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# Appeal Decision

Site visit made on 24 March 2022

**by James Blackwell LLB (Hons)**

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

**Decision date: 29 April 2022**

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**Appeal Ref: APP/A1910/W/21/3289126**

**The Plough, The Back, Potten End HP4 2QS**

- 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 Jamie Noble of Stankerr Pubs Ltd against the decision of Dacorum Borough Council.
  - The application Ref 20/03227/FUL, dated 21 October 2020, was refused by notice dated 12 July 2021.
  - The development proposed is the change of use of public house from Class A4 to Class C3 residential including internal alterations and a single storey rear extension.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The proposed development would be located within the Green Belt. It is common ground between the parties that the proposal would not be inappropriate development within the Green Belt. There is no compelling reason before me to disagree with this assessment, so I have determined this appeal on the same basis.
3. Since determination of the planning application, the 2019 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in July 2021.

## Main Issues

4. The main issues are:
  - whether the proposed change of use would be consistent with development plan policy, with particular regard to the ongoing viability of the public house and its status as an Asset of Community Value; and
  - whether or not the proposed development would preserve or enhance the character or appearance of the Potten End Conservation Area.

## Reasons

*Proposed Change of Use*

5. The appeal property was designated as an Asset of Community Value (ACV) by the Council in July 2018, as it was considered to “*further the social wellbeing or social interests of the local community*”<sup>1</sup>. This designation was attributed to its ongoing use as a public house, hosting a community library/book swap facility, and it acting as a community hub for charity and other public events. Based on the extent of representations received, it is clear that this community use prevails, and is something which is valued by local residents.
6. Policy CS23 of the Council’s Core Strategy (2013) (CS) says “*existing social infrastructure will be protected unless appropriate alternative provision is made, or satisfactory evidence is provided to prove the facility is no longer viable*”. Accordingly, the presumption in favour of retaining existing social infrastructure will only cease to apply where either of these two criteria are met. As a public house, it is not disputed that the appeal property comprises social infrastructure.
7. The appellant argues that use of the appeal property as a public house is no longer viable. Comprehensive viability information has been submitted by the appellant to corroborate this supposition, which demonstrates that the low trading performance of the public house in recent years has severely compromised its profitability. These findings have broadly been supported by the Council’s own Independent Viability Review<sup>2</sup> (IVR). This element of the criteria set out in Policy C23 has therefore been satisfied, as the evidence demonstrates the Pub is no longer viable in its current form.
8. Nonetheless, Policy CS23 goes on to say that “*the re-use of a building for an alternative social or community service or facility is preferred*”. Even where social infrastructure in its current use has been proven to be unviable, the overarching thrust of the policy therefore remains to preserve social or community facilities wherever possible, even if for some alternative use.
9. The appeal property was unsuccessfully marketed for sale (as a going concern) between January 2020 and October 2020, with an asking price of £550,000. The appellant’s Marketing Report<sup>3</sup> says this valuation was partly based on an assumption that the property had a secure rental income of £40,000 per annum, for a period of 9 years. However, the IVR suggests that several concessions have been given to the current tenant, which mean the actual level of rent paid has ranged between £13,000 and £30,000 over the preceding 4 years. This factor may have contributed to the appeal property being marketed at an unrealistic price. The valuation also refers to the “*excellent long-term alternative use value for residential use*”, which may have further inflated the asking price.
10. Indeed, the Council’s IVR valued the property at £400,000. This valuation was based on a number of comparable public houses on the market within approximately 25 miles of the appeal property. Whilst only headline details have been provided, both were marketed at a price significantly lower than the appeal property, which is again indicative of the appeal property being marketed above market value. This may have deterred potential investors. Irrespective of price, the appeal property was also marketed during the height of the Covid pandemic, when market confidence was particularly low. The

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<sup>1</sup> Dacorum Borough Council, List of Assets of Community Value, Notice of Inclusion (02/07/2018)

<sup>2</sup> Independent Viability Review, 20/03227/FUL, 11<sup>th</sup> May 2021, BPS Chartered Surveyors

<sup>3</sup> Marketing & Sustainability Statement, 12 October 2020, Drake & Co

unfavourable economic circumstances may therefore have compounded any lack of interest in the appeal property at this time.

11. Notwithstanding the above, two offers to purchase the appeal property have been made. One offer of £400,000 was made in July 2020 by a restaurateur who hoped to extend the property and trade as a restaurant. Another offer of £415,000 was made by a local community group in November 2020, who sought to preserve the appeal property as a community run pub. Both offers were rejected by the owner as they were considered too low.
12. Irrespective of the pub's viability, these offers demonstrate real and legitimate interest to purchase the appeal property, both of which would have preserved its community use. Moreover, had the appeal property been marketed at a lower price, or at a time when trading conditions were more favourable, there may have been more interest from potential buyers. It is possible that a purchaser would have come forward who was willing to invest in the pub to help secure its longer-term viability, or who sought to buy the property for some other community use or facility. On this basis, I am not persuaded that all necessary attempts to secure the continued community use of the appeal property have been adequately pursued, particularly given its status as an ACV.
13. For these reasons, I consider that the proposed development would conflict with Policy CS23 of the CS, the overriding objective of which is to protect social infrastructure where possible. It would also conflict with the overarching objectives of the Framework, which seek to promote facilities which support social interaction.

#### *Conservation Area*

14. The appeal site is located within the Potten End Conservation Area (CA). It sits in a prominent location opposite an area of open green space, but is otherwise surrounded by residential dwellings. The Character Appraisal<sup>4</sup> highlights that this area of the CA comprises a *"very discrete and distinct group of houses, most of which are terraced and date back from the early 19<sup>th</sup> century"*. Examples of such houses were clearly evident along The Back, which is a very narrow lane running parallel with the pub garden. Here, the houses are tightly spaced, and the side elevations of many of them (specifically along the southern side) directly abut the lane. Together, these features give the area a strong sense of enclosure and intimacy, which adds to its character and the overriding significance of this part of the CA.
15. There is already a long rear extension projecting from the back of the pub, which runs parallel with The Back. Whilst the new extension would be wider than the existing extension, it would be similar in both depth and height. Along The Back, where it would most readily be seen, the visual impact would therefore be broadly similar to the existing extension. As such, it would preserve the existing sense of enclosure and intimacy that characterises the lane.
16. In terms of the proposed fenestration, whilst the glass windows/doors would be extensive along the southern elevation of the extension, such features would be typical of domestic extensions facing out on to a garden. This element of the

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<sup>4</sup> Area Based Policies, Supplementary Planning Guidance 2004

proposal would therefore be in-keeping with the residential character of the area. Moreover, as this part of the CA is clearly residential in nature, I am also satisfied that the proposed change of use would be consistent with its prevailing character.

17. For these reasons, the development would preserve the character and appearance of the CA. In this regard, the development would be consistent with Policies CS6, CS12 and CS27 of the CS and saved Policy 120 of the Dacorum Local Plan 1991 – 2011. Together, these Policies seek to ensure new development protects heritage assets (and where relevant the Green Belt), by responding properly to its surroundings in terms of design, layout, scale and bulk. The development would also be consistent with the overriding design objectives of the Framework.
18. As the appeal site is within a conservation area, as per section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (Act), I have had special regard to the desirability of preserving or enhancing the character and appearance of the conservation area.

### **Other Matters**

19. Whilst there is little substantive evidence before me regarding the Council's 5-year land supply (5YHLS), even if paragraph 11(d) of the Framework were engaged, the Framework is clear that due weight should be given to existing development plan policies according to their degree of consistency with the Framework. In this instance, Policy CS23 of the CS reflects the objectives of the Framework that development should seek to promote social interaction, and provide social, recreational and cultural facilities (specifically including public houses), to enhance the sustainability of local communities and residential environments. I would therefore attach significant weight to the conflict with this Policy. Whilst an additional dwelling would make a minor contribution to the Council's housing land supply, the harm attributed to the conflict with Policy CS23 would therefore significantly and demonstrably outweigh this benefit when assessed against the policies in the Framework as a whole. As a result, even if the Council cannot demonstrate a 5YHLS to the extent asserted by the appellant, I am satisfied that the presumption in favour of sustainable development would not apply in this instance.
20. Following recent Natural England advice<sup>5</sup>, the appeal property is now within the Zone of Influence of the Chilterns Beechwoods Special Area of Conservation (SAC). The SAC seeks to protect habitats comprising beech forests, grassland and scrubland within the Ashridge Commons and Woods Site of Special Scientific Interest. However, as I am dismissing the appeal on other grounds, further consideration of this factor, including an appropriate assessment under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) to determine any impact of the proposal on the SAC, is not required.

### **Conclusion**

21. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which

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<sup>5</sup> Letter from Natural England dated 14 March 2022 to Buckinghamshire Council and others, entitled "Developments to the emerging evidence relating to the recreational impacts upon Chilterns Beechwoods Special Area of Conservation (SAC) and the need for a Mitigation Strategy"

outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

*James Blackwell*

INSPECTOR