



Appeal Decision

Site visit made on 4 April 2023

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/B3030/W/21/3271892

Kilvington Lakes, Vale of Belvoir, Newark, NG13 9PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Mr Freddie Reid against Newark & Sherwood District Council.
- The application Ref 20.02420.S73M is dated 7 December 2020.
- The application sought planning permission for the development of 34 self-catering holiday units, a 25-bed Inn building, Watersports building, Storehouse and Outfitters along with a commercial and educational unit, nature trails, cycle trails, pathways and family facilities and the re-routing a public right of way without complying with conditions attached to planning permission Ref 19/01097/FULM dated 23 January 2020.
- The conditions in dispute are Nos 17 & 18 which state that:
No 17: Notwithstanding the provisions of Part C, Class C3 "Dwelling Houses" of the Schedule of the Town and Country Planning (Use Classes) Order 2005, (or any order revoking or re-enacting that Order), the premises shall be used for the purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order.
No18: The site operator shall maintain a register of occupiers for each calendar year, which shall be made available for inspection by the local planning authority, at any time, and a copy of the register shall be supplied to the local planning authority at the end of each calendar year.
- The reasons given for the conditions are:
No 17: The development is located within the countryside where new residential development would not normally be permitted.
No18: To ensure that the accommodation is not occupied for residential purposes in a location where new residential development would not normally be permitted.
- This decision supersedes that issued on 17 May 2022. That decision on the appeal was quashed by order of the High Court.

Decision

1. The appeal is dismissed, and planning permission is refused.

Background and Main Issues

2. Planning permission was originally granted for the development in November 2015¹. This permission contained the two disputed conditions on this appeal case as well as one restricting occupation on the site to no more than 6 weeks per year. The removal of the condition restricting occupation to 6 weeks was

¹ 14/02023/FULM (the original planning permission)

allowed on appeal² following the Council's refusal of the planning application 19/01097/FULM (the subsequent planning permission), resulting in a new planning permission for holiday lets restricted in operation by the two disputed conditions in this appeal.

3. Pre-commencement conditions relating to phase 1 of the development have been discharged and I saw at my site visit that the development has commenced. There is no dispute that both planning permissions remain extant.
4. A decision dismissing an appeal against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with the two identical conditions subject to which both the original and subsequent planning permission was granted was quashed. In their judgement the judge found that there was no need for the Inspector to consider the 2015 permission³. The appellant confirmed in writing that he is content with that approach. I have therefore considered this appeal having regard to the two conditions on the 2020 planning permission.
5. The appeal is against the Council's failure to determine the application. That failure arose due to the Council's refusal to validate the application as it considered that removing the restrictive occupancy conditions attached to the permissions would go to the heart of the original permission which would go beyond the scope of the powers of S73 of the Act, particularly having regard to the Finney judgement⁴. However, the judge in the most recent judgement discounted that approach and determined that the removal of the conditions would still leave the operative part of the permission intact. Whether the disputed conditions are necessary and relevant is therefore a matter of planning judgement. The original planning application and, by association, this appeal are therefore valid. The Council has supplied, within its statement of case, the reasons it would have refused permission had it been in a position to reach a decision. With that in mind, the main issues are:
 - Whether conditions 17 and 18 are necessary and reasonable having regard to the location of the site in the open countryside
 - Whether the proposal makes an appropriate contribution to affordable housing if conditions 17 and 18 are removed;
 - The effect of the removal of conditions 17 and 18 on healthcare and public transport; and
 - The effect of the removal of conditions 17 and 18 on highway safety.

Reasons

Location

6. The Council's development plan outlines a spatial hierarchy of settlements to which new development would be directed to ensure, amongst other things, that new market housing is located in accessible settlements that have the services to support them. The appeal site lies in the open countryside outside

² APP/B3030/W/19/3239439

³ *Freddie Reid v SSLUHC & (IP) Newark & Sherwood DC* [2022] EWHC 3116 (Admin)

⁴ *Finney v Welsh Ministers* [2019] EWCA Civ 1868

- of any defined settlement in the hierarchy and is classed as being within the rural area.
7. Policy SP3 of the Newark and Sherwood Amended Core Strategy Development Plan Document 2019 (the CS) states that developments not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting. Policies to deal with such applications are set out in the Newark and Sherwood Local Development Framework Allocations and Development Management Development Plan Document 2013 (the DPD).
 8. The relevant Policy of the DPD, Policy DM8, states that development in the open countryside will be strictly controlled and limited to 12 types of development one of which is tourist accommodation which provides the policy basis for the original and subsequent planning permission on the site. New dwellings are allowed for only where they are of exceptional quality or innovative nature of design, reflect the highest standards of architecture, significantly enhance their immediate setting and are sensitive to the defining characteristics of the local area. That is not the case here and the removal of the conditions would not place the development in any other of the categories allowed by Policy DM8.
 9. I saw that Kilvington is a relatively small hamlet with little if any facilities to serve the day to day needs of residents. Travel would be necessary to higher order settlements. Although there is a bus stop close to the appeal site there is no dedicated footway to reach it. The roads here are narrow country lanes and therefore there is no safe route to reach the bus stops or indeed any dedicated safe cycle routes. In any case the bus service that is offered is extremely limited operating only twice within the day on a Wednesday and Friday to Newark and Bottesford.
 10. It is highly likely therefore that residents would be dependent on the car to access everyday services and facilities. Although planning permission is extant for some facilities as part of this wider development, there is no guarantee that these would be delivered on site and in any case, there would be very limited facilities providing the day to day needs of the local population. Even allowing for differences in rural and urban areas the near total dependency on the car would be contrary to both Policy SP7 of the CS and the National Planning Policy Framework (the Framework) which seek to minimise the need for travel, to move to a low carbon economy and promote sustainable transport.
 11. The appellant is of the view that given that the site has residential use and could be used for holiday lets for periods of up to 12 months then there would be no material change of use between the existing permitted use and that proposed. The Planning Practice Guidance states that a change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case. The appellant submits various appeal decisions and case law in support of his case concluding from these that the two main tests for determining the materiality for a change of use are the change in character of the use itself, including the land where it is located and effects of the change upon neighbouring uses and the locality.

12. Although I have taken these into account the majority relate to appeals against the refusal to grant a certificate of lawful use or development unlike the proposal before me now. In reaching their decision on the two similar cases (3190184 and 3195196) before me the Inspector concluded that the difference in transport movements was unlikely to be significant. In addition, some of the lodges were already in established residential use. Finally, the Council were at the time unable to demonstrate a five-year housing land supply and the Inspector gave significant weight to the social benefits of the scheme in contributing to the housing supply in the planning balance. These are all different to the appeal before me now. Nevertheless, I have still considered the relevant issues.
13. It is not disputed between the parties that the appearance of the development itself would remain the same and that it would not be harmful to living conditions of the occupiers of the surrounding houses.
14. The parties consider that a management agreement could be secured to control residential paraphernalia. However, that would need to be secured somehow, and in the absence of a legal agreement, I am not persuaded that a condition would be reasonable or enforceable. Someone occupying a house on a permanent basis is likely to want structures that would maybe not be required by a holiday let – a garage, a shed, a greenhouse are just a few of the structures that it would be reasonable to have at a permanent house. Furthermore, people putting their unique stamp on their property such as alterations to gardens, garden structures, fences would also be likely which would not be reasonable in my view to be the subject of a management agreement. While such features may not be particularly noticeable when considering one or two dwellings, it would be very different for what would amount to an estate of 34 dwellings on a much greater scale eroding the open nature of the area and its rural character contrary to Policy SP3 of the CS which requires that new development should not have a detrimental impact on the character of the location. As a consequence, there would be a real and harmful difference between the operation as private dwellings and holiday lets, no matter how long the holiday let.
15. With regard to trip rates, I have found, later in this decision, that there would be an increase in trip rates with the proposed method of occupation. There is likely to be a high dependence on the car due to the lack of access to other forms of transportation. While that may also be the case also if the site were used for holiday accommodation, the increase in trip rates mean that the situation would be worse. This would particularly be the case given people may be going to work and may have children who require transport even if they are aged over 50 as proposed.
16. I accept that the removal of the condition restricting the amount of time a holiday maker could stay on the site theoretically means someone could holiday for 12 months. However, the Inspector in his decision on the subsequent planning permission considered that “conditions 19 and 20 ensure that the holiday accommodation would be maintained in that use. This would prevent the site becoming available for permanent residential use. Consequently, by maintaining a list of registered occupiers an observer can easily identify any units with no occupant turnover. Without the restriction of condition 21 an occupant could remain on site for a prolonged period. However, this would be clearly evident on the register of occupants and would show a

lack of adherence to the terms of the approval". I would agree, the disputed conditions need to be complied with to ensure that the units are being occupied for holiday purposes only.

17. Therefore, on the basis of the evidence before me, there would be differences in the operation of that use and the use for permanent accommodation. For the reasons above I consider that the use for permanent houses would be more harmful, especially on the scale proposed.
18. Consequently, without conditions 17 and 18 in place the proposed 34 market houses would not accord with Policies SP3 and SP7 of the CS and Policy DM8 of the DPD. They are therefore necessary and reasonable in this respect.

Affordable housing

19. Policy CP1 of the CS requires that all housing proposals of 11 units or more provide 30% as affordable housing. The appellant is of the view that as these units tend to be lower cost to the buyer than an equivalent sized bricks and mortar homes, as well as allowing buyers to release equity and their larger homes to the market, then they fulfil the definition of affordable housing. An example is given of South Somerset District Council which provides support for these type of houses in its local plan.
20. However, there is no other substantive evidence before me regarding the cost of the units in comparison with local house prices. The Framework defines discounted market sales housing as that being sold at least 20% below local market values. Eligibility is determined having regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.
21. There is no legal agreement before me to ensure that the units are at a suitable discounted price or that they would remain so in the future. Consequently, the proposal would conflict with Policy CP1 of the CS.

Healthcare and public transport

22. The Clinical Care Commission Group on behalf of the NHS has made a request for a financial contribution on the basis that existing health infrastructure in the vicinity of the development is already operating at capacity and that this development, which is essentially permanent dwellings would place additional burden on the already at capacity health service. They have requested £33,388 in total (based on 34 lodges x £982 per lodge in line with the formula set out in the Council's SPD on developer contributions).
23. In my view, people are unlikely to register for a GP while on holiday, even if that may be for longer periods of time, other than maybe in an emergency. However, it is highly likely that permanent residents would register with a local GP, particularly if the proposal were to be limited to those over 50. I therefore consider the request is justified and would need to be secured by way of legal agreement.
24. Nottinghamshire County Council has stated that this development would require a public transport contribution towards improving the bus stop infrastructure at the two nearest bus stops of £10,600. However, given the extremely limited service available for residents I am not convinced that there would be wholesale use of the bus services. In any case there is no convenient

footway from the appeal site to safely reach the bus stops and therefore whether access to the buses were improved at the bus stop would be meaningless without safe access to them. Therefore, this is not necessary to make the development acceptable in planning terms.

25. There is no legal agreement before me to secure the required contribution to healthcare. As a result, the proposal would be contrary to Policy SP6 of the CS and Policy DM3 of the DPD which require that development include appropriate infrastructure provision.

Highway safety

26. Nottinghamshire County Council as Highways Authority consider that the impact of the development has not been properly considered or demonstrated, due to unagreed trip rates and the subsequent likelihood that the adjacent highway network has not been properly assessed in terms of capacity or safety.
27. The appellants Transport Assessment (TA) identifies that the existing peak flow traffic flow using the road where the appeal site is located is less than 140 vehicles per hour or less than three vehicles per minute at peak hour. Although I did not visit the site at peak hour, when I did traffic flow was very low and I have no reason to doubt the accuracy of the TA in this respect.
28. The appellant favours the figures provided in the TA for the proposed development, which it is intended would be for over 50's only, controlled by a condition, and utilises TRICS Retirement Flats category sites. Six sites were used and of those, two were for over 55's, two for over 60's and the other two unknown and therefore not directly comparable to the appeal scheme. The appellant adds further justification that those over 50 moving here would be likely retired or semi-retired. However, in my view, this is not a given, 50 is still a relatively young age when people will still be working or could have teenage children still at school or relying on parents for transport.
29. For similar reasons I am not convinced that the use of the TRICS Retirement and Care Community Category is the correct approach. I accept that this category may include higher rates of staff employed to look after those less able which would contribute to vehicle rates. However, due to shift patterns these may not always correspond with peak hours.
30. For completeness the appellant also includes figures for 34 privately owned housing units with no restriction presented as a worst-case scenario. However, it is evident from the appellant's statement that these sites include edge of town locations and therefore not directly comparable to the appeal site. The appellant then goes on to use just the data from the free-standing location which generates 177 movements throughout the day compared to 160 using edge of town and free-standing locations. I consider this comes closer to what would be more realistic traffic figures. When compared to the 92 arising from the 34 holiday accommodation units, there is a difference throughout the day. However, this does not necessarily equate to harm to highway safety.
31. The appellant goes on to model the operation of the junction using the PICADY junction analysis program and utilising double the maximum forecast traffic generation and double the maximum observed traffic flow. This confirms that the site access arrangements would operate within capacity. Even using the revised 177 movements per day, giving an increase in 85 vehicles above that

generated by the holiday lets this would increase the morning peak by 14 vehicles and the evening peak by 11 vehicles. I am not convinced, given the existing level of use that this increase would cause harm to highway safety.

32. For the reasons above I conclude that the proposal would lead to an increase in vehicle movements at the appeal site but not to a level that would cause harm to highway safety. The proposal therefore accords with Policy SP7 of the CS which in part seeks to ensure that the safety, convenience and free flow of traffic using the highway are not adversely affected.

Other Matters

33. While the Council can demonstrate a five-year housing land supply, Spatial Policy 2 of the CS makes provision for a minimum of 9080 dwellings. There is therefore no cap on the number of homes to be provided. The appellant has submitted a Housing Needs Assessment (HNA) assessing the unmet need for housing and the characteristics of need for the electoral ward of Farndon and Fernwood. This found, amongst other things, that the largest response to the household survey came from the over 50's who were the most likely to move home in the next five years. The proportion of older people is set to increase, house prices within the ward are higher than the district average and that demand within the ward exceeds supply for bungalows of all sizes. The report concludes that a balanced view of the various strands of evidence would suggest that a development of age restricted dwellings would be appropriate strategic action that would have long term benefits for the local community. The key will be building smaller dwellings suitable for older people to downsize into, freeing up larger detached homes for growing families. This is also reflected in the Council's District Wide Housing Needs Assessment 2020 which states that the 2020 household survey data indicates that older people are mostly living in 3 or 4-bedroom houses and 2 or 3-bedroom bungalows. Of those who intend to move home in the next five years, these households have strong aspirations and expectations to move to bungalows with 2 and 3 or more-bedrooms. Given the anticipated increase in older person households, it is important that the Council recognises the impact this will have on the range of dwelling types and sizes being developed over the plan period.
34. The specific units proposed can be manufactured and delivered quickly to meet the need identified by the appellant.
35. Policy CP2 of the CS concerns rural affordable housing and states such sites should be in or adjacent to villages and the need demonstrated by an appropriately constituted Housing Needs Survey. Policy SP3 of the CS states that local housing need in the rural areas will be address by focusing housing in sustainable, accessible villages.
36. The Council raise concerns regarding the way the HNA has been carried out at a ward level, which it considers to be too large an area, particularly given that there are already assessments of some of the settlements contained within the HNA. The Council defines local need as identified needs in the individual village, or second, the local area it serves (defined as being in the Parish in which it sits) (Newark and Sherwood Affordable Housing SPD 2013).
37. Irrespective of whether the HNA has been carried out appropriately or not, the housing is located in the open countryside and therefore would not comply with Policy CP2 or Policy SP3. I do not doubt that there is some need for housing,

and in particular bungalows for the older population and this would have a knock-on effect off freeing up housing for families. This is supported by paragraph 60 of the Framework which supports the Government's objective of significantly boosting the supply of homes, ensuring that a sufficient amount and variety of land can come forward when it is needed and that the needs of groups with specific housing requirements are addressed. However, it is important that such housing is in an appropriate location with access to services and facilities. Nevertheless, I give the identified need for the housing and the benefits to the housing market of bungalow accommodation for over 50's overall modest weight.

38. I give minor weight to the energy efficiency of the dwellings and the fact that they need less maintenance.
39. The appellant refers to the economic challenges associated with the ongoing Covid-19 restrictions across the UK associated with public health protection and earlier national lockdown, combined with substantial reductions in international tourism which now require the operators to take measures to ensure the ongoing and future viability of the site. Since that time, the appellant considers that there has been some recovery but refers to a report that identifies that, due to concerns regarding inflation and increasing costs of living, recovery may not be until the middle of the decade and businesses need to be flexible. Covid restrictions have been lifted, and there is no substantive evidence before me to suggest that the holiday lets would not be viable. I therefore give this limited weight.

Conclusion

40. If the two disputed conditions were removed the resultant development for 34 open market houses would be contrary to policies relating to the spatial strategy, affordable housing, accessibility and infrastructure bringing it into conflict with the development plan as a whole. The material considerations outlined above would not be sufficient to outweigh that conflict. Conditions 17 and 18 are therefore reasonable and necessary and the appeal is dismissed.

Zoe Raygen

INSPECTOR