



Appeal Decisions

Site visit made on 7 December 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal A: APP/P1133/C/20/3256453

Appeal B: APP/P1133/C/20/3256669

Land at Kennford International Caravan Park, Kennford, Exeter, Devon

- 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 Ian Hopkins (Appeal A) and Mrs Lisa Hopkins (Appeal B) against an enforcement notice issued by Teignbridge District Council.
 - The enforcement notice was issued on 15 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the non-compliance with occupancy conditions attached to the planning permission (reference 09/03912/FUL) granted on 16 February 2010 for the demolition of three chalets and the erection of six holiday chalets. The chalets/buildings shown for the purposes of identification only coloured red on the attached plan are being used as permanent residential accommodation and have been/are being occupied by an individual occupant for more than three months in a 12 month period. Contrary to Planning Conditions 5 and 4 (respectively) of Planning Permission 09/03912/FUL.
 - The requirements of the notice are: Cease using the building for permanent residential accommodation.
 - The period for compliance with the requirements is 12 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Appeal C: APP/P1133/W/20/3255697

Kennford International Caravan Park, Kennford EX6 7YN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr & Mrs Hopkins against Teignbridge District Council.
- The application Ref 20/00683/VAR is dated 29 April 2020.
- The application sought planning permission for the demolition of three chalets and erection of six holiday chalets.
- The conditions in dispute are Nos 2, 4 and 5 which state that:
- 2. Unless otherwise agreed in writing by the Local Planning Authority the development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 16 December 2009 (Drawings Numbered 1494 2/1A, 1494 2/2A, 1494 2/3A, 1494 2/4A, 1494 2/5A Design and Access Statement, Arboricultural Impact Assessment with Drawing Number 03381) as modified by other conditions of this consent.
- 4. No chalet shall be occupied for more than three months in each 12 month period by any individual occupant, group of individuals or family.
- 5. The chalets shall be occupied for holiday purposes only.

- The reasons given for the conditions are:
 2. In order to ensure compliance with the approved drawings.
 4. In order to prevent the establishment of permanent residential use.
 - 5. To ensure that the chalets are not used for permanent residential accommodation.
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Summary of Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice upheld subject to corrections.

Appeal C

2. The appeal is dismissed.

Application for Costs

3. An application for costs was made by Mr and Mrs Hopkins against Teignbridge District Council. This application is the subject of a separate Decision.

Procedural Matter

4. The appeal application (Appeal C) was submitted in order to seek the variation of condition 2, relating to site layout, and the removal of conditions 4 and 5, relating to the occupancy restrictions of planning permission 09/03912/FUL for the demolition of three chalets and erection of six holiday chalets (the permission). Four of those six chalets have been constructed. The Council have provided a putative reason for refusal in respect of this appeal against non-determination. I have therefore determined the appeal on this basis.

The Enforcement Notice

5. The alleged breach of planning control refers to the chalets/buildings enforced against as being coloured red on the attached plan to the notice, when in-fact they are shown within land edged red. This can however be corrected without causing injustice to the parties.
6. Whilst the requirement of the notice specifies that the permanent residential use of the building should cease, it would be more precise, given the alleged breach of planning control relates to a breach of condition, to require that the chalets/buildings should only be occupied in accordance with the requisite conditions. I do not consider that injustice to the parties would arise from this correction.

Appeal C

Main Issue

7. The main issue is whether or not the chalets are in a suitable location for open market housing having regard to local and national planning policy.

Reasons

8. The appeal site relates to a small parcel of land consisting of four detached chalet buildings emanating from the permission. These are occupied on a

- permanent basis. The wider site in which they are located relates to a holiday caravan park that lies immediately adjacent to the A38.
9. The removal of conditions 4 and 5 of the permission would result in four open market houses. The appellants are happy that a new condition could be imposed to restrict the use of the two un-built chalets to holiday accommodation.
 10. For the purposes of the Teignbridge Local Plan 2013-2033, adopted May 2014 (the LP), the site is located in the open countryside as it is outside of the defined settlement limits or villages that are identified by means of Policy S22 of the LP. That policy also identifies the scope for housing in the open countryside, which are listed as affordable housing for local needs, replacement dwellings, travelling show people plots, gypsy and traveller pitches and dwellings for agricultural, forestry and other rural workers. Policies S1A and S1 are then concerned with the presumption in favour of sustainable development and sustainable development criteria. Taken as a whole, the Council's approach to residential development within the District is broadly consistent with the housing approach set out in the National Planning Policy Framework (the Framework).
 11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. It is clear the removal of the conditions would result in open market housing in contravention of Policy S22 of the LP. The Council have also provided evidence that it has 7.11 year supply of deliverable sites for housing in the District. This is not contested by the appellants. These are matters to which I attach significant weight.
 12. It is said that there is a lack of viable and cost-effective housing accommodation within Kennford. Much is made of this by the appellants to support the removal of the conditions. The Parish Council are also keen to support such rental accommodation. I therefore appreciate the appellants intentions of continuing to provide the chalets at what is felt to be a reduced monthly rent and for what is felt should be seen as a community benefit.
 13. However, in order for substantial weight to be afforded to these benefits there would need to be a mechanism in the form of a planning obligation before me to ensure this would endure. There is no such mechanism before me.
 14. The resultant removal of the conditions would not therefore meet with the definition of affordable housing or affordable housing for rent¹. Given the conflict arising from open market housing in light of Policy S22 of the LP, I afford these benefits only limited weight. Put simply, if the permission were granted, the chalets could be sold, and the said benefits would not endure. This also weighs against any sustainable development credentials that might otherwise arise.
 15. The appellants highlight the availability of facilities and services to occupiers as well as connectivity in respect of footpaths and bus services. I could however see during my site visit that the appeal site is physically detached from

¹ As defined in the Glossary to the Framework

Kennford. Whilst it is then within reasonable walking distance of where certain facilities and some limited shops are located, the route is largely unlit, and the pavements are very narrow in places. Moreover, it necessitates walking in close proximity and crossing a bridge over the A38 which in my view does not translate into an attractive or desirable walking route.

16. I conclude that the chalets are not in a suitable location for open market housing and therefore conflict with Policies S1A, S1 and S22 of the LP as well as the achieving sustainable development and rural housing objectives of the Framework.

Other Considerations

17. The appellants contend that the chalets are not located in a position that is attractive to tourists and that the site is not closely related to tourist attractions, amongst other things. It is then said that the chalets would remain empty. However, the permission for the chalets emanates from 2009 and the evidence is that following their construction the chalets were occupied on a permanent basis. This casts doubt in my mind as to whether genuine efforts have been made to use and promote the chalets for their intended purpose and thus whether they would indeed become redundant. The putative reason for refusal is also not concerned with the loss of holiday accommodation. These considerations therefore only attract very limited weight.
18. I appreciate that other sites where housing has been granted planning permission have been brought to my attention, but only limited evidence is before me. From the synopsis provided however, these other sites had materially different circumstances to that before me, and so I afford these permissions very limited weight.
19. A prospective growth zone has also been brought to my attention but there are only very limited details before me, and it does not encompass the appeal site. I also accept that there are no other planning harms arising, but such an absence is merely a neutral factor as opposed one that weighs in favour of the removal of the conditions.
20. The variation of condition 2 relates to the proposed creation of a garden area, parking space and relocation of refuse and cycle storage. No objections have been raised by the Council in this regard, and I have no reason to disagree. Nevertheless, they are prompted by the proposed open market occupancy of the chalets and so in light of my findings the need for any changes in this regard falls away.

Planning Balance

21. I have found the removal of the occupancy conditions for open market housing to be contrary to the LP and Framework, which is a matter that attracts significant weight.
22. The Government is seeking to significantly boost the supply of housing and the removal of the conditions would make a contribution, albeit modest, to this supply. However, in the absence of any mechanism before me, the removal of the conditions does not offer enduring economic or other benefits to the social well-being of the local community and so it only attracts limited weight. Other considerations also only attract very limited or neutral weight.

23. Whilst I have sympathy for the families currently occupying the chalets, in the absence of a mechanism to ensure the benefits endure, the material considerations necessary to justify the removal of the conditions do not, therefore, exist.

Conclusion

24. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal must fail.

Appeals A and B

The ground (g) appeal

25. The appellants contend that the time given to comply with the requirements of the enforcement notice are too short.
26. There are four individual families involved whose children attend the local primary school. It is said that these families will need to seek alternative local low-cost family accommodation in close proximity to the village in order that their children may continue to attend this school; so as to avoid what is described as a major upheaval. A period of 24 months is therefore sought.
27. I have only very limited evidence about the families in terms of their circumstances or the number of children involved. Whilst I appreciate a longer period would provide more time to find suitable alternative family accommodation, I have very little evidence as to how or why a period of 24 months has been arrived at in relation to the educational needs of the children concerned, noting the appellant's consider 12 months may be appropriate if it were just a matter of re-homing adults.
28. I am therefore not persuaded on the evidence before me that a period of 12 months is too short in which to find suitable alternative family accommodation without causing major upheaval to the educational needs of the children concerned.
29. The Council have indicated they would be amenable to a period of 18 months should a period of 12 months be deemed too short. I however do not find this to be the case on the evidence before me, and note the Council advise they have already provided a longer period than they would normally afford. I also appreciate the issues posed by the current pandemic, but the timeframe associated with this is still unknown. I do however note that the Council has powers under section 173A(1)(b) of the Act, albeit that would be a subsequent matter and is entirely for them.
30. The appeal on ground (g) consequently fails.

Overall Conclusion

31. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice subject to corrections and refuse to grant planning permission for the variation and removal of conditions.

Formal Decisions

Appeals A and B

32. It is directed that the enforcement notice be corrected by:

- deletion of the words "*only coloured red*" and their replacement with the words "*on the land edged red*" in section 3 of the notice.
- deletion of the words "*Cease using the building for permanent residential accommodation.*" and their replacement with the words "*Cease the use of the chalets/buildings other than in accordance with conditions 4 and 5 of planning permission ref 09/03912/FUL.*" in section 5 of the notice.

33. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

Appeal C

34. The appeal is dismissed.

Paul T Hocking

INSPECTOR