



# Appeal Decision

Hearing held on 6 April 2004

Site visit made on 6 April 2004

by **Martin Andrews** MA BSc(Econ) DipTP(Dist) MRTPI

an Inspector appointed by the First Secretary of State

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Tel: 01452 835226  
The Planning Inspectorate  
Site Wing  
The Guildhall  
100 High Street  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail: enquiries@planning-  
inspectorate.gsi.gov.uk

Date

**6 MAY 2004**

**Appeal Ref: APP/G2815/A/03/1128215**

**Axe & Compass Public House, 14 Carlow Road, Ringstead, Kettering, Northants NN14 4DW**

- 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 J Gilhooly against the decision of East Northants District Council.
- The application (Ref. EN/03/00299/FUL), dated 21 March 2003, was refused by notice dated 14 July 2003.
- The development proposed is the construction of 2 No. detached dwellings.

**Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out in the Formal Decision below.**

## Main Issues

1. I consider that the main issues in this appeal are, having regard to the prevailing policies:
  - (a) the effect of the loss of the beer garden on the availability of community facilities in Ringstead, and
  - (b) the adequacy of the living conditions of the occupiers of the proposed dwellings in respect of cooking smells and noise and disturbance as a result of their proximity to the public house.

## Planning Policy

2. The development plan comprises the *Northamptonshire County Structure Plan 1996-2016*, adopted in 2001 and the *East Northamptonshire District Local Plan, 1996*. In the Structure Plan, the relevant policies include Policy RE2, which indicates that Local Plan policies should seek to retain important local facilities within the established confines of villages in order to meet the day-to-day requirements of the local population.
3. The corresponding policy in the District Local Plan is Policy CF8. This states that planning permission will not be granted for redevelopment or changes of use of community facilities and services unless it can be demonstrated that the community which they serve no longer needs them. Paragraph 13.31 of the supporting text explains that the term 'community services and facilities' includes public houses.

## Reasons

### *Effect on Community Facilities*

4. On the first issue it is clear that Local Plan Policy CF8, read in conjunction with paragraph 13.31, offers specific protection for the Axe & Compass Public House unless there is clear evidence that the premises are no longer needed in the village, as demonstrated by a lack of

viability. The appeal proposal however only involves the loss of a beer garden, which is not specifically mentioned in either the policy or the text as a community facility. The Council has nonetheless applied the policy and refused permission on the premise that, as the Notice of Refusal states, *'the loss of the garden may result in the erosion of a community facility'*. (my emphasis).

5. Ostensibly this is a reasonable application of the policy, as common sense suggests that a village pub with a beer garden is likely to be more attractive to regular patrons during the summer months and would additionally attract a wider clientele, including family groups. On this basis the likelihood is that the pub would be more viable with the beer garden than without it.
6. However the use of the word 'may' rather than 'would' in the Notice of Refusal is significant, in that the Council has not been able to provide any firm evidence that the availability of the beer garden actually increases the overall number of customers or the frequency of visits. Indeed the evidence of the appellant at the Hearing was that even during the hot summer of 2003 there was only limited use of the area. In his view, this was mainly because of changing patterns of behaviour, including the increasing popularity of barbecues in the gardens of residents of Ringstead and the surrounding area.
7. This evidence was essentially not disputed by the Council, which however remained concerned that even if past use of the beer garden has been at a low level, its development would limit the potential of the Axe & Compass to increase its customer base. Again, on the face of it this is a reasonable and common sense argument. But the appellant explained that although he had carried out a number of initiatives to increase trade, these had had limited success. There is also testimony from the Parish Council and third parties that the Axe & Compass is a well-run pub. Bearing these points in mind and that the location of the pub gives little potential for passing trade, I have no reason to suppose that even under new management the beer garden would become a catalyst for a substantial increase in visitors to the premises.
8. A further factor to bear in mind is that Ringstead has two other licensed premises, the New Inn and the Ringstead Social Club. Both of these have beer gardens so that a choice remains for local residents who might wish to drink or eat outside the premises in suitable weather. I also saw on my visit that even without the beer garden the Axe & Compass would have a patio area that could accommodate a number of tables.
9. Overall on this issue I conclude that the loss of the beer garden would not have a significant effect on community facilities in the area, either in itself or in respect of an adverse effect on the patronage and therefore viability of the Axe & Compass. Accordingly I see no harmful conflict with Local Plan Policy CF8.

#### ***Effect on Living Conditions***

10. On this issue the concerns relate to the potential for cooking odours and noise and disturbance to have an adverse effect on future occupiers of the two dwellings. On the first point, the relationship of the dwellings to the extraction system for the pub is not significantly different from that to existing properties; indeed it would be better than some. And as there is no evidence hitherto of the system's inadequacy or complaints in this regard, I see no reason to preclude the development on this basis.

11. On the second matter, it is mainly Plot 1 that would be affected by any noise and disturbance as its front elevation would be closest to the restaurant and pub entrance and its flank boundary would adjoin the existing gravel car park. In terms of the latter, there is undoubtedly potential for disruption from the noise of the cars on the gravel but, more significantly, from doors slamming, car radios and raised voices of people leaving the premises. And whilst such noise would be intermittent and of limited duration there can be little doubt as to its disruptive effect when it does occur; indeed at the Hearing the Council's Public Health Manager advised that a figure of 82 decibels might be expected from the slamming of a car door.
12. However the relationship between the proposed house on Plot 1 and the car park would be no different from that in the case of No. 10 Carlow Road, the existing house to the south west. I also note that the design of the proposed house, with only a door to a utility room on the ground floor and a window to an en-suite in its western flank, has anticipated the potential for an element of disturbance. And in respect of both this and the proximity to the pub itself, the potential for any reasonable objection must be substantially offset by the fact that the relationship would be clearly in evidence to possible occupiers. Taking these points into account, I do not regard the second reason for the refusal of the appeal scheme as being sufficient to justify its rejection. But that having been said, the inclusion of a condition requiring consideration to be given to additional noise attenuation measures would in my opinion remove any reasonable basis for refusing permission.

#### **Other Matters**

13. I have taken account of the concerns of nearby residents, including access difficulties and loss of outlook but after careful consideration I do not think that even if there were to be any noticeable effect it would be sufficient to justify a refusal of permission. Mrs Hawthorn of No. 10 Carlow Street attended the Hearing to make her views known and I visited that property to assess the effect of the proposal. I acknowledge that there would be at least some loss of outlook and sunlight to the garden. But with No. 10's predominantly southerly aspect and the fact that the bulk of the Plot 2 dwelling would recede as it rises above the roof of the pool room, any adverse impact would be substantially less than that feared. Whilst I therefore feel unable to dismiss the appeal on this basis, or indeed to formally require amendments to the scheme, this does not preclude the appellant's further consideration of minor adjustments to the ridge height and siting, as discussed at the Hearing, on a 'good neighbour' basis.

#### **Conditions**

14. The Council has suggested a number of conditions if the appeal is allowed. A condition requiring details of external materials and the submission and implementation of a landscaping scheme is necessary for the visual amenity of the area. A condition on boundary screening will have a similar effect, as well as securing privacy for the occupiers of the dwellings. The obscure glazing of the flank windows will also safeguard privacy, whilst conditions in respect of the details and provision of the access will safeguard highway safety. Finally I have already referred to the need for a noise condition in paragraph 12 above.

## Conclusion

15. On the main issues I have concluded that the proposed development would not lead to the unacceptable loss of a community facility or have an unreasonable effect on the living conditions for future residents. There would therefore be no material conflict with Local Plan Policy CF8 or the other policies of the Council. For these reasons and having regard to all other matters raised, I conclude that the appeal should be allowed.

## Formal Decision

16. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for the construction of 2 No. detached dwellings on land at the Axe & Compass Public House, 14 Carlow Road, Ringstead, Kettering in accordance with the terms of the application, Ref. EN/03/00299/FUL, dated 21 March 2003, and the plans submitted therewith, subject to the following conditions:
- 1) The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
  - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 3) No development 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. The boundary treatment shall be completed before the buildings are occupied. Development shall be carried out in accordance with the approved details.
  - 4) The first floor windows in the side elevations of the proposed dwellings shall be obscure glazed and thereafter permanently retained in that condition.
  - 5) Construction work shall not begin until a scheme for protecting the proposed dwelling on Plot 1 from noise from the Axe & Compass Public House and car park has been submitted to and approved by the local planning authority. All works which form part of the scheme shall be completed before the dwelling is occupied.
  - 6) Before the development hereby permitted is commenced, details of the construction and surfacing of the vehicular access to the public highway, parking facilities and all other hard-surfaced areas within the site shall have been submitted to and approved by the local planning authority. These facilities shall then be provided in accordance with the approved details before the first occupation of the development.
  - 7) Pedestrian visibility splays of at least 2m x 2m shall be provided on each side of the vehicular access. These measurements are taken from along the highway boundary. The areas of land forward of these splays shall be reduced to and maintained at a height not exceeding 0.6m above carriageway level. Any gates to be provided at the access point shall be hung to open inwards only.
  - 8) No development shall take place until there has been submitted to and approved by the local planning authority a comprehensive scheme of landscaping for the site, which shall be implemented strictly in accordance with the approved details in the first planting season following the occupation of the development.

**Information**

17. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.
18. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
19. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.
20. Attention is drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970, as amended.

*Martin Adams*

INSPECTOR

**APPEARANCES**

**FOR THE LOCAL PLANNING AUTHORITY:**

Mr J Mitson BA(Hons) DipTP  
Senior Planning Officer, East Northamptonshire Council, East Northamptonshire House, Cedar Drive, Thrapston, Northamptonshire NN14 4LZ.  
Mr D Hale Bsc(Hons) Env. Health Dip. Ac.Noise  
Public Health Manager, East Northamptonshire Council.

**FOR THE APPELLANT:**

Mr N C Ozier BA(Hons) MRTPI  
Managing Director, Brian Barber Associates, 4 Kimbell Mews, Humfrey Lane, Boughton, Northampton NN2 8XB.  
Mr P Smith BA MRTPI  
Mr M Fitzgerald RICS  
Mr J Gilhooly  
Appellant.  
Barrett Homes Ltd, 1 Silver Street, Kettering, Northants NN16 0BN.  
Appellant.

**INTERESTED PERSON:**

Mrs A Hawthorn  
10 Carlow Street, Ringstead, Kettering, Northants NN14 4DN.

**DOCUMENTS**

- Document 1 List of persons present at the Hearing.
- Document 2 Council's letter of notification of the Hearing and list of persons notified.
- Document 3 Letters of representation.
- Document 4 Appendices 1-5 to Mr Ozier's pre-Hearing Statement.
- Document 5 Copy of Structure Plan Policy RE2.
- Document 6 Suggested acoustic condition.

**PLANS**

Plan A Application plans: Drawing Nos. AC/01-AC/05; Ordnance Survey site and location plans.