

Parish: Hutton Bonville
Ward: Appleton Wiske & Smeatons

Committee Date : 16 February 2023
Officer dealing : Ms Helen Ledger
Target Date: 16th November 2022
Date of extension of time (if agreed):
17th February 2023

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22/02609/MRC

**Removal of condition 5 (Occupation) from previously approved application
05/00577/FUL Revised application for the change of use of redundant agricultural
building to holiday accommodation**

At: Appletree Cottage Lovesome Hill
For: Ms B Noda.

**The application is brought to Planning Committee owing to lack of compliance with
Planning Policy.**

1.0 Site Description and Proposal

- 1.1 The site is located within the strip of ribbon development along the west side of the A167 in the group of buildings known as Lovesome Hill. It comprises single storey holiday accommodation with two bedrooms, off road parking and an extensive rear garden.
- 1.2 The application seeks to remove a restrictive occupancy condition limiting the use of the building today know as 'Appletree Cottage' for use as holiday occupancy only. It is not on a wider holiday park nor has any linkage to a wider holiday accommodation business. The site has been occupied as a second home by the applicant and her previous husband.
- 1.3 The detached single storey building was converted from an agricultural use following planning applications in 2004 and 2005. The relevant condition is no.5 of application ref no. 2/04/072/0008B and 2/05/072/0008C which states that

"The occupation of the residential accommodation hereby approved shall be restricted to holiday visitors only and no person or persons shall occupy the accommodation for more than eight weeks consecutively".
- 1.4 This condition was subject to an application to remove the condition in 2014 which was refused for the reason set out below. It was most recently also subject to a certificate of lawfulness application attempting to demonstrate the building was not occupied as holiday accommodation, this was also refused for the reason set out in the planning history below.

- 1.5 The applicant is severely disabled and dependent upon a wheelchair. The submitted details describe that it is very difficult to find accessible affordable accommodation. It is understood that the applicant is in full time residence in the property and has been so since May 2022.

2.0 Relevant Planning History

- 2.1 2/04/072/0008B - Change of use of agricultural building to holiday accommodation granted 2004
- 2.2 2/05/072/0008C - Revised application for Change of use of agricultural building to holiday accommodation granted 2005
- 2.3 14/00540/MRC - Removal of Condition 5 of Planning permissions 2/04/072/0008B & 2/05/072/0008C to allow holiday accommodation to be occupied as a dwelling - Refused for the following reason:

The property is located outside any defined Development Limits where the permanent residential use will only be permitted in an exceptional case. Insufficient justification and evidence has been put forward in this case to demonstrate why the property is no longer viable as a holiday let. As such there are no proven exceptional circumstances and the proposal is therefore contrary to Policy CP4 of the Hambleton Local Development Framework.

- 2.4 22/01987/CLE - Application for a Lawful Development Certificate (existing) for permanent residential use. - Refused.

The information provided fails to demonstrate that on the balance of probabilities the stable has been used as a main dwelling house.

3.0 Relevant Planning Policies

- 3.1 As set out in paragraph 2 of the NPPF planning law requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise. The law is set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

Local Plan Policy S1: Sustainable Development Principles
Local Plan Policy S2: Strategic Priorities and Requirements
Local Plan Policy S5: Development in the Countryside
Local Plan Policy E1: Design
Local Plan Policy E2: Amenity
Local Plan Policy HG2: Delivering the Right Type of Homes
Housing Size Type and Tenure Supplementary Guidance
National Planning Policy Framework

4.0 Consultations

- 4.1 Hutton Bonville Parish Council - no response forthcoming

4.2 NYCC Highways - No objections

4.3 Teesside airport - no aerodrome safeguarding objection

4.4 MOD has no safeguarding objections

4.5 Site notice posted and neighbours notified. Two public comments received, both objecting. Comments summarised below.

- Untrue the building was redundant and disused, formally it was a workshop and store
- A barn and agricultural land it would be an asset to the rural economy, opportunities to expand rural enterprise, not redundant
- The property has two offers at the time of sale from agricultural purchasers.
- The conversion to a private dwelling would not benefit the local economy
- Such erosion of the rural economy and enterprise is not in the spirit of local or national policy
- For the previous attempt to overturn this condition (Ref. No: 22/01987/CLE) an email was provided from applicant that stated that the property would be let as holiday accommodation if these applications failed, in benefit of the local economy.
- NYCC have agreed to double council tax on second homes, as Appletree Cottage has been until the recent breach of condition.
- Likely to be a great deal of public interest in this case as other second homeowners look to convert their properties profit from sale at inflated prices as domestic dwellings
- Where would B&B guests stay in the small 2 bed dwelling?
- If Yurt used loss of amenity and privacy noted, and planning permission/building regulations clarification required
- Impact on amenity through conversion of existing vestibule area.

5.0 Analysis

5.1 The main considerations are firstly whether the planning condition still serves a purpose and meets the tests for planning conditions as set out in the NPPF paragraph 55 and 56. It is noted that the applicant failed in a recent application to demonstrate that the building had been occupied as a sole dwelling long enough in order to grant a certificate of lawful use and now seeks to apply the 2022 new Local Plan policy S5 - Development in the Countryside to determine if the condition is still valid. Finally, given the applicant's disability this application requires assessment under the 2010 Equalities Act

5.2 The site provides a small single storey unit of accommodation with a large garden to the rear and short access drive to the front along the narrow frontage. It provides an attractive rural setting for holiday accommodation in a setting not available in more urban areas. It is set in the countryside being within a small group of ribbon development and not within the built form of a settlement. It is well located on the public transport network being on the main Northallerton to Darlington bus route.

- 5.3 Paragraph 56 of the NPPF sets out the tests for conditions as; necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. At the time of the original application in 2004 the planning decision followed the extant development planning policies at the time which prevented new market housing in the countryside save exceptions such as holiday accommodation, which provided an economic benefit.
- 5.4 Current adopted policy S5 describes that development in the countryside will only be supported where it is in accordance with national policy or other policies of the development plan and would not harm the character, appearance, and environmental qualities of the area in which it is located. With regard to rural buildings, it notes that it needs to be demonstrated that the building is:
- i. redundant or disused.
 - ii. of permanent and substantial construction.
 - iii. not in such a state of dereliction or disrepair that significant reconstruction would be required; and
 - iv. structurally capable of being converted for the proposed use.
and the proposal:
 - i. would enhance the immediate setting; and
 - ii. any extension or alteration would not adversely affect the form, scale, massing or proportion of the building.
- 5.5 In this case the site is an established holiday use lawfully used by the current and past occupants as a holiday home. There is no evidence that this lawful use has become redundant or disused. In recent years the holiday at home boom has generated many applications for rural holiday uses within the district; including at the adjacent Lovesome Hill farm that has a camping barn and holiday cottage with consent for a further glamping pod. No details have been put forward to provide evidence as to why the property is no longer considered viable as a holiday cottage.
- 5.6 The submitted details instead argue that the site makes use of a very small former agricultural building of which, despite the one objection received, would have very limited feasible agricultural use with residential neighbours so close and the site access by a narrow single track lane. It notes that this application would create a new dwelling in the countryside but this is now in alignment with policy S5, in that it is the past agricultural use that needs to be considered not it's current holiday use; and on this basis it is considered it can be acceptable under policy S5.
- 5.7 The site is an established unit of holiday accommodation and there is no evidence from officer site visit or otherwise that the building is not structurally sound, and it is clearly capable of conversion to a permanent dwelling. However, no evidence has been presented to show that its conversion to a permanent dwelling would enhance its immediate setting, it is a small holiday dwelling set within domestic gardens. No further changes, such as extension, are proposed and the established changes do not affect the proportions of the building.
- 5.8 It is found that the condition as drafted would still be enforceable and precise enough to identify the limitations. The reasonableness test falls on whether it is found to meet the policy considerations above and is reasonable in regard to these.

- 5.9 It is noted that an application to remove the occupancy condition was first submitted in 2014 (ref:14/00540/MRC) and then considered under the LDF policy CP4. The consideration of this 2014 application was limited to whether a new dwelling in the countryside was acceptable under this policy. It was refused on principle on this basis only, with no further issues raised. There was no indication that the site was unsuitable for holiday use.
- 5.10 The application could deliver a wheelchair accessible home which could be protected as such through an appropriately worded planning condition. It is noted that policy HG2 along with the Council's supplementary guidance on housing size, type and tenure seeks to deliver a proportion of Part M4(3) compliant dwellings, albeit as part of larger developments. The Council's Supplementary Planning Guidance re-iterates this goal. Whilst this policy strictly applies to larger developments, the provision of such a home can be given weight in the planning balance. To this end a condition is recommended, requiring compliance with Part M4(3) of the building regulations.

The Equalities Act 2010

- 5.11 The Equalities Act identifies 9 protected characteristics of which disability is one. Section 149 of the Equality Act 2010 states a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. In this case note is made of the requirement to meet the needs of disabled persons that are different from the needs of persons who are not disabled including steps to take account of disabled persons' disabilities.
- 5.12 To help to consider the requirements of the Act in this case the applicant has written to the Council to describe her circumstances. This notes that within the limits of her mobility, chest down paralysis, it is exceedingly hard to find affordable accessible housing. The applicant is dependent on having an adapted bathroom, bedroom and kitchen. Appletree Cottage, being single storey and partly open plan is already partly adapted for these needs. It has the benefit of accessible parking immediately outside the main door. The bathroom is currently wheelchair friendly, but she would like to improve this and further adapt the kitchen to ensure it safely provides the facilities needed. She feels she cannot do this unless she had the assurance of a permanent residence. Her spinal injury specialists are at James Cook Middlesbrough, where the applicant attends for regular visits to the neurologist and urologist. As a Hambleton resident, all her crucial support network is in the surrounding area. The property is also relatively convenient for accessing the East Coast Main Line from the station in Northallerton.
- 5.13 No evidence has been provided to demonstrate the poor market provision of accessible dwellings for the applicant, although it is noted that as described Appletree cottage is single storey and obviously meets the majority of the specific needs of the applicant. It is indeed well located for her medical appointments but so would be a number of settlements within and to the north of Hambleton. Though perhaps these places would be outside the immediate areas for the support of friends and family.

5.14 It is understood that the applicant is currently residing at the premises, in breach of the condition and that she has no alternative accommodation. As such it must be understood that the effect of a refusal in this case would result in the applicant needing to seek alternative accommodation. This impact needs to be considered in the planning balance in the light of the Equalities Act.

Planning balance

5.15 The balance is between the requirement to consider a protected characteristic as identified in the Equalities Act along with the provision of a Part M4(3) wheelchair accessible home and whether the condition limiting the occupation of the dwelling is still valid considering the planning tests for conditions as set out above. The Equalities Act requires the consideration of the disability of the applicant in making the decision but it does not require that the protected characteristic be given great weight over any other material or policy considerations in the decision.

5.16 In this case it is considered that the personal circumstances of the applicant, combined with the provision of a Part M4(3) wheelchair accessible home is sufficient to outweigh the other material considerations in this case and as such the application is recommended for approval.

6.0 Recommendation

6.1 That subject to any outstanding consultations the application be **Granted** subject to the following conditions:

1. Within three months of the date of this approval details of the foul sewage and surface water disposal facilities shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a timescale for the implementation of any amendments to the existing drainage necessary. The development shall then be implemented in accordance with the approved details.
2. The access to the site shall be laid out and constructed in accordance with the following requirements:-
 - (ii) Any gates, barriers or other means of enclosure shall be erected a minimum distance of 4.5 metres back from the carriageway of the existing highway and shall open into the site.
 - (iv) That part of the access extending 4.5 metres into the site from the carriageway of the existing highway shall be made up and surfaced in accordance with Standard Detail number E6 and the Specification of the Local Highway Authority.
3. Visibility splays providing clear visibility of 2.4 metres x 33 metres measured down the centre line of the access road and the nearside channel line of the major road shall be maintained at the junction of the access road with the county highway. These visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

4. Within 6 months of the date of this permission a scheme shall be submitted to and approved by the Local Planning Authority setting out details to demonstrate compliance with Part M4(3) of the Building Regulations to ensure that the property is wheelchair accessible. The scheme shall include a time table for implementation. The development shall be implemented and maintained in accordance with the approved details.

The reasons for the above conditions are:-

1. In order to avoid the pollution of watercourses and land in accordance with Hambleton District Local Plan Policy RM3.
2. In order to provide suitable access to the site.
3. In the interests of road safety to provide for drivers of vehicles using the access road to the site and the public highway with a standard of intervisibility commensurate with the vehicular traffic flows and road conditions
4. In order to ensure that a wheelchair accessible home is provided.