
Appeal Decision

Site visit made on 23 May 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 14 July 2017

Appeal Ref: APP/R0660/W/17/3170004

The White Lion, Audlem Road, Hankelow CW3 0JA

- 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 Timothy Guttridge against the decision of Cheshire East Council.
 - The application Ref 16/3664N, dated 27 July 2016, was refused by notice dated 24 November 2016.
 - The development proposed is demolition of public house and erection of 5no. four bedroom detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of public house and erection of 5no. four bedroom detached dwellings in accordance with the terms of planning application Ref: 16/3664N, dated 27 July 2016, and subject to the conditions set out in the schedule attached to this decision.

Application for costs

2. An application for costs was made by Mr Timothy Guttridge against Cheshire East Council. This application is the subject of a separate decision.

Procedural Matters

3. The Council has referred to a number of policies contained within the emerging Cheshire East Local Plan Core Strategy (LPCS) which was subject to an examination in public in late 2016. The Inspector's report containing main modifications for the LPCS was issued on 20 June 2017. Subject to the modifications being made, the Inspector has indicated that the LPCS would be sound and may be adopted by the Council. However, I am not aware of any date set for the adoption of the LPCS. Notwithstanding this, having regard to the advanced stage of the LPCS and noting that modifications are yet to be made, I have given due weight to the relevant LPCS policies in this case and have assessed the appeal in that context.

Main Issues

4. The main issues are the effect of the proposed development with regard to:
 - the loss of an Asset of Community Value (ACV); and
 - the character and appearance of the surrounding area.

Reasons

Asset of Community Value

5. The Council argues that the proposal would result in the loss of an existing public house which is listed as an Asset of Community Value (ACV). Notwithstanding this, the public house is no longer a viable business and there is little prospect of it being so in the future. Furthermore, demand for such commercial use in such a rural location is indicated as being limited. As a result, I find that the public house no longer makes a positive contribution to the local community.
6. Given the number of previous attempts to make a successful business of the public house, and the significant amount of time that has passed, it is evident that this is no longer viable in this location for such an enterprise. Furthermore, I note that the appellant has sought to provide the best possible financial conditions for businesses to succeed by offering rent free periods to tenants. However, this has resulted in a series of failed enterprises which appear to relate to a lack of demand, its rural location, a lack of significant passing trade and the impact of other public houses in the surrounding area. Furthermore, from what I have seen and read, there is no evidence of any market demand for any alternative commercial use of the site.
7. Whilst there is no definitive period set out in existing policy for the marketing of a business to assess its viability, the Council points to Policy EG3 of the emerging LPCS which identifies a marketing period of a minimum of 2 years. I note that a period of 9 months of marketing was undertaken when the property was between a previous tenant and its last tenant and acknowledge that this is short of the 2 year policy period. However, taking into account the numerous attempts to establish a viable business at the site over the last 10 years and the cumulative time spent in seeking tenants, I find it reasonable to consider that such a use is no longer viable in this location and that there is no substantive evidence to indicate that there is any long term viability at the site.
8. In these circumstances, I find that whilst the period of 2 years indicated in the Council's emerging policy has not been achieved, it is evident that the established A4 use at the appeal site is no longer viable and has little prospect of being so in the future. Furthermore, I find that any additional period of marketing would likely only serve to prolong the underuse of the site and exacerbate the deterioration of its appearance within the settlement.
9. I have had regard to the comments made by interested parties regarding the property as an ACV. From the evidence before me, it is clear that the local community considers the public house to be a valued community facility. Therefore, this is a material consideration which carries significant weight in the determination of this appeal. As a result, it is necessary to assess the benefits and adverse impacts of the scheme in the planning balance.
10. I find that the proposal would result in an efficient and beneficial use of previously developed land in a sustainable location within an established and accessible settlement. The proposal would contribute to the local housing stock and would assist, albeit modestly, in meeting the national housing shortage. Furthermore, it would improve the current appearance of this highly visible site. Notwithstanding this, the proposal would result in the loss of an ACV and would therefore have an impact on the local community.

11. Whilst I appreciate that the loss of an ACV would be regrettable, on the basis of what I have seen and read, it has been demonstrated that the existing public house is not viable. I note the Council's argument that a number of community uses at the property could be explored and that a re-configuration of the internal layout could be undertaken to make a more efficient use of space. However, I have seen no substantive evidence of market demand or interest for future uses, including commercial or community uses. It is therefore difficult to see how the existing disused building would make a positive contribution to the social and cultural life of the community.
12. Accordingly, in applying the tests set out in Paragraph 14 of the Framework, I find that the substantial benefits of the proposal would outweigh the harm identified with regard to the loss of an ACV. As a result, I find that the proposal would constitute sustainable development and, having had regard to the above, I find it unnecessary to provide an alternate community facility.
13. Consequently, I conclude that the proposal would not be contrary to Policy CF3 of the Crewe and Nantwich Local Plan 2011 (LP) and the relevant guidance within the Framework regarding Assets of Community Value.

Character and appearance

14. The appeal site comprises a disused public house building, known as 'The White Lion' and associated car park and garden area. It is situated within the settlement of Hankelow and is located on the corner of Audlem Road and Longhill Lane. The surrounding area is predominantly residential with detached dwellings to the east, south and west of the site. The main frontage of the existing public house faces Hankelow Green which is a substantial green open space within the settlement. As a result, the site is highly visible within the village and along Audlem Road which is the main route through the settlement.
15. Detached properties are the predominant property type in the surrounding area and therefore I find that the proposed dwellings would be in keeping with the wider setting of the appeal site. Furthermore, I note that the scheme would seek to reflect locally distinctive elements such as mock Tudor frontages which are a particular feature of other properties along Audlem Road.
16. The layout of the proposed development flows from the nature of the appeal site as a corner plot. I note the Council's point that the proposal would not respect the existing building lines or pattern of development. However, I find that the layout would not be contrary to the existing urban grain as the proposed dwellings would follow the road frontages of the site.
17. Furthermore, I note that the existing building line of the public house is substantially forward of the adjacent detached properties along Audlem Road to the south. Notwithstanding this, Plots 1 and 2 of the proposal would be behind the building line of Holly Cottage on Audlem Road. Plot 3 would be sited closer to the road than the existing public house and Plots 4 and 5 would be set behind the building line of Smithy House off Longhill Lane. Taking this into consideration, I find that the proposal would be in keeping with the surrounding building lines and would complement the existing surrounding development. Whilst I note the Council's point regarding the infilling of an existing gap between the public house and Smithy House, I find that this would not result in any significant harm to the character or appearance of the streetscene or the wider area.

18. The appeal site is in a prominent and visible location within the settlement and the demolition of the public house would undoubtedly result in a change to the character and appearance of the site. However, the proposed dwellings would be in keeping with the overall pattern of development in the settlement and would reflect the predominant type of property in the locality in terms of scale, height, proportions and materials. Moreover, the overall appearance of the site would be improved in terms of the removal of a disused building and the site being redeveloped in such a way as to be in keeping with its surroundings.
19. Consequently, I conclude that the proposal would have no significant adverse impact on the character or appearance of the surrounding area. It would therefore comply with Policy BE.2 of the LP and the relevant guidance within the Framework. Amongst other matters, this policy and guidance seeks to ensure that development respects the pattern, character and form of its surroundings and has no significant adverse impact on the streetscene with regard to scale, height, proportions or materials.

Other Matters

20. Concerns have been raised by interested parties which have not been addressed within the substantive matters above. These relate to the potential impact of the proposed development on existing services and facilities within nearby settlements. Notwithstanding this, whilst I appreciate the importance of these matters to those concerned, I have no substantive evidence before me to demonstrate the precise nature of such potentially adverse impacts. As a result, I give such matters limited weight.
21. I note the points made regarding the condition of the building on the appeal site since it has been vacant and the comments made relating to previous tenants of the public house. However, whilst I have had due regard to such comments, I find that these matters are not directly relevant to the proposed development before me. Therefore, I have given limited weight to them in reaching my decision.

Conditions

22. I have had regard to the planning conditions suggested by the Council. Where necessary, and in the interests of conciseness and enforceability, I have altered the suggested conditions to better reflect the relevant parts of the Planning Practice Guidance.
23. In addition to the standard time condition (1), it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2) to provide precision and certainty. A condition relating to external materials (3) is appropriate in the interests of character and appearance. Conditions requiring a Construction Method Statement (4) and ground investigations and risk assessment (5) are necessary and reasonable in the interests of residential amenity. Condition 6 concerns the details of existing and proposed land levels and is appropriate for reasons of character and appearance and residential amenity. I have imposed conditions relating to a bat survey (7) and making provision for breeding birds (8) which are required and reasonable in order to safeguard biodiversity and protected species.
24. Condition 9 relates to archaeology and is imposed in order to safeguard the historic environment. Condition 10 relates to details on the implementation,

management and maintenance of surface water drainage and is necessary and reasonable in the interests of the living conditions of future and neighbouring occupiers. Conditions relating to soil (11) and land contamination (12) are necessary and reasonable in order to safeguard the local environment and in the interests of the living conditions of future and neighbouring occupiers. Condition 13 relates to noise mitigation measures and is reasonable and necessary in the interests of residential amenity. Condition 14 concerns visibility splays and is necessary and reasonable in the interests of highway safety.

25. The Framework advises that conditions should restrict national permitted development rights only where there is a clear justification to do so. In this case, due to the prominent position of the site and therefore the highly visible nature of the proposal within the settlement, I find that such justification exists in this case. Therefore, I have imposed Condition 15 removing permitted development rights for reasons of character and appearance and in the interests of residential amenity.
26. It is necessary that the requirements of Conditions 3 to 9 inclusive are agreed prior to development commencing to ensure an acceptable development in respect of character and appearance, the living conditions of future and neighbouring occupiers, safeguarding the local historic environment, biodiversity and protected species.

Conclusion

27. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Andrew McCormack

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 'Location Plan'; Existing Site Plan; Existing Plans and Elevations; Site Layout - K102.1 rev E; Floor Plans and Elevations of House Types 'H1.1 - K102.2.1 rev A'; 'H1.2 - K102.3.1 rev A'; 'H1.2 - K102.3.2'; 'H1.3 - K102.4.1 rev A'; 'H1.3 - K102.4.2'; Site Layout Plan - 'SCP/16220/FO1 rev D'; Visibility Splays on Site Layout Plan - 'SCP/16220/F02 rev D'; Swept Path Analysis Medium Car - Plots 1 & 2 - 'SCP/16220/ATR02 rev A'; and Swept Path Analysis Medium Car - Plots 3, 4 & 5 - 'SCP/16220/ATR03 rev A'.
- 3) No development shall take place until details or samples of all external facing materials have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved details or samples unless any variation is agreed with the local planning authority.
- 4) 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 the following:
 - i) details of the method of piling, if required;
 - ii) days and hours of piling work, if required;
 - iii) duration of the pile driving operations, if required (start and end dates);
 - iv) prior notification of piling, if required to the occupiers of potentially affected properties;
 - v) details of the responsible person (e.g. site manager/office) who could be contacted in the event of complaint);
 - vi) the parking of vehicles of site operatives and visitors;
 - vii) loading and unloading of plant and materials;
 - viii) storage of plant and materials used in constructing the development;
 - ix) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - x) wheel washing facilities;
 - xi) measures to control the emission of dust and dirt during construction;
 - xii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - xiii) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the demolition/construction phase of the development.
- 5) Development shall not commence until:
 - a) A Phase I Preliminary Risk Assessment has been submitted to, and approved in writing by, the local planning authority; and if required
 - b) A Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing by the local planning authority; and
 - c) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing by, the local planning authority.Prior to the occupation of the development:
 - d) The remedial scheme in the approved Remediation Strategy shall be carried out;

- e) A Verification Report prepared in accordance with the approved Remediation Strategy, shall be submitted to, and approved in writing by, the local planning authority.
- 6) Prior to the commencement of the development, details of proposed and existing land levels shall be submitted to, and approved in writing by, the local planning authority. The development shall be constructed in accordance with the approved details.
 - 7) Prior to the commencement of the development, an updated bat survey is to be undertaken and submitted to the local planning authority. The submitted report shall include mitigation recommendations for any adverse impacts identified.
 - 8) Prior to the commencement of the development, proposals for the incorporation of features into the scheme suitable for use by breeding birds, including house sparrow and roosting bats, shall be submitted to, and approved in writing by, the local planning authority. The approved features shall be permanently installed prior to the first occupation of the development and thereafter retained, unless otherwise agreed in writing by the local planning authority.
 - 9) No demolition/development shall take place within the area identified until the applicant, or their agents or successors in title, 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. The scheme shall be carried out strictly in accordance with the approved scheme.
 - 10) No development shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to, and approved in writing by, the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
 - 11) Any soil or soil forming materials to be brought to site for use in garden areas of soft landscaping shall be tested for contamination and suitability for use prior to importation to site. Prior to occupation, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the local planning authority.
 - 12) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority (within a maximum of 5 days from the find). Development on the part of the site affected shall be

suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to, and approved in writing by, the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.

- 13) The noise mitigation recommended in the report prepared by Hepworths, report no: P16-111-R02-V1, dated July 2016, shall be implemented prior to the first occupation of the first dwelling hereby permitted.
- 14) The visibility splays provided on plan 'SCP/16220/F02 ver C' should be kept clear of any obstructions above 600mm.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Classes A – F of Part 1 Schedule 2 and Class A of Part 2 of the Order, shall be carried out or constructed.

END OF SCHEDULE