



Appeal Decision

Site visit made on 17 August 2020 by L Wilson BA (Hons) MA MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2020

Appeal Ref: APP/E2001/W/20/3248405

Yellowtop Country Park, Main Road, Foggathorpe, East Yorkshire YO8 6PZ

- 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 Mrs Diane Simpson (Yellowtop Ltd) against the decision of East Riding of Yorkshire Council.
- The application Ref 19/00983/VAR, dated 20 February 2019, was refused by notice dated 20 August 2019.
- The application sought planning permission for removal of Condition 11 (log cabin occupancy restriction) of planning permission 02/03463/PLF (Siting of log cabins on wheels) to allow holiday use all year around for 10 cabins without complying with conditions attached to planning permission Ref DC/18/03533/VAR/WESTWW, dated 19 December 2018.
- The conditions in dispute are Nos. 1 and 2 which state that:
Condition 1: The lodges on the site shall be occupied for holiday purposes only and no lodge shall be occupied on a permanent basis.
Condition 2: The lodges shall not be occupied as a person's sole or main place of residence.
- The reasons given for the conditions are:
Condition 1: This condition is imposed in the interests of restricting the use of the accommodation to a temporary holiday use only. The Council acknowledges that these sites fulfil an important social function by providing holiday accommodation. It also acknowledges that tourism has an important part to play in the economy of the area and that these sites are important in this respect. However, these considerations must be set against policies S1, S2, S3 and S4 of the East Riding Local Plan which seek to restrict residential development in the Countryside to that which is essential in order to protect the Countryside for its own sake, to avoid placing demands on services, and in the interests of sustainability. The demands of permanent residents for services are greater than those of holiday makers and the use of the site as a permanent residential site would therefore place a greater burden on services. In addition, if the site were to be used as permanent residential accommodation, additional land would have to be used in order to meet the needs of tourism, resulting in the likely loss of productive agricultural land and spoiling the appearance of the Countryside.
Condition 2: This condition is imposed in the interests of restricting the use of the accommodation to a temporary holiday use only. The Council acknowledges that these sites fulfil an important social function by providing holiday accommodation. It also acknowledges that tourism has an important part to play in the economy of the area and that these sites are important in this respect. However, these considerations must be set against policies S1, S2, S3 and S4 of the East Riding Local Plan which seek to restrict residential development in the Countryside to that which is essential in order to protect the Countryside for its own sake, to avoid placing demands on services, and in the interests of sustainability. The demands of permanent residents for services are greater than those of holiday makers and the use of the site as a permanent residential

site would therefore place a greater burden on services. In addition, if the site were to be used as permanent residential accommodation, additional land would have to be used in order to meet the needs of tourism, resulting in the likely loss of productive agricultural land and spoiling the appearance of the Countryside.

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. Whether the disputed conditions are necessary, having regard to the countryside location of the site. If so, would variation of the conditions be justified on account of an essential business need.

Reasons for the Recommendation

4. The appeal site relates to an established tourism site which includes three businesses: Yellowtop Country Park, Still Rabbit Lodges and YellowRush Lodge. The site is well screened from the highway and currently contains 27 holiday units. The appeal site is located within the countryside and currently benefits from an existing manager's dwelling. The application seeks to vary conditions 1 and 2 to allow the continued occupancy of lodge 20 for an assistant manager.
5. From the evidence before me, the tourism site was accepted as being compliant with the relevant policies at the time of determination. The Council acknowledged that holiday accommodation provides a social function and has an important part to play in the economy of the area. Although the existing lodge in theory could be used all year for visitor accommodation the policy considerations for tourism and residential development differ.
6. The Council considered, in the original application, that the benefits of the holiday accommodation outweighed the harm to the countryside. Conditions 1 and 2 were clearly imposed to prevent the lodges being used as residential accommodation in the interests of sustainability. The reasons for the conditions set out that the ERLP seeks to restrict residential development in the countryside. The Council considered that the use of the site as a permanent residential site would place a greater burden on services compared to the holiday accommodation. In addition, if the lodges could be used as permanent residential accommodation then it is likely that additional land would be required to meet the needs of tourism, which would harm the countryside. It is apparent that the lodges were only granted permission as they related to holiday accommodation and residential development, in this location, would not have been supported.
7. Contrary to the assertion of the Council, the continued occupancy of the lodge would not result in an isolated home in the meaning of paragraph 79 of the National Planning Policy Framework (the 'Framework'). This is because of the extent of built development within the appeal site. Nonetheless, it would not represent a sustainable location for unrestricted residential accommodation due

to the distance to local shops and services and likely reliance on the private car. Whilst tourist accommodation would also result in car borne journeys, the reliance on local facilities and services, such as healthcare and schooling, would not be the same as general residential accommodation and the application was clearly approved due to the benefits of tourist related accommodation to the local economy. The appellant does not dispute the policy position in that respect but contends that there is an essential need for additional accommodation to house an on-site member of staff.

8. Policy S4 of the East Riding Local Plan 2012 – 2029: Strategy Document (2016) (ERLP) sets out forms of development which would be supported in the countryside. In general, new residential dwellings would not be allowed in the countryside. However, the policy allows for rural-based occupational dwellings subject to demonstrating an essential need. The supporting text outlines that for this type of application, it should be supported by, amongst other matters, a clear functional need for a full-time worker to be employed on the unit and the need for the dwelling cannot be met by an existing dwelling that is suitable and available. It goes on to state that the functional need test should clearly demonstrate that having one or more workers available at most times of the day and night is essential for the proper functioning of the unit. For example, to meet welfare needs of vulnerable livestock, or are needed to quickly deal with other emergencies. If planning permission was granted for the proposal the effect would be the creation of a new planning permission. Such development should be assessed in accordance with the development plan unless material considerations indicate otherwise and, in that context, policy S4 is relevant to the determination of the appeal.
9. The appellant has drawn my attention to paragraph 24 of the Good Practice Guide on Tourism which highlights that accommodation for key members of staff may sometimes be needed to achieve good quality service to customers and to meet the obligations of health and safety. I note that this guide has been superseded by the Framework and Planning Practice Guidance. I also acknowledge that national and local planning policy support tourism development and economic growth¹.
10. I do not doubt that the assistant manager fulfils a vital role being involved in the management of the business. I have had regard to the tasks set out in the appeal statement and the planning supporting statement, as well as the change in personal circumstances of the appellant. I note that the duties set out are not exhaustive and I do not underestimate the volume of work involved in running the business. I also understand that visitors expect a high level of service and the importance of responding to issues quickly, especially in light of the increasing use of social media and online review websites.
11. However, the evidence submitted does not show that there is a truly essential need for a further permanent residential dwelling. I note that the Council has highlighted that the existing manager's accommodation is not tied to a specific person responsible for the day to day management or operation of the site.
12. From the evidence before me, Yellowtop Country Park is a successful business that has been operating for around 20 years with high occupancy rates and no viability issues. The tasks of the assistant manager are varied and extensive. Nonetheless, many of the duties, for example HR duties, supervising

¹ Including Policies EC1 and EC2 of the ERLP and also paragraph 8a, 38 and 80 of the Framework.

changeovers, carrying out system and safety checks, could be carried out during the day.

13. One of the roles of the assistant manager is to deal with incidents, such as the breakdown of equipment. I appreciate that it is difficult to provide information relating to the frequency of these event but as no evidence has been submitted to suggest otherwise, it appears that these incidents are irregular occurrences. An external business or the assistant manager could be contacted to fix a piece of faulty equipment. It is unlikely that most holiday businesses of a similar scale would have a permanent on-site worker with the skills to repair all domestic items or services. It would not be unusual for these businesses or employee's to be on call 24/7 to assist in situations where there is an urgent need of repair.
14. Visitors are also likely to notice a malfunctioning piece of equipment, for example a faulty toilet flush, during the day or evening when staff are still working on site. Hence, it is unlikely that a visitor would notice a piece of equipment is not working, nor expect an instant response, late at night or in the early hours of the morning as they are likely to be sleeping. In addition, if there was an accident, for example a medical emergency, then the emergency services would be called to assist.
15. I understand that lodge 20 has been selected for security. It has been drawn to my attention that there have been issues regarding disputes between neighbouring visitors, as well as excessive noise and disturbance from visitors involving alcohol consumption. These issues most frequently arise outside normal working hours. No evidence has been submitted to roughly demonstrate how often these issues occur either, for example whether they generally happen monthly. Whilst lodge 20 is situated more centrally within the site than the manager's dwelling, it would not take long for the existing manager to walk from their dwelling to intervene and diffuse the situation. Where necessary, it would be reasonable to involve the police where the conflict risks personal safety or damage to property.
16. I appreciate that there would be days when the manager would be away from the site, for example when they are attending events, conferences and fairs. Again, based on the evidence presented, this does not appear to be a regular occurrence. In addition, besides the assistant manager there are also 12 core members of staff and additional seasonal staff. Therefore, there would be other members of staff which would be on site during normal working hours whilst the manager is unavailable. I have not been provided with the working hours of the staff but it is likely that their hours are staggered throughout the day and week to ensure that there is an employee on site to support visitors and to deal with any arising issues.
17. Whilst the role of the assistant manager is important in supporting the owner in operating the site, the reasons provided do not justify a further permanent dwelling. There is no clear evidence before me which demonstrates that not having an assistant manager living on the site undermines the operation and function of the business. The proportion of the work which would be undertaken out of normal working hours would be low and infrequent. Additionally, the volume of work would reflect the size of the site which is modest. The tourism site in its current format appears successful. The submission does not justify that it is essential for both the manager and

assistant manager to be available at most times of the day and night, for the proper functioning of the tourism site.

18. Whilst I recognise the difficulties that may have arisen in respect of the personal circumstances of the appellant, personal circumstances will seldom outweigh more general planning considerations. The appellant may not always be available to manage the accommodation, or may not have the technical skills to address all on site matters. However, that does not dictate that there is a need for additional accommodation to manage the site. In a functional sense, the existing manager's accommodation would appear to be sufficient to meet the requirements of the business if it was occupied on a permanent basis for the intended purpose of managing the accommodation on site. Consequently, the personal circumstances referred to do not alter my view that the existing on-site accommodation is adequate to manage the business on a 24 hour basis, with assistance from workers who could reside elsewhere and/or emergency assistance when required.
19. For these reasons, conditions 1 and 2 are necessary to protect the countryside and to ensure that the economic benefits of tourist development are not diminished through the use of tourist related accommodation for non-essential permanent residential purposes. The evidence submitted does not demonstrate that there is an essential business need to vary these conditions. The proposal therefore would conflict with the aims of Policy S4 of the ERLP. This policy seeks, amongst other matters, to promote sustainable development and to ensure that the intrinsic character of the countryside is protected.

Conclusion and Recommendation

20. For the reasons given above I recommend that the appeal should be dismissed.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

21. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be dismissed.

Chris Preston

INSPECTOR