



Appeal Decisions

Site visit made on 20 May 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2020

Appeal A Ref: APP/W3330/C/19/3242305

Unit 1, Pipistrelle Cottage, Smeatharpe Road, Churchstanton, Taunton, Honiton EX14 9RE

Appeal B Ref: APP/W3330/C/19/3242309

Unit 2, Pipistrelle View, Smeatharpe Road, Churchstanton, Taunton, Honiton EX14 9RE

Appeal C Ref: APP/W3330/C/19/3242311

Unit 3, Pipistrelle Grand, Smeatharpe Road, Churchstanton, Taunton, Honiton EX14 9RE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Robin Lockyer against enforcement notices issued by Somerset West and Taunton Council ('the notices').
 - The enforcement notices, numbered E/0190/10/18, were issued on 15 November 2019.
 - The breach of planning control alleged in the notices is failure to comply with condition 07 of a planning permission Ref 10/91/020 granted on 16 July 1991.
 - The development to which the permission relates is 'Change of use of barn to 3 holiday units at Barn C, Lower Southey Farm, Smeatharpe as amended by agent's letter and plan received 5th July 1991'.
 - The condition in question is No 7 which states that: 'The occupation of the holiday accommodation 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 notices allege that condition 07 has not been complied with and that the holiday units on the land are, in each case, being used as permanent residential dwellings.
 - The requirement of the notices is: Permanently cease the use of the Holiday Unit as a permanent residential dwelling.
 - In each case, the period for compliance with the requirements is 9 months from the date that the Enforcement Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990, as amended. The applications for planning permission deemed to have been made under section 177(5) of the Act also falls to be determined.
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Decision

Appeal A Ref: APP/W3330/C/19/3242305

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/W3330/C/19/3242309

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/W3330/C/19/3242311

3. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

4. The three appeals relate to a breach of the same condition at all three units, which are in the same building. As each notice and its associated cases raise the same issues, I have dealt with them in a single decision letter.
5. In the light of the present circumstances, regarding the Covid-19 pandemic, my site visit was undertaken on the basis of an Access Required Site Visit.

Application for costs

6. An application for costs was made by Somerset West and Taunton Council against Mr Robin Lockyer. This application is the subject of a separate Decision.

Main Issue

7. The main issue is whether condition 07 is reasonable and necessary having regard to the location of the appeal site and access to service provision.

Reasons

8. The three units that are the subject of this appeal were created through the conversion of a barn, by virtue of a 1991 planning permission. They, together with Pipistrelle House and Lower Southey Farm, form a small collection of dwellings some 300m from the small settlement of Smeatharpe. Both parties agree that the units lie outside any settlement boundary, within the open countryside, as defined in Policy SP1 of the Taunton Deane Core Strategy 2011-2018 (CS).
9. The conversion of rural buildings in the open countryside is supported in principle by CS Policy DM2. Amongst other things, this policy sets out a sequential approach with regards to uses to which a building being converted might be put. This prioritised list runs through various community and business uses, including holiday use, finishing with residential uses. The last of these includes "other residential use", which includes unrestricted use. These, it states, are only supported in exceptional circumstances. The appellant seeks to use the units without complying with condition 07 and, therefore, establish the unrestricted residential use of the units.
10. The appellant states that, since the permission was granted to create the units, changes to national planning policy guidance and permitted development rights¹ mean that CS Policy DM2 is at odds with the terms of the National

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

Planning Policy Framework, (the Framework). However, in my view, the Framework supports community, business and tourism uses as well as the provision of rural housing in certain circumstances², and the approach taken in CS Policy DM2 is consistent with this. Earlier this year an appeal³ against the refusal of an application to lift the same condition on the permission for conversion of this barn, now before me, was dismissed on this site. Little or no evidence has been provided in this appeal that would suggest any change of circumstances since that decision.

11. Whilst sustainability can mean different things in different areas, it is the accessibility of this site to service provision that is relevant to these appeals.
12. Policy A5 of the Taunton Deane Adopted Site Allocations and Development Management Plan 2016 (DMP) relates to accessibility. Amongst its terms, it states that residential development should be within walking distance of a defined range of service provision and its justification refers to the importance of regular, daily bus services to nearby towns. Its terms are reflected in those of CS Policy CP6. CS Policy CP1 aims, amongst other things, to reduce the need to travel.
13. There is a short walk along a surfaced footpath from the site to Smeatharpe. Thus, occupants of the dwellings would not be deterred from accessing its village hall and farm shop.
14. They would, however, have to travel to other settlements for the vast majority of services and facilities. Although I did not see a bus stop in Smeatharpe, I am told that buses stop outside the village hall. However, the evidence shows that the bus service to larger towns is intermittent and, as I have no evidence of its timing, I cannot be sure that it would be attractive to provide access to, for example, school and work opportunities elsewhere.
15. There is a limited range of services in Churchinford. During daylight hours and in good weather some residents would be prepared to walk or cycle from the units to the village. However, generally, the lack of footways along the road towards Redlane and the unmade nature of Broom's Lane would be likely to deter others and would not be an attractive proposition in poor weather or at night. Appendix 1 to the appellant's statement shows that the nearest primary school is some distance away and, given the lack of footways and lighting along the roads between it and the site, some of which are narrow and steep, there would be very little likelihood of occupants of the units walking or cycling to it.
16. Permanent residents might use community facilities in the area more than tourists, as they might have more interest in supporting their longevity. However, this would depend on personal preference and, as the three units are small, the benefits to those facilities arising from their small number of occupants would be likely to be limited. Overall, it has not been demonstrated conclusively that the development would enhance or maintain the vitality of rural communities as required by paragraph 78 of the Framework. In any case, given the accessibility issues I refer to above, the scheme would not result in a reduction in the need to travel and occupants of the units would nonetheless be reliant on car travel.

² Paragraphs 77-79

³ APP/W3330/W/19/3237811

17. I have taken into account the appellant's reference to local housing needs. However, I have not been provided with sufficient evidence of the local need for these types of dwelling, details of rental and or sale prices, nor how they might truly serve a local need. As such, I give little weight to these arguments.
18. For the above reasons, I find that non-compliance with condition 7 would lead to the creation of isolated dwellings in the countryside without exceptional circumstances being demonstrated. This would be contrary to the terms of CS Policies DM2 and SP1 and consistent with the Framework. Furthermore, occupants of the resultant dwellings would be largely reliant on the use of private car transport to access services and facilities, contrary to the terms of DMP Policy A5, CS Policies CP1 and CP6 and the Framework. Therefore, I find that the condition remains reasonable and necessary having regard to the location of the appeal site and access to service provision
19. I do not find that the development conflicts with CS Policies CP8, SD1 or DM1. The first two set out support for development in sustainable locations and a presumption in favour of sustainable development; however, neither weigh against against the development. The latter sets out a range of general requirements that the development broadly accords with.

Other Matters

20. Whilst other authorities might take a different approach to the lifting of holiday occupancy conditions, the Council made its decision on the basis of its development plan policy, which I have found to accord with the Framework. Therefore, this does not outweigh the harm that I have identified.
21. Although the initial reason for the permanent letting of the units was the illness of the appellant, I have been provided with no evidence to show why the units could not be run by another party.

Conclusion

22. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

INSPECTOR