



Appeal Decision

Site visit made on 7 September 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2022

Appeal Ref: APP/W3520/W/20/3264485

Asbach House, The Street, Framsdon, Stowmarket, Suffolk IP14 6HG

- 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 Mrs Julia Coulthard against the decision of Mid Suffolk District Council.
 - The application Ref DC/20/01048, dated 6 March 2020, was refused by notice dated 25 June 2020.
 - The development proposed is Change of use of the premises from a mixed C3/A4 use to wholly C3 residential use.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs Julia Coulthard against Mid Suffolk District Council. This application is the subject of a separate Decision.

Procedural Matters

3. A previous planning application¹ for the change of use of the building from a public house to residential was refused by the Council and unsuccessfully appealed in 2019². The appeal site, its environs and the substance of the appeal scheme before me are broadly the same to the previous appeal decision, so it is therefore a material consideration of significant weight in my deliberations, as like applications should be considered in a like manner. I have also had regard to the Judgement handed down in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137, as quoted by the Council, in this respect.
4. The appeal property is listed as an Asset of Community Value (ACV) under the Localism Act 2011. Like the Inspector for the previous appeal, I have been referred to the complicated nomination process and the inconsistent approach taken by the Council in its approach to the listing. The appellant suggests that the living accommodation contained at first floor should not have been included in the ACV and that the pub kitchen was used in connection with both, with the upstairs liable to council tax not business rates. It is unclear whether any formal proceedings have been lodged to challenge these points, but this is a separate matter, outside the scope of this appeal. The evidence before me suggests that the property is still listed as an ACV, which remains a material consideration to be taken into account in determining this appeal.

¹ Planning Ref: DC/18/00100.

² Appeal Ref: APP/W3520/W/18/3208626.

5. The Council has previously agreed in writing, to representatives of the appellant, that the moratorium on the sale of properties with ACV status does not apply to the appeal property due to the sale being in connection with the will of the previous owner. Moreover, the appellant is left with debts associated with inheriting the public house, which need to be covered by its sale.
6. Whilst the National Planning Policy Framework was revised on 20 July 2021 (the Framework), the revisions do not alter the policies upon which this appeal turns. In any event, the main parties have had the opportunity to comment upon the relevance of any revised content of the Framework and I have had regard to any responses received in my decision.
7. The Council's Decision Notice refers to Policy E6 of the Mid Suffolk Local Plan (1998) (LP). Paragraph 2.5.17 of the supporting text for the relevant chapter of the LP outlines that the terms 'industrial and commercial development' only relate to Classes B1, B2 and B8 in Part B of the Town and Country Planning (Use Classes) Order 1987 (as amended), as they would have been at the time. Moreover, as a public house, the use of the appeal building would have fallen within Class A4, but it is now Sui Generis. The Council promoted this point in a similar case determined at Debenham³. Similarly, Policy H16 of the LP relates to harm to living conditions and the Council did not identify any harm with respect to any of the matters raised in the policy or its supporting text. With these points in mind, Policies E6 and H16 of the LP are not relevant to the appeal before me.
8. I have been referred to the emerging Babergh and Mid Suffolk Joint Local Plan (JLP), which is now at an advanced stage of preparation. Emerging policies are therefore matters that can have a bearing on my consideration of the merits of this appeal. From my reading of the policy wording referred to in the appellant's Statement of Case and the proposed text of Policy LP31 provided since, it does not appear that the policy has altered to the extent that it would prejudice any of the parties were I to refer to it in the appeal. Moreover, given that it directly related to the loss of facilities it is relevant to the appeal scheme, I have therefore had regard to the policy. Nevertheless, in accordance with the requirements of Paragraph 48 of the Framework, it still only attracts limited weight in my determination of the appeal, as it may be subject to further alteration.
9. The Council's SPG⁴ does not form part of its development plan, rather it is an endorsed document. While it is generally consistent with the aims of the Framework with respect to rural facilities, it is of some age and supplements an obsolete Structure Plan policy. For these reasons, I concur with the Inspector in the previous appeal that the SPG would attract only limited weight in my determination of the appeal.
10. In light of the above I have therefore made my determination on the appeal on the basis of the other policies and documents listed in the Council's Reason for Refusal, and Policy LP31 of the JLP.
11. The 2021 Housing Delivery Test (HDT) results were published on 14 January 2022. The latest HDT result for the District does not alter the Council's position, with the approach remaining that no action is necessary in relation to the

³ Planning Reference: DC/20/05595 – The Angel Inn, 5 High Street, Debenham.

⁴ Retention of Shops, Post Offices and Public Houses in Villages (Adopted February 2004).

results. I have not, therefore, engaged further with the main parties in respect of this matter.

12. The appellant has discussed the merits of enforcement action associated with the proposed use being undertaken without planning permission and the willingness of the Council to enforce the use as a public house. However, these aspects do not fall within my remit for this appeal and it is for the Council and appellant to consider.

Main Issues

13. The Council's Officer Report and Decision Notice refer to the conflict of the proposal with Policies CS01 and CS02 of the Council's Core Strategy⁵ (CS), in respect of its location in the countryside. In light of this and the other matters raised in the reasons for refusal, the main issues are:
- whether the site is a suitable location for the proposed development with reference to the spatial strategy in the development plan; and
 - whether the proposed development would comply with local and national planning policies which seek to protect existing community facilities.

Reasons

Location

14. For the purposes of planning policy, the appeal site is situated within the countryside as defined by Policy CS1 of CS, which suggests that development is directed to Towns and Key Service Centres. In the countryside, development is restricted to particular types of development to support the rural economy, meet affordable housing, community needs and provide renewable energy. Policy CS2 of the CS also restricts development to defined categories in accordance with other CS policies. Despite the fact that part of the appeal property incorporates residential accommodation, the appeal scheme is not for any of the types of development listed under the aforementioned policies.
15. I therefore conclude that the proposed development would be contrary to the spatial strategy in Policies CS1 and CS2 of the CS, as it would encompass housing outside a defined settlement boundary.

Protection of existing community facilities

16. The appeal concerns Asbach House, formerly The Dobermann Inn, a vacant Grade II listed public house with an open plan dining / sitting area and bar at ground floor and living accommodation at first floor. It is the only public house in Framsdon, with those in other settlements being some distance away.
17. The Council accepts that the outlook for the public house is currently that is not viable and subject to declining trade and that retaining the public house use would not be 'planning positively', in the terms of the Framework, as it would restrict the use of the building to one which is unviable. However, in line with its SPG, the Council suggests that evidence on the viability of the facility should include attempts at diversification to sell or provide a wider product range or to let rooms. This differs from the JLP, which requires consideration of the current or future viability of the facility, not both. Although the JLP, like the SPG, is not

⁵ Core Strategy Development Plan Document (Adopted September 2008).

yet adopted, it is the most up-to-date reflection of the issues affecting the district's rural communities and their services and facilities. I have already set out that I afford both documents limited weight but, for the above reasons, I favour the approach in the JLP.

18. The appellant's sought professional advice which outlined that there would be little prospect of establishing the public house as a destination in its own right, particularly in the context of letting rooms. While the gastropub business model is not explored in detail, it is clear from the supporting evidence that works to the existing building, including its expansion to provide more covers, could be cost prohibitive. What is less clear, though, is why such a model would discourage interest from the population of the village. Nevertheless, given the policy approach outlined in the JLP, such matters would not necessarily be determinative in this instance.
19. For one reason or another, the community has been unable to agree the purchase of the property from the appellant. Given that the moratorium on sale does not apply to the building, it appears that its ACV listing has very limited effect in this regard. However, together with support demonstrated since, it does underline the importance of the appeal property to the community of Framsdon. I also appreciate that there is backing for the appellant's proposal.
20. Demonstration of the lack of viability of the public house negates the need in Policy LP31 to demonstrate that it is valued by the community, but the support for the facility adds weight to the requirement to demonstrate that it would not be needed for an alternative community use. This goes further than the preference outlined in the Council's SPG and the supporting text to Policy LP31 does not explain how this should be demonstrated. However, the policy approaches in the SPG and JLP both point toward marketing. Given that the supporting text includes a reasonably extensive open list of community services and facilities, this could include one or more of a number of alternative uses.
21. The property was commercially marketed by Sidney Phillips, a licensed property specialist, over a period of six months from 30 November 2016 to 30 May 2017. The marketing was undertaken by various means and the asking price reduced in February 2017. Marketing then began with Fine and Country began in June 2017, with an opportunity for residential living (subject to planning permission). The appellant suggests there was interest in the property, with an offer made and accepted, but this was withdrawn when the Council refused the previous planning application.
22. In June 2019, following the previous appeal decision, the property was put up for sale by the London Auction House. The appellant claims there was no registered interest in the property for the auction, despite national advertising, but there is no substantive evidence before me of the marketing that was undertaken for this process.
23. The appellant subsequently sought professional advice from Fleurets, a leisure property specialist. They outlined, amongst other things, that they would be reluctant to market the property as a public house, in the knowledge that it would receive extremely limited interest from the licensed trade industry. There has therefore been no further marketing of any kind, but the property remains on the auction website.

24. The SPG and LP31 differ in their approach to the extent of marketing required, with the former requiring a minimum period of twelve months, while the latter favours a period of six months. The Framework also guards against the “unnecessary loss” of valued facilities in rural communities.
25. While the initial marketing was over a period of six months, it is unclear why it had such a narrow focus and failed to consider other alternative uses for the property, particularly community uses. The marketing undertaken following this also adopted a similar restricted approach.
26. Framsdon is a small settlement which is predominantly rural in character and dispersed in a linear manner along The Street. I understand that the village hall has subsumed many of the activities that previously took place in the public house. This is not surprising given the timeframe since the pub was last open, but it is not sufficiently clear whether it is able to fulfil all of the requirements of the village.
27. The appellant suggests that new investment would be required in the appeal property to, amongst other things, rewiring, re-plumbing, and a new drainage system, as well as works to the detached barn. While certain works would be likely to be more difficult and cost prohibitive given the listed status of the building, most of these would appear to be required for any future use.
28. It is not uncommon for people to walk within villages, despite the absence of dedicated footpaths and streetlighting. The lack of a bus service for the village is also not uncommon and opportunities to travel between rural settlements will often require travel by private motorised forms of transport.
29. Based on the above, there is no substantive evidence before me to suggest why the initial marketing did not explore other alternative uses, including the reasons why the location, presence of living accommodation at first floor, and renovation works required would disincentivise other uses or mean that a residential sale strategy would be the most appropriate means of disposing of the property.
30. The marketing and other evidence before me does not therefore satisfactorily demonstrate that a community or other alternative use could not be accommodated at the site, which would maintain the small but meaningful contribution made by the use of the property to the economy of this rural part of the District.
31. I have had regard to the appeal decisions to which I have been referred, including the most recent decision at Little Dunham⁶, in which decisions have been made for and against the change of use of public houses to residential uses. However, I have only been concerned with the individual merits of the evidence, planning policies and other material considerations in relation to appeal scheme before me, particularly the interpretation and use of policies relevant to such matters in Mid Suffolk.
32. In light of the above, I conclude that it has not been satisfactorily demonstrated that an alternative use could not be accommodated within the appeal property, particularly one with a community focus. The proposed development would therefore lead to the unnecessary loss of a valued rural

⁶ Appeal Ref: APP/F2605/W/20/3260603 - The Black Swan Public House, The Street, Little Dunham, PE32 2DG, In Breckland Council's administrative area.

facility. Hence, the proposal would fail to accord with the aims of JLP Policy 31, the SPG and Paragraphs 84 and 93 of the Framework.

33. I have not found in relation to Policies FC1 and FC1.1 of the Core Strategy Focused Review (Adopted December 2012), as I refer to whether development is sustainable in the Planning Balance.

Other Matters

34. The proposal does not include any alterations to the listed building so I am satisfied that it would preserve the building, its setting, and any features of special architectural or historic interest which it possesses. It would therefore accord with the requirements of Section 66(1) of the Planning (Listed Building and Conservation Areas) (England) Act 1990 (the Act) and the heritage aims of the Framework.
35. The appeal property is near to Flinders Cottage, Street Farmhouse, and Barn 20 Metres South West of Street Farmhouse, all of which are designated as Grade II listed buildings. I have therefore had regard to the statutory duty referred to in the Act and the provisions of the Framework. However, given the proximity and physical relationship of the site with these designated assets and the nature of the proposal, their settings will be preserved and the proposal will not detract from them.
36. The appellant has referred to the conduct of the Council in the determination of the planning application, including the response to positive feedback given though a pre-application submission and its objectivity in its decision-making. These are primarily not matters for me to consider as part of this appeal and, in reaching my decision, I have considered the individual merits of the proposal afresh in relation to the relevant policies and evidence before me.

Planning Balance

37. The development plan for the area comprises the LP, CS and the CSFR. While these all predate the current Framework, it is clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to policies according to their consistency with the Framework.
38. Policy CS1 relates to the spatial strategy for Mid Suffolk and identifies that development, including housing, should be distributed in accordance with the settlement hierarchy. Both it and Policy CS2 refer to development outside of settlement boundaries and restrict the types of development that are appropriate there.
39. In isolation of other considerations, the approach to the protection of the countryside and restriction of development in such locations would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. However, this does not fundamentally undermine its continued relevance, particularly as the supporting text in paragraph 2.3.7 of the CS clearly identifies the reasons for needing to protect countryside areas. This differs only slightly from the aim in the Framework to recognise the intrinsic character and beauty of the countryside. There is therefore still a clear rationale for settlement boundaries in order to protect the countryside while focusing growth within designated settlements. In light of this I have regarded the underlying objectives of these policies, as being

generally consistent with the Framework. I therefore afford the conflict with these policies considerable weight.

40. Policy FC1 of the CSFR only unnecessarily duplicates what was in paragraph 14 of the 2012 Framework, so it is out-of-date and any conflict with it would only be afforded limited weight. Policy FC1.1 of the CSFR sets out how sustainable development will be delivered in the District, including compliance with the CS and other relevant documents. It is consistent with the aims for achieving well-designed places, as set out in the Framework and is therefore up-to-date, so any conflict with it would be afforded full weight. I have not found in relation to these policies in the main issues, as I refer as to whether the proposal would constitute sustainable development below.
41. I have set out above that the SPG does not form part of the development plan and JLP Policy LP31 is not yet adopted. The weight that I can afford any conflict with the SPG and Policy LP31 would therefore attract limited weight.
42. The Council has identified that it can demonstrate five-years supply of deliverable housing land within the district, which the appellant does not dispute. I have not found against Policy FC1 and the other policies relevant to the determination of the appeal are not out-of-date. With these factors in mind, the conventional untitled planning balance applies.
43. The proposal would add to the number and mix of dwellings within the District. There would be a small environmental benefit associated with the potential reduction of vehicle movements from the property. The occupants of the proposed dwelling would also be likely to support local services and facilities, but there is already residential accommodation at first floor. Given the magnitude of the proposal, these social, economic, and environmental benefits would be modest in scale and kind, so I afford each of them limited weight.
44. While the proposal would bring about the re-use of the listed building and potentially the maintenance of the building and its grounds, such heritage and environmental benefits could equally be derived from the continued use of the building as a public house or from another alternative use. There is also no substantive evidence before me to suggest that the building would be at risk. For this reason, and having regard to my findings in relation to the marketing in respect of alternative uses, I give very limited weight to these benefits, particularly the long-term sustainability of the listed building.
45. The Council has confirmed that there would be no other considerations which would weigh against the development. There would be an absence of harm with respect to highway safety (parking, access, and layout), contamination and biodiversity. In this context, such matters would neither weigh in favour nor against the appeal scheme.
46. In terms of harm the location of the proposal would conflict with the Council's Spatial Strategy and it has not been satisfactorily demonstrated that an alternative use could not be accommodated within the building, particularly one with a community focus.
47. Taking the above together, while collectively there would be a range of benefits associated with the proposal, the harm that would be caused by allowing development, would be of greater significance.

48. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole, and I find that the adverse impacts of the proposal are matters of considerable weight against the grant of planning permission that outweigh the claimed benefits.
49. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole. The proposal would also not amount to sustainable development under the terms of the Framework and Policies FC1 and FC1.1 of the CSFR.
50. Dismissing the appeal would interfere with the appellant's rights under Article 1 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, to be able to freely dispose of their property as another use, at a price they so determine. However, they reside elsewhere, not within the property, and I have not been presented with any substantive evidence to suggest that she would be a risk of being made homeless. Having regard to the legitimate and well-established planning policy aim to protect against the unnecessary loss of valued community facilities, a refusal of permission would be proportionate and necessary. It would not breach the requirements of Article 1, as the protection of the public interest cannot be achieved by means that are less interfering of the appellant's rights.

Conclusion

51. The proposed development would be contrary to the development plan and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should not succeed.

Paul Thompson

INSPECTOR