



Appeal Decision

Site visit made on 30 June 2025

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2025

Appeal Ref: APP/W1850/W/25/3359630

Mistletoe Cottage, Ailey Lane, Kinnersley, Herefordshire HR3 6NY

- 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 appeal is made by Messrs William and Simon Evans and Wiles against the decision of Herefordshire Council.
 - The application Ref is P242520/F.
 - The application sought planning permission for new two-bedroom holiday cottage to replace redundant stables, including change of use of agricultural land to residential without complying with a condition attached to planning permission Ref P162373/F dated 20 Jan 2017.
 - The condition in dispute is No 4 which states that the building which is the subject of this application shall be used for holiday accommodation only and for no other purpose including any other purpose within Class C of the Schedule of 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.
 - The reason given for the condition is: having regard to Policy RA3 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework the local planning authority are not prepared to allow the introduction of a separate unit of residential accommodation.
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Decision

1. The appeal is allowed and planning permission is granted for new two-bedroom holiday cottage to replace redundant stables, including change of use of agricultural land to residential at Mistletoe Cottage, Ailey Lane, Kinnersley, Herefordshire HR3 6NY in accordance with the application Ref P242520/F without compliance with condition number 4 previously imposed on planning permission Ref P162373/F dated 20 Jan 2017.

Background and Main Issue

2. Planning application reference P162373/F granted permission for a holiday cottage. That permission included a number of conditions, one of which (condition 4) specifies that the building shall be used for holiday accommodation only. The appellant wishes to remove this condition to allow the permanent residential occupation of the accommodation. The Council's statement indicates that the condition is necessary due to conflict with the settlement strategy set down in Herefordshire Local Plan, Core Strategy (2015) (CS). This is consistent with the reasons for the condition given on the decision notice.
3. Taking the above into account the main issue is whether the condition is reasonable and necessary having regard to the Council's settlement strategy.

Reasons

4. The appellant states that the site is located in Kinnersley in which CS policy RA2 states that proportionate housing is appropriate subject to specified criteria being met. The settlement boundary to Kinnersley is not defined for development plan purposes. Accordingly, the question of whether the site is located in the settlement is a matter of planning judgement taking into account what is on the ground.
5. The site is located on Ailey Lane amongst a linear run of buildings. Kinnersley comprises a ribbon of development approximately 1km to the north. On the ground there is a clear visual and physical separation between the cluster in which the appeal site is located and Kinnersley. Given this, the site is located outside of the settlement in the open countryside in which CS policy RA3 is supportive of residential development which satisfies one or more specified criteria. There is no argument put to me that the scheme would comply with any of these criteria. Therefore, the proposal results in residential development in the open countryside contrary to the settlement strategy set out in the CS.
6. Due to the site's location in the open countryside, the proposal is contrary to the Council's settlement strategy. I therefore find that conflict arises with those aims of CS policies RA2, RA3 and SS1.

Planning Balance

7. The Council accept that it is unable to demonstrate a 5-year supply of deliverable housing sites. In these circumstances, paragraph 11 d) of the National Planning Policy Framework (the Framework) indicates that the policies which are most important for determining the application should be deemed out-of-date and 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 to 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.
8. The proposal would make a small but meaningful contribution towards the area's housing supply. Given the supply shortfall, this attracts significant weight as a public benefit. No adverse impacts have been demonstrated which would significantly and demonstrably outweigh this benefit when assessed against the policies of the Framework taken as a whole. Thus, the presumption in favour of sustainable development applies, and material considerations indicate that the proposal should be determined otherwise than in accordance with the development plan.

Conclusion

9. For the reasons given above, I conclude that a condition to restrict the occupation of the building to holiday accommodation is not reasonable or necessary in the interests of the Council's settlement strategy. Therefore, the appeal should succeed, and planning permission is varied by deleting the disputed condition.

N Robinson

INSPECTOR