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## Appeal Decision

Site visit made on 25 September 2017

**by Chris Forrett BSc(Hons) DipTP MRTPI**

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

**Decision date: 14<sup>th</sup> November 2017**

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**Appeal Ref: APP/J0405/W/17/3176674**

**Rear of the Former White Lion PH, Startops End, Lower Icknield Way, Marsworth, Buckinghamshire HP23 4LJ**

- 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 The Keen Pension Fund against the decision of Aylesbury Vale District Council.
  - The application Ref 16/03802/APP, dated 20 October 2016, was refused by notice dated 12 May 2017.
  - The development proposed is to erect six new dwellings.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are :
  - (i) the effect of the development on the character and appearance of the area with particular regard to the Marsworth Conservation Area and the setting of nearby Listed Buildings;
  - (ii) whether or not the proposed development would be in a sustainable location;
  - (iii) whether the development would provide suitable living conditions for its future occupants with particular regard to noise and disturbance and privacy; and
  - (iv) the effect of the development on the parking arrangements for the retained White Lion building

### Reasons

#### *Character and appearance*

3. The appeal site is located away from the main part of the village of Marsworth and is largely located to the rear of a stretch of ribbon development to the south of the Grand Union Canal at Startops End. Therefore, in planning policy terms, it is located in the countryside.
4. The site was last used as the car park and garden area to the White Lion public house and has a significant area of tarmacadam still present. Given the last use of the site, as part of the White Lion public house, it is previously developed land. Notwithstanding that, the lack of built development on this part of the site has ensured that it has maintained the open character of the area to the rear of the properties along Lower Icknield Way. The site is also

- highly visible from the canal towpath, and to a lesser extent from the pedestrian and road bridge owing to the tree screening.
5. The Appellant has provided some evidence to suggest that historically there were buildings to the rear of the White Lion building. However, I saw no evidence of such historical buildings at my site visit nor is there any indication of the scale of such historical buildings. I have therefore given this very little weight.
  6. Given the proposed layout of the overall site, when considered against the context of the existing development, the tandem nature of the proposal is at odds with the prevailing character of the area at Startops End which is very much linear in form. The very nature of the tandem development would give rise to some harm to the character and appearance of the area.
  7. Turning to the overall design of the proposed dwellings, the development consists of two blocks of three dwellings which would back onto the Grand Union Canal. Each block would have three gable walls facing the canal and would be in the region of 7.5 metres in height. From the evidence before me, the existing cottages along Lower Icknield Way are in the region of 7 metres in height.
  8. To my mind, the overall design concept and appearance of the proposed dwellings is not objectionable in principle. However, given the location in which they are proposed they would be overly large in height when compared to the frontage development and would contribute to the erosion of the open character of the area.
  9. In coming to that view, I acknowledge that the height of the proposed dwellings was reduced following consultation with local residents and Marsworth Parish Council. However, whilst this may have resulted in an improvement to the overall scheme, it would still nevertheless result in harm to the character and appearance of the area.
  10. The site is also within the Marsworth Conservation Area (MCA) and close to three Grade II Listed Buildings (Bridge 132 – the road bridge over the canal, lock 39 on the canal and the former lock-keepers House). Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of these buildings and the character or appearance of the MCA.
  11. A large part of the MCA is open in nature particularly adjacent to the Grand Union Canal and this forms an important part of the character of the MCA. Whilst the site is not identified as an area of important open space, the development of the site would inevitably have an urbanising effect to the character of the MCA. This is compounded by the likely boundary treatment to the rear gardens of the proposed dwellings. As such, I consider that the proposal would detract from the open nature of the MCA.
  12. Paragraph 134 of the National Planning Policy Framework (the Framework) states that where a development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
  13. Whilst few benefits of the development have been identified, the provision of additional dwellings could be considered to be a public benefit. However, such

a benefit is clearly modest. Taking this into account, whilst the harm to the significance of the heritage assets would be less than substantial, the public benefits are not sufficient to outweigh the harm I have identified.

14. In respect of the effect of the development on the setting of the nearby listed buildings, the closest one is bridge 132, with lock 39 and the lock keepers cottage on the opposite side of the road.
15. The proposed development would be located to the rear of the White Lion building away from Bridge 132. To my mind, the development would not have any adverse impact on the setting of Bridge 132, or the other listed buildings in the vicinity of the site. In this respect, the development would accord with the conservation aims of the Framework and Policy GP.35 of the Aylesbury Vale District Local Plan (2004) (LP).
16. For the above reasons, I conclude that the dwellings would lead to unacceptable harm to the rural character and appearance of the area, and the character of the MCA, contrary to the provisions of Policy GP.35 of the LP which amongst other things seeks to protect the character and appearance of the area. This would also be at odds with the conservation aims of the Framework.

#### *Sustainable location*

17. Paragraph 55 of the Framework seeks to promote sustainable development in rural areas and indicates that housing should be located where it will enhance, or maintain, the vitality of rural communities. However isolated homes in the countryside should be avoided unless there are special circumstances.
18. The dwellings would not be isolated in the sense that they would be adjacent to the existing ribbon development along Lower Icknield Way. However, in respect of access to services, the site is away from the main part of the village of Marsworth. From the evidence before me, there are bus stops close to the site, but the level of service is somewhat restricted.
19. Whilst Marsworth does have some local facilities, the distance to the site from the parts of the village where the facilities are located would mean that residents of the new dwellings would have to rely heavily on the facilities and services of other larger settlements which would invariably involve regular travel by the private motor vehicle which is the least sustainable mode of transport. I find on this issue that the dwellings would not be in a sustainable location and the scheme would therefore be in conflict with the sustainable transport aims of the Framework.

#### *Living conditions*

20. The concern that the Council have raised relates to the use of the existing White Lion building and whether the public house use of the premises still exists or whether the planning permission<sup>1</sup> granted for the conversion of the building into two dwellings has been implemented.
21. The Council have stated that the permission has lapsed as the pre-commencement conditions have not been discharged and there has been no evidence submitted to demonstrate that the development has commenced.

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<sup>1</sup> 13/01430/APP

22. The Appellant has not disputed that the pre-commencement planning conditions have not been discharged but have drawn my attention to a building regulation application<sup>2</sup> and the Council's interim position statement on housing land availability which identified the White Lion site as being under construction.
23. From my site visit I saw that some building works had occurred on the rear elevation of the building with a new steel beam having been inserted. Internally, there was also a hole dug between an existing door frame on the lower ground floor.
24. Notwithstanding that, little detail of the previous planning permission has been provided to me and it is not clear whether these works relate to that permission. Furthermore, the undisputed statement from the Council in relation to the pre-commencement planning conditions leads me to have serious doubt as to whether the permission has been lawfully implemented. In the absence of any information to the contrary (such as a certificate of lawful development), I therefore must determine this appeal on the basis that the building has a lawful use as a public house.
25. Turning to the issue of potential noise and disturbance, unit 6 would be sited in the region of 10 metres away from the rear of the White Lion building with the area between the two buildings having been last used as a beer garden associated with the public house.
26. Given the proximity of the beer garden to unit 6, and to a lesser extent units 5 and 4, the occupiers of the development would be likely to suffer excessive noise and disturbance from the use of the beer garden, particularly during the summer months. To my mind, the development does not provide a suitable relationship between the two uses and would result in poor standard of living conditions for the occupiers of these dwellings.
27. In relation to potential privacy matters, given the orientation of unit 6 and the distance between the White Lion building and the proposed dwelling, there would not be any overlooking potential between habitable room windows. In relation to the rear garden area, subject to a suitable boundary treatment between unit 6 and the White Lion, I am satisfied that there would not be an excessive amount of overlooking to the rear garden area and as such it would provide a suitable private amenity area for the future occupants of the dwelling. However, this would not outweigh the harm I have already identified.
28. The Council have referred to Policies GP.8 and GP.95 of the LP. However, both of these policies are aimed at protecting the amenities of the occupiers of existing properties and therefore they are of little relevance in respect of the living conditions of the future occupiers of the development.
29. For the above reasons the development would not provide a suitable living conditions for the future occupiers of the development contrary to one of the core principles of the Framework which seeks to ensure that new development provides a good standard of amenity for all existing and future occupants of land and buildings.

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<sup>2</sup> 13/0112/DALBN

### *Parking arrangements*

30. Like the living conditions issue, the Council's concern relates to whether the White Lion building can still be used as a public house.
31. The proposed development would take up the majority of the existing parking area for the White Lion with only a limited amount of parking remaining adjacent to the garden area. Given the very limited parking remaining on site it is inevitable that there would be an increase in demand for parking elsewhere including on-street parking.
32. However, parking on the existing highway network is constrained by the traffic signalled road bridge, bus stop and the metal railings adjacent to the carriageway close to the appeal site. These factors severely restrict the safe parking of vehicles on the carriageway.
33. Whilst traffic flows along Lower Icknield Way were not heavy at the time of my site visit, the constraints of the existing road network lead me to the conclusion that any additional on street parking along this stretch of road would lead to increased highway danger to other road users.
34. In coming to that view, I acknowledge that there is a pay and display car park almost opposite the site. However, there is no guarantee that this would be available at all times for potential customers of the public house.
35. For the above reasons the proposed development would not provide sufficient off street parking provision for the retained White Lion building which would lead to an increase in street parking on the highway to the detriment of highway safety. The proposal would therefore be contrary to Policy GP.24 of the LP and aims of the Framework which amongst other matters seeks to ensure that developments provide sufficient parking for its intended users and that proposals provide a safe and suitable access for all people.

### *Other matters*

36. I have also had regard to the pre-application process undertaken by the Appellant for which no response was provided from the Council prior to the submission of the application. Whilst the lack of response is clearly regrettable, this is a procedural matter away from the planning merits of the development and I therefore give this little weight.

### *Planning balance*

37. The adopted LP dates back to 2004 and therefore was adopted some years prior to the Framework. The Council acknowledge that the development plan policies in relation to the supply of housing land are now out of date and I have no reason to disagree with that view. Notwithstanding that, they still form part of the development plan. In accordance with paragraph 215 of the Framework, given that they relate to housing land supply to 2011, I can only give them little weight. As such, given that the policies are out of date, the provisions of paragraph 14 of the Framework come into play.
38. In addition to the above, the Appellant and the Council disagree whether there is a five year supply of housing. When a council cannot demonstrate a five year supply of housing land, paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date.

39. However, given it is widely accepted that the development plan is out of date anyway, it is of little relevance if the Council can demonstrate a 5 year supply of housing or not as paragraph 14 of the Framework has already been engaged.
40. The fourth bullet point of paragraph 14 of the Framework makes it clear that where development plan policies are out of date planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole or that specific policies in the Framework indicate that development should be restricted.
41. I have found that the proposed development would not be situated in a sustainable location and would give rise to harm to the character and appearance of the area and would be in conflict with the LP. I have also found that the proposal would not provide suitable living conditions for the future occupiers of the development and that there would be insufficient off street parking provision for the retained White Lion building. These factors weigh heavily against allowing the proposed development.
42. The proposal would provide economic benefits to the area in relation to the construction period, and an increase in local household spending following occupation. Turning to the social aspect of sustainable development, there are clear benefits in the provision of much needed new housing.
43. Taking all of the above into account, to my mind, the factors weighing against the proposed development significantly and demonstrably outweigh the minor factors in its favour when assessed against the policies in the Framework taken as a whole.

### **Conclusion**

44. Taking all matters into consideration, I conclude that the appeal should be dismissed.

*Chris Forrett*

INSPECTOR