



Appeal Decision

Site visit made on 1 June 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/P1133/W/22/3292058

Kennford International Caravan Park, Kennford, Exeter EX6 7YN

- 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 Ian Hopkins against the decision of Teignbridge District Council.
 - The application Ref 21/01434/VAR, dated 17 June 2021, was refused by notice dated 12 August 2021.
 - The application sought planning permission for the demolition of three chalets and erection of six holiday chalets without complying with conditions attached to planning permission Ref 09/03912/FUL, dated 16 February 2010.
 - The conditions in dispute are Nos 2, 3, 4 and 5 which state that:
 - No.2 - Unless otherwise agreed in writing by the Local Planning Authority the development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 16 December 2009 (Drawings Numbered 1494 2/1A, 1494 2/2A, 1494 2/3A, 1494 2/4A, 1494 2/5A Design and Access Statement, Arboricultural Impact Assessment with Drawing Number 03381) as modified by other conditions of this consent.
 - No.3 - Notwithstanding the submitted landscaping details no development or further tree/hedge removal shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. Details shall include existing trees and hedges to be retained; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme and maintenance programme. All hard and soft landscape works shall be carried out and thereafter maintained in accordance with the approved details.
 - No.4 - No chalet shall be occupied for more than three months in each 12 month period by any individual occupant, group of individuals or family.
 - No.5 - The chalets shall be occupied for holiday purposes only.
 - The reasons given for the conditions are:
 - No.2 - In order to ensure compliance with the approved drawings.
 - No.3 - To assist in the assimilation of the chalets into the landscape in the interests of the character and appearance of the Area of Great Landscape Value.
 - No.4 - In order to prevent the establishment of permanent residential use.
 - No.5 - To ensure that the chalets are not used for permanent residential accommodation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal was refused for four reasons. The fourth reason for refusal explains that, in the view of the Council, because of the nature of the proposal being considered, with the approved holiday lets sought to be changed to affordable units through the removal of conditions, that it is not appropriate to consider such a change through an application under s73 of the Town and Country Planning Act (as amended) (the Act).
3. The Council refer to *R v Coventry City Council Ex p. Arrowcroft Group Plc [2001] P.L.C.R. 7* where in that case it explains that the new conditions would have amounted to a fundamental alteration of the original planning proposal and could not be considered as a s73 application. The Council also argue that *Finney v Welsh Ministers [2019] EWCA Civ 1868* is relevant and the Council make the case that s.73 may not be used to obtain a varied planning permission when the change sought would require a variation to the terms of the "operative" part of the permission.
4. I have taken all these submissions into account. Ultimately it would be for the courts to determine whether an application under s73 can be used to vary the conditions in this case. The original application included within the description the erection of six holiday chalets. However, the permission effectively allowed the use of the proposed buildings for six dwellings with the occupation of those dwellings controlled by conditions 4 and 5. Without those conditions controlling occupancy I do not consider that the use of the dwellings would have been restricted to holiday accommodation.
5. I have had regard to the judgements in *Wilson v West Sussex CC [1963] 2 W.L.R. 669* and in *East Suffolk CC v Secretary of State for the Environment [1973] 1 WLUK 162*. Although these cases involved agricultural workers' dwellings, it seems to me that these cases indicate that the removal of a condition restricting occupancy is unlikely to create a *Finney* conflict where the operative part of the planning permission refers to a specific type of occupation. This is because the courts have indicated that, once a dwelling has been built, a statement of the purpose of the dwelling in the description of the development is not sufficient to restrict occupancy.
6. In terms of *Arrowcroft*, given my findings on the affordable housing issue below, I do not feel that the considerations in this appeal would be so at odds with the original permission that this would exclude consideration under s73.
7. On this basis, I intend to determine the appeal on its planning merits. This would accord with the approach of the Council and the previous Inspector when a similar proposal to vary the conditions attached to the 2010 permission was determined. Accordingly, I consider that this addresses the fourth reason for refusal.
8. Another key matter is that the first reason for refusal states, amongst a range of objections to the development, that the proposal does not include any mechanism to secure allocation of the units as affordable housing in such a way as to accord with the related development plan policies. The information indicates that the appellant, during the processing of the application, submitted to the Council a draft planning agreement under s106 of the Act and sought to enter a dialogue to secure the four built units as affordable housing. The

Council has indicated that the draft would not meet its requirements and it does not seem that the draft agreement has been progressed.

9. Consequently, I only have a draft agreement before me as part of this appeal and, as a draft, it would not have the effect of limiting the occupation of the four chalets to affordable housing. If I was to allow the removal of the conditions as requested, and grant a new planning permission, effectively the units of accommodation would become open market dwellings.
10. I do not consider that there are exceptional circumstances in this case which would justify a negatively worded condition in any approval which would require a planning obligation or other agreement to be agreed post decision to require the units to be affordable housing. Such an approach would not accord with the Planning Practice Guidance and the limited circumstances when such an approach may be considered reasonable. This is especially so when there is not agreement between the main parties on the details of that agreement.
11. In the absence of a completed planning obligation or other mechanism to secure the proposed affordable housing, I will consider the appeal on the basis that the four existing units of accommodation, if the appeal was to be allowed, would be able to be occupied without restriction.

Main Issues

12. The main issues are:

- whether or not the development plan would support the use of the chalets for open market housing in this location,
- whether or not the location and arrangements of the chalets would render them unsuitable for permanent residential occupation, and
- the effect of the proposal on the Exe Estuary Special Protection Area (SPA) and Ramsar Site and Dawlish Warren Special Area of Conservation (SAC).

Reasons

Whether or not the development plan would support the use of the chalets for open market housing in this location

13. The four units of accommodation that have been constructed (out of the six which have been approved) are located on a separate section of land within the holiday caravan park. They are chalet bungalows constructed from brick and tile.
14. The caravan park lies to the broadly west of the A38 and lies in land classified as open countryside. The settlement of Kennford lies on the other side of the A38, and extends further to the very broadly north.
15. Policy S22 of the Teignbridge Local Plan 2013-2033 (the Local Plan) sets out the policy approach for development in the open countryside. The open market housing would not meet with any of the categories of dwelling identified in criterion (a) of Policy S22 as being considered acceptable. I have already explained that, in the absence of a planning obligation or other mechanism securing the occupation of the four dwellings as affordable housing, the intentions of the appellant in this respect, which would be worthwhile with its suggested approach in the particular circumstances of this site, are not matters which I can attach weight.

16. The first reason for refusal identifies conflict with Policies WE2, WE3 and WE5 of the Local Plan concerning the detailed policy circumstances for the delivery of affordable housing. However, in the absence of a completed obligation, I have not needed to consider these policies further.
17. The appellant has indicated that, in any approval, the two unbuilt chalets could be the subject of a condition which restricted them to holiday accommodation. This would accord with the original permission and therefore is not a matter which is at dispute.
18. Accordingly, I conclude that the proposal for the removal of the conditions that restrict occupation to holiday accommodation for the existing four chalets, and allow them to be used without occupancy restriction, would not meet with Policy S22 of the Local Plan and, thereby, the development plan strategy for the provision of housing on land designated in the open countryside.

Whether or not the location and arrangements of the chalets would render them unsuitable for permanent residential occupation

19. The site lies within the wider caravan park. It is, therefore, not isolated from other development. However, the caravan park is physically detached from the settlement of Kennford and the reasonably limited services and facilities available. To access those services and facilities at Kennford by foot it would involve walking up the footway adjoining the road which connects to the slip road onto the A38, over the bridge and down the other side of the road running parallel with the A38. There would then be a walk into Kennford itself, including to the shop, pub and school. While there is a pub and petrol station shop on the other side of the A38, and therefore nearer, I do not consider that overall the access route to services and facilities would be particularly attractive and together with the distance I do not believe that it would be a desirable option to walk for most people on a regular basis, including to the bus stop on the other side of the A38. Most people, if they had access to a private vehicle would be likely to use it to access services and facilities.
20. In this respect I agree with the Inspector and his conclusions on the location and accessibility of Kennford from the site when he determined a similar proposal for these four chalets in January 2021¹. In coming to my conclusions on this issue, I have had regard to the Kennford Sustainability Assessment Report and its analysis, including the location of employment opportunities, and that the units have been permanently occupied for some time.
21. As a consequence, the provision of open market housing on this site would not accord with the National Planning Policy Framework (the Framework) policy approach that seeks to promote locations that would allow sustainable transport solutions because it would be difficult to effectively promote and engage in access to services and facilities by walking, cycling and public transport from this site, even taking into account the rural location.
22. The second reason for refusal also raises concerns with the practical use of the site for permanent residential occupation. The rear gardens of Chalets 1, 2 and 3 are limited in depth but are useable as outdoor seating areas, although the size of this space would limit the ability for most other outdoor activities. However, the size of these gardens could be increased if works were

¹ Combined appeals dated 4 January 2021: APP/P1133/C/20/3256453, APP/P1133/C/20/3256669 and APP/P1133/C/20/3255697.

undertaken to the bund-like feature that runs along the back of these units. Chalet 4 has a more restricted space around the building but has sufficient external area to be serviceable. Overall the garden space is reasonable, and could be improved for three of the chalets as part of a planning condition attached to a new permission.

23. At my site visit, I was able to see inside one of the chalets. The accommodation is fairly spacious, laid out to a good standard, with two good sized bedrooms, both of which could be doubles. The internal accommodation would make acceptable living space for use on a permanent basis. The individual chalets provide detached dwellings and are separated sufficiently from each other and the adjoining static caravans such that there would be no material adverse impact on the living conditions of permanent residents from adjoining residential uses.
24. The four chalets are, however, reasonably close to the A38. At my site visit the passing vehicles created a noticeable and fairly constant background noise when in the outdoor spaces around the chalets. The noise was less inside the building especially when the double glazed windows were closed. The A38, with its slip roads, means that there are multiple traffic lanes in the vicinity of the site. I have no reason to believe, although only a snap shot in time, that the road noise was not typical of that time of day. There is likely to be less traffic, and therefore less background noise at some other times of the day, such as at night when occupants would be trying to sleep. However, there is the potential for disturbance, especially at night if the windows were open to assist with ventilation.
25. I consider that the longer term effect on holiday makers from traffic noise may be more limited because of the likely shorter duration of their stay. However, the effect of background noise on any permanent residents could have longer term impacts, if not found to be within acceptable limits, especially with regard to internal noise levels. The application was not accompanied by any detailed noise readings or surveys to demonstrate that the accommodation would provide permanent residents with a satisfactory noise environment. In the absence of such information, I consider that I need to take a precautionary approach. On this basis, I am not satisfied that the proposed permanent occupation of the chalets has been demonstrated to provide an acceptable noise environment. That the units have been permanently occupied for some years, including by it appears by persons housed by the Councils' Housing Team, does not convince me that the noise environment would necessarily meet an appropriate standard.
26. The Council also raise the issue of potential poor air quality adjacent to the A38. Again I have very limited details to satisfy me that the air quality would meet a satisfactory standard. There is, therefore, a reasonable potential that there could be an air quality issue and again I consider that it would be appropriate to take a precautionary approach before any permanent occupation of the units is approved.
27. The Framework requires that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions. On the basis of my analysis above regarding potential noise and air quality impacts, I am not satisfied that the case has been adequately demonstrated that the site would

provide acceptable living conditions for permanent occupants in respect of these matters.

28. I appreciate that the noise and air quality issues did not form a reason for refusal in the previous appeal decision. Nevertheless, these matters form a reason for refusal with the present proposal and, therefore, are matters that I have needed to consider.
29. The appellant has drawn my attention to examples of other new housing developments, permitted by the Council, and has argued are similarly positioned as the appeal site to services and facilities and/or in the vicinity of main roads. There are examples of development including at Kennford, Kingsteignton and Chudleigh.
30. The examples of these other sites do not appear to be separated by a main road from the adjoining settlement area in the way that the appeal site is in relation to Kennford and they all seem to have their particular site characteristics and relationship to the surroundings. Overall, these other examples do not appear so similar to the present appeal circumstances that in themselves they would address my concerns regarding the ability to access services and facilities from the present site, or that by comparison they demonstrate that the appeal site and its relationship to the A38 would provide satisfactory living conditions in relation to the noise and air quality environment. These other examples of residential development are, therefore, matters which I attribute limited weight in justification for the appeal proposal.
31. In the light of the above analysis, I have found that internal living spaces would be acceptable and that the external amenity space is reasonable and could be improved in relation to Chalets 1, 2 and 3. However, the access to services and facilities by sustainable transport options would be fairly poor and the evidence does not clearly demonstrate that the living environment would be satisfactory in relation to noise and air quality effects. As a consequence, I conclude, on the information before me, that the location of the chalets does not demonstrate that they would be suitable for permanent residential occupation. Accordingly, the proposal would not comply with Policy S1 of the Local Plan which, in this respect, sets out a series of sustainable development criteria against which schemes are to be assessed.

Habitat Sites

32. This proposal lies within 10km of the Exe Estuary SPA and Ramsar Site and the Dawlish Warren SAC. The information indicates that residential development in such a location has the potential to increase recreational pressure on these habitat sites and that permanent residential accommodation would be likely to have a greater recreational impact than holiday accommodation. To address this matter a financial contribution is required in accordance with the published mitigation strategy.
33. The contribution would be calculated on the basis of the difference between the standard fee for holiday accommodation and the higher fee for permanent residential dwellings. The appellant has indicated a willingness to resolve this matter, pay the contribution and has submitted an Applicant Information Form to the Council in this respect. However, it appears that the matter has not been concluded and, as a consequence, there is no definitive evidence of the Exe Estuary and Dawlish Warren Habitat Mitigation payment, or a unilateral

undertaking, to secure the necessary contribution to mitigate the likely impacts on the habitat sites.

34. It follows that I am unable to conclude that the proposal, either alone or in combination with other schemes, would not have a significant and adverse effect on the integrity of the habitat sites. Consequently, I conclude that the proposal would not meet with the legislative requirements of the Conservation of Habitats and Species Regulations 2017. The scheme would therefore also be in conflict with Policies EN8, EN9 and EN10 of the Local Plan which seek, amongst other things, protection of biodiversity.

Other Matters

35. I have taken into account that the Parish Council support the scheme. I have also carefully considered all the evidence that seeks to demonstrate that there is not a need for the holiday accommodation in this location and that pursuing holiday letting use for the chalets is unlikely to be economically viable. The further evidence at this appeal seeks to address the concerns of the previous Inspector where he commented that following the construction of the chalets they had been permanently occupied and this, in his view, had cast doubt as to whether genuine efforts had been made to promote their use as holiday accommodation.
36. The Alternative Local Accommodation Report and the information at the appeal stage provide background on other competing accommodation and provides a greater extent of information regarding the efforts to market the accommodation as holiday lets. The Council did not refuse the application based on the loss of the holiday accommodation. The evidence also indicates that letting the accommodation to permanent occupants helps to support the overall business at the caravan park and in turn this helps to maintain the related employment of workers at the site. I attach these matters moderate weight in justification for an alternative type of residential accommodation of the four chalets because of the scale of the proposal and the extent and level of detail of the marketing that has taken place.

Conclusion

37. The scheme would result in four units of open market housing in a location which would not be supported by Policy S22 of the Local Plan and therefore would conflict with this element of the strategy for the provision of housing across the plan area. It would also be in a location that was poorly located in relation to the ability to access services and facilities other than by the private vehicle. There is insufficient evidence to clearly demonstrate that permanent occupants would have satisfactory living conditions in terms of noise and air quality. Furthermore, the scheme would not provide appropriate mitigation to demonstrate that it would not have, either alone or in combination with other schemes, a significant and adverse effect on the integrity of the habitat sites. Cumulatively, these are matters that weigh substantially against the scheme and are such that the proposal to remove the requested conditions 4 and 5 would conflict with the development plan when considered as a whole.
38. That the internal living space would be acceptable and the external garden space would be satisfactory, and could be improved for three units, are neutral in the overall analysis. The intention that the accommodation would be used as affordable housing and thereby help to meet an identified local housing need is

not a matter that I can consider in the overall planning balance because of the lack of a secure and agreed mechanism to achieve this benefit.

39. The information on a lack of need for the units as holiday accommodation and therefore that ultimately the units could remain empty with the associated loss of the economic benefits from their permanent occupation, merits moderate weight in favour of the proposal. The benefits to housing supply, the social and economic benefits to the area and the reuse of these rural buildings as a matter of principle merits limited weight as only four units of open market accommodation would be provided. Taken together, all the elements that pull in favour of approval merit moderate weight.
40. It follows that the benefits that would result from the removal of conditions 4 and 5 as requested would not be outweighed by the identified harm and resulting policy conflicts. In terms of variations to conditions 2 and 3, which include details of the layout of the site and the approved plans, while this may be unobjectionable in itself, these changes are related to the scheme as a whole. As I have found the other elements unacceptable it would not be reasonable or necessary to change these conditions in isolation.
41. Accordingly, the removal of the conditions have not been justified. To conclude, the proposal would not accord with the development plan when considered as a whole. Other considerations do not indicate a decision should be made otherwise than in accordance with the development plan.
42. It appeared at my site visit that three of the four chalets are occupied and the information indicates that this is on a permanent basis. I have limited information regarding the circumstances of these occupants and their housing options. However, the previous appeal in respect of the enforcement notice also considered these matters at that time and the decision was to uphold the enforcement notice, with variations. Nevertheless, as this accommodation appears to be the occupants main home in each case, I have had regard to the rights of the occupiers and the appellant under the Human Rights Act 1998, including the right to the protection of property and that everyone is entitled to the peaceful enjoyment of their possessions. This is a qualified right, and interference may be justified where in the public interest.
43. Dismissing the appeal could interfere with the rights of the occupants to continue to use these properties in the way that they and the appellant wishes. However, the interference with these rights would be justified in this case, in the public interest and in a proportionate way. In particular, it would be in relation to the legitimate aim of according with the policies of an adopted Local Plan to control the type and location of development in the countryside, ensure that the accommodation was suitable in terms of noise and air quality environment and in the protection of habitat sites. The protection of the public interest, in relation to these matters, cannot be achieved by a means that would be less interfering with the rights of the existing occupiers and appellant. In these circumstances, dismissal of the appeal would be proportionate and the appropriate course of action.
44. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR