

**WRITTEN STATEMENT
OF
WINCHESTER CITY COUNCIL
APPEAL BY MR M CULHANE
OLD ORCHARD, KILHAM LANE, WINCHESTER, SO22 5PT
PINS REFS: APP/L1765/C/19/3230907
WCC REF: 16/00146/USE**

PLANNING OFFICER'S STATEMENT

NOVEMBER 2019

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INTRODUCTION

This written statement relates to an enforcement notice issued on 10 May 2019 and the alleged material change of use of the land to a mixed use comprising a residential unit and five self contained holiday apartments.

The notice requires the cessation of the holiday apartment use and the removal of both kitchens and bathrooms from the five units.

The appeal relates to grounds (a) and (f) only.

A planning contravention notice was served on the appellant but never returned and consequently an Enforcement Notice was served.

SITE DESCRIPTION

The site is located within the open countryside and is accessed off Kilham Lane. It is also serviced at the rear via the neighbouring commercial property. This is within the ownership of the appellant.

Three of the apartments (Gala, Pippin, and Bramley) form an extension to the house known as the Old Orchard (see 2006 applications). The other two (Braeburn and Russet) are a separate building at the rear and are on the same footprint as the 2009 approval. Details of their layout can be found on booking.com (Appendix A).

GROUND (A) THAT PLANNING PERMISSION SHOULD BE GRANTED FOR WHAT IS ALLEGED IN THE NOTICE

PLANNING HISTORY

06/01273/FUL Removal of existing bungalow roof and conversion to a two storey house, addition of single garage to front and two storey extension to rear.(Re-submitting). Approved 7.6.06

06/02394/FUL Demolition of existing bungalow and erection of 1 no two storey house. Approved 13.9.06

09/01741/FUL Detached double garage with storage over. Approved 19.11.09

CONSULTATIONS

None received at the time of writing

REPRESENTATIONS

None received at the time of writing

CONSIDERATIONS

Principle

The National Planning Policy Framework (NPPF) is a material consideration in determining planning proposals together with up to date local plan policies and is guidance for the Local Planning Authority. At its heart is the presumption in favour of sustainable development (paragraph 11) and the need to assess a development proposal's economic, social and environmental role (paragraph 8). As such sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life (paragraph 10).

The site is located within the open countryside where there is a general presumption in favour of development under policies CP8 and MTRA4 of the Winchester District Local Plan Part 1 providing any tourist accommodation is low key, on a small scale site and is appropriately located in terms of character and the landscape of the area. Ideally rural business uses should be within existing buildings via a conversion as per the supporting text of MTRA4. However, it is accepted that these uses could also be within well designed new buildings as per paragraph 83 of the National Planning Policy Framework (NPPF, 2019).

The reasons for issuing the enforcement notice refer to the supporting text of policy MTRA4 in that buildings should be re-used and that there should be an operational need. This reflects paragraph 84 of the NPPF where sites should meet local business and community needs in providing tourist type accommodation. The situation on site involves the creation of new accommodation in the form of an extension and a new building located to the rear of the house. None of these buildings are conversions and do not have planning permission and as such have not been assessed in terms of meeting the local community need. The appellant has demonstrated that it is in a sustainable location in terms of transport provision and facilities. However, the apartments are available all year round and cater not only for the long stay but also the one night stay (£80 per night). This type of operation would usually be described and comprise the appellant's business case. However, the appellant has failed to provide this information either as part of his appeal case or via a planning contravention notice.

The appellant does not live on site and the units operate separately from the main house. As such the appellant's interest in the site is purely commercial and it can be estimated that approximately 80% of the site is taken up by that commercial use. Clearly, this is a going concern and even though the number of units is low, the turn around of customers throughout the year would amount to large numbers just on the basis of the availability of the units alone. As such it cannot be considered low key or a small scale site on the basis of the information put before the local planning authority. This would be contrary to policy MTRA4.

No other objections have been raised in respect of character, landscape, neighbouring amenity or design.

SUGGESTED CONDITIONS

In order to meet HMRC tax occupancy conditions

<https://www.gov.uk/government/publications/furnished-holiday-lettings-hs253-self-assessment-helpsheet/hs253-furnished-holiday-lettings-2019> each unit must be available as a furnished holiday let for 210 days in the tax year and can only be let out for 105 days in the year. Given that the appellant has not provided any information in respect of the lettings, it can be presumed that each unit can be lawfully let for a maximum of 105 days in a tax year. However, it is apparent that each unit can be booked for more than that. Records would have to be kept for tax purposes so it would not be asking any more of the appellant if requested by the local planning authority as an imposed planning condition.

The appellant has suggested a condition limiting the occupancy of the accommodation to a number of weeks of any single letting and to the number of times by the same occupier. However, this would be difficult to monitor and too restrictive as the local planning authority would need to know that individual's name, the period of their stay and who they stayed with as they may not have booked in their name.

Suggested condition and informative wording:

Each unit of holiday/ tourism accommodation hereby approved must be let for no more than 105 days in any one tax year and for no other purpose other than that approved. A register of all lettings must be maintained and provided to the local planning authority at the beginning of each tax year.

Reason

To ensure that the lettings do not exceed the approved number and to satisfy policy MTRA4 in the Winchester District Local Plan Part 1.

INFORMATIVE

Please note that the development requires a commercial bin collection

OTHER MATTERS

On 2nd June 2019 Natural England produced standing advice to local planning authorities on achieving nutrient neutrality for new development in the solent region. The property lies within the catchment of the Solent and provides for overnight accommodation. As such there is wastewater generated by the occupants of the units together with the house that may give rise to nitrogen loading. The appellant has not demonstrated that the accommodation use is either nitrogen neutral or generates a net loss.

The onus would be on the appellant to provide details of the drainage system used and the calculations to demonstrate that the development is nitrogen neutral or generates a net loss. This would be a matter for the Inspector to determine in light of Natural England's standing advice.

CONCLUSION

The appellant has not provided enough information to justify that the tourist/ holiday accommodation is low key or from a small scale site. This is contrary to local plan policy. Should the Inspector find that the development is acceptable then it is considered that the suitable conditions can be imposed to control the use of the accommodation.

GROUND (F) THE STEPS REQUIRED TO COMPLY WITH THE REQUIREMENTS ARE EXCESSIVE, AND LESSER STEPS WOULD OVERCOME THE OBJECTIONS

The appellant has suggested that it is unnecessary and unreasonable to require the removal of all of the kitchens and bathrooms from the five units and states that the unit known as Gala was already annexe type accommodation at the time planning application ref 06/01273/FUL was implemented. However, given that the approved drawing does not show a kitchen in the extension now forming Gala and the appellant has not provided evidence to demonstrate that it was originally built in that way; there is no Building Regulation completion certificate or recorded visits to sign off the installation of plumbing/ soil pipes, it is reasonable to require the removal of those elements to revert the units to incidental. Moreover, should the bathrooms remain in place there would still be a propensity to use the units independently of the main house as it would take little effort to create a small food preparation area such as that which could be provided for by a microwave or toaster.

As such it is considered that the requirements are not excessive and the appeal on ground (f) should fail.