



Appeal Decision

Site visit made on 26 November 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2025

Appeal Ref: APP/U1430/W/24/3342645

Little Bearsden, St. Marys Lane, Bexhill-on-Sea TN39 5JE

- 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 Mr Des Moxam against the decision of Rother District Council.
 - The application Ref is RR/2023/2115/P.
 - The application sought planning permission for the extension of an annexe and use of the extended building as one unit of holiday accommodation without complying with conditions attached to planning permission Ref APP/U1430/A/10/2127139, dated 5 October 2010.
 - The conditions in dispute are Nos 6 and 7 which state that:
 - 6) The premises shall be used for holiday let accommodation and for no other purpose (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 7) The holiday accommodation unit shall not be occupied for more than 56 days in total in any calendar year by any one person.
 - The reason given for the conditions is "In order to ensure that the extended unit is not used as self-contained permanent residential accommodation or for any other non-holiday purpose".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's first reason for refusal states that the procedure under section 73 of the Town and Country Planning Act 1990 (as amended) was not appropriate and the proposal required a full planning application. The High Court judgment in the case of *Freddie Reid v Secretary of State for Levelling Up Housing and Communities & Newark and Sherwood DC* [2022] EWHC 3116 (Admin) concerned the removal of a condition restricting the permitted use of the land to holiday accommodation and no other use within Class C3. The judge held that the removal of the relevant conditions would have had no effect on the description.
3. It would be reasonable to apply a similar logic in this case given that the appeal proposal presents a similar situation. As it was not presented in evidence, the main parties were given the opportunity to comment on this judgment during the appeal process. Responses were received from the main parties, the Council acknowledging that the first reason for refusal would not therefore apply in these

circumstances. I shall therefore proceed to determine the appeal based on the remaining matters in dispute.

4. The National Planning Policy Framework (the Framework) was updated in December 2024, during the consideration of the appeal. The Council and the appellant were given the opportunity to comment upon the revisions insofar as they relate to the appeal and I have taken the comments received by the main parties into consideration in my decision.

Background and Main Issues

5. The appeal proposal seeks to remove conditions to allow the appellant to let the property for longer periods and for the unrestricted residential use of the property.
6. The main issue is whether the conditions are necessary and reasonable with regard to i) the effect of the appeal proposal on the supply of visitor accommodation in the area and ii) whether the proposal would be a suitable location for housing having regard to its accessibility to services and facilities.

Reasons

Visitor Accommodation

7. Policy EC6 of the Rother Local Plan Core Strategy 2014 (Core Strategy) seeks to promote tourism activities and facilities as part of the local economy. The policy states that proposals which increase the supply of self-catering accommodation and do not result in the loss of tourism accommodation will be supported. Policies DCO1 and DEC3 of the Development and Site Allocations Local Plan 2019 (DASA) seek to retain the use of sites that have social and economic value, including those which have been in tourism use. Where a change of use is sought, evidence of sustained marketing must be provided which demonstrates that there is a lack of demand for the existing use, or an alternative commercial or community facility. Evidence must also be provided to demonstrate that the unit is not or is not capable of being financially viable.
8. According to the appellant, their holiday let business 'effectively collapsed' after the Covid-19 pandemic and it was not 'buoyant' before then. For the holiday let to be viable, the appellant considers that the letting rate would have to be higher than most other comparable visitor accommodation in the area therefore outpricing it from the market. Although no specific financial viability assessment has been provided, the valuation office return figures show that the use turned a very small profit in 2021, 2022 and 2023. No substantive evidence has been provided regarding the letting rates or comparators in the area; neither is there any marketing evidence to demonstrate that there would be no demand for this accommodation.
9. The appellant has submitted evidence to show he is unable to undertake the routine tasks associated with keeping the holiday let running, including maintenance, laundry, gardening and cleaning. I accept that these personal circumstances present a significant issue. Nevertheless, there is little substantive evidence to show the potential costs of employing contractors to undertake all, or some, of these management tasks or any assessment of how this could potentially be managed, for example, with an increase to the rate with reference to comparable accommodation in the area.

10. The appellant indicates no marketing exercise was undertaken in respect of alternative uses since the enclosed nature of the site and proximity of the other dwelling would not be conducive to an alternative commercial use in this location. This is particularly so in terms of the potential effect on living conditions at the appellant's dwelling. I consider this would be a reasonable approach given the relationship of the two buildings, along with the shared vehicular and pedestrian access which would potentially exacerbate issues of noise and disturbance arising from any alternative commercial or community use.
11. Notwithstanding my conclusions on the marketing for alternative uses, the evidence provided does not clearly demonstrate that the holiday let is not, or is not capable of being, financially viable or that there is no demand for this accommodation. As such, the proposal would have a harmful effect on the supply of visitor accommodation in the area. Accordingly, it conflicts with Policy EC6 of the Core Strategy and Policies DCO1 and DEC3 of the DASA insofar as they seek to promote tourist facilities as part of the local economy and retain the use of sites that have social and economic value.

Access to Services and Facilities

12. The appeal site is located to the north of Bexhill and just outside the settlement of Lunsford's Cross. It comprises a 2-bedroom dwelling located adjacent to a larger house set in substantial grounds; there is also residential development to the south along St Mary's Lane.
13. It has been drawn to my attention that the Council concluded in relation to a 2019 planning permission for 4 houses at a site in Lunsford's Cross (Ref RR/2019/1477/P) that the site would be in an "appropriate location having regard to the accessibility of the site to employment, services and facilities". Given its location, that site would have similar accessibility credentials to the appeal site. With regard to the appeal site therefore, there is no substantive evidence before me which would lead me to conclude that there would not be access to services and facilities by means other than the private car.
14. I have also been referred to a 2017 appeal decision at Rialto Hall (Ref APP/U1430/W/16/3163599), located just to the north of the appeal site. Given that this appeal decision pre-dates the Council's 2019 decision referred to above, it attracts limited weight in my consideration of the appeal.
15. There is a bus service which runs along the A269 to Bexhill or towards Hailsham. I note the Council's view regarding the accessibility of the bus stop accessed via a footpath across a field. However, there is also a bus stop in Lunsford's Cross which is accessible via St Mary's Lane in under 10 minutes' walk. The bus stops are within reasonable walking distance and the bus route would provide an alternative to the private car for access to services and facilities.
16. There would most likely be vehicle movements contributing to carbon emissions whether the dwelling is occupied as a holiday let or as permanent accommodation. There is no substantive evidence before me that the frequency and type of vehicle movements would cause additional unacceptable harm over and above those connected to the existing holiday accommodation.
17. Given that the Council has previously accepted that the nearby Lunsford's Cross site would be an accessible location, and that the appeal property has access to

local services and facilities by private car or bus, I consider the proposal would provide a suitable location for housing having regard to its accessibility to services and facilities. It would be in line with the aims of Policies OSS3 and SRM1 of the Core Strategy insofar as they require proposals to be considered in the context of existing infrastructure and services and promote more sustainable travel patterns.

18. Whilst I appreciate the appeal site is located outside of a settlement boundary, this makes no difference to my conclusion on this main issue given the Council's finding regarding the location of the Lunsford's Cross site. As such, in respect of this main issue, I find no conflict with Policies OSS2 and RA3 of the Core Strategy and Policy DIM2 of the DASA. Collectively, these policies seek to limit new development to within settlement boundaries and allow residential development within the countryside in limited circumstances.

Other Matters

19. My attention has been drawn to other matters which are not in dispute between the parties, including the effect of the proposal on the living conditions of neighbours, the effect on the character and appearance of the area, as well as highway matters. The absence of harm in these respects is not a benefit and so does not weigh in favour of, or against, the proposal.

Planning Balance and Conclusion

20. The appeal proposal would be harmful to the district's supply of visitor accommodation. I have judged the magnitude of this harm as significant.
21. Paragraph 232 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. Policies EC6 of the Core Strategy and DCO1 and DEC3 of the DASA are generally consistent with the Framework in terms of their support for tourism as part of the local economy. I afford the conflict with these policies significant weight.
22. The Council acknowledges that they cannot demonstrate a 5-year supply of deliverable housing sites. The reported supply is equivalent to 2.63 years. In these circumstances, paragraph 11d)ii of the Framework is applicable. Footnote 8 of the Framework is clear that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard for key policies for directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes, individually or in combination.
23. One additional home would make a minimal contribution to the shortfall of housing supply in the district, even considering the Council's housing land supply position. There would be limited socio-economic benefits through new permanent residents using local services.
24. I acknowledge the personal circumstances of the appellant and associated consequences for the operation of the holiday let. Given their direct relevance, I attach moderate weight to these circumstances in the overall planning balance.

25. When assessed against the policies in the Framework as a whole, the significant weight I have attributed to the conflict with the development plan would significantly and demonstrably outweigh the limited benefits of an additional dwelling in terms of its contribution to the housing stock. The presumption in favour of sustainable development does not therefore apply in this case.
26. The proposal would conflict with the development plan read as a whole and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that conditions 6 and 7 are necessary and reasonable with regard to maintaining the supply of visitor accommodation in the area.
27. For the reasons given, the appeal should be dismissed.

L Francis

INSPECTOR