

Appeal Decision

Site visit made on 4 January 2017

by **Kenneth Stone BSc Hons DipTP MRTPI**

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

Decision date: 26 January 2017

Appeal Ref: **APP/E2205/W/16/3156139** **The Oak, 5 High Street, Charing TN27 0HU**

- 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 Mr Diljit Brar (Goldex Investments Ltd) against the decision of Ashford Borough Council.
 - The application Ref 16/00698/AS, dated 10 May 2016, was refused by notice dated 2 August 2016.
 - The development proposed is described as a change of use from a restaurant and public house (A3/A4 mixed use) to a sole A3 use.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application for the change of use was submitted in relation to the ground floor of the public house building only and seeks permission to change the use from a mixed use, public house and restaurant, to a sole A3 use. The Council have raised concerns that such a separation of functions from the guest accommodation would undermine the use of those other areas.
3. The application as submitted is for the change of use of the ground floor area and the appellant has stated that further applications could be submitted in the context of the other parts of the building if required. This is a matter for the Council.
4. The application would see one use, a mixed use, replaced by another use, in this case a coffee shop (which the appellant has suggested could be the subject of conditional control) and it is on this basis that I have considered the appeal.

Main Issues

5. The main issue in this appeal is the effect on the social wellbeing of the local community.

Reasons

6. The Oak Public House is located on the High Street at one entrance to Charing Village. The existing site area includes the public house building and various extensions which together formed a public house with guest facilities; the premises are presently vacant and have been so since May 2014, according to the appellant. The site also includes a car park to the rear of the building.
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7. The building is a Grade II listed building and the site lies within the Charing Conservation Area.
8. The premises were designated as an Asset of Community Value (ACV) under the provisions of the Localism Act 2011 following the appellant's applications for listed building consent and advertisement consent and which therefore required the submission of a planning application, taking their proposed change of use outside permitted development rights.
9. The development plan for the area includes the Ashford Borough Local Plan 2000 saved policies – updated June 2014 (ABLP) and the Ashford Borough Council Core Strategy, adopted July 2008 (Core Strategy). My attention has been drawn to policy SH16 in the ALBP and policies CS1 and CS18 in the Core Strategy. Policy SH16 seeks to resist the loss of public houses in rural areas unless certain criteria are met, including that another such facility is close by and the public house is no longer viable. Policies CS1 and CS18 seek to protect the community's needs through the retention of community infrastructure and facilities and include an aim to foster access to amenities and mixed and cohesive communities designed for social interaction.
10. I am required to determine the applications in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (Framework) is a material consideration. The development plan policies seek to protect community assets such as public houses and the Framework, at paragraph 28, advises that policies should promote a strong rural economy through, amongst other matters, promoting the retention of community facilities such as public houses. The development plan policies are therefore consistent with the Framework and I afford them full weight.
11. The proposed development would result in the supplanting of an existing mixed use, which includes a public house element, with an A3 use. In essence the public house use would be lost. The Council's policies and the Framework refer to viability as a significant consideration in this regard. However, I have been provided with no robust evidence regarding the viability of the previous business or a future public house use. There are some references to statements, on both sides, of previous operators but no specific viability or financial information particular to the premises on which I can base firm conclusions. In the absence of such evidence there is no basis to conclude that the public house use would be no longer viable.
12. The Council point out that there are no other public houses in the village and therefore none within reasonable walking distance as required by policy SH16. The appellant has drawn my attention to an application for a Micro pub for a property close by within the village which could provide for a public house facility. I have no confirmation if that application has been approved and there was no such facility in the village at the time of my visit. In any case the nature of a micro pub is very different from a traditional public house that the Council's policies are aimed at protecting. There is therefore no public house within walking distance.
13. On the basis of the above I conclude that the proposals would conflict with policy SH16 and CS18 of the development plan.

14. I am also concerned regarding the inter-relationship of the activities within the building and the overall use of the building. On my site visit I noted that integral within the main public house building was an upper floor function room which was connected through two internal stairs cases (one to the rear and side and one to the front) to the ground floor. The proposed internal works would see the separation of this element. The ground floor use would also be separated from the guest rooms.
15. The public house use and the facilities that are available at the premises are all part of the ACV and the proposal would segregate elements of that and I have not been provided with any detail on the effect of the proposed operations on those facilities. Where and how they would continue? the nature of their access? Where any reception or control facilities could be accommodated? On this basis I am concerned that if I allow this proposal this could undermine the Asset of Community Value and therefore the nature of the benefits it brings to the community.
16. Whilst the existing premises are vacant the ACV status was designated on the basis that the building in the recent past furthered the social wellbeing or social interest of the local community and there was a realistic prospect that within the next five years there could be a use of the building that would further the social wellbeing or social interest of the local community. This designation has not been formally challenged although it was open to do so.
17. The appellant proposes a coffee shop, and suggests that such a use retains much of the community benefits of the existing use in a modern format that facilitates activity more than simply for the consumption of hot beverages. It is certainly the case that many such establishments can be seen to facilitate meeting spaces, working environments, hot spots for internet access and other community activities as suggested by the appellant. In this regard the proposed use has some community benefits which need to be considered in the balance and to which I give moderate weight as a material consideration.
18. The Council are concerned that the opening hours would reduce the night time activity. The appellant has suggested that opening hours could be the subject of an appropriate condition which would enable them to open into the evening. The original application identified the proposed opening hours which would see the premises close at 19:00 hours Monday to Friday and Saturday and at 18:00 hours on Sundays. This provides an indication of the intention of the proposed operation and even if conditions were attached to allow for later opening it would not be appropriate to attach a requirement to open. The provision of meals and a public house activity would be likely to result in opening later and there would in my view be a reduction in the activity in premises later in the evening if permission were granted for the proposed use when considered against an operating public house.
19. On the basis of the information before me I conclude that the proposed development would result in harm to the social wellbeing of the local community through the loss of the public house, a designated Asset of Community Value. This would conflict with policies SH16 of the ABLP and CS1 and CS18 of the Core Strategy which seek to protect such community facilities. This is consistent with the Framework. Albeit there is some merit in suggesting that a coffee shop could have some community benefit this does not outweigh the loss of the public house and the conflict with the development plan.

Other matters

20. The Council suggest that if the public house use were lost there would be additional trips beyond the village to other such facilities and that this would be most likely be by private car which would result in additional harm from the unsustainable use of the private motor vehicle. There is little substantive evidence to justify the observation or quantify the level of activity or resultant harm that may arise. In the absence of any such firm information no robust conclusions can be drawn and I therefore give this concern very little weight.
21. I did note the existence of another coffee shop in the village. The existence of the facility is material in that such a facility is already provided and as such the proposal would not increase the range of activities in the village. However, the proposed coffee shop would be a very different type of operation and therefore is not of a similar scale or function. The impact of competition per se is not something I have given any weight.
22. The Council have not raised any issues regarding the effect of the change of use on the designated heritage assets and I agree that there would be no harm.

Conclusion

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

Kenneth Stone

INSPECTOR