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# Appeal Decision

Site visit made on 8 July 2019

**by Nick Davies BSc(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 August 2019**

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**Appeal Ref: APP/D0840/W/19/3225730**

**Building in grounds of Trevalsa Court Hotel, School Hill, Mevagissey, Cornwall PL26 6TH**

- 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 & Mrs John & Susan Gladwin against the decision of Cornwall Council.
  - The application Ref PA18/11012, dated 18 November 2018, was refused by notice dated 16 January 2019.
  - The application sought planning permission for change of use of managers accommodation to unfettered dwelling without complying with a condition attached to planning permission Ref PA18/04406, dated 4 October 2018.
  - The condition in dispute is No 5 which states that:  
*"The dwelling hereby permitted shall not be occupied otherwise than by a person as his or her Only or Principal Home. For the avoidance of doubt the dwelling shall not be occupied as a second home or holiday letting accommodation. The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request to do so) such information as the Authority may reasonably require in order to determine whether this condition is being complied with".*
  - The reason given for the condition is:  
*"To safeguard the sustainability of the settlements in the Mevagissey NDP area, whose communities are being eroded through the amount of properties which are not occupied on a permanent basis and to ensure that the resulting accommodation is occupied by persons in compliance with Policy HO1 of the Mevagissey Neighbourhood Plan 2017 – 2030".*
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The address of the appeal site given on the application and appeal forms is "c/o Trevalsa Court Hotel". I have used a description which more clearly identifies the site.

## Background and Main Issue

3. The appeal relates to a 2-storey building in the grounds of Trevalsa Court Hotel. The building was constructed following the grant of planning permission in 2011 for an "amended design to previous approval for manager's

accommodation including part internal refurbishments to hotel”<sup>1</sup>. A condition attached to that planning permission restricted the occupation of the manager’s accommodation to people employed in the day-to-day management of the hotel.

4. The Mevagissey Parish Neighbourhood Development Plan (the Neighbourhood Plan) was made on 27 June 2018. Policy HO1 of the Neighbourhood Plan seeks to limit the impact of dwellings used for holiday accommodation on the local housing market by only supporting new open market housing, other than replacement dwellings, where there is a restriction to ensure that the housing is occupied as a Principal Residence.
5. The planning permission that gives rise to this appeal was submitted in November 2018. The Council considered that the change of use of the manager’s accommodation to an unfettered dwelling gave rise to a new open market dwelling, so the disputed condition was necessary to comply with the requirements of Policy HO1. The appellants contend that the planning permission did not create a new open market dwelling, so the requirements of Policy HO1 should not have applied and the disputed condition should not have been imposed.
6. The application giving rise to this appeal sought the removal of the condition. As well as Policy HO1 of the Neighbourhood Plan, the Council’s reason for refusal also cites Policies 1, 2, 2a and 3 of the Cornwall Local Plan Strategic Policies (the Local Plan) and the National Planning Policy Framework (the Framework). The appellant contends that if the appeal proposal is not contrary to Policy HO1, then it is also not contrary to those other parts of the Development Plan or the Framework. The Council has not disputed this point and, from the evidence before me, including the fact that Policy HO1 was the only Policy stated in the reason for the imposition of the condition, I agree.
7. Therefore, I consider the main issue is whether condition 5 is reasonable and necessary, concerning the effect on the balance of the local housing market in the area.

## **Reasons**

8. Policy HO1 of the Neighbourhood Plan does not define “open market housing”. The Council, in determining the applications for change of use of the building and removal of the condition, took the view that the restriction on occupancy, to a person employed in the management of the hotel, meant that the accommodation did not comprise an open market property. The appellants, however, contend that the terms “open market” and “market” housing are commonly applied in opposition to affordable housing in the Neighbourhood Plan, the Local Plan and the Framework. Therefore, they consider that, as the manager’s accommodation was not affordable housing, it was open market housing.
9. In making a judgement when applying Policy HO1 the context and objectives of the policy should be considered. One of the strategic goals of the Neighbourhood Plan is the provision of housing to meet local need. The Housing Policies section of the Neighbourhood Plan contains sub-headings for Open market housing and Affordable housing. Under the latter section it is

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<sup>1</sup> LPA Planning Application number: PA11/03147

stated that *"the priority is to deliver truly affordable housing for local people, preferably without the necessity of building additional open market housing"*. The short supporting text for Policy HO1 refers to affordable housing on exception sites and community support for restrictions on future open market housing. Taking account of this context, I find that the logical definition of "open market housing" for the purposes of Policy HO1 is housing that is not affordable housing.

10. The appellants contend that, using this definition, the appeal proposal would not create a "new open market dwelling", because the manager's accommodation already comprises a C3 dwelling, that is not affordable housing, and this has been the case for 8 years. The Council, however, considers that the implementation of the planning permission would result in an unfettered dwelling that would constitute a new open market dwelling.
11. The original grant of planning permission for the building was for the manager's accommodation including part refurbishments to the hotel. The following condition was imposed:

*1. The residential unit hereby permitted shall not be occupied at any time other than by a person, or persons, (or their dependents), who are wholly or mainly employed in the day-to-day management of Trevalsa Court Hotel and shall not be disposed of separately from the same without the express consent of the Local Planning Authority.*

*REASON: The proposed unit was considered favourable on the basis that it was intended as replacement manager's accommodation for the existing hotel (allowing the existing accommodation to become letting rooms), and the proposed unit is noted to share amenity space and be located in such a manner that any residential occupation independent of the host building would adversely impact on the amenity associated with future occupants of both the host hotel and the unit hereby permitted, in accordance with the aims and intentions of Policy 2 of the Cornwall Structure Plan 2004 and Policy 6 of the Restormel Local Plan 2001.*

12. The condition not only limited the occupation of the accommodation, it also prohibited the disposal of the building separately from the hotel. The reason for the condition recognised that the accommodation would share amenity space with the hotel, and its location was such that residential occupation independent of the hotel would be harmful. The reasons for approval given on the decision notice included that the proposed new unit of manager's accommodation would allow for the conversion of the existing unit into additional letting rooms, and the implementation of the recommended conditions would ensure that the occupation of the new manager's accommodation was appropriately controlled.
13. The result of the permission was therefore to decant the existing manager's accommodation out of the hotel into a new building within the grounds, which shared amenity space with the hotel, and was closely controlled by a condition limiting occupancy and prohibiting separate disposal. In view of the shared facilities, the functional relationship between the buildings, and the close controls imposed by the planning condition, the accommodation would have comprised part of the same planning unit as the hotel, rather than a separate dwelling.

14. The application that gave rise to the disputed condition, reference PA18/04406, did not merely seek to lift the occupancy restriction, it was described as a change of use of the manager's accommodation to an unfettered dwelling. The Officer's Report to the Planning Committee stated that the proposal was acceptable in principle and would add to the housing stock of the village. It went on to say that the social, economic and environmental benefits associated with introducing the proposed new unfettered home separate to the hotel in this location weighed heavily in favour of the application. The Council clearly considered that a new dwelling would be created. As the proposals included a new access, car-parking and an enclosed domestic curtilage to separate it from the hotel grounds, it would result in the creation of a separate residential unit. Consequently, I conclude that the permission does result in a new dwelling. As the dwelling does not constitute affordable housing, it would be a new open market dwelling.
15. The appellants suggest that there is a fallback position whereby the existing manager's accommodation could be rebuilt, making it a replacement dwelling rather than a new open market dwelling. However, such a proposal would require a further planning application, and there is no evidence before me to demonstrate that this is likely to be a viable or realistic proposition. In any event, it is the implementation of the planning permission for the change of use to an unfettered dwelling that would create the new open market house.
16. Policy HO1 of the Neighbourhood Plan only supports new open market housing where there is a restriction to ensure its occupancy as a Principal Residence. In accordance with the development plan, it was therefore necessary to impose the disputed condition. Imposition of the condition also accords with paragraph 54 of the Framework, which encourages local planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
17. Paragraph 55 of the Framework says that planning 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. I have found that the disputed condition was necessary and reasonable. The appellants have not advanced any arguments regarding the other tests. The condition is clearly relevant to planning and the development to be permitted. Its terms are precise, and it includes a mechanism for ensuring that compliance can be monitored and, therefore, enforced if necessary. I therefore conclude that the condition meets the tests for conditions set out in the Framework.
18. Removal of the disputed condition would result in a dwelling that could be occupied as a second home, or holiday home. Census data from 2011 showed that Mevagissey Parish had a relatively high proportion of holiday and second homes within Cornwall at 24.6%. This represents a significant increase since the 2001 Census, when 12.9% of homes in the Parish had no resident household. Annex 8 of the Neighbourhood Plan outlines research and evidence identifying the negative social and economic consequences that can result from high proportions of second homes and holiday accommodation. These include difficulty for local people getting on the housing ladder and empty communities outside the holiday season, with consequent difficulties in sustaining services and facilities.

19. Policy HO1 seeks to ensure that any new open market housing provides economic and social benefits to the village, rather than fuelling the increase in homes in the parish with no resident household. The evidence supporting the Neighbourhood Plan, has been scrutinised by an Independent Examiner. Consequently, Policy HO1 is based on evidence that has been properly tested. I find nothing in the Local Plan or the Framework that suggests that Policy HO1 is inconsistent with this wider policy context. Although the appellants have questioned the applicability of Policy HO1 to their proposals, they have not suggested that there are other material considerations that would suggest that the condition should be removed if I concluded that it had been appropriately imposed.
20. I therefore conclude that the condition is reasonable and necessary to ensure that the proposal contributes to maintaining a balanced the local housing market.

### **Conclusion**

21. The disputed condition was appropriately imposed and meets the relevant tests set out in the Framework. Removal of the condition would be contrary to Policy HO1 of the Neighbourhood Plan. Consequently, I conclude that the appeal should be dismissed.

*Nick Davies*

INSPECTOR