



---

## Appeal Decision

Site visit made on 13 June 2023

**by Helen O'Connor LLB MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 June 2023**

---

### **Appeal Ref: APP/Q3305/W/22/3307642 Brookwell Cottage, Yarley, Wells BA5 1NU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Steve Harris against the decision of Mendip District Council.
- The application Ref 2022/0759/VRC, dated 7 April 2022, was refused by notice dated 25 August 2022.
- The application sought planning permission for the retention of use of outbuilding and for use as a holiday let and provision of additional car parking without complying with a condition attached to planning permission Ref 2020/1130/FUL, dated 21 January 2022.
- The condition in dispute is No3 which states that: *'The development hereby approved is for holiday let use only and/or ancillary to the residential use of the dwelling known as Brookwell Cottage, Wookey and shall not be occupied other than for purposes ancillary to Brookwell Cottage, Wookey or holiday accommodation and shall not be occupied as a person's sole or main place of residence. An up-to-date register of all occupiers on the site (including their main home address), shall be maintained and this information shall be made available at all reasonable times to the Local Planning Authority.'*
- The reason given for the condition is: *'Permission has only been granted in a location where isolated new dwellings would not otherwise normally be permitted because the development would result in economic benefits from the provision of holiday accommodation in accordance with Policies CP1, CP2 and CP4 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).'*

---

### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. On 1 April 2023 Mendip District Council ceased to exist with the former district forming part of the unitary Somerset Council. Nevertheless, in my heading above I have referred to Mendip District Council as that is consistent with the decision notice. So far as is relevant to the appeal case, the development plan remains the Mendip District Local Plan 2006-2029, Part 1 Strategy and Policies, December 2014 (LP1).

### **Background**

3. Condition 3 of planning permission 2020/1130/FUL limits the use of the appeal building to tourist accommodation or for purposes ancillary to Brookwell Cottage, a residential property. Notwithstanding the description of the development referring to use as a holiday let, both parties concur that the

removal of condition 3 would in effect give rise to an unfettered class C3 dwelling, and I have little basis to take a different view. The appellant seeks to remove condition 3.

4. The provisions of section 73 of the Town and Country Planning Act 1990 restricts my consideration to the question of the conditions subject to which planning permission should be granted.

### **Main Issue**

5. The main issue is whether the condition is necessary having regard to the location and accessibility of the appeal building and relevant local and national planning policies.

### **Reasons**

6. Core Policy 1 (CP1) of the LP1 sets out a spatial strategy that seeks to direct development to the five principal settlements within the former district. Thereafter, a hierarchy of villages is established whereby new development tailored to meet local needs in the rural areas is supported. It goes on to stipulate that development in the open countryside will be strictly controlled, such that only specified exceptions will be permitted.
7. The explanation for the strategy in CP1 outlines that this directs development to places where a range of employment opportunities, services, community facilities and other infrastructure can be accessed. This is reinforced by Development Policy 9 (DP9) of the LP1 requiring proposals to demonstrate where appropriate how they will improve or maximise the use of sustainable forms of transport, particularly by means other than the private car.
8. The strategy contained in the LP1 generally accords with the approach to rural housing set out in the National Planning Policy Framework (the Framework) which states that such housing should be located where it will enhance or maintain the vitality of rural communities but should avoid the development of isolated homes in the countryside unless permitted by exception. Moreover, the hierarchical settlement approach in the LP1 reflects that opportunities to maximise transport solutions will vary across the former district between urban and rural areas, as recognised in paragraph 105 of the Framework.
9. The appeal site is several miles from Wells, the nearest principal settlement. There is nothing to suggest that any public transport services run near to the site. The evidence before me would suggest that the closest village of Yarley offers few if any services. It is pointed out that there are some facilities within a range of 0.9-1.5 miles from the appeal site, but these are limited in extent. Moreover, the intervening roads include lanes that are narrow and poorly lit, with limited pavements. Combined with the distance, this would be likely to deter residents at the appeal building from regularly walking or cycling to and from those facilities. Furthermore, it is likely that residents would need to travel further afield to meet many basic day-to-day needs such as accessing employment, leisure, healthcare and shopping opportunities.
10. Consequently, I consider the location of the appeal site to be a remote, unsustainable location for a dwelling, resulting in undue reliance on the private car.

11. In reaching this view, I am mindful that there is a form of residential use in the building now, and as such those occupants would be reliant on the private car. However, owing to condition 3, it is either ancillary to Brookwell Cottage or occupied by people on holiday. In relation to the former, I anticipate there would be shared or joint trips minimising the overall number of journeys to and from the site. With respect to the latter, although occupied independently, the nature and frequency of trips is more likely to be recreational in nature.
12. In comparison to permanent residents, holiday let users would, for example, be less likely to be seeking routine or frequent access to education, employment and health facilities. Moreover, they would be more likely to travel together. Furthermore, unlike permanent residents, the appellant acknowledges that the likely activity of tourists would be seasonable and intermittent<sup>1</sup> which would reduce the number of trips associated with such occupants.
13. I accept the frequency and type of traffic movements would, to an extent, depend on the personal choices of specific occupants, but that is universally the case for all development. It does not follow that judgements reasonably based on generic movement characteristics are meaningless.
14. The removal of condition 3 would be likely to either generate an additional flow of movements to those associated with Brookwell Cottage or increase the frequency of trips to meet basic day-to-day needs. As such, it would exacerbate the reliance on the private car which would conflict with the strategy in the development plan to locate development where there is a reduced need to travel by private car. In addition, it would fail to promote sustainable transport as encouraged by section 9 of the Framework.
15. Amongst other things Core Policy 3 of the LP1 states that the Council will support proposals which extend the attraction of the area to visitors, and it is acknowledged that tourism is an important part of the Mendip economy. It is clear from the reason given for condition 3 on the Councils decision notice the economic benefits arising from the provision of holiday accommodation garnered weight in the positive decision, whereas an unfettered dwelling would have been unacceptable. This approach accords with paragraph 55 of the Framework, which requires local planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
16. The appellant contends that it is unlikely that the appeal building will become more than marginally profitable as a single business enterprise. However, the use has only relatively recently obtained permission and there is little substantive evidence to support the assertion. In any event, the condition wording allows the appeal building to be used ancillary to Brookside Cottage if not providing holiday accommodation.
17. It is put to me that that the proposal would accord with one of the exceptions set out in paragraph 80d of the Framework which allows for an isolated dwelling where it would involve the subdivision of an existing residential building. The caselaw<sup>2</sup> cited predated the current Framework and concerned the change of use of annexed accommodation from ancillary to independent residential accommodation. The court established that the subdivision of an

---

<sup>1</sup> Paragraph 5.17 Appellant's Appeal Statement of Case

<sup>2</sup> Wiltshire Council v SSHCLG & Mr W. Howse [2020] EWHC 954 (Admin)

existing residential dwelling within paragraph 80d) should be taken to mean the dwelling as one physical building rather than a wider residential unit encompassing other buildings. Allowing the sub-division of residential units by allowing separate buildings to become separate dwellings is beyond the limited exception allowed for in national policy and the wording of the present Framework reinforces that approach.

18. Hence, I cannot agree with the appellant's suggestion that the proposal would fall within the exception and find that the proposal would run counter to the thrust of paragraph 80 of the Framework.
19. My attention is also drawn to an appeal decision<sup>3</sup> concerning a holiday occupancy condition. However, that proposal related to a different site in a different county and consequently, separate development plan policies were applicable. Furthermore, the condition in that case only permitted use for holiday purposes, it did not also allow for ancillary residential use. Finally, it was made a considerable time ago, and the Framework has changed in the intervening period. Accordingly, given these significant differences in circumstances, it attracts limited positive weight in my determination.
20. Overall, I find that local and national policies relating to location and accessibility seek to resist an unfettered separate dwelling at the appeal site. Hence, the planning reasons for imposing condition 3 to limit the residential use remain, and therefore the condition is necessary. To act otherwise would conflict with the Mendip spatial strategy articulated in core policies 1, 2 and 4 of the LP1. This is further reinforced by the provisions of DP9 of the same document, which amongst other things, seeks to encourage alternative transport modes to the car.

### **Other matters**

21. It is highlighted that the proposal would not alter the character and appearance of the appeal building. Be that as it may, the absence of harm in this respect would not amount to a benefit but rather constitutes a neutral factor.
22. The appellant refers to a shortfall in the supply of deliverable housing land in the former Mendip district having persisted for some years. The most recent evidence provided refers to an appeal decision where the inspector found the supply in the former Mendip District Council area equated to a housing supply in the range of 2.87-2.94 years<sup>4</sup>. Furthermore, there are other factors, including local government reorganisation in Somerset and water quality considerations that could act as constraints on the ability to address the shortfall.
23. In these circumstances, paragraph 11d in the Framework deems that the policies which are most important for determining the application are out-of-date, and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
24. The permanent occupation of the building as a separate dwelling would be of some benefit to the supply of smaller rural houses, which garners additional weight given the extent of the shortfall in local housing supply. It is also likely

---

<sup>3</sup> Appeal reference APP/P1615/W/15/3049368

<sup>4</sup> Appeal reference APP/Q3305/W/22/3306827 dated 16.2.23

that there would be some associated social and economic benefits to the local community. Nevertheless, the degree of such benefits accruing from the occupation of the appeal building as a single additional dwelling would be limited. Therefore, overall the benefits attract limited positive weight.

25. As already mentioned, the removal of condition 3 would be at variance with the objectives to promote sustainable transport and the approach to rural housing in the Framework. I consider that the harm in this respect would significantly and demonstrably outweigh the benefits. Consequently, the presumption in favour of sustainable development would not support removing the condition.

### **Conclusion**

26. For the reasons given above I conclude that the appeal is dismissed, and the condition retained in its present form.

*Helen O'Connor*

INSPECTOR