



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/W/19/3228719

Spelland Oasts Barn, Goatham Lane, Broad Oak, East Sussex TN31 6EY

- 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 Colin Moyce against the decision of Rother District Council.
 - The application Ref RR/2018/3132/P, dated 17 December 2018, was refused by notice dated 1 April 2019.
 - The application sought planning permission for conversion of redundant barn to holiday let without complying with conditions attached to planning permission Ref RR/2003/358/P, dated 21 November 2003.
 - The conditions in dispute are Nos 3 and 4 which state that:
 - 3) The premises shall be used for holiday lets only and for no other purpose in Class C3 Dwellinghouses of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that order.
 - 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:
 - 3) To ensure an appropriate use of the property in accordance with Government Advice continued in PPG7 The Countryside and the Rural Economy and Policy EM3 of the Rother District Local Plan: Revised Deposit (November 2003).
 - 4) To prevent the unit being used as permanent residential accommodation contrary to Government Advice contained in PPG7 The Countryside and the Rural Economy and Policy EM3 of the Rother District Local Plan: Revised Deposit (November 2003).
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Decision

1. The appeal is allowed, and planning permission is granted for the conversion of redundant barn at Spelland Oasts Barn, Goatham Lane, Broad Oak, East Sussex TN31 6EY, in accordance with the terms of the application, Ref: RR/2018/3132/P, dated 17 December 2018, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. I have considered the appeal scheme as being an application for the development of land without complying with conditions subject to which a previous planning permission was granted. This is because the application does not propose a change of use, with both a holiday let and a permanent dwelling falling within Class C3 (Dwellinghouses) of The Town and Country Planning (Use Classes) Order 1987.

Background and Main Issues

3. Planning permission was granted in 2003 to convert the appeal building, which was then a redundant barn, to a holiday let. Conditions 3 and 4 imposed on that permission restrict the use of the building to a holiday let and the occupation by any one person to not more than 56 days. These conditions were imposed to ensure the building was used solely as a holiday let in order to adhere to the development plan policies extant at the time. A s106 Legal Agreement was also signed with the same aims. An application seeking the discharge of this is subject to a separate appeal¹. The appellant is seeking the removal of Conditions 3 and 4 so that the appeal building can be occupied in an unfettered way as a permanent home.
4. Thus, the main issues in this appeal are whether Conditions 3 and 4 are reasonable and necessary with particular reference to:
 - The effect of the proposed development, without the conditions imposed, on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty; and
 - Whether the proposed development, without the conditions imposed, 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

The effect on the character and appearance of the area

5. The appeal site encompasses a detached timber framed barn that exhibits the local agricultural vernacular. It is an attractive structure that adds to the local distinctiveness of the area. The conversion has been skilfully undertaken with the building retaining a sense of solidity and few overtly domestic features and accretions to its prominent front elevation. This has ensured an agricultural appearance and character to the building, a situation aided by the pallet of external materials and other touches like the five-bar gate at the entrance and the use of a post and rail fence and hedge as the boundary treatment. The curtilage of the barn has a simple appearance being mainly laid to lawn with a gravel track leading to a parking area to the side of the barn. The conversion won an award as testament to its quality.
6. Although carefully and sensitively converted, the building has unavoidable elements of a domestic character due to the presence of glazed windows, patios and parked cars. When occupied as a holiday home, it is likely children will play in the garden, adults will sit out and washing may be put out to dry. In this respect, the garden area can already be used for domestic activity and could be landscaped in a more domestic way if the owner so wished. Light pollution from within the site can occur all year around as the disputed conditions do not currently prevent winter stays. The same can be said of traffic movements, which could already occur daily. Therefore, the removal of the planning conditions would not result in new domesticising effects to the detriment of the rural landscape.

¹ APP/U1430/Q/19/3228722

7. That said, the occupation of the barn as a permanent dwelling would intensify the residential activity at the site. For example, permanent occupants may need to store domestic items such as bikes, tools and toys outside. They may also wish to increase their privacy by erecting solid fencing and may have more cars. However, the provision of fences and outbuildings can be controlled through planning conditions and further details of parking can be secured, perhaps with screening measures. With these conditions imposed the conversion would retain a strong sense of the former rural character of the site. Accordingly, the permanent occupation of the converted barn need not result in a harmful residential intensification at the appeal site.
8. I therefore conclude that the appeal scheme, without the disputed conditions imposed, would not harm the character and appearance of the area, including the historic character of the building, and would conserve the rural landscape of the High Weald Area of Outstanding Natural Beauty. It therefore follows that a conflict with Policies OSS3, OSS4, RA2, RA3, RA4 and EN1 of Rother Local Plan Core Strategy 2014 (CS), in so far as they seek to protect the character and appearance of the area and the AONB landscape, would not occur if the conditions were not imposed.

The suitability of the location of the development

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
 14. 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 suppressed 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.
 15. The accounts relate to the appellant's business as a whole² 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 overheads. 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.
 16. 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 good³.
 17. 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

² Heritage Holiday Homes Limited – which encompasses the appeal site and Joywell Cottage

³ As demonstrated in the 'Rother Hotel and Visitor Accommodation Futures' report 2013

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.

18. 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. As such, the disputed conditions are unnecessary because a conflict with Policies RA4, EC6 and OSSS3 of the CS would not occur if they were removed.

Conditions

19. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. It is necessary in the interests of safeguarding the character and appearance of the area, to reimpose the materials condition and to exceptionally impose conditions removing permitted development rights for the construction of buildings, hard surfaces and boundary treatments. It is also necessary to re-impose an amended version of Condition 5 of the original approval (parking provision) in the interests of highway safety and the character and appearance of the area.
20. It is unnecessary to impose a drawings condition as no development is proposed. A time limit condition is unnecessary as the conversion works have started and are complete.

Conclusion

21. The appeal scheme would adhere to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should succeed.

Graham Chamberlain
INSPECTOR

Schedule of Planning Conditions

1. The appeal building shall not be occupied other than as a holiday let until space has been laid out within the site for cars to be parked in accordance with details which have been first submitted to and approved in writing by the Local Planning Authority and that space shall thereafter be kept available at all times for the parking of vehicles.
2. New external materials shall match in colour and texture those of the existing building.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting this Order with or without modification), no enlargement, improvement, alteration, building, enclosure or hard surface as defined within Classes A to F of Part 1 of the Schedule 2 of the order, shall be carried out on the site otherwise than in accordance with a planning permission granted by the Local Planning Authority.
4. Notwithstanding the provisions of Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting this Order with or without modification), no fences, gates or walls shall be erected on the site otherwise than in accordance with a planning permission granted by the Local Planning Authority.