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## Appeal Decision

Site visit made on 6 November 2024

**by J Hobbs MRTPI MCD BSc (hons)**

an Inspector appointed by the Secretary of State

**Decision date: 13<sup>th</sup> January 2025**

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**Appeal Ref: APP/U1430/W/24/3341088**

**The Old Coachworks, High Street, Ticehurst, East Sussex TN5 7EX**

- 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 Mr Richard Upton against the decision of Rother District Council.
  - The application Ref is RR/2023/860/P.
  - The development proposed is change of use and minor external alterations to create one new self-contained age-restricted residential extra-care apartment.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) and 2023 Housing Delivery Test (HDT) results were published on 12 December 2024. I sought submissions from the parties on these matters and I have considered these, alongside their original representations when determining the appeal.

### Main Issue

3. The main issue is whether the proposal would result in the unjustified loss of a site of social or economic value.

### Reasons

4. Policy DEC3 of the Development and Site Allocations Local Plan, December 2019 (DASA) seeks to retain premises being used for employment purposes unless there is no reasonable prospect of its continued use, or it would cause serious harm to local amenities. DASA Policy DCO1 indicates that proposals which would lead to a loss of a site of social or economic value, must demonstrate that there is no prospect of its continued use. Included within the definition of sites of social or economic value are shops outside of defined centres. DASA Policy DCO1 outlines that proposals must be supported by evidence of a comprehensive marketing campaign, alongside evidence that the unit is not, or is not capable of being, financially viable for the existing use and any alternative commercial or community uses.
5. No marketing campaign has been undertaken to support this appeal. Previously a national agent was engaged to market the whole premises, including the retail unit. The agent explained there had been no enquiries regarding the retail unit. Whilst I acknowledge that a national agent has marketed the unit, there is no substantive evidence of this marketing campaign, including how the unit was marketed, for

how long, and whether it was marketed separately from the residential units. Therefore, it has not been demonstrated that a comprehensive marketing campaign has been undertaken. In turn, it has not been demonstrated that there is a lack of demand for the retail unit.

6. There are several factors which would affect the ongoing viability of the retail unit. This includes its location outside of the village centre and away from High Street, which means there is only glimpsed views of the unit from public roads. Also, it would be accessed via a private road which does not have street lighting. Given its location, the retail unit is unlikely to benefit from linked trips associated with other uses within the village centre. Also, the size of the unit would restrict potential retailers and/or alternative uses. Moreover, shopping trends have changed since the unit was permitted including a move toward online retailing.
7. Notwithstanding this, there is no financial evidence submitted with the appeal. Although the above factors would affect the viability of the retail unit, with appropriate mitigation some of these concerns could be overcome. Without further evidence I cannot conclude that the unit is not, or is not capable of being, financially viable as a retail unit or alternative commercial or community facility.
8. Concerns have been raised in relation to the proximity of the unit to nearby apartments and how this may affect occupiers' living conditions, their ability to park near their properties, and pedestrian safety linked to increased vehicular movements. With appropriate measures including restrictions on delivery times, noise mitigation measures, and parking restrictions the use of the retail unit would not severely harm the living conditions or the safety of neighbouring occupiers.
9. Both Policy EC7 of the Rother Local Plan Core Strategy, September 2014 (CS) and Policy E1 of the Ticehurst Neighbourhood Plan would not support new retail development in this location. Nevertheless, the retail unit was previously allowed at appeal<sup>1</sup> partially due to the site's historic use. As part of the Inspector's reasoning, they concluded that the proposal would not result in the loss of an employment creating use, due to the forecasted number of full-time equivalent posts (FTE) generated by the development. Even if I was to conclude that the FTE associated with the retail use was overestimated, this appeal proposal would lead to a net loss in FTE. Furthermore, the appeal proposal would not result in new retail development outside of the village centre and therefore, the aforementioned policies are not directly relevant to the proposal.
10. The appeal building has remained vacant since it was constructed so it has not contributed to the village's retail offering. Moreover, there is no evidence of a need for additional retail floorspace outside of the village centre. However, the proposal would lead to the loss of a unit that has economic value and a reduction in the amount of available retail floorspace within the area, rather than an addition. Even if the demand for retail floorspace is decreasing in Ticehurst, there is policy support for the conversion of the unit to another commercial or community use.
11. The appellant's assessment of the village centre is that there is an excellent range of accessible uses. There is no substantive evidence that an active use of this retail unit would materially harm the ongoing viability and vitality of services and facilities within the centre. Furthermore, the good performance of the village centre

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<sup>1</sup> Appeal Ref. APP/U1430/A/08/2091935, Decision issued: 5 June 2009

does not justify the loss of an out-of-centre retail unit, even if there is a vacant unit within the centre.

12. I conclude that the proposal would result in the unjustified loss of a site of social or economic value. The proposal would be contrary to DASA policies DEC3 and DCO1 for the reasons given above.

### **Other Matters**

13. There is an increasing need for specialist housing for older people in the area. The Housing and Economic Development Need Assessment<sup>2</sup> forecasts that by 2039 there will be a shortfall of 1,206 care bedspaces in Rother. There is no provision for new sheltered/retirement housing in the development plan. As such, the shortfall would need to be addressed through windfall development. Furthermore, paragraph 63 of the Framework indicates that the type of housing needed for different groups, including older people, should be reflected in planning policies.
14. DASA Policy DHG5 supports the provision of specialist housing for older people and indicates regard should be had to the walkability to services and public transport. Also, the Planning Practice Guidance<sup>3</sup> advises that local planning authorities should take a positive approach to proposals that propose to address an identified unmet need for specialist housing. The proposal would be windfall development of an extra care apartment which would help address an unmet need for specialist housing for older people in Rother, in an accessible location.
15. There would also be economic benefits associated with the construction period and occupiers of the proposed extra care apartment may utilise nearby services and facilities boosting their viability and vitality. There is also significant local support for the conversion of the retail unit to an extra care apartment.
16. Whilst the proposal would help meet an identified unmet need and address an acute shortfall in bedspaces, the scale of the proposal is very limited. Therefore, I ascribe moderate weight to the benefits of the proposal.
17. The appeal site is located within the High Weald National Landscape (HWNL). Under Section 85 of the Countryside and Rights of Way Act 2000, I have a statutory duty to seek to further the purpose of conserving and enhancing the natural beauty of the HWNL. One of the defining components of the HWNL is dispersed historic settlements including late Medieval villages. The appeal site is located within Ticehurst, which is an example of such a village. The proposal would lead to minor external alterations which would not alter the historic character of the village. Therefore, the proposal would conserve the natural beauty of the HWNL.

### **Planning Balance**

18. The CS and DASA date back to 2014 and 2019 respectively but the weight attached to these documents do not hinge on their age. Rather paragraph 232 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. Paragraphs 85 and 88 of the Framework indicate that planning decisions should enable the retention of accessible local services such as local shops and, with regard to the rural

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<sup>2</sup> Housing and Economic Development Need Assessment, Hastings Borough Council and Rother District Council, August 2020

<sup>3</sup> Housing for older and disabled people, Paragraph:016, Reference ID: 63-016-20190626

economy, significant weight should be placed on the need to support economic growth and productivity. Therefore, I ascribe significant weight to the conflict between the proposal and DASA policies DEC3 and DCO1.

19. Although DASA Policy DHG5 supports the provision of specialist housing for older people, no policies indicate that this support would override a policy conflict with regard to the unjustified loss of a site of social or economic value. Therefore, the proposal would conflict with the development plan when considered as a whole.
20. The Council has underperformed with regard to the HDT. The latest results state that only 43% of its housing requirement has been delivered in the preceding three years. Furthermore, the Council can only demonstrate 2.63 years supply of deliverable housing land. In these circumstances footnote 8 of the Framework indicates that the policies which are most important for determining the application are out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
21. The site is within the HWNL which is identified as a protected area within footnote 7 of the Framework. However, as the proposal would conserve its natural beauty, the application of policies in the Framework do not provide a strong reason for refusing the development proposed.
22. Despite the objective of boosting significantly the supply of housing and the provision for decisions to be responsive and support housing developments that reflect local needs in the Framework, the benefits associated with the provision of one extra care apartment would be moderate due to the scale of the development. The Framework gives significant weight to the need to support economic growth and, in rural areas, seeks to retain accessible local services.
23. Consequently, the adverse impacts of the unjustified loss of the retail unit would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
24. The appellant has highlighted a recent appeal decision<sup>4</sup> in Rother where the Inspector concluded that there was conflict with the development plan, but the material considerations, including a significant shortfall in housing land supply, indicated that the appeal should be allowed. However, that proposal was for 89 dwellings, it also included affordable homes and serviced plots to help the Council meet its statutory duty with regard to Self-Build and Custom Housebuilding. Therefore, that proposal is materially different and does not set a precedent for the appeal proposal.

## Conclusion

25. In forming my decision, I have had due regard to the Public Sector Equality Duty set out under Section 149 of the Equality Act 2010. However, the harm caused by the unjustified loss of a site of economic value would outweigh the benefits of the provision of one additional extra care apartment in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons, and fostering good

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<sup>4</sup> Appeal Ref. APP/U1430/W/24/3339879, Decision issued: 26 September 2024

relations between them and others. I conclude that it is proportionate and necessary to dismiss the appeal.

26. The proposal conflicts with the development plan, when considered as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

*J Hobbs*

INSPECTOR