
Appeal Decision

Site visit made on 18 April 2016

by Gareth W Thomas BSc(Hons), MSc(Dist), PgDip, MRTPI

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

Decision date: 25 July 2016

Appeal Ref: APP/E0345/15/3141752

The Pond Public House, 738 Oxford Road, Reading RG30 1EH

- 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 Mr Rob Willetts against the decision of Reading Borough Council.
 - The application Ref 150539, dated 26 March 2015, was refused by notice dated 6 October 2015.
 - The development proposed is for the development of 3 houses on land to the rear of public house.
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Decision

1. The appeal is allowed and planning permission is granted for the development of 3 houses on land to the rear of public house at The Pond Public House, 738 Oxford Road, Reading RG30 1EH in accordance with the terms of the application, Ref 150539, dated 26 March 2015, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1273-01A; 1273-02A; 1273-03A; 1273-04A; 1273-14G; 1273-13G.
 - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority.
 - 4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development. If within a period of 5 years from the date of planting of any tree or shrub, including hedging shown on the approved landscaping plan, that tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity.
 - 5) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and

the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 28 days of the report being completed and approved in writing by the local planning authority.

- 6) No construction site machinery or plant shall be operated and no construction related deliveries shall be taken at or despatched from the site outside the following times: 08:00 to 18:00 Mondays to Fridays and 08:00 to 13:00 Saturdays. There shall be no construction site machinery or plant operated at the site and no construction related deliveries shall be taken at or despatched from the site at any time on Sundays, Bank or Public holidays.
- 7) No dwelling hereby approved shall be occupied until the recommended actions contained within paragraph 4.11 of the report by Hepworths Acoustics (Report No: P15-264-R01 June 2015) have been completed.

Main Issues

2. The main issues are the effect of the proposed development on highway safety and whether a financial contribution towards affordable housing in the area is necessary.

Reasons

Highway safety

3. Notwithstanding the Council's concerns about the loss of the public house car park, the appellant has confirmed that the parking area was closed for separate management reasons. The car park was closed at my site visit. The appellant has also advised that there is no intention to reverse this decision and the trade and operation of the public house has not suffered as a result. It seems to me that on this basis it is not the appeal scheme which is causing the loss of the car park. Rather it is a commercial decision over which there is no control.
4. Moreover, despite what appears to be a difference of fact as to whether the site is in a residents parking permit area or zone and the Council's assertion that surrounding roads are heavily used for on street parking, there is no evidence from the Council to demonstrate that the displacement that has already taken place of customer and staff vehicles elsewhere has directly led to any highway or local parking difficulties. Also, the Council's Transport Strategy Section is satisfied that the loss of the car park would not worsen the historic delivery arrangements for the pub. As with the loss of the car park above, it is not the

appeal scheme itself that is causing the loss of what could be an alternative service delivery route and, again, this is a commercial decision.

5. The Council has referred to its Local Development Framework (LDF) Revised Parking Standards and Design, which would normally require the provision of one parking space per 5sqm of area available to customers, excluding kitchen, bar, server, toilets etc. However these Standards to my mind have greater relevance to new pub developments or the extension/alteration of a pub. Furthermore, they were adopted prior to the National Planning Policy Framework (the Framework) that seeks to maximise public transport, walking and cycling, and advises that parking standards should take account of the accessibility of development and the levels of car ownership. The Framework also states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe and the Written Ministerial Statement (WMS) dated 25 March 2015 highlights that local parking standards should only be imposed where there is clear and compelling justification.
6. In this case the pub is located in a highly sustainable location. Although the Council previously advised the appellant to retain at least a proportion of the car park for pub use and that a parking accumulation survey should determine likely parking demand associated with the pub during key opening times, there is no compelling evidence to show that on street parking or any vehicle movements associated with the pub in the absence of the car park has or would have a severe adverse effect on road safety or the free flow of traffic.
7. In relation to the actual scheme for three houses itself there are no objections from a highway point of view with the proposed access arrangements and the level of off road parking proposed found to be satisfactory, despite some minor misgivings about the ability to manoeuvre into and out of visitor spaces 8 and 9 as shown on the proposed plans.
8. Against this background the development proposed complies with Reading Core Strategy (CS) Policy CS24 and Policy DM12 of the Council's LDF Sites and Detailed Policies Document (SDPD). These policies seek to ensure that development proposals make satisfactory arrangements for parking and access in the interests of highway safety.

Affordable housing

9. The Council's adopted Supplementary Planning Document: Affordable Housing (SPD) explains the way that the Council intends to apply relevant policies of the CS and SDPD in terms of affordable housing provision. These provisions seek to give effect to the CS strategic objective of ensuring that a significant proportion of new dwellings permitted are affordable. SDPD Policy DM6 is particularly relevant to this appeal. For sites of between one and four dwelling units, a financial contribution would be sought towards the provision of affordable housing off-site. No section 106 Agreement or Unilateral Undertaking is in place.
10. Notwithstanding the requirements of Policy DM6 and its SPD however, the Court of Appeal (CoA) has allowed the appeal¹ by the Secretary of State for Communities and Local Government against the judgement of the High Court

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

of 31 July 2015, on a joint application of the two Councils in seeking to challenge:

- i. the Secretary of State's Written Ministerial Statement (WMS) of 28 November 2014, and his subsequent alterations to the Planning Practice Guidance on planning obligations for affordable housing and social infrastructure contributions, and
 - ii. his decision of 10 February 2015 to maintain those policy changes following an Equality Impact Assessment.
11. The effect of the CoA judgement has been to overturn the High Court judgement and it has given legal effect to the policy set out in the WMS, which should now be regarded as national planning policy to be read alongside the Framework, such that contributions for affordable housing and tariff-style planning obligations should not be sought from small scale developments such as the appeal proposal. Changes made to Planning Practice Guidance on 19 May 2016 now also confirm the approach to be taken. The Council and West Berkshire Council have decided not to seek leave from the Supreme Court to appeal against the CoA judgement.
12. Against this background, the Council has sought to demonstrate that local circumstances are such that it can still justify seeking contributions towards affordable housing below the WMS threshold in line with policy DM6. This includes evidence that almost half of all households in the West Berkshire Housing Market Assessment Area are currently in need of affordable housing whilst high numbers of homelessness and priority cases for affordable housing are recorded on the Council's housing register. This equates to 58% of Reading's Objectively Assessed Needs per annum. Moreover, around a quarter of annual completions in the Borough are on sites of ten or less, which in the opinion of the Council justifies a lower threshold.
13. While I am conscious of the current overall picture in terms of affordable housing locally as well as the aims of policy DM6 and the Council's SPD, these must now be seen in the light of the WMS and PPG and the thrust of the Government's purpose of making such changes which was to tackle the disproportionate burden of developer contributions on small scale developers. I attach considerable weight to the changes to national planning policy and in the context of Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the 1990 Act I find that this outweighs the requirements of policy DM6 and therefore also the SPD. Despite the Council's assertions and further evidence, I do not consider that in this case the local circumstances justify an exception to national policy. An affordable housing contribution should not therefore be sought in this case.
14. Consequently, the lack of a signed section 106 Obligation is not necessary to make the development acceptable in planning terms and should not therefore be an impediment to the grant of planning permission.

Other matters

15. Third parties have drawn attention to the fact that a small number of properties fronting Oxford Road currently park off-road presumably either by accessing their land through the car park or parking on the appeal site itself. However, it is an accepted principle of planning law that property rights have no bearing on

planning decisions. This includes both legal rights of passage or informal arrangements between two landowners.

Conditions

16. The Council has suggested a number of conditions which I have considered against the Use of Conditions guidance set out in the Planning Practice Guidance. I have amended some of them for clarity.
17. In addition to the standard 3 year limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in order to provide certainty. Despite not suggested by the Council, a condition to secure appropriate finishing materials is necessary in the interests of character and appearance of the area. A condition requiring land contamination assessment and if appropriate, subsequent mitigation and remediation is necessary to prevent pollution risk. A condition limiting the hours of any building etc operations is necessary given the close proximity of neighbouring dwellings. A condition requiring both hard and soft landscaping of the site together with its implementation is necessary to protect the character and appearance of the area. Given the submission of a noise report at the time of the application and its acceptance by the local planning authority, I consider that a condition requiring compliance with the report's recommendation to be necessary in order to protect local amenity.
18. However a condition preventing the burning of green waste on site is unnecessary given the limited opportunity available here for such activity to occur. I do not consider a condition limiting noise and dust emanating from a site that does not involve demolition to be necessary.

Conclusions

19. For the reasons set out above, and having regard to all other matters raised, I conclude that this appeal should be allowed.

Gareth W Thomas

INSPECTOR