



Appeal Decision

Site visit made on 1 July 2025

by **Laura Cuthbert**

an Inspector appointed by the Secretary of State

Decision date: 08 July 2025

Appeal Ref: APP/E3335/W/25/3359967

Barrow Farm, Barrow Lane, North Wootton, Shepton Mallet BA4 4HL

- 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 Nick White against the decision of Somerset Council.
 - The application Ref is 2024/2190/VRC.
 - The application sought planning permission for Erection of 2 single storey holiday lodges without complying with a condition attached to planning permission Ref 2012/1436, dated 20 November 2012.
 - The condition in dispute is No 4 which states that: The development hereby approved shall not be occupied other than for purposes of holiday accommodation and shall not be occupied by the same person(s) for more than 28 days in any calendar year, or such other period as may be first approved in writing by the Local Planning Authority (LPA), in accordance with written records of occupancy to be available for inspection by the LPA at any time.
 - The reason given for the condition is: The site lies in the countryside where development is strictly controlled. Permission has been granted only on the basis of holiday use in accordance with saved policies S1 and E14 of the Mendip District Local Plan 2002.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal relates to a parcel of land situated to the northeast of Barrow Farm. Planning permission was granted in 2012 for 2 holiday lodges on the appeal site. The development as approved is in situ.
3. This appeal seeks permission to remove condition 4 of the 2012 consent which requires the development to 'not be occupied other than for the purposes of holiday accommodation and shall not be occupied by the same person(s) for more than 28 days in any calendar year, or such other period as may be first approved in writing by the Local Planning Authority (LPA), in accordance with written records of occupancy to be available for inspection by the LPA at any time'. Consequently, the result of removing this condition would be that the lodges could be let or sold as open market dwellings or longer term rentals.
4. The Council's statement of case has suggested the scope of an application under Section 73 of the Town and Country Planning Act 1990 has been considered by the courts¹ and clarified 'that s73 applications cannot be used to effect a change to

¹ R (on the application of Fiske) v Test Valley Borough Council [2023] EWHC 2221 (Admin), Armstrong v Secretary of State for Levelling-Up, Housing and Communities [2023] EWHC 176 (Admin) and Test Valley Borough Council v Fiske [2024] EWCA Civ 1541

the original consent that would conflict with the operative part of the original consent..... Therefore, as the original description of development is for “holiday lodges”, the removal of condition 4 to allow for unrestricted residential use would conflict with the operative part of the original consent and would therefore not be possible under a s73 application’.

5. However, the judge in another judgement² discounted that approach and determined that the removal of the conditions would still leave the operative part of the permission intact. Whether the disputed conditions are necessary and relevant is therefore a matter of planning judgement.
6. The Council validated and determined the application to remove the condition. Its statement of case expanded upon its reasoning behind the decision. I am satisfied that, in this case, the removal of the condition would not conflict with the operative part of the original consent. Accordingly, with that in mind, the main issue is whether condition 4 is necessary and reasonable, having regard to the location of the site in the open countryside, in respect to the spatial strategy and the access to services and facilities.

Reasons

7. The site lies outside of any defined settlement boundary and is classed as open countryside. Policies CP1 and CP2 of the Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies (Local Plan) (adopted 2014) sets out the spatial strategy for the district and provides details of how housing will be provided across the district’s towns and villages. Criteria 1.c. of Policy CP1 states that development in the open countryside will be strictly controlled but may exceptionally be permitted in line with the provisions set out in CP4: Sustaining Rural Communities.
8. Policy CP3 permits development that benefits economic activity in accordance with the spatial strategy in Policy CP1, and in rural areas such as this site, in line with the criterion set out in Policy CP4. Criteria ‘4.b.’ of Policy CP4 supports development of the rural economy as set out in Policy CP3 which enable the expansion of businesses in a manner and of a scale which are appropriate to the location and the constraints upon it. The Council set out these policies are generally supportive of tourist accommodation in the countryside. Accordingly, this was the policy basis for the original permission and thus the reasoning behind the condition was because ‘the site lies in the countryside where development is strictly controlled. Permission has been granted only on the basis of holiday use’.
9. The removal of the condition would not place the development in any other of the categories supported by the development plan to enable new development in the open countryside. It is not allocated for housing, and it would not be supported by any other policies. As such, by virtue of its location outside of any defined settlement limits, the use of the lodges as unfettered dwellings would be contrary to the spatial strategy for the area.
10. The lodges are also in a location which is remote from services and facilities. The roads in the vicinity are narrow, and unlit without pavements. Walking and cycling to local services and facilities would therefore not be particularly safe or suitable and any long-term occupants of the lodges would in likelihood be reliant on the private car to access services. Furthermore, due to the unwelcoming nature of the

² *Freddie Reid v SSLUHC & (IP) Newark & Sherwood DC* [2022] EWHC 3116 (Admin)

roads, there would also be limited sustainable transport solutions, including a lack of public transport, applicable to the appeal site, which would fail to improve or maximise the use of sustainable forms of transport, other than the private car.

11. The existing holiday use of the lodges would generate vehicular traffic. However, trips are more likely to be recreational and their existing use would be seasonal and intermittent, which would consequently reduce the number and type of trips in comparison to longer-term occupants. Accordingly, the demand for day to day services and facilities from holiday makers would be significantly less than from occupants of an unrestricted dwelling, who would also need to access education and employment, even if home working is a more reliable option due to the improvement of modern technology, as stated by the appellant. Nevertheless, working from home doesn't negate the need to access other services and facilities. Therefore, unrestricted lodges in this location would not accord with the sustainability objectives of the spatial strategy. The lack of accessibility to enable long-term occupants to carry out day to day activities demonstrates that the site would be an unsuitable location for unfettered dwellings.
12. The appellant is of the view that as the lawful use of the site already falls within Use Class C3, there would be no material change of use between the existing permitted use and that proposed, drawing my attention to relevant case law. The Planning Practice Guidance states that a change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.
13. For the reasons set out above, I consider that the resulting impact between the permitted holiday use and an unrestricted dwelling as proposed, having regard to the spatial strategy and access to services and facilities, would be significant. Consequently, there would be a real and harmful difference, which would be materially harmful.
14. It is appreciated that the removal of the condition would not prevent the dwellings from continuing to be used as holiday lets and that it would afford the appellant flexibility during the low season when holiday lets are in reduced demand. I also note that the appellant states the relevant policies of the development plan seek 'to manage new development, not the day-to-day life of existing lawful buildings'.
15. However, I do not agree that the disputed condition artificially limits the lodges use, as alleged by the appellant. In reality, the occupancy condition allowed for the original development to be permitted, in the open countryside where new development is restricted, unless in exceptional circumstances. The lack of any policy within the Local Plan that safeguards holiday accommodation or restricts changes in use from tourism to residential, in my mind, increases the importance of the occupancy condition, as this is the only way to ensure the lodges are not open market dwellings in the open countryside.
16. The appellant has raised the significant number of holiday accommodation in the area as justification for the removal of the condition. I appreciate the challenges this may bring. I have also been provided with the income figures for 2021/2022 and 2024/2025 but these figures do not show a full picture on the income of the

holiday lodges, which were originally granted planning permission in 2012. I have not been provided with any convincing evidence which suggests the continued holiday use of the lodges is not viable. Therefore, on the basis of the limited evidence on this matter, this does not reduce the weight given to the harm that I have identified.

17. It is acknowledged that there is no restriction on someone renting the existing accommodation for work purposes. However, at present this can only be done for 28 days in any calendar year, which would have a materially different impact to an unfettered dwelling. The appellant has also stated that residents in nearby towns such as Wells, Shepton Mallet, Glastonbury, and Street routinely commute to work and school by car. However, these matters do not change or outweigh the conflict with the spatial strategy that the removal of the condition would result in.
18. Accordingly, for the reasons set out above, the consequences of removing the condition would result in the development as described being unacceptable. I am satisfied that Condition 4 still serves a purpose having regard to the current development plan. It remains necessary, enforceable, relevant to planning, relevant to the development permitted, precise and reasonable in all other respects.
19. Therefore, without condition 4 in place, the 2 holiday lodges would not be in accordance with Policies CP1, CP2, CP4 and DP9 of the Local Plan. These policies, in combination, seek to set out the overarching spatial development strategy and settlement tiers for the district, setting out the acceptable circumstances to sustain rural areas and requiring proposals to demonstrate how they will improve or maximise the use of sustainable forms of transport, other than the private car. Criterion 1.c. of CP1 states that in the open countryside, development will be strictly controlled.

Other Matters

20. The appellant has noted that there is an unauthorised traveller site nearby which the Council has not taken action against. The appellant alleges that 'this raises concerns about the consistency of policy enforcement in the area, particularly when considering the refusal of this application based on sustainability grounds'. Whilst this is acknowledged, I am not persuaded that this unauthorised site is similar to the proposal before me now. Whilst consistency is important, each case must be considered on its own merits and determined in the light of the specific circumstances and context of each case. Overall, I am not persuaded that this demonstrates that the Council's 'decision making approach may not be entirely balanced or justified' as the appellant states.
21. The appellant has also mentioned other 'similar applications' where occupancy restrictions have been lifted but has only provided me with one appeal decision³, from a different authority. However, even though the appeal was allowed, and the condition was varied, the Inspector in this decision concluded that an occupancy condition was still reasonable and necessary and a condition restricting it to be used for holiday accommodation purposes and not for any other residential use was attached accordingly. Nevertheless, each proposal must be considered on its own merits, and I have found the proposal before me now to be unacceptable for the reasons set out above.

³ APP/A2470/W/17/3188539

Planning Balance

22. The main parties agree that the Council is unable to demonstrate a five-year supply of deliverable housing sites. I note that the appellant states that since the original permission was granted, the housing land supply has become more acute. Nevertheless, Paragraph 11 of the National Planning Policy Framework 2024 (the Framework) would be engaged, which states that 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 taken as a whole, or there are specific policies in the Framework which indicate that development should be restricted.
23. The proposal would make a small contribution towards the provision of housing, consistent with the Government's stated aim in the Framework of significantly boosting the supply of homes, helping to alleviate the pressure of housing availability. I also acknowledge the social benefits the removal of the condition would bring, including allowing for necessary family care arrangements. I also appreciate that as the applicants age, the operational demands of running holiday lets may become increasingly difficult and that switching to long-term residential lets could alleviate these challenges and provide a more manageable source of income, as alleged by the appellant, helping to ensure the long-term viability of the lodges. Together these benefits carry moderate weight in favour of the development.
24. The proposal would encourage development and associated economic growth with future occupants contributing to the local economy and continued viability of services in the local area, albeit these would be limited due to the economic benefits of the original permission. Nevertheless, longer term occupants would support local services, trades, and community institutions, and the two dwellings would generate council tax revenue towards Somerset Council. Collectively, these benefits would again carry moderate weight.
25. However, the proposal would not be in a suitable location for unrestricted housing, having regard to the location of the site in the open countryside, in respect to the spatial strategy and the access to services and facilities. As such it would be contrary to the policies of the Framework to direct development to sustainable locations, ensuring homes have accessible services and to avoid the development of open market homes in the open countryside unless certain circumstances apply. Therefore, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
26. Overall, I conclude that the disputed condition 4 is both reasonable and necessary. If the condition was removed, the 2 holiday lodges would be contrary to policies in regard to housing in the open countryside and the objectives to promote sustainable transport, bringing it into conflict with the development plan as a whole. There are no material considerations, including the approach of the Framework, which outweigh that conflict. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal is dismissed.

Laura Cuthbert

INSPECTOR