



Appeal Decision

Site visit made on 23 August 2022

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/A0665/W/22/3296135

Ashwood Park, Chapel Street, Wincham, Northwich CW9 6QY

- 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 G Duthie of Tingdene Parks Limited against the decision of Cheshire West and Chester Council.
 - The application Ref 21/01575/FUL, dated 7 April 2021, was refused by notice dated 13 October 2021.
 - The development proposed is 'Demolition of existing retail/café building and siting of 4 park homes'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the provision of day-to-day community facilities.

Reasons

3. The proposed development relates to a commercial premises within the village of Wincham (or Lower Wincham as referred to by the Council). There are two separate units within the premises, one operational as a café/takeaway and one that is vacant. Whilst the site lies adjacent to a park home estate, Ashwood Park, it does not lie within it. Both share an access, however the appeal premises has a physically separate presence, with a clearly defined parking area, and its frontage presents onto Chapel Street, a main road through the village. The village itself consists mainly of housing and a large industrial estate. The premises are well positioned within the village to be accessible on foot, as well as for those working at the nearby industrial estate. It is also likely to attract passing trade given its position on the main road.
4. The lawful use of the premises is stated to be a combination of retail and café with takeaway, although I am advised that no retail use has occupied the site for a number of years.
5. Policy DM39 of the Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies document adopted 18 July 2019, (LP) applies to proposals that would involve the loss of community facilities. The supporting text of LP Policy DM39 includes a list of possible uses that could be considered as community facilities or services. Similarly to Paragraph 93 of the National Planning Policy Framework (NPPF), this list includes a combination of public buildings (such as cultural or religious buildings) and commercial

- buildings (such as shops and public houses) and is not exhaustive, requiring planning judgement in each case.
6. Both LP Policy DM39, the LP glossary definition of community facility, and the NPPF recognise the important role that valued community facilities have in meeting the day to day needs of communities. Such uses can stimulate social interaction, that can promote healthy and inclusive communities.
 7. Noting the physical characteristics of the premises, its position and presence in the village, it is capable of serving the local community. The catering provision of the café/takeaway premises is able to provide for some of the day-to-day needs of that local community, whilst also offering the potential for social interaction. As such, the existing premises are considered to be a community facility, the loss of which requires assessment against the relevant criteria contained within LP Policy DM39.
 8. The needs of a local community and therefore the value attributed to a particular facility in meeting those needs are not easily defined, but the local community itself must be integral to considering both. There is clear public support for the existing café/takeaway business as a community facility, borne out in representations including from local organisations such as the Parish Council and the Ashwood Park Residents Association. The comments made not only refer to the functional service the premises provide in catering terms, but also its social value as a community hub.
 9. Further, I am not persuaded that the opening hours of the café/takeaway undermine its value to the community. Operating hours that encompass breakfast and lunchtime trade are not uncommon for this type of facility. The facility is open every day except Sunday, and for a reasonable proportion of the day. Nor have I been presented with any evidence indicating the level of use by the local community is low. As such, it has not been demonstrated that this premises is surplus to the needs of the local community.
 10. The existing café/takeaway is operational and whilst I note the nature of the short-term letting arrangements, this does not necessarily mean that the current occupier would not continue to operate this use for its existing purpose, if they are given the opportunity to do so. Therefore, the café/takeaway facility remains capable of continued use.
 11. With regards to possible compensatory facilities for the café/takeaway, I have not been provided with the details of mobile snack vendors in the area, such as the precise location and accessibility, the frequency of visits or opening hours. Such vendors typically offer takeaway food and so I would question whether they could provide the same degree of social hub as the current café building. The Salt Barge Public House is accessible on foot for many residents of the village, but it is not clear from the information provided, that this would offer the same attraction as the existing facility in terms of opening hours as well as food for consumption on and off the premises. As such, based upon the information available to me, I do not consider that these are facilities that can cater for the same needs as the appeal premises at the moment.
 12. With regards to the vacant retail unit, I appreciate that the option of having groceries delivered, and the retail premises at Northwich, provide flexibility and choice for residents, albeit, those retail units at Northwich would not share the same level of accessibility as the appeal site for residents of the village.

Nevertheless, I have been presented with little evidence or marketing information, sufficient to demonstrate that all options for any retail use, or alternative community uses have been fully considered and exhausted for this unit. I appreciate that this might require multiple operators. Again, I have not been provided with any evidence or information to demonstrate that such a scenario is problematic or prohibitive.

13. To conclude on this main issue, the proposal would result in the loss of a community facility. The proposal does not therefore comply with LP Policy DM39, which guards against the loss of such facilities unless it has been demonstrated that there is no longer a need for the facility, either now or in the foreseeable future. Nor would it meet the objective of paragraph 93 of the NPPF which seeks to prevent the unnecessary loss of a valued community facility, which would reduce a community's ability to meet its day-to-day needs.

Other Matters

14. A fallback position is raised relating to termination of the café use, a change of use, or demolition. To decide whether a fallback position is a material consideration and before weight can be ascribed to it, firstly there must be a real prospect rather than just a theoretical one of that alternative being likely to occur. Secondly, if there is a greater than theoretical possibility of the alternative happening, then it is necessary to ascribe weight to it.
15. I have very limited evidence of the appellant's intentions to pursue these alternative options and whether the benefits to the appellant of those alternatives, would be greater than the existing use, sufficient to provide an incentive. Whilst there is some prospect of the use ceasing, which I will consider as a potential fallback position, given the information provided I consider that it has limited weight.
16. Economic benefits would be accrued from the development of four further park homes for Ashwood Park as a business, described by the appellant as a more efficient use of the land, allowing capital re-investment. There would be further economic benefits from the construction phase, and for local trades providing ongoing maintenance and management. Further, future residents would add to direct and indirect spend in the local economy.
17. However, these economic benefits would have to be balanced against the economic loss arising from the discontinuation of the existing business on site.
18. I note that the site falls within the settlement boundary for Northwich and that the proposal would contribute to the supply of market housing for older people, potentially releasing family housing onto the open market. I also note that park home accommodation adds choice to the market in terms of cost. I acknowledge the community aspect fostered by park home sites and the management and maintenance provided for older residents. These benefits would be limited by the scale of the proposal and as such, have limited weight.
19. The proposal would change the appearance of the site and the entrance to Ashwood Park from Chapel Street and this would be positive, where landscaping is introduced to the frontage. However, as all the land is within the control of the appellant, there may be alternative means of achieving such enhancements, if considered necessary.

20. I have taken account of the additional concerns raised by interested parties. Having considered the advice of relevant consultees, I am satisfied that if I were to find in favour of the proposal, highway matters, noise and land stability etc, could be appropriately addressed through the imposition of conditions. With regards to all other concerns raised, having considered the evidence before me, these matters do not lead me to any different conclusions.
21. These other matters do not outweigh the harm that I have identified in relation to the main issue.

Conclusion

22. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. The Act sets out the relevant protected characteristics which includes age. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the Act.
23. The proposed development would have some value in providing choice in the housing market for older people, albeit, I have not been presented with any evidence of a particular need for such housing. However, the proposal would also result in the loss of a community facility that provides value in meeting the day to day needs of people with this same protected characteristic. The harm that the development would cause would outweigh its benefits in terms of eliminating discrimination against persons with the protected characteristics, advancing equality of opportunity for those persons and fostering good relations between them and others as well as the need to eliminate harassment and victimisation.
24. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be dismissed.

S Brook

INSPECTOR