



## Appeal Decision

Site Visit made on 6 October 2020

**by Nick Davies BSc(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> November 2020**

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**Appeal Ref: APP/X1118/W/20/3252939**

**Foxhunters Inn, Road from Dean Cross to Heddon Mills, West Down  
EX34 8NU**

- 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 Philip Milton against the decision of North Devon District Council.
  - The application Ref 70712, dated 23 October 2019, was refused by notice dated 27 February 2020.
  - The development proposed is conversion of existing pub to form 4nos cottages, and the remodelling and modernisation of existing bungalow to form 1nos 4 bedroom detached dwelling house.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The application was refused by the council for 13 reasons. The second reason related to the severance of The Bungalow from the public house, which would be contrary to development plan policies regarding new dwellings in the open countryside. Since the application was refused, the Council has granted a Certificate of Lawfulness<sup>1</sup> for the occupation of The Bungalow as an independent residential unit. Consequently, the Council has confirmed that it no longer contests this reason for refusal.
3. Reasons 11, 12 and 13 related to the impacts of the development on the Braunton Burrows Special Area of Conservation; education facilities; and public open space provision. Each reason indicated that it could be overcome by a financial contribution towards mitigating measures or off-site provision, through a Section 106 Agreement. During the course of the appeal an Agreement has been completed, which would secure the necessary contributions.
4. Therefore, the main issues are:
  - a) Whether the proposed development would result in the unacceptable loss of an essential community facility;
  - b) Whether the development would provide suitable living conditions for future occupants with regard to privacy, road noise, outdoor amenity space and internal living space;

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<sup>1</sup> Local Planning Authority reference: 71279

- c) The effect of the development on highway safety; and,
- d) Whether suitable foul drainage could be provided to serve the development;

## **Reasons**

### *Loss of community facility*

5. The North Devon and Torridge Local Plan 2011-2031 (the Local Plan) has strategic objectives to support strong and inclusive communities. Paragraph 8.1 says that this strategy involves protecting existing community services in locations that are accessible to all sections of the community, including vulnerable and disadvantaged groups.
6. The Foxhunters Inn is located outside of any settlement, alongside the A361. The nearest village, West Down, lies approximately 850 metres, by road, to the east. Access from the village to the Inn is via a steep, narrow, unlit country lane, and a section of the A361 which has no footways. It is not, therefore, conducive to journeys by foot or bicycle. The evidence does not indicate that there is a regular bus service from the village that would provide an alternative. Consequently, the Inn is not easily accessible to the community, particularly vulnerable or disadvantaged groups.
7. Policy ST22 of the Local Plan says that the loss of community services will not be supported unless there is compelling evidence to demonstrate that the existing use is no longer commercially viable (or could not be made so); or, there is alternative local provision that is accessible to the local community by walking or cycling. In either case, it should be demonstrated that the premises are no longer required to meet the needs of the local community.
8. The property was marketed between 2009 and 2013, with successive reductions in the asking price, before going to auction and failing to meet its reserve price. The Inn was closed in 2013, when the business failed, and has not opened again since. A Viability Report submitted with the application concludes that a viable business could not be reinstated, for reasons that include the current condition of the premises requiring an estimated £250,000 investment; likely turnover being unable to meet running costs; repeated failure of previous attempts to run the business; and competition from other establishments that are better located to serve the community, or have safer parking facilities.
9. The Viability Report does not meet the requirements of paragraphs 8.9 and 8.10 of the Local Plan. It lacks a thorough analysis of the commercial operation of the previous or future business, and there has been no recent comprehensive sustained campaign to market the property. Furthermore, no figures have been provided to justify the estimated cost of bringing the building back into use. Nevertheless, after several years of disuse, the building is in a very poor condition, and recent fire damage has caused further deterioration. A considerable investment would now be necessary to bring the property back to a condition where it could accommodate a successful business. In view of the current trading conditions for the hospitality sector, there must be some doubt that finance for such a project would be forthcoming.
10. Although the Viability Report lacks detail, the previous business failures and the lack of success in marketing the property point to a lack of commercial viability

at that time. Current economic conditions are unlikely to be more favourable for the hospitality sector now than they were then. Coupled with the deteriorating condition of the building, there is little prospect of the existing use being commercially viable now, or in the foreseeable future.

11. In any event, Policy ST22 does not require the existing or future viability of the facility to be demonstrated if there is alternative provision, that is accessible to the local community by walking or cycling. The Crown Inn lies in the centre of West Down. It is a free house, offering meals and accommodation, as well as a bar service. It is easily accessible by foot or bicycle from all parts of the village, and has a small carpark. It is, therefore, far more accessible to the community than a facility on the appeal site. There is no evidence to suggest that it fails to meet the needs of the community for a public house. It would, therefore, be suitable alternative provision for the loss of the Foxhunters Inn.
12. In these circumstances, Policy ST22 requires it to be demonstrated that the premises are no longer required to meet any other needs of the local community. No evidence has been provided of active engagement by the appellant with the community in this regard. However, as well as The Crown, West Down has a village hall, church, community shop, infant school and community field, all within the settlement itself. Since it closed in 2013, and despite two planning applications for its conversion, no organisation has indicated that the building could meet the needs of the community in another way. No application has been made for it to be listed as an Asset of Community Value. There is little evidence, therefore, that the community values the facility, or its potential for an alternative community use.
13. Even if there were a need for additional community facilities, Paragraph 8.5 of the Local Plan says that the most appropriate location for their provision is within, or adjacent to a settlement, where they are readily accessible by the populations they serve. In view of its inaccessible location, some distance from the residents in West Down, the appeal site is not well-placed to provide alternative community facilities.
14. To conclude on this issue, the Foxhunters Inn is not easily accessible by the community, so its loss would not harm the strategic objective of the Local Plan to support strong and inclusive communities. Its inaccessibility means that it would not be suitable to meet any other local community needs. As suitable alternative provision for a public house is already met in the centre of the village, I find no conflict with Policy ST22 of the Local Plan. I also find no conflict with Policy ST07, which sets out the spatial strategy for development in the rural area of North Devon, or paragraph 83 of the National Planning Policy Framework (the Framework), which encourages the retention of accessible public houses.

*Living conditions for future occupants*

15. The Bungalow sits on higher ground directly behind the Inn, and there is only about 8 metres between the opposing building elevations. As The Bungalow sits at a higher level, the ground floor windows in its front elevation look down on the first-floor windows in the rear elevation of the Inn. At present, there is a line of conifers between the buildings, that would protect the privacy of occupants of the proposed cottages. However, the branches of these conifers reach the rear wall and windows of the Inn building. Retention of the conifers would be incompatible with the residential use of the Inn building due to their

- impact on light into, and outlook from, the bedroom windows in the proposed cottages. However, their removal would lead to the bedroom windows being directly overlooked, at close quarters and from a higher level, from primary windows in The Bungalow, resulting in a lack of privacy for future occupants.
16. It could be argued that this situation already prevails, as the first-floor windows previously served bedrooms in the Inn, and the Certificate of Lawfulness allows The Bungalow to be occupied as a separate dwelling. However, the cottages would be permanent dwellings, so occupants would be subject to a continuous lack of privacy, whereas guests at the Inn would only occupy the rooms for a limited period. Furthermore, the proposals involve the addition of a first floor to The Bungalow, with rooflights and a balcony, that would intensify the level of overlooking, resulting in additional loss of privacy for occupants of the cottages.
  17. I have considered whether it would be reasonable to impose a condition requiring windows in the rear elevation of the cottages to be obscure glazed, to maintain privacy. However, as the affected bedrooms have no other openings, this would result in occupants having no outlook, resulting in poor living conditions. Consequently, in the absence of a detailed scheme of boundary treatment to avoid overlooking of the cottages, I concur with the previous Inspector's conclusion<sup>2</sup> that the inter-relationship between the properties is likely to provide for limited privacy for occupants.
  18. The Inn building is very close to the carriageway of the A361, which carries high volumes of fast-moving vehicles of all types. The significant noise generated by this traffic would be within a few metres of the sitting room and bedroom windows of the proposed cottages. Many of the online reviews reproduced in the Viability Report refer to the impact of traffic noise experienced in the bedrooms of the Inn. The appellant indicates that triple glazed windows and a Mechanical Ventilation with Heat Recovery system would be installed to alleviate the traffic noise. However, no evidence has been submitted to quantify the existing noise levels, or to demonstrate that these mitigating measures would be effective in providing suitable internal living conditions for occupants of the cottages.
  19. I have considered whether the imposition of a planning condition, requiring the prior approval of a scheme of sound insulation, would overcome this issue. However, the noise levels that I observed were very high, and very close to the windows. In the absence of any acoustic evidence, I cannot be certain that an acceptable scheme could be submitted. In these circumstances, such a condition would not be reasonable, so would not comply with the advice at paragraph 55 of the Framework. Consequently, in the absence of acoustic evidence, I must conclude that the road noise would result in unacceptable living conditions for the occupants of the cottages.
  20. The submitted plans do not clearly indicate the allocation of the external space to the proposed cottages and The Bungalow. However, the cottages would only have external doors to the front, and to the sunken communal access path at the rear. Consequently, outdoor space for the occupants of these dwellings would be limited in area and usability. While there may be enough space for the storage of waste bins, there would be little opportunity for outdoor relaxation or recreation. The area at the front would be seriously affected by

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<sup>2</sup> Appeal Decision APP/X1118/W/17/3173495

traffic noise, so would be an intimidating space for occupants to use. That at the rear would be a narrow pathway, between the building and a retaining wall, so would receive little light and would not be an attractive outdoor space. Occupants of the cottages would not, therefore, have access to well-designed outdoor space, as required by Policy DM04 of the Local Plan.

21. Paragraph 127 of the Framework says that planning policies may make use of the nationally described space standard<sup>3</sup> (the NDSS), where the need for an internal space standard can be justified. The Local Plan does not adopt the NDSS, but it is, nevertheless, a material consideration in determining whether the development would provide acceptable internal living space for occupants. With reference to the floor areas set out in the Design and Access Statement, the proposed cottages would all exceed the minimum overall floorspace for the number of bedspaces. Units 3 and 4 would comply in all respects, except for the provision of built in storage. However, as they both comfortably exceed the overall floorspace requirement, this could easily be achieved.
22. The largest bedrooms in Units 1 and 2 would be, respectively, 1.5 and 0.5 square metres smaller than the NDSS minimum for a double bedroom. Furthermore, the two other bedrooms in Unit 2 would be 1.5 and 0.5 square metres below the NDSS minimum for a single bedroom. However, the total floorspace of these units would be 16 and 29 square metres above the minimum floorspace. Overall, therefore, there would be sufficient internal space for the occupants, with ample opportunity for built in storage. As the Local Plan does not adopt the NDSS, a rigid application of its standards for individual room sizes would not be reasonable in the conversion of an existing building, when the overall floorspaces considerably exceed the minimum requirements. Consequently, I find that the cottages would provide suitable internal living space for proposed occupants.
23. To conclude on this issue, whilst the cottages would have satisfactory internal space, they would not provide occupants with suitable living conditions due to the likelihood of noise from the road, and a lack of privacy and usable outdoor amenity space. The proposal would therefore be contrary to Policies DM01, DM02 and DM04 of the Local Plan, which seek to ensure that the amenities of future occupiers are safeguarded. The development would also fail to meet the Framework's objective of achieving well-designed places with a high standard of amenity for existing and future users.

#### *Highway safety*

24. The appeal site straddles the A361, which is a main road carrying significant volumes of traffic that is subject only to the national speed limit. The Viability Report states that the estimated average daily flow of vehicles was 6,911 in 2015. At the time of my visit, traffic was constant and fast-flowing. There is only limited space for the parking of vehicles beside the buildings on the eastern side of the road. Consequently, when the Inn was operational, customers parked in the carpark on the western side of the road.
25. The evidence indicates that the existing car-parking spaces on the eastern side of the road are used by occupants of The Bungalow. The development would

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<sup>3</sup> Department for Communities and Local Government Technical housing standards – nationally described space standard - March 2015

- involve enlarging this area, which would allow more manoeuvring space for vehicles. As The Bungalow has a lawful use as a separate dwelling, the use of these spaces by its occupants would be a continuation of the current situation, so would have a neutral impact on highway safety.
26. The parking spaces for the cottages would, however, be located in the western carpark. Occupants would, therefore, have to cross the A361 each time they left or returned to their house by car. This would involve crossing two lanes of fast-moving traffic and the dedicated right-turn lane into the carpark. This would be a hazardous exercise, even for an able-bodied person in daylight. However, this journey would have to be undertaken by all residents of the cottages, of all ages and abilities, at all times of the day and night, and in all weather conditions.
  27. Occupants accompanied by young children, or pushing prams or wheelchairs, or carrying shopping would encounter particular difficulty in crossing the road to and from the parking area. In these circumstances there would be a significant temptation to park in front of the buildings on the A361 for a short time. Whilst traffic conditions dictate that this would not be a regular incidence, it would result in significant highway danger whenever it did occur.
  28. There is a regular bus service on the A361, and there is a bus stop relatively close to the site. However, the lack of a footpath means that walking to this bus stop would be just as hazardous as crossing the road to reach the carpark. Consequently, even if occupants were minded to use this sustainable travel option, they would face similar highway dangers.
  29. It is argued that the development would result in less highway danger in all of the above respects than the previous use. However, the public house closed in 2013, and I have accepted the appellant's case that there is little likelihood of it reopening in the foreseeable future. Therefore, the alternative proposition of a very busy public house, resulting in similar levels of pedestrian activity, is a theoretical possibility, rather than a real prospect.
  30. Although the appellant states that there have been no significant accidents related to the buildings and the A361 for a very long time, the Highway Authority's records indicate that there have been four accidents in the vicinity of the site since 2014, two of which have been serious. This suggests that, even at a time when the public house is not operational, highway conditions in the locality are not inherently safe.
  31. For the above reasons, I concur with the previous Inspector, that there would be an increase in pedestrian movements across the A361, and highway safety would be compromised. The proposal would therefore conflict with Policies ST10 and DM05 of the Local Plan, which seek to protect the safety of the road network, ensure that all development has adequate parking, and that layouts consider the needs and accessibility of all highway users including pedestrians. The development would also fail to meet the Framework's aim of providing safe and suitable access for all users.

#### *Foul drainage*

32. The application form indicates that foul drainage would be disposed of via a mains sewer. The appellant's statement, however, confirms that there would not be a mains connection, as the public system lies some distance from the

site. Instead, it is contended that the existing on-site sewage treatment plant, which previously served the public house, nine letting rooms and The Bungalow is adequate, was overhauled in 2017, and is in good working order. There is no evidence before me to indicate that this system has insufficient capacity, or that it is unsuitable to deal with the waste from the development for any other reason. Even if that were the case, no evidence has been provided to cast any doubt on the feasibility of providing an acceptable system within the appeal site.

33. In these circumstances, had I been minded to allow the appeal, it would have been reasonable to impose an appropriately worded planning condition to ensure that a suitable system of foul drainage was in place, prior to occupation of the cottages. This would have ensured that the development met the requirements of Policies ST03, ST23 and DM02 of the Local Plan regarding adaptation to climate change, infrastructure provision and environmental protection.

### **Planning Balance**

34. I have concluded that the proposal would not conflict with Local Plan policies that protect community facilities. I have also found that suitable foul drainage arrangements could be secured by means of a planning condition. However, the development would not provide suitable living conditions for future occupants, and would be harmful to highway safety.
35. In balancing the issues, I have also considered the benefits of the development in delivering four additional dwellings, which would support the Framework's objective of significantly boosting the supply of homes. Furthermore, there would be economic benefits through employment during the construction phase, and through the future occupants' support for local services and businesses. In view of the scale of the proposal, however, these benefits would be moderate.
36. I am also mindful that the proposal would re-use previously developed land, and would find a new use for a prominently located building that is falling into disrepair. However, there is no evidence to indicate that these benefits could only be delivered through the particular scheme proposed under the appeal.
37. I therefore conclude that the benefits of the development do not outweigh the harm to the living conditions of future occupants and highway safety.

### **Conclusion**

38. For the reasons given above, I conclude that the appeal should be dismissed.

*Nick Davies*

INSPECTOR