Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2021/A0103.
Appeal by:	D & T McHenry.
Appeal against:	The conditional grant of full planning permission.
Proposed Development:	Appeal against condition 2 of LA01/2020/0809/F – the self-catering unit herby permitted shall be for holiday letting accommodation only and shall not be used for permanent residential accommodation. Erection of 2 no. holiday chalets (change of house type from E/2011/0118/F).
Location:	Sites 5 & 6, opposite Drumawillan House, Whitepark Road, Drumawillan, Ballycastle.
Planning Authority:	Causeway Coast & Glens Borough Council.
Application Reference:	LA01/2020/0809/F.
Procedure:	Hearing on 8 September 2022.
Decision by:	Commissioner Mark Watson, dated 7 February 2023.

Decision

1. The appeal is allowed and condition 2 of planning permission LA01/2020/0809/F is deleted.

Claim for Costs

2. A claim for costs was made by the Appellant against Causeway Coast & Glens Borough Council. This claim is the subject of a separate decision.

Reasons

3. The main issue in this appeal is whether the condition is justified. Full planning permission (ref. LA01/2020/0819/F) was granted on the appeal site on 30 July 2021 for erection of 2 no. holiday chalets (change of house type from E/2011/0118/F).

4. Condition 2 of the permission, reads:
'*the self-catering unit hereby permitted shall be used for holiday letting accommodation only and shall not be used for permanent residential accommodation'.*

   The reason given for the condition was:
`to ensure the proposal is in keeping with the character of the rural area'.

5. The Northern Area Plan 2016 (NAP) operates as the LDP for the area. In it the site lies within the countryside and is not zoned for any purpose. The NAP also identifies, for information purposes only, that the site lies within the Antrim Coast and Glens Area of Outstanding Natural Beauty. There are no policies or proposals within the NAP material to the appeal development.

6. The Strategic Planning Policy Statement for Northern Ireland *'Planning for Sustainable Development'* (SPPS) states that conditions should only be imposed which are necessary, relevant to planning, relevant to the development being permitted, precise, enforceable and reasonable. The Council referred to Planning Policy Statement 16 – Tourism (PPS16) and Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) in its appeal evidence. As there is no conflict or change in policy direction between the provisions of the SPPS and those of PPS16 and PPS21 in respect to the appeal development, PPS16 and PPS21 policy provisions remain applicable.

7. The appeal site comprises a small section of a larger parcel of several agricultural fields on the western side of Whitepark Road. The north-eastern corner of the larger site abuts the junction of the Whitepark Road and Straid Road, which abounds the northern boundary of the host site. Drumawillan House, a sizeable two storey dwelling lies opposite and east of the appeal site. The appeal site and host site lie a short distance to the south-west of Ballycastle town.

8. The Appellants seek the removal of condition 2 on the basis that it fails four of the legal tests; necessity, relevant to the development to be permitted, enforceable and reasonable in all other respects. They consider that the Council did not properly take into account the site history of the appeal site and wider host site it lies within. The Appellants also considered condition 2 to be unnecessary as application LA01/2020/0809/F related only to a change in house type comprised of physical alterations to buildings previously granted permission rather than the principle of development. The alterations in question pertained to additional first floor gable windows for bathrooms and changes in position of certain other windows on the buildings.

9. The Council considered that the Appellants' suggested deletion of condition 2 would not meet the purpose of the condition as originally imposed and would lead to an 'unfettered' permission, wherein the two chalets could be occupied as permanent dwellings, contrary to prevailing regional policy contained in PPS16 and PPS21. Policy TSM5 of PPS16 states that all permissions for self catering accommodation will include a condition requiring the units to be used for holiday letting accommodation only and not for permanent residential accommodation. It goes on to state that the overall design of the self catering scheme, including layout, the provision of amenity open space and the size and detailed design of individual units, must deter permanent residential use.

10. There is an extensive planning history to the appeal site and host site. Outline planning permission was granted on the host site on 25 November 1997 for '*site for 50 bedroom hotel and holiday cottages*' (ref. E/97/0131) by the then Department of the Environment Planning Service (hereafter referred to as the Department). No occupancy restriction condition was imposed in that permission. A renewal of that permission (ref. E/2000/0398/O) was granted by the Department on 17 July 2001. Again, no occupancy condition was contained in the decision. A

further renewal of the permission (ref. E/2004/0267/O) was granted on 4 March 2005, with the same conditions as the previous renewal application. A reserved matters application (ref. E/2007/0335/RM) for the development was granted on 8 January 2009 by the Department.

11. Shortly after that a full planning application (ref. E/2009/0107/F was submitted for '*erection of 100 bedroom hotel, separate staff accommodation blocks and holiday chalets, new access, ancillary car parking and landscaping (permission already granted for 50 bedroom hotel, staff accommodation block, 24 holiday chalets E/2007/0335/RM)*'. It was approved by the Department on 3 August 2009. No occupancy condition was imposed. An application for a '*proposed change of house type on sites 5 and 6 of approved 24 no. holiday chalets on planning permission E/2009/0107/F*' (ref. E/2011/0118/F) was granted full permission on 9 September 2011. Again, no occupancy condition was imposed.

12. The Appellants stated that the approved access, visibility splays and foundations for holiday chalets and staff accommodation were put in place in 2011. On 20 March 2013 the then Minister of the Environment issued a letter stating that the host site still had the benefit of planning permission E/2009/0107/F being live. The Council stated that the time limit on this permission had been removed. As it stands the host site for the tourist development has the benefit of a live planning permission, which the Council does not dispute.

13. A non-material change application (ref. LA01/2019/1400/NMC) relating to alterations to the approved road layout to provide enhanced visibility splays and improved pedestrian facilities was granted by the Council on 17 June 2020.

14. The application subject of this appeal sought a change of house type for Sites 5 and 6, which was duly granted by the Council. However, as already detailed above, the occupancy restriction contained in condition 2 was imposed. Whilst that permission is freestanding in the sense it is a full application, it pertained only to a change of house type. It did not seek the principle of development in relation to the already approved use for tourist accommodation.

15. The reason given in the decision notice for condition 2 was to ensure the proposal was in keeping with the character of the rural area. It does not explicitly refer to ensuring no permanent residential use, unlike the wording of the condition itself. At the hearing the Council witness clarified that the reason being framed around rural character referred to differences in character arising between holiday let accommodation and permanently occupied residential use. These would relate to the comings and goings of occupants and general higher levels of activity on site throughout any period of time arising from permanent residential use. I accept this rationale.

16. Having regard to the Planning Strategy for Rural Northern Ireland and the policy therein relating to tourist accommodation, Policy TOU3 'Tourist Accommodation', advocated that in the event of approving development on the basis of meeting tourist need, '*it is essential that the accommodation intended for tourists is retained as such and that a condition will be attached requiring that the accommodation be used for holiday occupation only and not for permanent residential accommodation*'. Again, as outlined above, no such condition was

imposed in the first permission, or in any of the subsequent permissions granted by the Department.

17. I appreciate that when planning powers transferred to the Council from the Department, some older application files inherited by the Council were incomplete. The Council was therefore unable to explain to me why such an omission took place in the first instance and repeatedly so through the various subsequent applications on the wider host site. Nevertheless, this planning history forms a significant component of the case before me and I afford it substantial weight. The extant permission E/2009/0107/F represents a potential fallback position for the Appellants. Whilst the Council considered this fallback to be a notional one, I disagree given the statements at the hearing by the Appellants. The Appellants already operate a substantial tourism development in Ballycastle and they acknowledged that implementing the amended design would be preferable, as it was better suited to modern tourist demands. However, the Appellants also indicated that they could simply build out the remainder of the extant permission if need be and no restrictive occupancy condition would apply. It is also logical from a financial point of view that the Appellants would seek to build out the approved development in phases given the economic climate. The stated fallback is a viable and realistic one.

18. Whilst the Appellants argued that the condition was unenforceable as the issue was not expedient to pursue in the public interest, that is not the test of enforceability as it relates to a condition. Nor does the particular site history render condition 2 unenforceable in its own right. Condition 2 is enforceable in the sense that the Council could take action in the event permanent residential occupation was taking place within the buildings in question. I accept that condition 2 is relevant to the development to be permitted, as the rationale for the Council seeking to impose controls of the type of occupancy is logical and based in regional policy. I also note the Council's reference to the case law of *I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions* which established the principle that where planning permission is granted for a certain use, any limitation on the way that use is exercised must be imposed by express condition, not just in the description of the development.

19. Ordinarily, I would agree that condition 2 would meet all of the legal tests for a condition to be attached to a planning permission for tourist accommodation. However, as it stands, the Appellants have the benefit of the live permission E/2009/0107/F. They could erect the development as was approved. Condition 2 was attached to a change of house type application, which although freestanding in its own right, did not relate to the principle of development, but merely physical alterations to the design of buildings already approved in principle. Deletion of condition 2 would simply leave the change of house type permission on the same terms as the extant 'parent' permission. It is unreasonable to impose a greater restriction upon a change of house type application than what exists upon the extant parent permission, which could be built out without any such restriction.

20. The chalets in question appear, to my mind, designed to deter permanent residential use given their overall size, accommodation schedule and limited storage capacity compared to a conventional dwelling intended for permanent residential use. This extant permission, the lack of an occupancy condition therein, as well as the persistent lack of such a condition being imposed

throughout the extensive history of the site, are such that in this particular case, I agree that condition 2 is not necessary. In the context of what the Appellants are entitled to implement under their existing permission, together with the longstanding failure of the former Department to impose an occupancy condition in the first instance, I agree that the imposition of condition 2 in this case was unnecessary and unreasonable.

21. In the particulars of this case, condition 2 of permission LA01/2020/0809/F fails two of the legal tests. I am not persuaded that any substantial precedent would be set by the removal of condition 2 as it seems highly unlikely there would be other sites with live tourist accommodation permissions wherein no occupancy conditions had been imposed. Whilst there was debate between the parties at the hearing as to the correct specific policy within PPS16 that should have been applied to consideration of application LA01/2020/0809/F, it is not germane to the issue of whether condition 2 is justified. Any concerns in that regard or to the overall processing of that application are matters between the parties.

22. The appeal shall succeed and condition 2 shall be deleted.

This decision relates to the following drawings submitted with the application:

DRAWING NUMBER	**TITLE**	**SCALE**	**DATE**
01B	Location Plan	1:2500	15/04/2021
02B	Site Plan	1:500	15/04/2021
03B	Floor Plans	1:100	15/04/2021
04B	Elevations	1:100	15/04/2021

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:-	Mrs. E Hudson (CC&G BC)
Appellants:-	Mr M Kennedy (MKA Planning) Mr P McHenry Mr D McHenry

List of Documents

Planning Authority:-	'A' Statement of Case & Appendix (CC&G BC) 'B' Rebuttal Statement (CC&G BC)
Appellant:-	'C' Statement of Case & Appendices (MKA Planning) 'D' Rebuttal Statement & Appendix (MKA Planning)