



Appeal Decision

Site visit made on 7 August 2017

by **David Reed BSc DipTP DMS MRTPI**

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

Decision date: 15 September 2017

Appeal Ref: APP/V2255/W/17/3175169

Chesley Oast, Bull Lane, Newington ME9 7SJ

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Asset Sky Limited against the decision of Swale Borough Council.
 - The application Ref 16/506159/FULL, dated 2 August 2016, was refused by notice dated 10 January 2017.
 - The application sought planning permission for the change of use of an agricultural building to 5 holiday homes including new works and alterations without complying with a condition attached to planning permission Ref SW/04/1320, dated 28 February 2005.
 - The condition in dispute is No 12 which states that: The holiday lets hereby permitted 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 Policy E9 of the Swale Borough Local Plan.
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Decision

1. The appeal is allowed and permission is granted for the change of use of a building to 5 full time residential dwellings at Chesley Oast, Bull Lane, Newington ME9 7SJ, in accordance with the terms of the application, Ref 16/506159/FULL, dated 2 August 2016, subject to the following condition:
 - 1) The area allocated for car parking and/or turning on the plan submitted with planning application SW/04/1320 shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.

Preliminary matter

2. Since the determination of the application and the submission of appeal statements the saved policies of the Swale Borough Local Plan 2008 have been superseded by the adoption of a new Swale Borough Local Plan on 26 July 2017. The parties were accordingly given a further opportunity to comment on the new policies and their implications for the case.

Main Issues

3. There is no dispute that the five units would provide a satisfactory standard of accommodation for permanent occupiers. The main issues therefore are:

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- whether permanent residential occupation of the units would result in a sustainable pattern of development having regard to national and development plan policy; and
- whether the units would provide acceptable living conditions for future occupiers in relation to noise and disturbance.

Reasons

Permanent occupation

4. Chesley Oast comprises a two storey former agricultural building which was granted planning permission for conversion to 5 holiday lets in 2005. The conversion of the building was completed in 2010/11 but, according to the appellant, extensive marketing by holiday letting agents failed to attract demand for its use as holiday accommodation. As a result the units have been occupied on a permanent residential basis since 2012.
5. The building lies well outside the defined built up area boundary of Newington and consequently in the countryside for planning policy purposes. In such countryside locations the settlement strategy set out in Policy ST3 of the recently adopted Swale Borough Local Plan states that development will not be permitted unless supported by national planning policy and able to protect the countryside and the vitality of rural communities.
6. National planning policy contained in paragraph 55 of the National Planning Policy Framework (NPPF) is that new isolated homes should be avoided in the countryside unless there are special circumstances. One of these is where the development would re-use redundant or disused buildings and lead to an enhancement of the immediate setting. In this case the appellant effectively argues that the building is redundant for holiday letting purposes and would have been disused if permanent occupation had not commenced. The proposal therefore meets the terms of this policy and since no change is proposed to the setting of the building the latter requirement is not relevant.
7. The original application included evidence that unsuccessful holiday marketing had been undertaken by Greyfox Sales and Lettings and Century 21 but these may not be specialist holiday letting companies. A further letter from Holiday Lettings Ltd, plainly an appropriate company, has now been submitted confirming that the apartments were advertised for 12 months on their website together with an additional digital marketing campaign but no bookings were taken. This is persuasive. The Council question the marketing exercise but offer no contrary evidence of unmet demand for self-catering holidays in the area. Newington does not comprise a particularly likely holiday or short break destination and with five units available all year round there is a poor prospect of achieving sufficient bookings for a viable holiday lettings business.
8. The officer report to committee stated that Policy RC6 of the 2008 Local Plan was central to the application, but this policy has been superseded by the new local plan which does not include an equivalent. As such, the previous policy requirements, to seek an employment or community use for the building, or alternatively demonstrate that the building is unsuitable for a non-residential use, no longer apply. In any event, now that the building has been converted from agricultural to residential use, to require a second conversion to an employment or community use would be unreasonable.

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9. The units are relatively remote from the services and facilities of Newington and large urban areas, so their occupation by permanent residents would not contribute to a sustainable pattern of development. The occupiers would be likely to rely to a large extent on use of the private car. However, national and development plan policy now allow the reuse of existing buildings in the countryside for residential purposes and the proposal falls within this category, particularly as the necessary conversion has already taken place. The proposal complies with paragraph 55 of the NPPF and Policy ST3 of the 2017 Local Plan and is therefore acceptable notwithstanding the unsustainable location.

Noise and disturbance

10. The converted building lies immediately next to a large warehouse unit with two other storage/workshop units on the other side of the adjacent access road. In order to address concerns that the close proximity of these units might cause noise and disturbance to permanent residential occupiers, a noise impact assessment was submitted with the appeal. This demonstrates that the building is exposed to low levels of external noise during both day and night periods, that the three units do not contribute any significant levels of noise, and that the level of sound insulation of the relevant party wall is good. The Council's environmental protection team accept the report's conclusion that noise levels within the residential apartments would meet acceptable standards and that no noise mitigation measures are required.
11. The Council point out that the assessment is based on the existing occupiers of the various units and that these may change in future, potentially leading to additional noise and disturbance. However, the adjacent unit is restricted to use as a warehouse with ancillary office accommodation and any workshop use of the units on the other side of the access is restricted to light industrial within standard working hours only. These conditions provide a measure of protection against any increase in noise, statutory noise controls would also be available and the units are relatively small restricting the number of potential traffic movements. In the circumstances the risk of unacceptable noise and disturbance to permanent residents from future business occupiers is only speculative and not sufficient reason to withhold permission. The proposal can therefore be considered to comply with Policy DM14 of the 2017 Local Plan which protects against significant harm to amenity.

Other matters

12. The parties make extensive submissions regarding the housing land supply position locally but this is not a determinative issue in this case. The proposal would nevertheless have the benefit of providing five additional dwelling units to help meet housing needs in the area.
13. The Council's strategy for the mitigation of potential impacts on the Medway Estuary and Marshes Special Protection Area and Ramsar site¹ do not involve financial contributions from sites of less than 10 dwellings.
14. As the works to convert the building have been completed the Council do not consider that any conditions need to be imposed in the event of the appeal being allowed. However, one condition to ensure the parking/turning area is

¹ about 4 km away from the appeal site

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retained for that purpose in the interests of highway safety remains relevant and should be retained.

Conclusion

15. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR