
Appeal Decision

Site visit made on 8 September 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 11th September 2020

Appeal Ref: APP/D1265/W/20/3252152

Former West Lulworth C of E Primary School, School Lane, West Lulworth, Dorset BH20 5SA

- 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 Willton Homes Ltd against the decision of Dorset Council.
 - The application Ref 6/2019/0553, dated 4 October 2019, was refused by notice dated 28 February 2020.
 - The application sought planning permission for the change of use of existing buildings, conversion of existing school building, demolition of extensions and erection of 1 1/2 storey extension to form 3 dwelling houses and erection of 6 dwelling houses with associated parking and landscaping without complying with a condition attached to planning permission Ref 6/2018/0653, dated 5 July 2019.
 - The condition in dispute is No 13 which states that: The properties shall only be occupied by a person as his or her only or principal home. The occupier shall supply to the Council (within 14 working days of the Council's request to do so) such information as the Council may reasonably require in order to determine compliance with this condition.
 - The reason given for the condition is: To ensure that the approved properties are not used as second homes, which would harm the sustainability of local communities and would not contribute towards meeting local housing need.
-

Decision

1. The appeal is allowed and planning permission is granted for the Change of use of existing buildings, conversion of existing school building, demolition of extensions and erection of 1 1/2 storey extension to form 3 dwelling houses and erection of 6 dwelling houses with associated parking and landscaping at Former West Lulworth C of E Primary School, School Lane, West Lulworth, Dorset BH20 5SA in accordance with the application Ref 6/2019/0553, dated 4 October 2019, without compliance with condition number 13 previously imposed on planning permission Ref 6/2018/0653 dated 5 July 2019 and subject to the conditions attached in annexe 1.

Application for costs

2. An application for costs was made by Willton Homes Ltd against Dorset Council. This application is the subject of a separate Decision.

Preliminary Matter

3. On 1 April 2019, Purbeck District Council ceased to exist and became part of a new Unitary Authority known as Dorset Council. The development plans for the merged Local Planning Authorities will remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced. I shall therefore determine the appeal having regard to the policies set out within the Purbeck Local Plan Part 1 (2012) (Local Plan)

Main Issue

4. The main issue is whether condition 13 is reasonable and necessary having regard to local and national planning policy.

Reasons

5. The crux of this appeal decision is whether the emerging policy H14 in the Purbeck Local Plan review is at a sufficiently advanced stage to be given weight such that it warrants the retention of the condition imposed on the original consent that the units of accommodation could only be occupied as principal homes. The effect of this would prevent them being occupied as second homes or as holiday letting accommodation.
6. Policy H14 of the emerging Purbeck Local Plan requires that *"...proposals for all new housing in the AONB¹ will only be supported where there is a restriction in perpetuity to ensure that such homes are occupied only as a principal residence"*. The Policy is intended to manage the number of new homes which are built as, or become, second homes in order to ensure the housing needs of local people are met, create a good balance and mix of housing to allow people to live and work locally and strengthen the community and local economy. The policy was the subject of debate at the Examination in Public. The most recent published position relates to the Inspectors Post Hearings note whereby the Inspector² stated that in order to achieve the outcome sought she was not persuaded that it was necessary for Policy H14 to apply to replacement dwellings and looked to an amendment to the policy in that regard. In other respects, no changes to that policy are indicated as being required.
7. The appellants argue that it matters not what the substance of any changes to the policy may be and argues the specific details which might render the policy unsound are not pertinent. Moreover, as the policy is a single body of text at the present time the policy cannot reasonably be attributed weight. That same issue was reflected in earlier appeal decisions³ also referred to by the appellants whereby it was not found appropriate to attach a second homes condition on the basis of Policy H14, though I note that the decisions referred to date from between August to November 2019 and precede the Inspectors post hearings note of March 2020. Similarly, the appellants argue the Council has allowed other developments for new dwellings⁴ in the AONB without the imposition of a second homes condition (decisions allowed in November 2019).

¹ Area of Outstanding Natural Beauty (AONB)

² Purbeck Local Plan Review – post hearings letter dated March 2020

³ APP/B1225/W/19/3220927; APP/B1225/W/19/3220929; APP/B1225/W/19/3229288; APP/B1225/W/19/3229294; APP/B1225/W/19/3227558;

⁴ 6/2019/0492 1A Battlemead, Swanage; 6/2019/0470 Kingston Lane, Worth Matravers; 6/2019/0468; Gypshayes, Langton Matravers.

8. In contrast the Council say that the situation has moved on and the post hearings note of March 2020 indicates the main part of the policy is likely to be found sound. The appellants argue that the policy as it relates to second homes is either engaged or not engaged; there are no criteria within the policy which give rise to a planning judgement as to the interpretation of the extent to which it might apply and that it is intended to apply within the AONB to all new or converted dwellings. Both aspects of which apply to this proposal, yet it does not, at this time, have the weight of an adopted development plan policy.
9. The National Planning Policy Framework (the Framework) makes clear that weight can be given to relevant policies in emerging plans according to the stage of preparation (the more advanced the more weight can be given⁵) and to the extent to which there are unresolved objections to relevant policies as well as their consistency with the Framework. In this case the policy seeks to ensure that by restricting second homes there is a good balance and mix of housing to allow people to live and work locally and to strengthen the community. This is a legitimate focus for the Council. It is also clear that the removal of the condition would run directly contrary to that aim.
10. Nonetheless, at this point in time, the Council is still in the process of the plan examination. It has not reached the stage of publishing intended modifications to the Plan and as such I cannot give Policy H14 the weight of an adopted development plan policy. I am mindful that at the time the condition was imposed on this site the examination was at a much earlier stage though stress that I have to address the situation as it applies now. I also note that the appellant acknowledges that the policy has been deemed capable of being found sound with changes. Consequently, whilst understanding the frustrations of both parties I cannot conclude that the emerging policy has sufficient weight to warrant the retention of the condition though am fully aware that position may soon change.

Other Matters

11. Extensive comment has been made by the appellants about how the Council reached its decision bearing in mind the officer recommendation to allow the removal of the condition. Such discussions are more appropriately covered in detail in the separate costs' decision.

Conditions

12. Based on my findings I delete the disputed Condition 13 and this appeal therefore succeeds.
13. With regard to the re-imposition of the remaining undisputed conditions I am not aware of whether any or all of the details required by these conditions have already been agreed between the Council and the appellant. As this is a matter for the Council and I have no substantive evidence that any such agreements are in place, I have re-imposed those non-disputed conditions from the original planning permission that appear still to be relevant except for the statutory time limit as it was evident on my site visit that development has already commenced.
14. I have made necessary adjustments to the numbering referencing given the removal of the previous condition 1. A plans compliance condition, conditions

⁵ Paragraph 48

necessary in the interests of highway safety, to ensure satisfactory appearance, to protect trees and biodiversity; to reduce the risk of flooding and to prevent trees on site being damaged are all relevant and necessary. Conditions are also necessary to deal with contamination issues and to manage construction traffic and to protect the living conditions of existing residents.

15. I note the inclusion of several informatives attached to the original planning permission. Whilst the appellants attention is drawn to them, I do not have the latitude to replicate these informatives as part of the appeal process.

Conclusion

16. For the above reasons, I allow the appeal, deleting the disputed condition and subject to the conditions set out in the formal decision.

J Wilson

INSPECTOR

Annex 1 Schedule of conditions

1. The development permitted must be carried out in accordance with the following approved plans: 5841-WLA-ZZ-XX-DR-A-0010 Rev C, 5841-WLA-ZZ-XX-DR-A-0009 Rev B, 5841-WLAZZ- XX-DR-A-0011 Rev A, 5841-WLA-C1-XX-DR-A-0102 Rev B, 5841-WLA-C1-00-DR-A-0100 Rev B, 5841-WLA-C1-01-DR-A-0101 Rev B, 5841-WLA-H2-ZZ-DR-A-0201 Rev B, 5841-WLAH2- 00-DR-A-0200 Rev A, 5841-WLA-H1-ZZ-DR-A-0303 Rev B, 5841-WLA-H1-00-DR-A-0300 Rev A, 5841-WLA-H1-01-DR-A-0301 Rev A & 5841-WLA-H1-02-DR-A-0302 Rev B.
2. Before the development is occupied the visibility splay areas as shown on Drawing Number 5841-WLA-ZZ-XX-DR-A-0010 Rev C must be cleared/ excavated to a level not exceeding 0.60 metres above the relative level of the adjacent carriageway. The splay areas must thereafter be maintained and kept free from all obstructions.
3. Before the development is occupied the turning and parking shown on the submitted plans must have been constructed. Thereafter, these areas must be permanently maintained, kept free from obstruction and available for the purposes specified.
4. The manufacturers name, product name and colour of all external facing and roofing materials must be submitted to and approved in writing by the Council before they are used on the proposal. The development must then be implemented using the approved materials.
5. The new dwellings must not be occupied until the Council has approved a scheme of landscaping. This needs to include:
 - i. A survey plan, showing existing cables, pipes and ducts above and below ground, existing levels, and all existing trees, shrubs and

- hedges on the land, plus details of any to be retained together with measures for their protection during the course of development
 - ii. A landscape proposals plan showing proposed levels, and details of hard landscape (cables, pipes and ducts above and below ground, surfacing/paving, surface water drainage, walls, fences and other structures, lighting, CCTV etc.) and soft landscape (trees, shrubs, herbaceous plants and grassed areas);
 - iii. Planting plans which must show the species of trees, shrubs and herbaceous plants to be planted and where they will be planted, the size that the trees/shrubs/plants will be on planting, and the number that will be planted;
 - iv. Information, which complies with BS 7370 Part 1 1991 and Part 4 1993 Grounds Maintenance, regarding how the planting will be maintained for the first five years following planting. This should include detail of watering, weed control and pruning.
6. The drainage scheme outlined in the document Flood Risk Assessment & Drainage Strategy ref VD19044 prepared April 2019 must be implemented. It must be maintained and managed in accordance with the agreed details.
7. The finished floor level of the new houses must be set above the surrounding ground levels and above the adjacent levels in School Lane as detailed in the Flood Risk Assessment VD19044 prepared April 2019. Precise details of the height must be agreed in writing by the Council prior to the construction of the houses and then implemented at the agreed height.
8. All works impacting on the retained trees during the demolition/development must be carried out as specified in the approved Arboricultural Method Statement.
9. Before any ground work starts, the developer must submit for the written approval of the Council:
- i) A 'desk study' report documenting the former uses of the site.
 - ii) A site investigation report detailing ground conditions, a 'conceptual model' of all potential pollutant linkages, and incorporating risk assessment.
 - iii) A detailed scheme for remedial works and measures to be taken to avoid risk from contaminants / or gases when the site is developed.
 - iv) A detailed phasing scheme for the development and remedial works.
- The remediation scheme, as agreed in writing by the Council, must be fully implemented before the development is first occupied. Any variation to the scheme must be agreed in writing with the Council in advance of works beginning.
- Within one calendar month of completion, the developer must provide written confirmation that all works were completed in accordance with the agreed details.
10. Where remediation is necessary as identified under condition 9, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and approved in writing by the Council. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works

and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

11. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Council. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 10 and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition 11 which is subject to the approval of the Council.

12 Before development commences a Construction Management Plan (CMP) must be submitted to and approved in writing by the Council. The CMP must include:

- the parking of vehicles of site operatives and visitors
- loading and unloading of plant and materials
- storage of plant and materials used in constructing the development
- delivery, demolition and construction working hours

The approved Construction Management Plan must be adhered to throughout the construction period for the development.

<<<END OF SCHEDULE>>>