



Appeal Decision

Site Visit made on 24 May 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/P1133/W/21/3268298

Dolphin Inn, Fore Street, Kenton EX6 8LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Dare Utility Services Ltd against Teignbridge District Council.
 - The application Ref 20/00710/FUL, is dated 1 May 2020.
 - The development proposed is to demolish extensions, convert main building into two dwellings and construct a new public house.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs has been made by Dare Utility Services Ltd against Teignbridge District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal is made against the non-determination of the application by the Council. The Council has confirmed that had it determined the application it would have been refused for six reasons. The appellant has had the opportunity to respond to these reasons at the final comments stage.
4. The appellant has submitted a Unilateral Undertaking (UU) to provide a financial sum to seek to mitigate the impacts of the proposal on the Exe Estuary and Dawlish Warren Area European Wildlife Sites. I will consider this matter later.
5. At the appeal stage, some additional plans have been provided which show an alternative as to how the site could be developed. It appears that these plans were the subject of some discussions with the Council. However, the plans were not agreed to amend the application and I will determine the appeal based on the plans which were formally before the Council.

Main Issues

6. Having regard to the Council's submissions, the main issues are:
 - whether there is sufficient justification for the loss of the existing public house, including having regard to whether the proposed replacement would provide suitable alternative provision,
 - the effect of the proposal on the character and appearance of the area, having regard to whether the proposal would preserve or enhance the

character or appearance of the Kenton Conservation Area (the CA) and the setting of a nearby listed building,

- whether the proposal would be acceptable having regard to the risk of flooding,
- the effect of the proposal on the living conditions of existing and future occupiers, having regard to any kitchen extraction system,
- whether the proposal has demonstrated sufficient space for the storage of waste bins to serve the two new dwellings, having regard to any effect on highway safety and visual appearance, and
- the effect of the proposal on parking in the local area.

Reasons

Whether there is sufficient justification for the loss of the existing public house, including having regard to whether the proposed replacement would provide suitable alternative provision.

7. The Dolphin Inn faces Fore Street and is located within a central position within the village of Kenton. The building includes bars and dining space on the ground floor with the pub kitchen on the first floor. Manager's accommodation is provided on the first floor with two bedrooms in the roof space which are lit by two rear dormers. Externally there is a modest sized rear beer garden. While there are restaurants within the village, the Dolphin Inn is the only public house.
8. The information from some of the representations indicates that in the past the public house was well used by local residents and societies and was an important element of the village community. The public house is designated as an Asset of Community Value. Furthermore, the Kenton Parish Neighbourhood Plan 2018-2033 (March 2020) (the NP) explains that one of its objectives is to identify and protect community assets, including the pub.
9. The evidence indicates that the property was marketed for sale in early 2020, with an auction taking place on 6 March 2020. At this point the pub closed due to the coronavirus pandemic and the lockdown required by the Government. The planning application submission was dated in early May 2020 and the premises were still closed at the time of my site visit.
10. The appellant has set out details in the Viability Report (January 2021) which, in summary, explains that the present building is too large for the village location and the current layout does not allow maximum use or a future viable economic return. It is explained that the entire property requires a major overhaul and renovation to improve the facility and the costs of such are not feasible given the present trading figures.
11. Nevertheless, despite this conclusion, much of the Viability Report focuses on general trends within the pub market and uses examples of public houses across the area which have been altered in terms of their business model and seeks to relate those examples to the present situation. While such trends are noted and understood, all the premises will have their own circumstances, such as the size of the local catchment population, ability to attract passing trade and quality and quantity of the accommodation.

12. In considering the Dolphin Inn site, there appears to be limited detailed information on matters, such as, the extent of marketing of the property as a going concern and little detail on the level of interest in continuing to run the premises as a public house. The few months of marketing at the start of 2020, before the auction, appears to be a reasonably limited period to engage interest and for any purchasers to potentially arrange finance and investigate a possible purchase.
13. Furthermore, there does not appear to be audited accounts available as part of the appeal submissions which show the historic trading performance to help gauge past performance. Also there is no detailed indicative business plan that would show whether or not a reasonably efficient operator, whilst investing in any necessary upgrades to the premises, would be able to make a profit.
14. I note at the appeal stage the submissions from the Chair of The Dolphin Inn Kenton Ltd Community Benefit Society (the CBS). This letter explains that the CBS was established with the aim of raising funds for the purchase of the public house through a community shares offer. The information sets out that, while the previous owner engaged positively with the CBS in support of the community purchase, it was decided to go ahead with the auction before funds could be raised. The Chair of the CBS has explained that he believes there is substantial community support for the maintenance of the building as a pub within the village as indicated by the results from their survey. Furthermore, it is said that the CBS has produced a Community Business Plan which shows that there is much more potential to increase the profitability of the premises and enhance the community offer.
15. I do not have before me all this background evidence, including the Business Plan, and therefore this limits the weight that I can attach to these submissions. However, I consider that there is evidence that the public house is important to the local community and this is reflected in the NP and with the designation of the building as an Asset of Community Value. The CBS believe that it could make the future business, using the present building, profitable. The establishment of the CBS and work that it has done to investigate community support for the public house demonstrate clear intent.
16. I note the concerns raised to the CBS submissions by the appellant. However, on the other hand, the evidence from the appellant in this regard is also fairly limited in clear detail to support the proposition that the building as it stands could not be traded profitably and in a way that would meet the needs of the community. Overall, I consider that I need to take a precautionary approach and I do not consider that the case has been adequately demonstrated that the existing layout and extent of the public house space would not be viable in the future.
17. The application, however, seeks to provide an alternative public house on the site and in a way that would allow complementary services such as morning refreshments that would add to the local offer. Policy K HW1 of the NP seeks to safeguard community facilities and includes, in summary, the criterion that development which results in the loss of identified community facilities (including the Dolphin Inn) will only be permitted if they are replaced by a community facility of equal or higher quality in terms of design, accessibility and parking.

18. The replacement community facility would be within a purpose built building, on part of the existing pub site. I consider that this is a genuine attempt by the appellant to seek to continue to provide public house provision as part of the proposal. Nevertheless, the floorspace available to the public would be much reduced and it is not clear how many tables or customers the new building could accommodate. I note the appellant's submissions that a reduced and purpose designed modern building would provide an efficient and profitable enterprise for the village and, in part, draws this conclusion from the experience of other enterprises and trends in the pub market. However, there is no detailed business plan in respect of the proposed public house that supports this conclusion and provides me with the confidence that this would be the case.
19. Furthermore, the proposed commercial kitchen would also be reasonably modest in size and I am concerned, in the absence of clear technical evidence otherwise, whether it would be sufficient to meet the needs of a typical public house catering business. It seems to me that food sales could help to supplement the wet sales to ensure the business had the greatest chance of being viable in the future. However, this may not be possible because of the size of the proposed kitchen and it would not appear to have the potential to at least match the catering offer provided by the present establishment with its larger kitchen area.
20. I have taken into account the support of the Parish Council and some local residents for the replacement pub and note that an earlier approval allowed one dwelling and a reduction in the public house space. Nevertheless, my concerns regarding the potential insufficiency of the proposed floorspace in the new public house are supported by the comments of some local residents and the Chair of the CBS. In particular, the CBS consider that the trade space allocated in the replacement building would not appear to be sufficient to meet the community need or wishes, as demonstrated by the CBS survey results, or indeed it is said would be viable as a commercial business, whether community or privately owned.
21. In the light of the above analysis, I conclude that I am not satisfied that the loss of the existing public house has been sufficiently justified or that the proposed replacement would provide a suitable alternative provision. The design and layout of the alternative public house has not been demonstrated, on the evidence before me, to be a facility of equal or higher quality and the effect of a permission would be to lose the existing premises and replace it with a building which has not been clearly shown to adequately meet the needs of the community or to facilitate a public house use that would be sustainable in the future. As a consequence, the proposal would conflict with Policy WE12 of the Teignbridge Local Plan 2013-2033 (the Local Plan), Policy K HW1 of the NP and the National Planning Policy Framework (the Framework) which, amongst other things, requires decisions to guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.

Character and appearance

22. The Dolphin Inn lies within the CA. The significance of the CA includes the historical development of the village with its pattern of built development and open spaces. This includes the range of terrace buildings, often fronting the

- roads, The Triangle and the relationship to the prominent and historic church and its surrounding buildings. The Kenton Conservation Area Character Appraisal identifies that one of the characteristic features of many of the buildings within the Kenton CA are that they are conventional two storey structures with dormers generally absent, especially on prominent roof slopes.
23. The Dolphin Inn is a prominent building within the street scene. The two storey appearance of the building with its end gable is particularly apparent when approaching along the main road from the broadly north west where it is seen in the surroundings with the adjoining buildings and The Triangle. The Dolphin Inn has the main roof sloping back from the road in a distinctive form which is characteristic of this part of the village.
24. The CA Appraisal and the NP both identify the majority of the Dolphin Inn building as making a positive contribution to the CA, the exception being the front section of the single storey lean-to which is categorised as having a neutral/negative impact. From my observations and the submissions, the form of the building, its position, design and appearance together with some parts of the single storey elements to the side, all combine to make an attractive and important contribution to the street scene and CA.
25. On the other side of the road and opposite The Triangle, is a short terrace of three buildings, Trinity Cottage, the corner shop (now a hairdressers) and the house adjoining Trinity Cottage. These are included as a single entry on the statutory list as a Grade II listed building. The significance of the buildings include their likely 18th century or earlier origin, their location, form and appearance with the fenestration, simple roof form and chimneys. The listing description describes the row as being in an extremely important position in the centre of Kenton. An important component of the surroundings in which the row is experienced is when approaching along the main road from the broadly north west. In these closer views from this direction the listed terrace is seen with The Triangle on the other side of the road and the Dolphin Inn in the immediate background. These elements within and adjoining Fore Street, including the visible parts of the Dolphin Inn, form part of the setting of the listed building.
26. The proposal would include the conversion of the main public house building to two dwellings and the erection of a new public house to the side area following the demolition of the single storey elements.
27. The addition of a window to the front elevation of the main building would be in character and add interest to this façade. However, the addition of the 4 dormers to the front roof slope, while acceptably designed in themselves, would not be a characteristic feature of the street scene. The provision of the dormers would be readily apparent and appear as an incongruous addition given the absence of dormers to the other front roof slopes in this terrace and the wider character of buildings fronting streets in the CA. This is an aspect of the proposal which would detract from the character and appearance of the building within the CA.
28. The replacement public house building would be set back from the frontage and the ridge running back to front would not accord with the general ridge lines of the adjoining terraces within the street scene. Additionally, the amount and height of the glazing, the higher eaves line of part of the west elevation in contrast to the rear section and the extent of zinc roof covering would combine

- to create a building which would not incorporate clear elements of scale, form, materials or design that would be locally distinctive, even with a more modern interpretation. Located in part next to and obscuring sections of the end gable of the existing public house building, and with the reasonably high and long ridge running back into the site, the mass and appearance of the new building would appear as a conspicuous and intrusive addition. Accordingly, the resulting building would be at odds with the local character and identity of the surroundings and appear as a stark and overly dominant addition to the street scene. It follows that the proposed replacement public house would detract from the character and appearance of the CA and thereby its significance.
29. In terms of the setting of the listed building, particularly when approaching along the main road from the broadly north-west, the replacement public house would be a very visible and conspicuous component of the background when viewed in conjunction with the simple vernacular appearance of the listed terrace. The replacement public house building would draw the eye away from the listed building. Its dominating appearance and form would detract from the surroundings in which the listed building was experienced, and thereby it would harm the setting of the listed building and its significance as a heritage asset.
30. This is an important conclusion as I am mindful of the duty to have special regard to the desirability of preserving listed buildings, their setting and features of special architectural or historic interest which they possess.
31. Drawing these matters together, the combined effect of the proposal would be to cause harm to the character and appearance of the CA and the setting of the listed building, and therefore detract from the significance of these designated heritage assets. The harm to the CA as a whole and to the setting of the listed building would be less than substantial within the meaning of paragraph 196 of the Framework. In accordance with the Framework, this harm should be weighed against the public benefits of the proposal.
32. The benefits of the scheme would include the provision of two additional residential units of accommodation in a location where occupiers would have access to some local services and facilities, and links to public transport. There would be a small boost to housing supply on a windfall site, and the units would make good use of a building which makes a positive contribution to the area. The residential units would provide social and economic benefits both during conversion and in subsequent occupation. The provision of the replacement public house would be an important component of the proposal providing economic benefits during construction but, as I have concluded above, the case has not been proven that this would lead to the maintenance of the same or an adequate level of provision of this service on the site. Given my findings with regard to the public house aspect of the scheme, the cumulative public benefits would be minor and afford only limited weight.
33. The Framework advises that any harm to the significance of a designated heritage asset should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the level of harm.
34. I have found that the public benefits of the proposal afford limited weight and they would not outweigh the harm to the CA and to the setting of the listed building, and the corresponding harm to the significance of both heritage

assets, which in accordance with the Framework, is required to be attributed great weight.

35. In the light of the above analysis, I conclude that the proposal would harm the character and appearance of the area, not preserve or enhance the character or appearance of the CA and harm the setting of the nearby listed building. It would, therefore, conflict with Policies S1, S2 and EN5 of the Local Plan, Policy KBHE 2 of the NP and the Framework which seek, amongst other things, to maintain or enhance the character, appearance and historic interest of affected settlements, street scenes and buildings.

Risk of flooding

36. The application was accompanied by a Flood Risk Assessment (FRA). This included a map extract from the Environment Agency web site. This shows that part of the site, including sections of the existing single storey buildings and a section of the site in the area where parts of the replacement public house building would be located, are within Flood Zone 3. The FRA explains the range of measures, such as the mitigation and finished floor levels, that are proposed would address any flood risk.
37. However, the Environment Agency (EA) has reviewed the FRA and objected on the grounds that insufficient information has been submitted to demonstrate that the proposed development will be safe from flooding over its lifetime. The EA highlight in its response that the Local Planning Authority would need to be content that the flood risk Sequential Test has been satisfied. The EA comment that the rebuilt public house would be entirely within Flood Zone 3 and areas of both residential dwellings will also be at risk of flooding.
38. The EA explain that to overcome its objections the FRA should be revised to consider the effects of climate change and update the finished floor levels for both the public house and residential dwellings. The EA advise that the FRA should demonstrate that the development is safe from flooding over its lifetime without increasing the risk elsewhere and where possible reduces flood risk overall.
39. I have carefully considered the comments from the appellant in the appeal statement and in the final comments where the case is made that the dwellings would not be liable to the risk of flooding. This does not appear to be the view of the EA given its comments in its response. Furthermore, the Council in its statement states that one of the new dwellings and the new public house would be located within Flood Zones 2 and 3. Therefore based on the responses before me it does not appear that the level of flood risk has been satisfactorily resolved.
40. Also, it does not appear on the information before me that the appellant has engaged with the EA to discuss and clarify its concerns or substantially updated the FRA to address the matters which have been raised. I give substantial weight to the advice of the EA, and its objection, as it is a technical body charged with providing such advice.
41. The proposal would introduce two new dwellings to the site which would have ground floor accommodation. The dwellings would fall within the "more vulnerable" Flood Risk Vulnerability Classification as set out in the Planning Practice Guidance (the Guidance). This would be the same Classification as a

drinking establishment. Nevertheless, the EA recommend, as well as the other mitigation listed for the residential dwellings as set out in the FRA, that the appellant should investigate raising finished floor levels to reduce the risk of internal flooding by as much as feasibly possible. The EA is, therefore, not satisfied with the proposal for the residential dwellings, as set out in the FRA, at this stage.

42. It follows, as I attach substantial weight to the advice of the EA, that the dwellings, either one or both, have not been clearly demonstrated to be acceptable in terms of flood risk.
43. The public house presently extends across the width of the site and it appears that some of the existing floorspace furthest from the water course would be in a lower zone of flood risk. The proposed new building would be positioned in an area already covered by buildings in public house use. However, the overall floorspace of the new public house building would be closer to the water course and it would appear that a larger proportion of the new building would be in Flood Zone 3 than the existing public house. This would, in theory, make a greater percentage of the proposed public house building more vulnerable to flooding than with the present situation, albeit that floor levels are proposed to be raised.
44. The proposed public house would be a new building and not a change of use of an existing structure. In these circumstances, the aim of the Framework is to direct development away from areas of highest flood risk and to undertake a sequential test which would consider if there was reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The appellant has commented on this and I appreciate at issue is a public house serving the local community. However, even taking a pragmatic approach as required by the Guidance, the analysis of other sites is limited and I do not consider it is sufficient to meet the requirements of the Sequential Test. Consequently, it would be premature to consider the Exception Test.
45. I understand that the appellant is a local person with knowledge of the area and that the site is said not to have flooded in the past. However, that does not mean, taking into account the current and future impacts of climate change, that without suitable safeguards there would be an acceptable flood risk with the proposal. I have considered all the submissions from the appellant including the FRA, together with the proposed floor levels, however, in particular with the outstanding objection from the EA, I am not satisfied that the new public house has been demonstrated to be acceptable in terms of the risk from flooding.
46. The reason for refusal also raises concerns that it has not been demonstrated that the surface water from the development would be disposed of in a manner that would not increase flood risk elsewhere. I note that the Council Drainage Section explained that details would be required to demonstrate acceptability in this respect. Given the location this is an important requirement. However, the site is already developed with hard surfaces and buildings and this, therefore, leads to surface water run-off. With the new public house building, there would be the opportunity to improve the scheme for surface water dispersal and the replacement system could be made the subject of a planning condition in any approval.

47. Nevertheless, in the light of the above analysis on flood risk, I conclude that the evidence does not clearly demonstrate that the proposal would be acceptable having regard to the risk of flooding. Consequently, the scheme would not comply with Policy EN4 of the Local Plan which seeks, amongst other things, to reduce flood risk.

Living conditions

48. The public house kitchen is shown on the ground floor at the rear of the new building adjoining the rear garden of one of the proposed dwellings. Other residential properties would be also fairly close by. The appellant explains that no details have been provided within the planning application but the kitchen extraction details can be dealt with by way of a planning condition including specifications, odour filtration system, management and maintenance plan.
49. However, the application has been made in detail and the elevations show no external flue or extractor equipment. There is little information in the submissions to provide reassurance that any external equipment that is likely to be required would be of a height, position and appearance to be visually acceptable within the CA and would also be able to be effective in protecting the amenities of the occupiers of the adjoining properties from, for instance, noise and odour impacts. I am not satisfied, therefore, that it would be reasonable in these circumstances to make the details of extractor equipment the subject of a planning condition in any approval.
50. Accordingly, I conclude that the kitchen extraction equipment, which is likely to be necessary for the commercial kitchen to operate effectively, has not been demonstrated would be able to operate in a way that would provide satisfactory living conditions for the existing and future occupiers of adjoining residential properties. As a consequence, the scheme would not comply with Policy S1 of the Local Plan which requires proposals to perform well against a number of criteria, including the environmental effects of noise and smell arising from the proposed development.

Storage of waste bins

51. The appellant has confirmed that no substantive details have been provided within the planning application in respect of bin storage and collection for the two independent residential units. The case is made that these details could be dealt with by way of planning conditions. As noted above, this is a detailed planning application. The Council's Waste and Cleansing Department have, in respect of this matter, sought confirmation where the waste and recycling containers would be stored prior to being put out for collection.
52. The two dwellings do not have side accesses or front gardens and no clearly identified space has been allocated within the rear gardens for the storage of waste. There is no clear indication as to how waste storage could be managed on the site¹. In these circumstances, I am not satisfied that it would be reasonable to allow this matter to seek to be resolved in the future by way of a planning condition in any approval.
53. Because of the absence of clear details/specifications of how a scheme for waste storage could operate for the two dwellings there is no persuasive

¹ The layout plan shows a bin position to the side of the public house but it is assumed that this is for the commercial use and not the dwellings.

evidence that bins would not be stored at the frontage to reduce the inconvenience of transferring waste through the two houses. If bins were stored to the front of the properties then this could unacceptably narrow the width of the usable footway and could lead to a highway safety hazard. There would also be an adverse visual impact from such storage if it was to be in position beyond the normal collection day.

54. As a consequence, I conclude that the proposal has not demonstrated sufficient space for the storage of waste bins to serve the new dwellings and, consequently, the scheme has the potential to adversely affect the safety of users of the highway and the appearance of the area. Accordingly, the proposal in this respect would conflict with Policies S1, S2, S9 and EN5 of the Local Plan and Policy K BHE 2 of the NP which seeks, amongst other things, to consider road safety, and protect and enhance an area's character.

Parking

55. The NP explains that a major concern over any future development is to ensure sufficient parking spaces are provided for new dwellings. This is because on-street car parking is already a concern in the older parts of the village with the Triangle car park very often full.
56. Policy K T2 of the NP requires new residential development to ensure there is no increase in on-street parking and that 3 bedroom dwellings provide 2 parking spaces. The policy, however, indicates that where the standard is not met robust justification will be required taking into account a range of listed factors.
57. In this case, there is a residential unit above the existing public house and this would be replaced above the proposed public house building. The residential addition would be the two units in the converted building. This is an existing building within the centre of the village and it is not possible to provide on-site car parking. However, the site is close to the services available in the village, near the bus stops and the use would provide an efficient and compatible use of a building that makes a positive contribution to the CA. Furthermore, the local car parking spaces that are likely to be needed by future residents may be off-set to some extent by the reduction in the floorspace of the public house and, therefore, the associated likely reduction in patrons that may have travelled to the site by car and would have then parked locally at those times.
58. I do not underestimate the local car parking issues and the clear policy approach of the NP. However, there would be local benefits to the provision of the two additional units in this building and I consider that there is sufficient robust evidence that the provision of the two dwellings without on-site car parking would be acceptable.
59. As a consequence, I conclude that the proposed parking situation has been robustly justified and that the provision of the development without on-site car parking would not have such an effect on the local parking situation that the scheme should be refused on this ground. Accordingly, there would be no conflict with Policy S9 of the Local Plan and Policy K T2 of the NP in this respect.

Other Matters

60. The site lies within 10km of the Exe Estuary Special Protection Area and the Dawlish Warren Special Area of Conservation. The occupants of the additional dwellings would be likely to use these areas for recreation with a resulting impact. The scheme, therefore, alone or in combination with other projects, would be likely to have a significant effect on these habitat sites.
61. However, a Habitat Mitigation Scheme has been established which seeks a payment per dwelling to address the likely impacts. The appellant has submitted a signed and dated UU which agrees to pay the mitigation sum in accordance with the Scheme. In these circumstances, it is likely that I would be able to conclude that the UU would mitigate the likely impacts such that the scheme, either alone or in combination with other projects, would not adversely affect the integrity of the habitats sites. However, in the light of my overall conclusion I have not had to consider this matter further.

Conclusion

62. The proposal would make efficient use of the site and would incorporate a genuine attempt to provide a replacement public house. I have taken into account all the letters of representation both for and against, and the support of the Parish Council, subject to some concerns. There would be benefits from the scheme, including with the provision of two additional dwellings. The combined benefits, however, would be minor and would merit only limited weight in favour of the proposal.
63. On the other hand, I have also identified a range of harmful impacts that would result from the development, in particular, with the uncertainty and likely diminution of the public house element of the site and the harm to the character and appearance of the area, including designated heritage assets. These matters weigh substantially against the development.
64. Other issues, such as from the risk of flooding, potential harm to adjoining living conditions of residents, and from the considered adverse highway and visual implications of waste storage, could potentially be resolved. However, on the information before me, they are matters that add harm and policy conflict to the scheme and also weigh significantly against the proposal. The lack of on-site car parking provision would be satisfactory, however, this is a neutral issue in the overall analysis. It follows that the combined harm and policy conflict resulting from the scheme would be substantial and would not be outweighed by the benefits.
65. 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 and planning permission refused.

David Wyborn

INSPECTOR