



MERGED APPEALS

**Arun - Condition removal or variation of
seasonal or holiday occupancy**

ALLOWED

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.
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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.

9. 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 Section3: *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.

Jacqueline Wilkinson

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
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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.

Costs 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

Costs application in relation to Appeal Ref: APP/C3810/A/13/2199053 Evergreen Cottage, Sack Lane, Lidsey, Bognor Regis PO22 9PE

- 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 Melanie Jenkins Farming Ltd for a full award of costs against Arun District Council.
 - The hearing was in connection with an appeal 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 for conversion and extension of redundant farm building to 1No. unit of holiday accommodation.
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Decision

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

The submissions for Melanie Jenkins Farming Ltd

2. The appellant seeks a full award of costs on the basis of unreasonable behaviour by the Council under the terms of the Circular 03/2009 (the Costs Circular). As the representations were made in writing, I will not repeat them in detail.

The response by Arun District Council

3. The Council responded at the Hearing by pointing out that it has relied on Arun District Local Plan policies DEV2 and GEN3. Whilst these are old (2003) when considered against paragraph 28 of the National planning Policy Framework and paragraph 55 they are very similar in aims. The Council does not deny that there has been a delay, but in terms of the impact on the appellant the property is already being used for the purposes he wants.

Reasons

4. Circular 03/2009 (the Costs Circular) A12 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
5. Paragraph A25 of the Circular states that costs unrelated to the appeal itself are not eligible.

6. The appellant refers to paragraphs A28, B3 and B8 of the Costs Circular. A28 and B3 emphasise the importance of discussion between the parties at all stages. B8 points out that the purpose of the costs application is not to resolve allegations of mishandling, but to decide whether or not an award of costs is justified on the basis of the evidence in a particular case. The appellant had discussed the application with the case officer and was under the impression that the proposal was acceptable. The decision therefore came as a complete surprise.
7. In assessing this application for costs I have considered the whole process, with respect to the guidance in paragraph A28 of the Circular. Beginning with the original permission in 2009, the appellant applied for a use which I was told he did not implement and I was given no evidence that he had tried to test the market at that time. Instead he let the dwelling on a permanent basis to a young couple, who now find themselves at risk of loss of their home. It was explained to me at the Hearing that the question of the viability of the holiday let was not raised at the time of this application, because he wanted to get on with the works. This indicates to me that the appellant had not put all his intentions and information to the Council at this time, as part of a constructive dialogue.
8. On the other hand, the Council's focus on the loss of tourist accommodation was not supported by any Local Plan policy to protect this type of accommodation. Although I found that the Council's reasons for refusal were, with respect to the aims of policy DEV2, overall substantiated, the Council had not identified the need for wider marketing for other business purposes.
9. I accept that the appellant was under the impression that the application had officer support and that it is not good practice to leave the on-going case management to the very end of the process, when the decision to refuse came as a surprise.
10. The Council did not dispute that there is an under-supply of housing in the District. In this case it suggested that the provision of one dwelling should be given limited weight as the impact on any shortfall would be minimal. The appellant states that no such distinction is made between small and large schemes in the Framework.
11. The provision of one dwelling would normally be deminimus in terms of housing supply. However, in the light of the District's lack of a 5 year housing supply, I found that some weight should be afforded to the provision of even one dwelling. A balancing exercise was still then required to assess this small benefit against the requirements of the Local Plan policy DEV2 and the Framework, particularly paragraphs 14 and 55. Whilst I gave a different weight to the provision of one dwelling to the Council, I found this matter to be a question of judgement, in which the Council did not act unreasonably.
12. The appellant points out that having seen his full grounds of appeal the Council had the opportunity to change its mind. However, it was not unreasonable for the Council to continue to point out that the approved business use would produce a small profit and that the marketing exercise for sale was not adequate. Even though I have conditionally approved the application to remove the disputed condition, I find that the Council did not act unreasonably on these matters.

13. Paragraph B15 states that planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted. Whilst I have granted permission, I do not consider that the Council's actions were unreasonable or have caused the appellant wasted or unnecessary expense.
14. Paragraph B16 states that authorities will be expected to produce evidence to clearly show why the development cannot be permitted. I found that in the circumstances of this case, with reference to the location and layout of the building, the proposal was not likely to be a reasonably profitable venture. Nevertheless it was not unreasonable for the Council to point out that the appellant's own figures indicated that a profit would be possible.
15. Paragraph B29 gives examples of circumstances which may lead to costs being awarded. The appellant states that the Council failed to refer to the National Planning Policy Framework and has relied solely on paragraph 2. However I found references in the officer's report and the statement of case to a number of paragraphs, including 14, 28, 49, 51, 54, and 55.
16. The appellant states that the Council did not address the evidence produced by Leaders and failed to present evidence that there is a demand for holiday accommodation, nor did it point to a policy which supports the retention of holiday accommodation. The letter from Leaders was referred to in the officer's report. I accept that the Council could not point to a policy requiring the retention of holiday lets, but I saw for myself that there were a number of holiday parks nearby, giving evidence that there is a local demand. The Tourism officer's comments were based on the fact that the building had never been used as a holiday let. Under the terms of Local Plan policy DEV2, it is the responsibility of the appellant to demonstrate that this particular building was not viable for holiday use.
17. I therefore conclude that whilst I have granted conditional permission, given the background to this case, and the need for a judgment to be made on a number of policy interpretations, the Council has not acted unreasonably nor has the appellant been put to wasted or unnecessary expense. With respect to the late change of officer support, the appellant was obviously disappointed, but I have found that this would not amount to unreasonable behaviour, given my analysis of the issues.
18. The conditions for an award of costs have therefore not been met.

Jacqueline Wilkinson

INSPECTOR

Appeal Decision

Hearing held on 14 July 2015

Site visit made on 14 July 2015

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 4 August 2015

Appeal Ref: APP/C3810/W/15/3005380

**Easter Cottage, Norton Cottage, Cart Barn, East Barn, & The Old Stables,
Old Dairy Lane, Norton, Chichester, West Sussex PO20 3AF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by 'All in the Same Boat Group' (Mrs Sally Kavanagh, Mr Ian Lissamore, Mr & Mrs Milne, Mr & Mrs Stephens & Mrs Frances Newman) against the decision of Arun District Council.
 - The application Ref AL/26/14/PL, dated 21 March 2014, was refused by notice dated 30 July 2014.
 - The development proposed is the change of use from 5 No tourist units to 5 No C3 residential units.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed residential units would be sustainable development with reference to the objectives of local and national planning policy.

Reasons

3. The five premises within the appeal site are former twentieth century agricultural buildings. A series of planning permissions over the last seven years granted their conversion to residential dwellings but restricted their occupation to tourist/holiday accommodation by means of a 28-day occupancy condition, albeit the wording of the condition on The Old Stables permission is different to that on the other units.
4. The reason for these occupancy conditions is to preserve the accommodation as holiday lets and to prevent the establishment of permanent dwellings in the open countryside in accordance with the objectives of the Arun District Local Plan (LP) 'saved' Policies GEN3 and DEV2(i).
5. LP Policy GEN3 states that outside the Built-Up Area (BUA) the countryside will be safeguarded for its own sake; development will not be permitted unless it meets a number of specific exceptions, which include tourist/holiday accommodation (in accordance with 'saved' Policy DEV1) but do not include unrestricted Class C3 uses. It also states that permission will not be given for

- the extension of isolated groups of buildings or the consolidation of linear or sporadic development unless it meets these exceptions.
6. LP Policy DEV2 states that proposals for the conversion of buildings for residential use outside the BUA will not be permitted subject to a number of exceptions. There is agreement between the Council and appellant that these exceptions are met apart from (i), which is disputed. This exception states that 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.
 7. The appellant suggests that the proposal to allow unrestricted Class C3 use is part of a subordinate scheme for business re-use in that West Barn located behind the site already has one business occupier and works are ongoing to create additional Class B1 units in accordance with the original permission in 2009 (LPA Ref AL/92/08).
 8. However, if all five of the units were to change to unrestricted C3 use they would, in combination with Long Barn on the road frontage which was allowed as an unrestricted C3 use by the 2009 permission, occupy a very large part of the wider site and could not be said to therefore constitute a subordinate part of a scheme for business re-use. In any case, the 2009 permission itself effectively determined that it was only the frontage building which should constitute such a subsidiary residential part of the scheme, which has been implemented.
 9. I note that previous appeal decisions cited by the appellant have addressed the issue of whether 'saved' LP Policies GEN3, DEV1 and DEV2 are consistent with the National Planning Policy Framework (NPPF). In particular I note that the appeals decisions in regard to Easter Cottage¹ and Norton Dairy², which post-date the NPPF's introduction, confirm that they are consistent with it and can therefore be given full weight. I agree with these previous Inspectors' reasoning and conclusions and confirm that these Policies are accorded full weight in this decision.
 10. Norton is a small hamlet outside any BUA comprised mainly of residential dwellings, with the notable exception of the Class B1 West Barn. It has no facilities, the nearest shops being about 2Km away at Westergate, which would realistically need accessing by private car. The appellant's argument that the appeal properties are not isolated because there are five of them in a group does not stand up to examination because they were only allowed as part of a mixed use scheme (AL/92/08) that included the unrestricted frontage C3 use.
 11. Consequently, and despite the site being surrounded by built development, the proposed dwellings would be new isolated homes in the countryside which paragraph 55 of the NPPF states should be avoided subject to a number of exceptions none of which I consider would be met in this case, although I acknowledge the main parties' view that the retention of the five residential buildings would benefit the Conservation Area. Whilst there may be policy within Sections 2 and 3 of the LP which encourage the preservation or

¹ APP/C3810/C/12/2183718 dated 15 May 2013, paragraph 6

² APP/C3810/C/12/2173591 dated 22 August 2012, paragraphs 8-14

enhancement of Conservation Areas, Policies DEV1 and DEV2 are also contained in Section 3 of the LP and these discourage residential uses.

12. The crux of this appeal is therefore whether the five tourism/holiday dwellings have been adequately marketed. By this I mean whether they have been adequately marketed for the business use to which they are currently restricted, short term let tourist/holiday accommodation where occupants are restricted to a period of occupancy of no more than 28 consecutive nights.
13. I have only been provided with one written document relating to the marketing of any of the five properties for holiday lets. This is the letter of 9 October 2012 from Amberley House Holiday Cottages to Mrs Kavanagh regarding Easter Cottage and subsequent confirmation e-mail of 10 June 2014 that its contents still hold. The letter explains that Amberley House will not be able to market the Cottage as holiday accommodation as it did up to the end of 2011 because of the "industrial estate and business park" behind it.
14. However, West Barn has approval for Class B1 use, which is by definition compatible next to residential dwellings including holiday dwellings and the use of the wider site was always subject to the mixed use approval under AL/92/08, which all the current owners must have had knowledge of prior to buying their properties. From my visit to the wider site it is clear that the current user occupying West Barn is unlikely to create noise or any other pollution associated with an "industrial" use, and so it appears Amberley House may have been under a misapprehension regarding this adjacent use.
15. In any case, even Amberley House's confirmatory e-mail is already over a year out of date; it appears there has been no attempt to market Easter Cottage by any other holiday accommodation company or by direct advertising since the end of 2011.
16. Furthermore, I have no written evidence that there has been any attempt by the owners of the other four holiday cottages to market them recently, either directly or through tourist/holiday letting companies as short term holiday lets in accordance with the restrictive condition. Indeed the appellant acknowledges that East Barn and Norton Dairy have never been advertised as holiday letting accommodation. This in itself confirms to me that there has been insufficient marketing of the appeal premises as a whole for their authorised use. Although I heard some anecdotal evidence at the Hearing that there had been attempts to market Easter Cottage and the Cart Barn in the past, this was mainly some time ago and does not prove that these premises are unviable for holiday use now.
17. I understand the appellant's arguments regarding the unlikelihood that all five properties could be successfully marketed for holiday accommodation but I conclude, given the evidence before me, that there has been no recent marketing of all five properties for their lawful use for any reasonable length of time (say six to nine months including over the summer period) and so I cannot conclude that the tourist/holiday accommodation use is unviable.
18. I also understand why the various owners have sought to market their properties for sale as tourist/holiday accommodation businesses and acknowledge that they have had no success in attracting any buyers. However, this is not the same thing as marketing them for their lawful use.

19. Even in terms of this latter marketing of the premises for sale, it is clear that some of the agents may have misunderstood the meaning of the 28-day occupancy condition, especially in terms of the differently worded condition on The Old Stables, which is admittedly open to misinterpretation due to its specific wording.
20. However, that is not a justification for allowing the proposed change of use of The Old Stables or any of the other properties. It is open to any of the owners to apply to vary or delete the particular condition that applies to their property and they would have the right of appeal should the Council refuse such an application, and this has always been the case.
21. It also appears that some of the agents in respect of the properties other than The Old Stables may have been seeking rather unrealistic prices for dwellings which are restricted to a standard 28 consecutive day holiday occupancy condition.
22. I acknowledge the advice received by various agents on the likely unviability of converting any of the holiday dwellings to Class B1 use due to the presence of the adjoining West Barn units and the site's relatively isolated rural location and do not disagree with their conclusions. But again, this does not negate the fact that none of the dwellings have recently been marketed for short term let holiday accommodation.
23. I heard anecdotal evidence from some of the owners at the Hearing that the agents they had used to market their properties for sale are connected to other national agents who market properties via the internet. But I was provided with no written evidence during the course of the appeal that any of the properties had recently been marketed by specialist holiday letting companies including on the internet for short stay holiday lets, which is what I would have expected and what would be required to prove the lawful use was unviable.
24. The appellant argues that the arrangements for accessing the site are complicated due to the lack of a right turn lane off the A27 eastern carriageway onto Norton Lane. Whilst this is so, I note that there is a right turn lane onto the B2233 a short distance to the west from the eastern carriageway and consequently consider that vehicular access to the site from either direction off the A27 is not significantly problematic.
25. In terms of whether the loss of these existing tourism units would adversely impact on the rural economy and the tourism offer of the District, I find the Council's anecdotal evidence to be rather vague. It is unclear what the figures for self-catering trends actually refer to and these are merely national, not local figures. I heard oral evidence at the Hearing from some of the owners suggesting that the local situation does not match these apparent national trends in the growth of self-catering. The appellant also argues that demand for holiday accommodation at this site would always be limited due to its location. However, none of the appellant's evidence was backed up by any written documentation, which again I would have expected to have formed part of the initial appeal documentation, and I therefore give it limited weight.
26. In any case, in view of my conclusion that there has been inadequate marketing of the properties for business purposes, and especially the current lawful use, the proposed development would fail to comply with 'saved' LP Policy DEV2(i). Unrestricted residential development in this isolated rural

location would fail to meet the objectives of 'saved' Policy GEN3 and paragraph 55 of the NPPF. The proposal would not accord with NPPF paragraph 51, as claimed by the appellant, because the properties are not in Class B use.

27. For the reasons given above I conclude that the proposal would not be sustainable development and the appeal should be dismissed.

Nick Fagan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Eve Hearsey BA (Hons) DipTP
Sally Kavanagh
Ian Lissamore
Leigh Sterling Milne FCA & Susan Frances Milne
Jessica Stephens for her parents Mr & Mrs Stephens senior
Frances Newman
Rod May for Mrs Newman
Daniel Clay for Mrs Newman

FOR THE LOCAL PLANNING AUTHORITY:

Simon Davis Planning Case Officer

INTERESTED PERSONS:

Liz Spence Adjoining residential owner/occupier

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Attendance List
- 2 Site Plan of original scheme AL/92/08
- 3 Refusal Notice & Site Plan of AL/79/14/PL for development scheme on tennis court adjacent
- 4 Copy of e-mail dated 13 July 2015 from Henry Adams estate agents to Ian Lissamore regarding current marketing of Norton Dairy
- 5 Copy of e-mail from Stride & Son estate agents to Eve Hearsey dated 7 January 2015 regarding 2014 marketing of Easter Cottage
- 6 Copy of current Savills marketing brochure of The Old Stables
- 7 Copy of current Stride & Sons marketing brochure of Easter Cottage
- 8 Emerging Local Plan position handed to me by LPA



Appeal Decisions

Hearing Held on 10 February 2021

Site visit made on 12 February 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 9 March 2021

Appeal A Ref: APP/C3810/C/19/3222033

Land at Wisteria Heights Caravan Park, Shripney Lane, Bersted, West Sussex PO22 9NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J Connors of Connor Park Homes Ltd against an enforcement notice issued by Arun District Council.
- The enforcement notice, numbered ENF/211/16, was issued on 10 January 2019.
- The breach of planning control as alleged in the notice is:
Without planning permission breaching Condition 4 of Planning Permission reference BE/151/11 granted on 28 March 2012.
Condition 4 of Planning Permission reference BE/151/11 specifies that 'the caravans hereby permitted shall be occupied solely for holiday purposes only and shall not be occupied as a persons' sole or main place of residence. The owners/operators shall maintain an up-to-date register of the names of owners/occupiers of individual caravans on the site and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.
Reason: The use of the site for all year round residential occupation would conflict with policies GEN2, GEN3, DEV39 of the Arun District Local Plan on the use of caravans and on residential development'.
Contrary to condition 4 of Planning Permission reference BE/151/11 and without planning permission, caravans are present on the land occupied as a persons' main place of residence.
- The requirements of the notice are:
 1. Cease to occupy the land for any purpose other than for holiday purposes; and
 2. Cease to occupy the land as a person's sole or main residence.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out in the formal decision below.

Appeal B Ref: APP/C3810/W/18/3214487

Shripney Garden Caravan Site, Shripney Lane, Bersted, West Sussex PO22 9NS

- 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 Connor Park Homes Ltd against the decision of Arun District Council.
- The application Ref BE/135/17/PL, dated 8 December 2017, was refused by notice dated 8 August 2018.
- The application sought planning permission for extension to existing caravan park to provide 12no. additional mobile homes, associated parking area, formation of access and construction of electrical intake housing – Amendment to application BE/42/10 without complying with a conditions attached to planning permission Ref BE/151/11/, dated 28 March 2012.
- The condition in dispute is No 4 which states that:
The caravans hereby permitted shall be occupied solely for holiday purposes only and shall not be occupied as a persons' sole or main place of residence. The owners/operators shall maintain an up-to-date register of the names of owners/occupiers of individual caravans on the site and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.
- The reason given for the condition is:
The use of the site for all year round residential occupation would conflict with policies GEN2, GEN3, DEV39 of the Arun District Local Plan on the use of caravans and on residential development.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out in the formal decision below.

Preliminary Matters

1. At the hearing the appellant confirmed that Wisteria Heights Caravan Park is the new name for the site, and it was agreed that despite the variation in the site address it is clear that both appeals relate to the same site.
2. Planning permission¹ was granted to extend an existing caravan site in 2010. A further permission² was granted in 2012 which extended the boundary of the site and this was subject to four conditions and is the relevant permission. The condition in question restricts the use of the caravans to holiday purposes only and not as a person's sole or main place of residence. It also requires an up to date register of the names of the owners/occupiers of individual caravans and the main home addresses to be kept and made available to the local planning authority.
3. The planning application seeks permission for the continuation of the use of the caravan park without complying with condition 4, so that the caravans could be used as permanent residential accommodation as a person's sole or main place of residence. The enforcement notice alleges the use of the site in breach of condition 4. The notice was served on the owners/occupiers of four of the caravans as well as the owner of the site.
4. If one or both of the appeals succeed, planning permission would be granted to continue the use without complying with the condition and would effectively grant a new permission for the use of the land. New conditions may be imposed provided that they do not materially alter the development that was subject to the original permission and are conditions that could have been imposed on that original permission.

¹ Ref BE/42/10

² Ref BE/151/11

5. The parties agree that, since the application was refused and the enforcement notice served, the Council is no longer able to demonstrate a five year housing land supply (5YHLS). The Council has advised that it is no longer pursuing the first reason for refusal or paragraph 4.2 of the reason for issuing the notice.
6. On 19 January 2021 the Government published the 2020 Housing Delivery Test results. The views of the main parties were sought and I have taken them into account.
7. As the reasons for refusal of the planning application and the reasons for issuing the enforcement notice are broadly the same, I have dealt with the ground (a) appeal and the Section 78 appeal together.

The appeal on ground (a) and the deemed planning application, and the Section 78 appeal

8. Having regard to the reasons for issuing the notice and refusing the planning application, the main issues are:
 - The effect of removing condition 4 on the provision of visitor accommodation;
 - Whether the development makes adequate provision for affordable housing and essential infrastructure contributions;
 - Whether there are any material considerations, including the housing land supply position and any benefits of the development, which would mean that the development should be determined otherwise than in accordance with the development plan.

Visitor Accommodation

9. The effect of the removal of the condition would be to allow 12 caravans to be used as permanent residential accommodation. Policy TOU DM1 of the Arun Local Plan 2018 (ALP) deals with tourism related development and states that the change of use of camping and caravan sites to other uses, including permanent residential use, will not be permitted, unless the site is allocated for other development within the local plan. The site has not been allocated in the local plan for other development, and it has not been identified as a potential housing site in the Housing and Economic Land Availability Assessment carried out by the Council in February 2020.
10. The area is a tourist destination associated with Bognor Regis and the surrounding coastal area. The loss of the visitor accommodation reduces the tourism offer in the area and results in a loss of a source of contribution to the local economy through visitor spending. However, it was confirmed³ during the hearing that in the near-by area there are three caravan parks, which are licensed for well over 1000 holiday units. In this context, the harm arising from the loss of 12 units is relatively moderate. While there would be a cumulative effect if several small sites are lost, there is no evidence before me to demonstrate that there is such a trend in the area. The removal of condition 4 of BE/151/11 is nonetheless harmful to the provision of visitor accommodation and is therefore in conflict with ALP Policy TOU DM1.

³ Email received from Arun District Council containing details of site licences for Lidsey Caravan Park, Riverside Caravan Park and Willows Caravan Park.

Affordable Housing

11. For all developments of 11 residential units or more, ALP Policy AH SP2 requires the provision of a minimum of 30% of the total site number of units proposed to be provided as affordable housing. This should be on the same site in the first instance, with provision by way of a commuted sum only in very exceptional circumstances. The removal of condition 4 would create 12 units of permanent residential accommodation. While the mobile homes are not 'bricks and mortar' homes, they provide dwellings for people to live in on a permanent basis. The policy does not differentiate between types of homes and therefore I am satisfied that it applies to mobile homes.
12. The National Planning Policy Framework as revised in 2019 (NPPF) includes a definition of Affordable Housing in Annex 2: Glossary. Under part d) Other affordable routes to home ownership, it is stated that this includes other low cost homes for sale (at a price equivalent to at least 20% below local market value). The appellant has provided evidence that the median house price in 2013⁴ in Arun District was £216,500, with detached houses having a median price of £313,000. Taking into account inflation, the appellant estimates that the median price of a detached dwelling would be £361,985. More recent house prices indicate that the average selling price of park homes in the District is £160,625.
13. While the category of 'detached houses' would clearly encompass a range of house sizes and types, the average selling price of a park home is substantially more than 20% below local market value based on the median price. I have also had regard to the limitations of mobile homes when compared with 'bricks and mortar' homes, such as the generally restricted garden space with less privacy than conventional housing, their elevated ground floor level requiring an access ramp, as well as their advantages in terms of their modular form and construction.
14. Nonetheless, in my view, and based on the specific evidence before me, in this instance I consider that the mobile homes can be considered to offer an affordable route to home ownership. Moreover, they accord with the aims of the NPPF⁵ to address the needs of groups with specific housing requirements, particularly the elderly and those requiring single storey accommodation. A financial contribution towards off site affordable housing provision is therefore not justified in this instance.

Essential Infrastructure Contributions

15. ALP Policy OSR DM1 requires new development to contribute to open space, sport and recreation provision or improvements. The Arun District Open Space, Playing Pitches, Indoor and Built Sports Facilities Supplementary Planning Document January 2020 (SPD) sets out the steps to calculate contributions towards provision and a play space calculator has been provided. ALP Policy INF SP1 requires development to contribute towards the infrastructure and services needed to support development to meet the needs of occupiers and users of the development.
16. The appellant has completed Planning Obligations under Section 106 of the 1990 Act to meet the requirements for financial contributions set out by West

⁴ ONS House Price Explorer released in 2015 in Appendix D of the Appellant's Further Representations

⁵ NPPF Paragraph 59

Sussex County Council (WSCC) and Arun District Council (ADC). The obligations come into effect if the appeals are allowed. I have considered these in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure (CIL) Regulations 2010 and paragraph 56 the NPPF. They relate to the following matters.

17. Education Contributions: contributions of £42,304 towards primary education, £45,531 towards secondary and £10,666 towards sixth form provision have been agreed. These are based on requirements set out by WSCC⁶ with site specific and detailed justification provided with the appeals⁷. The justification indicates that planned and windfall housing development will result in the local schools within the education planning area being over capacity. The contributions will be utilised for additional facilities, infrastructure and equipment as a result of increased pupil numbers. On the basis of the evidence before me I am satisfied that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests.
18. The appellant has indicated that they would be willing to accept a condition restricting the occupation of the units to those over 55 years old, and that therefore the development would fall under the exemption for education contributions set out in the ECC document as a nil child product can be assumed. However, the appellant has not suggested that such a condition would prevent dependant children from living within the mobile homes, and therefore I do not agree that it would result in a nil child product from the development. The contribution towards education provision is therefore required.
19. Libraries Contribution: Bognor Regis has the closest library to the site and will need to expand to cope with the demands placed on it, in order to meet the relevant standard of 35 square metres per 1000 persons. This gives a required space from the development of 0.798 square metres, equating to a sum of £3,664. The contribution would be used towards providing a library facility to cope with the size of the population arising from development in the area. I am satisfied that this obligation passes the statutory tests.
20. Fire and Rescue Service Contribution: The area is served by the Southern Service Division in West Sussex. The development will place an increased demand on the service to respond to emergencies. The service works in an integrated manner to respond to emergencies across the area it serves, and capital projects have been identified and costed to provide the adequate level of service for the additional population. A sum of £296 is sought towards the installation of linked smoke alarms in existing homes for vulnerable people such as visually or audibly impaired residents or those unable to respond to a fire without assistance in Bognor Parish. This would free up the service to deal with larger incidents. I am satisfied that this sum would be responding to the additional demands placed upon the service by the development and that it passes the statutory tests.
21. These contributions are requested by WSCC and would be secured by the UU provided by the appellant. The UU would meet the requirements of ALP Policy INF SP1, CIL Regulation 122, and paragraph 56 of the NPPF.

⁶ West Sussex County Council – Planning Obligations: Explaining Contribution Calculations February 2020 (ECC)

⁷ Written CIL Justification by WSCC dated 8 February 2021

22. Off-site Play Space Contribution: Formal play space is not provided within the development. The SPD states that for developments of more than 8 dwellings and less than 34 an off-site contribution is required towards the provision of play space. A sum of £20,764 is sought towards the improvement of an existing play area at Berghestede Play Area in the Trees Estate in Bersted. This is stated to be the most local play area, and it is not unreasonable to assume that future occupiers may use it.
23. The sum requested is in line with ALP Policy OSR DM1 and the SPD and is directly related to the development. However, I have seen no evidence that the existing play space is inadequate, nor that there is a need for improvements of the play space as a result of any additional demands placed on it by the development. I therefore consider, on the basis of the information provided, that it has not been demonstrated that the contribution is necessary to make the development acceptable in planning terms and it does not pass the statutory tests.

Conclusions in relation to affordable housing and essential infrastructure contributions

24. In relation to affordable housing, I have found that the mobile homes are a low cost form of housing and therefore a contribution towards off-site provision is not required in this case. The development therefore makes adequate provision for affordable housing, and accords with ALP Policy AH SP2, which sets out the affordable housing requirements.
25. The financial contributions towards education, libraries, and fire and rescue services are necessary and are secured through the submitted UU. The development therefore makes adequate provision for essential infrastructure contributions, in accordance with ALP Policy OSR DM1, insofar as it requires that development contributes towards the infrastructure and services needed to support it.
26. The request for an off-site play space contribution is not adequately justified and I cannot therefore conclude that such a contribution is necessary to make the development acceptable. There is thus no requirement for the UU providing for a payment to ADC and there is no conflict with ALP Policy INF SP1 insofar as it seeks to require new development to contribute towards open space provision.

Housing Land Supply

27. The Council initially stated that it had a supply of approximately 2.9 years, established by an appeal decision made on 12 February 2020⁸. The Council's most recent Annual Monitoring Report (AMR) for 2019-20 was published in December 2020 and states that the 5YHLS has now increased to 3.3 years. I have seen no evidence that would lead me to doubt this figure.

Benefits

28. The appellant has identified a number of benefits. The use of the mobile homes for permanent residential accommodation would provide 12 additional dwellings, which would make a contribution towards meeting the need for

⁸ Appeal Decision APP/C3810/W/3236911

housing in the district. I give this benefit moderate weight due to the relatively small scale of the contribution.

29. The appellant stated that volume housebuilders do not generally provide for single storey living, and that 'bungalows' are sought after particularly by the elderly and less mobile. The occupation of the mobile homes could be restricted to those over 55 years of age to help meet the needs of the older generation, which is forecast to grow at a faster rate than the general population. The mobile homes provide adaptable modular accommodation and are low maintenance. The use of a planning condition would assist in ensuring that they are available for older people. I give this benefit moderate weight.
30. There are environmental benefits from using previously developed land, thereby reducing the pressure on greenfield sites for housing development. The site is adjacent to existing development. The parties agree that the site is in a location that is close to local services, including large retail stores at Southern Cross Industrial Estate, and a bus route that is accessible on foot providing links to Walberton and Bognor Regis. While there is no footway on Shripney Lane it was lightly trafficked during my site visit and I am aware that there are also public footpath routes providing links to the bus stop. These are benefits to which I give moderate weight.
31. The appellant also outlined that mobile homes are built to high standards in factory conditions. I give this limited weight as modern homes are also built to meet recognised standards.
32. While permanent residential use would result in council tax payments, it would also result in the loss of local visitor spending and possible business rate income, and I therefore give this minimal weight. While permanent residential occupation would be all year round, with accompanying local expenditure, the holiday restriction does not prevent year round occupation and I therefore give this benefit minimal weight.
33. The lack of harm to neighbouring amenity and the character and appearance of the area are neutral considerations.

Other Matters

34. The site is adjacent to the Shripney Conservation Area and within its setting, but the Council has not raised any concerns regarding the effect of removing the condition on its significance, and I have no reason to disagree.
35. A number of local residents have raised various concerns. While the current mobile homes on the site may be larger than the previous caravans on the site, I have seen no evidence to indicate that they do not meet the statutory definition of caravans. Thus, any change in the appearance of the site due to the change in the type of caravan is not a matter that is before me for consideration, nor can I require that the land return to agricultural use. The appeals do not relate to any alterations to the access to the site.
36. The Council has not raised concerns regarding the increase in traffic from a permanent residential use, and I have seen no firm evidence that any increase would occur, nor that it would cause highway safety or drainage issues. It has not been demonstrated that the removal of the condition would lead to harm to the living conditions of neighbouring occupiers, whether through traffic generation or the occupation of the caravans on a permanent basis.

37. I saw on my site visit that an office building was standing on the site, but this does not form part of the matters that are before me through the appeals. There are permitted development rights for caravan sites to undertake works required by conditions on a site licence⁹, and some of the works mentioned by third parties may be considered to be 'de minimis'. I am aware of concerns that the warden's caravan is not sited in accordance with approved plans, building materials have been stored on site and a tree has been removed. However, these are not matters that have any bearing on my determination of the appeals. I have seen no firm evidence that there is inadequate water or sewage infrastructure on the site. Nor have I seen evidence that the landscape planting that has been carried out was not in accordance with the requirements of the permission.

Planning Balance

38. I have found that the removal of the condition causes some moderate harm to the provision of visitor accommodation in the area, and this is in conflict with ALP Policy TOU DM1. The development also results in permanent residential development in the countryside, which is in conflict with ALP Policy C SP1 and BNDP Policy ES7.
39. The development the subject of the appeals is contrary to the development plan taken as a whole, in that it represents a permanent residential use in a countryside area. The appeals should be determined in accordance with the development plan unless material considerations indicate otherwise.
40. The NPPF is an important material consideration, given the Government's objective of 'significantly boosting the supply of homes'¹⁰. The parties agreed that in the absence of a 5YHLS the 'tilted balance' of Paragraph 11d) ii of the NPPF is engaged.
41. The provision of 12 units of permanent residential accommodation through the removal of the condition would have a modest beneficial effect on the Council's overall supply of homes, would assist in providing low cost housing for those with specific accommodation needs, and is located on a site with relatively good accessibility to local services.
42. Taking all of these factors into account, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. Therefore, the presumption in favour of sustainable development applies, which points towards the grant of planning permission. In conclusion, while not in accordance with the development plan, planning permission should be granted.

Conditions

43. In relation to section 73 and section 73A applications, the PPG advises that it is good practice to set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect. I have considered the conditions on the original permission and those suggested in the Statement of Common Ground in the light of the Planning Practice Guidance (PPG).

⁹ Class B Part 5 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

¹⁰ NPPF paragraph 59

44. The parties agreed at the hearing that the other original conditions on planning permission BE/151/11 are no longer required. Condition 1 has been discharged through the commencement of the use. Condition 2 does not pass the test in the PPG as it is not reasonable or necessary to control the location of the caravan bases as this is a matter for the site licence. The site has boundary planting and I have seen no evidence that there is a requirement for landscaping through Condition 3.
45. In terms of the conditions suggested by the Council, a condition to remove permitted development rights for means of enclosure higher than 1 metre is justified in order to prevent the uncontrolled demarcation of individual caravan pitches, which is more likely to occur in a permanent residential use. Details of external lighting are justified in the interests of the character and appearance of the area and protecting biodiversity, as external lighting is more likely to be required as part of a permanent residential use which will continue through the winter months.
46. The appellant has suggested a condition restricting the age of the occupiers to persons over the age of 55 and their household, is necessary to ensure that the benefit of providing housing suitable for the elderly is realised. A condition requiring no less than two of the caravans to be occupied solely for holiday purposes is not required, as this was suggested in the interests of avoiding the need for an affordable housing contribution.
47. Where an appeal on ground (a) is allowed in respect of a breach of condition, such that the condition being enforced against will be removed, planning permission should be granted on the deemed planning application for the development originally permitted, subject to all of the other conditions previously imposed.
48. However, where the appeal succeeds on the basis that one or more new conditions should be imposed, it is necessary not only to grant planning permission on the deemed planning permission as above, but also to discharge the condition that is subject to the enforcement notice and impose the new conditions on the original planning permission. I shall therefore exercise the parallel sets of powers in this decision.

Conclusion

49. For the reasons set out above, and taking into account all matters raised, Appeal A succeeds on ground (a) and the enforcement notice should be quashed. I shall discharge the condition which is subject to the notice, and grant planning permission on the application deemed to have been made for the change of use previously permitted, without complying with the condition enforced against but subject to new conditions as described above. The appeal on ground (g) does not therefore fall to be considered.
50. For the reasons set out above, Appeal B should be allowed.

N Thomas

INSPECTOR

Formal Decisions:

Appeal A - APP/C3810/C/19/3222033:

The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, condition no 4 attached to the planning permission dated 28 March 2012 granted by Arun District Council ref BE/151/11 is discharged and the new conditions in the attached schedule are substituted.

Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for an extension to existing caravan park to provide 12no. additional mobile homes, associated parking area, formation of access and construction of electrical intake housing – Amendment to application BE/42/10, without complying with condition 4 but subject to the other conditions attached to that permission and the new conditions in the attached schedule.

Appeal B - APP/C3810/W/18/3214487:

The appeal is allowed and planning permission is granted for an extension to existing caravan park to provide 12no. additional mobile homes, associated parking area, formation of access and construction of electrical intake housing – Amendment to application BE/42/10, at Shripney Garden Caravan Site, Shripney Lane, Bersted, West Sussex PO22 9NS in accordance with the application Ref BE/135/17/PL made on the 8 December 2017 without complying with condition No 4 set out in planning permission Ref BE/151/11 granted on 28 March 2012 by Arun District Council, but otherwise subject to the conditions in the attached schedule.

SCHEDULE OF CONDITIONS

1. Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting this Order) no fences, walls, gates or other means of enclosure higher than 1 metre shall be erected on the site.
2. Prior to its installation, full details of any new or replacement external lighting together with their mechanisms and timings of operation shall be submitted to and approved in writing by the local planning authority. The new or replacement lighting shall be installed in strict accordance with the approved details and shall thereafter be maintained and operated in accordance with those details. No other external lighting shall be installed on the site.
3. The caravans hereby approved shall only be occupied permanently as a primary place of residence by persons who satisfy the following criteria:
 - i) Persons of 55 years of age or over;
 - ii) Persons living as part of a single household with such a person or persons of 55 years of age or over; or
 - iii) Persons who were living as part of a single household with such a person or persons of 55 years of age or over who have since died.

APPEARANCES

FOR THE APPELLANT:

Michael Rudd BSC (Hons) Msc LLM Barrister Kings Chambers

Nick Laister MRTPI Operational Director RPS

Joney Ramirez MA MRTPI Senior Planner RPS

FOR THE COUNCIL:

Simon Davis BA Hons Dip TP MRTPI Principal Planning Officer

INTERESTED PARTY:

Julie Twitchen

HEARING DOCUMENTS

HD1 Email from Simon Davis of Arun District Council providing details of nearby caravan parks

DOCUMENT PUT IN AFTER THE HEARING

HD2 Certified copy of the corrected unilateral undertaking put in by the appellant



Appeal Decision

Site visit made on 21 November 2016

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 10th January 2017

Appeal Ref: APP/C3810/W/16/3155230

Crab Apple, Russett, Bramley and Pippin Holiday Cottages, Highground Orchards, Highground Lane, Barnham, West Sussex PO22 0BT

- 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 and Mrs R Holden against the decision of Arun District Council.
 - The application Ref BN/10/16/PL, dated 12 February 2016, was refused by notice dated 19 May 2016.
 - The application sought planning permission for replacement of former agricultural buildings with four holiday cottages and associated office without complying with a condition attached to planning permission Ref BN/67/06, dated 10 January 2007.
 - The condition in dispute is No 2 which states that: *'The proposed buildings shall be used as holiday accommodation only and for no other purpose'*.
 - The reason given for the condition is: *'In the interests of amenity in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan'*.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of former agricultural buildings with four holiday cottages and associated office at Crab Apple, Russett, Bramley and Pippin Holiday Cottages, Highground Orchards, Highground Lane, Barnham, West Sussex PO22 0BT in accordance with the application Ref BN/10/16/PL made on 12 February 2016 without complying with condition No 2 set out in planning permission No BN/67/06 granted on 10 January 2007 by Arun District Council, and as shown on Drawing No.1 - Location Plan (12.02.16) and Drawing No.2 - Block Plan (12.02.16).

Procedural Matter

2. The application form states that the condition in dispute is No 3 which relates to the approval of materials. It is, however, clear that the appellants' case relates to Condition No 2 and the requirement that these buildings be used as holiday accommodation. I have considered the appeal on this basis.
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Background, relevant policies and main issues

3. The appeal site is located in a semi-rural location on the outskirts of the village of Barnham, outside the settlement boundary.
4. The reason for the condition in dispute in this case made particular reference to Policy Dev1 of the West Sussex Structure Plan, now superseded, and the Arun District Local Plan 2003 (the Local Plan) saved Policy GEN7. This Policy refers to the need to ensure that development will not have an adverse effect on adjoining occupiers or on the character of the area, and that it should represent sustainable development, including reducing the need to travel, particularly by private car.
5. The Council's reason for refusal in this appeal refers to the Local Plan saved Policy DEV2(i) which states that proposals for the conversion of buildings for residential use outside the built-up area will not be permitted unless "*it has been demonstrated that reasonable attempts have been made to market and use the premises for business purposes*". However, case law has established that holiday cottages should usually be treated as dwellinghouses for the purpose of applying planning policies and not as a commercial leisure use, even if their occupation is restricted by condition.¹ On this basis the Council has already accepted the principle of the residential use of these buildings and so there is no need for this test to be applied here.
6. Local Plan saved Policy GEN3 relates to the protection of the Countryside and states that outside the Built-Up Area the countryside will be safeguarded for its own sake and development will not be permitted unless it meets a number of specific exceptions. However, such exceptions include development which is in accordance with those policies within the plan which refer to a specific type of development, including those allowed by saved Policy DEV2. Therefore there is also no conflict with Policy GEN3.
7. The National Planning Policy Framework (the Framework) notes at paragraph 28 the importance of sustainable rural tourism and leisure developments which respect the character of the countryside. Additionally, paragraph 51 is referenced which states that planning applications for change to residential use from Class B should normally be approved, however, as noted above, the site is not currently in Class B use.
8. Finally, Policy TOU DM1 of the emerging Arun Local Plan 2011-2031 (Publication Version) indicates that existing visitor accommodation will only be granted planning permission for change of use when it is demonstrated that this use is no longer required: this will include a clear demonstration of marketing and viability appraisal. The Framework at paragraph 216 states that decision-takers may give weight to the relevant policies in emerging plans according to the stage they have reached and their degree of consistency with the Framework. However, whilst the intentions of Policy TOU DM1 accord generally with paragraph 28 of the Framework, its more specific provisions have not been tested at Examination. As limiting the freedom to change the use of buildings should be supported with a clear explanation in line with paragraph 157 of the Framework, I afford this Policy limited weight in this case.

¹ *Gravesham BC v SSE and O'Brien*, [1983] JPL 307: established that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It did not lose that characteristic even if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons.

9. Taking all of this policy background into account, and as the impact on character and appearance would be negligible and is not disputed by the parties, the main issues to be considered are therefore :
- The effect of the proposal on the supply of tourist accommodation in this area; and,
 - Whether the proposal would be in a suitable location in terms of access to services and facilities.

Reasons

Tourist Accommodation

10. The cottages were converted in two phases, with 2 being completed by May 2009 and the remaining 2 by April 2012. They are of traditional brick and flint construction with modest roof dormers. They are set in well-presented grounds, surrounded by fields, and are an attractive grouping. From my internal inspection I could see that these properties have been refurbished to a good standard.
11. Whilst at present the relevant policy provisions do not require an assessment of viability to be made, the appellants have supplied accounts and occupancy figures for the past 7 years. These figures demonstrate that there has been a year on year increase in the number of 'let' days and overall percentage occupancy from 6.5% in 2009/10 and 20% in 2012/13 to 31.8% in 2015/16. However, overall these properties have been operating at a loss. On this basis, notwithstanding promotional efforts, the appellants state that unrealistic levels of occupancy would be required to make the business profitable.
12. The parties refer to a study which uses 2014 data.² This shows an increase in the demand for self-catering accommodation in this area, however, this category also includes caravan and camping data and it is therefore not clear what type of accommodation this increase in demand relates to. The appellants also make the point that this study does not differentiate between countryside and sea side locations, nor the standard of the accommodation provided. The precise nature of this demand is therefore not entirely clear and it is not possible to draw meaningful conclusions from this, particularly in terms of the potential impact of the loss of this holiday accommodation on the visitor economy of this area.
13. Drawing these threads together, it is clear to me that this business has not been as successful as the appellants would have initially hoped. However, the primary consideration here is the effect of the proposal on the supply of tourist accommodation in this area. Overall, insufficient evidence has been presented to ascertain the current levels of supply of such accommodation in this area, and the consequence of any reduction on the visitor economy. Therefore, I conclude that the loss of this relatively small scale provision would not be at odds with paragraph 28 of the Framework which supports sustainable rural tourism.

Access to facilities and services

14. The appeal site is located around 1km to the south west of the village of Barnham and is accessed via a concrete track leading from Highground Lane. A building which is used as an office is located directly to the south of the cottages, and the

² The Economic Impact of Tourism for the Arun District 2014

appellants' home fronts onto Highground Lane to the south east of the appeal properties. There are a number of other residential properties in this local area. The site was previously part of a fruit farm which the appellants' state was not viable due to its small size and remote location.

15. Whilst Barnham has a range of facilities, including a railway station and secondary school, these are accessed via rural lanes which do not have pavements. There is a public footpath to the secondary school, but as this involves crossing fields it is unlikely that this would be used at all times of the year. I accept that it would be possible to live in this area without being dependant on private motor vehicles, and that some visitors have relied on public transport during their stay. However, if these properties were in permanent residential use, it is likely that the majority of journeys would be undertaken by private car, especially when travelling to access a greater range of shopping facilities, for work and for leisure and entertainment activities.
16. The Framework recognises that opportunities to maximise sustainable transport modes may be different in rural and urban areas.³ The appellants also question why this location is regarded as being suitable for holiday accommodation but not for permanent residential use. However, holiday accommodation typically has considerably lower levels of occupancy than permanent residences, and visitor trips tend to be relatively local. Therefore the impact in terms of the use of private cars would usually be likely to be markedly lower.
17. Open market residential development in this location would also conflict with the Framework which seeks to avoid isolated new homes in the countryside.⁴ Whilst a number of exceptions to this restriction are identified, none of these would be met in this case. In particular, the proposal would not involve re-use of redundant disused buildings.
18. The appellants' challenge the Councils reference to an appeal decision which was dismissed on the basis of its location.⁵ In this respect it appears that this proposal was 2km away from a small hamlet and therefore more remote than the present scheme, so I accept that it is not appropriate to make a direct comparison. Nonetheless it is clear that similar principles apply in that both proposals are located outside areas identified for residential development.
19. On this matter I conclude that the location of this proposal would not be suitable in terms of access to services and facilities. It would therefore conflict with the Framework and also Local Plan Policy GEN7 (iii) which promotes sustainable development by reducing the need to travel, particularly by private car.

Other matters

20. The Council has acknowledged that it is currently unable to demonstrate a 5 year supply of housing land, with the current level of provision being 2.15 years. Therefore relevant policies for the supply of housing in the Local Plan cannot be considered up to date, and applications for development outside the built up area should not be refused solely on the grounds of principle. Although Policy GEN7 is broadly consistent with the Framework the weight to be given to it is nevertheless reduced compared to a situation where there was an adequate supply of housing.

³ Paragraph 29

⁴ Paragraph 55

⁵ APP/C3810/W/15/3005380

In this respect, and given the current degree of the shortfall in housing provision, the net addition of four houses which could be delivered quickly carries significant weight in favour of the proposal.

21. Whilst I have some sympathy with the appellants' difficulty in repaying a capital loan relating to the refurbishment of these properties, it is not the role of the planning system to ensure that the personal finances of individuals are safeguarded and this consideration is therefore of limited weight.

Conclusion

22. Whilst the evidence provided in favour of the proposal suggests that this business does not contribute significantly to sustainable rural tourism, I have found that this would not be a suitable location for open market residential accommodation in terms of access to services and facilities. However, set against this harm are the social and economic benefits of addressing the under supply of housing in the district. As noted above, this consideration weighs significantly in favour of the proposal, particularly given both the high level of under-provision, and also that these buildings have already been converted and so could be available without delay.
23. On balance, my view is that the locational concerns identified do not significantly and demonstrably outweigh social and economic benefits. Consequently the proposal would represent sustainable development as defined by the Framework. Furthermore, in this case material considerations indicate that permission should be given for development that is not in accordance with the development plan.
24. For these reasons I conclude that the appeal should succeed. The Council has suggested conditions removing permitted development rights, however such conditions should only be imposed in exceptional circumstances which I do not consider have been demonstrated in this case.⁶ The Planning Practice Guidance also indicates that in cases of this type relevant conditions from the original permission should be repeated.⁷ In this case the conversion has already taken place and there is no evidence that previously imposed conditions are still required. Condition 7 linking the office building to the holiday accommodation has also become superfluous.

AJ Mageean

INSPECTOR

⁶ Planning Practice Guidance ID 21a -017-20140306: Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.

⁷ 21-031-20140306

DISMISSED



Appeal Decision

Site visit made on 15 April 2013

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 15 May 2013

Appeal Ref: APP/C3810/C/12/2183718

Easter Cottage, Old Dairy Lane, Norton, Chichester PO20 3NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Sally Ann Kavanagh against an enforcement notice issued by Arun District Council.
 - The Council's reference is CON/252/11.
 - The notice was issued on 7 August 2012.
 - The breach of planning control alleged in the notice is failure to comply with condition No 10 of a planning permission Ref AL/92/08 granted on 26 January 2009.
 - The development to which the permission relates is the *reuse of redundant farm buildings for mixed use development – B1 offices, residential dwellings and tourist accommodation units*. The condition in question is No 10 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 notice alleges that the condition has not been complied with in that *"without planning permission the condition has been breached in that the tourist accommodation has been used for used (sic) as a permanent residence"*.
 - The requirements of the notice are:
 - *Cease to use the tourist accommodation for any purpose other than for individual lets for up to and no more than 28 consecutive nights.*
 - *To keep a register in writing of occupiers of the tourist accommodation for each calendar year which shall be available for inspection by the Council and its officers at any reasonable time and a copy of the register shall be sent to the Council at the end of each calendar year.*
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected by the removal of the second instance of the words "for used" in the recitation of the alleged breach of planning control. The notice is also varied by deleting in its entirety the second requirement of the notice and the deletion of the word "six" in the period for compliance and its substitution with the word "twelve". Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matter

2. The notice contains an error in the recitation of the alleged breach in that a superfluous words "for used" have been included. I shall correct the notice to remove them.

Appeal under Ground (a)

Main Issue

3. Whether the condition in question continues to play a useful planning function in preserving the availability of holiday accommodation and preventing new permanent dwellings in the countryside.

Reasons

4. The unit in question is a single storey building which comprises a bedroom, bathroom, living room and attached kitchen. Part of an adjacent building is used as a store. The building forms one of a number of former farm buildings which are now being used for other purposes, and form a cluster around the access now known as Old Dairy Lane. Two of these other buildings have permission for use as holiday accommodation, and both have been the subject of appeals, referred to me by the Council.¹
5. The relevant policy position is that the saved policies of the Arun District Local Plan (LP) 2003 continue to have force. The more recent National Planning Policy Framework (the Framework) continues to restrict isolated new dwellings in the countryside and promotes sustainable rural tourism.
6. The site lies in the countryside where residential development is strictly controlled. LP Policy DEV1 permits the conversion of buildings for industrial and business uses, and the permission for the use of the appeal building for holiday purposes was in accordance with this policy. LP Policy DEV2 concerns the conversion of rural buildings for residential use. It says that such proposals will not be permitted unless a number of criteria are met. The most relevant is the criterion which requires a demonstration that reasonable attempts have been made to market and use the premises for business purposes. I consider that these policies are broadly compatible with the advice in the Framework.
7. In this case, the building has been used for holiday accommodation, and I have been provided with details of the lets in the period from September 2010 to October 2011. I have also been provided with evidence from the appellant which sets out to show that the business makes significant losses. Dealing firstly with the number of bookings, it is clear that the cottage has not been let for substantial periods during the time period in question. However, as the Council points out, holiday accommodation often benefits from repeat bookings and word of mouth recommendations, and therefore it may be expected that the number of bookings would increase over time, assuming that guests were pleased with the accommodation; there is no evidence to the contrary. The cottage was occupied for much of the summer period, and for a fledgling business, it appears to me that the prospects for growth were good. As the appellant took up full time occupation of the cottage towards the end of 2011, there was no opportunity to gauge the prospect of improved occupancy rates.
8. According to the information provided in the Planning Contravention Notice (PCN), the appellant spent considerable periods of time living in the cottage, when it would not have been available for letting. The information in the PCN also says that other friends and family stayed there. It is not said whether the occupation by non-paying persons only took place because paying guests had not booked it. Furthermore, as the appellant started to live in the cottage full-

¹ Refs: APP/C3810/C/12/2173591 (Norton Dairy) & APP/C3810/A/11/2156044

time at the end of 2011, and as she has no other place to live, it seems to me that there is some doubt as to the appellant's commitment during the 2010-2011 period to using the cottage for holiday accommodation thereafter.

9. The appellant argues that the commercial development of North Barn (also referred to as West Barn) has dented the attractiveness of the holiday cottage. The business use of the barn was part of the same planning permission as that for the appeal property, and therefore the appellant always knew that it was intended for business use, and that incidental parking and activity in the vicinity of the building could be expected. The North Barn building appears to be finished or near completion. At my visit, I saw that there was some activity and parking near to North Barn, although I accept that it may not be representative. Planting within the garden of Easter Cottage could, in time, screen much of the building, and an outlook over the countryside to the west is still present. The interior of the cottage is of a high standard and its location within the attractive hamlet of Norton is likely to be of more appeal to holiday-makers. I note that this argument was rejected in respect of the appeal concerning the adjacent Norton Dairy, and for similar reasons, I agree.
10. The Council has made a number of criticisms of the financial information provided by the appellant, some of which appear to me to have validity. A figure of £500 mortgage cost is included; the Council says that capital costs should not be included, and that only the interest on the loan should be included. This appears to me to be a proper methodology. I do not know what the interest only figure would be, but I would anticipate that it would significantly reduce the costs involved.
11. A number of the costs, such as electricity and water usage are not based on actual expenditure, but on national averages for a dwelling. Some of the variable costs are not calculated on a pro-rata basis, taking into account the proportion of the year that the cottage is actually let to holiday-makers, whereas income is based on actual receipts, and thus the national annual averages do not reflect the true costs of running the business. I also share the Council's reservations about the cost of cleaning and the provision of linen and towels for each handover, which seems to me to be excessive in terms of both the cost and time taken to clean what is a small cottage.
12. The terms of the letting contract enable the owner to claim against renters' credit cards for any damage caused, and thus I do not understand why a figure of £600 a year is earmarked as a cost against damages and replacements. The cost of logs also seems to me to be remarkably high, given the times of the year when the cottage has been let.
13. Taken together, I have considerable reservations that the figures with which I have been provided form a robust basis for predicting the future profitability of the business. I have noted that an established Bed and Breakfast business at nearby Norton Cottage closed in October 2012, referring to the poor trading conditions of 2012. However, that business serves a different market from that provided by self-catering accommodation, and I do not read too much into that.
14. The cottage has been marketed for sale, without success. The agents explain that it is difficult to sell when the holiday use is not profitable. However, I have strong misgivings about relying solely on the marketing evidence of what is a fledgling business, and about the profitability forecast. Accordingly, I am not

surprised that there was no genuine interest from potential purchasers. There has been no attempt to market the building for other business purposes, such as offices. Accordingly, I consider that the criterion of LP Policy DEV2 to demonstrate that reasonable attempts have been made to market and use the premises for business purposes has not been satisfied, and that the removal of the condition would conflict with policies aimed at restricting residential development in the countryside.

15. The appeal on ground (a) therefore fails, and planning permission is refused.

Appeal on ground (f)

16. The second requirement of the enforcement notice requires that a register be kept of occupiers of the accommodation and that it be made available for inspection by the local planning authority. This goes beyond what is necessary to remedy the breach of condition. Had the Council wished for such a requirement, it should have imposed a condition of this nature when granting planning permission. To this limited extent the appeal under ground (f) succeeds and I shall delete this requirement accordingly.

Appeal on Ground (g)

17. The period given for compliance is 6 months. The appellant has no other accommodation to go to, and she suffers from health problems as well. Six months is an insufficient time to find and move to alternative accommodation. The Inspector in relation to the Norton Dairy appeal extended the period for compliance to 12 months, and for the same reasons, I consider it appropriate to do so in this case. Should it be necessary, the Council has powers under s.173(1)(b) to extend the period for compliance if it is appropriate to do so in the circumstances. Accordingly, the appeal on this ground fails.

Human rights and equality duty

18. The enforcement notice represents a substantial interference with the appellant's property and the right to her home. However, these rights are not absolute ones, and in this case they are outweighed by the greater public interest. I have also taken into account the Public Sector Equalities Duty under the Equality Act 2010, and in part it accounts for my extending the period for compliance, but it does not outweigh my findings in relation to the ground (a) appeal.

Overall conclusions

19. For the reasons given above, the appeal under ground (f) succeeds in part and succeeds under ground (g), and the notice will be varied and corrected. The appeal under ground (a) fails, planning permission is refused and the notice is upheld.

JP Roberts

INSPECTOR

Appeal Decision

Site visit made on 11 July 2017

by AJ Steen BA (Hons) DipTP MRTPI

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

Decision date: 4 August 2017

Appeal Ref: APP/C3810/W/16/3155230

Crab Apple, Russett, Bramley and Pippin Holiday Cottages, Highground Orchards, Highground Lane, Barnham, West Sussex PO22 0BT

- 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 & Mrs R Holden against the decision of Arun District Council.
 - The application Ref BN/10/16/PL, dated 12 February 2016, was refused by notice dated 19 May 2016.
 - The application sought planning permission for replacement of former agricultural buildings with four holiday cottages and associated office without complying with a condition attached to planning permission Ref BN/67/06, dated 10 January 2007.
 - The condition in dispute is No 2 which states that: *The proposed buildings shall be used as holiday accommodation only and for no other purpose.*
 - The reason given for the condition is: *In the interests of amenity in accordance with policies DEV1 of West Sussex Structure Plan and policy GEN7 of Arun District Local Plan.*
 - This decision supersedes that issued on 10 January 2017. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of former agricultural buildings with four holiday cottages and associated office at Crab Apple, Russett, Bramley and Pippin Holiday Cottages, Highground Orchards, Highground Lane, Barnham, West Sussex PO22 0BT in accordance with the application Ref BN/10/16/PL dated 12 February 2016, without compliance with condition number 2 previously imposed on planning permission Ref BN/67/06 dated 10 January 2007.

Procedural Matter

2. The application form refers to condition no. 3 that relates to the materials and finishes of the proposed buildings. However, it is clear that the appellants' case relates to condition no. 2 that requires the buildings be used as holiday accommodation. I have considered the appeal on that basis.

Background and Main Issues

3. The cottages are currently used to provide holiday accommodation, which in planning terms is a form of residential use, although the original planning permission for the cottages limited their occupation by condition. It was clear that it was the intention of the applicant in applying for the original planning

- permission to use the cottages to provide holiday accommodation as a business, including an office building to support the use. The cottages have since been run as a holiday letting business. Consequently, the removal of this condition would result in a material change of use of the buildings from that business use to allow their occupation as independent residential dwellings.
4. The reason for the condition refers to Policy DEV1 of the West Sussex Structure Plan, which has since been superseded, and Policy GEN7 of the Arun District Local Plan (LP). Policy GEN7 of the LP seeks a high quality design and layout of development, and promotes sustainable development, including reducing the need to travel, particularly by private car.
 5. Policies DEV2(i) and GEN3 of the LP are referred to in the decision notice relating to removal of the condition. Policy GEN3 seeks to protect the countryside for its own sake, with development not to be permitted except for certain purposes, such as the diversification of the rural economy. Policy DEV2 relates to the conversion of rural buildings for residential use, the relevant part of criteria (i) requiring reasonable attempts have been made to market and use the premises for business purposes. The Council indicate that the other criteria are either not relevant or satisfied in this instance, and I see no reason to disagree with their conclusion in this regard.
 6. Paragraph 28 of the National Planning Policy Framework (the Framework) supports sustainable rural tourism that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. Although my attention has been drawn to Paragraph 51, this refers to the change of use of commercial buildings in B use classes, but is not relevant as the buildings are not in class B uses.
 7. Policies H DM3(4) and TOU DM1(a) of the draft Arun Local Plan (draft LP) have been referred to in the reason for refusal, which relate to the conversion of rural buildings to residential use and tourism related development. The draft LP has been submitted for examination and I note that there have been comments on these policies. I am not aware of the exact stage the draft LP has reached or whether the policies concerned will be considered as consistent with the Framework. Consequently, I am only able to give it limited weight in my decision.
 8. As a result, the main issue is the effect of the proposal on the supply of tourist accommodation in the area.

Reasons

Loss of tourist accommodation

9. The holiday cottages are advertised through English Country Cottages (formerly part of Hoseasons) and their own website, with two of the cottages also advertised on Facebook and Trip Advisor, the first two having been advertised since 2009 and the remaining two from 2012. I understand that the reviews of the cottages are excellent. The occupancy rate of the cottages is around 30%, with considerable demand during Goodwood events and good demand during school holidays, but little demand outside these times. The accounts supplied show losses in every year from the use to date.
10. I note reference to the Arun District Tourism Impact Study that uses 2014 data to suggest demand for self-catering, caravans and camping accommodation is

strong. However, this is now some years old and it does not distinguish between the different forms of accommodation, nor their location (whether seaside or countryside). Consequently, I do not consider it is possible to draw meaningful conclusions from that study in relation to the use of these cottages, so I attach little weight to it.

11. The Council suggest that the maintenance costs for the cottages are high taking account of the age and apparent condition of the cottages. However, some maintenance costs are inevitable and I see no reason to consider that the accounts would be exaggerated in this regard. I sympathise with the appellants concern as to how the capital loan may be repaid, but it is a well-founded principle that the planning system does not exist to protect private interests such as the personal finances of individuals. As a result I place limited weight on this factor.
12. Nevertheless, the low occupancy rate does indicate a lack of demand for these holiday cottages despite substantial efforts to market them for this use, such that the business has not been as successful as the appellants would have initially hoped. Consequently, it has been demonstrated that the cottages as a holiday accommodation business is not viable and would not be capable of providing any significant income for the appellants. The properties have not been marketed for sale, which may be the best way of marketing for certain uses, but that is not a requirement of the policy and, in the context of this business, would not be necessary to demonstrate a lack of viability. I am convinced that the marketing of the cottages as holiday accommodation has been reasonable and genuine.
13. I note that the offices that support the current use have been granted prior approval under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for use as a dwelling. Amendments to the GPDO in 2016 extended the time in which it is possible to carry out the change of use. Whilst that has not yet taken place, it may yet do so. Loss of the offices to support the business would further affect its viability, supporting my conclusions in this regard.
14. On balance, therefore, I conclude that the appellants have made reasonable efforts to market and use the premises as holiday accommodation, but it has not been a viable business. As such, the removal of the condition would comply with Policies GEN3 and DEV2, in particular criteria (i), of the LP. They would also comply with Policies H DM3 and TOU DM1 of the draft LP that seek to protect business uses of rural buildings, particularly visitor accommodation, unless the use is no longer required and this is demonstrated by marketing of the property for business purposes.
15. My attention has been drawn to Policy EE7 of the Barnham and Eastergate Neighbourhood Development Plan that supports and promotes tourism activities. However, whilst that policy would support new tourism facilities, it does not seek to protect or retain existing tourist accommodation, so is not relevant to the change of use of these holiday cottages.

Other matters

16. My attention has been drawn to Policy GEN7 of the LP, in particular whether the proposed development would comprise sustainable development with regard to the need to travel by private car. However, that policy relates to new

buildings and whilst it was relevant to the reason for imposing that condition, the removal of the condition would result in the re-use of these buildings rather than new buildings. Consequently, this policy is not directly relevant to the proposed development.

17. The cottages are located within a group of dwellings and the adjacent offices, nevertheless this is an isolated location away from the closest services and facilities that would support their residential use, such that residents would be reliant on the private car to access them. The National Planning Policy Framework (the Framework) states that isolated dwellings should be avoided unless there are special circumstances, including the re-use of redundant or disused buildings where it would lead to an enhancement to the immediate setting.
18. The re-use of these buildings as dwellings other than in accordance with this condition would enable their use throughout the year that would lead to a minor enhancement of their setting.
19. I have been provided with another appeal decision¹ relating to the change of use of holiday cottages to open residential use. The circumstances in that case were substantially different from this; in particular the limited amount of marketing that had been carried out with those cottages. As such, I need to consider this case on its own merits.
20. Reference is made in the appeal documents to the presumption in favour of sustainable development set out in the Framework. This refers to three strands of sustainability, being economic, social and environmental. In this case, there would be limited economic benefits as residents would support local services once the dwellings are permanently occupied, increase Council Tax receipts and contribute a small amount of new homes bonus. The provision of four dwellings would have a positive social impact in contributing to the need for homes in the area where, I note, there is no five year supply of deliverable housing sites. There would be some environmental harm arising from the increased travel by private car, although the holiday cottages are also accessed by private car such that this harm would be minimal. As a result, this would not significantly and demonstrably outweigh the positive economic and social benefits.

Conclusion

21. For the above reasons and taking into account all other matters raised, I conclude that the proposed development would accord with the development plan and the Framework such that the appeal should succeed. As a result, I will issue a new planning permission without the disputed condition.

Conditions

22. In allowing the appeal and granting planning permission I have considered those conditions imposed on the original planning permission. As the building work is complete, no conditions are necessary to limit the period for commencement of the permission, relating to external finishes of the development, landscaping details or demolition of the previous buildings. Given the removal of this condition, that linking the use of the office to the holiday accommodation is no longer necessary.

¹ Appeal reference APP/C3810/W/15/3005380

23. The Council have suggested additional conditions listing the approved plans and removing permitted development rights for windows in the flank elevations and extensions to the cottages. As no alterations are proposed to the existing buildings I do not consider that a condition listing the approved plans is necessary. Neither do I consider conditions removing permitted development rights to be necessary. Such rights should be removed only in instances of specific and precise justification. I find no exceptional circumstances in this case such as to warrant the removal of these rights, especially as they would apply to the buildings in their existing use.

AJ Steen

INSPECTOR