
Appeal Decision

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 2nd July 2020.

Appeal Ref: APP/W1850/W/20/3246965

Land off Roman Road, Newbridge, Aylton, Ledbury

- 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 DeGiles against the decision of Herefordshire Council.
 - The application Ref 194119, dated 28 November 2019, was refused by notice dated 23 January 2020.
 - The application sought planning permission for 6 holiday lodges with new access without complying with a condition attached to planning permission Ref 184486, dated 13 June 2019.
 - The condition in dispute is No 12 which states that: *"The buildings which are the subject of this application shall be used for holiday accommodation only and for no other purpose including any other purpose within Class C of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification."*
 - The reason given for the condition is: *"Having regard to Policies SD1, RA2 and RA3 of the Herefordshire Local Plan – Core Strategy, Policy PIX2 of the Pixley and District Neighbourhood Development Plan and the National Planning Policy Framework the local planning authority are not prepared to allow the introduction of a separate unit of residential accommodation, due to the relationship and close proximity of the buildings in this rural location."*
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Decision

1. The appeal is dismissed.

Procedural Matters

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 appellant and the Council have agreed to the appeal proceeding on this basis.
3. The Council and the appellant have agreed that there is a typographical error in the address of the appeal site as given on the application form, which should read 'Aylton', instead of 'Ayton'. I have therefore made this correction in the address given in the header above.

Background and Main Issue

4. The appellant seeks to vary the disputed condition to allow Lodge A, as shown on the submitted plan, to be used for the occupation of the manager of the permitted holiday lodge facility instead of as holiday accommodation.
5. The main issue is therefore whether, having regard to local and national policies regarding residential development in the countryside, there is an essential need for a rural worker to live permanently at or near their place of work.

Reasons

6. The area around the appeal site is predominantly agricultural, with scattered farms, tourism accommodation and dwellings. It is outside of any settlement defined in the development plan and as such is in the countryside according to Policy RA3 of the Herefordshire Local Plan Core Strategy 2011-2031 (CS). While it is located between a farm and another development of holiday lodges the site is physically separate from both and is some way outside of the small settlement of Little Marcle.
7. From the evidence before me it appears that each of the lodges would afford users the facilities required for day-to-day private domestic existence, with no shared facilities. Therefore, as permitted, each would be a separate unit of accommodation with occupancy limited to holiday accommodation. Consequently, the proposal would not create a new unit of residential accommodation, however it would enable Lodge A to be occupied as a permanent residence and I have considered the appeal on this basis.
8. CS Policy RA3 allows for residential development in rural locations outside of settlements only where one of 7 criteria are met, of which only the first two are relevant to this scheme. These allow residential development where it meets an agricultural or forestry need or other farm diversification enterprise for a worker to live at or near their place of work; or where it accompanies and is necessary to the establishment or growth of a rural enterprise. It sets out that proposals must also comply with CS Policy RA4, which permits dwellings associated with rural enterprises where it can be demonstrated that there is a sustained essential functional need for the dwelling and it forms an essential part of a financially sustainable business, and that such need cannot be met in existing accommodation.
9. Policy PIX2 of the Pixley and District Neighbourhood Development Plan 2011-2031 (NDP) also requires new residential development to satisfy the requirements of CS Policy RA3 and allied policies. While the appellant contends that this Policy refers only to housing, it is clear from the wording of the policy that it relates to all new residential development. Given that the proposed manager's accommodation would be their full time, permanent home, this policy is relevant to the proposal before me.
10. Due to its location, the proposal would result in the creation of an isolated home in the countryside, which Paragraph 79 of the National Planning Policy Framework (the Framework) seeks to avoid unless one of 5 criteria apply, including where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.

11. The appellant suggests that the requirements of the functional test are unexplained, however the Planning Practice Guidance (PPG)¹ provides guidance on factors that may be relevant when assessing whether an essential need exists for a rural worker to live at, or in close proximity to their place of work, replacing Annex A of Planning Policy Statement 7, to which the Council refers. Furthermore, the supporting text to Policy RA4 provides specific guidance for demonstrating an essential functional need in relation to non-agricultural rural enterprises. I have had regard to this guidance in reaching my decision.
12. The operation of holiday lodges would generate the need for some management such as taking and recording bookings, however given the availability of technology, it is likely that much of this would be carried out online or by telephone and as such would not require a person to be on site. Maintenance, cleaning and linen changes would require staff to be present on-site, however these would generally be daytime activities and as such would not require someone to be present overnight.
13. Guest arrival times could be agreed as part of the booking process and, in my experience, it is not unusual for a time window of arrival to be pre-arranged in order to ensure that guests can be met on-site. Some guests might arrive on a more ad-hoc basis, however there is no compelling evidence before me that such circumstances could not be accommodated through provisions for remote access such as key safes.
14. The proximity of the lodges to each other is likely to mean that guests would behave considerately to each other in terms of noisy activities. While there are other dwellings and holiday accommodation in the vicinity of the appeal site, these are some distance away and as such, even if guests were to generate noise, it is unlikely to significantly affect neighbours. In any event, the appellant could make appropriate provisions, such as in their booking terms and conditions, to enable them to address any inconsiderate behaviour. Consequently, it is unlikely that guests would require strong supervision as the appellant contends.
15. The COVID-19 situation is likely to put additional pressures on holiday accommodation, such as additional cleaning and measures to allow for social distancing. However, there is no evidence before me that the appeal site could not be laid out to comply with relevant government guidance, or that someone would be required on site at all times to ensure guests comply with the rules of the facility.
16. The appellant refers to local opposition and recent vandalism on site, however I have not been provided with details of the nature or frequency of such incidents or with any substantive evidence that these have had a direct impact on the operation or viability of the enterprise. Nor is there any compelling evidence before me that such incidents could not be deterred by other security measures such as security cameras or access gates.
17. I recognise that emergencies may occur on-site which require a response, and that guests may have queries, however it is likely that many such incidents could be dealt with by telephone or online messaging. Where an in-person response is necessary, a relatively short response time is likely to be helpful in minimising the impacts of such incidents. However, there is no substantive

¹ Paragraph: 010 Reference ID: 67-010-20190722

evidence before me that such occurrences would be frequent or that their nature would require a person to be immediately available on-site at all times. Nor is there any compelling evidence that the needs of the business could not be met by a person or persons living in the local area and able to attend the site relatively quickly.

18. Consequently, although there would be a need for staff to be on-site at times, it has not been demonstrated that there is a need for someone to be present at the business for the majority of the time or overnight, or that the business could not exist without close and continual supervision. As such, it has not been demonstrated that there is a sustained essential functional need for a dwelling for this enterprise.
19. I have not been provided with any financial data about the enterprise, such as a business plan or projected accounts. Consequently, I cannot be certain that it is financially sustainable. Although I note that this was not an issue raised when permission was granted for the holiday lodges, the need to consider this matter arises from CS Policy RA4, which is relevant to this proposal but not to the original development. That Policy allows for temporary permission to be granted where evidence of the economic sustainability of the rural enterprise is not proven or where an enterprise is not yet established. However, the appellant has provided specific alternative wording for the disputed condition, and has not sought a temporary permission. For the reasons above, the evidence before me is insufficient to demonstrate that there is a functional need for a manager to live on-site even in the short-term.
20. I note the appellant's concerns about the need to support a new business to become established, particularly given current economic uncertainty, however while having someone living on site might generate consumer confidence, there is no conclusive evidence before me to demonstrate that this is essential for the business to become established.
21. The appellant contends that if the lodges were managed by a letting agency, this would attract an 18% levy on bookings. However, in the absence of any financial information I cannot be certain that this would make the business unviable. In any event, the appellant suggests that avoiding this levy would fund the salary for a site manager, therefore both management options would appear to cost the same. Furthermore, as the appeal proposal would mean only 5 lodges would be available to let, it would appear to reduce the potential income of the enterprise, as there is nothing before me to suggest that letting prices or occupancy rates would be higher than without an on-site manager.
22. Furthermore, I have not been provided with any details of the wages or salary being offered for a site manager, how these might compare with other similar jobs in the area, or how and where the role has been advertised. I therefore cannot be certain that the appellant's difficulties in recruiting a manager are a result of the lack of accommodation, or that there is no prospect of employing staff to meet the needs of the enterprise without the proposed manager's residence. Consequently, there is no compelling evidence before me that an on-site dwelling is necessary for the rural enterprise to become established.
23. In the absence of financial information, I cannot be certain that the Council's suggestion that a property up to £250,000 would be affordable for the business or a site manager, or the appellant's suggestion that £300,000 would be too high a price having regard to the findings of the Council's Agricultural Business

Consultant in response to a proposed dwelling at another site in the area². In any event, the appellant has not provided details of any property search that they have undertaken, and as such there is no substantive evidence before me that there are no properties for sale, lease or rent in the local area that would be affordable for the business or for a staff member to rent or buy. Consequently, it has not been demonstrated that the needs of the enterprise cannot be met in existing accommodation.

24. Accordingly, it has not been demonstrated that there is an essential need for a rural worker to live permanently at or near their place of work or that a dwelling is necessary to the establishment of the rural enterprise. Furthermore, where there is a need for a staff member to attend the site, it has not been demonstrated that this cannot be met in existing accommodation, or that the proposed manager's residence would form part of a financially sustainable business. As such, the proposal would conflict with CS Policies RA3 and RA4 and therefore also with NDP Policy PIX2; and with Framework paragraph 79.
25. There is no substantive evidence before me that 5 holiday lodges with a manager living on site would generate more employment than 6 holiday lodges managed and maintained by off-site staff. For the reasons given above, there is no substantive evidence before me that the rural enterprise could not succeed, and therefore that the economic and tourism benefits of the holiday accommodation could not be realised, without the manager's residence now proposed. It has therefore not been demonstrated that the proposal would result in additional benefits compared to the existing permission. As such, the proposal would not benefit from the support given in NDP Policy PIX3 for proposals that generate employment and support and diversify the rural economy.
26. The proposal would not accord with the relevant policies of the development plan, which are consistent with the Framework and can therefore be considered up-to-date. It would not therefore benefit from the presumption in favour of sustainable development set out in CS Policy SS1.

Other Matters

27. Both main parties have referred me to Oasis Lodges, a development of holiday lodges close to the appeal site which has apparently been established for 10 years and is operated by the occupants of a nearby dwelling. However, I do not know whether it is subject to the same occupancy conditions as the appeal site. Nor has any evidence been presented that demonstrates that it has been necessary, rather than convenient, to have a manager in close proximity in order for the business to be sustainable. As such, I cannot be certain that the circumstances of that business are comparable to that of the appeal proposal, which I have considered on its own merits.
28. While staff living off-site would need to commute to the site for work, a manager living on-site would need to travel off-site for shopping and other day-to-day needs. Therefore, it has not been demonstrated that having a manager living on site would reduce car travel.
29. The proposal would only affect the occupation of Lodge A and not the physical appearance of the site or the lodges. As such, the proposal would not generate

² Council Ref. 192969

any additional benefits in terms of high quality, sustainable design compared to the existing permission.

30. The Council has identified that, even if condition 12 were varied to the specific alternative wording sought by the appellant, condition 15 of the permission would still limit the occupation of the lodges to holiday accommodation. In response, the appellant now contends that condition 15 is not precise or enforceable, and that the Council should have used different wording for that condition, to prevent occupancy of the holiday accommodation as a permanent or main residence, as an Inspector did in an appeal decision from 2000³. However, the appellant did not apply to vary condition 15, only condition 12. This additional proposal was not therefore considered by the Council and has not been subject to public consultation. Therefore, in the interests of fairness, I have considered this appeal on the basis of what was considered by the Council and on which interested people's views were sought. It is open to the appellant to make a further application to vary condition 15 should they choose to.

Conclusion

31. For the reasons given above, the appeal is dismissed.

L McKay

INSPECTOR

³ APP/W1850/A/00/1039625