The Planning Inspectorate

Appeal Decision

Site visit made on 27 July 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Appeal Ref: APP/Q1153/W/23/3315904
Holbrook, Broadwoodkelly, Winkleigh EX19 8EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Chris Conway against the decision of West Devon Borough Council.
- The application Ref 3723/22/VAR, dated 25 October 2022, was refused by notice dated 13 January 2023.
- The application sought planning permission for creation of a dwelling (following a Class Q Prior Notification being granted under ref 4219/21/PDM) without complying with a condition attached to planning permission Ref 2100/22/FUL, dated 7 October 2022.
- The condition in dispute is No 5 which states that: *The dwelling hereby approved shall only be used for private residential purposes and the said dwelling shall not be used for any business or commercial purposes without prior written consent of the Local Planning Authority.*
- The reason given for the condition is: *To safeguard the amenity and character of the surrounding area and to restrict the character and volume of traffic attracted to the site.*

Decision

1. The appeal is allowed and planning permission is granted for creation of a dwelling (following a Class Q Prior Notification being granted under ref 4219/21/PDM) at Holbrook, Broadwoodkelly, Winkleigh EX19 8EF in accordance with the terms of the application, Ref 3723/22/VAR, dated 25 October 2022, without compliance with condition number 5 previously imposed on planning permission Ref 2100/22/FUL dated 7 October 2022 and subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs was made by Mr Chris Conway against West Devon Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Prior approval (Ref 4219/21/PDM) was originally granted in January 2022 for the change of use of an agricultural building to a dwelling house. There were no conditions restricting the use of the approved dwelling. The timeframe during which the Prior Approval could be completed has not expired.

4. Subsequently, in October 2022, planning permission (Ref 2100/22/FUL) (the planning permission) was granted for the erection of a dwelling in place of the agricultural building for which prior approval has been granted to convert to a dwelling.

5. The Council considers that condition No 5 of the planning permission prevents the use of the dwelling as a holiday let, because this would fall within a commercial purpose. As such, the appellant applied to remove condition No 5 in order that the dwelling could be used as a holiday let.

6. The proposal would not involve any physical works and there is no dispute between the parties that there would be no harm to the amenity and character of the surrounding area.

7. The Council contend that the condition is necessary as a holiday use of the approved dwelling would result in an increased reliance on the private car in an unsustainable location in open countryside.

8. Based on the above, the main issue is whether the disputed condition is necessary and reasonable having regard to the location of the site relative to services and facilities.

Reasons

9. Policies SPT1 and SPT2 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (LP) seek to deliver sustainable development and sustainable rural communities. These policies support development with sustainable transport options that are well served by public transport, walking and cycling opportunities. The need for sustainable transport options and to locate development well served by public transport is to reduce the need to travel by motor vehicles, including the private car, in order to reduce carbon emissions.

10. The appeal site is approximately 1.7km southeast of Broadwoodkelly, which is the nearest location for access to services and facilities. The distance and nature of the roads is such that they would not be attractive to walkers or cyclists, particularly at night and in the winter months. As a result, the majority of journeys to and from the site would be reliant on a private motor vehicle that would not aid the reduction in carbon emissions.

11. Policy TTV1 of the LP seeks to direct growth and development delivering homes and jobs to the identified main towns, smaller towns, key villages and sustainable villages. LP Policy TTV2 supports the location of housing where it will enhance or maintain the vitality of rural communities and the delivery of sustainable rural tourism developments.

12. LP Policy TTV26 seeks to avoid isolated development in the countryside, unless there are exceptional circumstances. These include where there is re-use of a redundant building, where accommodation for rural workers apply, where the proposal secures the long-term future of a significant heritage asset or is of truly outstanding design.

13. A new dwelling in this countryside location would not accord with these LP policies. However, a dwellinghouse has already been accepted in this location by virtue of the existing planning permission. Whilst there is no definition of a dwellinghouse in the Town and Country Planning Act 1990 (as amended), in Gravesham BC v SSE and O'Brien [1983] JPL 306 it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford those who used it the facilities required for day-to-day private domestic existence. A dwellinghouse did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons. Consequently, a holiday let that meets the Gravesham test will usually be

treated as a dwellinghouse for the purposes of applying planning policies and not as a commercial leisure use.

14. As such, the use of a family home for holiday lettings would not necessarily be a material change of use. Materiality in such cases, in accordance with Moore v SSCLG [2012] EWCA Civ 1202, would be a matter of fact and degree, with the answer depending on the characteristics of the use as holiday accommodation. In the event that the appeal were to be allowed, the dwelling when occupied by those holidaying would still form a single household in accordance with its meaning under s258 of the Housing Act 2004. No change of use is proposed. Moreover, were a material change of use from a dwellinghouse intended in the future, that would require planning permission regardless of the outcome of this appeal.

15. Policy DEV15 of the LP advises that support will be given to proposals in sustainable locations, it requires amongst other things that development proposals avoid a significant increase in the number of trips requiring the private car and that development is compatible with the rural road network. It requires Sustainable Travel Plans to be submitted to demonstrate how the traffic impacts of the development have been considered and mitigated.

16. The Council has suggested that travel patterns would be more demanding for holiday use. However, the broad acceptability of both its location and any travel-related environmental impacts arising from a residential use of the site have already been established by virtue of the existing planning permission.

17. The removal of the disputed condition with the effect of permitting a holiday use, would have limited impact in terms of the length and frequency of private vehicle journeys. It would not alter the operative part of the planning permission. Permanent occupiers would still be likely to drive in order to access most shops and services and would also be likely to generate travel relating to regularly accessing places of work, education or visiting friends. Although future occupiers using the property for holiday purposes would be likely to generate different travel patterns (for example using the property as a base from which to explore), not a great deal of evidence has been put forward to show whether this would result in longer or more numerous journeys.

18. Based on the information provided, I am unable to conclude that removal of condition No 5 would necessarily lead to a less sustainable pattern of vehicular movements. Given this, the absence of a Sustainable Travel Plan does not weigh against the proposal. Moreover, whilst LP Policy DEV29 requires development to promote sustainable transport choices and provide safe access, the proposal would be unlikely to lead to more demand for travel or materially impact on the levels of highway safety compared to a permanent residential occupation.

19. LP Policy DEV15 is supportive of tourist development. The Council advise that to justify the holiday use, the appellant would have to demonstrate a need. However, Policy DEV15 says camping, caravan, chalet or similar facilities that respond to an identified need will be supported provided, amongst other things, the proposal is compatible with the rural road network. The policy does not preclude a holiday use of a dwellinghouse as such, and I have already found the proposal would be likely to generate a similar demand for travel. It would thus be compatible with the rural road network.

20. Even if the case were to be that the disputed condition would prevent holiday use of the dwellinghouse, there is no substantive evidence to demonstrate that the holiday use would likely generate more demand for travel than a private residential use. As such, given my findings above, I conclude that the site would provide a suitable location for a dwellinghouse, including holiday use, with particular regard to access to services and facilities. I am therefore satisfied that the disputed condition restricting the occupancy of the dwelling is not necessary or reasonable having regard to the location of the site relative to services and facilities.

21. For the reasons given above, the proposal to remove condition No 5 would not result in a significant increase in the number of trips via the private car. Therefore, in terms of the main issue, I find no conflict with the provisions of Policies SPT1, SPT2, TTV1, TTV2, TTV26, DEV15 and DEV29 of the LP.

22. Whilst not referred to in its reasons for refusal, the Council has referred to LP Strategic Objective SO10 and Policy DEV32 in its Officer Report. LP Policy DEV32 seeks to ensure the need to deliver a low carbon future is considered in the design and implementation of all developments. I have been informed that SO10 of the LP seeks to contribute to carbon reduction measures by reducing the need to travel. For the above reasons, there would also be no conflict with SO10 and Policy DEV32 of the LP.

23. I find no conflict with the general thrust of paragraph 84 of the National Planning Policy Framework 2021 (the Framework) which, amongst other things, requires planning decisions to enable the sustainable growth and expansion of all types of business in rural areas. Nor would there be conflict with paragraph 85 of the Framework which accepts that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements.

Conditions

24. The Planning Practice Guidance (PPG) states that, to assist with clarity, decision notices for the grant of permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The PPG also states that in granting permission under section 73 new conditions can be imposed, provided they do not materially alter the development and could have been imposed on the earlier permission.

25. I have no information before me about whether the original conditions were discharged. I shall therefore impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have updated the conditions to refer to the latest version of the General Permitted Development Order and the dwelling.

Conclusion

26. For the reason set out above, I conclude that the appeal should be allowed and grant a new planning permission without the disputed occupancy condition but retaining those non-disputed conditions.

J White

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years beginning from 7 October 2022.

2. The development hereby approved shall in all respects accord strictly with drawing numbers: Detailed Proposal 1501/002A Rev A, received by the Local Planning Authority on the 15/09/2022; Existing and Proposed Block Plan 1501/003, received by the Local Planning Authority on the 15/07/2022; Foul and Surface Water Drainage-Barn at Holbrook, received by the Local Planning Authority on the 13/07/2022; Site Location Plan LP 1 Rev B, received by the Local Planning Authority on the 11/07/2022.

3. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

   Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

4. Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting or further amending that Order), no development of the types described in Schedule 2, Part 1, Classes A-H of the Order, as set out below, shall be carried out on the site, other than that hereby permitted, without the express consent in writing of the Local Planning Authority:
   (a) Part 1, Class A (extensions and alterations)
   (b) Part 1, Classes B and C (roof addition or alteration)
   (c) Part 1, Class D (porch)
   (d) Part 1, Class E (a) swimming pools and buildings incidental to the enjoyment of the dwellinghouse and; (b) container used for domestic heating purposes/oil or liquid petroleum gas)
   (e) Part 1, Class F (hardsurfaces)
   (f) Part 1, Class G (chimney, flue or soil and vent pipe)
   (g) Part 1, (h) Including those classes described in Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and any Order revoking and re-enacting this Order).

5. The development shall be carried out in accordance with the submitted foul and surface water drainage drawing, reference Foul & Surface Water Drainage-Barn at Holbrook LP1.

6. Prior to their installation details / samples of facing materials, and of roofing materials to be used in the construction of the proposed development shall

be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with those samples as approved.

7. A detailed landscaping scheme shall be submitted to and approved by the Local Planning Authority prior to development above slab level showing a screen bank along the boundary between the proposed dwelling and agricultural building in the adjacent field, along with hedges, trees and shrubs along the other boundaries to the north, west and south, including proposals for protection and maintenance of the landscaping.

   The scheme submitted shall be fully implemented (a) in the planting season following the substantial completion of the development (b) in tandem with each phase of the development as set out under condition above, and must be implemented not later than the planting season following the completion of each phase and the plants shall be protected, maintained and replaced as necessary to the reasonable satisfaction of the Local Planning Authority for a minimum period of five years following the date of the completion of the planting.

8. The recommendations, mitigation and enhancement measures of the Ecological Assessment Report, by Redstone Ecology, dated May 2022, shall be fully implemented prior to development above slab level of the use hereby approved and adhered to at all times. In the event that it is not possible to do so all work shall immediately cease and not recommence until such time as an alternative strategy has been agreed in writing with the local planning authority.

9. No external lighting shall be installed on, or in association with, the new dwelling, except for low intensity, PIR motion-activated lights on a short timer (maximum 1 min), sensitive to large objects only (to avoid triggering by bats or other wildlife). The lights should produce only narrow spectrum, low-intensity light output, UVfree, with a warm colour-temperature (3,000K or less).

   All internal lighting shall be designed to have low illuminance output, no UV component, maximum colour temperature of 3000 Kelvin. Lighting units should be directed/cowled away from windows and glazed doors.

   Glazing on all elevations shall be treated to have low light transmission properties, i.e. with Visible Light Transmission of 40% or less. No skylights shall be installed.

10. Details of how the development will meet with the objectives of Policy DEV32 of the Plymouth and South West Devon Joint Local Plan, particularly in relation to halving 2005 levels of carbon emissions by 2034, shall be submitted to and approved in writing by the Local Planning Authority.

    The development then shall be carried out in accordance with the approved details and maintained permanently thereafter.

11. Details of an Electric Vehicle Charging Point shall be submitted to and approved by the Local Planning Authority prior to development above slab

level. The approved details shall then be installed prior to occupation and thereafter shall be maintained and kept in good working order as specified by the manufacturer.

End of Schedule

The Planning Inspectorate

Costs Decision

Site visit made on 27 July 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Costs application in relation to Appeal Ref: APP/Q1153/W/23/3315904
Holbrook, Broadwoodkelly, WINKLEIGH EX19 8EF

- 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 Chris Conway for a full award of costs against West Devon Borough Council.
- The appeal was against the refusal of planning permission under section 73 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. Parties in planning appeals normally meet their own expenses. However, 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. PPG includes examples of unreasonable behaviour by planning authorities that may lead to a substantive award of costs. Amongst other things, this can include, "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" and "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".

4. The applicant contends that the Council has behaved unreasonably because it failed to consider the 'six tests' for conditions in accordance with paragraph 56 of the National Planning Policy Framework, 2021 and relevant established case law; misapplied the requirements of s73 of the Town and Country Planning Act 1990 (the Act); failed to consider the potential fallback position; disagreed with a technical statutory consultee with no evidence or justification and failed to substantiate its reasons for refusal.

5. In its appeal statement the Council explains why the disputed condition satisfies the six tests and that it considers the proposed holiday use would be different in character to the approved development. The Council's overall point is that a holiday use would result in a greater demand for travel via private motor vehicles in an unsustainable location. In this regard, the Council's decision, and its position in the appeal, is ultimately underpinned by its planning judgement. As such, it was not unreasonable of the Council to conclude as it did, notwithstanding the context of the relevant case law.

6. Moreover, within its Officer Report the Council has explained why the planning application was determined as it was. It took into account the basis of what could be carried out as part and parcel of a dwellinghouse already permitted by the planning permission, in the context of an application under s73 of the Act.

7. Local Planning Authorities are not bound to accept the recommendations of technical statutory consultees. However, as noted above the PPG provides that Councils are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and where the reasons given for refusal is based on vague or generalised assertions about the impact of the scheme.

8. The Council's decision notice clearly identifies the policies of the development plan against which it was considered the proposal would fail to comply with. The Council provided a comprehensive Officer Report and statement of case, which had regard to the planning history of the site and gave a clear and coherent explanation in support of its position.

9. In reaching this view, the Council has explained why this application was determined as it was, taking into account previous decisions on the appeal site, and has substantiated its reasons for refusal having regard to development plan policies.

10. Whilst I do not find that the Council's planning arguments particularly convincing, a reasonable basis has nonetheless been made to substantiate the reasons for refusal.

11. The PPG advises that, where Local Planning Authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.

Conclusion

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

J White

INSPECTOR