



Appeal Decisions

Site visit made on 31 December 2019

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2020

Appeal A Ref: APP/X3540/Q/19/3239212

Pitfield, Butchers Road, Kelsale cum Carlton, Suffolk IP17 2PG

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
 - The appeal is made by Mr Edgerley and Ms Levy against the decision of East Suffolk Council.
 - The development to which the planning obligation relates is the conversion of a disused stable building and store to a holiday let.
 - The planning obligation, dated 21 June 2005, was made between Suffolk Coastal District Council and Mr D A Edgerley and Mrs H E King, Cheltenham & Gloucester plc and Messrs. R I and W T Edgerley.
 - The application Ref DC/18/3351/VLA, dated 2 August 2018, was refused by notice dated 15 May 2019.
 - The application sought to have the planning obligation discharged.
-

Appeal B Ref: APP/X3540/W/19/3239184

Pitfield, Butchers Road, Kelsale cum Carlton, Suffolk IP17 2PG

- 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 Edgerley and Ms Levy against the decision of East Suffolk Council.
 - The application Ref DC/18/3235/ROC, dated 28 June 2018, was refused by notice dated 8 May 2019.
 - The application sought planning permission for conversion of a disused stable building and store to a holiday let without complying with a condition attached to planning permission Ref C04/0200/FUL, dated 25 August 2005.
 - The condition in dispute is No 4 which states that: *"The premises herein referred to shall be used for holiday letting accommodation and for no other purpose (including any other purpose in Class C3 of the schedule to the Town and Country Planning (Use Classes) Order 1987). The duration of occupation by any one person, or persons of any of the units shall not exceed a period of 90 days in any calendar year, unless otherwise agreed in writing by the local planning authority."*
 - The reason given for the condition is: *"Having regard to planning policies, the size of units, communal land etc, the units are not suitable for permanent residential occupation."*
-

Appeal C Ref: APP/X3540/W/19/3239185

Pitfield, Butchers Road, Kelsale cum Carlton, Suffolk IP17 2PG

- 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 Edgerley and Ms Levy against the decision of East Suffolk Council.
 - The application Ref DC/18/3236/ROC, dated 28 June 2018, was refused by notice dated 8 May 2019.
 - The application sought planning permission for erection of link building and conversion of barn to provide expansion of an existing holiday let, together with other associated works without complying with conditions attached to planning permission Ref C10/1601, dated 8 September 2010.
 - The conditions in dispute are Nos 2 and 6 which state that:
"2. The premises herein referred to shall be used for holiday letting accommodation and for no other purpose (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987). The duration of occupation by any one person, or persons, of the holiday unit shall not exceed a period of 90 days in total in any one calendar year, unless the Local Planning Authority agrees in writing to any variation.
The owners/operators of the holiday units hereby permitted shall maintain an up-to-date Register of all lettings, which shall include the names and addresses of all those persons occupying the units during each individual letting. The said Register shall be made available at all reasonable times to the Local Planning Authority."
"6. The holiday accommodation approved under planning permission C04/0200/FUL and the building hereby approved to be converted and extended shall form one unit of holiday accommodation only."
 - The reasons given for the conditions are: *"To ensure that the development is occupied only as bona-fide holiday accommodation, having regard to the tourism objectives of the Local Plan and the fact that the site is outside any area where planning permission would normally be forthcoming for permanent residential development"* (condition 2) and *"For the avoidance of doubt as to what has been considered and approved."* (condition 6).
-

Decisions

Appeal A

1. The appeal is allowed. The planning obligation, dated 21 June 2005, made between Suffolk Coastal District Council and Mr D A Edgerley and Mrs H E King, Cheltenham & Gloucester plc and Messrs. R I and W T Edgerley, no longer serves a useful purpose and is discharged.

Appeal B

2. The appeal is allowed and planning permission is granted for conversion of a disused stable building and store to a holiday let at Pitfield, Butchers Road, Kelsale cum Carlton, Suffolk IP17 2PG in accordance with the application Ref DC/18/3235/ROC dated 28 June 2018, without compliance with condition number 4 previously imposed on planning permission Ref C04/0200/FUL dated 25 August 2005 and subject to the conditions set out in the attached schedule.

Appeal C

3. The appeal is allowed and planning permission is granted for erection of link building and conversion of barn to provide expansion of an existing holiday let, together with other associated works at Pitfield, Butchers Road, Kelsale cum Carlton, Suffolk IP17 2PG in accordance with the application Ref

DC/18/3236/ROC dated 28 June 2018, without compliance with condition numbers 2 and 6 previously imposed on planning permission Ref C10/1601 dated 8 September 2010 and subject to the conditions set out in the attached schedule.

Preliminary Matters

4. The appeals concern former agricultural buildings which have been converted and linked to form a unit of residential accommodation. Conditions imposed on the permissions for the original conversion and the subsequent further conversion and link building restrict the use to holiday accommodation. A planning obligation in respect of the original conversion imposes the same restriction. The appeals seek the removal of the conditions attached to the two planning permissions which restrict the use, and for the planning obligation to be discharged. In order to avoid unnecessary duplication, I shall deal with the appeals together in this document.
5. The applications in appeals B and C are made under Section 73 of the Town and Country Planning Act 1990. Section 73(2) of the Act requires that the local planning authority "*shall consider only the question of the conditions subject to which planning permission should be granted*". My decision shall be on this basis.

Main Issue

6. The main issue in the appeal is whether or not the conditions and planning obligation are necessary, having regard to the viability of holiday accommodation, relevant planning policies and other material considerations.

Reasons

7. The building forms part of a group of former farm buildings that were associated with the Old Manor House which is a grade II listed building. A former farm building next to the appeal property has been converted to residential accommodation. This is known as The Vineyard. The Old Manor House and the former farm buildings are adjacent to St Mary & St Peter's Church and the historic village of Kelsale. The buildings and an adjacent field are included within the Kelsale Conservation Area (CA). The Old Manor House and The Vineyard are specifically mentioned in the Conservation Area Appraisal as notable buildings that positively contribute to the CA.
8. I saw on my visit that the building that was converted under the original permission is historic, dating from the 19th century or earlier. Indeed, a tithe map from 1794 shows a building here. The building that was subject to the second permission in 2010 was also a conversion of a farm building and this development included a new link building. The appearance of this part of the development is more modern, but the layout is the same as the historic layout. The resulting building provides a single unit of accommodation with three double bedrooms, a kitchen/living area and a room which is used as a workshop.
9. The proposal would not amount to development because the proposed use would be within the same use class as the existing use.¹ However I shall

¹ Class C3 of the Town and Country Planning (Use Classes) Order 1987

examine whether the development plan policies referred to by the Council justify the conditions and planning obligation that are in dispute.

10. Within the wider village there are a number of local facilities, including a primary school, social club and village hall. There are bus services to the town of Saxmundham, which is a short distance away. Employment is provided at an industrial estate off the B1121 and there are footpaths along that road. The site is linked to the village by a footpath through the church yard. While occupants of the building would be reliant on the car for transport to facilities to a significant extent, options for use of alternative sustainable means of transport are available. The designation of the village in the Local Plan² as a Local Service Centre in Policy SP19 is recognition of its suitability to accommodate housing development. Although the site is outside the physical limits of the village as defined in the development plan, an unrestricted residential use would have a reasonably good level of accessibility to services and facilities. I see no necessity for the conditions or planning obligation on grounds of limited accessibility.
11. Furthermore, unrestricted residential use would preserve the building which forms part of a historic layout that contributes positively to the setting of the listed building and to the character and appearance of the CA. There is no necessity for the conditions or the obligation in terms of visual impact within the countryside.
12. Development plan policies restrict housing development outside physical limits boundaries. Policy SP29 of the Local Plan has such a restriction, while Policies DM3 and DM13 allow for conversion of existing buildings, the latter policy applying to those buildings that are redundant. The generally restrictive approach of those policies goes to the principle of housing development in the countryside rather than making a distinction between general housing and that which is used for holiday accommodation.
13. The requirement of Policy DM13 that buildings are redundant is consistent with the National Planning Policy Framework (the Framework) which also allows for the re-use of redundant buildings in the countryside for housing. Both parties say that the building is not redundant, and this was also a matter of agreement in a previous appeal³.
14. While the building may not be redundant, the appellants have provided information regarding its financial viability as a holiday let. Assessments have been provided by four holiday letting agencies regarding likely periods of occupation, income and the costs of managing the property as holiday accommodation. The appellants do not live locally, and maintenance work would have to be contracted out. All four assessments demonstrate that use of the property as holiday accommodation is not financially viable. The building has been occupied over the last 5 years for limited stays and over limited periods by friends and family of the appellants. It has not been used on a commercial basis for holiday accommodation in that period.
15. The Suffolk Coastal Local Plan has been submitted for examination. This includes Policy SCLP6.6 which states that existing tourist accommodation will

² Suffolk Coastal District Local Plan Core Strategy & Development Management Policies (2013)

³ APP/J3530/W/18/3209977

be protected and that change of use will only be considered in exceptional circumstances where it can be demonstrated that there is no current or future demand for such accommodation. The draft policy requires evidence of marketing for a minimum period of 12 months. There is no information before me as to the extent of any unresolved objection to this policy and the weight that I can give to it is limited. In any case the non-viability of the proposal would be generally consistent with the requirements of that policy.

16. As well as referring to planning policies, the reason for imposition of the condition on the first permission refers to the size of the unit and the land not being suitable for permanent occupation. The property has since been extended and is of suitable size to provide family accommodation. I saw also that it has a good-sized garden. These matters no longer justify the conditions or the obligation.
17. Concerns have been expressed about the implications for other properties which have similar restrictions. As each case must be considered on its individual merits, my decisions in these appeals would not set a precedent for removal of holiday occupancy restrictions elsewhere. On a similar basis, the circumstances in the other appeals referred to by the Council differ from those in these appeals and those decisions do not alter my conclusions.
18. For all of these reasons I find that the conditions and the planning obligation restricting the use to holiday accommodation are not necessary and therefore do not meet the tests set out in the Framework. The planning obligation imposes the same restrictions as the planning conditions in terms of limiting the use to holiday accommodation and limiting the maximum number of days that a person or group can stay in the property. For the reasons given it no longer serves a useful purpose and should therefore be discharged.

Other Conditions

19. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The Council has stated that condition 3 attached to permission ref. C10/1601 has been discharged. Other than this, I have no information before me about the status of the other conditions imposed on the original planning permissions. I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
20. I have not imposed the conditions requiring development to be commenced within specified periods as the developments have taken place.
21. Both permissions include conditions which impose detailed requirements in terms of materials and finishes. It is not clear whether the conditions on the first permission (C04/0200/FUL) which require submission and approval of details were discharged. However, it is a requirement that the development is retained in accordance with the approved details and this remains relevant to ensure the appearance of the building is acceptable.
22. The permissions also include conditions restricting permitted development rights. These conditions remain relevant because of the sensitive location of

the property within the CA and to safeguard neighbour's living conditions. I have imposed these conditions and have updated the reference to the Town and Country Planning (General Permitted Development) Order.

23. The first permission also includes a condition regarding foul drainage and one requiring access by an archaeologist in the event of any excavation. Both of these remain relevant in order to avoid water pollution and to allow for recording of archaeological artefacts.

Conclusion

24. For the reasons given I conclude that the appeals should be allowed.

Nick Palmer

INSPECTOR

Schedule of Conditions

Appeal B (Ref APP/X3540/W/19/3239184)

1. No development shall commence until satisfactory precise details showing the full conversion works [which term shall include survey drawings, floor plans, sections, elevations, fenestration and other details as appropriate], have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in its entirety before the use is commenced. Thereafter it shall be retained in its approved form unless otherwise agreed in writing by the local planning authority.
2. All external timbers, without exception, shall be stained black before the building is first occupied and shall thereafter be retained black, unless otherwise agreed in writing by the local planning authority.
3. No development shall commence until samples of roof or wall materials [e.g bricks, pantiles, weatherboarding etc] to be used to replace, or supplement those existing, have been submitted to and approved in writing by the local planning authority. All work must be carried out using materials that conform to the approved samples.
4. All rainwater pipes and gutters, flues and vent pipes shall be painted with a black finish and thereafter permanently maintained in that colour unless otherwise agreed in writing with the local planning authority.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting the said Order) no additional doors or windows shall be inserted into the stable and store, no further structures, buildings, walls, gates or fences shall be erected on the site, nor shall any buildings be extended in any way, unless prior application is made to the local planning authority and their approval in writing obtained thereto.
6. Foul drainage shall be by way of an individual filtered package sewage treatment plant, unless otherwise agreed in writing by the local planning authority. Full details of the proposed sewage treatment plant (including Environment Agency Discharge Consent Number, site of unit, design and projected loading of unit, together with final discharge point) shall be submitted to the local planning authority. Only a scheme approved in writing by the local planning authority shall be implemented at the site and shall be fully operational before the development is occupied.
7. The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority and shall allow him/her to observe the excavations and record items of interest and finds.

Appeal C (Ref APP/X3540/W/19/3239185)

1. The materials and finishes shall be as indicated within the submitted application and thereafter retained as such, unless otherwise agreed in writing with the local planning authority.

2. All rainwater pipes and gutters, flues and vent pipes shall be painted with a black finish and thereafter permanently maintained in that colour unless otherwise agreed in writing with the local planning authority.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order revoking or re-enacting the said Order, no development of any kind specified in Part 1, Classes A, B, C, D & E and Part 2 Class A of Schedule 2 of the said Order shall be carried out unless otherwise agreed in writing with the local planning authority. (Part 1, Classes A to E refer to alterations, extensions, roof alterations, porches, enclosures, outbuildings and oil/gas containers. Part 2, Class A refers to gates, walls and fences.)