



Appeal Decision

Site visit made on 31 July 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 09 September 2019

Appeal Ref: APP/T3725/W/19/3228136

Lapworth Farm, Spring Lane, Lapworth B94 5NS

- 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 Andrew Bradbury against the decision of Warwick District Council.
- The application Ref W/18/2287 is dated 26 November 2018.
- The application sought planning permission for erection of a replacement dwelling without complying with a condition attached to planning permission Ref W/96/0097 dated 14 March 1996.
- The condition in dispute is No 1 which states that: *The dwelling hereby permitted shall only be occupied by members or relatives of the family occupying the main dwelling house or for staff accommodation ancillary to the main dwelling house.*
- The reason given for the condition is : *There is no separate curtilage for the dwelling and no garaging or parking space attached to it.*

Decision

1. The appeal is dismissed.

Procedural Matters

2. A revised National Planning Policy Framework (the Framework) was published in February 2019. However, as any policies that are material to this decision have not fundamentally changed in the Framework, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.
3. The Council did not make a decision upon the application to remove the condition within the requisite time period and the appellants have chosen to appeal.
4. The Council has subsequently indicated that it would have refused the application as to remove the condition would result in a new dwelling in an isolated countryside location where occupiers would be dependent on private car for travel.

Background and Main Issue

5. The building known as "The Cottage" was granted planning permission¹ in November 1995 to replace a converted dairy damaged by fire with a modern dwelling. The planning permission was granted subject to three conditions including a condition restricting occupation to members or relatives of family occupying the main dwelling house. A further application in 1996 resulted in a new planning permission² with the occupancy condition being widened to allow occupation by staff accommodation ancillary to the main dwelling house as well as occupation for family members and relatives occupying the main dwelling house.
6. The appellants are seeking the removal of the disputed condition on the basis that they have no need for use of the Cottage for family members or as staff accommodation and wish to rent it out as a dwelling.
7. The reason given for the imposition of the condition was that there was no separate curtilage for the dwelling and no garaging or parking space. The removal of the condition would create a new dwelling in the countryside which is not for staff accommodation ancillary to the main dwelling or to be occupied by family members or relatives to the main dwelling house.
8. The main issue is therefore whether the removal of the condition is appropriate having regard to local and national policy having regard to the location of the appeal dwelling.

Reasons

9. The appeal dwelling forms part of a cluster of buildings that originally formed part of Lapworth Farm which is located on Spring Lane, a narrow rural lane edged with a grass verge, mature trees and hedgerows. There is sporadic development along Spring Lane. The appeal site is in a countryside location. The main farm house remains but there is no agricultural use. The other buildings include a two storey barn which is next to the Cottage which is currently in the course of conversion to two dwellings following the grant of planning permission on appeal³.
10. Policy H1 of the Warwick District Plan 2011-2029 Adopted September 2017 (the District Plan) refers to providing new housing in locations which enables sustainable lifestyles and sets out in Policy H1 e) that one of five subsections would need to be met to allow new housing in the open countryside if the proposal does not fit within any of the criteria within H1 a) to d). Criteria iv) refers to the re-use of redundant or disused buildings in accordance with Policy BE4 and lead to the enhancement of the immediate setting. The wording is very similar to Paragraph 79(c) of the Framework that is relied upon by the appellants.
11. Paragraph 79 of the Framework similarly seeks to avoid development of isolated new homes in the countryside unless the development falls within a list of exceptions. I do consider Paragraph 79 of the Framework to be relevant here this even though it refers to new homes. The appeal dwelling was granted

¹ W/95/1055

² W/96/0097

³ APP/T3725/W/16/3147884

- planning permission with a restriction on occupancy and to remove that restriction would have the effect of allowing a new home without restriction.
12. The appellants initially sought to rely upon a number of the exceptions referred to in Paragraph 79 rather than specifically advancing an argument that the dwelling is not in an isolated location. However, the appellants in their final comments do provide detailed information with regard to location. The Braintree judgement⁴ confirmed that whether or not a dwelling is isolated will be matter of planning judgement for the decision maker having regard to the particular circumstances of the case. Whilst, the appellant refers to the Cottage as being part of a cluster of dwellings that in itself does not mean that it is not isolated and does not address the likely reliance upon the private car in view of its location in the countryside.
 13. Whilst there is a hotel and bus stops on Stratford Road which runs parallel to part of Spring Lane, Stratford Road is not likely to be accessible by foot via the public right of way across from Langmoor Farm at certain times of the year. At the time of my site visit, it was difficult to see the sign or access the path. The previous Inspector also commented upon the state of the public right of way which was obstructed by vegetation and undergrowth. There is no pavement to Spring Lane.
 14. I consider that the dwelling would not make the fullest possible use of public transport, walking and cycling and future occupants would be likely use private car to make the most of their journeys for local services and facilities. The location including the narrowness of the lane is not likely to encourage walking or cycling. Paragraph 78 of the Framework refers to rural housing being located where it will enhance or maintain the vitality of rural communities and I have limited evidence as to how the removal of the condition would achieve that particularly with a modest 3 bedroom cottage. I do consider that the location does appear to be remote and isolated.
 15. The appellants indicate that arguments submitted with regard to the location not being remote did not figure in that respect in the previous Inspector's decision. However, at paragraph 11 of that decision the Inspector states "Although the appellant argues that the site is not isolated, I disagree" .
 16. The appellants then seek to rely upon re-use of a redundant or dis-used building where there is enhancement to its immediate setting under Paragraph 79(c) and subdivision of an existing dwelling under Paragraph 79(d).
 17. The Cottage has not been occupied since last year but is not in my view necessarily redundant or dis-used. Whilst the appellants currently have no need to accommodate family members or staff, circumstances can change. Even if the Cottage was considered to be redundant or dis-used in order to fall within the appropriate exception, there would need to be an enhancement to the immediate setting.
 18. The appellants rely upon an enhancement of the setting being achieved by creating a curtilage and a garage. However, whilst a proposed layout is provided, those matters are not part of this application. I do not therefore

⁴ Braintree District Council V SSCLG 2018 EWCA Civ 610

consider that the proposal would constitute enhancement of the immediate setting on the limited information before me.

19. The appellant also refers to the exception of a subdivision of an existing residential dwelling. However, although the Cottage is linked to the main house by virtue of the condition, the two dwellings are physically separate from each other in different parts of the wider grounds. The removal of the condition relating to occupancy would not create a subdivision of an existing residential dwelling.
20. I note that the Framework emphasises the need to significantly boost the supply of homes. However, the Framework deals specifically with rural housing and Paragraph 79 in particular sets out criteria which rural housing needs to fall within to be acceptable in a rural location. I have found that none of the criteria that the appellants seek to rely upon apply in this instance.
21. To allow the removal of the condition would therefore conflict with Policy H1 of the District Plan which relates to the direction of housing as the removal would not fall within the exceptions set out in that policy. The removal would also not comply with Paragraph 79 of the Framework.

Other matters

22. The Cottage lies within the West Midlands Green Belt. However, Paragraph 146 of the Framework allows for the re-use of buildings within the Green Belt providing that buildings are of permanent and substantial construction. As the Cottage already exists, the parties are of the view that the removal of the occupancy condition would not impact upon openness or conflict with the purpose of including land in Green Belt. I see no reason to disagree with that view when the only issue before me in this appeal is removal of a condition rather than any new structures.
23. The appellants refer to agricultural or holiday let conditions normally being allowed to be deleted but do not provide any further information. However, each case will depend upon its own particular merits and circumstances and equally there will be circumstances where it is considered appropriate for conditions to remain.
24. The appellants refer to the likelihood of demolition in the event of a refusal. The cost of refurbishment is estimated to be £30-50K and unviable with the occupancy condition although limited information is provided of cost. The appellant does however confirm that externally it remains a solid building and it was last occupied by a family as recently as 2018. The decision as to whether to renovate or demolish is a matter for the appellants.

Conclusion

25. For the reasons given, I have found that the removal of the occupancy condition would not be appropriate having regard to the location of the appeal dwelling. The application to remove the condition is therefore refused and the appeal is therefore dismissed.

E Griffin

INSPECTOR