



Appeal Decision

Site visit made on 21 January 2020

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2020

Appeal Ref: APP/X3540/W/19/3237328

31 Kessingland Cottages, Rider Haggard Lane, Kessingland, Lowestoft, Suffolk NR33 7RH

- 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 Mrs Susan Cornes against the decision of East Suffolk Council.
 - The application Ref DC/19/0188/VOC, dated 14 January 2019, was refused by notice dated 17 July 2019.
 - The application sought planning permission for the construction of 16 holiday units (self-catering) Stage II, Green Lane, Kessingland without complying with a condition attached to planning permission Ref W1326/31, dated 23 November 1979.
 - The condition in dispute is No 3 which states that: The holiday units shall not be occupied between January 6th and March 1st in any year.
 - The reason given for the condition is: The Local Planning Authority consider that the site and its accommodation should be used only for holiday accommodation and wish to prevent permanent residential occupation.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 16 holiday units (self-catering) Stage II, Green Lane, Kessingland at 31 Kessingland Cottages, Rider Haggard Lane, Kessingland, Lowestoft, Suffolk NR33 7RH in accordance with the application Ref DC/19/0188/VOC, dated 14 January 2019, without compliance with condition number 3, previously imposed on planning permission Ref W1326/31, dated 23 November 1979 and subject to the following conditions:
 - 1) The development shall be carried out in accordance with the following approved plans: Plan L-3413A.14 received 23 November 1979.
 - 2) The development hereby permitted shall be used for holiday accommodation only and shall not be occupied as the sole or main residence of the occupiers.
 - 3) The owner shall maintain, and keep available for inspection at all reasonable times, an up-to-date register of lettings.

Main Issue

2. The main issue is whether the proposal would result in the loss of a self-catering tourism accommodation unit.

Reasons

3. The appeal site forms a mid-terrace property that occupies an elevated position on the sea front. The site is part of a group of properties that are used as self-catering holiday homes and lets that were granted planning permission with a condition restricting their occupation between 6 January and 1 March. This is to ensure that the properties do not become permanent residential dwellings. The appellant seeks to remove the condition so that the holiday home can be occupied during this period.
4. Policy WLP8.15 of the East Suffolk Council (Waveney) Local Plan 2019 (the Local Plan) states that *"New self catering tourist accommodation will be restricted by means of planning conditions or a legal agreement which permits holiday use only and restricts the period the accommodation can be occupied"*. The appellant argues that this policy explicitly refers to 'new accommodation' and thus, is not relevant to the appeal site which was granted planning permission in 1979.
5. The Council argue that the tourist sector is very important and the objectives of the Local Plan in seeking to ensure the retention of tourist accommodation is clear. Moreover, although Policy WLP8.15 does refer to 'new accommodation', it would be folly to only apply the policy to new self-catering tourist accommodation as it would allow newly permitted accommodation a route to re-apply to alter conditions that may restrict its occupation.
6. I have carefully considered the Council's argument regarding Policy WLP8.15 of the Local Plan, including its age and pre-amble, and whether it would apply equally to existing accommodation. However, it is clear that Policy WLP8.15 applies to 'new' self-catering accommodation and while I accept that the Local Plan is geared towards protecting tourist accommodation, each application would need to be assessed on its own merits and the appeal site before me is clearly not 'new' having been granted planning permission over 40 years ago. Moreover, I have not been provided with any compelling evidence from the Council why the occupation of the property from 6 January to 1 March should be restricted, other than it is easier to monitor potential non-compliance.
7. However, I note that the Council has accepted the removal of conditions that seek a similar aim at other sites and have replaced it with a condition restricting the use of the property as tourist accommodation. Furthermore, the general thrust of the Council's argument to retain tourist accommodation is for the benefit of the tourism economy and restricting the use of the property as such would not be a benefit to the tourism economy as the property would be empty.
8. Thus, in this particular case, I do not find that the removal of condition 3 of planning application ref W1326/31, dated 23 November 1979 would result in the loss of a self-catering tourist accommodation. It would not be in conflict with Policy WLP8.15 of the Local Plan, the requirements of which are specified above.

Other Matters

9. Although the Parish Council states in its consultation response that it raises an objection to the development, it has not stated on what grounds the objection

stems from. Thus, I am not able to consider this matter any further, including any reference to the Kessingland Neighbourhood Plan 2017.

Conditions

10. The national Planning Practice Guidance advises that where an application under section 73 of the Act is granted, the planning permission should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As the development has commenced, there is no requirement to impose condition 1 from the original permission. The appellant has provided me with the Council's confirmation that conditions 4, 5 and 6 have been discharged. Condition 2 refers to the approved plans and remains relevant insofar as it relates to the appeal site.
11. In light of my findings I do not consider it necessary to comply with condition 3 of the November 1979 permission. However, I agree that to ensure the property remains as tourism accommodation, condition 1 as suggested by the Council is necessary. The appellant argues that as the property is used as a holiday home and is for personal use, condition 2 suggested by the Council is not necessary. However, as the permission runs for the lifetime of the development, the current ownership of the property may change in the future. Therefore, I find that condition 2 suggested by the Council is also necessary.

Conclusion

12. For the reasons given above, and having regard to the development plan when read as a whole, the appeal is allowed.

Graham Wyatt

INSPECTOR