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## 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

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**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 31<sup>st</sup> 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.**

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### **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 Linhay, 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 Hogbens 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