

Appeal Decision

Site visit made on 2 December 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/C1760/W/19/3230099

**Testwood Trout Farm, Southside Hill, Longparish, Andover, Hampshire
SP11 6PS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Nigel Jackson against the decision of Test Valley Borough Council.
 - The application Ref 19/00521/FULLN, is dated 28 February 2019.
 - The development proposed is change of use of redundant agricultural building to tourist self-catering accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for reasons relating to the principle of development, the potential overlooking of the adjoining host dwelling and in relation to the absence of information on the effect of the proposal on the Solent and Southampton Waters Special Protection Area (SPA).

Main Issues

3. In view of the above, the main issues are:
 - whether the use of the building for tourism accommodation purposes would be acceptable having regard to the provisions of the Development Plan;
 - the effect of the proposal on the living conditions of future and neighbouring occupiers, with particular regard to overlooking; and
 - the effect of the proposal on the SPA.

Reasons

4. The appeal building is a modestly-sized timber clad building tucked alongside the host dwelling and attached thereto by a small glazed link extension. The building has an open plan ground floor and accommodation in the roofspace. At the time of my visit, the building was sparsely furnished with domestic furniture.

5. The appeal site is located in a countryside location, outside of any settlement boundary defined in the Test Valley Borough Revised Local Plan 2011 – 2029 (adopted 2016) (Revised Local Plan). Policy LE16 allows for the reuse of buildings in the countryside for commercial purposes, including tourist accommodation, subject to a range of criteria. The first criterion (a) is that the building must be structurally sound and suitable for conversion without substantial rebuilding, extension or alteration. There is no dispute that the appeal building and minimal works thereto would comply with Policy LE16 (a).
6. The second criterion of Policy LE16, (b), is that the proposal should not result in the requirement for another building to fulfil the function of the building being converted. I note that there is a detailed planning history in relation to the appeal building and wider fish farm. The subject building was originally intended for purposes associated with secondary fish processing. Due to a range of factors, the building is no longer used for this purpose and the appellant's plans now appear to focus on the diversion of activities away from undertaking processing on the appeal site and varying the business income in a manner that is consistent with its overall function. As such, the building is redundant for its originally intended purpose and there do not appear to be any requirements for buildings as part of the proposal.
7. The subject building is designed and scaled so as to be more domestic than agricultural. Its functionality for alternative agricultural uses appear limited to storage, albeit not for any large plant or machinery. As such, there is little evidence that the building is otherwise required for an agricultural purpose or that an alternative building would be necessary should this building be used for tourist accommodation purposes. Any future application for any new buildings would be considered on their own merits.
8. The third criterion, (c), is that the proposed use is restricted primarily to the building. The proposals include only for minor external alterations and the change of function of the internal spaces on both floors. There is no intention to provide a sub-divided curtilage or extend the proposed use into another building or space on site. As such, the proposal would not conflict with this criterion.
9. The final criterion, (d), is that the development should "*lead to an enhancement of its immediate setting*". Given the requirement under Policy LE16 (a) to convert the building without substantial rebuilding, extension or alteration, and given the finished form and appearance of the building and immediate surroundings, there appears to be limited opportunities to create an enhancement to the immediate setting. The building would need very limited alterations and would continue to assimilate well with the adjoining host dwelling, neighbouring buildings and wider site in terms of their character and appearance.
10. The proposal would result in a neutral impact rather than an enhancement of its immediate setting. However, in the circumstances of this particular case, it is unclear how an enhancement could be achieved. As such, whilst there is a degree of tension with criterion (d), I do not consider that this constitutes a direct conflict.
11. In view of this main issue, considered in the round, the use of the building for tourism accommodation purposes would be acceptable having regard to Policies COM2, LE16 and LE18 of the Revised Local Plan which together, amongst other

things, seek to ensure that tourist accommodation proposals in the countryside make use of an existing building and maintain the area's character and appearance.

Living conditions of future and neighbouring occupiers

12. I noted that there was a first floor window in the gable end of the appeal building facing the host dwelling at a distance of approximately 1 metre. The host dwelling also contains a window in the opposite gable, with the result that these windows overlook one another at close range.
13. From the evidence, the windows serve or are intended to serve bedrooms. Should the appeal be allowed, there would be an unacceptable loss of privacy for the existing occupiers of the host dwelling and the future occupiers.
14. The appellant has stipulated that a condition could be imposed in the event the appeal were allowed to require the glazing to be replaced with obscure glass. I agree that such a condition could be imposed prior to the first use of the building for tourist accommodation purposes to avoid any harmful effects.
15. In view of this main issue, subject to a condition, the proposal would maintain the living conditions of future and neighbouring occupiers, with particular regard to overlooking. The proposal would therefore comply with Revised Local Plan Policy LHW4, which seeks to ensure that new development provides for the privacy and amenity of its occupants and those of neighbouring properties.

SPA

16. The appeal site lies within the zone of influence of the SPA which is designated in accordance with the Habitats Directive as transposed in the UK by the Conservation of Habitats and Species Regulations 2017 (Habitat Regulations).
17. I am aware from my involvement in other cases in the area that Natural England has revised its advice in respect of the potential effect of an increase in population within the zone of influence of the SPA. The '*Advice on achieving nutrient neutrality for new development in the Solent Region*' to which the Council has referred in its statement, is dated June 2019. It sets out that new development which includes overnight accommodation would be likely to result in additional wastewater discharging to the SPA which affects the balance of its nutrients and thus has the potential to harm its integrity. This issue therefore requires detailed consideration as part of an Appropriate Assessment under the Habitats Regulations.
18. The appeal proposal is not intended for the management of the SPA. Given that the proposal would involve an increase in the provision of overnight accommodation, it is clear that it is a type of development which, considered individually or cumulatively with other plans or projects, could have adverse effects on the integrity of the SPA.
19. There is little evidence to quantify the potential effects of the proposal on the SPA from an alteration in the nutrient levels from wastewater effluent. The information provided indicates that the on-site treatment plant discharges into a settlement pond which has a weed and reed bed system to remove nitrates. It has also been suggested that a planning condition could require details to be submitted prior to the commencement of the development. There is limited evidence about the effect that the proposal would have on the nutrient levels

compared to the existing permitted use of the building or the capability of the treatment plant to filter increased nutrient levels. As such, I cannot conclude that mitigation measures could be secured to achieve nutrient neutrality and avoid adverse effects on the SPA.

20. Appropriate assessments must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned. This point is corroborated by recent caselaw¹. As such, I cannot merely apply a condition seeking to secure mitigation measures as, were they required, there is no certainty that they would be deliverable and capable of being implemented within the necessary timeframe.
21. As such, I cannot satisfactorily conclude that the proposal would avoid adverse effects on the SPA. Whilst the appellant states that prospective clients would add to the local nutrient burden if they stayed elsewhere in the local area, the current proposal is for a new provision of tourist accommodation, not an existing facility for which the nutrient levels are already permitted. As such, the proposal conflicts with Revised Local Plan Policies E5 and E8, which seek to ensure that pollution does not result in adverse impacts on the natural environment and ensure that new developments satisfies the requirements of the Habitat Regulations.

Other Matters

22. The appeal site lies within Flood Zone 3, and hence it is an area with a high probability of flooding. The parties concur that the level of flood risk can be adequately addressed by implementation of the recommendations in the flood risk assessment and through the use of conditions. Had the appeal scheme been acceptable in all other regards, this is a matter to which I would have given further consideration.
23. I note that there are comments relating to the success or otherwise of the existing agricultural enterprise. I do not consider that Revised Local Plan Policy LE16 requires the submission of commercial viability information or that any buildings proposed for a change of use to tourist accommodation should be marketed prior to such a proposal being submitted.

Conclusions

24. Whilst the proposal would sustain or generate a modest economic benefits to the local area and would allow the appellant to diversify the business income, these factors do not amount to other considerations that outweigh the identified harm and conflict with the Development Plan, when read as a whole.
25. I therefore conclude that the appeal should be dismissed.

Hollie Nicholls

INSPECTOR

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244