



Appeal Decision

Site visit made on 4 January 2023

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2023

Appeal Ref: APP/U1430/W/21/3287434

Lyndhurst, Main Street, Peasmarsh, TN31 6YA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Terence Denman against the decision of Rother District Council.
 - The application Ref RR/2021/879/P, dated 24 July 2021, was refused by notice dated 15 October 2021.
 - The development proposed is change of use from granny annexe/holiday let to separate residential dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from granny annexe/holiday let to separate residential dwelling at Lyndhurst, Main Street, Peasmarsh, TN31 6YA in accordance with the terms of the application, Ref RR/2021/879/P, dated 24 July 2021, and the location plan and block plan and drawing numbers DD/Lyndhurst/01, 02, 05 and 06 submitted with it, subject to the following condition:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.

Main Issue

2. The effect on holiday accommodation provision in the District having regard to local policies relating, in particular, to viability and marketing.

Reasons

3. The appeal concerns a building at the end of the long rear garden of Lyndhurst. It has a lengthy planning history but was originally permitted as a replacement garage and workshop with storage over. In 2017 planning permission was given for a change of use from ancillary accommodation to holiday let/granny annexe. The Council accepted variation to two of the original conditions in 2022 to allow the annexe to be used by family members or non-paying guests of the main dwellinghouse. Condition 7 confirms that the accommodation may also be used for holiday purposes.
4. Policy EC6 of the Rother Local Plan Core Strategy of 2014 deals with tourism activities and facilities. Proposals will be encouraged where they do not involve the loss of tourism accommodation unless there is no prospect of its continuing use. Similarly, Policy DEC3 of the Development and Site Allocations Local Plan (2019) aims to seek effective use of employment sites by retaining premises currently or last in such use, including tourism, unless it is demonstrated that

there is no reasonable prospect of its continued use. The approach to be taken in this respect is set out in Policy DCO1 which refers to evidence that the unit is not, or is not capable of being, financially viable.

5. In this respect, details have been provided of holiday bookings between May 2019 and December 2020. During this time there were 20 individual lets for a total of 181 nights at an overall occupancy rate of around 60%. Based on a site benchmark value of £170,000 the appellant's position is that the return achieved was less than 3% and well below the commercial value of 6% cited by the Council's advisors. Even if the period is reduced by omitting months when trading did not take place the yield is 4.45%. Indeed, the Council accepts that the holiday let use is not currently viable.
6. The data includes three months when there were Government restrictions on movement in place due to the pandemic. However, ignoring this period does not alter the overall position. Furthermore, in some months, such as October 2020, occupation was very close to 100%. It is therefore evident that usage picked up towards the end of 2020 and was not dampened in the aftermath of events earlier that year. Indeed, the evidence provided covers a reasonable time period and gives a realistic indication of the likely demand for holiday use.
7. The holiday let cottage was advertised by Rye and Beyond Holiday Let Cottages on over 45 websites. Coverage was therefore widespread so it is difficult to see how "proper" advertising might increase its appeal. Furthermore, the steps taken led to a high level of lettings between August and October 2020. Clearly any operator would pay close attention to costs but no specific suggestions are made by the Council as to how they could be meaningfully reduced. These considerations do not lead to a conclusion that the yield could be significantly improved in the future.
8. Therefore, in a commercial sense, the holiday use is not financially viable and the policy test to this effect in Policy DCO1(ii) is met.
9. That policy contains a second strand which requires proposals to be backed by a comprehensive and sustained marketing campaign. The policy wording further explains that the marketing should normally be for 18 months and offer the land for sale or rental at a realistic valuation. It is apparent from this that the marketing is aimed at ascertaining whether there is outside interest in buying or renting the premises concerned. This is not the same as advertising the building for rent as a holiday unit.
10. Therefore, the proposal to put the building to a different use would conflict with Policy DCO1(i) as no marketing campaign has been undertaken.
11. In an earlier appeal (Ref: APP/U1430/W/20/3250900), the Inspector remarked that the building is likely to be attractive to holiday makers in view of its location, standard of accommodation and the access to it. However, land south of Main Street is allocated for residential development in the Development and Site Allocations Local Plan (Policy PEA1). A recent application has been withdrawn but it should be assumed that the land will be developed one day.
12. Nevertheless, the exact relationship between any development and the appeal building is unknown although the open fields that adjoin it would inevitably change. Some short-term disruption is also likely during construction which may make the building less attractive for lettings. That said, the other

identified attributes of the building as a base for visitors to the area would not be affected. In short, the development proposed to the south-west would not render the building unsuitable for occupation for holiday purposes.

13. However, there are other considerations to weigh up. First and foremost, the building has another permitted use as an annexe providing additional accommodation for Lyndhurst. Indeed, the conditions refer to use for holiday purposes in the event that the annexe is not required. Moreover, the appellant indicates that the building is no longer used as holiday accommodation and has not been since January 2021. He is entitled to use the building solely as an annexe and his actions and intentions should be given considerable weight. Any objection to the loss of tourist accommodation is therefore considerably weakened as this is already accepted by the existing planning position.
14. The appellant has given details of 77 holiday let units that received planning permission between 2018 and 2022. The Council observes that more applications were submitted during 2022 and so are not recorded in this figure. Only two units are noted as having been lost as a result of planning decisions although the circumstances were different to this case. It is also stated by the Council that some applications for the loss of holiday lets have been refused and were then dismissed on appeal. However, no details have been provided about whether, as here, the accommodation in question already had an alternative use.
15. It is not known whether any of the permissions given over recent years have been implemented. However, the picture that is painted is of a healthy pipeline of proposals coming forward thereby increasing the supply of quality serviced and self-contained accommodation in line with general policy aspirations. There is no evidence to suggest that there is a dearth of such accommodation or that demand is not being met. In fact, the information provided points the other way. The findings of the Rother Hotel and Visitor Accommodation Futures – Final Report of 2013 are now somewhat dated and Policy DEC2 is concerned with the provision of holiday sites and so has no direct bearing.
16. To sum up, the bookings taken in 2019 and 2020 suggest no lack of demand for holiday accommodation in this location. However, the use is not viable as a commercial proposition. When operated by the owners of Lyndhurst the holiday lettings made a fairly modest profit. Set against that, the appellant has not operated the use for two years and there is no intention to resume it. The appeal building has a lawful and beneficial use as an annexe so that, as things stand, it is unlikely to remain unused. In other, similar cases involving the loss of tourist accommodation a flexible, permitted use may not exist.
17. The National Planning Policy Framework refers to a prosperous rural economy and tourism can play its part in this respect. However, there is no reasonable prospect of the continued use of the building to the rear of Lyndhurst as holiday accommodation. Moreover, there is nothing to explain the specific unacceptable effect that the proposal would have on provision within the area. On the contrary, the evidence suggests that, in practice, the impact on overall visitor provision and on the wider economy would be insignificant.
18. The proposed use would not be contrary to Policy EC6 or to Policy DEC3. The conflict with the marketing requirements of Policy DCO1 is outweighed by other considerations as outlined above.

Other Matters

19. Three previous appeals relating to the conditions limiting the use of the building and which would have allowed an unfettered residential use, have been dismissed.
20. In 2018 (Ref: APP/U1430/W/17/3186260) the appeal building was outside the development boundary of Peasmarch. That has been adjusted by the Development and Site Allocations Local Plan so that it now lies within that area. Consequently there is no objection to the proposal in principle. This application was supported by information about financial viability but the appeal decision in 2020 (Ref: APP/U1430/W/20/3250900) was made without it. An appeal was rejected (Ref: APP/U1430/W/20/3263664) in 2021 since amending the conditions as suggested would have exceeded the scope of an application made under section 73. This appeal is for a change of use to a separate residential dwelling and not for non-compliance with conditions.
21. Therefore, all of the previous appeal decisions at the site can be distinguished from this case as the relevant considerations were not the same.

Conditions

22. As no changes to the building would be undertaken there is no physical development to carry out. Therefore, the approved drawings are referred to in the decision itself.
23. Pedestrian access to the property could be gained along the single track to the east. An appeal decision in 2017 (Ref: APP/U1430/W/17/3166521) found that a significant length of that alleyway would remain unmade and unlit where people unfamiliar with the area might meet vehicles, could trip or stray. However, given that the track leads only to the stables it is likely to be lightly trafficked. Furthermore, future residents of the appeal building would soon become aware of the nature of the route and take any necessary precautions. Therefore, unlike that case, pedestrian access to the proposed dwelling would be safe as users would not be strangers to the area. As such, it is unnecessary to insist that the path alongside Lyndhurst be retained for that purpose.
24. Parking and turning facilities have previously been agreed and there is scope within the site for them. It is therefore unnecessary to require further details which it would be in the interests of future occupiers to keep available for their use. The Council also proposes conditions relating to water efficiency and accessibility relating to a new dwelling. However, as the building already has a residential use and could be occupied as an annexe at all times, these requirements are not reasonable. The building is well separated from neighbours and has a good level of external space associated with it. As such, the removal of domestic permitted development rights is not warranted.

Conclusion

25. Because of the particular circumstances of this case, other material considerations indicate that this appeal should not be determined in accordance with the development plan. It should therefore succeed for the reasons given.

David Smith

INSPECTOR