The Planning Inspectorate

Appeal Decision

Site Visit made on 3 August 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 19 August 2021

Appeal Ref: APP/B9506/C/20/3265733
Land at Woodcutters Cottage, Crabbswood Lane, Sway, SO41 6EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Craig Knowles against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 11 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of an outbuilding shown in the approximate position shaded blue on the plan attached to this Notice to an independent unit of residential accommodation (C3 dwelling) known as Woodcutters Lodge.
- The requirements of the notice are: Cease the use of the building shown in the approximate position shaded blue on the plan attached to this Notice as an independent unit of residential accommodation (C3 dwelling).
- The period for compliance with the requirements is: 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the Enforcement Notice (EN) is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act.

Preliminary Matters

2. The appellant suggests that the independent dwelling unit use alleged in the EN is not the same use as an independent holiday let use with specific conditions. However, as what is alleged to have occurred is a breach of planning control, there are no conditions restricting how the building may be occupied. Even if there were, restricting the occupation of a building that can afford to those who use it the facilities required for day-to-day private domestic existence does not necessarily mean that the building loses the characteristics of a dwellinghouse C3 use. In any event, the appellant has made the case out under the ground (d) appeal that the way the building has been used for holidays has constituted a C3 dwelling use. Consequently, although there is no appeal before me under s174(2)(b) of the 1990 Act, there is not a substantive case made out that what is alleged has not occurred as a matter of fact.

3. Following on from the above, the terms of the deemed planning application for consideration under the ground (a) appeal derive directly from the alleged

breach of planning control. In this case, that is a C3 dwelling. I shall consider the ground (a) appeal accordingly.

The ground (d) appeal

4. Under s191(2)(a) of the 1990 Act, uses are lawful at any time if the time for enforcement action has expired. Under s171B(2) of the 1990 Act, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In this case, the Council took enforcement action on 11 November 2020. The burden to make out such a case in legal grounds of appeal such as this, rests firmly with the appellant.

5. Given the above, the appellant needs to show that, on the balance of probability, the change of use of the outbuilding known as Woodcutters Lodge to a C3 dwelling occurred by or before 11 November 2016 (hereinafter referred to as the material date) and it subsisted on a substantially uninterrupted basis over the relevant time.

6. The appellant has owned Woodcutters Cottage since 23 February 2017. There is evidence from this date going forwards related to use of the Lodge as a holiday let. However, that evidence does not cover back to at least the material date. To cover the relevant period, the appellant has referred to a statutory declaration from the son of the previous owner. He states that he was responsible for managing the bookings of the site formerly known as Cago Cottage and now named Woodcutters Cottage and that the Lodge was in use as holiday accommodation from 2013. It is further stated that "It had a snooker table and was arranged in an open plan format but contained all of the fixtures and fittings found in an independent dwelling such as a kitchen area, sleeping area, TV/lounge area and WC/bathroom area. It was occupied independently from Woodcutters Cottage and was used for overnight accommodation for paying guests right up until the property was sold to the current owner. Guests had no access to the main house at Woodcutters Cottage".

7. However, the Council has produced historic sales information from a website from October 2016 with photographs of the inside of the appeal building and the floor layout from that time showing the building as a 'Games Room'. The inside is arranged with features such as a large snooker table, what maybe a game machine, chairs/sofas and an entertainment corner comprising speakers and a TV. There is no sign of a kitchen area and a WC/bathroom area as stated was there by the previous owner's son. Whilst the photographs do not show all the internal space, from the positions where the photos were taken, they do appear to cover most of the inside of the building with very little space not shown in which to accommodate these essential living facilities needed for independent living. It is suggested by the appellant that the kitchen was a sink with free standing units and a WC, but that does not fit with what has been described as 'areas'. Moreover, the internal floor plan does not show any of these living facilities. In my view, these photographs do not support that the building had the facilities needed for independent living.

8. It is the case that the photographs show mattresses under the snooker table, but the presence of these does not substantively show what is claimed which is that "the building was clearly being used for sleeping" and because the main house was not being occupied by the previous owner "so the mattresses

pictured in the lodge would have been used by paying guests". In my view, at most all the pictures show is mattresses under the snooker table.

9. It may have been that the previous owner had run into planning and financial difficulties, as well as disputes with neighbours over the way the premises was as a whole being commercially operated. As such, the activities were not openly marketed. There may also have been paying guests using the Lodge. However, the alleged breach of planning control is the use of the property as an independent unit of residential accommodation (C3) and even though the photographs are a snapshot in time, as a matter of fact and degree, they cast considerable doubt that the Lodge was in such a use at a critical time just before the material date. Moreover, there are no records to show that the alleged use was continuing substantially uninterrupted and thus there were no times when the Council could not have taken enforcement action.

10. Further to the above, while the declaration from the previous owner's son is signed before a solicitor, there is no reference to the statement being made under the provisions of The Statutory Declarations Act 1835. In the absence of this, and consequently the lack of sanctions available if something said is shown not to subsequently be true, this limits the weight that I can attach to the declaration. The weight is further diminished by the conflicts between what is stated and the sales photographs and details. This declaration has very limited weight.

11. The estate agent involved in selling the property to the appellant may have presented that the Lodge was being used as holiday accommodation, but there is no detail to support this statement made. A mortgage may also have been arranged to purchase the property that would allow this use to continue. However, that is a separate matter from being able to show what is needed in this appeal. Also, the mortgage extract provided with the title 'Part Commercial Properties' appears to be a generic document with no specific reference to Woodcutters Cottage having a holiday let, where that may have been, or the level of accommodation provided.

12. There is a letter from someone who says they stopped in the holiday let at Woodcutters Cottage on various occasions from the summer of 2015 onwards. However, this is only one resident and the letter does not confirm what facilities were in the Lodge on those occasions. The letter is little assistance to the appellant's case. A further statutory declaration from adjoining neighbours only refers to the property being used for commercial purposes. Whilst it refers to the property being used as holiday accommodation, the signatories state that "I couldn't say which buildings were or were not being used". The appellant also confirms that during the process of purchasing Woodcutters Lodge, it was clear that the main house and the outbuildings were being used as holiday accommodation. Without clarity of what uses were taking place where, the neighbours' declaration has very limited weight.

13. A declaration from the operator of a bike hire company refers to delivering bikes to holidaymakers at the Lodge for many years, but this also does not show what the facilities might have been in the appeal building and it lacks specific dates. Other letters of support refer to general holiday/commercial use of the site and to holiday accommodation in the Lodge. However, these letters also lack the required level of detail and they are not declarations made under the 1835 Act. They have very little weight. I have considered all other

evidence, including what the appellant says about a statutory declaration made by the owner of some nearby stables, everything else said about attempting to track down and engage with the former owner to obtain more first-hand evidence, and the copies of local press cuttings, but nothing else persuades me from my earlier findings.

14. The appellant's case is not clear and unambiguous and there is contradictory evidence that casts doubt on the stated version of events. As such, the appellant has not discharged the burden upon them to show that at the date the EN was issued, no enforcement action could be taken against the alleged breach of planning control. Therefore, the ground (d) appeal must fail.

The ground (a) appeal – planning merits

15. The main issue is whether the appeal site is an appropriate location for a dwelling, having regard to the prevailing development plan policies.

16. Policy SP19 from the New Forest National Park Local Plan (LP) is the primary policy for considering new housing proposals in the National Park. The appeal site is not in a defined village and it does not fall under one of the other circumstances in the policy where new housing would be considered acceptable. There is a conflict with this policy on the basis that the deemed planning application I am considering is for an independent residential C3 dwelling. The use of a condition to control the occupancy to holiday use would not mean that this policy does not apply for reasons given in the Preliminary Matters section above. A holiday let condition along the lines suggested by the appellant would also not prevent the unit from being sold separately from the main dwelling as an independent holiday let. It would only control occupancy and not use (it would still be C3) or ownership.

17. Policy SP46 from the LP allows for small scale visitor accommodation in the four defined villages in the National Park. Whether or not it is unrealistic to expect all new tourism uses to occur within the settlement boundaries of the four villages, the first step of the policy aims to direct development to those settlements. Despite the appeal site's relative proximity to Sway, which is a defined village, it is outside the village in LP terms. Outside the defined villages, visitor accommodation is only acceptable if it is part of a farm diversification scheme for consideration under LP policy DP48, which is not the case in this appeal. New visitor facilities outside the villages are considered acceptable under policy SP46 provided that they would accord with LP policy DP49 'Re-use of Buildings Outside the Defined Villages'. That is only permissible though if, under criterion (b) of DP49, the proposal would not involve a residential use (other than in accordance with LP policy SP19). Given that the appeal scheme is a residential use, and it does not accord with policy SP19, the proposal conflicts with policy DP49 and by consequence policy SP46.

18. Notwithstanding that the occupation of the Lodge by guests would enable them to enjoy and understand the special qualities of the National Park, this consideration would not bring the proposal into line with the LP policies. Furthermore, whilst paragraph 8.22 from the LP is supportive of sustainable tourism, a scheme must still accord with the relevant planning policies.

19. The lane to the appeal site from the Sway Road is narrow and unlit without any pavements. Sway train station is also just over 1.5kms away. I note other distances given to pubs and a school. Given these circumstances, I consider it

is unlikely that occupiers of the unit, whether that would be permanently or for holidays, would regularly walk to and from the site or use other more sustainable forms of transport than the private vehicle, such as cycling, bus and train. There is no information about the frequency of a Cango bus that runs past the site, and notwithstanding that the appellant says he regularly walks along the lane, which is lightly trafficked, I consider that occupiers would for convenience tend to travel by car to access general services and facilities available in settlements. This is not a sustainable location in travel terms and is not somewhere that the relevant LP policies seek to allow a new residential use, including visitor accommodation.

20. Given that the building already exists and there is no indication that the change of use has involved any external changes to the building's appearance or to its setting within an existing residential curtilage, I do not find any conflict with the general design aims of LP policies DP2 and SP17. Nevertheless, for the reasons given, the appeal proposal conflicts with the development plan taken as a whole. Furthermore, the development conflicts with the sustainable development aims of the National Planning Policy Framework 2021 (NPPF). I recognise that the NPPF supports a prosperous rural economy, but in this case that consideration does not indicate a decision other than in accordance with the development plan.

21. I note other concerns raised by the National Park Authority related to, for example, the impact of the development on the Solent Special Protection Area. However, given that the appeal is being dismissed for other reasons and planning permission has not been granted, these other matters do not require any further consideration.

22. The ground (a) appeal does not succeed.

The ground (g) appeal

23. I can appreciate that like many other businesses, the coronavirus pandemic has had an adverse effect on income and there might be an opportunity to come back from that with holiday bookings now extending into 2022, particularly given the boost to the stay-at-home holidays sector due to the curbs and uncertainties around international travel. I am also aware of flexibilities being shown to businesses in terms of opening hours, for example. However, given that the date of this decision is when the EN takes effect, the nine months compliance period will take the timescale forward to around May 2022 anyway. That, to my mind, is a reasonable period and should mean that any bookings taken up until then could still be honoured. As such, the ground (g) appeal also fails.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Gareth Symons

INSPECTOR