



Appeal Decision

Site visit made on 20 August 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2019

Appeal Ref: APP/Q3305/W/19/3229927

Wellesley Park, Wellesley Lane, Dulcote, Wells BA5 3QB

- 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 Wellesley Park Owners Group against the decision of Mendip District Council.
 - The application Ref 2018/2402/VRC, dated 26 September 2018, was refused by notice dated 28 February 2019.
 - The application sought planning permission for re-use of structure of existing redundant poultry building to 3 tourism accommodation units in a managed environment without complying with a condition attached to planning permission Ref 2011/3057, dated 13 August 2012.
 - The condition in dispute is No 3 which states that: The accommodation units hereby approved shall not be occupied other than by tourists (see definition in Note 2 below) which is not their sole or main place of residence in accordance with written records of occupiers, addresses of their sole or main place of residence and purpose of occupancy that shall be made available for inspection at all reasonable times to the Local Planning Authority.
 - The reason given for the condition is: The permanent residential use of the development would be contrary to Saved Policy S1 of the Mendip District Local Plan (adopted 2002) and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted under Ref 2011/3057 which allowed for three tourism accommodation units to be provided on the appeal site. Condition 3 to that permission limits occupation to tourists only and prevents occupation of the three units as a sole or main place of residence. The appellant is seeking the removal of the condition so that the units could be occupied on a permanent residential basis.
3. The reason given for the condition was that the permanent residential use of the units would be contrary to the development plan and the National Planning Policy Framework (the Framework). Accordingly, the main issue is whether the condition is necessary and reasonable having regard to development plan policies and the Framework, with particular regard to the location of the site.

Reasons

4. Situated within a complex of buildings known as Wellesley Park, the appeal site contains one building split into three units of accommodation. Surrounded by fields and with some scattered properties in the surrounding area, the site is located in a

countryside setting. It is accessed via a narrow single-track road and there are some unmade public footpaths in the surrounding area.

5. The three units the subject of the appeal proposal provide residential accommodation. I observed on my site visit that they appear to contain all the internal facilities necessary to allow for private domestic existence, and it has been put to me that they have been sold on the open market. Be that as it may, the permission Ref 2011/3057 describes the units as tourism accommodation and condition 3 clearly limits their use to tourists and prevents occupation of the units as a sole or main place of residence. Accordingly, the use is not unfettered and the permitted use of the units cannot reasonably be described as open market housing.
6. Core Policy (CP) 1 of the Mendip District Local Plan 2006-2029 Part 1: Strategy & Policies (MDLP) sets out the Council's spatial strategy. Amongst other aspects, it indicates that the majority of development will be directed towards the five principal settlements in Mendip, that development tailored to meet local needs will be provided for in primary and secondary villages, that development may be permitted in other villages and hamlets subject to the provisions of CP4, and that development in the open countryside will be strictly controlled but may be exceptionally permitted in line with CP4. CP2 sets out that the delivery of housing will be secured from, amongst other aspects, conversions and redevelopments within development limits, identified strategic sites and other land allocated through the Site Allocations process. CP4 indicates that rural communities will be sustained by, amongst other aspects, the provision of occupational dwellings and rural affordable housing where there is a need, and through supporting the development of the rural economy and viable schemes which extend the range of community infrastructure.
7. Removing the condition would effectively allow the units to be used as open market housing in the countryside. Consequently, CP1, CP2 and CP4 all contain matters relevant to the acceptability of the appeal proposal. However, the evidence before me indicates that the site is not within the settlement limits, strategic sites or land allocations set out in the above policies. It is not suggested that the proposed development would provide affordable housing that would be secured for the benefit of the community in perpetuity, be occupational dwellings supporting rural-based enterprises, or extend the range of community infrastructure.
8. CP1 is clear that proposed development outside the development limits will be strictly controlled and will only be permitted where it benefits economic activity or extends the range of facilities available to local communities. It has been put to me that tourists bring their own food, drink and entertainment, and that the units are unoccupied for the majority of the time and therefore provide no economic benefit to the area during these periods. Accordingly, it is asserted that removing condition 3 would allow the units to be occupied on a permanent basis and this would increase demand for local services and facilities.
9. Be that as it may, the limited scale of the development indicates that the economic benefits arising from allowing an unrestricted residential use of the units would not be significant. I also have little substantive evidence that the removal of the condition would inevitably result in the units being occupied to a greater extent than the current situation or involve greater demand for local trades, services and facilities. Removing the condition would not, therefore, necessarily benefit economic activity to a greater extent than the current situation. Furthermore, it seems to me that CP4 sets out the overall approach to be taken in rural areas and the evidence before me indicates that the development would not lead to development of the rural economy in line with part 4 of CP4. Accordingly, I find that removal of the condition would conflict with MDLP policies CP1, CP2 and CP4.

These policies appear to be broadly consistent with the Framework in so far as they relate to delivering a sufficient supply of homes and supporting a prosperous rural economy.

10. Due to the proximity of nearby buildings in the Wellesley Park complex, the site cannot be described as isolated¹. However, it is located some distance away from the nearest services and facilities. Although it would be possible to walk from the site to Wells, the most direct route would entail walking along Wellesley Lane – which I observed on my site visit is narrow, unlit and contains no separate footway – and an unmade public footpath. Alternative walking routes to Wells and to Dulcote, with the allocated employment site and busses which serve Wells and Bath, would involve similar distances and conditions, including walking along roads and/or unmade footpaths. Although there is a cycle route in the vicinity of the site and part of it is traffic-free, cycling to Wells would also involve some cycling on narrow, unlit roads with no separate cycleway. Walking and cycling to local services and facilities would therefore not be particularly safe or suitable. Accordingly, the site's situation is not conducive to accessing services and facilities except predominantly by private car.
11. I acknowledge that this may be the case for rural areas in general, that Wells is only a short drive away, and that the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. However, the Framework also sets out that the planning system should actively manage patterns of growth in support of its objectives of promoting sustainable transport and that it should be ensured that safe and suitable access to the site can be achieved for all users.
12. In this case, walking and cycling to facilities, services and employment sites would not be particularly safe or suitable. Consequently, permanent occupiers of the units would be likely to be highly reliant on the private car. This weighs against the proposal and indicates that it would be inconsistent with the Framework. Although the Council's Decision Notice does not allege a conflict with MDLP Policy DP9, my attention has been drawn to it by both parties. Amongst other aspects, I note that it sets out that, where appropriate, development proposals must demonstrate how they will improve or maximise use of sustainable forms of transport (particularly by means other than the private car) and will be supported where they make safe and satisfactory provision for access by all means of transport. The reference to Travel Plans in the supporting text to the policy relates to the management of transport impacts and encouragement of sustainable travel modes and does not indicate that the above aspects are not applicable to the appeal proposal. For the above reasons, I therefore also find that the development would not comply with MDLP Policy DP9.
13. It has been put to me that maintaining the occupancy condition on the appeal site would be inequitable due to the material change of circumstances at Wellesley Park, with the majority of units being second homes and the complex effectively becoming a private residential development with limited holiday accommodation. It is asserted that this is not what the Council originally anticipated when allowing conversion of what was a farmhouse and barns. By removing the tourism occupancy restriction on other units in the complex, the Council has also now allowed permanent residential use of those units.

¹ The Framework does not define the word 'isolated', but in *Braintree District Council v SSCLG & Ors* [2017] EWHC 2743 (Admin), the judge found 'isolated' should be given its ordinary objective meaning of 'far away from other places, buildings or people; remote'. That judgement was subsequently upheld at the Court of Appeal, *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610.

14. Be that as it may, I do not have the full details as to how this came about. I am therefore unable to draw a direct comparison between those matters and the appeal proposal. However, the evidence before me indicates that the three units the subject of this appeal were granted separate planning permission from the other units. The original tourism use of those other units also involved conversion of existing buildings, whereas the evidence before me indicates that the three units the subject of this appeal proposal involved new build, despite the description of permission 2011/3057 referring to the re-use of the previous poultry building. It seems to me that they are therefore not directly comparable. Accordingly, I have determined the appeal proposal on its own merits and find that the above matters do not justify development that conflicts with the development plan.
15. Evidence regarding aspects such as marketing, demand, finances, viability and the sale of the units under the current occupancy restriction has been provided in support of removing the condition. It has also been put to me that the Council removed a tourist occupancy restriction on a new-build holiday unit elsewhere in the District in 2017 without requiring business and marketing information. I recognise that two of the units are in use as second homes and I acknowledge the issues regarding the sale of the units, the decreasing demand for holiday use of the other unit and the associated costs involved in letting it as tourist accommodation. Be that as it may, I have little evidence that there is a policy requirement applicable to this appeal proposal which allows the change of holiday accommodation to open market housing in the countryside on the basis of viability and sales-related issues. The Council's guidance on Marketing and Business Evidence (2017) is also not directly applicable. However, I have determined the appeal on its own merits and in this case the submitted details regarding these matters do not justify development, through removal of the condition, that would be contrary to the development plan.
16. I recognise that the development plan may not have a policy restricting loss of tourism accommodation. Be that as it may, this does not indicate that allowing permanent residential occupation of the units would comply with other development plan policies. Whether there has been a decrease in applications for other tourism development, whether the site's circumstances could be replicated elsewhere and how all units at Wellesley Park are experienced from the surrounding area do not lead me to a different conclusion. In coming to this view, I have also taken account of the fact that the occupancy restriction at the site differs from the Council's standard condition, that the other units are likely to involve private vehicle travel and that the development would contribute to housing supply.
17. For the above reasons, I conclude that the condition serves a useful planning purpose and is necessary and reasonable having regard to development plan policies and the Framework, with particular regard to the location of the site.

Conclusion

18. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR