The Planning Inspectorate

Appeal Decision

Site visit made on 22 July 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 August 2019

Appeal Ref: APP/A0665/W/19/3228859
The Bear and Ragged Staff, High Street, Tattenhall, Chester CH3 9PX

- 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 Punch Partnerships (PML) Limited against the decision of Cheshire West & Chester Council.
- The application Ref 18/02269/FUL, dated 8 June 2018, was refused by notice dated 6 March 2019.
- The development proposed was originally described as the conversion of existing public house to create 7 no. apartments (Use Class C3) including demolition of existing toilet block and rear staircase/store; and construction of 3 no. detached dwellings (Use Class C3) on land to the south of the former public house together with associated car parking, landscaping and other ancillary works.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the application, the proposal was amended to reduce the number of detached dwellings to the south of the site from 3 to 2, and I have accordingly considered the appeal on this basis. The amendments were in response to the Council's concerns about the effect of the proposal on the nearby heritage assets, and on the living conditions of occupiers. Although support was expressed by some respondents for the scheme in its original form, in the circumstances I am satisfied that no prejudice has been caused to any interested party by the lack of a second round of publicity following the scheme amendments.

Main Issues

3. The main issues arising in the appeal relate to (i) the acceptability of the proposed redevelopment of the existing/former public house for a residential use, having regard to local planning policies concerning retail and service centres; and (ii) whether the appeal proposals make adequate provision for affordable housing.

Reasons

Change of use

4. The appellant describes the existing building on the appeal site as a public house, an A4 use, whereas the Council's decision notice describes it as an A3 use, referable to its most recent incarnation as a Thai restaurant. Built in the

latter quarter of the C19th, the building appears to have been in use as a public house until 2012 when business ceased. Subsequently, it was used as a restaurant until that also ceased in early 2018. Paragraph 83 of the National Planning Policy Framework ('the Framework') exhorts planning decision makers to enable the retention and development of local services and community facilities, with examples that include public houses but not restaurants, although the list is not exhaustive.

5. Whether in A3 or A4 use, policy DM15 of the recently adopted Part 2 of the Cheshire West and Chester Local Plan ('CWCLP2') is applicable to proposals involving the loss of such a use. This policy has a number of requirements including that the development is consistent with the scale and function of the retail centre, that the vitality and viability of the centre would not be harmed, and that (where the proposal is not for a community facility) there has been an adequate marketing exercise.

6. The Council considers that the latter requirement has not been met. The supporting text to the policy refers to a requirement for *evidence of reasonable continuous marketing for a period of at least 12 consecutive months immediately in advance of a planning application under current market conditions.* Although the appellant, through WYG, at one point suggested that this marketing requirement applied only to retail losses, it now appears to be common ground that it also applies to the loss of the existing use, with which I concur.

7. Although now adopted as the relevant policy requirement, policy DM15 was not in force at the time of the appellant's submission of the application, and it is not possible to comply with the required marketing period retrospectively. However, Policy 4 of the Tattenhall Neighbourhood Plan 2010 – 2030, which was made on 4 June 2014, ('the NP') a date upon which there is no suggestion that the appeal property was not trading, seeks to avoid the loss of shops and related commercial services. A demonstration that reasonable efforts have been made to secure their continued use for these purposes is required. Again, it appears to be common ground that Policy 4 is applicable here, although not mentioned in the Council's decision notice.

8. The appeal site has now been marketed for a period of 12 months. The Officer's Report refers to correspondence from the appellant in October 2018 having been received to the effect that, as a result of an initial marketing period on the appellant's website, two offers for the property, the highest at £280,000, had been received and rejected. A chartered surveyor's practice, James A Baker ('JABCS'), was subsequently retained by the appellant to market the site and a further marketing period began a little over 3 weeks before the instant planning application was submitted. It appears that JABCS's retainer was limited to marketing the freehold property with vacant possession, and not to provide any valuation advice, with the guide price of £450,000 excluding VAT having been "set by" the appellant. It appears that the guide price was subsequently reduced to £395,000 excluding VAT.

9. The WYG correspondence refers to 6 offers having been received by December 2018, of which 4 were made unconditionally. It appears that alternate uses were planned by each of those prospective purchasers. These alternate uses, and whether or not they would consist of uses supported by CWCLP2 Policy DM15, have not been specified. Correspondence from JABCS states that there

has been no interest since marketing began for the property's continued use as licensed premises, although the Officer's Report refers to correspondence from the appellant's solicitors having stated that a sale contract was issued following the acceptance of an offer (later withdrawn) in the property's current commercial use.

10. Correspondence from JABCS refers to 5 offers rejected, 4 of them unconditional, and another unconditional offer having been accepted in November 2018 before the buyer withdrew, citing its uneconomic prospects. The mean average unconditional offer was £368,125 with the highest £412,500 and the lowest £325,000, exclusive of VAT. Despite the rejection of unconditional offers considerably in excess of it, and the marketing exercise at a much higher price, the appellant submits that £368,125 is a fair and achievable existing use value for the property.

11. The 'reasonable efforts' required by NP Policy 4 and the 'reasonable continuous marketing' requirement under 'current market conditions' of CWCLP2 Policy DM15 would not in my view be met by the rejection of an unconditional offer at a price exceeding the existing use value, on the appellant's own assessment, by more than £44,000. Although the parties discuss an uplift to existing use value ('EUV') to create a benchmark land value ('BLV') for the purposes of a financial viability appraisal, it is not suggested that any uplift is appropriate for the purposes of establishing a reasonable market value in circumstances where the property is voluntarily marketed by a willing seller for the purposes of continuing its existing use, as the relevant policies here anticipate. The appellant submits that the existing use value is the market value.

12. However, the Council suggests that the site value has been inflated. This is because of both the nature and the timing of the marketing operation. The Officer's Report refers to offers having been received prior to the planning application, and the involvement of JABCS, that did not exceed £280,000. Since the JABCS marketing campaign began, improved offers have been received. The sales particulars, published shortly before the planning application was submitted, drew attention to an 'alternate use opportunity subject to the granting of the necessary permissions' and suggested that the property 'may be of interest to builders, developers and investors'.

13. As a result, I accept the Council's case that the subsequent offers received are likely to have reflected the prospects of redeveloping the site for other, perhaps rather more profitable, uses, including ones that are not supported by policies CWCLP2 DM15 or NP 4. The offers may not truly reflect the EUV. The JABCS correspondence reports that, although 4 unconditional offers were received, all of these prospective purchasers were planning some alternative use of the site. Marketing the property in this way, with the JABCS campaign beginning within a month before submitting the planning application and with an express reference in the associated publicity to its redevelopment potential, does not amount to a reasonable effort to retain its existing use.

14. Consequently, I find that reasonable efforts to retain the appeal property in its existing use have not been made. No adequate marketing exercise has been undertaken, and unconditional offers for the property in excess of its market value have been unreasonably rejected. As a consequence I find that the proposal is contrary to Policy 4 of the NP. I attribute significant weight to this conflict. I also find that the proposal is contrary to Policy DM15 of the CWCLP2.

As the CWCLP2 has only recently been adopted, I give this conflict slightly less weight, because the requirement for a 12 month marketing exercise could not be complied with retrospectively. Nevertheless I attribute considerable weight to its requirement for an adequate marketing exercise to have been undertaken, which I consider has not occurred here irrespective of the length of the exercise.

Viability and affordable housing

15. Notwithstanding the objection to the loss of the existing use, redevelopment in the alternative for residential purposes would be expected to contribute towards the area's affordable housing supply. Tattenhall lies in a 'designated rural area' for the purposes of paragraph 63 of the Framework and accordingly the Council seeks a contribution towards the provision of affordable housing in the area, supported by Policy SOC1 of the Cheshire West and Chester Local Plan Part 1 ('CWCLP1'). The policy seeks contributions up to a maximum of 30% affordable housing, and reflects that the overall effect on the scheme viability is a relevant consideration. Therefore the circumstances justifying the need for a viability assessment exist.

Gross Development Value

16. The parties are in broad agreement concerning the capital sale values, the appellant anticipating revenues of £1,903,000 and the Council £1,887,430. They diverge considerably on the anticipated ground rents, and the capitalised investment values of these. The appellant anticipates ground rents of £250pa for each of the 7 apartments and a capitalisation yield of 4%. The Council anticipates ground rents of £350pa for the 1-bedroomed apartments and £450 for the 2-bedroomed, with a capitalisation yield of 3%, although has input a 4% yield into its viability appraisal summary. This results in capitalised annual ground rents of, respectively, £43,750 and £68,750.

17. The appellant refers to a national policy drive to reduce ground rent levels, changes to lending criteria by one Building Society, and to previous agreements on yields with the District Valuation Service. However, on this issue I prefer the Council's case, with the information supplied in support which includes the details of a nearby property sold at a 3% yield.

18. Although the issue of ground rents has received adverse publicity, and some lenders' criteria are tightening, I agree with the Council that they remain a valuable asset and the rent levels anticipated by the Council do not appear exceptionable. I am mindful that the Council's appeal statement was given by a Registered Valuer and long-standing professionally regulated member of the RICS with local knowledge of Tattenhall as a high value area. Although the Council's anticipated rents are described by the appellant as very optimistic, the policy drive and the changed lending criteria of a single, albeit prominent, Building Society, with a few other lenders but by no means all following suit, are not sufficient considerations to lead me to a different view.

19. The Council anticipates the Gross Development Value to be £1,956,180 and I agree with that.

Benchmark Land Value

20. The appellant's viability report results in a negative viability outcome even with no existing land value factored into the scheme. The appellant's proposed EUV

is £368,125 whereas the Council's is the higher of the two offers received at the start of the marketing campaign, £280,000. Adding a 20% premium and CIL costs results, in the Council's view, in a BLV of £350,000.

21. As the appellant points out, it is an integral part of an 'EUV plus premium' valuation method to allow for a landowner's incentive to encourage them to bring the site forward for development, and a typical level of 20-40% is suggested. The Council has applied 20%. However, the PPG states that the premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. It should provide a reasonable incentive, in comparison with other options available, for the landowner to sell land for development[1]. It should also allow a sufficient contribution to fully comply with policy requirements.

22. The policy context here is that the EUV is the market value, and the policy expectation (of CWCLP2 DM15 and NP Policy 4) is that an application for redevelopment only arises following reasonable efforts to retain the land in its existing use, with an adequate marketing exercise having been undertaken. This presupposes a willing seller at a price equating to the EUV, and in such circumstances no premium to incentivise the landowner is necessary. Put another way, given the policy objective of retaining the existing use, the other main comparable option available here is to sell the land at the EUV, and thus the 'reasonable incentive' for the landowner to sell the land for redevelopment of another form is none, save to reflect any planning obligations that a new use might carry. No AUV[2] has been suggested.

23. Therefore, I do not consider that a landowner premium of 20% (or more) is appropriate here. I do consider, for the reasons stated previously, that the EUV as assessed by the appellant, £368,125, is likely to have been inflated to some extent by the nature and timing of the marketing exercise.

24. Taking the matter in the round, therefore, I agree with the Council's assessment that the BLV does not exceed £350,000, and that this includes the effect of CIL and any planning obligations (other than a contribution towards affordable housing) that may be required.

Build costs

25. The appellant initially anticipated total build costs to amount to £1,071,220 (or £1,020,209 excluding contingency) using the BCIS median rate rebased to Chester. The Council agreed the principle, but not the figures and the Council's appraisal produces a figure, excluding contingency, of £1,040,194. The differences appear to result from the Council using costs of £1,323 and £1,511 per square metre for the flats and houses respectively (£122.91 and £140.38 per sq ft), and the appellant using £1,243 and £1,769 per sqm.

26. More recently the appellant has revisited the likely build costs, and produces a report from PSP Consultants in support of a revised estimate of £1,576,535, or £2,041 per sqm. This appears to relate to a site in Uxbridge, which casts some doubt on the appellant's claim that it is the best available evidence, but the main difficulty with its interpretation is that it refers to the gross internal floor areas of the 2 houses as amounting to 288 sqm. The net areas given in the appellant's viability report are stated to be 240 sqm and the Council has

[1] PPG Paragraph 013 Reference ID: 10-013-20190509
[2] alternative use value: PPG Paragraph 017 Reference ID: 10-017-20190509

assessed the gross areas to be 119.75 sqm each. Without any explanation of this apparent discrepancy, or of how the PSP costs have been arrived at, or of any details of the author's credentials or experience of such matters, I prefer the BCIS data upon which the build costs were originally based, and thus accept the appellant's original (November 2018) figure of £1,071,220 inclusive of contingency.

27. The net internal area of the development is said to have increased since then, from 232 to 240 sqm for the 2 houses, leading to a total of 657 sqm rather than 649 sqm in net internal floor area. I accept that an increase in build costs may reflect this change. However, as the anticipated revenue has also risen since then, although reducing per sqm by around £50, I consider this change, which is unexplained, has a negligible effect on the overall outcome.

Sales Fees and Finance

28. Little divides the parties on marketing and disposal fees, amounting in the appellant's estimate to £44,810 and in the Council's to £41,750. Professional fees at 7% are agreed, although results in a difference of around £35,000 because of the appellant's current estimate of the build costs, which I have rejected. Applying 7% to the contingent build cost of £1,071,220 results in professional fees of £74,985.40.

29. As to finance costs, each party states they have applied a rate of 7% although it is not clear on the appellant's case precisely how the actual figures in the viability report have been arrived at, by reference to the ongoing cash requirements of the build programme. The build programme is said to be 12 months with a 6 month lead in and a 3 month sales period. The peak cash requirement is said to be £1,632,182.

30. By contrast the Council has supplied a detailed cashflow analysis assuming development and sales to take place over an 18 month period, with a maximum cumulative net cash flow of £1,177,929 and a total finance cost (on an assumed 15% GDV profit basis) of £34,183. It having been demonstrated how it has been arrived at, I see no reason to depart from the Council's figure. Rounding all these figures results in professional and marketing fees and finance costs of £155,000.

Developer's profit

31. Having accepted the Council's case on GDV, a 15% return to the developer would result in a profit of £293,427 and a 17½% return, as contended for by the appellant, would result in £342,331.50.

32. The PPG describes an assumption of 15-20% of GDV as a suitable return to developers for the purpose of plan making[3] but gives no specific advice on acceptable returns in decision-making on individual development schemes. The RICS Financial Viability in Planning guidance of 2012 gives an example of where a lower return (although not by reference to the PPG) might be appropriate: *a small scheme constructed over a shorter timeframe may be considered relatively less risky and therefore attract a lower profit margin, given the exit position is more certain, than a large redevelopment spanning a number of years where the outturn is considerably more uncertain*.

[3] PPG Paragraph 018 Reference ID: 10-018-20190509

33. The appellant's justification for adopting a mid-point assumption as reasonable relies on its misunderstanding that the project involves the conversion of a listed building, meaning that, in its view, repair costs are difficult to quantify at this stage. The appeal property, although of local interest, does not appear on the statutory list and so there is no such difficulty. Again, I prefer the Council's case. The proposed development is of a small site in the heart of a popular and evidently affluent settlement, where the build contract would run for 12 months and the returns to the developer can reasonably be expected to follow shortly thereafter.

34. I consider that a reasonable developer would be willing to develop the site on an anticipated return on GDV that is lower than 17½%, and as low as 15%.

Conclusions on the viability of affordable housing

35. Various figures have been suggested in the course of the appeal as to the amount of the contribution that ought to be made through a commuted sum. The appellant calculates the 30% requirement to be £84,958. The Council seeks the lesser sum of £68,000. From my conclusions on the factors above, which have resulted in a 'surplus' of around £86,500, I consider that there is sufficient value in the site and the appeal proposal to meet this requirement.

36. As the appellant does not propose to make any contribution to affordable housing provision, however, whether by way of a commuted sum or otherwise, I conclude that the development would be contrary to Policy SOC1 of the CWCLP1, requiring affordable housing contributions of up to 30% to be made consistently with scheme viability.

Other matters

37. The appeal site lies within Tattenhall Conservation Area and close to several listed buildings, the nearest of which is 'Rosebank', and the non-designated assets of the Old School House and the Nine Houses. The desirability of preserving the importance of designated heritage assets acquires considerable importance and weight in assessing development proposals, and I have paid special regard to the statutory duties in this respect. I concur with the main parties however that no heritage assets would lose any significance as a result of the proposals.

Conclusion

38. For the reasons discussed above I find the proposed development to conflict with the development plan's requirements to make reasonable efforts to avoid the loss of services without adequate marketing. It would also fail to provide a contribution towards local affordable housing needs. Although the proposal would result in the provision of housing, contributing towards the Government policy objective of significantly boosting the supply, I have no sufficient evidence before me of any unmet need for open market housing in the area that might justify the proposal, particularly in the light of the harms I have found in respect of the main issues.

39. Other matters have been raised in correspondence, such as the impact of the proposal on the local sewerage capacity and the effects of the proposal on local car parking arrangements, but none of these matters are sufficient to affect my conclusions.

40. Therefore, as the proposed development conflicts with the development plan for the area, and no material considerations of sufficient weight have been raised that would warrant setting it aside, the appeal is dismissed.

Laura Renaudon

INSPECTOR