
Appeal Decision

Site visit made on 24 June 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2020

Appeal Ref: APP/U2235/W/20/3245613

Spice Lounge (formerly known as Scketts), 118 Heath Road, Coxheath, Maidstone, Kent ME17 4PN

- 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 C Dickens (Clarus Homes) against the decision of Maidstone Borough Council.
 - The application Ref 19/501775/FULL, dated 17 April 2019, was refused by notice dated 5 December 2019.
 - The development proposed is the demolition of the existing restaurant and erection of 14no. retirement apartments for over 55 year old persons with associated parking turning and amenity space.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing restaurant and erection of 14no. retirement apartments for over 55 year old persons with associated parking turning and amenity space at Spice Lounge (formerly known as Scketts), 118 Heath Road, Coxheath, Maidstone, Kent ME17 4PN in accordance with the terms of the application 19/501775/FULL, dated 17 April 2019 and the plans submitted with it subject to the conditions set out in the attached schedule.

Procedural Matter

2. The appeal submissions of both main parties give the appeal site various different addresses. The address used in the heading and the decision above has subsequently been agreed by both main parties and is similar to those that were used earlier. As such, I consider that no party would be prejudiced through the use of this address.
3. The Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 (The Revised UCO) has been published since the submission of the appeal and both main parties were provided with an opportunity to comment on the implications of this legislation which I have had regard to.

Main Issues

4. The main issues are the effect of the development on:
 - Local community facilities within Coxheath; and
 - The character and appearance of the site and the surrounding area.

Reasons

Community Facilities

5. The appeal site is located within the settlement of Coxheath which is designated as a 'Larger Village' by the Maidstone Borough Local Plan (Adopted 2017)(The MBLP). The preamble to Policy SP11 of The MBLP identifies that Coxheath has a good offering of key services and facilities, including healthcare services. Moreover, Policy DM17 of The MBLP defines a District Centre within Coxheath which hosts a variety of commercial uses including shops, a café and hot-food takeaway premises. The evidence before me indicates that a library, a church, a school and a village hall are all located outside of the District Centre, along with the restaurant at the appeal site which would be demolished as part of the proposed development. The Council and interested parties contend that the restaurant should be considered a community facility, particularly as it is popular, frequently used and provides a place where people, including families and the elderly, can meet.
6. Policies SP11, SP13 and DM20 of The MBLP seek to resist the loss of community facilities, other than in certain circumstances, and The National Planning Policy Framework (The Framework) also requires planning decisions to retain and plan positively for the provision of community facilities and other local services. However, neither the supporting text to Policy DM20 of The MBLP nor paragraph 92 of The Framework includes restaurants within their respective lists of uses that are likely to represent 'community facilities'.
7. Furthermore, whilst the supporting text of Policy DM20 of The MBLP identifies that community facilities encompass educational, cultural and recreational buildings, it goes on to list the types of uses that are intended to be included in those terms. This does not indicate that they were intended to be applied so broadly that they would encompass restaurants or all buildings where people meet. As such, while these lists are not necessarily exhaustive, I do not find particular policy support for the restaurant to be considered a community use in this context. In this regard, neither The Revised UCO or the definition of Asset of Community Value (ACV) contained within The Localism Act 2011 give me reason to conclude that the restaurant represents a community facility.
8. The site lies outside, albeit adjacent to, the identified District Centre at Heath Road and a restaurant is not one of the listed uses which Policy DM17 of the MBLP seeks to protect outside of the District Centres. Given this location, and as none of the other policies referred to above require viability to be assessed, it is not necessary to consider that factor further.
9. Nevertheless, I accept that the restaurant is valued by the local community, particularly for its social and recreational contribution, and that there are no similar facilities nearby that open in the evening. However, it is clear that there are various facilities in Coxheath of the types identified by the above policies, and the availability of these is supported by its designation as a District Centre. These facilities, including convenience shops and food take-aways, provide services of a wholly different nature. However, I am not persuaded that the loss of the restaurant would result in unduly limited community facilities in the area to an extent that would restrict day-to-day living. Therefore, having regard to the particular circumstances of the site and the general availability of community services at Coxheath, the evidence does not lead me to conclude that the restaurant is essential to the function or vitality of the local community.

10. It has been brought to my attention that the building at the appeal site was formerly used as a public house and that neither of the two former public houses within Coxheath remain. Whilst I appreciate that there is a desire amongst some local residents for Coxheath to be served by a public house, the restaurant at the appeal site is not a public house, the evidence before me indicates that it has not functioned as one for a considerable time and I have no basis to conclude that the premises would revert to that former use. As such, even allowing for the alterations to legislation brought about by The Revised UCO, I have no basis to conclude that the use of the premises would change to become a public house or any other use that could represent a community facility.
11. For the reasons given above, the development would have an acceptable effect on local community facilities within Coxheath. Therefore, the proposal would not conflict with policies SP11, SP13, DM17 and DM20 of The MBLP, the requirements of which are set out above. Neither would the proposal conflict with the abovementioned aims of The Framework.
12. Although it has been brought to my attention that the Draft Coxheath Neighbourhood Plan (2014) indicated that the premises should be considered as an ACV, the evidence before me does not demonstrate that the building has been listed as an ACV or that the neighbourhood plan has been made or progressed to a stage that would enable it to be afforded weight. Accordingly, these factors do not alter my assessment of the proposal. Furthermore, whilst Policy SP22 of The MBLP has been brought to my attention, as this relates to the retention of employment sites it is not relevant to this proposal.
13. I have had regard to the planning permission¹ that has recently been granted to change the use of part of the building at the appeal site to a shop. However, that planning permission does not alter my assessment of the main issue.

Character and Appearance

14. The appeal site is located at the junction of Heath Road and Clockhouse Rise, with the Heath Road District Centre adjacent to the site in one direction and a Grade II listed church in the opposite direction, albeit well separated from the site due to the presence of the church grounds and a road in the intervening space. School playing fields are opposite the site, an ambulance station is to the rear and areas of residential uses are interspersed throughout the area. Accordingly, the area features a variety of uses and built form of varied scale and appearance.
15. The building at the appeal site adds to this variety by being unlike any other building within the surrounding area. Although the main part of the building is of some visual interest, the projections at the side and rear cause the built form to have a mixed appearance. Furthermore, whilst the building is set back from the road in a manner that creates a sense of spaciousness at the site, the area forward of the building being laid out as a car park results in hardstanding dominating the site. As such, the contribution of the site to the overall character of the locality is limited.
16. The proposal would see the removal of the existing buildings from the site and the erection of a building that would comprise of 14 flats over 3 floors, arranged in an 'L' shape with the two longest elevations facing the adjacent roads and a parking and garden area being located to the rear of the built form. The building would include a variety of projections to the front and side elevations with dormer windows and a mixture of materials including hanging tiles and brickwork of two

¹ 20/502819/FULL

- colours. The building would also include a taller section at the most prominent corner and a glazed atrium at the main entrance.
17. The proposed building would feature a small setback from Heath Road, with a greater set back being achieved from Clockhouse Rise. The positioning of the building in this way would enable the front elevation to align, approximately, with the adjacent buildings and also ensure the provision of a similar set back to that which is provided forward of the nearby flats at Mace Court. Although the building would be closer to the road than the existing building, given that the spaces forward of the built form within the surrounding area are not of consistent depth, the positioning of the building would not cause it to have a jarring appearance in its surroundings and would be suitably reflective of the pattern of existing development within the locality. Whilst the area of landscaping would not be sufficient to screen the development, there is no reason for this to be required in this location where other built form is not entirely screened from the public domain.
 18. Although the building would be large and represent a substantial addition to the locality, the bulk and mass of the built form would be diluted through the materials and forward projections dividing the building into different sections. Accordingly, rather than appearing as a continuous mass, the building would include sufficient architectural interest on the front and side elevations to enable the building to have a form and appearance that would sit appropriately within its context. In this regard, given the mixed height of built form throughout the area, the height of the building would not cause the development to appear incongruous in its context, especially as the tallest part of the building would be close to the junction of Heath Road and Clockhouse Rise, thereby creating visual interest at the most prominent part of the building.
 19. Although representations that have been made indicate that the building has existed at the site for a lengthy period of time, it is not designated as a heritage asset and I do not have grounds to conclude that the contribution of the existing building to the character or appearance of the site or the surrounding area is sufficient to require its retention. Conversely, the replacement building would be of enhanced visual interest and the replacement of the hardstanding dominated frontage of the site with the provision of a small area of landscaping would also be of benefit to the overall appearance of the site.
 20. As the building is adjacent to the abovementioned Grade II listed church, I have had special regard to the desirability of preserving the setting of that building. In this regard, the positioning of the building would reduce the visibility of the adjacent church from part of Heath Road. Moreover, I acknowledge that for a short period of the day and at certain times of the year, the proposal would also have some effect on the direct sunlight that reaches the church and its grounds. However, any effects arising in these respects would be limited and compensated for by the abovementioned improvements to the appearance of the appeal site which would provide an enhanced setting for the adjacent building in comparison to the existing situation. Therefore, I find that the proposal would bring about the overall enhancement of the setting of the adjacent listed building.
 21. For these reasons, the development would have an acceptable effect on the character and appearance of the site and the surrounding area. The proposal would, therefore, accord with Policies SP11, DM1 and DM12 of The MBLP which combine to require that development is of high quality design, responds positively to local or historic character, is of a size that is compatible with the settlement and occurs at an appropriate density in order to ensure that the distinctive character of the area in which it is situated is not compromised. The proposal would also

accord with The Framework which requires, amongst other things, that development is of high quality design and sympathetic to the local area and creates attractive, welcoming and distinctive places to live.

22. Although Policy DM2 of The MBLP has also been referred to by the Council in respect of this issue, as that policy relates to sustainable design, I do not find that it is determinative in respect of this matter. Moreover, whilst it has been brought to my attention that a previous application was refused due to its visual effect, this does not alter my assessment of the proposal that is the subject of this appeal.

Other Matters

23. It has been brought to my attention that the site is not allocated for development within The MBLP, that an adequate supply of housing land exists and that housing is being delivered that meets the Council's identified housing targets. However, Policies SP11 and SP13 of The MBLP both allow for limited development of appropriate size on previously developed land within Coxheath and the evidence before me does not demonstrate that the housing targets are intended to limit further development. In this regard, The Framework encourages the significant boost of housing supply and the development of windfall sites. As such, I have no basis to conclude that the provision of residential accommodation at this site should be prevented on the basis of the abovementioned factors. Similarly, whilst it has been indicated that retirement accommodation is available within Coxheath and not fully occupied, this is not reason to prevent further age-restricted accommodation being provided.
24. Whilst the preamble to Policy SP13 of The MBLP identifies that healthcare facilities would need to be upgraded to accommodate growth within Coxheath, the policy allows for windfall development, no objections have been received from the providers of those facilities and no quantitative evidence has been provided that demonstrates that the proposed development would create unacceptable additional pressure on health services and open space. Accordingly, the evidence before me does not give me reason to conclude that the development would cause an undue burden in these respects. Similarly, whilst it has been brought to my attention that other substantial developments have occurred or are likely to occur within the wider area, I have no basis to conclude that the proposed development would cause any unacceptable cumulative effects in terms of local infrastructure.
25. Given the number of buildings that are served by Clockhouse Rise, and in the absence of any evidence to the contrary, I have no basis to conclude that the 14 proposed apartments would cause an uplift in vehicle movements within the locality to an extent that would pose a threat to highway safety. In this regard, as The Framework states that development should only be prevented if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe, the evidence before me does not indicate that the proposal should be found unacceptable for that reason. Moreover, whether the pedestrian crossing further along Heath Road is used or not, I have no basis to conclude that the nearby bus stop and other provisions at the opposite side of Heath Road would not be able to be accessed safely from the proposed development.
26. Furthermore, the evidence before me does not demonstrate that the proposed car parking provision would represent an undersupply of parking to an extent that would cause a reduction of safety or the restriction of the free flow of traffic within the locality.

27. Limiting the occupation of the building to people over the age of 55 and their dependents or former dependents aligns with the definition of age-restricted housing that is contained within Planning Practice Guidance². I recognise that this does not necessarily mean that the residents will have retired and, as such, future residents may drive, own cars and be as active as the occupiers of any other residential building. However, even having regard to the possible level of activity at the site that has been indicated by interested parties, I have no basis to conclude that this would cause harm in terms of noise, disturbance, parking provision, vehicle movements or any other matter that would detract from the overall amenity of the area or highway safety. Furthermore, as a condition can be imposed to control the future use of the building, I have no basis to assume that the accommodation would not be occupied as proposed.
28. The internal configuration of buildings and the provision of lifts would be controlled by other legislation and I have not been made aware of any policy basis to require more than one lift within the development. As such, this is not a factor that I find to be determinative to my assessment.
29. Whilst some windows within the proposed development would face in the general direction of the residential properties of Clockhouse Rise, the separation distance that would exist between the proposed building and those dwellings would ensure that the development does not cause overlooking to an unacceptable degree.

Conditions and Conclusion

30. I have imposed conditions in relation to the time period for the commencement of development and to require the development to be undertaken in accordance with the approved plans in the interests of clarity.
31. Pre-commencement conditions are also imposed in order to protect any archaeological interests that exist at the site and ensure that any contamination is remediated as consultees have identified that both might be present. If they are present, requiring details to be agreed at a later time would be too late to prevent the occurrence of harm. Although the submission and agreement of a 'closure report' was requested by the Council, the condition that has been imposed includes adequate measures to ensure that any required remediation is undertaken and, unlike the condition that was suggested, would be enforceable in a more timely manner if it were not complied with.
32. Conditions are also imposed to ensure that surface water is managed satisfactorily, the living conditions of future occupiers are not unduly effected by noise from the use of Heath Road and that adequate and functional access and parking is provided, in accordance with the approved plans, in the interests of highway safety. A further condition is imposed to require two of the approved parking spaces to be fitted with electric vehicle charging points in the interests of promoting sustainable modes of transport and in accordance with paragraph 110 of The Framework.
33. As providing net gains for biodiversity is encouraged by The Framework and Policy DM1 of The MBLP, a condition is imposed to require details of biodiversity enhancements to be submitted, agreed and implemented. Furthermore, in the interests of protecting the character and appearance of the site and the area, conditions are imposed to secure the agreement and implementation of a landscaping scheme, the use of materials as shown on the submitted plans and the provision of the approved bin store.

² Paragraph: 010 Reference ID: 63-010-20190626

34. A condition is also imposed to restrict the age of occupiers in order to reflect the terms of the application and align with the abovementioned paragraph of the Planning Practice Guidance.
35. For the reasons given above and subject to the imposition of the conditions included within the schedule below, I conclude that the appeal should be allowed.

Ian Harrison

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: BDS-1529-P100, BDS-1529-100 Revision C, BDS-1529-101 Revision A, BDS-1529-102 Revision C, BDS-1529-103 and BDS-1529-105 Revision A.
3. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed, and items of interest and finds are recorded. The watching brief shall be undertaken in accordance with a written programme and specification, which shall have been submitted to and approved in writing by the Local Planning Authority
4. No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.
5. No development above slab level shall occur until a scheme for the disposal of surface water has been submitted to and approved by the local planning authority. The approved scheme for the disposal of surface water shall then be fully implemented prior to the occupation of the development hereby approved and retained as such thereafter.

6. Prior to the occupation of the building hereby approved an acoustic appraisal assessing the impact of noise caused by traffic using Heath Road on the aural amenity of the future residents and a scheme detailing any required mitigation shall have been submitted to and approved in writing by the Local Planning Authority. All works which form part of the scheme of mitigation shall be completed before any part of the development is occupied and retained thereafter.
7. The access, car and cycle parking and turning areas and driver visibility splays shown on drawing no's: BDS-1529-100 Revision C and BDS-1529-105 Revision A shall be provided in full accordance with those plans prior to the first occupation of any part of the development hereby permitted and retained thereafter. No obstructions of a height of more than 0.6 metres above the carriageway level shall be placed anywhere within the approved driver visibility splays.
8. The gradient of the site access shall be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.
9. 2 electric vehicle charging points shall be provided to serve the parking spaces shown on plan BDS-1529-100 Revision C prior to the first occupation of the development hereby approved and they shall be retained thereafter.
10. Prior to first occupation of the development hereby approved details of biodiversity enhancements at the site, including a timetable for provision, shall be submitted to and approved in writing. The approved biodiversity enhancements shall then be carried out in accordance with the approved details and the approved timetable and retained as such thereafter.
11. Prior to the first occupation of the building hereby approved, details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority. These details shall include boundary treatments, hard surfacing materials and details of any planting, seeding or turfing. All hard landscape works shall be implemented prior to the first occupation of the building hereby approved and all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
12. The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan BDS-1529-103.
13. The bin store shown on plans BDS-1529-100 Revision C and BDS-1529-102 Revision C shall be provided prior to first occupation of the building and retained thereafter.
14. Each unit of the development hereby permitted shall be occupied only by persons aged 55 years old or older, by persons living as part of a single household with such a person or persons or persons who were living as part of a single household with such a person or persons who have since died.