

ENBORNE 17/03016  PINS Ref 3195763	Land at Enborne Lakes Enborne Newbury	Section 73: Removal of Condition 4: Length of stay of planning permission 08/01535/FUL (New barn for storing agricultural equipment and hay plus accommodation for anglers and walkers).	Delegated Refusal	Allowed 24.7.18
--	--	--	----------------------	--------------------

### Decision

The appeal is allowed and planning permission is granted for a new barn for storing agricultural equipment and hay plus accommodation for anglers and walkers at Pine View, Unnamed Road from Watery Lane to Enborne, Enborne, Newbury in accordance with the application Ref 17/03016/FUL made on 25 October 2017 without complying with condition No. 4 set out in planning permission Ref 08/01535/FUL granted on 19 December 2008 by the West Berkshire Council, but otherwise subject to the following condition:-

“The development hereby permitted shall begin not later than 3 years from the date of this decision.”

### Application for costs

An application for costs was made by Ms Cherie Bettles against West Berkshire Council. This application will be the subject of a separate decision.

### Preliminary matters

The appellant has drawn attention to a Court of Appeal decision to highlight an alleged deficiency in the officer report and the Council’s interpretation that a holiday let accommodation is essentially different to a permanent dwelling house (C3). Whilst the judgment determined that such differentiation is a matter of fact and degree, the appellant then provides a copy of an appeal decision where the Inspector appeared unequivocal in his reasoning in that case that a holiday let constitutes a C3 dwelling house. Conversely, the Council also places weight on the Sheila Moore judgment to support its case. It seemed to the Inspector however that each case needs to be determined on the individual facts and this is what he had done in this decision.

### The main issue

The main issue in this appeal is whether the removal of the occupancy condition would represent sustainable development, having particular regard to its location and to relevant local and national planning policies.

### Reasons

The appeal property is located in a countryside setting and outside any defined settlement. A number of scattered dwellings lie in close proximity with a public house just to the south-west. The large market town of Newbury is some three miles to the east. The appeal building is set within an existing agricultural complex of buildings and two fishing lakes. From the evidence, the buildings may no longer form part of the agricultural enterprise and are now used for hobby purposes.

The appeal property comprises a building that was granted for the accommodation of anglers and walkers. Section 75(2) of the Town and Country Planning Act 1990 provides that ‘Where planning permission is granted for the erection of a building, the grant of planning permission may specify the purposes for which the building may be used’. The property has all the hallmarks of a detached dwelling house within the meaning of Class C3 and it is the appeal condition as opposed to the description of development contained in the original

planning permission that defines the way in which the building in this case can be used. It is noted that the building may be occupied on an all-year-round basis.

Since the original planning permission was granted, the Council has adopted the West Berkshire Core Strategy (the Core Strategy). The Council explains that saved policy ENV16 of the West Berkshire District Local Plan (the Local Plan) continues to lend support for proposals aligned to farm diversification whilst policy CS10 of the Core Strategy by also supporting rural diversification schemes maintains that proposals that seek the loss of such facilities must demonstrate that they do not negatively impact on the local economy and the vitality and viability of the surrounding rural area.

Following on from the above, the Council considers that the current proposal should be assessed against the housing policies of the Core Strategy, namely policy ADPP1 and CS1. In this regard, the Council opines that the removal of the occupancy condition would result in a net additional open market dwelling that does not lie within or adjacent to an existing defined settlement and nor would it be in a location identified for a dwelling under the bullet points of policy CS1. Furthermore, the Housing Site Allocations DPD (DPD) explains that there would be a presumption against housing in the *countryside* (the Inspector's emphasis) unless required for certain defined categories, none of which would apply in this case. The Council also argues that the proposal would not qualify under the terms of policy C4 of the DPD as the building cannot be described as redundant.

Notwithstanding, this interpretation is dependent on whether the removal of the condition would result in the provision of an additional open market dwelling. In *Moore* the property in question was terraced and could sleep up to 20 people. Sullivan LJ considered that the property was used by large groups who occupied it and came together largely as a result of their shared interest (yoga, cycling etc.) but they did not occupy it as "single households" or "family groups". For this reason it was held that a material change of use from C3 had occurred.

However, the use of Pine View is at the other end of the spectrum in that the appeal building containing 3 bedrooms and all of the facilities that one would normally expect of a single dwelling house would encourage its use as a building accommodating families or small groups with a close connection to each other. From the evidence, the property is mainly rented for week long holidays accommodating probably no more than six people. Therefore the use falls within limbs (a) and/or (c) of C3 in the terms set out by Sullivan LJ in *Moore*. The Inspector did not therefore consider that there would be any breach of Core Strategy policies CS1 and ADPP1 or with DPD policies C1 and C4.

That said, it is the condition that limits the use of Pine View to tourist accommodation and its removal in his view hinges on whether the condition would continue to serve a useful planning purpose. In this regard it is relevant to examine whether the loss of this accommodation limited to holiday occupation would cause harm to the rural economy.

Policy CS10 of the Core Strategy together with policy ENV16 of the Local Plan are positively worded policies that seek to encourage the diversification of the rural economy, including supporting small and medium sized enterprises. These policies are broadly consistent with section 3 of the National Planning Policy Framework (the Framework) that seeks to promote economic growth in rural areas. As the Inspector alluded to in appeal reference APP/D305/Q/14/2222976, there is nothing in the Framework that specifically states that any holiday let accommodation must be retained in perpetuity and neither do policies CS10 or ENV16. Clearly, the effect of a proposal on the rural economy is a material planning consideration and it is relevant to examine whether the loss of the accommodation would result in a serious shortage of accommodation within the local area.

The appellant acknowledges that the present holiday let does provide some benefit to the

rural economy of West Berkshire but that the Council has overemphasised the contribution that this holiday accommodation provides in the local context. The Council points to the fact that this area of West Berkshire is noted for its coarse fishing, which respects the character of the countryside in line with paragraph 28 of the Framework. It is argued that the appellant has not made full use of marketing opportunities centred around the angling fraternity, which it is claimed might account for the relatively modest letting rates experienced by the owner of the property. Moreover, the Council's evidence suggests that there does not appear to be an oversupply of self-catering accommodation within the district.

The appellant's figures reveal that the income generated by letting the property has declined. In addition and from what the Inspector saw during his site visit, the farming enterprise has also declined and is more akin to that of a hobby with many tractors of a vintage pedigree being housed and serviced within the former agricultural building. The Council does not dispute the appellant's arguments that the income for 2017 amounted to just over £3100. This degree of marginality indicates that the property is unlikely to become profitable as a single business enterprise particularly now that the original use as part of the farming enterprise no longer applies. Whilst the Inspector acknowledged the Council's view that a more robust marketing exercise might generate additional enquiries leading to an increase in holiday lets, it is unlikely that the property will become profitable as a single enterprise.

Consequently, he was satisfied that the lifting of the condition would not seriously prejudice Core Strategy policy CS10 in terms of having a negative impact upon the local rural economy. Neither would it unacceptably conflict with paragraph 28 of the Framework.

Given that the condition no longer serves a useful planning purpose in the context of its level of support to the rural economy, the question remains whether it is still necessary in the context of the policies of the Framework. Although neither party relies on the Framework, current policy is set out in paragraph 55 of the Framework, which restricts the development of new isolated dwellings and places an emphasis on sustainable development within rural areas. For the purposes of the Framework, sustainable development has three aspects: the environmental; the economic; and the social.

Whilst the appeal property is outside of a definable settlement, it is not a new dwelling. As stated above the appeal property affords facilities required to meet the day-to-day needs of a single dwelling house. The property moreover has the characteristics of a dwelling albeit subject to the disputed condition.

Thus taking firstly the environmental dimension, the appeal property is an existing building of a residential character. No changes, alterations or extensions are proposed as part of this appeal. In terms of the use of raw materials the proposal would be likely to have a negligible environmental effect. The appeal property is also part of the established character of the area, being one of a number of sporadic dwellings in the wider area. Removal of the disputed condition would not change the character or appearance of the dwelling to any appreciable degree, and thus in these terms it would not have a harmful environmental effect.

The site is accessed by a narrow unlit road with no separate footway. However, it is not far from the appeal property to the A343, the main road into Newbury, the nearest settlement with a range of services, the edge of which is around 3 miles from the appeal site. For all practical purposes the majority of journeys to and from the appeal property would be made by car. However, this would pertain to both short-term and permanent occupants of the appeal property. Both short-term and permanent residents would be likely to visit Newbury for shopping and other services. The key difference would be the likelihood of permanent residents commuting on a daily basis for work and potentially school. However, short-term occupiers could travel significant distances to arrive at the appeal property, and once there

use it as a base for exploring the wider area.

Thus, whilst there would be undoubted differences in the transport patterns of short-term and permanent occupants of the appeal property, the Inspector had no substantive evidence before him to suggest that there would be a material difference in emissions created by vehicle trips related to these two uses. Consequently he did not consider that use of the appeal property as a permanent dwelling would be of more significant harm in this regard than its use as a short-term holiday let.

There would be a difference in the economic effects of short-term and permanent residents of the scheme. However, given the modest scale of the property he was not persuaded that, over time, the economic effects would be of a difference that would be material. Indeed, given the potential for tourists to travel more widely through the surrounding area using the bungalow as a base, it is likely that some of the resulting economic effects may be more dispersed than those of a permanent household who would inevitably use local facilities and services on a more regular basis. Thus removal of the condition would be unlikely to lead to any discernible economic harm in this regard.

Whilst noting from the above that the Council's development plan seeks to boost tourism in the area, he found that the continued use of the appeal property for short-term holiday purposes would only make a limited contribution to this objective. Consequently, this is a matter that attracts only limited weight in the overall planning balance.

By removing the condition, this would have modest, although clear social benefits through the creation of a permanent dwelling. While tempered to some degree by its location thus necessitating the use of a private car, the removal of the condition would, however, help to meet the national planning objective of boosting housing supply, albeit to a modest degree. It is clear that in this social aspect of sustainable development the benefits, whilst limited, would weigh in the favour of the property's use as a permanent dwelling.

Accordingly the Inspector concluded that in terms of the Framework, the removal of the disputed condition would be likely to have marginal benefit in terms of the three dimensions of sustainable development. Moreover, as the appeal property is an existing dwelling, with an established residential character, the removal of the condition would not undermine the objectives of paragraph 17 of the Framework, insofar as they relate to the role and character of different areas.

Consequently, having regard to the three dimensions of sustainable development he considered that the use of the property as a permanent dwelling would be sustainable.

No conditions have been suggested by the Council. The Inspector attached the usual time limit condition. From his perusal of conditions attached to the original permission, he did not believe that these remain relevant to the development undertaken or from what he gleaned during his site visit.

### **Conclusion**

In light of the above reasons and having regard to all other matters raised, the Inspector concluded that the appeal should succeed and the relevant condition No. 4 no longer required to be complied with.

## **Costs Decision**

The application for an award of costs is refused.

### **Reasons**

#### *The case for the appellant*

The applicant believes firstly that the Council behaved unreasonably on the basis that it acted contrary to, or not followed well-established case law. Reference is made to an earlier e-mail exchange with the Council, which provided a confused response in relation to the authorised use of the property, Pine View. The applicant followed this up by citing case law that suggested that an interpretation based on the property falling within Class C3 was appropriate. Subsequently, the Council confirmed that the Council accepted that the property had an authorised use as holiday accommodation although it remained silent on the matter of whether it fell within a C3 use.

The officer report that recommended the refusal of planning permission for the appeal proposal sought to clarify the issue of whether the appeal property could be classified as a C3 or C1 use class. This further confused the issue and the applicant believes that this also amounts to unreasonable behaviour.

The applicant proceeds to suggest a second ground for her claim of unreasonable behaviour in that having conceded that the property could fall under Class C3, it then applied planning policies applicable to new housing development. The applicant argues that the planning application was assessed against the wrong planning policies and that planning permission ought to have been granted had the confusion surrounding which Use Class applied not arisen.

#### *The case for the Council*

The Council counters the first claim on the basis that the email exchange did not maintain its original position that the authorised use was as a D2 use and nor did it conclude that the removal of the condition would result in a C1 use. In relation to the second ground, the Council believes that it adopted a reasonable position to apply housing policies to the application to remove Condition 4 as any permission would result in the creation of an open market dwelling. In applying the policies of the development plan, it was also considered necessary to assess the application against policy CS10 of the Council's Core Strategy and policy ENV16 of the Saved Local Plan.

### **Reasons**

The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs can be awarded against a party who has behaved unreasonably and thereby caused the costs applicant to incur unnecessary expense in the appeal process.

For substantive matters, the PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Importantly, any unnecessary costs identified must relate to the appeal process.

The pre-application discussions between the applicant and the Council cannot be taken into account as they do not relate to appeal proceedings. These are discussions falling outside the scope of this Costs application but in any event serve only to provide an in-principle view by the Council.

Once submitted it is of course appropriate for the Council to apply its development plan policies. The development plan must be read as a whole. Whilst the judgments in *Gravesham Borough Council v SoS for the Environment* and *Sheila Moore v SoS CLG* and

Suffolk Coastal District Council were cited by the parties to support their respective views, the question as to whether a holiday let constitutes a C3 dwelling house needs to be determined on the individual facts. The facts were very clearly set out and on balance the Inspector was satisfied that it was appropriate to consider the application and the subsequent appeal in this way.

It seems to me therefore that the Council was entitled to consider the application against its housing policies in the first instance; however it is clear that the main thrust in their assessment focussed on its economic development policies. The Inspector said this as the planning officer thoroughly considered the effects on the Rural Economy and also applied a correct planning balance towards the end of his/her report in which the focus was very much aligned to an assessment against policies CS10 and ENV16. Indeed, the only failing if there is one is that the officer might have needed to proceed to also assess the application against the Framework, particularly given the location of the property in the countryside. The application of sustainable development principles applies to all new development.

### **Conclusion**

Therefore, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not therefore justified.

DC