

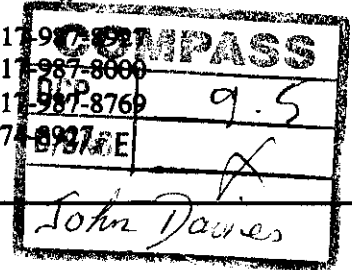


# The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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Our Ref:  
T/APP/F1230/A/95/247587/P7

Date: **30 OCT 1995**

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6  
APPEAL BY MR W O P MILES  
APPLICATION NO: 1/E/94/0524C

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the West Dorset District Council to refuse an application for planning permission under Section 73 of the Town and Country Planning Act 1990, for the development of land without complying with conditions subject to which a previous planning permission was granted. The planning permission was No 1/E/94/0286F dated 15 July 1994 for alterations to convert a stable to 2 units of accommodation on land at Knap Farm, Buckland Newton. I conducted a hearing into the appeal on 27 September 1995. At the hearing, an application was made on behalf of your client for an award of costs against the West Dorset District Council. This is the subject of a separate letter.

2. The conditions in dispute are Nos 2,3,4,7 and 8 that state:

2. The accommodation units hereby approved shall be used for holiday accommodation purposes only and for no other purpose.

3. No person shall occupy the holiday accommodation hereby approved, for longer than 4 consecutive weeks, or return within 6 weeks of departure.

4. A register of all persons occupying the holiday accommodation hereby approved shall be kept by, or on behalf of, the owner/owners of the holiday accommodation. The said register shall be made available for inspection during all reasonable hours at the request of a duly authorised officer of the Local Planning Authority, for such time as the development continues to be used as holiday accommodation.

7. The development hereby approved shall not be commenced until details of additional planting along the western boundary shall have been submitted to and agreed in writing by the Local Planning Authority. Such scheme shall be implemented during the planting season November-March inclusive, immediately



following commencement of the development or as may be agreed otherwise in writing by the Local Planning Authority. The scheme shall include provision for the maintenance and replacement as necessary of the trees and shrubs for a period of not less than 5 years.

8. No development shall be commenced until revised details of the point of vehicular access into the "parking area" shall have been submitted to and agreed in writing by the Local Planning Authority.

3. The reasons for the conditions were stated as:

2. The use of the development hereby approved as a permanent residential accommodation would be contrary to the Local Planning Authority's policy for the control of development in rural areas beyond defined development boundaries.

3. The use of the development hereby approved as permanent residential accommodation would be contrary to the Local Planning Authority's policy for the control of development in rural areas.

4. To ensure that the accommodation is used for holiday purposes only.

7. In the interests of visual amenity.

8. In the interests of safeguarding the adjacent specimen tree.

4. From my inspection of the site, my reading of all the representations and the submissions presented at the hearing I consider that there is one main issue in this appeal. This is the effect that the removal of these conditions would have upon the character and appearance of the surrounding rural area, having particular regard to the location in the West Dorset Area of Outstanding Natural Beauty (AONB) and the advice in Circular 11/95 on the use of conditions.

5. The development plan is comprised of the Dorset (Excluding South-East) Structure Plan Second Alteration approved in May 1993. Policy D1 restricts residential development in the countryside outside settlements to cases where there is an essential agricultural, horticultural or forestry need. Policy D3 applies this limitation to proposals for the change of use or adaptation of buildings. The boundary of Buckland Newton is presently defined in the deposit West Dorset District Local Plan. You argue that the deposit Local Plan boundary has no greater weight than that defined in the Village Plan for Buckland Newton which was originally approved by the Council as development control policy in 1979. However, I do not accept this view since the 1979 boundary did not form part of an adopted local plan and the Council confirm that it was withdrawn in 1991. The Plan which is presently on deposit has been prepared in accordance with statutory procedures and must take precedence over any informal development control policies which have been formally withdrawn by the Council. Consequently, the boundary of Buckland Newton for policy purposes is presently that defined in the deposit Local Plan.

## Condition 2

6. The removal of this condition would permit the proposed accommodation to be used for unrestricted residential use, rather than being limited to holiday use only. The appeal site lies outside the defined boundary of the village and, since no arguments of agricultural or other need are put forward, the conversion of the building to residential use would be contrary to Structure Plan Policy D1. It would also conflict with Policies SP3 and SP4 of the deposit Local Plan which apply similar restrictions to residential conversions outside the defined development boundary. But this cannot be conclusive of the outcome since the Local Plan is as yet unadopted and the boundary is the subject of objections, particularly by the appellants. I therefore turn next to other considerations.

7. You argue that the appeal site can be regarded as either an infill or a minor extension to a group of dwellings in accordance with paragraph 2.18 of Planning Policy Guidance Note 7 (PPG7). However, this paragraph deals with new housebuilding rather than conversions. It may have been relevant when permission was granted for a new house on this site in 1989 but it has little bearing upon the conversion of existing buildings. Advice on such proposals is set out in paragraph 2.15 of PPG7 and the Council claim that the conversion of these buildings to residential use would be contrary to this on the basis that there is no mention of such uses being acceptable. I do not accept this interpretation since the paragraph states, quite unequivocally, that there should generally be no reason to prevent the conversion of rural buildings to other uses provided they are in keeping with their surroundings. Annex D makes it clear that applications for residential use should be examined with particular care but it does not follow that such conversions are unacceptable in principle.

8. The Council argue that the domestic paraphernalia likely to be associated with permanent residential use would be located in front of the proposed dwellings because of the lack of space to the rear or side of the building. You argue that there would be little difference in appearance between unrestricted residential and holiday use, and that the former would give the properties more of a rural character.

9. In my view there would be little difference between the two uses in terms of car parking since there is every likelihood that permanent residents in this rural location would own a car, and people on holiday would almost certainly come by car. However, holidaymakers would have less need for garden sheds, greenhouses, washing lines and similar trappings of domesticity which are likely to accompany longer term occupation. Because of the restricted nature of the appeal site, there is little scope for such structures and equipment to be installed anywhere apart from in front of the proposed dwellings. Furthermore, permanent residents could, quite reasonably, wish to create private amenity space for themselves, which would almost inevitably require the screening of part of the area in front of the building. Such alterations would have a considerable visual impact because of the visibility of the appeal site and its elevation above the adjoining bridleway, giving it an urban appearance out of keeping with the rural character of the locality.

10. I accept that the appeal site is screened to an extent by existing trees and shrubs but these permitted clear views of the site from the adjoining bridleway at the time of my visit. The deciduous nature of much of the existing landscaping would provide an even less effective screen during the winter. Whilst there would be only limited impact on the natural beauty of the wider AONB, the introduction of domestic curtilages in such a highly visible location can do nothing to further the objectives of the area's designation, or of the Structure

and Local Plan policies designed for its protection. In reaching this conclusion I have borne in mind the amount and nature of development in the immediate vicinity, including the adjoining house known as Bladeley Cottage. Nevertheless, I do not consider that this development justifies the conversion of this building to unrestricted residential use in view of the likely visual impact and its urbanising influence.

11. You suggest that such problems can be overcome by conditions restricting permitted development rights. But in my view conditions would not overcome the likely adverse consequences I have identified since it would be unreasonable to refuse to allow the addition of normal domestic structures, or the creation of a private amenity space, if unrestricted residential use were to be permitted. There was also discussion at the hearing regarding the possibility of a condition to allow longer term letting during winter months since holiday units may be empty for much of the winter. I note that the Council has attached such a condition to holiday accommodation at Holcombe Valley cottages. However, the planning objections I identify above relate to the principle of unrestricted residential use and do not apply only during certain months of the year. A condition allowing unrestricted residential use during the winter months would therefore fail to overcome objections to the principle involved.

12. I conclude that the conversion of this building for unrestricted residential use would conflict with the development plan and with the deposit Local Plan, and would cause unacceptable harm to the character and appearance of the surrounding rural area. Consequently, planning permission would have to be refused without Condition 2 which therefore satisfies the test of necessity set out in Circular 11/95.

#### **Conditions 3 and 4**

13. The Council state that Conditions 3 and 4 have been used elsewhere in the District but do not dispute that they were not attached to several recent permissions to which you refer. No justification is put forward for the periods specified in Condition 3 and I accept your view that there is no planning reason to prevent someone returning on holiday within 6 weeks. Nor can I find any planning justification for limiting the length of a holiday to 4 weeks. The Council argue that Condition 3 is necessary because of the visual impact of domestic paraphernalia associated with long term residential use, but Condition 2 achieves the same aim. Further, it could prove difficult to enforce Condition 3 in view of the problems involved in monitoring and detecting a breach. The register required by Condition 4 could assist but I consider this to be an unreasonable intrusion into the privacy of individual holidaymakers. The Council maintain that this condition is necessary to ensure holiday use but Annex 2 of PPG21, on Tourism, makes it clear that a holiday occupancy condition such as Condition 2 is enforceable. Paragraph 15 of Circular 11/95 states that conditions should only be attached if permission would have to be refused if they were not imposed and, for the reasons given, Conditions 3 and 4 are clearly unnecessary.

#### **Condition 7**

14. The Council argue that additional planting is required to screen the parking area in front of the building but there is already an attractive area of landscaping between the drive to Knap Farmhouse and Lockett's Lane which, whilst not totally screening the appeal site, would serve to soften the impact of parked cars. I accept your view that little purpose would be served by removing this landscaping and that it is likely to remain. Bearing in mind the requirements for parking, turning and access, which I deal with further below, there would

be little scope for carrying out any meaningful additional planting within the appeal site. I do not consider that the absence of such planting warrants refusal and the condition may therefore be removed.

### **Condition 8**

15. The Council's concern here is that the proposed access would lead to the loss of the mature poplar immediately adjoining the appeal site. Although this tree is not covered by a Tree Preservation Order, it makes a significant contribution to the appearance and rural character of the locality. The proposed access would require the construction of retaining walls and additional hard surfacing, all of which would be within the canopy of the tree, with the consequent risk of damage to the root system. Although I accept that digging could be carried out by hand and that large roots could be bridged, the work involved would in my opinion pose a significant threat to the tree. Furthermore, the new ramped access would cover a grassed area within the canopy and would hence reduce the amount of water received by the root system. It may well prove possible to construct the access without removing this poplar but, in view of the nature of the work and its location within the canopy, I consider that this tree's retention in the longer term would be improbable. There is in my view ample scope to relocate the access so as to come off the existing drive to Knap Farm and I therefore conclude that Condition 8 is reasonable and justified in order to protect the appearance of the area.

16. I therefore find Conditions 3,4 and 7 to be unnecessary and I shall remove them from the permission, retaining Conditions 2 and 8. No submissions were made by either yourself or the Council in relation to the other conditions attached to permission No 1/E/94/0286F and so these have also been retained.

17. I have taken account of the previous consent for a detached dwelling on the appeal site but that outline permission was granted in 1989, prior to the revision of the settlement boundary to exclude the site. The permission has now lapsed and it has hence had little bearing on my decision. I have also considered the other appeal decisions to which you refer but I do not find them to be so similar that they should influence my decision which has been made on the individual merits and circumstances of this appeal. I have had regard to all other matters raised but I find nothing to be sufficient to alter my conclusions on the main planning considerations which lead me to my decision.

18. For the above reasons and in exercise of the powers transferred to me I hereby allow this appeal and grant planning permission for alterations to convert a stable to 2 units of accommodation at Knap Farm, Buckland Newton in accordance with the application No 1/E/94/0524C made on the 3 October 1994 subject to the following conditions:

1. the development to which this permission relates must be begun not later than the expiration of 5 years beginning with the date of this permission;
2. the accommodation units hereby approved shall be used for holiday accommodation purposes only and for no other purpose;
3. the development hereby approved shall not be first occupied until details of the external finish and treatment of the external walls shall have first been submitted to and agreed in writing by the Local Planning Authority;

4. the development hereby approved shall not be commenced until details of the design, materials and external appearance of the windows shall have been submitted to and agreed in writing by the Local Planning Authority;

5. no development shall be commenced until revised details of the point of vehicular access into the "parking area" shall have been submitted to and agreed in writing by the Local Planning Authority;

6. foul drainage from the proposed development shall be by way of a sealed cess pit only, unless otherwise agreed in writing by the Local Planning Authority.

19. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

20. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J. Davies', written in a cursive style.

JOHN DAVIES BSc MRTPI  
Inspector

**APPEARANCES**

**FOR THE APPELLANT**

- Mr Robin Bryer BA, MRTPI Chartered Town Planner

- Mr Stuart Murgatroyd RHSCert, DipLA Landscape Architect

- Mr W O P Miles Appellant

**FOR THE LOCAL PLANNING AUTHORITY**

- Mr Robert P Burden BSc, MRTPI Senior Planning Officer, West Dorset D C

**DOCUMENTS**

- Document 1 List of persons present at the Hearing

- Document 2 Council's Letter of Notification

- Document 3 Statement by the Appellant's Landscape Architect

- Document 4 Observations by the Council's Landscape Officer

- Documents 5i,ii Council's letters to the Appellant

- Document 6 Appellant's Letter to Ward Councillor of 22 October 1990

- Document 7 Permission No 1/E/93/0684C: Holcombe Valley Cottages

- Document 8 Permission No 1/E/90/0131F: Buckland Newton House

- Document 9 Extract from JPL, March 1990 submitted by Agent

- Documents 10i-ix Bundles of documents B, M and W submitted by Agent

**PLANS**

- Plans A1,ii Submitted with Planning Application No 1/E/94/0286F

- Plan B Details of dwelling permitted on Appeal site by Planning Permission No 1/E/92/0342R

- Plan C Extract from 1979 Village Plan for Buckland Newton

- Plan D Drawing submitted by Appellant's Landscape Architect showing Poplar tree adjacent to Appeal Site



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Our Ref:  
T/APP/F1230/A/95/247587/P7

Date: 30 OCT 1995

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND  
SCHEDULE 6  
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)  
APPLICATION FOR COSTS BY MR W O P MILES

1. I refer to your application for an award of costs against the West Dorset District Council which was made at the hearing held at Stratton House, 58 High West Street, Dorchester on 27 September 1995. The hearing was in connection with an appeal by Mr W O P Miles against a refusal of planning permission on an application for the development of land without complying with conditions subject to which a previous planning permission was granted. The planning permission was No 1/E/94/0286F dated 15 July 1994 for alterations to convert a stable to 2 units of accommodation on land at Knap Farm, Buckland Newton. A copy of my appeal decision letter is enclosed.
2. In support of your application you refer to an extract from the Journal of Planning & Environment Law, dated March 1990, which quotes a speech by the then Minister of State at the Department of the Environment in which he emphasised the need for planning authorities to be consistent in their decisions on similar applications. The Council argue that circumstances have changed since the permission for a detached house on the appeal site was granted but you consider that they have not. The emerging Local Plan and the 1979 Village Plan are of the same status since neither is statutory and the first opportunity for the appellant to object to the revised boundary is the forthcoming Local Plan inquiry. The appellant therefore has every right to expect the same decision on an application to convert the appeal building to permanent dwellings as on the application for a new dwelling. The Appendix to Circular 8/93 sets out examples of unreasonable behaviour by planning authorities and these include coming to a different decision when circumstances have not materially changed. The circumstances of the application to convert the building were so similar to the approval for a new dwelling that the Council's decision was not justified. The Council had acted unreasonably in imposing the conditions restricting use to holiday purposes only and a full award of costs was justified.
3. In the alternative, if it were decided that some conditions should remain, then a partial award of costs is justified on the grounds that certain of the conditions imposed were





unnecessary and unreasonable. This is quoted in Example 8 of the Appendix to Circular 8/93 as an example of unreasonable behaviour. The conditions were unreasonable to varying degrees, particularly Condition 4 which required a register to be kept. The Council has not imposed such conditions in similar cases where permission for holiday use has been granted and the Council has not behaved equitably. The appellant should not have been put to the expense of employing professional representation and going to appeal to have unfair and unreasonable conditions removed. The Council's letter of 5 December 1994, after the application to remove the conditions had been refused, indicated that there were grounds for agreeing alternative conditions. The appellant had invited prior discussions but these had not taken place. The appellant had hence been treated differently to other applicants when he was entitled to expect consistency.

4. In response, the West Dorset District Council state that there had been an important change of circumstances prior to the application to renew the outline consent for a detached dwelling. The original 1979 Village Plan had been superseded by the Eastern Area Local Plan which had been prepared after extensive public consultation and was adopted by the Council as the basis for development control on 26 September 1991. The application for renewal had been considered against this new policy boundary and refused in June 1992. By the time the application for conversion had been submitted the Local Plan was even further advanced and so merited greater weight. The decision to allow only holiday use was consistent with the new policy for the re-use of vacant buildings and the up to date Structure Plan Second Alteration which was approved in May 1993. The Local Plan policies reflect Policy D1 of the Structure Plan and the Council has taken a consistent view since the change of the development boundary. The authority had been helpful in advising the appellant to submit for approval of reserved matters when it was decided not to renew the original outline permission.

5. With regard to the partial award of costs and the conditions imposed, because of the policies for development outside the defined settlement boundary and the visual harm, all of the conditions are considered reasonable and necessary. They are designed to secure short term occupation consistent with holiday use and to prevent the introduction of residential paraphernalia. This is necessary because of the location in the Area of Outstanding Natural Beauty (AONB) and the prominence of the front curtilage of the site. Condition 4 is reasonable and necessary since it enables the use to be monitored and the other conditions relating to holiday use to be enforced. It is appropriate for Condition 7 to require additional landscaping in view of the location in the AONB and the proximity to a public right of way. Condition 8 is designed to protect the poplar tree which makes a significant contribution to the character of the area and the setting of the site. The Council has sought to be flexible and wrote to the appellant to encourage discussion to seek ways to overcome the objections. The appellant need not have employed professional representation as he could have discussed the matter directly with the Council and avoided the appeal.

6. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.

#### **Full Costs**

7. In my decision letter on the appeal I explain that the boundary of Buckland Newton for policy purposes is presently defined in the deposit Local Plan. The 1979 Village Plan

11. Accordingly in exercise of my powers under Section 250(5) of the Local Government Act 1972 and section 322 and paragraphs 6(4) and 6(5) of Schedule 6 to the Town and Country Planning Act 1990, and all other enabling powers, I HEREBY ORDER that the West Dorset District Council shall pay to Mr W O P Miles the costs of the proceedings of this hearing, limited to those costs incurred in appealing against Conditions 3 and 4 attached to Planning Permission No 1/E/94/0286F dated 15 July 1994, such costs to be taxed in default

### FORMAL DECISION - PARTIAL AWARD

10. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Mr W O P Miles for a full award of costs against the West Dorset District Council.

### FORMAL DECISION - FULL AWARD

9. However, I consider that Conditions 3 and 4 are neither necessary or reasonable. It is clear from Annex C of PPG21 that Condition 2, limiting the use to holiday accommodation only, is enforceable and additional conditions are therefore unnecessary. No justification for the periods specified in Condition 3 has been given and the register required by Condition 4 is an unreasonable intrusion into the privacy of holidaymakers. Further, there is no justification for imposing such conditions in this case when they were omitted from the other permissions for holiday conversions, in similar circumstances, to which you refer. Whilst the appeal site is unusual in that the land is mostly in front of the building, the principle of conversion to holiday accommodation outside the development boundary is the same, and the circumstances do not justify these additional conditions. I note that the Council offered to discuss these conditions with the appellant after the application to vary the permission had been refused. But the time for discussion and negotiation was before the issue of the decision, particularly since the Council clearly considered that there was scope for removing or varying some of the conditions. I therefore consider that Conditions 3 and 4 should not have been imposed and that it should not have been necessary to discuss them at the appeal. I conclude that your application for a partial award of costs is justified in relation to the work involved in appealing against Conditions 3 and 4.

8. Paragraph 20 of Annex 3 to Circular 8/93 makes it clear that conditions should only be imposed when they are necessary and reasonable and that conditions which fail to meet these criteria may lead to an award of costs against the Council. I have concluded that Condition 7 should be removed but this is on grounds of the amount of landscaping surrounding the site and the limited scope for additional planting. The condition is not unreasonable in principle and I do not consider that the Council were wrong to impose it.

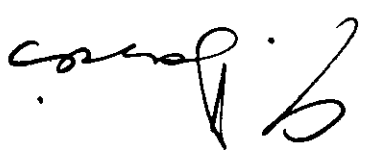
### Partial Costs

was superseded in 1991 when the Eastern Area Local Plan was adopted for development control purposes. I am therefore satisfied that there was a material change in planning circumstances between the original outline approval for a new dwelling on the appeal site and the application to convert the stable to 2 units of accommodation which the Council was entitled to take into account. I therefore conclude that your application for a full award of costs is not justified.

of agreement as to the amount thereof. The subject of the proceedings was an appeal under Section 78 of the Act of 1990 against a refusal of planning permission by the West Dorset District Council for the development of land without complying with conditions subject to which a previous planning permission was granted.

12. You are now invited to submit to the West Dorset District Council, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement as to the amount thereof.

Yours faithfully



JOHN DAVIES BSc MRTPI  
Inspector

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