



Appeal Decision

Site visit made on 12 May 2022

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Appeal Ref: APP/K0235/W/21/3283168

The Fox and Hounds, 178 Goldington Road, Bedford MK40 3EB

- 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 Fox & Hounds Bedford Ltd against the decision of Bedford Borough Council.
 - The application Ref 21/00951/FUL, dated 29 March 2021, was refused by notice dated 22 July 2021.
 - The development proposed is change of use from public house (Sui Generis) to retail use (Use Class E) and residential (Use Class C3) with associated extensions and external alterations to the façade, changes to car parking layout, closure of one vehicle entrance, and provision of cycle parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An additional partial floor plan and section (PL010) indicating window separation distances and an amended Proposed Site Plan (PL002 Rev C) showing revised parking and waste storage arrangements have been provided with the appeal, which were not part of the original application and were not considered by the Council in its decision to refuse planning permission, albeit the site plan had been provided, even if not formally submitted, to the Council by that time. Additionally, the appellant has provided a financial statements document at the final comments stage of the appeal process, which had not been released at the time the appeal was made. As this document updates the financial information provided previously, the Council was given an opportunity to comment on its content.

Main Issues

3. The main issues are:
 - i. Whether the proposed change of use of the public house is justified;
 - ii. The effect on living conditions at nearby properties in Abrahams Close;
 - iii. Whether there would be adequate provision for waste and recycling;
 - iv. Whether there would be adequate provision in terms of highway safety and parking; and
 - v. The effect on the character and appearance of the area.

Reasons

Change of Use of the Pub

4. There is no dispute that Policy 83 of the adopted Bedford Borough Local Plan 2030 (BBLP), "neighbourhood centres and individual shops – changes of use", is relevant to this main issue. However, the policy, which includes public houses in the definition of 'essential local shops', is not explicit whether it applies only to changes of use from those falling within 'essential local shops' to uses outside that definition or whether it applies to any changes of use including between uses falling within that policy definition.
5. In this case, the change of use proposed is from a public house to residential and retail, with the latter indicated to be for a small supermarket. The resultant use of the site would therefore include an element, being the Class C3 residential flats, which would not fall within the 'essential local shops' definition. The main public house floorspace on the ground floor would become mainly retail floorspace, with associated storage and servicing areas, falling within the 'essential local shops' definition. The proposal overall, therefore, involves change of use to uses both apparently within and outside the definition of 'essential local shops'.
6. Since the BBLP was adopted in January 2020, significant changes to the Use Classes Order came into force in September 2020. These include the revocation of former use Classes A (including shops, financial services, public houses, restaurants, takeaways) and D (including non-residential institutions and leisure facilities) and the creation of the broad Class E for 'commercial, business and service' uses including retail shops, and 'any other services which it is appropriate to provide in a commercial, business or service locality'. Public houses, formerly Use Class A4, are not included in Class E and are *sui generis*, not falling within any use class. An effect of this change is that planning permission is required for any change of use from a public house to another use or uses. While no development plan policy requiring the specific retention of public houses is before me, policy support for the provision and retention of public houses and other community facilities is set out in the National Planning Policy Framework July 2021 (the Framework).
7. During my site visit I saw several other 'essential local shops' in the locality, including Thandi Food Store and Newsagents, the Premier store, both on Goldington Road, and The Devonshire Arms and White Horse public houses. There may be other 'essential local shops' within the specified 10-minute walk or half a mile, but either way I am satisfied that criterion i. of Policy 83 is met.
8. While the proposal would result in an additional small food shop, it would not lead to a concentration of similar uses in the locality. This is because the other limited examples of similar uses within around 10 minutes' walk are interspersed in streets and sites predominantly in other uses, principally housing, albeit there would be a handful of small shops along this part of Goldington Road and comfortably within 10 minutes' walk of each other. Furthermore, the cumulative impact of the shop uses with the addition of the proposed retail unit would not be significantly harmful to environmental quality, amenity or parking for reasons covered elsewhere in this decision. While the opening hours of the retail unit are not specified, there is no persuasive evidence before me that this use would create significantly more risk of anti-social behaviour than a public house at the site. In addition, the operating hours of the new retail unit could be controlled by condition. I am therefore satisfied that criterion iii. of Policy 83 is also met.

9. The financial statement at Appendix 5 of the appellant's grounds of appeal indicates the Fox and Hounds to have operated at a net loss of £151,458 for the period 16 January 2019 to 31 March 2020 (later updated to 16 January 2019 to 31 January 2020). The subsequent update, released for issue on 13 December 2021, also indicates a net loss of £23,983 for the period 1 February 2020 to 31 March 2021 despite a significant level of income from central Covid19 pandemic support. Whilst unsigned copies, the latest financial statements document provided indicates the operation of the public house was not economically viable in the period 16 January 2019 to 31 March 2021, which includes a mix of periods before, during, and between Covid19-related restrictions on social activity. On its face, the evidence therefore appears to satisfy the first part of criterion ii. of Policy 83, which advises that financial information may be appropriate to demonstrating (lack of) economic viability.
10. Notwithstanding the financial statements, criterion ii. goes on to specify that whether a current or last use is no longer economically viable can best be demonstrated by evidence of active marketing. I accept that the policy does not demand evidence of marketing in all instances. However, should the public house be changed as proposed, with the associated alterations to the building to facilitate retail as well as the provision of residential flats at first floor level, it is unlikely that it would revert in the future to a public house and the particular services that a public house can provide to the community would therefore be likely to be lost indefinitely.
11. As such, and while there may be evidence of net losses in the recent financial statements of the current operator, the circumstances of this case make it one where the premises should be actively marketed, in line with that aspect of the Policy. This would enable an informed assessment to 'best' demonstrate whether the current planning use, rather than the current business operation, of the premises as a public house remains viable. There is no evidence before me that the Fox and Hounds has been actively marketed for continued use as a public house and so any interest from prospective pub operators is untested. I am therefore not satisfied that criterion ii. has been adequately demonstrated for the purposes and circumstances of this appeal.
12. The appellant refers to a decision made by the Council in relation to The Phoenix and their understanding of Policy 83. There are limited details of that case before me, but it appears to relate to a 2017 application and, whilst the language may be similar, the policies referred to in the extract from the officer's report are not Policy 83 or from the BBLP, relating in the main to a 2013 plan. While I have considered this information, my assessment above in relation to Policy 83 is unaltered.
13. In conclusion, the proposed change of use of the public house to retail and residential has not been demonstrated to be justified and would therefore conflict with Policy 83 of the BBLP, which seeks to protect community facilities such as public houses as 'essential local shops'.

Living conditions

14. The front elevations of the dwellings in the first part of Abrahams Close are positioned near the back edge of the footway, facing towards the Fox and Hounds site. At the side, the proposed two-storey extension would introduce several windows serving the new flats, including two bedroom windows, a kitchen window and a living room window. While somewhat offset, the separation distance

between these new windows and the front elevations of the closest properties in Abrahams Close would be around 13 metres. This would fall below the expected distance of 18 metres specified in E5 of the Council's Residential Extensions, New Dwellings and Small Infill Developments Supplementary Design Guidance, 2000 (the RENDSID).

15. The belt of mixed trees and other vegetation adjacent to the side boundary of the Fox and Hounds is largely comprised of deciduous species and situated beyond the appeal site boundary fence, with no substantive evidence that the vegetation is within the appellant's control. Therefore, while the vegetation currently provides a partial privacy barrier between the site and Abrahams Close, this would not be effective when the trees are not in full leaf and there is no reasonable certainty that it would be retained or survive in the longer term. As such the vegetation cannot be relied upon to prevent direct overlooking between primary windows in the proposed flats and at Abrahams Close.
16. I accept that some existing dwellings are positioned such that separation distances of 18 metres, or even much less, are not achieved. Reasons and circumstances for this will vary. While there can be some flexibility in the application of guidance, the RENDSID does normally require 18 metres separation, and there is no persuasive evidence before me that a particular reason or circumstance nearby specifically extends to justify a reduced level of privacy in this proposal.
17. An exception to the 18 metres expectation is where the design avoids direct overlooking, which is not the case with the submitted plans. While a condition requiring the relevant windows in the new flats to be obscure glazed and part-fixed shut would address overlooking, I am not satisfied it would result in reasonable living conditions for occupiers of the affected flats given the outlook from some primary windows would be substantially restricted by such a course of action. Therefore, while other design solutions may be possible, I am not satisfied that obscure glazing represents a satisfactory design solution in this instance.
18. In conclusion, the proposed development would have a harmful effect on living conditions at nearby properties in Abrahams Close, with particular regard to privacy. It would conflict with Policy 32 of the BBLP, which among other things seeks to minimise disturbance to neighbours including from overlooking, and with E5 of the RENDSID, the relevant requirements of which are set out above.

Waste and recycling

19. The amended site layout plan includes provision of a communal storage area, adjacent to the residential parking spaces, for residential waste. The capacity of bin storage proposed to be provided for refuse and recycling is not specified, but the plan indicates space for two bins large communal bins. Taking account of the standard household allocation for general waste and dry mixed recycling, as set out in the Council's Technical Guidance: Waste and Recycling in New Developments, 2021, and making provision for five flats, it has not been demonstrated that two large (1100 litre) bins of the type set out in Annex III of the Technical Guidance would make sufficient provision to serve the five households while enabling general waste and dry recycling to be stored separately and accounting for emerging national additional recycling requirements as the Technical Guidance seeks.
20. The Technical Guidance advises that residents of communal properties, such as the flatted accommodation proposed, should not be required to carry waste further

than 30 metres. The appellant advises that the distance from the bin storage area to the highway would be 36 metres, and as a result a management company would be given responsibility for moving the bins to the highway on collection days. The Council considered the main flat entrance-to-bin carry distance to be around 45 metres before the layout was revised, with further internal carry distance from each individual flat.

21. The proposed route and distance from the furthest flat to the repositioned residential bin store is not specifically set out in the appeal documents. However, the floor plans indicate the only access to the car park/bin storage area from the flats at first floor would be via a door on the front of the building, labelled Residential Entrance, and then walking around the building. This route appears to significantly exceed 30 metres from flat to the bin storage area when compared to the distance from the bin storage area to the highway. In addition, refuse storage for the retail use, which was included on the originally submitted site layout plan, is omitted from the amended plan. Accordingly, the provision that would be made for retail refuse is uncertain.
22. In conclusion, it has not been demonstrated that the proposed development would make adequate provision for waste and recycling. This would be contrary to Policies 29 and 32 of the BBLP, which among other things seek to ensure that adequate functional provision for refuse and recycling storage is integrated into developments, and also inconsistent with the Technical Guidance. In this case, it would not be reasonable to address the matter by condition, given the relatively limited space available around the parking area for bin storage options and the uncertainty about retail waste, meaning potential solutions may require alterations to the design or layout of the development.

Highway safety and parking

23. In response to the second reason for refusal, additional information relating to the highway safety/traffic implication of the development has been provided in the Transport Appeal Statement. The on-site parking area serving the Fox and Hounds has vehicular access points onto Caves Lane and Goldington Road. The reconfiguration of the parking area, shown on drawing PL002 Rev C, would provide 8 spaces for residents and visitors of the flats and 12 spaces associated with the retail unit. Of the latter, 2 would be disabled spaces and 4 would have retractable bollards to enable them to be reserved for delivery parking when a delivery is due. The 8 residential and visitor spaces would meet the minimum expectations for the five flats as set out in Table 1: Residential Minimum Parking Standards per dwelling of the Council's Parking Standards for Sustainable Communities: Design and Good Practice Supplementary Planning Document 2014 (the Parking SPD).
24. At less than 500m² the proposed retail unit is considered a small food retail outlet for the purposes of the Parking SPD, for which a maximum of 1 parking space per 18m² is expected. The 6 general spaces plus 2 disabled spaces would be available at all times, with a further 4 spaces available except when a delivery is taking place or due. Given that for non-residential uses the Parking SPD sets maximum standards, the quantum of spaces meets the expectations set out in Table 2 when the Zone 2 (wider urban area) location of the site is accounted for, albeit not to the maximum level of the range specified.
25. Furthermore, swept path analysis indicates that the development could be accessed and exited in forward gear by a 10m rigid delivery lorry, and that the

disabled spaces can be similarly accessed in forward gear by a large car. All vehicular access and egress would be via Goldington Road, with the existing access to Caves Lane being closed off to achieve the proposed parking layout. The Parking SPD seeks parking for a maximum of 2 Heavy Goods Vehicles (HGV), with the maximum provision normally expected unless a variation is justified.

26. The development would provide space for one HGV, and the appellant states that the retail use would not require more than one delivery at a time. On the evidence, I am satisfied details, such as the type of delivery vehicle and scheduling and operation of deliveries, including to ensure off-peak servicing and no more than one delivery vehicle seeking to service the site at once, commercial refuse, and staff parking, could have been specified in a Delivery and Servicing Management Plan (DSMP) and controlled by condition, had the appeal been allowed.
27. While the number of parking spaces would accord with the Parking SPD, and the layout of the parking and servicing area would be generally workable for the types of vehicles likely to use it, likely parking demand and safety for all road users in the circumstances of this appeal are also relevant. It is generally accepted that Goldington Road is part of a main route through Bedford that carries a substantial volume of traffic, and that the total trips generated from the proposed mixed use are likely to significantly exceed the number of trips generated by the public house, even when the latter is fully operational and unrestricted, such as by the lockdowns in response to the pandemic.
28. TRICS data suggests an increase in vehicular trips from around 245 to around 1122 daily, albeit the total daily two-way person trips by all modes is likely to be much higher. However, the evidence also indicates that the average maximum duration of stay at small convenience stores by customers is limited to somewhere under 10 minutes. Accordingly, each parking space would have capacity for around 6 vehicles per hour. With the daily peak vehicle activity for the proposed convenience store forecast at 57 arrivals between 1900-2000, the general retail parking spaces, further supported by the two disabled spaces, would make adequate provision in most circumstances. Subject to appropriate delivery management to prevent deliveries taking place at times of higher and peak parking demand, the other 4 retail spaces would be available for higher-than-usual peak demand. Even during the likely peak car park accumulation between 1800-1900, the evidence indicates total car parking demand of 33 vehicles over the hour would be met by the retail parking provision, with some leeway, based on expected average durations of stay.
29. No significant counter evidence has been presented to show that parking demand would be likely to frequently be higher than the forecast peak level, and I am satisfied that displaced or overspill parking would be uncommon and infrequent. There are no parking restrictions on Caves Lane near the site. However, I saw that there are various parking restrictions in place in the site vicinity at particular locations and times of day, including signs showing parking on the verge or footway in this part of Goldington Road to be prohibited.
30. I note that some restrictions would not apply for the likely full extent of retail opening hours, but there is no significant evidence to suggest drivers would be particularly likely to infringe them, or park inconsiderately at other times, when seeking to access the flats or retail unit. Given that displaced and overspill parking

would be unlikely, additional on street parking restrictions or other mitigations have not been shown to be necessary. The development would also make provision for cycle storage for retail users and residents, and a significant proportion of visits to the shop would be on foot.

31. During my visit I observed the signal-controlled crossing, the nearby tennis club, and the school on Goldington Road, and their proximity to the Goldington Road/Caves Lane junction and the site access. Accident data provided shows a number of incidents at or near the junction over five years, some involving serious injury. While the Council considers the incidents to indicate the junction is under stress, and no specific assessment of the current operation and capacity of the junction has been provided by the appellant, the varied details, circumstances, and positions of the incidents does not indicate any particular issue or trend or point to any specific problem with the design of the junction. Furthermore, no specific junction mitigation measures have been identified as necessary by the Council, or the appellant.
32. While the combined retail and residential use would increase vehicular traffic movements from newly generated vehicular trips through the day by forecast levels up to around 27 additional two-way movements during the AM peak hour and 29 in the PM peak hour. Total vehicular trips would include the newly generated vehicular trips plus, the evidence indicates, a significant proportion of vehicular trips that would be combined as part of an existing journey particularly from passing traffic. The nature of the retail provision as a small convenience shop, and its location on a main route with a significant volume of passing traffic, support that likelihood given it would not be a 'destination' type provision. At around one additional vehicular trip every two minutes, not all of which will use the Caves Lane/Goldington Road junction, the effect on the operation and safety of the local highway network would be limited in this instance.
33. The development would make adequate provision for parking and turning clear of the highway, including for service/delivery vehicles subject to a DSMP, and it would not have any significant impacts on the transport network, or on highway safety. In conclusion, the proposal would make adequate provision in terms of highway safety and parking and would not conflict with Policy 31 of the BBLP, which seeks to ensure that development would not have any significant adverse impact on access to the public highway, or with the relevant requirements of the Parking SPD. It would also be consistent with Paragraphs 110 and 111 of the National Planning Policy Framework.

Character and appearance

34. The Fox and Hounds is a substantial building located in a varied and predominantly residential street scene. It is an attractive building, albeit somewhat unremarkable in architectural terms with no evidence provided to show particular merit in this regard. There is a largely symmetrical front elevation with a degree of horizontal emphasis, which is readily visible in the street-scene, and the general scale and style of the building are suggestive of the public house use. It is set close to the boundary with Abrahams Close, with the remainder of the site mainly given over to parking on the Caves Lane side and the pub garden at the rear of the building.
35. The proposed extension would increase the scale of the existing set-back side projection, which would undermine the overriding symmetry of the façade to a modest degree. However, given the limited additional width and the continuation

of the roof form, taken in the context of the off-centre position of the building on the site, the effect on the overall appearance of the front elevation and on the Goldington Road street-scene would not be unduly cramped or harmful to local character and appearance.

36. The rear section of the extension would run parallel to Abrahams Close, where the two-storey height would increase the prominence of the building in the street-scene, particularly when the belt of trees and vegetation is not in leaf. However, the existing two-storey part of the building is already noticeable in the Close, and the main substance of the building is readily apparent as occupying the corner position of the Close with Goldington Road. While there would be a perceptible change in appearance and scale of the building due to the extension, this would be against the backdrop of the existing building and would not have a significant discordant effect on the character and appearance of the locality.
37. The alterations to provide the proposed shopfront would include a significant area of modern glazing in place of two existing doors and ground floor windows, and the addition of a new fire exit door in place of a bay window. This would alter the appearance of the building, particularly at ground floor level, in a manner generally consistent with the nature of the proposed retail use. However, the principal features of the elevation, including the sense of symmetry arising from the pair of gables with bays, and the general horizontal emphasis would still be read. The character of the varied street-scene would not be materially affected, and the revised appearance of the building would integrate satisfactorily to be generally in-keeping with the surroundings, which include a few other examples of modern-style shopfronts.
38. In conclusion, the proposed development would not harm the character and appearance of the area and would accord with Policies 28, 29 and 30 of the BBLP, which together and among other things seek to ensure development integrates well with and complements the character and identity of the area.

Planning Balance

39. While there would be no significant harm in relation to the character and appearance of the area or highway safety and parking provision, there would be significant harm arising from the loss of the public house as a community facility with insufficient justification. There would also be harm to the living conditions of neighbouring occupiers and from inadequate provision for the storage of waste and recycling. These harms would not be outweighed by the various social and economic benefits of the proposed retail and residential development, including the increased housing supply associated with the modest net gain of five dwellings, in the context and circumstances of this case.

Conclusion

40. The development would conflict with the development plan, taken as a whole, and there are no other considerations, including the Framework, of sufficient weight to indicate that planning permission should be granted. Therefore, the appeal is dismissed.

C Jack

INSPECTOR