
Appeal Decision

Site visit made on 9 August 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2021

Appeal Ref: APP/L1765/W/21/3270852

The Anatolian Restaurant, Winchester Road, Waltham Chase SO32 2LL

- 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 A Ozdemir against the decision of Winchester City Council.
 - The application Ref 20/01645/FUL, dated 31 July 2020, was refused by notice dated 3 November 2020.
 - The development proposed is change of use and conversion of existing building from restaurant (Class A3) and a single residential unit (Class C3) to 7 residential apartments (Class C3), together with external changes to the building, open space, revised parking arrangements, and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Subsequent to the Council's decision, a revised National Planning Policy Framework ('the Framework') was published. The parties have had the opportunity to comment on the implications for the appeal.
3. The application was amended during the course of its consideration to reduce the number of apartments from 7 to 6 and adjust the bedroom mix. The Council made its decision against the revised plans and I shall determine the appeal on the same basis.

Main Issues

4. The main issues are:
 - a) whether the proposal complies with development plan policy in respect of development in the countryside;
 - b) the effect on services and facilities in the locality;
 - c) the effect on the character and appearance of the area;
 - d) whether the proposal complies with development plan policy in respect of dwelling sizes; and
 - e) the effect of the scheme on European protected sites.

Reasons

Development in the countryside

5. The appeal site lies in the countryside in policy terms, outside of the built-up areas of Winchester, Whiteley and Waterlooville and the settlements listed in Policy MTRA3 of the Winchester District Local Plan Part 1 - Joint Core Strategy (2013) (LPP1) as being suitable for development to meet local needs. The nearest settlement to the appeal site is Waltham Chase, the boundary for which is approximately 400 m to the south along the B2177 Winchester Road.
6. Policy MTRA4 of the LPP1 restricts development in the countryside to certain categories. These can be summarised as development which has an operational need for a countryside location, proposals for the reuse of existing rural buildings for employment, tourist accommodation, community use or affordable housing, schemes to facilitate the needs of established businesses and small scale sites for low key tourist accommodation. Market housing does not feature in the list and as such the appeal proposal would be in direct conflict with LPP1 Policy MTRA4. A grant of planning permission would need to be justified by other material considerations.

Services and facilities

7. Policy CP6 of the LPP1 sets out the Council's desire to retain and improve the facilities and services available across the District. It stipulates that proposals should not threaten or result in the loss of premises or sites used to provide services and facilities unless it can be demonstrated that the site/premises is not required because the service or facility has been satisfactorily relocated or is no longer needed to serve the locality; and the site or building has no reasonable prospect of being used for an alternative service or facility which would benefit the local community.
8. Paragraph 7.41 of the LPP1 places local services and facilities into a number of categories. Restaurants are not included in the list but other commercial operations such as pubs and shops are. Given their similarities to food-led pubs, I can see no reason why restaurants should not be covered by the policy. However, without an audit of the services and facilities available in Waltham Chase and other nearby settlements it is impossible to gauge the importance of the site in meeting community needs. The fact that there have been few objections from patrons of the existing restaurant is not determinative when considering whether the facility is no longer needed to serve the locality.
9. The premises have been occupied by a number of food and drink businesses in recent years, but none of these has endured. This includes a public house and restaurant similar to the historic use and the current Turkish restaurant which has recently given notice. Figures submitted by the appellant are indicative of a challenging trading environment, but they do not constitute an expert viability appraisal and do not prove conclusively that the site would be unsuitable for an alternative service or facility which would benefit the local community.
10. Overall, I am not satisfied that compliance with LPP1 Policy CP6 has been demonstrated. It has not been shown that a restaurant is no longer needed to serve the locality, or that there is no reasonable prospect of the site being used for an alternative service or facility that would benefit the community.

Character and appearance

11. The east side of Winchester Road, north of Waltham Chase, comprises a ribbon of detached houses and bungalows. There is no one prevailing building style and the pattern of development is irregular. The Anatolian Restaurant itself is a unique building, having the outward appearance of a public house. In converting the building to apartments, the density of residential units would be greater than that of nearby housing, but there is no reason why this should be harmful in planning terms. The building would be substantially unchanged on its road elevation, the main alterations being to the forecourt and the rear elevation where there would need to be a pair of new dormers and some minor adjustments to fenestration. The scheme would largely reflect the status quo, minus signage, and as such it would not stand out as being out of character.
12. The officer report conflates the issue of character with one of living conditions, suggesting that the proposal would result in cramped living conditions and a lack of amenity space. The apartments would comply with the Nationally Described Space Standard and whilst the outdoor amenity spaces would be small they would be useable and communal space would be provided for the two upstairs flats which lack a garden. I have not been directed to any policy or guidance relating to garden sizes to demonstrate that the scheme is substandard.
13. Overall, I can find no evidence to support the argument that the appeal scheme fails to respond positively to the character of the area in terms of layout and density. The proposal would represent a sympathetic conversion of the building compliant with Policy DM16 of the Winchester District Local Plan Part 2 Development Management and Site Allocations (2017).

Dwelling mix

14. Policy CP2 of the LPP1 states, amongst other things, that development should provide a range of dwelling sizes, as appropriate to the site size, location and characteristics. It specifies that a majority of homes should be in the form of 2 and 3 bed houses, unless local circumstances indicate an alternative approach should be taken.
15. The plans show a dwelling mix comprising 4 No. 1 bed unit, 1 No. 2 bed unit and 1 No. 3 bed unit. This does not comply with the local plan aspiration for the majority of dwellings to be 2 and 3 bed houses. Nevertheless, it does include a proportion of such dwellings and also provides smaller units which would be suitable for single persons and couples without children.
16. There may have been potential for the plans to be adjusted to increase the proportion of larger units, but this would not be straightforward as the layout of the building is a significant constraining factor. Furthermore, the introduction of additional family sized apartments would lead to a situation whereby the gardens are too small to meet the everyday needs of households with children.
17. Policy CP2 provides a degree of flexibility to cater for the size, location and characteristics of the site. The dwelling mix within the appeal proposal is a reasonable compromise, bearing in mind that this is a conversion scheme with limited outdoor space. The development would still provide a range of dwelling sizes as stipulated within Policy CP2, including units at the more affordable end of the market. Based on the circumstances of this particular case, I conclude that policy compliance has been achieved.

European protected sites

18. The appellant has provided a signed unilateral undertaking which secures a contribution to mitigate the adverse impacts of additional recreation pressure on the Solent Special Protection Areas (SPAs), in line with the Winchester City Council Interim Solent Recreation Mitigation Partnership Strategy. The Council has confirmed on this basis that the second reason for refusal is withdrawn.
19. The third refusal reason relates to the impact of the development on the SPAs through nitrates within foul water discharge. Taken in combination with other residential developments within the relevant catchment area, the scheme would have a likely significant effect on the internationally important interest features of European sites. Appropriate Assessment is therefore required prior to any grant of permission.
20. The parties agree that the proposal would lead to a net increase in nitrates and that mitigation would be required to make the scheme acceptable. The Council has published a position statement on nitrate neutral development which sets out various potential options for mitigation and advocates imposing a negatively worded condition to secure water efficiency measures and a mitigation package. The appellant's evidence makes reference to a mitigation scheme being promoted by the Hampshire and Isle of Wight Wildlife Trust and a system of financial contributions which the Council has introduced.
21. Acting as competent authority under the Habitats Regulations¹, I must have sufficient information to demonstrate, beyond reasonable scientific doubt, that the integrity of the designation would not be adversely affected. Whilst there are clearly mitigation options in the pipeline, there is insufficient information on how they would apply to the appeal scheme and how any financial contribution would be secured. There is no planning obligation before me in relation to the nitrates issue and it would be inappropriate to require the payment of monies using a planning condition. I could have taken this up with the parties, were I minded to allow the appeal. However, the appeal is being dismissed for other reasons and therefore my decision does not turn on this matter.

Planning Balance and Conclusion

22. I am advised that the premises have been marketed for over 2 years without success. I do not know the basis on which the site was offered to the market or the extent to which it was advertised. I have no information regarding asking price, sales particulars or marketing channels. Based on the limited information provided, I cannot be assured that the marketing exercise has been robust and therefore it does not carry any significant weight in favour of the scheme.
23. There has been some attempt to explore whether the site may be suitable for affordable housing. One affordable housing provider has declined the site and a local estate agent has indicated that the scheme would be unattractive to registered providers. It is not clear whether there has been any serious consideration to redevelopment of the Anatolian Restaurant as an exception site under the Council's affordable housing policy or promoting the appeal scheme as tourist accommodation. The appellant argues that the latter would have been explored through general marketing but without details of that exercise this is impossible to validate. As it stands, there is no substantive evidence to

¹ Regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017

demonstrate that alternatives to market housing would be unviable or unachievable.

24. It is suggested that the building could be converted to residential use under Class MA² permitted development rights. Such rights do not apply at present, as the building has not been vacant for a continuous period of at least 3 months. Even if they did, the appellant is required to submit an application to the local planning authority for a determination as to whether prior approval would be required. The Council would have the opportunity at that stage to verify whether or not the conditions and limitations of Class MA are met and there would need to be a process of public consultation in accordance with the requirements of the regulations. It is not for me to pre-judge the outcome of that process. There is no fallback position at present and therefore the appellant's arguments in this regard carry very limited weight.
25. The appellant contends that the local plan is inconsistent with national policy and should therefore be given lesser weight. However, Policies MTRA4 and CP6 of the LPP1 are both consistent with the Framework in seeking to actively manage patterns of growth in a sustainable manner and protect local services and community facilities. With the exception of the subdivision of an existing residential building and circumstances where the development would re-use redundant or disused buildings and enhance its immediate setting, neither of which apply to this case, the Framework does not make explicit reference to the conversion of buildings in the countryside to dwellings.
26. I acknowledge that the appeal site lies on a bus route and within walking distance of Waltham Chase. However, the evidence presented does not justify making a decision otherwise than in accordance with development plan policy.
27. For the reasons given above and having regard to all other matters raised, including reference to Green Belt policy and the appellant's present financial situation, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR

² Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.