
Appeal Decision

Site visit made on 17 September 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal Ref: APP/X1118/W/19/3232497

Score Valley Cottage, off A361, Ilfracombe EX34 8NA

- 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 Christopher Copner against the decision of North Devon District Council.
 - The application Ref 66410, dated 8 March 2019, was refused by notice dated 31 May 2019.
 - The application sought planning permission for conversion of disused stable to form 1 unit of holiday accommodation without complying with a condition attached to planning permission Ref 41882, dated 26 July 2006.
 - The condition in dispute is No 4 which states that:
The development hereby permitted shall not be used otherwise than as ancillary accommodation to Score Valley Country House Hotel for the provision of short let holiday accommodation. The property shall not be occupied as a permanent dwelling and shall not be occupied by any one person for a period exceeding 28 days in any calendar year. The owner or operator shall maintain a register of occupants for each calendar year. This shall be made available on request for inspection by any duly authorised officer of the Local Planning Authority.
 - The reason given for the condition is:
The site is in a location within which new permanent residential use would not be acceptable in policy terms and to minimise traffic attracted to the locality which is in a non sustainable location and requires the use of a sub-standard access. However, use for holiday purposes only is considered acceptable.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of disused stable to form 1 unit of holiday accommodation at Score Valley Cottage, off A361, Ilfracombe EX34 8NA in accordance with the application Ref 66410 dated 8 March 2019, without compliance with condition number 4 previously imposed on planning permission Ref 41882 dated 26 July 2006 and subject to the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted in Schedule 2, Part 1, Classes A, B, C, D, E, F, G and H and Schedule 2 Part 2 Class A, shall be carried out other than as expressly authorised by this permission.

Background and Main Issue

2. The appeal building is a stone-built former stable building that is located adjacent to the site of a country house hotel. It lies in the countryside to the south of the built-up area of Ilfracombe. Planning permission was granted in 2006 to convert it to a unit of holiday accommodation with the disputed condition. The effect of allowing the appeal would be to enable the continuous residential occupation of the building by any individual or individuals. Whether or not that occupation was for leisure purposes, it would amount to establishing the lawful use of the building as an unrestricted residential dwelling, because holiday accommodation is a use that falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987.
3. The main issue in this appeal is, therefore, whether the condition restricting the occupancy of the building to holiday accommodation ancillary to the hotel, is necessary and reasonable, having regard to the policies of the development plan, the strength of the rural economy and the accessibility of the site.

Reasons

4. Paragraph 55 of the National Planning Policy Framework (the Framework) advises 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. The appellant claims that the requirement for the building to be occupied ancillary to the hotel can no longer be enforced as the two buildings have been run separately ever since the planning permission was implemented. However, I have not been provided with evidence to demonstrate that this is the case.
5. It is also argued that this element of the condition is not precise or reasonable. However, I find that the requirements are clear, in that they entail the occupation of the building for holiday purposes with a functional or administrative link to the hotel. The evidence before me suggests that it was reasonable to impose the condition, in the light of planning policies and highway evidence that prevailed at the time. The condition is not, therefore, *ultra vires*.
6. Policy DM18 of the North Devon and Torridge Local Plan 2011 – 2031 (adopted 2018) (the Local Plan) addresses the removal of holiday occupancy conditions. Removal will be permitted where the building is capable of permanent occupation and there is compelling evidence to demonstrate that the restriction is no longer justified. There is no dispute between the parties that the building is capable of permanent occupation. The supporting text indicates that appropriately marketing the property for a period of 12 months, prior to the application, would demonstrate there is no demand for the property in the locality.
7. In this instance there has not been a recent marketing exercise. However, I am mindful that the condition requires the accommodation to be occupied ancillary to the hotel. This would limit the marketability of the property, as it would exclude, for example, a prospective purchaser who intended to run it as part of a separate holiday letting portfolio. In these circumstances, a marketing exercise would not have given an accurate picture of the demand for general holiday accommodation in the locality. Nevertheless, the Local Plan Policy does

still require compelling evidence to demonstrate that the condition is no longer justified.

8. The appellant claims that the property proved to be not commercially viable as a holiday unit, quoting the results of 3 years of marketing in 2008 – 2011. It is claimed that the property can only attract an average rent of £400 per week for a maximum of 26 weeks. Taking account of the costs involved in servicing and maintaining the accommodation, there is little or no profit. Furthermore, 276 rentals in Ilfracombe are listed on the Airbnb website, the majority being within the town and close to the coast, which, it is argued, indicates a lack of demand for accommodation outside the town.
9. I have not been provided with details of the marketing that took place, and have no evidence to demonstrate whether, 8 years on, the same rents and costs would apply. Whilst the data may indicate that coastal properties are more likely to attract a listing on the Airbnb website, that does not demonstrate that the appeal property, in an attractive rural area outside the main town, would not be viable. In the absence of full up-to-date evidence, I cannot safely conclude that there is no demand for the property as a unit of holiday accommodation.
10. Nevertheless, the accommodation is not currently being used for holiday purposes and, based on the appellant's evidence, it hasn't been for at least 6 years. Although I have been unable to safely conclude that there is no demand for the property as holiday accommodation, I have not been presented with any evidence to demonstrate that it would be profitable. The owners cannot be compelled to occupy the building in accordance with the planning condition, so dismissing the appeal would not necessarily result in the building being used as holiday accommodation. If the owners were forced to cease the current residential occupation, the building could therefore become disused.
11. The disputed condition arose in the policy context that applied in 2006, but the former stable was a historic building that was not originally constructed for holiday purposes. The presence of the building in this location does not therefore result from its approved use. National and local planning policy has evolved since the original grant of planning permission. Paragraph 79(c) of the Framework indicates that the re-use of disused buildings in the countryside is acceptable, without any preferred hierarchy of uses related to the accessibility of the location. Policies DM27 and ST07 of the Local Plan, similarly, support the conversion of disused rural buildings without any preference for tourism uses over residential, or any reference to the accessibility of the location.
12. Therefore, if the stable was still disused, or if it became disused, its conversion to a dwelling would accord with the aims of the Framework and the Local Plan regarding the conversion of rural buildings. Consequently, the continued restriction on the occupation of the building for holiday purposes only, is not necessary or reasonable having regard to current development plan policy.
13. The occupation of the building for holiday accommodation would have benefits for the rural economy, as tourists would bring trade to businesses and facilities in the area. However, the evidence before me suggests that there is at least some doubt that a holiday use would be reinstated if the appeal were dismissed. Even if a holiday use was re-established, it is likely that the building would be occupied primarily in the summer months, and therefore the economic benefits would be concentrated during the holiday season. Occupants

- of an unrestricted dwelling, however, would support local services and facilities throughout the year.
14. Whilst the economic benefits arising from a permanent dwelling may be different to a holiday use, I have no evidence before me to indicate that, in aggregate terms, they would be any less. Consequently, the condition restricting the occupancy of the building to holiday accommodation ancillary to the hotel, is not necessary or reasonable having regard to the strength of the rural economy.
 15. It is common ground between the parties that permanent occupation of the building, independent of the hotel, will not give rise to additional highway danger. The site does, however, lie outside the settlement limits of Ilfracombe and the sustainability of the location for a permanent dwelling is questioned by the Council. The site lies about 100 metres from the A361 that leads into Ilfracombe. Whilst the road leading from the site to the A361 is quite steep, and has no footways or lighting, it carries little traffic. I found that it provided a short, safe pedestrian route from the site to the bus stop, which lies at the junction with the A361. From here, there are regular bus services between Ilfracombe and Appledore, via Bideford and Barnstaple, where all the services and facilities required by occupants could be obtained.
 16. There is a footpath from the junction with the A361 all the way to the edge of Ilfracombe, albeit that the road needs to be crossed at one point. The edge of the town is about 500 metres from the junction, and the services within the settlement are about 1.5km from the site. The facilities available in the town are therefore within reasonable walking and cycling distance. Whilst the gradient may discourage walking or cycling back to the site, the availability of a bus service provides an alternative. The occupants of a permanent dwelling would therefore have sustainable transport options to access local services.
 17. The occupation of the building for holiday purposes would also generate a need to access services and facilities. These needs may be different to those of permanent residents, but I have no evidence to indicate that an unrestricted residential use would result in a significantly greater level of private vehicular movements, compared with a holiday use. In any event, I have found that sustainable travel options exist. The condition restricting the occupancy of the building to holiday accommodation ancillary to the hotel is not therefore necessary or reasonable, having regard to the accessibility of the site.
 18. I therefore conclude that the disputed condition is not necessary or reasonable in the light of current development plan policies. Furthermore, an unrestricted residential use would not harm the rural economy, and the site is accessible to local services and facilities by sustainable modes of transport. Taken together, these factors provide the compelling evidence required by Policy DM18 of the Local Plan to demonstrate that the restriction is no longer justified. The development without the disputed condition would comply with Policies DM27, ST07 and ST10 of the Local Plan, which support the conversion of rural buildings and the provision of sustainable travel options.

Conditions

19. The Planning Practice Guidance (PPG) says that, to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless

they have already been discharged. As the development has already been completed, it is unnecessary to reimpose conditions 1 and 2 of the original permission, which required commencement within a set timescale and compliance with the approved plans.

20. A condition removing permitted development rights is still necessary in order to preserve the character of the building. I have therefore reimposed condition 3, but in an amended format, having regard to the advice in the PPG and to reflect the updated legislation.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR