

Appeal Decision

Site visit made on 28 October 2020

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2020

Appeal Ref: APP/D0840/W/20/3256753

Whitsand Bay Hotel, Finnygook Lane, Portwrinkle PL11 3BU

- 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 John Phillips against the decision of Cornwall Council.
 - The application Ref PA19/09480, dated 21 October 2019, was refused by notice dated 28 January 2020.
 - The application sought planning permission for Change of Use of current Hotel (C1 use) for the creation of eighteen one and two bedroom apartments (C3 use), gym, hair salon, games room and pool with associated alterations to a Listed Building (Grade II) without complying with a conditions attached to planning permission Ref PA18/08163, dated 9 April 2019.
 - The condition in dispute is No 3 which states that: The dwellings hereby permitted shall not be occupied otherwise than by a person and/or dependant relatives as his or her/their only or Principal Home. The dwelling shall not be occupied as a second home or holiday letting accommodation. The occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request to do so) such information as the Authority may reasonably require in order to determine whether this condition is being complied with.
 - The reason given for the condition is: To safeguard the sustainability of the settlements in the Rame Neighbourhood Development Plan area, whose communities are being eroded through the amount of properties which are not occupied on a permanent basis and to ensure that the resulting accommodation is occupied by persons in compliance with policy 1 of the adopted Rame Peninsula Neighbourhood Plan 2017 - 2030.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in 2019 under Ref PA18/08163 for 'Change of Use of current Hotel (C1 use) for the creation of eighteen one and two bedroom apartments (C3 use), gym, hair salon, games room and pool with associated alterations to a Listed Building (Grade II)'. Condition 3 of that permission requires the approved apartments to be occupied only as a Principal Home and prevents their use as second homes or holiday letting accommodation.
3. The appellant is seeking the removal or variation of the condition so as to allow the potential inclusion of second homes and/or holiday letting. Accordingly, the main issue is whether removing or varying the condition requiring the approved apartments on the site to be occupied only as a principal home would be acceptable in terms of the development plan and material considerations.

Reasons

4. The appeal site contains the Grade II listed Whitsand Bay Hotel. The attractive historic building is an impressive and prominent feature in the locality. It has been closed since November 2018 when it was decided that, with no offers being received after a period of marketing of it as a going concern, it was no longer financially viable to continue. Shortly after it ceased trading, planning permission was granted for, amongst other aspects, a change of use of the building from a hotel to 18 apartments and a variety of other uses.
5. Policy 1 of The Rame Peninsula Neighbourhood Development Plan 2017 – 2030 (RPNDP) sets out that, due to the impact upon the local housing market of uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes), new open market housing will only be permitted where there is a condition restricting occupancy as a Principal Residence. It defines principal residences as those occupied as the residents' sole or main residence.
6. The appellant's appeal statement sets out that condition 3 of permission PA18/08163 presented an obstacle to the original proposers of the scheme raising the finance required for the development due to the probability that it was unlikely that all the apartments could be sold as primary residences. The submitted evidence, including letters from the two agents marketing the site, identifies that other potential purchasers have indicated that the condition makes the scheme unviable given the costs of developing the project, and therefore no offers have been forthcoming for the as-approved scheme. The agents also set out that, following extensive marketing and several clients showing an interest in the project, potential developers and investors consider that there would not be sufficient demand for the apartments as principal residences. It is therefore asserted that property prices would have to be lower and that this would adversely affect the project viability.
7. An extensive marketing effort of the site has clearly been undertaken. I recognise that the costs associated with re-developing the historic building would be likely to be higher than with other unlisted buildings. It seems reasonable to me to consider that apartments which could be used as either second homes, holiday accommodation or as a person's sole or main residence would be in greater demand, and thus command a higher price, than apartments only allowed to be occupied as a principal home. I am also sympathetic of the current owners' concerns that they could potentially see no return for their work over many years and I note that a substantially reduced offer for the site would not be acceptable to them.
8. However, I have little substantive evidence, such as a viability appraisal, which verifies that the approved scheme is unviable, and neither the opinions of the agents nor the continued failure to secure the redevelopment of the hotel demonstrate, of themselves, that the approved scheme is unviable. The evidence before me does not therefore indicate that removal or variation of the disputed condition would be justified in relation to viability. Consequently, I cannot agree that the condition poses an excessive and unacceptable risk upon the development value.
9. It has been put to me that if condition 3 is not removed or varied, the site will remain unused and the hotel will fall into disrepair. I understand that during the determination of the now-approved planning application, Historic England were concerned that the building should be sympathetically restored.

10. As a designated heritage asset, I give great weight to the building's conservation and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires special regard to be had to the desirability of preserving the (listed) building or its setting or any features of special architectural or historic interest which it possesses. I am also mindful that the National Planning Policy Framework (Framework) sets out that such assets are irreplaceable, should be conserved in a manner appropriate to their significance and that, in determining applications, account should be taken of, amongst other aspects, the desirability of sustaining and enhancing their significance and putting them to viable uses consistent with their conservation.
11. I acknowledge the costs associated with maintaining the hotel, which positively contributes to the locality, and that an empty building is more likely to fall into disrepair than a building which is in use. I note that it is said that the panelling has begun to distort, the parquet flooring has started to lift and the exterior of the building is showing signs of wear, with one of the windows having become dislodged during a gale. The appellant also indicates that it is not practical or viable to continue heating the building without any revenue.
12. However, there is limited detail before me which sets out what works are or would be required to prevent the empty building from falling into disrepair. I also have little substantive evidence that the condition of the empty building is deteriorating significantly, that its preservation and future conservation is under threat and that the designated heritage asset is at risk of being lost if the disputed condition is not removed or varied. In relation to this, I did not observe any obvious significant external damage or any particular signs of disrepair. Furthermore, although I recognise that maintaining it in good condition would clearly involve some costs, it seems to me that allowing the building to fall into significant disrepair would reduce the owners' chances of receiving an offer which they would find acceptable. I am not therefore persuaded that the significance of the designated heritage asset would be harmed if the disputed condition were not removed or varied.
13. As set out in the Framework, planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. It has been put to me that the building should be treated as a special case in light of its listing and historic significance, and a number of considerations have been put forward in support of this. It is also emphasised that varying the condition to allow for holiday lettings would not preclude the apartments being used as a primary residence and that holiday lettings would potentially be occupied for much of the year.
14. However, RPNDP Policy 1 provides the basis for the disputed condition and, for the above reasons, I find that the considerations put to me have not been sufficiently substantiated to justify a departure from the development plan. Accordingly, I conclude that removing or varying the condition requiring the approved apartments on the site to be occupied only as a principal home would not be acceptable in terms of the development plan and material considerations. I therefore find that the proposed development would conflict with RPNDP Policy 1.
15. In coming to this view, I have taken account of the fact that the hotel operated for a long time and was seasonally occupied, and that the proposed development would involve the creation of residential apartments through

conversion of an existing building rather than through new-build properties. However, these matters do not lead me to a different conclusion.

Conclusion

16. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR