
ADVICE (No.2)

1. I am asked to advise Melanie Jenkins Farming Ltd ("**the Company**") on the approach to be taken when considering planning applications for re-use of redundant farm buildings in Arun district.

Main Material Facts

2. The Company own a number of redundant farm buildings.
3. The Company wishes to convert the redundant farm buildings to residential use.
4. Among the buildings owned by the Company is Evergreen Cottage, Sack Lane, Lidsey, Bognor Regis, PO22 9PE ("Evergreen Cottage").
 - a. By a decision notice dated 4th August 2009 Arun District Council ("the Council") granted planning permission to develop the barn to the west of the bungalow at Sack Lane, Lidsey by: *"Conversion and extension of redundant farm building to 1 No. unit of holiday accommodation"*¹ ("the 2009 Planning Permission") (the barn to the west of the bungalow subsequently became known as Evergreen Cottage). Condition 7 attached to the planning permission provided: *"The tourist accommodation hereby approved shall be used for individual lets for up to and no more than 28 consecutive nights"*.
 - b. By an application dated 20th January 2013² the Company applied for planning permission pursuant to section 73 of the Town and Country Planning Act 1990 ("TCPA 1990") to develop Evergreen Cottage without complying with condition 7 attached to the 2009 Planning Permission. The application was refused by a decision notice dated 29th April 2013 and a subsequent appeal

¹ LPA reference AL/49/09

² LPA reference AL/5/13

was dismissed by a decision letter dated 17th December 2013³ (“the December 2013 Decision Letter”).

5. At paragraph 15 of the December 2013 decision letter, the inspector stated her view that aims of local plan policy DEV2, GEN3, and GEN7 broadly accord with the aims of the NPPF.

Instructions

6. I am asked to advise on the relationship between the development plan policies relating to the residential conversion of redundant agricultural buildings and those contained in the National Planning Policy Framework (“NPPF”).
7. I am asked, in particular, to consider the approach to be taken when determining future applications made by the Company for conversion of redundant farm buildings.
8. In order to address the questions posed in my instructions I first set out the legal and policy framework.

Legal Framework

9. When determining an application for planning permission a local planning authority (and on appeal, the Secretary of State) is required to have regard to the provisions of the development plan, so far as material to the application, any local finance considerations, so far as material, and to any other material considerations⁴.
10. A planning authority is required, to make a determination on a planning application in accordance with the development plan unless material considerations indicate otherwise⁵.
11. The meaning of the words contained in a planning policy is a question of law as policy statements should be interpreted objectively in accordance with the words used, whereas judgments which are to be made on application of the policy are

³ PINS reference APP/C3810/A/13/2199053

⁴ Section 70(2) Town and Country Planning Act 1990

⁵ Section 38(6) Planning and Compulsory Purchase Act 2004

matters for the decision maker in the exercise of their own judgment which can only be challenged on grounds of irrationality⁶.

Policy Framework

The Development Plan

12. The development plan, so far as material, consists of the saved policies of the 2003 Arun Local Plan (“the 2003 Local Plan”).
13. Policies DEV 1 and DEV 2 of the 2003 Local Plan provide:

DEV1

Proposals for conversion of buildings for industrial or business uses outside the built up area will be permitted provided that:-

(i) the building is structurally sound, of permanent construction, and capable of conversion without rebuilding or significant alteration or extension;

(ii) the resultant building and use will not have an adverse effect on the rural character of the area in respect of the nature and level of activity likely to be generated, including the resultant traffic level;

(iii) the resultant building is sympathetic to its setting in terms of form, bulk and visual design;

(iv) where the building is of historic or architectural importance, there is no adverse effect on the character and appearance or features of architectural or historic interest, internally and externally, which the building possesses, or its setting; and

(v) the traffic to be generated by the new use can be safely accommodated by the site access and the local road system.

⁶ Tesco Stores v. Dundee City Council [2012] UKSC 13, see in particular paragraphs 18 and 19

A structural survey may be required to demonstrate that the building is capable of conversion.

Provision for bats and/or owls should be incorporated into the scheme.

Where necessary, planning conditions will be imposed removing relevant Permitted Development Rights under the General Permitted Development Order.

All large scale proposals must be accompanied by a landscape assessment.

Reason

To encourage a healthy rural economy and reduce the need for new buildings in the countryside.

POLICY DEV2 Conversion of Rural Buildings for Residential U.

Proposals for the conversion of buildings for residential use outside the built-up area will not be permitted unless:-

- (i) either, it has been demonstrated that reasonable attempts have been made to market and use the premises for business purposes, and the application must be supported by a statement of the efforts which have been made; or, residential conversion is a subordinate part of a scheme for business re-use;*
- (ii) the building is structurally sound, of permanent construction, and capable of conversion without rebuilding or significant alteration or extension;*
- (iii) the resultant building and use will not have an adverse effect on the rural character of the area and is sympathetic to its setting in terms of form, bulk and visual design. Particular regard will be given to the impact of any residential curtilage on the character of the countryside;*
- (iv) where the building is of historic or architectural importance, there is no adverse effect on the character and appearance or features of architectural or historic interest, internally and externally, which the building possesses, or its setting; and*
- (v) the traffic to be generated by the new use*

can be safely accommodated by the site access and the local road system.

The proposal must minimise the amount of land to be used as residential curtilage.

A structural survey may be required to demonstrate that the building is capable of conversion.

Provision for bats and/or owls should be incorporated into the scheme.

Where necessary, planning conditions will be imposed removing relevant Permitted Development Rights under the General Permitted Development Order.

All large scale proposals must be accompanied by a landscape assessment.

Reason

To protect the character of the countryside from inappropriate development and to ensure that opportunities for rural employment are not lost.

Explanation

3.01 The conversion of rural buildings can be beneficial to the area by contributing to the local economy and to the rural landscape. However, particular care needs to be taken with conversions of groups of buildings, which can result in unacceptable levels of activity and extensive alterations to the building. Proposals for residential use bring few benefits to the rural economy, can result in a suburban character in an area and be detrimental to the building.

3.02 Conversion for industrial and business uses will usually be preferred to residential uses. (Business uses include tourism and tourist accommodation.) The District Council, in determining planning applications for residential conversion 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, in order to give potential business occupiers the opportunity to come forward. For the purpose of these policies, buildings will be defined as being of historic or architectural importance according to the criteria at paragraph 1.72.

14. Policy GEN3 provides that outside the built up area boundaries as defined, the countryside will be protected for its own sake and development will not be permitted unless it falls within certain categories, which do not include general needs residential development.
15. Policy GEN7 encourages high quality design.

Emerging Local Policy

16. The Council are preparing a new local plan for their area. They have produced a pre-submission draft. Policy DM16 includes the following:

Conversion of Rural Buildings for Residential Use

Proposals for the conversion of buildings for residential use outside the built-up area will not be permitted unless:

- 1. Either, it has been demonstrated that reasonable attempts have been made to market and use the premises for business purposes, and the application must be supported by a statement of the efforts which have been made; or, residential conversion is a subordinate part of a scheme for business re-use;*
- 2. The building is structurally sound, of permanent construction, and capable of conversion without rebuilding or significant alteration or extension;*
- 3. The resultant building and use will not have an adverse effect on the rural character of the area and is sympathetic to its setting in terms of form, bulk and visual design. Particular regard will be given to the impact of any residential curtilage on the character of the countryside;*
- 4. Where the building is of historic or architectural importance, there is no adverse effect on the character and appearance or features of architectural or historic interest, internally and externally, which the building possesses, or its setting; and*
- 5. The traffic to be generated by the new use can be safely accommodated by the site access and the local road system.*

The proposal must minimise the amount of land to be used as residential curtilage. A structural survey may be required to demonstrate that the building is capable of conversion. Provision for bats and/ or owls should be incorporated into the scheme. Where necessary, planning conditions will be imposed removing relevant Permitted Development Rights under the General Permitted Development Order. All large scale proposals must be accompanied by a landscape assessment.

National Policy

17. Paragraph 55 of the NPPF provides:

To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- the exceptional quality or innovative nature of the design of the dwelling.*

Such a design should:

— be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;

- *reflect the highest standards in architecture;*
- *significantly enhance its immediate setting; and*
- *be sensitive to the defining characteristics of the local area.*

18. Paragraph 215 of the NPPF advises that weight should be given to relevant policies in existing plans according to their degree of consistency with the framework.

Advice

19. When determining a planning application for conversion of redundant agricultural buildings in Arun, a planning authority must have regard to the relevant policies in the 2003 Local Plan, and in particular, policy DEV2.
20. Policy DEV2 indicates that planning permission will not be granted for residential conversions unless all five criteria are met. The effect of criterion (i) is to require the building to have been marketed for business use before it can be considered for residential use. The approach to be followed in applying criterion (i) is further explained in paragraph 3.02 of the reasoned justification. The Council proposed no change to that approach in the light of the NPPF, in that it has followed the same approach in policy DM16 in the emerging local plan.
21. The NPPF is an important ‘other material consideration’ and inspectors give significant weight to it. In order to apply paragraph 215 of the NPPF it will be necessary to consider the degree to which policy DEV2 is consistent with the framework, and in particular, paragraph 55.
22. Paragraph 55 of the NPPF advises that local planning authorities should avoid isolated new homes in the countryside unless there are special circumstances. One of those special circumstances is *“where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.”*
23. That ‘special circumstance’ contemplated is not restricted to cases where the building has been offered on the market for business uses. In my view, a policy which seeks to restrict the special circumstances to cases where a redundant building has been offered on the market for business use would not be consistent with paragraph 55 of the NPPF.

24. In my view policy DEV 2, and also DM 16 in the emerging local plan, is not consistent with the approach indicated in paragraph 55 of the NPPF as it does not contemplate residential use of redundant buildings in the countryside in the special circumstance identified in the NPPF.
25. The Council are likely to rely upon the approach set out in policy DEV2, and to rely on the apparent endorsement of that approach in the December 2013 Decision Letter. A previous inspector's decision is, when relevant (as it is likely to be in this case), a material consideration to be taken into account in determining planning applications. The decision maker is required to have regard to the importance of consistency in decision making and, if a different approach is to be taken, to give reasons⁷.
26. In the December 2013 Decision Letter the inspector (at paragraph 13) referred to paragraph 55 of the NPPF and to the fact that it contemplates that new isolated homes in the open countryside should be avoided unless there are special circumstances. The inspector then stated that DEV2 accorded with that aim of the NPPF. What the inspector did not do was to consider whether DEV2 allows for development in the special circumstances contemplated in paragraph 55. Development which would re-use of redundant or disused buildings and lead to an enhancement to the immediate setting is contemplated as a special circumstance in paragraph 55. Paragraph 55 of NPPF does not contemplate that such a special circumstance will only arise if the building has first been offered to the market for business uses. DEV2 adds another requirement to the special circumstance contemplated in paragraph 55 of the NPPF and for that reason is inconsistent with it. The 2013 Decision Letter does not address and consider the fact that DEV2 adds an additional test to that set out in paragraph 55, and as a result a subsequent inspector (or the local planning authority) would have good reason not to follow the December 2013 inspector's approach.
27. In determining any planning application the decision maker will have to consider whether the 2003 Local Plan policy DEV2 is consistent with the NPPF. For the reasons I have given, I consider that there is a good argument that it is not. If the decision maker comes to the conclusion that DEV2 is inconsistent with the NPPF, the

⁷ North Wiltshire DC v. Secretary of State (1993) 65 P & CR 137 at page 145 (Mann LJ)

advice in paragraph 215 of the framework will have to be considered. If that advice is followed the decision maker will give less weight to DEV2 as it is inconsistent with the NPPF. I anticipate that an inspector on appeal would prefer the approach set out in paragraph 55 of the NPPF to that set out in policy DEV2 of the 2003 Local Plan.

28. In order to ensure that local policies are consistent with the NPPF I recommend that policy DM16 in the emerging local plan be objected to on the grounds that it is inconsistent with paragraph 55 of the NPPF.

29. If I can be of any further assistance at this stage, please contact me in chambers.

NEIL CAMERON Q.C.
Landmark Chambers
London

25 January 2014

Re: Melanie Jenkins Farming Ltd

ADVICE (No.2)

Elizabeth Lawrence MRTPI,

Elizabeth Lawrence Limited