



Appeal Decision

Site visit made on 17 September 2019

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 26th September 2019

Appeal Ref: APP/Z2260/W/19/3227870

The Knot, 20 Beach Road, Westgate On Sea CT8 8AD

- 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 Julian Radley (Westgate Property Limited) against the decision of Thanet District Council.
 - The application Ref F/TH/18/1529, dated 31 October 2018, was refused by notice dated 8 February 2019.
 - The development proposed is described as 'The proposals for the development has sought to retain the existing public house, the Knot, and convert that into 9 apartments and a maisonette. The central core of the site is shared vehicular access for the proposed apartments and the approved townhouses (ref: TH/16/0423). 10 parking spaces and 2 visitors spaces have been provided for the apartments'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellants have advised that the cited applicant, Mr Julian Radley was, at the time of the application's submission, an individual person with significant control as a Director of Westgate Property Ltd, but that this appointment has been terminated. The appellants remain Westgate Property Limited.
3. The Council's Decision Notice sets out a revised description of development which refers to the proposals as being:

'Part retrospective change of use from Public House and the erection of a three-storey extension to the rear to facilitate conversion into 4 No. 1-bed flats, 3 No. 2-bed flats, 1 No. 3-bed flat and 2 No. 2 bed maisonettes with associated parking, bin and cycle stores'

The appellants have used a similar description in their Statement of Case. Furthermore, they have confirmed that a scheme for which planning permission has been obtained has commenced, that the building has been extended and that there are eight residential units on the site. Therefore, the description of development provided by the Council, which includes reference to parts of the development being retrospective, more appropriately addresses the current circumstances and I have determined the appeal on the basis of the description of development set out on the Decision Notice.

Main Issues

4. The main issues are:

- The effect of the change of use of the public house on the ability of the community to meet its needs for community facilities.
- The effect of the development on Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI).

Reasons

Community facilities

5. Beach Road is one of a number of parallel roads running towards the seafront which serve an area of mixed use, although the predominant use is residential in the form of terraces of houses and blocks of flats. The Knot occupies a prominent corner plot and is a focal point in the area, albeit that it is no longer in use as a public house.
6. Policy CF1 of the Thanet Local Plan 2006 (the Local Plan) broadly sets out that planning permission will only be granted for change of use of a community facility if there is no longer a need for the facility or alternative facilities are provided. This policy is consistent with the National Planning Policy Framework (the Framework) which seeks to guard against the unnecessary loss of valued facilities and services and includes reference to public houses as community facilities.
7. Planning permission has been granted for two previous schemes at the site under Council Ref. F/TH/16/0423 and F/TH/17/0899. (the Approved Scheme) which included a micro pub and letting rooms in addition to residential units. The appeal scheme, if fully implemented, would result in the loss of both the original public house use and the potential micro pub and letting rooms, through the conversion of the whole extended building to residential units.
8. Both main parties consider that the loss of the potential for the micro pub is a determinative factor for the appeal. On this basis the appellants' view that the scheme essentially involves change of use of the micro pub and letting rooms to two additional residential units is germane.
9. The scheme makes no provision for a replacement facility on the site or in any other location. In this regard the development does not seek to pass the test established by the second element of Policy CF1 of the Local Plan in terms of the provision of alternative accommodation.
10. The appellants' submissions in terms of the need for the community use focus mainly on the viability of the micro pub. There is limited reference to any continuing need for the public house in its original form other than in terms of general comments regarding the changing nature of the pub trade in recent years and the lack of success of previous operators to sustain trade to achieve an adequate return for the tenant or landlord.
11. The results of the marketing exercise which has been undertaken by the appellants in respect of the micro pub are limited by the lack of explanation regarding why prospective operators were not interested and the general as opposed to specific nature of comments regarding the viability of the potential

- use. Furthermore, the identification of other public houses and eateries in the area does not demonstrate that there is no longer a need for the public house, the potential micro pub or some other community use if the development went ahead.
12. The appellants consider that the restrictions which have been imposed on the Approved Schemes through planning conditions could have contributed to the lack of interest by an operator for the micro-pub element of those schemes. Conversely, they also question whether planning conditions can adequately control the impacts of the development on residential amenity. In both cases there is limited substantive evidence to support these contentions.
13. Whilst it is clear from the planning history that the Council has accepted the loss of the public house in its previous form from the site, this decision was taken in relation to a different scheme which included a level of re-provision. I have very limited information regarding the background to this decision on which to base any conclusion that there is no longer a need for the public house or any other community facility. Furthermore, the Council did not consider the Approved Schemes were contrary to Policy CF1 of the Local Plan.
14. The appellants argue that the Council has misapplied Policy CF1 of the Local Plan in that if it can be demonstrated that there is no longer a need for the facilities then change of use is acceptable. However, they have provided limited evidence to demonstrate that neither the public house nor the potential micro pub is no longer needed or that the site is not needed for another community use. Policy CF1 also does not differentiate between community facilities which are active or not currently in operation, seeking only to control the change of use or re-use of community facilities for non-community uses.
15. I conclude that, in the absence of relevant evidence to demonstrate that there is no longer a sufficient need for the public house as a community facility the change of use of the public house would have a harmful effect on the ability of the community to meet its needs for community facilities. The development is therefore contrary to Policy CF1 of the Local Plan.

Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI)

16. The Conservation of Habitats and Species Regulations 2017 requires that where any proposal is likely to have a significant effect on a European site either alone or in combination with other plans or projects, an appropriate assessment must be made in view of that site's conservation objectives. The Council states that the site is approximately 100 m from the SPA and the SSSI. The SPA is a European Site.
17. Circular 06/2005 sets out that the decision on whether or not an appropriate assessment is necessary should be made on a precautionary basis. In this case the site's distance to the SPA means that there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of the development. Although this may be minimal of itself, a significant effect could occur when considered in combination with any other new residential development in the surrounding area. Adopting the precautionary approach, I consider that there is a potential for recreational disturbance to the SPA through additional activity associated with this residential development, which would affect the integrity of this European site.

18. I am only required to carry out an Appropriate Assessment where the circumstances that could lead to a grant of planning permission are present. In this case while I have established that the development could have a likely significant effect (either alone or in combination) on the European site I am intending to dismiss the appeal on other grounds, therefore, there is no prospect of planning permission being granted. On this basis, notwithstanding that a Unilateral Undertaking has been submitted, it is not necessary for me to undertake an Appropriate Assessment or give any further consideration to Habitats Regulation Assessment.
19. The SSSI is not a European Site, therefore it does not fall to be considered under the appropriate assessment regime. Notwithstanding that it is a nationally designated site, I have very limited evidence to suggest that there will be any impacts on the SSSI arising from the development. On this basis the reference to the SSSI by the Council has had limited weight on my determination of this appeal.

Other Matters

20. The site is located within the Westgate-on-Sea East Conservation Area (the CA). Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character or appearance of the area. In addition, Paragraph 193 of the Framework requires when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In this case, on the basis of the sensitive alterations to the building and the compatible external materials and design of the extension, the development would not be harmful to the character or appearance of the CA.
21. Kent County Council Ecological Advice Service has identified the potential for bats to be present on the site. These creatures are a protected species under the Wildlife and Countryside Act (as amended) and the EC Habitats Regulations. However, as I am dismissing the appeal for other reasons it is not necessary for me to consider this matter further.
22. There is support for the scheme on the basis that a micro pub would attract traffic to the area. However, there is very limited substantive evidence to demonstrate that the likely levels of traffic generated by a micro pub would have a significant impact on highway safety and convenience. Consequently this concern does not outweigh the harm that I have identified in relation to the loss of a community facility.

Conclusion

23. For the reason set out above, the appeal is dismissed.

Sarah Dyer

Inspector