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## Appeal Decision

Site visit made on 22 February 2023

**by David Spencer BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 13<sup>th</sup> March 2023**

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**Appeal Ref: APP/K2610/W/21/3285482**

**82b Lower Street, Salhouse, Norwich NR13 6AD**

- 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 Ray Stowers against the decision of Broadland District Council.
  - The application Ref 20210420, dated 3 March 2021, was refused by notice dated 30 April 2021.
  - The development proposed is change of use from shop/café (A1/A3) to dwelling (C3).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The description of the development proposed in the decision banner above is taken from the Local Planning Authority's (LPA) decision notice which I consider more accurately describes what was applied for.
3. Since the Local Planning Authority (LPA) made its decision, there have been material changes in circumstance relating to protected habitats. This includes likely significant effects arising from new residential development in connection with recreational pressure and disturbance at various habitats across Norfolk. As such Broadland District Council has adopted the Norfolk Green Infrastructure and Recreational Impact Avoidance and Mitigation Strategy (GIRAMS) which, as of 1 April 2022, seeks a per dwelling tariff payment as appropriate mitigation to avoid any adverse impacts. There is also the matter of nutrient neutrality and the Government's correspondence of 16 March 2022 which followed Natural England advice regarding nutrient pollution on the separately protected habitats of the Broads Special Area of Conservation (SAC) and the River Wensum (SAC). I deal with this under 'Balance and Habitats Regulations' below.

### Main Issues

4. The main issues in this appeal are:
  - (i) the effect of the loss of the existing premises on the provision of local community facilities in the area; and
  - (ii) whether the proposal would provide acceptable living conditions for future occupiers having regard to internal space.

## Reasons

### *Loss of existing premises*

5. The appeal building was originally constructed to serve as a sorting office for what was the adjacent post office. Previous proposals to convert the appeal building at No.82b Lower Street were assessed by the LPA on the basis of the building providing a shop/café function. The appellant states that the building opened as a post office/café in August 2014 and that the use ceased trading at the end of August 2017. The building has subsequently remained vacant although elements of its former use remain on the external street façade of the building and internally from looking in through the windows.
6. The LPA describe the existing lawful use as shop/café and ascribed it an A1/A3 use class. In July 2020 the Town and County Planning (Use Class) (England) was amended, with effect from 1 September 2020 (i.e. before the planning application was submitted), to revoke part A of the order and introduce new use classes. I note in correspondence with the appellant in an email of 29 April 2021<sup>1</sup> that the LPA categorise No.82b as now falling within Use Class E on the basis of its primary lawful use being post office/shop. On the written evidence before me and from what I observed on site, including references to the former café use, I consider the appeal building is within Use Class E. I note the nearby Prima Rosa café premises in another part of the former post office complex at 82 Lower Street but I have not been advised that there is an alternative shop or post office counter elsewhere in Salhouse. As such the appeal building presents an opportunity to accommodate a small community facility use for the village given its planning history and lawful use.
7. There is a significant amount of material before me regarding whether the building is an Asset of Community Value (ACV) under Part 5, Chapter 3 of the Localism Act 2011. There is no evidence, such as an extract from a published register, to definitively conclude that the building is currently an ACV. At the time the LPA made its decision it reported that ACV status would expire on 26 March 2022. On the evidence before me I have determined the appeal on the basis that it is not an ACV. That said, ACV status only has weight as a material consideration and should not detract from the important starting point for determining all planning proposal which is, in law, the development plan.
8. Policy CSU2 of the Broadland Development Management Development Plan Document 2015 (the DMDPD) seeks to avoid the loss of local services and to only allow for changes of use in exceptional circumstances where it has been demonstrated that the use is no longer viable. The context for the policy at paragraph 9.12 of the DMDPD refers to community cohesion and vitality and guarding against the loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. Paragraph 9.14 of the DMDPD states that applicants proposing to change the use of an existing community facility and local service are advised to agree a marketing strategy and it is expected that such marketing should be for at least 12 months and the premises is marketed at a realistic price. Policy EMP1 of the Salhouse Neighbourhood Plan 2017 (the SNP) is more widely drawn and refers to retaining existing businesses and commercial uses subject to caveats, for example, the existing use is not viable.

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<sup>1</sup> Appellant Final Comments, Appendix A, page 6

9. The appellant submits that the building has been marketed by the owner 'for sale' since April 2016 and that a 'for sale' sign has been on the property for at least 4 ½ years (as of Autumn 2021). The appellant has also provided photographs of an advert on Parish Council notice boards and limited receipts from 2017 for this. The appellant further submits that the LPA does not have a transparent policy on the marketing strategy necessary to satisfy the requirements of Policy CSU2 and despite the disputed ACV status the Parish Council have not attempted to purchase the building, including under any 'Right to Bid' process. Be that as it may, the limited approach of an unassuming 'for sale' sign at the premises (based on the photographic evidence provided by the appellant) and on a parish notice board does not in my view comprise a valid testing of the market or a sufficiently compelling demonstration that the building is not viable for another commercial or community enterprise. Local advertising within Salhouse would not attract wider interest, including from those further afield with a track record in running local community businesses. Furthermore, I do not consider the references to local press coverage concerning the ceasing of the last use at the appeal site to constitute some kind of wider marketing.
10. There are no details (records) of what interest, if any, the modest local signs attracted or whether the owner received or rejected any reasonable offers on the basis of the lawful planning use. I would have anticipated some published marketing details over the requisite 12 months period, including with a reputable agent who has an established track record in the local commercial property market. Given No.82b presents an opportunity to secure a local facility / community use it warrants a 'fair crack' at testing the market, irrespective of any 'Right to Bid' process under the ACV regime. This has not been done, despite the passage of time since the last use ceased trading.
11. There is before me a degree of local support for the appeal proposal and for the building to be allowed to be converted for residential use. Some of these representations also raise scepticism about the prospect of a shop/café use being viable in Salhouse given the proximity of Norwich and the prevalence of internet retail. The appellant also refers to a study including nearby Hoveton that revealed significant retail expenditure leakage to Norwich. On the other hand, the reasonable size of Salhouse village, the presence of other viable community facilities such as the public house and the need to reduce car dependency, all point to it being reasonable to suitably test whether there would be interest or demand for a local facility or community retail use at the appeal location. It would be for a marketing strategy of the premises to test this and so I give only very limited weight to the local representations in support of the appeal proposal. The appellant also refers to the conversion of No.82a Lower Street to residential from what was part of the original post office/ shop complex (Tookes). The LPA submits this occurred in 2006 and so predated the current development plan requirements and latest national planning policy. As such I give very limited weight to the conversion of No.82a as setting a precedent for the appeal proposal.
12. The appellant further submits that a residential use would support the local economy (local spend etc.) in contrast to the vacant condition of the building, including references to a past attempt to secure a holiday let use. The fact that the building has been vacant for so long is not in itself a reason to circumvent the development plan requirements and to appropriately test whether there would be commercial interest in the building. I am also advised

that the vacant building has attracted anti-social behaviour but there is very little to corroborate this. Accordingly, I do not consider the current condition of the building to be a material consideration that outweighs the need to appropriately test the potential of the building for a community facility or local service.

13. I therefore conclude that the appeal proposal would result in the harmful loss of the existing premises without appropriately testing the potential and viability to provide for local facilities in the building. Consequently, the proposal would be contrary to Policy CSU2 of the Broadland DMDPD and Policy EMP1 of the SNP. It would also fail to accord with paragraphs 84 and 93 of the National Planning Policy Framework (NPPF) which seek to support both a prosperous rural economy and healthy communities more generally. This includes, amongst other things, retaining accessible local services and facilities including local shops and local services to enhance the sustainability of communities.

#### *Living Conditions*

14. Based on the submitted plans, the appeal building has a maximum gross internal floor area of 32 square metres (sqm). The Nationally Described Space Standard (NDSS) for a one bedroomed unit is 37sqm, on the basis of a single person occupancy. As such the appeal proposal would fall short on the very minimum gross internal floor area considered suitable for a decent level of inhabitation, including suitable space for storage and sufficient circulation. The appellant refers to developments approved in London for very small studio flats that were below the NDSS for a 1 bedroomed unit but I have very little information on the circumstances under which they were approved and how applicable such small studio accommodation would be in a rural village location such as Salhouse. As such they do not provide a basis for contemplating an unsatisfactory standard of residential accommodation at the appeal location.
15. Whilst I recognise not everyone seeks a conventional property and smaller homes have an important role to play in meeting housing need, including the housing mix encouraged by Policy H2 of the SNP and providing for more affordable accommodation, the appeal building is ultimately too small to provide a satisfactory standard of residency. It would provide for a very confined and restricted single space for all living, cooking and sleeping, together with an unappealingly parsimonious arrangement for toilet and shower. Once curtilage land is taken to provide an off-street vehicle parking space, there would be no meaningful outside amenity space to compensate for the cramped internal living space, especially in warmer (hot) summer months. This adds to my concerns about the substandard residential accommodation that would result from converting the small building at No.82b.
16. The appellant emphasises the nearby development at 70 Lower Street (The Old Reading Room) as setting a comparable precedent for the appeal proposal. The LPA disputes the appellant's floorspace figures (24sqm) and asserts No.70 has a floor area closer to 48sqm. From my observations, No.70 is visibly a slightly larger building compared to the appeal site and I also saw that it appears to benefit from a small private amenity area at the rear for sitting out. Overall, I find No.70 provides no comparable basis for justifying the substandard accommodation proposed at the appeal site. I am also referred to the adjacent 82a Lower Street but as the LPA point out this conversion of part of the former post office premises included various alterations to raise the

building to create the necessary living space and provided for a small private garden area. As such I find that the arrangement at No.82a has not set a precedent that supports allowing the poor standard of accommodation proposed at the appeal building.

17. I therefore conclude that the appeal proposal would not provide acceptable living conditions for future occupiers having regard to internal space. It would be contrary to Policy GC4 of the Broadland DMDPD which requires development to meet the reasonable amenity needs of all potential future occupiers. It would also fail to accord with paragraph 130(f) of the NPPF which states that development should promote health and well-being, with a high standard of amenity for future users.

### **Balance and Habitats Regulations**

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that decisions should be determined in accordance with the development plan unless material considerations indicate otherwise. On the two main issues in this appeal the proposal would cause significant harm contrary to relevant development plan policy requirements. These policies are in accordance with national planning policy and therefore they are up-to-date and carry full weight. There are no material considerations before me sufficient to outweigh the conflict with the development plan policies identified.
19. As set out above circumstances have now changed since the LPA made its decision in respect of likely significant environmental effects arising from an additional dwelling at the appeal location. These effects would be relation to both recreational pressure and disturbance and water nutrient levels on the qualifying features of protected habitats. As such the appeal proposal should be subject to a Habitats Regulations Assessment (HRA) to consider whether any adverse effects could be suitably mitigated. However, because the appeal proposal would be contrary to the development plan on the two main issues identified in this appeal, these provide clear reasons to refuse the development. Accordingly, I consider it would not be judicious or a prudent use of resources to invite and consider HRA mitigation proposals from the appellant. Even if a positive HRA outcome could be established in this case, that would be a lawful requirement to enable a development to cautiously proceed (and so neutral in any planning balance). It would not override or counterbalance my separate conclusions of harm on the main matters in the appeal.

### **Conclusion**

20. I have had regard to all other matters raised, but there is nothing that leads me to conclude other than that the appeal should be dismissed for the reasons given.

*David Spencer*

Inspector.