DECISIONS – 20 FEBRUARY 2020

Site: HOLIDAY UNITS AT, PIPISTRELLE HOUSE, SMEATHARPE ROAD, CHURCHSTANTON, TAUNTON, HONITON, EX14 9RE

Proposal: Variation of Condition No. 07 (restriction of letting period) to allow for the 3 No. units to be residential at Pipistrelle Holiday Units, Smeatharpe (retention of works already undertaken)

Application number: 10/18/0033

Reason for refusal: Appeal – Dismissed
Costs -

The Planning Inspectorate

Appeal Decision

Site visit made on 17 December 2019

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 22nd January 2020.

Appeal Ref: APP/W3330/W/19/3237811

Pipistrelle Holiday Units, Pipistrelle House, Smeatharpe, Honiton, Devon EX14 9RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Robin Lockyer against the decision of Somerset West and Taunton Council.
- The application Ref 10/18/0033, dated 30 January 2019, was refused by notice dated 17 April 2019.
- The application sought planning permission for 'Change of use of barn to 3 holiday units at Barn C, Lower Sothey Farm, Smeatharpe as amended by agent's letter and plan received 5th July 1991' without complying with a condition attached to planning permission Ref 10/91/020, dated 16 July 1991.
- The condition in dispute is No 7 which states that: The occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times.
- The reason given for the condition is: The accommodation provided is unsuitable for use as a permanent dwelling because of its limited size, and inadequate facilities on site and the Local Planning Authority wish to ensure the accommodation is available for tourism.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Robin Lockyer against Somerset West and Taunton Council. This application is the subject of a separate Decision.

Procedural Matter

3. The reason for imposing the disputed condition included reference to the limited size of the accommodation and inadequate facilities available on site. The Council has not pursued these issues in this appeal and I have not been directed to any relevant policies on them. I have not therefore considered these matters further.

Main Issue

4. The main issue is whether the disputed condition is necessary and reasonable having regard to the location of the appeal premises in the open countryside and access to services and facilities.

Reasons

5. The appeal is seeking the removal of the disputed condition in order that Pipistrelle Holiday Units can be used as permanent residential dwellings rather than as holiday accommodation. The Units are part of a small group of dwellings with Pipistrelle House and Lower Sothey Farm, set approximately 300m from the small settlement of Smeatharpe. The appeal site is outside of the settlement boundary of any settlement defined in the Taunton Deane Core Strategy 2011-2018 (CS) and therefore, in planning policy terms, it is in the open countryside.

6. Policy DM2 of the CS supports conversion of existing buildings in the countryside subject to a sequential approach setting out the priority of uses that will be permitted. Community and employment uses are given highest priority, then holiday/tourism use, with residential uses lower priority. As the Units have already been converted to holiday accommodation, it is reasonable to assess the proposal from this point in the sequence.

7. The appellant's evidence is that the Units were converted in the early 1990s and operated as holiday units for 10-12 years, after which short term lettings were taken as a means of keeping the accommodation occupied during the quieter winter months. Due to the appellant's ill health they continued to be occupied as short term lets. There is no substantive evidence before me of a lack of current demand for holiday or tourism accommodation in the area, or that the Units are not viable for such use. Accordingly, there is no compelling justification to move from holiday/tourism use to any other type of residential use.

8. Even if there were such justification, Policy DM2 requires priority to be given to affordable, farm or forestry dwellings or community housing before any other residential use. The appellant is not proposing to secure the Units as affordable housing or as any of the other types listed. No substantive evidence has been provided to demonstrate that the Units would not be suitable for other types of housing or that there is no demand for them locally. Therefore, the proposal fails to comply with the sequential approach in CS Policy DM2 and conflicts with that Policy.

9. The appellant suggests that the sequential approach in Policy DM2 is at odds with the National Planning Policy Framework (the Framework). The CS was adopted after the original Framework was published in 2012 however, so would have been

consistent with its principles and policies. The revised Framework published in 2019 supports rural community, business, tourism and leisure uses and rural housing to meet local needs, particularly for affordable housing. It also allows re-use of redundant or disused buildings in the countryside but only where it would enhance the immediate setting[1]. Accordingly, the approach taken in Policy DM2 is consistent with that of the revised Framework and, having regard to paragraph 213, the Policy carries full weight.

10. Framework paragraph 79 states that decisions should avoid the development of isolated homes in the countryside except in specified circumstances. The small group of dwellings that includes the appeal site is surrounded by open, relatively undeveloped agricultural land and is readily perceived as occupying an isolated position separate from the settlement. Given this physical separation, it follows that removal of the condition would result in the creation of 3 isolated permanent homes in the countryside.

[1] Paragraph 79.

11. Framework Paragraph 79d) allows such development where it would re-use redundant or disused buildings and enhance their immediate setting. The Units are not disused and, although not currently in that use, no evidence has been provided to demonstrate that the buildings are now redundant for holiday accommodation. Nor is there any evidence that permanent residential use would lead to an enhancement of the setting of the buildings. Therefore, neither d) or any of the other circumstances in Framework paragraph 79 apply. Accordingly, national policy directs that such proposals should be avoided.

12. Smeatharpe has a farm shop and a small village hall which holds some events, but otherwise has very little in the way of services and facilities. Residents of the Units would be reliant on the larger village of Churchinford or the towns of Taunton or Honiton for day-to-day services and facilities including schools and shops. Churchinford is approximately 1.5 miles from the site and is designated in the CS as a Minor Rural Centre.

13. The evidence indicates that the No 387 bus service from Taunton to Sidmouth via Smeatharpe travels on Mondays and Thursdays. While the appellant refers to a daily service from Churchinford to Taunton, I have no evidence this passes through Smeatharpe. It has not been demonstrated that either route would provide suitable times to travel to work or school.

14. Furthermore, to access bus stops in Smeatharpe, residents of the Units would walk the paved public footpath to the village hall but then have to walk some distance along the main road, which has no footway or lighting and narrow, uneven verges. This would not provide a safe or attractive route for pedestrians. Although the appellant suggests that there is a bus stop at the village hall, I saw no signage, notices or other evidence of this at my site visit.

15. While Churchinford is within cycling distance of the appeal site, the unlit routes are unlikely to be attractive for use outside daylight hours. Accordingly, although there are some options for sustainable transport modes from the site, these are limited. Framework paragraph 103 recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nevertheless, the isolated location of the appeal site significantly compromises the ability to access such modes.

16. Both permanent residents and holidaymakers would be likely to support some local services such as shops, therefore the removal of the condition would have limited benefits for such services. Although the appellant contends that residents would be more likely to use local services than drive to Honiton or Taunton, this would be influenced by personal preference and convenience, so cannot be guaranteed.

17. Permanent residents could also support playgroups and schools, however the relatively small size of the Units means there are unlikely to be many children resident, so the potential benefit would be limited. Permanent residents could use community and social facilities such as the village hall, but again this would be influenced by personal preference and lifestyle, so the social benefits in this regard would be limited. It has not therefore been demonstrated that the proposal would enhance or maintain the vitality of rural communities as required by paragraph 78 of the Framework.

18. Accordingly, the removal of the condition would result in permanent dwellings in a location with limited access to public transport, facilities and services, where future residents would be largely reliant on the private motor car. It would therefore lead to conflict with Policies CP1 and CP6 of the CS, which require, amongst other things, that locational decisions reduce the need to travel, improve accessibility to jobs, services and community facilities. It would also conflict with Policy A5 of the Taunton Deane Adopted Site Allocations and Development Management Plan 2016 (SADMP) which, amongst other things, sets out that residential development should be within walking distance of, or should have access by public transport to, employment, convenience and comparison shopping, primary and secondary education and health care, leisure and other essential facilities.

19. Consequently, the proposal would also conflict with Policies SP1 and CP8 of the CS and Policy SB1 of the SADMP, which seek to focus development on the most accessible and sustainable locations, and to strictly control development outside of settlement boundaries unless it is in accordance with national, regional and local policies for development within rural areas. As the proposal would not accord with development plan policies the presumption in favour of sustainable development in Policy SD1 of the CS does not apply. Furthermore, it would not accord with paragraphs 78 or 79 of the Framework. The condition therefore remains reasonable and necessary having regard to the location of the appeal premises in the open countryside and access to services and facilities.

Other Matters

20. The Units make effective and efficient use of the land as they have been converted into holiday accommodation. The site is now previously developed land, however as it is already in use no benefit would accrue from the proposal in this regard. The proposal would not harm highway safety, have an adverse visual impact or result in additional pollution. As such, the impacts would be neutral in relation to these matters and I therefore find no conflict with Policy DM1 of the CS. This does not however outweigh the harm that I have identified above.

21. The appellant contends that it is inappropriate to withhold planning permission for a proposal that would have been acceptable if it were the subject of an application now. There is no compelling evidence that the conversion of the barns in the early 1990’s led to an enhancement of the immediate setting as now required by Framework paragraph 79d). If another local barn were to be proposed for

conversion, the circumstances would be considered on their own merits and may not be comparable with the appeal site. As such, it has not been demonstrated that current national policy would support conversion of the barns to permanent dwellings. Nor does a decision from another authority, under different development plan policies, justify development outwith the policies of the development plan.

22. The appellant also contends that permitted development rights for conversion of agricultural buildings to dwellings[2] are an example of the Government's more permissive stance towards dwellings in the countryside now, compared to when the original permission was issued. As such rights can only be applied to agricultural buildings they would not now apply to the appeal site. Nor is there any evidence that the barns, before conversion, would have met all necessary criteria to have been permitted development. Therefore, this change in legislation does not justify the appeal proposal.

23. The proposal would contribute to the supply of housing, which is encouraged by the Framework. However, very little evidence of local housing need or house price affordability has been provided to support the appellant's suggestion that the proposal would meet a local need for modest dwellings that are relatively affordable. Given the modest number of permanent dwellings being proposed, in the context of the Council having a Framework compliant supply of housing land,

[2] Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

the benefits would be commensurately modest, such that they would be comfortably outweighed by the significant harm and associated development plan conflict identified above.

24. Although the appellant refers to getting constant requests for short term lets, the Units are not proposed to be restricted to rented tenure. Therefore, the demand for rental properties can be afforded minimal weight.

25. The appellant contends that dismissal would lead to the existing tenants being given notice and the site becoming vacant due to their ill health. There is however no evidence that the Units could not be managed as holiday accommodation by someone else, therefore the potential for them to be left vacant carries little weight.

26. The Council has suggested an alternative condition to increase the permitted occupancy of the Units for holidaymakers to up to 3 months in any 12 month period. While this would be more flexible, no justification for this change has been submitted. In any event the appellant is clear that they are seeking planning permission without any such restriction. On balance therefore, it has not been demonstrated that the revised condition would be reasonable or necessary.

Conclusion

27. For the reasons given above, and taking into account all matters raised, I find that the proposal would conflict with the development plan when read as a whole. There are no other considerations, including the Framework, that outweigh the conflict. I therefore conclude that the appeal should be dismissed.

L McKay

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 17 December 2019

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 22 January 2020.

Costs application in relation to Appeal Ref: APP/W3330/W/19/3237811 Pipistrelle Holiday Units, Pipistrelle House, Smeatharpe, Honiton, Devon EX14 9RE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Robin Lockyer for a full award of costs against Somerset West and Taunton Council.
- The appeal was against the refusal to grant planning permission under section 73 of the of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The applicant contends that the Council failed to consider a number of matters when determining the application: national policy and permitted development legislation in relation to conversion of rural buildings; the presence of local facilities; rural travel patterns; the contribution of the site to housing supply and mix; and the contribution of residential use to supporting local services and facilities. They suggest that the Council overstated the isolated location of the appeal site and that, had the Council taken a more wide-ranging view of the proposal, it could have taken a more balanced consideration of the benefits and lack of harm to the wider public good and the appeal could have been avoided.

4. Paragraph 49 of the PPG sets out examples where local planning authorities may be at risk of a substantive award of costs, including preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

5. Local policies for the location of housing are consistent with national policy in seeking to direct residential development to sustainable locations. There is no moratorium in local policy on development outside towns, with many smaller settlements in rural areas identified as suitable for housing. The appeal site

lies outside of these settlements however, in the open countryside. Therefore, the Council's consideration of the proposal in relation to local and national policies which seek to restrict development in the countryside was not unreasonable.

6. The Council acknowledged the changes in local and national policy since the original decision and considered the proposal against the policies of the development plan and the provisions of the National Planning Policy Framework (the Framework), both of which were referenced in the reason for refusal. In particular, it considered whether the appeal site was isolated for the purposes of Framework paragraph 79 and concluded that the requirement of paragraph 79d) was not met as the proposal would not enhance the immediate setting.

7. The Council went on to assess the sustainability of the location in relation to day-to-day services and public transport. It considered the proposal in relation to local policies which seek to reduce the need to travel. Its conclusion was supported by clear reasoning, with particular reference to Framework paragraph 103 which recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The Council's behaviour was not therefore unreasonable in this regard.

8. The Council also considered the benefits to the local economy and services of permanent occupation of the Units compared to holiday occupation. It further considered whether the proposal would meet the needs of rural workers, eligible local needs or provide key worker accommodation. It therefore took into account material considerations, including the Framework.

9. While the Council did not consider the proposal in relation to Class Q of the General Permitted Development Order[1] this was because the buildings are no longer in agricultural use. In these circumstances, the absence of consideration of this national legislation by the Council was not unreasonable.

10. The proposal would have resulted in 3 permanent dwellings, making a contribution to the local housing market. The Council made no assessment of this issue, which, given the clear emphasis on boosting housing supply in the Framework, was unreasonable behaviour. The applicant provided limited information on local housing need however, with references to demand for rental properties, high house prices and affordability supported by very little detailed evidence. Given the limited amount of information provided on this issue, I find that no wasted expense or effort has been demonstrated.

11. The applicant's contention that a more balanced consideration could have been given suggests that they consider different weight should have been accorded to the various benefits and harm resulting from the proposal. It is a well-established principle in planning law that the attribution of weight is a matter for the decision maker. The Council considered the proposal in relation to the development plan and other material considerations, including changes in national policy, and reached a reasoned and balanced conclusion that the disputed condition remained necessary.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

L McKay

INSPECTOR

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[1] Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)