



Appeal Decision

Site visit made on 1 September 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2022

Appeal Ref: APP/X1355/W/22/3299669

Evergreen Park, Road Leading To Evergreen Park, Crimdon TS27 4DW

- 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 Evergreen Park Ltd against the decision of Durham County Council.
 - The application Ref DM/21/00185/VOC, dated 19 January 2021, was refused by notice dated 26 November 2021.
 - The application sought planning permission for the change of use from a materials storage area to permit the siting of 16 executive holiday lodges without complying with a condition attached to planning permission Ref DM/15/01520/FPA, dated 21 July 2016.
 - The condition in dispute is No 5 which states that: The lodges hereby approved shall be occupied for holiday purposes only, and shall not be occupied as a person's sole, or main place of residence.
 - The reason given for the condition is: in the interest of the appropriateness of the approved use.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Evergreen Park Ltd against Durham County Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal seeks to remove condition 5 of a planning permission originally granted at appeal in 2016. This approved the change of use of the site to permit the siting of 16 executive holiday lodges. The contested condition requires that the caravans are occupied for holiday purposes only, and not as a person's sole or main place of residence. The appellant argues that this condition is not necessary and seeks its removal. The effect would be that without the condition they could be occupied as a person's sole or permanent residence.
4. The initial proposal for the holiday lodges was specifically assessed based on their occupation for holiday purposes and, thus, benefitting the tourism industry. In allowing the appeal for the siting of the 16 holiday lodges, the Inspector found that they addressed an identified need in the local tourism market. Although within the same use class, there are material differences between occupying the lodges for holiday purposes or as a person's sole or permanent residence. It is therefore, in my view, correct to assess the proposal

before me against the relevant local and national planning policies for permanent residential development.

Main Issues

5. The main issues are:

- Whether the development plan would support the use of the lodges for permanent residential occupation in this location;
- Whether appropriate provision is made for affordable housing;
- Whether the location and arrangements of the lodges would render them unsuitable for permanent residential occupation with regards to living conditions; and
- Whether appropriate provision is made for open space.

Reasons

Development plan

6. The appeal site lies outside of any settlement's built-up area boundary, as defined in the County Durham Plan (2020) (DP), and is treated as countryside for the purposes of applying the relevant DP policies.
7. Policy 6 of the DP is referred to in the Council's first reason for refusal. This relates to development on unallocated sites and specifically refers to sites which are not allocated in the Plan, which are either within the built-up area or outside the built-up area but well-related to a settlement. In this instance, the appeal site is outside the built-up area of any settlement and physically, visually, and functionally detached from any settlement. As such, irrespective of the public transport connections, the appeal site is not well-related to a settlement. The proposal would therefore not fall to be assessed against the criteria within this Policy.
8. Instead, the proposal would fall to be assessed against Policy 10 of the DP, which relates to development in the countryside. This policy stipulates that development in the countryside will not be permitted unless allowed for by specific policies in the Plan, relevant policies within an adopted neighbourhood plan relating to the application site or where the proposal relates to one or more exceptions set down in the policy. These are established under the headings of Economic Development, Infrastructure Development, and the Development of Existing Buildings. The proposal would not accord with any of these exceptions. Moreover, the main parties have not directed me to any other policies which would support permanently occupied residential units at the appeal site's countryside location.
9. There is a distinct difference to the types of services and facilities that would be accessed by permanent occupiers of the lodges and holiday occupiers. The latter may permanently reside outside of the local area and, in my view, are likely to make more recreational trips. In this regard, I saw that the appeal site is a short walk from the beach. I accept that if occupied permanently future occupiers would also make use of the convenient access to the beach. However, there would also be a greater need to access other services and facilities including, amongst other things, local health and library facilities, in addition to trips to places of work for any occupiers that are not retired. This is,

in part, why the DP seeks to focus permanently occupied housing either within or outside, but well related to, the built-up areas of settlements.

10. In this regard, although the distances to the nearest settlements along the A1086 are short and there is a regular bus service providing connections. Given the lack of facilities within walking distance and the detached nature of the site from the built-up areas of settlements, the appeal sites location is not well served by services and facilities to support the day to day living of people occupying the lodges as their sole or permanent residence.
11. To conclude on this main issue, the proposal would conflict with the requirements of Policy 10 of the DP. I therefore find that the proposal would not accord with the plan led strategy for housing and growth of the DP and there are no identified policies that would expressly permit permanently occupied residential units in this location. Policy 10 is consistent with the National Planning Policy Framework (the Framework), to the extent that it seeks to promote sustainable rural development and recognises the intrinsic character and beauty of the countryside.
12. The proposal would also conflict with paragraph 105 of the Framework which advises that the planning system should actively manage patterns of growth in support of the objectives in paragraph 104 of the Framework. These include, amongst other things, identifying and pursuing opportunities to promote walking, cycling and public transport use.

Affordable housing

13. The third reason for refusal relates to an affordable housing contribution sought by the Council and my attention is drawn to Policies 15 and 25 of the DP and section 5 of the Framework. Broadly, these promote the laudable aim of addressing housing needs which are accessible, affordable, and meet the needs of those residents unable to access the open housing market. They apply in certain circumstances where new units are proposed. The creation of 16 permanently occupied residential units, rather than units in occupation for holiday purposes, means that affordable housing would normally be required, under these policies.
14. I accept that the lodges would be cheaper to buy than conventional housing within the area. However, the price would still be set by the open market. In this regard, the evidence before me does not clearly demonstrate that they would meet the definition of affordable housing as set out in Annex 2 of the Framework. Moreover, there is no substantive evidence before me that would preclude the appeal proposal based on the nature of the lodges themselves.
15. I have had regard to the viability evidence before me. However, there is no substantive evidence before me to support the financial figures quoted, limiting the weight I give to this evidence. Such evidence does not, therefore, justify a lower level of affordable housing than required by the DP.
16. I therefore find that the proposal does not make appropriate provision for affordable housing. The proposal would therefore conflict with the requirements of Policies 15 and 25 of the DP and the provisions of the Framework in this regard.

Living conditions

17. The lodges are laid out in a regular arrangement with no external areas of privacy and without boundary treatments between lodges. In this regard, there is a high degree of overlooking between lodges. Moreover, the separation distances would not accord with the space standards in paragraph 3.2 of the Council's Residential Amenity Standards Supplementary Planning Document (2020) (SPD).
18. However, the SPD's supporting text advises that distances may be relaxed having regard to the character of an area. In this context, the layout of the lodges is in keeping with the character of a residential park home estate. I am also mindful that prospective residents can decide whether to move into the lodges, knowing the physical relationship between the lodges. Moreover, the lodges benefit from expansive open views, due to the site's elevation, countryside location and the arrangement and design of the lodges with their low height and use of decking. I was able to see from the lodges on site that they are spacious and do not offer cramped accommodation internally or in terms of their external layout. On balance, therefore, I find that if occupied permanently future occupiers would have acceptable living conditions.
19. I therefore find that the location and arrangements of the lodges would render them suitable for permanent residential occupation with regards to living conditions. I therefore find no conflict with the objectives of Policy 29 of the DP, the SPD, or paragraphs 126 and 130 of the Framework. These, amongst other things, seek high standards of amenity for existing and future users.

Open space

20. Policy 25 and 26 of the DP broadly indicate that contributions will be sought to mitigate the adverse effects that new development may have on local infrastructure. This includes contributing to the improvement of existing open space or the provision of new open space.
21. The Council's Officer Report indicates that the contributions sought towards the provision of public open space have been calculated using standard formulae based on the number of units, bedrooms and persons. However, I have not been provided with any detailed evidence to define the extent of any local deficiencies in open space, the effect that the appeal proposal might have on them, or how and where the contributions would be spent.
22. Accordingly, I cannot be certain that the contribution sought would be necessary to make the development acceptable or that it would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, and notwithstanding the aims of the DP policies, I am unable to conclude that a planning obligation seeking to provide the financial contribution would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. In these circumstances, the absence of a planning obligation in relation to this matter does not weigh against the proposal.

Other Matters

23. In support of the appeal, it is put to me that following a marketing exercise there has been a lack of demand for the lodges for holiday purposes. In the appellants final comments, I am advised that the project commenced immediately after planning permission was obtained in 2016 with marketing.

However, I have no firm details of any such early marketing. Moreover, the evidence before me in the covering letter to the application submission to the Council advised that marketing commenced in March 2019.

24. At the time of the submission of the application to the Council in January 2021, the evidence submitted advised that no sales had taken place. However, I am informed in the appeal submission that 9 lodges have now sold and during my site visit there were several units on site that were occupied. Moreover, the owners will have purchased the lodges with an understanding of the restriction in place and having regard to the location of other holiday parks nearby. As such, from the evidence before me, I am unable to conclude that the tourism need identified in the 2016 appeal decision does not remain.
25. The appeal site would share the same access as the existing residential park at Evergreen Park. The permanent occupation of these units was confirmed through a certificate of lawful existing use in 2006. However, their existence does not alter the status of the DP or the plan led strategy for housing growth. Moreover, the absence of harm in relation to other considerations, including the effect on the character and appearance of the area, are neutral matters.
26. I have also had regard to the appeal decision provided by the appellant (Ref: 3211466) which allowed the removal of a holiday occupancy restriction of a site in Mid Suffolk. No affordable housing provision was required in that instance. However, the Inspector did not have the Council's requirements at that time, and it was not a matter in dispute between the parties. Moreover, the Inspector was satisfied that the evidence provided casted reasonable doubt on whether the tourism use was sustainable in the long-term. This contrasts with the proposal before me.

Conclusion

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the determination of applications should be made in accordance with the development plan unless material considerations indicate otherwise. In this instance, the proposal would conflict with the plan led strategy for growth. In addition, the appeal site's location is not well served by services and facilities to support the day to day living of people occupying the lodges as their sole or permanent residence. Moreover, there is no mechanism before me for the delivery of affordable housing meeting the definition within the Framework.
28. I have no firm evidence of a specific shortfall in supply, or need, that would be served by the occupation of the lodges permanently. In contrast, there was previously an identified need for the lodges for holiday purposes. Based on the evidence before me, I cannot conclude that such a need no longer exists.
29. As such, for the reasons given above, the proposals would conflict with the development plan and there are no material considerations that would outweigh this conflict. Therefore, the appeal is dismissed.

Mr R Walker

INSPECTOR