



Appeal Decision

Site visit made on 27 July 2021

by Roy Curnow MA BSc(Hons) MRTPI

An inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/U1105/C/21/3272376

Bungalow 1, Stoneleigh Country Holidays, Weston, Sidmouth, EX10 0PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Loca Ventures Weston Ltd against an enforcement notice issued by East Devon District Council ('the Notice').
 - The enforcement notice, numbered 20/F0265, was issued on 15 March 2021.
 - The breach of planning control alleged in the notice is failure to comply with condition No 3 of a planning permission Ref 87/P0468 granted on 14 July 1987.
 - The development to which the permission relates is Outdoor swimming pool and extension of season to 45 weeks. The condition in question is No 3 which states that: "The holiday accommodation at Stoneleigh Country Holidays shall not be occupied by any one person or family for more than four successive weeks in any one year". The reason given was "To ensure that the accommodation is not used permanently for residential purposes". The notice alleges that the condition has not been complied with in that the land is being used for permanent residential accommodation.
 - The requirements of the notice are: You must comply with the 3rd condition of Planning Permission 87/P0468 by – (a) permanently ceasing the occupation of the holiday accommodation as permanent residential accommodation; and (b) not occupy the holiday accommodation by any person or family for more than four successive weeks in any one year.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. An error was made on the appeal form, in respect of the Appellant's name. This was clarified in subsequent correspondence and my header reflects this.
3. Following my site visit, a revised version of the Government's National Planning Policy Framework ('the Framework') was issued. This is a material consideration that has to be taken into account in my decision and, as such, the parties were invited to make further comments in respect of this matter alone. The Council responded on 29 July stating that it did not consider that the changes were relevant to the determination of this case. The Appellant commented on 1 August setting out how the revised Framework supported its position. These responses have been taken into consideration.

Main Issues

4. The Notice alleges the use of Bungalow 1 ('No 1') without compliance with condition 3 attached to planning permission 87/P0468. The appeal is made on ground (a), which is to say that planning permission should be granted without complying with the condition. Therefore, the main issues are whether the condition is necessary having regard to: the site's location; the living conditions of future occupants by reasons of the size of the building, its storage space and private amenity space; and the character and appearance of the area.

Reasons

Site Location

5. The Stoneleigh Country Holidays development, ('the site') lies in a rural location in the open countryside. It is accessed via a network of narrow lanes from the nearby A3052, and comprises single storey units of accommodation that are detached, semi-detached and, as is the case with No 1, terraced. The Appellant states that there are 70 units on the site. This accommodation is set within large areas of open space. There is a large amenity/reception building close to the access, which was closed when I visited the site when it appeared that work was being undertaken to its interior.
6. In its submissions, the Appellant states that the proposal involves a change of use from Use Class C1 to Class C3¹; this is not the case. Its present use and that in future, were the appeal to be allowed, both fall within Use Class C3.
7. In terms of the planning history of the site, I have been referred to various planning permissions. An application was made for 'Outdoor Swimming Pool and Extension of Season to 45 Weeks', Council reference 7/41/87/P0468/00039 (the 1987 permission). It was granted subject to 4 conditions, the third and fourth have relevance here. The third restricted occupation of the accommodation by any person or family to no more than four successive weeks in any one year, and the fourth precluded the use of the holiday accommodation during the latter half of January and all of February.
8. As it was not clear in their original submissions, I wrote to parties requesting additional information on which planning permission controlled the use of the appeal site. The Council stated that the 1987 permission is relevant. It says that an application that was made to carry out the development without complying with the fourth condition of the 1987 permission, (Council reference 7/41/91/P1159/00039) and allowed at appeal² left the other conditions untouched. The Appellant agreed with this. The submissions show this to be the case.
9. Condition 3 from the 1987 permission reads "*The holiday accommodation at Stoneleigh Country Holidays shall not be occupied by any one person or family for more than four successive weeks in any one year*". The Reason given was "*To ensure that the accommodation is not used permanently for residential purposes*".
10. The evidence shows that Bungalow 35 (No 35) is not subject to this condition. The Council's submissions state that planning permission 93/P1127 allowed for

¹ Town and Country Planning (Use Classes) Order 1995 (as amended)

² PINS reference T/APP/U1105/A/92/203040/P4

the Conversion of Store Block to Staff Residential. That this relates to No 35 is not disputed by the Appellant and I take it to be the case. Although I was not supplied with a copy of that permission, I am told that its Condition 2 is worded thus, *"The dwelling unit hereby permitted shall be occupied only by a person and his or her dependents engaged in the running of Stoneleigh Holidays"*. The reason for the condition being *"The site is not in an area where new residential development will be permitted"*.

11. The site, presently, is also not within an area that has been identified as being appropriate for residential development. Strategy 7 from the East Devon Local Plan 2013-2031 ('LP') sets out that 'Development in the countryside will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development'.
12. There is no Neighbourhood Plan and the Appellant acknowledges that the site is not located in an area where unrestricted residential development would normally be allowed. Its case is made on the basis that there would be a "transfer/swap" of the manager's accommodation restriction from No 35 to No 1. Thus, it says, there would be no net increase in unrestricted dwellings in the open countryside.
13. For the transfer/swap to be effective, it needs to be demonstrated that the Appellant has control over No 35. This has not been done. The transfer/swap could only be achieved through a planning obligation, under S106 of the 1990 Act. That the Appellant claims that No35 "has established use as a caretakers [sic] residence" as it has been used for this purpose for over 10 years does not alter this. I do not have an obligation before me. Therefore, the transfer/swap could not be ensured. Thus, if allowed, there is a real possibility that the appeal would result in two units of permanent residential accommodation on the site, albeit restricted to employee use.
14. There can be little doubt that tourism is important to the East Devon economy, nor that the economy has been adversely affected by the Covid 19 pandemic. I can see the merits in the Appellant's arguments with regards to how the provision of staff accommodation on the site helps with the successful running of the site. Indeed, this was previously recognised when application 93/P1127 allowed for No 35 to be used in this way. However, it has not been demonstrated that what the Appellant describes as a "very small and modest scale" development would deliver economic benefits to the area's wider tourist economy.
15. There is support for the principle of the development from the East Devon Local Plan 2013-2031 ('LP') in its Strategies 3, 4, 28, 30 and 37 and Policies E5 and E17. They variously support economic development, employment provision, crime prevention and changes of use of holiday accommodation where appropriate circumstances exist. These strategies and policies accord with the terms of Chapter 6 of the Framework that encourage and support a strong competitive economy. When read as a whole, the Council's Development Plan allows for flexible decision-making in response to otherwise unanticipated circumstances, such as the economic effects arising from the Covid-19 pandemic. Thus, the suite of LP policies accords with paragraph 82(d) of the Framework.

16. However, it is for the Appellant to demonstrate that the appropriate circumstances exist to secure the support of Development Plan policies for the proposal.
17. I have been given no substantive evidence of a need for an additional unit of accommodation for an employee of the site. Indeed, the Appellant tacitly acknowledges that there is none by recognising the need for a transfer/swap of the restriction from No 35. It says that No 35 is not occupied by a "site manager". However, condition 2 of 93/P1127 requires occupation by a person "engaged in the running of the site", which is different. I have not been told whether its occupant complies with that condition. Furthermore, if there is no compliance, I do not know whether that breach has become lawful. Whilst answers to both could have a material effect on the appeal, I do not have them and must make a determination on the evidence before me.
18. Therefore, I find that the appropriate circumstances required for the support of the suite of policies I refer to do not exist. Therefore, condition 3 is necessary, to ensure that a further unit of permanent residential accommodation does not result in a location where such accommodation is allowed in certain circumstances. It has not been shown that those circumstances are present and, therefore, the proposal is contrary to the terms of LP Strategy 7.

Living conditions

19. Amongst its terms, LP Policy D1, which promotes high quality design, requires access to appropriate open space for occupants of residential properties. It does not set out a required standard, nor has the Council provided me with one. There are quite extensive areas of open space on the site that are well-suited to serve the needs of those staying in No 1 for short periods. However, it is important that occupants of a permanent dwelling should have access to private amenity space. Given its proposed use by a site employee, this would be especially important as that amenity space would provide some degree of respite from people staying at the site. Although I did not enter that property, it appeared that No 35 had an area of private space to its rear.
20. No 1 has space at its front for the parking of a vehicle and would allow for the storage of bins. Land to its rear is separated from a parking area to one side by a hedge but is otherwise open. I have no drawing that defines an amenity area for No 1, nor is this defined on the ground. However, given the hedge, a path that serves other units close-by that runs behind No 1, and that No 1 is part of a terrace, any amenity space would inevitably be small in size. Furthermore, the area to the rear of No 1 has no privacy, as it is overlooked from the path.
21. Whilst the Appellant proposes that No 1 be used as accommodation for a site manager, I have been given no reason why any lesser standards should be applied to it than any other dwellinghouse. Given the lack of private open space, the dwelling lacks an important facility to the detriment of the living conditions of its occupants.
22. Internally, No 1 provides its occupants with two bedrooms, a bathroom and an open plan living room-kitchen area. The Council has given no evidence of the floor area for the unit of accommodation, nor how it lacks storage space. From what I saw at my site visit, whilst the unit was not large, it gave an appropriate level of space to its occupants and its fenestration provides good levels of light and ventilation.

23. For the above reasons, I find that condition 3 is necessary as the permanent residential unit of staff accommodation would be harmful to the living conditions of its occupants due to a lack of outside space. The proposal is, therefore, contrary to the terms of LP Policy D1.

Character and appearance

24. The Council's Delegated Report sets out that the surrounding landscape forms part of the East Devon Area of Outstanding Natural Beauty (AONB). The Framework advises that great weight should be given to conserving and enhancing its landscape and scenic beauty and that it should be given the highest status of protection.
25. Granting permission without condition 3 would result in the permanent residential use of No 1. This would mean the permanent introduction of domestic paraphernalia onto the site with a consequent change to its character and appearance.
26. However, this change would be limited to the small area immediately to the rear of No 1. Notwithstanding the value of the site's setting, condition 3 is not necessary to protect the character and appearance of the area. Thus, the proposal would not be contrary to the terms of LP Strategy 7 that seeks, amongst other things, to protect the district's distinctive landscapes.

Conclusion

27. For the reasons given above, I conclude that condition 3 is necessary to make the development acceptable in planning terms. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector