
Appeal Decision

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 17th June 2020.

Appeal Ref: APP/Y9507/W/19/3243634

Joinery & Boxwood, Scandors Yard, Baybridge Lane, Owslebury SO21 1JN

- 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 Mrs Kate Shanley nee Soulsby and Acorn Holiday Cottages Limited against the decision of South Downs National Park Authority.
 - The application Ref SDNP/19/01763/CND, dated 5 April 2019, was refused by notice dated 28 October 2019.
 - The application sought planning permission for change of use of joinery workshop to 'holiday lets' accommodation without complying with a condition attached to planning permission Ref 12/00378/SFUL, dated 30 April 2012.
 - The condition in dispute is No 3 which states that: *"The proposed accommodation shall not be used other than for holiday purposes and shall not be used for any individual's main or sole residential dwelling. 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 officers of the Council."*
 - The reason given for the condition is: *"To ensure that the accommodation is only used as holiday / tourist accommodation."*
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Decision

1. The appeal is dismissed.

Procedural 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, following consideration of the grounds of appeal and the submitted evidence, I have been able to reach a decision based on the information already available. The appellants and the Local Planning Authority (LPA) have agreed to the appeal proceeding on this basis.

Main Issue

3. The main issue is whether the disputed condition is necessary, reasonable and relevant to planning having regard to the provision of visitor accommodation and the location of the appeal premises in the open countryside in the South Downs National Park.

Reasons

4. The appeal site comprises two residential units for which occupancy is restricted by condition. The appeal seeks the removal of the disputed condition in order that the units can be used as permanent residential dwellings rather than as holiday accommodation. Although the LPA's first reason for refusal refers to a proposed change of use, the evidence before me is that the existing units afford users the facilities required for day-to-day private domestic existence. Consequently, both appear to be dwellinghouses falling within Use Class C3. This was also the LPA's conclusion in its officer report. I have therefore considered the appeal on the basis that no change of use is proposed.
5. The appellants advise that Policies RT16 and CE28 of the Winchester District Local Plan Review 2006, the development plan in force at the time of the decision, supported the re-use of buildings in the countryside for small scale tourism facilities providing conditions prevented permanent residential use being established. While they are not specifically referenced in the reason stated on the decision, there is no evidence before me to dispute the appellants' suggestion that those policies provided the justification for the disputed condition. In any event, the proposal stands to be considered in the light of current local and national policies and against the tests for conditions set out in paragraph 55 of the National Planning Policy Framework (the Framework).

Visitor accommodation

6. Policy SD23 of the South Downs National Park Local Plan 2014-33 (LP) resists the loss of visitor accommodation unless specific criteria are met. The supporting text to that Policy sets out that the National Park is a major resource for recreation and tourism, which play a significant role in the local economy. Furthermore, it identifies a need to increase capacity and potential growth in demand for visitor accommodation; and sets out that due to the availability of new sites for new development, any loss of visitor accommodation can be difficult to replace. Policy 43 of the South Downs Partnership Management Plan 2013 (MP) also seeks to support the development and maintenance of appropriate recreation and tourism facilities, including a mix of quality accommodation. Therefore, the need for visitor accommodation and the economic implications of its loss are material planning issues in the National Park.
7. There is no substantive evidence before me to demonstrate that the existing holiday accommodation is financially unviable, that any marketing has taken place, or that the use as holiday accommodation harms the special qualities of the National Park. As such, removal of the disputed condition would result in the loss of visitor accommodation without justification, in conflict with LP Policy SD23.
8. Furthermore, it would conflict with Framework paragraph 83c), which requires planning decisions to enable sustainable rural tourism developments which respect the character of the countryside.

Location

9. The appeal site is part of a cluster of properties with an equestrian centre, several dwellings and other developments which together form the hamlet of Baybridge. This small settlement is not defined in LP Policy SD25 as one where development will be supported. Therefore, in planning policy terms, the site is in the open countryside. However, it is in close physical proximity to surrounding properties and as such is not isolated.

10. LP Policy SD25 exceptionally allows for development outside of settlement boundaries where it complies with relevant policies of the LP and meets one of four criteria. Paragraph 7.10 of the supporting text lists Policy SD23 as an example of a relevant policy. Therefore, given my findings above in respect of that policy, the proposal would conflict with the first requirement of Policy SD25.
11. The appeal site is not allocated for development or safeguarded in the LP for the use proposed, nor is it community infrastructure. There is also no substantive evidence before me that there is an essential need for two unrestricted dwellings in this countryside location. As such, the proposal would not meet any of criteria 2 a), b) or c).
12. Criterion 2 d) allows for appropriate re-use of a previously developed site where it conserves and enhances the special qualities of the National Park. Although 'appropriate' is not defined in the policy, the guidance in the supporting text refers to development demonstrably necessary to meet the wider objectives of the LP.
13. The proposed loss of visitor accommodation would conflict with objective 9 which seeks to protect and provide for local businesses including tourism. The use of the units as permanent dwellings would also reduce opportunities for people to visit and stay in the National Park, and therefore to discover, enjoy, understand and value it and its special qualities. As such, the proposal would conflict with objective 5 of the LP and the statutory purpose of the National Park to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public. Accordingly, it would not be an appropriate re-use of a previously developed site.
14. As the units contain the same day-to-day facilities as a permanent dwelling, the traffic movements of residents going out to work, school and for other purposes, and the domestic activities of a permanent residential use are unlikely to be significantly different to that of visitor accommodation. Therefore, the proposal would conserve the tranquillity of the area, and as such have a neutral impact on that special quality of the National Park. Nevertheless, for the reasons given above, the proposal would not meet criterion d) of LP Policy SD25.
15. Although LP Policy SD25 does not specifically preclude unrestricted housing in the countryside, there is no substantive evidence before me that, had the original building not already been converted, its re-use as unrestricted dwellings would have been demonstrably necessary to meet any of the LP objectives. As such, I cannot be certain that if that application were made today, it would be considered an appropriate re-use of previously developed land supported by Policy SD25.
16. Turning to national policy, the appellants contend that paragraph 55 of the 2012 Framework should have been considered when the original permission was granted. I have found however that the site is not isolated, therefore, paragraph 79, the equivalent paragraph of the revised Framework published in 2019, does not apply. In any event, there is no substantive evidence before me that the appeal building was redundant or disused or that its re-use led to an enhancement of its immediate setting, as required by both paragraphs 55 and now 79.
17. There is no substantive evidence before me that permanent residents would enhance or maintain the vitality of the rural community or support local services any more than visitors occupying the units as holiday accommodation. As such, without the condition, the change of use of the original building to residential use would not benefit from the support for rural housing set out in the Framework.

18. The appellants contend that permitted development rights for conversion of light industrial buildings to dwellings¹ represent a significant change in Government policy since the original permission was issued. The appellants' evidence is that the building when in industrial use would have complied with the limitations and prior approval matters of Class PA, resulting in unrestricted dwellings in the countryside. While I have no reason to dispute that claim, such rights can only be applied to buildings falling within Use Class B1(c) on 19 March 2014 and could not therefore be applied to the appeal site. Because I must consider the appeal on the basis of the circumstances and policy at the time of my decision, this argument carries negligible weight.
19. Although the residential use already exists, the proposal could result in additional domestic paraphernalia associated with permanent use, such as play equipment or garden sheds, of a nature connected with less transient and more permanent, long-term occupation of the properties. However, given the proximity of the site to other residential properties there is no compelling evidence before me that this would materially impact the character of the area or alter the extent of the small settlement. As such, I find that without the condition there would be no conflict with LP Policy SD4.
20. I have however identified conflict with LP policies SD23 and SD25, which are consistent with the Framework. Accordingly, the conflict with these policies carries very substantial weight. Consequently, the impact of the change in permitted development legislation since the original permission was granted would be comfortably outweighed by the harm that would result from the loss of visitor accommodation and the location of two unrestricted dwellings in the countryside. Therefore, for the reasons given above, and taking into account all matters raised, I find that there are no other considerations, including the Framework, that outweigh the conflict with the development plan.
21. Accordingly, the disputed condition is necessary, reasonable and relevant to planning, having regard to the provision of visitor accommodation and the location of the appeal premises in the open countryside in the South Downs National Park.

Conclusion

22. The appeal is therefore dismissed.

L McKay

INSPECTOR

¹ Class PA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)