



Appeal Decisions

Hearing Held on 8 December 2020

Site visit made on 9 December 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2021

Appeal A, Appeal Ref: APP/Q1153/W/20/3257061

Ashbury Hotel and Golf Club, Southcott, Okehampton EX20 4NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Simon & Mrs Joan Essex against the decision of West Devon Borough Council.
 - The application Ref 0155/20/FUL, dated 14 January 2020, was refused by notice dated 15 May 2020.
 - The development proposed is 16 holiday lodges.
-

Appeal B, APP/Q1153/W/20/3256993

Ashbury Hotel and Golf Club, Southcott, Okehampton EX20 4NA

- 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 Simon & Mrs Joan Essex against the decision of West Devon Borough Council.
 - The application Ref 0352/20/VAR, dated 29 January 2020, was refused by notice dated 15 May 2020.
 - The application sought planning permission for proposed twelve golf lodges without complying with a condition attached to planning permission Ref 0483/19/FUL, dated 20 September 2019.
 - The condition in dispute is No 5 which states that: The units hereby approved shall be utilised as holiday accommodation only and not as main residences, and shall only be let in association with the adjoining Golf Complex and shall not be managed or disposed of separately from 'The Ashbury Golf Hotel'.
 - The reason given for the condition is: In the interests of amenity due to the integration of the units into the Golf Hotel complex site and as their location is justified by the existing business and tourism use diversifying. Also for the purposes of sustainability as this is not a location where new residences would be considered sustainable.
-

Appeal C, APP/Q1153/W/20/3257031

Ashbury Hotel and Golf Club, Southcott, Okehampton EX20 4ND

- 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 Simon & Mrs Joan Essex against the decision of West Devon Borough Council.
- The application Ref 0307/20/VAR, dated 27 January 2020, was refused by notice dated 15 May 2020.
- The application sought planning permission for proposed three no golf lodges without complying with a condition attached to planning permission Ref 2247/19/VAR, dated

9 October 2019.

- The condition in dispute is No 4 which states that: a) The holiday lodge accommodation hereby approved shall be occupied for tourist accommodation purposes only in connection with the golf/leisure hotel complex and shall not be occupied as a person's sole or main place of residence.
b) The holiday accommodation shall not be occupied by the same person or family for more than 3 months in any 12 month period.
c) The site operator and owners shall maintain an up to date register of the names and contact details of all owners/ occupiers, including their guests, and evidence of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.
 - The reason given for the condition is: The lodges have been approved on the basis they would support an existing tourism facility and to ensure the holiday accommodation remains as such and are not occupied in a residential manner.
-

Decision

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for proposed twelve golf lodges at Ashbury Hotel and Golf Club, Southcott, Okehampton, EX20 4NA, in accordance with the application Ref 0352/20/VAR dated 29 January 2020, without compliance with condition number 5 previously imposed on planning permission Ref 0483/19/FUL dated 20 September 2019, subject to the conditions in the attached schedule.
3. Appeal C is allowed and planning permission is granted for proposed three no golf lodges at Ashbury Hotel and Golf Club, Southcott, Okehampton, EX20 4NA, in accordance with the application Ref 0307/20/VAR dated 27 January 2020, without compliance with condition number 4 previously imposed on planning permission Ref 2247/19/VAR dated 9 October 2019, subject to the conditions in the attached schedule.

Preliminary Matters

4. Appeal C seeks permission without complying with a condition on a previous permission under S73 of the Town and Country Planning Act 1990. That permission was also granted under S73 and was described as "*Application for variation of condition 2 of planning consent 2670/18/FUL*" which is not an act of development. I have, therefore, referred to the description of development given under the original permission, 2670/18/FUL, in my heading.
5. In respect of Appeal B, the development had been partly implemented but had not been completed or occupied. In respect of Appeal C, the originally consented development has been substantially completed but not occupied.

Applications for costs

6. Applications for costs were made by Mr Simon and Mrs Joan Essex against the Council. These applications are the subject of separate Decisions.

Main Issues

7. The main issues in respect of Appeal A are whether the location of the development would accord with local policies that seek to restrict development in the countryside to minimise the need to travel and whether an identifiable local need has been adequately demonstrated.

8. The main issues common to both Appeals B and C are whether the respective conditions are reasonable and necessary having regard to the location and nature of the developments in the context of the relevant local and national policies.

Reasons – Appeal A

Location and need for development

9. The appeal site forms a part of the landscaped area adjacent to one of the golf courses and close to the accommodation blocks and sports facilities at the Ashbury Hotel and Golf Course (the Ashbury complex). The Ashbury complex is based in the countryside with the closest main settlement of Okehampton some approximate 5 km to the east. The sister hotel to the Ashbury, the Manor House Hotel, is based some 1.4 km away and offers another range of facilities which guests based at the Ashbury complex can use.
10. In planning policy terms, overarching Policy SPT1 of the JLP¹ seeks to promote sustainability through all forms of development, including through environmentally conscious economic activity, the creation of sustainable societies and through protection of natural assets and the environment. It specifies a number of ways in which it seeks to do so, but access to a range of health-promoting travel options, reducing energy demand and low carbon energy schemes all underline the Plan's focus on the environmental impacts of travel and development generally.
11. The appeal site is within the Thriving Towns and Villages Area (TTVA) and is in the fourth tier category of Policy TTV1 which relates to the 'Smaller villages, Hamlets and the Countryside', where "*development will be permitted only if it can be demonstrated to support the principles of sustainable development and sustainable communities (Policies SPT1 and 2)...*". The aims of Policy SPT1 are detailed above. Policy SPT2 is principally concerned with the creation of sustainable resident communities and is therefore not relevant to tourism.
12. In relation to holiday or tourism development, JLP Policy TTV2 sets out that development proposals in the TTVA will be supported where they reinforce the sustainable settlement hierarchy and where they deliver a prosperous and sustainable pattern of development. Its specific rural sustainability objectives include the delivery of sustainable rural tourism and leisure developments that benefit rural businesses, communities and visitors, and respect the character of the countryside and historic settlements.
13. The proposal is in the TTVA, in the countryside. Public transport services are limited and the nature of the roads between the site and Okehampton are not conducive to walking or cycling. Whilst a minibus shuttle service between the two hotel sites and into Okehampton was mentioned at the hearing, it does not form part of a coherent sustainable travel plan under which the business operates. Therefore, insofar as it would result in a majority reliance on private vehicle travel for access to Okehampton or elsewhere for shopping, services and other leisure pursuits, the proposal would not be an obviously sustainable form of rural tourism that accords with the sustainable settlement hierarchy.
14. Whilst there would be benefits to the business from allowing the proposal, there are limited means by which these would be shared with other

¹ Plymouth and South West Devon Joint Local Plan 2014 – 2034 (adopted 2019)

surrounding rural businesses as may be the case if the location were optimised so as to support the sustainable settlement hierarchy. Thus, the above factors combine to result in a conflict with the sustainable settlement and rural tourism aims of Policies SPT1, TTV1 and TTV2, and the JLP read as a whole.

15. In relation to the need for the development, JLP Policy DEV15 (7) specifies that in respect of rural tourism, *"the loss of a tourist or leisure development will only be permitted where there is no proven demand for the facility. Camping, caravan, chalet or similar facilities that respond to an identified local need will be supported, provided the proposal is compatible with the rural road network, has no adverse environmental impact and is not located within the Undeveloped Coast policy area"*. As the proposal seeks permission for a number of lodges, which are essentially similar self-catering facilities to chalets, the second part of Policy DEV15 (7) is relevant.
16. It was agreed at the hearing that the two sentences of DEV15 (7) operated independently, i.e. that one concerned a loss or change of use and that the other was relevant to *new* proposals. The commonality between both parts is that there is a requirement to *demonstrate* a demand, or lack thereof, for tourism or leisure facilities to be either provided or permanently lost, i.e. through showing a high demand for a limited range of accommodation, or alternatively, declining visitor numbers and a worsening economic trend.
17. Despite evidence submitted and discussed at the hearing that indicates that the business would benefit, i.e. through the income generated by the new lodges, the potential increased take up of afternoon tee times on the golf courses and wider economic and employment benefits, there is nothing in the way of cogent evidence that demonstrates that there is an identified local *need* for the development proposed. The hearing discussion about the business strategy to stay competitive in an ever-evolving market, particularly in light of comparable sites, i.e. St Mellion, proposing a similar development, does not equate to a need or evidenced demand from a customer base which the Policy requires.
18. Whilst the appellant indicated during the hearing that it was difficult to gather evidence of need, particularly given the lack of directly comparable tourism complexes based in the immediate locality, there does not appear to have been any attempt to capture data that might help to suggest one. Such evidence could have included information from local holiday lettings agents, details about the hotel capacity, questionnaire responses from hotel guests about the appetite for a wider range of accommodation options and/or details of numbers of prospective purchasers of the lodges, given the number of people who it was stated by the appellant had verbally expressed an interest therein.
19. The lodges that have been completed (3) and those partly completed (9) had not been marketed prior to the hearing owing to the issues with the disputed holiday tying conditions (Appeals B and C). As such, the demand for those lodges, that may be indicated by the take up and duration of any sales period, has not yet been tested. However, once they are marketed and made available for letting, such information could provide directly relevant and site-specific evidence of a local need for further lodges. Until such evidence, or other evidence of a similar nature that is sufficiently compelling is made available, the proposal fails to comply with Policy DEV15 (7).
20. Given that the location of the proposal does not accord with the sustainable settlement hierarchy of the Plan as defined in Policies SPT1, TTV1 and TTV2, an

evidenced identifiable need is a key requirement to justify development in such a location. That need has not been evidenced.

21. In addition to the above, despite that informal sustainable travel arrangements may exist, there was little to suggest that the number of trips generated by the development had been considered and appropriate mitigation measures put forward, i.e. under a Sustainable Travel Plan as required by DEV15 (8). This lack of consciousness of the environmental effects of the proposal as part of the wider business strategy raises further conflict with JLP Policy DEV15.
22. In conclusion, for the reasons set out above, the location of the proposal and the lack of identified need conflicts with the development plan, read as a whole.

Other Matters – Appeal A

23. In terms of the requirement to demonstrate a need, the appellant highlights that the earlier permissions for 3 and 12 lodges were granted on the basis that they were, amongst other things, sustainable in terms of scale in conjunction with the existing complex and found compliant with both the development plan and National Planning Policy Framework (the Framework). Of relevance is the fact that the 3 lodge proposal was originally determined when an earlier development plan was in force (now superseded). Irrespective of the conclusions reached on those proposals, the evidence before me for the 16 lodge proposal does not include any cogent evidence of need, particularly in the context of the location of the development which does not strictly accord with the JLP spatial strategy. Thus, I cannot reach any definitive conclusions about whether the Council has been inconsistent and the earlier permissions are not at risk from my findings in relation to this case in any event.
24. No particular issues have been raised in respect of the character and appearance of the countryside or suitability of the local road network. Nor has any specific adverse environmental impact been highlighted beyond the reliance of guests on car travel.
25. A number of comparisons were highlighted between the proposal and a permission granted for a nearby site named 'Betty Cottles', in respect of which limited evidence was provided. In respect of the location and need for those lodges, I have insufficient evidence that would justify reaching an alternative conclusion in respect of Appeal A.
26. I am mindful of the large number of employment opportunities and scale of economic contribution made by the business to the area of West Devon. However, these factors do not outweigh the need to adequately justify development in the countryside that does not typically support the sustainable settlement hierarchy set out in the JLP, which in turn seeks to support a wider range of existing businesses.
27. The appellant suggested at the hearing that the overarching plan was to seek permission for a total of 50 lodges (including those already permitted) to capture the benefit of around 50,000 additional visits per year. However, the appeal is based on the scheme before me which is for only 16 of those lodges and for which there is limited evidence of *need*, distinct from ambitions to expand the business as such.

Reasons - Appeals B and C

28. Both permissions under Appeals B and C were granted with holiday occupancy and 'tying' conditions, albeit that the conditions differ from one another. The permissions were subsequently implemented. There is no dispute between the parties about the necessity for conditions preventing permanent residential occupation given that the lodges are specifically intended for holiday purposes.
29. The earlier three lodge proposal (Appeal C) was subject of a S73 application to allow a change to the approved plans. This was granted and the original holiday occupancy condition was re-imposed. That condition required that the accommodation shall only be occupied "*in connection with the golf/leisure hotel complex*". The 12 lodge permission requires that those units shall "*only be let in association with the adjoining Golf Complex and shall not be managed or disposed of separately from The Ashbury Golf Hotel*".
30. The effect of the conditions technically permits the 3 lodges to be owned separately of the existing business as long as the respective guests were there *in connection with* the Ashbury complex in some way. Conversely, the 12 lodge permission requires all lodges to be retained as business assets and managed as part of the accommodation offer within the Ashbury complex.
31. The appellants do not consider it commercially viable for the 12 lodges to be retained as assets and in the case of the 3 lodges, it is considered that prospective purchasers would be deterred by the requirement for a lodge to be let "*in connection with the golf/leisure hotel complex*", which may potentially be difficult to prove or disprove.
32. At the hearing, the appellant offered an insight into previous experience of the business having offered both catered hotel stays and self-catering accommodation which resulted in direct business conflict and a level of confusion for bookings administrators. Whilst I am of the view that some businesses can and do indeed make such arrangements work, the appellants made it clear at the hearing that they do not intend to repeat this experience. Their intention is to sell all of the lodges as holiday homes, although retain freehold title of all of the land on which they are situated.
33. The application documents originally provided in relation to the 3 and 12 lodge schemes used phraseology and inferred that the lodges would maintain ties to the existing business. It was not made clear that each lodge would essentially be its own 'business', the capital investment for which would be recouped through its initial disposal, with 'lettings agreements' ensuring access to facilities on site and an ongoing regular income for the business. The owners would be required to 'manage' and promote their lodge to their respective family and friends networks, and through lettings agents however they may choose to do so. This strategy allows the overarching business to reduce its own marketing effort, benefitting from the additional footfall and promoting efforts of others. This type of business model is not unusual.
34. At the hearing, further details were provided verbally about the intended 'lettings agreements' which would afford the lodge owners with c. two passes for facilities membership, inclusive golf tee times and other similar incentives. The business would benefit from the sale price achieved for each lodge, which would include a premium for these memberships. Additional income could be derived through the purchase of additional facilities passes, golf access, electric

- buggy rental and meals in the restaurant etc. The lack of any draft form of letting agreement has left a degree of uncertainty about the mechanics of the ongoing relationship between the lodges and the complexes.
35. The Council indicate that the necessity for the conditions arises because of the location of the site which conflicts with the JLP spatial strategy. The justification being that the business has been allowed to expand as per JLP Policy SPT2 which seeks to encourage and support opportunities for business growth, but that guests would be encouraged to stay on site, minimising the need to travel.
 36. Whilst the development plan is not required to detail all instances where conditions might be used to offset harm, it is ordinarily made clearer when the occupancy is likely to be tied in perpetuity, i.e. in the case of a rural workers dwelling. There does not appear to be any such prescription in the development plan about 'tying' new holiday accommodation to parent businesses or limiting occupation beyond holiday use only. The differences between the conditions also undermines the stance on how specifically the anticipated harm would arise and how it might be mitigated.
 37. The business anticipates that it would sell the lodges based on their location adjacent to the complex and owing to the access to the facilities that would be afforded to guests. The business would have an ongoing interest in ensuring that guests make use of the facilities to create additional income. Once sold, the lodge owners would rely on the co-location and access to facilities provided by their lodges to market it to future guests. Essentially, both the business and lodge owners would have overlapping and complementary interests. Whilst no guests would be forced to use the facilities, their desire to be based at the complex is likely to result from an intent to use at least some, which would likely achieve a satisfactory level of 'connection' or 'association' with the existing business in any event.
 38. Another way that harm arising from the unsustainable locations could be minimised is through the use of Sustainable Travel Plans (Travel Plan), as required by JLP Policy DEV15 (8). Clearly the Policy is seeking to promote sustainable travel choices and consolidation of business activities that necessitate travel, where possible to do so. The Council does not appear to have sought such in respect of either existing permission. Though the business has some informal measures currently in operation, i.e. the minibus shuttle between the sister hotels, and to Okehampton, electric carts, e-bikes, it does not do this under the umbrella of an approved Travel Plan/Plans.
 39. It also became apparent during the hearing that in addition to marketing, cleaning and changeovers would be left to the responsibility of each respective lodge owner. This suggests that there could be an additional volume of vehicular movements solely for these duties for each individual lodge, which further highlights that there is a lack of environmentally conscious thinking on the part of the business. The removal of the existing conditions and allowing the disaggregation of the business could exacerbate any issues of this nature.
 40. As such, whilst the removal of the 'tying' elements of the conditions is considered acceptable insofar as it would assist with achieving the desired business growth and flexibility, there is a need to offset a degree of the harm that could be generated by a lack of sustainable travel choice and coordination.

41. As such, drawing together this main issue, the 'tying' elements of the holiday conditions are not reasonable or necessary for the developments to accord with the development plan. It is however necessary to impose additional conditions requiring Travel Plans to be submitted and approved, prior to occupation of the respective lodges.

Other Matters – Appeals B and C

42. The element of the 3 lodge permission preventing any family residing in a lodge for holiday purposes beyond 3 months in any 12 month period is agreed between the parties as being unnecessary and is thus removed.
43. In respect of whether an inconsistency would remain between the permissions and those previously given for the 'Betty Cottles' scheme, it should be reiterated that that permission was granted when a previous development plan was in force and that these appeals are being considered against the current development plan requirements.

Final conclusions

44. Appeal A conflicts with the development plan, read as a whole. Neither the economic benefits nor other stated considerations are of sufficient materiality to indicate that a decision should be taken other than in accordance therewith.
45. Thus, for the reasons set out above, and taking account of all other matters raised, Appeal A is dismissed.
46. In respect of Appeals B and C, the 'tying' elements of the holiday occupancy conditions are neither reasonable nor necessary, having regard to the development plan, the Framework or the Planning Practice Guidance relating to the use of planning conditions.
47. Appeals B and C are therefore allowed.

Conditions – Appeals B and C

48. As both developments have already been commenced, the statutory time limit conditions are not necessary. Conditions listing the approved plans are, however, necessary in the interests of certainty.
49. For the reasons set out above, conditions are also necessary on both permissions to prevent the lodges being used for permanent occupation. The necessity for registers of owners and occupiers to be maintained was discussed at the hearing. Given that these would provide a useful tool for the Council to monitor compliance, these were agreed as a necessary aspect of such.
50. To ensure compliance with JLP Policy DEV15, it is necessary to impose conditions seeking approval and implementation of Sustainable Travel Plans.
51. In respect of Appeal B, many of the originally imposed conditions are still necessary because the development is incomplete. In order to minimise the risk of flooding and pollution, surface water and construction phase drainage conditions are necessary.
52. In the interests of the character and appearance of the area, conditions are necessary to prevent the replacement of lodges and to ensure that the

surfacing details are undertaken as approved. For similar reasons, it is also necessary to condition a landscaping scheme.

53. A condition is necessary to prevent the installation of external lighting in the interests of the protection of light-sensitive species. Similarly, it is also necessary to condition that the remainder of the development is undertaken in accordance with the previously approved ecology assessment.
54. In respect of Appeal C, the Council confirmed that the previous surface water drainage condition had been discharged but a further condition is necessary to ensure that it is retained in accordance with the approved details.

Hollie Nicholls

INSPECTOR

DOCUMENTS SUBMITTED

Document 1

Addendum to statement from Mr S Essex

APPEARANCES

FOR THE APPELLANT:

Mr Simon Essex	Appellant
Mr Stephen Harris	Joint General Manager
Mr Michael Armstrong	Joint General Manager
Mr David Jade	Ashbury Hotel and Golf Club
Mr Tim Taylor BA MSc MRICS PgDI	Solicitor – Foot Anstey
Mr Peter Rowan Dip TP MRTPI	Planning Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Oliver Gibbins BA(Hons) PG Dip TP	West Devon Borough Council
Mr Phil Baker MA(Hons)	West Devon Borough Council

APPEAL B – SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location plan, Ref 1819-8
 - Amended block plan, Ref 1819-7 received 23/7/19
 - Amended Proposed elevations and levels units 10-12, Ref 1819-6 received 23/7/19
 - Amended Proposed layout units 10-12, Ref 1819-4 received 23/7/19
 - Proposed elevations and floor plan, Ref 20727
 - Proposed layout units 1-9, Ref 1819-3
 - Proposed elevations and levels units 1-9, Ref 1819-5
- 2) The development hereby approved shall be used as holiday accommodation only and shall be used for no other purpose (including any other purposes within Class C3 of the Town and Country Planning (Use Classes) Order 1987, or any Order revoking or re-enhancing that Order with or without modification. The site operator and owners shall maintain an up to date register of the names and contact details of all owners and occupiers, including their guests, and evidence of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.
- 3) Prior to the first occupation of any unit hereby approved, details of the permanent surface water drainage management system shall be submitted to, and approved in writing by, the Local Planning Authority. The surface water drainage system shall be implemented and subsequently retained as approved for the lifetime of the development.
- 4) The development shall be constructed in accordance with the Proposals for Construction Phase Drainage (drawing No. 3002; Rev. A; dated 1st February 2019), which was submitted as Appendix A of the Flood Risk Assessment & Surface Water Drainage Strategy (Ref. J-802 Rev 01 dated 6th February 2019).
- 5) External material treatments and finishes on the units and tracks, parking and hard surfaced areas, shall be as set out on the approved plans and application form and retained as such.
- 6) The units hereby approved shall not be subsequently replaced or externally amended from the details in the approved plans in any way.
- 7) Prior to the first occupation of any unit hereby approved, a scheme for the planting, management and long-term maintenance of trees, shall be submitted to, and approved in writing by the Local Planning Authority. The approved tree planting scheme shall then be carried out in full in the first available planting season following its approval and managed and maintained in accordance with the scheme thereafter. Any trees which die or fail within 5 years of planting shall be replaced.
- 8) There shall be no external lighting affixed to or associated with the development of the units hereby approved which faces or spills light onto the adjacent woodland to the north, north-east and south east of units 10-12.

- 9) The development shall be carried out fully in accordance with the enhancement and mitigation measures as set out in the submitted Ecology impact assessment by JL ecology Ltd dated November 2018.
- 10) Prior to the occupation of the units hereby approved, a Travel Plan that seeks to implement and promote sustainable travel measures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and occupied in accordance with the approved Travel Plan.

APPEAL C – SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1906-1 received 19 July 2019
 - 1906-2 received 19 July 2019
 - 1906-3 received 19 July 2019
- 2) The development hereby approved shall be used as holiday accommodation only and shall be used for no other purpose (including any other purposes within Class C3 of the Town and Country Planning (Use Classes) Order 1987, or any Order revoking or re-enhancing that Order with or without modification. The site operator and owners shall maintain an up to date register of the names and contact details of all owners and occupiers, including their guests, and evidence of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.
- 3) The surface water drainage management system shall be completed in accordance with the details and plans approved under Ref J-730-3001 Rev B and shall be permanently retained as such thereafter.
- 4) Prior to the occupation of the units hereby approved, a Travel Plan that seeks to implement and promote sustainable travel measures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and occupied in accordance with the approved Travel Plan.