



Appeal Decision

Site visit made on 7 November 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2022

Appeal Ref: APP/E2205/W/22/3291778

The Little Black Dog, The Street, Great Chart, Ashford, Kent, TN23 3AN

- 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 Wood against Ashford Borough Council.
 - The application Ref 21/01469/AS, is dated 10 August 2021.
 - The development proposed is change of use of building from former public house to form a single dwelling house, with off street parking and garden area; alterations to fenestration.
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Decision

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

Preliminary Matters

2. This appeal has been lodged following the Council's failure to determine the application. The Council in their appeal statement have put forward reasons for refusal had they been in a position to determine the application. I have used this to inform my main issue below.

Main Issues

3. The main issues raised by the appeal are the effect of the proposed development on: -
 - a) The host non-designated heritage asset and whether the proposal would preserve or enhance the character or appearance of the Conservation Area (CA);
 - b) The loss of an existing community facility.

Reasons

Non-designated heritage asset and CA

4. The property has been in existence for a long time, according to the Council's review of historical maps. For this reason, it is of historical value. It hosts traditional windows that provide architectural interest to the property. Its heritage value is both historical and architectural and these give the property its significance as a non-designated heritage asset. Furthermore, it is sited centrally in the village and within a CA and is surrounded by a number of listed buildings. The appeal property adds to both the character and appearance of the CA.

5. The existing windows hold historical and aesthetic value to the property and there is no substantial indication that this existing fenestration is in a poor condition. The proposal is to replace all the existing windows with conservation style double glazed units.
6. The details of the proposed windows, although said to be replacements of a style matching the existing (like for like), are unknown as they have not been submitted in support of the proposal. It is unclear whether the windows would be timber framed, slimline conservation style windows. Without an understanding of the design and proportions of the proposed windows, there is insufficient information before me that would demonstrate that the appearance of the new windows would be acceptable. I cannot determine whether the new windows would be in keeping with the host property and the traditional architecture of the building or that their appearance would not diminish the character or appearance of the CA.
7. Any harm to the significance of a non-designated heritage asset will require a balanced judgement. However, it has not been sufficiently demonstrated that the proposed new windows would not have a harmful effect on the character or appearance of the host non-designated heritage asset and the CA or their significance. For this reason, the proposal should be resisted.
8. It is suggested that the impositions of a joinery details condition could deal with this matter. Given the above uncertainties I do not consider that it would be appropriate to rely on the imposition of a planning condition as there is no substantively clear indication that a condition would secure replacement windows of an acceptable design and form that would ameliorate the objections sufficiently to allow permission to be granted.
9. For these reasons, I am not satisfied that the proposal has demonstrated that harm to the host non-designated heritage asset building would not occur and that the character or appearance of the CA would be preserved or enhanced. Consequently, this brings the proposal into conflict with Policies ENV13 and ENV14 of the Ashford Local Plan 2030 that require, amongst other matters, proposals to preserve or enhance the heritage assets of the Borough and the character and appearance of the CA.
10. Policy ENV13 states that where a non-designated heritage asset is likely to be impacted, harm will be weighed against the public benefits of the proposal. The conversion of the public house to 1 dwelling would bring about limited public benefit as it would not make a significant contribution to the supply of housing within the Borough.

Community facility

11. Para 84 of the Framework indicates that planning policies and decisions should enable the retention and development of accessible local services and community facilities, with public houses amongst those listed. A public house is identified as a community asset within the Framework. This resists the change of use of public houses to residential in principle.
12. The appeal property is centrally located and is one of two public houses in the village. It is therefore within easy walking distance for residents of the village. Local objection has been raised to the loss of the public house, which is clearly valued by many in the local community.

13. The public house ceased trading in early 2021. The appellant subsequently bought the premises from the previous owner in July 2021 and in August of 2021 submitted a planning application seeking the change of use of the property to residential. It is said that the public house was unable to operate at a profit. Figures provided suggest this is indeed the case.
14. The Council advises that a rule of thumb is that a commercial enterprise is advertised for a period of at least 9 months through recognised agents specialising in the public house trade, at a price that is realistic for a new owner to take on the business. The property has been marketed by Fluretes, who specialise in public houses disposal sales, and that it was marketed for 16 months from 3 December 2019 and did not receive any serious offers for the continuance of the business operating as a public house. This marketing took place on their website and on other third-party websites, as well as by other email marketing. Although I have not been provided details of the marketed value of the premises, given the premises was advertised by public house marketing specialists I have no substantive reason before me that might lead me to question whether the marketed price was realistic.
15. It is explained that the Little Black Dog is restricted by its size, and this causes viability issues with providing food and drink. Compounding this is its location within walking distance of The Swan & Dog public house, which is a much larger, attractive, brewery led, public house that offers a far wider selection of facilities including its own car parking area. The limited size of the sales area of the appeal premises bar limits the number of customers. The staff remuneration is the single greatest expense in the running of a licensed premises and due to the small bar area, the potential for sales is overshadowed by the considerable staff expense. It is said that this expense alone will prevent the business from being profitable and this does not take into consideration any of the other standard operating expenses that any business of this nature will incur.
16. In addition to the above, the internal business areas, including the bar, cellar and kitchen would require a significant investment in order to simply start trading mainly due to the length of time the business has not been operating. The fixtures and fittings have deteriorated beyond economic repair, and the premises would require a substantial investment to replace all of the necessary equipment required. It is advised that the last tenant of the public house had vacated leaving behind numerous problems with the property and business and measures were put in place to keep the public house open whilst marketing was carried out.
17. Furthermore, it is highlighted that there have been a number of much larger public houses which have been forced to close in neighbouring villages, some of which are the sole remaining public house in the village, which suggests that the viability of a public house the size of The Little Black Dog is simply not practical.
18. The history of this public house with low level of use, its size and its poor infrastructure points to the premises not being a commercially sustainable enterprise either now or in the future. Consequently, the evidence leads me to conclude that the loss of this existing community facility would be unlikely to be avoided irrespective of those objectives of the Framework that seek to retain accessible local services and community facilities.

Other Matters

19. The Council has highlighted that the proposed development could have a negative impact on the Stodmarsh Lakes European Designated Nature Conservation Sites. Given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail.
20. Some concerns have been raised about the processing of the planning application. However, this is not a matter that is primarily before me in respect of this appeal but is an issue for the local planning authority in the first instance. In any event, these concerns would not lead me to alter my findings above.
21. The Council is unable to demonstrate a five-year supply of deliverable housing sites. The proposal would provide one family home. This is a benefit of the scheme, although being only one dwelling this would bring about limited social and economic benefit. However, the proposal has not demonstrated that it would not harm the host non-designated heritage asset, or the CA and I attribute significant weight to this.
22. Even if the shortfall is substantial and the housing land supply is acute, the limited social and economic of the proposal would not outweigh the significant potential harm to the non-designated heritage asset or the CA. Consequently, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

23. Whilst I have found in favour of the appellant in terms of the effect on the second main issue, this does not overcome the identified harm in relation to the first main issue. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR