
Appeal Decision

Site visit made on 24 June 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 1 July 2020

Appeal Ref: APP/W1525/W/20/3246379

The Beehive PH, 346 Baddow Road, Chelmsford CM2 9RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr R Drogman against the decision of Chelmsford City Council.
 - The application Ref 19/01826/PIP, dated 4 November 2019, was refused by notice dated 11 December 2019.
 - The development proposed is conversion of existing building to form 9 dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As explained in the Planning Practice Guidance (the Guidance), the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order) is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for the proposed development from the technical detail.
3. In respect of residential development, an applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum number of net dwellings as part of the application. In this instance, permission in principle has been sought for the erection of nine dwellings at the appeal site. I have taken this as a maximum and I note that this reflects the descriptions on the appeal form and decision notice. For the avoidance of doubt, I have determined the appeal on that basis, having regard to the requirements of the above referenced Order and the Guidance.
4. The Chelmsford Local Plan -2020- (the new Local Plan) has been adopted by the Council since the appeal was lodged. The parties have had an opportunity to comment on the new Local Plan in relation to the case during the appeal process. The policies within the Chelmsford Core Strategy and Development Control Policies -2008- are therefore no longer extant. The appellant has had the opportunity to comment on the policies while in draft form. Although the policies have been renumbered, the changes made to the draft policies as they appear within the new Local Plan have no particular bearing for the determination of this appeal.
5. The appellant submitted a completed Unilateral Undertaking (UU) dated 02 April 2020 in relation to mitigating the effects of the proposal on European Protected Sites, accompanied by a plan showing the site's red line boundary. The Council has had the opportunity to comment and, as a consequence no

longer wish to uphold the third reason for refusal. Although this issue is no longer in dispute between the parties, it is a matter that I will return to later in my decision. I have taken account of the UU in my decision

Main Issues

6. The main issues are: -

- The effect of the proposal on the ability of the community to meet its day to day needs;
- The effect of the proposal on the significance of The Beehive as a non-designated heritage asset; and : -
- The effect of the proposal on The Blackwater Estuary, a European Designated Site.

Reasons

Community facilities

7. The appeal site lies within a built up area on one corner of the junction of Beehive Lane and Chelwater with Baddow Road. It contains a predominately two storey public house, known as The Beehive, a range of single storey outbuildings and a forecourt, which is laid out for car parking.
8. Policy DM21 of the new Local Plan relates to the protection of existing local community services and facilities. Amongst other things, this policy only permits the change of use of premises or redevelopment of sites that provide valued community facilities or services where the premises cannot be readily used for, or converted to, any other community facility and the facility or service which will be lost will be adequately supplied or met by an existing or new facility in the locality concerned.
9. Whilst the Beehive is currently closed, I have very limited information before me to suggest any reuse or conversion of the The Beehive for use as another community facility would not be feasible. Whilst the appellants have provided a map extract showing the location of other community facilities in the wider area, I have no information before me to identify the services provided by these businesses and facilities, nor of travel distances, particularly on foot or bicycle, to demonstrate that they lie within the catchment served by The Beehive. It has, therefore, not been demonstrated that these facilities would adequately supply or meet any community need that would be lost by the change of use of the building.
10. Policy DM21 further advises that, in relation to the loss of a locally valued commercial community facility, such as a public house, evidence is required to demonstrate that the use is not economically viable and that it is no longer required to meet the needs of the local community.
11. The reasoned justification for Policy DM21 sets out the level of evidence required to demonstrate that a building's existing use as a public house is not economically viable and is no longer required to meet the needs of the local community.
12. The site has been vacant for some time. Within his Statement the appellant has provided evidence that there have been attempts to market the property,

either as a residential or commercial property. However, there is little evidence within the report to demonstrate that the property was actively marketed for any prolonged period of time, with all enquiries from prospective purchasers being between the end of August 2017 and the middle of January 2018.

13. Furthermore the marketing report contains very few details of the marketing campaign to demonstrate that the marketing of the property was serious and realistic. In summary there is very limited evidence to demonstrate that the proposed change of use would comply with Policy DM21 of the new Local Plan.
14. In the absence of evidence to demonstrate otherwise, the change of use would have a harmful impact on the ability of the community to meet its day to day needs. The development is therefore contrary to Policy DM 21 of the new Local Plan.

Heritage asset

15. The Beehive is entered on the Council's Register of Buildings of Local Value. Its significance derives from its vernacular architecture in relation to its historic function as an example of a traditional Victorian public house, together with its prominence in the street scene. The forecourt contains a Sarsen Stone which is a Local Geological Site.
16. Policy DM14 of the new Local Plan seeks to protect the significance of non-designated heritage assets. Where harm to the asset would result, proposals are required to demonstrate that harm is minimised through retention of features of significance and/or good design and/or mitigation measures and that the level of harm is justified following a balanced judgement of harm and the significance of the asset.
17. The proposed change of use would result in the loss of the public house function and so the direct linkage to its functional past would be lost. However the significance of the building derives principally from its appearance and the visual connection to its former use.
18. Notwithstanding the single storey additions, the building, largely retains its original external form and remains prominent in the street scene, providing a wayfaring landmark. The proposal would retain the building, but there is no information regarding the likely effect of the conversion and new use on the appearance of the building. This information would be provided at technical details submission stage. There would be harm to the non-designated heritage asset, however that harm would be less than significant
19. There would be benefits resultant from the proposed change of use, particularly in regard to the provision of up to nine additional dwellings to supplement local housing supply and the securing of the building's future and prevention of further deterioration. The benefits would, with regard to the permission in principle, outweigh the level of harm that I have found to the non-designated heritage asset.
20. Whilst the change of use and an unsympathetic conversion may well have tipped the balance the other way, only the change of use is before me and I have concluded in favour of the principle of development given the benefits and the level of harm that would occur from the change of use only.

21. I therefore conclude that the harm to the significance of The Beehive as a non-designated heritage asset resultant from the proposal would be outweighed by the public benefits that would result in regard to the principle of its change of use. The proposal would, therefore, be in accordance with the aims of Policy DM14 of the new Local Plan.

Effect on European Protected Site

22. The site is located within the zone of influence of the Blackwater Estuary Special Protection Area and RAMSAR site (the SPA) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policy DM16 of the new Local Plan seeks to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. Within the new Local Plan the Essex Coast Recreational disturbance avoidance and mitigation strategy (RAMS) incorporates strategic mitigation measures to be delivered to avoid adverse impacts. The appellants have provided a financial contribution towards mitigating the effects of the proposal on the SPA. This has been secured by a UU under Section 106 of the Town and Country Planning Act 1990 (as amended).
23. However, the Court of Justice of the European Union recently ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA). This responsibility now falls to me within this appeal.
24. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake an AA. The AA is required on a case-by-case basis to determine whether or not the project would adversely affect the integrity of the European Site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other Matters

25. The proposed development would provide benefits accruing from the provision of up to nine additional dwellings to supplement local housing supply and the securing of the building's future and prevention of further deterioration. Taken together, and given the scale of the development, these benefits carry moderate weight.
26. However, I have found that the proposal would have a harmful impact on the ability of the community to meet its day to day needs, and this harm bears significant weight. The benefits of the proposal would not, therefore outweigh the harm that I have found and do not, therefore, alter my overall conclusion.
27. Whilst the issue of the effect of the site on European Sites remains unresolved the effects could only be, at best, neutral in my considerations.

Conclusion

28. Whilst I have found that the proposal would not result in harm to the non-designated heritage asset, I have found that it would have a harmful impact on the ability of the community to meet its day to day needs. For the reasons set out above, the appeal is dismissed.

I Dyer

Inspector