



Appeal Decision

Site visit made on 2 May 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal Ref: APP/Y3940/W/22/3311505

Sambourne House, Sambourne Road, Minety, Malmesbury SN16 9RQ

- 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 Matthew James against the decision of Wiltshire Council.
 - The application Ref PL/2021/10000, dated 20 October 2021, was approved on 20 May 2022 and planning permission was granted subject to conditions.
 - The development permitted is retention of building for use as garage and 2 x holiday lets and retention of 2.3m high boundary wall.
 - The condition in dispute is No 2 which states that: *Notwithstanding Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification), the two self-contained units hereby permitted shall be used to provide holiday accommodation only, which shall not be occupied as permanent, unrestricted accommodation or as a primary place of residence. No person shall occupy the units hereby permitted for a continuous period of more than one week in any calendar month and it shall not be re-occupied by the same person(s) within 14 days following the end of that period. An up-to-date register of names and main home addresses of all occupiers shall be maintained and shall be made available at all times to the Local Planning Authority.*
 - The reason given for the condition is: *The site is in a location where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit permanent residential accommodation.*
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Decision

1. The appeal is allowed and the planning permission Ref PL/2021/10000 for retention of building for use as garage and 2 x holiday lets and retention of 2.3m high boundary wall at Sambourne House, Sambourne Road, Minety, Malmesbury SN16 9RQ granted on 20 May 2022 by Wiltshire Council, is varied by deleting condition 2 and substituting for it the following condition:
- 2) Notwithstanding Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification), the two self-contained units hereby permitted shall be used as holiday accommodation only, and shall not be occupied as permanent, unrestricted accommodation or as a primary place of residence. No person(s) shall occupy the units hereby permitted for a continuous period of more than 28 days in any calendar year and the units shall not be re-occupied by the same person(s) within 28 days following the end of that period. An up-to-date register of names and main home addresses of all occupiers shall be maintained and shall be made available at all reasonable times to the Local Planning Authority.

Background and Main Issue

2. The site is in the countryside where, in accordance with the Council's settlement strategy, development is only permitted in specified circumstances, such as for development related to tourism. For this reason, and in the interests of residential amenity and access, permission is unlikely to have been granted for the proposal had it not included a condition that the two units would be occupied only as holiday accommodation. As such, it is common ground between the parties that a condition restricting use of the building to holiday accommodation is necessary.
3. However, the appellant considers that it is unfair to restrict occupation to a specific number of days, and that there should instead be no limit. He also considers that the requirement for guests to provide their home addresses could breach data protection requirements, and that only the guests' names and dates of occupation should be provided. The main issue is therefore whether condition 2 is reasonable and necessary.

Reasons

4. Condition 2 (No 2) as worded in the Council's decision notice requires that a particular person or persons can stay in the accommodation for only one week in any calendar month and cannot re-occupy it within 14 days. The appellant has provided examples of cases¹ where no such time limit was imposed, and others² where a 28-day limit per year on particular persons (and no re-occupation within 28 days) was imposed.
5. The National Planning Policy Framework (the Framework) advises that planning conditions should amongst other things be enforceable. Without a restriction on the period of time that a person or persons can occupy the accommodation, I consider that it would be difficult for the Council to enforce its use as holiday accommodation without undue intrusiveness to the owners or occupiers.
6. In respect of the length of time of such occupation, the Council has provided an example³ of another case locally where a similar condition to No 2 was imposed. Each case must be considered on its own merits, and little evidence is before me to demonstrate that the period of occupation makes it difficult to let the appeal accommodation.
7. However, no specific reasoning for the imposition of the limit of one week has been provided by the Council. Legitimate holiday guests may well want to stay for a longer break of, for example, a few weeks. I therefore see no reason in this case for the strict limit of one week on the length of individual stays.
8. As with some of the examples provided by the appellant, I therefore consider that the period that a person or persons can occupy the accommodation should be 28 days in any calendar year, and with no re-occupation by the same person(s) in the following 28-day period. This would reduce the total number of days of occupation of any particular person(s) in any calendar year from those currently allowed by the condition. However, it would allow for longer individual stays and so would be more appropriate to holiday use.

¹ LPA references PL/2021/10981, 19/07951/FUL and PL/2021/09104

² LPA references PL/2021/11657 and PL/2021/11763

³ LPA reference PL/2021/09745

9. With regard to providing the main home addresses of guests, this is necessary to allow the Council to ensure that holiday use is maintained without excessively intruding on the appellant or their guests. I understand the concerns of the appellant and others about data protection. However, little substantive evidence of mishandling of such data by the Council has been provided to me.
10. I have no reason to believe that the Council would collect, hold or process this personal data other than sensitively and in accordance with the relevant legislation. A condition requiring such details is not uncommon and I note that many of the example cases provided by the appellant required that a register of guests' main home addresses had to be provided. As such, this element of the condition is reasonable and necessary.

Conditions

11. For the reasons given above, I have concluded that a condition is reasonable and necessary, but that as currently worded condition 2 would be excessive in its extent of control. The Council can exercise sufficient control by means of a condition worded as set out above. The Council has accepted that the wording of its original condition should be amended to refer to persons and units in the plural. This is necessary to make the condition precise and would not prejudice any party. These changes would accord with the advice in the Planning Practice Guidance and the Framework.

Conclusion

12. I conclude that the planning permission should be varied as set out in the formal decision.

O Marigold

INSPECTOR