



Appeal Decision

Site visit made on 17 December 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2025

Appeal Ref: APP/U1105/W/24/3343375

**The Barn and Pinn Cottage, Road Past West Barn, Bowd, Sidmouth, Devon
EX10 0ND**

- 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 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Kim Clinch against the decision of East Devon District Council.
 - The application Ref is 23/2262/VAR.
 - The application sought planning permission for the construction of a single storey house/bungalow without complying with a condition attached to outline planning permission Ref 7/39/02/P1130/00114, dated 10 September 2002.
 - The condition in dispute is No.2 which states that: *The accommodation hereby approved shall only be occupied by persons and their dependents engaged in the running of the adjacent restaurant/guest house and at no time as a separate dwelling divorced from the running of this business.*
 - The reason given for the condition is: *The site is in an area where independent dwellings will not be permitted.*
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a single storey house/bungalow without complying with a condition attached to outline planning permission Ref 7/39/02/P1130/00114 at The Barn and Pinn Cottage, Road Past West Barn, Bowd, Sidmouth, Devon, EX10 0ND, in accordance with the terms of the application Ref 23/2262/VAR and the plans submitted with it.

Background and Main Issue

2. Outline planning permission for a dwelling was granted in 2002, subject to several conditions. These included a condition restricting the occupancy of the dwelling to persons or their dependants engaged in the running of the adjacent Barn and Pinn Cottage restaurant/guesthouse (the guesthouse). All other matters reserved by the outline planning permission were approved in 2003¹. The dwelling has been constructed and various works have been undertaken to renovate the guesthouse, including the conversion of the managers accommodation, previously located in an outbuilding, to guest rooms.
3. The appellant and her husband would now like to sell the guesthouse and the dwelling so they can retire. The removal of the occupancy restriction from the outline planning permission is being sought so that the dwelling can be sold on the open market.

¹ Ref 03/P0520

4. Consequently, the main issue is whether the occupancy condition is reasonable and necessary having regard to the local development strategy and the accessibility of the appeal site to shops, services, facilities and employment via sustainable modes of travel and transport.

Reasons

5. The appeal site is located outside a Built-up Area Boundary (BUAB) defined within the East Devon Local Plan 2013-2031 (the Local Plan) and the East Devon Villages Plan². Consequently, Strategy 7 of the Local Plan defines the appeal site as being located in the countryside where development will only be permitted where it is in accordance with, and is explicitly permitted by, a specific Local or Neighbourhood Plan policy. Policy 9 of the made Neighbourhood Plan for the Sid Valley 2018-2031 (SVNP) also adopts this approach, albeit with reference to new residential development. Based on the evidence before me, neither plan specifically addresses the circumstances where the removal of an occupancy condition of this type would, or would not, be acceptable.
6. However, the intent of both policies is to actively manage the patterns of growth in the area by limiting the need to travel and offering a choice of transport modes, in addition to protecting the character of the area. Further support of development which promotes, and is accessible via, sustainable modes of travel and transport, thereby minimising emissions, amongst other provisions, is set out in strategies 3 and 5, and Policy TC2 of the Local Plan.
7. Also located within the hamlet of Bowd is The Bowd Inn, a large public house and restaurant which, together with the guesthouse forms part of a cluster of built form alongside the main road (the A3052) connecting the nearby settlements of Sidford and Sidmouth with Exeter. No built form is proposed, therefore the proposal would not result in the growth of Bowd, retaining the rural character created by the traditional thatched cottages and converted brick barns within the hamlet.
8. Bus stops are located on the A3052 and Fire Beacon Lane, a short distance from the appeal site. Based on the evidence before me, these stops are located on routes that provide hourly connections to the larger settlements in the area where shops, services, facilities and employment of a range likely to support day-to-day needs can be accessed. As recognised by the Council, this level of public transport provision is more extensive than other countryside locations.
9. Whilst a change the occupiers of the dwelling may result in differing patterns of movement and/or the use of a private vehicle, this would be likely to be the case irrespective of whether the occupancy restriction remains in place. For instance, under new ownership, a member of staff engaged in the running of the business living in the dwelling may have several dependents, including children of school age, particularly given its size provides ample space for a family. In this scenario, the number of trips from the dwelling by private vehicle so other members of the household can access shops, schools and employment, would be substantially higher than the trips currently undertaken by the appellant and her husband.
10. Given the lack of specific development plan policies regarding the removal of this type of occupancy condition, the appellant has provided other evidence to justify

² Online version accessed January 2025 [edvp-adopted-version.pdf](#)

the proposal. The Statutory Declaration³ signed by the appellant and executed by a solicitor confirms that the guesthouse together with the dwelling has been on the market with a variety of agents for significant periods of time since 2013. A marketing report submitted with the planning application indicates that within the five months leading up to submission, the property's listing received a large number of online hits, yet no viewings by potential buyers were made and no offers submitted. During this period, the property's guide price was reduced. The Statutory Declaration states that the property remains on the market.

11. Such evidence is similar to the requirements of Strategy 32 of the Local Plan to justify the loss of employment and, in relation to when the loss of holiday accommodation is proposed, Policy E18 of the Local Plan. Whilst the proposal does not neatly fall under either of these scenarios, these policies do require that the property in question is marketed for at least 12 months (or up to two years depending upon market conditions) at a realistic price without interest to permit a loss of these uses.
12. The marketing evidence provided by the appellant exceeds these timescales. The Council has indicated that the logical explanation for a lack of sale during this period is not because of the occupancy tie of the dwelling but that the price sought does not reflect what the market is required to pay. However, a guide price does not preclude a potential buyer from showing interest in a property, undertake a viewing or from offering a lower price. Aside from the Council's assertion, I have limited compelling evidence before me which demonstrates it to be unrealistic.
13. Notwithstanding the lack of a specific Local or Neighbourhood Plan policy which explicitly permits the proposal, it accords with the development plan when considered as a whole, including strategies 3 and 5B, and Policy TC2 of the Local Plan, and Policy 9 of the SVNP.
14. I therefore conclude that the occupancy condition is not reasonable and necessary having regard to the local development strategy and the accessibility of the appeal site to shops, services and employment via sustainable modes of travel and transport.

Other Matters

15. As the guesthouse is a Grade II listed building, I am required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. From the evidence before me, including the listing description, I consider the significance/special interest of the guesthouse to be predominantly derived from its use of natural materials including cob and thatch, its age and overall aesthetics.
16. The guesthouse is orientated towards the A3052, setback behind a garden area and paved driveway which in turn is separated from the property by a boundary wall. This setback combined with the views across the garden area makes a positive contribution to the significance/special interest of the listed building.
17. The distance between the guesthouse and the dwelling, separated by the car park associated within the accommodation in addition to the clearly defined boundary of

³ Exhibit marked as SM1 and dated 13 October 2023

the garden area is such that it is not experienced as an integral part of the guesthouse and its converted outbuildings within the wider setting. Whilst the change in the occupancy of the dwelling may result in differing activities and frequency of comings and goings, its residential use would not. Therefore, I conclude that the proposal would preserve the setting of the listed building.

Conditions

18. Decision notices for the grant of planning permission under Section 73 of the Act should also restate the conditions imposed on earlier permissions that continue to have effect. As the dwelling has been constructed, the conditions on the original permission have outlived their useful purpose, including those relating to the approval of reserved matters, landscaping scheme and foul drainage/surface water scheme. In addition, the conditions setting out the standard time limits, the list of approved plans and the replacement of any tree, hedge or bush should they die, be damaged or removed are no longer relevant. Therefore, I have not imposed these in my decision above.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed and I grant a new planning permission with the removal of the disputed condition.

Juliet Rogers

INSPECTOR