



Appeal Decision

by **M L Milliken BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/D2510/W/20/3245593

**No1 and No2 The Old Granary, Fold Hill, Friskney, Boston, Lincolnshire
PE22 8RG**

- 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 James Gibson against the decision of East Lindsey District Council.
 - The application Ref S/053/01329/19, dated 21 July 2019, was refused by notice dated 16 September 2019.
 - The application sought planning permission for conversion of original granary building into 2 holiday lets without complying with a condition attached to planning permission Ref S/053/02507/12, dated 4 September 2013.
 - The condition in dispute is No 15 which states that: "The accommodation hereby permitted shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The owners/operators of the site shall maintain an up-to-date register of the names of all owners/occupiers of accommodation on the site, and of their main home addresses, and shall make this information available to the Local Planning Authority upon request".
 - The reason given for the condition is: "To ensure that the development is restricted to holiday use only and that the accommodation is not used for residential purposes and in accordance with Paragraph 55 of the National Planning Policy Framework which seeks to restrict residential development in the open countryside to that which is necessary to serve proven agricultural needs".
-

Decision

1. The appeal is allowed and planning permission is granted for conversion of existing granary building into 2no. holiday lets, erection of fencing and provision of parking in accordance with amended plans which were received by the Local Planning Authority from the applicant on 18th January 2013 and 12th July 2013 at The Old Granary, Fold Hill, Friskney, Boston, Lincolnshire PE22 8RG in accordance with the application Ref S/053/01329/19 dated 21 July 2019 without compliance with Condition number 15 previously imposed on planning permission Ref S/053/02507/12 dated 4 September 2013 but subject to the Conditions found in the accompanying Schedule.

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 I have been able to reach a decision based on the information already available. Having sought the views of interested

- parties, no formal objection has been received and I am therefore determining the appeal on that basis.
3. From the evidence before me it is clear that the development has commenced and there is no suggestion otherwise. I have therefore proceeded on that basis.
 4. I note that there are some minor adjustments to the description of development and address provided by the appellant on the application and appeal forms, as reflected in the banner, when compared with the Council's decision notice for the original permission. I am however satisfied that the adjustments made do not materially change the nature of the development and, in any event, I am considering the application as a variation to the original permission.
 5. The original application sought permission for holiday lets and Condition 15 prevents their use as a person's sole or main place of residence within those terms. In validating and determining the application to which this appeal relates, it would appear that the Council did so on the basis that a holiday let is a dwellinghouse (use Class C3) and I consider that connection is reinforced by the original imposition of Condition 15. Although the decision notice is not clear on specific harm, I find that, as the Council have accepted that this is not a proposal for two new dwellinghouses, the proposed conflict relates to their use as a person's sole or main place of residence. Accordingly, I am determining the appeal on that basis.
 6. Section 73 of the Town and Country Planning Act 1990 allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted, and S73(2) requires only consideration of the question of the conditions to which a grant of planning permission should be subject. I am determining this appeal on that basis and in the specific context of planning permission Ref S/053/02507/12.

Main Issue

7. The main issue is whether or not removal of the Condition would result in new sole or main places of residence in an acceptable location, and with regard to the possible risk of flooding.

Reasons

Site Location

8. The appeal site is located within the area of Fold Hill, close to the large village of Friskney. Although I have not been provided with a copy of the settlement boundary, the Council has stated that the appeal site is located outside the settlement of Friskney. The physical pattern of development within Fold Hill is linear in nature and contains a number of residential properties and commercial premises. The appeal site is located off Low Road and is surrounded by existing residential development, commercial uses and farmland.
9. The appeal property comprises a building that was granted planning permission for conversion to accommodation comprising two holiday lets. From the evidence before me, it is clear that the accommodation is of a sufficient standard to afford the facilities required for day to day existence. It is also noted that, based on the original planning permission, the building may be occupied on a year-round basis as holiday lets. In this way, the original

permission did not restrict occupation or create seasonal occupation, but effectively allowed a year-round use of the building as dwellings. I therefore consider that, in this regard, there may be little material difference in the planning character between the use of the dwellings as holiday lets or as a person's sole or main place of residence, and little evidence has been put forward to suggest otherwise.

10. Since the original planning permission was granted, the Council has adopted the East Lindsey Local Plan Core Strategy (ELLPCS) (2018). The Council considers that the current proposal conflicts with adopted Policy SP3 of the ELLPCS, as removal of the condition would result in two dwellinghouses in an unsustainable countryside location, which would not be in accordance with local policy and which would also be contrary to Paragraph 79 of the National Planning Policy Framework (the Framework).
11. Adopted Policy SP3 of the ELLPCS sets out the district wide housing requirement and strategy for housing growth. The policy identifies Friskney as an inland town or large village which could potentially include housing allocations. The policy also identifies the strategy for windfall sites, including those that lie outside of settlements. Although the appeal site does not lie immediately adjacent to the built footprint of Friskney as per the wording of the policy, the proposal accords with this aspect of the strategy in all other respects.
12. Firstly, it would retain the core and form of the settlement, as although located outside the settlement of Friskney, it does not comprise new dwellings. From the evidence before me, including plans and photographs, I am satisfied that the appeal site is not isolated but part of a linear development that connects to Friskney via a public footpath. In addition, the appeal property affords the facilities required to meet the day-to-day needs of two single dwellinghouses, albeit that it is subject to the disputed condition.
13. Secondly, the proposal would not significantly harm the settlement's character and appearance, nor the character and appearance of the surrounding countryside and rural setting as no changes, alterations or extensions are proposed to the building as part of this appeal. As the appeal property constitutes built form in a developed setting, it is also part of the established character of the area. Removal of the disputed condition would therefore not change the character or appearance of the building to any appreciable degree, and thus in these terms it would not have a harmful effect.
14. The reason given for imposing Condition 15 is so that the accommodation is not used for residential purposes in accordance with Paragraph 55 of the Framework. This paragraph has since been superseded by Paragraph 79 of the Framework and I note that there is nothing in the Framework or within the other policies before me that specifically requires holiday let accommodation to be retained in perpetuity. Paragraph 79 of the Framework restricts the development of new isolated dwellings and places an emphasis on sustainable development within rural areas. In addition, the Council has provided me with a copy of the East Lindsey Settlement Proposals Development Plan Document (adopted July 2018), which states that Fold Hill looks to the main village of Friskney for services and facilities and that the Plan accordingly seeks to promote development around the existing core.

15. It is considered that, for reasons already stated, the appeal site is not isolated but part of a linear development close to the large village of Friskney. Nor does the proposal constitute new dwellings. With regards to services and facilities, the site is accessed via Low Road and there is a public footpath opposite the site that leads to Friskney village, with a bus stop located within short walking distance along the route. This is well-illustrated by the plans and photographs submitted in evidence.
16. Whilst I accept that for all practical purposes the majority of journeys to and from the appeal site might be made by car, this would pertain to both short-term and permanent occupants of the appeal property. From the limited evidence before me, I am not satisfied that short-term occupiers would not travel long distances to arrive at the appeal property and once there, travel to explore the wider area. Whilst it is accepted that there could be differences in the transport patterns of short-term and permanent occupants of the appeal property, I have no evidence before me to suggest that there would be a material difference between the two uses on these terms. In addition, no physical changes are proposed to the appeal property and consequently I do not consider that use of the appeal property as a person's sole or main place of residence would be of more significant harm in this regard than its use as two holiday lets.
17. For the reasons given I therefore consider that the proposal does not conflict with adopted Policy SP3 of the ELLPCS (2018) as a whole, which includes the strategy and criteria for windfall sites, or Paragraph 79 of the Framework.

Risk of Flooding

18. The appellant has provided me with a Flood Risk Assessment for the site. From the evidence before me, I am satisfied that the issue of flood risk was adequately dealt with as part of the conversion of the building and I am aware of no change in circumstances since that point. There is therefore nothing before me to support the Council's assertion that the site would be subject to an unacceptable level of flood risk, or increase the risk of flooding elsewhere.
19. I therefore find that the proposal complies with adopted Policy SP16 of the ELLPCS (2018), which outlines the Council's approach to preventing and managing flood risk.

Other Matters

20. The Council have drawn my attention to an appeal decision within the vicinity of the site, at Land Opposite Hedwig House, which was dismissed as it was considered that the site in question was not an appropriate location for residential development. The appeal related to new build development and it is not considered that it is directly comparable to the appeal site or proposal, by virtue of its immediate location adjacent to existing development and the fact that the development is already in situ and no alterations are proposed to the appeal property. In any event, I am assessing the appeal before me on its merits and upon the basis of the evidence.
21. The Council's submission references a lack of supporting economic information provided by the appellant regarding the existing holiday lets, however neither policy cited on the decision notice requires the submission of such information and the Council do not cite the impact on the rural economy as a reason for

refusal in this case. Although I cannot safely conclude that there is no demand for holiday lets in the local area, based on the appellant's evidence the property is not currently being used for this purpose. Whilst it is accepted that there would be a difference in the economic effects of short-term and permanent residents, as neither party has provided me with detailed economic information there is no evidence before me that removing the condition would have an adverse effect.

22. I note the Parish Council objection to the proposal on the basis of the shared access situation. No further details are before me to question the suitability of the access and I note that the Local Highway Authority did not object to the proposal in this case. I therefore consider that the objection is unfounded. I also note that support exists for the proposal from local residents, primarily relating to the desire for permanent residents over temporary holiday users and the potential for improvements to their living conditions as a result, which weighs in favour of the appeal. Removal of the condition would also help to meet the national planning objective of boosting housing supply, albeit to a modest degree.

Conditions

23. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
24. I also note that, whilst some of those original conditions require actions pre-commencement, there is no dispute that use as holiday let dwellinghouses has already commenced and there is no suggestion that any of those matters remain unresolved. For completeness, however, all the original conditions have been re-imposed and can be addressed as appropriate by the parties.
25. I further note the Local Planning Authority's statement that the Council does not wish to add any conditions other than those outlined on the original approval, should the inspector be minded to allow the appeal.

Conclusion

26. For the reasons set out, I conclude that the appeal should be allowed.

M L Milliken

INSPECTOR

Schedule of Conditions

- 1) The development must be begun not later than the expiration of three years beginning with the date of this permission.
- 2) Before the commencement of the development hereby permitted a schedule of external materials of construction of buildings and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. Samples shall be provided as may be required by the Local Planning Authority of the materials in the schedule and the use of such samples shall be approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the schedule and samples so approved.
- 3) Details of the design of all external doors to be utilised in the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced and all external doors used in the development shall conform to the details so approved.
- 4) Details of the window frames to be utilised in the development hereby permitted, including samples if so required, shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. Such details shall indicate, at a scale of not less than 1:20, the longitudinal and cross-sectional detailing, sill and lintel detailing, and means of opening. The window frames shall be installed in accordance with the approved details and thereafter so maintained.
- 5) Prior to the holiday units being first brought into use, the first floor windows to the bathrooms in the northern elevation shall be obscured glazed and retained as such thereafter.
- 6) Prior to the holiday units being first brought into use the doors at first floor level on the southern elevation shall be installed and retained in place thereafter.
- 7) The development shall proceed in accordance with the recommendations outlined in the noise report by Acoustic Associates submitted as part of the application on 18th April 2013. These measures shall be retained in place following the first use of the holiday units.
- 8) Prior to development commencing a scheme of building recording shall be undertaken and shall include the following: a textual history of the building and its context; plan and elevation drawings and detailed descriptions of phasing, fabric, construction, fittings and fixtures backed by annotated photographs; and a full photographic survey cross referenced to an existing ground plan, the photographs to include all external elevations, roof structures and any original or historic features. The final report should be submitted to the Local Planning Authority and deposited in the Historic Environment Record prior to any alteration of the building.
- 9) Before the access is brought into use, a visibility splay of 2.4m for the width of the application site shall be formed and thereafter the visibility splay shall be kept free of obstacles exceeding 0.6 metres in height.
- 10) The development shall proceed in accordance with the recommendations in the conclusion of the Flood Risk Assessment submitted with the application on 6th December 2012.

- 11) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out without the prior written approval of the Local Planning Authority: i) the erection of freestanding curtilage buildings or structures including car ports, garages, sheds, greenhouses, pergolas or raised decks; ii) the erection of extensions including dormer windows, conservatories, garages, car ports, porches or pergolas; iii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows; iv) the installation of satellite dishes.
- 12) Prior to work commencing a further Protected Species Report must be undertaken and submitted to the Local Planning Authority. The development shall proceed only in accordance with the measures outlined in that Report.
- 13) No work to the roof of the building shall be carried out between the months of March and August unless the Local Planning Authority is satisfied that no breeding birds are present within the building.
- 14) Notwithstanding the details submitted, before the commencement of development hereby granted, details of the proposed boundary treatment, including a schedule of materials, and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full before the development is first brought into use unless otherwise agreed in writing by the Local Planning Authority.
- 15) Before the development is commenced, full details of the proposed soakaway system for the disposal of surface water from the development hereby permitted, including percolation test results, shall be submitted to and approved in writing by the Local Planning Authority. Should the percolation test results be considered unacceptable by the Local Planning Authority details of an alternative means of providing for surface water drainage shall be submitted for consideration. The approved means of surface water drainage shall be implemented in full before the development hereby permitted is first brought into use.
- 16) The flue hereby permitted shall be finished in black and retained as such thereafter.
- 17) The external face of the frame to all new windows shall be set in a reveal of a minimum of 10mm from the front face of the adjacent walling and thereafter so maintained.