



Appeal Decision

Site visit made on 7 September 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/F2605/W/22/3290905

The Old Waggon and Horses, Chapel Street, Shipdham IP25 7LB

- 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 Dodd against the decision of Breckland Council.
 - The application Ref 3PL/2021/0625/F, dated 20 April 2021, was refused by notice dated 6 October 2021.
 - The development proposed is demolition of old public house and retail and erection of 7 affordable dwellings, access and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description on the planning application form for the purposes of my banner heading. However, I have removed the superfluous references to 'Full planning application' and 'Chapel Street, Shipdham' as they are not a description of development.
3. At the time of my visit, the appeal site had been cleared of any former buildings, therefore the 'demolition of old public house and retail' had already taken place. The evidence before me indicates that the demolition works have been undertaken under a separate planning permission. I have considered the appeal on that basis.

Main Issue

4. The main issue is whether the proposal would be acceptable having regard to the requirements of local and national policy relating to community facilities.

Reasons

5. Paragraph 93 of The National Planning Policy Framework (the Framework) confirms that to provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should plan positively for community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments. It also states that decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.
6. Policies EC 05 (Town Centre and Retail Strategy) and Com 04 (Community Facilities) are consistent with the Framework and amongst other things

recognise that the importance of rural shops and facilities will be a material consideration in any application that would result in their loss. More specifically, Policy COM 04 (Community Facilities) of the LP sets out that proposals which result in the loss of local community buildings (most recently used for this purpose where the use has ceased), will not be permitted unless:

- it can be demonstrated that there is no local need for the facility or that its continuing function is no longer viable following appropriate marketing; or
 - an equivalent facility in terms of quality is provided to serve the same community in an accessible location.
7. The supporting text for Policy COM 04 states that proposals which would result in the loss of a community facility must demonstrate that efforts have been made to retain the facility and that opportunities for conversion to alternative community uses have also been explored. It then sets out the types of information that should be provided in such instances and these matters are pertinent to my considerations.
 8. The evidence before me indicates that the appeal site previously formed part of a wider site which was occupied by a public house, a commercial garage, and retail units including a fish and chip shop and a dog groomers. A comprehensive mixed-use scheme was most recently approved on the wider site under planning permission¹ and this included the provision of replacement retail units and a car garage on the appeal site. As part of the same permission, 8 dwellings and a convenience store were also approved on land adjacent to the appeal site.
 9. Whether or not all the former buildings were in use when the previous planning permission was granted, what is clear is they included community facilities defined in the Framework and development plan as well as other local services. The previously approved development retained a mixed provision of community facilities and local services on the appeal site and adjoining land. The appellant has also acknowledged that the appeal proposal would result in the permanent loss of retail units and a garage on the site. These are material considerations to which I attach significant weight and to which I find is directly relevant to how I apply Policy COM 04.
 10. The scheme before me is solely residential. The appellant contends that there are other existing community facilities in Shipdham including motor repair businesses, a store and post office, a café and a dog grooming business. Even so, this alone does not on its own justify a loss of community facilities and local services in Shipdham. The appellant's commercial statement dated July 2021 does not include any detailed marketing evidence to demonstrate that the previously approved buildings on the appeal site have not generated any interest for community facility and local service provision. From what I have seen, no consultation with the local community or local service providers has been undertaken in respect of possible alternative community uses for the replacement units to the uses that may have been originally envisaged.
 11. The evidence put forward relating to a lack of demand and vacant units relates to other locations in the district and is not specific to Shipdham. It is not clear

¹ LPA ref 3PL/2020/1005/VAR

why previous businesses on the appeal site closed and whether this related, for example, to the availability of leases for those tenants, the viability of those particular businesses or the suitability of the previous buildings.

12. Furthermore, the appellant's commercial statement includes an assessment of the viability of providing new retail units on the site taking into account construction costs and likely rental returns. However, this does not explain why the retail units would not be viable as part of the wider development they originally formed part of which remains in the appellant's ownership according to the site plan provided. Given the previous comprehensive approach to development on the wider site, I would have expected the wider associated costs and revenues to be factored into any viability appraisal and if not an explanation why this were the case.
13. With regards to a nationwide shift towards online retail, appropriate marketing and community consultation on the previously approved units may reveal demand for more niche local requirements that are not catered for online. Furthermore, there is nothing to suggest that scope for the multi-use of buildings or innovative ways of combining services and facilities has been explored. I am also aware that planning permission has been granted for 90 new homes to the north of the site². Increases in the local population have the potential to generate additional local need, but I am not aware that this has been factored into the appellant's assessment of need.
14. The convenience store on the adjacent site, would undoubtedly help to meet local needs for food and convenience shopping but I am less persuaded that it would be an equivalent replacement for the mix of community facilities and local services that previously occupied the site. In any case, the convenience store is yet to be delivered and given my other observations, it has not been proven that this would on its own cater for the overall local need for community facilities.
15. To conclude, and taking all the above considerations into account, I find that it has not been satisfactorily demonstrated that the loss of the site for the provision of community facilities would be justified. Therefore, the loss of community facilities on the site would be unacceptable and would conflict with the sustainable objectives of the development plan and the Framework.

Other Consideration

16. The details before me indicate that the dwellings would be 100% affordable units. Policy HOU 07 (Affordable Housing) confirms that where affordable housing is proposed, provision will be made through planning obligations to secure it and to ensure that it is available in perpetuity at an affordable price for future eligible households. The requirement for a planning obligation is also a matter referred to within the Council's report to its planning committee. The onus is on the appellant to provide an appropriate obligation, particularly given the premise of their proposal, yet this has not been addressed. Without an appropriate mechanism to secure the housing as affordable units, this substantially diminishes any weight which I am able to attach to this matter as a material consideration.

² LPA Ref 3PL/2013/0095

Other Matters

17. Since the Council issued its decision, Natural England (NE) has issued its overarching advice in respect of 'Nutrient Neutrality'. The Council has received a letter from NE concerning nutrient pollution in the protected habitats of the River Wensum Special Area of Conservation (SAC) and the Broads SAC and Broadland Ramsar site advising that new development with overnight accommodation has the potential to cause adverse impacts to the integrity of these protected habitats. The Council has confirmed that the appeal site is located within the Broads SAC. While it is working with other organisations in the region and landowners to develop a strategic mitigation scheme, presently there are no identified mitigation solutions in place.
18. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether or not the proposal could adversely affect the integrity of the protected sites, either alone or in combination with other plans and projects. This responsibility falls to me in the context of this appeal.
19. Had I been minded to allow the appeal, it would have been necessary to establish whether the proposal on its own or in combination with other projects would be likely have significant environmental effects on the integrity of the European sites including whether mitigation to achieve nutrient neutrality would be necessary and could be achieved. A Habitats Regulations Assessment would usually be required and this would need to be informed by the Nutrient Neutrality Methodology within NE's overarching advice.
20. Furthermore, the Norfolk Green Infrastructure and Recreational Impact Avoidance Mitigation Strategy (GIRAMs) (March 2021) sets out a requirement for a tariff to mitigate the recreational impacts of development on the districts protected sites. This equates to £185.93 per dwelling. I accept that this is not a matter on which the Council refused planning permission. Even so, the appellant has been made aware of this matter within the Council's statement of case but has not provided a planning obligation making provisions for this requirement.
21. In any case, it has not been necessary for me to pursue these matters any further as a finding that the proposal would not have an adverse effect on the integrity of the European sites, with or without any mitigation, would be a neutral matter in the planning balance. Furthermore, I am dismissing the appeal for another reason and so it has not been necessary for me to consider this matter any further.

Conclusion

22. Paragraph 12 of the Framework confirms amongst other things that the development plan is the starting point for decision making and where a planning application conflicts with an up-to-date development plan, permission should not usually be granted unless material considerations in a particular case indicate that the plan should not be followed.
23. There is no dispute that the local planning authority is able to demonstrate a five-year housing land supply. In any case, a suitable mechanism to secure the proposed affordable housing has not been provided.

24. I have concluded that the loss of community facilities on the site would be unacceptable and would conflict with the development plan and national policy. In the context of the Council's positive housing land supply position, the conflict with the development plan amounts to very significant harm and the other considerations do not clearly outweigh this conflict.
25. Therefore, and for the above reasons, on balance I conclude that the appeal should be dismissed.

M Russell

INSPECTOR