



Appeal Decision

Site visit made on 16 September 2020

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/B1930/W/20/3251964

The Red Cow Public House, 171 Westfield Road, Harpenden, AL5 4ND

- 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 D & P Goes & Stell, Paratrend Limited, against the decision of St Albans City & District Council.
 - The application Ref 5/19/2327 dated 7 August 2019, was refused by notice dated 25 November 2019.
 - The development proposed is described on the application form as "Construction of three dwellings with associated parking and landscaping".
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Decision

1. The appeal is dismissed.

Procedural matters

2. The site location and block plan submitted with the application (Drawing No 11A) shows the Red Cow Public House falling outside the appeal site, but within a blue line, which means that it was within the ownership or control of the appellant at the time the application was made (7 August 2019). However, the appellant has since confirmed in their appeal statement that the freehold of the Red Cow Public House was sold by them to Oxen Court Limited in 2019 (exact date not specified), with the leaseholder remaining as Farr Brewery. A letter has also been submitted by the Farr Brewery confirming that on 21 September 2019, it took a new 15-year lease of the Red Cow Public House and bought the business from the previous tenant who had previously leased the building from 2015. This letter also clarifies that the lease only relates to the immediate area surrounding the Red Cow Public House (as defined by a red-line on the accompanying plan) and does not include the appeal site. For the avoidance of doubt and in view of the fact that there does not appear to be any dispute between the Council and appellant on this matter, I have proceeded on the basis that the appeal site falls under a different ownership and control from the Red Cow Public House. I am satisfied that the Council and third parties had sufficient opportunity in the appeal process to make comments on this change in ownership status and that dealing with the appeal on this basis has not prejudiced the interests of any party.
3. The appellant has submitted an amended site plan (Drawing No 15D) that illustrates new planting added to the side of the driveway. Taking into account the judgement given in *Bernard Wheatcroft Ltd v Secretary of State for the Environment and Harborough District Council* [1980], I am satisfied that the

Council and third parties would not be prejudiced by this minor change and as a consequence I have considered the appeal on the basis of this amended plan.

Main issues

4. The main issues are the effect of the proposed development on:
 - the viability of the Red Cow Public House, with specific regard to car-parking; and
 - the setting of a listed building, namely the Red Cow Public House.

Reasons

Appeal site context

5. The appeal site is of an irregular shape, mostly covered by concrete hardstanding or gravel, and slopes slightly downwards in a north-easterly direction. The evidence reveals that it previously formed part of the land associated with, and used in connection with, the adjacent Red Cow Public House and part of the rear garden to No 165 Westfield Road. At the time of my inspection, it was vacant with no discernible use and I found it to be in a neglected condition, with overgrown scrubland and debris covering a large part of the site.
6. The Red Cow Public House (the 'public house') is a prominent Grade II listed building that fronts onto a junction on Westfield Road, with spacious open crossover/driveway gaps between it and the neighbouring residential houses at Nos 165 and 173. It has been subject to a number of unsympathetic rear extensions and alterations, which as a consequence means that its special historic interest is of more significance to the site frontage on Westfield Road. The area surrounding the appeal site is primarily residential, with a variety of architectural styles ranging from historic terraces to modern.

The viability of the Red Cow Public House, with specific regard to car-parking

7. The evidence reveals that the appeal site was previously used for parking in connection with the public house. Although the appellant states that it has not been used for such purposes for many years, this is disputed by neighbours. There is however no evidence before me that conclusively reveals its current lawful use and this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open for the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.
8. Although it may be possible for the appeal site to resume a car-parking use in connection with the public house, there are no planning requirements or other powers that legally oblige the public house landlord, employees or customers to use this site for parking. However, even though it has been severed in ownership from the public house and is not currently in use, this does not in itself mean that the previous use of the site is no longer lawful or that a new planning unit has been created. Set against this context it is important to not lose sight of the fact that land ownership is a private civil matter and planning is generally concerned with land-use in the public interest and not the

protection of purely private interests¹. If this were not the case, the loss of community uses and facilities arising from a severance of site ownership could be repeated too easily and often for all forms of development proposals.

9. In my view, because of their close proximity to each other, previous functional interdependence, long historical association and the functional car-park like appearance of the appeal site, there remains a close visual and functional relationship between the appeal site and the public house, even if both pieces of land are now in different ownership. Furthermore, despite its neglected condition, it would not take much work or time to return the appeal site to a condition where it is capable of providing a car-parking area for the public house. In view of this, I would not consider it appropriate to permit an alternative use on the appeal site without first considering the impact the loss of this facility would have on the public house which it originally served. This is reflected in Policy S12 of the Neighbourhood Plan² which states that new development proposals on land last used for community uses such as public houses will only be granted planning permission where it can be demonstrated that the facility is no longer required.
10. I recognise that the appeal site may not have been used as a car-park for a number of years and that there are other parking spaces available at the front and rear of the smaller public house site. However, the extent of this remaining public house parking area appears to be very constrained and limited in size, and it is not clear to me how many spaces exist in total (allowing for manoeuvrability), and what, if any, impact this may have on outside hospitality provision in the form of a beer garden or outside dining area. Furthermore, there is limited evidence before me to demonstrate that the viability of the public house remains sound since the appeal site ceased being used as a car-park and although the new leaseholder has supplied a letter to confirm that the business is 'thriving', this was dated 28 November 2019 and they only took on the lease on 21 September 2019;- it seems to me that little over 2 months is insufficient time to conclude that the business will thrive without the appeal site car-park and remain viable in the long-run without it.
11. Furthermore, I note that there is no evidence of any parking surveys to demonstrate the impact, if any, of parking on the public highway. Whilst I agree that the Framework³ seeks to encourage more sustainable forms of travel, and that many customers will travel by foot or cycle from the local area, this does not mean that all customers will do so. It is therefore unclear to me what impact the loss of the appeal site as a car-park has had on parking stress levels in the area and the amenity of neighbours, and whether it has resulted in a reduction in car-borne public house customers to the detriment of the viability of the business.
12. I recognise that the appellant may be frustrated at having to provide such evidence when the public house is no longer within their ownership and that the new public house leaseholder may not wish to have the added expense of maintaining an additional car-park. However, I consider the provision of this evidence to be necessary given the close historical and functional links between the appeal site and public house, and the requirements of Policy SI2 of the Neighbourhood Plan.

¹ Planning Practice Guidance: Paragraph: 008 Reference ID: 21b-008-20140306

² Harpenden Neighbourhood Plan 2019.

³ National Planning Policy Framework, Ministry for Housing, Communities and Local Government, February 2019.

13. In view of the above, I conclude that insufficient evidence has been provided to demonstrate that the loss of the car-park on the appeal site would not have a detrimental impact on the viability of the public house. The proposal would therefore conflict with Policy SI2 of the Neighbourhood Plan, which seeks to ensure that existing community facilities are protected where they are needed or that they are provided elsewhere.
14. I also find that the scheme conflicts with Paragraph 83 of the Framework which seeks, amongst other things, the retention of community facilities such as public houses.

The setting of a listed building, namely the Red Cow Public House

15. By reason of its significant height, the development would tower over the public house, which would have a lower 1.5 storey ridgeline. I recognise that views of the scheme from Westfield Road would be restricted by neighbouring housing and the public house itself, but the development would nonetheless be clearly visible through the private drive access point. The development would as a consequence dominate the public house and its setting, and harm its special historic interest when viewed from the public realm on Westfield Road. This harm would be compounded by the development having a tall abrupt gable roof set against the softer edge provided by the low hipped roof on the public house.
16. The appellant has drawn my attention to a previous scheme⁴ for a single storey rear extension to the public house that they feel helps to justify the appeal being allowed. However, this scheme is not directly comparable to current proposal in terms of position, scale, height, design, character, use and public benefits. Furthermore, the approved scheme does not project above the height of the existing public house and therefore has a more limited visual impact from the public realm on Westfield Road. In any event, I must consider the appeal scheme on its own merits; - the existence of this other scheme does not therefore justify the harm I have identified.
17. The appellant has referred to the architectural style of the proposed dwellings and their design quality. However, despite the lack of objections from the Council, I do not consider the design of the new dwellings to be of such a high quality that they would protect or enhance the setting of the listed public house.
18. In view of the above, I find that the development would not preserve the setting of the listed building (the Red Cow Public House) in accordance with Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. As a consequence, the scheme would conflict with Policy 86 of the Local Plan⁵ and Policies ESD1 and ESD2 of the Neighbourhood Plan, which collectively seek, amongst other things, for developments to; (a) have special regard to the desirability of preserving the setting of listed buildings; and (b) maintain or enhance, and be considerate of, local character and the heritage of the area.

⁴ Planning appeal decisions APP/B1930/W/3151472 and APP/B1930/Y/16/3151469

⁵ St Albans District Plan, City and District of St Albans District Local Plan Review, Adopted 30 November 1994, Written Statement.

Other matters

19. I note the appellant's concern that the Council's Conservation Officer did not provide any comments on the application. However, this is not a legal requirement and I am satisfied that an appropriately experienced and qualified planning officer would have been able to make a decision on this matter without such an input.

Planning balance

20. I am satisfied that the appeal site falls within the historic curtilage of a permanent structure (the public house) and therefore constitutes previously developed land in accordance with Framework's definition; - I have accordingly given substantial weight to the value of using it for 3 new homes in accordance with Paragraph 118. However, I have not given great weight to the benefits of the scheme in accordance with Paragraph 68 of the Framework as I do not consider it to be a suitable small site for new homes for the reasons referred to above and below.
21. Although the Local Plan is over 5 years old, Paragraph 213 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework and that due weight should be given to them according to their degree of consistency with the Framework.
22. The Neighbourhood Plan was only recently made following examination and Policies ESD1, ESD2 and S12 are generally up to date insofar as they relate to the main issues of this case. However, I agree with the appellant that Policy 86 of the Local Plan is out of date and does not accord with the more comprehensive and balanced approach shown in the Framework. I have as a consequence attached only limited weight to the scheme's conflict with this policy.
23. On the basis of the evidence and my observations on-site, I am satisfied that the scheme would cause less-than substantial harm to the significance of the listed building (the public house) as a designated heritage asset. As a consequence, I have weighed this harm against the public benefits of the proposal, including securing optimum viable use, in accordance with Paragraph 196 of the Framework. In carrying out this assessment, I have also given great weight to the protection of the listed building in accordance with Paragraph 193 of the Framework.
24. Furthermore, in accordance with Section 66 (1) of the 1990 Planning (Listed Buildings and Conservation Areas) Act 1990 (see above), I have also given considerable importance and weight to the desirability of preserving the setting of the listed building when carrying out my balancing exercise.
25. I recognise that the scheme would result in a range of public benefits, namely; - (a) the provision of three additional family dwellings to increase the choice of local housing stock; (b) a quickly-deliverable contribution towards the Council's 5-year housing land supply in a district where there is a significant deficit; (c) landscaping improvements to the site; (d) future occupiers contributing to the vitality and viability of local shops, services, facilities, businesses and community organisations; and (e) local employment during construction. However, it is my view that these benefits, when considered collectively with

the small number of dwellings proposed, would be of modest value and outweighed by the harm to the setting of the listed building. Similarly, I am also of the view that these public benefits would not outweigh the harm to the viability of the public house as a community facility that would arise as a consequence of it not being demonstrated that the car-parking facility is no longer required.

26. I recognise that the Council is unable to demonstrate an up-to-date 5-year housing land supply. However, I have concluded that the scheme conflicts with Paragraphs 193 and 196 of the Framework in terms of its harmful impact upon a designated heritage asset, which as a consequence means that the presumption in favour of sustainable development is not engaged in accordance with Paragraph 11(d)(i) Footnote 6.
27. In view of the above, I conclude that the proposal does not accord with the development plan and that other material considerations do not indicate that the proposal should be determined other than in accordance with this.

Conclusion

28. All representations have been taken into account, but no matters, including the benefits of the development and the scope of possible planning conditions, have been found to outweigh the identified harm and policy conflict. For the reasons above, the appeal should be dismissed.

Robert Fallon

INSPECTOR