



Appeal Decision

Site visit made on 21 February 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Appeal A Ref: APP/V2635/W/23/3322063

72 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 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 Mr Nigel Marsh against the decision of King's Lynn and West Norfolk Borough Council.
- The application Ref 23/00022/F, dated 6 January 2023, was refused by notice dated 24 March 2023.
- The application sought planning permission for proposed change of use of existing agricultural buildings to holiday home use without complying with a condition attached to planning permission Ref 12/00197/F, dated 24 May 2012.
- The condition in dispute is No 12 which states that: The development hereby approved shall be carried out in accordance with the following approved plans:
 - Site Plan, scale 1:500, received 08/02/2012
 - Drawing No. NP 0259-07, Site Plan, received 08/02/2012
 - Drawing No. NP 0259-05, Plans as Proposed, received 22/02/2012
 - Drawing No. NP 0259-06, Elevations as Proposed, received 18/04/2012;
 - Drawing No. NP 0259.VS.03, Vision Splays to access, received 04/05/2012.
- The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is allowed and planning permission is granted for proposed change of use of existing agricultural buildings to holiday home use, at 72 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB, in accordance with the terms of the application, Ref 23/00022/F, without compliance with Conditions 1, 2, 3, 4, 9, 10, 11 and 12 previously imposed on planning permission 12/00197/F dated 24 May 2012 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. I have determined two other appeals¹ relating to the same site. These appeals relate to different matters and so are the subject of separate decisions.
3. The application form states that development has been completed. However, for reasons expanded on below, the amended plans before me do not fully correlate with the development observed on site. Therefore, for the avoidance of doubt, I have determined the proposal on the basis of the plans, rather than the observed works on site.

¹ Appeal References APP/V2635/W/23/3322299 and APP/V2635/W/23/3325640.

4. I sought the main parties' views on the relevance of the judgment in *Finney*² to the proposal, with respect to the consistency of the works proposed on the amended plans with the approved description of development. Having considered the responses received and noting that the originally approved plans included operational development not specifically set out in the description, I am satisfied that the development shown on the proposed plans would not be inconsistent with the operative part of the original planning permission. Therefore, the proposal can be considered under Section 73.
5. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this does not alter the main parties' cases and it is not necessary to seek further comments. References hereafter are to the December 2023 version.

Applications for costs

6. An application for an award of costs has been made by Mr Nigel Marsh against King's Lynn and West Norfolk Borough Council. An application for an award of costs has also been made by King's Lynn and West Norfolk Borough Council against Mr Nigel Marsh. These are the subject of separate decisions.

Background and Main Issues

7. The site has a detailed planning history. Planning permission was granted in 2012 for the change of use of existing agricultural buildings to three holiday let units. A separate building is shown as a shared games room on the approved plans. The appellant indicates development was completed in accordance with the approved plans around December 2019, with 'minor amendments' made since, including additional doors and windows, and internal alterations.
8. The Council opened an enforcement investigation in 2022 on the basis that the development had not been carried out in accordance with the approved plans, a breach of the disputed Condition 12. The appeal proposes to amend the plans approved under Condition 12.
9. Paragraph 56 of the Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance adds that these six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.³
10. Based on the Council's reasons for refusal, the main issues are whether the disputed condition meets the aforementioned tests, having regard to the suitability of the development in terms of flood risk, the location of holiday accommodation and the effect on protected ecological sites. However, before this, I must address matters in dispute which have led to the Council's reasons for refusal, as these inform the assessment of the proposal that must subsequently be made.

² *Finney v Welsh Ministers & Others* (2019) EWCA Civ 1868

³ Paragraph: 003 Reference ID: 21a-003-20190723

Reasons

11. The Council contends that the games room has been sub-divided into separate rooms, each with kitchenette and bathroom facilities, for letting as additional units. It includes screenshots from a holiday lettings website dated November 2023 purporting to show at least one of the sub-divided rooms as being available for separate let. The appellant disputes the Council's characterisation of the development, describing the separate games rooms as 'ancillary' to the main use and that no intensification of the use has occurred, nor is one sought through the application.
12. The Council's first reason for refusal embodies its position that the works undertaken are 'tantamount' to the creation of additional residential accommodation, which would not be supported due to the site's location in an area of high flood risk. The second and third reasons for refusal flow from this assertion that additional accommodation has been created, namely the requirement to produce a business plan to justify new tourism accommodation and to secure mitigation for additional recreational pressure on protected sites.
13. I saw on site that the building at issue between the parties was laid out as three separate rooms, each with a kitchenette, shower room/WC and an otherwise open plan space. They were respectively presented as a games room with pool table, a photography studio and a gym/sport equipment store. These closely reflect possible recreational uses of the spaces listed by the appellant in their statement of case. The fourth room in the building was in use as a store for bed linen and other supplies.
14. I also observed that the original Unit 3 has been subdivided into two separate units. The smaller unit, described on the proposed plans as an office, was laid out with what appeared to be living space on the ground floor and a bedroom upstairs and named 'The Hayloft' on the door. Parts of the other building (Units 1 and 2) were undergoing refurbishment at the time of my visit.
15. Despite seeing the site and noting the aforementioned history and points of dispute, the evidence before me is inconclusive in many respects, with limited detail of the Council's enforcement investigations and differences between the existing plans, the proposed plans and what has been built on site. However, notwithstanding the situation on the ground, or the evidence advanced by the Council, it is ultimately the development applied for and as shown on the submitted plans that I must assess. The appellant has clearly stated that the sub-divisions are not proposed as additional accommodation, but as ancillary space associated with the three existing holiday units. The annotations on the plans reflect this.
16. While the Council has misgivings over the appellant's intentions for these rooms, it was required to assess the proposal as made, not the proposal that it believed reflected the situation on the ground or the suspected breach of planning control. It is also not my role in this appeal to determine if a breach of planning control has or has not occurred. Whether any approval of the submitted plans still results in a discrepancy between what is approved and what exists on the site is a matter for the main parties to address separately.
17. In light of this, I consider the issues cited in the Council's reasons for refusal on the basis of the layout and usage of rooms as shown on the plans before me.

18. In simple terms, no additional holiday accommodation is proposed on the plans. The individual games rooms would be in the same use as originally approved. Consequently, the development sought would not materially increase the flood risk vulnerability of the site such that it would result in an unsustainable form of development. No conflict therefore arises with Policies CS01, CS08, CS11 or CS18 of the Core Strategy (July 2011), or Policy 9 of the Heacham Neighbourhood Plan (June 2022) (the HMP).
19. Similarly, as no increase in the number of holiday units is proposed, it is not necessary for the appellant to provide a business plan, and no conflict arises with Policy DM11 of the Site Allocations and Development Management Policies Plan (September 2016) (SADMP). For the same reasons, it is not necessary to require mitigation for additional recreational impacts on nearby protected sites, and no conflict arises with Policy DM19 of the SADMP or Policy 9 of the HMP.
20. The Council describes the change as a 'retrograde step' in terms of the functionality of the smaller rooms compared to a larger room. I am not convinced by the appellant's arguments that separate spaces are more functional than a single, larger space; however, there is nothing in any policy put to me that requires a games room as part of a holiday development, less so one of any specific size. In this respect, the change from one large, shared space to smaller, individual spaces would not have a material effect on the quality of the accommodation otherwise provided by the main units, which are generous in floorspace and have a full range of facilities.
21. The smaller games rooms, given their layout and facilities, could feasibly be rearranged to be rented out as separate accommodation. However, the original permission includes Condition 5, which states that development shall only be carried out in accordance with the approved flood risk assessment of March 2012 and specific mitigation measures including that no bedrooms/sleeping accommodation shall be located on the ground floor.
22. I am satisfied that the amended plans, if granted, would not result in conflict with the original Condition 5, as the plans do not show sleeping accommodation on the ground floor. The plans also do not show additional holiday let units beyond the three originally approved. As already set out, any subsequent difference between those plans and what exists on site would be a matter for the landowner to address separately with the Council.
23. I have noted the appellant's points that the internal subdivision of the games room would not amount to development under Section 55 of the Act, but it is not necessary for me to reach a finding on this matter, as it would not be determinative in light of my findings above.
24. For the reasons set out, therefore, I conclude that the appeal scheme does not conflict with the development plan in respect of flood risk, the location of holiday accommodation or the effect on protected ecological sites.

Other Matters

25. The Council did not refuse the application on the basis of the design of external works shown on the amended plans, including a single storey extension and link building to the rear of Unit 1. Having observed the site, the buildings are set well back from the road and within an enclosed courtyard. These extensions and other external alterations to the existing buildings are minor in nature and

do not significantly alter the overall appearance or quality of the development, nor do additional doors and windows create opportunities for overlooking of neighbouring properties.

Conclusion

26. Having found the amended scheme acceptable, it is not necessary to retain the plans approved under Condition 12 of the original permission in order for the proposal to accord with the development plan. Therefore, the appeal should be allowed, with the original Condition 12 removed and replaced by a new condition setting out the amended plans, to ensure there remains certainty as to the development approved.

Conditions

27. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged, and with the exception of the time limit.
28. Conditions 9, 10 and 11 originally attached to Ref 12/00197/F were removed under permission 22/02233/F, their purpose having been superseded by permission 21/00080/F. As such, it is not necessary to reimpose them.
29. The Council has also not sought re-imposition of the original Conditions 3 and 4 which related to the safe removal and disposal of asbestos materials during construction and prior to occupation. I am satisfied that this means the terms of these conditions have been met.
30. The Council seeks the re-imposition of the other conditions. I have no evidence to suggest these conditions do not remain necessary to make the development acceptable in planning terms, and I shall therefore re-impose them. In doing so, I have updated the wording of the original Condition 2 to accurately set out the title of the current version of the legislation.
31. The Council's suggested amendment to the original Condition 6 to require details prior to the 'next' occupation of the accommodation is imprecise and potentially onerous on the appellant to achieve if the units are regularly occupied by new guests. Therefore, I shall re-impose the original wording.
32. If any of these conditions have in fact been discharged, that is a matter for the parties to address between them.

K Savage

INSPECTOR

Schedule of Conditions

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order), no development permitted under Schedule 2, Parts 1 and 2 of the aforementioned Order shall be carried out without the prior permission of the Local Planning Authority having been granted on a specific application.
- 2) The development hereby permitted shall be carried out in full accordance with the approved Flood Risk Assessment (FRA) March 2012 GCB/BROWN & CO and the following mitigation measures detailed within the FRA submitted under application 12/000197/F:
 1. Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.
 2. Flood-proofing measures including structural construction shall be installed within the proposed development, as set out within section 10.1 of the FRA, up to first floor level.
 3. Finished floor levels shall be set no lower than 5.60m above Ordnance Datum (AOD).
 4. No bedrooms/ sleeping accommodation shall be located on the ground floor.
- 3) Prior to their first occupation each holiday dwelling shall be registered to receive the Environment Agency's Free Flood Warning Service.
- 4) The development hereby permitted shall only be used as holiday accommodation and shall not be used as a permanent residence at any time.
- 5) The development shall be carried out in full accordance with the mitigation measures set out in Part 7 of the Biodiversity and Protected Species Report submitted under application 12/00197/F (by Aurum Ecology Limited, received 08.02.2012) unless agreed otherwise in writing by the Local Planning Authority.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing No. NP 0529-07, Site Plan, received 08/02/2012 under application 12/00197/F, in relation to the layout of the buildings only excluding access, visibility, parking and turning that, for the avoidance of doubt, are conditioned under application 21/00080/F
 - Elevations Jan 2023
 - Floorplans Jan 2023
