



Appeal Decision

Site visit made on 14 June 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 21st August 2023

Appeal Ref: APP/M2270/W/22/3302890

The Castle Inn, Crook Road, Brenchley, Tonbridge TN12 7BN

- 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 Kevin O'Connell against the decision of Tunbridge Wells Borough Council.
 - The application Ref 22/00277/FULL, dated 18 January 2022, was refused by notice dated 21 March 2022.
 - The development proposed is change of use and conversion of Public House A4 use (at ground floor) into Residential C3 use to create a single dwelling with the residential unit above.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner is taken from the application form. I have removed wording that does not relate to acts of development.
3. Following the determination of the planning application the Brenchley and Matfield Parish Neighbourhood Development Plan 2020-2038 (BMNDP), August 2022, has been made. The council has referred to the BMNDP within their appeal statement and the appellant has had an opportunity to respond to these comments in their final comments. Notably, the BMNDP now forms part of the development plan and therefore the appeal proposal must be assessed against it. I am therefore satisfied that in the interest of natural justice, the appellant is not prejudiced by me considering the policies within the BMNDP.

Main Issues

4. The main issues are:
 - whether the principle of the proposed development is acceptable; and,
 - the effect of the proposed development on the setting of the Grade II listed Castle Hill Cottages, Hatchways and Ashmede and a non-designated heritage asset, Castle Inn.

Reasons

Principle of development

5. The Castle Inn is a public house which is both a community asset and a commercial use. BMNDP Policy BE1 explains that proposals for redeveloping sites in commercial and employment use for residential use should provide independent evidence that there is no market demand for suitable employment

uses on the site, either for continuing a similar business or for an alternative commercial use. Policy BE1 goes on to state that proposals should demonstrate that the site has been proactively marketed for similar and alternative commercial uses over a period of at least 18 months.

6. Policy CR13 of the Tunbridge Wells Borough Local Plan (LP), March 2006, indicates that proposals that would result in the loss of a community facility within, or within or a 400m distance, from the defined Limits to Built Development will not be permitted subject to specific exceptions. The appeal site is remote from the defined limits of Brenchley and therefore LP Policy CR13 neither weighs in favour or against the appeal proposal.
7. The appellant has provided trading accounts over a number of years which show that the public house has either made a very modest profit or a loss. In particular, the accounts show a decline in sales over the last few years. Although interested parties have questioned the commerciality of the ongoing operation of the public house, the appellant's evidence indicates that the site has been the subject of significant renovations and alterations as well as hosting special themed nights. Based on the submitted accounts it appears as though this work has had negligible effect on the revenue, and in fact sales have continued to decline.
8. It is also acknowledged that the Coronavirus pandemic and resultant lockdown and restricted operating rules would have affected the public house's financial performance. The viability of the public house would continue to be affected by the prevailing economic conditions affecting the hospitality industry, including the rise of energy costs. Given the limited extent of the profit generated, and in some circumstances the loss, I consider that it has been demonstrated that the current operation of the public house is not viable. The Council also came to the same conclusion.
9. The appeal property has been marketed by an agent on both their residential and commercial databases for an extended period and has appeared on websites such as Rightmove. The asking price has been reduced on two occasions and the appellant accepted an offer below the reduced asking price but the buyer pulled out of that transaction. The only other offer was conditional on planning permission being granted for a residential use.
10. Nevertheless, I have not been provided with any evidence that either the original or reduced asking price reflects the market value. The property has been marketed by a sole agent; the appellant has also not provided evidence of an alternative valuation. Also, it has not been demonstrated that The Castle Inn has been marketed by a trade specific agent or offered to be let.
11. The parties have referred to Policy ED12 of the Submission Local Plan, Tunbridge Wells Local Plan (SLP). This policy does not yet form part of the development plan. In accordance with paragraph 48 of the National Planning Policy Framework (the Framework), I have been provided with evidence that the policy has been subject to an initial examination which resulted in a minor wording change, also there has been limited objections to the policy. Consequently, I afford moderate weight to this policy.
12. SLP Policy ED12 indicates the proposals which would result in the loss of a local facility or service will not be permitted subject to a criteria. For commercial uses it must be demonstrated that the site has been the subject of appropriate

marketing for a period of at least 18 months and subject to at least two independent valuations. The previous planning application for the same development was withdrawn as it was not marketed for longer than 18 months, this has now occurred. However, for the reasons given above, I consider that the appeal property has not been appropriately marketed. The appeal proposal would therefore conflict with SLP Policy ED12.

13. I acknowledge that the demand for rural public houses has been in steady decline and there has also been a general decline in the number of public houses over the last ten years. In this instance, the appeal site is in a remote location, serving a small hamlet and therefore there may be little footfall and a potential small customer base, as demonstrated by the customer numbers provided. Also, the public house only has a small external area. However, it has not been demonstrated that the public house has been appropriately marketed. Therefore, I cannot conclude that there is no demand to continue to operate The Castle Inn as a public house.
14. The appellant contends that the absence of a listing as an asset of community value, also shows there's little interest in the public house. A lack of a listing does not indicate that there is little interest. In any event, public houses are identified as community facilities within LP Policy CR13, albeit that policy does not apply in this instance due to the appeal site's location.
15. Two other public houses within the locality of the appeal site have been referred to in the officer's report as the closest alternative public houses to The Castle Inn. Notwithstanding, the alternative public houses are some distance away and primarily serve Brenchley and not Castle Hill. The provision of these public houses is therefore not considered to be a suitable alternative to the Castle Inn.
16. The appellant contends that parallels can be drawn from the planning permission (ref. 20/03713/FULL) to convert the Green Cross Inn to a residential use. However, I have not been provided with the most pertinent details of that application including why a marketing exercise was not required. I therefore cannot draw any parallels from that example.
17. The appellant has highlighted LP Policy H13 which identifies that the change of use of a listed building, a building whose loss would be detrimental to the character of the countryside, or a building which is in keeping with its surroundings will be permitted where it conforms with the specified criteria. It is not disputed by either party that the proposal accords with this policy. Regardless, this does not alter my overall conclusion on the acceptability of the appeal proposal.
18. In these circumstances, the principle of the proposed development is not acceptable. The appeal proposal would therefore be contrary to core policies 7, 8 and 14 of the of the Tunbridge Wells Borough Local Development Framework, Core Strategy, Development Plan Document (CS), June 2010. These policies seek to safeguard buildings in existing employment use; resist the loss of community facilities as far as practicable and resist the loss of local services, including community facilities in villages.
19. The appeal proposal would also be contrary to paragraphs 28, 84, 92 and 93 of the Framework, which indicate that non-strategic policies can allocate the provision of community facilities at a local level; planning decisions should

enable the retention of community facilities; planning decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other; and to provide the social facilities and services the community needs decisions should plan positively for the provision and use of public houses.

20. The Council has indicated that the appeal proposal is also not in accordance with the Planning Practice Guidance (PPG) but has not specified the area of the guidance it contradicts, and it is not immediately obvious. Without further evidence, I cannot conclude that the proposed development is not in accordance with the PPG.

Heritage assets

21. Castle Hill Cottages, Hatchways and Ashmede are all Grade II listed buildings and are located within Castle Hill. The appeal site is located within the setting of these buildings and, therefore, I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving the setting of these listed buildings. The Council has also indicated that The Castle Inn is a non-designated heritage asset.
22. Hatchways and Ashmede were likely built in the early 17th century and Castle Hill Cottages were built in the early 19th Century. The significance of these buildings, in part, derives from their aesthetic value due to their age and architecture, as well as their setting within the relatively tight knit hamlet of Castle Hill.
23. The Castle Inn is located at the centre of the hamlet, at the junction between Crook Road and Pearsons Green Road. Based on the evidence before me, a public house has been a focal point for the hamlet since the early 19th Century and would have served workers at the nearby brickworks as well as travellers. It would have also had a functional relationship with nearby residents including those within the listed buildings.
24. The change of use from a public house to a private residential dwelling would alter the character of the hamlet and it would lead to the loss of a focal point within Castle Hill, and the relationship between the public house and listed buildings. This would harm the setting of the listed buildings.
25. Given the scale and nature of the proposal, the harm would be 'less than substantial.' In accordance with paragraph 202 of the Framework, I must weigh the less than substantial harm that I have identified against the public benefits of the proposal. In doing so, paragraph 199 of the Framework explains that great weight should be given to the conservation of the designated heritage asset.
26. There would be some economic benefits during the construction phase through employment; however, these would be short-term. The proposal would lead to a home capable of accommodating a family which the existing apartment may not be capable of doing. However, the need for family accommodation in the area has not been demonstrated. I therefore attach modest weight to these public benefits.

27. Paragraph 202 of the Framework explains, where appropriate, the benefits of securing the optimum viable use should be considered. I cannot conclude that a residential use would be the optimum viable use, as the appeal has not been marketed for any use other than residential and as a public house. As such, this does not affect my assessment of the public benefits.
28. Paragraph 203 of the Framework explains that the effect of an application on the significance of a non-designated heritage asset should be taken into account and in weighing applications that directly affect non-designated heritage assets, a balance judgement will be required having regard to the scale of any harm and the significance of the heritage asset. As detailed above, the significance of The Castle Inn as a non-designated asset includes its historic use as a public house. The proposed development would cause significant harm to the non-designated heritage asset as it would lead to a change of use.
29. Whilst The Castle Inn has been the subject of several extensions and alterations, the harm caused to the setting of the listed buildings is not related to the appearance; instead, it is related to the proposed use. Therefore, it is rational for the Council to consider that extensions and alterations to the building would not affect the setting of the listed buildings, but the change of use would.
30. The harm I have found in respect of the effect of the proposal on the significance of the setting of the Grade II listed buildings and to the non-designated heritage asset would not be outweighed by the modest public benefits identified. I therefore conclude that the proposed development would have a harmful effect on the setting of the Grade II listed Castle Hill Cottages, Hatchways and Ashmede and a non-designated heritage asset, Castle Inn. It would therefore be contrary to CS Core Policy 4 which indicates that the borough's heritage assets will be conserved and enhance, and special regard will be had to their settings. It would also be contrary to paragraph 202 of the Framework for the reasons given above.

Other Matters

31. The appeal site is located opposite the High Weald Area of Outstanding Natural Beauty (AONB). Paragraph 176 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONBs.
32. The proposed development includes limited external works and would result in a dwelling within the hamlet of Castle Hill. In views toward and out of the AONB the appeal property would be viewed alongside other residential properties and would be similar in appearance to neighbouring properties. The proposed development would therefore conserve the landscape and scenic beauty of the AONB.
33. The appellant has indicated within the Planning Statement that the Council cannot demonstrate five years of deliverable housing land supply. Notwithstanding, the appeal proposal would not lead to additional dwellings and therefore the Council's housing land supply position neither weighs in favour or against the proposal.
34. A lack of an effect by the proposed development on the living conditions of neighbouring residents and the provision of a property to provide an internal

layout which complies with the nationally described space standard are neutral factors.

35. The appellant has indicated that some of the objectors do not live close to the appeal site. Regardless, comments are welcomed on planning application from members of the public regardless of where they are located.

Conclusion

36. The principle of the proposed development is not accepted, and it would have a harmful effect on the setting of three listed buildings and a non-designated heritage asset. I attached substantial weight to these findings against the appeal.
37. In this case the proposed change of use would allow an existing occupier with a protected characteristic to close their business and remain living within the appeal property. I sympathise with these circumstances; nonetheless, I have not been provided with evidence that the appeal scheme is the only feasible option to achieve the appellant's aims, therefore, while I acknowledge the benefits that the proposed change of use could bring, these attract moderate weight.
38. I have had due regard to the Public Sector Equality Duty set out under s149 of the Equality Act 2010, but the harm caused by the development outweighs its benefits, in terms of eliminating discrimination against people with protected characteristics, advancing equality of opportunity for those people and fostering good relations between them and others. I conclude that it is proportionate and necessary to dismiss the appeal.
39. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
40. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR