



Appeal Decision

Site visit made on 8 April 2025

by **N Perrins MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2025

Appeal Ref: APP/U2235/W/24/3354377

The George, Benover Road, Yalding, Kent ME18 6EJ

- 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 Mr Dan Mahendran against Maidstone Borough Council.
 - The application Ref is 24/502003/FULL.
 - The application sought planning permission for change of use from ground floor Sui Generis (Public House) to Class E restaurant part retail facilities with ancillary Sui Generis use (Takeaway) without complying with conditions 2 and 6 attached to planning permission Ref: 23/502781/FULL.
 - Condition 2 states that: The development hereby permitted shall be carried out in accordance with the following approved plans: 100 Existing Ground and First Floor Plans, 101 Existing Second Floor Plans, 110.A Existing Elevations, 200 Proposed Ground Floor Plans, 1001 Site Block Plan, Site Location Plan and Heritage Impact and Design and Access Statement.
 - The reason given for the condition is to clarify which plans have been approved.
 - Condition 6 states that: The area of floorspace to be used for restaurant and retail use shall be as set out on approved drawing 200 (proposed plans).
 - The reason given for the condition is unrestricted use of the building or land could cause demonstrable harm to the character, appearance and functioning of the surrounding area and / or the enjoyment of their properties by adjoining residential occupiers.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I acknowledge that Yalding Parish Council requested that this appeal should be heard through an in person hearing as opposed to the written procedure. However, I am satisfied that I am sufficiently aware of the relevant planning history and have information from all parties that clearly sets out their position to enable me to make a decision based on what is in front of me. As such, I conclude that it is appropriate for the appeal to be determined through the written procedure.
3. The appeal is made against the failure of the Council to determine the application within the statutory period. The Council has confirmed through providing copy of a committee report that, had it determined the application, it would have granted planning permission.

Background and Main Issues

4. The appeal site is a former public house building located within Yalding, which is a designated larger village and local centre in the Maidstone Borough Council Local

Plan Review 2021-2038 (the Local Plan). The site is in the Yalding Conservation Area as well as being within Flood Zone 3.

5. The ground floor of the former public house has been converted to a convenience store following the grant of planning permission Ref: 23/502781/FULL. As observed on my site inspection and confirmed in the information before me, the layout and some conditions as approved through planning permission Ref: 23/502781/FULL have not been adhered to. Following an enforcement investigation by the Council, the appellant submitted the proposals subject of this appeal seeking to regularise the situation at the appeal site.
6. The changes to planning permission Ref: 23/502781/FULL propose an increase in internal commercial floorspace of around 15.6 square metres (sqm) arising from internal layout changes including removal of a staircase. This comprises an increase in retail shop floorspace of around 13.18 sqm and around 2.44 sqm for the restaurant / café component. Whilst overall commercial floorspace would be increased, the restaurant / café including bar area provision would be proportionately reduced from that approved under Ref: 23/502781/FULL. The restaurant is now referred to as a café and would be moved within the building to give it a street frontage. The ancillary space would also be reduced. As not all the development shown on the plans has yet been completed, the proposal is partly retrospective.
7. I am satisfied that the proposal in terms of its retail and restaurant / café uses does not materially depart from the operative part of planning permission Ref: 23/502781/FULL and is appropriate to have been submitted as S.73 planning application.
8. Consequently, and considering the position of the Council, the main issue is whether there are any planning policies, planning issues and / or matters raised in the representations that would justify refusal of the proposal. I have considered the main issues raised in the information before me under the headings below.

Reasons

Flood Risk

9. The appeal site is in Flood Zone 3, which is the highest risk of flooding. Policy LPRSP14 (C) of the Local Plan relates to climate change and requires new development to include a Flood Risk Assessment (FRA) where the site is in Flood Zone 3. Paragraph 170 of the Framework states that where development is necessary in areas at highest risk of flooding, it should be made safe for its lifetime without increasing flood risk elsewhere. Footnote 63 of the Framework states that a site-specific FRA should be provided for all development in Flood Zone 3.
10. There is no information before me that demonstrates that a FRA was submitted with the application. The Council's committee report that has been provided as part of the information before me makes no reference to the submission of a FRA. The absence of a FRA is contrary to the requirements of Policy LPRSP14 (C) of the Local Plan and Footnote 63 of the Framework.
11. I am aware of representations to the application and appeal that have highlighted, amongst other matters, concerns with the development's impact on flood risk following the removal of the internal staircase. I note there is a separate

undetermined application¹ that proposes to change the use of the upper floors from residential accommodation to a House of Multiple Occupation (HMO), which has attracted an objection from the Environment Agency relating to the impact on that proposal from the removal of the staircase and ability to implement flood resilience measures to the ground floor.

12. Whilst I am not concerned with the merits of that separate application in this appeal, there is no information before me to conclusively confirm what the existing planning status is of the floors above the ground floor other than references to it being used for some form of residential accommodation. Whether this is in connection with the ground floor or now a wholly separate planning unit is not confirmed in the information before me. The removal of the internal staircase has, however, evidently removed access to the upper floors from the ground floor. Access to the upper floors now appears to be solely from an external staircase.
13. It is evident from the information before me that the site is highly vulnerable to flooding with documented evidence of events in the relatively recent past. Consequently, I sought views from the appellant and the Council as to whether the removal of the staircase to facilitate the appeal development before me raises any material issues with flood risk. In response, the appellant contends that whilst this might be an issue for the separate application for the floors above, it is not a material consideration in this appeal that relates solely to the changes to the ground floor of the building. No response was received by the Council, so I do not take their view on flood risk in this case.
14. Whilst the removal of the staircase may not need planning permission in isolation, it has resulted in a change to the approved layout and conflict with conditions attached to planning permission Ref: 23/502781/FULL that now needs to be regularised. As such, the removal of the staircase is a material issue for this appeal that requires an assessment as to its effect. In this regard, the removal of the staircase raises the unresolved possibility that the existing accommodation above, if being used for separate residential use, could be exposed to a greater level of flood risk than if it had remained in situ. A FRA as is required by both development plan and national planning policy would have conclusively addressed this issue. Therefore, in the absence of the required FRA, I am not satisfied that the information before me conclusively or adequately demonstrates the removal of the staircase has no bearing, as contended by the appellant, on the acceptability of this development in terms of not increasing flood risk elsewhere.
15. In conclusion and for the reasons stated, I am unable to conclude whether the development is acceptable in terms of flood risk and has not increased the risk of flooding elsewhere, namely the accommodation above. As such, the development is contrary to Policy LPRSP14 (C) of the Local Plan and the related flood risk requirements set out in the Framework.

Vitality, viability and character of Yalding local centre

16. Retail-type uses that are proposed by the appeal development are supported by local plan policies LPRCD1, LPRSP7 and LPRSP11 (C). The original permission established that the conversion of the property to a mix between shop and restaurant / cafe was acceptable in terms of these planning policies. As has been demonstrated, the proposed plans would retain the approximate 70:30 split

¹ Ref: KT/2024/132154/01-LO1 REF

between shop and restaurant / café approved under Ref: 23/502781/FULL albeit across an increase in commercial floorspace.

17. The increase in ground floor commercial floorspace arises mainly from the removal of the internal staircase. Most of the additional floorspace has been used to increase the convenience retail shop area within the development. The changes in internal configuration have, however, resulted in a more efficient and logical use of the space. This includes the re-positioning of the restaurant / café with ancillary takeaway to the front of the building. I find that this would be an improvement over the approved layout as customers would be able to enter it directly from the street.
18. I acknowledge that objections have raised concerns that the development would not deliver on what had been originally envisaged in planning permission Ref: 23/502781/FULL, particularly regarding the reduction in restaurant / café area and selling of local produce. The reduction in covers and bar area compared to the approved restaurant / café is likely because of the proposed change for it to operate more as a café. Using the related space as a café would still provide an important facility for residents to interact and socialise very similar to if it were a restaurant. The resultant proportionate reduction in floorspace would, therefore, not result in any material planning harm as the overall function provided would be similar. There is also no evidence that demonstrate the reduction in the café area would affect its longer-term sustainability.
19. In terms of local produce, Policy LPRCD1 (7) envisages that farm shops are generally located in the countryside and linked to a farm holding. Without any known link between the development and a farm holding, a restriction for the type of retail use would not meet the tests for planning conditions. As such, planning permission Ref: 23/502781 does not include any restrictions regarding the offer. In any event, the revised ground floor layout accords with the Local Plan's retail and shopping planning policies and any change in offer from what was previously proposed is not a reason to refuse planning permission.
20. Concerns have also been raised whether the increased retail shop area would adversely impact the other nearby convenience store due to increased competition in the local centre. However, this is not normally a material planning consideration and there is also no evidence before me that demonstrates that any adverse impacts would arise in this regard and from a relatively minor increase in floorspace. Objections were also made regarding the reduction of ancillary space as well as for the toilet facilities to be shared between staff and customers. No objections have been received by the Council's Environmental Health team on these matters, and I have no reason to disagree with the Council's assessment of these aspects as set out in their committee report.
21. To conclude, the development retains an appropriate balance between retail, café and ancillary takeaway across only a marginally larger floorspace to what was previously approved. Accordingly, I find that the increase in floorspace and changes to layout will not have any negative impacts on the local centre and accords with Policies LPRCD1, LPRSP7 and LPRSP11 (C) of the Local Plan.

Heritage

22. The appeal site is in the Yalding Conservation Area (CA) and within the setting of several nearby listed buildings. The duties under Sections 66 (1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require that

special regard be paid to the desirability of preserving listed buildings, their settings, and any features of special architectural or historic interest that they possess, and that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. The appeal building is also identified by the Council as being a non-designated heritage asset.

23. From the information before me the significance of the CA derives from the historical development of the settlement's layout from its origins as a medieval market town, various listed buildings and overall quality of the architecture and public realm. The street outside the appeal property is also identified as a positive aspect of the CA within the Yalding Conservation Area Appraisal and Management Plan. The contribution of the appeal building to the significance of heritage assets derives from its historical origins as well as its complimentary external architecture and appearance that contributes positively to the character and fabric of the CA and the setting of nearby listed buildings.
24. The proposed changes only relate to the internal aspects of the building with the external facades and street outside remaining unaffected in terms of the plans before me. Accordingly, I find that the appeal proposal would result in no harm to the significance of the CA or setting of nearby listed buildings. Reference is made in the committee report to the proposal resulting in less than substantial harm, albeit to what this relates is not clearly stated. As set out above, I cannot identify any less than substantial harm, or any harm, to designated heritage assets. I also note that the internal staircase was a modern addition to which the Council's Conservation Officer did not object to its loss.
25. I do acknowledge, however, that removal of the central staircase and other features has markedly changed the fabric of the ground floor to how it was previously used and appeared. Given the long association of the building being used as a public house, the removal of these features has resulted in harm to the internal character of the non-designated heritage asset when compared to how it has historically been used and likely laid out. The works that have occurred have also affected the ability for existing conditions regarding archaeology to be complied with.
26. Paragraph 216 of the Framework requires a balanced judgement to be made having regard to the scale of any harm or loss to the significance of non-designated heritage assets. Given the internalised nature of the proposal, the harm that has arisen is at the lower end of the scale given that the most important contribution of the appeal building to heritage assets is its external appearance, which is not affected by the appeal scheme. I also give weight to the operational benefits that would arise by the more efficient layout as well as giving the restaurant / café street frontage that overall would enhance the vitality and viability of the Local Centre. For these reasons, the identified harm to the significance of the non-designated heritage is outweighed by the scheme's benefits.
27. I am aware that there are concerns with aspects of the external appearance of the building following the change of use of its ground floor such as signage and alterations to openings. These aspects, however, do not form part of the development before me and not a matter for me to consider in this appeal.
28. For the reasons stated, I find that the development is acceptable in terms of impacts on heritage assets. The development, therefore, accords with the requirements of Policy LPRSP14 (B) and LPRENV1 of the Local Plan, which seeks

to ensure new development conserves, and where possible enhances, the significance of heritage assets and apply a balanced judgement in respect of harm to non-designated heritage assets. The appeal proposal is also consistent with the requirements of the Framework in respect of heritage matters.

Residential amenity

29. The appeal site is within a designated local centre where retail-type uses are supported by the Local Plan. The building will retain the uses previously approved albeit with the internal changes resulting in a relatively minor increase in floor area. The increase in floor area has resulted in more of the building being used for the retail shop, which is a use that is appropriate for its location in a local centre.
30. There is no evidence before me that demonstrate this minor increase in floor area and changes in layout will have any materially harmful impacts on residential amenity over and above what has already been approved. I also note the site's former use as a public house that would have had greater potential to harm amenity than the current mix of shop, restaurant / café and takeaway use as shown on the plans before me. As such, the development accords with Policies LPRSP15 and LPRQD6 of the Local Plan, which seek to respect amenity for residents.

Parking

31. The appeal site includes a large courtyard that provides 13 car parking spaces. The Council concluded that this provides sufficient parking to adequately service the development including its modest increase in floorspace. No objections were submitted by the local highway authority on the level of parking provision or any other highway matter. As such, the parking provision for the development is acceptable and meet the needs of customers in accordance with Policy LPRTRA4 of the Local Plan.

Other Matters

32. I note the appellant appealed under non-determination provisions after being frustrated by delays and a deferral at planning committee. This is a neutral matter in this appeal and not determinative to its outcome.

Conclusion

33. For the reasons given above and considering all matters raised, I conclude that the development does not accord with the development plan or national planning policy regarding flood risk. This is significant issue and, even with other aspects of the proposal found to be acceptable, is sufficient on its own for planning permission to be refused. For this reason, the appeal is dismissed.

N Perrins

INSPECTOR