



Appeal Decision

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 08/04/2024

Appeal reference: CAS-02884-D0W4R1

Site address: Wisteria Lodge, Sandy Lane, Caerwent Brook, Caerwent NP26 5BB

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Adam Phelps against the decision of Monmouthshire County Council.
 - The application Ref DM/2023/00377, dated 9 March 2023, was refused by notice dated 4 May 2023.
 - The application sought planning permission for the 'Proposed conversion of garage into two bedroom holiday cottage' without complying with conditions attached to planning permission Ref DC/2017/00078, dated 15 March 2017.
 - The conditions in dispute are No's 3, 4 and 5 which state that:
 - 3. The holiday let hereby permitted shall be used for the purpose of providing holiday accommodation only.
Reason: The provision of permanent residential accommodation would not be acceptable in the open countryside.
 - 4. The development shall be occupied as holiday accommodation only and shall not be occupied as a person's sole or main place of residence or by any persons exceeding a period of 28 days in any calendar year.
Reason: The provision of permanent residential accommodation would not be acceptable in the open countryside.
 - 5. An up to date register containing details of the names, main home address, dates of arrival and departure of occupants using the holiday accommodation shall be made available for inspection by the Local Planning Authority upon request.
Reason: To ensure the accommodation is used as holiday let accommodation only.
 - A site visit was made on 16 January 2024.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal form describes the proposed development as 'Modification of conditions 3,4 & 5 relating to application DC/2017/00078', even though the planning application form and written submissions confirm that it is the removal of these conditions that is sought. I have therefore dealt with the appeal as one that seeks the removal of Conditions 3, 4 and 5 of planning permission ref. DC/2017/00078.
3. The appellant refers to the application as one which is '*...not for a new residential unit*' but '*...simply a relaxation of restrictive conditions to a modern domestic garage*'. So as to avoid any misunderstanding, a decision under section 73 leaves the original planning permission intact and, if successful, an entirely new planning permission is granted. In this case, I must consider the question of whether, as a matter of planning judgment, the conditions should be removed; the effect of which could be an unrestricted dwelling if I were to grant planning permission without imposing the restrictive occupancy conditions subject to which the previous permission was granted.
4. Since the application was determined by the Council, Welsh Government has published Planning Policy Wales (PPW), Edition 12. As the implications of the changes to PPW do not affect the outcome of this appeal, I have not sought to canvas the views of the parties.

Background

5. As I understand it, planning permission was granted in 2008 for the 'Remodelling of house and garage', which related to the host property known as Mayfield with the garage providing ancillary accommodation to this existing property.
6. Planning permission was subsequently granted for the conversion of the same garage into a holiday cottage in 2017, which the Council states was justified under Policy T2 (Visitor Accommodation Outside Settlements) of the adopted Monmouthshire Local Development Plan (LDP) 2014. The permission was subject to conditions limiting its use to a holiday let given that it considered there was no justification for an independent dwelling in the open countryside.

Main Issue

7. Against the background that I have described, the main issue is whether the disputed conditions are reasonable and necessary having regard to the sustainability of the location and policies seeking to protect the countryside from unjustified development.

Reasons

8. The appeal property is a detached building known as Wisteria Lodge. It is accessed directly off a classified road and lies outside the settlement boundaries of Caerwent as defined on the proposals map to the adopted LDP. For planning policy purposes, therefore, it is located in the open countryside.
9. Accordingly, the Council assessed the proposal against LDP Policy S1, which seeks to direct new housing development to within settlements and states that outside the settlements listed in the policy, open countryside policies will apply and planning permission will only be granted for: (i) the conversion of a rural building (in the circumstances set out in Policy H4); (ii) the sub-division of an existing dwelling; or (iii) that necessary for agricultural, forestry or other appropriate rural enterprise in accordance with Technical Advice Note 6. In coming to its decision, it found conflict with Policy S1 insofar as the proposal would result in an unrestricted residential use in the open countryside and with the objectives of Planning Policy Wales (PPW) and Future Wales (FW) which seek to secure sustainable forms of development.

10. I note the appellant's contention that Policy S1 is a strategic one looking to control the spatial location of new development rather than restrict or control previous residential conversions. I do not dispute that the appeal property has already been granted planning permission for a residential use, albeit the conditions imposed on that planning permission restrict the use to holiday accommodation. Given that the effect of the removal of the occupancy conditions would be an unrestricted dwelling in the open countryside, I do not consider that it was inappropriate for the Council to apply Policy S1. Neither do I consider that its assessment of the 2017 application against other LDP policies directly related to visitor accommodation outside settlements means that it was not entitled to assess the proposal the subject of the appeal against Policy S1.
11. The appellant also questions the weight that should be given to LDP policies given that the plan is out of date. Although we are now beyond the plan period, the LDP remains part of the development plan. The development plan comprises FW and the adopted LDP. FW is the most recently adopted part of the development plan, and there is no compelling evidence before me to indicate that the LDP policies are no longer relevant or that they are inconsistent with the thrust of FW to locate development in the most sustainable locations and protect the countryside from unjustified development. This is also consistent with the overall aims of national planning policy advice in PPW.
12. Consequently, I find that the removal of the occupancy conditions would create an unrestricted dwelling outside a defined settlement and in the open countryside which, based on the evidence before me, would not constitute any of the exceptions listed nor would it be a use necessarily restricted to a countryside location. It therefore follows that it would fail to meet the requirements of Policy S1.
13. The appellant asserts that the Council also gave significant weight to LDP Policy H4, which relates to the conversion / rehabilitation of buildings in the countryside for residential use, in its assessment of the application despite that the appeal proposal is no such conversion. In response, the Council has confirmed that Policy H4 was explored as a potential means of justifying the proposed development, however, the proposal was not considered to meet the policy requirements, in particular criterion (e).
14. From my reading of Policy H4, it is clear that it is permissive of the conversion of a building in the open countryside for residential use where the criteria are met. In this case, the building has already been converted to a residential use and the removal of the disputed conditions is not needed to secure the conversion or retention of the building. Even if I were to assess the proposal against this policy, to my mind it would not comply with criterion (e) insofar as it is a modern building which would not be considered favourable for conversion. Although I acknowledge the appellant's assertion that this criterion is intended to relate to the conversion of modern portal framed agricultural buildings that were only permitted due to functional need, I am not convinced that this is the only scenario that the policy seeks to resist.
15. Notwithstanding the appellant's claim that Policy H4 is of little relevance to the appeal proposal, my attention is nonetheless drawn to the final paragraph of that policy, in which it is stated that any proposals not considered to be compliant with Policy H4 '*...will be judged against national policies relating to the erection of new dwellings in the countryside or against Policy T2 relating to the re-use and adaptation of existing buildings to provide permanent serviced or self-catering visitor accommodation*'.
16. Dealing first with Policy T2, which relates specifically to the provision of visitor accommodation outside settlements, the appellant goes on to assess the proposal against this policy. Whilst I acknowledge that this policy informed the Council's decision in respect of the 2017 application for the conversion of the building to a holiday cottage, that is not what is now proposed and I am not therefore persuaded that it is the most

relevant policy against which to assess the acceptability of the appeal proposal. Furthermore, I understand from the Council that in its consideration of the 2017 application, the provision in the policy to comply with the criteria set out in Policy H4 was not engaged given that it was exceptionally justified under the latter part of the policy insofar as it represented the conversion of a building of modern construction that would be restricted by condition to tourist accommodation. Whilst the appellant argues that the conversion from a domestic garage to a holiday let should not have been considered an “exception”, I have been provided with no compelling reasons why that should be so.

17. Turning to the second strand, that of the need for proposals not compliant with Policy H4 to be judged against national policies. Although I accept that the Council did not reference the specific elements of FW and PPW with which it finds conflict in its delegated report, it nevertheless sets out the primary objective of ensuring that the planning system contributes towards the delivery of sustainable development.
18. In its subsequent appeal statement, the Council makes reference to para. 4.2.25 of PPW, which states that *‘In the open countryside, away from established settlements recognised in development plans or from other areas allocated for development, the fact that a single house on a particular site would be unobtrusive is not, by itself, a good argument in favour of permission; such permissions could be granted too often, to the overall detriment of the character of an area’*. Similarly, FW references a plan led system, stating that unfettered residential units in the countryside are contrary to the basis of the plan led system and, instead, focuses such development in sustainable locations.
19. Be that as it may, the appellant has also made reference to para 3.60 of PPW which deals with development in the countryside, advising that it *‘....should be located within and adjoining those settlements where it can best be accommodated in terms of infrastructure, access, habitat and landscape conservation. Infilling or minor extensions to existing settlements may be acceptable, in particular where they meet a local need for affordable housing or it can be demonstrated that the proposal will increase local economic activity. However, new building in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled’*.
20. In the context of the above, and in support of the proposal, the appellant states that the appeal site represents a sustainable location, adjoining the village of Caerwent and approximately a 10 minute walk from the main amenities of the village. The appellant also argues that Wisteria Lodge cannot be considered to be in an isolated, open countryside location, as it forms part of a cluster of buildings.
21. In my opinion, the site’s location cannot properly be described as ‘adjoining the village of Caerwent’ given that it is separated from the southernmost part of the village by intervening fields. Whilst it may be possible to walk to the village, such a journey would be via a highway with no footway along part of its length and limited street lighting. Thus, I am not convinced that it would be conducive to a safe and attractive journey for pedestrians walking in the carriageway, particularly during the evening or in inclement weather. Neither do I know whether the facilities and services on offer in the village of Caerwent would adequately cater for the day-to-day needs of future occupants without significant reliance on the private car as a means of travel to a main settlement further afield.
22. I also do not dispute that the appeal site forms part of a small group of dwellings; although not isolated therefore, I am not convinced that allowing the removal of conditions that restrict the use of this modern building, resulting in a more widespread distribution of unrestricted residential development in the countryside outside the existing settlement, would safeguard the character of the surrounding area.

23. Taking all of the above factors into account, I consider that the appeal site is not suitably located in relation to access to services and facilities and would not deliver a sustainable pattern of development as required by the development plan as a whole. Furthermore, it would undermine the Council's strategy in relation to the location of housing which directs such development to within settlements unless justified in a countryside location. The removal of the conditions in dispute and the use of the property as an unrestricted dwelling in the open countryside would fail to sit within the principles of sustainability contained in the development plan and national planning policy guidance.
24. In coming to my decision, I have had regard to whether there are other considerations that weigh in favour of the development. The appellant states that the holiday let use has become unsustainable and the only economically viable use would be a permanent residential use, whereas the Council argues that returning to an ancillary use to the main dwelling would be the most appropriate course of action. In this context, I am not persuaded that the appeal proposal is the only means by which the building can be used, but in any event, I do not consider such matters to outweigh the harm that I have identified for other reasons in the balance of acceptability.
25. I therefore conclude that the removal of the disputed conditions and granting permission for an unrestricted residential use would conflict with LDP Policy S1 and with the aims of FW and PPW, which seek, amongst other things, to ensure that residential development is directed to appropriate locations in order to deliver sustainable patterns of development and to resist unjustified development in the open countryside. Accordingly, I consider that the conditions in dispute remain both reasonable and necessary.

Conclusion

26. For the reasons I have given, and having regard to all matters raised, the appeal is dismissed.
27. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective to make our cities, towns and villages even better places in which to live and work.

Melissa Hall

INSPECTOR
