
Appeal Decision

Site visit made on 13 September 2016

by Claire Victory BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2016

Appeal Ref: APP/X2220/W/16/3153668

Aylesham Sports Club, Burgess Road, Aylesham, Kent, CT3 3AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Zoe Horton (Gba Designs Ltd) against the decision of Dover District Council.
 - The application Ref DOV/16/00192, dated 17 February 2016, was refused by notice dated 6 May 2016.
 - The development proposed is the conversion and extension of vacant club to provide 21 No. flats.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - The effect on the proposal on the local provision of community facilities;
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal on protected species.

Reasons

Local provision of community facilities

3. The National Planning Policy Framework (the Framework) states that planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.
 4. Policy DM 24 of the Core Strategy (CS) (2010) seeks to retain rural shops and pubs. Changes of use are only permitted where the loss would not harm the economic and social viability of the community it serves, or if it has been adequately demonstrated that the use is no longer commercially viable, and genuine and adequate attempts to market the premises as a pub have failed.
 5. Further to the above, the supporting text to CS Policy DM 24 notes that the Council will have regard to the way in which the pub has been managed, and will require adequate and genuine attempts to market the property for pub use, for a period of time that fully tests demand, having regard to the buoyancy of
-

- prevailing market conditions. There is no specific period for marketing. The Council has also referred to its Marketing Guidelines, which are described as a working draft and which have not been formally adopted as supplementary planning guidance. As such I can attach only limited weight to this document.
6. Although the parties dispute whether the appeal property, also known as the Aylesham Working Mens Club or The Legion, is a pub or social club, it has a licensed bar, seating areas and a function room on the first floor, and thus is capable of performing a social role. Shepherd and Neame ceased trading at the club in March 2014. At the time of the site visit it was apparent that the property had been vacant for some time and was in a state of disrepair. Nevertheless, the property is close to the railway station, only a few minutes' walk from the local centre, and is within an existing residential area. As such it is well located to provide a local social facility for the community.
 7. The appellant has indicated that the property was marketed from 1 November 2014 to 19 March 2015 on the web pages of Daltons Weekly and the Publican's Morning Advertiser, and sent to approximately 300-400 people on their mailing list, and that there has been no interest shown in the last 22 months other than for redevelopment of the site. The appellant has also contacted a number of pub operators who have stated they would not be interested in taking on the operation of the licensed premises.
 8. However, whilst a screen print taken from Google search engine dated 17 April 2016 shows links to Daltonbusiness.com, Movehut.co.uk and Porters Surveyors own website with details of the appeal property, there is no evidence that the property was advertised for the period specified. Furthermore, no details have been provided of the 13 enquiries that were said to have been received in relation to the sale of the property.
 9. I acknowledge the general decline in patronage of public houses in recent years and the low trading level of the appeal property whilst it was open. The appellant has also referred to the decline of the Kent coal industry and social changes in Aylesham in connection with the lack of viability for the appeal property.
 10. In respect of other community facilities in the locality, there are two pubs, The Ratling, and the Royal Oak, each about 2km from the village. I also note that the Aylesham Welfare Leisure Centre has a public bar which can be hired out for events. However, if the appeal were allowed, this would reduce the availability of local facilities for the day-to-day needs of the community that can easily be reached on foot. Proposals for around 1000 new dwellings in the village would be likely to further increase demand for such facilities.
 11. On balance, I conclude that insufficient evidence has been provided of a genuine attempt to market the premises as a pub. Consequently the proposal would have an adverse effect on the local provision of community facilities, contrary to CS Policy DM 24, and the Framework.

Character and Appearance

12. The appeal site contains the large two storey detached social club, and a detached dwelling used as a caretaker's home. It is located in a prominent position adjacent to a large grassed area, and thus the side and rear of the club building are clearly visible in long range views to the south and west.

Glimpses of the roof line can also be seen beyond the trees and railway line to the east.

13. The two storey side extensions would be greater in size than the existing single storey side projections, but the roof ridges would be lower than the principal elevation and due to the hipped roof forms and placement and proportion of windows, the proposal would remain sympathetic in scale and design to the host building. Matching materials would ensure the extensions would blend in satisfactorily with the existing property.
14. The rear extension would be no greater in height than the existing roof ridge, and the flat roofs of the two rear wings would reduce the bulk of this element of the proposal. The separate two storey dwelling house and other outbuildings at the rear of the social club are to be demolished, and although there would be an overall increase in built form, the rear of the property is enclosed by mature conifer trees along the side and rear boundary and faces out onto woodland and the railway line beyond, and so the visual impact of the rear extension would be limited from Burgess Road.
15. When seen in longer range views from the south and west across the adjacent open space the development would be appear as a substantial building. However, the existing social club is greater in scale than the surrounding properties, which are predominantly modest semi-detached and small terraced blocks of two storeys in height. Consequently the prominence of the proposed development within the streetscene would not appear unduly incongruous.
16. The site contains an extensive area of hardstanding in broadly the same location as that proposed and the visual impact of the proposed car parking area could be softened with an appropriate landscaping scheme.
17. Taking all of the above into account, I conclude that the proposal would not cause harm to the character and appearance of the area and thus would not conflict with the Framework, which requires amongst other things a high quality of design and the promotion of local distinctiveness.

Protected species

18. Paragraphs 117 and 118 of the Framework require developments to minimise impacts on biodiversity and avoid significant harm to protected species and habitats. The Planning Practice Guidance states that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate, if there is a reasonable likelihood of a protected species being present and affected by the development.
19. No ecological surveys were submitted with the application, but after the application was refused, Bat Surveys were carried out in May and June 2016. These surveys found no evidence of roosting bats but some evidence of foraging within the site. The Council has indicated that a condition to provide bat boxes within the site would overcome its concerns in this regard, and I see no reason to disagree based on the evidence before me.
20. An extended Phase 1 Habitat survey was provided with the application, which concluded that reptiles were likely to be present along the railway sidings about 125m south east of the site. It also found that the potential for reptiles to

occur within the site is high,¹ with suitable habitats recorded within the site for foraging and sheltering. However no reptile survey has been undertaken of the appeal site.

21. The appellant contends that a reptile survey is not necessary due to the small area covered by the amenity grassland of just under 1000 sqm. However the proposed works are likely to encroach upon areas of potential habitat for reptiles, which also include an area of scrub and a log pile in the northern corner and a brash pile to the south of the amenity grassland. Accordingly, there is a reasonable likelihood of protected species being present, and potential for harm to be caused to the species or its habitat.
22. It is essential that the presence of a protected species and the extent to which they may be affected is established before the grant of planning permission, and no exceptional circumstances have been put forward to justify granting permission subject to a condition for a further surveys or habitat management. In these circumstances, the suggested condition to require a phased and directional cutting regime of the adjacent amenity grassland to encourage reptiles to relocate to adjacent scrubland and railway sidings would not be sufficient to overcome the potential risks to protected species.
23. I therefore conclude that insufficient information has been provided to adequately assess the potential impact of the proposal, and whether any impacts could be satisfactorily avoided or mitigated. This would be contrary to the Framework.

Balancing and Conclusion

24. The latest available evidence before me relating to housing land supply is provided in the 2014/2015 Annual Monitoring Report, published December 2015. This indicates that the Council is unable to demonstrate a five year supply of deliverable housing sites and relevant policies for the supply of housing should not be considered up-to-date in accordance with paragraph 49 of the Framework. In these circumstances, there is a presumption in favour of sustainable development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
25. The proposal would provide additional housing which would address the current undersupply. However, the loss of a social facility, and potential for harm to protected species would significantly and demonstrably outweigh this benefit when assessed against the Framework when taken as a whole and therefore the proposal would not constitute sustainable development. The proposal would be contrary to the development plan and this conflict would not be outweighed by other material considerations.
26. The Framework also requires planning permission to be refused if significant harm to biodiversity resources resulting from development cannot be avoided, adequately mitigated, or as a last resort, compensated for. The Council has advised that the site lies within the Thanet Coast and Sandwich Bay Special Protection Area mitigation area and that a planning obligation is required to secure appropriate mitigation. No obligation has been provided by the

¹ Paragraph 5.3.2 of survey provided by Greenspace Ecological Solutions dated 2 February 2016

appellant. However, as I am dismissing the appeal there is no need to consider this further.

27. For the reasons set out above I conclude the appeal should be dismissed.

Claire Victory

INSPECTOR