

Appeal Decisions

1. PURPOSE AND RECOMMENDATIONS

Purpose of Report:	To inform Members of notified appeals and appeal decisions and to take them into account as a material consideration in the Planning Committee’s future decisions.
Recommendations:	It is RECOMMENDED that:
	(This report is for Information)
Wards:	Council-wide

3.0 APPEAL DECISIONS

3.1 Appeal Reference: APP/D1265/W/20/3252152

Planning Reference: 6/2019/0553

Proposal: Removal of condition 13 of Planning permission 6/2018/0653 (Change of use of existing buildings, conversion of existing school building, demolition of extensions and erection of 1 1/2 storey extension to form 3 dwelling houses and erection of 6 dwelling houses with associated parking and landscaping) to allow unrestricted occupation of the dwellings.

Address: Former West Lulworth C Of E Primary School, School Lane, West Lulworth, BH20 5SA

Appeal Allowed and full costs awarded by decision letter dated 11th September 2020

The proposal involved the removal of condition 13 of planning permission 6/2018/0653 (to erect six dwellings and convert the former school buildings into three houses) which restricted the occupancy of the new houses to being a person’s principal or sole residence.

Planning Committee on 4th December 2019 resolved to refuse permission contrary to officer recommendation for the following reasons:

“The proposal, by means of the potential for vacant properties would result in harm to the character and vitality of West Lulworth, contrary to Policy H14 of the emerging Purbeck Local Plan. The Council considered that as the Plan was at an advanced stage of preparation, that this Policy could be given weight, in accordance with Paragraph 48 of the NPPF, and that the condition was reasonable and necessary in order to maintain the character and vitality of West Lulworth, in accordance with Paragraph 55 of the NPPF. The proposal was therefore contrary to Policy H14 of the emerging Local Plan, and paragraphs 48 and 55 of the NPPF.”

The Inspector considered that the main issue in the appeal was:

- Whether condition 13 is reasonable and necessary having regard to local and national planning policy.

The Appeal Inspector considered that Policy H14 of the emerging Purbeck Local Plan, from which the condition is derived, cannot be given weight in the decision making process at this time.

The Appeal Inspector noted that since the Planning Committee that took place, an Inspectors Post Hearings note, relating to the public examination of the Local Plan has been published. The appeal Inspector noted that the Inspector examining the Local Plan (Local Plan Inspector) had commented that she was not persuaded that Policy H14 of the Purbeck Local Plan should apply to replacement dwellings, but that in other respects, no changes to the policy were indicated as being required.

However, the Appeal Inspector determined that as the Council has not reached the stage of publishing modifications to the Local Plan or undergoing publicity for the modifications and their further examination, Policy H14 cannot be given the weight of an adopted development plan policy. This is because the Policy may yet be further modified as part of the process.

The Appeal Inspector accepted that this position may soon change, but at present, the emerging policy H14 does not have sufficient weight to warrant the retention of the condition.

The appeal was therefore allowed, and condition 13 deleted from the planning permission 6/2018/0653.

An application for costs was also submitted.

The Appeal Inspector states:

“I quite understand the members concern in seeking to ‘maintain the character and vitality of West Lulworth’ and to resist the increase in second homes in the area in order to limit the potential for vacant properties. However, under the circumstances of this particular policy and the progression of the plan the basis for that position has not reached a definitive stage such that it could be fully relied upon for decision making. However well meaning, the overturning of the officers’ recommendation was by members, the removal of the condition was unreasonable on the evidence before them and it was equally unreasonable for the Council not to inform members that it had, under other powers, separately approved applications in the AONB without the imposition of the same condition.”

The Appeal Inspector also concluded that the Council, in maintaining the case for the retention of the condition, amounted to unreasonable behaviour, as the Council cannot be certain of what modifications may be made to Policy H14, and whether the Purbeck Local Plan will be found sound and will be adopted.

The Council was also found to have acted unreasonably due to a delay in issuing the decision after the Planning Committee. Although the Council was going through the complaints procedure with the applicant, the Appeal Inspector determined that this should not have influenced the timing of the issuing of the decision notice.

For the reasons above, the costs appeal was allowed and an award of full costs is made against the Council.