



Appeal Decision

Site visit made on 6 May 2025

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2025

Appeal Ref: APP/X1355/W/25/3359018

Dog And Gun Inn, Auton Stile, Bearpark, Durham DH7 7DB

- 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 Arya Samadi, on behalf of EON Luxfolio Limited, against the decision of Durham County Council.
 - The application Ref is DM/24/01823/FPA.
 - The development proposed is change of use of existing building from public house (sui generis) to form workspace (use E) & bar/restaurant/café/retail (use E) & associated external alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I observed that the ground floor bar/restaurant/café/retail unit that forms part of the development is already in use. The appeal is thus considered retrospectively. This is immaterial to my assessment of the planning merits of the appeal scheme.
3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024. In so far as it relates to this appeal, there have been no substantive changes to the wording of relevant paragraphs and both parties have had an opportunity to comment on this through the appeal process. I have thus had regard to the most recent version of the Framework in this decision.
4. The Council's second reason for refusal concerns the accuracy of the plans. Those before me are very limited in detail, with the elevation drawings in particular lacking clarity and in some areas failing to reflect features of the building that I observed on site. Nevertheless, I have concluded against the main issues based on the evidence and my own observations. Had I been minded to allow the appeal, more detailed and accurate plans would have been required.
5. The status of the first floor of the building is unclear from the evidence. First floor plans have not been provided. The Council maintain that it previously operated as a flat ancillary to the wider pub use, and the development results in its change of use to commercial floorspace. The appellant however contends that it retains permission for residential use. Had I been minded to allow the appeal, it would have been necessary to seek clarity on this matter in order that the terms of the permission were clearly defined. However, I have not pursued this issue any further as it could not have changed the outcome of the appeal.

Main Issues

6. The main issues are:

- Whether or not the loss of a community asset is acceptable, having regard to the relevant provisions of the development plan;
- Whether the development provides adequate and safe access arrangements for all users; and
- Whether the development provides adequate car parking.

Reasons

Community asset

7. Policy 6 of the County Durham Plan Adopted 2020 (the CDP) supports development of sites in the built-up area which are not allocated in the Plan provided that, among other provisions, it does not result in loss of a settlement's or neighbourhood's valued facilities or services, unless it has been demonstrated that they are no longer viable. This is consistent with Paragraph 88 of the Framework which states that planning decision should enable the retention and development of accessible local services and community facilities, such as public houses.
8. The appeal building was formerly used as a public house. The development comprises the change of use of the building, including subdivision of the internal space into several individual workspaces with kitchen and WC facilities, and the provision of a modest bar/restaurant/café/retail space in the corner of the building.
9. Bearpark contains two churches, a communal hub and a social club. There are also shops and a takeaway close to the appeal site. The nearest pubs however are in neighbouring settlements at Ushaw Moor and Langley Park, and the local community centre has now closed. The Council consider the lawful pub use at the site provides a community asset, as the last remaining pub in Bearpark. Likewise, representations from a local councillor and minutes from a Bearpark Parish Council meeting note the loss of the pub as a community facility and resource. While I recognise it has not been operational for some time and may not have been used by local sports clubs, I am satisfied it has value as a community facility.
10. Both main parties have referred to the Campaign for Real Ale (CAMRA) "Public House Viability Test" (PHVT). This is not a policy requirement and little information regarding this assessment has been provided. The PHVT is thus not decisive in my consideration of this main issue. Nevertheless, matters considered by the parties pursuant to the PHVT are relevant to the viability of the site as a pub.
11. Bearpark is situated close to Durham City, amongst several other settlements, and so there is a considerable local population and wide catchment area. The appeal building is situated on a main thoroughfare through Bearpark, among other commercial uses and benefits from a private car park, bus connections to neighbouring settlements. It is thus in a relatively accessible location. It also features residential accommodation at first floor, providing space to support, expand or supplement the business. The value of the pub as a community facility is also likely to have increased with the closure of the local community centre.

12. To demonstrate that such a building or facility is not viable, the supporting text to Policy 6 states that the applicants must be able to evidence that the premises has been advertised as a going concern in the press, online and on-site, at least four times within a six-month period and all reasonable offers have been explored.
13. The site was formerly owned by a national brewery, whom the appellant contends actively sought to sell the premises over 10-15 years without success. The appellant purchased the property at a considerably reduced price, as a vacant development project, rather than a going concern. There is however no substantiated evidence of protracted attempts by the previous owner to sell the property, the viability of the pub over this period or the reason for its fall in value.
14. The appellant has advised that having acquired the property they sought to find a suitable operator for the pub, including through local agents, letters to local businesses and word of mouth. This attracted some interest, albeit there were common issues that made the site unviable for potential occupiers. However, no substantiated evidence of this has been provided. Moreover, there is no marketing evidence before me, including no indication of how long the pub use specifically was advertised for, on what terms and across which mediums. It is thus not clear whether other approaches to marketing the use may have been more successful. More comprehensive marketing of the site may have demonstrated a clear lack of demand for a pub use. Based on the evidence however, I am not persuaded that the marketing undertaken is sufficient to draw firm conclusions in this regard.
15. As part of their appeal submission, the appellant has provided evidence from the Valuation Office Agency (VOA) that demonstrates the most recent rateable value of the appeal property was low compared to nearby competitor pubs and comparable to a vacant pub in Broompark. This does not in itself demonstrate that the site is not a community asset or could not viably be operated as a pub.
16. The appellant sought pre-application advice from the Council, which highlighted the pub as a valued community facility and advised that its loss would be resisted. It confirmed the need to demonstrate the viability (or lack of it) of the pub, detailing what marketing has been undertaken, what the terms of the sale were in April 2021 and what business opportunities have been explored over the last 2 years. The requirement to demonstrate a lack of viability, and provide detailed information in respect of marketing, should therefore not have come as a surprise to the appellant. Ultimately, detailed evidence in respect of this matter has not been provided, and this does not lead me to a different conclusion on this matter.
17. My attention has been drawn to other planning permissions granted by the Council, for the change of use of a public house to a dwellinghouse¹, and for change of use of an ambulance centre². Limited details of each case have been submitted. Nevertheless, the settlement in which the pub is located is in a more remote area. Moreover, the Council's Officer Report highlighted that the applicant provided a viability report at the time of the application, the pub was 350m from another pub within the same settlement, and with insufficient trade to support both. Additionally, details of comprehensive marketing were submitted. The second application did not concern a public house, and the property had been vacant since 2016. Based on the evidence before me, both cases are materially different to the local circumstances and evidence provided in this appeal.

¹ Council Ref DM/24/03168/FPA

² Council Ref DM/24/02067/FPA

18. It has thus not been adequately demonstrated that the building or facility is not viable as a public house. Accordingly, the loss of this community asset is not acceptable, having regard to the relevant provisions of the development plan. The development conflicts with Policies 6 and 9 of the CDP. These policies, among other provisions, seek to protect and enhance the hierarchy of retail centres, including the evening economy, and support the development of unallocated sites which does not result in the unjustified loss of a settlement's valued facilities.

Access arrangements

19. Policy 29 of the CDP requires all development proposals to consider the needs of existing and future users, including those with dementia and other sensory or mobility impairments. The supporting text to this policy indicates that spaces should be designed to be accessible and safe to all users. This is consistent with Paragraph 135 of the Framework, which states that planning decisions should ensure that developments create places that are safe, inclusive and accessible.
20. The site features a raised decking area on the Auton Stile side of the building, accessed via a ramp. The decking includes a step up to the front door of the bar/restaurant/café/retail unit. The plans before me do not clearly depict the ramp, though I observed on site that this is relatively steep. These access arrangements are unlikely to be suitable for users with sensory or mobility impairments.
21. The surrounding context includes various properties without level access, in part due to the topography of the area, and the former public house did not benefit from this either. Nevertheless, while the building is existing, the development is a new proposal and is required to comply with the relevant provisions of the development plan in respect of this matter. Based on the evidence before me, there is no compelling justification to allow a departure from this policy in this instance.
22. While this matter may not have been raised in the previous application or appeal, this does not preclude the Council from raising it as an issue on a later application.
23. The development thus fails to provide adequate and safe access arrangements for all users. It is contrary to Policy 29 of the DCP. This policy, among other provisions, seeks to ensure all development proposals achieve well designed buildings and places, contribute towards healthy neighbourhoods and consider the health impacts of development and the needs of existing and future users.

Car parking

24. The submitted plans depict 10 off-street parking spaces within the appeal site. The Council's Highways Development Management section has not raised any concerns regarding road safety and considers the existing number of car parking spaces to be a suitable level of provision for the proposed uses.
25. The Council's Officer Report raises concerns regarding the layout and topography of the parking area. However, it is not clear which spaces are considered to be inoperable or why, and no specific conflict has been highlighted with the guidance in the Parking and Accessibility SPD Adoption Version 2023 (the SPD).
26. Notably, the Council's Highways Development Management section did not raise any concerns regarding the design or accessibility of the parking arrangements. Moreover, the Council considered that there would not be a heavy reliance on the private car, given the site's accessibility to other means of transport. Based on my

own observations, and having regard to the guidelines within the SPD and the site's accessibility, there is sufficient car parking space to serve the development.

27. On the basis of the evidence before me, the development thus provides adequate car parking and accords with Policies 6, 21 and 29 of the CDP in this regard. These policies, among other provisions, seek to ensure development proposals will not be prejudicial to highway safety, provide a sufficient level of car parking and provide convenient access for all users.

Other Matters

28. A previous appeal³ concerning the development was dismissed on the basis that the application was not valid as made. While the Council did not provide a statement of case in respect of that appeal, this does not amount to tacit approval of the development by the Council and does not weigh in favour of the appeal scheme before me.
29. Other than where set out above, I have not identified conflict with any other relevant parts of the development plan or national policy and guidance. However, the absence of harm or development plan conflict with respect to other relevant matters weighs neither for nor against the proposal.
30. The PPG and Framework encourage the Council to take a positive approach and work proactively with applicants. While the appellant's frustrations with delays in the application process and the level of engagement offered by the Council are noted, this does not lead me to a different conclusion on the main issues.
31. The appellant contends that, as a public house, the site benefits from permitted development rights (PDR) pursuant to Schedule 2 Part 3 Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). While this may be the case, use of the premises as a drinking establishment with expanded food provision is not equivalent to its change of use to workspaces & bar/restaurant/café/retail. Application of these PDR would thus not have comparable or worse impacts with regard to the main issues than those arising from the appeal scheme. This does not therefore weigh in its favour.

Conclusion

32. While I have found that the development provides adequate car parking facilities, this does not overcome the harm and development plan conflict arising from the unjustified loss of a community asset and failure to provide adequate and safe access arrangements for all users. The development therefore conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR

³ Appeal Ref APP/X1355/W/23/3332312