HOUSE AT WARLAWBANK STEADING, RESTON. TD14 5LW

APPEAL ON THE REFUSAL OF 21/01262/FUL.
THE APPLICATION TO REMOVE CONDITION 2 OF THE APPROVED APPLICATION: 18/01000/FUL.
PERTAINING TO THE USE AS A HOLIDAY LET ACCOMMODATION

This application, to the Council's Local Review Body, is made against the refusal of planning permission on 8 October 2021 (reference 21/01262/FUL) for our application seeking to remove Condition No 2 from the original grant of permission for the erection of building on the land to be used as holiday let accommodation, dated 19 April 2019 (reference 18/01000/FUL).

Having granted planning permission, albeit that a condition (No 2) was imposed for the erection of a dwelling house for holiday let purposes, it is contended that the Council, as the Planning Authority, has accepted the principle of the erection of building, that has been purpose designed for occupation as a dwelling house.

The proposed development includes: two first-floor double bedrooms, together with bathroom facilities, full kitchen facilities, together with appropriate levels of living accommodation, on the ground floor; all of the facilities and amenities necessary to enable the building to be occupied for residential purposes. The design fully complies with the space standards required to meet with the current Building Regulations.
It would be subject to a Building Warrant application, to meet all necessary, technical compliances.

The 2019 grant of planning permission set out, in the associated 'Report of Handling', that there is an established 'building group' (in terms of the Council's policy HD2) of three dwelling houses at Warlawbank and the principle of erecting a detached dwelling house on this site has therefore been accepted.

Therefore, it is contended that Condition No 2 places a restriction on the manner and duration of that residential occupation and is not one that would control the acceptance for the erection of a building for residential occupation.

The Council's 2019 'Report of Handling' states that the condition is required given amenity issues resulting from its proximity to a livestock building/sheep handling facilities. This condition originates from the Environmental Health Officer's consultation which considered the proposed erection of a dwelling house for permanent residential use was unacceptable in amenity terms. The report then identifies that, '… windows on the rear elevation were removed to address potential noise and odour impacts'. As a result of those amendments the use of the property, for holiday let for short periods of time, was considered by the Chief Planning Officer to be acceptable in amenity terms.

The agricultural building and facilities is then referred to as a 'modern livestock building'. However, there is no Council planning record for a grant of planning permission for the erection of that building, since 1990, contained within the planning portal details for the TD14 5LW postcode. Accordingly, it must be determined that the building was erected under the authorisation provisions of Article 3(1), Schedule 1, Part 6, Class 18 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

That authorisation, by the Scottish Ministers for the erection of a building for the purposes of agriculture carried out on agricultural land, then removes permission for any such building for the housing of specific animals or animals bred for their skin or for fur or for the storage of slurry or sewage sludge within 400 metres of the curtilage of any protected building (defined as any permanent building which is normally occupied by people, or would be so occupied, if it were in use for purposes for which it is apt, but excludes a dwelling on another agricultural unit which is used for or in connection with agriculture).

In this instance, the approved building and that of the applicant, together with the two neighbouring dwellings, are all within 50 metres of the modern livestock building and, therefore, well within the 400 metre 'cordon sanitaire'.

Despite the concerns, raised by the Council's Environmental Health Officer, no evidence has been provided that there have been any complaints received to date, relating to any detrimental residential amenity resulting from the agricultural use of the building by those permanent occupants. Equally, and regardless of the Council's use of the planning process to seek to protect future occupants from potential impacts of the use of the agricultural building, there are more than adequate statutory enforcement powers contained with the Environmental Protection legislation, above and beyond those discretionary planning enforcement powers.

Indeed, it is possible that the lack of any complaint is due to the limited and intermittent nature of its agricultural use, located on the hilltop and a distance from the main farm complex at Newlands, Sunnyside.

The exposure to the approved property, to noise, odour, dust and insects, would be no greater than that which exists to the applicant or to the occupants of the two neighbouring, permanent, residential properties.
However, no detail of the levels of such detrimental exposure have been identified and therefore it is not possible to take account of those adverse impacts in order to attempt to mitigate any such impact. When considering what matters have been undertaken by the applicant, or neighbours, (permanent neighbours) it is obvious that no mitigation actions have been taken.

As such, the potential amenity impact argument is questioned. One that will be wholly acceptable to residential occupants for up to a period of 4 weeks, especially during the summer months of the year, but not for more permanent residential occupants.

Any future occupants of this new residential building, whether 'holiday makers' or more permanent residents, would be wholly aware of the locational circumstances of the proposed property in the working countryside and would be fully aware of the existing levels of amenity; they would not occupy the property in total ignorance.

Expected amenity levels for occupants in urban areas and those for properties in the working countryside cannot be compared and land use planning policies or their subsequent guidance cannot be drawn up as a single level of expectations for use in such circumstances.

As the Council have based their refusal of planning permission, for the removal of condition No 2, on the provisions of Circular 4 of 1998 it is pertinent therefore to consider the relevant sections of that Circular, including that devoted to conditions that seek to 'regulate after development'; at paragraph 84.

It states that, '…particular care is needed when imposing a condition that will remain in force after the development has been carried out as these can place onerous and permanent restrictions on what can be done with the premises affected. As such they should not be imposed without scrupulous weighing of where the balance of advantage lies.'

The 'Report of Handling' makes it clear that instead of undertaking such a detailed assessment of the appropriateness or otherwise of a regulatory condition here a 'standard condition' has been imposed set principally upon the potential concerns and comments of the Council's Environmental Health Officer.

It is further contended that that Officer, being so concerned of the impact on future occupants cannot identify how the provisions of the Environmental Protection legislation could be utilised to serve a suitable abatement notice in order ameliorate an identified statutory nuisance. It falls to therefore conclude that there is no nuisance in this instance.

Whereas the planning condition, controlling the duration of residential occupation, could adequately resolve the otherwise unacceptable amenity issues for such future occupants; in circumstances where no identified problem presently exists or has been established to exist.

Further the Council identifies that Condition No 2 is the Council's standard 'holiday accommodation condition'. The reason for its imposition is that the accommodation is, "… not designed for permanent accommodation" and that residential use would be, "… contrary to the Council's housing in the countryside policies".

However, as the reason for refusal states: "The proposed removal of Condition 2 of planning permission 18/01000/FUL would be contrary to Local Development Plan 2016 policies PMD2 (Quality Standards), HD2 (Housing in the Countryside), HD3 (Protection of Residential Amenity) and IS2 (Development Contributions) as the Planning Authority would lose control over the consented use of the development for holiday let purposes."

This first part identifies a number of relevant local plan policies against which it is identified that the proposed removal of the condition would be contrary. However, and contrary to the provisions of section 25 of the Town and Country Planning (Scotland) Act 1997, do not set out what detriment would be caused if the development were otherwise to be approved.

The Scottish Ministers advice is that an applicant should be clearly able to understand why planning permission has been refused. However, this part of the reason for refusal identifies only that any detriment would be that the Planning Authority would losing control over the use of the development for holiday let purposes.

Therefore, there is no identification of what, if any, detriment would be caused by permitting the development as applied for.

Taking on other arguments provided in the 'Report of Handling' we would contend that it is not part of the circular tests as to whether or not a standard condition imposed by a Planning Authority meets the enforceability test based on the fact that it has not been challenged. Indeed, paragraph 8 of the Circular whilst identifying some benefit of the use of standard conditions warns that their, '… slavish or uncritical application of conditions is wholly inappropriate, and their use may encourage the use of conditions as a matter of routine without the careful assessment of the need for a condition which every applicant should be able to expect'. The very same level of assessment as required by paragraph 84, above.

We could make an argument against the potential for a single dwelling house generating a sufficient number of children by itself to justify a financial contribution towards the existing deficiency in the Council's educational estate.
However, in this instance no such details were presented to the applicant as part of the consideration of our application by the Council and as such we have not been able to be fully considered here. Accordingly, its inclusion in the reason for refusal is disingenuous.

However, should the Local Review Body be so minded to allow this review appeal then the matter of arranging for an appropriate development contribution can be considered if deemed necessary.

Report prepared on behalf of Timber Bush Associates Limited.
December 2021.

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