



Appeal Decision

Hearing held on 12 August 2025

Site visit made on 12 August 2025

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Appeal Ref: APP/U2235/W/25/3365602

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 Mr James Mills on behalf of CKE Homes Ltd against the decision of Maidstone Borough Council.
 - The application Ref is 24/503954/FULL.
 - The development proposed is conversion of former public house into 1no 2-bedroom flat and 3no 1-bedroom flats.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of former public house into 1no 2-bedroom flat and 3no 1-bedroom flats at 40 Sandling Road, Maidstone, Kent ME14 2RF in accordance with the terms of the application, Ref 24/503954/FULL, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was submitted by Mr James Mills on behalf of CKE Homes Ltd against the decision of Maidstone Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. A scheme, broadly identical to the appeal proposal, was refused planning permission¹ and dismissed at appeal in September 2024². A previous appeal decision is capable of being a material consideration where it is sufficiently closely related to the issues that regard should be had to it. The principal difference between the current and previous scheme is the inclusion of additional supporting evidence, namely the "*Viability study relating to the Dragoon, Maidstone, June 2024*" (Viability Study).

Main Issues

4. The main issues in this appeal are:
 - whether the change of use of the property from a public house is justified; and
 - whether other material considerations outweigh any harm identified such as to justify the development.

¹ LPA ref: 23/503490

² PINS ref: APP/U2235/W/24/3339194

Reasons

Whether change of use is justified

5. The appeal property is a three-storey end of terrace building situated on the corner of Sandling Road and Hope Street, known as The Dragoon Public House (the pub). The pub is within Maidstone's built area and is close to the town centre. The surrounding area is characterised principally by residential development but includes a mix of uses, such as ground floor shop units fronting onto Sandling Road and a tyre workshop and MOT centre to the rear of the site.
6. The pub comprises a bar area and customer toilets at the ground floor and one unit of living accommodation across the first and second floor. The pub has ceased trading, having closed in January 2023. At time of my site visit, the pub remained vacant.
7. The proposal seeks conversion of the pub building into one two-bedroom flat and three one-bedroom flats including a first-floor extension and changes to fenestration. The building would be solely in residential use, and therefore the proposal would result in the loss of the existing lawful use as a public house.
8. Policy LPRINF2 and Policy LPRCD1 of the Maidstone Local Plan Review 2024 (LPR) seek to prevent the loss of community facilities, including pubs.
9. Where no replacement facility is proposed, criterion 2 of Policy LPRINF2 states proposals which would lead to a loss of community facilities will not be permitted unless 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).
10. Criterion 9 of Policy LPRCD1 requires consideration be given to the following: (i) firm evidence that the existing uses are not now viable and are unlikely to become commercially viable; (ii) the availability of comparable alternative facilities in the village or the local area; and (iii) the distance to such facilities, the feasibility of alternative routes being used, and the availability of travel modes other than by private motor vehicle.
11. As identified in the previous appeal decision, there are other pubs in the local area, which are accessible on foot³. It is common ground between the parties that there are other comparable alternative facilities in the local area which can reasonably be reached without using a private motor car.
12. Prior to the appellant's ownership, the pub was owned by a brewery company. The letter from Shepherd Neame Ltd dated 28 April 2025 confirms the pub was last run as a tied tenancy, and it does not hold trading accounts for the previous tenant. The appellant has been unable to contact the former tenant landlord, who would be under no obligation to supply any audited financial reports.
13. Moreover, guidance from HM Revenue & Customs suggests most sole traders do not require a statutory audit and the pub's turnover is unlikely to have met the threshold at which audited financial reports are a legal requirement. Therefore, audited financial reports for the pub business are either unavailable or do not exist.

³ Paragraph 10 of appeal decision APP/U2235/W/24/3339194

14. Following the pub's closure, the premises was publicised on a national property website and sold by a major auction house specialising in the sale of pubs. However, no primary evidence of the marketing exercise has been submitted. The duration of the marketing period is unclear, and it is unknown whether the property was listed at a reasonable market value. Whilst the appellant was the only bidder at auction, in the absence of full details of the marketing exercise I cannot be certain there would not have been interest in the market from other pub operators.
15. Whilst I note that running a pub is outside the appellant's area of commercial expertise, it is unclear why the evidence requirements could not be satisfied through marketing the pub for a fixed period and re-opening the premises to trade by a suitably experienced pub operator.
16. In the previous appeal decision, the Inspector noted the proposal relied on information documenting a general trend of falling demand for traditional pubs, but which was not specific to the appeal site, along with anecdotal evidence from the former landlord presented in a newspaper article. Whilst the sale of the premises by the brewery was reported as being because it no longer fitted the company's business needs, the Inspector concluded this did not prove the pub is unviable for another operator who may have different business needs⁴.
17. The Viability Study accompanying the current appeal proposal was unavailable to the Inspector in determining the previous appeal. It differs from previously submitted evidence as, in addition to general trends within the sector, it identifies site-specific constraints and provides business analysis through a rental valuation.
18. The Viability Study was prepared by a chartered surveyor specialising in disposal, purchasing, rent review, and valuation of public houses. It identifies that prior to the appellant's ownership, the pub was owned by the brewery company for over 60 years, operating as part of its tenanted estate, but over the past 10 years there were regular tenancy changes due to a lack of profitability.
19. The Viability Study attributes this fall in profitability to a range of economic and regulatory factors, such as staffing costs, rising utility costs, licence fee, duty rises, and supermarket competition. In addition, it identifies social factors and changes in consumer preferences, including a decline in local community social drinking, the long-term effects of COVID-19 in discouraging older customers, and a decline in beer consumption. Across the sector, the Viability Study identifies a permanent drop in trading levels and long-term trend of decline in volume of sales since 2008.
20. Between 2018 and 2023, the pub's average annual beer barrelage was below the point of viability. The brewery company deemed the pub unviable as a "wet-only" community tenanted pub, prompting its sale. The Viability Study indicates the pub has insufficient space for diners or a commercial kitchen and lacks a beer garden and customer parking. Therefore, the physical constraints of the building prohibit alternative revenue streams, such as serving food or provision of guest accommodation, and thus adversely affect the pub's commercial viability.
21. The Viability Study identifies four pubs in the immediate vicinity and 20 pubs in or near the town centre, concluding the pub's viability is affected by competition within the town centre which offers a wide variety of eating and drinking options and large, branded pub outlets.

⁴ Paragraph 8 of appeal decision APP/U2235/W/24/3339194

22. The rental valuation exercise is based on the pub's final trading situation, operating the property as a tenancy. The analysis concludes the profit level would be equivalent to 6% of turnover. At this low profit level, the study indicates the business would be vulnerable to unexpected adverse impacts, provide low rental income, and minimal return on capital with a lack of incentive for investment. The Viability Study concludes the analysis demonstrates the pub use is not viable.
23. In its email, dated 17 November 2024, Campaign for Real Ale (CAMRA) suggest the pub's viability may have been impacted by the former owner's business practices. However, the rental valuation analysis presented in the Viability Study assumed the pub would be operated by a 'reasonable efficient operator' and is not predicated on the practices of a single business, and concludes it is unlikely that an experienced pub operator would make a profit and that if another individual decided to trade the pub it would not prove viable. Moreover, CAMRA acknowledge the cost pressures and suggest a food offer is necessary, concluding that it considers the pub is not likely to be viable.
24. Whilst the Council requested a third-party assessment of the Viability Study, this is not a requirement of the relevant development plan policies. Whilst an independent review may provide assurance of the study's validity, in the absence of such a review it does not automatically follow that the study is without credibility.
25. The Planning Officer's Report concludes some of the arguments presented in the Viability Study may be reasonable but considers little evidence has been submitted to support its claims, including audited financial reports. The reasons audited financial reports are unavailable are discussed above.
26. Moreover, I have been provided no critique of the study, its methodology or conclusions, and thus have been presented no evidence to dispute the validity and accuracy of the Viability Study. Therefore, I am satisfied the Viability Study provides compelling evidence that the pub is not commercially viable and is not likely to become viable in the foreseeable future.
27. The Planning Practice Guidance indicates that the weight to be given to a viability assessment is a matter for the decision maker⁵. Whilst I acknowledge that existing audited financial reports and marketing evidence relating to the previous pub enterprise are unavailable to the appellant, Policy LPRINF2 contains no mechanism to accept alternative types of evidence. Therefore, the Viability Study cannot substitute the required audited financial reports and marketing evidence.
28. It is an established principle that decision-makers should consider the development plan as a whole. As set out above, the proposal is not supported by audited financial reports and marketing evidence and does not therefore meet the evidence requirements of Policy LPRINF2. Logically, I cannot therefore consider the Viability Study to comprise 'firm evidence' for the purposes of Policy LPRCD1. In the absence of audited financial reports and marketing evidence, the proposal would therefore conflict with Policies LPRINF2 and LPRCD1.
29. For these reasons, the change of use of the property from a public house would not be justified.

⁵ Planning Practice Guidance, Paragraph: 008 Reference ID: 10-008-20190509

Other considerations

30. The site comprises one unit of residential accommodation connected with the pub. The proposal would provide a total of four dwellings, thus increasing the site's residential capacity by three units.
31. As set out by the submitted plans, the proposed development would include measures to support biodiversity such as swift boxes, bee bricks, log piles and planting for pollinators. Subject to these measures being secured through a condition, the proposal would provide a small ecological enhancement of the site.
32. The pub is vacant, and its windows and doors are boarded up for security. The building has been subject to vandalism and graffiti. Through bringing the building into active use, the development would have a small positive effect on the character and appearance of the area.

Other Matters

33. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires I have special regard to the desirability of preserving listed buildings, their setting, or any features of special architectural or historic interest which they possess.
34. The Grade II* listed Officers Quarters is on the opposite side of Sandling Road, to the south of the appeal site, and is in use as restaurant. The building comprised the officers' quarters and mess at cavalry barracks, and was constructed in 1797-98, by the Barrack Department. It formed the centrepiece to the cavalry barracks overlooking the square, flanked by the men's barracks. It has a timber balloon frame clad in weather board with brick ridge stacks and rear extension, and slate hipped roof. It is the only surviving example of a large timber barracks and is the only cavalry officers' quarters from this period. The building's significance is therefore derived from both its architectural and its historic interest.
35. Situated at Sandling Road to the north of the appeal site is a terrace comprising nos 63 to 89, 92, 94, The Flowerpot Public House, and the embankment and railings opposite, which are Grade II listed for their group value. The terrace comprises a variety of dwellings dating from the 18th and mid-19th century and ranging in height from two to three storeys. Within the terrace there is variety in the roof lines with pitched roofs and tiled mansard roofs with prominent dormers. Dwellings are constructed with stock brick or red brick, and many have painted frontages. Some dwellings have simple doorcases, others include plinths or are round headed. Sash windows with intact glazing bars are prevalent. At the end of the terrace, The Flowerpot Public House is a three-storey stuccoed building with a slate roof with wooden eaves cornice. The raised stone embankment with mid-19th century cast iron railings and lamp holder provide separation from the carriageway. The historic and architectural interest therefore contributes to the group's value.
36. The Officer's Quarters is screened from the appeal property by a mature tree belt along the verge, providing physical and visual separation between the site and listed building. In addition, the proposed dwelling is a considerable distance from the terrace group, with very limited visual connectivity between the listed group and the appeal site, with only very oblique views between them.

37. Whilst the proposed development would include the addition of a rear extension and the removal of a chimney, the building's form would generally be retained. Reflecting the scale of the proposed development and the considerable physical and visual separation, I am satisfied the proposal would cause no harm to the setting of those listed buildings. Since the settings of the listed buildings would be preserved, the proposal would satisfy the requirements of the Act.
38. Concerns were raised by some residents that the proposed development would increase demand for on-street parking. The Council's adopted parking standards do not require parking provision for a development of the proposed type in this edge of town centre location, and therefore the absence of parking provision would not result in conflict with the development plan. The number of parked vehicles can be controlled through administration of the area's residential permit scheme. The proposed development would include cycle storage, and the site is within the urban area, served by pedestrian footways and street lighting, and is within walking distance of the town centre and public transport, including rail stations. Furthermore, I have been provided no substantive evidence that any effects on parking provision would result in harm to highway safety.

Planning Balance

39. Since issuing its decision, the Council has updated its housing land supply information. At the hearing, the Council confirmed its current available housing land is equivalent to 4.5 years' supply. The Council therefore accepts it cannot demonstrate a five-year supply of specific, deliverable housing sites as required by paragraph 78 of the National Planning Policy Framework (the Framework). This shortfall in the area's housing land supply represents a material change in context since the previous appeal decision.
40. In this circumstance, paragraph 11(d) of the Framework is engaged, whereby planning permission should be granted unless (i) policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development, and (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
41. The proposal would not conflict with the Framework's policies that protect areas or assets of particular importance. The proposal would be located within the urban area of Maidstone, close to the town centre, and therefore the proposed location would not be isolated, would limit the need to travel and offer a genuine choice of transport modes including sustainable transport, and would make efficient use of land. No adverse impacts in respect of design or function have been identified. Therefore, the proposal would not conflict with the Framework's key policies.
42. Paragraph 232 of the Framework indicates that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

43. Paragraph 98 of the Framework seeks to provide the social, recreational and cultural facilities and services the community needs, requiring decisions guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.
44. Conflict with the development plan occurs following a failure to meet the standard of evidence specified by Policy LPRINF2, namely that the proposal is not supported by audited financial reports or proper marketing evidence. However, the Framework does not stipulate these types of evidence as a requirement. In this regard, Policy LPRINF2, and by extension Policy LPRCD1, are inconsistent with Paragraph 98 of the Framework. Consequently, I afford only limited weight to the proposal's conflict with Policies LPRINF2 and LPRCD1.
45. As set out above, the pub is currently vacant, and the Viability Study demonstrates that if an experienced pub operator or individual decided to trade from the pub it would not prove viable. Since there is little prospect of the pub operating viably, and taking into consideration the availability of accessible, comparable alternative facilities, the effects of the proposal on the provision of valued facilities and the community's ability to meet its day-to-day needs would be limited.
46. Having regard to the Framework's objective of boosting significantly the supply of housing and the Council's housing land supply shortfall, the benefits of the scheme, principally the net addition of three dwellings, carry moderate positive weight in the scheme's favour.
47. Consequently, the adverse impacts of the proposed development do not significantly and demonstrably outweigh the scheme's benefits. Therefore, the presumption in favour of sustainable development would apply and the appeal should be allowed.

Conditions

48. The Council has suggested conditions which I have considered against the Framework and Planning Practice Guidance. In addition to the standard time limit for commencement, in the interests of certainty I have imposed a condition to ensure the development is carried out in accordance with the approved plans.
49. To maintain the character and appearance of the area, I have attached a condition requiring submission and approval of details of external materials.
50. To provide suitable residential amenity for future occupants, and to maintain the amenity of nearby dwellings, I have included conditions requiring the development's internal and external noise levels comply with relevant standards. For the same reasons, I have included a condition preventing the installation of external lighting without the prior consent of the Council.
51. To enhance the site's biodiversity value in accordance with LPR Policy LPRSP14(A), I have attached a condition requiring ecological enhancement shown on the approved plans be implemented and retained.
52. To ensure the proposed dwellings are accessible and adaptable as required by LPR Policy LPRQD6, I have attached a condition requiring the development comply with Part M4(2) of the building regulations.

53. To ensure the proposed development is constructed to an environmentally sustainable standard which complies with the requirements of LPR Policy LPRQD1, I have included conditions requiring the development achieve a high level of water efficiency and a portion of its energy needs met by renewable or low carbon energy sources.
54. I have not imposed the suggested condition to remove permitted development rights. Paragraph 55 of the Framework indicates planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Such a condition would not be necessary to make the appeal proposal acceptable.

Conclusion

55. As set out above, other relevant material considerations, namely the provisions of the Framework, indicate that a decision should be taken other than in accordance with the development plan. Therefore, I conclude the appeal should be allowed.

E Dade

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: Existing Elevations & Block Plan 2007.E.01; Existing Plans 2007.E.02; Proposed Elevations 2007.P.10; and Proposed Plans 2007.P.11.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in gardens and other relevant amenity areas will conform to the standard identified by the current version of BS 8233 2014, Sound Insulation and Noise Reduction for Buildings has been submitted to and approved in writing by the local planning authority. The assessment should have regard to ProPG: Planning & Noise (2017) and the Acoustics Ventilation and Heating Guide (2020) to ensure that there is a good balance between acoustics, ventilation and thermal comfort for future occupants. It is expected that higher levels of noise that require windows to be closed to meet BS8233 internal level specifications will need greater ventilation than the minimum standard in the Building Regulations in trying to achieve open window equivalence which will involve user control of ventilation rates to key rooms such as living rooms and bedrooms. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the premises and be retained thereafter.
- 5) The development hereby approved shall not be occupied until measures for the enhancement of ecology have been implemented in accordance with the details shown on drawing nos 2007.P.10 and 2007.P.11. All features shall be retained and maintained thereafter.
- 6) The development hereby approved shall not be occupied until details of decentralised, renewable or low-carbon sources of energy to provide at least 10% of total annual energy requirements of the development, have been submitted and approved in writing by the local planning authority. The approved details shall be installed in accordance with an approved timetable and maintained thereafter.
- 7) The development hereby approved shall meet the higher level of water efficiency of 110 litres per person, per day as set out under the building regulations Part G2 or any superseding standard. The building shall not be occupied unless this standard has been met and this standard shall be maintained thereafter.
- 8) The development hereby approved shall meet the accessible and adaptable dwellings building regulations Part M4(2) standard or any superseding standard. The dwelling shall not be occupied unless this standard has been met and the dwelling shall be thereafter retained as such.
- 9) No external lighting shall be installed on the site without the prior written consent of the local planning authority.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Peter Andrew Court BA (Hons) PGDip MRTPI, Director, Peter Court Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

William Fletcher BSc MA, Senior Planning Officer, Maidstone Borough Council