



Appeal Decision

Site visit made on 24 October 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2024

Appeal Ref: APP/R0660/W/23/3314797

The Sutton Gamekeeper, Hollin Lane, Sutton, Cheshire SK11 0HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Messrs Clarkson and Johnson of Bradley Edge LLP against Cheshire East Council.
 - The application Ref 22/3765M, is dated 21 September 2022.
 - The development proposed is conversion of public house (Sui Generis) into two dwellings (Use Class C3) including associated external alterations, extensions, and carports.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of public house (Sui Generis) into two dwellings (Use Class C3) including associated external alterations, extensions, and carports at The Sutton Gamekeeper, Hollin Lane, Sutton, Cheshire SK11 0HL in accordance with the terms of the application, Ref 22/3765M, dated 21 September 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development above is taken from the application form, excluding words which are not acts of development.
3. The appeal was submitted on 16 January 2023 against the failure of the Council to give notice of its decision within the prescribed period. Although the Council subsequently issued a decision notice for the application dated 24 February 2023, I am satisfied that jurisdiction had passed to the Secretary of State prior to its issue. Therefore, the notice has no legal standing. In reaching this view, I have taken account of an appeal decision submitted by the appellants (ref APP/H1033/W/21/3272745) and I consider my decision to be consistent with it, in so far as it relates to this procedural matter.
4. The Council's notification letter regarding the appeal was issued to include reference to its refusal of the application, rather than its failure to determine it within the prescribed period. A further notification letter was issued by the Council to rectify this matter, with a further period for representations to be made. I am satisfied that no parties have been prejudiced in this regard.
5. The application included a report concerning economic viability dated 19 July 2022, prepared by Fleurets, which includes a viability assessment (the viability report). Three interested parties have jointly submitted a detailed representation regarding the viability assessment, and I shall refer to this as 'the Proctor Report'.

6. The National Planning Policy Framework (the Framework) was revised during December 2023. In the interest of natural justice and to ensure neither of the main parties were prejudiced by this matter, I consulted both parties on the changes to the Framework, and this has informed my determination of the appeal.

Background and Main Issue

7. The proposal is a resubmission of a previously refused scheme (planning application ref 20/4280M), which was subsequently dismissed at appeal (ref APP/R0660/W/21/3274475) in February 2022. That Inspector found that it had not been demonstrated that the former PH was unviable nor mitigated by alternative provision. The proposal before me seeks to overcome the previous reasons for refusal. The Council has provided a delegated report which sets out their consideration of the proposal, together with a putative reason for refusal.
8. Having regard to all of the evidence before me, the main issue is whether the proposal would result in the unnecessary loss of a viable community facility.

Reasons

9. The appeal property is a former Public House (PH) with a bar area, lounge, dining area and kitchen to the ground floor, and three bedroomed residential accommodation above, car parking area to the front and a rear garden. From the evidence before me and my visit, internal fittings and fixtures are generally no longer in situ or in a state of disrepair. The frontage was bounded by 'heras' style fencing and included for-sale signage.
10. The PH traded as The Lamb Inn for a considerable time until it was sold circa 2015, after which it was refurbished to reopen in February 2015 as The Sutton Gamekeeper. There is no dispute that the PH made a positive social contribution to the cultural life of the village community until its closure in March 2020, which coincided with the first national lockdown for COVID-19.

Marketing

11. The viability report submitted with the application states that the purchase price of the PH in 2015 was £260,000 and that the property was originally marketed with a guide price of £475,000 in July 2020 until January 2022. Further marketing was undertaken via another agent with a guide price of £395,000 with offers invited from March 2022. I am advised that details were listed on four websites as well as that of the agent, and during this time, there were some 18 viewers and one offer for purchase as a public house, with interest allegedly waning on account of the size of the building and car parking area; and further offers were received for redevelopment.
12. Having regard to the previously dismissed appeal, the Inspector found that the PH was initially marketed in July 2020 by a local estate agent on a low-key basis to try and achieve a quiet sale. It was not until December 2020 that a for-sale board was erected, and the details were added to the property listing websites Rightmove and Boxpod. Therefore, I find that the property was more widely marketed from July 2020.
13. My attention is drawn to the onset and duration of lockdown restrictions in response to COVID-19, between March 2020 and July 2021 when public houses experienced significant operating challenges and uncertainty. Consequently,

the 18 viewings recorded is significant in this context. Interested parties also refer to an offer made by a local entrepreneur for use as a PH, albeit there is no clear evidence of this before me or whether this is the same offer referred to in the viability evidence, nor when any such offer was made.

14. The appellants' viability evidence refers to sight of the marketing reports of the selling agents, but these are not before me. There are no independent valuations before me from any party to demonstrate that the asking prices sought for the PH are or were realistic. Furthermore, the sales particulars before me bear little resemblance to the condition of the property at the time of my visit, and refer to internal fixtures, fittings and other items that are clearly no longer in situ. In this regard, the viability report does not clearly demonstrate that the property has been marketed at a reasonable price.
15. Further evidence provided by the appellants' viability consultant dated 17 August 2023 (the appellants' further evidence) includes comparative sales particulars for St Dunstan's Inn, Langley, a PH about one mile away from the appeal site. These particulars are referred to as 'recent' and show an asking price for offers over £450,000. This was significantly less than that sought for the appeal property in the first period of marketing from July 2020, but more than that sought during the more recent marketing period.
16. Furthermore, the particulars appear to show that St Dunstan's Inn is presently operating; that it includes internal fixtures and fittings and other items; and it appears to be in reasonable condition. This is markedly different to the appeal property, which has been stripped of much of its internal fittings, fixtures and other items; and appears to be in a relatively poorer condition. Therefore, I do not find the sales particulars for St Dunstan's Inn to be directly comparable to those for the appeal site.
17. Nevertheless, 18 viewers, with one or more parties expressing interest as a PH during a period of about 18 months to two years demonstrates that the property was considered potentially viable by at least one potential purchaser. Moreover, the Fleurets evidence makes clear that the actual price paid by the present owner was £300,000 on an unconditional/existing use basis. This suggests that the present owner purchased the appeal property on the presumption another licensee could operate a viable business model for a PH.
18. Consequently, I am satisfied that the marketing of the PH has been of a reasonable duration. On balance, it has been marketed at a price to result in a reasonable volume of interest over that time.

Viability

19. The appellant's viability report sets out that the PH was an unsustainable business model which led to its closure. Turnover figures for the PH for the period 2015-2018 range from around £218,409 to £309,424, with operating profit showing a loss range of £5,758 to £30,224 over the same period. While interested parties suggest that The Lamb Inn traded profitably before it was sold, there is no substantive evidence before me to demonstrate this.
20. The viability report indicates that a community pub/restaurant model would be more appropriate, taking account of various factors including (but not limited to) the nature of the property, prevailing market conditions and other competing premises within a nearby catchment and is based on an assumed

net turnover of around £210,000 per annum with 60% gross profits. The sales particulars for St Dunstan's Inn, Langley detail a net turnover in the region of around £200,000 pa with 60% gross profits. Thus, I find the Fleurets evidence for assumed turnover to be reasonable and comparable. The highest turnover of the failed Sutton Gamekeeper model with an adjustment for inflation as advocated by the Proctor Report would not be a reasonable approach for a community-based model.

21. The appellant's viability report sets out that a community model would fail on the basis of a purchase price of £300,000 having regard to other costs which would be incurred. While there is no explicit justification as to why the present owner has not progressed the re-opening of the PH, the evidence indicates that there are particular challenges presently faced by the sector, including (but not limited to) the impact of inflationary pressures, rising utility costs and staff shortages. Therefore, circumstances may have changed considerably since the PH was purchased. The viability assessment has also undertaken a sensitivity test based on a notional purchase price for the PH of £100,000.
22. Consequently, the viability evidence demonstrates that a community-based model would not be viable at either the marketed purchase price or at a much lower notional price, taking into account owner's remuneration, renovation and finance costs.
23. The appellants' further evidence includes a contractor's estimate to substantiate the estimated £150,000 for renovating the PH. Whilst I note that no independent structural survey has been provided, there is no compelling evidence before me to demonstrate that the renovation costs & contractor's estimate are unreasonable. A structural survey is budgeted for in other costs. Having regard to the condition of the property at the time of my visit, and on balance, I find that the scope of works is not unreasonable.
24. The further evidence submitted by the appellant provides a breakdown of acquisition costs to a total of about £18,707 and I find these to be clearly justified and reasonable. Interested parties contend that other financing options could be available, including 100% equity. However, there is no substantive evidence of any 100% equity offer, and I give more weight to the appellants' evidence that such a position is unrealistic.
25. The viability evidence assumes a 'one year loss in profit' to allow for necessary works to be undertaken to the PH and to build up custom after re-opening. Although various factors may alter this cost, including the availability of labour and the willingness to undertake works in a shorter period, there is little compelling evidence before me to demonstrate that a one-year period would be unreasonable, nor that if it were shorter, that it would robustly demonstrate that the PH would be viable.
26. Concerns have been raised by interested parties regarding further assumptions within the viability assessment. However, the assessment within the Proctor Report uses the turnover of a failed business model against the operating costs of a community-based offer, and thus it is not a realistic assessment. Overall, I give more weight to the reasoned assumptions used within the appellants' viability evidence.
27. Overall, I am therefore satisfied that it has been demonstrated that the use of the property as a PH is no longer viable.

Alternative Provision

28. My attention has been drawn to a significant number of other PHs within about 1.5 miles of the appeal site with a variety of opening hours and a diverse range of offers to include food.
29. The former Sutton Ex-Servicemen's Club is located nearby on the opposite side of the road. However, I am not satisfied that this forms a comparable community facility to that of a pub, particularly in light of evidence which indicates that a membership fee applies. Therefore, a club would not cater for opportunistic visits as a public house does.
30. Having regard to the other nearby PHs, at least two of the nearby PHs can be reached via a footway and are within a reasonable walking distance of the appeal site. The appeal proposal would not result in a situation where no public houses were reasonably available or accessible by foot. I am therefore satisfied that there is an acceptable and suitable level of alternative provision within reasonable proximity.

Conclusion

31. Given my findings above, I conclude that the proposed development would not result in the loss of a viable community facility. It accords with Policy EG2 of the Cheshire East Local Plan Strategy 2017, and Policy REC5 of the Cheshire East Local Plan Site Allocations and Development Policies Document 2022. Taken together, these policies seek to protect the rural economy and the vitality of rural settlements; to retain, enhance and maintain community facilities that make a positive or social contribution to the cultural life of a community, unless suitable alternative provision is made.
32. The proposal accords with paragraph 97c) of the Framework, whereby planning 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.

Other Matters

33. The appeal site is within the village of Sutton, a defined settlement within the Green Belt. The main parties agree that the proposal would not be inappropriate development within the Green Belt, as it would involve the reuse of an existing building, and I find no reason to consider otherwise.
34. The proposal would not harm the character and appearance of the area, nor the amenity of neighbouring occupiers, and it would not result in adverse impacts upon highway safety. Subject to the imposition of suitable conditions, it would not result in adverse impacts upon protected species, biodiversity and geodiversity.
35. There is no substantive evidence to demonstrate that the professional qualifications or experience of any persons providing evidence on behalf of any main or interested party are not as purported, nor to demonstrate that any evidence given by any such persons is not duly submitted in accordance with their professional codes of conduct, and/or with impartiality. As such it does not alter my decision.

Conditions

36. I have considered the conditions suggested by the Council, comments from the appellant, and in light of Planning Practice Guidance (PPG). For clarity, precision and to ensure compliance with the PPG, I have undertaken some amendments, editing and rationalisation.
37. Conditions 1 and 2 respectively impose a time limit for commencement and require the development to be completed in accordance with the approved plans. These conditions are necessary to provide certainty and precision to the permission. A materials condition is reasonable and necessary to ensure a satisfactory appearance to the development, and in the interest of the character and appearance of the area.
38. Conditions 4, 5 and 6 are reasonable and necessary to safeguard biodiversity and protected species. Conditions 7 and 8 are reasonable and necessary in order to ensure appropriate landscaping of the site, and in the interest of the character and appearance of the area.
39. Condition 9 is required to ensure the delivery of electric vehicle charging points. Such a condition is reasonable and necessary in order to encourage the uptake of ultra-low emission vehicles and ensure sustainable development.

Conclusion

40. For the reasons given, I conclude that the development accords with the development plan, read as a whole. No material considerations including the Framework have been shown to carry sufficient weight to warrant a decision otherwise than in accordance with it.
41. Therefore, the appeal is allowed and planning permission should be granted, subject to the conditions I have set out in the attached schedule.

J Moore

INSPECTOR

SCHEDULE OF CONDITIONS - APP/R0660/W/23/3314797

- 1) The development hereby approved shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan – Ref: ID:BW1-00905480, dated 30 September 2020
 - Proposed Site Plan, Floor Plans and Elevations – Ref: 20.M03.04D
 - Proposed Ground Floor Plan – Ref: 20.M03.05
 - Proposed First Floor Plan – Ref: 20.M03.06A
 - Proposed Elevations – Ref: 20.M03.07A
- 3) The materials to be used in the development hereby approved shall be those specified on the application form.
- 4) No removal of any vegetation or the demolition or conversion of buildings shall take place between 1st March and 31st August in any year, unless a detailed survey has been carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone take place.
- 5) The development hereby approved shall be carried out in accordance with *Section 7.0 Indicative Mitigation* of the report *Dusk Survey Results* (dated September 2022 by Tyrer Ecological Consultants Ltd) unless varied by a European Protected Species Licence subsequently issued by Natural England. The agreed features for roosting bats shall be permanently installed in accordance with the approved details.
- 6) Prior to the first occupation of the development hereby approved, a strategy for the incorporation of features to enhance the biodiversity value of the development hereby approved shall have been submitted to and approved in writing by the Local Planning Authority.

The strategy shall include proposals (the proposals) for the provision of features for nesting birds including house sparrow and roosting bats (any external lighting should avoid direct light spill upon bat roost features), brash/deadwood piles and native species planting.

The proposals shall be permanently installed in accordance with approved details prior to the first occupation of the dwelling.
- 7) Prior to the first occupation of the development hereby approved, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority.

The landscaping scheme shall include a landscape plan, details of hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme.

- 8) The approved landscape plan shall be completed in accordance with the following:
- a) All hard and soft landscaping works shall be completed in full accordance with the approved landscaping scheme, within the first planting season following completion of the development hereby approved, or in accordance with the approved implementation programme.
 - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock.
 - c) All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - d) All new tree plantings shall be positioned in accordance with the requirements of Table A.1 of BS5837:2012 Trees in Relation to Design, Demolition and Construction (Recommendations).
 - e) Any trees, shrubs or hedges planted in accordance with the approved landscaping scheme which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
- 9) Prior to first occupation of the development hereby approved, an Electric Vehicle Infrastructure Plan (EVIP) shall be submitted to and agreed in writing by the LPA.

The EVIP shall aim to meet the following specification: a single Mode 3 compliant Electric Vehicle Charging Point per property with off road parking, independently wired to a 30A spur to enable minimum 7kW fast charging or the best available given the electrical infrastructure.

In the event that the electrical infrastructure is not available, the EVIP shall include written confirmation from the electrical supplier and shall aim to meet the following specification: Mode 2 compliant charging.

END OF SCHEDULE