

<p>SHAW CUM DONNINGTON 18/00109</p> <p>Pins ref: 3214552</p>	<p>Donnington Grove Country Club Donnington Newbury Berkshire RG14 2LA</p>	<p>Section 73 - Removal of Condition 13 - Use/Occupancy Restriction which states: 'The apart hotel units, hereby approved are occupied for holiday purposes only; The apart hotel units shall not be occupied as a person's sole, or main place of residence; The adjacent hotel operator (Donnington Grove Country Club) shall maintain an up-to-date register of the names of all owners / occupiers of individual apart hotel units and of their main home addresses, and shall make this information available all reasonable times to the local planning authority' of approved planning reference 14/01943/COMIND.</p>	<p>Dele. Refusal</p>	<p>Dismissed 23.07.2019</p>
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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 Sandtrend Ltd. against the decision of West Berkshire Council.

The application Ref 18/00109/COMIND, dated 11 December 2017, was refused by notice dated 23 April 2018.

The application sought planning permission for proposed annexe to provide an extension to existing hotel to provide 26 aparthotel units, together with associated landscaping and car park without complying with a condition attached to planning permission ref. 14/01943/COMIND dated 16 October 2014.

The condition in dispute is No. 13 which states that:-

The apart hotel units hereby approved shall be occupied for holiday purposes only; they shall not be occupied as a person's sole, or main place of residence. The adjacent hotel operator (Donnington Grove Country Club) shall maintain an up-to-date register of the names of all owner/occupiers of individual aparthotel units 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 development is only considered to be acceptable if the units are restricted to holiday units and are not occupied as a person's sole or main place of residence. The site is outside of any defined settlement and the Local Planning Authority seeks to ensure that new residential development is not located in such areas, unless it has been sufficiently justified. This is in accordance with advice contained within the National Planning Policy Framework 2012 and Policies ADPP1 and CS10 of the West Berkshire Core Strategy 2006-2026.

Preliminary matters

The name of the appellant is spelled differently on the application and appeal forms. At the hearing, it was confirmed that the correct version is that stated in the above heading.

The application has been made under Section 73 of the Town and Country Planning Act 1990 for the carrying out of development without complying with a condition attached to an earlier grant of planning permission. The condition in dispute is condition No.13 of planning permission reference

14/01943/COMIND. That was a permission granted under S73 on an application relating to an earlier version of the same condition. The description of development that the Inspector has used above comes from that earlier permission, reference 13/00148/XCOMIN as that is the act of development proposed.

At the hearing, the appellant raised concern about this approach, on the basis that development had commenced and the wording the Inspector had used could imply a breach of planning control. The Inspector was satisfied that this is not the case as, reading the heading in full, it is clear that the appeal relates to a request to carry out development without complying with Condition 13 only. As the building itself is not yet built, there can be no breach of that condition at this time.

If the Inspector were to allow the appeal, the effect would be to grant permission for the development without a condition restricting occupancy. In effect, it would permit the construction of 26 units of housing for permanent residential use. Although the description of development would still refer to 'aparthotel units', the lack of any occupancy condition would allow permanent occupation.

The Council's second reason for refusal concerned a lack of affordable housing provision within the development. Subsequently, the parties have agreed a scheme that would enable 30% of the dwellings to be provided as affordable housing. It was confirmed at the hearing that, subject to a planning obligation to secure the affordable housing, the Council accepted the affordable housing proposal as suitable for the site. There is no substantive evidence that this would not be the case, so the Inspector found that this matter is no longer in dispute.

Following the hearing, a completed Unilateral Undertaking planning obligation has been provided. As well as providing the required affordable housing obligations to overcome the second reason for refusal, it also provides a mechanism for ensuring that the proceeds of the development are re-invested in making improvements to Donnington Grove Country Club.

Main Issues

The main issues are:-

(i) Whether the site is in an appropriate location for the development with regard local and national planning policy and the accessibility of services and facilities; and

(ii) whether there are any other material considerations that could outweigh any conflict with the development plan, with particular regard to benefits to tourism and the rural economy.

Reasons

Location of development

Area Delivery Plan Policy (ADPP) 1 of the West Berkshire Core Strategy 2012 (CS) sets out the overall spatial development strategy for West Berkshire. It indicates that development over the plan period will follow existing settlement patterns with most development located in or adjacent to various listed settlements, of which Newbury is the largest. CS Policy CS1 sets out the overall number and types of locations in which new housing should be delivered. CS

ADPP2 sets a specific vision for Newbury, confirming the target number of new dwellings and broad locations for growth that do not include the appeal site.

Policy C1 of the Housing Site Allocations Development Plan Document 2017 (HSA) goes further to indicate that other than for certain exceptions, there will be a presumption against new residential development outside defined settlement boundaries. There is no dispute that this principle of restraint applies to the location of the appeal site, which is in an area defined by the development plan as open countryside, and that the proposal is not covered by the exceptions.

Together, these policies seek to direct development to the most accessible locations. It was agreed at the hearing that the site was within walking distance of a number of facilities. There was also no dispute that there are more facilities within walking distance than when a previous Inspector dismissed an appeal (Ref: APP/W0340/A/12/2182113) for a similar proposal to permit the development without complying with an earlier version of an occupancy condition.

However, whilst the Golf Course at Donnington Grove adjoins the settlement limit for Newbury, the site is broadly centrally located within that Golf Course. Whether or not it should be considered isolated, there is a significant detachment from the built form of the main urban area. The walking route to the urban edge and closest bus stops, along the lengthy site access drive is a managed environment and may not attract so much traffic as the surrounding public highways. However, the drive is narrow and the Inspector found at the site visit that it was necessary to step onto the grass verges to allow cars to pass. This detachment from the urban edge, which gives a rural feel, along with the characteristics of the route is unlikely to encourage travel by non-car means in order to access the majority of services, especially in inclement weather. As such, the Inspector was not lead away from the earlier Inspector's finding that a very high proportion of journeys to and from the dwellings would be made by private car.

The existing permission for aparthotel units would undoubtedly generate some need to travel. The wording of the condition in dispute is such that there is no limit on the length of time that a unit can be occupied by the same person or group of people. As such, it could be occupied for a significant part of the year where occupants may wish to access local services beyond the facilities at the Country Club. This differs from the situation when the other Inspector considered the earlier appeal which related to a time-limited condition.

However, whilst the permission has been implemented and the parties now agree that it should be considered as previously developed land, which is a further change in circumstance from the previous appeal decision, the aparthotel building has not been built. The evidence points to the extant permission being unviable to develop due to the occupancy restriction. In this context, he found no conclusive evidence that the building would be built in the near future and, therefore, place limited weight on the extant permission as a fall-back position.

The Inspector's attention was drawn to a recent development at a former fish farm within the Donnington Grove estate which can now be occupied as permanent dwellings. However, whilst residents would generate similar travel patterns to those at the appeal site, the scheme arose in part from the conversion of existing buildings. That scenario engages a different planning policy context and a different balance of considerations, so he did not find that it indicates that this wholly new build development should be permitted without an occupancy restriction.

The Inspector found that the location of the site outside the development boundary brings the proposal into clear conflict with HSA Policy C1. It would also conflict with CS Policy CS13 which seeks to reduce the need to travel and demonstrate good access to key services and facilities. In light of these findings, whilst CS ADPP1 allows some flexibility in terms of the

location of development, and may not expect all development to be provided within defined settlement boundaries, and the proposal may not harm the relationship of Newbury with the open countryside beyond, he also found that the proposal is not well related to the transport accessibility of the settlement. As such, the conflict with Policy C1 is not superficial, nor at odds with the aims of ADPP1.

ADPP1 is, however, broader in scope and also permits limited development in the countryside focussed on addressing identified needs and maintaining a strong rural economy. The Inspector turned to the effect on the economy later, but regardless of his findings on the second main issue, given the weight that he had placed on the fall-back position, he did not find that the development of 26 dwellings is 'limited'. Therefore, it cannot comply with this aspect of ADPP1.

In failing to comply with ADPP1 and the settlement hierarchy, there is also a conflict with CS Policy CS1 that further clarifies the strategy for housing delivery across West Berkshire. The proposal does not accord with the general vision in terms of locations for new housing at Newbury set out in CS ADPP2, although the policy does not explicitly place an embargo on development elsewhere, so there is no clear conflict with it.

Overall, with regard to the above, he found that the proposal conflicts with the development plan and the site is an inappropriate and harmful location for new permanently occupied housing.

Material considerations

There is no dispute that Donnington Grove Country Club makes a sizable contribution to the local economy. The scheme as first conceived for aparthotel units would provide additional hotel accommodation and consequential additional economic benefits. However, as already noted, that scheme is not viable to develop.

The Country Club has now been trading at a loss for some time. There is no dispute that a range of projects could significantly improve the viability of the business so as to realise a profitable trading position. The proposal to develop the site so that it could be permanently occupied housing would provide a significant injection of capital that the submitted planning obligation would ensure was directed to these projects. In turn, that investment could secure the future of the business and allow it to continue contributing to the economy.

It may well be that the projects would ultimately put the business on a sufficiently secure financial footing to allow it to continue to grow in the future, increasing the contribution to the local economy. Given that the vision for Newbury, set out in the CS, indicates that tourism will play a bigger part in the town's economy, the Inspector placed substantial weight on these benefits.

Benefits will also arise from the delivery of affordable housing, although due to the shortcomings in location of the site, this receives only moderate weight. The investment in the main building which is Grade II* listed, is also a benefit as is the consequence of providing greater security over the future use of this heritage asset. However, there is no evidence that the building is at risk and so this matter receives only limited weight.

The delivery of housing in itself is also a benefit as is the additional spending that would result from future occupiers and economic benefits during the construction phase. However, given that the Council can currently demonstrate sufficient housing land supply, the locational shortcomings led the Inspector to only place limited weight on these benefits.

The planning obligation also requires that a discounted membership of Donnington Grove Country Club would be offered to each residential unit. However, whilst that could some

provide further benefit to the Country Club, it is only a requirement to offer and there is no substantive evidence that it would make a significant contribution to the business. The Inspector, therefore, give this obligation very limited weight.

Planning balance

The proposal is not in an appropriate location for new housing. It conflicts with the development plan in this regard. There is no substantive evidence suggesting those policies with which he had found conflict are not in conformity with the National Planning Policy Framework or any other reason as to why he should not give the development plan full weight.

The previous Inspector had insufficient evidence that the proposal would provide a benefit to the Country Club. By contrast, he had significant evidence before him in that regard and had attached substantial weight to the benefits that would result.

Permission was originally granted for aparthotels as tourism accommodation. Controlling the use in this way goes to the heart of reasons for granting permission which would otherwise be unacceptable in this location. The units as originally intended are unlikely to be developed, and so will not yield the benefits originally expected. However, that also means they receive limited weight as a fall-back position and the proposal before him is effectively for new housing in the countryside.

The development would provide a much-needed capital injection that could place the Country Club on a sound financial footing for the future and allow it to continue contributing to the local economy. The development would not provide tourism benefits in itself, but would result in a harmful pattern of development, contrary to the development plan. Overall, the Inspector found that the material considerations are not of sufficient weight as to indicate a decision other than in accordance with the development plan.

Conclusion

The condition remains justified and the appeal is dismissed.

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