



Appeal Decision

Site visit made on 18 October 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

Appeal Ref: APP/J3720/W/22/3295080

The Conifers, Hunger Hill, Ullenhall B95 5ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Ellard against the decision of Stratford-on-Avon District Council.
 - The application Ref 21/01164/VARY, dated 9 April 2021, was refused by notice dated 22 September 2021.
 - The application sought planning permission for change of use of existing games room constructed under permitted development to holiday let, without complying with a condition attached to planning permission Ref 17/01411/FUL, dated 24 July 2017.
 - The condition in dispute is No 3 which states that:
3) *"The development hereby approved shall only be used for holiday accommodation purposes and not for any other residential use falling within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or any Statutory Instrument revoking and re-enacting that Order with or without modification. For the avoidance of doubt 'any other residential use' includes a person's or persons' main residence, or a permanent residential unit of accommodation."*
 - The reason given for the condition is: *"To ensure that the holiday let unit is not used for permanent residential occupation which, given the open countryside location, would represent an unsustainable form of development in accordance with Policies CS.1, CS.5, CS.9 and CS.10 of the adopted Stratford-on-Avon Core Strategy (2011-2031)."*
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The appeal property, Lavender Lea, was constructed as a games room ancillary to The Conifers in 2008. In 2017 an application (17/01411/FUL) was approved by the Council to allow Lavender Lea to be used as a holiday let, with its use restricted by condition. An application (19/02527/VARY) to remove the condition was refused in 2019 and an appeal (APP/J3720/W/20/3254312) dismissed in 2021.
3. The appellant has submitted booking and financial information. This includes an extended period covering March 2021 to February 2022, which was not submitted to the Council during the application stage. However, it was provided as part of the appellant's statement at appeal stage and the Council responded to it in their statement of case. The Council is therefore aware of this evidence and has had the opportunity to comment. Consequently, no parties have been prejudiced by my acceptance of this evidence.

Main Issue

4. The main issue is whether the proposed removal of holiday let restriction would result in an unsustainably located residential unit.

Reasons

5. The appeal property is a detached holiday cottage located within a small cluster of dwellings near to the junction of the A4189 and Henley Road. It is physically separate to The Conifers with its own access, parking, and garden area.
6. The appeal site lies in the open countryside, outside of any settlements which are listed as the focus for development within Policy CS.15 of the Stratford-on-Avon District Core Strategy 2011-2031 (2016) (CS). Policy CS.15 states that for 'all other settlements' development is restricted to small-scale community-led schemes which meet a need identified by the local community. There is no evidence before me to suggest the proposal would fulfil this requirement.
7. The appeal site is not located within reasonable walking or cycling distance to settlements containing services and facilities, and the location is not well served by public transport. Therefore, access to services and facilities would be dependent on the use of the private car. Furthermore, permanent residential use would involve greater use of the private car than the use of the appeal property for holiday letting purposes. Thus, the proposal does not represent sustainable development having regard to the National Planning Policy Framework (Framework).
8. The proposal would not satisfy the residential criteria of Policy AS.10 of the CS, including criterion d) which allows for 'conversion to a residential use of a redundant or disused building in open countryside. In such cases, residential should be the only viable use.' The appeal property is neither redundant nor disused as it is still functioning as a holiday let. Thus, the proposal for an open market dwelling in this location would need to be the only viable option for it to avoid conflict with Policy AS.10.
9. Policy CS.22 of the CS states that an existing employment site should not be redeveloped or converted to non-employment use unless it is no longer viable or appropriate for a business purpose. However, the holiday let falls within Class C3 of the Use Class Order, albeit that its occupation is restricted by the condition in dispute. There is no evidence before me to suggest that the holiday let currently employs any staff.
10. The appellant indicates that holiday bookings of the appeal property have dropped in recent years making the use of the building as a holiday let unviable. Information presented to the Council during the application stage indicated that occupancy levels for the holiday let had reduced during the period March 2020 to March 2021, resulting in a financial loss for 8 months of the 13-month period, with only 5 months resulting in profit. Nevertheless, this 13-month period was during the Covid-19 pandemic when the majority of the country was in lockdown for substantial periods of time. This meant that people were unable to travel and take holidays during these periods of lockdown. I also note that there were a significant number of bookings made that would have resulted in profit had the cancellations not been made. The evidence submitted does not show the reasons for cancellation of bookings, but they clearly coincide with the Covid restrictions in place at the time.

11. More recent booking and financial information has been submitted during the appeal stage. This covers the period March 2021 to February 2022. The Council's statement includes a table showing the comparison of the appellant's additional booking period and the Covid restrictions that were in place at that time. The table shows that during March 2021 national lockdown measures were still in place. In April 2021 the Government's stay at home order had been lifted but people were encouraged to stay local. During these months, the appellant showed a loss. The appellant shows a profit and good levels of bookings during the summer months from May to September 2021. This coincides with the Government's easing of Covid restrictions coupled with the warmer weather months when people were more likely to take holidays. The appellant shows a loss for the months October 2021 to February 2022, but this coincides with the colder winter months when people were less likely to take holiday. The Government's Winter Plan B also took place in December 2021 and January 2022, as a result of the Omicron coronavirus variant.
12. I acknowledge that the holiday let was advertised nationally and locally on holiday websites with various travel agents. However, it has not been compellingly demonstrated that the holiday let business would not be profitable had it not been for the impacts of the Covid-19 pandemic. The evidence submitted was undertaken during a period when there were Government restrictions in place, and during a time of public uncertainty and wariness. Therefore, based on the evidence before me, I conclude that the holiday let would not have been operating under normal circumstances due to the effects of the Covid-19 pandemic.
13. It is suggested that the maintenance and advertising costs associated with the holiday let are high and there have been issues with items being broken or stolen. However, these increasing costs and difficulties in the upkeep of the appeal property largely relate to personal circumstances and management of the holiday let by the appellant. I therefore attach little weight to it.
14. Even though the 'The Conifers and Lavender Lea' have been jointly marketed for sale, there is no evidence provided to demonstrate that the appeal property has been separately marketed for sale as a holiday let. Thus, there is no evidence that the holiday let would not be financially viable under different ownership.
15. I acknowledge that if the appellant no longer wished to or was unable to make the offer of the property as a holiday letting and did not advertise, then the building would remain empty for long periods of time. However, I am not convinced that all options have been explored, including ways of maximising profitability, to make it a more attractive business to purchase by third parties.
16. Consequently, the evidence submitted does not demonstrate that the holiday let business is unviable and that the occupancy restriction is no longer justified.
17. Whilst the Core Strategy does not contain any specific policies about the lifting of occupancy conditions, the proposal relates to the removal of a condition which would lead to open market housing in an unsustainable location that would conflict with the development plan for the reasons given.
18. I conclude, therefore, that the removal of the condition would not result in a satisfactory form of development having regard to the relevant development plan policies and the principles of sustainable development. As such, the

proposal would conflict with Policies CS.15, CS.22 and AS.10 of the Stratford-on-Avon District Core Strategy 2011-2031 (2016).

Other Matters

19. The proposal would be an addition of one dwelling to the overall district housing supply that would provide associated economic and social benefits to the locality. However, the contribution would be a modest one to which I attach limited weight.
20. Although there would be no harmful effect on the character and appearance of the area, the highway network, or neighbouring living conditions, these are neutral effects rather than benefits.

Conclusion

21. For the reasons given, and with regard to all other matters raised, I conclude that condition No 3 imposed on planning permission Ref 17/01411/FUL is necessary and reasonable to prevent the property being occupied as a permanent dwelling in conflict with the relevant development plan policies, the Framework and the principles of sustainable development. The appeal is therefore dismissed.

Helen Smith

INSPECTOR