
Appeal Decision

Site visit made on 22 November 2016

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 21 December 2016

Appeal Ref: APP/Q3305/W/16/3151838

The Walton Gateway, 160 Main Street, Walton, Street, BA16 9QU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Webb against the decision of Mendip District Council.
 - The application Ref. 2016/0291/OTA, dated 2 February 2016, was refused by notice dated 7 April 2016.
 - The development proposed is the demolition of the existing public house and then residential development and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether there are over-riding reasons to justify the loss of the existing community facility of the public house and its redevelopment with housing, and secondly, the provision made for affordable housing and recreational open space.

Preliminary matters

3. The application is in outline format with all detailed matters reserved for subsequent consideration. Nevertheless the application includes an illustrative layout plan which shows 10 detached houses on the site following the demolition of the present public house.

Reasons

Background

4. The appeal site comprises a detached public house set in its own grounds of about 0.39ha, including an extensive area of parking and the pub garden, which lies on the corner of Main Street and Whitley Road on the edge of the village of Walton. The pub had a main bar, restaurant, function room and letting rooms but at the time of my visit, the pub was permanently closed although internally the fixtures and fittings were intact including the kitchen and bar areas. It is proposed in outline to demolish the pub and redevelop it with housing.

Policy context

5. The development plan includes the Mendip District Local Plan Part 1 - Strategy and Policies (2014). Policy DP17 is relevant to the appeal. It indicates that
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development proposals that would result in the loss of premises used for local facilities or services will not be permitted unless three criteria are met. In summary these are: that suitable alternative provision is being made in the area; retention of the use would perpetuate existing highway or environmental problems; or there is no likelihood of a viable community use. The provisions of this policy are generally consistent with the policy in the National Planning Policy Framework (NPPF) which states in paragraph 70 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.

6. Policy DP11 deals with the provision of affordable housing within all new housing proposals and, in summary, indicates that 30% of the total housing proposed must be affordable housing as so defined and provided on-site and/or a financial contribution for provision off-site, depending on the scale of the development and the size of the site. Policy DP16 deals with the provision of open space and green infrastructure in new residential development. The provision can be made on-site or a contribution towards the provision off-site depending on the circumstances of the site. Finally Policy DP19 is an overarching policy related to development contributions.

Loss of a community facility

7. In the first place I am satisfied that the lawful use of the site as a public house is a community facility to which Policy DP17 and paragraph 70 of the NPPF apply.
8. Dealing with the first strand of policy DP17, concerning suitable alternative provision, the representations from Walton Parish Council and local people describe the existing (now closed) pub as a valued and unique local asset. The appellant refers to three other public houses being within a mile radius of the Walton Gateway including the Royal Oak within the village itself. However, the evidence before me does not demonstrate that these public houses are a suitable alternative to the appeal site pub in terms of accessibility, function or the range of facilities provided. The proposal therefore does not satisfy part (1) of the policy. In relation to part (2) it is not contended that the historical use as a pub has given rise to local amenity or highway problems and it appeared to me at the site visit that the site had good access and with good visibility to the main road.
9. In terms of the third part, the test applied here, where a commercial facility would be lost, is that it must be established that there is no likelihood of a viable community use. The appellant's team say that a public house use in these premises is not viable and that the business has not been viable for some time despite the investment made in the premises. It has been trading at a loss as shown in the accounts submitted for periods ending April 2015 and December 2015 which show a trend of decline. There is submitted evidence that the pub has been marketed for sale on a freehold basis for over 10 months and at a price which a professional valuer has intimated as the correct price.
10. The Council queries the price that the premises have been marketed at, both the original figure and the subsequent discounted one, and have raised concerns about the basis of the valuation figure and the adequacy of comparable evidence. The Council has supplied information which purports to show the offered sale price of similar premises elsewhere in England to

demonstrate that the advertised price of the appeal site pub was too high and unjustified.

11. Whilst the Council's evidence is not a professional assessment of the valuation it does raise doubt in my mind about the level of the selling price advertised and therefore the adequacy of the marketing exercise as a whole. Further, this exercise does not appear to have explored alternatives to freehold sale, or opportunities for other linked commercial, institutional or community uses within the extensive building or on part of the site which could contribute to the overall viability of the premises and the retention of the public house.
12. Overall, I am not satisfied that the marketing exercise undertaken so far constitutes 'reasonable attempts', as described in the explanatory 'Local Context' of the policy, to demonstrate that there is no likelihood of securing a viable community use to satisfy part (3) of the policy. On this basis, I find that an exception to the presumption against the loss of the community facility set out in the policy and the NPPF has not been justified.

Provision of affordable housing and open space

13. The Council says that the scale of residential redevelopment put forward is such that as part of the new development the provision of affordable housing is a requirement of policy DP11 and open space is required as per Policy DP16. Further, the appellant has indicated a willingness to enter into a formal 106 Agreement to meet the Council's policy requirements for these aspects¹.
14. The Written Ministerial Statement (WMS) of the 28 November 2014 is also a material consideration following the decision of the Court of Appeal on *Secretary of State for Communities and Local Government v West Berkshire and Reading Council*. In the WMS, as reflected in paragraph 031 of the Planning Practice Guidance (PPG), the government's policy is that contributions for affordable housing and tariff style planning obligations should not be sought for small scale and self-build development in some circumstances (Reference ID - 23b031-20161116). The PPG goes on to specify the circumstances as where the development would comprise 10 units or less, and a maximum combined gross floorspace of no more than 1000 sqm gross floor area.
15. In this case the outline proposal is for residential development and the illustrative plans show 10 units which would be below the stated threshold. However, the proposed site layout also indicates a schedule of accommodation for the 10 units which would total some 1,700 sqm in gross floor area. Therefore the scale of development envisaged exceeds the threshold set out in the WMS and the PPG.
16. I find that there is a clear requirement in the development plan that the scale of residential development proposed must make appropriate provision for affordable housing and open space in accordance with policies DP11 and DP16. Although the appellant has indicated a willingness to accept such provision, though contributions where necessary, there is no formal Obligation or other mechanism before me to secure appropriate provision and implementation in accordance with policy DP19 and the guidance in the PPG.

¹ As in letter dated 22 Feb 2016 from Agent

Planning Balance

17. Bringing together the conclusions reached on the main issues I have found that on the evidence before me it has not been established that the proposed residential development is justified as an exception to the presumption against the loss of the community facility set out in the relevant development plan policy and the NPPF. Further, no formal mechanism has been put forward to secure the necessary provision of affordable housing and open space which are stated requirements of the scale of development proposed.
18. I recognise that a commercial building being closed and vacant will not aid the local economy or the local environment, but these adverse effects may be short term and do not outweigh the clear conflict of the proposal with the development plan and the need to ensure that facilities that contribute to the community's day-to-day needs are retained in the long term. I therefore conclude that there are no other considerations which outweigh the policy conflict that I have identified.

Conclusions

19. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR