



Appeal Decision

Site visit made on 26 January 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th June 2020

Appeal Ref: APP/W3330/W/19/3239808

Church View, Sawyers hill, West Buckland, Wellington TA21 9JZ

- 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 Richard Gale against the decision of Somerset West and Taunton Council.
 - The application Ref 46/19/0004, dated 31 January 2019, was refused by notice dated 3 June 2019.
 - The application sought planning permission for conversion of store building into holiday let without complying with a condition attached to planning permission Ref 46/2004/020, dated 8 July 2004.
 - The condition in dispute is No 11 which states that: the occupation of the building shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
 - The reason given for the condition is: the Local Planning Authority is not prepared to allow a permanent residential site to become established because of the inadequate size of the building and wish to ensure that the approved accommodation is available for tourism.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In 2019 West Somerset Council merged with the former Taunton Deane Borough Council to form Somerset West and Taunton Council. The relevant adopted Local Plan in this case remains the Taunton Deane Borough Council Adopted Core Strategy 2011 – 2028 (CS).

Background and Main Issue

3. The appeal property, Church View, is a single storey, two-bedroom dwelling located on the edge of West Buckland. The building is currently in use as a holiday let. The building was converted from a storage building to a one-bedroom holiday let in 2004 and has subsequently been extended.
4. The proposal is for the removal of a restrictive occupancy condition which would allow the property to be occupied as a permanent residential dwelling. The reason for the original condition in 2004 was because the Council considered the building itself too small to be a permanent residential dwelling

and also due to the Council's wish to keep the accommodation available for tourism.

5. The Council refused the application to remove the condition and believe the condition remains necessary as the site is not considered to be an appropriate location for a permanent dwelling due to its position in the open countryside.
6. Consequently, the main issue is whether the condition restricting the use of the building to holiday accommodation is necessary and reasonable having regard to whether or not the proposed development would occupy an acceptable location for a permanent residential dwelling.

Reasons

7. Church View, is situated within a rural location outside of the development boundary of West Buckland; a small rural village. A small cluster of other properties surround the appeal property and a Church and surrounding field and greenery forms the visual backdrop of the site.
8. Policy SP 1 of the CS sets out the settlement hierarchy for the area and identifies existing settlements as well as setting guidelines for development which is acceptable. The policy states that outside of the settlements, proposals will be treated as being within open countryside. The appeal site is outside of an existing settlement, it is therefore, in policy terms, within the open countryside.
9. Policy DM 2 of the CS: Development in the Countryside, sets out the uses which will be supported outside of defined settlement boundaries. The proposal does not fall within any of the exceptions which would make the principle of a permanent residential dwelling in this location acceptable. The policy is clear that outside of settlement boundaries, national policy regards the re-use or continuation of buildings in economic or community uses as generally preferable to conversion to residential uses and therefore applies a sequential approach to such conversions.
10. The sequential approach sets out that the priority order is as follows; community uses, class B business uses, other employment generating uses, holiday and tourism, affordable, farm or forestry dwellings, community housing and, in exceptional circumstances, conversion to other residential use.
11. The current, lawful, use of the appeal site is as a holiday let. However, this use has not been active since around 2013. The appellant suggests that the holiday lets are not financially viable or needed and argue that criterion 7 (iv) of policy DM 2 has been exhausted and therefore the next uses within the sequential approach must fall to be considered.
12. The evidence before me suggests that, whilst a loss was made in three of the eight years of operation, the remaining five years returned a marginal profit. However, I have not been provided with detailed evidence outlining the strategy which was used to market the property during this time and, in my view, I do not have sufficient substantive information to evidence that the holiday let was robustly marketed.
13. In any event, the evidence before me is that for the majority of operational years the business was profitable, albeit at a small scale. I note that these figures do not include any outgoings for caretaking, cleaning or facilitating

change overs as this was undertaken by the appellant. However, such arrangements are not, to my mind, unusual in the context of a small business and without further detailed information around the potential future cost of such services being provided by another party I cannot reasonably conclude that these potential additional costs would be sufficient to tip the balance and render the accommodation financially unviable.

14. Furthermore, as the property has not been let or marketed since 2013/2014 the evidence provided is significantly outdated and it is therefore extremely difficult to reach a reliable determination as to the viability of the business in the current economic conditions. Moreover, the appellant's evidence states that the building was extended in January 2011. Therefore, for the vast majority of the years the business was operational the building was smaller than is currently the case and, in my view, the extension could make a difference to the potential income. Whilst I have had regard to the up to date Hoseasons income projection appraisal provided by the appellant, I have not been provided with up to date costings or outgoings against which to qualify the income projections and, consequently, this information does not provide a full picture of the potential viability of the business.
15. In addition to the evidence provided with regard to the viability of the extant business, the appellant has also provided a number of marketing appraisals to support the argument that the holiday business is not a desirable acquisition. Ongoing attempts to sell the property over a number of years have not been successful. I recognise that the sale of the property has been marketed in a number of ways and acknowledge that the price has been lowered in order to secure a sale and to reflect the restrictive condition. However, as the business use ceased in around 2013, the property being marketed is not an active business and I consider this may be a factor in the lack of a sale. Irrespective of whether or not the holiday let is a desirable investment and can be sold as such, I do not consider that I have sufficient evidence to conclude that the holiday business is, itself, unviable.
16. Based on the evidence before me, I am not persuaded that there is no longer a demand for this kind of accommodation in the area and I have not been provided with a degree of detail to enable me to conclude that the business as a whole is no longer viable. As such I consider that criterion 7 (iv) of DM 2 and the preferred use of the building has not yet been fully exhausted.
17. Policies SP 1 and DM 2 are further supplemented in their aims to promote sustainable patterns of development by Policy CP 1 of the CS. Policy CP 1 sets out that development proposals will be required to demonstrate that the issue of climate change has been addressed by, amongst other things, reducing the need to travel. The supporting text to the policy goes on to say that directing development to the most sustainable locations and reducing the need to travel through the CS Spatial Strategy will have an impact on climate change at the local level.
18. The appellant states that the appeal site is within a seven-minute walk of a pre-school, primary school, church, play area and playing field. However, the roads in the area do not have regular, accessible or continuous pavements and these characteristics are likely to discourage pedestrians and cyclists; thus increasing the reliance on private motor vehicles.

19. Other key facilities and local services are further from the site and those living within the area, therefore, are highly likely to rely upon facilities and services within other larger settlements. Moreover, there is a distinct difference between the day-to-day needs of holiday makers and those who occupy a residential dwelling in terms of accessing services and facilities. Permanent residents, for example, would have a general reliance on local services such as schools and health care services. Given my findings in relation to the likelihood of car use, this would result in a significant number of trips over and above those associated with holiday accommodation.
20. I therefore consider that, even if the sequential approach outlined under policy DM 2 was considered to have been exhausted the tests within policy CP 1 would fail to be met.
21. I therefore conclude that the condition restricting the use of the building to holiday accommodation is necessary and reasonable as, in policy terms, the preferred uses within the open countryside have not been fully exhausted and the building does not occupy an acceptable location for a permanent residential dwelling. Accordingly, the proposal would conflict with the aims of policies SP 1, DM 2 and CP 1 of the CS which set out the settlement hierarchy and the criteria which must be met in order for residential accommodation within the open countryside to be permitted.

Other Matters

22. I note that the original condition was imposed as, at that time, the Local Planning Authority was not prepared to allow a permanent residential site to become established because of the inadequate size of the building and also wished to ensure that the approved accommodation was available for tourism. These reasons did not form part of the reasons for refusal for the application which is the subject of the appeal before me and I have no evidence to suggest that this is in dispute.
23. I note the appellant's reference to the Inspector's finding in a 2015 appeal APP/D3315/C/15/3005229. Whilst the full particulars and background to the previous appeal are not before me, I have had regard to the decision taken in that instance and to the conclusion reached regarding the application of policy DM 2. Policy DM 2 specifically states that it relates to 'uses'. Whilst the dwelling in this case has already been built and the physical works required would be minimal, I consider that should condition 11 be removed a change to the planning character of its use would be facilitated. I therefore consider this policy is engaged in my consideration of the appeal before me.
24. Notwithstanding that the proposal might accord with CS Policy CP 8, this does not outweigh the conflict with the development plan as a whole.
25. I acknowledge that there appears to be some degree of local support for the proposal and recognise that effective re-use of existing buildings is actively encouraged by Government policy. I recognise the benefits of the scheme in respect of striving to meet the Government's aim to significantly boost the supply of homes. I also acknowledge the economic benefits of engaging local professionals, trades and suppliers and the ongoing benefit of the occupiers of the dwelling utilising local facilities thus contributing positively to the viability of the village. However, those benefits would be very modest given the small

scale of the proposal and must be set against the conflict with the development plan to which I attach significant weight.

26. Whilst the appellant makes reference to the existence of a number of other schemes which could be considered similar, the circumstances in each case are likely to be different. For example, appeal reference APP/D3315/W/17/3179264 was for the erection of up to 205 new dwellings and APP/D3315/A/14/2228193 was for a new dwelling and not the removal of a restrictive condition to facilitate use as a permanent residential dwelling. Whilst I am unaware of the full background to the appeal, appeal reference APP/D3315/C/15/3005229 would appear to have followed a different procedure and, in any event, the evidence put to the Inspector in that case appears to be different from that in this appeal. I have also been provided with a scheme approved by the Council (28/15/0009), once again I am unaware of the full details in this instance, however, it would appear that in this case the Council deemed the sequential test under policy DM 2 to have been effectively applied. The context in these cases was, therefore, notably different to this appeal. In any event, each case must be treated on its own merits and the existence of other examples is not sufficient reason to justify a development which I consider in itself to be inappropriate.
27. I have given careful regard to all of the above considerations. However, none are sufficient to dissuade me from the conclusions I have reached that the condition restricting the use of the building to holiday accommodation is necessary and reasonable as the building does not occupy an acceptable location for a permanent residential dwelling. The other considerations presented by the appellant do not outweigh the conflict with the development plan I have found in this instance.

Conclusion

28. For the reasons given above I dismiss the appeal.

L J O'Brien

INSPECTOR