



Appeal Decision

Site visit made on 3 October 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2023

Appeal Ref: APP/U2750/W/23/3320801

Appletree Cottage, Lovesome Hill Loop Road, Lovesome Hill, North Yorkshire DL6 2PB

- 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 Ms B Noda against Hambleton District Council.
- The application Ref 23/00454/MRC is dated 24 February 2023.
- The application sought planning permission for the change of use of redundant agricultural building to holiday accommodation without complying with a condition attached to planning permission Ref 22/02609/MRC, dated 21 February 2023.
- The condition in dispute is No 3 which states that: The occupation of the residential accommodation hereby approved shall be restricted to the applicant and their dependents, who can occupy the development on a permanent basis or alternatively the property can be occupied by holiday visitors for no more than eight weeks consecutively.
- The reason given for the condition is: in order to ensure that the occupancy of the property is in line with the requirements of Local Plan Policy.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of redundant agricultural building to holiday accommodation at Appletree Cottage, Lovesome Hill Loop Road, Lovesome Hill, North Yorkshire, DL6 2PB in accordance with the terms of the application, Ref 23/00454/MRC, dated 24 February 2023, without compliance with condition No 3 previously imposed on planning permission Ref 22/02609/MRC dated 21 February 2023 and subject to the following conditions:
 - 1) The access to the site shall be maintained in accordance with the following requirements:-
 - Any gates, barriers or other means of enclosure shall be erected a minimum distance of 4.5 metres back from the carriageway of the existing highway and shall open into the site.
 - That part of the access extending 4.5 metres into the site from the carriageway of the existing highway shall be made up and surfaced in accordance with Standard Detail number E6 and the Specification of the Local Highway Authority.
 - 2) Visibility splays providing clear visibility of 2.4 metres x 33 metres measured down the centre line of the access road and the nearside channel line of the major road shall be maintained at the junction of the access road with the county highway. These visibility areas shall be

maintained clear of any obstruction and retained for their intended purpose at all times.

Applications for costs

2. An application for costs was made by Ms B Noda against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal is made against the Council's failure to give notice of its decision within the prescribed period. The Council has set out its case in its appeal statement.
4. Hambleton District Council has merged with several councils to form North Yorkshire Council. The development plans for the merged local planning authorities will remain in place for the area within the new authority until such time as they are revoked or replaced. I have determined the appeal on this basis.
5. The governing permission is described in the evidence as reference 2/05/072/0008C. In November 2022, an application was submitted that sought to remove the holiday occupation condition (condition 5) that was imposed on this permission. This application, reference 22/02609/MRC, was approved on 21 February 2023. It removed the occupancy condition but imposed a personal occupancy condition (condition 3). The application form for the appeal proposal sets out that the appellant wished to remove condition 5 from permission 2/05/072/0008C. However, the Council changed the development description to relate to the removal of the occupancy condition attached to permission reference 22/02609/MRC.
6. The Council publicised the application on this basis. The appellant has confirmed that they were aware of this changed description and does not consider themselves prejudiced by the development description used. I am satisfied that in accepting this amended description, it would not cause prejudice or injustice to any interested party. I have therefore determined the appeal on this basis.

Main Issue

7. The main issue is whether it is necessary and reasonable to restrict the occupation of the dwelling to the named person and for holiday purposes, with regard to the development strategy for the area.

Reasons

8. Since the original permission was granted, the Hambleton Local Plan (2022) (the Local Plan) has been adopted. Policy S5 addresses development in the countryside and sets out criteria for the conversion of existing buildings. None of the criteria seek to control the occupancy of rural conversions. The criteria appear to relate to the original act of conversion, and in this regard, I note the Council's statement that the application of the policy is only relevant where it deals with a building that is redundant or disused. That is not the case here as the conversion has taken place and the building has been used for residential purposes for a number of years, albeit restricted by an occupancy condition.

9. Policy S1 of the Local Plan sets out a number of sustainable development principles. Although the property is not located within a defined settlement, it lies within a small ribbon development of other mainly residential properties and so is not far away from other buildings and people. I do not consider that the removal of the condition would lead to a new isolated home in the countryside.
10. Residents of the property would have to travel to higher order settlements in order to access facilities and services to meet their day to day needs. The property is on the main Northallerton to Darlington bus route although no information is presented about the frequency of the service. The appellant is already using the property for residential purposes and so will be currently travelling to services and facilities in the area. Furthermore, occupants using the property as holiday accommodation would likely travel to the site by private motor vehicle and rely on this mode of transport to journey around the local area for sightseeing and to access services and facilities. In my judgement, the difference in the amount of transport movements with and without the occupancy condition would unlikely be significant.
11. The property has a small domestic garden to the front and a larger area to the rear. It is well screened in the surrounding area by vegetation and has comparable materials to other buildings in the vicinity. No changes are proposed to the property. The removal of the occupancy condition would not appreciably alter the property in terms of its appearance or function. Its use as general market housing would not therefore harm the character and appearance of the area.
12. The use of the property for general market housing as opposed to one with the restricted occupancy would have similar effects in terms of highway safety and the living conditions of nearby residents. Accordingly, the removal of the occupancy condition would not have a materially greater effect on highway safety or the living conditions of nearby residents in terms of noise and disturbance, privacy or vehicle movements.
13. The proposal would therefore accord with the design objectives of Policy E1 of the Local Plan and chapter 12 of the Framework.
14. There is no clear evidence before me that there is a shortage of holiday accommodation in the area.
15. Even if Policy S5 is applicable to the appeal proposal, for the reasons given above, there would be no conflict with its relevant requirements.
16. In conclusion, based on the specific circumstances of the appeal proposal, it is not necessary or reasonable to restrict the occupation of the dwelling to the named person and for holiday purposes, with regard to the development strategy for the area.

Other Considerations

17. The Equalities Act 2010 (the Act) sets out the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and

those who do not. Amongst other things, for the purposes of the Act, protected characteristics include disability.

18. I have given the appellant's personal circumstances very careful consideration. The condition as currently worded would allow the appellant to use the property as their main residence. Retaining the condition would not therefore require the appellant to move out of the property. The appellant contends that the occupancy condition puts them at a disadvantage in numerous ways, including the ability to obtain a mortgage or home improvement loan on the same terms as an able-bodied person could do without any restrictive condition in place. Nonetheless, no compelling evidence has been submitted to substantiate this statement. However, this does not alter my conclusion on the acceptability of the appeal proposal.

Conditions

19. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I shall therefore reimpose conditions 1 and 2 which relate to highway safety matters.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed.

F Wilkinson

INSPECTOR