The Planning Inspectorate

Appeal Decision

Site visit made on 9 December 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2019

Appeal Ref: APP/U1430/Q/19/3228722
Spelland Oast House, Spellend Farm, Broad Oak, East Sussex TN31 6EY

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge planning obligations.
- The appeal is made by Colin Moyce against the decision of Rother District Council.
- The development to which the planning obligations relate is the conversion of a redundant barn to a holiday let.
- The planning obligations, dated 13 November 2003, were made between Rother District Council and Colin Moyce.
- The application Ref RR/2018/3172/P, dated 24 January 2019, was refused by notice dated 1 April 2019.
- The application sought to have all of the planning obligations restricting the occupation and sale of the building discharged.

Decision

1. The appeal is allowed. The planning obligations within the Planning Agreement made pursuant to Section 106 of the Town and Country Planning Act, dated 13 November 2003, made between Rother District Council and Colin Moyce, do not serve a useful purpose and are discharged.

Preliminary Matters

2. This appeal was considered concurrently with another appeal (Ref: APP/U1430/W/19/3228719), which is seeking approval for the development of land without complying with conditions subject to which a previous planning permission was granted.

Background and Main Issue

3. Planning permission was granted in 2003 to convert the appeal building, which was then a redundant barn, to a holiday let. A s106 planning agreement was drafted including a suite of planning obligations aimed at ensuring the barn was only used as a holiday let. The planning obligations require that the barn is only used as holiday accommodation, that no person may occupy it for more than 56 days in any calendar year, that it cannot be a person's sole residence and that it cannot be sold from the main dwelling (Spelland Oast). The appellant is seeking the discharge all of these obligations.

4. In assessing applications to discharge planning obligations, s106A of the Town and Country Planning Act 1990 states that a planning obligation may be discharged if it no longer serves a useful purpose. Accordingly, the main issue in this appeal is whether the planning obligations in dispute still serve a useful purpose, with reference to: Whether the proposed development would be in a

suitable location, with particular reference to policies concerned with housing in rural areas and the effect on the provision of holiday accommodation.

Reasons

5. Policy OSS3 of the CS addresses the location of development and states that planning applications should be considered in the context of the spatial strategy for the area. The strategy, as set out in Policies OSS1, OSS2 and TR3 of the CS, is to direct most new housing to defined settlements in order to, amongst other things, reduce the need to travel and thus reduce carbon emissions.

6. The appeal site is located in a small cluster of buildings on the periphery of Broad Oak, a small settlement served by a handful of facilities. These can be accessed on foot from the appeal site by walking along a pavement, but the limited array of services means that it would be necessary to travel further afield for everyday needs, such as employment. I have not been provided with details of any bus service and therefore it is likely occupants of the appeal building would travel by private motorised transport, at odds with the aims of the spatial strategy. Thus, the appeal site is justifiably identified in the development plan as being outside a defined settlement boundary and within the countryside.

7. Policy RA3 of the CS states that new housing in the countryside will be allowed in extremely limited circumstances as an exception to the normal policies of restraint. One such circumstance is the conversion of traditional rural buildings in accordance with Policy RA4 of the CS. Policy RA4 sets out a hierarchical approach to the re-use of traditional farm buildings such as the appeal property. The priority is to first consider farm-associated uses or farm-related business uses. If this can not be achieved then non-agricultural commercial uses, including tourism, are to be considered and finally, when the foregoing would not be viable, residential uses may be acceptable.

8. As such, and notwithstanding the poor accessibility to services and facilities, the development plan as a whole does not prevent an unfettered residential occupation of the appeal building if the hierarchical approach has been followed. In this instance, farm-associated and farm-related business uses would have been discounted when the conversion was originally approved. Thus, consideration needs to be given to the viability of non-agricultural commercial uses. In this instance the holiday let. If the holiday let is unviable then an unfettered residential use would be the next step in the hierarchy.

9. To this end the appellant has provided business accounts in an attempt to demonstrate the holiday let is unviable. These demonstrate that the gross profit from business sales has failed to cover the 'administrative expenses' of the business in four of the last five years. Although details of occupancy levels have not been submitted the accounts demonstrate several trends such as falling sales revenue, advertising costs increasing, and the small wage being drawn halving between 2014 and 2018.

10. The Council have not suggested that the administrative expenses have been higher than would reasonably be expected due to poor management or that they have been artificially inflated in an attempt to demonstrate poor profitability. Furthermore, there is nothing before me to suggest the accommodation has been overpriced and demand supressed accordingly. Given that sales are not currently covering expenses, the appellant would be

understandably reluctant to lower the price of stays below what is apparently a fair market price to stimulate greater turnover. Thus, the accounts appear to show a genuine attempt to run a profitable business without success. The period it has been operating, since around 2005, alongside the increase in marketing discussed by the appellant and apparent in the accounts, is also evidence of an earnest attempt in this respect.

11. The accounts relate to the appellant's business as a whole and do not provide a breakdown of revenue and costs per rental/holiday home. However, the other property in the business is Joywell Cottage let on a long-term basis with a consistent income and fewer over heads. As such, combining the two properties into one set of accounts is likely to provide a more favourable picture than if they were separated, with the appeal site likely to perform even worse as a business venture in isolation of Joywell Cottage.

12. Notwithstanding the above, the very close proximity of large electricity pylons and an overhead line is likely to be a serious constraint on the barn's ability to function as a successful holiday let. Not only is this infrastructure unsightly, potentially noisy and overbearing, it also raises health concerns, which may be unfounded but sincerely held. The complaint letters submitted with the appeal are testament to this. It would be a risk to refer to the pylons in marketing material. But if the appellant tries to hide the presence of the pylon then this runs the high risk of disgruntled customers who are likely to seek a refund and may not return. In any event, the presence of the pylons can easily be seen on Google Maps It seems to me that the pylons are an inherent problem to the viability of the holiday let in spite of the site's location in a historic area (1066 Country) where prospects for future growth in tourism are good, as demonstrated in the 'Rother Hotel and Visitor Accommodation Futures' report.

13. The Council has referred to Policy DC01 of the emerging Development and Site Allocations Local Plan. This policy has not been adopted yet and may be subject to further revisions, so any conflict with it is not determinative. That said, the policy seeks to protect holiday lets unless there is no reasonable prospect of a continued use. Given the inherent limitation placed on the appeal property by the presence of the pylons, there is no reasonable prospect of it enduring as a viable holiday let. As the holiday let is unviable, it would be disproportionate to require a marketing campaign offering the site for sale as a holiday let. The s106 Agreement signed in 2003 prevents the sale of the barn separate from the appellant's home in any event.

14. I therefore conclude that the use of the appeal building as a holiday let is unviable and therefore unsuitable. Thus, an unfettered residential use of the converted barn would be consistent with the hierarchy in Policy RA4 of the CS. Similarly, as there is no prospect of the holiday use continuing due to the poor profitability there would be no harm to the provision of holiday accommodation and thus no conflict with Policy EC6 of the CS. As such, it is unnecessary to retain the building as a holiday let by restringing occupation to holiday makers. Such an approach would only see the slow decline of the building. Accordingly, the planning obligations serve no useful purpose and therefore the appeal should be allowed and the obligations in the s106 Agreement discharged.

Graham Chamberlain

INSPECTOR