



Appeal Decision

Site visit made on 11 October 2023

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Appeal Ref: APP/P1133/W/23/3320229

Dolphin Inn, Fore Street, Kenton, Devon EX6 8LD

- 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 Philip Dare, Dare Utility Services Ltd, against the decision of Teignbridge District Council.
 - The application Ref 22/01006/FUL, dated 19 May 2022, was refused by notice dated 23 March 2023.
 - The development proposed is described as Sub-division of part of the public house to form a new dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Dare Utility Services Ltd against Teignbridge District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development in the banner heading above comes from the planning application form. However, the appeal form indicates that the description changed from that stated on the application form to: 'Sub-division of part of the public house to form a new dwelling, demolition of two storey rear extension and erection of single storey rear extension, demolition of lean-to side extension to form new beer garden and bin store, installation of new door on front elevation, installation of new first floor window on front elevation and replacement gates to front'. This wording reflects the description in the Council's Decision Notice and better captures the development's scope. I have therefore considered the appeal on this basis.
4. The Planning Inspectorate's Procedural Guide (Planning Appeals – England) sets out that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Council and by interested parties at the application stage. However, in seeking to resolve the Council's concerns and reasons for refusal, the appellant submitted amended plans with the appeal. Whilst the Council also received those amended plans prior to determining the planning application, it made its decision based on the plans listed on the Decision Notice and not the amended plans.
5. The amended plans, which include another new door on the front elevation and moving the bin store door, would change the external appearance of the

building and mean that the above description of development would no longer be accurate. The proposed amendments therefore equate to a fundamental change to the original scheme and constitute a different proposal. In addition, accepting amendments at appeal stage could deprive those who were entitled to be consulted on the application of the opportunity to make any representations that, given the nature and extent of the changes proposed, they may have wanted to make on the amended scheme. Taking the amended plans into account could therefore also prejudice other parties' interests. Consequently, I have determined the appeal on the basis of the proposal determined by the Council, as per the plans listed on the Decision Notice, and have not taken the amended plans into account.

Main Issues

6. The main issues are:

- Whether the public house use would be of sufficient quality; and
- The safety of future occupiers of the proposed development during flooding, with particular regard to access and egress.

Reasons

Quality of public house

7. Although closed and unoccupied, the appeal site contains the Dolphin Inn public house and, as described in the submitted Planning, Design and Access & Heritage Statement, ancillary owner/manager accommodation. As per the existing floor plans, the existing accommodation is accessible through the pub (via its kitchen) and independently via the building's eastern front door which leads to two doors, one into the pub and the other a separate private entrance to the accommodation. It was clear to me on my site visit that this allowed the occupiers to have direct access to the pub as necessary and sufficient privacy and separation from it when they were, for example, not working.
8. The submitted plan titled 'Proposed plans & section - conversion' (PL11 Rev A) shows that occupiers of the owner/manager accommodation within the proposed development (the reconfigured flat) would have to access the accommodation by going through the pub. This would involve passing through the pub's kitchen after having entered via the building's existing western front door (which leads directly into the pub) or new pub garden entrance and walking through either a dining room or main bar and a hall leading to customer WCs.
9. With occupiers of the reconfigured flat only able to access their home by walking through the pub, the proposed development introduces a risk of conflict between the commercial use of the pub and the residential use of the reconfigured flat. This is particularly the case in relation to the pub kitchen, which may be a busy, hot and potentially hazardous environment at times and would thus not provide a suitable or safe residential access. It seems to me that the need for occupiers of the reconfigured flat to walk through public parts of the pub could also prove to be awkward, with for example occupiers potentially having to trapse past customers with grocery shopping, paraphernalia for a day trip etc.

10. The Council has not alleged that the pub's layout or overall space would of itself be unsatisfactory or insufficient for it to operate. I also recognise that the reconfigured flat would provide residential accommodation ancillary to the pub use and that it would be for the pub's owner or manager. However, the sole access to the reconfigured flat being via the pub would result in an uncomfortable conflation of different activities, to the detriment of the pub's quality. This poses a risk to its successful operation and thus its viability, particularly given that the available evidence indicates that the access would also not comply with building regulations. The similar layout of the approved 2016 scheme does not lead me to a different conclusion.
11. Although the appeal proposal intends to retain a public house use on the site, I conclude for the reasons above that the public house would not be of sufficient quality, with its viability put at risk by the development proposed. I therefore find that it does not accord with what Policy WE12 of the Teignbridge Local Plan 2012-2033 (LP) and Policy K HW1 of the Kenton Parish Neighbourhood Plan 2018-2033 (NP) seek to achieve. Amongst other aspects, this includes the general quality of community facilities being considered in proposals, the facility being of equal or higher quality, and a range of services within an area being maintained. The proposal would also be inconsistent with the provisions in the National Planning Policy Framework (Framework) in relation to promoting healthy and safe communities.

Flood risk

12. While the eastern section of the appeal site is situated within Flood Zone 1, the western section is within Flood Zones 2 and 3. The submitted Flood Risk Assessment (FRA) includes various flood mitigation measures for the proposed development. Access to the new separate, self-contained flat would be via the building's eastern front door. Given that flat and its entrance would be in Flood Zone 1, and on the basis of the submitted evidence, access to the new flat would therefore be acceptable in relation to flood risk and safe access/egress for future occupiers of that unit. However, even though the reconfigured flat would not itself be at risk of flooding given its position on the building's upper floors, access to it, via the building's existing western front door and/or new pub garden entrance, would be within Flood Zones 2 and 3.
13. The Framework identifies that development should only be allowed in areas at risk of flooding where it can be demonstrated that, amongst other aspects, safe access and escape routes are included where appropriate. The Planning Practice Guidance (PPG) also identifies the need to manage residual risk by providing safe access and escape routes and considering the ability of residents to safely access and exit a building (through the voluntary and free movement of people) during a design flood. Access during a flood event is clearly an important issue and, as per the Environment Agency's standing advice on preparing FRAs (accessible via the PPG), the provision of dry refuge does not negate the need to demonstrate safe access. Although emails between the Council's Planning Officer and drainage team during the application process referred to the need to provide safe access or dry refuge, the drainage team's formal written consultation response does not indicate that it would be acceptable for just one of either safe access or dry refuge to be provided.
14. With the reconfigured flat only being accessible via Flood Zones 2 and 3, there is a clear risk that occupiers may not be able to safely enter or leave their

accommodation during a flood. Being on the building's upper floors, occupiers could seek refuge within it during flooding, whilst a personal flood plan could also be created, as per the example shown in part 2 of the FRA. However, without sufficient details to indicate otherwise, it is not clear that people would be able to safely leave or access the reconfigured flat during a flood (with or without help) if it were necessary. For example, an unexpected health issue may require the occupiers to leave their accommodation to seek urgent medical attention, whilst those who may be vulnerable, disabled or have poor health in general may need to have safe access at all times.

15. The lack of details relating to how safe emergency access and egress for the proposed reconfigured flat could be provided mean that it is not possible to confirm the safety of future occupiers of that unit during flooding. The ability of future occupiers to take refuge in the flat during flooding and to sign up for flood warnings, and that flood gates could be provided, do not resolve this. In coming to this view, I have taken into account that the recent flooding of Kenton and the site may have been an extreme and unprecedented event, that the flood water may not have been fast flowing and that people (including rescuers) were able to move around during the flood. Whether the flood mitigation measures proposed, including flood gates and/or flood doors, would have been successful do also not lead me to a different conclusion.
16. For the reasons above, I cannot conclude that future occupiers of the reconfigured flat would be safe during flooding, with particular regard to access and egress. I therefore find that the proposed development does not accord with LP Policy EN4. Amongst other aspects, this sets out that development within flood zones 2 and 3 will be permitted only where it demonstrates occupants' safety in a flooding event.

Other matters

17. I recognise that a similar proposal was granted planning permission in 2016. Although the LP was adopted then, that permission is no longer extant and does not indicate that the appeal proposal, which I have determined on basis of submitted evidence and existing policy and guidance, is acceptable.
18. The appeal site is within 10km of the Exe Estuary Special Protection Area and Dawlish Warren Special Area of Conservation. In combination with other plans and projects, the addition of residential units within this area would be likely to have a significant effect on the designated sites' interest features due to increased recreational disturbance. Appropriate mitigation needs to be secured for such development in accordance with LP Policies EN9 and EN10. In this regard, although I note that the appellant wants their financial mitigation contribution for a different scheme to be applied to the appeal proposal, there is nothing before me (such as a planning obligation or similar mechanism) to secure it as mitigation for the development proposed. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further because it would not lead me to a different decision.
19. The site is within the Kenton Conservation Area (CA) and there is a group of grade II listed buildings (Trinity Cottage, the Corner Shop and house adjoining Trinity Cottage at the north west) on the opposite side of the highway. The CA is significant for, amongst other aspects, its medieval heritage, the village's layout and its vernacular buildings and 19th century architecture. The listed buildings are notable for, amongst other things, their age, finish and

architectural features, and their position in the centre of Kenton. The Council does not allege that the development would have an adverse effect on the CA or the listed buildings and their settings. On the basis of the available evidence, I have no reason to disagree. Accordingly, I am satisfied that the appeal scheme would preserve the significance of the designated heritage assets, including in relation to the character and appearance of the CA and the listed buildings' settings and any features of special architectural or historic interest which they possess.

20. With the available evidence indicating that the Council cannot demonstrate a sufficient supply of deliverable housing sites, the approach set out in paragraph 11d) of the Framework applies. However, the Framework is clear that in such circumstances, permission should be granted unless the application of its policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; and this includes, as per footnote 7, areas at risk of flooding. Given my findings above, there is thus a clear reason for refusing the development proposed. The presumption in favour of sustainable development is therefore not applicable in this instance.

Planning Balance

21. I have found that the retained public house would not be of sufficient quality due to the reconfigured flat only being accessible via the pub; and that it has not been demonstrated that future occupiers of the reconfigured flat would be safe during flooding with particular regard to access and egress. On the basis of the submitted evidence and the proposal not according with various adopted development plan policies, this leads me to conclude that it conflicts with the development plan as a whole.
22. The building is currently vacant and has had no beneficial use since the pub closed due to the coronavirus pandemic. The appellant's submissions indicate that substantial investment is required to re-open the pub and provide an attractive interior and kitchen that would meet the necessary standards.
23. The appeal proposal would generate income and provide the investment necessary to upgrade and re-open the pub, which is an Asset of Community Value but is said to be no longer viable and its use effectively lost. By retaining and re-opening a pub, the development proposed would benefit the community by re-providing a valued asset. This would align with the Framework's support for the retention and development of community facilities; and its direction to guard against the unnecessary loss of valued facilities.
24. The proposed development would provide an additional three-bed windfall dwelling. This would contribute to the supply and mix of housing in the district, which is in short supply. Located within the settlement boundary of Kenton and close to public transport and various services and facilities, the new unit would also be in an accessible location and support the vitality of the community.
25. Bringing the building back into use, combined with the use of appropriate external materials, the appeal proposal would reverse the building's deteriorating external appearance through lack of maintenance since the pub's closure. This would stop the building from falling further into disrepair whilst it remains vacant and prevent it from beginning to detract from the character and appearance of the surrounding area and its designated heritage assets. Furthermore, the removal of the piecemeal extensions at the rear of the

building, which are visible in public views, would improve the site's appearance and thus its contribution to the character and appearance of the Kenton CA and setting of the nearby group of listed buildings.

26. The appeal proposal would therefore deliver some clear social, economic and environmental benefits. It would also re-use a disused building and underutilised brownfield land without harming the character and appearance of the building and locality. Furthermore, although a previous scheme was found to be unacceptable in relation to the quality and size of the replacement pub proposed, the Council has not alleged that the reconfigured pub's layout or overall space, as per the appeal proposal, would be inadequate. On the basis of the submitted plans and available evidence, I have no reason to disagree. However, with the reconfigured flat only being accessible via the pub, the proposed development would create an awkward and unsatisfactory convergence of different activities, to the detriment of the pub's quality.
27. The appeal proposal cannot therefore reasonably be described as providing, in the words of NP Policy K HW1, a community facility of equal or higher quality, whilst the benefits associated with the re-opening of the reconfigured pub, and for example its improved interior and kitchen compared to the existing situation, are therefore also lessened. My above findings in relation to this matter also identify a risk to the pub's successful operation. This indicates that the appeal proposal may not result in a viable business, and the proposal's other benefits do not, as required by LP Policy WE12, outweigh this. Furthermore, the lack of safe access and egress to the reconfigured flat during flooding represents a significant safety issue.
28. Accordingly, I find that the benefits of the proposal outweigh neither the harm I have identified nor the conflict with the development plan. It also seems to me that a scheme allowing for the pub's re-opening and providing similar social, economic and environmental benefits as the appeal proposal could be realised with some changes to ensure suitable and safe residential access, such as via a changed internal layout. Consequently, the proposed development does not represent the only means of bringing the building and pub back into use and delivering the improvements and benefits I have identified above.

Conclusion

29. The proposal conflicts with the development plan read as a whole and there are no material considerations which carry sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is therefore dismissed.

T Gethin BA (Hons), MSc, MRTPI

INSPECTOR