
Appeal Decisions

Site visit made on 6 February 2017

by **B Bowker Mplan MRTPI**

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

Decision date: 23 March 2017

Appeal A Ref: APP/W0340/W/16/3161019

The Red Lion, 5 Church Street, Theale, Reading RG7 5BU

- 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 Iain MacNaught against the decision of West Berkshire Council.
 - The application Ref 15/01312/FULD, dated 14 May 2015, was refused by notice dated 29 June 2016.
 - The development proposed is change of use from Public House to residential use, demolition of the former skittle alley and outbuildings replaced with a new two storey side extension comprising of an additional 7 dwellings.
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Appeal B Ref: APP/W0340/W/16/3160633

The Red Lion, 5 Church Street, Theale, Reading RG7 5BU

- 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 Iain MacNaught against the decision of West Berkshire Council.
 - The application Ref 16/00853/FULD, dated 22 March 2016, was refused by notice dated 21 June 2016.
 - The development proposed is change of use from Public House to residential use, demolition of the former skittle alley and outbuildings replaced with a new two storey extension comprising of an additional 8 dwellings.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the change of use from Public House to residential use, demolition of the former skittle alley and outbuildings replaced with a new two storey side extension comprising of an additional 7 dwellings, at The Red Lion, Church Street, Theale, Reading RG7 5BU, in accordance with the terms of the application Ref 15/01312/FULD, dated 14 May 2015, subject to the conditions in the attached schedule.

Appeal B

2. The appeal is allowed and planning permission is granted for the change of use from Public House to residential use, demolition of the former skittle alley and outbuildings replaced with a new two storey extension comprising of an additional 8 dwellings, at The Red Lion, Church Street, Theale, Reading RG7 5BU, in accordance with the terms of the application Ref 16/00853/FULD, dated 22 March 2016, subject to the conditions in the attached schedule.
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Application for costs

3. Applications for costs have been made by Mr Iain Macnaught against West Berkshire Council. Both applications are the subject of a separate Decision.

Preliminary Matters

4. The scanned copies of the submitted application forms are not dated. Consequently, the application dates used above are taken from the respective decision notices.
5. Following revisions to its vehicular parking standards, the Council no longer object to Appeal B on highway safety grounds. Based on all I have seen and read, I have no reason to disagree with the Council's acceptance of this matter. As such, this decision will focus on the main issue below.

Main Issue

6. The main issue in both appeals is whether or not the proposed development should make provision for affordable housing.

Reasons

Affordable housing

7. Core Strategy (CS) Policy CS6 relates to affordable housing and of relevance to the proposals requires 20% provision of affordable housing on sites of 5 to 9 dwellings. The Council's calculate that the level of on-site affordable housing required by CS Policy CS 6 would be 1.6 and 1.8 units respectively. A Planning Obligations Supplementary Planning Document (SPD) is also referred to by the Council. Whilst the Council do not make any specific references to the SPD, I note that it includes additional guidance on CS Policy CS6.
8. It is stated within the Council's Committee Report that the parties agreed on a £50,000 affordable housing contribution and that although below the requirement of CS Policy CS6, the Council's Housing Service raised no objection. However, the appellant refutes that they agreed to a £50,000 affordable housing contribution. In any event, a Unilateral Undertaking was not submitted to the Council nor is one before me.
9. An Inspector determining a recent and similar appeal proposal¹ at the site concluded that the need for a contribution towards affordable housing satisfied the 3 tests in Regulation 122 (2) of the Community Infrastructure Regulations 2010. In the absence of evidence to demonstrate that the proposal would be unviable and no affordable housing provision, the Inspector concluded that the proposal was contrary to CS Policy CS6.
10. However, a Court of Appeal's judgement² has been issued since the previous appeal decision. A consequence of this judgement is the reinstatement of national planning policy contained within the Written Ministerial Statement (WMS) of 28 November 2014. Subsequently, Planning Practice Guidance (PPG) has been updated to reiterate the WMS. The WMS and PPG state that contributions should not be sought from development that involves 10 units or

¹ APP/W0340/W/15/3134073

² Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

less and a maximum combined gross internal floor space of no more than 1000 square meters. The proposals fall within this threshold.

11. The Court of Appeal judgement confirmed that the starting point for the decision maker is the development plan as outlined at Section 38 (6) of the 2004 Planning and Compulsory Purchase Act (PCPA) and Section 70 (2) of the 1990 Town and Country Planning Act (TCPA). In this context, the Council contend that the proposals should be considered in line with CS Policy CS6. Furthermore, the Council highlight the number of people registered in housing need within the district, the average internet based price of two bedroom properties in 2016, and the 2012 Housing Need Assessment and Affordable Rent Review.
12. Notwithstanding the proposals conflict with CS Policy CS6 and the Council's evidence on this matter, I attach great weight to the WMS and the PPG. In addition, the appellant refers to recent appeal decisions involving proposals within the threshold where affordable housing provision was concluded to be contrary to national planning policy. In the context of Section 38 (6) of the PCPA and Section 70 (2) of the TCPA, the great weight I attribute to the WMS and PPG outweighs the weight I afford to CS Policy CS6.
13. Therefore I conclude that the lack of financial contribution towards affordable housing is not a reason to dismiss the appeals.

Other matters

14. Concerns are raised regarding the resultant loss of the Public House and the applicant's viability study. I understand that the site is listed as an Asset of Community Value and that following a community bid for the pub, a 6 month moratorium was in place until 12 August 2016 which has since passed. However, based on the evidence before me, I have no compelling reasons to disagree with the Council's assessment and acceptance of the resultant loss of the Public House.
15. Concerns have been raised regarding the effect of the proposals on highway safety and the living conditions of residents at Meadow Way, with reference to light, noise, outlook and privacy. However, based on the Council's and the previous Inspector's assessment, I am satisfied no harmful effect would occur in these respects. I also note the increased separation distances involved compared to the previous appeal proposal and that the Council have withdrawn their objection on highway safety grounds in relation to Appeal B.
16. Based on the evidence before me, including the lack of objection from the Council's Conservation Officer, dismissing the appeal based on the demolition proposed and the proposals effect on the Theale Conservation Area and adjoining listed buildings would not be justified. I also agree with the Council that the proposals would not have a harmful effect on the character and appearance of the surrounding area.
17. In addition, the evidence before me does not justify dismissing the appeals on the grounds of wildlife, land stability, drainage, flood risk and the capacity of local services. The issue of impact on property values has also been raised. However, it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.

Conditions

18. The conditions in the attached schedule are based on those suggested by the Council. Where necessary, the conditions have been amended in the interests of clarity and precision as required by Planning Practice Guidance.
19. A condition specifying the relevant plans is necessary in the interests of certainty. A condition requiring details of hard surfacing, landscaping, submission of materials and window details prior to commencement of development are necessary to protect the character and appearance of the TCA and the surrounding area. A condition requiring approval of boundary treatment details prior to commencement of development is necessary in the interests of the character and appearance of the surrounding area and to ensure privacy for future and neighbouring occupants.
20. Conditions relating to obscure glazing, the removal of permitted development rights for windows and dormer windows, and construction methods and times are necessary in the interests of neighbouring living conditions. However, as flat 8 and its south elevation bedroom window do not form part of appeal B, the obscure condition is not necessary for appeal B. A condition to secure acceptable refuse and recycling provision is required in order to secure satisfactory living conditions for future occupiers.
21. A condition requiring an archaeological watching brief is necessary based on the recommendation by the Council's Archaeologist. A condition relating to unforeseen contamination is necessary based on the recommendation of the Council's Senior Environmental Health Officer.
22. Conditions requiring approval of the parking layout, including cycle spaces prior to development and construction of the site access prior to occupation of the residential units are included for highway safety and sustainable transport purposes.

Conclusion

23. For the reasons given above, and taking into account all matters raised, I conclude that the appeals should succeed subject to the conditions outlined in the attached schedules.

B Bowker

INSPECTOR

Attached – schedule of conditions.

Appeal A

Schedule A: Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location & Block Plan number 074 02-01 P, Existing Ground Floor Plan 074 03-01 P, Existing First Floor Plan 074 03-02 P, Proposed Ground Floor Plan 074 03-10 P5, Proposed First Floor Plan 074 03-11 P5, Proposed Site Roof Plan 074 03-12 P5, Proposed Elevations 074 05-10 P4.
- 3) No development shall take place until samples and an accompanying schedule of the materials to be used in the construction of the external surfaces of the extension hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out and retained as such in accordance with the approved materials.
- 4) No development shall commence until details of the link to include materials and details of the brick recessed windows have been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out and retained as such in accordance with the approved plans/details.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed prior to the first occupation of any of the dwellings/flats hereby permitted. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 6) No development shall take place until details, to include a plan, indicating the means of treatment of the hard surfaced areas of the site, have been submitted to and approved in writing by the Local Planning Authority. The approved hard surfacing details shall be completed prior to the first occupation of any of the dwellings/flats hereby permitted. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 7) The window serving bedroom 1 of flat 8 (south elevation) shall be fitted with obscure glass and shall be fixed shut (in accordance with drawing number 074 03-11 P5) before the flat hereby permitted is occupied. The obscure glazing and fixed shut window shall be permanently retained in that condition thereafter.
- 8) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 no windows/dormer windows (other than those expressly authorised by this permission) shall be constructed at first floor level on the west and south facing elevations of the extension hereby permitted, without planning permission being granted by the Local Planning Authority in respect of an application made for that purpose.

- 9) Demolition or construction works shall take place only between 07.30 – 18.00 hours on Mondays to Fridays and 08.30 – 13.00 hours Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 10) No development shall take place within the application area until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall incorporate and be undertaken in accordance with the approved statement.
- 11) The dwelling/flats hereby permitted shall not be occupied until the refuse and recycling facilities have been provided in accordance with the approved drawings and these facilities shall be retained for this purpose thereafter.
- 12) Should any unforeseen contamination be encountered during the development, the developer shall inform the Local Planning Authority immediately. Any subsequent investigation/remedial/protective works deemed necessary by the Local Planning Authority shall be carried out to agreed timescales and approved by the Local Planning Authority in writing. If no contamination is encountered during the development, a letter confirming this fact shall be submitted to the Local Planning Authority prior to occupation of the dwelling/flats.
- 13) No development or other operations shall commence on site until a detailed scheme of landscaping for the site has been submitted to and approved in writing by the Local Planning Authority. The details shall include schedules of plants noting species, plant sizes and proposed numbers/densities, an implementation programme and details of written specifications including cultivation and other operations involving tree, shrub and grass establishment. The scheme shall ensure;
 - a) Completion of the approved landscape scheme within the first planting season following completion of development.
 - b) Any trees shrubs or plants that die or become seriously damaged within five years of this development shall be replaced in the following year by plants of the same size and species.
- 14) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;

- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 15) Notwithstanding the approved plans, no development shall commence until an amended parking layout illustrating details of motorcycle and bicycle spaces, together with a parking management plan for the allocation of parking spaces for the residential units hereby permitted has been submitted to and approved in writing by the Local Planning Authority. No residential unit shall be occupied until the approved details have been implemented in full.
- 16) No dwelling/flat shall be occupied until the access has been constructed in accordance with the approved drawings.

Appeal B

Schedule B: Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location & Block Plan number 074 02-01 P, Existing Ground Floor Plan 074 03-01 P, Existing First Floor Plan 074 03-02 P, Proposed Ground Floor Plan 074 03-10 P2, Proposed First Floor Plan 074 03-11 P2, Proposed Site Roof Plan 074 03-12 P2, Proposed Elevations 074 05-10 P2.
- 3) No development shall take place until samples and an accompanying schedule of the materials to be used in the construction of the external surfaces of the extension hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out and retained as such in accordance with the approved materials.
- 4) No development shall commence until details of the link to include materials and details of the brick recessed windows have been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out and retained as such in accordance with the approved plans/details.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed prior to the first occupation of any of the dwellings/flats hereby permitted. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 6) No development shall take place until details, to include a plan, indicating the means of treatment of the hard surfaced areas of the site, have been submitted to and approved in writing by the Local Planning Authority. The approved hard surfacing details shall be completed prior to the first occupation of any of the dwellings/flats hereby permitted. Development

shall be carried out in accordance with the approved details and retained as such thereafter.

- 7) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 no windows/dormer windows (other than those expressly authorised by this permission) shall be constructed at first floor level on the west and south facing elevations of the extension hereby permitted, without planning permission being granted by the Local Planning Authority in respect of an application made for that purpose.
- 8) Demolition or construction works shall take place only between 07.30 – 18.00 hours on Mondays to Fridays and 08.30 – 13.00 hours Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 9) No development shall take place within the application area until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall incorporate and be undertaken in accordance with the approved statement.
- 10) The dwelling/flats shall not be occupied until the refuse and recycling facilities have been provided in accordance with the approved drawings and these facilities shall be retained for this purpose thereafter.
- 11) Should any unforeseen contamination be encountered during the development, the developer shall inform the Local Planning Authority immediately. Any subsequent investigation/remedial/protective works deemed necessary by the Local Planning Authority shall be carried out to agreed timescales and approved by the Local Planning Authority in writing. If no contamination is encountered during the development, a letter confirming this fact shall be submitted to the Local Planning Authority prior to occupation of the dwelling/flats.
- 12) No development or other operations shall commence on site until a detailed scheme of landscaping for the site has been submitted to and approved in writing by the Local Planning Authority. The details shall include schedules of plants noting species, plant sizes and proposed numbers/densities, an implementation programme and details of written specifications including cultivation and other operations involving tree, shrub and grass establishment. The scheme shall ensure;
 - c) Completion of the approved landscape scheme within the first planting season following completion of development.
 - d) Any trees shrubs or plants that die or become seriously damaged within five years of this development shall be replaced in the following year by plants of the same size and species.
- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
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- vi) measures to control the emission of dust and dirt during construction;
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The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) Notwithstanding the approved plans, no development shall commence until an amended parking layout illustrating details of motorcycle and bicycle spaces, together with a parking management plan for the allocation of parking spaces for the residential units hereby permitted has been submitted to and approved in writing by the Local Planning Authority. No residential unit shall be occupied until the approved details have been implemented in full.
- 15) No dwelling/flat shall be occupied until the access has been constructed in accordance with the approved drawings.