



Appeal Decision

Hearing held on 17 December 2024

Site visit made on 17 December 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2025

Appeal Ref: APP/U2750/W/24/3351755

Moor and Pheasant, Dalton Moor, Thirsk, North Yorkshire YO7 3JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Oakland Place Limited against North Yorkshire Council.
- The application Ref is ZB24/00643/FUL.
- The development proposed is the change of use of a former public house (Sui generis use) to form a convenience store under Sch.2 Part 3 Class F2(a) and three 2-bed apartments on the ground floor and two 1-bed apartments on the first floor (with existing residential use continuing in the remaining space). The change of use gives rise to operational development in the form of additional fenestration and doors, a new accessway for and with parking for the residents, amenity space, bin storage within an existing garage, and a parking layby adjacent to the road serving the convenience store.

Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made in writing by the appellant prior to the hearing. The Council responded in writing prior to the hearing. Parties were given the opportunity to comment at the hearing. The claim is the subject of a separate decision.

Preliminary Matters

3. The Government published a revised National Planning Policy Framework (the Framework) in December 2024. The main parties were given the opportunity to comment on its relevance to their respective cases, and I have considered the revised Framework in my decision.
4. I have amended the description of the development in the banner above in respect of the references to the Town and Country Planning (Use Classes) Order 1987¹ (UCO) to reflect the recognised convention of reference to the appropriate Use Classes within the Order and to reflect the updated classification of the public house use within the current UCO.
5. The appellant stated that it was not possible to access some files relating to the planning history of the appeal premises. I heard the appellant's concern about the Council's retention policy at the hearing. The significance of these files was not fully explained, and I have determined the appeal in the context of the current development and on the basis of the information before me. Matters of access to

¹ As updated by Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Council held records are not for me to consider under a section 78 planning appeal.

6. At the start of the hearing, it was clarified that the correct proposed elevation plan is drawing no: 101965.04 Rev C. I was also provided with a hard copies of drawing nos: 23/298/TR/003 Rev A and 23/298/TR/004 in relation to proposed access arrangements and lay-by visibility respectively. I have determined the appeal on the basis of these plans.

Background and Main Issues

7. The appeal is made against the failure of the Council to determine a planning application within the prescribed period. The Council have confirmed that had they determined the application it would have been refused on the grounds that the loss of the public house as a community facility has not been justified contrary to the aims and objectives of Policy IC4 of the Hambleton Local Plan 2022 (HLP), and that the living conditions of future occupiers of the proposed residential units would be adversely affected with regard to odour from a nearby chick hatchery and from noise and disturbance from vehicles associated with that operation and other industrial premises close to the appeal site.
8. It therefore follows that the main issues are whether:
 - The proposed change of use is justified with reference to the strategy in the development plan for retaining community and local facilities; and
 - The proposed development would provide adequate living conditions for future occupiers with particular regard to odour and noise and disturbance from adjacent uses.

Reasons

Change of Use of Public House

9. The Moor and Pheasant Public House (the PH) forms part of a small cluster of residential and industrial properties close to the village of Dalton. The appeal proposal involves the conversion of the existing PH to 5 apartments in addition to an existing manager's flat which would be retained. A small convenience store is also proposed.
10. HLP Policy IC4 states that proposals which would lead to the loss of premises or land currently or last in community use will not be supported unless, amongst other things, the existing use is no longer financially or operationally viable and there is no reasonable prospect of securing a viable satisfactory alternative community use. It does not define what is considered to be a community facility. Nevertheless, the supporting text under the subheading 'Justification' at paragraphs 7.44 and 7.45 suggests that local facilities could include public houses. These paragraphs recognise that some facilities may be commercial operations but are still valuable to the local community.
11. It is well established that public houses can play an important role in sustaining communities providing valuable opportunities as meeting places, in the form of opportunities for social interaction or as meeting places for clubs, societies and sports teams. I have no evidence before me that the PH when it was operating did not provide those opportunities or could not offer them in the future. Therefore, on

that on that basis it is reasonable and rational to consider that the premises provides a facility for the community.

12. Whist I recognise that the supporting text to a policy within a development plan does not form part of any particular policy, its purpose is to provide explanation and context to aid the reader. It would therefore be neither irrational nor perverse to take this text into consideration in the determination of an appeal, and in this instance consideration of what constitutes a community facility.
13. Furthermore, the Framework gives examples of community facilities at paragraphs 88 d) and 98 a), both of which include public houses within their lists of examples. The lists in neither the HLP nor the Framework are closed lists and simply provide examples of the types of buildings which may provide community facilities.
14. I have also considered the UCO which places public houses under a separate classification (Sui generis) to local community facilities (Sch.2 Part 3 Class F2(a)). For the purposes of the UCO local community facilities are restricted to shops selling essential goods which have a floorspace under 280 metres square, where there are no other similar facilities within 1km, halls or meeting places principally used by the local community, place for outdoor sport or recreation and swimming pools or skating rinks. However as uses which could be reasonably considered to be community facilities fall within in divisions of the Order other than Sch.2 Part 3 Class F2(a), the UCO is not determinative on this matter.
15. Notwithstanding the arguments around the wording of HLP Policy IC4 put forward by the appellant that the use of the premises should not be considered as a community use or facility, reference to community facilities and uses in the policy should be given their broadest meaning. Based on supporting text at paragraphs 7.44 and 7.45 and the considerations set out above it would be reasonable to conclude that the appeal premises constitute a community facility irrespective whether it is open or closed or the length of time since it last traded.
16. In the absence of any adequate or compelling evidence to the contrary, based on the wording and supporting text to HLP Policy IC4 and the guidance in the Framework, that a public house, and therefore the appeal premises is a community facility which could help to sustain the community through the creation of healthy, vibrant and inclusive places within the district. HLP Policy IC4 is therefore relevant to this appeal.
17. I now turn to the matter of whether the proposal before me fulfils the requirements of HLP Policy IC4. The policy states that for the loss of relevant premises to be acceptable, amongst other things and pertinent to the situation before me, it should be demonstrated (my emphasis) that the existing use is no longer financially or operationally viable, and there is no reasonable prospect of securing a viable satisfactory alternative community use.
18. Paragraph 7.48 of the supporting text to HLP Policy IC4 sets out how the Council would expect claims that a community use is no longer viable should be demonstrated. This includes financial records of the business for the previous 3 years and evidence of marketing for a minimum of 12 consecutive months. Although I recognise that the supporting text does not form part of the policy, nevertheless Policy IC4 requires demonstration that an existing use is no longer viable and there is no reasonable prospect of an alternative community use for the

premises. The supporting text provides a useful aid for prospective applicants as to how that may be demonstrated. Whilst I agree that the length of time premises are marketed for may not be prescribed within the policy, it would be reasonable for the Council to expect demonstrable evidence that the premises had been properly marketed for a reasonable length of time as either a going concern or for an alternative community use.

19. The PH closed in 2019 and has not traded as such since. At the hearing I heard anecdotally that the previous owner of the PH was a respected local businessman who runs a number of other successful hospitality businesses. However, he was unable to make the appeal premises profitable. Whilst I do not doubt the reliability of this information, it does not unequivocally prove that that premises would be unviable for another operator who may have different operating model.
20. At the hearing, the appellant asserted the use of 'Return On Capital Employed' (ROCE) as a means to determine whether a business is a commercial concern. This methodology may a recognised indicator of financial viability for potential investors. However, I have not been presented with any detailed analysis using this method to demonstrate how the premises are not viable as a PH or what the ROCE is in this instance based on the level of investment made by the previous owner. Nevertheless, I have been provided with several years of abbreviated accounts obtained via Companies House which indicate that the business returned a loss before it closed. But, without more detailed information about the type of investment that was being made or how the business was being run, I cannot be sure that the premises would not have made a profit in future years, not withstanding the COVID pandemic which followed.
21. Furthermore, I have not been provided with any marketing details relating to the sale of the PH. At the hearing I was told that the marketing exercise which took place had been on an informal basis using the previous owners contacts and his knowledge of the industry and that sale boards would have damaged his credibility. Nevertheless, I was also advised that an agent had been used although their name and details were unknown. Whilst I understand that this exercise was carried out by the previous owner, it would not be unreasonable, given the circumstances, to obtain from him, the marketing particulars or other information relating to the exercise, including the length of time it was actively marketed for, and the numbers of viewings or offers, without divulging commercially sensitive information, given that the appellant was the successful purchaser of the property.
22. Therefore, in the absence of any demonstrable evidence in relation to a marketing exercise or other comparable information, including the length of time it was actively marketed or the basis upon which the premises was presented to the market, I cannot be certain that a public house use is not a viable concern. Moreover, the comparison of the PH to others in the local area whose financial viability may also be precarious, does not negate the need to comply with the requirements of HLP Policy IC4, regarding evidence of commercial viability.
23. I note that there were no objections to the loss of the facility from the local community, however, this does not equate to a lack of harm. Furthermore, lack of objections is not a matter upon which HLP Policy IC4 places any weight in the consideration of a potential loss of a community facility.

24. Moreover, I note that the premises are prominently located on the roadside with an attractive outside seating area and ample car parking provision with a caravan site to the rear. Theoretically, therefore it has the potential to attract passing trade to complement local trade as well as to provide a service for users of the caravan site to the rear of the PH. These factors reinforce my view that the opportunities for the PH have not been fully explored to demonstrate that the business cannot be made viable.
25. In coming to this conclusion, I have carefully considered the comments made by the appellant in relation to *Tesco Stores Ltd v Dundee City Council [2012] UKSC 13* and other associated case law² in that the specific wording of the policy requires the “a proposal that would result in the loss of premises or land currently or last in community use will not be supported unless it can be demonstrated that: ... the existing use is no longer financially viable and there is no reasonable prospect of securing a viable satisfactory alternative use ...” and have clearly differentiated the wording of the policy its supporting text in coming to my conclusion that the premises constitutes a community facility.
26. Considering all of the above, I conclude that the proposal would result in the unacceptable loss of a community facility. It would therefore conflict with Policy IC4 of the HLP, which seeks to maintain and improve the provision of local community services and facilities.

Living Conditions

27. The appeal site is located close to a small business park and an industrial unit which operates as a chick hatchery. At the hearing the appellant advised that the operation of the hatchery unit involves the hatching of eggs which are then transported away from the site once the chicks are a day old, and older live birds are not kept on site. This concurs with what I saw on site, that there was no evidence of the keeping of livestock at the unit. I was also told that the operation of the site requires clean, hygienic conditions which are unlikely to produce odours. The Council has not disputed this, although at the hearing, I heard from the Council that the lack of complaints may not be indicative that there have not been issues in the past and that they may just not be on record. However, Council records are kept for six years and there are no complaints on file
28. Nevertheless, I have not been provided with any compelling evidence that odours from the unit are intrusive or occur on a regular basis, with no evidence of complaint from other neighbouring properties to the extent that they would adversely affect the living conditions of future occupiers of the appeal premises. That is not to say they have not occurred or may not happen in the future. Nevertheless, I have to determine the appeal on the information before me which indicates that odour is not a commonplace issue at this location, or which would not ordinarily be experienced in a rural location which would warrant the withholding of planning permission on this matter.
29. The Council is also concerned that industrial activity on neighbouring sites have the potential to cause noise and disturbance to occupants of the proposed apartments in relation to vehicular movements. It is critical of the appellant for not

² City of Edinburgh Council v Secretary of State for Scotland / Tesco Stores Ltd v Secretary of State for the Environment and Others / R (oao Cherkely Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567

submitting vehicle and noise surveys to understand existing background noise levels and volumes of vehicle movements in the vicinity of the appeal site.

30. Industrial uses are inevitably likely to involve regular comings and goings of both workers and visitor vehicles as well as deliveries to and from the sites, which would involve HGVs setting off and slowing in low gear. From my observations of the locality, it appeared that traffic would not be constant. Whilst I accept that my observations represent only a snapshot in time on two occasions during a working day around the time of the hearing, I have no reason to believe that they were not typical for a normal weekday. Subject to appropriate levels of glazing being installed into the proposed apartments I am satisfied that the living conditions of future occupiers of the apartments would not be adversely affected by noise from vehicles passing the appeal site or from activities occurring on neighbouring industrial sites.
31. The proposal involves the introduction of a small convenience store in part of the building. At the hearing, the levels of traffic which the store would be likely to attract and the sort of deliveries which were likely to be required would be unlikely to cause any adverse impacts on the living conditions of future occupiers of the building which could not be adequately controlled by the imposition of appropriately worded conditions in relation to opening hours and restrictions on delivery times. I am therefore satisfied that the living conditions of future occupiers would not be compromised with regard to noise and disturbance in this respect.
32. I therefore conclude that subject to suitably worded conditions the proposal would not result in unacceptable harm to the living conditions of future occupiers of the proposed development with regard to odour and noise and disturbance. I therefore find no conflict with HLP Policy E2 which requires proposal for all development to provide and maintain a high standard of amenity for all users and occupiers including future occupants of the proposed development.

Other Matters

33. The proposal includes a small shop unit which it is intended would supply convenience goods. The Council's objections to the proposal do not include reference to this element of the proposal. However, the Council have questioned the appellants evidence in relation to a survey undertaken to establish the need for a shop in this location. I also note comments in relation to the existing manager's unit, the location of the WC on the ground floor and matters in relation to the caravan park to the rear of the appeal site. Nevertheless, as I have dismissed the appeal on other matters, I have not pursued these further.
34. At the hearing the appellant contended that the proposal should be assessed in accordance with the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework. However, mindful that I have not been made aware by either party that the Council cannot demonstrate a 5-year housing land supply, I can only therefore conclude that the development plan policies are up-to-date and that the provisions of paragraph 11(d) are not triggered.
35. I acknowledge the appellant's concerns over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.

Conclusion

36. I have found that the living conditions of future occupiers would not be adversely affected, and the proposal would provide five additional housing units of a type which there is a local need close to sources of employment, with modest benefits arising from their creation and subsequent engagement by occupiers in the local economy. This would accord with the Framework in terms of boosting housing supply; however, the small scale of the proposal means the social and economic benefits of the scheme would be limited. The provision of a small convenience store within the building would provide some benefits to the local community, however, these would be limited due to the location of the premises outside of the main built-up area of the village. Nevertheless, the provision of a shop of the size proposed would not outweigh the loss of a larger community facility provided by the existing PH.
37. Furthermore, I have found that the loss of the PH as a local, community facility is not justified with regard to the requirements set out in HLP Policy IC4. I attach great weight to the loss of this community facility, particularly in a rural location where there are few and those which exist have the ability to maintain the quality of life and reduce the need to travel.
38. Therefore, for the reasons set out above the development conflicts with the development plan, to which I attach significant weight. No material considerations have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it. I have taken all other matters into consideration, and these do not indicate that permission should be forthcoming. Consequently, the appeal is dismissed.

K L Robbie

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr George Wright MRTPI

Mr Gareth Davies

FOR THE LOCAL PLANNING AUTHORITY:

Mr Connor Harrison – Senior Planning Officer

Mr Ian Nesbitt MRTPI – Principal Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING:

Proposed Elevations drawing no: 101965.04 Rev C

Proposed Access Arrangements drawing no: 23/298/TR/003 Rev A

Proposed Lay-by Visibility drawing no: 23/298/TR/004