



Appeal Decision

Site visit made on 1 October 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2019

Appeal Ref: APP/U1430/W/19/3233706

Abertawe Cottage, Silverhill, Hurst Green TN19 7PU

- 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 Waddington against the decision of Rother District Council.
- The application Ref RR/2019/982/P, dated 14 April 2019, was refused by notice dated 20 June 2019.
- The application sought planning permission for *change of use from ancillary residential accommodation to holiday let* without complying with conditions attached to planning permission Ref RR/2006/2257/P dated 11 April 2007.
- The conditions in dispute are Nos 2, 3 and 4 which state that:
 - (2) *The building shall be occupied for holiday purposes only.*
 - (3) *The building shall not be occupied as a person's sole, or main place of residence.*
 - (4) *The proposed holiday unit shall not be occupied for more than 56 days in total in any calendar year by any one person.*
- The reasons given for the conditions are:
 - (2) *To ensure that the premises do not become part of the housing stock and are only used by visitors for holiday accommodation purposes and to accord with Policies S1, S10 and LT9 of the East Sussex and Brighton & Hove Structure Plan 1991-2011 and Policies GD1 and EM9 of the Rother District Local Plan.*
 - (3) *To ensure that the premises do not become part of the housing stock and are only used by visitors for holiday accommodation purposes and to accord with Policies S1, S10 and LT9 of the East Sussex and Brighton & Hove Structure Plan 1991-2011 and Policies GD1 and EM9 of the Rother District Local Plan.*
 - (4) *To strengthen tourism and benefit the rural economy of the area by ensuring that there is a wide range of properties available to encourage visitors to come there on holiday and to accord with Policies S1, S10 and LT9 of the East Sussex and Brighton & Hove Structure Plan 1991-2011 and Policies GD1 and EM9 of the Rother District Local Plan.*

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Rother Development and Site Allocations Local Plan (DSALP) Proposed Submission October 2018 is subject to Examination. Main Modifications and Additional Modifications have been produced. The views of both parties have been sought on the implications for this case. The plan is at a relatively advanced stage of preparation but I am aware that there are objections to the

relevant policies, and I have insufficient evidence to form a view as to whether the objections are resolved. I therefore give those policies limited weight.

Background and Main Issue

3. Planning permission was granted to convert the building to a holiday let. Conditions were imposed to ensure that the premises are not occupied as permanent residential accommodation. The appeal seeks to remove the conditions that restrict its occupation, with the effect that it could be occupied as a permanent dwelling, as opposed to holiday accommodation.
4. The main issue is the effect of the removal of the conditions on the supply of tourist accommodation in the area.

Reasons

5. Rother Local Plan Core Strategy 2014 (CS) Policy EC6 (iv) states that proposals relating to tourism facilities will be encouraged subject to a number of considerations. One such consideration is that it does not involve the loss of tourism accommodation, unless there is no prospect of its continued use. The supporting text to Policy EC6 identifies that there are particular opportunities for self-catering and serviced accommodation across the District. CS Policy EC3 (i) seeks to retain existing employment uses, including those in use for tourism, unless there is no reasonable prospect of the use continuing. Where such uses are demonstrated not to be viable, it sets out in (iv) where an alternative mixed use is not viable, alternative community uses, affordable housing, and then market housing should be prioritised, subject to local needs.
6. Emerging Policies DCO1 and DEC3 of the DSALP broadly follow this approach, and Policy DCO1 sets out requirements for evidence of a comprehensive and sustained marketing campaign, which clearly indicates lack of demand for the existing use, and evidence that the unit is not or is not capable of being financially viable. Paragraph 83 of the National Planning Policy Framework (the Framework) is supportive of sustainable rural tourism.
7. The appeal proposal relates to a small building located very close to the footway of the A21, a busy trunk road. It has been laid out as a two bedroom dwelling over two floors, and is built of stone with a pitched tiled roof. It has access from the A21 to a parking space, with a large rear garden. It is within the hamlet of Silver Hill, surrounded by the attractive countryside of the High Weald Area of Outstanding Natural Beauty (AONB). The Council's evidence indicates that there is market potential for high quality self-catering holiday cottages in the area, with good opportunities in the Battle and Bexhill-on-Sea areas, and the site falls within such an area.
8. Since the use was permitted in 2007 it has not been used for holiday accommodation. The appellant states that no holiday letting agencies would take the property on to let, despite its refurbishment since a previous appeal¹ was dismissed to change the use of the property from a holiday let to a dwelling. Letters have been provided from a holiday cottage letting agency stating that the building is not suitable for use as a holiday let, as it is too close to the A21, on a bend in the road, and is affected by traffic noise. Be that as it may, without evidence that the property has been marketed to tourists as

¹ APP/U1430/W/14/3000428

holiday accommodation, I cannot conclude that it has no prospect of being used as such.

9. I recognise that the Council has previously approved an application for the unrestricted residential use of Silverhill Oast², a short distance from the appeal site and set further away from the A21, partly due to the proximity of the A21 and associated traffic noise. However, in that case the application was accompanied by evidence of very poor visibility from the access, and conclusive evidence that the business was no longer viable, as it had made little profit in the years it had operated. This is not comparable to the appeal site, where inadequate visibility has not been raised as a concern. Moreover, as the property has never operated as tourist accommodation, there is no evidence regarding its viability. I therefore do not find that the supporting evidence submitted with Silverhill Oast is applicable to this site, nor that it demonstrates that holiday lets in the area cannot be viable.
10. I do not know the circumstances that led to the closure of the adjacent Public House, but due to the differing nature of the two uses it does not indicate that a holiday let cannot be viable in the area. While I appreciate that the proposal would bring the building into use, I am not satisfied that the building has no prospect of being used as a holiday let if there were a willing owner.
11. Even if I were to accept that there was no prospect of the building being used for holiday accommodation, there is no evidence that the property has been marketed for its lawful use, nor that alternative community uses of the building or its use for affordable housing have been considered, as required by CS Policy EC3.
12. For the reasons set out above, I therefore find that the removal of the conditions would be harmful to the supply of tourist accommodation in the area. Consequently, the proposal would be in conflict with CS Policies EC3 and EC6, insofar as they seek to retain tourism accommodation and employment uses. In this regard these policies are consistent with the tourism and economic development aims of the Framework in particular paragraph 83 which states decision should enable sustainable rural tourism.
13. For the same reasons the proposal would also be in conflict with emerging Policies DEC3 and DCO1 of the DSALP, however, I attach only limited weight to this conflict.

Planning Balance and Conclusion

14. The Council is not currently able to demonstrate a five year housing land supply, and the appellant refers to the need for 75 new homes in Hurst Green, identified by the Hurst Green Neighbourhood Plan Steering Group. Paragraph 11 of the Framework indicates that the policies which are most important for determining the application are out-of-date, where a five year housing land supply cannot be demonstrated. Paragraph 11d) (ii) states that for decision taking, this means that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

² RR/2018/3165/P

15. CS Policies EC3 and EC6 seek to resist the loss of tourist accommodation, which could affect the delivery of housing. However, they are broadly consistent with the Framework. Thus, I attach moderate weight to the conflict with them. The proposal would be detrimental to sustainable rural tourism. However, it would provide a new dwelling. Nevertheless, even if I accept the greatest shortfall suggested, the contribution to the housing supply in the area would be limited.
16. Therefore, the adverse impacts of the proposal, would significantly and demonstrably outweigh the benefits. Applying the 'tilted balance' does not therefore point towards the grant of planning permission and there are no other material considerations which indicate the proposal should be determined other than in accordance with the development plan. Thus, for the reasons set out above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR