

PLANNING COMMITTEE – 12 OCTOBER 2017

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 17/503941/FULL			
APPLICATION PROPOSAL Removal of condition 5 of SW/89/42 (Conversion of agricultural buildings into 2 holiday cottages) - The provision of the residential accommodation as holiday accommodation is no longer viable for the reasons set out in the supporting planning statement and an alternative use for the building needs to be found to secure its long term future. Removal of the condition to allow unrestricted residential occupancy is requested.			
ADDRESS Denstroude Farm Denstroude Lane Dunkirk Canterbury Kent CT2 9JZ			
RECOMMENDATION – Refusal of planning permission			
REASON FOR REFERRAL TO COMMITTEE: Ward Member Request			
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Dunkirk	APPLICANT Mr & Mrs Purchase AGENT Hobbs Parker Property Consultants	
DECISION DUE DATE 21/09/17	PUBLICITY EXPIRY DATE 12/09/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
17/501531/FULL	Removal of condition 5 of SW/89/42 (Conversion of agricultural buildings into 2 holiday cottages) - The provision of the residential accommodation as holiday accommodation is no longer viable for the reasons set out in the supporting planning statement and an alternative use for the building needs to be found to secure its long-term future	Withdrawn by Agent	

1.0 DESCRIPTION OF SITE

- 1.01 The property is a former agricultural building, converted to two holiday lets in 1989 under planning reference SW/89/42. One holiday let is a one-bedroom unit; the other has two bedrooms. Both front onto a small courtyard, with other agricultural buildings on two sides (north and east), with Denstroude Lane running along the fourth (southern) side of the site. The property has a small amenity area to the north east, with a single parking space adjacent to same.
- 1.02 The property is situated in a very remote location, deep within the countryside and some considerable distance outside any established built-up area boundary.

However, it is close to the Borough's boundary with Canterbury City Council and close to the coast, to Canterbury and to the Blean Woods.

- 1.03 Condition 5 of planning permission SW/89/42 restricts the use of the units for holiday let use only as follows:

"The accommodation hereby permitted shall be used solely for the purpose of holiday accommodation and shall not be let to or occupied by any person or groups of persons for a period of more than four weeks in any calendar year without the further written consent of the District Planning Authority.

Grounds; As the site lies outside any area intended for new permanent residential development and as the permission is only granted in recognition of the applicant's intention and the District Planning Authority's wish to encourage suitable provision of holiday accommodation in this attractive rural area."

- 1.04 In 2002, other agricultural buildings on site were granted permission for conversion to holiday let use under reference SW/02/0452, but this permission was never implemented.

2.0 PROPOSAL

- 2.01 The proposal is to remove Condition 5 of SW/89/0042, and thus allow full residential use of both units. The proposal also proposes that, with minor internal changes, the two holiday lets should then be converted to a single two-bedroom residential unit – a change that would not in itself require planning permission.

- 2.02 The proposal is accompanied by an in-depth Planning Statement (PS), which explains the history of the holiday lets until the present time. It states that the property was converted in the early 1990s and run as holiday lets until 2005 when the applicants purchased the farm. They continued running the holiday lets until a serious water leak in 2010 meant that the use had to be suspended; that it resumed again following repairs but that bookings have dwindled over the last decade, due to increased expectations within the market with regard to holiday let accommodation, and an increase of holiday accommodation within the area. The PS also notes a lack of investment in the accommodation, leading to a requirement for substantial investment in order to refurbish them, estimated to be £31,000. This figure, and the calculations which led to it, are considered later in this report.

- 2.03 The statement also notes that, following the withdrawal of the recent similar application, on Officers' advice, the applicants attempted to market the property for other commercial uses, such as offices, an artist's studio, etc. Its states that *'However, even with some informal indication from the Planning Officer that such uses would be supported, the commercial letting agents were not prepared to market the property without being able to demonstrate that the use of the premises being offered was in accordance with the planning permission. Therefore in order to market the property it is necessary to first obtain a planning permission for the uses proposed. Rather than do this it is considered more appropriate to demonstrate to the council why the uses suggested are not appropriate uses for the building.'* Again, this matter will be further discussed later within this report.

- 2.04 The statement further notes that *'There are many other redundant buildings on the farm that could be converted to residential use under the prior notification process with very little opposition from the council but there is no desire to convert these buildings particularly if unrestricted residential use for the holiday let is given'*.

2.05 Finally, the statement contends that *'Policy criterion 7 of policy CT3 (of Bearing Fruits 2031: The Swale Borough Local Plan 2017) specifically identifies the aim of bringing "vacant homes back into use and up to the Decent Homes standard; "Therefore there is clear policy compliance with policy CT3 as the applicants proposal is aimed at ensuring the building is a viable proposition in terms of its refurbishment and future use.'*

2.06 The application is being referred to the Planning Committee at the request of Cllr Bowles.

3.0 PLANNING CONSTRAINTS

Within the Special Landscape Area (SLA)

Outside any established built-up area boundary

4.0 POLICY AND OTHER CONSIDERATIONS

4.01 The National Planning Policy Framework (NPPF): Paragraphs 7 (sustainable development) and 55 (sustainable development within the rural area).

4.02 The National Planning Policy Framework (NPPF)
Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policies ST3 (The Swale settlement strategy), ST7 (The Faversham area and Kent Downs Strategy), CP1 (Building a strong economy), DM3 (the rural economy), DM14 (development criteria), DM24 (valued landscapes)

5.0 LOCAL REPRESENTATIONS

5.01 One local response has been received, neither supporting nor objecting to the proposal, but noting that *'My only comment on this would be if a barn is no longer used or needed then take it down. As there is not housing there it doesn't make sense as it will mean any landowner will be building barns to convert into housing.'*

6.0 CONSULTATIONS

6.01 Dunkirk Parish Council, which raised no objection to the earlier withdrawn application, now objects to the present application. Their comments, in full, are as follows:

'Dunkirk Parish Council has changed its position and now object to the application. Our previous comments were based on the Local Plan 2008 which had little depth to support refusal of the application. With the Local Plan Bearing Fruits 2031 now being a 'made' plan, it has now strengthened Swale's position with NPPF compliant policies.

The original planning permission was for holiday accommodation. The 'business plan' figures proposed show a very weighted loss position. It is also noted that this is not an up to date financial statement, with booking being last listed for 2012. It should also be noted that whilst the Planning Statement is dated July 2017, the minimum wage rose from £7.20 to £7.50 in April 2017 whereas the spreadsheet states £6.70.

The building is in the countryside, outside the built area and therefore not compliant with the Local Plan 2031. The application is also non NPPF

compliant. The application states: 'The Framework identifies at paragraph 51 the need for Local Planning Authorities to identify and bring back into residential use empty housing. This is not empty housing being brought back into use. This would be change of use from holiday lets to residential development.

In terms of promoting sustainable development in rural areas the framework recognises at paragraph 55 that there will be circumstances in which residential use is the best use of redundant rural buildings away from the built confines. It states: To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are small groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid isolated new homes in the countryside unless there are special circumstances such as:

1.the essential need for a rural worker to live permanently at or near the place of work in the countryside; or'

This does not apply.

2. 'where such development will represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or'

This does not apply.

3.'where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or'

This does not apply.

4. 'the exceptional quality or innovative nature of the design of the dwelling'

This, also, does not apply

For the reasons given above, we recommend refusal of the application'

6.02 I have discussed the application with the Council's Tourism Officer, who does not wish to see the loss of holiday let accommodation.

7.0 APPRAISAL

7.01 In policy terms, the situation is to my mind clear. Policy ST3 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 states in point 5 that 'At locations in the open countryside, outside the built-up area boundaries shown on the proposals map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. I would contend that the proposal fails to meet these criteria.

7.02 Similarly, with regard to sustainability, the National Planning Policy Framework (NPPF) at para 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. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- *the exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
 - *be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*
 - *reflect the highest standards in architecture;*
 - *significantly enhance its immediate setting; and*
 - *be sensitive to the defining characteristics of the local area.*

None of these criteria apply in this case

- 7.03 It is therefore key to consider whether the scheme meets the principles of sustainable development as described within the NPPF. It states at para 7:

“There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- ***an economic role*** – *contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*
- ***a social role*** – *supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and*
- ***an environmental role*** – *contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”*

In this case, the NPPF seeks to emphasise sustainable development; seeks to protect the countryside for its own sake; and to prevent new dwellings in the countryside. I would contend that the proposal would not play either an economic role, a social role, or an environmental role, if approved, and as such these criteria are also not met.

- 7.04 Paragraph 55 of the NPPF sets out criteria relating to new dwellings in the countryside, of which this proposal meets none. The site is isolated from facilities and amenities, and its high reliance on private transport would render it unsustainable development.

- 7.05 The NPPF also emphasises that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. Relevant

policies of the development plan accord with the aims of the NPPF, and as the new Local Plan was adopted as recently as 26th July, it can be considered as being truly up to date. The key policy here now is policy DM3 (The rural economy) of the newly adopted Local Plan which states that planning permission for new residential development will not be permitted where this would reduce the potential for rural employment and/or community facilities unless the site/building(s) is demonstrated as having no demand for such purposes or its site would be undesirable or unsuitable.

- 7.06 This application turns on whether or not a case has been made which justifies the release of the planning condition to allow use of the building as an unrestricted residential dwelling, which in this remote rural area would normally be contrary to both national and local planning policies of rural restraint. The site lies outside any town or village and far from most amenities. In settlement strategy terms (policy ST3) the property lies in very unsustainable location for residential development, although such locations are often ideal for tourism uses. As such, I consider that residential use would not have been approved here in 1989, or today, and that the condition was rightly imposed. Tourism use is by definition a residential use and it is sometimes hard to see why release of such a condition is such an issue. However, the key policies are intended to boost the rural economy by way of good quality holiday accommodation (e.g. on farms) and to restrict rural housing development. This balance can be achieved only by permitting holiday accommodation with appropriate planning conditions. This effectively authorises a rural commercial use with potential economic benefits, A conversion to unrestricted housing fails to preserve those benefits and the proper alternative to holiday lets ought to be an alternative commercial use rather than unrestricted residential use.
- 7.07 The applicants' planning statement deals with the history of the property and paints a picture of falling lettings. However, it does not indicate any attempts to refurbish or update the property so far. Nor does it address how alternative commercial uses could be approved and the property marketed as such. Moreover, as new uses for farm buildings are normally seen as part of agricultural diversification, there is no indication of how the use fits into the overall farm business and how their use might be encouraged by better linking their use to the operations of the farm. To my mind, it leaves a number of questions unanswered:
- Why has so little investment been made within the holiday lets for so long? The need for refurbishment would be much less if ongoing small scale investment had been made into the business over the years.
 - Some of the figures for the refurbishment appear high and they appear to assume that all the cost would be borne at one time, rather than a gradual investment e.g. all new kitchen appliances for both units.
 - There is no mention of the possibility of combining the two holiday lets to one larger unit, as might better suit today's holiday market (as suggested by the applicants' own evidence), and as suggested for its future residential use.
 - Why was no attempt made to engage other agents when the one contacted refused to market the property unless it had the appropriate planning permissions in place? Many property companies and auctioneers advertise properties with the caveat 'subject to necessary consents'. Alternatively, planning permission could have been sought for an alternative commercial use to aid such marketing. Here, the decision seems to have been made simply that this would not be worth doing.
- 7.08 Much of the case made for the conversion to a residential dwelling is based upon the amount of investment required to bring the holiday lets back up to the necessary standards to attract people wishing to stay in them for holidays. The statement notes

that the lets have been in the ownership of the applicants since 2005, and it seems that there has been little or no investment in them since then. This has created something of a 'catch-22' situation: the argument is made that refurbishment is required to bring the lets up to an acceptable accommodation standard, but the investment required is too high, so that refurbishment cannot be justified, so the lets will continue to fall below modern expectations, and will fail to be let on a regular basis. I am of the opinion that an apparent lack of investment in a business venture is not a justification for a change of use to a new use which would be contrary to local and national planning policy.

- 7.09 The list of refurbishments required for the lettings seems to reflect a need to almost totally remove all existing fixtures, fittings and amenities for the holiday lets and start again, requiring completely new kitchens, bathrooms, furniture, carpets, white goods, curtains, linen, etc., which again suggests a lack of rolling investment over time. The actual suggested costs envisaged also appear to be somewhat high, with new television sets being valued at £375; ovens at £700; fridges at £250 and washing machines at £400. A cursory glance at the website of a well-known electrical retailer would suggest that recognised branded articles can be purchased for £220 (32" television sets); £390 (ovens); £138 (fridges); and £270 (washing machines). As such, I would question the cost envisaged to refurbish the holiday lets.
- 7.10 I am also concerned by the lack of full marketing of the property for other commercial uses. The conversion of a commercial or community building to a residential use is generally only considered when all other avenues have been explored and found to be impractical. The statement notes that a property agent was contacted, but would not market a building for any other possible uses unless those uses had the appropriate permissions in place. This is understandable, but even with that advice the applicants have not sought planning permission for alternative commercial uses in order to thoroughly test the market, which seems to me to be an unusual practice, and immediately raises the question of why this has not been done.
- 7.11 Such issues can be of vital significance and are often tested at appeal. In recent years the Council has experienced some pressure for the removal of holiday let conditions on properties but such applications and appeals have been refused and dismissed. I have attached two appeal decisions that have revolved around this issue.
- 7.12 In the first case at Bapchild (in 2013) on a site just outside the village boundary, the appellant argued that the holiday use was not viable, but the Inspector found that some costs quoted by the appellant had risen sharply without explanation and she shared the Council's concern over the reliability of the figures. She found the use compatible with current policy but saw no evidence of the appellant having marketed the property. In the second, more recent, case at Selling against an enforcement notice the Inspector again saw the condition as compliant with relevant planning policy but concluded that the appellant had made no attempt to sell or let the property in accordance with the condition, making it "inappropriate to consider allowing the building to have unrestricted residential use". The new Local Plan has been adopted in the meantime but the policy of only approving residential of rural buildings if this does not deter commercial use has been restated in policy DM3.
- 7.13 I am not convinced that the relevant current policy test has been passed with this application or that other avenues for the future of the building have been explored sufficiently thoroughly.

8.0 CONCLUSION

8.01 As the proposal has failed to justify any support contrary to established local and national planning policy, I recommend that the application be refused.

9.0 RECOMMENDATION – REFUSE for the following reason:

REASON

(1) The removal of Condition 5 of Planning Reference SW/89/0042 would automatically allow the creation of a separate full residential dwelling. That dwelling, being situated outside any built-up area boundary in the countryside and in a remote and wholly unsustainable location, would represent an undesirable encroachment of development in the countryside to the detriment of the valued local landscape within which it is situated. Therefore, the proposal is contrary to policies ST3, DM14 and DM24 of Bearing Fruits 2031: The Swale Borough Local Plan 2017; and paragraphs 7 and 55 of the National Planning Policy Framework (NPPF).

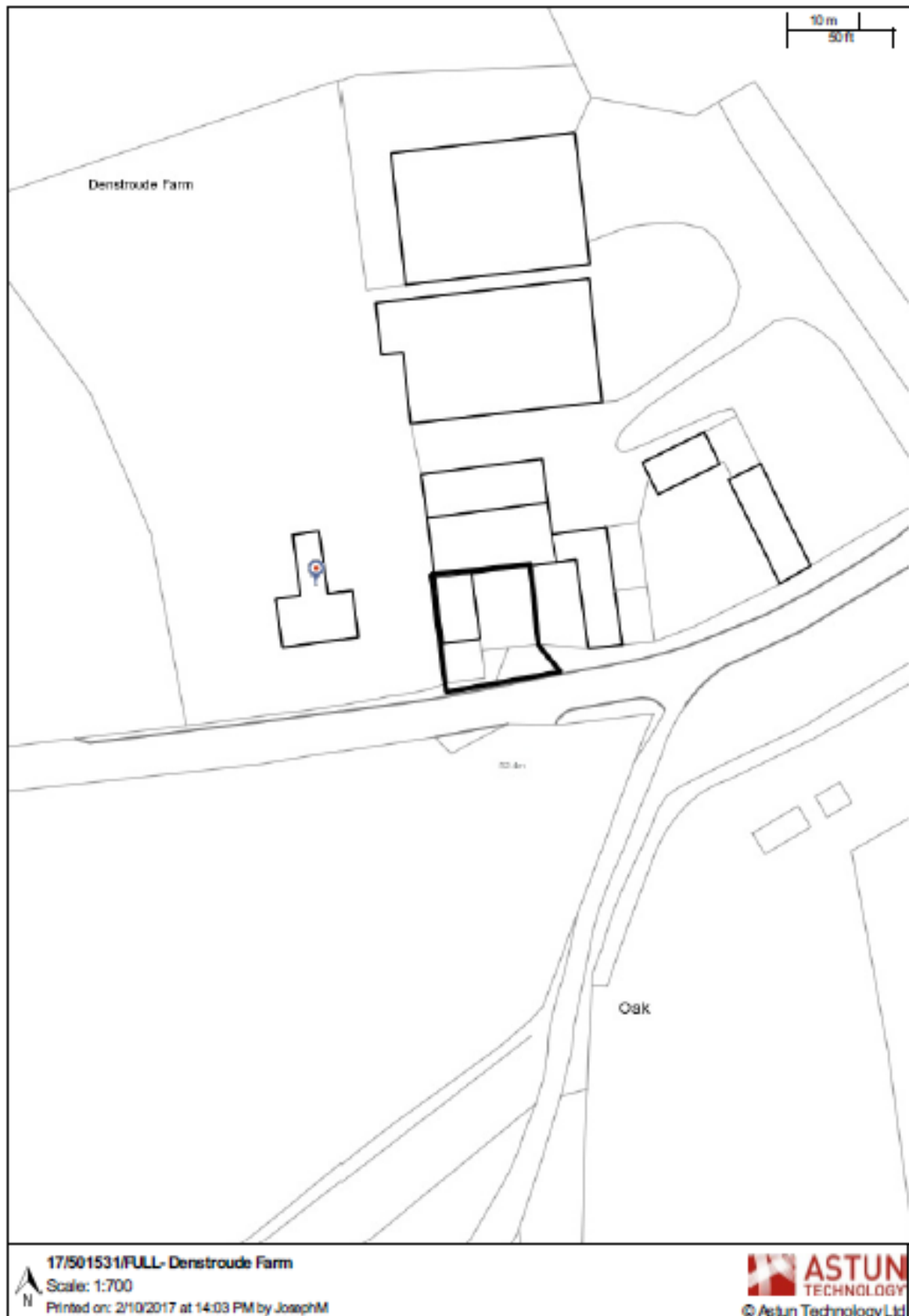
Council’s approach to the application

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Where possible, suggesting solutions to secure a successful outcome.
As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this case, the proposal was unacceptable in principle, and no amendments would have rendered it acceptable.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council’s website.
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



APPENDIX 1



Appeal Decision

Accompanied site visit made on 19 May 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 15 June 2016

Appeal ref: APP/V2255/C/15/3140621

Hop Pickers Cottages East, Highbens Hill, Selling, Kent, ME13 9QZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Swale Borough Council.
- The appeal is made by Mr D Riden.
- The notice was issued on 17 November 2015.
- The land and/or property affected is defined in the Notice as "land and buildings known as Hoppickers Cottages East, Highbens Hill, Selling, Kent shown edged red on the plan attached to the Notice and thereafter referred to as the "land", "cottage" or "site" as appropriate".
- The breach of planning control as alleged in the Notice is that planning permission for the use of the cottage was granted by the Council under reference SW/94/323 dated the 31st May 1994. The permission contained conditions restricting the use of the cottage as follows:- "(ii) The accommodation hereby permitted shall be used solely as holiday accommodation and not for any other purpose, including any purpose within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking or re-enacting that Order) including occupation at any time by any person or persons as their sole or main residence" and "(iii) The accommodation hereby permitted shall not be let to or occupied by any person or group of persons for a period of more than four weeks in any calendar year without the written consent of the District Planning Authority". A copy of the Planning permission is attached to the Notice. Evidence has been obtained via responses to a Planning Contravention Notice that the cottage has been used as a permanent home throughout the year in breach of these conditions. Written consent for the use of the cottage for residential use in breach of conditions (ii) and (iii) of planning permission SW.94/323 referred to above has not been given.
- The reason for imposing the conditions was in each case stated to be as follows: "As the site lies outside any area intended for new permanent residential development and as the permission is only granted in recognition of the applicant's intention and the District Planning Authority's wish to encourage suitable provision of holiday accommodation in this attractive rural area".
- The requirements of the notice are to cease the use of the cottage by any person or group of persons other than in strict compliance with conditions (ii) and (iii) of planning permission SW/94/323.
- The period for compliance with the requirements is three 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.

Summary of decision: The appeal on ground (a) is dismissed and planning permission is refused. However, the appeal on ground (g) is allowed and the period for compliance is extended to twelve months.

APPENDIX 1

Appeal Decision APP/V2255/C/15/3140621

Preliminary matters**The appeal on ground (a)**

1. Paragraph 206 of the National Planning Policy Framework (NPPF) indicates that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In determining whether the appeal on ground (a) should be allowed the main issues are whether the conditions cited by the enforcement notice comply with paragraph 206 and, if not, whether planning permission should be granted for unrestricted residential use of the property.
2. The appeal site is within the Kent Downs Area of Outstanding Natural Beauty. Paragraph 115 of the NPPF indicates that great weight should be given to conserving landscape beauty in such areas, which have the highest status of protection in relation to landscape and scenic beauty. However, as the conditions relate to an existing property, their discharge would not in itself have an effect on the landscape beauty of the area.
3. Saved Policy B5 of the Swale Borough Local Plan 2008 states, amongst other things, that the Council will seek to retain existing tourist attractions and facilities, including tourist accommodation. It goes on to say that proposals to change the use of such facilities will be considered in accordance with Policy B1, Policy RC2, and Policy C1 as appropriate. Supporting paragraph 3.90 indicates that, in the rural areas, the provision of self catering accommodation through the conversion of suitable existing rural buildings is to be encouraged in accordance with Policy B5 and, additionally, Policy RC1.
4. Policy RC2 is concerned with retaining and enhancing rural services and facilities and states, amongst other things, that the Council will require evidence that local services / facilities, either in use or vacant, are neither viable nor likely to become viable before planning permission will be given for a change of use. It goes on to say that planning permission will only be given for a change of use where evidence has been submitted of genuine efforts having been made to sell or let the enterprise.
5. No such evidence has been submitted in this case: however, the appellant counters the Council's reliance on the Local Plan by arguing that it is out of date. In particular the appellant argues that Policy B5 is inconsistent with the NPPF because the presumption to re-use rural buildings for tourist accommodation prior to consideration for unrestricted dwellings no longer features in the NPPF. As to the appeal decision cited by the Council (PINS ref: APP/V2255/A/13/2195986 relating to Ladybird Lodge, Bapchild Court, School Lane, Bapchild, Sittingbourne, Kent. ME9 9NL, dated 7 August 2013), the appellant contends, at paragraph 2.7 of his Final Comments, that "the LPA has mistakenly said that the Inspector saw the Policies as being consistent with the NPPF and not out-of date when there is no explicit reference to this consideration". However, at paragraph 11 of her decision, the Inspector states that "Saved Policy B5 specifically seeks to retain existing facilities for tourists, including accommodation. This is consistent with the Framework's aim of supporting a prosperous rural economy, including rural tourism. Furthermore, Policy RC2 states that planning permission for a change of use will only be granted where evidence has been submitted of genuine efforts to sell or let the

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- enterprise". In that case, as in this, there was no evidence that there had been any efforts to sell the appeal property as a holiday-let operation, leading the Inspector to the view that, in the absence of such information, it would be inappropriate to consider allowing the building to have unrestricted residential use.
6. I have had regard to the appeal decision to which the appellant refers (PINS ref: APP/D0840/A/14/2215545 relating to The Linhaye, Port Isaac, Cornwall, PL29 3SR dated 27 June 2014). However, the background to that case was different, with the local planning authority apparently having made inconsistent decisions in relation to other applications.
 7. In their Final Comments the appellant's agents draw attention to the recent Court of Appeal judgment in *Richborough Estates Partnership LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government (C1/2015/0894)*. In that case Lindblom LJ found that paragraph 49 of the NPPF should be interpreted widely, and that it applies to all policies which have the effect of restricting where housing should go, including open countryside and Green Gap policies. Paragraph 49 seeks to deliver housing, particularly when authorities cannot demonstrate a five year supply. However, the judgment also makes it clear that paragraphs 14 and 19 of the NPPF do not render "out-of-date" policies irrelevant in the determination of appeals and that the weight to be attributed to such policies is a matter of judgement for the decision-maker.
 8. There are various elements to consider, including whether the scheme meets the three dimensions of sustainable development identified in paragraph 7 of the NPPF, and the appellant draws attention to these in his appeal statement. However, the evidence of what efforts been made to use or sell the appeal property as a holiday-let operation remains an important pre-requisite so as to allow the decision-maker to reach a balanced judgement having regard to all the material considerations including the competing demands for tourist accommodation and for unrestricted residential accommodation. Accordingly, I concur with the Inspector who determined the Ladybird Lodge appeal that, without such information, it would be inappropriate to consider allowing the building to have unrestricted residential use.
 9. I have also considered the appellant's argument, at paragraph 6.14 of his Statement of Case, that, were I to decide that the appeal property should remain as holiday accommodation, "the conditions should be varied to merely restrict the use for holiday accommodation only without any restriction on the duration that any occupants can stay". However, this would make the condition difficult to enforce and to a large extent would negate its purpose. Thus, whilst I note the World Tourism Organisation's definition of tourism, and the appellant's comments regarding the emerging Local Plan, I do not consider that the conditions should be varied in the manner proposed.
 10. From the available evidence the conditions appear to comply with paragraph 206 of the NPPF and accordingly I conclude that the appeal on ground (a) must be dismissed and the grant of planning permission refused.

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The appeal on ground (g)

11. The period for compliance stated by the Notice is three months. This is a relatively short time in which to expect the appellant, who has apparently lived at the property for some years, to move from what appears to be his main residence. In addition, it would be in nobody's interest for the property to become neglected and, bearing in mind that there is some suggestion from third parties and from the appellant to the effect that the demand for holiday accommodation in Highbens Hill may not be as great as it once was, it strikes me as appropriate that the appellant should be afforded the opportunity to establish the level of demand for such accommodation and, if appropriate, to submit an application accordingly. In the circumstances I shall extend the period for compliance to twelve months and the Notice shall be varied accordingly. Subject to that variation the Notice is upheld.

Formal decision

12. The appeal on ground (a) is dismissed and the grant of planning permission is refused. However, the appeal on ground (g) is allowed and the Time for Compliance specified in Section 6 of the Notice is increased from three months to twelve months. Subject to that variation the Notice is upheld.

Felix Bourne

Felix Bourne

INSPECTOR

APPENDIX 2

UNPUBLISHED



Appeal Decision

Site visit made on 7 August 2013

by **S M Holden** BSc MSc CEng TPP MICE MRTPI FCILT

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

Decision date: 2 September 2013

PLANNING SERVICES

02 SEP 2013

Appeal Ref: APP/V2255/A/13/2195986

Ladybird Lodge, Bapchild Court, School Lane, Bapchild, Sittingbourne, Kent ME9 9NL

- 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 A Smith against the decision of Swale Borough Council.
- The application Ref SW/12/0979, dated 16 July 2012, was refused by notice dated 16 October 2012.
- The application sought planning permission for a change of use of private gymnasium/swimming pool to holiday let accommodation without complying with a condition attached to planning permission Ref SW/08/0406, dated 2 June 2008.
- The condition in dispute is No 2 which states that: The building shall be used solely for the purpose of holiday accommodation and shall not be let or occupied by any person or group of persons for more than four weeks in any calendar year.
- The reason given for the condition is: In order to prevent the permanent residential use of the building and having regard to the rural location of the site in pursuance of Policies E1 and E6 of the Swale Borough Local Plan 2008 and Policy EN1 of the Kent and Medway Structure Plan.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is necessary and reasonable in order to protect the countryside from the creation of a permanent, independent, residential dwelling in an unsustainable location.

Reasons

3. Bapchild Court is situated on the western side of the village of Bapchild, which is just to the east of Sittingbourne. It is a large country house that has been sub-divided into three dwellings. Ladybird Lodge is within the grounds of No 30 and is a separate, modern, ancillary building. It was originally constructed as a swimming pool and private gym, following approval of application Ref: SW/99/0024. To the rear of the building is a tennis court. In 2008 permission was given to convert Ladybird Lodge into holiday accommodation, subject to a condition restricting its use so as to prevent it becoming a permanent dwelling, Ref SW/08/0406. The application sought to have this condition removed.

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4. The appeal site comprises Ladybird Lodge together with part of the access driveway, a narrow strip of land in front of the building and the tennis court to the rear. The site and the other buildings that make up Bapchild Court are in an area designated as countryside and are outside the defined village boundary. However, this group of properties are all within walking distance of the services and facilities of the village. The appellant therefore contends that this is a material consideration in favour of an unrestricted residential use of Ladybird Lodge.
5. Saved Policy E6 of the Swale Borough Local Plan states that the countryside, which is defined as all land outside the built-up area boundaries, will be protected and where possible enhanced. It goes on to set out a series of criteria for development proposals that could be considered to be acceptable in countryside locations. Criterion (2) is the most relevant in this case. This refers to Policies RC1 and RC6, which seek to promote revitalisation of the rural economy and only permit the conversion of rural buildings to dwellings if certain criteria are met.
6. The National Planning Policy Framework (the Framework) confirms that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework also advises that local planning authorities should avoid new isolated homes in the countryside, unless there are special circumstances.
7. The appeal site's proximity to the village means that it is not entirely isolated. However, Ladybird Lodge is separate from the host property and well away from the main residential development of the village. I therefore consider that the presumption against new dwellings outside the built-up areas defined in the development plan is consistent with the advice of the Framework. I accept that a change of use is likely to only require minor physical alterations to Ladybird Lodge itself. Nevertheless, to be acceptable, the proposal must meet the criteria set out in Policy RC6.
8. The permission to convert Ladybird Lodge into holiday accommodation was implemented in 2009/10 and it would appear that lettings have been taking place for the last three years. Only limited details of the use of the property were provided with the appeal. Nevertheless, it would appear that in the first two years the property was let for 25 weeks. Although rental income in the first year of operation, 2010, was low, it rose considerably in 2011 and again in 2012.
9. The appellant contends that due to the cost of the conversion and the on-going running costs, the operation is not financially viable. However, the Council has not accepted the information on the costs of operating the property as a holiday let. No copies of invoices or bills were provided to substantiate these costs, some of which appear to have risen sharply over the period without adequate explanation. I therefore share the Council's misgivings about the quality and accuracy of this information and, on the basis of the submitted data, I am not persuaded that the business would not be viable over a longer time period.
10. Furthermore, a letter from the agent managing the letting for Mr Smith states that they are pleased with the level of bookings. This letter goes on to suggest that the quality of the accommodation has compensated for the location, which

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is away from more traditional holiday destinations. It also appears that 75% of the lettings relate to visitors who had family connections in the area. Whilst Ladybird Lodge may not be providing a conventional holiday for the occupants, these figures demonstrate that there is a demand for short-term, self-catering accommodation for people seeking to visit the area for a variety of reasons.

11. This combination of factors suggests to me that, in terms of an appropriate use of the building, the conversion to holiday accommodation has been successful. Saved Policy B5 of the Local Plan specifically seeks to retain existing facilities for tourists, including accommodation. This is consistent with the Framework's aim of supporting a prosperous rural economy, including rural tourism. Furthermore, Policy RC2 states that planning permission for a change of use will only be granted where evidence has been submitted of genuine efforts to sell or let the enterprise. It would not appear that there have been any efforts to sell Ladybird Lodge as a holiday-let operation. In the absence of such information it would be inappropriate to consider allowing the building to have unrestricted residential use.
12. The Council initially suggested that the only other acceptable use of the building would be for employment or other economically beneficial uses. On this basis the appellant sought an estimate for its conversion to an office. This estimate was a gross figure that also included removal of gym, play equipment, tennis court and re-landscaping. As the estimate was not confined to the cost of converting the building and I understand that the Council has not considered this proposal, I give this matter little weight in my consideration of the appeal. Furthermore, criterion (1) of Policy RC6, requires substantiated evidence to demonstrate that reasonable and sustained efforts have been made to secure an alternative acceptable use for employment or community purposes. In my view, simply providing an estimate for the cost of conversion would not satisfy this requirement.
13. My attention has been drawn to a number of other appeal decisions relating to conditions restricting accommodation for use as holiday-lets. These were in different parts of the country and each was determined on its individual planning merits, taking account of the unique circumstances of the particular proposals. I consider that none of them are directly comparable with this appeal, which I have also determined on its individual planning merits.
14. I therefore conclude that the condition is necessary and reasonable in order to protect the countryside from the creation of a permanent, independent, residential dwelling in an unsustainable location. The use of the building as a separate dwelling would conflict with the aims and objectives of the Local Plan policies and the Framework to promote rural tourism and strictly control new residential development in the countryside.
15. For this reason, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR

