
Appeal Decision

Site visit made on 25 March 2021

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 13th April 2021

Appeal Ref: APP/U1430/W/20/3263664

Lyndhurst, High Street, Peasmarsch TN31 6YA

- 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 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 Terry Denman against Rother District Council.
 - The application Ref RR/2020/1406/P is dated 22 July 2020.
 - The application sought planning permission for change of use from ancillary accommodation to holiday let/granny annexe without complying with conditions attached to planning permission Ref RR/2017/1843/P, dated 3 October 2017.
 - The conditions in dispute are Nos 6 and 7 which state that:
 - 6. The new residential annexe is permitted solely as additional accommodation for the existing dwelling (Lyndhurst, Main Street, Peasmarsch, East Sussex, TN31 6YA). Subject to condition 7 below, it shall not be occupied by any person who is not a member of the family (as defined by section 186 of the Housing Act 1985 or in any provision equivalent to any re-enactment of that Act) residing in the family dwelling.
 - 7. In the event that the annexe accommodation referred to in condition 6 above is not required for use by a family member, it may also be used as holiday accommodation, in which case it shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence and it shall not be occupied for more than 56 days in total in any calendar year by any one person.
 - The reasons given for both conditions are to preclude the creation of a new dwelling in the countryside, which should be separately assessed having regard to Policy RA3 of the Rother Local Plan Core Strategy.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether conditions 6 and 7 meet the six tests for controlling the use of the building as a holiday let/granny annexe.

Reasons

3. This appeal relates to a building with a lawful use for either a holiday let or a granny annexe at the end of the rear garden of Lyndhurst on Peasmarsch High Street. The building is subject to a series of conditions, of which no. 6 controls the use as a granny annexe and no. 7 controls the use as a holiday let. The appellant seeks to vary condition 6 to remove the requirement that the granny annexe should be occupied by a member of the family living in the main dwelling and to simply describe its use as 'additional

accommodation' for the main dwelling. Condition 7 would also be adjusted to reflect this change.

4. Without the qualification as to its use by a member of the family the term 'additional accommodation' is vague and ambiguous and the building could be occupied by anyone for any length of time. In practice it could be let out as a separate dwelling and the reason for the condition is to prevent this happening without further consideration by means of a planning application. The condition as currently worded is thus necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects which are the six tests for an acceptable condition. If amended as suggested the condition would not be enforceable and the use of the building could change from the description of the planning permission which would exceed the scope of an application under Section 73¹.
5. The appellant argues that between August 2009 and October 2017 the first floor of the building had permission to be used as guest accommodation without restriction as to the number of days occupied or type of guest. However, that use involved reliance on the main dwelling whereas following the change of use the building is now self-contained.
6. For these reasons conditions 6 and 7 meet the six tests for controlling the use of the building as a holiday let/granny annexe and the appeal should therefore be dismissed.

David Reed

INSPECTOR

¹ As established by *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868