



Appeal Decision

Site visit made on 26 March 2024

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2024

Appeal Ref: APP/E2001/W/23/3328740

Mill Hills, Main Street, Bishop Wilton, East Riding of Yorkshire YO42 1RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (as amended) 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 Julie Roberts against the decision of East Riding of Yorkshire Council.
 - The application Ref is 23/01297/VAR.
 - The application sought planning permission for erection of four holiday cottages without complying with conditions attached to planning permission Ref 03/03974/PLF, dated 28 October 2003.
 - The conditions in dispute are Nos 8 and 9 which state that:
Condition 8 - The development shall only be used for holiday accommodation and not for permanent residential occupancy.
Condition 9 - The site shall not be occupied between 8th January and 8th February in any one year.
 - The reasons given for the conditions are:
Condition 8 - This condition is imposed as the site is in open countryside and the development has only been granted consent for holiday accommodation.
Condition 9 - This condition is imposed to allow the Local Planning Authority to control the use of the development in detail and to ensure that the site is not used for permanent accommodation.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of four holiday cottages at Mill Hills, Main Street, Bishop Wilton, East Riding of Yorkshire, YO42 1RX in accordance with the application Ref 23/01297/VAR, without compliance with condition numbers 8 and 9 previously imposed on planning permission Ref 03/03974/PLF dated 28 October 2003 and subject to the following conditions:
 - 1) Apart from Lodge 2 shown edged red on plan 949/23, the development shall only be used for holiday accommodation and not for permanent residential occupancy.
 - 2) Apart from Lodge 2 shown edged red on plan 949/23, the site shall not be occupied between 8th January and 8th February in any one year.

Preliminary Matters

2. Based on the submitted evidence, the appeal property has been occupied for residential purposes. I have therefore dealt with the appeal under section 73A of the Town and Country Planning Act 1990 (as amended).

3. The application to vary conditions 8 and 9 was made in respect of Lodge 2 only. No application is before me in relation to Lodges 1, 3 and 4. Therefore, in substance, my appeal assessment is based on Lodge 2 only, as shown edged red on plan reference 949/23 and not in relation to Lodges 1, 3 and 4.
4. The description of development on the Council's decision notice is "Variation of Condition 8 (occupancy restrictions) and Condition 9 (occupancy restrictions) of planning permission 03/03974/PLF - Erection of four holiday cottages to allow for holiday occupancy restrictions to relate to lodges, 1,3 and 4 only". Paragraph 7.13 of the officer report to committee concludes that condition 9 can be removed. This is reiterated in the overall conclusion of the officer committee report at paragraph 8.3 where it states, "As this application is submitted to vary conditions in the 2003 consent for lodge no.2 only, it is recommended that condition 8 must remain given the conflict with the development plan and condition 9 can be removed". The reason for refusal on the decision notice reflects this conclusion as it only refers to condition 8. In relation to the reason for refusal, the appellant states that "Confusingly, this relates only to condition no. 8 and no mention is made of condition 9".
5. In response, the Local Planning Authority's (LPA) appeal statement sets out that "There is no confusion in the decision made at Committee. The report clarifies the officer's position that they would not object to the removal of condition 9 with a clear justification, whilst also being clear why there were reasons to refuse condition 8". When the decision notice, which includes in the description of the proposal reference to condition 9, is read alongside the officer committee report and planning application form, I find that the LPA has expressly approved Lodge 2 without compliance with condition 9. There is no evidence from the LPA that it disagrees with this finding. Furthermore, it is noteworthy that the evidence indicates that it does not raise an objection to the removal of condition 9. Consequently, my assessment relates only to condition 8 and in respect of Lodge 2 only.

Main Issue

6. The main issue is whether it is necessary and reasonable to restrict the use of Lodge 2 to holiday accommodation and not for permanent residential occupancy having regard to the development strategy for the area.

Reasons

7. The appeal property, Lodge 2, is one of four timber lodges arranged around a large pond. It is built on brick and concrete foundations with a tiled roof. Having inspected the property and been able to attest to the standard of accommodation and being mindful of the judgement¹ referenced by both main parties, I am satisfied that the nature of Lodge 2 is that it is a residential use, albeit one limited to holiday use by planning condition. The variation sought by the appellant would effectively mean that Lodge 2 would be an open market dwelling.
8. Policy S1 of the 2016 adopted East Riding Local Plan Strategy Document (the ERLP SD) sets out a presumption in favour of sustainable development. Policy S2 supports a reduction in greenhouse gas emissions. To support these policies, Policies S3 and S4 of the ERLP SD set out the development strategy

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

for the area which aims to direct most new development to areas where there are services, facilities, homes, and jobs and where it can be served by the most sustainable modes of transport. The framework for achieving this is the Settlement Network contained in Policy S3. This consists of land within the development limits of specified Major Haltemprice Settlements, Principal Towns, Towns, Rural Service Centres, and Primary Villages. Policy S4 states that outside of a development limit land will be regarded as the Countryside.

9. Lodge 2 lies around 150 metres outside the defined development limit of Bishop Wilton. For development plan purposes therefore, it is within the Countryside.
10. Part A of Policy S4 supports new development in a number of named Villages and the Countryside in order to maintain their vibrancy, subject to certain criteria being met. In addition, Policy S4 is clear that development in the Countryside should also accord with the specific provisions of part C of the policy. Part C supports residential development in the Countryside in specified circumstances: conversion of buildings subject to certain criteria; replacement dwellings; new dwellings of exceptional quality or of truly outstanding innovative design; affordable housing for local people; agricultural, forestry or other rural-based occupational dwellings subject to demonstrating an essential need. Based on the evidence before me, the removal of condition 8 from Lodge 2 would not place it in any of the categories supported by part C of Policy S4.
11. The location of Lodge 2 is outside a settlement in the Countryside. It is not uncommon for tourist accommodation to be located in countryside locations, and I note that tourism development is one of the development types supported by part C of Policy S4. However, it is not a location where Policy S4 would support the unrestricted residential occupation of Lodge 2.
12. Paragraph 84 of the December 2023 National Planning Policy Framework (the Framework) seeks to avoid the development of isolated homes in the countryside unless one of the listed circumstances apply. There are a number of scattered buildings located in the vicinity. These are predominantly timber holiday lodges along Thorny Lane and the three lodges on the same site as Lodge 2. A dwelling lies further to the west on Belthorpe Lane. However, even if Lodge 2 is not considered to be an isolated home in the countryside in the context of paragraph 84 of the Framework, this does not alter the fact that it is in a countryside location, nor does it overcome the proposal's conflict with Policy S4 of the ERLP SD.
13. Lodge 2 has the attributes of a dwelling, having the facilities required for day-to-day private domestic existence. In the event of the appeal being dismissed, it would continue to function as a dwelling, albeit restricted to holiday accommodation. The question therefore arises as to whether there are material differences between the property being used for holiday accommodation and its use as an unrestricted, permanently occupied dwelling.
14. I appreciate that trips by private vehicle would be generated by both holiday makers and permanent residents. Traffic movements would be generated by the arrival and departure of holiday makers, trips to recreational/visitor destinations and the servicing of the accommodation. There are some services and facilities within Bishop Wilton, including a village shop, primary school, church, pub, and a bus service between Pocklington and York although no detail is before me on the regularity of this service. However, the property is

reasonably remote from a range of higher-level services such as employment, health care, and a wider range of retail and recreation and leisure facilities. These would be more important for permanent residents than holiday guests, and such residents would be located away from those services and facilities that would often be required. This would lead to a different pattern of vehicle movements to a holiday maker who would not be so dependent on accessing similar local services.

15. I appreciate that the appellant works at a local business and so does not have to travel for employment. However, this may not be the case for future residents of the property.
16. While recognising that opportunities for sustainable transport solutions varies between rural and urban areas, the proposal would not support the locational aims of the ERLP SD or the Framework to minimise the need for travel, to move to a low carbon economy and promote sustainable transport.
17. Consequently, being located within the Countryside and outside of the development limits of Bishop Wilton, the proposal to vary condition 8 in respect of Lodge 2 would not accord with Policies S1, S2 and S4 of the ERLP SD. Together these policies seek to focus new development within the development limits of existing settlements, taking into account the need to support sustainable patterns of development.

Other Considerations

18. I am satisfied that the LPA has allowed Lodge 2 to continue without compliance with condition 9. However, the evidence is that condition 9 remains in respect of the other lodges on the site. It is necessary that I still consider condition 9 but only in so far as it concerns the other lodges.
19. Concerns have been raised about the enforceability of condition 9. I appreciate the burdens that can be placed on LPAs in pro-actively monitoring such conditions. However, there is scope for LPAs to reactively respond to complaints that may be received about potential breaches. In my view, the points raised relate more to the practicalities of enforcing condition 9 rather than it being a condition that cannot be enforced.
20. My interpretation is that condition 9 does not duplicate the restrictions and controls of condition 8. Rather, in my view, when taken together, conditions 8 and 9 provide a precise and enforceable means of ensuring that Lodge 2 is not used for permanent residential occupation. However, as set out above, the LPA has approved the use of Lodge 2 without compliance with condition 9. In this regard, I find that condition 8 on its own is not sufficiently precise or enforceable to ensure that Lodge 2 is not used for permanent residential occupancy. Without condition 9, or some other additional means of control or restriction, I do not consider it possible to distinguish between Lodge 2 being used for holiday accommodation or permanent residential occupancy. Consequently, in my judgement, without condition 9 or some other additional means of control or restriction, condition 8 as it applies to Lodge 2 would not meet the tests for conditions set out in paragraph 56 of the Framework.
21. There is scope through the section 73 application process to impose new conditions as a new permission would be granted. However, there is no explicit agreement between the main parties as to an alternative wording for condition

8. Furthermore, the application made by the appellant does not relate to the other lodges, it relates only to Lodge 2. The owners/occupiers of the other lodges have not been expressly involved in the appeal process. In addition, and in any event, condition 9, as it relates to the other lodges, in my judgement already provides a suitable and necessary level of control when it is read alongside condition 8.

Planning Balance and Conclusion

22. I have concluded that the proposal would conflict with the development plan. However, the LPA has allowed the use of Lodge 2 without compliance with condition 9. In effect, this is now a fallback position. Furthermore, the LPA confirms in its officer committee report that it had no objection to this condition being removed in so far as it relates to Lodge 2. In this context, I find that the retention of condition 8, in so far as it relates to Lodge 2, would not provide suitable precision or enforceability, and hence would not meet the tests for conditions set out in paragraph 56 of the Framework. This is a matter that is sufficiently weighty, as a material planning consideration, to outweigh the identified conflict with the development plan.
23. Accordingly, I conclude that the appeal should be allowed in so far as it relates to condition 8 and Lodge 2.

Conditions

24. Decision notices for the grant of permission under Section 73 should restate the conditions imposed on earlier permissions that continue to have effect. Accordingly, those conditions that I consider remain relevant will be imposed albeit that they are amended to reflect my conclusion above and in respect of Lodge 2.

F Wilkinson

INSPECTOR