



Appeal Decision

Site visit made on 17 September 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2019

Appeal Ref: APP/C3620/W/19/3223148

Royal Oak PH (demolished), 265 Kingston Road, Leatherhead KT22 7PJ

- 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 Mahendra Ganatra of Cresswest Limited against the decision of Mole Valley District Council.
 - The application Ref MO/2018/0980/PLAMAJ, dated 4 June 2018, was refused by notice dated 8 October 2018.
 - The development proposed is the demolition of the former Public House. Erection of two buildings comprising 20 No. flats and a Community Facility with associated landscaping, access and parking.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the former Public House; erection of two buildings comprising 20 No. flats and a Community Facility with associated landscaping, access and parking, at Royal Oak PH (demolished), 265 Kingston Road, Leatherhead KT22 7PJ, in accordance with the terms of the application, Ref MO/2018/0980/PLAMAJ, dated 4 June 2018, subject to the conditions in the attached schedule.

Procedural Matters

2. The public house has already been demolished, and therefore the development has commenced. No new buildings were in evidence on the site at the time of my site visit. I have treated the appeal scheme as seeking permission for the demolition of the Public House and the construction of the two buildings and associated works. I have removed the words 'retrospective application' from the description in the banner heading above as they do not form part of the proposal, and I have undertaken some minor editing of the wording in the interests of clarity.
3. Since the appeal was lodged the revised National Planning Policy Framework (the Framework) has been published. The appellant has commented on its implications for the case.

Main Issues

4. The main issues are:
 - Whether the proposal would provide a suitable alternative community facility;

- Whether the public house is no longer required and alternative uses have been considered for the site;
- Whether any harm would result from the loss of the public house; and
- Whether the proposal would provide suitable access for service and delivery vehicles.

Reasons

Background

5. Policy CS17 of the Mole Valley Local Development Framework Core Strategy (CS) 2009 deals with the provision of infrastructure, services and community facilities, and is concerned with its delivery, as well as its retention. It states, amongst other things, that the Council will resist the loss of key services and facilities, unless specific circumstances apply. While it does not specifically refer to public houses, neither does it refer to other facilities such as shops and post offices. The supporting text makes reference to facilities included in the Community Facilities and Infrastructure: Position Statement 2008, but that document is primarily concerned with the provision of infrastructure to meet the needs generated by new development. I do not therefore agree that the lack of a specific reference to public houses indicates that they cannot be considered a key community facility.
6. CS Policy CS17 indicates that the loss of key services and facilities will be resisted, unless an appropriate alternative is provided, or evidence is presented that the facility is no longer required and suitable alternative uses have been considered.
7. This approach is broadly in accordance with the Framework. Paragraphs 91 and 92 seek to promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other. A public house provides such an opportunity. The Framework seeks to guard against the unnecessary loss of valued facilities and services, and to ensure that shops, facilities and services are retained for the benefit of the community.

Suitable alternative provision

8. The appeal site is a triangular-shaped plot at the junction of Kingston Road with Oak Road and Clements Mead. It is within an area referred to as North Leatherhead, which is a small centre separated from the rest of Leatherhead by the railway line. Kingston Road is a busy main road which runs through North Leatherhead.
9. The building that has been demolished provided a stand-alone public house, with its own car park, beer garden and children's play area. The proposal would replace it with 20 flats in two buildings, including a small self-contained community facility of 51 square metres on the ground floor of one of the buildings. While there is nothing in CS Policy CS17 to indicate that the alternative provision should be of similar size to the facility it would replace, in this case it would clearly be considerably smaller and more constrained than the public house. It would have its own pedestrian access but would be surrounded by residential uses.

10. The submitted layout was based on its potential occupation by a counselling service, which is no longer planned. It is not clear that it would be suitable for occupation by a wider range of alternative community uses. The space is constrained not only by its internal layout but also by its close proximity to the flats, with shared walls and ceiling/floor. It is shown to be laid out as a counselling facility, with three consulting rooms, a small office and WC. Its location, layout and size would restrict its potential to be used for activities that encourage social interaction, in order to provide an alternative to the public house. Moreover, in this location such activities could be incompatible with the neighbouring residential uses in such close proximity. While it would be possible to control the hours of use, this would restrict the range of activities that could take place, particularly in the evenings.
11. I note that the appellant is prepared to offer favourable terms to a future occupier, to encourage its use by a not-for-profit organisation. However, this would not overcome the shortcomings of the proposed space in terms of its size and location.
12. For these reasons, I do not find that the proposal would provide a suitable alternative facility. It would therefore conflict with CS Policy CS17 insofar as it resists the loss of community facilities unless an appropriate alternative is provided.

Need for the public house and suitable alternative uses

13. CS Policy CS17 requires that if an appropriate alternative is not provided, evidence should be presented that the facility is no longer required, and that suitable alternative uses have been considered. The policy states that this will require the developer to provide evidence that they have consulted with an appropriate range of service providers and the community, where relevant.
14. The appellant maintains that the declining turnover of the public house is evidence that the facility is no longer required. Prior to closing in 2017, the public house had experienced declining wet sales, demonstrated by its barrelage and details of turnover provided by the most recent landlord. It also had a high turnover over of landlords in recent years. Anecdotal evidence provided by the same landlord indicates that it was not well used by the community and attracted anti-social behaviour. I am aware that local residents question the credibility of the evidence regarding the viability of the public house and the stated anti-social behaviour. However, while the evidence indicates that the business was in decline and was experiencing problems, this does not indicate that the facility is not needed. Moreover, it is clear from the extent of local representations that there is considerable concern at the loss of the public house.
15. Marketing information has been provided which shows that there was no interest from potential purchasers in the public house except for redevelopment. However, the property was only marketed for a short period of time, from May 2017 until the end of June 2017. Although CS Policy CS17 does not give an indication as to the minimum period for a property to be marketed in order to demonstrate that it is no longer required, the Council's requirement for a 12 month period is not unreasonable. In this context, a period of less than two months is insufficient to form the firm view that there would be no interest in taking on the site for a public house or other community use.

16. The availability of the site for purchase was not advertised directly to the local community as no 'for sale' sign was erected, but it was marketed to existing applicants on the selling agent's database. A public meeting was held following the sale of the building to the appellant and its subsequent demolition. The evidence indicates that the purpose of the meeting was to allow the community an opportunity to engage with the proposed development plans. I have seen no evidence that alternative uses were discussed with the local community prior to the demolition of the public house. Although it is stated that there were consultations with service providers, the extent of this is not clear. I am therefore not persuaded by the evidence that suitable alternative uses were fully considered at an appropriate time.
17. For these reasons, I conclude that the public house is required and alternative uses have not been fully considered. As a result, it would be in conflict with CS Policy CS17 which seeks, amongst other things, to resist the loss of community facilities unless there is evidence that the facility is no longer required and suitable alternative uses have been considered.

Harm arising from the loss of the public house

18. In terms of whether any harm would result from the loss of the public house, it is relevant to consider whether there are alternative facilities available in the area which perform similar functions. North Leatherhead Community Centre is a short distance from the appeal site. This provides a meeting place and opportunities for social and leisure activities. It has a licensed bar but has limited opening hours. While it is an important community facility that has a role to play in social cohesion, it is not open to all as membership is required. This could dissuade some from using it as an alternative to the public house. Moreover, it reduces the potential for those visiting the area to make use of it, and for meetings between people who might not otherwise come into contact with each other.
19. There is a public house at The Plough, but this is further away and separated from North Leatherhead by the railway bridge. While it would be possible to walk to it from the appeal site, it would not be conveniently located to serve the wider community in this part of Leatherhead. I note however that there is a small parade of shops nearby on Kingston Road, which includes a café, and there is reference in the appellant's evidence to a further café on Kingston Road. However, while these provide a meeting place during the day, they are unlikely to be open in the evenings.
20. While there is a range of facilities available in the area, none of them provide a realistic alternative to the public house. Its loss has therefore reduced the opportunities for social interaction in the local community, and harm arises from this.
21. None of the circumstances set out in CS Policy CS17 in which the loss of key community facilities would be acceptable apply in this instance. I therefore conclude that the proposal would be in conflict with CS Policy CS17, which seeks, amongst other matters, to resist the loss of key services and facilities. It would also conflict with the advice in the Framework.

Suitable access

22. The main vehicular access to the site would be from Kingston Road, via an under-croft beneath part of the main building that would front the road, leading to a car park and turning area. The headroom would be restricted, so that the access could only be used by small transit vans and cars. Kingston Road is a wide and busy road, that had a constant flow of traffic at the time of my site visit, which was midday on a weekday. I appreciate that this is only a snapshot in time of highway conditions, but it would be reasonable to assume that traffic flows increase at peak times. There is a bus stop immediately outside the site, and restricted parking on this side of the road. On street parking takes place on the opposite side of the road, and the width of the road is sufficient to allow two way traffic flows past the parked cars.
23. An emergency access is proposed from Oak Road, to the rear of the site. Oak Road is narrow and one-way where it passes the site and has no public footway. On the opposite side, a row of houses is set very close to Oak Road, behind shallow front gardens.
24. As a result of the restricted headroom, larger delivery vehicles would be unable to enter the site from Kingston Road, and would have to stop on the road outside the site. I note that although parking is restricted, loading and unloading is permitted. I see no reason why the existence of the bus stop outside the site would give rise to particular highway safety concerns, and note that drivers already using the route would anticipate buses stopping on the site frontage. There is sufficient space for most traffic to pass a stationary bus or delivery vehicle. I have seen no firm evidence that delivery vehicles parking on the road would be more than sporadic and temporary, nor that it would give rise to highway safety concerns.
25. It is suggested by the appellant that larger vehicles, such as removals lorries, could use the emergency access on an occasional basis, and swept path analysis has been provided showing that this would be possible, and that vehicles would be able to turn within the site. The County Highway Authority (CHA) is satisfied that a suggested condition could control the use of the emergency access, and raises no objection to the proposal on highway safety grounds. I have no reason to disagree.
26. The Council is concerned that the use of Oak Road for access to the site would cause noise and disturbance to neighbouring occupiers, due to the proximity of existing dwellings to the road. However, the appellant estimates that this would only be used by larger vehicles such as removal lorries and deliveries of large items, and would be infrequent. As the use of the access could be controlled by condition through the management of the site, its use would cause only sporadic and temporary noise and disturbance to neighbours. As a result, it would not be unacceptably harmful to their living conditions.
27. I therefore conclude that the proposal would provide suitable access for service and delivery vehicles. Accordingly, it would not conflict with Policy MOV2 of the Mole Valley Local Plan 2000, insofar as it seeks to ensure that new development is compatible with the transport infrastructure and environmental character in the area, with suitable servicing arrangements, vehicular access, egress and movement within the site.

Other Matters

28. A planning obligation signed by the appellant and the Council under Section 106 of the Planning Act has been provided. This includes a number of obligations to come into effect if planning permission is granted. I have considered these in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework.
29. The planning obligation would secure the on-site provision of affordable housing, in accordance with CS Policy CS4. It also gives an undertaking that the community facility would be retained for that purpose, unless it can be demonstrated that best endeavours have been used for a period of no less than 24 months to secure an occupier. The provision of a suitable alternative to the public house is a requirement of CS Policy CS17. I have sufficient evidence to conclude that the planning obligation meets the relevant statutory tests, and I have taken it into account in determining this appeal.
30. There is local concern that the public house was demolished without planning permission and no action was taken by the Council to prevent this. While I understand the frustration of local residents, the fact that the public house has been demolished without permission is not a reason in itself to dismiss the appeal. I appreciate that there is a local desire to see the public house rebuilt on the site, or incorporated into a mixed use redevelopment, but I have determined the appeal on the basis of the submitted scheme.
31. The Council considered the effect of the proposal on the character and appearance of the site and surrounding area and concluded that it would be appropriate. It also considered the effect on daylight, sunlight and privacy and found that it would not be harmful. I have no reason to disagree with these conclusions. The Council and the Highway Authority are satisfied that adequate car parking, electric vehicle charging points, and cycle storage would be provided for future occupiers of the proposal and I have no reason to come to a different view.
32. I note the concern that the additional dwellings would add to pressure on local services, but I have seen no firm evidence that resisting the proposal on these grounds would be justified. While no outdoor play space is provided, the proposal includes communal amenity space and I am not aware of any policy basis for requiring on site provision of play space in a development of this relatively small scale. Refuse bins would be screened within enclosures and while two of the doors would open onto an area of tarmacked footway, this would not be in a location that would impede pedestrians.
33. Any noise and disturbance to neighbouring residents during construction is inevitable but would be temporary and short-lived. The provision of boundary hoarding would reduce the dangers and security risks associated with a construction site. It is a well-founded principle that the planning system does not exist to protect private interests such as the value of land or property.

Planning Balance

34. Planning decisions should be made in accordance with the development plan, unless material considerations indicate otherwise. The Framework is one such material consideration. The parties agree that the Council cannot currently

demonstrate a five year housing land supply, and the figures indicate a significant shortfall. Paragraph 11 of the Framework indicates that the policies which are most important for determining the application are out-of-date, where a five year housing land supply cannot be demonstrated. Paragraph 11d) ii states that for decision taking, this means that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

35. The amount of weight to be given to development plan policies is a matter of planning judgement for the decision maker. Being out of date does not mean that a policy carries no weight. CS Policy CS17 seeks to resist the loss of key services and facilities, which could affect the delivery of housing. However, it is broadly consistent with the Framework and so still carries a moderate amount of weight.
36. In terms of benefits, the development would make use of previously developed land to provide additional housing, including affordable housing, which would improve the supply of housing and is a benefit which attracts significant weight, in view of the current shortfall. There would be employment generated by its construction, which would be a limited temporary benefit due to its relatively small scale. There would be some limited benefit through the provision of a new community facility. The site is close to local services and facilities in Leatherhead, including the railway station, and I attach moderate weight to this as it would help to reduce car-based travel. The lack of harm to highway safety, the provision of adequate living conditions and the lack of harm to the living conditions of neighbouring occupiers, are neutral factors.
37. In the context of paragraph 11 of the Framework, the adverse impacts of the development to which I attach moderate weight, would not significantly and demonstrably outweigh the benefits, to which I attach significant to limited weight. Therefore, applying the 'tilted balance' points towards the grant of planning permission. In conclusion, while not in accordance with CS Policy CS17, the proposal would be acceptable, having regard to this material consideration.

Conditions and Conclusion

38. I have considered the suggested conditions in the light of the Planning Practice Guidance (PPG). As the development has already commenced, there is no need to impose the statutory time limit for the implementation of the permission. I have imposed a condition requiring that the development is carried out in accordance with the approved plans, in the interests of clarity.
39. Details of external materials, hard surfacing, extract flues, ventilation systems and meter boxes, boundary treatments, soft landscaping, and the design of the cycle stores, are required in the interests of visual amenity. In the interests of flood risk; conditions relating to sustainable drainage are necessary. Conditions relating to construction traffic management, the provision of parking, cycle storage, the provision and use of the access onto Oak Road and the closure of an obsolete access are required in the interests of highway safety. A condition seeking to restrict carbon emissions is justified in relation to CS Policy CS19 and electric vehicle charging points are required to accord with the Council's guidance. Details of site levels, a noise assessment and hours of use of the community facility are required in the interests of living conditions. A condition

for the retention of the community facility is needed to reflect the development as applied for.

40. For the reasons set out above, and taking into account all matters raised, I conclude that the appeal should be allowed.

N Thomas

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 17-020-001, 17-020-003 Rev B, 17-020-004 Rev B, 17-020-005 Rev B, 17-020-006 Rev B, 17-020-007 17-020-008 Rev A.
- 2) Before any above ground works commence, details of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 3) Before any above ground works commence, details of the hard surfacing to be used within the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall indicate either porous materials or the provision of a direct run-off from the hard surface to a permeable or porous area. All hard surfacing shall be carried out in accordance with the approved details.
- 4) The construction of the buildings and hardstanding hereby permitted shall not commence until details of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The development shall be carried out and thereafter retained and maintained in accordance with the approved details.
- 5) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved in writing by the Local Planning Authority. This must demonstrate that the drainage scheme has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
- 6) Before any above ground works commence, full details of all proposed extract flues, ventilation systems and meter boxes shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.
- 7) No occupation of the development hereby permitted shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected/retained. The boundary treatment shall be completed prior to the first occupation of the

development, shall be carried out in accordance with the approved details and thereafter permanently retained as such.

- 8) The development hereby approved shall not be occupied until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purpose. 20% of the total number of parking spaces shall be fitted with a fast charge socket for electric vehicles.
- 9) The development hereby approved shall not be first occupied until secure and covered parking of bicycles within the development site has been provided in accordance with the approved plans and thereafter retained.
- 10) Prior to the construction of the buildings and hardstanding hereby permitted, a Construction Transport Management Plan, to include details of: a) parking for vehicles of site personnel, operatives and visitors; b) loading and unloading of plant and materials; c) storage of plant and materials; d) programme of works (including measures for traffic management); e) provision of boundary hoarding behind any visibility lines; f) measures to prevent the deposit of materials on the highway; g) no HGV movements to or from the site shall take place between the hours of 08.30 and 09.15 hours and between 15.00-16.00 hours nor shall the contractor permit any HGVs associated with the development at the site to be laid up, waiting, in Kingston Road or in the vicinity of West Hill School during these times; h) on-site turning for construction vehicles; shall be submitted to and approved in writing by the Local Planning Authority. The approved Construction Transport Management Plan shall be adhered to throughout the construction period for the development.
- 11) The development hereby approved shall not be occupied until the proposed emergency access to Oak Road has been constructed in accordance with the approved plans and thereafter shall be kept permanently maintained.
- 12) The development hereby approved shall not be occupied until a Service Management Plan dealing with the use of the emergency access from Oak Road has been submitted to and agreed in writing by the Local Planning Authority. The access shall not be used by vehicles except in accordance with the approved Service Management Plan.
- 13) The development hereby approved shall not be occupied until the existing accesses from the site to Oak Road/Clements Mead have been permanently closed and any kerbs, verge and footway, fully reinstated.
- 14) Prior to any above ground works commencing, details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted and approved by the Local Planning Authority, implemented prior to the first occupation of the development and thereafter retained.
- 15) Before any above ground works take place, a landscaping scheme shall be submitted to and approved by the Local Planning Authority including planting of trees, shrubs, herbaceous plants and areas to be grassed. The

landscaping shall be carried out in the first planting season after the date of this decision unless agreed otherwise in writing by the Local Planning Authority, and shall be maintained for a period of 5 years. Such maintenance shall include the replacement of any trees and shrubs that die.

- 16) Prior to occupation of the development hereby approved, details of the design and external appearance of the refuse and cycle stores shall be submitted to and approved in writing by the Local Planning Authority and thereafter the structures shall be provided in accordance with the approved details and thereafter retained for those purposes.
- 17) Prior to the construction of the buildings hereby permitted, the proposed finished levels of the ground, the ground floor slab level of each building, and the finished levels of any access road and driveway showing their relationship with the existing levels of the immediately adjoining land and buildings, shall be submitted to and approved, in writing, by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 18) Prior to the occupation of the community facility space by the first and any subsequent community facility provider, a noise management report shall be submitted to and approved in writing by the Local Planning Authority covering issues of (1) the nature of the community facility and a scheme of noise assessment mitigation including details of insulation and noise control and (2) hours of use. The development and use shall be carried out in accordance with the approved details and hours of use.
- 19) The area on the ground floor of the main building fronting Kingston Road, identified on the submitted plans as a community facility, shall be used for community purposes and for no other purpose (including any purpose within Classes D1 and D2 of the Schedule to the Use Classes Order 1987 as amended).