



Appeal Decision

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st May 2020.

Appeal Ref: APP/X1118/W/20/3245841

The Mill, Road from The Mill to Silcombe Cross, Bish Mill EX36 3QF

- 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 & Mrs R & H Heritage against the decision of North Devon District Council.
 - The application Ref 70635, dated 10 October 2019, was refused by notice dated 11 December 2019.
 - The application sought planning permission for conversion of redundant mill to one unit of holiday accommodation (amended plan) without complying with a condition attached to planning permission Ref 61507, dated 25 October 2016.
 - The condition in dispute is No 3 which states that: The development hereby permitted shall not be used otherwise than for the provision of short let holiday accommodation. The property shall not be occupied as a permanent dwelling and shall not be occupied by any one person for a period exceeding 28 continuous days in any calendar year. The owner or operator shall maintain a register of occupants for each calendar year. This shall be made available on request for inspection by any duly authorised officer of the Local Planning Authority.
 - The reason given for the condition is: The site is in a location within which new permanent residential use would not be acceptable in policy terms. However, use for holiday purposes only is considered acceptable.
-

Decision

1. The appeal is allowed and planning permission is granted for conversion of redundant mill to one unit of holiday accommodation (amended plan) at The Mill, Road from The Mill to Silcombe Cross, Bish Mill, EX36 3QF, in accordance with the application Ref 70635 dated 10 October 2019, without compliance with condition number 3 previously imposed on planning permission Ref 61507 dated 25 October 2016 and subject to the conditions in the schedule below.

Preliminary Matter

2. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.

Main Issue

3. The main issue is whether the disputed condition is necessary and reasonable, having regard to the rural location of the development and the need to protect the rural tourism economy.

Reasons

4. The appeal building is a former mill, based in the rural settlement of Bish Mill, approximately 1.8km from South Molton. The parties agree that it is based in a location that is not ordinarily suitable for the construction of new residential dwellings. It is in the countryside where there is currently policy support for the conversion of disused rural buildings subject to certain criteria, including where it would not harm any intrinsic qualities or historic interest and where the conversion would have a positive impact on the immediate setting.
5. Planning permission to convert the building was given in 2016 and owing to the policy circumstances applicable at that time, it was restricted to use for short let holiday accommodation. The permission was implemented and the building has been available for such purposes since 2017. Since then, the planning policy context has changed considerably, with the North Devon and Torridge Local Plan 2011 - 2031 (Local Plan) having been adopted in October 2018.
6. As such, the building is now no longer a disused rural building: it is a letting unit with a holiday occupancy condition that prevents occupation by any individual or family for more than 28 days in any calendar year, and for a register of occupiers to be maintained.
7. The Local Plan includes Policy DM18 which allows for the removal of holiday use conditions. The Policy states that: *"Applications for the removal of occupancy conditions on holiday accommodation will only be permitted where: (a) it is capable of being occupied permanently without need for major extension or alteration; and (b) there is compelling evidence to demonstrate that such a restriction is no longer justified"*.
8. The preamble to the Policy explains that it is necessary to demonstrate an absence of demand for the property with the holiday occupancy condition in place, through means such as marketing the property at a reasonable price for a period of at least 12 months. Evidence of the surplus of local holiday homes or profit/loss indicators were also suggested in the Council's pre-application response.
9. The appellants' family does not intend to sell the building and nor is it suggested that it is redundant for holiday letting purposes. It is for these reasons that they claim that Local Plan Policy DM18 is not strictly applicable. From the appellants' perspective, the desired outcome is for the condition to continue to apply, albeit with some variation to enable them to occupy the building as an annexe to the host dwelling, The Mill. This would enable the care duties of an elderly relative to be shared amongst the extended family.
10. It has been clarified that the appellants do not currently reside in The Mill, and would be relocating from their own dwelling elsewhere. This suggests that it would not be a comfortable arrangement to combine the extended family under the same roof, initially, even though The Mill may appear to be a large, two storey dwelling.
11. Cognisant of the need for compelling evidence to be provided to justify the removal of holiday occupancy conditions, it seems reasonable to expect that sufficient evidence will be provided to support a proposal from which would result similar outcomes for the rural economy, at least in the short to medium term. The submitted evidence includes an indication of the name and age of

the relative for whom it is intended that care will be provided. The appellants' names and those of the other extended family members, along with their relationship to one another, is also documented. There is no medical letter outlining any specific health or care needs of the elderly relative, with age and frailty being given as the key reasons that such support is needed. Though limited, this evidence is not disputed by the Council and I agree that similar evidence would be sufficient to justify an annexe proposal of the format prescribed by Local Plan Policy DM25.

12. The construction of annexes is a typical way to provide accommodation to meet a specific need for a medium to long-term period. In this instance, such a solution would inevitably result in greater delay and more complication than would be the case if the appellants were merely permitted to occupy the appeal building, which is available and conveniently located for the intended purpose. Furthermore, in light of this, the construction of a permanent extension or building that could eventually become redundant for its originally intended function would seem an unresponsive and potentially wasteful solution.
13. Despite the intention for the use to be temporary, the appellants do not seek a time limit on the variation of the condition. This is because the period for which such care duties will be required cannot be specifically defined. Nor can the permission be based on the named occupants, as this would remove flexibility for those family members to change as, or when, necessary. Whilst I do not have cause to dispute the evidence or doubt the appellants' documented intentions based on the family's current needs, I am also mindful that other factors could change the situation in future.
14. However, drawing this issue together, although Local Plan Policy DM18 appears the most applicable, the proposal doesn't fit entirely under the ambit of the Policy. Insofar as there would be harm to the rural economy from the loss of holiday accommodation, at least temporarily, I consider that there is a degree of inconsistency with the Policy, and thus, conflict with the Development Plan.
15. However, there are a number of material considerations which indicate that a decision should be taken other than in strict accordance with the Development Plan. Those considerations include the social benefits from the extended family unification within the host dwelling and annexe. That the family occupation of the annexe would still generate some economic benefit to the area is also a mitigating factor, along with the prospect that the holiday use could be readily reinstated at any time, intermittently or permanently. Therefore, considered holistically in the context of the National Planning Policy Framework (2019), the benefits of the proposal are considered to outweigh the harm.

Conditions

16. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission. It is also necessary to add the condition limiting the occupation as an annexe or holiday let.
17. Whilst the Council suggest a condition requiring the building's use to revert to holiday accommodation purposes when there is no longer a need to provide care for the elderly relative, I consider that its suggested wording is imprecise and that it could be practically difficult to enforce. As already indicated, the annexe use of the building will continue to generate some form of social and

economic benefit to the area for the duration of such use. When it becomes practically and financially desirable for the appeal building to be let for holiday accommodation purposes, it will remain capable of being used for such purposes, with resultant benefits to the local economy.

Final Conclusion

18. For the above reasons, taking into account all other matters raised, the appeal is allowed.

Hollie Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The parking provision and turning facilities shown on plan Ref 90/2016/005 shall be retained and maintained for such purposes thereafter.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order) no development falling within Classes A, B, C, D and E of Part 1 and class A of Part 2 of Schedule Two of the Order shall be carried out.
- 3) The flood mitigation measures detailed within the Flood Risk Assessment dated 22nd July 2016 shall be retained and maintained in perpetuity.
- 4) No habitable accommodation is to be introduced on the ground floor of the proposal and an access and egress route on the first floor south elevation leading to higher ground to the south shall be provided and retained in perpetuity in line with plan Ref 90/2016/004.
- 5) The development hereby permitted shall only be used as short term holiday let accommodation or as ancillary accommodation to The Mill. If the property is used for holiday letting purposes then it shall not be occupied by any one person for a period exceeding 28 continuous days in any calendar year. The owner or operator shall maintain a register of occupants for each calendar year which shall be made available on request for inspection by any duly authorised officer of the Local Planning Authority. If the property is occupied as ancillary accommodation to The Mill then it shall only be occupied by the owners of The Mill or their relatives and not used as a separate dwelling.