



Appeal Decision

Site visit made on 22 February 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/D0840/W/21/3282893

The Lodge, Sea View Holiday Park, Sennen, Penzance TR19 7AD

- 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 Mrs J Brownbridge against the decision of Cornwall Council.
 - The application Ref PA21/00252, dated 11 January 2021, was refused by notice dated 15 April 2021.
 - The development proposed is use of existing manager's residential unit as dwelling. Change of use.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs J Brownbridge against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The appellant initially submitted an application under Section 73 of the Act to construct the manager's residential unit without compliance with condition 3 of planning permission reference 03/P/0423/FA, dated 4 July 2003. Condition 3 states: *"The occupation of the building permitted shall be restricted to a person employed in the running of 'Sea View Caravan Park' and their immediate family"*. The reason given for the condition was *"...due to the special circumstances involved in the case... as the site lies in a position within the open countryside where an unrestricted residential property would not normally be permitted"*.
4. The Council required the application to be amended to form a standalone application for planning permission because (i) the red line site area was considered to exceed that of the original permission, and, (ii) because of an interpretation of caselaw¹ which prevents any variation to the terms of a permission under s73 that disaccord with its original operative part. I have determined the appeal on this basis.

Main Issues

5. The main issues are whether the unfettered occupation of the dwelling would be acceptable, having regard to:
 - whether its location accords with local policies that seek to prevent the development of homes in the open countryside in order to protect its character and minimise the need to travel; and

¹ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, [2012] EWHC 1631, [2012] All ER (D) 325 (Feb), [2012] 1 WLR 1000 (UK) Limited

- the living conditions of future occupiers of the dwelling in terms of noise and disturbance from the adjacent Holiday Park.

Reasons

Location

6. The appeal dwelling is located in close proximity to the A30 and in the vicinity of the village of Sennen. It is a pitched roof, detached bungalow, standing in a generously-scaled, landscaped garden. Its orientation is largely north-south, although it has an easterly-facing conservatory addition. To the north of the dwelling is agricultural land, to the west are two neighbouring dwellings and bordering all other boundaries is the adjoining long-established Holiday Park, including its tennis courts, swimming pool area and a number of static caravans.
7. The appellant is seeking to remove the occupancy restriction on the dwelling to remain living there without complying with the need to maintain a managerial role in the running of the Holiday Park. The Holiday Park is intended to be sold separately of the dwelling.
8. The appellant's evidence describes the site as *within* the linear village of Sennen. The Council's evidence refers to the site as being within the open countryside, approximately 900 metres away from the settlement.
9. In my view, Sennen and Sennen Cove collectively form a modestly-scaled village with some large concentrations of development. There are small groups of buildings beyond these concentrations, most of which would have once formed farmsteads, but that now represent outlying development. There are a number of facilities within the main clusters, but some are outside the settlement, stretching along the A30, such as the Parish Church and 'First and Last Inn'.
10. Though a previous development plan may have included a settlement boundary for Sennen or Sennen Churchtown, the current Cornwall Local Plan (Local Plan) (2016) does not define such for villages. It has been put to me that the nearby Church and 'First and Last Inn' were previously held to constitute part of a small satellite settlement, hence, that the appeal site should be regarded as forming part of the same. However, the appeal dwelling is clearly separated from the Inn and the Church by agricultural land. Though the site is clearly not isolated and may lie within sight of Sennen, it cannot be said to be strictly *within* or immediately adjoining the settlement. Therefore, in my view, when considered against Local Plan Policy 3 and against the guidance of the CPOAN², the location of an unfettered dwelling would not accord therewith, even if on previously developed land.
11. In seeking to justify the removal of the occupancy condition, as was the intent of the appeal application as it was originally made, the appellant refers to the Hambledon case³ which requires a decision maker to consider whether, in all probability, planning permission would be granted now without an occupancy restriction. Insofar as I regard the location of the dwelling to conflict with Local Plan Policy 3, the restriction of its occupancy to one associated with the adjoining Holiday Park is necessary and reasonable in accordance with Local Plan Policy 7, which seeks to permit rural workers' dwellings where there is evidence of an essential business need.

² Chief Planning Officer's Advice Note: Infill/Rounding Off (2017)

³ Hambledon DC v SSE and others (1994) (HC/253)

12. Were there satisfactory evidence to indicate that the manager's dwelling was superfluous to the requirements of the business and not capable of being sold along with it, it may be acceptable to allow for the dwelling to become unfettered. The parties agree that evidence of an attempt to sell the dwelling with the occupancy restriction in place is useful proof of this nature.
13. In this case, limited evidence has been provided of the capability of the business being operated without an on-site manager's presence. In terms of marketing, it is suggested that a specialist estate agency has marketed the Holiday Park for a prolonged period up to around July 2020, which involved sending details to more than 1,000 potential purchasers. It is also alleged that the Holiday Park is best suited to a purchaser that wishes to bring the site into step with current customer demands and that, in this context, the manager's accommodation is unnecessary. However, I have little detail of the duration of the marketing effort, the pricing strategy or examples of particulars or details that were used to market the business with the manager's accommodation as an integral part thereof. Whilst I note the brief email summary from the estate agent concerning the marketing efforts, it omits details such as those described above and there is no corroboration from the prospective purchaser that the manager's dwelling is a superfluous asset.
14. In view of the above, and in the absence of robust evidence to the contrary, I cannot conclude that the dwelling is superfluous to the business's needs or that satisfactory market testing has been undertaken. The change of use of the dwelling to an unfettered one therefore raises conflict Policy 7 of the Local Plan.

Living conditions

15. The appeal dwelling is adequately screened in a visual sense from the Holiday Park, owing to the existence of the high boundary wall and hedges. However, it occupies a position adjacent to it and has a curtilage which the Holiday Park effectively wraps around, with amenities such as the tennis courts and swimming pool close by.
16. The occupancy restriction on the dwelling, as worded, does not relate to the living conditions of its occupiers or in any way infer that the living conditions would only be acceptable to those who worked at the Holiday Park. There is also limited evidence that the Holiday Park creates any disturbance or antisocial noise that renders the area an unpleasant one in which to live. The evidence does suggest that the appellant would prefer to remain living at the dwelling if given the opportunity, which highlights that the living conditions afforded by the dwelling and its surrounding environs are sufficiently pleasant despite the adjacent Park.
17. There are two other unrelated dwellings adjacent to the Holiday Park, the occupiers of which must experience the comings-and-goings and general noise from holiday makers throughout the year. Whilst I accept the possibility that complaints could be raised by future occupiers if instances of noise were above acceptable levels, on balance, I do not consider that the relationship between the appeal dwelling and Holiday Park would result in unacceptable living conditions.
18. In view of the above, the unfettered occupation of the dwelling would not be harmful to future occupiers in terms of noise or disturbance from the Holiday Park, having regard to Policies 12 and 13 of the Local Plan which seek to protect individuals and property from unreasonable noise and disturbance.

Other Matters

19. Whilst the appellant raises questions about the difference in the reason given for an occupancy restriction on an earlier 2002 permission, I have limited details as to why that dwelling may not have been considered suitable for permanent residential occupation. In any event, whilst this is not an appeal under s73 to remove the condition, the permission granted in 2003 and subsequently implemented is the one which is most relevant to consider.
20. The appellant refers to an appeal decision for a residential development in the area dating back to 2009. Given the material change to the policy context in the intervening period, the limited evidence of the findings and their applicability to the site, I attribute limited weight to this particular case.
21. Whilst the Council has suggested an alternative condition to allow the occupation of the bungalow by someone 'last employed' as a manager, if the ownership of the dwelling and Park become separated, the requirement of the condition would be very unlikely to be met beyond the appellant's occupation and such a condition could therefore not be reasonable.
22. I am aware that the appellant no longer wishes to remain financially or practically involved in the business. I also note the age and health-related factors that make continued occupation of a bungalow desirable to the appellant in contrast with moving into a house, or somewhere unfamiliar. However, these circumstances are not particularly unique and I have limited evidence to suggest that it would be impractical to purchase a suitable bungalow elsewhere within the locality. Consequently, I attribute only modest weight to these personal circumstances.

Planning Balance and Conclusion

23. Whilst I have found that the living conditions of future occupiers would not be harmed, the unfettered occupation of the dwelling would conflict with the requirements of the development plan, when considered as a whole.
24. The public benefits of the proposal would be limited to the marginal increased access to housing, free of any occupancy restrictions, but neither this nor the appellant's personal circumstances are of such weight that they indicate that a decision should be made other than in accordance with the development plan.
25. For the reasons set out above, the appeal is dismissed.

Hollie Nicholls
INSPECTOR