



Appeal Decision

Hearing held on 14 November 2013

Site visit made on 14 November 2013

by Jacqueline Wilkinson Reg. Architect IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 December 2013

Appeal Ref: APP/C3810/A/13/2199053

Evergreen Cottage, Sack Lane, Lidsey, Bognor Regis PO22 9PE

- The appeal is made under section 73A 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 Melanie Jenkins Farming Ltd against the decision of Arun District Council.
 - The application Ref AL/5/13/, dated 20 January 2013, was refused by notice dated 29 April 2013.
 - The application sought planning permission for conversion and extension of redundant farm building to 1No. unit of holiday accommodation without complying with a condition attached to planning permission Ref AL/49/09/, dated 4 August 2009.
 - The condition in dispute is No 7 which states that: The tourist accommodation hereby approved shall be used for individual lets for up to and no more than 28 consecutive nights.
 - The reasons given for the condition are: To preserve the availability of the accommodation as a holiday let in accordance with policy DEV34 of the Arun District Local Plan and to prevent the establishment of a permanent dwelling in the open countryside in accordance with policies GEN3 and GEN7 of the Arun District Local Plan.
-

Decision

1. The appeal is allowed and planning permission is granted for conversion and extension of redundant farm building to 1No. unit of holiday accommodation at Evergreen Cottage, Sack Lane, Lidsey, Bognor Regis PO22 9PE in accordance with the application Ref AL/5/13/, made on the 20 January 2013, without complying with condition No 7 set out in planning permission No AL/49/09/ granted on 4 August 2009 by Arun District Council, but otherwise subject to the following conditions:
 - 1) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), Class A and Class E, no enlargements, improvements or other alterations, buildings or enclosures shall be erected.

Application for costs

2. At the Hearing an application for costs was made by Melanie Jenkins Farming Ltd against Arun District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are i) whether the tests of policy DEV2 of the Arun District Local Plan 2003 (Local Plan) have been satisfied, ii) whether the use of the property as a dwelling would be sustainable in terms of location and the rural economy and iii) if these issues are not satisfied, whether there are any other material planning considerations which would justify the proposal.

Reasons

Policy framework

4. I was told at the Hearing that Local Plan policy DEV34, referred to by the Council in its reason for the disputed condition, was not put before me as it was cited in error.
5. Local Plan policy DEV2 *Conversion of rural buildings for residential use* aims to protect the character of the countryside from inappropriate development and to ensure that opportunities for rural employment are not lost. DEV2(i) does not permit conversion of buildings outside the built up areas unless it has been demonstrated that reasonable attempts have been made to market and use the premises for business purposes. Paragraph 3.02 explains further that conversion for business uses will usually be preferred (which includes tourist accommodation) and that in determining applications for residential conversion the Council will expect a demonstration that other more appropriate uses have been explored. This will normally require evidence that the property has been placed on the open market and advertised appropriately at a reasonable price and for a suitable period of time.
6. Policy GEN3 *Protection of the countryside* aims to protect the countryside for its own sake. Development will not be permitted unless it meets operational needs of agriculture or it diversifies the rural economy. The text to GEN 3 explains that the Council intends to protect the natural environment by strictly controlling development in the countryside. It acknowledges the benefit to farmers of rural diversification and encourages the submission of whole farm plans to accompany farm diversification proposals. Policy GEN 7 *Form of new development* requires high quality design and layout.
7. The appellant makes the case that the Local Plan is out of date and is inconsistent with the National Planning Policy Framework (the Framework). He states that policies DEV2 and GEN3 are unduly restrictive and fail to address the economic, social and environmental roles of sustainable development in a mutually dependent manner.
8. He points out that under paragraph 14 of the Framework, which states that there is a presumption in favour of sustainable development, where relevant policies are out of date this means granting permission unless any adverse effects would significantly and demonstrably outweigh the benefits or specific policies in the Framework indicate that development should be restricted.

- The Framework must be taken as a whole. Paragraph 17 – *Core planning principles* – states that one principle is to take into account the different roles and characters of different areas, ... recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it. Another core principle is to actively manage patterns of growth to make the fullest use of public transport, walking and cycling. Policies DEV2 and GEN3 accord with these core principles.
10. Section 1 of the Framework – *Building a strong, competitive economy* – paragraph 19, places significant weight on the need to support economic growth. Directly relevant to this appeal is Section 3 – *Supporting a prosperous rural economy* – which, in paragraph 28 explains that economic growth should be supported in rural areas by supporting sustainable growth and expansion of all types of businesses and enterprises in rural areas, to promote the diversification of agricultural and land-based rural businesses, support sustainable rural tourism ... which respect the countryside. Policy DEV2 shares similar objectives.
 11. Paragraph 51 relates to empty housing (which the appeal building is not) and commercial buildings (which the appeal building is not).
 12. Paragraph 55 states that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities. New isolated homes in the countryside should be avoided unless there are special circumstances. Policy DEV2 accords with this aim of the Framework.
 13. Policy GEN7 *Form of new development* requires a high standard of design and layout, which fully accords with the aims of the Framework set out in Section 7.
 14. Section 6 of the Framework relates to delivering a wide choice of high quality homes and paragraph 49 states that housing applications should be considered in the context of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing. The Council accepts that it cannot demonstrate a five-year supply of deliverable housing. This does not automatically mean that these Local Plan policies, which are broadly economic and environmental policies, are out of date, but rather that appropriate weight must be given to the provision of a dwelling in assessing the planning balance.
 15. I have taken a broad overview of the Framework and I conclude that the aims of policies DEV2, GEN3 and GEN7 broadly accord with the aims of the Framework.

The tests of DEV2(i)

16. DEV2(i) requires that it must be “demonstrated that reasonable attempts have been made to market and use the premises for business purposes”.
17. It was stated at the Hearing that the appellant was aware, before commencing his application for tourism use, that the building would not be viable for such a use. He nevertheless obtained planning permission on this basis and carried out the work to convert the building. It was also confirmed at the Hearing that he has never attempted to use it as a holiday let. Instead, the building has

been let to a young couple who are related to the occupier of the adjacent bungalow.

18. The appellant has had the appeal property on the market with a local estate agent for sale as a holiday letting business since August 2012. There has been no interest and this does not surprise me, as there are not likely to be many investors seeking small holiday lets to run as a business in the current economic climate. This evidence on its own would not satisfy the tests of policy DEV2.
19. A more reasonable approach would have been to have marketed the property for holiday letting directly through a number of appropriate agencies and web sites. However, the appellant has not directly tested the holiday letting market in this way, but has instead submitted a marketing assessment prepared by the Real Places Consultancy.
20. On the basis that the capital funding to carry out the conversion was clearly not dependent on or linked to the approved use, I consider it relevant to assess the viability of holiday letting "from the current position", so the capital expenditure on the building works would not be included as costs. On this basis the marketing assessment reaches the conclusion that a small profit would be made from holiday letting. This is based on refit costs of approximately £7,000, operating costs of between £6,600 and £7,185 (depending on occupancy rates), with an initial occupancy of 45%, rising to 60% in year 5 and thereafter. This would be likely to produce an annual profit rising from £750 to £1,725. However, the appellant states that this would not be enough to make the project worthwhile, so he would leave the building vacant.
21. The opinions of a local letting firm, Leaders, were also submitted as evidence. They expressed the view that the property would have only very limited appeal for holiday rental, due to its position and not particularly attractive character and setting. They suggest a more realistic occupancy level of around 20%. The Leaders letter also indicates that the property could not be advertised in current condition, which clearly makes it difficult to test the market.
22. I am inclined to agree with the Leaders assessment. I saw that the appeal property is not attractively located in terms of views or access to attractive countryside. Its accommodation is poorly laid out, with a cramped feeling, there is no fireplace and the garden is small and overlooked by the adjacent bungalow. I agree with Leaders that the prospects for this building as a holiday let would not be good. I also saw that there are a number of "value" holiday chalet parks available nearby, with which this unit is likely to be in competition. I also give some weight to the suggestion made in the Real Places report that the property would be highly exposed to any small changes in the market place.
23. I therefore accept the broad conclusions of the market assessment and local advice, that the holiday letting use is unlikely to be sufficiently profitable over the longer term to justify using the building for that purpose.
24. That said, I turn again to the tests of DEV2. Whilst both parties have focussed on use as a holiday let, I have no evidence before me that any other business use has been explored. The appellant argues that the Framework does not require a sequential test. However, the Framework must be taken as a whole

and so the purpose of the requirements in Section 3: *Supporting a prosperous rural economy* must be taken into account. This purpose is to support economic growth in rural areas by supporting sustainable growth of all types of business and enterprise in rural areas.

25. The Framework requires, in paragraph 55, that isolated new homes in countryside are avoided unless there are special circumstances, none of which include open market residential letting. Whilst there would be an income from residential letting, this has not been justified as part of a wider business plan for the farm diversification, nor would an unrestricted residential permission guarantee that the building would continue to be part of the farm.
26. Reference has been made to the recent Government consultation¹, which would in effect allow the residential conversion of rural buildings in certain circumstances. However, these measures are not approved and I must assess this appeal against the requirements of the current development plan policies.
27. It is the case that a building currently in use as an office can now be changed to residential subject to certain requirements², however, the appeal building would not have been occupied for the qualifying period, so it would be reasonable to explore other business uses.
28. Notwithstanding that the Council has not pressed for an alternative business use to be explored, I am unable to conclude that the proposal would fully satisfy the tests of policy DEV2(i) of the Local Plan.

Location and the rural economy

29. The occupier of the appeal building spoke at the Hearing of poor bus services and the need to travel by car to both work and local services. I saw that the lane has no lighting and the A29 is a narrow heavily trafficked trunk road with no footpaths or cycle lane. Cycling or walking to services would therefore be very difficult. In terms of supporting local services, I was not told that there are any within walking or cycling distance which would be supported by the proposal and the appellant has not made the case that unrestricted residential use is necessary to sustain the viability of the farm business.
30. In terms of location and the local rural economy the proposal would not therefore represent sustainable development.

Conclusions on issues i) and ii)

31. I conclude that the proposal would not satisfy the tests of Local Plan policy DEV2, in that other business uses have not been fully explored. I also conclude that the proposal would not be sustainable in terms of location or support for the rural economy.
32. The proposal would therefore fail the broad objectives Local Plan policies DEV2 and GEN3 and the Framework, which are to support sustainable development whilst protecting the countryside for its own sake.

Other material planning considerations

¹ "Greater flexibilities to change use", DCLG, consultation closed 15/10/13

² TCP (General Permitted Development) Order Class J.

33. The appellant makes the case that the proposal would provide an affordable unit of accommodation. However the removal of the disputed condition 7 would not guarantee that the dwelling would remain in the ownership of the appellant or be let at anything other than a market rent, although I accept that as the property is small, it would not attract a high rent. Whilst it is currently let to a local person, that person is a tenant and his occupancy is subject to the terms of a lease.
34. However, the Council cannot demonstrate a five year supply of housing. This does not mean that the application should automatically succeed, but I must assess whether the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when taken against the policies of the Framework as a whole or unless the specific policies in the Framework indicate that that development should be restricted.
35. The provision of a dwelling, in the light of the acknowledged shortage in the District, attracts some weight. However, the benefit of one dwelling would be very small and would be significantly outweighed by the lack of sustainability of the proposal in terms of the location and the rural economy. A specific policy in the Framework (paragraph 55) indicates that isolated new homes in the countryside should be avoided unless there are special circumstances. Whilst the examples given are not exhaustive, the proposal would also be at odds with this policy.
36. I therefore conclude that, notwithstanding the shortfall in housing in the District, the proposed unrestricted residential use would fail to comply with the overall aims of the Framework.
37. I am required to assess whether a condition would make the otherwise unacceptable development, acceptable. A condition has been suggested by the Council, which would restrict the residential use of the dwelling to an agricultural worker working in the locality.
38. The appellant states that there is no need for an agricultural dwelling on the farm or the estate but he points to a shortage of affordable rural accommodation in the locality. I was told at the Hearing that the current occupier works in local farm, which indicates to me that there is a demand for affordable housing for a rural worker in the area. The Council's suggested condition would secure the use of the appeal property to such a person and the development would thus be justified under the terms of paragraph 55 of the Framework.
39. I therefore conclude that there are other material planning considerations which would justify the proposed dwelling, subject to it being limited to occupation by an agricultural worker.

Unilateral undertaking

40. A Unilateral Undertaking has been submitted, which commits the payment of £1,656.00 and a monitoring fee of £150.00 to affordable housing in the District has been required by the Council under the terms of an Interim Housing Policy adopted by full Council on 18 August 2010. This requires a 15% contribution from developments of 1 – 14 houses, but recognises the need to assess this figure in terms of viability. This approach accords with the aims of the

● Framework, set out in paragraph 50, to deliver inclusive and mixed communities.

41. However, in the light of my decision to grant conditional permission where the proposed condition would effectively restrict the accommodation to a limited number of rural workers, it would not be reasonable to require a full contribution towards affordable housing in the District. I therefore cannot conclude that the Unilateral Undertaking satisfies the tests of paragraph 206 or the Community Infrastructure Regulations Levy Regulations, Regulation 122. I am therefore unable to take this undertaking into account.

Other matters

42. I have given close consideration to the human rights of the couple currently living in the property, their non-resident young children and the grandparents living next door. I was told at the Hearing that the occupiers have a tenancy, which can be terminated by the landlord, giving the appropriate notice. The couple therefore remain there at the goodwill of the appellant and there would be no change to their situation or rights to a family life as a result of my decision.

Overall conclusions

43. Whilst the Council's reasons for imposing the disputed condition were stated to be to preserve the availability of the holiday let, the requirements of Policy DEV2 are wider than this. This policy clearly aims to prevent the loss of rural employment opportunities. Whilst I have accepted that the marketing assessment, backed up the opinion of a local letting agent, is reasonable in terms of assessing holiday letting, marketing for wider business use was not carried out. I therefore am unable to conclude that the requirements of policy DEV2 have been satisfied.
44. The second reason for refusal was to prevent the establishment of a permanent dwelling in the open countryside. I have found that the second reason is in accordance with the broad aims of the Framework and I have also concluded that the proposed unrestricted residential use would not be sustainable development in terms of location or the rural economy.
45. Given the shortfall of housing in the District, especially affordable housing, I give some weight to the proposed residential use, which if it was restricted to an agricultural worker, would help satisfy some of the local need for more affordable rural housing. The proposal would then comply with the special circumstances set out in paragraph 55 of the Framework and the requirements of Local Plan policy GEN3. Local Plan policy GEN7 would also be satisfied.
46. I have given consideration to the personal circumstances of the current occupiers of the appeal building. Personal circumstances are not normally a planning matter, although in this case the fact that one of the occupiers works in agriculture in the area indicates a need for such accommodation in the area.
47. I therefore conclude that the benefits of the proposed residential use, if restricted to housing for an agricultural worker, which can be secured by condition, would outweigh the loss of an opportunity to provide rural employment and disadvantages of its isolated location.
48. For the reasons given above I conclude that the appeal should be allowed.

Conditions

49. I have considered the Council's suggested condition in the light of the advice given by the Government in Circular 11/95, *The Use of Conditions in Planning Permissions* and the Framework, paragraph 206. I have not been told that any of the other conditions are still required, so I have not imposed them.
50. The appellant states that there is no need for an agricultural dwelling on this farm or elsewhere on the estate. However, in paragraph 47 of his statement, he points to a shortage of affordable rented rural accommodation. One of the occupiers of the appeal property is employed on a farm in the locality, demonstrating that there is a local need. I therefore consider that there is reasonable justification under the exceptions set out in paragraph 55 of the Framework for the residential use of the appeal property to be restricted to agricultural occupation to satisfy this wider need.
51. As discussed at the Hearing given the small size of the garden, I consider it necessary to withdraw permitted development rights to extend the building further or to erect ancillary buildings in the garden. This is in order to protect the amenity of the occupiers in terms of outdoor amenity space.



INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Elizabeth Lawrence BTP MRTPI	Elizabeth Lawrence Ltd
Sam Tod	Tod Anstee Property Consultants
Roger Budden	Real Places Consultancy
David Vawdrey	Leaders Letting
Mariya Miles	Occupier of Evergreen Cottage

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Vick	Team Leader Development Control West
-------------	--------------------------------------

INTERESTED PERSONS:

M Miles	Local resident
Councillor Jacqui Maconachie	
Councillor Dougal Maconachie	

DOCUMENTS

- 1 Letter 11 November 2013 to the Council containing estimated costs of furnishing and equipping the appeal property for self catering letting.
- 2 Breach of Condition Notice dated 22 November 2012.
- 3 Appeal summary from appellant
- 4 Interim housing policy – New Standards for Affordable Housing.

