



Appeal Decision

Hearing Held on 22 October 2020

Site visit made on 23 October 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/P1615/W/20/3255023

The Rising Sun, Coleford Road, Woodcroft, Chepstow NP16 7HY

- 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 Worthy Developments Ltd against the decision of Forest of Dean District Council.
 - The application Ref P1864/19/FUL, dated 28 November 2019, was refused by notice dated 6 February 2020.
 - The development proposed is the erection of a first floor extension over existing public house kitchen and toilets to provide additional accommodation with associated works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by Worthy Developments Ltd against Forest of Dean District Council. This application is the subject of a separate Decision.

Procedural Matters

3. At the hearing there was a discussion regarding the lawful use of the first floor residential accommodation. A section 78 appeal is not the procedure to determine the lawful use of land or buildings and in this case there is no Certificate of Lawful Use or planning permission which clarifies whether the first floor accommodation is a separate unit of accommodation or ancillary to the public house use below. I note that the plans show an internal door which links the residential accommodation to the commercial space and also an external door. I do not consider that the Council Tax records are determinative on this issue because of the rebuttal evidence from Mrs Ingram.
4. Sales details show the first floor accommodation has been marketed as owner's accommodation¹ in the past. While I heard that the accommodation had, it was said, been used briefly as independent accommodation, other information that I heard was that the space has been used at other times by staff and the landlord. At those latter times the first floor accommodation was therefore available to be operated in conjunction with the public house use. If the appeal were to be allowed, and the proposed accommodation was not subject to an occupancy condition (and I will examine this matter later), the past availability

¹ Mrs Ingram's appendix 6 in her submissions at the application stage.

of the accommodation to be used in association with the public house use would, in all likelihood, be altered. I will consider the issues having regard to this background.

5. The appellant makes the case that the planning application seeks permission for the first floor extended accommodation to be used as two separate open market flats. The open market nature of the accommodation of the two units is clear from the answer to question 17 on the application form. Furthermore, the separate access to the rear, with no interconnection with the public house floorspace, would enable occupiers to use the accommodation as independent units and this helps to further clarify the intention of the proposal.
6. The second reason for refusal, as clarified in the Council's statement, raises concerns regarding overlooking of the Old Station House from the rear first floor windows. Without prejudice to their case, the appellant has suggested a range of different proposals to address any concerns that I may have with regard to the first floor windows in the rear elevation. One of the suggestions involves the removal of the window to bedroom 2 of Flat 1 (Window A), the removal of the window to bedroom 2 of Flat 2 (Window B) and its replacement with a window to the side elevation, and potentially coloured glass to the window (Window C) which would light the living/kitchen of Flat 2.
7. The 'Procedural Guide – Planning Appeals – England' advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which the views of interested parties were sought. Having regard to the "Wheatcroft" principles² I am satisfied that consideration could be given to Window A being removed (and not replaced) as this would be a lesser scheme which would not prejudice any party. In a similar way, the changes to the glass to Window C is a matter that can be considered without prejudice to any neighbour.
8. However, the removal of Window B, with the proposed replacement on the side elevation, would be an evolution of the proposal at the appeal stage. The proposed side window, whether it be within the side wall or as a roof light, could face towards Hilltop on the other side of Stoulgrove Lane. The occupier of this property raised potential overlooking concerns with the original submission and did so again with the proposed option of an additional window at the hearing. The Council confirmed at the hearing that they had not assessed the scheme on the basis of such a window.
9. Consequently, I am concerned that were I to consider the option of a replacement for Window B to the side it would lead to possible prejudice, including to the neighbour who has not seen detailed plans at this stage³ or been formally consulted on the proposal. I therefore conclude that the alternative to move Window B should not be considered and I will decide the appeal based on the position of Window B as proposed on the original plans.
10. At the appeal stage, the appellant submitted a further ecological report to seek to address the fourth reason for refusal. The Council accepted that this evidence addressed its concerns in this respect and the ecological requirements

² As set out in *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

³ I am not satisfied that it would be reasonable to seek to address this matter in the form of a condition requiring the submission and approval of details to the Council.

could be the subject of a planning condition in any approval. I have found no reason to disagree.

Main Issues

11. The main issues are the effect of the proposal on:

- the future operation of the public house, including whether future occupiers of the first floor accommodation would be provided with satisfactory living conditions,
- the living conditions of the occupiers of Old Station House, with particular regard to any overlooking,
- highway safety, and
- the character and appearance of the host building and the area.

Reasons

Future operation of the public house

12. The site includes the public house with kitchen and toilets on the ground floor, residential accommodation on the first floor, a modest car parking area to the rear and a beer garden to the front. The building has been unused for some time and is located amongst residential properties within the village of Woodcroft.
13. The Rising Sun Public House is registered as an Asset of Community Value. Policy CSP.8 of the Forest of Dean Core Strategy 2012 (the Core Strategy) seeks, in summary, to resist proposals that would involve the loss of community facilities, including public houses. The National Planning Policy Framework (the Framework) has a similar approach and advises that to provide the social, recreation and cultural facilities and services the community needs, decisions should guard against the unnecessary loss of valued facilities and services.
14. In this case the public house space on the ground floor would be retained and because of the removal of the existing staircase to the upper floor, there would be a small increase in floor area. I am very conscious that the Council did not refuse the proposal because of harm to the community facility and the evidence indicates that the space has been retained as part of the proposal to seek to address the previous concerns, including the dismissal at appeal of a scheme which would have converted and extended the building solely for residential use.
15. However, local residents and the Parish Council have made, both at the application and appeal stage, submissions raising concerns that the effect of the proposal would be to harm the potential for the building to reopen in its established public house use. This matter was discussed in detail at the hearing.
16. In respect of the proposed flats, it seems to me that from examining the Planning Report that it was considered that there was potential for noise and disturbance from the public house use to have an adverse impact on the living conditions of the occupiers of the proposed flats. However, the Council's Environmental Health Section raised no objection after assessing a Noise

Impact Assessment that had been said to have been submitted to support the application. The Planning Report goes on to acknowledge that the proposal also has the opportunity for the flats to become separated from the Public House and, to ensure the Public House and its viability in the future, a condition could be imposed to prevent the flats being sold off separately.

17. I sought a copy of the Noise Impact Assessment. However, after searches neither the appellant (who was represented by a new agent at the appeal stage) or the Council were able to supply a copy. Indeed the Council confirmed⁴ that it has now fully investigated this and it reports that it would appear that the mention of such a report in the officer's report was in fact an error, and that there was not in fact such a report submitted to the Council as part of the application. In the light of these circumstances, I place limited weight on the conclusions of the Environmental Health Section.
18. At the present time there is a 3 bedroom flat above the public house part of the ground floor. This accommodation is of a size that could be used by a family, however, it seems that the space was at times occupied by those associated with the commercial premises. I have no clear evidence to dispute that the site has been and is presently in one ownership and therefore occupiers of the flat, who may have been working in the space below, would have, in my view, been likely to have accepted any noise and activities associated with the public house as part and parcel of the occupation of the overall site.
19. I consider that this may be less likely with occupiers of the two flats who potentially could be occupying them separately from the other uses on the site. There is no secure mechanism before me to prevent the separation of the flats from the rest of the site. Furthermore, as the application is made on the basis of open market flats I consider that it would be unreasonable to restrict their occupation by condition to staff and/or manager's accommodation (or even to require first option for such identified occupants) as this would partly negate the effects of any permission.
20. Both flats would have a bedroom over the public house space and with windows facing the beer garden. The landscaping strip in front of the building could assist in preventing customers sitting immediately under the first floor bedroom windows but there is likely to be some disturbance from the normal late evening activities of a public house which could be readily discernible to the occupants of the upstairs flats. Also the kitchen extractor would need to be positioned as part of the rear changes to the building and this would need, in all likelihood, to be in proximity to the residential accommodation. While this may be modern and efficient equipment I do not have reassurances that this could be provided without some potential for odour and noise issues affecting the residential accommodation proposed at the rear of the extended building.
21. While it may be possible to address some or all of these matters through sound insulation, odour control and other works I do not have technical details before me that clearly demonstrate that this could be achieved. I do not accept that occupiers of the accommodation should be prepared to accept a lower standard of accommodation simply because they chose to live above a public house. The Framework requires that planning decisions should create places with a high standard of amenity for existing and future users. Taking all these matters into account, I consider that the proximity of the public house and its ancillary

⁴ Email dated 19 October 2020 and copied to the appellant.

spaces, and with the beer garden to the front, would, on the evidence before me and in all likelihood, create unsatisfactory living conditions for the occupiers of the proposed flats.

22. There are other adjoining residential properties nearby, such as Hilltop which looks out over the beer garden, however, these properties do not have accommodation directly over the public house space itself. In any case, any impact upon the occupiers of these existing properties would not justify the likely unsatisfactory living conditions that occupiers of the proposed flats would be likely to experience.
23. I have noted the argument that the designation as an Asset of Community Value does not necessarily restrict the use to a Public House, however, given the recent changes to the Use Classes Order, the Public House is now a *sui generis* use. Planning permission would be required for any alternative community use. I therefore afford the argument that alternative community uses may be less likely to generate noise and disturbance to upper floor residents limited weight because there is no planning permission for such alternatives.
24. The Framework requires that decisions should ensure that new development can be integrated effectively with existing businesses and community facilities, and gives the example of a pub. While the public house use is not presently operating, were the use to recommence, the provision of two units of open market accommodation on the first floor, with the likely impact highlighted above, could result in complaints regarding the use from future occupants of the flats. In the absence of clear and suitable mitigation this could then lead to restrictions on how the public house could operate. Consequently, there is the potential that the introduction of the independent residential uses on the first floor could jeopardise the full scale operation of the public house use in the future.
25. Even if it is agreed that the present first floor accommodation is a separate residential unit, the introduction of a second unit, with both units extending back in the site with one directly over the kitchen area, would, in my view, add to the potential for complaints and the potential for limitations to be placed on the public house use.
26. I appreciate that the proposal has been formulated to retain the existing public house floor space and the related ancillary space on the ground floor. However, the public house use would lose the internal link to the upper floor accommodation that it has at the present time. Therefore it is likely, given the proposed configuration of the residential units with a separate access, that the public house would not have the equivalent availability as at present for on-site accommodation for workers associated with the business on the site.
27. Lock-up public houses may be a more frequent occurrence than in the past. However, I am not satisfied that the evidence demonstrates that for a public house in this village location, where the licensee would need to find other accommodation, this would provide circumstances with the same or greater potential to facilitate the public house reopening compared to the existing arrangements. Indeed, it would appear that a pub without the availability of owner's accommodation may reduce the interest for future operators to take on the use.

28. I have noted the representations on behalf of the Rising Sun Woodcroft Community Pub Community Benefit Society. The Society is seeking to acquire the site and would wish to install a manager on the first floor as part of their proposals to bring the site back into use for the community. While this group may not be the only person, body or company who could operate the site in the future, this information does support the contention that without the potential availability of worker's accommodation on site, the potential operators who may be interested in reopening the public house could be reduced.
29. Drawing all these matters together, I conclude that the proposed first floor accommodation, for the reasons explained and on the evidence before me, would be likely to result in unsatisfactory living conditions for future occupiers. If the residential use was to take place, this could in turn lead to complaints regarding the public house which could lead to restrictions on its operation. The likely reduction of availability of owner's accommodation may lead to fewer potential operators of the public house willing to take on that part of the site. While approval of the scheme may lead to the renovation of the site and therefore a potential beneficial use, I conclude that taking all the circumstances into account, the proposal as a whole, would make the public house element less attractive as a proposition to reopen and potentially put this community element of the site in jeopardy. As a consequence, I am not satisfied that the scheme would meet the requirements of Policy CSP.8 of the Core Strategy and the Framework which, in this respect, seeks to protect community uses.

Living conditions

30. The first floor extension would extend over the rear kitchen and toilet areas. The rear elevation would be slightly angled in its relationship to the Old Station House. Window A would broadly face towards part of the side gable and part of the single storey outbuilding attached to the Old Station House. There would be some views from this window over the outbuilding towards a part of the seating area to the rear of this neighbouring dwelling and also towards general parts of the rear garden. With the modest distance between the window and the adjoining property this would lead to unacceptable levels of overlooking. However, this could be addressed by the removal of this window and this could be made the subject of a condition in any approval.
31. Window B would be set back from the boundary a little further but there would be clear and direct views from this bedroom window into parts of the rear garden of Old Station House. This would adversely affect the living conditions of this adjoining occupier. Changes to the window itself, such as partially obscuring sections of the window or limiting opening, or landscaping and boundary changes, would not reduce the presence of the window as perceived by the neighbour and the perception that overlooking would occur from a reasonably close distance. The relationship of this window to the neighbouring property would not be acceptable and would not provide the high standard of amenity that the Framework requires of development.
32. Window C is existing and presently lights the stairwell. It is reasonably small in size and views from the window towards Old Station House would be partially obscured by the proposed first floor extension. With the distance to the boundary to the neighbouring property, the position of the window to one side of the rear elevation, the modest size of the window and the effect of the proposed rear extension, views towards the garden area of the Old Station

House would be limited. As a consequence, the impact would not result in an unacceptable level of overlooking from this particular window. I have therefore not needed to consider other options proposed by the appellant for this window.

33. In the light of the above, I conclude that Window C would be acceptable and that the harm resulting from Window A could be addressed by its removal. However, Window B would cause unacceptable levels of overlooking to the adjoining property and in this respect the proposal would adversely affect the living conditions of the occupiers of Old Station House. As a consequence, the proposal would conflict with Policy AP.4 of the Forest of Dean District Council Allocations Plan 2006 to 2026 (the Allocations Plan) and the Framework which seek, amongst other things, to respect the amenity of residents and others.

Highways

34. There is a modest off road car parking area to the rear of the existing building. The plans show that this can accommodate 4 parking spaces and it appears that the spaces have been available in the past for staff, residents of the first floor accommodation and patrons of the public house. The evidence indicates that the changes on the site would result in a need for an additional 2 parking spaces and the submitted plans show that, with clearance of areas at the back of the site, 6 spaces could be accommodated. These spaces would be used for staff and the residents of the flats, with none for patrons.
35. I have not been presented with detailed and comprehensive vehicle movement data and because the site is vacant it is not possible to ascertain precise movements associated with the car parking area that would have taken place in the past. Patrons would not now be allowed to park on site, although the scope for them to do so in the past appeared to be limited because of the number of spaces available. The extra permanent residential use as proposed would increase the number of separate units of activity associated with the site and I consider this is an important factor related to traffic movements on the site. Also the number of car parking spaces available to users of the site would be increased by two and the plans show the spaces could now all operate independently.
36. Taking all these matters together, my judgement is that the number of vehicle movements using the access to the car park would be likely to increase compared to the existing lawful situation. I have considered all the evidence from the appellant's highway consultant, including the nature and frequency of the movements associated with the different uses on the site, but for the above reasons I prefer the evidence of the County Highway Engineer in this respect.
37. There is very limited ability with the existing and proposed arrangements for turning to take place on site. It is likely that most drivers would either have to reverse out of the site or into the parking spaces from the road. At my site visit I noted vehicles parked on the highway on both sides of the access. While this was only a snap shot in time, parking in these areas is not restricted and I have no reason to believe that this would not occur from time to time, particularly if the public house was to reopen. The sight lines from the access are already limited on both sides by physical obstructions. The parked vehicles would provide an additional limitation for drivers leaving the site and seeking to view oncoming traffic.

38. This section of the B4228 is subject to a 30mph speed limit. The road had a reasonably regular flow of traffic when I was at my site visit, including lorry movements, and I have no reason to believe that this was not a reasonable representation of a typical situation. Reversing into the site would require manoeuvring in the road, potentially across both carriageways and this would have the potential to obstruct traffic movements and hinder the free flow of vehicles. Leaving the site in a forward gear would provide a substandard situation because of the poor sight lines and the parked vehicles.
39. It would not be possible to prevent a driver entering the site in a forward direction. This would then result in the need to reverse out of the site into the road where there is restricted visibility. Because of the sight line deficiencies, there could be a situation where it may not be possible to clearly see approaching vehicles and, with the position of the parked vehicles on either side of the access limiting some movement within the road, this may mean that vehicles from some of the proposed spaces would need to reverse across both parts of the carriageway. Reversing out onto the B road where drivers would have limited visibility of on-coming traffic would be hazardous. This hazard would increase compared to the lawful situation as the number of vehicle movements through the access are considered to be greater.
40. I do not accept that because users of the car park would live or work at the site they may become familiar with the limitations of the access and that this would reduce the risk of an accident. The highway concern is one of the physical limitations of the sight lines and likelihood of the need to manoeuvre in the highway. This would be the same situation for any driver. Furthermore, drivers approaching along the B4228 may not be aware of the access limitations and may not have sufficient advance warning of a vehicle about to reverse into the carriageway.
41. I have noted that only one minor incident (in 2004) has been recorded in the vicinity of the access and that records go back some decades. Nevertheless, the proposal sets out a new arrangement with 2 additional spaces and a likely increase in vehicle movements through the access. Therefore I afford the accident records limited weight.
42. Drawing these matters together, I conclude that the proposal would increase vehicle movements through a substandard access and this would lead to an unacceptable impact on highway safety. There would be conflict with paragraph 109 of the Framework in this respect.

Character and appearance

43. This part of Woodcroft is characterised with buildings with a mix of types, sizes and styles, although generally the majority of the buildings along the main road are two storeys. Along the B4228 road frontage, next to the site, there is a terrace of dwellings with their ridges running parallel with the road. The public house is sited perpendicular to the main road and the end gable section of the building is quite a prominent feature within the street scene. At the rear there are some single storey flat roofed projections and, while not attractive, these elements are reasonably subservient to the main building.
44. The proposal would include an extension above the existing ground floor additions. The ridge would be at the same level as the main ridge and the projection back would be fairly substantial compared with the overall bulk and

form of the main building. However, the bulk of additions would be set back from the B4228, the mass of the projection would be broken up with an acceptable design by the two ridge lines and gables, with one gable stepped back from the other. The roof pitch would be typical of some other buildings in the vicinity and the longer first floor extension would have a ridge that would have a similar orientation as the adjoining terrace, albeit set back in the site. The timber framed fenestration would be complementary to the main building.

45. The extension would be sizeable but it would not affect the principal elevation of the building nor would it appear overly dominant within the street scene. The site lies within the village, generally surrounded by other development and the design and appearance would be acceptable in the circumstances of this site and its context. I have come to this conclusion even if the building was to be considered a non-designated heritage asset because the effect on the building and its character would be in keeping.
46. Reference is made to the previous scheme which proposed a rear projection and which was not refused by the Council or at appeal on design or impact grounds. That scheme, however, did not project quite so far back and had more articulation to the west elevation. Consequently, that proposal was somewhat different and is not determinative in relation to the present proposal which I have considered on its merits.
47. For the reasons explained, I conclude that the proposal would be acceptably designed and would be sympathetic to the character and appearance of the host building and with the wider area. As a consequence, the scheme would comply with Policy AP.4 of the Allocations Plan and the Framework which seek development, in this respect, to take account of local character and history in terms of design solutions. It follows that there is no conflict with the general approach to seeking good design in the Council's Residential Design Guide and the Residential Design Guide – Alterations and Extensions.

Other Matters

48. The proposal would provide at least one and potentially, depending on the status of the first floor accommodation, two additional units of residential accommodation. They would be provided on a windfall site that would make effective use of the land. The development could be delivered by a small builder adding to the overall mix and offer of housing in the area. There would be economic and social benefits during construction and in subsequent occupation. However, as at most two additional units are proposed and in a Council area that can demonstrate a Framework compliant supply of housing, I attribute the cumulative benefits of the proposal, including the small boost to housing supply, limited weight.

Conclusion

49. I have found that the proposal would detract from safeguarding the public house use, and could potentially put this community asset in jeopardy. The rear window of one of the bedrooms would cause adverse levels of overlooking of the neighbouring property and this would harm the living conditions of this adjoining occupier. Furthermore, the proposal would lead to an unacceptable impact on highway safety. These are matters that collectively weigh substantially against the scheme.

50. The proposal would not harm the character and appearance of the area or the host building, but I am not persuaded, with the modest impact of the single storey additions, that the scheme would provide anything more than a minor visual improvement to the site. At best this affords only limited weight in favour of the development. The benefits I have highlighted above carry limited weight. It follows that the substantial harm from the proposal would not be outweighed by the benefits.
51. For the reasons given above, the scheme would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Giles Atkinson	of Counsel
Mr Harry Dodd	Director, NUKO Planning
Mr Chris Worthy	Co-Director, Worthy Developments
Mr Ian Wickett	Associate Director, Transport Planning, RSK

FOR THE LOCAL PLANNING AUTHORITY

Mr Stephen Colegate	Principal Planning Officer at Forest of Dean District Council
Mr Stephen Hawley	Highway Development Management Team Leader at Gloucestershire County Council

INTERESTED PARTIES

Mrs Dale Ingram	Planning4pubs on behalf of the Rising Sun Woodcroft Community Pub Community Benefit Society
Dr Michelle Hayes	Local resident and Chair of the Rising Sun Woodcroft Community Pub Community Benefit Society
Mr Steve Hebborn	Local resident and member of the Rising Sun Woodcroft Community Pub Community Benefit Society
Mr Peter Tyler	Local Resident
Mrs Áine Davies	Old Station House, Woodcroft
Mr Clement Brown	Hilltop, Woodcroft

DOCUMENTS SUBMITTED AT THE HEARING

1. Council Tax extract for Rising Sun from the register
2. Asset of Community Value Nomination Form
3. Letter withdrawing Compulsory Purchase Order from the Forest of Dean District Council dated 7 May 2020