

Appeal Decision

Hearing held on 1 March 2017

Site visit made on 1 March 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 29th March 2017

Appeal Ref: APP/J0405/W/16/3158739

19-20 Fort End, Haddenham, Buckinghamshire, HP17 8EJ

- 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 Richmond Assets Ltd against the decision of Aylesbury Vale District Council.
 - The application Ref 15/00980/APP, dated 20 March 2015, was refused by notice dated 15 March 2016.
 - The development proposed is the demolition, extension and alteration and the conversion of 19/20 Fort End, Haddenham to form seven dwellings with parking and amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council determined the application on the basis of an amended plan (ref: 1522-03b) which was submitted during the course of the application. For clarity, I have also determined the appeal based upon this amended plan.
3. The Council confirmed in their appeal statement that they have conceded on their second and third reasons for refusal in respect of planning obligations.

Main Issue

4. The main issue is the effect of the proposed development upon the vibrancy of the community of Haddenham.

Reasons

5. The appeal property is located on a prominent corner plot to the north of Fort End, an open area created by a staggered junction of Thame Road, Fern Lane, High Street and Banks Lane which divert around a small village green. It has operated for a period of over 20 years as an Indian restaurant called 'Taste of the East.' At my site visit I saw that the restaurant was still open for business, and it was established at the Hearing that this currently trades 7 days a week, during the evenings.
 6. The appeal property is located within the settlement of Haddenham, a large village which has a number of services and facilities as well as good transport links to major settlements. Services and facilities in Haddenham are spread
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around the village, however, there were a number of commercial properties at Fort End, including a bakery, butchers, barbers and an estate agent.

7. The Haddenham Neighbourhood Plan 2015 (NP) identifies that for a settlement the size of Haddenham, the community is poorly served by services and facilities including shops, pubs food outlets and commercial services. It also states that the settlement is at risk of becoming a dormitory or commuter village. In this context, NP Policy HWS2: Protecting Community Amenities seeks to protect, retain and enhance local services and community facilities. The loss of facilities is restricted unless it can be demonstrated that they are no longer financially viable. The policy goes on to state that "*whilst proposals to change the use of an asset must demonstrate that all reasonable steps have been taken to retain its present use and community value as a viable concern.*"
8. At the Hearing, it was also noted that the village is set to expand due to a number of recently approved housing schemes. Moreover, the emerging development plan for the District identifies Haddenham as a strategic settlement as part of a draft settlement hierarchy, although this is untested and at an early stage. In light of the above, both the Council and the local community contend that the need to protect existing facilities remains a valid and important consideration.
9. The appellant has provided certified accounts which demonstrate that the business has been operating at a loss for a sustained period between 2011 and 2014. While no detailed accounts were provided for the last financial year, it is understood that the annual losses have continued. The appellant has sought to promote the business locally and has implemented measures such as special offers and internal redecoration; however further losses are also anticipated into the next financial year. Although the business continues to operate due to shareholder funding and subsidisation by the appellant's wider chain of businesses, in light of the above, I am satisfied that the business as it stands is no longer financially viable and as such the first part of the policy test under HWS2 is met.
10. The second limb of this policy effectively relates to marketing. The appellant claims that in specifying 'asset' this test is only applicable to facilities which are identified as Assets of Community Value (ACV). Within the NP, paragraph 9.3 of the supporting text to Policy HWS2 lists a number of ACVs to be nominated by the local community under the provisions of the Localism Act 2011. The Council have also provided a copy of the register of ACVs as part of their statement. The appeal property is not identified in the NP nor is it on the formal register. It was confirmed at the hearing that 'Taste of the East' has not been put forward as an ACV.
11. While I accept that the terminology and phrasing of Policy HWS2 in respect of reference to 'asset' and 'whilst' is clumsy, I am satisfied that the overall intention of the policy is to support, retain, protect and enhance all community amenities within the village.
12. Paragraph 9.3.1 of the supporting text which directly precedes the policy is also clear that the function of community amenities should be protected because of their importance to village life and that their loss or harm will be resisted. This is all encompassing and in making reference to the need to market an 'asset' it is clear to me that the policy wording relates not just to those facilities formally identified as ACVs but all such community facilities. Accordingly, I find that the

second limb of HWS2 is relevant to the determination of this appeal as a second key policy test to be met in respect of the loss of a local service and community facility.

13. Following the determination of the application, evidence was provided in respect of marketing carried out. The leasehold for the business as an A3 and A4 use was advertised for a period of 6 months from July 2016 and the price of the lease was also reduced after a period of 2 weeks to offers in the region of £35,000 with a premium of £175,000. Marketing involved a London-based agent which specialises in commercial and leisure businesses and a campaign of emailing potential clients on a database was undertaken. Due to concerns over demotivating existing staff, no marketing boards were erected on the property itself. From the discussion held at the Hearing, it is understood that there was little interest in the appeal site and it is noted that no formal viewings were made. The property was removed from the market in January 2017 due to concerns that it would stagnate if it continued to be marketed.
14. While the NP does not define what 'reasonable steps' should be taken in respect of marketing, I do not consider that the campaign as set out above to be adequate. This appears to be overly narrow; while it is clear from the evidence that the particulars were sent to some 7000 recipients who have signed up with the agent, this appears to have been the only format which was relied upon.
15. A lack of any marketing of the freehold is also a significant shortfall and I consider that those recipients on the database would not reasonably have been able to assume that offers would have been considered on this basis. It is also my view that the rent and premium could be unrealistic particularly given the existing business accounts, and the appellant's own acknowledgment at the Hearing in respect of the need to upgrade the kitchen facilities and other investment required. Moreover, the particulars themselves were lacking in any great detail in respect of covers, and specific facilities/offerings.
16. While I accept that stagnation is a legitimate concern, I consider that a marketing period of 6-months is overly short and thus inadequate. I acknowledge that the presence of 'for let' boards can be unnerving for staff, however I consider that this was a significant missed opportunity in the campaign, as was a lack of any marketing in the local area.
17. I take on board the appellant's comments in respect of a time lag in terms of the business need and future housing growth of Haddenham which may increase footfall and the potential for custom. However, there is no formal evidence to support claims that this was even recognised in the campaign.
18. I therefore consider that reasonable steps have not been demonstrated in respect of marketing. The second test as set out in Policy HWS2 has therefore not been met.
19. Overall, the development would not be justified under the provisions of NP Policy HWS2. In light of the significance and need for local services to support the village, and due to the policy conflict, I therefore conclude that the permanent loss of the restaurant as a community facility would adversely affect the vibrancy of Haddenham.

Other Matters

20. There is a dispute as to whether the Council can demonstrate a 5 year housing land supply. Parties did, however, agree at the hearing that the weight to be given to the benefits of the scheme in respect of the creation of 7 units is significant. It was also agreed that NP Policy HWS2 was relevant to the determination of the appeal. The policy is relevant in respect of changes of use and as such could affect the supply of housing.
21. I have identified that the development would be in conflict with the NP as the adopted development plan. Even if I were to conclude that there is a shortfall in 5 year supply and that HWS2, as a policy relevant to the supply of housing, should not be considered up to date, I consider that the permanent loss of a restaurant and the adverse effect on the availability of community facilities in Haddenham would significantly and demonstrably outweigh the benefits, even when attaching significant weight to the economic and social benefits of the housing. The proposals cannot therefore be considered sustainable development for which the National Planning Policy Framework presumes in favour.
22. The appeal property is located within the Haddenham Conservation Area and there is also a Grade II listed building to the eastern boundary. The conversion would entail minimal external alteration and as such there would be no harm to the setting of the listed building. Furthermore, while I have found harm to overall vibrancy of Haddenham, the change of use of the appeal property to residential would not undermine the general character of Fort End, which is derived from a mix of both commercial and residential dwellings, to any significant degree. The character and appearance of the Conservation Area would therefore be preserved.

Conclusion

23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

C Searson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jake Collinge	Planning Consultant
Naz Choudhury	Richmond Assets Ltd
Charles Cohen	Charles Benjamin Associates

FOR THE LOCAL PLANNING AUTHORITY:

Jenny Harris	Aylesbury Vale District Council
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INTERESTED PERSONS:

David Truesdale	Haddenham Parish Council
John Brandis	Haddenham Village Society
Graham Tyack	Haddenham Village Society
Cllr Brian Foster	District Councillor for Haddenham and Stone
Cllr Judy Brandis	District Councillor for Haddenham and Stone
Bill Burns	Local Resident
Charles Simpson	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Letter from appellant's accountant.
- 2 Marketing advertisement for House of Spice
- 3 Email dated 19 July 2016 of Database Report for marketing campaign.
- 4 Written comments on Aylesbury Transport Strategy - G Tyack
- 5 Photographs depicting traffic along Fort End
- 6 Annotated photograph of Haddenham Village Sign - C Simpson
- 7 Appeal decision APP/J0405/W/16/3146817
- 8 Listed Building Description and Map for 21 Fort End
- 9 Written comments from Cllr Brandis