



Statement of Case of Staffordshire Moorlands District Council

Town and Country Planning Act 1990

Section 78

Planning & Compulsory Purchase Act 2004

Local Planning Authority Ref: SMD/2024/0272

The Planning Inspectorate Reference: APP/B3438/W/25/3358820

APPEAL BY MR AND MRS COOKE AGAINST THE REFUSAL OF AN APPLICATION BY
STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL SEEKING PERMISSION TO REMOVE
CONDITION 1 OF SMD/2004/0970 ENTIRELY.

AT

HERMITAGE FARM, FROGHALL ROAD, FROGHALL

1. Introduction

1.1 The appeal is against the decision of the Council's Planning Committee in respect of the refusal of an application for the removal of condition 1 of the planning permission SMD/2004/0970 entirely so that the applicants/owner can allow permanent residence rather than time-limited residential occupation of these Class C3 units.

1.2 The condition of concern is as follows:

The premises shall be used for short stay holiday accommodation not exceeding 4 weeks at any one time except during the period 1st October to 31st March when it may be used for Class C3 (dwelling houses) of the Town and Country Planning Use Classes Order, 1987 as long as no occupancy exceeds 3 months of any 12 month period. A register of such occupants including details of duration of stay will be kept and made available for inspection by the Local Planning Authority, if requested

Reason:- The occupation since the site lies within the open countryside outside settlement boundaries.

1.3 The planning application, subject of this appeal was considered by the Planning Applications Committee on 17th October 2024. Members visited the site in the morning before debating it, along with others in the afternoon. The members refused the application for the reasons stated and based on the policies contained within the report. A copy of the Committee report and Committee Minutes were included with the Questionnaire.

2. Relevant Planning History

- 99/00224 Conversion of Barn to Holiday Accommodation. Approved. (Copy of decision attached at Appendix A)
- SMD/2004/0970 (04/01361) Variation of Condition 2 of planning permission SM99/0224 Approved.
- SMD/2019/0390 - Insertion of six doorways on the rear (north) elevation, including reinstatement of three former (blocked up) openings; removal and/or re-positioning of internal partition walls on ground floor to create living rooms and WCs; removal of attached (unlisted) modern farm sheds to rear to allow creation of private gardens and 12 no. car parking bays; re-creation of stone retaining walls to access track on a new alignment

Refused by the Council on 13th December 2019.
Dismissed at appeal on 14th December 2020.

- SMD/2019/0391 – Application to remove condition 1 of 04/01361/FUL (SMD/2004/0970).

Refused by the Council on 13th December 2019.
Dismissed at appeal on 14th December 2020.

- SMD/2019/0394 - Demolition of three agricultural (storage/cattle) sheds and creation of enclosed garden areas to serve the cottages in the adjacent stone barn conversion, together with creation of a 12-bay car park with access track, manoeuvring area and stone retaining walls.

Refused by the Council on 13th December 2019
Dismissed at appeal 14th December 2020.

3. Council's Case

3.1 A copy of the Council's Committee report was provided with the Questionnaire. It sets out the main issues of the Council's case and there is no intention to repeat these here.

3.2 A material consideration of significant weight in this case is the fact that a previous appeal was dismissed in relation to the removal of the restrictive occupancy condition regarding the same building at Hermitage Farm. The Staffordshire Moorlands planning application reference is SMD/2019/0391 and the subsequent appeal reference is Appeal A, APP/B3438/W/20/3253375 (Appeal decision attached as Appendix B).

3.3 The Inspector made the following statement:

"12. I accept that the disputed condition altered the permitted use in the appeal building, effectively to a mixed-use. However, there would still, on the face of it, be a clear conflict between the proposal and the description of the original permitted development and the mixed-use granted later. Given that Finney says the description cannot be altered via s73, such a condition, enabling the barn to be used as four independent dwellings, without a seasonal or other time limitation on the length of occupation, would alter the nature of the development and be unlawful. A new planning application, rather than a s73 application, would therefore be required for the proposal.

13. The appellant has cast some doubt as to whether the original planning permission is the correct permission for the appeal building and I am referred to decision notices for earlier planning and listed building consent applications. As these are not the permissions relevant to the Council's decision, I have not referred to them in any further detail.

14. Therefore, based on relevant statute and the Finney judgment, even if the proposal in Appeal A were acceptable in other respects, such as the access to shops and services and the loss of tourist accommodation, the description of development cannot be altered so the proposal would not be consistent with them. It follows that the appeals cannot succeed.

15. The above factors lead me to conclude that, as a matter of law and on the facts of the appeal, it is not possible to alter the use of the appeal building by varying the 'restrictive occupancy condition', attached to the planning permission, in the way proposed. For this reason, I have not found against policies E4, H1, SS10 and SS11 of the LP."

3.4 Since this appeal decision was issued by the Inspector, nothing has changed to lead the Local Planning Authority to a different view on the application. The more recent Court of Appeal judgment in *Test Valley BC v Fiske* 2024 EWCA Civ 1541 has confirmed the position that a Section 73 cannot be used to remove a condition where that would be inconsistent with the operative part of the development. In this case the operative part of the parent/original permission in 1999 was for 'Conversion of barn to holiday accommodation' – see Decision notice attached at Appendix A. The effect of the removal of Condition 1 of SMD/2004/0970 (which itself was a variation of the original 1999 permission) would be unrestricted housing. This would negate the consent granted by the operative part of the permission. It would be unlawful and on this ground alone the appeal should fail – as it did in 2020.

3.5 Even if the view was reached that the application is procedurally correct, a number of other reasons for refusal have been identified by the Council. The site is considered by the Council to be an unsustainable location for dwellings, conflicting with policies SS1, SS9, SS10, H1 and T1 of the Staffordshire Moorlands Local Plan. The site is not close to services and facilities and there is no regular public transport. There are no footpaths and the roads are unlit. Occupiers would be heavily reliant upon the car for all their daily needs. Spatial policies in the Local Plan seek to focus housing in the main three towns and larger villages where services and facilities are readily available. The appeal site is not within even a smaller village; it is in the open countryside.

3.6 Furthermore, the loss of tourist accommodation would conflict with policies E4, SS10 and SS11 of the Staffordshire Moorlands Local Plan, as well as the 'Tourism Strategy for Staffordshire Moorlands 2022-2027' and the Churnet Valley Masterplan SPD. The Tourism Strategy aims to expand, improve and encourage the development of holiday accommodation to attract overnight visits because of the recognised economic benefits this brings particularly to the rural economy.

3.7 No information is provided as to how many units are to be provided and/or how private amenity space would be achieved for these. Notably, the barn building is Grade II Listed in its own right, as well as sitting 20 metres North of the Grade II Listed building 'The Hermitage'. In the previous appeal (attached at Appendix 2), the Inspector did consider these matters and came to the view that the completion of external landscaping works to provide adequate amenity space for a number of dwellings would be detrimental to the setting of the Listed building and would therefore be inappropriate, contrary to Policies DC1 and DC2 of the Staffordshire Moorlands Local Plan. There has been no material change that would lead to a different view being taken now.

4. Response to Appellants Grounds for Appeal

4.1 Ground (a) – Sustainability

4.1.1 Fundamentally, spatial policy under the Staffordshire Moorlands Local Plan seeks to achieve sustainable development; careful consideration needs to be given to the location of new dwellings to ensure that they are close to a range of day-to-day services and facilities. In this case, it has been identified that occupiers of the properties would be wholly reliant on the private car as a means of transport. It would not be realistically possible to walk to any services and facilities from the site and methods of public transport are extremely limited. Thus, there

would be a clear conflict with policies SS1, SS9, SS10, H1 and T1 of the Staffordshire Moorlands Local Plan.

4.1.2 Whilst the Council recognise that some applications in the local area have been granted permission for the removal of the condition referred to in this application, there are also a number of planning applications which have been refused at appeal, due to the site being in an unsustainable location for dwellinghouses. Each application is considered on its own merits and different site circumstances can lead to different planning outcomes. A relevant example is as follows:

- **Appeal Ref: APP/B3438/W/19/3232886 - Frimsmoor Croft, Ashbourne Road, Rue Hill, Cauldon Low ST10 3HD**

Similarly, this site is situated within an area of rolling open countryside and sat within a generous plot of land. Whilst the Inspector appreciated the requirement of boosting the supply of homes, it was not considered that the building would be *“within an accessible location for housing, close to services and facilities and it would, in fact, be isolated. Nor would it have good access to public transport.”* Although the Inspector recognised that the scheme would bring forth some social, economic and environmental benefits, these benefits would be outweighed by the harm associated with the unsuitable, isolated location for housing.

The exact same applies in this case.

4.2 Ground (b) – Loss of Tourism

4.2.1 The loss of available holiday accommodation would contradict the need of Staffordshire Moorlands for more overnight tourist accommodation.

4.2.2 Although the appellant states in their appeal statement that *“market research was used to prove there is a massive oversupply of Holiday accommodation in the area now”*, the fact that there is lots of accommodation in the area doesn’t necessarily equate to oversupply. This could indicate a very healthy market and demand for overnight accommodation in the Staffordshire Moorlands.

4.2.3 The Council is currently working on an Accommodation Acceleration Plan (AAP) for holiday accommodation in conjunction with Staffordshire County Council and Hotel Solutions (hospitality consultants). Although the final report and findings isn’t due until the end of March and can’t therefore be released, the project team advise that research undertaken for the AAP has shown that:

- Well-designed, efficiently run, well-priced, well-marketed holiday accommodation is viable especially in as area like Staffordshire Moorlands that is performing the best in Staffordshire.
- Holiday accommodation in character listed buildings would additionally be expected to perform well if all the above are in place (i.e well designed, well priced and well marketed).

- Supply and its visibility has increased significantly 2019-2023 -listings by 233% - but so have booked nights – by 220%, so the market has clearly got bigger rather than more units drawing on the same pool of visitors.
- Also over this period letting prices have increased significantly boosting overall revenue and therefore making bookings more profitable even at stable occupancy levels. Average revenue per listing has increased from £29000 to £39,000.

4.2.4 The overall picture for holiday accommodation is healthy. The Council’s position is that the underperformance of these units is likely to be a function of a high cost base, poor marketing, incorrect pricing or a combination of these.

4.2.5 The applicant has made the point that under Policy H1, the conversion of rural buildings for residential use can be acceptable, where such development would represent the optimal viable use of a heritage asset. However, it is clear from the Tourism Strategy that tourist accommodation is of great need to encourage growth of the district, thus demonstrating that it does represent the optimal viable use of the building.

4.2.6 When considering the loss of tourist accommodation under the Frimsmoor Croft, Ashbourne Road, Rue Hill, Cauldon Low ST10 3HD appeal (APP/B3438/W/19/3232886), the Inspector made the following points:

4.2.7 *“It lies within the Churnet Valley, where there is specific support for tourist accommodation and planning permission was originally granted for this purpose so that it forms part of the stock of accommodation in the area.”*

4.2.8 *“From my observations, the property is in good condition and I am not persuaded that the site would readily become redundant or disused or that there is no prospect of the property being used for its lawful purpose... I have also found that the removal of the condition would harm the supply of tourism accommodation in the area”.*

4.2.9 The exact same applies in this case.

4.3 Ground (c) – Amenity Space

4.3.1 Whilst the appellant has referred to adequate amenity space being available for permanently occupied dwellings, no evidence has been provided to show how this would be achieved to meet Council standards. Notably, the Council are unclear about the number of residential units to be provided and therefore cannot make informed assessment regarding amenity space. The appellant makes reference in their appeal statement to an abundance of shared amenity space being available. Whilst this may be appropriate for transient holiday use, it would not be for permanent occupation where residents expect and require private space in line with the Council’s Space About Dwellings SPD, which refers to ‘Private Gardens’. The spatial standards set out refer to private amenity space, to which a lack of information was provided during the application process.

4.3.2 Although no plans were submitted under SMD/2024/0272, a plan was submitted under SMD/2019/0390 to demonstrate how the barn would be subdivided into dwellings, including

external alterations to the barn and the creation of private external amenity space for each dwelling. The Council recommended refusal of this application, due to the creation of private amenity space and how this would harm the character and appearance of the listed building and historic farmstead setting of the building. Details regarding private amenity space have not been provided under SMD/2024/0272 and therefore, the Council cannot make an informed assessment of the case.

4.3.3 The appellant proceeded to appeal against this decision (the Appeal decision is attached at Appendix B – it is Appeal C of APP/B3438/Y/20/3253392) and the appeal was dismissed by the Inspector. The Inspector made the following points regarding the site context and the proposed private amenity space:

4.3.4 *“Although the space between the barn and the farmhouse has a closer historical association with the farmstead, the other buildings behind the barn and the land that they occupy provide a rural context which forms an integral part of the historic setting of the barn within the farmstead, which contributes to the understanding and significance of the heritage asset.”*

4.3.5 *“It is not uncommon for traditional farmsteads to include buildings grouped with yards and pens for animals, but the proposed gardens and patios would be individually divided and enclosed by tall timber fences. Their physical presence, form and appearance would wholly contrast with the barn and maintain enclosure to its rear. This would add to my concerns for the suburbanisation of the listed barn and undermine the case for the proposal as a means of preserving this important former farm building”.*

4.3.6 The appellant refers to the Council supported application at Rockhouse Farm, stating that the site can offer a substantial amount more amenity space than the amenity space associated with the cottages at Rockhouse Farm. The Inspector took consideration of the Rockhouse Farm case under the appeal APP/B3438/W/20/3253375, making the point that *“the scheme did not affect a listed building... so it would not be comparable with the appeal scheme before me.”* The same would apply regarding the case in front of the Council today.

4.3.7 The Inspector concluded that: *“the modern appearance of the gardens and patios and their enclosures would introduce a discordant form of development that would have a significantly detrimental effect on the farmstead setting of the listed barn. The proposal would therefore be harmful to the understanding and significance of the listed barn, as a heritage asset.”* Therefore, even if the applicant had provided details regarding the subdivision of the available external space to provide private amenity space for the proposed dwellings, it would not have been supported by the Council based on the previous reason for refusal and appeal decision.

4.3.8 The appellant has not demonstrated that sufficient private amenity space can be provided based on the lack of information provided to the Council under the application submission. Notwithstanding this, it has already been identified under SMD/2019/0390 that the creation of private external amenity space would be harmful to the Listed building. Therefore, even if more information was submitted in this case, the Council would take the same stance as was concluded previously.

4.4 Ground (d) - Conflict relating to the original permitted development

4.4.1 Regardless of the points which the appellant has made, the proposed development would continue to conflict with the description of development approved under SMD/2004/0970. Therefore, the Council hold the view that a Section 73 application is not appropriate for the proposed development, as was identified by the Inspector under the appeal reference APP/B3438/W/20/3253375 (Appendix B).

4.5 Ground (e) – Pre-Application Advice

4.5.1 The appellant has made reference to the pre-application advice which they received from the Council.

4.5.2 The Council offers a weekly planning surgery where applicants can make an appointment to discuss a proposal by telephone. A Planning Officer will provide informal comments based on the information provided at the time. No advice was sought through the more formal written and comprehensive pre-application advice service offered by the Council which is a chargeable service. Notably, any pre-application advice does not constitute nor would it prejudice a subsequent formal determination by the Council.

5. Planning balance and conclusion

5.1 For the reasons above, the Council recommend that the appeal is dismissed. First and foremost, the Council's case is that procedurally, a section 73 application is not the correct application for this development. As a matter of law and on the facts of the appeal, it is not possible to alter the use of the appeal building by removing the 'restrictive occupancy condition', attached to the planning permission, in the way proposed.

5.2 Notwithstanding the procedural issue with the application, there would be harm associated with the appeal proposal. This harm arises from the unsustainable location for housing, loss of tourist accommodation and insufficient information regarding the provision of private amenity space and impact on heritage assets. Substantial weight must be given to this harm, due to non-compliance with policies SS1, SS9, SS10, SS11, H1, E4, DC1, DC2 and T1.

5.3 However the proposal would provide some housing (albeit this is not quantified) which is a benefit of the proposal particularly in circumstances where the Council currently can not demonstrate a 5 year supply of housing land. However the weight to be given to this is limited because firstly it is not known how many units are intended to be provided but in any event it is only likely to be a small number, governed ultimately by the size of the building. In this case the conflict with the Development Plan relating to the unsustainable location of the appeal site for housing, the loss of needed tourism accommodation and the lack of information to demonstrate that sufficient amenity space can be achieved without heritage harm is significant and demonstrable and outweighs the benefits when assessed against the Framework taken as a whole.

5.4 The proposal does not comply with the Development Plan and will not deliver sustainable development.

5.5 The Inspector is duly invited to dismiss the appeal.

6. Conditions

1. Prior to any permanent occupation of the building, a plan shall be provided for the written approval of the Local Planning Authority, detailing the subdivision of the residential units. The plan shall include details of private external amenity space per unit and the provision for sufficient parking for per unit. The development shall subsequently be carried out as approved before permanent occupation and shall remain in situ for the lifetime of the development.

Reason:- to ensure that all future residents have adequate private amenity space in line with the Council's Space About Dwellings SPD; to safeguard the setting of the Listed building and historic farmstead in line with Policies DC1 and DC2; in the interest of highway safety in compliance with Policy T1.

 STAFFORDSHIRE
moorlands
DISTRICT COUNCIL

MOORLANDS HOUSE, STOCKWELL STREET, LEAK, STAFFORDSHIRE
MOORLANDS. ST11 6HQ TEL: 01538 483350 FAX: 01538 483586

DECLUT 1

Application No. SM99-0224
Date Registered: 31 MAR 1999
Decision Date: 28 JUNE 1999

MR. R. WILLIAMS,
ALDER MILL, SHEPPY ROAD,
ATHRISTONE, WARKS.
CV9 5AU.

The Council of the Staffordshire Moorlands District in pursuance of powers under the above mentioned Act hereby consent:

CONVERSION OF BARN TO HOLIDAY ACCOMMODATION AT HERMITAGE FARM, FROGHALL

in accordance with plans ref: 51/99-1", OOF subject to the conditions specified hereunder:

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

Reason

To comply with the provisions of Section 91 of the Town and Country Planning Act, 1990.

2. 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.

Reason

The premises are not considered suitable for permanent residential occupation.

3. Notwithstanding the originally submitted details this permission shall relate to the amended drawings numbered 51/99-1^A received in this office on 14th June, 1999.

Reason

For the avoidance of doubt,


Signed on behalf of the said Council



Appeal Decisions

Site Visit made on 13 October 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2020

Appeal A, APP/B3438/W/20/3253375

Hermitage Farm, Froghall Road, Ipstones Bank, Froghall, Stoke-on-Trent ST10 2HQ

- 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 Jeff Barlow against the decision of Staffordshire Moorlands District Council.
 - The application Ref SMD/2019/0391, dated 27 June 2019, was refused by notice dated 13 December 2019.
 - The application sought planning permission for 'Conversion of barn to holiday accommodation' without complying with a condition attached to planning permission Ref 04/01361/FUL (SMD/2004/0970), dated 20 January 2005.
 - The condition in dispute is No 1 which states that: *'The premises shall be used for short stay holiday accommodation not exceeding 4 weeks at any one time except during the period 1st October to 31st March when it may be used for class C3 (dwelling houses) of the Town and Country Planning Use Classes Order, 1987 as long as no occupancy exceeds 3 months of any 12 month period. A register of such occupants including details of duration of stay will be kept and made available for inspection by the Local Planning Authority, if requested.'*
 - The reason given for the condition is: *'The occupation since the site lies within the open countryside outside settlement boundaries.'*
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Appeal B, APP/B3438/W/20/3253390

Hermitage Farm, Froghall Road, Ipstones Bank, Froghall, Stoke-on-Trent ST10 2HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jeff Barlow against the decision of Staffordshire Moorlands District Council.
 - The application Ref SMD/2019/0394, dated 27 June 2019, was refused by notice dated 13 December 2019.
 - The development proposed is Demolition of three agricultural (storage/cattle) sheds and creation of enclosed garden areas to serve the cottages in the adjacent stone barn conversion, together with creation of a 12-bay car park with access track, manoeuvring area and stone retaining walls.
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Appeal C, APP/B3438/Y/20/3253392

Hermitage Farm, Froghall Road, Ipstones Bank, Froghall, Stoke-on-Trent ST10 2HQ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
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<https://www.gov.uk/planning-inspectorate>