The Planning Inspectorate

Appeal Decisions

Site visit made on 6 January 2020

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 January 2020

Appeal A Ref: APP/J9497/C/19/3222957
Appeal B Ref: APP/J9497/C/19/3222958
Appeal C Ref: APP/J9497/C/19/3222959
Appeal D Ref: APP/J9497/C/19/3222960

Elm Cottage and Ash Cottage, Downton Farm, Lydford, Okehampton, EX20 4AX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Ellen Leigh-Tyrer, Appeal B by Mr Guy Tyrer, Appeal C by Mr Robin St John Lumley and Appeal D by Mrs Sue Boyd against an enforcement notice issued by Dartmoor National Park Authority.
- The enforcement notice, numbered ENF/0046/17, was issued on 5 February 2019.
- The breach of planning control as alleged in the notice is the change of use of two buildings on the land namely Elm Cottage and Ash Cottage from a use of two holiday units to use as full time non-holiday residential dwellinghouses, as marked on the plan attached to the notice.
- The requirements of the notice are permanently to cease the full time non-holiday residential use of the holiday units known as Ash Cottage and Elm Cottage.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended and Appeals B, C and D on grounds (d) and (g)
- **Summary of decisions: appeals dismissed**

The appeal site and relevant planning history

1. The appeal property consists of a farmhouse and a number of barns in a courtyard arrangement. One of the barns is situated to the west of the farmhouse and is of simple design, constructed of stone with a slate roof and rooflights. This barn has been converted into two dwellings known as Elm Cottage and Ash Cottage. Both cottages have small enclosed gardens to one side with external doors to the cottages. The rear of the cottages faces onto the courtyard and the cottages have openings directly onto the courtyard.

2. Planning permission 0357/99 was granted in 1999 for the change of use of the two barns (Barn A and Barn B) on the holding to three holiday units subject to a holiday occupancy condition (Condition 7): 'The holiday units hereby permitted shall only be used as such and no family, group or individual shall occupy any of the units for more than three weeks in any three month period.' Barn A contains the two cottages which are the subject of the notice.

3. In 2007, permission 0714/07 was granted for the change of use to a mixed use to include a tearoom and teaching spaces in association with the establishment of a rare breeds farmstead.

4. In 2010 an application to lift the holiday occupancy condition to allow for permanent occupation was withdrawn.

5. A Planning Contravention Notice in May 2017 established that Elm Cottage and Ash Cottage were 'in permanent accommodation' and had been council taxed as such since October 2011.

6. Planning permission was refused in April 2018 for the 'use of holiday barns as residential (retrospective)' (ref 0001/18) on policy grounds.

7. In August 2018 an application for an LDC for an existing 'use as two dwelling houses' of the barn was refused (ref 0445/18).

The appeals on ground (d)

8. An appeal on this ground is that it is too late to take enforcement action.

9. I note that the appellants considers that the Authority's description of development in the April 2018 application was for a retrospective application for a change of use and as a change of use it is only necessary to demonstrate a 4 year period to achieve immunity from enforcement action.

10. The appellants claims that the authority has misconstrued the relevant planning history when considering the April 2018 application and failed to have regard to the 2007 permission which they consider was clumsily drafted (although I note that no appeal or challenge was made to the decision). The appellant considers that the holiday let use ceased prior to the sale of the site in 2007 and that the holiday lets formed part of a wider change of use of the land pursuant to the 2007 permission, with Barn A within part of a mixed use agricultural diversification project. It is claimed that this created a new planning unit resulting in the 1999 permission falling away and that the holiday lets sit within a mixed use not subject to any occupancy conditions. In support of this view, the appellant refers to the red line on the site location plan of the 2007 permission which includes the holiday lets and a further barn to the south proposed to be converted into teaching space and a tearoom. The appellant also refers to Dunnett[1] relating to the interpretation of conditions which I have had regard to, and that the absence of a holiday occupancy condition on the 2007 permission released the use of Barn A from the conditions previously imposed, even if this had not been the intention of the Authority.

11. As the Authority correctly points out the red line merely identifies the site and cannot by itself create a new planning unit. The tests for establishing a planning unit were identified in Burdle[2] where it is necessary to identify the unit of occupation and whether there is a physical and/or functional separation of primary uses as a matter of fact and degree. It is certainly arguable that the whole of the Downton Farm enterprise represents one planning unit which has been comprised of various related activities associated with agriculture and

[1] Dunnett Investments Ltd v SSCLG & East Dorset DC [2016] 534 (Admin), [2017] EWCA Civ192
[2] Burdle and Williams v SSE & New Forest RDC [1972] WLR 1207

farm diversification, within which different permissions have been granted over a period of time.

12. The appellant states that the business was run as one unit with the income from the letting accommodation, visitor parking, teaching room and tearoom being accounted for together but the business failed in 2010 when the use of the holiday accommodation, tea room and teaching space ceased. In 2011 the applicant began letting the two cottages as separate dwellings and details of the tenancies of the two units shows that they have been let out continuously since that time with any breaks being *de minimis.*

13. On the evidence before me I consider that the 2007 permission did nothing to change the use of the holiday lets or authorised any physical changes to them. The 1999 and the 2007 permissions are complimentary and represented the continued diversification of the farm. They are not inconsistent and can continue alongside each other without conflict. The Pioneer Aggregates[3] case established the principle that a permission which is capable of being implemented cannot be abandoned and the Authority have referred to another appeal decision[4] pertaining to whether an occupancy condition had been nullified by a later grant of permission. As with that case I find that a subsequent permission has not created a new planning unit or a new chapter in the site's planning history. The 1999 permission has not fallen away and the holiday lets remain subject to the occupancy condition.

14. The appellant argues that even if the 2007 permission had not existed, the relevant time limit is still that of s171B(2) and cites Arun[5] in support, However, the circumstances in that case are different in that they related to the change of use of an annexe to a dwellinghouse, whereas in this appeal, the holiday lets are not annexes but are C3 dwellinghouses limited by condition.

15. Accordingly, as the holiday lets are dwellinghouses and no change of use has occurred through the breach of condition, s171B(3) is relevant and it is necessary to show that, on the balance of probabilities, that the breach of condition has taken place continuously for a period of 10 years beginning with the date of the breach for it to be immune from enforcement action. As the breach only commenced in 2011, it cannot be demonstrated that the 10 year period can be achieved.

16. The appeal on this ground fails.

The appeal on ground (a)

17. The main issue is the use of the appeal property as open market housing.

18. The 2018 application was refused as it was contrary to a number of policies of the Dartmoor National Park Development Plan and the National Planning Policy Framework (the Framework). The development involved the creation of two unjustified open market dwellings outside a recognised settlement which do not meet an identifiable need for affordable housing to meet local needs or a need relating to an agricultural worker or other essential rural business. The

[3] Pioneer Aggregates (UK) Ltd v SoS [1984] 2 All ER 358
[4] APP/P0240/X/13/2194126
[5] FSS v Arun DC and Brown [2006] EWCA Civ 1172

appellant has submitted some evidence in this appeal to address the policy requirements.

19. Policy DM26 applies to the removal of agricultural and holiday use conditions and a series of tests need to be met. Evidence needs to show that demand for holiday accommodation no longer applies. Financial details from the appellant indicates that income from the holiday units dropped from 2008 to 2011 and net profit dropped. The Authority has been unable to assess whether the charge for the accommodation was reasonable and no business plan had been submitted to consider whether this was viable or realistic. Neither is there a farm business plan relating to the contribution of the holiday accommodation to farm diversification which may have identified that the holiday lets led to the failure of the farm business. Although there is competition from other holiday accommodation in the area, this alone does not demonstrate lack of demand or that the building is redundant as holiday accommodation.

20. The second test requires that the appeal property has been offered for sale, rent or lease for a period of 12 months at a price that reflects the existence of the restrictive condition. This has not been done. The third test is for the appellant to be willing to enter into a legal agreement that the property is reserved for occupation by local people as an affordable dwelling.

21. The size of each unit at about 90sqm meets national and local size guidance for three bedroom affordable homes. The appellants consider that they are meeting a need for affordable housing and a local estate agents indicates that the rent is discounted by 20-30% less than market rents for the area. However the Authority points out that the rents are not affordable under the terms of the Affordable Housing Supplementary Planning Document (SPD) and the requirements in respect of the occupiers being in housing need, unable to afford open market prices and having local connections are not proven or controlled through a legal agreement as set out in the SPD.

22. The appellants refer to a number of other policies. In particular, reference is made to the Authority not attaching weight to the heritage or business development value of the building under Policy COR2. However there is no evidence to suggest that the future of the building would be jeopardised and in any event, there is scope for its use as affordable housing. The appellant also refers to the Framework's support for the re-use of redundant or disused buildings but I attach limited weight to this as the buildings are not redundant.

23. The appellants question the expediency of enforcement action but within the National Park, the focus is on the provision of local needs housing rather than providing market housing generally. The appellants have pursued the use of the appeal property in full knowledge of the existence of the restrictive condition and claim in their defence that the Authority has been aware of the issue since 2010 but took no action. However the facts support the Authority's position that the breach only came to light in 2017.

24. Attention is drawn to local support for the earlier application and to the Parish Council's view which was that although the development did not meet affordable housing in terms of its statutory definition, the occupiers were local people in receipt of benefits and paying about 20% below the standard rental value.

25. I have had regard to all the other relevant matters raised and, notwithstanding the local support expressed, I conclude that the development fails to satisfy the requirements of Policy DM26 in particular and that there are no other considerations that outweigh the policy approach of the Development Plan to market housing within the National Park.

26. The appeal on ground (a) fails.

The appeals on ground (g)

27. The appellants consider that the period of compliance of 6 months. Whilst the tenants can be given notice under the tenancy agreements, the occupants are unlikely to be able to find alternative accommodation and will need to register for social housing where none is available. Eviction proceedings could exceed the compliance period.

28. No information has been submitted in respect of the personal or financial circumstances of the occupants and no alternative time scale has been suggested. In view of this I consider that the compliance period is reasonable for the occupants to find alternative accommodation. The Authority has also pointed out that this period would allow time for a planning application for the use of the two dwellings as locally affordable houses to be submitted and considered.

Conclusions

29. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Decisions on Appeals A, B, C and D

30. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

PN Jarratt

Inspector