



Appeal Decision

Site visit made on 30 June 2020

by S M Holden BSc MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/U1430/W/20/3250900

Lyndhurst, Main Street, Peasmarsh, Rye, East Sussex TN31 6YA

- 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 Terry Denman against the decision of Rother District Council.
 - The application Ref RR/2020/3/P, dated 9 January 2020, was refused by notice dated 2 April 2020.
 - The application sought planning permission for a change of use from ancillary accommodation to holiday-let/granny annexe without complying with conditions attached to planning permission RR/2017/1843/P.
 - The conditions in dispute are Nos, 3, 4, 5, 6 & 7 which are set out in Annex A.
 - The reasons given for the conditions is also set out in Annex A.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal building is sited at the end of Lyndhurst's long rear garden. Although granted permission as a replacement garage and workshop with storage above, a change of use from ancillary accommodation to holiday-let/granny annexe was subsequently permitted in October 2017, RR/2017/1843/P.
3. This permission is subject to a series of conditions, two of which (6 & 7) restricted the occupancy of the building either to a member of the family or, if not being so used, as a holiday-let. Occupation by a member of the household could be for an unlimited period. Alternatively, the building could be used at any time of the year as holiday accommodation. The only restriction on the length of its occupation as a holiday-let is that the same person could not stay there for more than 56 days in any one year. The application seeks to delete these conditions, so that the building can be occupied as a separate dwelling.
4. The remaining conditions in dispute, 3, 4 and 5 relate to the provision of parking and a pedestrian access. The Council considered its second reason for refusal, which appears to relate to these conditions, was imposed in error and should have been an informative. I have had regard to its position in determining the appeal.

Main Issue

5. The main issue is whether or not Condition 7 is reasonable and necessary in order to retain the provision of holiday accommodation in the area.

Reasons

6. There was no evidence presented with the application or appeal to indicate how the building has actually been used either by a family member or as holiday accommodation since 2017. However, another appeal seeking to remove the occupancy restrictions set out in Conditions 6 & 7 was dismissed in February 2018¹. At that time, the site lay beyond the built-up area boundary of Peasmarsh. The Inspector therefore found a significant conflict with the development plan's objective of only permitting new dwellings in the countryside in extremely limited circumstances.
7. Since that appeal was determined, the Council has adopted its Development and Site Allocations Local Plan 2019 (DaSALP) and the building now lies within the development boundary of the village. The original reason for imposing the conditions is therefore no longer relevant. In these circumstances, it is necessary to consider whether or not the removal of the restrictions would conflict with other, current development plan policies.
8. Policy EC6 of the Rother Local Plan Core Strategy, 2014 (CS), seeks to promote tourism activities and facilities as part of the local economy. The policy states that proposals which increase the supply of self-catering accommodation and do not result in the loss of tourism accommodation will be supported. Policies DCO1 and DEC3 of the DaSALP seek to retain the use of sites that have social and economic value, including those which have been in tourism use. Where a change of use is sought, evidence of sustained marketing which demonstrates that there is a lack of demand for the existing use must be provided.
9. I consider that the accommodation provided by the building is likely to be attractive to holiday makers. It is in a secluded location within the High Weald AONB, an area designated for its landscape and scenic beauty. It provides a reasonable standard of accommodation, adequate access for both vehicles and pedestrians and is tucked away to the rear of other residential development within the village. However, it is close to Lyndhurst, enabling either its occupants, or another suitable person, to service the premises while providing privacy for the occupiers of both properties.
10. In order to demonstrate that there is no demand for using the building as a holiday-let, it would be necessary to provide evidence that the premises have been meaningfully advertised as holiday accommodation. Such marketing should show that it had been offered for rent at an appropriate price for at least 18 months, as required by Policy DCO1, and that there had been a significant lack of interest from potential holiday makers. In the absence of such evidence, I am not satisfied that its use as a holiday-let could not form part of a viable business. There is no reason why the building would have to be sold or separated from Lyndhurst in order to generate income from its current lawful use.
11. Offering the building to rent as a separate dwelling would be likely to result in the building being occupied for a greater proportion of the year. However, it does not necessarily follow that this would generate more income on an annual basis for the appellant. Even if it did, that would not be a justification for allowing a change to the occupancy restriction that would conflict with the requirements of the development plan. Having regard to the requirements of

¹ APP/U1430/W/17/3286260

Policy DCO1, the loss of the holiday-let could only be justified if it could be demonstrated that there was no demand for such accommodation, or it could not be operated as part of a viable business. This situation is not comparable with owners of other dwellings who choose to rent their homes out for holiday use. In those instances, the individual properties will have an established use as a dwelling and could revert to such at any time in the future.

12. I therefore conclude that Condition 7 is reasonable and necessary in order to protect and retain the supply of holiday accommodation in the District. Its deletion would be contrary to Policies EC6 of the CS and DCO1 and DEC3 of the DaSALP, which seek to support the rural economy, including tourism.

Other Matter

13. My attention has been drawn to Policy PEA1 within the DaSALP. This shows that land immediately to the rear of Lyndhurst has been allocated for a future residential development of up to 45 dwellings. I accept that a development of this scale would change the relationship between the building and the surrounding area in the future. However, it is not known when, or precisely how, this site will be developed, and no planning application is currently under consideration. Consequently, it is not possible to assess the effects of the future use of the adjacent site for a residential development on the use of the building as a holiday-let at the present time. I therefore consider this matter carries little weight in my assessment of the current proposal.

Planning Balance

14. The Council accepts that it is unable to demonstrate a 5 year supply of deliverable housing sites. In these circumstances, Paragraph 11(d) of the Framework is engaged and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
15. There would be a small social benefit arising from the use of the building as a separate dwelling. However, one additional home would make a minimal contribution to the shortfall of housing supply in the District and is therefore a matter of very limited weight.
16. On the other hand, as a small unit of self-contained accommodation within an attractive rural environment, the building is highly suitable for use as a holiday-let. Its loss would be detrimental to the supply of tourist accommodation in the District. This would be harmful to the rural economy, which the Framework seeks to support, and is a matter which carries modest weight.
17. I therefore consider that the adverse effects of removing the occupancy restriction set out in Condition 7 would significantly and demonstrably outweigh the very limited benefits of doing so, when considered against the Framework as a whole. I therefore conclude that the presumption in favour of sustainable development does not apply in this case.

Other Conditions

18. In view of my conclusion about the Condition 7, I will now move on to consider the implications for the other conditions which the application sought to remove and vary.

19. Condition 6 allows additional flexibility in the use of the building. Its deletion would mean that the building could only be used as holiday accommodation. As this would be more restrictive than the current permission, it would be inappropriate to delete it while retaining Condition 7.
20. Conditions 3, 4 and 5 relate to the provision of parking and a safely lit pedestrian access to the building. They required submission of details and implementation of those approved details. On my site visit, it would appear that these requirements have been met. However, the conditions do not only make specific reference to works that are required prior to first use of the building as a holiday-let/granny annexe. The conditions also include retention clauses as these facilities will be needed throughout the lifetime of the development. These requirements are justified in order to provide safe and satisfactory access to the site for all existing and future users. In view of my finding in relation to Condition 7, there is therefore no reason to amend these other conditions.

. Conclusion

21. I have found that the removal of the occupancy restriction relating to the use of the building as a holiday-let would conflict with the requirements of the development plan. There are no other considerations, including the advice of the Framework, which outweigh this conflict.
22. For this reason, the appeal is dismissed.

Sheila Holden

INSPECTOR

Schedule of Conditions in dispute

Deletion sought for Conditions 6 and 7 which state:

- 6) *The new residential annexe is permitted solely as additional accommodation for the existing dwelling (Lyndhurst, Main Street, Peasmarch, East Sussex TN31 6YA). Subject to condition 7 below, it shall not be occupied by any person who is not a member of the family (as defined by section 186 of the Housing Act 1985 or in any provision equivalent to any re-enactment of that Act) residing in the family dwelling.*
- 7) *In the event that the annexe accommodation referred to in condition 6 is not required for use by a family member, it may also be used as holiday accommodation, in which case it shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence and it shall not be occupied for more than 56 days in total in any calendar year by any one person.*

The reason given for both conditions is:

To preclude the creation of a new dwelling in the countryside, which should be separately assessed having regard to Policy RA3 of the Rother Local Plan Core Strategy.

Variation sought for Conditions 3, 4 and 5 which state:

- 3) *Details of a motor vehicle parking area for the holiday-let/granny annexe shall be submitted to and approved in writing by the local planning authority, and the parking area shall be provided in accordance with the approved details, prior to occupation of the building as a holiday-let/granny annexe. The approved parking area shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles for occupiers and visitors to the holiday-let/granny annexe.*
- 4) *Details of a lighting scheme for the existing pedestrian access shown on approved drawing no. DD/Lyndhurst/05, dated Dec 2016, shall be submitted to and approved in writing by the local planning authority, and the scheme shall be carried out in accordance with the approved details prior to occupation of the building for a holiday-let or granny annexe. The approved lighting scheme shall thereafter be retained.*
- 5) *The existing pedestrian access shown on approved drawing no. DD/Lyndhurst/05, dated Dec. 2016, shall be retained for pedestrian access to the holiday-let/granny annexe at all times and for no other purpose.*

The reasons given are:

- 3) To ensure a satisfactory level of off-road parking facilities so as not to prejudice the free flow of traffic and conditions of general safety along the highway, in accordance with Policies CO6(ii) and TR4 of the Rother Local Plan Core Strategy.
- 4) To ensure the pedestrian access meets the standard necessary for future occupiers of the holiday-let/granny annexe and to safeguard the amenities of neighbouring properties from light pollution, in accordance with Policy OSS4(i and ii) of the Rother Local Plan Core Strategy.
- 5) To ensure an appropriate means of pedestrian access to the holiday-let/granny annexe in accordance with Policy OSS4(i) of the Rother Local Plan Core Strategy.