
Appeal Decision

Site visit made on 13 November 2017

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 8 December 2017

Appeal Ref: APP/N1730/W/17/3180908

242-246 Oatsheaf Parade, Fleet Road, Fleet GU51 4BX

- 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 WDP2 Ltd. against the decision of Hart District Council.
 - The application Ref 17/00696/FUL, dated 30 January 2017, was refused by notice dated 6 July 2017.
 - The development proposed is the change of use from yoga centre (D2) to create six residential units comprising 4 x one-bedroom flats and 2 x two-bedroom flats, also associated cycle and bin storage and parking to rear for 11 cars.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the premises should be retained for yoga centre (D2) use; and
 - whether the proposal would make adequate provision for habitat mitigation to offset any impact on the Thames Basin Heaths Special Protection Area (the Thames Basin Heaths SPA).

Reasons

Yoga Centre (D2) use

3. The proposal is for the change of use of the top two floors of Nos 242-246 Oaksheaf Parade, part of a three-storey building on the corner of Reading Road North and Fleet Road at the south western end of Fleet town centre. The first and second floors are currently used as a yoga centre within use class D2, and the application is for their conversion to six flats with associated car and cycle parking and bin storage in the parking/service area to the rear. The ground floor is used for retail purposes and would not be affected.
4. There is no dispute that the premises are capable of conversion to residential use, indeed planning permission was granted for six flats in 2011 although this was not implemented. There is also no dispute that the site lies in a highly accessible town centre location, with good road links and also sustainable transport options including nearby bus and train services.
5. The site lies within Fleet Town Centre as defined in the Hart District Local Plan 2006 (HDLP) as altered, where Policy F1 seeks to maintain or enhance the

vitality and viability of the centre by permitting proposals which contribute to an appropriate mix of uses. The town centre is then divided into primary and secondary retail areas, the premises being located within the latter where Policy F3 states that residential, office, catering and leisure uses are considered suitable for upper floors. Most pertinent to the present case, Policy URB15 relating to town, district and local centres permits changes of use to or from residential use above ground floor level 'where that would support the vitality and viability of the centre'. Changes of use either way are acceptable, the key criterion being the change should support the role of the centre, as opposed to detracting from it.

6. The other HDLP policies quoted by the Council are of little or no relevance to this appeal. Policy GEN2 seeks to ensure changes of use protect the physical character of the area concerned, which is not an issue in this case, whilst Policy URB20 supports proposals which retain or provide various facilities including 'community based services'. This may or may not include yoga centres but in any event does not specifically preclude their loss.
7. There is no dispute that these HDLP policies are broadly consistent with the National Planning Policy Framework (NPPF) and are therefore not out of date.
8. The Bikram Yoga Centre which occupies the premises has been operational for about seven years, and according to the operators during this time has been built up into a successful community business drawing people into Fleet from many surrounding areas. This is corroborated by numerous objections to the proposal by yoga centre users who greatly value the services provided, emphasising its contribution to individual health and wellbeing as well as its benefits in attracting customers from a wide area into Fleet town centre who then go on to use other shops and services nearby.
9. Unfortunately no quantitative evidence has been submitted to demonstrate the scale and reach of the yoga centre operation. However the website¹ advertises an extensive schedule of classes seven days a week between 6.30 am and 9.30 pm, mainly in the mornings and evenings, and the premises are open from 6 am to 10 pm depending on the day of the week. The centre certainly appeared to be generating a good number of visitors during the site visit which was undertaken in the early evening. A range of treatments and therapies are also available to customers. Overall the centre appears to be busy with activity for long periods every day of the week.
10. In comparison, six flats would contribute less to the vitality and viability of the town centre. Whilst the occupiers would contribute to the life of the town and generate expenditure for local shops and services, with mainly one bedroom flats the occupiers are likely to be singles or couples who could be out at work for much of the day. The result would not be the level of activity and potential for linked trips that are generated by the yoga centre use and consequently not such a significant contribution to the town centre. Paragraph 23 of the NPPF recognises town centres as the heart of their communities and for Fleet this is more effectively supported by a yoga centre than six flats.
11. The Council claims there is a shortfall of gym and health clubs in the district but it is not clear if the study concerned included yoga centres. The appellant argues there are a range of gym and yoga facilities within one mile, but no

¹ link provided by the appellant

details are provided as to their quality or location and it is not clear how the provision relates to the level of demand. The evidence of alternative provision in the area is therefore inconclusive.

12. For these reasons the proposal would detract rather than support the vitality and viability of the town centre in conflict with HDLP Policy URB15. The premises should therefore be retained for yoga centre (D2) use.
13. The appellant argues that the yoga centre is operating in breach of planning conditions, opening earlier in the morning than permitted and offering other services, but this is a matter for the Council to enforce or regularise and has not been raised as a concern.
14. The operators state that they wish to renew the lease of the premises for another ten years, indicating that the centre is on a sound footing. On the other hand, the appellant claims the use is 'not viable' and has served notice to end the tenancy, although on what grounds is not clear. There appears to be a landlord and tenant dispute but this, together with relative rental values, is not relevant to the planning merits of the appeal.

Habitat mitigation

15. The site lies within 5 km of the Thames Basin Heaths SPA which has been identified for its importance as habitat supporting certain protected species. Within the 5 km zone an assessment has concluded that visitor pressure arising from new housing development is likely to have a significant effect (either alone or in combination with other schemes) on the SPA unless it is properly mitigated. A mitigation strategy in the form of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) has been drawn up towards which financial contributions are invited.
16. In this case the Council has developed a SANG scheme and some private SANG provision is also available. However, the appellant has not submitted a unilateral undertaking offering a financial contribution to the Council for SANG nor secured alternative provision on a private SANG site. In addition, no mechanism is proposed for contributing towards SAMM. The suggestion that advanced notice is given of an appeal decision to enable a payment to be made to the Council is unworkable and would not provide adequate assurance that the necessary mitigation would be provided.
17. The proposal would not therefore make adequate provision for habitat mitigation to offset the impact on the Thames Basin Heaths SPA.

Conclusion

18. The proposal would provide six additional dwellings which would be a benefit regardless of the housing land supply position and would make a social and economic contribution to the town. The visual appearance of the access to the premises would also be slightly improved by the conversion works. However, the social and economic benefits of retaining the yoga centre use in the town centre would be significantly greater than those arising from six flats. The appeal should therefore be dismissed.

David Reed

INSPECTOR