

46/19/0004

MR GALE

Removal of Condition No. 11 of application 46/04/0020 to allow property to be occupied as a single dwelling house at Church View, Sawyers Hill, West Buckland (resubmission of 46/17/0052)

Location: VALLEY COTTAGE, SAWYERS HILL, WEST BUCKLAND,
WELLINGTON, TA21 9JZ

Grid Reference: 317174.120331 Removal or Variation of Condition(s)

Recommendation

Recommended decision: Refusal

- 1 The proposal would result in a new residential dwelling in a non-sustainable location in the open countryside contrary to Government guidance contained within the NPPF 2019 and would be contrary to the requirements governing development in the open countryside contained within the adopted Taunton Deane Core Strategy policies SP1, DM2 and CP1.

Recommended Conditions (if applicable)

Notes to Applicant

1. In accordance with paragraph 38 of the National Planning Policy Framework the Council works in a positive and pro-active way with applicants and looks for solutions to enable the grant of planning permission. However in this case the applicant was unable to satisfy the key policy test and as such the application has been refused.

Proposal

(Section 73) Removal of holiday occupancy condition to planning permission 46/04/0020 to allow unencumbered residential use, as an open-market dwelling

Site Description

Single storey, two-bedroom dwelling with small curtilage (hard-surfaced) located on the edge of West Buckland. The building was converted from a storage building to a one-bedroom residential holiday use under permission 46/04/0020, it has subsequently been extended to two bedrooms.

Relevant Planning History

- 46/04/0020 – conversion of storage barn to holiday let – C/A – 8/7/2004
- 46/10/0021 - Erection of a single storey extension at Church View - C/A
- 46/11/0010 - Erection of single storey extension at Church View, Valley Cottage, West Buckland (Resubmission of 46/10/0021) (retention of works already undertaken) - C/A
- 46/12/0033 - removal of holiday occupancy condition to permission 46/04/0020 – refused – 13/2/2013
- 46/17/0052 – removal of holiday occupancy condition to permission 46/04/0020 – refused – 21/12/2017

Consultation Responses

WEST BUCKLAND PARISH COUNCIL - support the application
SCC - RIGHTS OF WAY - no comments received
SCC - TRANSPORT DEVELOPMENT GROUP - standing advice
ENVIRONMENT AGENCY - no comments received
ECONOMIC DEVELOPMENT - no comments received
LANDSCAPE - no observations

Representations Received

Five letters of support have been received citing the fact that the building has been empty and unused for a long time and that there is a shortage of housing in the south-west.

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below.

SP1 - Sustainable development locations,
DM2 - Development in the countryside,
CP8 - Environment,

This takes into account the recent adoption of the SADMP.

Local finance considerations

Community Infrastructure Levy

This development could be liable to pay Community Infrastructure Levy (CIL) contributions, the applicant is advised to contact the local planning authority's CIL officer for details if permission is granted.

Determining issues and considerations

The main issues are: the agreement of the planning authority to determine a repeat application which is, in terms of the proposed development, identical to two previously refused applications (the most recent being in 2017); the principle of development; submitted evidence in support of the application; and the evaluation of the viability of the consented use in regards to the mooted reasons for removing the planning condition.

Introduction

This application represents the third such application in six years to remove a condition to permission 46/04/0020 restricting use of the building (now a two bedroom bungalow) to holiday occupancy only, the most recent application (46/17/0052) being refused in 2017, with a prior application (46/12/0033) for the same Section 73 variation of conditions proposal refused in 2013. The local planning authority (LPA) therefore has to initially, under section 70 of the 1990 Town and Country Planning Act and amendments under the 2011 Localism Act, reach a view on whether such an application should be either declined to be determined or allowed to proceed beyond the validation stage, and is, in terms of the submitted content accompanying the application, materially different to earlier applications. It is considered that the submitted marketing evidence is a material difference to the previous 2017 application and therefore the LPA should reach a determination as to the merits of the application.

Principle of development

In terms of the principle of development the site is in an open countryside location in which residential development is generally not supported. The original consent for conversion to a residential use was granted in 2004 precisely because the intended use was for holiday accommodation only. Since that time the building was let out to tourists over an 8 year period but this appears to have stopped in 2013 and over the last six years the building has been vacant and the applicants have submitted now three applications to remove the holiday condition. The policy reasons to refuse the application discussed in the report in 2017 are still valid to this application in regards to an unsustainable location and conflict with policies in respect of spatial strategy SP1 and DM2. There have been no significant changes in the Local Plan since the last refusal in 2017, with some changes to the NPPF 2019 as compared to the 2012 NPPF but none that would support this type of accommodation in open countryside locations (unless used for essential rural workers or to provide affordable dwellings). There are therefore no significant material changes to the previous policy reasons for refusal which would warrant grounds to give 'in principle' support to the current application.

Submitted evidence

The main and different 'evidence' provided with this application is of the marketing of the property for sale and accounts related to the years when the building was let out from 2006 to 2013. The submitted accounts show some fallow years with a loss being made in 3 of the 8 years (from 2006 to 2013 inclusive) for which accounts have been submitted, however taking the years in profit and loss into account the total profit over the 8 year period was a low five-figure sum (excluding 'drawings' from the business bank account by the wife of the applicant, this is discussed below). Since 2013 the site has not been used or marketed for holiday letting purposes so it is difficult to reach a thoroughly reliable determination as to the viability of the business in current economic conditions. The agent has not explained why the applicants have ceased to run the business or why no more recent attempts have been made to let out the building as a holiday unit. The LPA therefore has to rely on out of date information in regards to the current viability of the building as an extant business. The agent has offered information regarding the marketing of the property as a dwelling with a holiday occupancy condition (but perhaps not as a currently functioning holiday unit business for sale), however whilst there is no doubt that it has been offered to the market it is open to question whether this has been at a realistic price. The advertisement from the Somerset County Gazette which includes the unit (single storey, two bedroom house with a holiday occupancy condition) prices it at £230,000, the same advertisement also features a two-storey, three bedroom dwelling, without any holiday occupancy conditions in the local area, at £235,000. It is expected that in normal circumstances a holiday use restriction imposed via a planning condition would considerably reduce the asking price of a property. The submitted evidence does not provide a convincing justification of a realistic price for the property taking into account the holiday restriction, nor does it explain why the business is no longer extant or the building being put to use for tourist letting purposes. A recent application (and permission granted) for conversion of an outbuilding to a holiday use in the same LPA area included a submission from the holiday letting company Sykes Cottages stating that holiday accommodation in Somerset is 'very popular' (see 10/18/0030).

Whilst the LPA accepts that the submitted figures for the use of the building up to 2013 do not show a high profit margin, they do demonstrate profitability over the longer term and recent (admittedly anecdotal) evidence indicates that tourist accommodation in the vicinity is in demand.

The submitted accounts and financial information have been provided to demonstrate that the consented use as a holiday let is unviable. The details of the accounts are confidential and whilst reference will be made to them, the figures will not be cited in this report, except in deliberately ambiguous terms which would not break commercial confidentiality. The question that has to be addressed in relation to the accounts is that of:

do they evidence an unsustainable and economically unviable business?

The accounts contain a basic income/expenditure and profit/loss annual summary, and individual income/expenditure entries from bank records. Whilst these do show 3 out of 8 years with a loss the other years show a reasonable profit and evidence of monies paid into the bank account shows what appears to be clear evidence of regular occupancy of the property after letting out, through the services of a holiday letting company. The void periods when the property was not let out appear to be short, except in one year where perhaps there was another explanation as to why

the holiday use took a marked downturn. Whilst information about the rental has not been provided directly the information in the accounts details regular payments from the same holiday letting company over the 8 year period, and suggest that the operation was a modest but still sustainable business. Only in one year do these generally good levels of occupancy slacken to what could be considered an unviable level. The calculation of profit and loss calculates income against expenditure, but the expenditure includes several drawings from the company by an individual who is assumed to be the wife of the applicant, as part of the annual expenditure. It can therefore be reasonably postulated that these 'drawings' are income from the business which should be added to the overall profit (minus losses) over the 8 year period. When added together the average weekly income over the total 8 year period appears to be a low three-figure sum. Given that the building was for most of the period a one bedroom holiday cottage this does not appear to show an unviable enterprise.

The question of the viability and cessation of operation of the holiday let business use of the building is important in assessing the proposed removal of the condition, and has further implications in terms of the asking price for which the property has been marketed. As the business use appears to have ceased around 2013 it is not being advertised as a current and operational holiday let with bookings, but rather as a dwelling with a holiday occupancy condition. Whilst it is acknowledged that the planning use class of C3 applies to both unencumbered, open-market dwellings, and those with a planning condition restricting occupancy to holidaymakers, in property terms the impact on value is considerably different for such a dwelling. This could be especially true if the commercial tourism letting of the property has stopped some six years ago so potential buyers would not be sure of investing in an ongoing and modestly profitable enterprise. The previous application (46/17/0052) for the same proposed development noted in the officer's report, that

"Evidently points made by the agent steer officers to the view that the occupancy of the property was quite high, thus questioning its viability without any current evidence to suggest otherwise."

This report (46/17/0052) also highlighted that the asking price when the building was offered for sale prior to the 2017 application, appeared to be close to the expected range (£215-259k in Taunton) for bungalows without any holiday occupancy condition, and that in the same appeal case cited in this application (by the agent for GTH) 'Gerberstone' the marketed value there was between 43-47% below normal prices due to the holiday condition.

In the submitted planning statement the previous officer report to 46/17/0052 is summarised thus "...the evidence was deemed to be the correct information, but due to the limited, inaccurate and outdated nature of the marketing evidence gathered, did not enable a decision to be fully made in response to Policy DM2". The LPA would dispute that this is an accurate summation of the reasons given in the report in relation to evidence which were two-fold: firstly the officer questioned the case that the business was not viable, secondly the marketing evidence was deemed to have failed to have shown that the property had been marketed at a price which genuinely reflected the reduction in value resulting from the planning conditions to consent 46/04/0020. To quote from the report, "the price of the property has been decreased over the course of this period, however the sale figure has never been previously agreed with the Council as being 'reasonable'..."

This application has stated that the building was offered for sale in range from an initial £275k down to the current price of £230k. Research on websites such as Zoopla and RightMove indicates that the range for comparable two-bedroom bungalows in a ten mile radius of West Buckland goes from approximately £150k up to approximately £350k, but this is for properties without any holiday occupancy conditions. Of the specified holiday units found in the Somerset area, through internet research, most were park-home style properties on established holiday encampments at prices often below £100k (but the LPA accepts that park-homes are not directly comparable), although one converted barn for a one bedroom bungalow was found in the Dulverton area for £160k. In the report for the 2017 application the officer noted that the price offered had not been agreed as 'reasonable' with the LPA in terms of accepting that the building had been marketed at a value reflective of the restriction. If the figure of more than 40% below normal market value is accepted for the reduction caused by a holiday condition then it is considered that the submitted evidence of marketing the property has not adjusted the price to reflect the effect on value that a holiday occupancy condition creates. No information has been supplied by the agent, despite being from the estate agents who are currently marketing the property, as to how the 'fair' price was calculated in respect of the inevitable reduction that a holiday occupancy condition imposes. If a hypothetical 40% reduction had been given with the offered sale this would mean that the figures of £230k-£275k equate to between £380k-£450k as the 'normal' market value for an unencumbered dwelling, (ie 60% is £230-£275k, 100% is £380-£450k). This is a price range considerably over even the most expensive properties that are unencumbered, open-market, two-bedroom bungalows, in the ten-mile radius area, at current prices. In the relevant section of the submitted Planning Statement the agent argues that "...the property was marketed at £275,000 which is a fair market value for the property and reflective of the occupancy restriction in place".

The agents for this application are the firm of local estate agents who are currently marketing the property for sale. They are therefore in a very good position to have provided a robust market valuation of the property at normal market value without a restrictive planning condition, and a second value with the condition in place, showing the current state of the bungalow market locally and how the 'fair' price in respect of the holiday occupancy condition was calculated. If the price asked was a 'fair' reflection of the expected holiday-condition reduction then this should have been calculated with a readily understandable formula using a percentage-decrease price calculation against current market values. Even at a percentage decrease of perhaps 20-30% the asking price range of £275-230k is close to the top end of the current (unencumbered, open-market) bungalow price range locally, and in no way accords with prices for holiday lodges or similar.

Conclusion

No evidence has been submitted showing any attempt to continue using the building as a holiday unit, such as letters from holiday cottage companies stating that the building could not be let out. The submitted accounts show that when the building was in use for holiday letting occupancy rates were reasonable for such a property and a modest but generally steady income was accrued. The planning authority accordingly question the notion that the business use of the building is unviable as no robust evidence has been presented making this case, and the submitted

accounts appear to make the opposite case. Without clear evidence of an unviable business use for the consented holiday accommodation and of a marketing campaign to sell the property at a price reduction that concurs with that expected due to a holiday condition (on an agreed formula with the LPA) it is considered that there are no grounds to support the proposed removal of the condition. The reasons given to refuse the application in 2017 are essentially unchanged. It should be made clear to the applicant that any future period of marketing which may be used as evidence for subsequent applications to remove the condition, should be to a price where the LPA has been first consulted about how a fair evaluation of the reduction has been calculated.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

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