
Appeal Decision

Site visit undertaken on 21 December 2023

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/C3105/W/23/3321715

The Pheasant Pluckers Inn, Street Through Burdrop, Burdrop OX15 5RQ

- 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 Geoffrey Richard Noquet against the decision of Cherwell District Council.
 - The application Ref 23/00092/NON, is dated 13 March 2023.
 - The development is described as on the Application Form as 'Permission is sought to Change the Current of Suis Generis to that of C1.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Appellant in their Statement of Case (SoC) has submitted information pertaining to the placement of shepherds huts/ Gypsy Wagons. Whilst there is a site plan submitted which shows the location of an existing shepherds Hut which was viewable on my site visit, there is no further information pertaining to the siting of the other two proposed shepherds huts. Despite this, the application form does not refer to shepherds huts, and in general the appeal process is not the appropriate place to evolve the scheme; and the scheme that is considered at appeal ought to be the same one that was considered by the Council. There is no evidence that these shepherds huts formed part of the scheme that the Council made its decision on, or that this proposal for existing/proposed shepherd huts was subject to any form of consultation. In accordance with the 'Wheatcroft Principles',¹ it would not be appropriate to consider these shepherds hut proposals within my decision as the acceptance of such would deprive those who should have been consulted on the changed development or the opportunity of such consultation. As such, I will base my decision solely upon the application that was assessed by the Council during the original planning determination which is only the change of use from Sui-Generis to C1.
3. Further to the above, there is also commentary within the appeal as to whether the existing shepherd hut in situ has planning consent or is lawful development. It is not for me under a Section 78 appeal to determine the current correct and legal use of the existing land and its associated uses or structures. I have therefore made my decision on the basis of the above and the existing conditions. To that end it is open to the Council to pursue enforcement action regarding this shepherds hut, or for the appellant to apply for a determination under sections 191/192 of the Town and Country Planning Act if they believe

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

the lawful use/development is different. My determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.

Background and Main Issues

4. The appeal was made prior to the Council's determination of the application. Following the submission of the appeal, the Council issued a statement regarding the application and recommends the appeal be dismissed on the basis that the application is invalid as there is not enough information provided to make a determination of the scheme, as well as highlighting issues around viability of the existing use and its compliance with Saved Policy S29 of the Cherwell Local Plan (LP).
5. The main issues are:
 - Does the submitted information allow the proper determination of the application; and
 - If there is enough information provided, is the proposed change of use in accordance with the policies of the development plan.

Reasons

Does the submitted information allow the proper determination of the application?

6. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO2015) together with the National Planning Practice Guidance (NPPG) sets out what is required in a planning application in order to make a determination of that application. Article 7-(1)(b) states that an application for planning permission must – *"include the particulars specified or referred to in the [application] form"*; and DMPO2015 Article 7-(1)(c) states that an application of planning permission must be accompanied by (ii) *"any other plans, drawings and information necessary to describe the development which is the subject of the application."*
7. The description of the development as highlighted on the Application Form is a change of use from a Public House (Sui-Generis) to a C1 use with the entire land outlined in red on the Location Plan. A C1 use is defined as *"a use as a hotel, boarding or guest house or as a hostel where, in each case, no significant element of care is provided."*² The documents submitted with the appeal, such as the Appellant's SoC, or basic planning statement make no mention of the proposed C1 use, which buildings or land it applies to and it is therefore unclear which type of C1 use is being applied for, given that there are different considerations as to a bed and breakfast, hotel, or boarding house for example. There is mention of 'Proposed Holiday Letting Expansion,' however a strict reading of the Use Classes Order would indicate that a holiday let is not currently considered to fall under the C1 use class³.
8. It is therefore unclear what is actually being applied for given that there is no discussion of the proposed C1 use in the appellant's appeal documents such as via a planning statement and/or accompanying plans to support that statement. In considering a C1 use, it would be necessary to understand a number of questions such as the principle appropriateness of the change of

² Part C The Town and Country Planning (Use Classes) Order 1987

³ Typically Holiday Lets will fall under the C3 use class.

use; how the proposed use would function; is the use proposed the sole/main use; what is the status of ancillary uses (if any) and are these affected by the change of use; parking provision (which is dependant upon how many guests and the type of use, ancillary uses); living conditions and amenity considerations; amongst others. Whilst the Council have validated the application, they have sought additional information from the appellant in the form of a Floor Plan and elevations of the entire building showing the new uses as well as a Planning Statement and a viability assessment to understand and make a determination of the proposal against the policies of the Development Plan.

9. In interpreting the requirements of the DMPO2015, the minimum information required to make a determination as to this particular application would be the application form with signed certificate, location plan, detailed planning statement addressing the above mentioned factors, a viability statement and a detailed floor plan of each floor of the buildings seeking to change the use of and showing the configuration of the proposed use as this could determine size of rooms and position of windows, amongst other considerations. An elevation plan, whilst desirable, would in my mind not be absolutely necessary to describe the change of use development which is the subject of the application. I note that a Floor Plan has been submitted with the appeal, however much of the floor plan is blank, only shows the ground floor, and does not make reference to the proposed C1 use and is therefore inadequate.
10. I acknowledge comments from the Appellant in their appeal statement where in previous change of use applications⁴ that the Council did not request floor plans from the Appellant. It is noted that both of these applications referred to were for change of use to a dwelling, rather than the change of use from a business to a different business (accommodation) use which has additional planning considerations as mentioned previously that may not be present for a residential application.
11. Taking the above into account, and in conclusion of this matter, I agree with the Council that there is not enough information presented within the application to describe the development which is the subject of the application in accordance with the DMPO2015 and the NPPG. Based upon this information the Council could not grant planning permission. On the basis of the information provided the application is not valid and I am therefore unable to make a determination as to the planning merits of the proposed scheme.

Conclusion

12. For these reasons, and having considered all matters raised in evidence and from what I saw during my site visit, the appeal should not continue and I am unable to consider the planning merits of the scheme. I conclude that the appeal is not valid and on this basis should be dismissed⁵.

J Somers

INSPECTOR

⁴ Council Planning Ref: 17/01981/F Change of Use from A4 to C3; Council Planning Ref: 18/01501/F Change of Use from A4 to C3.

⁵ Section 79(6) of the Town and Country Planning Act 1990