
Appeal Decision

Site visit made on 6 December 2021

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/D0840/W/21/3280016

Crooked Inn (Manager's Dwelling), Liskeard Road, Trematon, Saltash, Cornwall, PL12 4RZ.

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs T & S Arnold against the decision of Cornwall Council (the LPA).
 - The application Ref. PA20/05269, dated 26/6/20, was refused by notice dated 31/3/21.
 - The application sought planning permission for alterations and variations to extant consented managers dwelling (under construction) and associated works, without complying with a condition attached to planning permission Ref. PA13/03126, dated 11/10/13.
 - The condition in dispute is No. 5 which states that: The occupation of the dwelling hereby approved shall be limited to the manager or proprietor of the Crooked Inn, or a widow or widower of such a person, and to any resident dependants.
 - The reason given for the condition is: The approval of open market housing in the countryside is contrary to policy and national guidance. This dwelling is only permitted having regard to the submitted justification for the needs of the business known as the Crooked Inn in accordance with Policy H07 of the Caradon Local Plan First Alteration 2007 and the provisions of the NPPF 2012.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In about 1984, a fire destroyed much of a house (Stoketon Manor) that existed on the appeal site. A small part of this former house (the billiard room) survived. This was retained and used for domestic storage purposes. The appellants have argued that the residential use of the appeal site was not abandoned, the manager's dwelling was a replacement house and the LPA acted unreasonably by attaching an occupancy restriction on the new dwelling.
3. I note from the planning officer's report that the appellants initial application for a manager's house (ref. E2/10/00189/FUL) was not advanced on the basis of a replacement dwelling but instead, to meet the business needs of the Crooked Inn. The 2013 application also described the new house as a "*managers dwelling*" rather than a replacement dwelling. Furthermore, the appellants, who have been professionally represented throughout, freely entered into a section 106 agreement (and subsequent Deeds of Modifications). This agreement has the effect of tying the new house to the Crooked Inn.

4. On the basis of the information before me, there is greater force in the LPA's argument that it did not act unreasonably when determining previous applications for a manager's dwelling on the appeal site.
5. A draft section 106 planning obligation (unilateral undertaking) has been submitted as part of the appeal. This includes provision for alternative manager's accommodation to be made available in part of the Crooked Inn. As this undertaking has not been completed I am unable to take it into account.
6. An application for costs has been made by the appellants against the Council. This application is the subject of a separate Decision.

Main Issue

7. The main issue is whether the disputed condition is reasonable and necessary, with particular regard to local and national planning policies for housing in the countryside and any essential needs of the business known as the Crooked Inn.

Reasons

8. The appeal site lies outside the confines of any recognisable settlement. In applying local¹ and national² planning policies, the site is to be treated as lying within the open countryside³. The most important development plan policies to the determination of this appeal are LP policies 3 (role and function of places) and 7 (housing in the countryside). Amongst other things, these policies are aimed at safeguarding the character and appearance of the countryside by restricting housing development. They are consistent with the housing provisions of the Framework. Broadly similar local and national planning policies were in place when the Council determined the previous applications.
9. A dwelling on the appeal site would not comprise the rounding off of a settlement or development of previously developed land within or immediately adjoining a settlement. It would also not comprise the filling of a small gap in an otherwise continuous built frontage. Furthermore, a house in this location would not meet any of the other provisions allowed for under LP policy 3. The development would conflict with the provisions of the LP relating to the role and function of places within Cornwall.
10. LP policy H7 permits new homes in the countryside where there are special circumstances. These include rural occupation workers and where there is up to date evidence of an essential need of the business for the occupier to live in that specific location. The Crooked Inn is a sizeable establishment that includes bars and dining/function areas, 15 letting bedrooms, gardens and car parking. There appears to be no dispute that for the efficient operation of this established business⁴ a dwelling would need to be available on or very near to this enterprise for occupation by a manager. If the occupancy was restricted accordingly, a dwelling serving this business would comply with LP policy H7.
11. In approving the sizeable, detached manager's dwelling at the Crooked Inn, the Council accepted the appellants argument that the one bedroom manager's flat that was in existence at that time, was inadequate to serve the functional needs of the business. Whilst the appellants' agent now asserts that this house

¹ The development plan includes the Cornwall Local Plan Strategic Policies 2010-2030 (LP).

² The National Planning Policy Framework (the Framework).

³ This part of the countryside also forms part of the Tamar Valley Area of Outstanding Natural Beauty (AONB).

⁴ The appellants' agent has informed me that this has operated at modest profit levels for the last five years.

is "way beyond that reasonably necessary to accommodate a public house manager", this is at odds with the arguments advanced on behalf of the appellants when the previous applications for a detached manager's dwelling were submitted to the Council.

12. It is rather hypocritical for the appellants to now claim that the manager's house is of a size that is unnecessary to meet the functional needs of the business. Clearly, the size of the house has not been an impediment to the efficient operation of the business undertaken at the Crooked Inn.
13. It is a long established planning principle that where cogent evidence exists to demonstrate that there is no longer an essential need for an occupancy condition on a dwelling then such a restriction should be lifted. In this instance, the appellants, by offering an alternative two bedroom manager's residence⁵ in the Crooked Inn building, appear to accept that an 'on-site' dwelling is necessary for the continued efficient operation of the business.
14. I note the appellants argument that the detached manager's house is no longer required in association with the existing business. In support, a marketing campaign has been undertaken in an attempt to demonstrate that the occupancy condition should be removed. On behalf of the appellants, the house, in isolation from the rest of the Crooked Inn, has been professionally valued in the region of £900,000 to £950,000. As this house is tied to the business, it has been properly marketed together with the Crooked Inn business premises alongside⁶. That said, the discount in the asking price to reflect the occupancy restriction is unclear to me⁷. This raises some doubt in my mind as to whether it has been reasonably/realistically priced.
15. I note that the marketing campaign includes the property being advertised on the estate agent's website, as well as other websites including Daltons Business.com and Zoopla. Many hundreds of download enquiries have been made from these websites. A number of telephone enquiries have been made to the estate agents, but no formal requests for viewings have been received or serious interest or offers. I also note the estate agent's remarks that there are very few individuals in the marketplace willing or able to realistically consider the level of investment required. Given the economic conditions that have ensued as a result of the pandemic, it is not unreasonable to expect a lengthy period of marketing, at a realistic asking price, to properly test the market.
16. The websites marketing the property/business only contain a brief description of the main features. They do not specify the address and no 'for sale' boards appear to have been erected. Whilst this is explained as being "*commonplace*" so as to avoid "*timewasters*" and to maintain the confidence of customers and staff, it raises doubt in my mind as to the overall effectiveness of the marketing. A prospective purchaser seeking this type of business in the Saltash area is unlikely to 'hit upon' properties on websites that do not actually mention Saltash. Moreover, this business is the subject of a planning application (and now an appeal) that involves local publicity/consultation,

⁵ Permission has not been sought for this two bedroom unit as part of the application. Whilst such accommodation already exists (and is occupied by one of the chefs) it does not appear to have permission or benefit from a certificate of lawful development. It is also unclear where the chef would reside if this flat was occupied by a manager and whether this would lead to further pressure for additional on-site residential accommodation.

⁶ I note that since early 2019, the house and business have been marketed with an asking price of £2,500,000.

⁷ In my experience of rural occupancy conditions, a typical discount of about 30% is applied to the 'open market' value of such dwellings. In this instance, if such a discount has been applied, the open market value of the dwelling would appear to be between about £1.29 - £1.36 million.

including notifying the Town Council. It would be surprising if staff, regular customers and competitors were unaware of the appellants intentions. I am unconvinced by the appellants arguments on these matters.

17. I recognise that like many businesses, the licenced trade has suffered considerably over the last few years, including the effects of the COVID-19 pandemic. I also note the estate agent's remarks that the Crooked Inn is a most desirable and saleable concern for a variety of reasons including location, presentation, facilities and income stream and that it is the overall value created by having the substantial private home tied with it that appears to be preventing the site from being considered as a viable commercial option. However, given my findings above, I share the LPA's concerns regarding the robustness of the marketing undertaken on behalf of the appellants.
18. There is clearly a continuing essential need for a manager to reside 'on site' in connection with the efficient operation of the Crooked Inn. Approving a house in this location without an occupancy restriction/removing the occupancy condition, would be at odds with established planning policies. It would also be very likely to result in future pressure for another tied dwelling in this part of the countryside which the LPA would have difficulty resisting. This would be likely to undermine public confidence in the planning system. I conclude on the main issue that the disputed condition is reasonable and necessary.

Other Matters

19. I am mindful of the requirement⁸ to ensure that any variation to the terms of a permission would not create a disaccord with the operative part of an original planning permission. Whilst I note the appellants' legal submissions on this matter, including references to other judgments⁹, if I was to allow the appeal it would have the effect of creating a discrepancy with the description of the development. In short, permission would be granted for a manager's dwelling that would not have to be occupied by a manager. Given the current law, I consider that, in this instance, removing the occupancy condition would be outside the scope of section 73 of the Town and Country Planning Act 1990.
20. The conflict I have identified above could not be overcome by attaching an occupancy condition, which provided alternative manager's accommodation, on a part of a different building. Moreover, given the planning history of the Crooked Inn, there are also doubts in my mind as to whether the alternative two bedroom manager's flat would be adequate to meet the long term functional needs of this business.
21. The development would not harm the landscape or scenic qualities of the AONB. It would conserve the natural beauty of the area but would not enhance it. Whilst mindful of the relevant duty¹⁰, given that the dwelling already exists, it would be unsound to withhold permission in the absence of any landscape enhancement. This does not outweigh my findings on the main issue above.

Overall Conclusion

22. Given all of the above, I conclude that the appeal should not succeed.

Neil Pope

Inspector

⁸ *Finney v Welsh Ministers and Others* [2019] EWCA Civ 1868.

⁹ These include, *I'm Your Man Limited v Secretary of State* [1999] 77 P&CR 251.

¹⁰ Section 85 of the Countryside and Rights of Way Act 2000.