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# Appeal Decision

Site visit carried out on 14 March 2016

**by Mrs J A Vyse DipTP DipPBM MRTPI**

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

**Decision date: 30 March 2016**

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**Appeal Ref: APP/C3105/W/15/3136680**

**Cottage at Bishop's End, Street Through Burdrop, Burdrop, Oxfordshire OX15 5RQ**

- 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 G R Noquet against the decision of Cherwell District Council.
  - The application, No 15/01103/F, dated 12 June 2015, was refused by a notice dated 19 August 2015.
  - The application sought planning permission for conversion of a redundant barn/store into a one bedroom and bathroom self-contained holiday letting cottage without complying with two conditions attached to planning permission No 13/00781/F, granted on appeal on 17 February 2014 (Appeal Ref: APP/C3105/A/13/2203382).
  - The conditions in dispute are:
    - No 3, which states that *The building shall be used for holiday lets only and remain ancillary to the property 'Bishop Blaize/Bishop's End'. The building shall not be used for any other purposes, including those within Class C of Schedule 2 to the Town and Country Planning (Use Classes)(Amendment)(England) Order 2005.*
    - and
    - No 4, which states that *The holiday letting unit hereby approved shall not be let or be occupied by any person, or connected group of persons, for a period exceeding eight weeks in any calendar year.*
  - The reason given for condition No 3 is *To ensure that the use is not separated from the main planning unit of Bishop Blaize/Bishop's End because of the close proximity of the relative buildings and because the barn/store does not have adequate amenity space or parking facilities for independent residential use.*
  - The reason given for condition No 4 is *To ensure that the premises are used for holiday lets and not permanent residential accommodation.*
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## Decision

1. For the reasons that follow, the appeal is dismissed.

## Procedural Matters

2. At the start of the site visit, it became clear that the red and blue lines marked on the site location submitted with the appeal were not the same as those shown on the plan held by the Council in relation to the planning application. I was shown the correct plan, which was agreed by the appellant, and a copy of was subsequently forwarded to me. It is important, since the application the subject of the appeal relates to a condition on an earlier permission – the two plans must correlate. In addition, it was confirmed that another plan, showing three parking spaces and a garden area that was submitted with the appeal, did not form part of the application. The parking spaces and garden lie outwith the defined application site.
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3. It is clear that there is a degree of antagonism between the appellant and some local residents. However, the demeanour of the parties is not a planning matter. I confirm that I have made my decision only on the planning merits of the respective cases before me and have come to the case with an open mind, considering all matters afresh. In the light of comments in the grounds of appeal, I would also stress that the key guiding principles for Planning Inspectors are openness, fairness and impartiality. Among other things, I am required to maintain a high level of integrity and objectivity when examining the issues and evidence before me. I have observed those principles in coming to my decision.
4. There is reference in the documentation before me to applications having been made by local residents to secure listing of the public house as an Asset of Community Value (ACV). All, including the latest, have been unsuccessful.

### **Main Issues**

5. The appellant seeks, in effect, to 'remove' the appealed conditions to enable the holiday let accommodation to be occupied as a separate dwelling. On the basis of the evidence before me, I consider the main issues in the appeal to be:
  - whether future occupiers would be provided with acceptable living conditions, having particular regard to noise, smell and amenity space provision;
  - and the effect of the proposal on the trading potential/viability of the public house.

### **Reasons for the Decision**

#### *Living conditions for future occupiers*

6. The appeal premises comprise a converted stone building (previously a bottle store for the public house) that lies immediately in front of, and is set at right angles to a larger building that was a public house. It sits end on to the road and is attached to the public house premises at one corner, although there is no direct internal link between the two buildings. At the time of my visit, whilst the public house was not trading as such, works appeared to be underway with a view to bringing it back into use.
7. It is clear from the Inspector's Decision relating to use of the appeal building to a self-contained holiday letting cottage, that the close proximity of the accommodation to the pub, and the absence of adequate amenity space and parking, meant that it was not suitable for independent residential use. To that end, the two appealed conditions are interrelated: condition 3 sets out that the unit shall be used as holiday let accommodation only, with condition 4 defining what is meant by the term holiday let.
8. Dealing firstly with the matter of parking, another of the conditions attached to the planning permission required the provision, prior to the use commencing, of a single parking space. Although the Council advises that no such details have been submitted pursuant to that condition, even though the use has commenced (the conversion works had been completed and the unit was occupied at the time of my visit) I have no reason to suppose that the requisite number of parking spaces connected with use of the building as an independent dwelling could not be accommodated were the appeal to succeed, although

they would be on land outwith the application site, albeit land currently under the control of the appellant.

9. Moving on then to proximity of the accommodation to the pub and amenity space provision. The ground floor of the holiday let comprises a combined kitchen/living area looking directly onto a parking area in front of the pub, adjacent to the front door to the pub. A staircase leads directly from the ground floor into the first floor bedroom, which has an en-suite bathroom. Land to the rear is higher than at the front. As a consequence, access to the rear is at first floor level, directly from the bedroom. A door leads out onto what was, at the time of my visit, a small slabbed amenity area with some grass, enclosed by trellis fencing, which backs directly on to the main pub car park. The Council advises that the amenity space area is currently unauthorised and comments that it reduces the amount of parking available for pub customers. I have, nevertheless, assessed it in relation to the development proposed.
10. It seems to me that the small amount of living space available is likely to increase the importance of having a reasonable standard of private external amenity space were the accommodation to be used as a separate dwelling. In my view, the small area at the rear is deficient in terms of both size and privacy, although I recognise that replacing the trellis fencing with close board fencing would improve the privacy aspect. Moreover, it is not part of the same planning unit as the holiday let, being outside the red line application site. In any event, I consider the extent and quality of the space, particularly having regard to its intimate relationship with the pub car park, with the car park entrance to the pub located just a few metres away, to be inadequate for an independent dwelling. As a consequence, future occupiers would not be provided with adequate living conditions in this regard.
11. The building has a very intimate relationship with the large car park at the rear, the parking area to the front, and the pub itself. Indeed, the front door to the appeal building, and its large front window, are very close to the front door to the pub, immediately adjacent to an area of parking there. Whilst the Council refers to potential problems in relation to cooking odours, I understand the pub kitchen to be at the far end of the main building. I am satisfied, in this regard, that there would not, in principle, be a material problem in this particular regard. However, it seems to me that the juxtaposition of uses would be likely to give rise to problems of noise and disturbance on occasion. There would also be implications for the privacy of future occupiers. Whilst those shortcomings may be tolerated by holiday makers or others who would be in occupation for limited periods, I am not persuaded that the arrangement provides acceptable living conditions were the building to be occupied on a permanent basis, as a separate dwelling.
12. The appellant draws attention to other public houses elsewhere with adjoining dwellings, in particular the Bell Inn at Shenington, the Stag's Head at Swacliffe, the Chandlers Arms at Epwell and the Lampet Arms at Taddmarton. However, from the photographs provided, it would appear that the relationship between the public houses and the adjacent dwellings is very typical, sitting side by side with both having street frontages, as opposed to the more intimate relationship that exists between the buildings at the appeal site. Moreover, the properties in question appear to be materially larger than the appeal premises, with nothing to indicate that any of the dwellings provide anything other than

appropriate living conditions for permanent occupation. Those properties are not, therefore, directly comparable to the arrangement before me, which I have considered on its own merits.

13. As acknowledged by the appellant, conditions such as those imposed here can be appropriate when a building is not suitable as a permanent dwelling. That is exactly the reason they were imposed in this case. Other than the addition of an apparently unauthorised area of outdoor amenity space, which space I have found in any event to be inadequate, and the commencement of refurbishment of the pub, nothing has changed in terms of the physical relationship between the properties since the permission was granted on appeal. I consider, as did my colleague, that occupation of the building on a permanent basis would be inappropriate having regard to the living conditions that would prevail for future residents. Were the appeal to succeed, there would be conflict with saved policy C30 of the Cherwell Local Plan 1996<sup>1</sup>, which requires that conversion schemes provide acceptable standards of amenity and privacy for occupiers. There would be conflict too with the National Planning Policy Framework (the Framework) which seeks to ensure, among other things, that developments create attractive and comfortable places to live. Indeed, one of the core principles of the Framework requires a good standard of amenity for all existing and future occupants of land and buildings.

*Trading potential/viability of the public house*

14. It would seem that the public house closed in around 2006/7, not long after it was purchased by the appellant, and has not traded as such since then. At the time of my visit, however, internal works were underway, apparently with a view to bringing the premises back into use as such. Indeed, the lawful use of the premises remains as a public house with ancillary residential accommodation.
15. In dealing with the previous appeal, the Inspector found that the holiday let use then proposed would not be likely to prejudice the public house use. Indeed, he considered that it was not unusual for a rural pub to also offer some form of holiday accommodation and he found that, in principal, the use accorded with the Framework, which supports sustainable rural tourism and the expansion of rural businesses and enterprises, especially through the conversion of rural buildings.
16. In relation to the development proposed however, there is concern that use of the appeal building as a separate dwelling would have implications for the running of the public house and thus its viability. I am mindful, in this regard, that paragraph 123 of the Framework recognises that development will often create some noise and that existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. Paragraph 70 of the Framework also requires that planning decisions should ensure that established facilities are able to develop and modernise.
17. Were the appeal building to be occupied as a separate dwelling, its occupants would expect a greater level of amenity than would holiday occupiers,

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<sup>1</sup> The development plan includes the saved policies of the Cherwell Local Plan 1996 and the more recent Cherwell Local Plan 2011-2031 Part 1 (adopted in July 2015). No policies of particular relevance in the later plan are drawn to my attention.

particularly in relation to matters such as noise and disturbance and privacy. The intimate relationship of the two buildings, in particular the close proximity to the main pub car park of the rear of the appeal building and the proposed amenity space, together with the proximity of the front door and large front facing window of the appeal building to the front door of the pub and smaller parking area, would have the potential, it seems to me, to result in a conflict of interests at times. In turn, that could have implications for the trading practices of the public house and its ongoing viability, contrary to one of the main thrusts of the Framework, namely that of supporting a prosperous rural economy. There would also, potentially, be conflict with Local Plan policy S29, which resists proposals that would result in the loss of existing village services.

#### *Other Matters*

18. The appellant maintains that the holiday let accommodation could be sold off as a separate unit at any time. In support of that position, my attention is drawn to the Bell Inn at Shenington. The appellant advises that accommodation there (which was not holiday accommodation) was subject to a condition that it should not be sold or leased as a separate unit, which condition was removed by the Council in 2014. However, it would appear from the Counsel's opinion provided in support of the application for removal of that condition, that the development proposed in that case was considered acceptable in planning terms. That is not the case here where there are implications in terms of the living conditions for future occupiers and, potentially, for the ongoing viability of the public house.
19. In any event, the wording of the condition in that case is very different from those the subject of this appeal, which do not state that the building shall not be sold or leased separately from the main building. Rather, they requires that the holiday let remains ancillary to the main use of the premises as a whole, namely as a public house. As a consequence, were the holiday let to be sold off, it would become a separate planning unit. In such circumstances, it is likely that there will have been a material change of use, given that ancillary or incidental use rights do not continue after the cessation of the primary use. In essence, activities carried on within a single planning unit cannot be regarded as ancillary to activities carried on outside that unit. On that basis, it seems to me that selling off the holiday let would be unlawful in the absence of a planning permission for its use as a separate planning unit.
20. The appellant maintains that the Council has prevented him from occupying the residential accommodation that is part and parcel of the adjoining public house. That is not my reading of the planning history. Residential occupation of the pub is permissible where it is ancillary to use of the premises as a public house. It is occupation of the building wholly for residential use that would be unlawful. It is also argued that the absence of a residential presence associated with the pub creates difficulties in terms of greeting holiday let guest, giving out keys, collecting payments etc, as well as missed opportunities for walk-in nightly and weekend lets. However, no substantiated evidence is before me to demonstrate that the commercial viability of the holiday let is so compromised that the lawful use would cease. Indeed, the unit was occupied at the time of my visit. Moreover, in my experience, holiday lets are often managed at a distance, with arrangements and payments made on-line or by telephone, with local cleaners going in when lettings change over. In any

event, as noted above, it would seem that the pub is currently being refurbished, presumably with a view to bringing it back into use.

21. The appellant advises that the pub is currently on the market and that several interested purchasers have expressed a wish to live in the holiday let accommodation and to let out the pub bedrooms, the implication being that the appealed conditions are inhibiting the sale. Again, however, no substantiated evidence is before me to corroborate that. Any arrangement along the lines indicated would need to be considered formally by the local planning authority in the first instance, through the submission of a formal planning application. Even then, it seems to me that the arrangement suggested would still retain the appeal premises as ancillary to the public house use, as opposed to occupation as a separate dwelling, with no evidence that such an arrangement would be likely to harm the viability of the public house.

### **Conclusion**

22. I recognise that the creation of a small market dwelling is a benefit that attracts some positive weight in the planning balance, although that weight is tempered by the scale of the development. Similarly, any increased local spend by future occupiers would be limited in scale and would have to be weighed against the potential harm that I have identified to the future viability/trading potential of the public house. That said, I have no reason to suppose that holiday occupiers would not spend locally. Although it is suggested that the present situation means that the building stands empty for most of the year, there was no substantiated evidence in this regard. Indeed, the building was clearly in occupation in mid- March, at the time of my visit.
23. In the overall planning balance, I find that the adverse impacts I have identified are not outweighed by the benefits and there is nothing that leads me to the view that my determination should be made other than in accordance with the development plan and the Framework in this regard. Thus, for the reasons set out above, the appeal does not succeed.

*Jennifer A Vyse*

INSPECTOR