

Appeal Decisions

Site visit made on 10 March 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st April 2020.

APPEAL A

Appeal Ref: APP/K1128/W/19/3241910

Hillfield Village, Bugford Cross to Yeomans, Hillfield TQ6 0LX

- 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 John Palmer, Yellow Bridge Developments Ltd. against the decision of South Hams District Council.
 - The application Ref 0738/19/VAR, dated 6 March 2019, was refused by notice dated 29 August 2019.
 - The application sought planning permission for the demolition of 3no. dwellings and construction of 3no. replacement dwellings and 1no. holiday let/owners accommodation without complying with a condition attached to planning permission Ref 51/2151/14/VAR, dated 20 October 2014.
 - The condition in dispute is No.5 which states that: Unit 3 hereby permitted shall only be occupied as holiday and/or staff accommodation and not as permanent residential accommodation.
 - The reason given for the condition is: To ensure that the holiday and staff accommodation is not used for permanent occupation to prevent the establishment of a permanent dwelling in the countryside contrary [*sic.*].
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APPEAL B

Appeal Ref: APP/K1128/W/19/3241914

Hillfield Village, Bugford Cross to Yeomans, Hillfield TQ6 0LX

- 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 John Palmer, Yellow Bridge Developments Ltd. against the decision of South Hams District Council.
 - The application Ref 0743/19/VAR, dated 6 March 2019, was refused by notice dated 29 August 2019.
 - The application sought planning permission for the demolition of shop and erection of new coach house comprising 3 no. holiday units without complying with a condition attached to planning permission Ref 51/1451/05/F, dated 20 September 2005.
 - The condition in dispute is No.1 which states that: The three units of accommodation hereby permitted shall only be occupied as holiday accommodation and not as permanent residential accommodation.
 - The reason given for the condition is: In order to retain the character of the existing building.
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APPEAL C

Appeal Ref: APP/K1128/W/19/3241916

Hillfield Village, Bugford Cross to Yeomans, Hillfield TQ6 0LX

- 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 John Palmer, Yellow Bridge Developments Ltd. against the decision of South Hams District Council.
 - The application Ref 0745/19/VAR, dated 6 March 2019, was refused by notice dated 29 August 2019¹.
 - The application sought planning permission for the erection of new unit of accommodation without complying with a condition attached to planning permission Ref 4037/16/FUL, dated 17 February 2017.
 - The condition in dispute is No.3 which states that: The unit of accommodation hereby permitted shall only be occupied as holiday accommodation and not as permanent residential accommodation.
 - The reason given for the condition is: To ensure that the approved holiday accommodation is not used for unauthorised permanent residential occupation.
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APPEAL D

Appeal Ref: APP/K1128/W/19/3241924

Hillfield Village, Bugford Cross to Yeomans, Hillfield TQ6 0LX

- 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 John Palmer, Yellow Bridge Developments Ltd. against the decision of South Hams District Council.
 - The application Ref 0746/19/VAR, dated 6 March 2019, was refused by notice dated 29 August 2019.
 - The application sought planning permission for demolition of chalets 36, 37 & 38 (2 bedroom) and erection of two chalets no 36 & 37 (3 bedroom) in traditional materials without complying with a condition attached to planning permission Ref 06&51/0561/01/F, dated 17 May 2001.
 - The condition in dispute is No.2 which states that: The chalets shall only be used for holiday accommodation and not for permanent residential accommodation.
 - The reason given for the condition is: The Local Planning Authority considers that the use of the chalets for holiday purposes is acceptable but any use for permanent accommodation would need to be the subject of a separate planning application to be considered on its own merits to comply with the objectives of Development Plan Policies E6, H4, SHDC3 and relevant Central Government Guidance.
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¹ The Council's decision notice is undated. The date, comes from the appeal form and has been confirmed by the Council to be correct.

APPEAL E

Appeal Ref: APP/K1128/W/19/3241935

Hillfield Village, Bugford Cross to Yeomans, Hillfield TQ6 0LX

- 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 John Palmer, Yellow Bridge Developments Ltd. against the decision of South Hams District Council.
 - The application Ref 0752/19/VAR, dated 6 March 2019, was refused by notice dated 29 August 2019.
 - The application sought planning permission for creation of 28 new holiday units, pool building extension and alterations with associated landscaping and infrastructure without complying with a condition attached to planning permission Ref 0762/18/VAR, dated 5 June 2018.
 - The condition in dispute is No.8 which states that: The units of accommodation hereby permitted shall only be occupied as holiday accommodation and not as permanent residential accommodation.
 - The reason given for the condition is: To ensure that the approved holiday accommodation is not used for unauthorised permanent residential occupation.
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APPEAL F

Appeal Ref: APP/K1128/W/19/3241927

Hillfield Village, Bugford Cross to Yeomans, Hillfield TQ6 0LX

- 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 John Palmer, Yellow Bridge Developments Ltd. against the decision of South Hams District Council.
 - The application Ref 0748/19/VAR, dated 6 March 2019, was refused by notice dated 29 August 2019.
 - The application sought planning permission for demolition of 45 units & construction of 8 new units of accommodation, together with new internal road layout, landscaping, recycling facilities, treatment plant including reed bed filtration system and associated works without complying with a condition attached to planning permission Ref 06_51/2102/06/F, dated 23 January 2007.
 - The condition in dispute is No.10 which states that: The 8 new units of accommodation shall only be occupied as holiday accommodation and not as permanent residential accommodation.
 - The reason given for the condition is: To ensure that the 8 new units of accommodation are not used for permanent occupation for reason that to prevent the establishment of a permanent dwelling in the countryside [*sic.*].
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APPEAL G

Appeal Ref: APP/K1128/W/19/3241931

Hillfield Village, Bugford Cross to Yeomans, Hillfield TQ6 0LX

- 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 John Palmer, Yellow Bridge Developments Ltd. against the decision of South Hams District Council.
 - The application Ref 0749/19/VAR, dated 6 March 2019, was refused by notice dated 29 August 2019.
 - The application sought planning permission for creation of 28 new holiday units, pool building extension and alterations with associated landscaping and infrastructure without complying with a condition attached to planning permission Ref 0762/18/VAR, dated 5 June 2018.
 - The condition in dispute is No.8 which states that: The units of accommodation hereby permitted shall only be occupied as holiday accommodation and not as permanent residential accommodation.
 - The reason given for the condition is: To ensure that the approved holiday accommodation is not used for unauthorised permanent residential occupation.
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APPEAL H

Appeal Ref: APP/K1128/W/19/3241936

Hillfield Village, Bugford Cross to Yeomans, Hillfield TQ6 0LX

- 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 John Palmer, Yellow Bridge Developments Ltd. against the decision of South Hams District Council.
 - The application Ref 0753/19/VAR, dated 6 March 2019, was refused by notice dated 29 August 2019.
 - The application sought planning permission for the erection of 7 new holiday units (plots 34-40) without complying with a condition attached to planning permission Ref 3554/16/VAR, dated 3 January 2017.
 - The condition in dispute is No.8 which states that: The holiday units hereby permitted shall only be occupied as holiday accommodation and not as permanent residential accommodation.
 - The reason given for the condition is: To ensure that the approved holiday accommodation is not used for unauthorised permanent residential occupation.
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Decisions

1. The appeals are dismissed.

Application for costs

2. An application for costs was made by Mr John Palmer, Yellow Bridge Developments against South Hams District Council. This application is the subject of a separate Decision.

Procedural matters

3. The 8 application forms do not give reference numbers for the original permissions that they relate to. In respect of appeal E, the date of the previous permission given on the application form is inconsistent with the decision notice provided and referred to in the Council's decision. I sought clarification from the Council and appellant in respect of this point but received no response from either party. However, the reference number 0762/18/VAR for the previous permission is stated on the Council's decision notice, referred to in the appellant's statement and a copy of that permission was provided with the appellant's appeal form. I have, therefore, determined appeal E as the proposal described in my heading.
4. Appeal A seeks permission without complying with a condition on a previous permission under S73 of the Town and Country Planning Act 1990. That permission was also granted under S73 and was described as "Variation of condition 5 (to confirm unit 3 will be staff/holiday accommodation) of approval 51/0956/14/F" which is not an act of development. I have, therefore, referred solely to the description of development given under the original permission, 51/0956/14/F in my heading.
5. Appeal B seeks permission without complying with a condition on a previous permission under S73 of the Town and Country Planning Act 1990. That permission was also granted under S73 and was described as "Variation of condition (9) of planning permission 51/1259/04/F for demolition of shop and erection of new coach house comprising 3 no. holiday units" which is not an act of development. I have, therefore, referred solely to the description of development given under the original permission, 51/1259/04/F, in my heading.
6. Appeal D seeks permission without complying with a condition on a previous permission under S73 of the Town and Country Planning Act 1990. That permission was also granted under S73 and was described as "Amendments to permission 06/51/1176/00/F [*sic.*] dated 30/8/00 for demolition of chalets 36, 37, & 38 (2 bedroom) and erection of two chalets no 36 & 37 (3 bedroom) in traditional materials (stone facing on south east elevation and addition of two porches)" which is not an act of development. I have, therefore, referred solely to the description of development given under the original permission, 06&51/1176/00F, in my heading.
7. Appeal E seeks permission without complying with a condition on a previous permission under S73 of the Town and Country Planning Act 1990. That permission was also granted under S73 and was described as "Variation of condition 8 (Holiday Accommodation Restriction) following grant of planning consent 1415/17/FUL (Creation of 28 new holiday units, pool building extension and alterations with associated landscaping and infrastructure)" which is not an act of development. I have, therefore, referred solely to the description of development given under the original permission, 1415/17/FUL, in my heading.
8. Appeal G seeks permission without complying with a condition on a previous permission under S73 of the Town and Country Planning Act 1990. That permission was also granted under S73 and was described as "Variation of condition 8 (Holiday Accommodation Restriction) following grant of planning

consent 1415/17/FUL (Creation of 28 new holiday units, pool building extension and alterations with associated landscaping and infrastructure)" which is not an act of development. I have, therefore, referred solely to the description of development given under the original permission in my heading.

9. Appeal H seeks permission without complying with a condition on a previous permission under S73 of the Town and Country Planning Act 1990. That permission was also granted under S73 and was described as "Application variation of condition number 2 following grant of planning permission 3155/16/FUL" which is not an act of development. I have, therefore, referred solely to the description of development given under the original permission, 3155/16/FUL, in my heading.

Background and Main Issues

10. Hillfield Village has been subject to numerous planning permissions, many relating to the provision of holiday accommodation. Whilst the wording of the disputed conditions varies between the various permissions, they are essentially constructed so as to restrict occupation of the accommodation at the site to holiday accommodation only, preventing occupation as permanent dwellings. The reasons for the conditions also vary, but the appeals must be determined in accordance with prevailing policy.
11. From the reasons for refusal and other submitted evidence, the main issues are whether the conditions are necessary to prevent permanent residential occupation with particular regard to:
 - (a) The accessibility of the site to services and facilities; and
 - (b) The demand for holiday accommodation in the locality.

Reasons

Accessibility

12. Hillfield Village may not be isolated from other development, but there is no dispute that it is located outside any settlement identified in the development plan as suitable for future housing growth.
13. Amongst other things, Policies SPT1 and SPT2 of the Plymouth and South West Devon Joint Local Plan 2019 (LP) seek to manage development so as to promote neighbourhoods and communities that have a mix of local services and community assets, sustainable and health promoting transport options available to access local education, services and jobs, reasonable access to a vibrant mixed use centre to meet daily community needs and be well served by public transport, walking and cycling opportunities.
14. There are a number of services and facilities within a relatively short distance. Theoretically, this may make them accessible by bicycle, but the unlit, narrow winding nature of the rural highway network is unlikely to make this an attractive option for most people. Walking, which the appellant says could take around 30 minutes to some key facilities, is unlikely to be a regular choice due to the time taken.

15. Therefore, whilst the proposals may comply with certain other aspects of LP Policies SPT1 and SPT2, given the travel considerations I have described, I find that permanent dwellings at Hillfield Village would conflict with those policies, read as a whole.
16. Paragraph 103 of the National Planning Policy Framework (the Framework), recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. However, the paragraph also indicates that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Given the characteristics of the surrounding routes, outlined above, such choice would not realistically exist.
17. Whilst there are 8 separate appeals before me, relating to a number of planning permissions, I have not been presented with any particular evidence as to why I should not consider the cumulative effect of the proposals. Collectively, allowing the appeals would result in a significant number of permanent dwellings with poor accessibility to services and facilities. As such, I do not find support from Framework Paragraph 103 read as a whole.
18. Notwithstanding the above, some of the accommodation is already in existence, with restricted residential uses established at the site. It is likely that many of the occupiers would travel to the site and around various local attractions by private motor vehicle. In this regard, my attention has been drawn to appeal decisions in *Bassetlaw District*² also relating to conditions restricting permanent occupation.
19. In the *Bassetlaw* cases, part of the Inspector's reasoning related to the appropriateness of Section 73 of the Town and Country Planning Act 1990 to deal with the proposal, and whether the nature of development at the site would be changed so as to effect a material change of use. That is not in dispute at Hillfield Village. In considering the location of development, the *Bassetlaw* Inspector found that a change to permanent residential occupation would only lead to moderate adverse impacts in respect of accessibility and transport. There is no substantive evidence that I should not reach the same conclusion of moderate harm here.
20. However, whilst finding some harm, there was also a shortfall in housing land supply in the *Bassetlaw* cases. Whilst the appellant submitted that this was the case in South Hams district at the time of making the applications, the Council's position that, following the adoption of the LP, it can now demonstrate in excess of 5 years housing land supply is not disputed. As such, the balance of considerations before me is different to those in *Bassetlaw*. I, therefore, give those decisions limited weight.
21. Moreover, whilst the conflict with the development plan in terms of accessibility would be tempered by existing travel patterns to the site, a permanently resident community would not have good access to the services and facilities described in LP Policies SPT1 and SPT2. As such includes education and jobs, the need to access them would be greater for permanent residents than those

² Appeal Refs. 3190814 & 3195196 (full reference numbers not provided)

on holiday. Accordingly, the creation of permanent dwellings at the site is contrary to the policies of the development plan.

Demand for holiday accommodation

22. LP Policy DEV15 seeks to support the rural economy. Alongside supporting new tourist accommodation, subsection 7 states that the loss of tourist or leisure development will only be permitted where there is no proven demand for the facility. I understand that the appellant responded to the Council's request for additional information and that the Council confirmed that no further evidence was required. I also understand that the appellant is frustrated that the Council has not expressly referred to the submitted evidence and has not produced contrary evidence of demand.
23. Substantive evidence has been provided setting out that units at the site have been marketed for sale for around 8 years. I am told by the appellant that a number remain unsold, and a good proportion of those that have sold are not subject to occupancy restrictions. I can appreciate the difficulties that have been experienced in selling the units given the appellants evidence indicating that it is not possible to obtain a mortgage against them due to the occupancy restrictions in place.
24. I have no doubt that releasing the units from the restrictive conditions would result in a significant upturn in sales. However, the marketing evidence, whilst making reference to the ability to purchase for private occupancy or let as a holiday home, is based primarily on private sale. This evidence, therefore, demonstrates a lack of demand for occupancy restricted second homes, but does not demonstrate a lack of demand for tourist accommodation generally.
25. There is also evidence of occupancy levels for individual units. However, there is no comparison to occupancy levels elsewhere in the area for me to assess whether they are unusually low. Nor is there any detailed commentary on the occupancy such as whether the respective units were occupied by individual owners, let as temporary holiday accommodation, the length of time each property was made available to the rental market or the efforts that have been undertaken in marketing them as such. In any event, whilst the stated occupancy levels may almost all be below 50%, they have been occupied. Therefore, the occupancy evidence demonstrates that there is some demand for accommodation at the site.
26. If I were to allow the appeal, owners would still have a choice to occupy the units permanently or let them as holiday accommodation. In that scenario, there would be no loss of tourist accommodation. However, in the absence of robust evidence as to the likelihood of such behaviour, I can only attach limited weight to that matter. Therefore, without a restriction in place, I find it likely that at least some of the units would be lost from the tourism market.
27. LP Policy DEV15 does not set out how demand, or lack thereof, should be demonstrated. However, on the basis of the foregoing, I find that the evidence does not demonstrate that there is no proven demand for this tourist development and the relevant test in the policy is not met.

Other matters

28. I understand that there is some concern surrounding the proportion of second homes in the South Hams area. However, mindful of the separation of the site from services and facilities, there is no particular evidence that properties occupied for holiday purposes on a purpose built holiday site are particularly harmful in this regard. Given the lack of dispute that there is currently more than 5 years supply of general housing in the area, I give this matter limited weight.
29. My attention has been drawn to an appeal decision in Cumbria³, but as that appears to relate to a refusal to issue a Lawful Development Certificate, it is of limited relevance to this appeal that is concerned with planning merits.

Conclusion

30. The site is not an appropriate location for permanent residential development. Even though harm associated with shortcomings in accessibility may be tempered by the existing restricted residential uses at the site and so be moderate overall, there is no substantive evidence of any material consideration of sufficient weight to counter this. Furthermore, it has not been adequately demonstrated that there is no proven demand for holiday accommodation in the area. As such, I find that the proposal conflicts with the development plan.
31. There is evidence before me concerning the need for various planning obligations and dispute over its relevance. However, as I am dismissing the appeal for other reasons, whether any such mitigation is reasonable or necessary does not fall to be considered.
32. For the reasons given above, I find that the conditions are reasonable and necessary to prevent permanent occupation of the accommodation. Accordingly, the appeals are dismissed.

M Bale

INSPECTOR

³ Appeal Ref. 2172847 (full reference number not provided)