched to the normal day to day travel needs for employment and education, and would not be conducive to minimising private car use. The appeal decision supports the view that the travel patterns of holidaymakers are likely to be very different to those of residents. Whilst acknowledging that point, there are significant differences between the Sleaford case and the appeal subject of my consideration, not least the scale of the proposal and the travel distances to the main towns and services.
15. The second case concerns a proposal for a detached dwelling at Scrub Hill⁷, a small village to the east of Belle Isle. Whilst I have limited information before

⁵ National Planning Policy Framework February 2019

⁶ APP/R2520/W/18/3204872 – Lakeview, Sleaford dated 21 March 2019.

⁷ APP/D2510/W/16/3151196 – Old Fen Lane, Scrub Hill dated 15 November 2016

me on the case, it is clear that the Inspector considered, amongst other things, that the proposed dwelling would be in an unsuitable location due to its distance from Coningsby and the level of access to public transport. The Inspector was not convinced this would permit access to jobs and services at a level which would be a viable alternative to private car use. From the information on bus times submitted by the appellant, it is clear that the same services run through Scrub Hill as Belle Isle. Whilst I give due weight to the other Inspector's decision in my reasoning, given the material differences between the proposals it does not alone lead me to conclude that the property subject of my decision is in an unsuitable location.

16. The Framework is clear that in rural areas, housing should be located where it will enhance and maintain the vitality of communities, whilst avoiding the development of isolated homes in the countryside except in certain specified circumstances. The appeal property forms part of the existing community at Belle Isle and makes a small contribution to supporting local services nearby such as the public house and chandlery.
17. The planning permission for the site is also a consideration. When consent was granted in 2006 for the conversion of the former restaurant to form 4 open market flats and the holiday cottage, the occupancy of the cottage was restricted because of concerns regarding its suitability for occupation as a permanent residency due to its restricted level of amenity space. That this concern no longer exists does not alone justify the removal of the holiday use condition, however it is a point to be weighed in the planning balance.
18. The Council refers to Core Strategy Policy SP15 on the tourism and leisure economy in its reason for refusal. However, it is evident that the retention of the property as tourist accommodation does not form a substantive part of the Council's case and, therefore, I attach limited weight to this policy in my decision.
19. There is however some conflict with policies SP1, SP2, SP3 and SP4 which seek to steer the development of new housing to locations in the towns and large villages, and in some limited circumstances, in the medium and small villages. The settlement of Belle Isle does not fall within an identified small village and in principle the development of a new house within the settlement would not comply with these policies.
20. The Framework is clear that the development plan is the starting point for decision taking and if there is conflict with an up to date development plan, permission should usually not be granted.
21. However, there are other material considerations which weigh in favour of the proposal. The Stables is presently a C3 dwellinghouse but with a planning condition restricting its occupancy. Although not within an identified small village, the settlement of Belle Isle has some services and the level of accessibility to settlements with a good range of services is such that the occupiers of the property would not have to rely on the private car most of the time. A further consideration is the property's close association with the open market housing within Sinclairs Mill and the absence of the objection to use of the property for the same use which applied at the time Condition 3 was attached.

22. Therefore, balancing all of these considerations, I find that the proposal would be in a suitable location, with regard to its specific characteristics and level of accessibility to local services. As such, conditions 2 and 3 are not reasonable or necessary, and their removal would comply with the tests for planning conditions set out in paragraph 55 of the Framework and the related advice in the Planning Practice Guidance concerning the application of these tests.

Conditions

23. The planning conditions attached to the 2006 planning permission no longer serve a purpose and I do not attach them to the consent, other than condition 5 regarding the maintenance of floor levels at the approved height, in order to reduce the risk of the property being flooded. I have not imposed a condition relating to the timescale for implementation, as the physical works subject of the original planning permission have been implemented.

Conclusion

24. I have considered all matters that have been raised but none demonstrate that conditions 2 and 3 continue to be reasonable and necessary. Accordingly, I conclude the appeal should be allowed and condition 2 and 3 should be removed.

Tim Wheeler

INSPECTOR