The Planning Inspectorate

Appeal Decision

Hearing held on 24 May 2011
Site visit made on 24 May 2011

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: 26 May 2011

Appeal Ref: APP/X1735/A/11/2147302
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/10/00647, dated 17 September 2010, was refused by notice dated 10 December 2010.
- The development proposed is the erection of 4 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 public house remained open and trading at the date of the hearing. At the hearing the Council and the Appellant agreed that the proposal includes the works of demolition of the public house and other buildings.

Policy Context

3. At the date that the application was determined by the Council, the development plan included the South East Plan (2009) and the Havant Borough Wide Local Plan (the LP). The reasons for refusal referred to LP policies which were said to be contravened. However those policies and their supporting text were superseded in February 2011 by the Havant Borough Core Strategy (the CS). At the hearing the relevant CS policies were identified as Policies CS1, DM2 and CS16. Policy CS16 seeks high design quality for development. Policies CS1.10 and DM2 are directed at the protection of community facilities with Policy DM2 the most directly relevant.

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 PPS4 sets criteria when assessing planning applications affecting public houses which include taking account of the importance of the facility to the local community.

Main Issues

5. Having regard to local and national policy, the main issues are considered to be firstly the effect of the proposed housing on the character and appearance of the area. And secondly, in relation to the existing community facility:-

   a) Whether the premises are no longer viable as a public house.

   b) Whether the premises are viable for any other use which would provide a beneficial facility to the local community.

   c) 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

Character and Appearance

6. The public house was probably erected about 50 years ago and it adjoins a parade of shops (with flats over) in an approximately central position within the large contemporary suburban housing estate in Cowplain known as the Hazleton Estate. The public house resembles a large bungalow but with a staff flat at first floor level within the hipped roof. There is car parking to the front and side of the building. The ground floor accommodation includes large flat-roofed wings. The building is of unremarkable appearance and no objections have been made to its demolition on character and appearance grounds. This issue rather concerns the 4 proposed houses which the Council considers would appear cramped and out of character with their surroundings.

7. The surrounding housing along Hazleton Way and the side roads includes a high proportion of detached bungalows but also features detached and semi-detached houses of varying design but with some common materials and design features. Most occupy relatively wide plots with the dwelling set back from the road. The spaces between the detached dwellings vary. Near the appeal site they are rarely less than 2m and can be wider. Many of the front gardens survive as originally laid out and they typically incorporate a driveway which may continue beside the dwelling where the gaps between the buildings are wider. Cars are therefore parked either to the front or side of the dwellings or within a garage where these exist. Some gardens have been paved to provide extra parking or to reduce maintenance. In most cases that is likely to have been done when there was no requirement for planning permission.

8. Planning permission was granted to the Appellant in November 2010 to develop the former large car park at the side of the public house as 3 chalet bungalows fronting Eglantine Walk. In that development the low flank elevations would be about 1.5m apart and the plot widths would vary from about 9m to 16m.

9. The appeal proposal is for 4 detached houses with gaps of about only about 1m between the main flank elevations. With generous overhanging eaves the gap shrinks to less than 300mm at eaves level and as little as 100mm between the gutters. The narrow plot widths would vary from about 6.7m to 7.7m. With no garages and no space between the houses, all cars would need to be parked in front of the houses and in relatively close proximity to those on neighbouring plots, risking a cluttered appearance of up to 8 cars. The Appellants have suggested a landscaping scheme to soften the appearance of the cars to include low hedges. Whilst that may partially screen the vehicles once it

matures, there would be little space to accommodate the suggested hedges and the long term maintenance and retention of these features could not be assured.

10. The layout also makes no provision for the storage of bins or bicycles or garden equipment. The occupiers may therefore be deterred from using bicycles, contrary to local and national policy objectives to encourage alternatives to the car, and may leave large bins scattered in prominent locations in front of the house, adding to the cluttered appearance of the parking. Whilst the application of a condition could require the approval of storage provision for the bins and cycles, that would be likely to further reduce the limited space about the buildings, as would any storage for garden tools.

11. For the above reasons it is concluded that the proposed development as 4 detached houses would appear unduly cramped in this context and thereby harmful to the character and appearance of the area and contrary to relevant policy objectives including those of CS Policy CS16.

12. Whereas the Appellant suggests that the development would make efficient use of the land and provide needed housing in accordance with other objectives of PPS3, an alternative planning application has been submitted by the Appellant for 3 detached houses which features wider plots, increased gaps between the houses, more space for planting to replace the unsightly tarmac of the pub car park, room to park cars in less prominent locations between the houses, and more generous outside space to accommodate bicycles, bins and garden storage. The Council officers are recommending that application for approval. Thus, subject to the Council's determination of that application including consideration of the loss of the community facility, it appears likely that there is an alternative design for the development which may go ahead with only one less dwelling. That would be more likely to provide the good quality housing in keeping with its context that is sought by PPS3 and PPS1.

Loss of Community Facility

13. The Appellant commenced the marketing exercise required by Policy DM2 in February 2010. However a For Sale sign was not erected on the site of the public house until November 2010. Previously there had only been an 'All Enquiries' sign on the adjacent car park. The agent confirms that the marketing exercise did not draw interest from anyone seeking to operate the premises as a public house. The present tenant company declined an offer of a longer lease but at a much higher rent. Some interest was expressed in using the building for a restaurant or a children's nursery but that was not pursued due, it is claimed, to the high costs of conversion and refurbishment which would necessarily be added to the purchase price. An offer to acquire the site to extend the building and convert it to a freemason's hall was not pursued as it is said that there was planning advice that the sequential approach to location would be applied. That would have required an assessment that no suitable sites were available in more accessible town centre locations. It is doubtful whether such use would have qualified as a facility for the local community in the terms of Policy DM2 if it depended upon drawing members from across the Borough or beyond.

14. Nevertheless it cannot be ruled out that this apparent lack of other market interest may have been due to the price at which the property was marketed. The advertised freehold price of £300,000 + VAT for the public house alone without the large car park was the same that was paid by the Appellant for the

building together with the car park in April 2010 (as the Land Registry has confirmed to a resident). The Appellant clearly already had in mind the site's development potential when paying that figure. The car park has since been sold for housing development at a price not far below the original acquisition price for the whole site including the public house. At the hearing the Appellant acknowledged that the public house site is similar in area to the car park land and would have a similar value if the housing development is approved. As the Appellant intends to pursue the housing development if the appeal is allowed, notwithstanding that this is less than the price at which the site has been marketed, this again suggests that the marketing price for the public house is unrealistically high.

15. The advertised sale price for the public house did not relate to any valuation of the public house as a going concern. The agent confirms that no such valuation has been prepared. The present tenant is a commercial pub management company which has operated the site for 3 years and currently has a lease which can be terminated at short notice. The Appellant acknowledges that the tenant is able to operate profitably at the current rent after meeting managerial, staff and other running costs. The Appellant suggests that the present rent, which includes the public house and its staff flat, is not dissimilar to the open market rent that could be achieved for the flat alone. That may well be so although the tenant disputes whether the flat can be occupied independently of the public house.

16. When a long lease was offered to the tenant it was to be at more than double the present rental and about 50% higher than the recently assessed rateable value. No justification is offered for that higher figure. Neither is there any indication that it reflects the clear need for investment in the public house facilities if the trading position is to be improved and secured for the long term. That would include as a minimum repairs to the leaking flat roofs, refurbishment of the public areas and possible investment in the kitchen facilities if the business is to offer food like most other public houses. The tenant understandably declined that lease offer on viability grounds. A lease was not offered in the market to anybody else.

17. The addition of VAT to the advertised freehold asking price is likely to have been a further deterrent and it is not clear that it would be payable in all circumstances. The Appellant suggests that anyone interested in acquiring the building for community use could have made a lower offer. However the advertisements did not invite offers and it is likely that, given the conversion and refurbishment costs that deterred potential users, the offer would have needed to be so far below the asking price that potential purchasers did not consider it worth pursuing.

18. I acknowledge that the Council officers presented an internal email at the hearing in which they concluded that the asking price had been realistic and that they were intending to so advise their committee when it considered the parallel application for 3 dwellings. However I attach very little weight to the evidence on which that conclusion was based. The officers had reviewed several asking prices of other public houses in South Hampshire but only one actual sale figure. Moreover those are not true comparables as there is no information to compare the premises or to determine the basis on which those prices had been arrived at by the selling agents. It is likely that many of the prices reflected some redevelopment potential for an alternative use for the property in question. In particular the Cricketers Tavern which had been

considered by officers to be most similar to The Crows Nest has in fact been demolished and there is thus no prospect of that building being reopened. Moreover it is not clear which buildings were subject to policies similar to DM2 and how such policies would be applied in individual circumstances. For example a city centre public house is much more likely to have numerous suitable alternative facilities nearby and thus an increased prospect of satisfying Policy DM2 with enhanced potential for development for other purposes.

19. The Hazleton Estate is said to have 1,755 homes. At the planning application stage, 37 representations were received from local people objecting to the loss of the public house. Of these, 30 were based on a standard pro-forma letter and 7 were individually composed. At the appeal stage two further representations were received including one based on the earlier standard letter and one enclosing local press reports without comment. According to the committee report 77 representations were received by the Council for the subsequent application for 3 dwellings. Whilst that indicates additional interest amongst local people, those representations are not before the Inspector for this appeal. No customers or local residents attended the appeal hearing.

20. Amongst other things the written representations for the subject application and appeal point out that the pub is still trading as a going concern, that there are many elderly local residents, and that some customers are disabled. There are anecdotal references to how the public house was more popular in the past and to confirm that it is valued by its customers. There is no reason to doubt those assertions. However the location of the public house adjacent to a local centre but away from any main road means that it is highly dependent on custom from residents in the surrounding area. The sale of the public house by Admiral Taverns (in administration), the evidence of low customer numbers over a weekend in July 2010, and the apparent lack of interest from its present operating company or anybody else in the future long term operation of the business may suggest that most people in the area either do not visit public houses regularly or that they go elsewhere to do so. However contributory factors to the apparent lack of popularity of The Crows Nest may be the drab internal décor, the lack of any food offer, limited signage, and the poor conditions of the function room and its toilets as the result of a leaking roof.

21. The take-away facilities near the public house would not provide alternative facilities for socialising as had been suggested. However the Appellant has submitted updated information on local community facilities that identified those which are public houses. For most of the estate the nearest public house is the Spotted Cow on London Road. The Cowplain Social Club is close to that pub. As there are footpath links though to that location it would be easily accessible on foot for those living in the south-western part of the estate and there is a convenient pelican crossing on the A3. A Community Centre in the southern part of the estate presents another opportunity for community socialising in that area. For those at the northern end of the estate, The Colonial Bar at Horndean would be just within walking distance along the busy and noisy A3. However those living in the central or eastern parts of the estate would face significantly longer journeys with the nearest public house or other social facility being beyond reasonable walking distance for many, particularly for the elderly or disabled.

22. It is concluded on this issue that:

a) The public house is in operation and the tenant is able to make a modest profit and has indicated an intention to continue for the time being. That confirms that the public house remains viable in the short term. However, in the longer term, investment is likely to be needed to maintain or improve trade. The marketing exercise has failed to demonstrate that the public house is unviable as the unrealistically high freehold asking price exceeded its likely value as a public house in this condition and location, or its value in an alternative community use, or even its likely development value for the proposed residential development. That price is likely to have deterred potential operators who would need to invest in the building to maintain its viability beyond the short term. A long lease was only marketed to the existing tenant and again at a rental far higher than the current business appears to justify. That also does not reflect the need to invest in the premises if the business is to be maintained and improved. To be realistic the freehold or leasehold price would need to reflect the location and condition of the premises and to exclude any development potential for uses of the site or of the building (other than as a pub or other community facility). However a realistic price could allow for the independent residential use of the first floor flat if the ground floor is used for another community facility or if the flat could lawfully be occupied independently of the public house. The unrealistic freehold price contravenes CS Policy DM2 as amplified by paragraph 10.05. The unrealistic leasehold price and the offer of a lease to only one party further indicate that the marketing exercise was inadequate.

b) The unrealistic price for the freehold is also likely to have deterred those who might otherwise have been interested in converting the premises to another beneficial facility for the local community, given the need to also pay for the repair of the roof and for other conversion and refurbishment costs.

c) If the Crows Nest were to close, alternative public houses and other social facilities are only easily accessible for some local residents. Others would be left without facilities that are easily accessible. The existing public house is clearly important to some members of the local community who still need it for community use. It may be valued by more local people if its condition and facilities were improved or if it were put to another community use with a broader appeal.

Conclusion

23. The overall conclusion is that the appeal should be dismissed firstly because the proposed development would appear cramped and thereby harmful to the character of the area contrary to CS Policy CS16 and secondly because, contrary to CS Policy DM2 and its supporting text, the premises have not been marketed at a realistic freehold or leasehold price to test whether it could continue in use as a public house or to be converted to another facility beneficial to the local community.

24. 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
Mr P Mitson	Director of Appellant Company

FOR THE LOCAL PLANNING AUTHORITY:

Ms R McMurray	Planning Case Officer, Havant Borough Council
Ms L Howard	Senior Policy Planner, Havant Borough Council
Mr S Cantwell	Team Leader, Havant Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

1 Core Strategy Policy CS1 and supporting text
2 Core Strategy Policy CS16 and supporting text
3 Core Strategy Policy DM2 and supporting text
4 Report to Committee of 26 May 2011 for Application Ref APP/11/00211 (3 dwellings)
5 Email of 9 May 2011 from L Howard to R McMurray

PLANS SUBMITTED AT THE HEARING

A Set of drawings for APP/11/00211 (A1-A7)
B Community Building Assessment