



Appeal Decision

Site visit made on 13 May 2024

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2024

Appeal Ref: APP/U1430/W/23/3330389

Black Cat Barn, Badgers Barn, Kane Hythe Road, Netherfield, East Sussex TN33 9QU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Jacqueline Stringer Faith against the decision of Rother District Council.
 - The application Ref is RR/2023/1111/P.
 - The development is the change of use of existing holiday let into 1no. bedroom dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of existing holiday let into 1no. bedroom dwelling at Black Cat Barn, Badgers Barn, Kane Hythe Road, Netherfield, East Sussex TN33 9QU in accordance with the terms of the application, Ref RR/2023/1111/P, subject to the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement or other alteration (including front porches, additions to roofs) shall be made to the dwellinghouse hereby permitted.

Preliminary Matter

2. The application form states that the development has already taken place. I have therefore dealt with the appeal on the basis that planning permission is being sought retrospectively for the change of use. I have deleted the word retrospective from the description of development in my formal decision as this is not an act of development under s55 of the Act.

Main Issue

3. The main issue is the effect of the development on the supply of tourist accommodation in the District and whether any loss is acceptable having regard to the development plan and other material considerations.

Reasons

4. The appeal site comprises a detached building, which has a lawful use as a holiday let. Access to the site is shared with other properties close to the site, including another holiday let, and is gained from a narrow lane leading from the B2096. The site comprises a small-scale building with a single car parking

space to the front and is overtly domestic in appearance. The proposal seeks to change the building from a holiday let to a dwellinghouse.

5. Policy DC01 of the Development and Site Allocations Local Plan 2019 (DSA) states that proposals that result in the loss of sites of social or economic value, including tourist accommodation, must demonstrate that there is no reasonable prospect of a continued use. This requires evidence of a comprehensive and sustained marketing campaign, which indicates a lack of demand and evidence that demonstrates that the unit is not or is not capable of being financially viable.
6. It is common ground that a marketing campaign has not been carried out, including for alternative commercial uses. The appellant's supporting information, including the letter from an estate agent, indicates that there is no market for a holiday let property. Nevertheless, this information does not provide conclusive evidence that demonstrates that there is a lack of demand for the property as a holiday let. The appellant states that the separate sale of the property for either holiday let or commercial purposes would not be operationally feasible while the layout and position of the property would not support alternative uses. However, there is no substantive evidence before me demonstrating that there is no reasonable prospect of a continued commercial use at the site.
7. The appellant has presented the profit and loss details for the property. The accounts indicate that the property made a profit in 2018 and 2019. While costs have increased and the property has undergone some refurbishment, there are no comprehensive accounts covering a longer and more recent time period demonstrating that the property is not financially viable for holiday let purposes.
8. The other holiday let property near the site would be retained, and the appellant has identified other holiday let properties in the area. Nevertheless, the proposal would involve the loss of tourist accommodation, which Policy EC6 Rother Local Plan Core Strategy 2014 (CS) seeks to avoid having been informed by the Rother Hotel and Visitor Accommodation Futures report.
9. I conclude that the development harms the supply of tourist accommodation in the District. The development therefore conflicts with Policy EC6 of the CS and Policies DC01 and DEC3 of the DSA, which collectively seek to retain sites of social or economic value, unless there is no prospect of their continued use.

Other Matters

10. The appeal site lies within the High Weald Area of Outstanding Natural Beauty (AONB). Paragraph 182 of the National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB. I am also mindful of the statutory purpose of AONBs to conserve and enhance the natural beauty of the area.
11. In addition, nearby Foxhole Farmhouse is a grade II listed building. Special regard is required to the desirability of preserving its setting, which includes the appeal site given the proximity to it. The listed building is significant for its scale and proportions and its use as a farmhouse associated with the surrounding land.

12. The change of use of the building to a dwelling has not involved any physical alterations to the building or the site. Consequently, the development conserves the landscape and scenic beauty in the AONB and does not harm the significance of the Foxhole Farmhouse as a designated heritage asset.

Planning Balance

13. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with the aforementioned policies of the CS and DSA, with the associated conflict reflecting the loss of tourist accommodation. The proposal conflicts with the development plan as a whole and should be refused unless other material considerations indicate otherwise.
14. There is no dispute that the Council cannot currently demonstrate a five year supply of deliverable housing sites. Paragraph 11 d) of the Framework explains that in these circumstances planning 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 as a whole.
15. The proposal makes a positive contribution to housing supply with associated social and economic benefits once the dwelling is occupied. While the contribution of a single dwelling to meeting housing need in Rother and the associated benefits are limited by the scale of development proposed, the dwelling would nonetheless add to the supply of new homes.
16. On the other hand, the loss of a tourist property would reduce the availability of such accommodation and the associated economic benefits that such a property provides. However, a one-bedroom property would make only a very limited contribution to the local economy given its low capacity in terms of occupancy. Furthermore, the retention of tourist accommodation close to the site would ensure that some economic benefits, including employment, would endure.
17. The benefits and harms are both very modest and evenly weighted. When assessed against the Framework as a whole, and notwithstanding the support within Chapter 6 of the Framework for a prosperous rural economy, the adverse impacts of the development are not of such magnitude as to significantly and demonstrably outweigh the benefits. Consequently, it follows that this is a sustainable form of development and, given the presumption in favour of sustainable development set out in the Framework, this is a material consideration of considerable weight in favour of granting permission.

Conditions

18. As the change of use has already taken place, it is not necessary to impose a condition requiring that the development is carried out in accordance with the approved plans.
19. The removal of permitted development rights should only be used in exceptional circumstances. In this instance the justification to protect the scenic beauty of the AONB comprises an exceptional circumstance which supports the removal of permitted development rights in respect of the extension or alteration of the building.

Conclusion

20. The proposal conflicts with the development plan. Material considerations indicate that a decision should be made other than in accordance with the development plan. For the reasons given above the appeal should be allowed.

J Pearce

INSPECTOR