
Appeal Decision

Hearing Held on 30 September 2020

Site visit made on 1 October 2020

by Gareth W Thomas BSc(Hons) MSc(Dist) PgDip MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 October 2020

Appeal Ref: APP/J1860/W/20/3245502
Wagon Wheel, Grimley, Worcester WR2 6LU

- 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 & Mrs Giuliano against the decision of Malvern Hills District Council.
 - The application Ref 19/00347/FUL, dated 28 February 2019, was refused by notice dated 25 July 2019.
 - The development proposed is for the conversion of public house/restaurant to 1no. dwelling (including partial demolition) and the erection of 2no. dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the proposed change of use of the restaurant/public house would result in the unacceptable loss of a valued local community facility
 - Whether the proposed development would give rise to unacceptable flood risk
 - The effects of the proposed development on the character and appearance of the area; and
 - Whether the proposal would adequately respond to local affordable housing need.

Procedural matter

3. The Council confirmed prior to the Hearing that it no longer wished to contest the fourth reason for refusal relating to archaeology and that it was content that the matter could be dealt with by way of a condition in the event that I was minded to allow the appeal. The appeal has been considered on this basis.
4. An additional statement was submitted by the Council prior to the Hearing relating to affordable housing. In essence, this amounted to a fourth reason for refusal. The appellants were given the opportunity to consider the matter and to respond accordingly at the Hearing. This matter is explored later.

Reasons

5. The Wagon Wheel is situated in the rural village of Grimley some 8kms north of Worcester. The pub lies off a minor no-through road in the heart of the village, which comprises some 30 or so houses according to the Council. The restaurant/pub can fairly be described as a destination restaurant, its reputation having been formed through the endeavours of the appellants over some 33 years.

Loss of community facility

Whether a valued local facility

6. Paragraph 92 of the National Planning Policy Framework (the 'Framework') makes clear that in order to provide the social, recreational and cultural facilities the community needs, planning policies and decisions should, amongst other things, ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community. The approach is reflected in policy SWDP 37 of the South Worcestershire Development Plan. This policy makes clear that that the strategy is to protect valuable community facilities and services that play an important role in the social infrastructure of South Worcestershire and help secure sustainable communities. Local facilities such as pubs and restaurants are important in helping maintain a high quality of life for local residents, particularly those who have limited access to alternative facilities further afield.
7. Allowing the change of use and conversion of the public house/restaurant would not result in the loss of the last remaining pub in the village and neither would it involve the loss of the last pub in the community comprising Grimley Parish. There are several other food-based pubs within a couple of miles of the appeal site. The appellants explained that the Wagon Wheel is not a valued community asset that serves the village and that apart from a few local regulars who might occasionally purchase a bar meal alongside their drink, the overwhelming customers are diners from the neighbouring City and beyond. This is further explained in the evidence submitted by the appellants in relation to the split between food and wet sales. Whilst the Council maintained that this is a profitable business, including the sale of beverages, the evidence suggested that the wet sales part of the business was closely aligned to the restaurant. It is clear to me that this is not a village pub in the truest sense.
8. Although rural pubs can form an important part of the social fabric of local communities, in this case, the Wagon Wheel is a destination pub/restaurant rather than a village pub much frequented by the local community. It is noteworthy that there has not been any groundswell of local opinion in support of the pub/restaurant's retention. The parties agreed that the Wagon Wheel has not been used for local community group gatherings or for locally arranged entertainment events. Whilst the Council has confirmed that five of the six Assets of Community Value (ACV) that have been registered within the Malvern Hills District have been pubs, which demonstrates that pubs are valued in this District, it is evident that no such support has been forthcoming here. I therefore consider that it is most unlikely that such interest will be ignited in this instance.

Viability and Marketing

9. The parties agreed that the pub/restaurant continues to trade successfully and it is the desire of the appellants who have built an excellent reputation on the basis of fine dining who have now expressed the desire to retire. The present business has 60 covers and an attractive bar area, which adds considerably to the charm of the establishment. Despite the reputation that has built up over many years, the appellants point out that the restaurant trade has suffered in recent years as a result of the growth of chain pubs offering discounted food. This works against the introduction of a different management arrangement – the present seemingly success and profitability of the Wagon Wheel is due to the Giuliano family's hard work and endeavour. It is unlikely that the pub/restaurant would be as successful if the family was replaced by a manager.
10. Taking the foregoing into account, I consider there to be a number of factors that count against its continued viability. On the one level there are general trends in the pub and restaurant trade, including those identified by the appellants. However there appear to be issues that are particular to the Wagon Wheel, including its location on a no-through road in a relatively lowly populated rural area, the lack of public transport and the relatively low local clientele base.
11. Policy SWDP 37 states that any proposal that would result in the loss of a building currently or last used as a community facility will only be permitted if any of the specified criteria are met. The criteria, amongst other things, include where there is an excess of similar provision in the appropriate catchment area for that particular community facility or where the community facility could not be operated by the current occupier or by an alternative occupier and it has been marketed in accordance with requirements set out in Annex F of the SWDP.
12. The appellants have marketed the Wagon Wheel for a period of six years through professional agents, initially for £625,000, reducing to £595,000 in 2017 and by 2019 to £550,000. The Council challenged the fact that no comparative data had been provided. The Hearing was provided with some limited comparative information gleaned online on the day of the Hearing and while of limited value, provides some comparison of other similar business properties within the Worcestershire area. Although the Council quite rightly pointed out the inadequacies of comparing properties by way of internet fliers, it did not submit any analysis of its own.
13. As a property that has been marketed for some six years, it would reasonably have been expected that it might have generated some interest, possibly offers. However, only two viewings have taken place during this entire period with no offers. While the Council remarked that this indicates an excessively high asking price, on the basis of the comparative evidence submitted and the somewhat peculiar if not entirely unique set of circumstances that confronts a business of this nature in this location, I am satisfied that the property has been offered for sale at a realistic price and that it has been marketed in compliance with Annex F.

Balancing exercise on the loss of a community facility

14. I have found that the Wagon Wheel cannot be deemed to be a valued community facility. I have also found on balance and, in the absence of

contrary evidence, that it has been marketed for a sustained period at a price that reasonably reflects its value as a high-end pub/restaurant. Whilst it remains a viable business, SWDP Policy 37 requires demonstration that alternative community provision is available or that where the community facility could not be operated by the current occupier or by an alternative provider, the requirements of Annex F are satisfied. Having regard to the satisfactory application of those two criteria, I conclude that there is no conflict with either SWDP Policy 37 or the Framework.

Flood risk

15. The Environment Agency (EA) flood maps indicate that part of the appeal site where the proposed development will occur lies within Flood Zone 1 which indicates that there is a low probability of the site flooding. The remainder of the site from the raised wall to the ornamental garden area to the east of the appeal scheme and where there is a drop of some 1.00m is in Flood Zone 3 indicating an annual flood risk greater than 1 in 100 years. The step comprising the fall in land at the point of the retaining wall of some 1.00m means that Flood Zone 2 is minimal in extent.
16. The Framework (paragraph 155) indicates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas of highest risk and where development is necessary, making it safe without increasing flood risk elsewhere. The Framework advises that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
17. The Framework and the Planning Practice Guidance (PPG) require a sequential, risk-based approach to the location of development. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. It also indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The PPG states that for the purposes of applying the Framework, the 'areas at risk of flooding' are principally land within Flood Zones 2 and 3. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
18. A Flood Risk Assessment (FRA) was submitted with the planning application, which claimed that, subject to mitigation measures, principally raised finished floor levels, development can be undertaken without being at risk from flooding nor increasing the risk of offsite flooding. I have taken into account the fact that the EA as well as the South Worcestershire Land Drainage Partnership (SWLDP) raised no objection to the proposed development on the basis of the information contained in the appellants' FRA, including the mitigation as proposed and the flood mapping held by the EA.
19. The Council's concern is that the published flood maps are indicative only and do not take into consideration the effects of climate change. Revised mapping was produced by the Council in an attempt to refine the published maps to take account of the effects of climate change. Whilst there was little disagreement that the refined mapping indicated that the site lay partly in Flood Zones 2 and 3, the appellants believed that mitigation measures would prevent the properties being at risk from flooding. The Council highlighted that the proposed plot 2 would not enjoy a safe dry access.

20. Although the parties agreed that the finished floor levels would offer adequate protection based on the Council's own analysis and there was no suggestion that this would lead to displacement of flood water elsewhere, the fact remains that the development would be located within Flood Zones 2 and 3. Third party photographic evidence also suggests that significant flooding has occurred in the recent past with the further claim that the composition of soils in the immediate area results in flood water building up rapidly during flood events and which has become more frequent as a result of the implementation of strategic flood control measures upstream. The appellants' own drainage consultant admitted that there appears to be a mis-match between the levels provided by the EA maps and the local incidence of flood events and, following what had been presented to the Hearing, he confirmed that he would not now be comfortable with this discrepancy. This suggested to me that further detailed investigation would be necessary before development should be contemplated.
21. Given the evidence and what I heard at the Hearing, I would agree with the Council that the FRA does not contain an adequate sequential assessment and therefore fails to demonstrate that there are no alternative sites reasonably available to accommodate two additional dwellings that are at a lower risk of flooding. The sequential test must be passed before the exception test can be applied. I have therefore not applied the exception test as set out in paragraph 160 of the Framework.
22. Whilst I note that neither the EA nor the SWLDP have not raised concerns regarding the proposed mitigation measures contained within the appellants' FRA, this does not overcome the need to firstly pass the sequential and exception tests to establish whether the appeal proposal is acceptable in principle on flood risk grounds. I must apply a precautionary approach in these circumstances.
23. Taking all matters into consideration on this main issue, the proposal would not be acceptable in respect of the risk of flooding. Accordingly, the proposal is in conflict with Policy SWDP 28, which requires developments within flood risk areas to pass the sequential and/or exception tests and also the Framework.

Character and appearance

24. The village of Grimley contains a nucleus of houses that front close to Main Street in the vicinity of St Bartholomew's Church; at this location, there is a relatively traditional built form and character. However, towards the appeal site the pattern of development becomes rather more dispersed. Within the village, including in the vicinity of the Wagon Wheel, there are examples of fairly modern houses that have a somewhat suburban appearance. Overall however, Grimley has retained its rural village character largely as a result of dwellings being located close to the village street in generally linear style.
25. The proposed development comprising two detached modern bungalows closely spaced and set back from Main Street immediately behind and to the side of the host property would appear contrived and at odds with the prevailing character of properties that mainly front the village street. The more detailed design features of the bungalows would give them a somewhat suburban appearance that would represent a stark contrast with the traditional qualities of the Wagon Wheel. Whilst in isolation they would be of unremarkable and restrained style, they fail to draw significantly on the attributes of the existing

buildings and vernacular style of Grimley to inform their design, nor would they represent novel or positive additions to the village.

26. Consequently, the proposed dwellings would appear discordant, out of keeping and harmful to the character and appearance of the area. Whilst the appellants draw attention to existing similar arrangements elsewhere in the village, these to my mind are located sufficiently away from the appeal site and concealed by the slight bend in the village street such that they do not have significant influence on the context of the appeal site. Moreover, past failures to respect local vernacular character at a time when planning controls might have been more relaxed should not be used to perpetuate design standards that fail to maintain and reinforce local distinctiveness.
27. The proposed development by reasons of its siting, layout and architectural style would therefore harm the character and appearance of the area to a significant extent. Consequently, it would conflict with Policy SWDP 21 of the SWDP and guidance set out in the South Worcestershire Design Guide Supplementary Planning Guidance, which sets out amongst other things to ensure that new development is of a high quality thereby helping to reinforce local distinctiveness and character.

Affordable housing

28. Policy SWDP 15 Meeting Affordable Housing Needs sets out the thresholds and amount of affordable housing that development proposals should include. For smaller sites within the Designated Rural Area such as the appeal proposal, a financial contribution for off-site provision equivalent in value to 20% of the units proposed would be negotiated by way of a separate legal obligation. This is set out in detail in a joint position statement prepared by the three South Worcestershire councils dated June 2019. The calculations may include a reduction based on a Vacant Building Credit, which in my view would not apply in this case given that the pub/restaurant including a 4-bed apartment could not reasonably be classified as unoccupied.
29. The appellants suggest that the request for affordable housing contributions were submitted very late in the appeal process and that this has given insufficient time to consider issues of viability or to prepare appropriate legal undertakings. Moreover, they believe that the Council has not adequately demonstrated that there is an affordable local housing need in the area. The joint position statement was adopted a month before the decision date and should have formed part of the Council's consideration at the application stage. In this regard, the appellants believe the request is unreasonable.
30. Whilst it would have been beneficial had the matter been raised much earlier, following the change of policy at national level, it is clear that the scheme must address all relevant policies of the adopted development plan. In this regard, Policy SWDP 15 is a relevant policy for the determination of this appeal. The policy does not distinguish between large or small-scale developments and therefore does not exempt small housing schemes from the requirement to redress the housing imbalance. Although I do sympathise with the appellants' criticism of the late submission, it is for the appellants to justify why the affordable housing requirements of the development plan policy should be set aside. Consequently, in the absence of a planning obligation that would make appropriate contributions towards affordable housing, the appeal proposal conflicts with Policy SWDP 15 of the Council's adopted development plan that

sets out to meet local affordable housing needs in all cases. It would also conflict with paragraph 62 of the Framework in this regard.

Other Matters

31. To the south-west of the appeal site on the opposite side of Main Street lies the Church of St Bartholomew, an imposing Grade II* listed building and the separately Grade II listed Churchyard Cross, to the front of the chancel. Given the location of the proposed dwellings, I agree with the Council that the setting of these listed buildings will not be affected by the appeal proposal. I am therefore satisfied that I have discharged my statutory responsibilities under section 66 of the Planning (Listed Building and Conservation Areas) Act 1990.

Planning Balance and Conclusion

32. Although I have found that the pub/restaurant is not a valued community facility and that it has been marketed at a price that reflects its existing use and for a reasonable period of time in line with the Council's policy, this does not override my concerns in relation to flood risk, character and appearance or affordable housing provision. Whilst the appeal proposal would provide two additional dwellings plus an enlarged dwelling within the premises with resultant economic and social benefits, in the context of housing delivery, such benefits would be modest.
33. The proposal is clearly in conflict with the development plan, read as a whole. The benefits of the scheme do not amount to considerations of sufficient materiality to outweigh the harms that I have identified above nor the associated conflict with the development plan.
34. For the above reasons and taking account of the evidence and what I heard at the Hearing, the appeal is dismissed.

Gareth W Thomas

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr B Greenaway BSc (Hons) MA lic MRTPI	Greenaway Planning Ltd
Mr Bob Sargent CSci, CEnv, CWEM,FCIWEM	Consultant Hydrologist
Mrs Giuliano	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms H. Jones	Planning Officer
Ms L Kendall	Area Planning Officer (North)
Mr Bob Hughes	South Worcestershire Land Drainage Partnership

INTERESTED PARTIES:

Ms Jenny Cranton	Local Resident
Mr Andrew Jefferey	Local resident

DOCUMENTS PUT IN AT THE HEARING

1. Rightmove online data of commercial properties for sale in Worcestershire

DOCUMENTS PUT IN FOLLOWING THE HEARING

1. Register of Assets of Community Value – Malvern Hills DC
2. Population figures for Grimley Parish