The Planning Inspectorate

Appeal Decision

Site visit made on 8 May 2019

by A Thompson BSc BTP MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2019

Appeal Ref: APP/A2280/W/18/3210060
1 Gibraltar Cottages, Ham Lane, Gillingham, Kent, ME7 3JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Sean Farley against the decision of Medway Council.
- The application Ref MC/17/2642, received complete by the Council on 16 October 2017, was approved on 5 June 2018 and planning permission was granted subject to conditions.
- The development permitted is change of use of existing outbuilding to self-contained holiday let.
- The conditions in dispute are Nos 3 and 4 which state that:
  Condition 3: *The accommodation herein permitted shall only be occupied as a holiday let and shall not be occupied for more than 28 consecutive days at any one time. A written log/record detailing the names, addresses and contact details of the guests staying at the holiday let and the dates of their arrival and departure shall be kept at all times whilst the holiday let use hereby permitted, is taking place. The written log/record of the holiday guests at The Premises shall be made available to the Local Planning Authority within 48 hours of a written request being delivered to The Premises*.
  Condition 4: *The occupation of the holiday let as shown on approved drawing numbers 1 of 2 and 2 of 2 shall be limited to the period from 01 February to 30 November in each year.*
- The reasons given for the conditions are:
  Condition 3*: To regulate and control activity levels and to restrict any potential intensification of use, in accordance with Policies BNE2, BNE25, BNE30,BNE32, BNE33 and ED15 of the Medway Local Plan 2003.*
  Condition 4: *The holiday let building is not suitable for permanent residential occupation as a separate planning unit, to regulate and control activity levels and to restrict any potential intensification of use, in accordance with Policies BNE2, BNE25, BNE30,BNE32, BNE33 and ED15 of the Medway Local Plan 2003.*

Decision

1. The appeal is allowed and the planning permission Ref MC/17/2642 for change of use of existing outbuilding to self-contained holiday let at 1 Gibraltar Cottages, Ham Lane, Gillingham, Kent, ME7 3JJ granted on 5 June 2018 by Medway Council, is varied by deleting conditions 3 and 4 and substituting for them the following condition:

   (3) The accommodation herein permitted shall only be occupied as a holiday let and shall not be occupied for more than 28 consecutive days at any one time. A written log/record detailing the name, address and contact details of the individual or one of the guests in each group staying at the holiday let, the number in each group and the dates of their arrival and departure shall be kept whilst the holiday let use hereby permitted, is taking place. The

prescribed information about each separate person or group staying at the premises shall be retained on the register for a period of 10 years from the date of departure of that individual or group. The written log/record of the holiday guests at The Premises shall be made available to the Local Planning Authority within 48 hours of a written request being delivered to The Premises.

Procedural Matters

2. The application form was undated so I have taken information about when the application was submitted from the Council's decision notice and referred to this in the banner heading.

3. The Council's decision notice makes reference to 'Saved' Policies BNE 30 Metropolitan Green Belt (MGB), BNE 32 Kent Downs Area of Outstanding Natural Beauty (AONB) and BNE 33 Special Landscape Area (SLA), of the Medway Local Plan 2003 (the Local Plan) as part of its justification for imposing planning conditions 3 and 4. As the Council have confirmed that the appeal site is not located in an area that is designated as MGB, nor is it within the Kent Downs AONB or the SLA, I have not taken these policies into account in relation to this appeal. On the other hand, I have taken into account 'Saved' Policy BE27 of the Local Plan, as this is directly referred to in 'Saved' Policy BE25 and has also been referred to in the appellant's planning statement as a relevant policy.

4. I conducted a reference back exercise with both the appellant and the Council in relation to the planning condition that I was minded to impose in the event the appeal was allowed and have taken into account the views expressed by both parties on that condition in determining this appeal. In the reference back exercise, I had sought views on a new condition, which amongst other things, proposed that the register of guests should be retained for a period of 48 months from the date of departure of the guests.

5. For reasons I explain below, I have now concluded that the register should be retained for a period of 10 years from the date of departure of the guests. As the Council and the appellant had submitted their appeal statements on the basis that a 10 year retention period should apply, it was not necessary to undertake a further reference back exercise on this point.

Background

6. The appeal concerns the change of use of an outbuilding to the rear of 1 Gibraltar Cottages that has received planning permission for a change of use to holiday accommodation (Ref: MC/17/2642). The Council, in granting consent, imposed conditions 3 and 4 which restrict the holiday occupancy, both in terms of that it shall not be occupied for more than 28 consecutive days at any one time and be limited to the period from 01 February to 30 November in each year.

7. The conditions were applied because the Council were concerned about the intensification of the use, and that it was not suitable for permanent residential accommodation. Condition 3 also concerns the keeping of records, so that the Council is satisfied that the holiday accommodation is being used as such.

8. The appellant considers that the conditions are not reasonable and necessary as the consented use is sufficient to restrict the occupancy and prohibits

lettings during December and January, as well as raising a number of concerns over the record keeping arrangements.

Main Issues

9. The main issues are whether conditions 3 and 4 are reasonable and necessary (a) in order to prevent the permitted holiday accommodation being used as permanent residential accommodation; and (b) with regard to the associated record keeping requirements.

Reasons

Occupancy Controls

10. No 1 Gibraltar Cottage is one of a pair of semi-detached cottages that are located in open countryside to the south of Gillingham. Although there are other pockets of development nearby and the M2 motorway is not far to the south, the cottages are located in a pleasant rural location that appears both isolated and remote from the built up area.

11. Both the appellant and the Council agree that the appeal building is suitable as a holiday let and is not suitable for permanent residential use. I see no reasons to disagree as the site is not well located in relation to facilities that would be needed by permanent residents, and such a residential use would cause harm to the living conditions of the occupiers of the host property.

12. Without controls over the occupancy, the development would conflict with 'Saved' Policy BNE2 of the Local Plan, which seeks to ensure residential amenity is protected and with 'Saved' Policies BNE25, BNE27 and ED15 which set out a restrictive policy approach for development in the countryside to ensure its protection, by encouraging the rural economy and restricting residential development.

13. The description of development that has been granted planning permission refers to the building being converted to a self-contained holiday let. Given the small scale of the property, in this particular case, it is likely that its use as a short term let falls within Use Class C3 – dwelling houses[1]. If the permitted use is within Use Class C3, then planning permission would not be required to use the building for permanent residential accommodation.

14. I consider that there are no other restrictions to the 'consented use' apart from those imposed through the planning conditions. Given these factors, I do not agree that the description of development is sufficient on its own, or in combination with the other parts of the application and the permission (save for the planning conditions), to restrict use of the accommodation as a holiday let.

15. In relation to the period of occupancy, there is no suggestion by the appellant that a maximum limit of 28 days on the duration of each letting is unacceptable, but rather that prohibiting letting the accommodation throughout the entire months of December and January is unreasonable.

16. The evidence that the Council has provided to justify the restriction during December and January concerns whether letting the unit constantly for every week of the year would essentially result in a residential use taking place.

[1] Town and Country Planning Act (Use Classes Order) 1987 (as amended)

However, with a maximum limit of 28 days, this simply would not be the case because this would prevent permanent residential occupation.

17. The Council's arguments in this regard are thus not of a persuasive nature. The use of the appeal property as a holiday let, including in December and January, would help support the rural economy and thus accords in this regard with the thrust of 'Saved' Policies BNE25, BNE27 and ED15 of the Local Plan.

18. I conclude that Condition 3 is reasonable and necessary in this regard to ensure the development accords with the development plan as regards the occupancy controls it applies, in relation to 'Saved Policies' BNE2, BNE25 and ED15 of the Local Plan. However, Condition 4 is not reasonable and necessary as it prohibits lettings during December and January.

Record Keeping Requirements

19. The appellant has raised a number of concerns and objections about the requirement to maintain a written log/record of guests, as set out in condition 3, and also a concern about the need, subsequently confirmed by the Council, for 10 years of records to be retained.

20. Although the appellant has stated that other methods could be found for checking if a breach of the planning permission is taking place, it is not stated what those might be. The appeal property is screened from the surrounding area and cannot be viewed from the main road because it is located towards the rear of the host property's garden, behind a substantial fence and gate. Such a breach, if it was to occur, may not therefore be apparent.

21. In these circumstances, and in the absence of any alternative method, the requirement to maintain a written log/record with information about those using the property and timing of their stay is necessary and reasonable.

22. I note the evidence that the initial booking process is handled by a third party and that the information required could not be obtained directly from their database. Thus, information about the guests would have to be collected separately by the owners of the appeal building. However, given that only the name, address, contact phone number of a member of the party and the date of arrival and departure would be required, I do not consider this would be unduly onerous or impractical.

23. While I accept that some guests might not agree to provide this information, I consider that it would be unlikely that most would object, given its limited nature and extent, and if it is made clear why the information is required and how it might be used. Similarly, I find it unlikely that most of the guests who had agreed to provide this information, would be unable or unwilling to confirm they had stayed at the property, in the unlikely event of the Council contacting them within 10 years of their visit.

24. However, I agree with the appellant that it would be excessive and unnecessarily burdensome to require full contact details for every guest to be recorded. Provided there is sufficient information about one member of each group staying and a record of the number of guests in each group where there is more than one occupant, that should be sufficient to be able to demonstrate compliance with the condition.

25. Adding in the timescale for retention of the information in the wording of the planning condition would make the process more transparent and the condition more precise.

26. My initial view was that maintaining a record of the last 48 months of guests would be sufficient. But, for the reasons set out in Paragraph 13 above I have concluded that use of the appeal building as a short term let falls within Use Class C3 – dwelling houses. Consequently a 4 year time limit for enforcing against a change of use of any building to use as a single dwelling house[2] would not apply.

27. In which case, it would be necessary to provide information about the previous 10 years of use in order to achieve immunity from a breach of condition notice[3]. Thus, imposing a 10 year timescale for retention of the records is necessary and reasonable in this case having regard to planning law and the relevant policies of the development plan.

28. The appellant also argues that the record keeping requirements of condition 3 are in conflict with, and puts them in breach of, the General Data Protection Regulation (GDPR), which was brought into law by the Data Protection Act (2018). It would be necessary, though, to obtain such information, in order to reach an informed view on whether or not there has been a breach of the planning permission. This includes matters in relation to the length of time that the information is held. Otherwise, the planning system could not effectively operate in the public interest.

29. I see no evidence to suggest that the appellant could not set out very clearly in the privacy statement for guests why the information is being requested, how it would be used and stored or otherwise meet the requirements of the GDPR. Assuming that guests have been clearly informed about the information they are requested to provide, then I do not consider that they would be alarmed or upset in the unlikely event of the Council subsequently contacting them to check that they had stayed at the accommodation.

30. In the event that the information was requested by the Council, it would then be for them to decide whether it was necessary and proportionate to publish the information, having regard to the requirements of the GDPR. In the event that the business is sold, it would also be for the appellant to consider up to date advice, at that time. Hence, this is a not matter which affects my views on the requirements of this condition.

31. I conclude that condition 3 is reasonable and necessary concerning the maintenance of a log/record to be able to demonstrate that the property is being used as a holiday let, in accordance with the provisions of 'Saved' Policies BNE2, BNE25 and ED15 of the Local Plan, but the amount of information that is required to be collected about the guests using the property is excessive and the current wording of the condition lacks precision about the period of time the log/record should be retained. Both of these defects could be addressed through revisions to the wording of the condition.

32. Therefore, I propose to vary the permission by deleting Condition 3 and impose a modified Condition 3, which addresses the defects I have identified.

[2] See Section 171B(2) Town & Country Planning Act 1990 (as amended)
[3] Section 187A Town & Country Planning Act 1990 (as amended)

Other matters

33. The effect of my decision is not to issue a new planning permission. Matters in relation to the unilateral undertaking to provide payment of a tariff to help fund strategic measures across the Thames, Medway and Swale Estuary, concerning the protection of North Kent Marshes Special Protection Area/Ramsar Sites, were for the consideration of the Council at the time it made its decision. The same applies as regards other issues which the Council considered in its decision, apart from Conditions 3 and 4

Conditions

34. I have included a substituted Condition 3 in relation to the occupancy controls and record keeping requirements. This is in order that the development is used for holiday accommodation purposes and provides an appropriate recording mechanism, in accordance with 'Saved' Policies BNE2, BNE25 and ED15 of the Local Plan. The remaining conditions in the Council's decision notice remain in force, and hence are not repeated.

Conclusion

35. I conclude that with regard to occupancy controls, condition 3 is reasonable and necessary, although not condition 4. In relation to record keeping requirements, condition 3 is not precise and reasonable in its current form. Accordingly, planning permission MC/17/2642 is varied by deleting conditions 3 and 4 and replacing them with a substituted condition 3. On this basis, the condition would accord with the tests set out in paragraph 55 of the National Planning Policy Framework and the related advice in the Planning Practice Guidance concerning the application of these tests.

36. For the reasons set out above, and having regard to all other matters that have been raised, I conclude that the appeal should be allowed, subject to the imposition of the substituted condition.

Anthony Thompson

INSPECTOR