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## Appeal Decision

Hearing held and site visit made on 10 January 2017

**by Jane Miles BA (Hons) DipTP MRTPI**

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

**Decision date: 24 March 2017**

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**Appeal Ref: APP/D0840/W/16/3154072**

**Former Car Park, Helebridge Road, Marhamchurch, Cornwall EX23 0HB**

- 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 S Rudman of The Innovative Design Company against the decision of Cornwall Council.
  - The application ref: PA16/00853, dated 27 January 2016, was refused by notice dated 28 June 2016.
  - The development proposed is construction of 5 new dwellings and one new commercial unit (A1 & A2 uses), together with the demolition of both the car park stores and the rear corner lobby area of the Bullers Arms Hotel.
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### Decision

1. *The appeal is allowed and planning permission is granted* for the construction of 5 new dwellings and one new commercial unit (A1 & A2 uses), together with the demolition of both the car park stores and the rear corner lobby area of the Bullers Arms Hotel at the Former Car Park, Helebridge Road, Marhamchurch, Cornwall, EX23 0HB, in accordance with the terms of the application, ref: PA16/00853, dated 27 January 2016, *subject to the conditions listed at the end of this decision.*

### Background & Preliminary Matters

2. The appeal site consists primarily of land that was last in use as car park and beer garden for the adjacent public house/hotel known as the Buller's Arms Hotel (the BAH<sup>1</sup>). A small lobby area at the rear of the BAH and a narrow strip of land along part of its frontage are also included in the appeal site, but the main BAH building and various small areas immediately around it are in a separate ownership. The site in this appeal differs from the site in a previous scheme, which included demolition of part of the function room and bedrooms above it. That previous scheme was dismissed on appeal in 2015<sup>2</sup>, and I have taken the appeal decision into account.
3. The Council's single refusal reason in this case cites only the *National Planning Policy Framework* (paragraphs 28 and 70) and does not rely on any development plan policies. However, not least as the development plan is normally the starting point in considering any development proposals, it is relevant to note here that the Cornwall Local Plan Strategic Policies 2010-2030

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<sup>1</sup> Comprising a public house, a function room and hotel bedrooms

<sup>2</sup> Appeal ref: APP/D0840/A/14/2228217, decision dated 21 May 2015

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(LP) was adopted in November 2016. LP Policy 4 relates to shopping, services and community facilities. It was clarified at the hearing that no remaining saved policies in the North Cornwall District Local Plan (1999) are relevant to the matters at issue in this appeal.

4. At the hearing it was agreed that one submitted plan (drawing no. PL.206) is not in fact applicable to the current scheme.
5. An application for costs, made by the appellant against the Council, is the subject of a separate decision.

## Reasons

6. The principal concern of the Council, the Parish Council and local residents is that the proposed development of the car park land would permanently harm the continued viability of the BAH, a valued community facility. The Council relies on paragraphs 28 and 70 of the *Framework* in support of its refusal on this basis. The appellant maintains, in essence, that because the car park is not and will not be available to the BAH, the success or otherwise of the BAH is not dependent on the status of the former car park.
7. Given these particular circumstances, which I consider more fully in due course, the **main issue** in this case is whether or not the viability of the adjacent public house/hotel (the BAH) is a relevant planning consideration in assessing the proposed development and, if so, the effects of that development on the pub's viability.
8. I note firstly some points relating to the history of the BAH and the appeal site. The appellant bought the BAH and the car park in 2006, but it closed for business in 2012 and the whole property (including the car park) was put on the market. According to the appellant various options were considered at that time. A 2012 planning application to retain the pub without the hotel element and to create some new residential accommodation was refused.
9. It appears that a range of options were also considered in sale negotiations involving the current owner/operator of the BAH (Ms Unger). Crucially, Ms Unger and her then business partner bought the BAH in 2013 subject to various terms and provisos but the purchase did not include the car park area. I heard that, although a licence to use the car park was initially given, the purchase did not include any guarantee of that licence continuing in perpetuity. The licence was revoked in October 2014, following the Council's refusal of the development scheme that was subsequently dismissed on appeal in 2015. Thus the BAH has been operating since 2014, and continues to operate, without any use of the car park area. The BAH including the car park was listed as an asset of community value in 2013, but the car park area was removed from that listing in 2014.
10. In 2015 the previous Inspector acknowledged the car park was not available to customers of the BAH but noted there was no evidence of any formal requirement to retain it for pub use: that situation is unchanged. Amongst the main issues he considered was the impact of removing a large part of the function room on the viability of the BAH and its value as a community facility. He noted it was likely the absence of a car park would detract from the attractiveness of the function room, but his decision does not include any explicit finding that loss of the car park would harm the viability of the BAH

business. He found that loss of a large area of the function room (rather than loss of the car park) would unacceptably harm the BAH's value as a community facility (rather than the financial viability of the business) <sup>3</sup>.

11. In the current appeal scheme the function room (and hotel bedrooms) would remain. The Council's concerns stem from the effects of loss of the car park on the financial viability of the pub business which, according to the Council's appeal statement, "jeopardises the community value of the function room and in turn the BAH". Local residents are also concerned that allowing the appeal scheme could lead to closure of the BAH and thus the loss of a valued community facility.
12. Whilst I fully understand and appreciate those concerns, the first matter for me to consider is the relevance of any impact on the BAH's viability as a planning consideration in assessing the proposed development scheme. In this respect an argument has been put forward on behalf of a small local group<sup>4</sup> to the effect that the BAH and car park still form a single planning unit. On this basis it is suggested the appellant should be required to provide evidence on matters such as the financial viability of the pub business, the monetary value of the appeal site as a pub car park and details of marketing exercises to sell or let it as such. A large number of other appeal decisions have been submitted in support of the view that a car park is, in effect, an integral and important element in the continuing viability of pub businesses.
13. The need to establish the appropriate planning unit more commonly arises in cases where there is a dispute as to whether a material change of use has occurred, but that is not at issue here. The majority of the appeal site was last used as a car park (for which planning permission had been granted in 1971<sup>5</sup>) but planning permission is now sought for a different use. Tests to determine the planning unit, established in a High Court judgment<sup>6</sup>, begin with consideration of the unit of occupation and turn on the context of physical and functional separation. In this case, because the BAH and the car park area are now in separate ownerships (and the licence allowing use of the car park in association with the BAH has been terminated) these two areas no longer form a single unit of occupation. Thus even though there has previously been a functional relationship between them, logic dictates that they must now be treated as physically separate areas.
14. It follows that I do not accept the argument that the BAH and the car park area currently form a single planning unit. Moreover nothing put before me, in writing or at the hearing, has explained how the appellant could reasonably or realistically be expected to provide detailed financial information about the viability of a business in which he has no involvement.
15. With regard to the car park itself, I have borne in mind the anecdotal evidence of its importance in relation to the many and varied events held at the BAH in the past; the possibility that it may have been used at times for informal parking unrelated to the BAH; the access difficulties faced by some customers of the BAH now the car park is no longer available. None of these matters

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<sup>3</sup> Paragraph 42 of the 2015 appeal decision

<sup>4</sup> The Marhamchurch Conservation Group (MCG) an informal group formed in response to development proposals for the appeal site

<sup>5</sup> This was common ground at the hearing, albeit the Council had not been able to trace the decision notice and no-one was aware what, if any conditions, had been imposed at that time

<sup>6</sup> *Burdle and Williams v SSE and New Forest DC* [1972] 3 ALL ER (referred to in representations for the MCG)

however amount to substantive evidence sufficient to demonstrate that the privately-owned car park land can reasonably be considered a community facility in its own right. I therefore conclude that neither LP Policy 4 nor *Framework* paragraphs 28 and 70, relating to the retention of community facilities (including public houses), are directly applicable to the proposed redevelopment of the car park area.

16. As the car park area is in separate ownership from the BAH and is no longer physically or functionally part of the BAH premises, I further conclude that viability of the BAH is not a relevant planning consideration in assessing the development scheme for the appeal site. Thus assessing the relatively limited and inconclusive evidence put forward about the financial viability of the BAH business in order to determine the likely effects of the proposed development is not necessary.
17. None of the circumstances in the various appeal decisions submitted by the MCG are so similar to those in this case as to alter or outweigh my conclusions in these respects. In particular, in those decisions where development was proposed on part or all of a pub car park, it appears that both pub and car park were in the same ownership. Other Inspectors have found, and I do not disagree, that a development proposal involving the separation of a pub from its car park could affect both the ongoing viability of a pub business and the prospects of selling it as a going concern. However the very significant difference here is that a purchaser chose to buy the pub but not the car park. A split into two ownerships took place before the 2014 and 2016 development proposals. Moreover, whilst various references have been made to what was said and/or offered during the purchase process, including in relation to financial values, those matters are not relevant planning considerations.
18. I note the many objections to the proposals, in writing at both application and appeal stages and in representations at the hearing. Many focus on the undoubted community value of the BAH, both as a facility for local residents and in terms of contributing to the local tourist economy. I note also concerns that, more generally, selling off pub car parks might be used to circumvent policies which aim to retain pubs as community facilities. However nothing I have read, seen and heard in this case suggests that was the intention here. Moreover my assessment of the proposed development must be based on its planning merits, in the light of the LP and the *Framework* and other material planning considerations. In the particular circumstances of this case, and for the reasons already explained, I am unable to treat the future viability of the separately-owned BAH as a material consideration. I find no material conflict between the development proposals, LP Policy 4 and the *Framework*.

#### *Other matters and overall conclusion*

19. No objections are raised by the Council or the Highway Authority to detailed aspects of the proposed development, such as design, layout, access and parking for example. I have taken account of differing views on these matters from the Parish Council, local residents and the MCG. I note also the local view that there is no need for additional housing in the village, not least in the light of a recent permission for a larger development elsewhere in the village. In this latter respect however, development on the appeal site would not conflict with any LP policies relating to the location of new housing.

20. Due to its location inside a bend of the road the appeal site is in a prominent location in the village Conservation Area (CA). Whilst there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area, the designation does not preclude new development taking place. In this instance, having noted the Marhamchurch CA Character Statement, the village CA appears to be significant in heritage terms mainly because it is focused on the historic core of the village. It includes many attractive traditional buildings (some of which are listed) that help to illustrate the village's historic evolution.
21. However the car park land, adjacent to the CA's southern boundary, is not identified in the Character Statement as a feature of special interest or character. On the contrary, as an open expanse dominated mainly by hard-surfacing it contributes little to the CA's character and appearance despite some existing vegetation. Moreover in terms of design, character and appearance the proposed development would be similar in many respects to the scheme considered acceptable in this respect by the 2015 Inspector. In terms of siting, scale and design I find this appeal scheme would be compatible with and sympathetic to the general form and pattern of existing development in the CA. It would at least preserve the CA's character and appearance, without detracting from its significance as a designated heritage asset.
22. I note the various concerns expressed about the relationships that would be created between the side of the BAH building (the function room), the single storey rear projection of the commercial unit and the new dwellings beyond that. However given the proposed separation, layout and building forms I find no sufficiently compelling grounds to conclude the development would harm the attractiveness of the function room (in terms of loss of light) or living conditions in the proposed dwellings (in terms of noise from the function room and/or the commercial unit).
23. The existing vehicular access would be re-used, with appropriate visibility splays, and on-site parking provision would be adequate for the proposed development. Moreover the proposals include the provision of a new length of public footpath alongside the adjacent highway carriageway, which would be a benefit in highway safety terms. Use of the proposed commercial unit for retail purposes could potentially generate some on-street parking in front of the unit but I find it unlikely that this would compromise highway safety in a highway environment where differing road widths, on-street parking and traffic including large vehicles necessitate relatively slow speeds. Consequently, although I fully understand local concerns about the permanent loss of the car park to the BAH and parking issues in the village centre, I find the proposed development would not in itself compromise highway safety.
24. Neither the above matters nor any other matters raised are so significant as to alter or outweigh my overall conclusion that the proposed development would accord with the development plan and with the *Framework*. It follows therefore that the appeal must succeed and planning permission should be granted subject to conditions.

#### *Conditions*

25. A condition specifying the approved plans is necessary to provide certainty. As discussed at the hearing, conditions relating to external materials and landscaping are reasonable and necessary in the interests of visual amenity in

the CA. A requirement to provide and retain the proposed access, parking and turning area and also the proposed footway alongside the highway are justified in the interests of highway safety. It is reasonable in the interests of residential amenity to impose some restrictions on any external plant or noise generating equipment which might be installed at the commercial unit. However, given the scale of the unit and the types of uses falling within Classes A1 and A2, a simpler approach than that set out in the Council's suggested conditions would be sufficient.

*Planning permission is therefore granted subject to the following conditions:*

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, drawing nos: PL.201, PL.202, PL.203, PL.205A, PL.207, PL.208, PL.209, PL.210A, PL.211A, PL.212, PL.213, PL.214.
- 3) No development shall take place until details or samples of materials to be used in the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a landscaping scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include: details of the species, sizes, numbers and locations of new trees, hedging and shrubs; details of hard surfacing materials; details of means of enclosure; an implementation programme. All hard and soft landscaping shall be provided in accordance with the approved scheme.
- 5) The development hereby permitted shall not be occupied until vehicular access, turning and parking facilities have been provided and made available for use in accordance with the approved layout plan (drawing no. PL.205A) and any details approved pursuant to condition 4 above. The access, turning and parking facilities shall be retained and kept available for such purposes at all times thereafter.
- 6) The development hereby permitted shall not be occupied until the new footpath alongside the highway has been provided and made available for use in accordance with the approved layout plan (drawing no. PL.205A) and any details approved pursuant to condition 4 above.
- 7) No external plant or noise generating equipment shall be installed at the commercial unit hereby permitted other than in accordance with a scheme which has first been submitted to and approved in writing by the local planning authority. The scheme shall include measures to minimise noise and vibration from such plant and equipment. The measures shall be implemented as approved and retained in operation thereafter.

*Jane Miles*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                  |                          |
|------------------|--------------------------|
| Walter Wonnacott | Peter Wonnacott Planning |
| Stephen Rudman   | Appellant                |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                    |                                                   |
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| Peter Blackshaw    | Principal Development Officer<br>Cornwall Council |
| Cllr David Parsons | Local Councillor<br>Cornwall Council              |

### **INTERESTED PERSONS:**

|                   |                                         |
|-------------------|-----------------------------------------|
| Raymond Hockin    | Chairman, Marhamchurch Parish Council   |
| John Milverton    | Marhamchurch Conservation Group         |
| Nikki Unger       | Bullers Arms Hotel                      |
| Cllr Nikky Chopak | Local councillor                        |
| Chris Jopling     | Local resident                          |
| Lynn Muir         | Local resident                          |
| Graeme Henderson  | Local resident                          |
| Bobbie Heathcote  | Local resident                          |
| Geraldine Stemp   | Local resident                          |
| Roger Blewitt     | Local resident                          |
| Jason Petherick   | Vice-chair, Marhamchurch Parish Council |

### **DOCUMENTS SUBMITTED AT THE HEARING:**

1. Written copy of Mr Hockin's statement
2. Council's written response to the appellant's claim for costs