



Appeal Decision

Site visit made on 11 December 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2020

Appeal Ref: APP/C1435/W/19/3237487

The Old Mill, Chalvington Road, Golden Cross, Chiddingly, BN27 3SS

- 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 Dick Shone of the Old Mill Park Ltd against the decision of Wealden District Council.
 - The application Ref WD/2018/2617/FA, dated 4 December 2018, was refused by notice dated 2 April 2019
 - The application sought planning permission for change of use from touring to static caravans on a 12-month License, together with alterations to the internal drive, installation of low level lighting and associated landscaping without complying with a condition attached to planning permission Ref WD/2014/0423/F, dated 10 April 2014.
 - The condition in dispute is No 5 which states that: (i) The caravans shall be occupied for holiday purposes only; (ii) The caravans shall not be occupied as a person's sole or main place of residence; (iii) The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.
 - The reason given for the condition is to ensure that approved holiday accommodation is not used for unauthorised permanent residential occupation, having regard to Policies GD2, DC2, DC17 and DC22 of the adopted Wealden Local Plan, coupled with the requirements of paragraph 55 of the National Planning Policy Framework 2012.
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Decision

1. The appeal is dismissed.

Award of costs

2. A late application for costs was made by Mr Dick Shone of the Old Mill Park Ltd against Wealden District Council. This was accepted and is the subject of a separate decision.

Preliminary Matter

3. The decision notice makes reference to policies in the emerging Wealden Local Plan (Submission Document) January 2019. This had been undergoing examination during the course of this appeal. However, following the publication of a letter from the examining Inspector in January 2020 it has become clear that there are significant issues with this plan which mean that it cannot proceed to adoption in its current form. It has now been withdrawn.

Background and Main Issues

4. The proposal seeks to remove or vary condition 5 of a planning permission originally granted in 2014. This approved the change of use of the site from touring to static caravans on a 12-month license together with alterations to the internal drive, installation of low level lighting and associated landscaping. The contested condition requires that the caravans are only occupied for holiday purposes only, and not as a person's sole or main place of residence.
5. The appellant argues that this condition is not necessary and seeks its removal. An alternative condition, stipulating that the accommodation can be occupied as a private main residence as long as one or more of the occupants is at least 55 years old, is suggested. The effect would be that there would be no requirement for the caravans on the site to be used for holiday accommodation. They could alternatively be occupied as a person's sole or permanent residence, subject to age restrictions.
6. The main issues in this appeal are:
 - i) whether or not appropriate provision is made for affordable housing;
 - ii) The suitability of the location for the permanent residential development proposed, having particular regard to the accessibility of the site in relation to services by means other than the private car; and
 - iii) whether or not the loss of the existing tourism use is justified.

Reasons

Affordable Housing

7. The disputed condition means that the existing caravans on the site cannot be used as a person's sole or main place of residence. As such, they can only be used for holiday use or related types of temporary accommodation. This is materially different to a dwelling, which implies a principal residence with a greater degree of permanence. Consequently, the effect of the proposal would be to change the use of the site to permanent housing, and therefore create new dwellings. Whilst the occupancy could be restricted to the over 55's, this would not change the permanent nature of the proposed housing. In planning terms, this would amount to a new housing development, which raises the question of whether affordable housing is necessary.
8. Policy WCS8 of the Wealden District Core Strategy Local Plan (2013) ("Core Strategy") states that affordable housing will be required on sites of 5 or more dwellings, at a level of 35% of the total number of dwellings within each scheme. Whilst this was not cited on the Council's decision notice, the policy is cited on various occasions in the written submissions. This requirement is also reflected in policy AFH1 of the Wealden Affordable Housing Delivery Local Plan (2016) ("WAHDLP"). The creation of 11 permanent residential units means that affordable housing would normally be required, under these policies.
9. It is argued that, as permanent accommodation, the modular housing proposed here would be cheaper to buy than conventional housing within the District. However, the price would still be set by the open market. The evidence before me does not clearly demonstrate that the proposal meets the definition of

affordable housing as set out in Annex 2 of the National Planning Policy Framework ("the Framework").

10. As such, no affordable housing is provided in this new housing development, and there is no mechanism before me of securing it. It follows that the proposal conflicts with policy WCS8 of the Core Strategy and policy AFH1 of the WAHDLP, the purposes of which are discussed above. Appropriate provision for affordable housing has not been made, and I attach significant weight to the harm that would arise, in consequence.

Location for permanent residential use

11. The existing development comprises 11 plots for modular homes around an access road, most of which now have buildings in situ. It is accessed from a country lane but close to ribbon development along the A22 and other caravan and park home sites. The wider setting of the site is rural, a relatively flat area comprised of irregularly shaped fields and pockets of woodland.
12. The disputed condition requires that the development is to be used for holiday purposes. Permanent residential occupation has a different character, involving a greater degree of need for everyday services. The Council maintain that the site is unsuitable for residential development, as such services could in most cases only be accessed by car.
13. There is a convenience store within the petrol station that sits close to the site on the A22. This can be easily accessed by foot from the site and would fulfil some of the likely demand from future residents of the site for basic everyday products. There are also shops and social facilities within Deanland Wood Park, which could also potentially be accessed by future occupants of the proposed development. Whilst the route to this park follows a country road, the volume of traffic along it is low. It falls within reasonable walking distance of the site.
14. Other services are available in small villages nearby such as Ripe and Chalvington, but these exceed reasonable walking distance. Berwick Railway station is around 7 km away. Whilst these areas could be potentially accessed by bike as the country roads are quiet, the existing take up rate of cycling for everyday transport is low in comparison to the private car.
15. A more comprehensive range of shops and services can be found in Hailsham, several kilometres east of the site. Whilst there is a footpath along the A22, the distance involved means that future residents would be unlikely to access this area on foot. The speed and level of traffic is likely to deter cyclists. However, there is a bus service which follows the A22, and from which future occupants could access Hailsham or alternatively Uckfield. The frequency of this service, noted by another planning Inspector to run hourly¹, means that future occupants could realistically make trips to and from these large settlements by public transport. Whilst this would be a less convenient option than the car, it represents a reasonable alternative.
16. In elaborating on its position in relation to this issue, the Council cite policy WCS6 of the Core Strategy. This is a strategic policy which sets out the broad allocation of housing across rural areas. It does not identify the site as falling within an area where new housing development is planned.

¹ APP/C/1435/W/17/3180696

17. In terms of detailed policies on development in the Countryside, the site falls within the countryside for the purposes of saved policies in the Wealden District Council: Wealden Local Plan (1998) ("Local Plan"). Policy GD2 sets out a restrictive approach to new development in such areas, limiting it to that which is essential to a countryside location. Policy DC22 of this plan states that residential mobile homes will not be permitted in the countryside unless they are on a temporary basis and are also connected with a rural activity. As the proposal does not meet this criteria, it conflicts with the development plan, in this respect.
18. However, the Local Plan predates the publication of the Framework. This states that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. It also states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, which should be taken into account in decision making. This is not an isolated location; as discussed above there are some essential services and facilities within walking distance of the site and functional public transport options. In the context of a rural area, the site has fair levels of accessibility by means other than the car.
19. As the development for the most part already exists, there would be no significant change to the appearance of the site and surrounding area as a consequence of this proposal. Furthermore, given the existing use of the site, the total number of vehicular trips is unlikely to increase significantly over the existing situation. Consequently, there would be very little impact on the highway network. These factors all serve to limit any harm that arises in relation to this issue.
20. Overall, taking account of all the points set out above, I conclude that no significant harm would arise as a consequence of the accessibility of the site in relation to services and facilities, by means other than the private car. I therefore attach limited weight to the conflict with the development plan, in this respect.

Tourism use

21. The Council also express concern about the loss of the existing tourism use. The 11 plots provide guest accommodation which potentially support the rural economy, and tourist attractions within the local area.
22. However, the operation is of a relatively small scale and in consequence the overall impact of the loss of this facility on the tourism in the District would be limited. Furthermore, the Council acknowledge that there is no adopted development plan policy, which protects the existing use of the site. Whilst there were emerging policies that dealt with this issue, these have been withdrawn as previously discussed.
23. The Council cite another decision where an Inspector dismissed an appeal for a proposal that sought to remove a condition limiting the use of a property to holiday let accommodation². However, in that case there was development plan policy, which specifically justified the original proposal on the basis that it would amount to a tourism use. The same circumstances do not apply here.

² APP/C1435/W/15/3131416 (particularly paragraph 7)

24. I note the concerns expressed by the Council about the possible cumulative impact of such conversions taking place. However, the evidence before me in this appeal does not conclusively demonstrate that there is a significant shortage of tourism accommodation within Wealden. Indeed, the appellant draws attention to studies which suggest that tourist accommodation in the District has a low occupancy rate³.
25. These considerations lead me to the view that there would be no harm arising as a consequence of the loss of this tourism facility. There is no conflict with the development plan, and no significant conflict with the relevant parts of the Framework which seek to support a prosperous rural economy, including sustainable rural tourism.

Other Matters

26. Other planning policies are cited by both parties, on the decision notice and in the appeal submissions. I have had regard to all of these, but my conclusions relate to the most relevant policies to each main issue. There is some support in the development plan for the reuse of previously developed land, which would occur here.
27. I understand that there is a desire to use the units on a permanent basis; this is a consequence of the strong demand for housing within this area. However, units were continuing to be built on the site in the course of this appeal and many of the plots appear to be sold or completed. This work has occurred recently and whilst the current restrictions are in place. The written submissions suggest that the units are currently being used as holiday homes, albeit in many cases for longer stays; which is broadly in line with the intentions of the condition.
28. Consequently, even taking account of the apparent rise in competition, on the evidence before me I am not persuaded that the development is not viable and give very little weight to the arguments made to this effect. This is not a persuasive reason to allow the appeal. Whilst there is local support for the proposal, this does not outweigh the harm identified.

Planning Balance and Conclusion

29. The proposed variation of condition would conflict with the development plan, when it is considered as a whole.
30. It is common ground that the Council are unable to demonstrate a 5-year housing land supply. On the evidence before me from around the time of the original determination, the supply is around 2.62 years, representing a significant shortfall. The appellant maintains that the actual supply is even less, at 2.2 years. The restrictive approach to new housing development set out in the policies cited in the first two main issues of this appeal mean that, having regard to paragraph 11 d) of the Framework, the policies most relevant for determining the application are out-of-date.
31. The proposal would deliver 11 residential units for permanent occupation, targeted at older people thus fulfilling a demand from this segment of the market for residential accommodation. As relatively compact, modular buildings these would potentially be cheaper to buy than conventional housing

³ Wealden District Council: Strategic framework for tourism in Wealden (April 2010), page 14.

- within the District, and as small units they could free up other larger properties. They also demonstrate a high standard of environmental performance. On the basis of my site inspection the quality of the accommodation would be good.
32. However, weighed against this is the fact that there would be no affordable housing contribution. Paragraph 64 of the Framework states that, where major development is proposed, at least 10% of the homes should be available for affordable housing ownership. Whilst the proposal could be restricted to the over 55s, it does not amount to specialist or purpose built accommodation for the elderly. The lack of affordable housing detracts from the extent to which the proposal would help deliver the objective, set out in the Framework, of delivering a sufficient supply of homes.
33. The economic benefits of the development would also be limited when considered against the existing situation. They would be confined to a small amount of business for the petrol station and occasional use of the bus service, along with some additional construction activity and ongoing maintenance enabled by the completion of the remaining undeveloped parts of the site. Whilst there would be no significant harm arising as a consequence of the levels of accessibility, the contribution the development would make to the vitality of the rural community would be limited.
34. As they are permanent dwellings, the proposal would lead to additional Council tax revenue for the Council. This is a local finance consideration that weighs in favour of the proposal.
35. Overall, I attach significant weight to the failure to provide affordable housing. For this reason, even taking into account the shortfall in housing supply, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development does not apply.
36. The Council also expressed concerns about a likely increase in traffic generation associated with the proposal. It was argued that this would have a significant effect on nearby European protected sites although it has now withdrawn these concerns in light of the Inspectors findings in relation to the now withdrawn local plan. As this appeal is failing and I am not intending to grant planning permission, there is no need to undertake an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 (as amended).
37. The Council have approved various other examples of park home development, sometimes without affordable housing, including at Deanland Wood Park very close to the site. However, it is right that this position is reconsidered, as the Framework is clear about the need to make provision for affordable housing when the major development threshold is met.
38. Other appeal decisions are cited by both parties, which I have had regard to. In terms of this decision the most relevant are the two recent appeals involving housing development at Golden Cross as these are the closest to the site. One appeal, cited previously, was ultimately allowed and the other dismissed⁴. In

⁴ APP/C1435/W/19/3223713

the second appeal the tilted balance was not enacted due to issues with Habitats sites; the circumstances here are different as the Council withdrew this concern in the course of the appeal.

39. The evidence relating to the accessibility of sites for new residential development differs in each appeal decision. On the principle of development and accessibility, in this case the appellant provides further evidence about the provision of services at Deanland Wood Caravan Park which has influenced my findings. This is reflected in the discussion in the second main issue.
40. Overall, the proposal conflicts with the development plan and there are no other considerations that outweigh this finding. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR