



Appeal Decision

Site visit made on 4 October 2022

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/P1045/W/22/3299082

Rose Cottage and Ivy Cottage, Roston Inn, Mill Lane, Roston, DE6 2EE

- 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 Mrs L Murphy against the decision of Derbyshire Dales District Council.
 - The application Ref 21/01309/VCOND, dated 25 October 2021, was refused by notice dated 7 January 2022.
 - The application sought planning permission to allow the separation of ownership and operation of the cottages and Roston Inn by not complying with a condition attached to planning permission Ref 13/00235/VCOND, dated 15 May 2014.
 - The condition in dispute is No 2 which states that: *The holiday cottages, subject to this variation of planning condition application, shall only be occupied in connection with and ancillary to the ownership/operation of the Roston Inn and at no time shall be severed and occupied as separate independent units.*
 - The reason given for the condition is: *To assist in the longer term viability of the Roston Inn and prevent any associated severance to ensure that the cottages are available in a capacity that serves the local housing needs, in accordance with the aims of Policies SF4, H4, and HC12 of the Adopted Derbyshire Dales Local Plan (2005).*
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Decision

1. The appeal is allowed and planning permission is granted to allow the separation of ownership and operation of the cottages and public house by not complying with Condition 2 attached to planning permission 13/00235/VCOND, dated 15 May 2014 at Roston Inn, Mill Lane, Roston, Ashbourne DE6 2EE, but subject to the conditions set out below:
 - 1) The Holiday Cottages, subject to this variation of planning condition application, shall be used in either of the following ways:-
 - a. Holiday accommodation – the cottages shall not be used as the person's sole, or main place of residence. The owners/operations of the buildings shall maintain an up-to-date register of the names and addresses of all occupiers of the cottages, and of their main home addresses, and shall make this information available upon request to the local planning authority; or,
 - b. Permanent residential accommodation – occupation of the cottages shall be limited to a person living and/or working within 3 miles of the application site, or a person with a close family connection to the area, a widow or widower of such a person, and to any resident dependants.

- 2) Prior to the holiday cottages subject to this application being occupied in the revised manner specified in condition one of this decision notice, four car parking spaces shall be provided within the Roston Inn car park for the parking of residents'/visitors' vehicles, marked, laid out, surfaced, and maintained through the life of the cottages free from any impediment to their use.
- 3) The existing field access to the south of the cottages shall be used by vehicles associated with servicing the septic tank serving the cottages only and by no other vehicles. In all other respects, the cottages shall be served via the Roston Inn car park only.

Preliminary Matters

2. The planning history at the appeal site is rather long and somewhat complex. Mindful of this, and in the interests of clarity, I have set out here the general background to the site. Planning permission was originally granted for the erection of the two cottages under reference 1295/0757, this was amended by way of a variation of condition, reference 11/00683/VCOND, that was itself subject to a further variation of condition, reference 13/00235/VCOND. This was refused but was subsequently allowed at appeal under reference APP/P1045/A/13/2210062. As the appeal before me relates to the variation of a condition imposed on this most recent permission, it is the conditions attached to this appeal that I have been mindful of.

Main Issue

3. The main issue is the effect of the proposed removal of condition 4 on the viability of Roston Inn.

Reasons

4. The appeal site is a long plot running along Mill Lane beside the junctions with Lid Lane and The Hollow. The site is subdivided in to two parts, Roston Inn and its associated space to the north of the plot, and the cottages with their garden to the south. Vehicular and pedestrian access to the cottages is achieved through the car park and garden of Roston Inn.
5. As noted above, condition 2 restricts the occupation of the cottages to being in connection with, or ancillary to, the ownership or operation of the Roston Inn. The Council's reason for imposing this condition was in order to assist the viability of the Roston Inn.
6. I understand that Roston Inn and the two cottages are owned by the appellant but that the public house is currently managed by another party. It is clear from the evidence before me that this has been the case, albeit not continuously, for some time. It is also clear from the submissions that the public house has regularly struggled to remain open. My understanding of the condition is that the Council intended the income resulting from the rent of the two cottages to subsidise the running costs of the public house. It does not appear however, that this has necessarily occurred.
7. Although condition 2 requires a connection between the cottages and public house, this can either be through ownership or operation. Therefore, although an individual or company may own both the public house and cottages, they could operate them as separate businesses. It is not required that the rent

from the cottages is put into the public house and so, especially where a separate landlord is employed to manage the public house, it is unlikely that the rent would be used to support the public house. In such a circumstance, whilst the condition would be followed, the reason for it would not be achieved.

8. Removing the condition would allow for the two cottages to be sold independently from the public house and this may be a more attractive offer for a potential purchaser. However, the evidence before me does not suitably demonstrate this to be the case, or that operating the public house independently improve its viability. Consequently, although I do not find that the removal of the condition would help the viability of the public house, I also do not find that its retention is beneficial either.
9. I note the Council's concerns that the substantive evidence before me is limited and of some age. While I am mindful of this, it is nevertheless sufficient to demonstrate that condition does not work as intended.
10. Paragraph 56 of the National Planning Policy Framework (the Framework) requires conditions to only be imposed where they are necessary, relevant to planning and to the development, enforceable, precise, and reasonable. Where a condition does not meet one or more of these six tests, it should not be imposed. As I have found the condition does not help the viability of the public house, it cannot be said to be necessary and therefore, the condition does not meet the six tests and should be removed.
11. The removal of the condition, as it has been found to not be necessary, would not adversely affect the long-term viability of Roston Inn. The proposal would therefore not conflict with Policy HC15 of the Derbyshire Dales Local Plan (the LP) which, amongst other matters, requires that developments protect and retain community facilities, including public houses. The removal of the condition would also comply with Paragraph 56 of the Framework as outlined above. Although the Council have also referred to LP Policy S4, I do not find that this is particularly relevant to the appeal before me.

Conditions

12. As I have concluded that condition 2 would not be necessary to support the viability of the public house, I have removed condition 2.
13. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me to demonstrate that the other conditions should not be reimposed, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

14. For the reasons given above, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed conditions and by restating those conditions that are still subsisting and capable of taking effect.

Samuel Watson

INSPECTOR