



Appeal Decision

Site visit made on 22 March 2023

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Appeal Ref: APP/Z0835/W/22/3301914

2 Matthews Field, Church Road, Hugh Town, St Mary's TR21 0NA

- 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 Mrs Carmen Stevens against the decision of The Isles of Scilly Council.
 - The application Ref P/22/009/COU, dated 17 January 2022, was refused by notice dated 15 March 2022.
 - The development proposed is described as "to create two self-contained apartments on the first floor roof space. One ground floor flat [owners accommodation] with two [ancillary] self-contained flats for short-let holiday accommodation".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has been put to me that the description in the online planning application submitted by the appellant to the Council was to '*Install 2 kitchenettes into our 2 x B&B rooms and build a porch*'. However, the full description of development in the planning application form submitted with the appeal is as per the banner heading above. Notwithstanding the appeal form and Decision Notice include different descriptions, the completed planning application form details what has been applied for. I have therefore determined the appeal on this basis.
3. The appeal property is a three-four bedroom dwelling, having been extended in the past few years through the addition of a dormer which allowed en-suites and sitting areas to be added to the first floor. Although it appears to have a long history of being used as a bed and breakfast (B&B) and the appellant has also provided tourism accommodation on the island for many years, there is no planning permission or lawful development certificate (LDC) before me formalising the use of the appeal property as a guesthouse/B&B.
4. It is not for me within the context of an appeal under section 78 of the Town and Country Planning Act 1990 to formally determine the lawful use of land. If a person wishes to ascertain whether a use is or would be lawful, the correct approach is for an application to be made under section 191 or 192 of the Act for a certificate of lawful use. The evidence before me is also not conclusive that there is a reasonable likelihood, on the balance of probability, that a LDC for use of the property as a guesthouse would be granted by the Council if such an application were made to them. Consequently, although the Council indicates that informal B&B uses are generally considered acceptable subject to certain considerations, the evidence indicates that the lawful use of the property is as a single family dwellinghouse.

5. At my site visit I observed that the proposed kitchenettes and porch had been constructed, albeit the porch had not been fully completed. I have determined the appeal on this basis.

Main Issue

6. The main issue is whether the proposed development would be acceptable in relation to development plan policies relating to tourism development.

Reasons

7. The works proposed are limited, internal works generally do not need planning permission, and I acknowledge that the appellant describes the appeal proposal as only involving the installation of two kitchenettes and the building of a porch. Nevertheless, given the description of development on the planning application form and the property's lawful use as a dwellinghouse, granting permission for the proposed development would effectively result in a change of use of the property.
8. As per the submitted plans, and as I observed on site, there would be access within the building between the proposed ground-floor owners' accommodation and the first-floor holiday accommodation. Although the proposed porch would improve access via the rear entrance and the owners may expect guests to use the front entrance, both floors would be physically accessible via both front and rear entrances. The first-floor accommodation would also not have an external, separate means of access. In addition, while the kitchenettes would allow guests to make their own meals, the appellant indicates their intention to continue providing them with breakfast. Accordingly, it seems to me that the proposal could not reasonably be described as fully sub-dividing the property and creating two additional entirely separate units of accommodation. However, allowing the appeal would not only permit the proposed physical works but also formalise the use of the property as, to my mind, a guesthouse.
9. Policy WC5 of the Isles of Scilly Local Plan 2015 to 2030 (LP) is therefore relevant. Part 5 of the policy sets out that proposals for a change of use of a dwelling where an informal B&B has been operating (and has not been subject to formal planning approval) will not be permitted under Part 1 of the policy unless a certificate of lawful use has been obtained to demonstrate that the use of the property as a C1 guesthouse is lawful. Based on the available evidence and the context I have set out above, granting permission for the appeal proposal would therefore conflict with Part 5 of LP Policy WC5.
10. Given the above context, Part 1 of Policy WC5, which sets out various circumstances where tourism development will be permitted, is also relevant. In the case of conversions, under e) of Part 1, this includes permitting proposals that do not result in the loss of homes that would otherwise be available for permanent occupation unless there are wider public benefits demonstrated to offset the loss of permanently available homes.
11. In this instance, because a guesthouse use of the property would be formalised were permission to be granted, the proposal would effectively result in the loss of a dwellinghouse use that would otherwise provide a home available for permanent occupation. In coming to this view, I have taken into account that the ground floor would still provide accommodation for the owners.
12. In terms of public benefits, various matters have been put forward, including extending the season and diversifying the tourism economy, providing eating facilities for guests staying out of season (including those working), improving sustainability by providing eco-friendly facilities and information, and a reduction in

water and energy consumption as visitors tend to have fewer showers when self catering and stay longer meaning less need to use washing and drying machines. However, although I recognise the importance of these, none of the matters, on the evidence before me, constitute wider public benefits that would offset the loss of a permanently available home. That the proposal would not conflict with the other elements (a-d) of Part 1 does not lead me to a different conclusion.

13. I recognise that the appellant has run a tourism accommodation business for several years, the appeal property is said to have been run continuously from 1967 to 1997 as a B&B, and that the local economy is based on tourism. However, for the above reasons and given the conflicts I have identified with Parts 1 and 5 of LP Policy WC5, these matters do not change my finding that the proposed development would not be acceptable in relation to development plan policies relating to tourism development. In coming to this view, I have also taken into account that the local plan is said to make no provision for minor changes needed to businesses caused by external circumstances.

Other matters

14. I note the appellant's reference to their discussions with the Council prior to submitting the planning application and their frustration regarding matters such as the advice they received prior to and after submission and the information available to them; the Council being aware previously of the appellant's intentions for the property to continue their established B&B business; not being offered a refund on the application fee; and the Council seeing the appeal as a test of its local plan. My attention has also been drawn to the appellant having signed two s106 agreements for other sites in relation to social housing issues. However, these matters are not determinative as to the acceptability of the proposal. I have therefore considered the appeal on its merits, based on the evidence before me and the relevant LP policies.
15. The Council has raised no concerns with regards to the effect of the development on the Isles of Scilly Conservation Area (CA) and Area of Outstanding Natural Beauty (AONB). Having visited the site and considered the proposal, including the appearance and limited size and visibility of the rear porch, I have no reason to disagree. Consequently, I find that the development would preserve the character and appearance of the CA and the natural beauty of the AONB.

Planning Balance

16. Given the conflict I have identified with LP Policy WC5, the proposed development would not be acceptable in relation to development plan policies relating to tourism development. Based on the submitted evidence, this leads me to conclude that the proposed development conflicts with the development plan as a whole.
17. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010. The Act sets out the relevant protected characteristics, which includes age and disability. Since there is the potential for my decision to affect persons with protected characteristics, I have had due regard to the three equality principles set out in Section 149 of the Act.
18. I acknowledge the appellant's concerns that obtaining a LDC may take some time and that they do not have the number of working years left to do so. However, LDCs are a proportionate means of achieving a legitimate aim, relate to the use of land rather than the circumstances of individuals, and the opportunity to obtain such a certificate and the requirement in LP Policy WC5 to have one in circumstances such as this applies equally to every applicant irrespective of who

they are. Overlooking the policy requirement based on, for example, someone's age, health/impairment or past endeavours would undermine the adopted development plan, which was found sound following examination in public. It would also not foster good relations between all persons equally and, it seems to me, would be neither reasonable nor justified in this instance.

19. In dismissing the appeal, the provision of holiday accommodation at the property would not be formalised and the proposed physical works would not be granted planning permission. However, having due regard to this, and to the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of dismissing the scheme on those with protected characteristics would still be justified and the decision would be necessary and appropriate having regard to the requirements of the adopted development plan. Furthermore, as I have found that the proposed porch is not harmful, it seems to me that the appellant could obtain permission for it via a separate planning application to the Council if they so wish, while internal works generally do not require permission. Given the Council's appeal submissions set out that it continues to not prohibit informal B&Bs, the evidence before me also indicates that dismissing the appeal would not mean that the appellant could not continue to offer some level of holiday accommodation, with or without kitchen facilities, at the property and thus continue their business. As such, waiting the requisite number of years in order to be able to obtain a LDC is not the appellant's only option and dismissing the appeal would thus not have a detrimental impact that would amount to discrimination.
20. It has been put to me that there is limited year-round accommodation available and that the appeal property provides accommodation for visiting workers, including council contractors and government and NHS staff, throughout the year. The cooking facilities in each room are also said to be needed because of the island's limited options and availability for eating out throughout the year but particularly in winter; the costs associated with travelling to Scilly meaning guests often want to make savings during their stay; and eating out not being viable for everyone due to rising prices, dietary requirements and people with health conditions (including in relation to coronavirus) and/or mobility issues. I recognise that the proposed facilities would also meet the changing demands of tourists and make the appellant's business more viable by attracting more out-of-season visitors, while the proposal would improve the property's energy efficiency.
21. Be that as it may, these matters do not outweigh the conflict I have identified with the development plan. As I have set out above, it seems to me that dismissing the appeal would also not inevitably mean that the appellant and Mr Stevens cannot continue to run their business and receive an income and pension from providing some level of accommodation within their home for both tourists and workers. In addition, I have little substantive evidence that the proposal is essential for the appellant to be able to provide accommodation throughout the year or for guests to be able to feed themselves.

Conclusion

22. The appeal proposal conflicts with the development plan read as a whole and there are no material considerations which carry sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is therefore dismissed.

T Gethin

INSPECTOR