The Planning Inspectorate

Appeal Decision

Site visit made on 10 December 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 27 April 2020

Appeal Ref: APP/L1765/C/19/3230907
Old Orchard, Kilham Lane, Winchester, Hampshire SO22 5PT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Michael Culhane against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 10 May 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from a single residential unit to a mixed use comprising a residential unit and five self contained holiday apartments.
- The requirements of the notice are to:
  1. Cease the use of the five apartments, in the approximate positions cross-hatched in black on the attached plan, as self contained holiday apartments.
  2. Remove all kitchens, bathrooms from the five apartments.
  3. Restore the five apartments to uses incidental to the residential use of the Land.
- The period for compliance for Steps 1 & 2 is 6 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The Appeal on Ground (a) and the deemed planning application (DPA)

Main Issue

2. With reference to the stated reasons for serving the enforcement notice the main issue is whether the location is suitable for the development, with particular regard to the Council's Spatial Strategy.

Reasons

3. Three of the self-contained apartments are in a single storey building which is attached to the site's main dwelling. Granted planning permission in 2006 as an extension to the site's main dwelling each apartment within the building has its own front door onto the property's driveway. The other two apartments are located in a detached two-storey building towards the rear of the site. This was approved as a double garage with overlying storage accommodation, granted planning permission in 2009. Having the appearance of a chalet bungalow the building is effectively demarcated from the dwelling's main rear curtilage area by a slatted, wooden fence.

4. The Council indicates that, as the appellant failed to respond to a planning contravention notice served, and with the interpretation that the use was contrary to local planning policy, the Council then saw it expedient to issue the enforcement notice in an attempt to secure its cessation.

5. The explanatory accompanying text to Policy MTRA 4 of the Winchester District Local Plan Part 1 (LP) indicates that development in the countryside will be limited to that which has "an essential need to be located in the countryside". However, it also indicates that it is often appropriate for existing buildings, which are capable of use without major reconstruction, to be productively re-used for uses such as tourism. At my site visit I noted that the two buildings housing the apartments are both well designed and presented. The policy continues in saying that the development should be proportionate to the nature and scale of the site with small scale sites suitable for low key tourist accommodation.

6. LP Policy CP8 says that the Council will support economic development and diversification, in accordance with its spatial strategies, by supporting key economic sectors, one of which is tourism. In turn, it is recognised that tourism, which often goes hand-in-hand with the partaking of recreational activities, can generate significant local income and support a number of other economic sectors such as retail, transport and local creative industries.

7. Kilham Lane, towards its junction with Romsey Road, is largely developed on its eastern side for residential purposes. On its opposite side, off which 'Old Orchard' is located, development is noticeably more sporadic. The appeal site, although classed as 'countryside', is on the very cusp of this transition. In this context the Council's case report is therefore somewhat misleading in describing the site being located within the "open countryside.". This would imply a degree of isolation, which is not here the case. Given the nearby suburban character, neither can the location be considered as unsustainable, and the Council acknowledges this in its case report.

8. The Council, in issuing the enforcement notice, describes the use as "unnecessary development" in a countryside location where appropriate premises should be retained for such uses. As mentioned, and with reference to the Council's Policies Map, it appears that the site lies within, but at the very edge of, what is zoned as a countryside location. To that extent policy MTRA 4 is applicable but, even so, the policy's wording only seeks to prohibit development from such locations where an operational need has not been demonstrated. However, I have highlighted the benefits that can arise from such a use, and there is a clear difference between such a development in this location, especially with its limited scale, and that of one sited within the "open countryside" proper.

9. From my site visit observations the development is a relatively low key use, with limited accommodation in terms of bed spaces available. Given the circumstances I see little relevance in the Council's point that a high percentage of the site is taken up by a "commercial use". Neither am I convinced as to the materiality of the Council's assertion that the appellant does not live at the site. I am, though, mindful that the development does meet relevant provisos in both of the local policies cited. Accordingly, I consider that the Council has been too narrow in its approach to the

development at issue and, in not taken into account all the various material considerations involved, has been unduly prohibitive.

10. In my judgement, the benefits to the local economy and tourist industry through holiday let accommodation in this particular instance, outweigh the site's countryside location, albeit marginal, and the policy restrictions on developments therein. Accordingly, on balance, I find that any locational harm is outweighed here by the other knock-on benefits highlighted.

11. I therefore conclude that the development is not in material conflict with the general objectives of LP policies MTRA 4 and CP8, and the Council's spatial strategy is not compromised in this instance. Nor is the development inconsistent with the government's aim of stimulating economic growth and creating and supporting 'rural' businesses and diversity, as emphasised by the relevant advice in paragraphs 83, 117, 118 and 127 of the National Planning Policy Framework (the Framework).

12. Accordingly, for the reasons given, and having had regard to all matters raised, the appeal on Ground (a) succeeds and planning permission, by way of the DPA, is granted, but subject to conditions as set out in the Formal Decision below.

The Appeal on Ground (f)

13. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by restoring the land to its condition prior to the breach taking place.

14. Under ground (a) I have found that planning permission should be granted for the development so it is not necessary for me to consider the appeal on ground (f) and assess the lesser steps argued by the appellant which he considers would remedy the breach.

Conclusion and Conditions

15. I have found that despite the development being, on the face of it, at odds with the Council's spatial strategy, this objection is outweighed by it being consistent with the general objectives of the relevant local policies and also relevant advice within the Framework. For the above reasons, and having had regard to all matters raised, I allow the appeal and grant planning permission for the development, namely the material change of use of the land from a single residential unit to a mixed use comprising a residential unit and five self contained holiday apartments. Accordingly, the enforcement notice is quashed.

16. In considering what conditions need to be imposed I note that the Council has suggested the imposition of two conditions. Whilst, I agree with the Council and, indeed, the appellant, that a condition regulating the use and occupation of the holiday apartments is both reasonable and necessary, the Council has not made it clear why a more standard and ubiquitously used condition in this regard should not be employed. The appellant has advanced the wording of such, and I have been provided with an example of the Council having previously taken the appellant's preferred approach.

17. I have imposed the condition as suggested by the appellant. Its requirements are clear, the wording is precise, and there is no good reason before me why the condition might be considered unenforceable. I see no necessity to depart from the standard approach and, instead, make references to 'days' as opposed to 'weeks', nor the purpose of making reference to the tax year. Accordingly, I am satisfied that the condition I have imposed is workable and reasonable in the circumstances.

18. The second condition arises due to Natural England's advice to Councils as to achieving nutrient neutrality for new development in the solent region, within which the appeal site is located. This advice is contemporary and recommends that Councils impose a condition on all planning permissions for one or more net additional new dwellings, including overnight accommodation. I therefore disagree with the appellant as to the advice not being applicable in the current appeal. This is a relatively new development which does not enjoy immunity from planning control. Accordingly, planning permission is being sought for the development's lawful continuation, although in view of the dwelling already being established at the site I draw a distinction between the two elements by way of the condition's wording.

19. In the circumstances the Council is correct in requesting that the matter of nutrient neutrality should be here addressed. That said, the use as holiday lets has been continuing, albeit without formal regulation, and I am not convinced that the use should cease until such time as the requisite details and an appropriate mitigation package have been submitted to the Council and subsequently approved.

20. With the onus on the appellant to provide details of the drainage system, and to avoid undue disruption, I am proposing a staged process which allows for the possibility of no approval emanating from the Council. The wording might seem somewhat draconian but the stated timelines are necessary as there needs to be there as a "long stop". Also, they are reasonably achievable. In the event I do not therefore anticipate difficulties in approval being ultimately obtained, given the clear technical guidance as to what level of detail is required to satisfy the relevant authorities.

Formal Decision

21. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the land from a single residential unit to a mixed use comprising a residential unit and five self-contained holiday apartments at Old Orchard, Kilham Lane, Winchester, Hampshire SO22 5PT, as referred to in the notice. The permission is subject to the following conditions:

    1) The development hereby approved shall be for holiday/tourism lettings only and not for any permanent residential use. The holiday accommodation shall not be occupied for a period exceeding 4 weeks for any single letting, shall not be occupied for more than 5 times per year by the same occupier, and there shall be no return within 4 weeks by the same occupier. A register of all occupiers, detailing dates, names and usual addresses, shall be maintained by the owner, and shall be kept up to date and available for inspection at all reasonable hours by the local planning authority.

2) The use of the buildings for holiday apartments, hereby permitted, shall cease within six months of the date of failure to meet any of the following criteria:

(i) Within three months of the date of this decision, details of a mitigation package addressing the additional nutrient input arising from the development, including a timetable for implementation, shall be submitted to the local planning authority.

(ii) Within nine months of the date of this decision the details shall have been approved in writing by the local planning authority or, if the local planning authority refuses to approve the details or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State.

(iii) If an appeal is made pursuant to (ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.

(iv) The approved scheme shall have been implemented in accordance with the approved timetable.

Timothy C King

INSPECTOR