



Appeal Decision

Site visit made on 12 March 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2020

Appeal Ref: APP/A0665/W/18/3219332

The Maypole, 59 Hill Top Road, Acton Bridge CW8 3RA

- 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 Punch Partnerships Ltd (PML) against the decision of Cheshire West & Chester Council.
 - The application Ref 18/03065/FUL, dated 3 August 2018, was refused by notice dated 27 November 2018.
 - The development proposed is the conversion of the existing public house to 3 dwellings, comprising 1 no. 2 bedroom, 1 no. 3 bedroom and 1 no. 4 bed units, including a rear extension and associated internal and external alterations; and the construction of 3 dwellings on the existing car park, comprising 2 no. 2 bedroom and 1 no. 4 bedroom units (Class Use C3) with associated vehicle parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the submission of the appeal there has been a material change to the development plan with the adoption of the Cheshire West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies adopted July 2019 (CWCLP2). This forms part of the development plan along with the Cheshire West and Chester Council Local Plan Part One adopted January 2015 (CWCLP1). The parties' views were sought during the course of the appeal with regard to this change in the policy position. The appeal has, therefore, been determined having regard to the up to date development plan.

Main Issues

3. Two reasons for refusal have been identified in the Council's decision notice. Whilst the first is a relatively discrete matter, the second includes a number of elements that are expanded upon in the officer's report and submitted statements. The main issues are, therefore, identified as:
 - i. Whether or not the proposal would be inappropriate development in the Green Belt;
 - ii. The effect of the development on the openness of the Green Belt;
 - iii. The effect of the development on the character and appearance of the area;

- iv. Whether or not the location of the development is acceptable, having regard to access to everyday services and facilities by sustainable transport modes and to the local and national planning policies on the location of housing;
- v. Whether or not the development would result in the unacceptable loss of a community facility; and
- vi. If the proposal is inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether or not the proposal would be inappropriate development in the Green Belt

- 4. The appeal site is on Hill Top Road, Acton Bridge, and comprises the former Maypole public house and car park to the side and rear. The scheme proposes the change of use of the public house (PH) to three dwellings, together with necessary internal and elevational alterations. It also proposes the construction of a row of three terrace properties, two detached outbuildings, and a parking area.
- 5. The appeal site is within the North Cheshire Green Belt. As such, the National Planning Policy Framework (the Framework) informs that new buildings in the Green Belt should be regarded as inappropriate. Both paragraphs 145 and 146 confirm that there are exceptions to this, one of which is limited infilling in villages. In this regard there are two elements to consider. The first, whether the appeal site is within a village, and the second, whether the development proposed should be regarded as limited infilling.
- 6. With regard to the first, I note that at paragraph 5 of the appeal decision relating to the site opposite¹ the Inspector informs that Acton Bridge is washed over by the Green Belt and does not have a settlement boundary. Nevertheless, he considers Acton Bridge to be a village, having regard to 'the overall scale of the settlement and level of services and facilities within it'. Whilst the Maypole PH has now closed, I have not been advised that there has been any other material change to the services and facilities within Acton Bridge since that decision. Accordingly, I have no reason to disagree with the conclusion on this matter, particularly as it is consistent with other appeal decisions referred to.
- 7. The Council suggest that the above position has now changed as a result of a material shift in policy. The CWCLP2 has recently been adopted. Its Policy R 1 (Development in the rural area) does not identify Acton Bridge as a settlement that ought to accommodate growth. Whilst this is noted, whether the site is within the boundary of a settlement that is defined in the development strategy would not be determinative for the purposes of establishing whether a site is within a village in the context of Green Belt policy and paragraph 145 e) of the Framework. Having regard to the appeal decision referred to above, the change in the development plan position does not alter my own findings on the status of Acton Bridge when considered within the context of paragraph 145 e).

¹ Appeal reference APP/A0665/W/15/3017904

8. Turning to the matter of whether the development can be regarded as limited infilling, I note that CWCLP1 Policy STRAT 9 does not provide any assistance in defining what is meant by 'limited infilling' within the Green Belt.
9. Policy STRAT 8 (Rural Area) provides a definition of 'infill' and that infill development is mentioned in the supporting text of Policy R 1. However, this definition is provided in the context of the Council's overall housing strategy and is provided in the interests of controlling housing numbers outside of settlements that are identified for growth in the development plan. To my mind it would not be appropriate to apply this definition to a policy (i.e. Green Belt policy) that seeks to limit the impact of development on openness. In the absence of a definition of 'limited infilling' in the Framework or in the context of a Green Belt policy of the development plan, what constitutes limited infilling falls to be a matter of judgement, having regard to the particular context of a site.
10. In this regard, the appeal site comprises a building last used as a PH and its associated parking and servicing areas to the side and rear. The site is within an established row of residential properties, with detached properties and outbuildings along the highway on one side of the site and a row of terrace properties on the other. The result is a linear form of development along Hill Top Road that is continuous and includes the PH building itself. The car park to the side of the PH forms a gap in this built up row.
11. Whilst the principle new building proposed would provide three dwellings within the gap, these would each be modest in their size and would be consolidated within a single building, the form of which would be comparable to development within the existing built up row. The gaps either side of the new building would also be similar to those found within the row, as would the size and location of the proposed outbuildings. Having regard to the context of the site, as well as the form and size of the new buildings proposed, I am of the view that the new build element of the proposal would amount to limited infill development of the sort defined in paragraph 145 e) of the Framework and acknowledged in the supporting text of CWCLP1 Policy STRAT 9. Accordingly, the proposal would not be inappropriate development in the Green Belt.
12. Whilst I note the Council's reference again to the appeal decision opposite the site², built development on that side of Hill Top Road does not form a continuous building line or frontage, as it does in the case that is before me. This difference is acknowledged in the appeal decision referred to above. As such, that decision does not alter my conclusion in this case.
13. As a final matter on this first main issue, there is some disagreement between the parties with regard to the consistency of the Council's Green Belt policy with the Framework. Policy STRAT 9 (Green Belt and countryside) sets out the Council's approach to development within the Countryside, including the Green Belt. The appellant has referred to the list of types of development permitted within the Policy and suggests that it is not consistent with 'the exceptions for new buildings in the Green Belt' as listed in the Framework. Whilst this may be so, the list provided is development that the Council regard as permitted within the **countryside**; it is not intended to be a list of development permitted within the Green Belt. The supporting text of the Policy acknowledges the Green Belt policy within the Framework, as well as the Framework's list of

² Appeal reference APP/A0665/W/15/3017904

exceptions. Accordingly, whilst these exceptions are not listed in the body of Policy STRAT 9, this would not render the Policy inconsistent with the Framework. My conclusion that the development would not be inappropriate within the Green Belt is, therefore, in compliance with the Policy insofar as it relates to development within the Green Belt.

Effect on openness

14. I have concluded that the proposal would not be inappropriate development within the Green Belt. It therefore follows that the development would not conflict with the fundamental aim of Green Belt policy³, and that it would not have a harmful effect on the openness of the Green Belt, or its permanence.

Character and appearance

15. The scheme proposes certain external alterations to the existing PH. Whilst these are limited in their extent, the change of use of the building would introduce further alterations to the layout of the site around the building in order to provide the garden space and parking to serve the dwellings within. These alterations would do little to alter the building's appearance but would change the character of the site. Having regard to the site's context, particularly the street scene along Hill Top Road, the alterations to the PH and associated alterations to the site's layout would be in keeping with the character of the area and would not be unacceptable in terms of the resultant appearance of the site.
16. The development would also introduce new buildings (a terrace of three dwellings and two detached garages) within an area of the site that the Council describe as being open in character. Whilst the majority of the appeal site is currently void of buildings, its character and its appearance are different to that of the surrounding agricultural land. The land surrounding the PH is clearly associated with the PH building and, as such, its character and appearance is more in keeping with the built development along Hill Top Road, rather than the wider undeveloped countryside. Development on this land would not, therefore, harm either the character or appearance of the wider countryside.
17. The development would result in the partial loss of the existing gap between the PH and 69 Hill Top Road, as well as the loss of some views across the site. Such a change would not, however, be unacceptable, having regard to the current character and appearance of the site.
18. The location of the new terrace would follow the linear form of development along this side of Hill Top Road and the location of the proposed garage buildings would not be out of accord with that of similar outbuildings in the area. The design of the new buildings is simple and sympathetic to the character of built development on Hill Top Road.
19. The Council suggests that the development would have an adverse effect on the character and the appearance of the area. However, having regard to the design of the development, the location of the new buildings, the context of the site and the site's existing form, I cannot agree with the Council. The development would be of an appropriate scale and design and would not, therefore, have an unacceptable effect on the character and appearance of the area. In this regard it would accord with Policy STRAT 9 of the CWCLP1 insofar

³ As set out in Paragraph 133 of the Framework.

as it relates to the effect of development on the character and appearance of the Cheshire countryside.

Location of the proposed development

20. There is a suite of policies that form the Council's overall development strategy. These include CWCLP1 policies STRAT 2 (Strategic development) and STRAT 8, as well as Policy R 1 of the CWCLP2. These direct new housing development to the identified principal settlements, as well as supporting some development in rural areas. Policy STRAT 8 confirms that provision for 4,200 dwellings will be made in rural areas. More than half of these dwellings will be provided within key service centres, which are identified in Policy STRAT 8. As for the remaining portion of the 4,200 dwellings, the Policy informs that new development will also be accommodated within local service centres, which are identified in Policy R 1 of CWCLP2. Ashton Bridge is not a settlement identified in either policy.
21. Whilst the above is noted by the appellant, it is suggested that Policy STRAT 8 does not preclude development within villages, such as Acton Bridge. In this regard, Policy R 1 states that for development proposals in the countryside, which includes villages and hamlets that are not identified as key or local service centres, regard must be had to policy STRAT 9 of the CWCLP1. This Policy provides a list of development types that will be permitted within the countryside. This list does not include the type of development proposed in this case and, as such, it would conflict with the Policy.
22. On this matter the appellant again refers to the lack of conformity of Policy STRAT 9 with the Framework. I have already found the Policy to be consistent with the Framework insofar as it relates to Green Belt policy. I have no reason to conclude that the Policy, as part of the Council's overall development strategy, is inconsistent with any other section of the Framework. In this regard, the weight attributed to the conflict I have identified with the Policy is not reduced.
23. In addition to the above, CWCLP2 Policy DM 19 (Proposals for residential development) informs that proposals for new housing outside of identified settlements will be supported where they are necessary to meet the minimum levels of development for new housing, or where they comply with one of the criteria listed. Whilst the appellant suggests that the development would comply with the Policy by positively contributing to the minimal level of new housing identified in the plan, the evidence before me does not suggest that there has been a failure to deliver the minimum housing level set out in Policy STRAT 2. As such, development that is otherwise in conflict with the Council's development strategy cannot be regarded as necessary to meet its housing requirement.
24. As for compliance with the criteria listed in Policy DM 19, the development may well accord with point vi and vii under criterion 7. However, in order for it to be regarded as the exception referred to in criterion 7 of the Policy, it must involve the 'replacement of buildings on previously developed land'. The case before me would not involve such development. Furthermore, it has not been suggested that the development complies with any of the other criteria listed.
25. In terms of access to everyday services and facilities, I acknowledge those within Acton Bridge and that occupiers of the development would have a

degree of access to these by sustainable transport modes. However, the Council's development strategy has identified other locations that it considers would have a greater degree of access to services and facilities and would, therefore, be more appropriate for accommodating growth.

26. On the basis of the evidence before me I have no reason to conclude that the Council's strategy for new development is not working. The strategy seeks to direct new development to principal and more sustainable settlements in the interests of sustainable development and to promote strong, prosperous and sustainable communities. It only permits development outside of the identified settlements in particular circumstances. As the development would not be within a settlement identified in the strategy and would not otherwise be one of the exceptions listed, it would not meet the objectives of the strategy and would, therefore, be harmful to it.
27. Accordingly, the location of the development would be unacceptable and would conflict with the principles of sustainable development identified in CWCLP1 Policy STRAT 1 (Sustainable development). The development would also fail to comply with policies STRAT 2, STRAT 8 and STRAT 9 of the CWCLP1, as well as policies R 1 and DM 19 of the CWCLP2.

Community facility

28. The development would result in the loss of the use of the existing building as a PH. Both CWCLP1 and CWCLP2 regard a PH as providing a local service and community facility⁴. This is acknowledged by the appellant. Policy STRAT 8 of CWCLP1 supports the retention of community facilities, whilst Policy STRAT 11 (Infrastructure) informs that the Council will support measures to protect, enhance or improve access to existing facilities, services and amenities.
29. The appellant notes that Policy STRAT 8 is positively worded and suggests that it does not specifically state that the loss of a community facility, such as the PH, would be resisted. Whilst this may be so, it is clear that both policies STRAT 8 and STRAT 11 acknowledge the importance of such facilities to the social and economic wellbeing of residents. The aim of both policies is clearly to protect local services and community facilities, including those in rural locations such as Ashton Bridge.
30. The Council have also referred to CWCLP1 Policy SOC 5 (Health and well-being) in their first reason for refusal. Whilst I note that the Policy does not specifically refer to the loss, protection or otherwise of local services or community facilities, it informs that proposals will be supported that consider the specific requirements of different groups in the community. Furthermore, the supporting text of the Policy notes that rural areas are particularly identified as needing improved access to services and facilities. I am, therefore, satisfied that a policy that requires a decision maker to consider the effect of development on the well-being of a particular community (e.g. the rural community) is relevant to the matter of whether the loss of a community facility would be acceptable.
31. Having regard to the above, the development would not be supported by the aims of policies SOC 5, STRAT 8 or STRAT 11. Notwithstanding this, Policy DM39 (Cultural and community facilities) of the CWCLP2 provides support for

⁴ Paragraph 5.71 of the CWCLP1 and paragraph 14.41 of the CWCLP2

- development involving the loss of community facilities and local services in particular circumstances. The Policy and guidance provided in its supporting text require, amongst other matters, that regard is had to whether the facility is capable of continued use for the existing purpose; whether there is a need for the facility, either now or in the future; the role of the facility within the community; the existing alternative facilities in the surrounding area; and the possibility of using the premises for any other community facility use.
32. With regard to the possible continued use of the public house, the appellant provided a viability study, dated October 2018, which was updated in December 2018. These assessments have confirmed that the profitability of the business has declined in recent years and resulted in a financial loss during the last year reported in the assessment. Whilst the Council has questioned the reliability of this information, the appellant has provided further evidence to substantiate the accounts, including a letter from the last tenant of the PH confirming that its operation had become unsustainable.
33. Whilst there is disagreement between the parties with regard to the cost of refurbishment, I have no reason to doubt that some investment would be required if the PH were to re-open, having regard to the evidence before me.
34. Based on the accounts provided by the last tenant and probable refurbishment costs, it is unlikely that the appellant could continue the PH use of the site as a viable enterprise. However, this may not be the case with another PH operator and willing investor. Indeed, this point is made in paragraph 12 of the appeal decision referred to by the Council⁵. In this regard, whilst I note the appellant's suggestion that there has been no third party interest in the site, the site has not been actively marketed. If it had, this would support the appellant's claims with regard to the financial viability of the PH.
35. The appellant has confirmed that in order to protect the viability of the other public houses it operates in the area, it is not prepared to re-open the PH itself or sell it to another operator. However, an alternative community use would not necessarily compete with its other establishments and may even complement them. The appellant suggests that the site would not be suitable in its current form for other community uses. In this regard I acknowledge that the site has been removed from the list of assets of community value. Nevertheless, there is a lack of evidence to support the appellant's claim with regard to the likelihood of viable alternative community uses for the site. The lack of third party interest in the site is not surprising when there is no evidence before me that the market has been actively tested.
36. As for the need for the PH, as noted the appellant already operates the Hazel Pear PH, which is within the vicinity of the appeal site. Whilst the Council suggests that when the Maypole PH was open it served a particular sector of the local community that the Hazel Pear PH does not, I cannot conclude that its role in the community would be unique if it were to operate again. However, the existence of another PH in the village is not sufficient to demonstrate that the facility at the appeal site is surplus to the needs of the community. Furthermore, whilst I note that the village is also served by other services and facilities, some of which I have mentioned earlier, it is not so well served that it is considered an appropriate location for additional growth. Rather, it is a

⁵ Appeal decision reference APP/A0665/W/15/3139409

village within the rural area where the retention of its existing services and facilities is to be supported (Policy STRAT 8).

37. All things considered, whilst I acknowledge that it is unlikely that the appellant would re-open the PH or that it would allow a competing operator to do so, I do not have sufficient evidence to conclude that the PH as a community facility is surplus to the needs of the local community, or that it is unlikely that the site would be put to an alternative community use. In this regard the development would not benefit from the support provided by Policy DM 39 and would, therefore, remain in conflict with policies SOC 5, STRAT 8 and STRAT 11.

Other considerations and planning balance

38. As I have concluded that the proposal would not amount to inappropriate development within the Green Belt, I have not considered whether the very special circumstances required to justify the proposal have been demonstrated.
39. Notwithstanding this, I have had regard to the appellant's suggestion that the development would meet the three objectives of sustainable development, as set out in the Framework. With regard to the site's appearance, whilst the site is currently enclosed with security fencing, its condition is not otherwise detrimental to the appearance of the area. As such, I give these matters limited weight in the planning balance. The economic benefits during construction of the development, together with the social and economic contribution the occupiers of the site would make to the community and the local economy are acknowledged and add weight in favour of the development. As would the provision of 6 new units of accommodation to the local housing stock.
40. The above benefits of the development add weight in favour of the scheme. I have, however, attributed significant weight to the adverse effects of the development with regard to the unjustified loss of a community facility and the effect of the development on the Council's development strategy. These matters outweigh all suggested benefits.
41. Whilst I have concluded that the proposal would not result in inappropriate development in the Green Belt and that it would be acceptable in terms of its effect on the character and appearance of the surrounding area, such matters would have a neutral effect in the planning balance.

Conclusion

42. Having regard to the above and all other matters raised, I conclude that the appeal should be dismissed.

J Moss

INSPECTOR