

Appeal Decision

Hearing Held on 15 February 2022

Site visits made on 8 February and 1 March 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2022

Appeal Ref: APP/U1105/W/21/3281523

New Fountain Inn, Church Road, Whimble EX5 2TA

- 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 Mr Dominic Morgan against East Devon District Council.
 - The application Ref 20/2481/FUL, is dated 20 October 2020.
 - The development proposed is reduction in public house floor area & the creation of four homes, one by part public house alterations & three new dwellings.
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Decision

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

Main Issues

2. The appeal was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for numerous reasons which have been listed below as the main issues in the appeal:
 - Whether the proposed partial change of use of the public house would result in the unacceptable loss of a valued local community facility;
 - the adequacy of the provision for parking and turning;
 - whether the proposal would conserve or enhance the character or appearance of Whimble Conservation Area or affect the settings of the nearby Grade II listed building, Nos 1 and 2 Rose Cottages;
 - the effects of the proposal on the living conditions of neighbouring occupiers, with particular regard to privacy and outlook; and
 - whether the proposal would provide an adequate means of disposal of surface water drainage.

Reasons

Context

3. The appeal site comprises a pub in the village centre of Whimble and its adjoining car park. Whimble is a village of a reasonable size and has a shop/Post Office, primary school, train service, various sports clubs and another public house and restaurant, 'The Thirsty Farmer'. An old linhay building sits to the rear of the car park on site which has been converted and

extended to form the 'Whimble Heritage Centre' to display and store artefacts relating to the history of the area.

4. The proposal seeks permission to subdivide the pub and its associated manager's accommodation into a 2 bed dwelling and smaller 'micro pub' (without restaurant kitchen facilities) with a separate, single bed manager's flat. This aspect would include remodelling of extensions to the rear of the pub. It also seeks to construct a short terrace of 3 No 2 bedroom dwellings on the adjoining car park area. To provide parking, an existing store building would be internally subdivided and a garage allocated to each of the four new dwellings. Three external parking spaces would also be provided, one to the rear of the pub for the manager's accommodation, and two general visitor spaces alongside the new dwellings.

Loss of community facility

5. The proposal involves the provision of a public house with a reduced floor area and alternative format to the present offering. Whereas the pub currently has two separate bar areas and a total floor area of around 150 sqm, the proposal would see this reduced by approximately 52 sqm, through the consolidation of the bar areas into one and through the removal of the kitchen areas and consequently, with the loss of the means to prepare and serve hot food.
6. The proposal is based on a model devised by The Micropub & Microbrewery Association which involves venues of a scale and format that can minimise overheads and avoid competing with larger family and food-orientated premises. These types of venues are also intended to appeal to their local community and specialise in local ales, craft beers and simple snacks. A number of examples of similar, successful venues were detailed in the submitted evidence.
7. Strategy 32 of the East Devon Local Plan (2016) seeks to resist the loss of, amongst other things, social gathering buildings such as pubs. The Policy states that permission will not be granted for the change of use of social or community facilities unless... *"3. Options for retention of the site or premises for its current or similar use have been fully explored without success for at least 12 months (and up to 2 years depending on market conditions) and there is a clear demonstration of surplus land or provision in the locality"*.
8. Policy E14 specifically relates to the change of use of village shops or services and stipulates that proposals that would result in a significant or total loss of public houses will not be permitted except where the existing provision is no longer viable and there is no market for the business as a going concern. The Policy goes on to indicate that evidence of a marketing effort of at least 12 months should be submitted, along with an economic viability assessment.
9. The appellant argues that the Policies are not wholly relevant as the proposal would not result in the wholesale loss of the pub. Rather, the pub is intended to be maintained as a facility for the community, albeit in a different, more economically viable form and would enable the appellant to retain the asset and continue to run the business.
10. The proposal involves a partial change of use of the pub, in the order of a third of its total floor area. There is no threshold in either Strategy 32 or Policy E14 that helps to determine how much of a loss should be considered 'significant'

relative to the existing size or format of a facility. However, in my view, the combination of a reduction of a third of its floorspace and complete removal of the food sales element would be a significant loss relative to the typically expected function and format of a village pub. I therefore consider that the requirements of Strategy 32 and Policy E14 in respect of viability and marketing evidence are triggered.

Viability and marketing

11. The evidence contains high level details about the pub's decline from the year 2017 to its eventual closure in 2020. The evidence of the tenant manager verifies the unfortunate situation, though offers little in the way of documented financial evidence. A single sheet of comparisons between the current and future business models is the only available financial documentation. This essentially seeks to demonstrate that based on the income for a typical month of operation of the pub (based on an average month from the year 2017-2018), the outgoings of the future business model will enable the business to operate viably, whereas the overheads of the current business prevent it from doing so. The Council, whilst conceding that a smaller premises would reduce overheads, highlighted that the source of these figures was unclear, they were unverified, and that there is no other data to prove that the figures are accurate by way of commentary from a financial or business advisor in relation to the same.
12. Whilst I have some sympathy with the desire to keep financial information personal, there is a need to demonstrate that sufficient effort and investment has been put into the business in order to sustain it. I am of the view that too little has been revealed of the financial situation that led to the demise of the business to be certain that the proposal is the only viable solution. The modest evidence to suggest that the proposal would be economically preferable also appears to lack robustness.
13. The Council submitted its 'Marketing Strategy Statement guidance' (2020) which suggests how to demonstrate that an adequate marketing campaign has been undertaken relative to the prevailing market conditions. Despite a failed historic offer of which anecdotal evidence was offered, it was highlighted that the property had not been marketed owing to the appellant's preference to retain the asset. Consequently, no evidence of marketing has been submitted.
14. Policy E14 also includes a requirement to market any property or business, including offering it to the local community for their acquisition/operation. It is noteworthy that there has been a groundswell of local opinion in support of the pub's retention in its current form. This has resulted in the registration of the premises as an Asset of Community Value (ACV)¹ in 2018 and an expression of interest in its acquisition by a local community group. The pub has not been offered to the local community as the appellant has not actively sought to sell or lease it to any other business or individual.
15. A number of comparisons were made to a proposal that involved the demolition and rebuilding of a pub, along with the construction of housing at 'The Nightjar' in Aylesbear. I visited that premises and noted its successful integration with the surrounding streetscape and the availability of customer parking to the rear. That business is clearly set up to offer both food and drink beverages as would

¹ Asset of Community Value – Order CA036 dated 5 February 2018, registered until 2023

be expected of a typical, modestly-scaled village pub. It is also apparent that evidence of viability and marketing was provided to justify that scheme, which is another clear reason why it differs from that before me.

16. I accept that there may be some factors that count against the pub's ability to trade, including the general trends identified by the appellant, along with the availability of other 'destination' venues in the locality. However, it is apparent, through at least the interest that this proposal has ignited, that the facility is a valued one and that its adaptation to the proposed format is not desirable from the perspective of a large number of local residents and past patrons. Taking the foregoing into account, I regard that insufficient financial evidence has been submitted to demonstrate that the business is financially unviable, and no consideration at all to the operation of the business by an alternative provider. Consequently, the proposal conflicts with Strategy 32 and Policy E14 of the Local Plan.

Parking and turning

17. Local Plan Policy TC9 sets out the parking requirements for new residential developments stating that at least 1 car parking space should be provided for one bedroom homes and 2 car parking spaces for each home with two or more bedrooms. The requirement for the residential element of the proposal is therefore a total of 9 spaces. Exceptions to this appear to relate specifically to town centres, which is not applicable in this case.
18. The Council question the useability of the proposed garages due to the use of doors and tight manoeuvring space. Setting this aside, if the garages are counted, the total number of spaces proposed equates to 6, which is obviously a shortfall against the minimum number of 9 needed.
19. In addition to the shortfall of residential car parking spaces, the proposal would not deliver any parking spaces for customers or staff of the micro pub. The Policy doesn't specify how much parking should be provided for commercial uses by type, but the preamble explains that "*nearly all new developments will generate need for some new parking*" and that the Policy "*seeks to accommodate car parking provision commensurate with the type, size and location of development occurring*".
20. The absence of clarification in the Policy as to how many spaces are required is unhelpful. However, it is clear that the car park that serves the pub has been useful for customers and deliveries. Whilst the Heritage Centre indicate that its customers have in the past enjoyed access to the car park, I understand that this is not by way of legal entitlement. To my mind, despite the relatively good public transport connections in the area and potential for the micro pub to attract locally-based customers, a modest car parking area would be expected, not least for disabled visitors that the building has been designed to enable access for. Whilst quantifying the additional shortfall is difficult and despite the lack of objection from the highways consultee, given that there is already an acknowledged conflict with Policy TC9, this matter is not decisive in any event.
21. In view of the above, the proposal conflicts with Local Plan Policy TC9 which seeks to ensure that spaces are provided for the parking of cars (and bicycles) in new developments.

Effects on heritage assets

22. The appeal site lies on the southern edge of Whimble Conservation Area (CA). On the opposite side of the street but slightly offset is the listed building known as Nos 1 and 2 Rose Cottages (list entry number 1098079). Under respective Section 66(1) and 72(1) of the Listed Building and Conservation Areas Act 1990 (LBCAA), I am required to pay special regard to the desirability of preserving the listed building or its setting, and the desirability of preserving or enhancing the character or appearance of the CA.
23. The special qualities and thus significance of the CA stems from its historic layout of narrow streets, including The Square as a focal point with its Parish Church, and numerous examples of plain vernacular cottages, often made from plastered cob with slate or thatched roofs. Historic features that collectively add to this special interest include boundary walls and the stream and trees within The Square. The settlement is located within a wider agricultural landscape setting, which underline the historic importance of farming and cider-making connections to the village.
24. The appeal building is an example of a period farmhouse built in the plain vernacular style true to the area. The now Whimble Heritage Centre was once a linhay building associated with the farmhouse, the car park forming the former farmyard associated with the two buildings. Historic mapping shows the development on the opposite side of the road in c.1905, but it took longer for development to creep up to the southern edge of the former farmyard. The way it has done so has enclosed the street to a large degree, but means that the car park appears as a welcome opening in the narrow street, appreciable as a former farmstead, particularly given the sympathetic manner of the conversion of the linhay.
25. In view of the above, the appeal site as a whole contributes positively to the significance of the CA as a remaining example of a vernacular farmhouse and associated functional building within a spacious enclosed yard. The modern development of new houses within the farmyard have, to an extent, eroded some degree of appreciation of the asset's former role and connection with its landscape context, but, it has at least retained the key elements of the openness and presence of the key buildings within the street.
26. The significance of the listed building lies in its origins as a C16 former farmhouse, constructed from cob, and with later C16 and C17 alterations. It has since been converted into two adjoining cottages with numerous C19 and C20 alterations. The listing description refers to its overall irregular 5-window front, slate roof (formerly thatch), buttresses and varied chimney stacks. The internal features of note listed include its original plan, crossbeams, fireplaces and a brick oven. It retains stylistic and fabric evidence important to both its significance and that of the CA.
27. The relatively unaltered way in which the listed building, and the adjoining vernacular cottage, 'Dairy Cottage', address the street and share a close connection with the appeal site as a neighbouring former farmstead within a rural settlement contribute to the significance of the building and CA.
28. The Council accept that alterations to remove the unsympathetic rear extensions to the host building to reveal its original gable end, along with alterations to the windows to return them to their original vernacular

proportions, would result in an overall aesthetic improvement to the appeal building. These changes would also result in an incremental enhancement to the streetscene and CA.

29. However, owing to the way in which the form and siting of the proposed terrace of three dwellings would subsume the large majority of the car park in close proximity to the street, the understanding of the farming tradition of the building and its relationship to the settlement would be lost. This would be further exacerbated by the large overlap with the principal elevation of the former linhay, significantly diminishing its presence within the street scene.
30. Whilst the linear form chosen for the proposal is appreciable given the manner in which the historic and later infill dwellings address the street, the openness of the car park offers a positive contribution to the streetscene in its own right, which would be entirely lost. When taken as a whole, the proposal would also appear cramped, given the tight arrangement of the dwellings, areas of landscaping, vehicle parking and manoeuvring spaces.
31. Though it is alleged that the design of the dwellings has been deliberately simplified to replicate the tastefully plain qualities of buildings in the area, it would still not do so sufficiently given the arrangement of porches, and the uniformity across the terrace, unlike dwellings in the area which all have a degree of individuality. These findings suggest that the appearance of the CA would be further harmed by the proposal.
32. In view of the above, the proposal would fail to preserve the character and appearance of the CA, thus harming its significance, and would also be harmful to the significance of the listed building through unsympathetic development within its setting. The proposal would therefore fail to meet the expectations of the LBCAA and would also conflict with, in particular, Policies D1, EN9 and EN10 of the Local Plan. These Policies collectively seek to secure new development which is of high quality, locally distinctive design, and where in a conservation area, only permitted where it would preserve or enhance the appearance and character of that area.
33. Under the terms of the National Planning Policy Framework (the Framework), the harms to the heritage assets would be less than substantial though still of considerable importance and weight. As directed by both Local Plan Policy EN9 and the Framework, such harm should be weighed against the public benefits of the scheme. I return to this aspect further below.

Living conditions of neighbouring occupiers

34. The new dwellings would front onto Church Road, alike the dwellings on the opposite side of the road, 'Dairy Cottage' and Nos 1 and 2 Rock Cottages. The proposed new dwellings would be positioned and would have main habitable room windows facing towards these existing dwellings at an approximate distance of 9 – 11 metres. Whilst the overlooking would be across the public street, it would introduce intimate window-to-window relationships that do not presently exist, to the detriment of the living conditions of those affected neighbouring occupiers in terms of privacy and outlook. Whilst the appellant's evidence suggests that similar arrangements exist along the narrow street, in my view, the proposal would appear to result in the closest and most harmful relationship between buildings on comparable floor levels within the street.

35. 'The Old Exchange' is a small-scale, single storey dwelling to the south of the site. The gable end of the new dwellings would be situated within around 3 metres of this dwelling. Due to their angled relationship, the windows in the rear elevations would have close range oblique views of the gable end window of The Old Exchange. Due to the two storey height of the proposed dwellings relative to the scale of The Old Exchange, and it's very modest outdoor space, it draws from the car park to provide an open outlook, thus avoiding a sense of enclosure from its own-closely positioned boundaries. Thus, the creation of a mass of two storey dwellings would also result in a loss of outlook that would be harmful to the living conditions of occupiers of The Old Exchange, additional to the loss of privacy.
36. Other potential impacts on living conditions have been raised. Firstly in relation to the increased noise and disturbance from the close proximity parking arrangements to 'West Park House'. Secondly, in relation to the potential future impacts on occupiers of the proposed dwellings from their interaction with the public entrance and windows of the Heritage Centre. And, thirdly, in respect of the marginal set back of 2.5 metres of the proposed dwellings from Church Road, which is a narrow street absent of footways. All of these harms point towards a congested layout that would fail to retain or provide a high quality living environment for future or neighbouring occupiers.
37. In view of the above, the proposal would be harmful to the living conditions of neighbouring occupiers and therefore conflicts with Local Plan Policy D1, which, amongst other things, seeks to only permit proposals that do not adversely affect the amenity of occupiers of adjoining residential properties.

Surface water drainage

38. Evidence submitted with the appeal proposal indicates that the appeal site lies in close proximity to infrastructure owned by the drainage undertaker that could accept surface water flows. Despite this, and the relatively hard surfaced nature of much of the site, the detail in relation to the means of surface water drainage is lacking. The plan shows that a surface water holding tank would be installed beneath the main spine road which would discharge to the surface water drain at a restricted rate. It also shows a 'Aco Channel' would be installed with sump and silt traps at the point of access in order to catch any residual overland run off.
39. The latest correspondence from the Lead Local Flood Authority indicates that calculations, overland flow routes and management details of the system would need to be provided for the drainage scheme to be found acceptable. The Council conceded that this information could be readily secured by way of a pre-commencement planning condition.
40. Therefore, subject to the imposition of a suitable condition, the proposal complies with Local Plan Policy EN22 which seeks to ensure that surface water run-off implications of a proposal have been fully considered.

Other Matters

41. Despite the absence of a costs application, I note the appellant's disappointment about opportunities that the Council missed to provide feedback from consultees or highlight specific policy issues. Ultimately, the appellant claims that the lack of a timely decision contributed towards the need

for resolution by way of appeal. Whilst regrettable, I have focussed on the planning merits of the case in reaching my own decision in this case.

Planning Balance and Conclusion

42. Although I have found that the proposal could be conditioned to avoid negative surface water impacts, this does not override my concerns in relation to the unjustified loss of the community facility, the harm to the living conditions of neighbouring occupiers, harm to heritage assets or insufficient parking/turning arrangements.
43. There would be a number of public benefits associated with the delivery of four dwellings, principally from the additional contribution of smaller dwellings to the housing stock and the increased access to housing, but also from the construction economic impacts that would eventually be replaced by the economic activity of future occupiers. I am also mindful that a social and economic benefit would result from the provision of an alternative public house, sustaining a modest employment provision and associated accommodation. I attribute these collective benefits modest weight in the overall balance.
44. However, the public benefits of the scheme do not outweigh the identified less than substantial harm to heritage assets or indicate that a decision should be taken other than in accordance with the development plan.
45. For the above reasons and taking into account all of the submitted written and verbal evidence, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Bryan Turner

WWD Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Ms Lynne Schwenn

East Devon District Council

INTERESTED PARTIES:

Mr Robin Barker

Local resident

Mr Jeremy Wilson

Save the New Fountain Group

Ms Karen Scott

Save the New Fountain Group

Mr Jonathan Prideaux

Whimble Heritage Centre

Mr Alan Lascelles

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Mr Peter Boekman

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