



Appeal Decision

Site visit made on 23 September 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal Ref: APP/D0121/C/18/3214410

Vosper Lodge, Red Hill, Redhill, Bristol BS40 5TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Rachael Furnival against an enforcement notice issued by North Somerset Council.
- The enforcement notice was issued on 17 September 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of the land from a mixed use of residential and agriculture to a mixed use of residential, agriculture, bed and breakfast and the parking of vehicles unconnected with the residential or agricultural use of the land.
- The requirements of the notice are 1. Cease the use of the land for bed and breakfast and the parking of vehicles unconnected with the residential or agricultural use of the land 2. Remove all vehicles unconnected with the residential or agricultural use of the land.
- The period for compliance with the requirements is Three months from when this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal was brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary Matters

1. The lawful uses of the land which is the subject of the enforcement notice are residential and agriculture. The site essentially comprises a dwellinghouse and its curtilage, together with a field.
2. The alleged bed and breakfast use is said to have taken place within the house itself and in an annex/garage building within the curtilage of the residential property. This use also involves incidental parking which takes place within the curtilage of the house.
3. The alleged parking of vehicles refers to separate parking activity, namely the use of part of the farm land for commercial airport parking (for users of Bristol Airport) and/or parking by paying guests staying at Vosper Lodge.

The Appeal on Ground (b)

4. The appeal on ground (b) is that the matters in the enforcement notice have not occurred as a matter of fact. The onus is on the appellant to demonstrate

this on the balance of probability. The appellant pleads this ground in relation to both the alleged bed and breakfast and car parking uses.

5. There is no dispute that the appellant does not offer meals to guests, and so the alleged bed and breakfast use ought to be described as use for overnight accommodation. The notice can be corrected accordingly without causing injustice to the appellant or the Council.
6. As regards the allegation of the parking of vehicles unconnected with the residential or agricultural use, the appellant indicates that airport parking was being phased out at the time that the notice was issued.
7. I acknowledge the appellant's comments that the Council could therefore have held off enforcement action in respect of this aspect of the use pending the phasing out being completed. However, the appeal on ground (b) is "that those matters have not occurred". Accordingly, whether the parking use is being phased out or has ceased altogether, the appeal on ground (b) fails in respect of the parking use because it is undisputed that the parking use has occurred.
8. The appeal on ground (b) therefore succeeds only to the extent that the allegation will be corrected to refer to overnight accommodation use.

The Appeal on Ground (c)

9. The appeal on ground (c) is that the matters in the enforcement notice do not constitute a breach of planning control. Again, the onus is on the appellant to demonstrate this on the balance of probability. The appellant pleads ground (c) only in relation to the alleged overnight accommodation use.
10. The appellant claims that the alleged overnight accommodation use does not require planning permission because it is incidental to the residential use of the house. Section 55(2)(d) of the Town and Country Planning 1990 as amended (1990 Act) provides that the use of any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse does not involve development.
11. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously. Where it is disputed that a material change of use has occurred, it is necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes; the concept of physical and functional separation is key.
12. The concept of a mixed use is one of two or more primary uses existing within the same planning unit or unit of occupation. One is not incidental to the other, although there may be incidental uses associated with each primary use, and there may or may not be a degree of physical separation between the different primary uses. An incidental use is one which is not part and parcel of, but is functionally connected to a primary use, and the functional relationship is one which is normally found. The question of scale does not determine but may be relevant to whether a use is incidental.

13. The use of a domestic outbuilding as a bedroom would normally be part and parcel of the residential use but development may take place if occupied for a separate purpose. It is not unusual for a homeowner to work from home, or to rent out a room for use as short-stay tourism accommodation, and whether this is an incidental use or becomes a primary use in its own right, resulting in a mixed use of the property, is a matter of fact and degree. Hobby activities can also be incidental or primary uses depending on the circumstances.
14. In this case, I accept that the overnight visitor accommodation use is carried out within the same planning unit as the lawful residential and farming uses. The question is whether there has been a material change of use to introduce a new mixed use as alleged. The appellant has let five of the six rooms in the annex for use as overnight visitor accommodation, along with one of the bedrooms within the main house. She has referred to staff being employed for the use, which also has a dedicated website with an online booking facility. It appears that there are uses taking place on the land which are themselves incidental to the overnight visitor accommodation, with the sixth room in the annex being used as an associated office/store, and there being a signage directing visitors to their parking area.
15. The appellant suggests that the visitor bedrooms are not continuously let out – and could be available for use at times by relatives or friends. However, it is also her evidence that about 1/3 of the residential floorspace is used for the overnight visitor accommodation use, and overall visitor occupancy is approximately 50% or circa 1150 bed nights per annum. I appreciate that the accommodation business operates from the main house, but the appellant has not shown that the commercial use has a functional relationship with the residential use that is normally found, or has not caused a significant difference in the character of the activities taking place on the land so that it could be described as incidental to the lawful use.
16. On the balance of probabilities, and as a matter of fact and degree, I find that the overnight visitor accommodation use is a primary use of the planning unit. As alleged, there has been a material change of use which requires but does not have planning permission. The appeal on ground (c) fails.

The Appeal on Ground (a) and the Deemed Planning Application

17. The appeal on ground (a) is that planning permission ought to be granted in respect of any breach of planning control constituted by the matters stated in the notice. Planning permission is sought only for the overnight accommodation use and not the airport parking use.
18. As per a previously refused planning application (ref: 18/P/2261/FUL) the appellant proposes that the overnight visitor accommodation use is only carried out in the six bedroom annex. To overcome the Council's objections to that application, the appellant also proposes that there are only 9 parking spaces to serve the residents of Vosper Lodge and the visitors and staff of the overnight visitor accommodation as shown on Drawing 10a.
19. It is open to me to under s177(1)(a) to grant planning permission for "part of the matters" alleged. While I could not incorporate the submitted Drawing 10a into any permission granted, the development could be permitted subject to a condition which requires the use must cease if details of the accommodation and parking are not submitted to or approved by the Council or implemented

as such. I shall therefore consider this ground (a) appeal on the basis proposed by the appellant.

20. The main issues on the planning merits of the appeal development are:

- whether the alleged change of use for overnight accommodation is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (2019) (the Framework) and the development plan, taking into consideration its effect on the openness and purposes of the Green Belt;
- the effect on the character and appearance of the surrounding area;
- the effect on highway safety;
- whether the development allows for a wide choice of transport methods; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

21. The appeal site is located in the Green Belt (GB). The Framework makes it clear that the Government attaches great importance to the Green Belt and the protection of its essential characteristics, being its openness and permanence. It confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
22. Paragraph 146 of the Framework provides that the re-use of buildings and material changes in the use of land need not be inappropriate development in the Green Belt, provided that the openness of the GB would be preserved and there would be no conflict with the purposes of the including land in the GB, which include assisting in safeguarding the countryside from encroachment. Policy DM12 of the Sites and Policies Plan Part 1 (SPP) makes similar provisions.
23. The use of the annex for overnight visitor accommodation on its own would not reduce the openness of the GB or encroach upon the countryside. However, the same could not be said for the parking incidental to the use. Even if the number of visitor bedrooms was limited to six and the number of parking spaces for the use and dwelling were limited to nine, permitting the overnight visitor accommodation use would be likely to cause an increase in how many and how often vehicles are parked on the land over and above the residential use on its own¹. That there would be fluctuations in parking does not alter that assessment.
24. I consider that, on its own, the lawful residential use of Vosper Lodge would rarely lead to nine vehicles being parked on the site. I also find that, while the appellant proposes to restrict car parking to the existing curtilage of the house, reducing harm to the countryside, residents of the house would in practice park there anyway. It follows that, even if permission is granted on a conditional

¹ Agricultural parking would not be subject to the condition

basis as proposed, the appeal use would cause a loss of openness in the Green Belt and thus be inappropriate development in the Green Belt. It would be unreasonable for me to approve the use subject to a condition requiring the provision of fewer than 9 parking spaces since that would be likely to negate the benefit of the permission.

25. I now proceed to assess the remaining main issues below and to assess whether very special circumstances arise.

Character and appearance; highway safety; sustainable transport

26. The suggested condition to limit the number of parking spaces to 9, together with other proposed conditions related to landscaping and the new access would overcome the Council's objections in relation to character and appearance, highway safety and sustainable transport.
27. If so conditioned, the alleged overnight accommodation use would thus accord with the expectations of Policy CS5 of the Council's Core Strategy (2017) (CS) related to preserving the character of the area, and with Policy DM24 of the SPP and Policies CS10 and CS11 of the CS regarding road network safety. The amount of parking on site would also not unduly impinge upon the sustainable transport policy aims of Policy CS10.
28. However, the absence of any harm on these grounds would not amount to positive considerations that could outweigh the harm that the alleged overnight accommodation use causes to the Green Belt by reason of inappropriateness.

Other considerations

29. The appellant suggests that the appeal overnight accommodation business supports the provision of tourist accommodation in the local area in accordance with CS Policy CS22 and SPP Policy DM57. I accept that the use complies with these policies, which support the provision of new, improved and replacement tourist accommodation and permit the construction of new buildings for use as visitor accommodation subject to criteria that are generally met.
30. However, the appellant has not shown how the appeal use improves the diversity of the tourist offer, or whether the use meets a particular need for visitor accommodation that the area would otherwise lack. She has not shown that allowing the appeal would result in significant economic benefits or be necessary to ensure the implementation of Policies CS22 and DM57. Accordingly, I attach modest weight to the benefits of the use as a tourism facility.

Balancing and Conclusion

31. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
32. I have identified that the alleged changed of use would be inappropriate development and carries substantial weight. The use also results in a moderate loss of openness and conflict with the purposes of the Green Belt. If

appropriately conditioned, it would not result in harm in terms of character and appearance, highway safety or sustainable transport. These are though only neutral effects.

33. The other considerations cited in support of the alleged change of use carry only modest weight and taken together, do not outweigh the harm identified to the Green Belt. There are no very special circumstances to justify the alleged change of use.
34. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

35. It is directed that the enforcement notice be corrected by the deletion of the phrase 'bed and breakfast' in paragraphs 3, 4 and 5 of the notice and substituting the phrase 'overnight accommodation'. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V Bond

INSPECTOR