



Appeal Decision

Site visit made on 27 February 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Appeal Ref: APP/Y3940/W/23/3329735

Elmleaze Farm, Keevil, Trowbridge, Wiltshire BA14 6NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr S Fry against the decision of Wiltshire Council.
 - The application Ref is PL/2023/00859.
 - The development proposed is change of use of a 2-bed holiday let to a dwelling (C3 use class).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of a 2-bed holiday let to a dwelling (C3 use class) at Elmleaze Farm, Keevil, Trowbridge, Wiltshire, BA14 6NF in accordance with the terms of the application, Ref PL/2023/00859, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The address of the appeal site, stated in the banner heading above, has been taken from the application form. For the avoidance of doubt, I observed that 'The Old Cricket Pitch' was stated on the site entrance gate.
3. The proposed change of use has been carried out and the dwelling is being occupied as a residential dwelling by Ms. Valerie Austin, a close relative of the appellant. I have determined the appeal on this basis.
4. The Council has confirmed that, following the appellant's clarifications regarding the provision of visibility splays on site, the Council's 2nd reason for refusal, relating to highway safety, has now been overcome. This is reflected in the main issue, which is set out below.

Main Issue

5. The main issue is whether the site provides a suitable location for residential development, having particular regard to the settlement strategy for the area.

Reasons

6. The appeal site comprises a former agricultural building, located at the end of a run of dwellings on the eastern edge of Keevil, which has previously been converted into a 2-bedroom holiday let. The relevant planning permission imposed conditions securing the use of the building for holiday accommodation only. The planning history for the site shows that previous applications have been made for residential use at the site, all of which have been refused.

7. This appeal relates to permission for a change of use of the building from its existing lawful use as a holiday let to use as a dwellinghouse. No operational development or changes to the existing curtilage of the building are proposed.
8. Keevil is identified in the Wiltshire Core Strategy (adopted 2015) (Core Strategy) as a 'Small Village'. Small Villages do not have settlement boundaries, but rather the requirements of Core Policy 2 of the Core Strategy are applicable.
9. Core Policy 2 provides that, amongst other things, at the Small Villages development will be limited to infill within the existing built area. Paragraph 4.34 of the Core Strategy clarifies that for the purposes of Core Policy 2, infill is defined as the filling of a small gap within the village that is only large enough for not more than a few dwellings, generally only one dwelling.
10. Firstly, the appellant's description of the change of use as infilling a new use into the existing building does not accord with the definition given at paragraph 4.34, which refers to the filling of a small gap within the village. In this regard, the references to 'filling', 'dwellings', and the size of the gap in paragraph 4.34 indicates that paragraph 4.34 is concerned with built development, which is not under consideration in this appeal.
11. Secondly, even if I were to find that the change of use had the potential to fall within the definition given at paragraph 4.34, as the site is surrounded by fields on 3 sides, with an absence of development immediately to the east of the site, the site does not constitute a small gap within the village. Consequently, the change of use does not fall within the definition of infill given in paragraph 4.34 of the Core Strategy. Core Policy 2 does not therefore provide support for the change of use.
12. Following my findings above, it is not necessary to consider criterion i), ii), or iii), found under the 'Outside the defined limits of development' sub-heading in Core Policy 2, as the change of use does not relate to a development type which is supported by Core Policy 2. The change of use's non-conformity with the delivery strategy detailed in Core Policy 2 means that the change of use undermines the aim of Core Policy 1 in directing appropriate development towards the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire.
13. One of the objectives of Core Policy 48 of the Core Strategy, as set out in paragraph 6.66 of the Core Strategy, is to support the sensitive reuse of built assets to help meet local needs. Core Policy 48 lists the criteria which must be fulfilled for proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses to be supported. Core Policy 48 further states that where there is clear evidence that the above uses are not practical propositions, residential development may be appropriate where it meets the same criteria.
14. Mention has been made of the current state of the tourism sector in general, including in relation to the number of people taking vacations abroad. However, few details have been provided to substantiate the assertion that the need for overnight accommodation with respect to the site has decreased, or that the holiday let is unviable. This does not amount to the clear evidence required to demonstrate that the existing tourism use on site is not a practical proposition,

as required by Core Policy 48. Core Policy 48 does not therefore provide support for the change of use.

15. As the site is located at the end of a run of dwellings which are themselves located near to other development which leads towards the heart of Keevil, the site is not in an isolated location. Thus, the references to the re-use of redundant or disused buildings in Core Policy 48, and in paragraph 84 c) of the National Planning Policy Framework (the Framework), do not provide support for the change of use.
16. It follows from the above that the site does not provide a suitable location for residential development, having particular regard to the settlement strategy for the area. The change of use conflicts with Core Policies 1, 2, and 48 of the Core Strategy, which collectively seek to, amongst other things, define where development will be the most sustainable across Wiltshire's settlements.
17. The change of use also conflicts with paragraph 8 a) of the Framework which seeks to, amongst other things, ensure that sufficient land of the right types is available in the right places.

Other Matters

18. Subsequent to appeal decision Ref APP/Y3940/W/23/3315432 and appeal decision Ref APP/Y3940/W/22/3299162, where the Inspectors found in each case that paragraph 11 d) ii. of the Framework was engaged, the Council has now asserted that, following updates to the Framework in December 2023, paragraph 77 of the Framework is applicable. This is due to the Council having an emerging local plan which has now passed Regulation 19 stage. This has not been disputed by the appellant. Consequently, paragraph 11 d) of the Framework is not engaged.
19. I have had regard to the examples of planning permissions referred to. The permissions relating to Sturgess Farmhouse¹ and the Annexe, The Dairy House² both related to individual buildings which were surrounded by a cluster of other buildings, with the Annexe being used as an ancillary annexe to the main house rather than as a holiday let. The Council has asserted, and this has not been disputed by the appellant, that the permission relating to The Manor Farm House³ involved an important material consideration in the form of the application of paragraph 11 d) ii. of the Framework, which is not the case in this appeal. Therefore, none of these permissions are directly relevant to the change of use under consideration in this appeal. Hence, these examples do not change my findings on the main issue above.
20. Appeal decision Ref APP/K3415/W/17/3192163 involved a determination against the specific requirements of Lichfield District Council's development plan, including the exception for development in the remaining rural areas with reference to bullet point 3 of Local Plan Strategy Core Policy 6. As such, the policy context is different to that involved in this appeal. Thus, that appeal decision does not change my findings on the main issue above.

¹ Local Planning Authority reference: 17/04537/VAR

² Local Planning Authority reference: 18/05494/VAR

³ Local Planning Authority reference: PL/2022/01492

Other Considerations

21. The change of use conflicts with an up-to-date development plan. In these circumstances, paragraph 12 of the Framework advises that planning permission should not usually be granted. This is reinforced by paragraph 15 of the Framework which provides that, amongst other things, the planning system should be genuinely plan-led. Nevertheless, other material considerations may indicate that the plan should not be followed.

Benefits of the change of use

22. The appellant has referred to a 2023 Housing Land Supply Statement and to Briefing Note No. 22-09⁴, which both refer to historic shortfalls in housing land supply. However, the Council is presently meeting the requirements of national planning policy in this respect. Of particular relevance in this regard is that the Council is in the 'no consequences' category in the latest Housing Delivery Test results. The housing requirement as set out in the Core Strategy does not represent a ceiling, but even so, the change of use, relating to one building only, does not provide a significant uplift to the housing stock of the local area. Consequently, it provides a limited contribution to meeting the aims of Core Policy 15 of the Core Strategy, which details the housing requirements for the Melksham Community Area.
23. Similarly, the contribution of the change of use, as one dwelling only, over the long-term to the economic vitality and community life of the local and wider area is likely limited. Quantifiable evidence has not been presented to demonstrate otherwise. The scheme under consideration in appeal decision Ref APP/Y3940/W/22/3299162, related to 4 dwellings, with consequently greater positive impacts in these respects. That appeal decision accordingly does not alter my findings.
24. The site is located within walking distance of the services and facilities available in Keevil, although as Keevil is a Small Village, these are very limited in number and include a post office, a primary school, and a church. It is important to note that paragraph 4.16 of the Core Strategy provides that, amongst other things, any development at Small Villages will be carefully managed by Core Policy 2 and the other relevant policies of the Core Strategy.
25. The provision of cycle storage and electric vehicle charging points on site would enable the use of sustainable modes of transport. However, the path set out by the Government for all new cars to be zero emission is a multi-year in nature, and their use cannot be mandated at this time. In any event, I have not been provided with quantifiable evidence in relation to the vehicle movements generated by the change of use, as opposed to its use as a holiday let. Accordingly, it has not been demonstrated that the change of use necessarily involves a similar or a lesser level of vehicle movements than its use as a holiday let.
26. Taking account of the very limited services and facilities available in Keevil, referred to above, in all likelihood the usage of the building as a permanent residential dwelling over the long-term would generate numerous trips via private vehicles over the course of a typical month, to enable even basic day-to-day needs to be met, including trips to shopping and employment

⁴ 5 Year Housing Land Supply and Housing Delivery Test: Briefing Note No. 22-09 (April 2022) (Wiltshire Council)

destinations. It has not therefore been demonstrated that the change of use provides any meaningful benefits with respect to the promotion of sustainable transport.

27. Whether flexible working arrangements and home working would be used by any future occupiers of the building depends on a variety of factors, including an element of personal choice. No details have been provided in relation to the destinations served or the frequency of the bus services mentioned (including bus services 76 and 77), and accordingly the presence of these bus services does not alter my findings.
28. Taking all of the above into account, the collective benefits of the change of use are not significant in planning terms.

Personal circumstances

29. I have taken account of the submitted evidence regarding the personal circumstances of Ms Austin, in relation to rights under Article 8 of the European Convention on Human Rights as set out in Schedule 1 of the Human Rights Act 1998 (as amended). I have also considered this evidence in relation to the aims of the Public Sector Equality Duty set out in the Equality Act 2010 (as amended), in relation to the relevant protected characteristics. For reasons of privacy I will not set out the evidence here but nevertheless I find it to be compelling. I note that the evidence is not disputed by the Council.
30. Given the personal circumstances cited, the dismissal of this appeal would involve a disproportionate interference with the appellant's rights under Article 8, and would not advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it with respect to s149(1)(b) of the Equality Act 2010 (as amended).
31. In this regard, I agree to the main parties' suggestion that a temporary personal planning permission would be appropriate. This would ensure that any interference with the appellant's rights under Article 8 is proportionate to the legitimate aim of ensuring that the planning system should be genuinely planned. It would also ensure that any adverse impacts in relation to the protected characteristics identified are the minimum necessary.

Planning Balance

32. It follows from the above that the collective benefits of the change of use attract little weight in support of it.
33. The personal circumstances involved in this case however amount to very significant weight in support of the change of use operating for a temporary period. The personal circumstances alone clearly outweigh the moderate weight which I consider should be given to the change of use's conflict with the relevant development plan policies.
34. Therefore, as a matter of planning judgement I find that the personal circumstances involved in this case indicate that the appeal must be determined otherwise than in accordance with the development plan.

Conditions

35. I have had regard to the conditions suggested by the Council. I have considered them against the advice on conditions set out in the Framework and the Planning Practice Guidance (PPG).
36. A condition is necessary specifying the approved plans, to provide certainty with respect to the change of use applied for (condition 1).
37. The PPG provides that planning permission usually runs with the land and it is rarely appropriate to provide otherwise⁵. However, the PPG also provides that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission⁶.
38. Due to the personal circumstances mentioned above, this appeal involves exceptional circumstances. As such, a planning condition ensuring that the change of use would operate on a temporary basis for the benefit of a named individual is both reasonable and necessary (condition 2). The Council's suggested wording has been amended in the interests of precision. There is no suggestion within the evidence that a carer would live on site permanently, and as the imposed condition would not preclude visits for care purposes, it is not necessary for a carer to be mentioned within the imposed condition.
39. A condition is necessary requiring that no obstructions are placed within the visibility splay (condition 3), in the interests of highway safety.
40. A condition is necessary removing the permitted development right under Class AA of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), to safeguard the rural character and appearance of the area in relation to the building on site which is clearly visible from the road (condition 4).
41. As the change of use has been carried out I have omitted the standard time limit condition, as this is no longer necessary.

Conclusion

42. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alexander O'Doherty

INSPECTOR

⁵ Paragraph 21a-015-20140306

⁶ Paragraph 21a-015-20140306

Conditions Schedule

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (1:1250), Plan (Drawing No. 10), Elevations (Drawing No. 11), Site Plan (Drawing No. 12), Site Block Plan (Drawing No. 13).
- 2) The use hereby permitted shall be carried on only by Ms. Valerie Austin. When the premises cease to be occupied by Ms. Valerie Austin, the use hereby permitted shall cease within 3 months of the cessation of such occupation and the use shall revert back to its lawful use as a holiday let.
- 3) The visibility splays as shown on the approved plans shall be provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level and shall be maintained free of obstruction at all times thereafter.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no development otherwise permitted by Class AA of Part 1 of Schedule 2 of that Order shall be carried out on the site.

End of Conditions Schedule