



Appeal Decision

Site visit made on 23 May 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/C1760/W/22/3308397

Packridge Farm, Packridge Lane, Toothill, Hampshire SO51 9LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Chrissi Knight against the decision of Test Valley Borough Council.
 - The application Ref 22/00327/VAR, dated 8 February 2022, was refused by notice dated 26 August 2022.
 - The application sought planning permission for the erection of a single storey detached building to provide guest accommodation without complying with a condition attached to planning permission Ref TVS.01167/7, dated 12 July 2001.
 - The condition in dispute is No 4 which states that: *The building shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Packridge Farm on the approved plans.*
 - The reason given for the condition is: *To avoid the establishment of a separate unit of accommodation.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding what is stated on the application form, the evidence before me indicates that, as the appeal site has been occupied by longer-term residents not technically part of the household living at Packridge Farm since 2019, condition 2 had been breached prior to the application being submitted. Therefore, I have considered the development retrospectively.
3. Whilst the Council refer to the National Planning Policy Framework (2018) ('the Framework') on the decision notice, the most recent version was published in 2021. Therefore, I have determined this case based on the most recent version of the Framework as the relevant policy in place at the time of my decision.

Background and Main Issue

4. Planning permission has been granted for a single storey detached building, known as The Dairy, to provide guest accommodation, subject to a condition restricting the occupation of the building to the residential use ancillary to Packridge Farm. The appellant now wishes to remove or vary this occupancy condition.

5. Consequently, the main issue is whether the condition is reasonable or necessary having regard to local and national planning policies on the location of housing.

Reasons

6. The evidence before me indicates that The Dairy has been divided from the Packridge Farm landholding, resulting in the farmhouse no longer being in the ownership of the appellant. As The Dairy is occupied by the appellant, it is functioning as a separate dwelling. Although seeking to remain living in The Dairy, the appellant acknowledges that some form of occupancy restriction may be required on the basis that the condition imposed on the planning permission sought to prevent the creation of a separate unit of accommodation. Thus, within the application, the appellant proposed amendments to the condition which would limit the use of the building for the appellant or holiday accommodation or in accordance with any use which has deemed or express planning permission.
7. The Council have indicated that some form of holiday accommodation may be appropriate on the appeal site, supported by Policy LE18 of the Test Valley Borough Revised Local Plan 2016 (the Local Plan) which relates to tourist development proposals. However, the Council do not appear to have determined the planning application based on an alternative condition restricting the use solely for holiday accommodation. Nor is that reflected in the alternative condition suggested. As such, injustice may arise if I were to determine the appeal based solely on this use. In any event, the use of the property for holiday accommodation does not appear to meet the appellant's requirement to remain permanently living in The Dairy.
8. Similarly, although Policy LE16 of the Local Plan permits the reuse of buildings in the countryside for commercial or residential use, provided specific criteria are achieved, the suggested alternative condition does not seek to restrict The Dairy for solely one or other of these uses. Additionally, the criteria necessary to support residential development that complies with Policy LE16 have not been demonstrated.
9. The appeal site is located outside the boundaries of the hierarchy of settlements set out in Policy COM2 of the Local Plan. Therefore, for the purpose of the development plan, the site is located within the countryside where development is strictly controlled. Policy COM2 stipulates that development in the countryside will only be permitted if it is: a) appropriate; or b) essential to be located in the countryside. Although Policy COM2 identifies other policies relevant to assessing the type of development considered to be appropriate, none apply to the development. Furthermore, given that it is not essential that residential development be located in the countryside, exception b) is also not applicable.
10. The nearest settlement of North Baddesley includes a range of shops, services and facilities. Although occupants of The Dairy could walk, cycle or travel by bus to North Baddesley, as Packridge Lane is largely unlit and devoid of pavements or verges, it is not particularly appealing and, in some places, would be unsafe. Therefore, occupants of The Dairy would be reliant on the use of a private car for their daily needs, a scenario that Policy COM2 seeks to avoid unless overall social and economic benefits outweigh the disadvantages of a location that is relatively remote from facilities.

11. I sympathise with the personal circumstances of the appellant that led to the division of the Packridge Farm landholding and recognise that the appeal scheme would provide benefits to them. However, as set out in the Planning Practice Guidance, planning is concerned, in general, with land use in the public interest rather than the protection of purely private interests¹. As such, the weight I attach to these personal circumstances is limited. In addition, I have limited substantive evidence before me demonstrating that living in The Dairy is the only option available to the appellant.
12. Notwithstanding the lack of a condition imposed on another planning permission² restricting the use of the garden room extension to The Dairy, and irrespective of the appellant's interpretation of 'guest accommodation', this approval did not permit the use of the building as a separate dwelling. Moreover, the use of The Dairy as a separate dwelling does not fall within the use permitted by the original planning permission and, in any event, would be contrary to Policy COM2.
13. As the ownership of The Dairy has been severed from Packridge Farm, I appreciate that compliance with the occupancy condition is problematic to the appellant. However, it is not clear why the limitations of the condition were not considered during the division of the landholding. Even if The Dairy will become unoccupied following my decision or a legal agreement could be used to control its occupation, no such agreement has been provided. As such, I attach little weight to the difficulties the condition presents to the appellant.
14. Given the development would result in the creation of a separate dwelling in the countryside, which the original condition seeks to avoid, it remains relevant and necessary in the context of Policy COM2 of the Local Plan, regardless of any influence from the bed and breakfast business previously run from Packridge Farm.
15. Consequently, I conclude that the condition is reasonable and necessary having regard to local and national planning policies on the location of housing and the development conflicts with Policy COM2 of the Local Plan in this regard. I also find conflict with Chapter 5 of the Framework which requires housing in rural areas to be responsive to local circumstances and needs.

Other Matters

16. The site is located within 13.8km of the New Forest Special Protection Area (SPA) and close to the River Test which flows into the Solent region, including several SPAs and a Special Area of Conservation (SAC). The Council's decision notice included two reasons for refusal relating to these areas as it has not been demonstrated that the development would not cause harm to these European Sites. If the circumstances leading to the grant of planning permission had been present, I would have considered the impact of the development upon the SPAs, in accordance with the Conservation of Habitats and Species Regulations 2017. However, as I am dismissing the appeal on the main issue above, potential adverse effects in this regard would not arise from my decision.

¹ Paragraph: 008 Reference ID: 21b-008-20140306

² Council ref: 16/00643/FULLS, dated 4 May 2016

Conclusion

17. The development conflicts with the development plan as a whole and there are no material considerations, either individually or in combination, in this case, that suggest a decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

Juliet Rogers

INSPECTOR