



Appeal Decision

Site visit made on 15 April 2025

by A Veevers BA(Hons) PGDip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th May 2025

Appeal Ref: APP/D2510/W/25/3359616

The Old School, Church Lane, Conisholme, Lincolnshire LN11 7LZ

- 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) (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Dawson against the decision of East Lindsey District Council.
 - The application Ref is N/036/01824/24.
 - The application sought planning permission for change of use and alterations to existing building to provide a holiday unit without complying with conditions attached to planning permission Ref N/036/01362/06, dated 21 July 2006.
 - The conditions in dispute are Nos 2 and 3 which state that:
No 2: *No one shall occupy the holiday unit the subject of the application in excess of a total of three calendar months in any year provided that and without prejudice to the foregoing once the holiday unit has been occupied by a person or persons for a total of three calendar months in any year then that person or persons shall not occupy again the holiday unit on the application site until an interval of at least two months has elapsed from the date of expiry of the said three month period.*
No 3: *In the respect of the holiday unit it is necessary to maintain a daily record of the names of the occupants and to make such log available for inspection by the Council on request.*
 - The reasons given for the conditions are:
No 2: *In order to ensure the holiday unit is used for holiday purposes and to comply with Policy T16 of the East Lindsey Local Plan Alteration 1999.*
No 3: *In order to ensure the holiday unit is used for holiday purposes and to comply with Policy T16 of the East Lindsey Local Plan Alteration 1999.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was granted for the conversion of the appeal building for use as holiday accommodation in 2006, subject to conditions. Evidence from both main parties indicates this permission has been implemented and the property has subsequently been used for holiday accommodation. The property is known as The Old School and the appellant now wishes to use it for permanent residential accommodation.
3. Whilst not a matter raised by the main parties, the Environment Agency (EA) has drawn my attention to the Finney judgement¹ in relation to the scope of section 73 (s73) of the Act, in particular, the possibility of a conflict with the description of development and the removal of the disputed conditions.

¹ *Finney v Welsh Ministers* [2019] EWCA Civ 1868

4. Although an appeal decision has been provided to support the EA's case², that appeal was determined prior to the more recent Reid judgement³. In this judgement a s73 application sought to remove an existing condition that restricted the use of thirty-four self-catering holiday units to holiday accommodation and not any other purpose, including within Class C3 of the Use Classes Order⁴. The Council argued that by seeking to remove the condition, it would enable the units to be used as permanent residential dwellings, which would be contrary to the description of development.
5. The Judge found that when a condition is removed, the operative part of the permission remains intact, albeit in an unconditional way. If the condition restricting the units to holiday accommodation was removed, the way the development could change would have nothing to do with the description, but because the condition preventing the benefit of the Use Classes Order would be removed. The Judge held that what can be done with the use of the land may not be exhaustively written into the description but may arise by the operation of law (i.e. a lawful change of use to another purpose within the same use class).
6. The Reid Judgement is of direct relevance to the appeal proposal as it involves the removal of a condition controlling the use of the existing building. In the case before me, the holiday let use is residential (Use Class C3) and it could be used as a permanent dwelling. The function of the disputed conditions was a way of controlling occupation, as distinct from controlling use (i.e. the conditions restricted the occupancy of the dwelling, not the primary component of its use as a dwelling). As such, the removal of such conditions would not conflict with the description of development and the application can be considered under s73. This does not however, alter the need to consider, as a matter of planning judgement, the planning merits of removing condition 2 and/or condition 3.
7. Within the reason for the disputed conditions, reference is given to Policy T16 of the East Lindsey Local Plan Alteration 1999 (ELLPA). The ELLPA has now been superseded by the East Lindsey Settlement Proposals Development Plan Document and the East Lindsey Local Plan Core Strategy (the CS), both adopted July 2018. Thus, the ELLPA policies weigh neither for nor against the proposal.

Main Issues

8. Based on the Council's reasons for refusal, the main issues are:
 - Whether conditions 2 and 3 are reasonable and necessary having regard to local policies relating to the location of development, with particular regard to accessibility to services and facilities; and,
 - The effect of the removal of conditions 2 and 3 on flood risk.

Reasons

Location

9. The appeal building is a detached, two-storey converted former school in use for holiday accommodation. It is accessed via Church Lane, an unlit narrow road with no footway. The Council argue the proposed removal of conditions 2 and 3 would

² Appeal Ref: APP/B3438/W/20/3253375

³ *Freddie Reid v SSLUHC & (IP) Newark & Sherwood DC* [2022] EWHC 3116 (Admin)

⁴ The Town and Country Planning (Use Classes) Order 1987 (as amended)

result in a dwelling in an open countryside location but the appellant considers the appeal site is located within the village of Conisholme rather than in open countryside. As such, it is appropriate to consider the proposal against policies in the CS which concern the location of permanent residential occupation.

10. Conisholme is identified as a small village by Policy SP1 of the CS, the Council's overarching 'settlement pattern' policy. The supporting text to this policy states that small villages have a limited range of services or facilities and look to higher order settlements to meet the vast majority of their needs. It also states the majority do not have access to public transport in the form of scheduled bus services or the main road network and consequently are not suitable for major housing or employment growth. Although not referred to in the Council's reason for refusal, I have been provided with a copy of Policy SP4 of the CS which provides the Council's approach to housing in medium and small villages that are not coastal. This policy is referred to in the Council's officer report.
11. Policy SP4 (1) allows for the conversion or redevelopment of some sites for housing, where they are brownfield or are disused agricultural buildings, provided certain criteria are met. One criterion is that the site has been actively marketed for either a community, economic or leisure use at an appropriate price for a period of 12 months. No evidence has been put to me to indicate the property has been marketed for any such uses. Therefore, even if other criteria would be met, the proposal would not meet the requirements of Policy SP4 (1).
12. Policy SP4 (2) is supportive of housing where it is in an appropriate location within the developed footprint of the settlement as infill and conforms to Clause 2 of Policy SP25 – Green Infrastructure. An 'appropriate location' is defined in the policy as a location which does not conflict with national or local policies. 'Developed footprint' is defined as the continuous built form of the settlement and excludes individual buildings or groups of dispersed buildings which are detached from the continuous built up area of the settlement. It also excludes gardens, community and recreation facilities, and land used for an active employment use.
13. In terms of an appropriate location, Conisholme comprises of a cluster of loosely arranged residential properties that generally sit either side of the A1031, Conisholme Road, Fen Lane and Church Lane/Lowgate Road. The village includes the small St Peter's Church which at the time of my site visit appeared to be permanently closed for services, a post box, a large static caravan sales business and Appleby's ice cream parlour. The evidence before me and my own observations indicate that there are no facilities for example, a shop or school in proximity to the appeal site, such that the occupants of the property could walk to meet their everyday needs.
14. I saw no bus stops in the village and in the absence of evidence to the contrary, it is unlikely that a regular bus service operates in the area for transport to larger settlements. To access facilities by other means, occupants of the appeal property would need to travel further along the roads beyond the settlement that are generally unlit with no pedestrian footway. These circumstances do not lend themselves to safe use by pedestrians and would be unlikely to encourage cycling, in particular during times of darkness or adverse weather conditions.
15. I recognise that there is generally a greater reliance on private vehicles in more rural areas and there are already a number of residential properties a similar

distance from services and facilities. Nonetheless, there would be a lack of sustainable transport choices available and occupants of the property would be likely to be reliant on a private vehicle for access to services and amenities.

16. The current use of the property as a holiday let is also likely to result in trips by private car to access and support services in nearby areas. However, the use of the property as a permanent dwelling would be likely to create more journeys on a daily basis by occupiers of a dwelling travelling to work, school and for other services. The number of deliveries and visitors to the property would also be likely to increase over and above that which would occur frequently with a holiday let.
17. Furthermore, Policy 22 of the CS aims to support accessibility and reduce isolation in the district by supporting development in or adjoining towns, large and medium villages where it is accessible to key services. The use of the property as a permanent dwelling outside such areas would undermine this objective by directing permanent residential development, albeit only one unit in an existing building, to a location with limited access to different modes of transport. Thus, in my view, for the reasons given above, the appeal property would not be in an 'appropriate location' for a permanent dwelling.
18. In terms of the 'developed footprint' of the settlement, the appeal site is located along a narrow road that serves a collection of dispersed properties. The curvature of the road and mature roadside vegetation separate the appeal site with residential properties in the central part of Conisholme, at the junction of Church Lane and Conisholme Road. Here properties are relatively close together, whereas there are fields to each side and to the rear of the appeal property. The appeal property is reasonably close to the large garden of The Old Rectory on the opposite side of the road. However, it is separated from the nearest bungalow to the north by a field and to the caravan sales business to the south by a paddock and woodland. Therefore, while the property is not isolated, it is an individual building detached from the core of the village, with the above factors creating a visual separation with the site not being seen as part of a continuous built form. I therefore consider the appeal site is not within the 'developed footprint' of the settlement.
19. Consequently, on the basis of the evidence before me, for the reasons given above, the use of the appeal property as a permanent dwelling would not be in an appropriate location within the developed footprint of the settlement and would not therefore, meet the requirements of Policy SP4 (2).
20. The appellants have suggested that use of the appeal property as a holiday let is no longer viable, with the costs associated with managing and maintaining the property being more than the funds received from renting it out, particularly since the Covid pandemic. However, little substantive evidence has been provided to support this claim, such as detailed income and expenditure accounts, bookings or marketing information, except for scant details of unrelieved financial losses for the last three years. Whilst the property may not be considered financially viable by the appellant, I cannot be certain, on the basis of the limited information presented to me in this case, that it is not capable of being financially viable as a holiday let or that there is no demand for it as a holiday let. Therefore, the evidence before me does not lead me to conclude that the existing holiday accommodation is no longer viable or required to meet the tourism needs of the locality.

21. While I recognise the appeal building may be of local importance as a former school site, has some architectural merit and incorporates local materials, the Council confirm it is not on any list of locally listed buildings. Even if I considered the building to be a non-designated heritage asset, no compelling evidence has been presented to substantiate the appellant's claim that it is dis-used or that its upkeep as a holiday let is unviable or would be any more than if used as a permanent home. Neither has it been adequately demonstrated that the use of the property as a holiday let could lead to long periods of vacancy or the decline of the building.
22. The disputed conditions are therefore reasonable and necessary to ensure compliance with local policies relating to the location of development, with particular regard to accessibility to services and facilities. Their removal would be contrary to Policies SP1 and SP4 of the CS which together, amongst other things, guides the sustainable pattern of places for development in the district. Their removal would also conflict the objectives to promote sustainable transport and to seek to minimise the need for travel and to move to a low carbon economy at paragraphs 8 and section 9 of the Framework.
23. The Council's reason for refusal references Policy SP3 of the CS, however, this policy relates to 'Towns' and 'Large Villages' and therefore is not directly relevant to this main issue.

Flood Risk

24. The site lies in Flood Zone 3a, an area with a high probability of flooding. While the EA's original consultation response to the application raised no objection to the proposed removal of the disputed conditions, the EA's subsequent appeal documentation confirms that the use of the appeal property as a permanent residential dwelling would be unacceptable in terms of flood risk. The EA advise that the site could experience flood depths of between 0.5 to 1 metre (danger for most) for the 0.5% annual exceedance probability scenario up to the year 2115 should a breach in flood defences occur. This could result in a safety risk to occupants of the site. The EA also advise the site could be at risk from tidal flooding.
25. The Council's approach to flood risk is set out in Policy S16 of the CS. Amongst other things the policy requires that, where required by national planning policy, proposals in areas at risk of flooding must be accompanied by a site-specific flood risk assessment (FRA). Footnote 63 of the Framework is clear that an FRA should be provided for all development in Flood Zones 2 and 3. As a minimum, advice in Planning Practice Guidance (PPG) (paragraph: 020 Reference ID: 7-020-20220825) identifies the assessment needs to show that the development will be safe for its users for the intended lifetime of the development, without increasing flood risk elsewhere, and be sufficiently flood resistant and resilient to the level and nature of the flood risk.
26. No FRA has been submitted with the application. In the absence of such information, including information about the finished floor levels of the property, I cannot assess the residual risk of flooding or whether safe access to and from the building would be available.
27. I note there would be no physical changes to the site. However, the appellant's assertion that flood risk would be safely managed has not been verified by any

evidence. The EA state that the latest information on flood risk at the site is materially different to that at the time planning permission was granted for the holiday let, although I have little information to confirm this claim. Regardless, while I accept that the permanent residential use of the site would remain within the same vulnerability classification as that of a holiday let, I agree with the EA that the nature of the two uses would differ.

28. Permanent occupation of the property, particularly if it was the sole or main residence of the occupant, would be likely to result in more possessions in the building and would require the re-housing of its occupants in the event of a significant flood event. Holiday let occupants would be short-term visitors that would be able to vacate the property quickly with minimal belongings and would more than likely have alternative accommodation.
29. In conclusion, the removal of the disputed conditions would have the effect of permitting a permanent dwelling in a location which, in the absence of an adequate, site-specific FRA, it has not been demonstrated how the known risk of flooding would be managed. The disputed conditions are therefore reasonable and necessary to ensure compliance with the development plan in respect of flood risk. The removal of the disputed conditions would be contrary to Policy SP16 of the CS, which, amongst other matters, seeks to ensure housing is not located in areas of inland flood risk.

Other Matters

30. Additional residents in one settlement can help support services and facilities in another. However, given that only one additional permanent dwelling would be created and that holiday occupants would also be likely to boost local businesses in the area such as restaurants and shops, I consider any improvement to the vitality and viability of the local services and facilities would be no more than negligible and would not outweigh the harm as set out.
31. The CS dates from 2018, however the weight to be attached does not hinge on its age. 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. In this regard, reference is made by the appellant to the fact that the Council cannot demonstrate a five year housing land supply and I note the significant emphasis the Government places on boosting the supply of housing. No details of the extent of any shortfall have been provided with the appeal documentation and no reference is made to it by the Council. Nevertheless, even if I accept the Council cannot demonstrate a deliverable five year supply of housing land, given that the application of policies in the Framework relating to flood risk provide a clear reason why a permanent dwelling on the site would be unacceptable, the first exception in paragraph 11 (d) (i) applies. Thus, the proposed removal of the disputed conditions does not benefit from the presumption in favour of sustainable development.
32. A Grade I listed building, St Peter's Church, is located near to the appeal site. As such, I have had regard to the duty to have special regard to preserving a listed building or its setting under section 66(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act). The listed building is a small Early English parish church located within woodland. I have been provided with the listing description which identifies the church has medieval

origins and was altered in the 15th, 18th and 19th Centuries. From my own observations and information before me, I consider the significance of the building is derived from its age, religious association and early period architecture. Insofar as it is relevant to this appeal, as no physical works to the appeal building would result from the removal of the disputed conditions and it is physically and visually separated from the listed building by intervening woodland and a field, there would be no harm to setting of the listed building and no conflict with the LBCA Act.

33. I note previous applications in 2010 and 2014⁵ that were refused by the Council and an appeal that was dismissed to remove the occupancy conditions imposed on a different planning permission relating to the same site⁶. Nonetheless I have reached my own findings in this appeal based on the circumstances of the present case.
34. I recognise the appellants have spent time and money renovating the property. Even if I were to agree that the living conditions of neighbouring residents and access and parking would be acceptable, these are all neutral factors rather than ones that carry positive weight in favour of the development.

Conclusion

35. For the above reasons, removal of conditions 2 and 3 would result in an unrestricted dwelling in an unsuitable location with regard to accessibility to services and facilities and in a known area of flood risk. To remove the conditions would conflict with policies relating to the spatial pattern of development, accessibility and flood risk, bringing it into conflict with the development plan as a whole. Consequently, conditions 2 and 3 restricting the occupancy of the appeal property remain reasonable and necessary. The conditions also comply with the remaining tests set out in paragraph 56 of the Framework and the advice set out in the PPG.
36. I therefore conclude that the appeal is dismissed.

A Veevers

INSPECTOR

⁵ LPA Refs 530/10 and 1458/14

⁶ LPA Ref N/03/01633/07