



Appeal Decision

Site visit made on 2 September 2024

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2024

Appeal Ref: APP/U2235/W/24/3339194

The Former Dragoon Public House, 40 Sandling Road, Maidstone, Kent ME14 2RF

- 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 CKE Homes Ltd against the decision of Maidstone Borough Council.
 - The application Ref is 23/503490/FULL.
 - The development proposed is conversion of former public house into 1no. 2-bedroom flat and 3no. 1-bedroom flats including erection of first floor extension and changes to fenestration.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description given on the Council's decision notice as it is more accurate than that given on the application form because it makes reference to the first floor extension and changes to fenestration as well as the conversion of the existing building to flats.
3. The Maidstone Borough Local Plan Review 2021-2028 (the Local Plan Review) was adopted in March 2024. This plan replaces the Maidstone Borough Local Plan 2017 (2017 Local Plan), other than where policies have been explicitly saved. I have had regard to the new policies in the Local Plan Review where they replace those included in the Council's decision notice. I give further details in my reasoning.

Main Issues

4. The main issues are:

- Whether the change of use of the property from a public house is justified
- The effect of the proposal on the building as a non-designated heritage asset and its effect on the settings of the Grade II* listed Officers Quarters, and Grade II listed 63 to 89, 92, 94 and The Flower Pot Public House, Sandling Road and the embankment and railings opposite to them.

Reasons

Change of use of public house

5. Policy LPRCD1 of the Local Plan Review requires that where proposals involve the loss of facilities or services, including public houses, consideration should be given to firm evidence that the existing uses are not now viable and are unlikely to become commercially viable, the availability of comparable alternative facilities in the local area, and the distance and ease of access to such facilities.
6. Policy LPRINF2 of the Local Plan Review states that proposals that would lead to the loss of community facilities will not be permitted unless, amongst other criteria, it is evidenced that a need within the locality no longer exists, and it is not commercially viable (supported by audited financial reports and a reasonable level of proper marketing evidence). For the purposes of the policy, pubs are considered to comprise community facilities.
7. These policies replace Policies DM17 and DM20 from the 2017 Plan. While the wording differs in some respects, their aims remain essentially the same. One change has been the inclusion within Policy LPRINF2 of the requirement for viability to be demonstrated through financial reports and marketing, whereas before it was included in supporting text to Policy DM17. While the supporting text was not policy, it did illustrate the type of information that qualified as the firm evidence required by that policy. Irrespective of the status of such explanatory text, the inclusion of the requirement for audited financial reports and marketing evidence within Policy LPRINF2 makes it clear that such evidence is necessary to justify the loss of a public house.
8. The evidence that has been submitted consists of an article from Kent Online, a BBC news article, and details of closures of other public houses by the former owner of the appeal site, Shepherd Neame. While this information documents a general trend of falling demand for traditional public houses, it is not specific to the appeal site. The sale of the premises by Shepherd Neame was reported as being because it no longer fitted their company's business needs. That does not prove that the public house is unviable for another operator, who may have different business needs. The quote from a former landlady in the newspaper about trade never recovering from the Covid restrictions is anecdotal and is without any supporting record of trading. The appellant suggests in its rebuttal statement that financial data is available, but it has not been submitted and therefore I am unable to take it into account.
9. The appellant has not provided audited financial reports or evidence of marketing to demonstrate that there is no demand to use the appeal premises as a public house, as required by Policy LPRINF2. What information has been submitted does not meet the threshold of firm evidence required to demonstrate that the premises are not commercially viable, as required by Policy LPRCD1. In the absence of such evidence, there remains the possibility that this particular facility could remain as a public house providing a service to local residents.
10. There are other public houses in the local area. However, the presence of these comparable alternative facilities, which are accessible on foot, does not

negate the need to comply with the first part of Policy LPRCD1, regarding evidence of commercial viability.

11. I conclude that the proposal would conflict with Policies LPRCD1 and LPRINF2 of the Local Plan Review.

Heritage assets

12. The Council considers the public house to be a non-designated heritage asset because of its architectural form and social history as part of a tight knit urban area of terraced housing, shops and public houses, originally serving local industry and the army barracks, although these uses have now largely gone or been much reduced in size.
13. While the property may have some significance because of these features, it is not nationally or locally listed, nor has the locality been designated as a conservation area. It would appear that at least part of the site was not originally built as a public house and was only converted to that use in the early years of the last century. Its relevance as part of the social history of the area is therefore somewhat weaker than may first appear.
14. So far as its architectural form is concerned, it is part of a terrace of shops with accommodation above. All of these have had replacement front windows and shopfronts, mostly in uPVC material. Given this context, I consider the use of uPVC for the replacement windows on the appeal site would be acceptable. The design of the proposed windows with vertical sliding sashes and a 6 over 1 glazing pattern within the existing openings would be sympathetic to the appearance of the building.
15. One architectural feature of the terrace and those adjoining it is the regular spacing of chimney stacks along the ridge line, and to a lesser extent the single chimney at the rear of the property. Some stacks no longer have chimney pots and at least one stack appears to have been removed on the adjoining terrace. Nevertheless, they do form a characteristic feature of the buildings. The removal of the chimneys on the appeal property would weaken the visual rhythm that these stacks currently provide to the street scene.
16. The internal alterations could be carried out without the need for planning permission, and I place little weight on them in terms of the heritage significance of the building. The use of close boarded fencing to screen the rear garden is not unusual in a residential setting, and I note that there are other examples of it in the vicinity. That being said, brick boundary walls are more common in the area and would be preferable.
17. Taking these factors together, I consider that the heritage significance of the building to be modest and the changes to it, including the rear extension to which no objection has been raised, would largely retain its character and appearance. The loss of the chimney stacks is to be regretted, but on its own would not in my view amount to a reason to resist the appeal proposal. The use of a brick boundary wall rather than close boarded fence is a matter that could be made subject to a condition.
18. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay regard to the desirability of preserving the settings

of listed buildings. The nearest of these is the Grade II* listed Officers Quarters, now a restaurant, which lies on the opposite side of Sandling Road to the appeal site. The significance of this building lies in its former use as an officers' mess to cavalry barracks and its timber construction. There is no historic link between the Officers Quarters and the appeal site in the sense that it was never part of the barracks, and in visual terms it is of a different age and design. It is also partly screened from the appeal property by a tree and shrub belt along the verge. Having regard to these observations and my finding that the existing character and appearance of the appeal building would be largely retained, I consider that the proposal would not have a harmful impact on the setting of this listed building.

19. The terrace comprising 63 to 89, 92, 94 and The Flowerpot Public House, Sandling Road and the embankment and railings opposite them, are listed Grade II for their group value. Their significance is as an early example of terraced housing of varying ages and styles, fronting the road and separated from it by iron railings. The appeal property has some similarities with this listed group of buildings in that it is a public house similar to The Flower Pot Public House and forms part of the continuation of terraces fronting Sandling Road. However, it is a considerable distance from the group of listed buildings, and only very oblique views of it can be obtained to or from them. I consider it would have no appreciable impact on the setting of the listed group.
20. Paragraph 209 of the National Planning Policy Framework (the Framework) requires the effect on non-designated heritage assets to be taken into account in determining applications. In this case, and notwithstanding the loss of the chimney stacks, I give the impact limited weight.
21. In terms of the impact on the settings of the designated heritage assets, I conclude that the proposal would cause no harm, and there is therefore no need for me to weigh the development against public benefits.
22. For the same reasons there would be no material conflict with Policies LPRSP2, LPRSP14(B), LPRSP15 and LPRENV1 of the Local Plan Review, which require new development to contribute positively to a locality's character, and conserve and where possible enhance the significance of heritage assets and their settings. These policies supersede Policies SP1, SP18, DM1 and DM4 of the 2017 Local Plan.

Other Matters

23. Based on the Council's most recent published information there is a 5.7 years' supply of housing land available, and the latest housing delivery test is above 100%. There is therefore no requirement to impose the presumption in favour of sustainable development in footnote 8 and paragraph 11 of the Framework.

Conclusion

24. Although I have found no appreciable harm to heritage assets, I have found that there would be a conflict with Policies LPRCD1 and LPRINF2 of the Local Plan Review, and therefore a conflict with the development plan when taken as a whole. The proposed development would have the benefit of creating 4

flats, which would help meet demand for new dwellings. However, given that the Council is able to show that it is meeting its housing land and housing delivery requirements, I give this benefit only moderate weight. It is not sufficient to outweigh the conflict with the development plan. Consequently, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR