



Appeal Decision

Site visit made on 6 November 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2019

Appeal Ref: APP/Q3305/W/19/3232796

Orchard Cottage, Mackley Lane, Norton St Phillip, Frome BA2 7NL

- 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 Caroline Balch against the decision of Mendip District Council.
 - The application Ref 2018/2812/VRC, dated 13 November 2018, was refused by notice dated 9 January 2019.
 - The application sought planning permission for replacement of timber chalet with permanent building for use as a holiday home (revised application to 109395/001) without complying with conditions attached to planning permission Ref 109395/002, dated 24 June 1993.
 - The conditions in dispute are Nos 5 and 6 which state that: *The accommodation hereby permitted shall be used for holiday purposes only and shall not be used as the principal or sole residence of any persons or persons [sic]; and Between 1 April and 31 October in any one year the accommodation shall not be in the same occupation for a continuous period exceeding 31 days, with no return within the following 31 days by the previous owner.*
 - The reason given for both conditions is: *Permission is granted for this replacement building in order to assist farm diversification in an area where permanent residential accommodation would not normally be permitted as it would be contrary to Structure and Local Plan Policies.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Based on the evidence before me, planning permission was originally granted so that the holiday accommodation would assist in farm diversification. Accordingly, the main issue is whether the occupancy conditions remain necessary and reasonable, having regard to the provisions of the development plan and other material considerations.

Reasons

3. Core Policy 4 of the Mendip District Local Plan Part 1: Strategy and Policies 2006 – 2029 (2014) (LP) identifies how rural settlements will be sustained and seeks to support proposals which enable the diversification of business in a manner and of a scale which is appropriate to the location and constraints upon it. The policy also makes direct reference to Core Policies 1 and 2 of the LP which identify Norton St Philip as a primary village and state that such villages are best placed to accommodate most new rural development.

4. The appeal site is located amongst a small cluster of farm buildings. However, it is not located within the development boundary of Norton St Philip. The village itself is separated from the appeal site by an expanse of open countryside. It is reached from the appeal site via a narrow country lane without footpaths and there is a distinct absence of development between the cluster of farm buildings and the village. Accordingly, both in terms of physical distance and how the location of the site is experienced on the ground, the appeal site is significantly removed from the Primary Village where the LP seeks to guide new development.
5. Despite this apparent conflict with the LP, my attention has been drawn to an appeal decision¹ on a site in West Berkshire which considers the distinction between permanent dwellings and holiday accommodation. In allowing that appeal, and with specific reference to case law, the Inspector concluded that due to the similarities of the building in question with a permanent dwelling, the proposal would not result in the creation of a new dwelling. Accordingly, he went on to assess whether the condition continued to serve a useful planning purpose, rather than simply assess the proposal as a change of use to a permanent dwelling.
6. I do not have the full details of this decision before me. However, based on the evidence that I do have, the description of that appeal site has many similarities with this proposal. In this case, the existing building is a single storey, detached structure that has all the hallmarks of a detached dwelling. Whilst it was purpose-built as holiday accommodation, internally, it provides a living room, kitchen, bedroom and bathroom facilities. In addition, the contested conditions allow for long-term occupation between 1 November and 31 March.
7. I find the approach set out in the West Berkshire decision both fair, and compelling, and based on the evidence before me, I have no reason to assess the matter in a different way. I am therefore satisfied that the removal of the conditions would not result in the creation of a new dwelling. However, as with that decision, the restriction of the use lies within the conditions. Therefore, the key assessment in this appeal is whether the conditions continue to fulfil a useful planning function, and as a consequence, remain necessary and reasonable.
8. The reason given for the occupancy conditions was to assist farm diversification in an area where permanent residential accommodation would not normally be permitted as it would be contrary to Structure and Local Plan Policies. As identified above, the location of the appeal site is removed from the primary village. Therefore, due to this location and its associated constraints, the conditions remain entirely consistent with the requirements of Core Policy 4 of the LP. Accordingly, I give this policy a considerable level of weight in my assessment of the appeal.
9. Evidence has been provided to suggest that there is limited demand for the site in its current use. However, the email from a letting agent does not include any substantive evidence to support its assertions. I therefore attach very little weight to these claims. In addition, I have no evidence before me in relation to whether or not any income derived from the holiday accommodation affected

¹ APP/W0340/W/18/3195763

the associated farm. As a consequence, there is little by way of compelling evidence to weigh against the requirements of Core Policy 4 of the LP.

10. I have also been provided with information in relation to how the site was used historically. This includes reference to a previous wooden structure that was used as a private dwelling. However, the evidence does not prove or establish a historical or lawful use. Therefore, I do not find it compelling and accordingly, I afford it very limited weight in my assessment of the appeal.
11. In contrast to the suggested demand for holiday accommodation, it is the appellant's case that there is demand for the appeal site for permanent residential use by way of private renting. Based on the evidence before me, the appeal site is already occupied in this manner and I have no reason to dispute the likely demand. However, to assess whether or not the conditions remain necessary and reasonable, in my view the starting point should be to address the reasons why the conditions were originally imposed.
12. As identified above, the location of the appeal site is removed from the primary village. Due to this location, the development boundary and the provisions of the LP provide a plan-led justification to restrict development. It is this location which justified the use of the restrictive conditions and for the reasons identified above, I am satisfied that the location continues to justify such a restriction. Accordingly, I am satisfied that the conditions continue to fulfil a useful planning function.
13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In light of my findings identified above, I am satisfied that material considerations do not indicate that a decision should be made contrary to the development plan. Consequently, I conclude that the conditions remain necessary and reasonable. Accordingly, the removal of the conditions would fail to comply with Core Policies, 1, 2 and 4 of the LP which, taken together, set out the plan-led approach to new development within the district.

Conclusion

14. I am satisfied that the conditions in their current form continue to fulfil a suitable planning purpose. Accordingly, they should not be removed and as a consequence, the appeal should be dismissed.

Martin Chandler

INSPECTOR