



Appeal Decisions

Site visit made on 22 April 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2021

Appeal A Ref: APP/Y3940/C/20/3261091

Appeal B Ref: APP/Y3940/C/20/3261363

The Brick Store, Dunkirk Hill, Devizes, Wiltshire SN10 2BD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Ben Sandell and Appeal B is made by Mrs Sandell against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice was issued on 24 September 2020.
 - The breach of planning control alleged in the notice is failure to comply with condition No 3 of a planning permission Ref 18/01312/FUL granted on 5 April 2018.
 - The development to which the permission relates is the change of use from farm store to holiday let including alterations to junction of access track with Dunkirk Hill. The condition in question is No. 3 which states that:
Notwithstanding Class C3 of the Schedule to the Town and Country (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification) the accommodation hereby permitted shall be used to provide holiday accommodation only, which shall not be occupied as permanent, unrestricted accommodation or as a primary place of residence. An up to date register of names and main home addresses of all occupiers shall be maintained and shall be made available at all reasonable times to the Local Planning Authority.
 - The notice alleges that the condition has not been complied with because the building is being occupied as permanent residential accommodation in breach of the condition
 - The requirements of the notice are:
 1. *Cease occupying the holiday accommodation as permanent residential accommodation.*
 2. *Ensure that the accommodation is occupied in accordance with the condition referred to in paragraph 4 of the Notice.*
 - The period for compliance with the requirements is 9 months.
 - The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal C Ref: APP/Y3940/W/20/3260904

The Brick Store, Dunkirk Hill, Devizes, Wiltshire SN10 2BD

- 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 and Mrs B Sandell against the decision of Wiltshire Council.
 - The application Ref 0/01225/FU, dated 14 February 2020, was refused by notice dated 1 May 2020.
 - The development proposed is described as change of use from holiday let to dwelling (unrestricted residential use).
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Decisions

Appeal A and B – the enforcement appeal

1. It is directed that the enforcement notice is corrected by the insertion of the word “only” before the word “occupied” in Requirement 2. Subject to this correction, the appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, the condition No 3 attached to the planning Ref 18/01312/FUL granted on 5 April 2018 by Wiltshire Council is discharged. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the change of use from farm store to holiday let including alterations to junction of access track with Dunkirk Hill at The Brick Store, Dunkirk Hill, Devizes, Wiltshire SN10 2BD in accordance with the application Ref 0/01225/FU made on 14 February 2020 without complying with condition No 3 set out in planning permission Ref 18/01312/FUL granted on 5 April 2018 by Wiltshire Council, but otherwise subject to the following conditions:
 - a) The development hereby permitted (i.e. the use of the application building for a holiday let) shall not be first brought into use or occupied until the highway improvement works identified on approved drawings no.3B, no.4A, and no.5376/201 Rev.D, have all been carried out and completed. The access shall be maintained as such thereafter in perpetuity.
 - b) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

Appeal C – the s.78 appeal

2. The appeal is allowed and planning permission is granted for the change of use from farm store to holiday let including alterations to junction of access track with Dunkirk Hill at The Brick Store, Dunkirk Hill, Devizes, Wiltshire SN10 2BD in accordance with the application Ref 0/01225/FU made on 14 February 2020 without complying with condition No 3 set out in planning permission Ref 18/01312/FUL granted on 5 April 2018 by Wiltshire Council, but otherwise subject to the following conditions:
 - a) The development hereby permitted (i.e. the use of the application building for a holiday let) shall not be first brought into use or occupied until the highway improvement works identified on approved drawings no.3B, no.4A, and no.5376/201 Rev.D, have all been carried out and completed. The access shall be maintained as such thereafter in perpetuity.
 - b) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

Procedural matters

3. I have a duty to get the enforcement notice in order if I can do so without prejudice to the appellants or the local planning authority. As worded, the second requirement of the notice places a positive obligation on the owner to ensure that the property is occupied, which goes beyond what is necessary to remedy the breach, and I doubt that it is what the Council intended. I shall correct the requirement to provide that the accommodation is only occupied in accordance with the condition in dispute. I consider that neither the Council nor the appellants would be prejudiced by such a correction.
4. The application subject to Appeal C is for a change of use to a dwelling. However, the planning permission granted for the change of use of the building to a holiday let authorised the change of use to a dwelling, albeit that the occupation was restricted. I have therefore dealt with the proposal as one made under s.73A of the Act for the change of use from farm store to holiday let including alterations to junction of access track with Dunkirk Hill without complying with condition 3 imposed on planning permission Ref 18/01312/FUL granted on 5 April 2018.

Main Issue

5. The main issues are:
 - i) whether the condition in dispute is reasonable and necessary with regard to the aims of protecting character of the countryside, to support the vitality of settlements and to avoid an over-reliance on travel by car, and
 - ii) the effect of removing the condition on housing land supply.

Reasons

Appeals A and B Ground (a) and Appeal C

6. The appeal site is located to the north-west of Devizes town centre, close to, but outside of the settlement boundary. New residential development in the county is directed to the most sustainable locations through the Wiltshire Core Strategy (CS). Policy CP1 identifies 4 tiers of settlement and sets out the broad nature of development which may be permitted within each tier. Policy CP2 provides more detail of the scale of development to be permitted and, amongst other things, provides that, other than in circumstances as permitted by other policies within the plan, development will not be permitted outside the limits of development, as defined on the policies map. Policy CP12 deals with the Devizes Community Area, and provides that development should be in accordance with the strategy set out in Policy CP1. Policy H1 of the made Devizes Area Neighbourhood Plan adopts the general thrust of the CS development strategy.
7. Thus, the location of the appeal site is not one where unrestricted residential development would normally be permitted. In terms of the objectives of the policies, the removal of the condition would have no impact on the protection of the character and appearance of the countryside, or on the vitality of settlements. The site is somewhat remote, being accessed by an unlit private drive, and walking or cycling on the busy Dunkirk Hill would not be an attractive proposition, especially in the dark or in bad weather. Accordingly, it would be likely that there would be heavy reliance on travel by car. The extent

- of this harm is limited, because of the closeness of the site to Devizes, so that many car journeys would be short.
8. Having said that, the use as tourist accommodation would also be heavily reliant on travel by car, but, as explained below, the economic benefits arising from holiday use are given greater priority.
 9. Policy CP48 of the CS deals with supporting rural life and provides that proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses will be supported where they satisfy a number of criteria. The Council accepted, in deciding the application for the conversion of the building to a holiday let, that the proposal met the criteria of the policy. CP48 goes on to say that it is only where there is clear evidence that the employment, tourism, cultural and community uses are not practical propositions that residential development may be appropriate.
 10. The appellants argue that the use of the converted building as tourist accommodation is not viable, and thus the occupancy condition no longer serves a useful planning purpose. However, that conclusion is reached on the basis that a tourism use could not generate sufficient income to recoup the cost of carrying out the conversion. This seems to me to be the wrong premise on which to assess whether a tourism use is viable. The conversion has taken place, the risk of the investment has been borne, and the existing use value is not that of an agricultural building, but as a unit of tourist accommodation. Thus, the inputs that might be appropriate for assessing the viability of a proposed development do not apply here, because the development has already been carried out.
 11. On the basis of the appellants' evidence, the cost of the carrying out the work exceeded what could be expected to be recouped from the income derived from holiday rentals. Regardless of this, the conversion went ahead, and thus viability only comes into play if there can be shown to be no market for the building as a holiday cottage, having regard to the existence of the occupancy condition. The property has not been offered for sale, nor has evidence been provided that there is no market for holiday cottages, using data of the kind referred to in the Planning Practice Guidance. Similar considerations apply to the prospects of use of the property for employment purposes.
 12. I have had regard to the other cases referred to me by the appellants. Appeal decision APP/Y3940/W/18/3210000 in relation to Common Hill, Bleet, Steeple Ashton was a prospective development, as were the proposals approved by the Council at Oaks Farm, Bromham and at The Kennel Building, Catcomb House Farm. In the case of Church Farm, Coulshot, again, a prospective development, the Council accepted that the location, scale and layout of the building was such that an alternative commercial or community use would be unlikely. Thus, the considerations in those cases are not identical to those here, where the building has been converted to residential use already.
 13. I recognise that the building immediately adjacent the site has the benefit of approval for a conversion to residential use under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, that use was permitted under specific provisions which do not apply to this case, and this approval and the existence of such rights do not outweigh the conflict with the development plan.

14. I therefore conclude that there is insufficient evidence to show that the condition in dispute no longer serves a useful purpose, and that to remove the condition would conflict with the development plan policies referred to above.

Housing land supply

15. The Council accepts that it cannot demonstrate a 5 year housing land supply. Whilst the shortfall is not great, it has worsened in the time that the appeals have been under consideration. Although there is no shortfall in this particular part of the county, this does not prevent paragraph 11(d) of the National Planning Policy Framework from being applied here, and the relevant policies most important for determining the appeal are out-of-date. There are no policies applicable here which protect areas or assets of particular importance, and thus the presumption in favour of sustainable development applies.
16. I have identified small harm arising from the need to travel, along with a conflict with the development plan. Although the addition of the dwelling to the housing stock would make the smallest possible increase, in view of the importance which the Government attaches to increasing the supply of housing, I give this benefit modest weight. Weighing these factors, I find the adverse effects of allowing the appeals would not significantly and demonstrably outweigh the benefits.

Planning balance and conclusions

17. Although I have found a conflict with the development plan, the provisions of the Framework and the presumption in favour of sustainable development are material considerations of some weight, which, in this case, justifies my not determining the appeals in accordance with the plan. Thus, for the reasons given above, I conclude that both appeals should be allowed, that planning permission should be granted and that the enforcement notice should be quashed.

Conditions

The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The only conditions which still remain relevant are conditions (4) and (6). Whilst I noted that junction improvements with Dunkirk Hill have been carried out, I do not have full information about whether or not it has been complied with in its totality, and in any event, it has an ongoing requirement for the works to be retained and maintained. Condition 6 has not been appealed against and has ongoing effect, and I shall therefore re-impose it.

JP Roberts

INSPECTOR