The Planning Inspectorate

Appeal Decision

Site visit made on 30 June 2020

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 24th September 2020

Appeal Ref: APP/Q9495/W/20/3245316
Smallwood House Hotel, Compston Road, Ambleside, Cumbria LA22 9DJ

- 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 and Mrs A Harrison against the decision of Lake District National Park Authority.
- The application Ref 7/2019/5293, dated 06/05/2019, was refused by notice dated 07/08/2019.
- The application sought planning permission for Change of use from hotel (C1) to residential (C3) to facilitate the development of up to five apartments, without alteration to the external appearance (Resubmission) without complying with a condition attached to planning permission Ref 7/2016/5672, dated 24/11/2016.
- The condition in dispute is No 4 which states that: The five apartments hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her.
- The reason given for the condition is: To ensure that the resulting accommodation is occupied by persons with a defined local need in order to comply with Lake District National Park Core Strategy (Local Plan Part One) Policy CS18 and the accompanying House Provisions: Supplementary Planning Document. The provisions relating to armed forces personnel are in accordance with the Allocation of Housing (Qualification Criteria for Armed Forces) (England) Regulations 2012.

Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The appellant purchased Smallwood House Hotel in 1989, at which time the lower ground floor (the flat, the subject of the appeal) was in use as owner accommodation. The flat continued to be used on this basis by the appellant and his family until 1992. It was then occupied on a rental basis by persons not directly connected with the hotel business until 2001, at which time the appellant and his family again occupied the flat. Shortly thereafter he removed the kitchen and replaced it with a bedroom, an arrangement that remained in place until 2016.

3. Planning permission was granted in February 2016 (ref 7/2015/5477) for the conversion of the appeal building to 5 flats, subject to local occupancy and affordable housing restrictions. In November 2016, permission was granted (ref 7/2016/5672) for the change of use of the appeal building from a hotel (Use

Class C1) to 5 residential flats (Use Class C3). Planning condition No 4 of the November 2016 permission restricts occupancy of all 5 flats to persons with a local need or local connection.

4. The application subject of this appeal sought to remove the local occupancy restriction from the flat, on the grounds that it was already a separate dwellinghouse and therefore the local occupancy restriction is not applicable.

5. Although the emerging Lake District National Park Local Plan is at a relatively advanced stage of preparation, the examination concluded that further work was required before the emerging plan was sound. Consequently, the emerging policies carry only limited weight at this stage and the currently adopted local plan is the development plan for the purposes of the appeal.

Main Issue

6. The main issue is whether the condition is necessary and reasonable in the interests of maintaining a balanced and mixed local housing stock and local community.

Reasons

7. Smallwood House Hotel has been in use as a hotel since the 19th century. The building has 3 main floors with additional living accommodation in the roof space and the flat, the only access to which is via an internal door and flight of stairs in the hotel building. It is close to the centre of Ambleside, a busy village popular with tourists in the Lake District National Park (the LDNP).

8. The LDNP is a largely rural area with an economy heavily reliant on tourism and hospitality. The housing market is under significant pressure from people seeking to move from more affluent urban areas or to acquire investment properties. Opportunities for new residential development are limited. Consequently, younger people and young families on typically lower rural and tourism wages are often unable to afford open market housing in the area. The resultant imbalance in the housing market, and particularly the lack of more affordable properties to meet local housing needs, is detrimental to maintaining a healthy balanced and mixed local community.

9. Policy CS18 of the Lake District National Park Core Strategy including Proposals Map Adopted October 2010 (the CS) seeks to support healthy mixed communities by redressing the imbalance in the housing market. It aims to prevent the creation of open market housing, including the conversion or change of use of buildings, while permitting new dwellings to meet identified local need or local affordable housing need. The LDNP Housing Provision Supplementary Planning Document Adopted March 2014 clarifies that in respect of new development, local occupancy restrictions will apply to the net gain in the number of dwellings.

10. In this case, the Council considers that the change of use of the appeal property from a hotel to a residential use results in a net gain of 5 residential units, hence the local occupancy restriction applies to all 5 units. However, the appellant considers that the flat was a self-contained residential unit. As such, the planning permission results in a net gain of only 4 new dwellings and therefore the local occupancy restriction should not apply to the flat.

11. During the time that the Council was considering the previous applications, and as illustrated by the plans submitted with application ref 7/2016/5672, the flat had 3 bedrooms and no kitchen. I accept that the flat had rudimentary kitchen appliances in the living room including a toaster, kettle, small fridge and microwave, and the appellant's family used the bathroom sink for washing up. However, the evidence is that since approximately 2002, in the absence of a kitchen, the family used the hotel kitchen to prepare their main meals.

12. I acknowledge that the appellant originally intended to replace the kitchen and internal alterations could have been made to reinstate it. Nevertheless, from 2002 onwards, the flat did not contain a kitchen. Consequently, it would not have had the appearance of a self-contained dwellinghouse and it did not afford the facilities required for independent domestic existence, particularly by a family with children. The flat was therefore physically and functionally part of the Smallwood House Hotel and it was not suitable to be occupied by persons other than those connected with the hotel business.

13. A number of documents have been provided relating to the appellant's period of occupation of the flat including electoral register records, Council Tax and non-domestic rate bills, and correspondence in relation to Building Control. While the evidence indicates that the building in its entirety was first and foremost in Class Use C1, I accept that the flat was in residential use by the appellant and his family. However, there is nothing before me to demonstrate that the regulatory regimes referred to, including telephone lines and television licensing, would apply differently to a residential (C3) use in a hotel building than to residential accommodation ancillary to a hotel (C1) use.

14. Prior to the removal of the kitchen, and irrespective that the flat did not have a separate external access, it did provide the facilities necessary for day to day domestic existence. In this respect, there is evidence that the flat had been occupied on a short-term basis by students and seasonal workers employed in tourism and hospitality. Therefore, the flat was suitable to be occupied as a self-contained residential unit and it was occupied for at least some of the time between 1992 and 2001 by persons not connected with the hotel business but with a local need and a need for more affordable housing.

15. While I do not dispute that the flat would have been in demand with seasonal workers, it has not been demonstrated that it was continuously occupied on this basis. Notwithstanding the correspondence from 2 former tenants, there is no complete record of tenancy agreements during the time that the flat was let, nor have financial records been provided to evidence the lettings. The lawful residential (C3) use of the flat has not been established. In the absence of substantive evidence in this regard and taking account of the seasonal nature of tourism and the duration of university term times, I cannot be certain that the flat was continuously occupied as a residential rental property with only de minimis breaks in occupancy.

16. Therefore, although there is evidence that the flat was occupied historically and since 2002 as owner accommodation ancillary to the hotel use, there is little compelling evidence to demonstrate a lawful change of use to separate residential accommodation for the purposes of planning.

17. By restricting occupancy to persons with a local need or local connection, planning condition No 4 of the November 2016 permission seeks to ensure that the development does not result in open market housing, which would be likely

to be unaffordable for people on relatively low local wages such as those employed in the tourism industry. This is consistent with the social objectives of the National Planning Policy Framework that require development to support vibrant and healthy communities and, in rural areas, to support housing developments that reflect local needs.

18. Given the pressure on housing in this area, the removal of the local occupancy restriction on the flat would result in the creation of a more expensive open market dwelling that would be likely to attract persons from outside the area with no local need and no local connections. There would be no guarantee that the flat would be occupied on a permanent basis or that it would be affordable to local young people or young families. The creation of additional open market housing would not contribute to redressing the imbalance in the housing market and it would not contribute to a sustainable and balanced local community. The removal of planning condition No 4 would contribute to cumulative adverse impacts and further imbalance in the local housing stock.

19. I therefore find that condition No 4 restricting the occupancy of the flat is necessary and reasonable in the interests of maintaining a balanced and mixed housing stock and local community. The proposed variation of the condition would conflict with the development plan, including Policy CS18 of the CS. This requires, among other things, that new dwellings should contribute to meeting identified local needs and help redress imbalances in the local housing market.

Other Matters

20. I am aware of a permission for the change of use of a guesthouse to an open market dwelling in Windermere (ref 7/2019/5574). That scheme relates to a 7 bedroom property in use as a guesthouse with owner's accommodation. It is in an area with no evidence of a local need for a 7 bedroom dwellinghouse and the Council considered that the property could not be satisfactorily subdivided to create a number of smaller dwellings. As such, it was not possible to meet local need and affordable housing need and a local occupancy restriction would not therefore be reasonable. On this basis, the scheme is not directly comparable to the appeal scheme and it does not provide a justification for it.

Conclusion

21. For the reasons set out above, the appeal should therefore be dismissed.

Sarah Manchester

INSPECTOR