



Appeal Decision

Site visit made on 20 August 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Appeal Ref: APP/J2210/W/20/3253327

25 Nunnery Fields, Canterbury, Kent CT1 3JN

- 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 L Waite (LJW Developments (Two Doves) Limited) against the decision of Canterbury City Council.
 - The application Ref CA/19/10333, dated 17 December 2019, was refused by notice dated 5 March 2020.
 - The development proposed is the conversion of former public house to two dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on the provision of community facilities and the living conditions of future occupiers with particular regard to privacy.

Reasons

Community Facilities

3. The proposal would involve the alteration of the building at the appeal site and the change of its use from a public house to two dwellings. The Canterbury District Local Plan 2017 (The CDLP) and the National Planning Policy Framework (The Framework) both identify that public houses can represent a community facility. Policy QL6 of The CDLP states that the loss of community buildings or sites or uses for community purposes will be supported if it is demonstrated that there is no need for the use of the facilities within the locality and that other uses to serve the local community could not operate from the buildings or land. Moreover, Paragraph 92 of The Framework states that planning decisions should plan positively for the provision of community facilities and guard against the loss of valued facilities and services, particularly where this would reduce the community's abilities to meet its day-to-day needs.
4. In terms of demonstrating whether another use serving the local community could operate from the site, the appellant has provided a limited assessment that demonstrates little consideration of the potential use of the building for such purposes. Whilst the size and layout of the building, lack of parking, the sensitivity of neighbouring uses and the need to retain access to the first floor may represent constraints, it does not necessarily follow that these factors would prevent the building being used for an alternative purpose that serves

the community. Furthermore, whilst the appellant has identified that there are other buildings within the vicinity of the site that are used for purposes that serve the community, this is not evidence that the building at the appeal site could not also be used for such a purpose. As such, the loss of a building that could be used for other community uses has not been adequately justified.

5. Paragraph 12.2 of the supporting text within The CDLP and paragraph 92 of The Framework both identify types of uses that can be considered community facilities and, although not exhaustive, this provides some guidance as to what could constitute a community use. Therefore, notwithstanding the suggestion of the appellant, the requirement of Policy QL6 of the CDLP in this regard is not vague to the extent that it makes it unclear or unnecessary to be complied with. Moreover, on the basis that the need for community uses can evolve, I see no reason for the Council to have a prescriptive list of potential users that should be considered. As such, these factors do not lead me to conclude that the requirement to consider whether other community uses could occupy the building should not be applicable.
6. The appellant has identified that Policy QL6 of The CDLP refers to whether other uses 'could' use the premises rather than any other verb and, as such, it has been construed that this undermines the relevance of the policy and the necessity to comply with it. In this regard, whilst I agree that the abovementioned policy should be applied with regard being had to the real world, the level of assessment of other potential community use occupiers that has been undertaken is minimal and does not provide a compelling assessment of the likelihood of the building being occupied. For these reasons, the requirement of Policy QL6 has not been complied with and, as that policy is part of the adopted development plan, I am not persuaded that the policy should be afforded reduced weight.
7. The means of demonstrating a lack of need for the existing use is not specified by Policy QL6 and, unlike Policy QL3 of The CDLP there is no policy basis to require a 2 year marketing period to be undertaken. Notwithstanding this, I recognise that making the property available in this way represents a reasonable method of demonstrating an absence of interest in operating a public house at the site. Whilst I recognise that the marketing exercise has been directed towards potential public house operators and that this has not led to any interest from those operators, the submissions include no details of the price at which the premises was advertised, the justification of that price or the content of the sales particulars. From this basis, the evidence of the marketing exercise that has been provided is not conclusive in terms of demonstrating that there is no need for a public house at this site.
8. Furthermore, as the evidence before me indicates that the marketing only related to the use of the building as a public house, it does not demonstrate that the premises could not or would not be occupied by another use serving the community. Accordingly, as the marketing evidence does not demonstrate that the building would not be wanted by any other community use, which has been suggested to be a more relevant consideration by the appellant, the marketing of the premises does not provide a reason to reach a different conclusion in relation to the potential use of the building by other community uses or the applicability of the abovementioned requirement of Policy QL6 of The CDLP.

9. Notwithstanding the above, I have had regard to the list of shortcomings, limitations and constraints that have been identified by the appellant that would affect the viable operation of a public house at the appeal site, including its current condition, and also acknowledge that evidence has been provided that the operation of the public house has resulted in financial losses in 3 of the last 5 years. I also recognise that the proximity of the site to Canterbury City Centre may affect demand and trade and that there are other public houses within the vicinity of the appeal site which could both affect trade and provide an alternative facility that would reduce the effect of the loss of the public house on the local community.
10. Although these factors do not necessarily demonstrate an absence of need for the public house at the appeal site, even if I were to conclude that the public house is not likely to reopen or is not needed to serve the local community for those reasons, this would not alter my assessment in relation to it having not been demonstrated that other uses serving the community could not operate from the premises.
11. I have no basis to conclude that the protection of community facilities provided by Policy QL6 of the CDLP and paragraph 92 of The Framework is only intended to apply to Assets of Community Value (ACV). As such, whilst I recognise that the Council decided to not list the public house as an ACV and the suggested reasoning for that decision, this does not prevent the premises being considered a community facility or indicate that the requirements within Policy QL6 are not applicable.
12. Whilst I have been made aware of three appeal decisions¹ where the development involved the loss of a public house, the evidence before me does not demonstrate that the circumstances and the relevant policies of the development plan are directly comparable. Accordingly, whilst I acknowledge that, for various reasons, the loss of the public house was found acceptable in those cases, they do not alter my assessment of the acceptability of the development that is the subject of this appeal in the context of the specific circumstances of this site and the policies of the adopted development plan.
13. For these reasons, the development would have an unacceptable effect on the provision of community facilities and would not, therefore, accord with the abovementioned requirements of Policy QL6 of The CDLP which seeks to prevent the unjustified loss of buildings that are used for community purposes. The proposal would also conflict with the abovementioned part of The Framework which requires planning decisions to plan positively for the provision of community facilities.

Living Conditions of Future Occupiers.

14. One of the reasons for the refusal of the application related to the privacy of the occupiers of the one bedroom dwelling, particularly as a result of the use of the garden area serving that dwelling by the occupiers of the other dwelling to access the bin store. However, amended plans have been submitted by the appellant that show a different configuration of the garden areas serving the proposed dwellings and I am satisfied that the alterations to the proposal are sufficiently minor that the appeal can proceed on the basis of the amended plans without prejudicing the involvement of any other interested parties.

¹ APP/M1595/W/18/3197444, APP/T0355/W/18/3212539 and APP/U4610/W/19/3223761

Therefore, subject to the development being undertaken in accordance with the approved plans and conditions being imposed to require windows to be partially fixed shut and obscure glazed as shown on the submitted plans, I am satisfied that the development could be made acceptable in this respect.

15. Consequently, the development would have an acceptable effect on the living conditions of future occupiers with particular regard to privacy. The proposal would, therefore, accord with Policies DBE3 and DBE4 of the CDLP which together require that dwellings provide an acceptable standard of accommodation and have regard to the privacy and amenity of future occupiers.

Conclusion

16. Whilst the proposal would be acceptable in terms of its effect on the living conditions of future occupiers, the development would have an unacceptable effect on the provision of community facilities. For that reason, I conclude that the appeal should be dismissed.

Ian Harrison

INSPECTOR