Re THE BELL INN, SHENINGTON, OXFORDSHIRE



ADVICE



Introduction

My Instructions In this matter anse from a recent planning decision in respect of The Bell Inn, Shennlngton, and Oxfordshire in 1984 conditional planning permission was granted for development of a cottage ("the cottage") attached to the Bell Inn Public House (CHN/517/84) the permission included two conditions of particular note the first, condition 4 stated



That the proposed residential accommodation shall be used solely in conjunction with and ancillary to the existing residential accommodation the Bell {inn



1. The second condition 5, which states

'That the proposed residential accommodation shall not be sold or leased as a separate unit



1. In April 1997 planning permission (Ref 97/00340/F) was refused for the 'Relaxation of Condition 4 of CHIV 517/84 to permit the attached cottage to the Bell into a Single residential unit' on the basis that there would be a loss of existing parking for The Bell Inn Public House associated with the development



1. A further application to relax Condition 4 was refused In July 1997 (97/01 021/F), because It was said that 'The proposal will lead to the erection of two Independent units of accommodation with inadequate off street parking provision and will result In an Increase of on street parking In the vicinity to the detriment of the safety and convenience of road users



The present Situation

1. The situation presently is that the proprietors of The Bell live In the 'cottage' and three letting bedrooms they have are available on the upper floors of The Bell. The proprietors wished to achieve separation of the land and that led to an application made on the 26th November 2013 Ref 13/01809/F to request the removal of condition 4, and a variation in the wording of condition 5 on planning permission CHN 517/84 (to remove the reference to letting.
2. Conditional Planning Permission which Included condition 3 that states 'The residential accommodation shall not be sold as a separate unit of accommodation ' The reason for Imposing the condition is stated as being 'To benefit the sustainability and viability of the community facility



1. The effect is to allow the cottage to be Inhabited as a separate dwelling to The Bell Inn, but In the event the cottage is sold, It can not be sold as a separate unit of accommodation
2. I am asked to advise whether the planning condition 5, as imposed on planning permission Ref 13/01809/F, satisfies the relevant tests for conditions now contained within the NPPF and the Planning Practice Guidance that revoked Circular 11/95 earlier this year.
3. Those tests are that planning conditions should only be imposed where they are:
4. necessary
5. relevant to planning and,
6. to the development to be permitted
7. enforceable
8. precise and,
9. reasonable in all other respects

Advice

1. It is not clear from the permission itself what 'the community facility ' referred to In the condition is, although it is clear from the Officer's Report that The Bell Inn is the relevant "facility" The report however

Appendix A (model conditions) to be retained,



is not incorporated into the Permission. and so It is unclear to what the condition relates if one is not familiar with the background In the letter accompanying the application for permission it was submitted that the development "should be supported for Its beneficial effect for the proprietors of The Bell Inn, In providing a local service to the village," and so It may be Inferred that is what the condition’s referring to, albeit, the drafting could have been clearer

1. The relationship between the proposal and The Bell Inn is addressed at various points In the Officer's report recommending approval Shenington Parish Council are noted as supporting the application as a means of achieving the continued Viability of The Bell Inn The Parish Council recommended that to "give extra credence to the applicant's claim that granting the application would benefit the economic sustainability of The Bell" a condition should be Imposed to any sale of the cottage to the Bell Inn
2. Paragraph 5 8 of the Report says

"The applicant's have submitted supporting Information suggesting that the viability of the Bell Inn as an on-going concern would be Improved If the cottage leased as an Independent unit and also that there is substantial work required to repair and maintain the grade Il listed Bell Inn It is considered that the potential additional Income gained through the leasing of the cottage will aid In the required restoration and maintenance work, and support the overall the [SICI viability of the pubic house Thus [SIC] securing the immediate future of the heritage asset and a valuable community facility



1. Further, the Officer wrote at para 5 9

Given that the justification for the proposed amendment to conditions of CHIV 517/84 relies heavily on improving the viability of the Bell Inn, It is considered appropriate to ensure that the cottage, although independent, remains ancillary to the public house and shall not be sold as a separate unit



1. The conclusion expressed there is curious, because the Officer finds both in paragraphs 5 9, and 5 12, that the development complies With the relevant planning policies The Report acknowledges that the principle of the development is acceptable and is In accordance With Polices H21 and H 13 of the Local Plan The Highways Liaison Officer commented that "In view of the recent history and changes In legislation It is considered that It would not be reasonable to offer an objection to the proposed variation In the conditions " I'm unsure as to what recent changes In legislation the Highways Liaison Officer was referring to - perhaps he meant the policy Introduced by paragraph 32 of the NPPF that "development should only be prevented or refused on transport grounds where the residual cumulative Impacts of development are severe
2. The proposal is therefore in accordance With the development plan, and as such, is properly labelled sustainable development In accordance With the National Planning Policy Framework to which a presumption in favour of granting permission applies
3. It was not therefore necessary, to tie any future sale of the cottage to any other land to make the development acceptable - It was never unacceptable
4. Regardless of the motives of the applicant for making the application, and the fortunate consequence that permission might Improve the viability of The Bell, the development is acceptable in planning terms in any event Conditions should be Imposed where they secure necessary, not simply desirable aims, and It is clear that the condition is wider than is appropriate to make the development acceptable The Planning Practice Guidance is clear that {if a condition is wider In scope than is necessary to achieve the desired objective It failed the test of necessity)
5. Indeed, It is curious to accept that funds could be raised through leasing the property that could then be applied to The Bell Inn, but then prevent the owners from selling the cottage to raise funds that might be applied in the same way
6. Clearly the Issue of viability for The Bell Inn was a material planning consideration that the Officer gave weight to In his Report but it was not necessary to outweigh any conflict with the Development Plan, because there Isn't one. Even If there was no benefit to be had to The Bell Inn through the leasing of the cottage, I would have anticipated, based on the Officer's assessment, that Permission should still be forthcoming
7. In any event, It is clear that the condition is ineffective In tying the sale of either the cottage or The Bell Inn to the other, because all It says is that, "The residential accommodation shall not be sold as a separate unit of accommodation ' I assume the phrase "residential accommodation" relates to the cottage if It related to all residential accommodation, Including that above The Bell Inn, It would have said, "The residential accommodation shall not be sold as separate units of accommodation



1. Accordingly, The Bell inn can be sold separately and there would be no breach of the condition, so long as the Cottage remained In the ownership of Mr and Mrs Wyatt at that point, the condition would become otiose, because The Bell Inn would be In separate ownership and the condition would then Impose an unreasonable burden on Mr and Mrs Wyatt, In that It would prevent them from selling their home altogether. That of course is not the function of a planning condition, and there could be no argument by the LPA that the condition should remain in such circumstances Conditions should be reasonable, and not place unjustifiable and disproportionate burden on landowners and, or they fail the test of reasonableness

Conclusion

1. Accordingly, there are no sound planning reasons for imposing the condition, it is not necessary to make the development acceptable, and it is both Imprecise and potentially unreasonable. It is unlikely the LPA could defend it’s future application, in the circumstances outlined above, and as such, It should be removed.

Thea Osmond-Smith

1st August 2014

Re THE BELL INN, SHENINGTON,

OXFORDSHIRE



ADVICE



Peter J Frampton BSc (Hones), T P,

MRICS, MRTPI

Frampton’s Orel House 42 North Bar

Banbury

OXON

OX16 0TH

THEA OSMUND-SMITH



LONDON BIRMINGHAM BRISTOL

1 sty August 2014