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## Appeal Decision

Site visit made on 22 August 2017

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

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

**Decision date: 11 September 2017**

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**Appeal Ref: APP/C4615/W/17/3172823**

**Horse and Jockey, Ivyhouse Lane, Coseley WV14 9JH**

- 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 Paul Jones of HJH Developments Limited against the decision of Dudley Metropolitan Borough Council.
  - The application Ref P16/1764, dated 9 December 2016, was refused by notice dated 17 March 2017.
  - The development proposed is the demolition of the existing public house and the erection of 8No apartments.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the site is a suitable location for the development with regard to land stability.

### Reasons

3. The appeal site comprises a former public house, its car park and associated land. The public house building appears to have been empty for some time and is partially boarded up and in a state of dereliction. A canal within a steep cutting is adjacent to the appeal site.
4. The Coal Authority (CA) has stated that the appeal site falls within the defined Development High Risk Area. As such there are coal mining features and hazards within the appeal site and the surrounding area that need to be considered, specifically a mine entry within the appeal site and historic unrecorded underground coal mine workings at shallow depth.
5. Policy D4 of the Dudley Borough Development Strategy (DS) states that where it is known that land stability may have an impact on any development planning applications must be accompanied by sufficient proportionate information to determine the extent of the instability.
6. Paragraph 120 of the National Planning Policy Framework (the Framework) states that to prevent unacceptable risks from land instability, planning decisions should ensure that new development is appropriate for its location. Paragraph 121 states that decisions should also ensure that the site is suitable for its new use taking account of ground conditions and land instability, including from former activities such as mining.
7. The planning application was supported by a Coal Mining Risk Assessment (CMRA) that has been carried out by a firm of geotechnical and environmental

engineers. In relation to the historic unrecorded coal mine workings the CMRA recommends that intrusive investigation be carried out to verify the anticipated shallow seam depths and presence of any workings. It also states that one mineshaft is recorded within the site and that its best-plot position falls beneath the proposed building. However, the precise location, shaft size and the nature of any infill material is unknown and further site investigation would be required to determine this.

8. The CA employs a general precautionary principle in its adopted policy for building over or within the influencing distance of a mine entry. Consequently its policy is to avoid it wherever possible due to the potential for significant risks to both the development and the occupiers. Consequently, the CMRA states that it would be prudent to review the development proposals to see if it is feasible to redesign the layout to avoid the best-plot position of the mineshaft. Nevertheless, the authors of the CMRA state that after discussions with the architect that the proposed layout is the only feasible layout.
9. However, it would appear that alternative layouts could be considered as the appellant has stated that once the exact location of the mineshaft is known the layout will be confirmed or it will need amending. Furthermore, the Planning Practice Guidance (PPG) states that in some circumstances the preparation of a land stability risk assessment may require additional intrusive site investigations.<sup>1</sup> Even though the CMRA states that if the works detailed within it "are fully implemented then we see no reason why the site cannot be safely and economically developed" the conclusions are not based on intrusive site investigations. Furthermore, the appellant states that if the findings are such that it is concluded that the site cannot be made stable an alternative use will be brought forward.
10. Taking into account all of the above, I find that there is insufficient evidence before me to establish whether the site is safe and stable enough to accommodate the proposed development. Nor can I be content that past mining activity in the area poses no unacceptable risks to the future occupiers of the development.
11. The appellant considers that the further investigations set out within the CMRA could be submitted through a planning condition if I was minded to allow the appeal. However, I am mindful of DS Policy D4 and the relevant national policy advice on land stability within the PPG. This is a matter that requires to be fully understood before planning permission is granted, rather than being addressed by planning condition. I find that the circumstances of this case justify a precautionary approach in order to avoid potentially harmful impact arising from the development. Furthermore, the use of a planning condition on this matter could modify the development in such a way as to make it substantially different from that set out in the application and as such it should not be used.
12. In conclusion I consider that insufficient evidence has been put forward to demonstrate that the site is a suitable location for the development with regard to land stability. On this basis the development would conflict with DS Policy D4 and the Framework.

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<sup>1</sup> Paragraph: 008 Reference ID: 45-008-20140306

*Other matters*

13. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The Council's Officer Report states that Coseley North Tunnel Portal, which is adjacent to the site, is a grade II listed building. I have no reason to dispute this. It does not form any part of the Council's case that the proposal would harm the setting of this heritage asset. On the basis of the relationship of the listed building to the appeal site that I saw during the site visit, I agree with that assessment. Therefore, I am satisfied that the proposal would preserve its setting.

**Conclusion**

14. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*D. Boffin*

INSPECTOR