The Planning Inspectorate

Appeal Decisions

Site visit made on 6 August 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Cuckoo-Well-Hollow, Bradley Lane, Threapwood, Alton, Stoke-on-Trent ST10 4DG

- The appeals are 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 previous planning permissions were granted.
- The appeals are made by Mrs P Capewell against the decisions of Staffordshire Moorlands District Council.

Appeal A Ref: APP/B3438/W/19/3226745

- The application Ref SMD/2018/0567, dated 3 September 2018, was refused by notice dated 9 November 2018.
- The application sought planning permission for a proposed additional holiday chalet without complying with a condition attached to planning permission Ref SMD/2010/1041 (former ref: 10/00828/FUL) dated 1 February 2011.
- The condition in dispute is No 9, which states that: *The holiday unit hereby permitted shall only be occupied for short stay purposes only and no other form of residential occupancy at any time and by people who have permanent accommodation elsewhere. The development shall not be occupied by any one person or group of persons for a period exceeding 28 consecutive days and for no more than a total of 16 weeks (112 days) in any calendar year. The owner shall maintain a register of all guests, (including names, addresses and dates of stay) for each calendar year which shall be made available for inspection by the District Council on request*.
- The reason given for the condition is: *To define the permission and to prevent permanent residential use which would not be appropriate in this area of strict control*.

Appeal B Ref: APP/B3438/W/19/3227012

- The application Ref SMD/2018/0566, dated 3 September 2018, was refused by notice dated 9 November 2018.
- The application sought planning permission for a renewal of planning permission SM97-9933 (erection of two holiday chalets and use of haulage yard for holiday accommodation) without complying with a condition attached to planning permission Ref SMD/2002/1130 (former ref: 02/01239/FUL) dated 7 January 2003.
- The condition in dispute is No 7, which states that: *The premises shall be used for short stay holiday accommodation not exceeding four weeks at any one time and for no other purpose, including any purpose in Class C3 (dwelling houses) of the Town and Country Planning Use Classes Order 1987.*
- The reason given for the condition is: *The premises are not considered suitable for permanent residential accommodation*.

Decisions

1. Appeal A is dismissed.

2. Appeal B is dismissed.

Applications for costs

3. An application for costs in respect of Appeals A and B was made by Mrs P Capewell against Staffordshire Moorlands District Council. These applications are the subject of a separate Decision.

Procedural Matters

Appeals A and B

4. The appeal site at Cuckoo-Well-Hollow is a complex of three chalet style structures. Planning permission for a three-bedroom chalet, the subject of Appeal A (hereinafter referred to as Chalet 1), was granted in 2011. The two-bedroom chalets, the subject of Appeal B (hereinafter referred to as Chalets 2 and 3, with 2 being the middle chalet), secured planning permission in 2003 as a renewal of an earlier consent[1].

5. These two appeals follow the Council's decisions to refuse planning permission to remove Condition 9 of planning permission SMD/2010/1041 in respect of Appeal A and Condition 7 of SMD/2002/1130 in respect of Appeal B (the disputed conditions). The reasons for refusal cited on the decision notice in respect of Appeals A and B are the same.

6. The appellant seeks to remove the disputed conditions, which presently restricts the occupancy of the appeal buildings to short-let holiday residential use, being a maximum of 28 consecutive days and for no more than a total of 16 weeks (112 days) per calendar year in respect of Appeal A and not exceeding four weeks at any one time in respect of Appeal B. Removing the disputed conditions would have the effect of granting planning permission for their conversion to permanent dwellings to meet general demand.

7. The appellant disputes the Council's contention that removing the disputed conditions would result in a *change of use* of the chalets to permanent dwellings. In this regard, I have considered the Moore and Gravesham judgements[2] also cited by the appellant. From my observations on site, the holiday chalets that are the subject of Appeals A and B are well equipped, including full kitchen/dining facilities and bathroom/shower rooms. They would meet the Gravesham test and could be treated as dwellinghouses.

8. However, whilst they may be categorised as such, they are presently not permanent homes. They provide tourist accommodation, which is controlled by the disputed conditions. It would be unlikely that they would be occupied all year round, with gaps in their use. Consequently, even if the removal of the disputed conditions would not amount to a technical change of use within the context of the Town and Country Planning (Use Classes) Order, the nature of the proposal would, in my view, be sufficiently different. It would therefore constitute a change of use from a holiday let to a new permanent residential dwelling and I have determined the appeal on this basis.

[1] Council ref: SMD/2002/1130 (Old Ref: 02/01239/FUL) and SM97-0033 respectively
[2] Moore v SSCLG [2012] EWCA Civ 1202 and Gravesham BC v SSE and O'Brien [1983] JPL 307

9. On 19 February 2019, the Government published an updated revised version of the National Planning Policy Framework (the Framework). In relation to the main issues in this appeal, Government policy has not materially changed. Accordingly, no parties have been prejudiced by my having regard to it.

10. Both the appellant and Council have made some reference within their evidence to policies within the Submission Draft Local Plan although none are cited within the reasons for refusal in each case. The Council contend that only Policy SS1a (presumption in favour of sustainable development) could be afforded significant weight whilst Policies SS1 (development principles), DC1 (design considerations) and T1 (development and sustainable transport) could be given moderate weight, having regard to guidance at Paragraph 48 of the Framework. However, in the absence of any detailed evidence to confirm that there are no unresolved objections, I afford them limited weight at this time.

Appeal A only

11. The Council's Statement of Case confirms that the original application to which Appeal A relates was granted under application 10/00828/FUL. It is now listed by the Council as SMD/2010/1041. There is no date on the copy of the decision notice before me but both parties agree that it was dated 1 February 2011. For clarity, I have used this date in the banner heading above.

Appeal B only

12. The original application to which Appeal B relates was granted under application 02/01239/FUL. On the evidence before me, it is clear that it is now listed as application SMD/2002/1130, dated 7 January 2003.

Main Issues

13. The main issues in each appeal are whether Condition 9 of planning permission SMD/2010/1041 in respect of Appeal A and Condition 7 of SMD/2002/1130 in respect of Appeal B (the disputed conditions) are reasonable and necessary with regard to the following:

- Whether the chalets would be a suitable location for permanent residential accommodation, having regard to local and national planning policy;
- Whether the chalets would provide suitable living conditions as permanent residential occupation for future occupiers.

Reasons

14. Cuckoo-Well-Hollow is a small development of three detached single storey holiday chalets accessed via an unmade track from Bradley Lane to the north-west of Bradley in the Moors and west of the village of Alton. The larger unit, Chalet 1, is positioned at the end of the site. Chalets 2 and 3 are the two smaller units that lie closest to the entrance. These each have a parking area and garden enclosed with open timber fencing.

15. The ground slopes up from the western boundary of the site, with a concrete block wall constructed along part of this perimeter, adjacent to the three-bedroom unit with a further landscaped area to the north, at a higher level. Trees and vegetation surround the site, giving it a rural leafy character.

Policy Background

16. Appeal sites A and B are outside the development boundary of a village. For planning purposes they are therefore within the countryside.

17. Both parties agree that the Council is presently unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, Paragraph 11(d) of the Framework and the so called 'tilted balance' is engaged. The proposal should therefore be considered in the context of the presumption in favour of sustainable development.

18. Policy SS6c of Staffordshire Moorlands Core Strategy Development Plan Document (March 2014) (SMCS) sets out the circumstances in which development within 'other rural areas' of the District, such as the countryside, will be considered.

19. Policy R1 of the SMCS relates to all development in such rural areas. It seeks to support rural diversification and states, amongst other matters, that wherever possible, development should be within suitably located buildings, which are appropriate for conversion. Policy R2 states that other than sites allocated for housing in the Site Allocations DPD, only certain forms of housing development will be permitted in rural areas outside the settlement and infill boundaries of the town and the villages.

20. In so far as they relate to the location of housing, these policies are broadly consistent with the Framework's objectives. This includes, to promote development in rural areas by siting housing where it will enhance or maintain the vitality of rural communities and, by identifying opportunities within planning policy for villages to grow and thrive, as well as recognising the intrinsic character of the countryside. To this extent, they can be afforded substantial weight as a result.

Whether a suitable location for permanent accommodation

21. On the evidence before me, I have nothing to demonstrate that by removing the disputed conditions, the chalets would meet or support any of the particular types of development cited within Policy SS6c, including affordable or rural exceptions housing, community facilities, tourist opportunities or rural business/farm enterprises.

22. Nor would the appeal proposal in each case meet the affordable housing or new dwelling criteria established by Policy R2. Furthermore, Policy R1 advises that development should either be in suitably located buildings that are appropriate for conversion or, where new/replacement buildings are involved, they should, amongst other matters, be in close proximity to an existing settlement. In this context, Paragraph 79 of the Framework also confirms that the development of isolated homes in the countryside should be avoided unless specific circumstances apply.

23. In this case, whilst the entrance to the appeal is close to a small group of houses, it is some way beyond the small settlement of Bradley in the Moors. The nearest village would be Alton, approximately 2 miles away, which has some limited services. Cheadle, the nearest town, is further at approximately 3 miles. Furthermore, the use of the chalets as permanent dwellings would change the nature and pattern of travel in comparison to short-term holiday

lets, not least in the need to access services and facilities, including places of work, schools and health provision for example.

24. In this context, Bradley Lane is narrow with no street lighting or footway and it is unlikely that anyone would choose to walk or cycle along it. There is no bus service and I consider that future permanent residential occupiers would typically be reliant on a private car to access day-to-day services. I consider the sites to be isolated, in its ordinary meaning[3], for the purposes of Paragraph 79.

25. Having regard to the five exceptions within paragraph 79 of the Framework, neither appeal seeks accommodation for a rural worker nor do the chalets represent a heritage asset. The appellant acknowledges that the buildings are vacant rather than redundant or disused. The proposals would also not involve the sub-division of an existing dwelling and I do not find the chalets to be of sufficient merit to represent design of an exceptional quality. Consequently, the circumstances for the development of isolated homes in the countryside set out within the Framework do not apply to either Appeal A or B.

26. I appreciate that guidance within the Framework recognises that the opportunities to maximise sustainable transport solutions in rural areas may differ from urban areas, which should be taken into account in decision making. However, this is within the context of promoting sustainable transport rather than in relation to rural housing. In any event, the appellant acknowledges that the appeal sites are relatively isolated in their location.

27. The appellant has also drawn my attention to other decisions for the removal of holiday conditions that were allowed/approved, where the sites were in a similarly rural location. In the appeal at Oakmoor[4], the site was on the edge of a village and the Inspector allowed it having regard to the planning balance and the specific circumstances in that case. Similarly, at Hopton[5], the Inspector acknowledged the presence of some services locally. The provision of a contribution to affordable housing also weighed in its favour. At Retford[6], being substantially larger than the appeal site, the contribution of the proposal to a shortfall in housing land supply was deemed a significant benefit. For these reasons, I do not find these decisions to be directly comparable.

28. Moreover, I have not been provided with full details of the Council's decisions cited by the appellant, including the sites at Bradley Elms Farm and Cheddleton[7]. I am therefore unable to determine whether they are similar. However, I have no reason to dispute the Council's assessment that three of these sites[8] involved stone vernacular buildings, two of which were held to be of merit such that ensuring their viable long-term use weighed in their favour. In any event, I must consider each case on its individual merits.

29. I therefore conclude that the removal of Condition 9 of planning permission SMD/2010/1041 in respect of Appeal A and Condition 7 of SMD/2002/1130 in respect of Appeal B would result in unsuitable permanent residential

[3] As denoted in judgement of Braintree District Council v Secretary of State for Communities and Local Government & Ors [2018] EWCA Civ 610
[4] Appeal Ref: APP/B3438/W/3171736
[5] Appeal Ref: APP/P1045/W/15/301947
[6] Appeal Ref: APP/A3010/W/17/3190814 and APP/A3010/W/17/3195196
[7] Council Refs: SMD/2018/0524 (Bradley Elms) and SMD/2018/0710 (Cheddleton)
[8] Council Refs: SMD/20170764 (Rock House Farm), SMD/2018/0374 and SMD/2018/0403 (Ringe Hay Farm), SMD/2018/0524 (Jays Barn)

accommodation in the countryside. The proposals would therefore be contrary to Policies SSC6, R1 and R2 of the cited above in so far as they relate to the location of new homes. They would also be contrary to guidance within the Framework, which is a material consideration to avoid isolated homes within the countryside. Consequently, I find the disputed conditions both reasonable and necessary in this respect.

Suitable living conditions as permanent residential accommodation

30. The chalets that are the subject of Appeals A and B are timber clad concrete brick structures with concrete roof tiles, constructed for their original purpose as holiday accommodation. I accept that the design and character of these buildings was deemed acceptable in light of their original permissions, albeit subject to their use as holidays chalets. I also acknowledge that all the chalets incorporate heating, sewage provision, water and electricity. These services would, nevertheless, be necessary for their intended purpose as holiday accommodation.

31. However, I have no evidence before me that Building Regulations approval has been obtained for any of the chalets. Moreover, the letter from a prospective purchaser clarifies that an agreement in principle on a mortgage application was declined after a surveyor for the lender determined that they were not content with the construction of the property. This, in my view, casts reasonable doubt upon their physical worthiness and suitability for permanent residential use.

32. Furthermore, the Council's Space about Dwelling Supplementary Planning Guidance (Space SPD) (December 1996) establishes minimum separation distances between principal window elevations of adjacent dwellings. Although of some age, and whilst it may not be specifically cited in the Core Strategy or the new emerging Local Plan, its objectives accord with the principles of the Framework, to ensure that development provides acceptable living standards. It can be afforded moderate weight as a result.

33. The three chalets are positioned in relatively close proximity to one another. The south-eastern facing elevation of Chalet 1, which incorporates a primary bedroom window is approximately 9m from the north-west facing elevation of Chalet 2, which also has bedroom windows within it. This is significantly below the 22m recommended within the Space SPD. The three windows to the bedrooms on the rear, south-west facing elevation of Chalet 1 are also afforded a restricted outlook due to their proximity to a retaining wall/banking, contrary to guidance within the Space SPD that a minimum of 6m should be available to any boundary or solid obstruction.

34. The distance between the south-east facing lounge windows of Chalet 2 and the bedroom windows to the north-west facing elevation of Chalet 3 would be approximately 12.5m, again, significantly below 22m. Both Chalet 2 and 3 would also fail to achieve a minimum of 6m to a boundary from at least one elevation. For this reason, overlooking between the chalets could not be addressed through the provision of fences/walls. At such proximity, for residents who would occupy the chalets on a permanent basis, these distances would result in poor outlook, overlooking and a loss of privacy.

35. In respect of internal space standards, the Government's Technical Housing Standards – Nationally Described Space Standard (2015) (NDSS) are referred

to in Policy H1 of the Council's Emerging Plan, which can only be afforded limited weight. The appellant's Statement of Case, upon which the Council has had the opportunity to comment, also contends that the internal floorspace of Chalet 1 is above the standard for six persons within the NDSS in any event. Chalets 2 and 3 are clearly smaller, but in the absence of adopted technical standards, from my internal inspection, they did not, in my view, appear so small that they would not offer a reasonable standard of accommodation sufficient for future occupiers.

36. Turning to amenity space provision, the Council's Space SPD requires private garden space for dwellings with 3+ bedrooms to achieve a minimum area of 65m$^{2.}$ Dwellings with 1 or 2 bedrooms should achieve a minimum of 85m^2 to allow for extensions or 65m^2 if permitted development rights were removed. For Chalet 1, the red line boundary pursuant to the original grant of planning permission includes a large area of land to the north of the building. Whilst the site plan is unclear about its use, even though it is at a higher level and has only recently incorporated an area of grass, it is adjacent to the chalet and it would provide a sufficient area of amenity for Chalet 1. Moreover, the Council accept that Chalet 3 has sufficient outdoor space to its southerly side whilst Chalet 2 falls only just short of the requirement. I am therefore not persuaded that the amenity space would be insufficient.

37. Taking all these matters together, I therefore conclude that whilst the chalets would each provide suitable internal space and a sufficient level of outdoor amenity space for permanent residential occupation, their proximity to one another would be harmful to the living conditions of future occupiers. I am also not persuaded of their physical suitability for permanent residential use.

38. In the case of both Appeals A and B, the proposals would therefore conflict with Policy DC1 of the SMCS (2014). This requires development to be of a high quality and to protect residential amenity, including in relation to privacy and soft landscaping. They would also be contrary to guidance within the Council's Space SPD cited above and within the Framework, which requires development to create places with a high standard of amenity for future users. I therefore find Condition 9 of planning permission SMD/2010/1041 in respect of Appeal A and Condition 7 of SMD/2002/1130 in respect of Appeal B both reasonable and necessary in this respect.

Other Matters

39. Whilst Chalet 1 has been adapted to be accessible to all, with wider doors, ramps at the front and lower electric sockets, this would be equally beneficial to its use as holiday accommodation and so it carries only neutral weight.

40. I also appreciate the appellant's difficult personal circumstances and I acknowledge the concern about the Council's handling of the application and not seeking to work proactively with the appellant. However, in my determination of this appeal, I must consider only the planning merits of the proposal before me.

Planning Balance

41. Having regard to the matter of the 'tilted balance' the Government clearly seeks to significantly boost the supply of homes. In this case, however, I do not find the buildings in respect of Appeals A and B to be within an accessible

location for housing, close to services and facilities nor would they have good access to public transport.

42. I appreciate that the appellant marketed the chalets between 2014 and 2017 and the interest arising from this process was subsequently stymied, mainly by problems securing mortgages for holiday cottages. However, the site lies close to the Churnet Valley, where there is specific support for tourist accommodation. Moreover, planning permission for the chalets was originally granted for this purpose so that they form part of the stock of accommodation in the area. Their viability therefore attracts neutral weight as a result.

43. Whilst there would be some economic benefit to the local economy arising from their use as holiday chalets, I do recognise that if occupied permanently, they would be likely to support the services and facilities in Alton all-year round. On the account of their size, there might also be some social benefit in offering modest-priced homes within the District. This weights in favour of the proposals.

44. However, any social benefits of the scheme would be reduced by the harm that I have identified to the living conditions for future occupants living in the chalets permanently. There would also be harm associated with their unsuitable isolated location. From my observations, whilst presently unused, the chalets are all in good condition and I am not persuaded that the site appears unduly unkempt or that there is no prospect of them being used for their lawful purpose. This diminishes the environmental benefit that might arise from permanent occupation if the site was in a state of neglect. Moreover, the benefits arising from three new dwellings and their contribution to housing supply would, in any event, be limited.

45. I therefore find that the removal of Condition 9 of planning permission SMD/2010/1041 in respect of Appeal A and Condition 7 of SMD/2002/1130 in respect of Appeal B, would result in dwellings that would not be within a suitable location for permanent residential occupation. I have also found harm to the living condition of future occupants. I therefore find that the adverse impacts of the proposed development significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, neither Appeal A nor Appeal B would represent sustainable development and the disputed conditions are both reasonable and necessary.

Conclusion

46. For these reasons, I conclude that Appeals A and B should be dismissed.

Kate Mansell

INSPECTOR