



Appeal Decision

Site visit made on 6 December 2022

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/D0840/W/22/3294102

70 Lostwithiel Street, Fowey, PL23 1BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Malcolm Widger against the decision of Cornwall Council.
 - The application Ref PA21/08312, dated 13 August 2021, was approved on 15 November 2021 and planning permission was granted subject to conditions.
 - The development permitted is request for change of use from C1 (dwelling and B&B) back to C3 (dwelling). No works required.
 - The condition in dispute is No. 3 which states that: The dwelling hereby permitted shall be occupied as Permanent Primary Residence only and shall not be occupied as a second or holiday home.
 - The reason given for the condition is: In accordance with Policy 5 of the Fowey Neighbourhood Development Plan 2019-2030 which states that due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing, other than replacement dwellings will only be supported where there is a restriction to ensure its occupancy as a Principal Residence.
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Decision

1. The appeal is allowed and planning permission Ref PA21/08312 for change of use from C1 (dwelling and B&B) back to C3 (dwelling) at 70 Lostwithiel Street, Fowey, PL23 1BQ granted on 15 November 2021 by Cornwall Council, is varied by deleting condition No. 3 and substituting it for the following condition:
 - a) The dwelling hereby permitted shall not be occupied otherwise than by a person and/or dependent relatives as his/her/their only or principal home. The dwelling shall not be occupied as a second home or holiday letting accommodation. The occupant will supply to the Local Planning Authority (within 14 days of their written request to do so) such information as the authority may reasonably require in order to determine whether this condition is being complied with.

Applications for costs

2. An application for costs was made by Mr Malcolm Widger against Cornwall Council. This application is the subject of a separate decision.
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Background and Main Issue

4. Planning permission was granted in 2021 for the 'change of use from C1 (dwelling and B&B) back to C3 (dwelling)'. It is understood that the building had been used as a bed and breakfast (B&B) since 1995. Condition 3 of the 2021 permission requires that the dwelling shall be occupied as a permanent primary residence only and prevents its occupation as a second or holiday home.
5. The appellant seeks the removal or variation of the condition so as to allow the dwelling to be used as a second or holiday home. Accordingly, the main issue is whether the condition is necessary in terms of the development plan and any other material considerations.

Reasons

6. The Fowey Parish Neighbourhood Development Plan 2019-2030 (FNP) states at paragraph 9.26 that the impact of second home ownership in a small rural community is detrimental to its economy, social cohesion and culture. As a result, and following a survey where nearly 80% of respondents agreed to limit the growth of second home ownership, Policy 5 was included in the FNP. Such a Policy is repeated in other areas of Cornwall, and in other parts of the country where the proportion of second home ownership is considered to be a problem. Evidence before me demonstrates that the Policy has been applied elsewhere in the FNP area.
7. I note that paragraph 9.28 of the FNP, titled 'policy 5 intention', states that it is the intention to restrict new build, open market housing to be used as the principal residence, which means it would not apply to the conversion of an existing building. I do not accept the Council's position that the use of the comma means that 'new build' and 'open market' are two different things. These do not appear as a list. In this respect there is a discrepancy between the wording of the supporting text and that of the Policy.
8. It is important in a scenario like this that I refer to the specific wording of the Policy rather than any wider objectives or supporting text implied elsewhere in the document. The phrase 'new build' is not used in the Policy. I am also mindful that I can see no logical reason why the Policy should only cover new build housing rather than applying more broadly to include new housing that is delivered through other means such as a change of use (COU). The impact of second home ownership on the community is unlikely to be different if the residential use is brought about by changing the use of a building rather than building a new one. The wording of Policy 5 is clear and should be given full weight. It relates to all new open market housing, not just housing that is newly built.
9. I note that the building subject of this appeal was constructed as a dwelling and was in use as such for a significant period up to 1995. However, at this time, its lawful planning use changed to a B&B. The fact that the owners of the dwelling chose to occupy the whole building as a single dwelling for periods of time out of season, or that they used different rooms in the building for their own accommodation at different times does not change this position. The B&B use was not abandoned and continued until recently when it was lawfully changed back into a dwelling.

10. The COU facilitated a new open market house. Although no construction work was required to carry out the COU, Section 55 (1) of the Town and Country Planning Act 1990 makes it clear that a material COU is included within the definition of development.
11. In summary, for the reasons above and with reference to paragraph 56 of the National Planning Policy Framework, I find that the condition that the Council imposed is necessary and relevant to the development permitted to manage the uncontrolled growth of dwellings used for holiday accommodation, in accordance with Policy 5 of the FNP. To ensure that it is also enforceable, precise and reasonable in all other respects I have revised the wording of the condition, in accordance with the amended wording suggested by the Council. This follows more clearly the wording of Policy 5 of the FNP, and gives the Council the ability to request information from the occupier of the dwelling to ensure that the condition is being complied with.

Other Matters

12. There are several references before me to the Human Rights Act 1998 (HRA). Article 1 of the First Protocol of the HRA covers the protection of property and is a qualified right. Article 8 covers the right for respect for private and family life and is also a qualified right. A qualified right is a right that may be interfered with or infringed in order to secure an aim set out in the relevant article. This involves balancing the fundamental rights of individuals against the legitimate interests of others and the wider public interest.
13. It is clear from the evidence before me that the FNP went through the correct preparation and consultation process, which included a formal examination and a referendum. There is no evidence before me that leads me to conclude that it should not be considered as part of the development plan, or that I should give it or the relevant Policy less than full weight in the decision making process. The FNP explains why the Policy is considered necessary and further evidence before me refers to the housing crisis in Cornwall, the boom in house prices and the reduction in homes available to rent. It is suggested that the short-term holiday letting market has become more attractive for private landlords. For these reasons, it is clear that its aims and purposes are in the wider public interest.
14. I accept that the application of this Policy means that there will be many situations where two neighbouring dwellings will have different restrictions in terms of how they can be occupied. However, there is no mechanism by which the Policy can be applied to every dwelling in the FNP area. The Policy only applies to development that facilitates the delivery of new open market housing, where planning permission would be required.
15. The application of the Policy has had an impact on the appellant's ability to sell the building. It is not clear however from the submissions whether it has de-valued the building. Furthermore, I note that it is now in new ownership, so a sale must have been successful, freeing up the appellant to relocate to be close to a dependent family member. On the basis that there is a legal basis for the Policy restriction, that it has a legitimate aim and is necessary in a democratic society, a fair balance has been struck between the public interest and the rights of the individual. I am satisfied that the decision is therefore human rights compliant.

Conclusion

16. In conclusion, whilst the appeal is technically allowed, I have imposed a new condition with revised wording that has the same purpose as that which the Council originally imposed.

A Tucker

INSPECTOR