The Planning Inspectorate

Quality Assurance Unit
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0117 372 8252
Customer Services: 0117 372 6372

Miss Karen Wooden
Havant Borough Council
Business Development & Support Team
Civic Centre
Havant
Hampshire
PO9 2AX

Your Ref: APP/11/00211

Our Ref: APP/X1735/A/11/2161808/NWF

Date: 7 February 2012

Dear Miss Wooden

Town and Country Planning Act 1990
Appeal by Acres Developments Ltd
Site at The Crows Nest, 64-66 Hazleton Way, Waterlooville, PO8 9BT

I enclose a copy of our Inspector's decision on the above appeal.

If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

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Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Yours sincerely

Amanda Baker

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The Planning Inspectorate

Appeal Decision

Hearing held on 18 January 2012
Site visit made on 18 January 2012

by R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 February 2012

Appeal Ref: APP/X1735/A/11/2161808
The Crows Nest, 64-66 Hazleton Way, Waterlooville PO8 9BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Acres Developments Ltd against the decision of Havant Borough Council.
- The application Ref APP/11/00211, dated 24 February 2011, was refused by notice dated 8 June 2011.
- The development proposed is the erection of 3 detached dwellings following the removal of the existing public house, car park and service buildings.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal includes the works of demolition of the public house and other buildings.

Policy Context

3. The development plan here includes the South East Plan (2009) and the Havant Borough Core Strategy (2011) (the CS). At the hearing, Core Strategy Policy DM2 was agreed to be the policy most directly relevant to the main issues. In summary, that policy and its supporting text will, amongst other things, only permit the change of use or loss of premises currently or last used as community services or facilities (including public houses) where an active marketing process has demonstrated that the premises are no longer viable for their authorised use or another beneficial community facility. Amongst other things the marketing process is to be robust, appropriate and genuine, at a realistic price, and conducted over at least 12 months.

4. Other material considerations include national Planning Policy Statements (PPS). PPS1 'Delivering Sustainable Development' and PPS3 'Housing' amongst other things seek good design that has regard to context, high quality housing, and the efficient use of land. Amongst other things Policy EC13 of Planning Policy Statement 4 sets criteria when assessing planning applications affecting public houses which include taking account of the importance of the facility to the local community.

Planning History

5. On 26 May 2011 an appeal was dismissed in respect of a refused earlier application for the erection of 4 dwellings on the same site (Appeal Ref APP/X1735/A/11/2147302). That appeal was dismissed in part because the development of 4 dwellings would have appeared unduly cramped and harmful to the character and appearance of the area and also because the premises had not been marketed at a realistic freehold or leasehold price to test whether they could continue as a public house or be converted to another facility beneficial to the community, thereby contravening CS Policy DM2.

Main Issues

6. The Council has no objection to the design or density of the revised scheme now that it has been reduced to 3 dwellings. However at a meeting held on the same day as the above appeal decision was issued and with the knowledge of that decision, the Council resolved to refuse permission for similar reasons as those set out in the appeal decision in relation to the marketing of the appeal premises. Further marketing has been carried out since that decision was made and is the subject of additional information submitted by the Appellant together with new evidence on the accessibility of alternative facilities. Having regard to that evidence and to local and national policy, the main issues are now therefore considered to be:

   a) Whether the premises are no longer viable as a public house and whether they are viable for any other use which would provide a beneficial facility to the local community.

   b) Whether the public house is important to the local community or it is no longer required for a community use or there is an easily accessible existing or new facility for the community it serves.

Reasons

Viability

7. In February 2010 the Appellant commenced the marketing exercise required by Policy DM2. The evidence of the marketing exercise between February 2010 and May/June 2011 was considered at the previous appeal and again by the Council when resolving to refuse permission for the subject development. The appeal decision concluded that it had not met the requirements of Policy DM2. In particular:

   - According to the Appellant a 'For Sale' sign was not erected in front of the public house until November 2010 (a resident says it was January 2011). Previously there had only been an 'Any Enquiries' sign on the adjacent car park which has been sold separately.

   - The freehold price of £300,000 + VAT was unrealistically high, unrelated to any valuation of the public house as a going concern, higher than the site's likely value for residential development (according to the price achieved for the sale of the public house car park for housing development) and about the same as the figure that had been paid by the Appellant for the public house with that car park which was based on the site's potential development value and not its value for continued use as a public house.

- The addition of VAT to the advertised price would be a likely deterrent.
- Evidence presented by the Council of the marketing of other public houses at similar prices was of little weight as they were not realised sale figures and did not amount to true comparables in respect of property descriptions, facilities, locations, or applicable planning policies.
- No leasehold interest had been marketed except that the established tenant had been offered (and had rejected) a longer lease at more than double the present rent and 50% above the rateable value. There was no evidence to justify those figures.

8. The Council reached similar conclusions when it resolved in June 2011 to refuse planning permission for the subject application.

9. Since June 2011 the premises have been remarketed. Notable features of the remarketing process are that:
   - The freehold price has been reduced to £250,000 + VAT.
   - The premises have also been marketed to rent (inviting offers).
   - The established tenant was offered the opportunity to purchase the premises or to negotiate a new lease without a set rent (but did not respond).
   - The For Sale sign was amended to include the rental offer.
   - A second commercial agent (Fleurets) was appointed specialising in licensed premises.
   - Direct approaches were made to local community organisations and to operators of public houses and restaurants.

10. According to the written marketing reports from the two agents dated September 2011 (after only 3 months of the remarketing), the remarketing only attracted limited interest. In particular, no interest was expressed by the community organisations. Some initial enquiries by potential pub operators were not pursued by them. An offer to acquire the premises for retail use at a freehold price below the asking price was not pursued when the purchaser was put off by the restrictive covenant against retail use. However there was active interest from a children's nursery operator. Nursery use would satisfy Policy DM2. The nursery operator made an offer for the freehold at the asking price, but subject to planning permission. The Appellant then made an application for planning permission for the nursery.

11. The marketing position was updated in the December hearing statement and at the hearing where one of the commercial agents was present.

12. During the consideration of the planning application for the nursery, the potential operator's offer to purchase the premises was withdrawn but replaced firstly by an offer to rent with an option to buy and secondly by an offer to rent but at a reduced rental figure. On the strength of that offer the Appellant gave notice to the existing public house tenant and the public house closed in January 2012. Planning permission for the nursery was granted on 20 December 2011. However the nursery operator has not proceeded with the acquisition of a leasehold or freehold interest. In the month since the planning permission was issued, the agents have modified the sales material and the site sign to refer to this and they have sent details to other nursery operators.

13. Following the discussion at the hearing the conclusions on the marketing exercise are that:

- Whilst the reduced freehold price remains unsupported by evidence as to the value of the premises for public house or other community use (and may remain higher than such values in the present economic circumstances) the reduction in price will have reduced its deterrent effect for potential purchasers. The Appellant has shown some flexibility in considering lower offers. The continued reference to VAT in the marketing material of one (but not both) agents may have continued to act as a deterrent, particularly as the agent accepts that other properties are marketed without a VAT liability and there is no obvious adjustment of the price here to reflect that liability. It remains unclear whether VAT would be payable in all circumstances and whether it could or could not be reclaimed by a purchaser. Nevertheless the advertised price is now reasonably realistic. However the site has only been offered at that realistic price for just over 6 months rather than the 12 months sought by the supporting text to DM2.

- The new marketing for rent has addressed that issue from the previous appeal and is robust in that: the offer was made generally available; offers were invited without a set rental value; and that offer was made to the last tenant (but was not taken up). However that wider marketing of the leasehold interest at a realistic price has also only been carried on for just over 6 months.

- A For Sale sign on the site has now been in place for the minimum 12 months marketing period. The sale sign has only very recently been amended to include the authorised nursery use. Previously the site had been marketed as 'Suitable for Alternative Uses Subject to Planning' and that had not deterred at least two approaches seeking nursery use. The retention of a 'Sold' sign on land now enclosed within the same fence could have misled potential purchasers but that is a matter no longer within the control of the Appellant as the adjacent land is in separate ownership.

- The approaches to community organisations and to local pub and restaurant operators, as well as other marketing to organisations on the registers of the two agents is further evidence of appropriate marketing.

14. Overall the marketing exercise is considered to have met the requirements of Policy DM2 and its supporting text but for the important qualification that the acceptable period of marketing at a realistic price has only been carried on for just over 6 months and not at least 12 months. The suggestion of the commercial agents that it should be possible to find any purchaser within 3-6 months is in contradiction of the recently adopted policy. Moreover that policy and the restrictive covenant against retail use inevitably constrain the market for this site and support a longer marketing period than might be required for a less constrained site. Also it is widely reported that economic circumstances and the property market remain difficult. Planning permission has only just been granted for nursery use for which there is some evidence of local demand. That one potential nursery operator has apparently been unable to maintain their interest for financial or other reasons does not negate that demand.

15. Although the last tenant appeared to have a viable business at a low rent at least in the short term, they declined to make any offer for the premises. Investment is likely to be needed to reopen and secure the long term future of

a public house. Therefore the prospect of that happening has receded since the previous appeal when the public house was still trading. Nevertheless the prospects of another viable community use, especially the recently authorised nursery use, appear to be better. In that context it is concluded that at least a further 6 months marketing would be needed to satisfy the policy requirements.

Loss of Community Facility/Availability of Alternative Facilities

16. The Hazleton Estate is said to have 1,755 homes. At the planning application stage, 77 representations were received from local people objecting to the loss of the public house. Although most were based on a standard pro-forma letter, this nevertheless suggests that the public house facility is important to the community. At the appeal stage only one further representation was received. Whilst that also sought the retention of the public house it opposed the alternative of a nursery use. Two local residents attended the appeal hearing. Neither was opposed to the residential development. One was concerned about parking issues should the nursery permission be implemented and had also experienced some disturbance when the public house was in operation.

17. There has been no material change in the local availability of alternative public houses and other community facilities since the previous appeal. However the Appellant has submitted further evidence as to the accessibility of such facilities for local residents, especially public houses. In particular, whilst this demonstrates that all residents of the Hazleton estate are likely to have an alternative public house within 2km (as the crow flies), it also confirms that the north-central and eastern parts of the large estate would no longer have such a facility within the 800m distance which the Government's Manual for Streets (MfS) refers to as a 'walkable neighbourhood'. In this context where Policy DM2 seeks that alternative facilities are 'easily accessible', the 800m distance is to be preferred to the 2km distance referred to elsewhere in MfS. That reference is drawn from Planning Policy Guidance 13 'Transport' at paragraph 75 which refers to the scope to replace short car trips 'particularly under 2km.' That indicates that 2km is the typical upper distance which people might walk rather than use a car. However that does not equate to 'easily accessible' in the terms of the CS. Although MfS indicates that 800m is not itself an upper limit, it is described as a distance which residents may access 'comfortably' on foot. In this context 'comfortably' approximates to 'easily'.

18. It follows that the closure of the public house has left a significant area of housing without the valued facility that it previously enjoyed and with no easily accessible alternative. However Policy DM2 does not seek to protect public houses from conversion to other community facilities. For example, conversion to nursery use would satisfy the policy but would meet different needs from a public house and would serve different members of the community to whom it would nevertheless be of value.

19. Even had the marketing exercise to date established that no public house (or other community use) is likely to be viable in the terms of CS Policy DM2(1), it would be illogical to then refuse planning permission on the sole basis that there is no alternative easily accessible public house as, without viability, no public house is likely to operate on the appeal site.

Other Matters

20. The Appellant has repeated and amplified evidence to the previous appeal concerning the value of the first floor flat. This has previously been occupied by the public house tenant and was included in the offer made by the nursery operator as a staff flat but was excluded from the application for planning permission for the ground floor nursery. If this could be sold or let separately, the Appellant now considers that it would have a rental value of £725-795pcm or a sale value of £120,000-£150,000. That value may potentially enhance the site's value in mixed use including community use. But it does not create a significant fallback position such as to affect the other conclusions in that:

    - Whilst the flat may have an independent access it has not been clearly established that the flat is currently a separate planning unit that could be occupied independently from the ground floor.
    - The last tenant submitted a letter claiming that there are licensing restrictions against the separate occupation of the flat if the ground floor is in public house use although the Appellant questions this.
    - Although the rental value of the flat is similar to the rent previously paid by the pub tenant for the pub and flat together, it is not greater. Leaving the ground floor vacant would not result in a significantly greater return to the freeholder.
    - The sale value (presumably leasehold) remains well below the advertised price for the premises as a whole. It was acknowledged at the hearing that it would be difficult to sell the flat separately if the future use of the ground floor remained uncertain and could include potentially noisy and disruptive uses such as a pub or nursery.

Conclusion

21. The overall conclusion is that the appeal should be dismissed because, contrary to CS Policy DM2 and its supporting text, the premises have not been marketed at a realistic freehold or leasehold price for the required full 12 months to test whether they would be viable to either continue in use as a public house or to be used for another facility beneficial to the local community.

22. For the above reasons the appeal should be dismissed.

R P E Mellor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs R Jubb	Planning Consultant, Bell Cornwell LLP
Mr D Holloway	Chartered Surveyor, Holloway, Iliffe & Mitchell

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Cantwell	Team Leader, Havant Borough Council

INTERESTED PERSONS:

Mr R Atcherley	Local resident
Mr R Chandler	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1 Letter of notification and list of those notified
2 Revised Holloway marketing particulars including reference to planning consent for day nursery use
3 Supporting text to Core Strategy Policy DM2