



Appeal Decision

Site visit made on 27 April 2022

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

Appeal Ref: APP/P1133/W/21/3287682

The Sail Loft, The Strand, Starcross EX6 8PR

- 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 (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Alice Stephens-Hodge against the decision of Teignbridge District Council.
 - The application Ref 21/01428/VAR, dated 16 June 2021, was refused by notice dated 18 August 2021.
 - The application sought planning permission for conversion of store/loft into flatlet without complying with a condition attached to planning permission Ref 5/5/1417/33/3, dated 25 July 1978.
 - The condition in dispute is condition (b) which states that: *'The use of the flatlet hereby permitted shall at all times be ancillary to the main residential use of the existing dwellinghouse.'*
 - The reason given for the condition is: *'To ensure that the property of Hope Cottage is retained as a single dwelling unit.'*
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The Sail Loft is a self-contained unit of accommodation above an outbuilding to the rear of Hope Cottage. Hope Cottage fronts the River Exe and is within Flood Zones 2 and 3. The unit (or 'flatlet') was created following permission granted in 1978 under Ref 5/5/1417/33/3 and must be used in a manner ancillary to Hope Cottage pursuant to condition (b) of that permission.
3. It is the appellant's desire for The Sail Loft to continue to be predominately used as such but occasionally also as a short-term holiday let, and for the condition to be varied accordingly. The Council finds this to cause issues of flood risk, referring to the 'Sequential Test', and also has concerns regarding the effect of the holiday let on the privacy of those within Hope Cottage.
4. The appellant, referring to case law¹, considers these matters to be irrelevant to the proposal to vary the condition on the basis that no development would take place. Whilst it is not for me within the context of this appeal under section 78 of the Act to reach a formal view on this matter, I am inevitably obliged to broach it insofar as it is material to my assessment.
5. The Sail Loft is accessed down the drive of Hope Cottage, beyond its bare flank wall. The doorway into The Sail Loft is physically separated from the mainstay

¹ Burdle v Secretary of State for the Environment, 1972

of Hope Cottage's grounds by a fence, with a lockable gate, and there is no other way to access the unit, including from within the ground floor of the outbuilding. The Sail Loft therefore has a high degree of physical separation from the other parts of Hope Cottage.

6. Use of The Sail Loft as a holiday let would also set it to a different purpose to ancillary use. Indeed, the appellant's evidence highlights a need for such holiday facilities in the area and draws on their particular economic benefits. The holiday let would logically confer a different transport pattern, with people traveling from further field, and would invite a succession of different third parties to dwell in an area at high risk of flooding. The holiday let would therefore be substantially different and unrelated in purpose to Hope Cottage.
7. The appellant has suggested that conditions could be employed to restrict the proportion of holiday usage so as to allow The Sail Loft to maintain an ancillary relationship with Hope Cottage and prevent a material change of use. Such conditions, relating to detailed matters of fact and degree, would be overly prescriptive and difficult to enforce in my opinion. For example, holiday usage could simply go unrecorded, and a condition could not oblige the unit to actually be utilised in an ancillary way in practice.
8. As such, and for the purposes of my decision alone, I find that the proposal would constitute development consisting of a material change of use as a separate unit of occupation, and thus a new planning unit, would be created.
9. Against this background, I consider the main issues to be the effect that varying the condition would have on (i) flood risk and (ii) the living conditions of the occupants of Hope Cottage, with reference to privacy.

Reasons

Flood risk

10. Policy EN4 of the Teignbridge Local Plan 2013-2033 (adopted 2014) (the TLP), is consistent with national policy in requiring, in the first instance, a sequential approach (the Sequential Test) which guides development to areas at lower risk of flooding, before site-specific flood risk assessment is to be undertaken.
11. However, like national policy, Policy EN4 expressly excludes minor development from the Sequential Test. Minor development is defined by the National Planning Policy Framework (the Framework) to include changes of use where no operational development is proposed. Given that these are the circumstances here, it follows that a Sequential Test is not required.
12. Nonetheless, the Framework establishes that *all* development in Flood Zones 2 or 3 should be subject to a site-specific Flood Risk Assessment (FRA). The FRA should address matters such as flood resilience, any access or escape routes as part of an agreed emergency plan, and any other residual flood risk. As there is no FRA before me, I cannot ascertain that the future occupants of the holiday let would be safe from flood risk over the lifetime of the development.
13. This leads me to conclude on this issue that varying the condition in order to accommodate holiday let use of The Sail Loft would have an unacceptable effect with regard to flood risk. The proposal would conflict with the relevant aims of Policy EN4 of the TLP and the Framework.

Living conditions

14. The Sail Loft has three windows within its south, side elevation and a large aperture which offers eastward river views down Hope Cottage's drive. The latter serves a lounge area and is the most appealing opportunity for an outward aspect.
15. Whilst the side windows overlook Hope Cottage's grounds aside its rear elevation, the kitchen window is higher within the wall and set behind a sink. There is little opportunity, therefore, to look down from it. Outlook from the other two windows largely oversails Hope Cottage's grounds. Moreover, the rear garden spaces here are already beset with a degree of mutual overlooking between properties from height and over fairly modest boundary treatments.
16. For these reasons, I conclude on this issue that varying the condition to provide holiday let use of The Sail Loft would have an acceptable effect on the living conditions of the occupiers of Hope Cottage, with reference to privacy. The proposal would in this regard accord with Policy S1 of the TLP.

Other Matters

17. The Sail Loft is within the setting of the semidetached Grade II listed buildings Harpridge and Rothesay, which draw their significance from their historic fabric and architectural composition. Given the absence of operational development in this case and also the separation of the site from the listed buildings, the proposal would not harm the significance they derive from their setting.
18. The site is also inside the respective zones of influence of the Exe Estuary Special Protection Area and the Dawlish Warren Special Area of Conservation. Given that there would be a modest increase in tourism in the vicinity of these sites, I cannot rule out that the proposal would cause likely significant effects to them through increased recreational use. Had I been minded to allow this appeal, I would have had to consider this matter within an Appropriate Assessment. As I am dismissing it for other reasons, I have not done so.

Planning Balance and Conclusion

19. The absence of a suitable FRA and associated demonstration that the Sail Loft would be safe from flood risk over its lifetime draws the proposal into conflict with the development plan when read as a whole. The other considerations in favour of the scheme, including the economic benefits of the tourism use in this fairly accessible location, would not outweigh this conflict.
20. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR