



Appeal Decision

Site visit made on 9 April 2024

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal Ref: APP/K0235/W/23/3332432

The Fox and Hounds, Goldington Road, Bedford MK40 3EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Fox & Hounds Bedford Ltd against the decision of Bedford Borough Council.
 - The application Ref is 23/00740/FUL.
 - The development proposed is the change of use from public house (Sui Generis) to retail use (Use Class E) and residential (Use Class C3) to form four dwellings, with associated extensions and external alterations to the façade, changes to car parking layout, closure of one vehicle entrance, and provision of cycle parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues relevant to this appeal are:
 - whether the proposed change of use of the public house is justified with reference to the strategy in the development plan for retaining local facilities.; and
 - the effect of the development upon highway safety with particular reference to the adequacy of parking and space for deliveries and manoeuvring

Reasons

Whether the proposed change of use of the public house is justified

3. Policy 83 of the Bedford Borough Local Plan (2020) (the Local Plan) is applicable to the appeal scheme. In essence, this policy seeks to manage the change of use of 'essential local shops'. The policy is clear that the definition of a 'shop' includes public houses. Local Plan Policy 83 applies three criteria that must all be met for a change of use to be acceptable. In broad summary, it should be demonstrated that the current (or last) use is no longer economically viable. The policy states that this can be best illustrated by providing evidence that the property has been actively marketed. Additional criteria are that there should be other essential local shops in a 10-minute walk (half a mile) which provide a similar service; and there would not be an over-concentration of the alternative use, or that anti-social behaviour would be generated. The purpose is to ensure that planning decisions maintain some essential local shops in neighbourhood centres.

4. Representations from interested parties indicate that the public house was popular but ceased to be operational on the 24 April 2023. The closure date can be confirmed by signage viewable at the appeal site. The evidence before me indicates that in the year ending 28 February 2023, the operator of the public house lost a total of £167,253. Furthermore, a previous appeal decision (the previous appeal decision)¹ summarises that between 2019 and 2021, the public house operators also made a loss. Although this is indicative of a lack of economic viability, it is not definitive as it is possible that a different operator, perhaps pursuing a different model and recognising changes in consumer habits, might be able to generate a profit from the business. A robust period of marketing would enable this to be tested.
5. The appellant has suggested that a food service would not be viable from this building. However, there is no detailed evidence before me regarding the physical alterations that would need to be made to the building to support such a diversification and whether these would be prohibitively expensive. Moreover, there is no analysis as to the level of passing trade and whether this is sufficient to support a food service.
6. The supporting text of Policy 83 highlights the importance of essential local shops in meeting the day-to-day needs of residents. This is consistent with Paragraph 97 of the National Planning Policy Framework, which, amongst other matters, states that planning decisions should guard against the unnecessary loss of valued facilities. Therefore, notwithstanding the lack of recent profits at the public house, it is necessary to consider whether the building has been actively marketed. This is because if planning permission were to be granted, it is doubtful that the public house use would be reinstated.
7. Appendix 1 of the Allocations and Designations Local Plan (2013) (the ADLP) provides a list of the information that may be of assistance in assessing marketing information. Appendix 1 suggests that marketing should normally take place for a period in between six months and two years.
8. The appellant's Marketing Report states that agents were instructed to market the property's leasehold in June 2022 for £70,000 per annum. Following the Council's refusal of planning permission, the price was revised to £42,000 per annum. Although the period where the building was marketed at the lower price is relatively short, the Council has not provided evidence that indicates that the higher price was unrealistic given the prevailing market conditions at the time and the fact that an independent appraisal of the building's value has been included as part of the appeal documentation. In result, I have no reason to believe that the price of the leasehold was unreasonable.
9. Although a leasehold would allow the operator to, in effect, own the building for a prescribed period, a leasehold often places some conditions or limitations upon the holder. The evidence does not indicate whether there were any terms or limitations in the leasehold agreement that might render the proposal unattractive to future operators. Additionally, although the appellant has referenced that prospective purchasers would be provided with an information pack regarding the building, this has not been provided as part of the appeal proceedings. In result, although I do not hold concerns regarding the price of the leasehold, I cannot be certain that this marketing process has been robust.

¹ APP/K0235/W/21/3283168

10. The appellant's Final Comments indicate that 53% of public houses are occupied on leasehold tenures. Therefore, a significant minority of public houses are occupied on freehold tenures. Consequently, the making available of this public house on a leasehold basis, and without robust marketing of the building's freehold, is likely to exclude a significant proportion of people interested in operating a public house. Therefore, by marketing the property on a leasehold basis only, some potential operators may have been excluded.
11. The appellant has explained that during the initial period of marketing, offers to purchase the freehold would have been considered. However, given that this is not demonstrated in any of the submitted sales information, it is uncertain if any prospective purchaser would have known that the appellant was willing to enter negotiations regarding the building's freehold.
12. Since the refusal of planning permission, the public house has been marketed on a freehold basis. It is unclear when this process commenced as the first reference to this is in the Supplementary Marketing Note dated the 30 October 2023. Therefore, it is doubtful that the property has been marketed for a sufficient period in line with Appendix 1 of the ADLP.
13. Furthermore, the appeal documentation does not include information regarding the price of the freehold, whether it is a reasonable figure and whether the landowner was willing to enter negotiations regarding it. Although I understand that the freehold of the premises has been marketed, on my site visit I noted that the advertisement board at the property referred only to the leasehold of the premises. Therefore, for the preceding reasons, I do not believe that efforts to market the freehold of the property have been sufficiently robust.
14. The site is near to the other operational public houses of the White Horse in Newnham Avenue and the Devonshire Arms in Dudley Street. On my site visit, I noted that both public houses were within a 10-minute walk of the site. The Council has not submitted any evidence which would cause me to doubt this observation. In result, I believe that patrons and residents would have suitable access to comparable alternative facilities in the local area.
15. Over-concentration has not been defined by Policy 83. However, the primary use in the area is residential accommodation. Within the immediate environs of the site is a single other retail unit (Thandi Food Store and Newsagents). Although the wider area features other retail units, these occur on an occasional basis. Therefore, the retail element of the proposal would not result in an over-concentration of retail units. There is also no persuasive evidence before me that would indicate that the development would result in an increase in anti-social behaviour, particularly as it would be possible to impose a planning condition that would control the opening hours of the retail unit.
16. Local Plan Policy 83 is unambiguous that all three criteria need to be met for a proposed alternative use to be acceptable. Therefore, although I have no concerns regarding access to alternative facilities and over-concentration of other uses, the absence of compelling information regarding viability means that this policy has been breached. Therefore, I conclude that the change of use of the public house would harmfully undermine the strategy in the development plan for retaining local facilities.

Highway safety

17. The site features a car park to the side with access proposed from Goldington Road. The site is also near to junctions between Goldington Road with Caves Lane and George Street. Goldington Road also features various parking restrictions, cycle lanes and a bus stop. The proposed development includes the provision of 14 car parking spaces. This car park would also serve as the location for deliveries to the proposed shop.
18. However, should some of the car parking spaces be in use at the point that deliveries need to be made to the retail unit, it is likely that the parking of the delivery vehicle would be displaced onto Goldington Road. Alternatively, the parking of a delivery vehicle on the site would impede access to other car parking spaces. This, in turn, would displace parked vehicles onto the widely used highway.
19. There is a need for the development to accommodate car parking and deliveries on the site as parking on the surrounding roads would impede the flow of pedestrians and vehicles, whilst interrupting views in visibility splays.
20. The Council has suggested that this matter could be overcome through the imposition of a planning condition, which would secure the provision and implementation of a Delivery and Servicing Management Plan. Such a plan would include details of how deliveries would be made to the retail unit and the timings in which they would take place.
21. A condition of this nature is necessary to ensure that the development does not erode highway safety; is relevant to planning given the aims of the development plan to prevent adverse effects on highway safety; is directly applicable to the development; would be enforceable; precise; and reasonable in all other respects.
22. Furthermore, I am also mindful that the previous appeal decision did not find that the level of car parking provision was unacceptable. Therefore, given that the scheme has not changed in this regard, I do not believe harm has been demonstrated.
23. I therefore conclude that the proposed development would not have an adverse effect upon highway safety with the above condition imposed. The development, in this regard, would comply with Policy 31 of the Local Plan. Amongst other matters, this seeks to ensure that developments give particular attention to parking provision and safety.

Other Matters

24. The development would provide four new homes. Whilst this is a benefit, there is no evidence before me that indicates that the Council is not significantly boosting the supply of homes within its area. Therefore, benefits arising from improvements to the local housing supply position are likely to be relatively small and do not outweigh my previous findings.
25. In submitting the planning applications, the appellant was attempting to address issues raised in the previous appeal decision. However, I have reviewed the submitted evidence and assessed it against the requirements of adopted planning policies. Therefore, this matter does not overcome my findings in respect of the first main issue.

Conclusion

26. Although the development would not have an adverse effect upon highway safety, this is outweighed by the adverse effects arising from the loss of the public house. In result, the proposal would conflict with the development plan, taken as a whole. Therefore, are no material considerations that indicate that the decision should be taken other than in accordance with the development plan. Accordingly, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR