
Appeal Decision

Site visit made on 18 February 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 2 June 2020

Appeal Ref: APP/W1850/W/19/3242467

Wheatsheaf Inn, A44 From Norton Lane to Worcestershire Boundary, Whitbourne WR6 5SF

- 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 Peter Styles (Fatydam 2 Ltd) against the decision of Herefordshire Council.
 - The application Ref 184595, dated 13 December 2018, was refused by notice dated 14 August 2019.
 - The development proposed is conversion of redundant public house to form 1no. four bedroom dwelling and 1no. 3 bedroom dwelling.
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Decision

1. The appeal is dismissed

Application for costs

2. An application for costs was made by Mr Peter Styles (Fatydam 2 Ltd) against Herefordshire Council. This application is the subject of a separate Decision.

Procedural Matter

3. The description of the development in the above heading is taken from the Council's decision notice. I note that the original application form described the development as "conversion of redundant public house to form 1no. four bedroom dwelling and 1no. 3 bedroom dwelling and construction of a pair of semi-detached three bedroom dwellings". Prior to the Council's decision the application was amended to remove the new build element of the scheme and revised site layout plans¹ were submitted. I have therefore determined this appeal on the same basis as I am satisfied that there has been the opportunity for consultation on these revised plans and therefore no prejudice would arise to any interested persons.

Main Issues

4. The main issues are:
 - Whether the proposal would be appropriate having regard to local and national policies for local services and community facilities;
 - The effect of the proposal on highway safety;

¹ Drawing No.13b Amended Site Layout Plans dated 19/6/19

- The effect of the proposal on protected species.

Reasons

Community facility

5. Policy SC1 of the Herefordshire Local Plan Core Strategy 2011-2031 (CS) seeks to retain existing social and community facilities including pubs. However, it identifies circumstances where the loss of these facilities can be justified. These criterion are set out in a continuous paragraph style, and whilst within the policy they are not numbered, for the sake of clarity in the reasoning I have referred to them as criterion 1), 2) and 3). These are 1) where an appropriate alternative facility is available, or can be provided; or 2) where the facility is no longer required, viable or is no longer fit for purpose; and 3) where appropriate, it has been vacant and marketed for community use without success. Viable alternative facilities must be equivalent to those they replace, in terms of size, quality and accessibility.
6. My interpretation of the wording of this policy is such that the insertion of the word 'or' after criterion 1) means that the proposal does not need to comply with criterion 2) if compliance with criterion 1) is met. However, the inclusion of the word 'and' after criterion 2) does, in my view, require that the proposal would also need to comply with criterion 3). Therefore, in order for the proposal to comply with policy SC1, it must either need to comply with criterion 1) and 3) or 2) and 3). Having had regard to the explanatory text of this policy, I consider that this is a logical interpretation of the policy.
7. Turning firstly to whether the proposal complies with criterion 1); from my site visit it was apparent that there is another public house known as Live and Let Live located approximately 600 metres from the appeal site. This pub appeared as an appropriate size and quality to constitute another alternative facility as specified within this policy. I disagree with the Council's contention that this cannot be considered an alternative site, as it is much closer to the village of Whitbourne. As such this alternative facility could therefore be considered better located to serve residents of this village. The proposal would therefore comply with criterion 1) of Policy SC1.
8. Criterion 3) of the policy requires the need to market the pub as a community facility. The explanatory text which supports this policy states that in order to demonstrate that alternative community uses have been considered, evidence of marketing for a period of at least 12 months should be provided with any proposals involving the loss of community facilities.
9. Evidence has been provided which demonstrates that the site was marketed for a period of 52 months between August 2011 and January 2016². Policy SC1 is not specific that marketing needs to be in the 12 months preceding the submission of a new application, however it has been over 4 years since marketing ceased for this site. This is a considerable amount of time, and it is reasonable to expect up to date information and evidence is submitted in support of new planning applications. Furthermore, from the evidence provided it appears that the appellant has not marketed the pub whilst it has been under his ownership, and has simply relied on marketing by the previous owners which ceased when he acquired it. Therefore, in this instance I am in

² Sidney Phillips letter dated 25 July 2016

- agreement with the Council that the proposal has not been marketed as a community facility for 12 months. Consequently, the proposal does not accord with criterion 3) of the policy.
10. The Council have raised concerns that no evidence has been provided about whether the site is no longer viable or fit for purpose, as per criterion 2) of the policy. The appellant has submitted a prohibition order from the Council's environmental health team which prohibits the use of first floor living accommodation for living and sleeping as evidence that the building is no longer fit for purpose. Whilst this evidence does indicate the general dilapidated condition of the building, in itself it does not preclude the building from being fit to be used as a pub. I do not consider that this clearly demonstrates that the building is no longer fit for purpose. No further cogent evidence has been submitted which indicates that the site is no longer viable. Consequently, the proposal does not accord with criterion 2) of the policy, and therefore the proposal does not comply with policy SC1 of the CS.
 11. I note the representation made by CAMRA as an interested party, and the concerns raised by the appellant at the weight given to this by the Council in their determination of the planning application. Whilst I appreciate the concerns the appellant may have, I have been presented with no evidence that the Council has acted inappropriately in this respect. In any event, I am required to determine each appeal on its own merits, and I have found that the proposal does not comply with policy SC1 of the CS.
 12. The appeal site is located within the Whitbourne Neighbourhood area, but is outside of the settlement boundary of the village of Whitbourne. This is the nearest settlement and is approximately 500 metres north. The village has limited facilities which includes a local shop, pub and village hall. The highway which leads from the site to this village is narrow, winding, and bounded on both sides by tall hedgerows. There are no formal pedestrian footways and the road is not lit. Whilst the village is well within an appropriate walking and cycling distance, given the characteristics of the road it would not be an attractive route for pedestrians to use. As such it is likely that future occupiers would be reliant on private vehicles to access these services and facilities.
 13. Given the limited facilities within the village of Whitbourne, it is likely that residents would have to travel further afield to access the full range of day to day services and facilities, including employment opportunities. This is a fact which is not contested by the appellant, who has commented that the majority of residents within Whitbourne appear to rely on their private vehicles. The appellant points to the village of Knightwick, which provides a doctors surgery and pharmacy. This is located approximately 1 mile to the east of the development site, and would be accessed by the A44. As a busy road, it is likely that residents would be dissuaded from using the A44 to walk or cycle to this village to access this doctors surgery, given the busy traffic conditions along this route.
 14. The settlement of Bromyard is located approximately 4.5 miles from the appeal site, and as a defined town provides the majority of the full range of services and facilities residents would need on a day to day basis. Given the distance, it is unlikely that residents would choose to walk to this town. Therefore, given the location of the appeal site in relation to other services and facilities, future

occupiers would have to rely on private vehicles to access a full range of services and facilities for their day to day needs.

15. I recognise that there is a bus stop located outside of the site which provides services to Worcester, Hereford and Bromyard. However, these services are sporadic and unlikely to provide a realistic alternative to the private car to access day to day facilities. I recognise that Paragraph 103 of the Framework states that in rural areas, options for sustainable transport solutions may be less available than in urban areas. I am in agreement with the appellant in so far as the appeal site is closer to the bus stop than other sites within the village of Whitbourne, and could therefore be considered more accessible for non-car trips. However, based on the evidence before me and my observations during my site visit, I find that occupiers would likely be heavily reliant on private cars.
16. Consequently, I find that the proposal would not be appropriate having regard to local and national policies for local services and community facilities. It would conflict with the requirements of Policy SC1 of the CS. This policy seeks, amongst other things, that social and community facilities are retained where possible. Furthermore, the proposal would result in future occupiers being reliant on private vehicles. This would not accord with policies SS1, SS4, SS7 and MT1 of the CS. Together these policies seek, amongst other things, that development should be accessible by and facilitate a choice of modes of travel, and reduce the need to travel by private car. It would also not accord with Section 9 of the National Planning Policy Framework (the Framework) which aims to promote sustainable transport.

Highway safety

17. CS Policy MT1 states that development should be designed to achieve safe entrance and exit. The drawings for the proposed access shows a small access road which would serve both dwellings running along the boundary at the north of the site. During my site visit I observed that at the approximate position of the proposed access there is currently an informal area which was laid to gravel with a dropped kerb. The drawings of the access do not provide any substantive details of the formation of the proposed access, and no visibility splay information has been included.
18. Notwithstanding this, from my observations on site it was apparent that visibility to the north would be severely restricted by the close proximity to the bridge parapet and vegetation. To the south visibility would be restricted by the pub building itself. The proximity of the access to the junction of the A44 means that vehicles turning from the A44 towards the site would not see any vehicles exiting the site until they were in close proximity to the access. During my time on site I observed that vehicles, especially those making the left turn from the A44, did so at higher speeds. This would further compound the impact arising from the reduced visibility from the access. Consequently, a failure to provide adequate visibility splays would be likely to lead to an unacceptable degree of highway safety.
19. The appellant contends that the gravelled area has historically been used as parking for staff members, as well as deliveries for the pub. Be that as it may, the provision of limited staff parking in this location would not be comparable in impact to an access to serve residential dwellings. The operational hours of a pub mean that staff arrivals and departures would differ from that of a

- residential dwelling. The majority of arrivals and departures for residential uses comes in the morning and evening highway peak when the highway network is at its busiest, and thus the potential for conflict is higher. This would differ from the peak traffic generation times of the pub, which would be at lunchtime and in the evening when the surrounding roads are quieter.
20. I appreciate that when the pub was open it would have likely generated substantially more vehicular trips than the proposed residential use. Evidence has been submitted in the form of photographs which shows the car park for the pub when it is full. However, this car park is on the opposite side of the road to the appeal site, and the visibility when exiting this car park, especially towards the bridge over Sapey Brook is much improved compared to the proposed site access.
21. My attention has been drawn to a planning permission at the New Inn pub in Malvern for a residential use³, in which there were no highway objections. Whilst the appellant has submitted the Officer Report, I have not been provided with the full details of the scheme. I cannot therefore be certain that the circumstances which led to it being found acceptable are the same. Notwithstanding this, there are notable differences in the available visibility of the New Inn site, which is on a straight road with no impediment to visibility. This is materially different to the appeal site and its constraints.
22. The appellant has cited an example of a prior approval proposal for the conversion of light industrial to a dwelling house in Crown East, Worcester. Again, I have not been provided with the full details of this scheme, and it is unclear from the evidence if this was granted a consent. Notwithstanding this, the scheme is within a different local planning authority to the appeal site, and does not involve the conversion of a pub to a dwelling. It is therefore not directly comparable to the appeal proposal. In any event, all appeals and applications must be determined on their own planning merits, which is what I have done in this case.
23. Therefore, based upon the evidence presented and my own observations on site, I am not satisfied that the proposal would not lead to an unacceptable impact on highway safety. To this extent the proposal would not accord with Policy MT1 of the CS, Policy LU4 of the Whitbourne Neighbourhood Development Plan 2011-2031 (NP) and paragraph 109 of the Framework. Together these policies seek, amongst other things, that development has suitable and safe access to the highway.

Protected species

24. The appeal site is located in close proximity to Sapey Brook, and there are a number of mature trees within the boundary of the site. These can both provide important habitats for protected species. In my view, it is not unreasonable to assume that the site and its surrounds are used by protected species including bats.
25. No bat, bird nesting surveys or ecological assessment has been submitted as part of the appeal. In the absence of any such assessment I am unable to reach a view on whether the proposed development would result in disturbance or harm to any protected species. I note that the appellant has indicated a

³ Planning permission reference 174416

willingness to undertake such surveys, which could form part of a planning condition. However, a planning condition would not be appropriate as the contents of any ecological surveys could require additional mitigation. Therefore, the ecological report would have an effect on the acceptability or not of the principle of the development.

26. Consequently, in the absence of any cogent evidence by the appellant to confirm that the proposal would not harm protected species, I find conflict with Policy LD2 of the CS. This policy seeks, amongst other things, that development should conserve biodiversity and does not harm protected species. I also find conflict with the Framework and its aims to conserve and enhance the natural environment by minimising impacts on biodiversity.

Other Matters

27. I note the comments of the Parish Council in support of the planning application. However, this does not outweigh the harm that I have identified above.

Planning Balance and Conclusions

28. The Council acknowledges that it is unable to identify a five year supply of housing. Paragraph 11 and Footnote 7 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing should not be considered up to date where a five year housing land supply cannot be demonstrated. Where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
29. In the context of the development plan, I have found that the proposed development would be contrary to policies SC1, SS1, SS4, SS7, MT1, LD2 of the CS. I have also found conflict with policy LU4 of the NP. For this appeal in the absence of a five year supply of housing the policies most relevant to the determination of this appeal should be considered out of date.
30. I recognise that the proposal would deliver positive benefits in the form of additional housing which would contribute towards the Council's 5 year housing supply. However, the provision of two additional dwellings would only provide a limited contribution to housing supply. Minor economic benefits would be achieved through the construction of the dwellings, albeit this would be a temporary benefit. Furthermore, future occupiers could support the local community and facilities within local villages and settlements. I also recognise that the proposal would reuse an existing building which is currently in a dilapidated state. This is a positive benefit which adds weight in favour of the scheme.
31. However, the proposal would result in the loss of a community facility, and the likelihood of future occupiers being dependent on the use of the private car for access to services. In addition, I have found that I cannot conclude that unacceptable harm would not be caused to highway safety or to protected species. Collectively, these are matters to which I afford significant weight in decision making terms.
32. Overall, I conclude that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed

against the policies in the Framework and the development plan when taken as a whole. Therefore, the proposal would not represent a sustainable form of development.

33. For the above reasons I conclude that the appeal should be dismissed

S Shapland

INSPECTOR