



Appeal Decision

Hearing held on 15 June 2021

Site Visit made on 16 June 2021

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/R0660/W/20/3264430

New Bungalow, Border Fisheries, Waybutt Lane, Chorlton CW2 5QA

- 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 M Glover against the decision of Cheshire East Council.
 - The application Ref 20/1554N, dated 7 April 2020, was refused by notice dated 3 November 2020.
 - The application sought planning permission for 'change of use from welfare facilities for members to domestic for maintenance/security staff family' without complying with conditions attached to planning permission Ref 19/1532N, dated 5 July 2019.
 - The condition in dispute is No 3 which states that: The occupation of the dwelling, hereby approved, shall be limited to a person solely or mainly employed by Border Fisheries or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
 - The reason given for the condition is: Having regard to the location of the site within the Green Belt where there is a presumption against development except where justified for long term business need.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from welfare facilities for members to domestic for maintenance/security staff family, in accordance with the application Ref 20/1554N, dated 7 April 2020, without compliance with conditions Nos 1, 2, 3, 4 and 5 previously imposed on planning permission Ref 19/1532N, dated 5 July 2019 and subject to the conditions set out in the attached Schedule.

Applications for costs

2. An application for an award of costs has been made by Mr M Glover against Cheshire East Council. This application is subject to a separate decision.

Preliminary Matters

3. It is common ground that Condition No 4, which required details of boundary treatments within three months of the date of the original permission, would be satisfied by the details submitted with application Ref 20/1554N. I have no reason to conclude otherwise in this matter.
4. Prior to the hearing, a question was raised to the main parties as to the relevance to the appeal of the judgment in *Finney v Welsh Ministers & Others (2019) EWCA Civ 1868*, which held that in an application under Section 73, a local planning authority must only consider the question of the conditions, and

cannot consider the description of the development to which the conditions are attached. I have had regard to the responses received. Ultimately, both parties were satisfied that this judgment did not limit my ability to determine the appeal. There is no request from the appellant to alter the description of development. As such, any new permission issued would still be for the same building, and still for a residential use, but without the specific restriction on occupancy engendered by the disputed condition. I am satisfied that removal of the condition would not be comparable to the situation in *Finney* and I am content that the proposal can be considered under Section 73 of the Act.

Background and Main Issue

5. The appeal relates to a dwelling located on land forming part of Border Fisheries; a recreational fishing facility spread across several lakes. The dwelling was originally granted planning permission in 2002 as an ancillary welfare building for the fishing facility. Planning permission to extend the building was granted in 2014 and, in 2019, permission was granted for a change of use of the welfare building to domestic for maintenance/security staff family. It is this permission wherein the disputed condition was imposed. The main parties agree that 'domestic' as used in the description of development refers to use as a dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
6. The main issue, therefore, is whether the disputed condition is reasonable and necessary, having regard to local and national planning policy concerning the Green Belt, provision of dwellings in the countryside and the rural economy.

Reasons

Green Belt

7. The appeal site is located within the Green Belt. The Council's reason for imposing the condition was due to its location in the Green Belt '*where there is a presumption against development except where justified for a long-term business need.*'
8. However, Policy PG3 of the Cheshire East Local Plan Strategy 2010-2030 (July 2017) (the CELPS) relates to development in the Green Belt and sets out the same exceptions to inappropriate development as the National Planning Policy Framework (the Framework). In this case, the appeal building existed on site prior to permission being granted for the change of use in 2019. Therefore, at the time, it met with exception d) at Paragraph 146 of the Framework which states that the re-use of buildings of permanent and substantial construction is not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
9. Neither Policy PG3 nor the Framework sets any requirement for re-use of a building in the Green Belt to take a business-first approach. I note that Saved Policy NE.1 of the Crewe and Nantwich Replacement Local Plan 2011 (the CNRLP) remains part of the development plan. It supports the conversion of buildings within the Green Belt that are of permanent and substantial construction. However, whilst this is generally consistent with the Framework, the policy also requires development to accord with the criteria of Saved Policy NE.16, including that any loss of a building in commercial or recreational use is justified. The Council accepts that this part of the policy is not consistent with

the Framework approach, and should only be afforded limited weight. In any event, I afford greater weight to Policy PG3 as it is more recently adopted and is consistent with the Framework.

10. In this respect, the removal of the disputed condition would not result in any physical alteration to the building, and so it would have no greater effect on the openness of the Green Belt or its purposes than if the condition were retained. Therefore, the removal of the condition would not result in inappropriate development in the Green Belt, and there would be no conflict with Policy PG3 or the Framework.
11. Ultimately, the proposal was not found to be inappropriate development when permission was first granted, and this remains the case. Therefore, it has not been necessary, then or now, for the appellant to demonstrate that very special circumstances existed to justify inappropriate development in the Green Belt. Therefore, I find the Council's stated reason for imposing the condition, that the residential use could only be justified by a long-term business need, to be unfounded in terms of Green Belt policy.

Development in the countryside

12. The Council alleges that the removal of the condition would introduce conflict with Policy PG6 of the CELPS, namely Criterion 3(v) which supports development in the open countryside that is 'essential for the expansion or redevelopment of an existing business'. That is one of six exceptions to the generally restrictive approach set out in the policy. However, the policy is worded such that only one of these criteria needs to be met.
13. Criterion 3(ii) permits 'the reuse of existing rural buildings where the building is permanent, substantial and would not require extensive alteration, rebuilding or extension.' I saw the building to be of permanent construction, and no significant alteration or extension was proposed originally, nor is any proposed now. Therefore, whilst the Council may have determined the proposal to accord with criterion 3(v) when originally granted, it also accorded with criterion 3(ii) when first proposed, and it would still accord with criterion 3(ii) now. This is sufficient for an unrestricted dwelling to form an acceptable form of development in the countryside under Policy PG3. It is not necessary for criterion 3(v) to also be met.
14. In any event, I find the Council's interpretation of criterion 3(v) to be strained. It is supportive of proposals essential for existing businesses, but there is nothing in this criterion which indicates that the loss of a business-linked use is conversely to be resisted. The appellant at the hearing referred to the Supreme Court judgment in *Tesco Stores Ltd v Dundee City Council [2012] UKSC 13* which held that policy statements should be interpreted objectively in accordance with the language used, read as always in their proper context. Read plainly, Policy PG6 does not restrict a building from being re-used as a dwelling, nor does it require that the loss of any existing use is justified or that occupancy must be linked to a rural enterprise. This is consistent with the approach of the Framework at Paragraph 79. I therefore find no conflict with criterion 3(v) in this case.
15. Moreover, the Council acknowledges that the proposal would comply with Policy H1 of the Wybunbury Combined Neighbourhood Plan (the WCNP) (April 2020), which supports proposals for small scale housing developments, including

conversions of existing, permanent buildings. Again, there are no qualifications within this policy which require the loss of the existing use of the building to be justified or restrict housing in the countryside to certain categories of occupant for which a need has been demonstrated.

16. For these reasons, I find that the disputed condition is not necessary to ensure compliance with the aforementioned policies. The proposal would represent an acceptable form of development in the countryside and would accord with Policies PG6 of the CELPS and H1 of the WCNP.

Effect on the rural economy

17. The Council's main argument, supported by the Parish Council and other interested parties, is that the loss of the existing building as a dwelling connected with the fishery facility would not support its retention and would be harmful to the rural economy.
18. The building was originally granted as a welfare building, providing shelter, storage and office space for anglers and the business itself. The appellant argues that the proposal arose originally due to the building becoming redundant as a welfare building. I understand that it was already occupied by members of the appellant's family at the time the original application was made in mid-2019. The appellant's planning statement at the time set out that the permanent occupation of the building as a dwelling would provide surveillance, in response to security issues at the site. At the hearing, the appellant indicated that there is a low risk of theft and that it was a letter of objection that principally raised concerns over anti-social behaviour. Ultimately, the appellant argues that the occupation of the dwelling by staff members is not essential for the operation of the wider business, and that given the recent decline in membership, the condition would lead to the potential loss of the appellant's family's home were the business to cease trading but the dwelling still be linked to it.
19. The Council relies in large part on alleged conflict with Saved Policy NE.16, which requires that in order to re-use of a rural building an applicant must demonstrate that the building is inappropriate for commercial, industrial or recreational use due to its character and/or location; that every reasonable attempt has been made to secure a suitable business re-use for the building, or that residential conversion is a subordinate part of a scheme for business re-use. The Council argues that none of these criteria have been met.
20. The proposal as originally made set out that the occupation of the dwelling by staff of the fishery business would form part of a business re-use, in accordance with the requirements of Policy NE.16, notwithstanding the appellant's sustained view that the policy is not consistent with the Framework and should be afforded limited weight.
21. Council officers have acknowledged that the requirements of Policy NE.16 are not consistent with the approach of the Framework, which allows for the re-use of redundant buildings within the countryside as dwellings without having to justify the loss of an existing use, business or otherwise. Moreover, the development plan contains more recently adopted policies which do not set out the same requirements and are more consistent with the Framework. The Council does not explain why it considers Policy NE.16 should still be afforded significant weight given this context. Given this inconsistency, I afford limited

- weight to Policy NE.16 and have considered the proposal primarily against the policies of the CELPS and the Framework.
22. The Council argues that the severing of any connection between the appeal building and the fishery business would conflict with Policy EG2 of the CELPS, criterion 3 of which encourages the retention and expansion of existing businesses, particularly through the conversion of existing buildings. Again, read plainly, I consider the word 'retention' in Policy EG2 refers to the business as an entity, not a particular building, and I do not read the policy as requiring the retention of specific buildings so as to preserve the facilities of an existing business. Rather, the policy is supportive of proposals for new buildings or conversions of existing buildings to new uses which help to retain or expand a business. The appeal scheme does not propose a new business-related use, and therefore I find this criterion is not directly relevant to this case.
23. The Council argues that the main purpose of the building is to provide security, and this formed a key reason for granting permission originally. I accept that surveillance was advanced by the appellant as a benefit of the proposal at the time of the original application, and that the appellant was prepared to accept an occupancy condition at the time. However, it does not follow from this that the benefit of surveillance of one, outlying part of the site must have been proposed because it was a way to ensure the viability of the entire business, or that the appellant's acceptance of the condition was evidence of it being necessary for its survival.
24. I note that the committee report in respect of this proposal made only brief reference to family members fulfilling more roles, including security, due to reductions in staff numbers. The minutes of the committee meeting do not set out Members' deliberations as to the perceived importance of the security function or the basis upon which they considered the change in occupancy would fail to support the business and harm the rural economy.
25. Overall, I find the Council's concerns in these respects are largely speculative. It has provided no firm evidence that the business would suffer operationally or financially from the dwelling being occupied by someone unconnected with it. Despite the view of the interested party to the hearing, the Council accepted that it did not require information on the viability of the business from the appellant. As such, it had little to no information as to the actual financial position of the business, and no firm basis for concluding that the loss of a single, outlying building would jeopardise the entire business.
26. Since occupation as a dwelling, any security has been in the form of passive natural surveillance. It is not a dedicated security building staffed by security personnel. Therefore, notwithstanding the benefits which may have been originally advanced, I consider the dwelling provides minor, indirect benefit to the business in terms of security. No contrary evidence has been adduced by the Council to indicate that there is a genuine security risk around the appeal site, or that the business has suffered significant theft or damage to property that has threatened its viability.
27. Moreover, I do not agree with the Council and interested parties that this modest security function would be wholly lost were the dwelling to be occupied by someone unconnected with the business. The physical presence of a dwelling means a degree of natural surveillance and perception of overlooking will exist regardless of the occupant of the building.

28. Ultimately, the evidence before me does not demonstrate that occupation of the dwelling by a private resident would jeopardise the security of the site or, by extension, put at risk the long term viability of the business. The Council has sought to retain the building as part of the fishery enterprise on the basis of speculative and unsubstantiated concerns. The appeal building is an ancillary structure, and nothing in evidence indicates to me that it must be occupied by a staff member to ensure the future viability of the enterprise, that operations would be impeded by the presence of a private dwelling next to the fishing lake, or that the building is needed for some other purpose essential to the operation of the business.
29. For these reasons, I find that the removal of the disputed condition would not harm the retention of the existing fishery business or be harmful to the wider rural economy. Therefore, the proposal would not conflict with the aims of Policies EG2 and PG6 of the CELPS or the Framework.

Other Matters

30. At the hearing, the interested party argued that the proposal would not represent a sustainable form of development in terms of the Framework. The Council confirmed it did not pursue this as a reason for refusal. The Framework sets out that achieving sustainable development means that the planning system has three overarching and interdependent objectives – social, economic and environmental. However, the Framework acknowledges that they are not criteria against which every decision can or should be judged.
31. In this case, the use of the building as an unrestricted dwelling would have social benefits in terms of adding to the housing stock of the district, and residents would make a modest contribution to rural vitality by adding to the rural population. They would also provide some modest economic benefits through patronising local businesses. The removal of the condition would not change the extent of these benefits. As set out above, it has not been demonstrated that the proposal would lead to economic harm in terms of the future viability of the existing business, and this is not a matter that weighs against the proposal.
32. In environmental terms, the site's isolated location from the nearest settlements means occupants would rely on the private car for most journeys. Residents unconnected with the fishery business may make more journeys beyond the immediate area to work, but the difference in overall environmental impact would be minor. Moreover, sustainability is achieved in more ways than just reducing car dependency, and in making efficient re-use of an existing building, the proposal avoids the construction impacts and carbon footprint of a new build project. Overall, therefore, I am satisfied the proposal represents a sustainable form of development.

Overall findings on main issue

33. For the reasons set out above, the proposal would be acceptable in terms of Green Belt policy, its location in the countryside, and its effect on the rural economy. Notwithstanding the limited conflict with saved Policy NE.16, the proposal would accord with the development plan taken as a whole, and other material considerations in this case do not indicate permission should nevertheless be withheld. Taking into account all I have seen, heard and read, I conclude that the disputed condition is not necessary to make the

development acceptable in planning terms. Consequently, it does not meet with all of the tests of conditions set out at Paragraph 55 of the Framework, and should be removed.

Conditions

34. The original permission has been implemented and a time limit condition is no longer applicable. To provide certainty, a condition setting out the approved plans is necessary, and shall include the landscaping plan submitted with this application. No external works are proposed and a condition suggested by the Council requiring materials to match the existing building is unnecessary.
35. It is necessary to secure the agreed landscaping details through a condition. This includes a strict timetable for compliance because permission is being granted following commencement of the use, and it is not possible to use a negatively-worded condition to secure the implementation of the landscaping before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
36. I note a condition on the original permission removing certain permitted development (PD) rights relating to potential extensions and alterations to the appeal building. The Planning Practice Guidance (PPG) advises that conditions restricting the future use of PD rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn.
37. The brief reasoning provided by the Council is to ensure continued control over the extent of further building on the site. However, given my findings that the dwelling would not be harmful to the Green Belt, and having regard to the modest size and form of the dwelling and site layout, along with its secluded position in the landscape, I am not persuaded that there would be a demonstrable risk to the character of the surrounding area, living conditions or the purposes of the Green Belt, from works under PD in this case. Therefore, I have not re-imposed this condition.

Conclusion

38. For the reasons set out, the appeal should be allowed.

K Savage

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: APP.512 (Location Plan); APP.512 (Proposed Floor Plans and Elevations); APP.541.01 (Proposed Boundary Treatment).
- 2) All planting, seeding or turfing, including boundary treatments within the approved drawing APP.541.01 shall be carried out within the first planting and seeding season following the date of this permission, and any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.

If no scheme in accordance with this condition is implemented within 12 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as the approved scheme is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANT:

Mr M Glover	Appellant
Caroline Payne	Planning Agent, Emery Planning

FOR THE LOCAL PLANNING AUTHORITY:

Richard Taylor	Principal Planning Officer
Chris Grimes	Planning Officer

INTERESTED PARTIES:

Cllr Janet Clowes	Elected Councillor, Wybunbury Ward and Member of Neighbourhood Plan Committee
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