



Appeal Decision

Site visit made on 20 January 2020

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 05 March 2020

Appeal Ref: APP/E2001/W/19/3239833

Five Acre Lake, South Ings Lane, North Cave HU15 2PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Farr and Mrs S Hubbard against the decision of East Riding of Yorkshire Council.
 - The application Ref 18/03926/PLF, dated 30 November 2018, was refused by notice dated 25 September 2019.
 - The development proposed is for the use of an existing building as a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The building which is the subject of this appeal was constructed without the benefit of planning permission. The main parties agree that the current use dates from at least 2013. The building, as constructed, has no lawful use. A previous planning consent¹ for the site gave permission for construction of holiday accommodation but was not implemented and is not being considered within this decision. The current use as a dwelling as described within the planning application is therefore the only consideration within this appeal.
3. There was a factual error within the Council's reason for refusal. This states that Policy S4 of the East Riding Local Plan² 2016 (Local Plan) "only permits the conversion of buildings in the countryside to dwellings where the preservation of the building would enhance the immediate setting **and** (my emphasis) where it would represent the optimal viable use of a heritage asset". The "and" should have read "or" and this correction is reflected within my decision.
4. The Appellant raises the issue of whether or not the Council has, or would take enforcement action regarding the building which is the subject of this appeal. A judgement by the Supreme Court has been cited which refers to the expediency of taking enforcement action against the use of a building as a dwelling. I have no information before me regarding the Council's previous or future intentions with regard to enforcement action and this appeal is concerned solely with the planning application before me.

¹ Ref 08/03019/STPLF.

² East Riding Local Plan Strategy Document 2012-2029. Adopted 2016.

Main Issue

- The main issue is whether, in the context of national policy and adopted local planning policy, the development is appropriate on this site.

Reasons

5. The appeal dwelling is situated within a large fenced area which includes Five Acre Lake which supports an angling business. The appeal building is a three bedroom, one and a half storey timber lodge with various outbuildings ancillary to its function. The property is reached by vehicle from Sand Lane (the main highway) via Mires Lane and the Outgang. The Outgang is a potholed, unsurfaced track. Access on foot is possible via a Public Right of Way (PRoW) on South Ings Lane leading towards the A63 and the wider PRoW network.
6. Policy S3 of the Local Plan sets out the development limits of the nearest settlements and both parties agree that the proposal is in open countryside, outside the settlement boundary. Policy S4 of the Local Plan and paragraph 79 of the National Planning Policy Framework³ (The Framework) seek to avoid development of isolated homes in the countryside. However, one exception is re-use of a redundant or disused building and enhancement of its immediate setting. The building has no lawful use and neither redundant nor disused and this exemption would not apply. The supporting text to Policy S4 adds to this and requires proposals which do not fall within a listed exemption to demonstrate why they require a rural location. No such evidence has been provided.
7. The Appellant contends that the spirit of both Policy S4 and the Framework suggest that existing buildings in the countryside should be used and can usefully provide housing. However, the actual wording of both Policy S4 and the Framework specifically refer to disused and redundant buildings.
8. The proposal is within the countryside and does not relate to any of the exceptions listed within Policy S4 of the Local Plan, or paragraph 79 of the Framework. It would conflict with Policy S3 and S4 of the Local Plan. Due to its position within the countryside and lack of public transport or a surfaced and lit road, it would have a reliance upon private vehicles to reach nearby settlements' services and facilities. No evidence has been submitted to support a contrary view. It would therefore conflict with Policies S2, S8 and ENV1 (A) of the Local Plan which seek that proposals reduce carbon emissions and greenhouse gases and ensures people and places are well connected.

Other Matters

9. Reference is made to paragraph 148 of the Framework which supports the conversion of existing buildings to help meet the challenge of climate, flooding and coastal change. There is no evidence that an alternative use would be any less able to deliver these environmental benefits. Additionally, although the development may accord with this aim, conflict with paragraph 79 of the Framework carries significant weight within this decision.
10. The main parties disagree on whether use of the building as a dwelling would be more or less sustainable than another use however, this factor has little weight within my decision.

³ February 2019.

Planning balance

11. I have found that the use of the building as a dwelling house fails to accord with the development plan. It is therefore necessary to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with this plan. The Appellant contends that since the Council has been aware of the use since 2013, and not taken enforcement action, there is tacit agreement to the use. I have no conclusive evidence before me regarding the Council's previous or future intentions regarding enforcement action. Additionally, the assertion that the Council agree to the current use is not supported by the site's planning history which demonstrates that there has been consistent resistance to the current use including recent refusal of planning permission which has led to this appeal.
12. The Appellant also contends that it would not be in the interests of fairness and good governance to refuse the planning permission and render the building useless. There is no evidence before me to suggest that an alternative use for the building could not be found or whether such an option has been considered. Consequently, there is no certainty that the building would become useless should this appeal fail.
13. Although the Appellant has not specifically brought such a consequence to my attention, I must consider the impact that dismissal of the appeal would have on the human rights of the Appellants. Article 8(1) of the First Protocol to the European Convention on Human Rights (the Convention), as incorporated in the Human Rights Act 1998 (the HRA) sets out that everyone has the right to respect for his private and family life, his home and his correspondence.
14. Although the risk does exist, there is no evidence to suggest that my decision is likely to lead to the loss of the Appellants' home. This risk is proportionate given the conflict with policy. As such, I do not consider that the human rights of the Appellant would be infringed by this decision. Furthermore, I find that the need to protect the public interest from the identified harm and consequent development plan conflict, which cannot be achieved by lesser means, is justified and proportionate in this case.

Conclusion

15. The proposal would be acceptable in terms of its effect upon the character and appearance of the area; ecology; PRow and flood risk. However, the building is neither disused nor redundant, alternative uses have not been investigated and there is no evidence to suggest that its future is under threat. Consequently, there is conflict with the policies of both the Local Plan and the Framework when taken as a whole.
16. I have carefully considered the personal circumstances of the Appellants and sympathise with their predicament, but I do not consider that such circumstances are sufficient to outweigh the conflict with the Local Plan.
17. For the reasons stated above, the appeal is dismissed.

E Symmons

INSPECTOR