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# Appeal Decision

Hearing held on 8 August 2013 and 29 November 2013

Site visit made on 29 November 2013

**by Nigel Harrison BA (Hons) MRTPI**

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

**Decision date: 16 January 2014**

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**Appeal Ref: APP/C3240/A/13/2194804**

**The Swan, Waters Upton, Telford, TF6 6NP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Simon Davis against the decision of Telford and Wrekin Council.
  - The application Ref: TWC/2012/0109, dated 14 December 2011 was refused by notice dated 19 September 2012.
  - The development proposed is an outline application for residential development (up to 5 houses) on part of pub car park and beer garden, with amended access off River Lane.
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## Decision

1. The appeal is allowed and planning permission is granted for residential development (up to 5 houses) on part of pub car park and beer garden, with amended access off River Lane at The Swan, Waters Upton, Telford, TF6 6NP in accordance with the terms of the application Ref: TWC/2012/0109 dated 14 December 2011, subject to the conditions set out in the Schedule attached to this decision.

## Clarification

2. The Hearing opened on 8 August 2013 and resumed on 29 November 2013. During the opening session it became apparent that the ownership of the former Swan Inn, which is included within the appeal site, had recently changed, although the new owners had not been informed of the planning application or notified of the Hearing. The Hearing was therefore adjourned to enable proper notification to be made in accordance with the Regulations, and to allow for sufficient time for representations to be made.
3. At the resumed Hearing common agreement was reached between the appellant and the Council that the current use of the former public house fell within Use Class A1 'Retail', which is a permitted change of use from Use Class A4 'Food and Drink' under the provisions of the *Town and Country Planning (General Permitted Development Order) 1987 (as amended)*. On this basis the Council stated that it no longer wished to defend those parts of its reasons for refusal relating to the loss of a community facility, and to which Policy CS10 of the *Wrekin Core Strategy Development Plan Document (CS)* refers.
4. However, subsequent to the Hearing, and having taken further advice, the Council wishes to pursue the issue relating to the loss of a community. It now considers that the primary use of the 'Swan' building falls within Use Class B8 'Storage and Distribution', and as such planning permission would be required

for change of use from Class A4 'Use for the sale of food and drink for consumption on the premises'. Whilst this represents an unexpected change to the stated position at the Hearing, in determining this appeal I will not rule on what I consider to be the current lawful use of the building. This matter is not before me, and in any event, I do not have sufficient evidence to make such a judgement.

5. Nor is loss of a community facility a new issue, as the Council has simply reverted to its original position set out in the decision notice and written evidence. The matter was also discussed orally at the Hearing. Consequently, I am satisfied that no injustice would result, and have determined the appeal on the basis of all the existing evidence and the facts before me.

### **Procedural Matters**

6. Whilst being considered by the Council the number of proposed dwellings was reduced from 'up to six houses' to 'up to five houses', and the application description amended accordingly. Interested parties were re-consulted on the basis of the revised proposal, and I have considered the appeal on this basis.
7. The application is made in outline, with all matters being reserved for subsequent approval. An indicative site layout plan showing 5 No dwellings (Ref: 7431/006A) was included with the application, which I shall treat as being for illustrative purposes only.

### **Main Issues**

8. I consider there are two main issues in this case:
  - The effect of the proposal on the character and appearance of the area, also having regard to whether the indicated garden and parking areas are sufficient to serve the needs of future occupiers.
  - Whether the loss of part of the former 'Swan' car park and beer garden would result in the potential loss of a local facility which plays a role in sustaining the economic and social life of the village, having regard to national and local policy which seeks to support community facilities in rural communities.

### **Reasons**

9. The application site comprises the former Swan public house and its associated car park and beer garden. The indicative site layout accompanying the application indicates a development of five dwellings set out around a small access road. As part of the proposal it is intended to close the existing access and provide a new access onto River Lane. The indicative layout shows 20 parking spaces and a 129sqm garden to be retained for the Swan building.
10. It is acknowledged that the Council cannot demonstrate a five year supply of deliverable housing sites, and recent evidence (October 2013) shows that only a 2.5 year supply exists. In such circumstances Paragraph 49 of the National Planning Policy Framework (the Framework) says relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites.
11. Policy CS7 of the *Core Strategy Development Plan Document*, December 2007 (CS) provides the spatial interpretation of the housing target identified in CS

Policy CS1, with an emphasis of helping to sustain rural communities. Policy CS7 says new housing development shall be focussed on the three 'suitable' settlements (including Waters Upton). These policies are complemented by saved policies of the *Wrekin Local Plan*, February 2000 (LP), particularly LP Policy H24 which says the Council may permit small scale affordable housing schemes within or adjoining villages in the Rural Area. There is no dispute that the site offers a sustainable location in a village with good local services and facilities, and with reasonable public transport links to major centres.

#### *Character and Appearance of the Area*

12. One of the Council's concerns relates to the density of the scheme, which it says would represent overdevelopment of the site and a cramped form of development out of keeping with the rural character of the area. Whilst the plot sizes would be generally smaller than those in Pinfold Croft to the east, the revised indicative layout shows reasonable sized rear gardens, and space for adequate separation distances within the development itself and in relation to surrounding properties. Although the site is on the edge of the built-up area of the village where densities tend to be lower, I am satisfied that a scheme of no more than five dwellings on the site is acceptable, particularly having regard to a recently approved scheme at a similar density close by.
13. The Council also says the indicated garden sizes would be inadequate to serve the needs of future residents. However, no evidence in the form of a Supplementary Planning Document, or other reference to minimum garden sizes, has been submitted to substantiate that statement. Notwithstanding the representations made on the subject, I am also satisfied that the amount of parking provision for each dwelling is adequate, and I note that the Highway Authority have raised no objections in this regard.
14. Overall, I consider that a development of five dwellings on this site would not materially harm the character and appearance of the surrounding area. As such, I find no conflict with CS Policy CS15 and LP Policy UD2 which require proposals to respect and integrate with their wider setting, to strengthen local identity, and to project a positive local image.

#### *Community Facility*

15. The former public house had already ceased trading when the application was refused by in September 2012. It is currently occupied by a business selling cosmetic products which are mainly distributed by mail order, with the owner's residential accommodation at first floor level. Although the public house has been closed for over two years, the Council considers that its lawful use remains within Use Class A4, as no regularising change of use application has been made or enforcement action taken.
16. CS Policy C10 explains that the loss of buildings used for the benefit of the community will be resisted. Only where a lack of need is demonstrated or where acceptable alternative provision exists, or is proposed concurrently, will development for non-community uses be considered. Paragraph 28 of the Framework seeks to promote the retention and development of local services and community facilities in villages, including public houses.
17. The Council's main concern in this regard is that the reduction in customer parking and garden space arising from the proposal would potentially have an unacceptable impact on the setting of the public house, and its level of

attraction to customers. It says this in turn could result in a decline in trade and the overall loss of a community facility. Significantly however, the Swan ceased trading at a time when it enjoyed the benefit of a very large car park and beer garden/play area, and it is not disputed between the parties that many other contributing factors play a part in the closure of public houses. These include the economic downturn, higher rents, the smoking ban, and the increasing popularity of drinking at home. On the other hand there are many other reasons why a public house would continue to be successful, including location, quality of food and drink offered, character, comfort, and value for money. I accept the appellant's argument that only rarely will the size of the car park or beer garden be the main deciding factors when a choice is being made about which public house or restaurant to visit.

18. I recognise the possibility that the public house might re-open at some future date, and this eventuality would clearly be welcome. For this reason, it is entirely reasonable that the Council is anxious to ensure that the appeal of the building to potential purchasers is maximised. On balance however, I am satisfied that the amount of parking provision and garden area shown on the revised illustrative plan, although significantly reduced, are appropriate to the size and location of the premises. I find no convincing reason to withhold permission for this reason, and am satisfied that the proposal would not result in the potential loss of a local facility which plays a role in sustaining the economic and social life of the village. As such I find no conflict with CS Policy CS10 or National policy in the Framework.

### **Conditions**

19. I have considered the conditions put forward by the Council in the light of the advice in Circular 11/95. As the application was made in outline, I shall impose the standard conditions relating to the submission and approval of reserved matters. For the avoidance of doubt and in the interests of proper planning the layout shall include for a minimum 20 parking spaces and a minimum 130sqm garden area to serve to the former public house.
20. A number of conditions have been recommended requiring details of materials and a sample brick panel, together with window materials and reveal depths. However, as the appearance of the development is a reserved matter, I shall not impose them. Similarly, a condition requiring full landscaping details is not needed at this stage, although conditions to ensure the protection of retained trees and hedges are necessary in the interests of the appearance of the area. For clarity I have combined the various requirements in one condition. Conditions to control the parking of vehicles, materials storage, and other site operations are necessary in order to protect the living conditions of nearby residents during the construction period, although these can more effectively be dealt with through the submission and implementation of a construction method statement.
21. Foul and surface water drainage details are required in order to prevent pollution and flooding, and to ensure sufficient capacity remains in the systems. Several conditions were recommended by the Highway Authority. Except where there is duplication, or the matters are covered by other legislation, these are necessary in the interests of highway safety.
22. A condition is needed to ensure that adequate mitigation measures are provided for the roosting of bats, a protected species, and for the incorporation

of bird and invertebrate boxes. However, the specification of a named manufacturer is too prescriptive. The Council has put forward a condition withdrawing normal permitted development rights relating to enlargements or extensions to the dwellings, window and door alterations including roof lights, satellite dishes, and the erection of garden buildings. However, Circular 11/95 advises that such conditions should only be imposed exceptionally where they would serve a clear planning purpose. I am not persuaded in this case that exceptional circumstances have been demonstrated to justify the removal of normal permitted development rights, and therefore shall not impose it.

23. A condition has been put forward requiring a full survey to be submitted with the reserved matters, including schedule of trees, hedgerows and other vegetation, watercourses, boundary treatments, footpath routes, views into and out of the site, and an assessment of local vernacular styles. However, I consider some of the requirements are too onerous, and others fall within the normal remit of the reserved matters. Therefore I shall not impose it.

### ***Unilateral Planning Obligation***

24. A signed and dated Unilateral Undertaking (UU) made pursuant to Section 106 of the Town and Country Planning Act 1990 was submitted after the Hearing. This includes provision to be made in the scheme for 2 No affordable housing units (both to rent and to a lifetime homes standard).
25. The Framework seeks to deliver a wide choice of high quality homes and widen the opportunities for home ownership. At the local level this is reflected in LP Policy H24 which requires a 40% provision of affordable housing in the rural settlements. Although the need for affordable housing has been questioned by some parties, I am satisfied from the evidence before me, (which includes the Waters Upton Parish Housing Needs Survey Report March 2001) that there is a need for affordable housing in the village, and that the proportion of such housing provision proposed here is fully justified.
26. Paragraph 204 of the Framework, and the *Community Infrastructure Levy Regulations 2012*, say that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and be reasonably related to it in scale and kind. Having regard to the representations made and the content of the UU, I am satisfied that the appropriate policy and legal tests referred to above are met. I therefore afford it substantial weight.

### ***Conclusion***

27. Although a finely balanced decision, I am satisfied that the proposal would not materially harm the character and appearance of the area, would provide satisfactory living conditions for occupiers of the development, and would not conflict with national and local policy which seeks to support community facilities in rural communities. I find no conflict with National policy in the Framework which includes the stated presumption in favour of sustainable development. Indeed, it is compliance with that assumption that has partly informed my decision.
28. I have noted the objections of local residents, the Parish Council and others concerning the inadequacy of the access to a narrow lane, loss of view and sunlight, the availability of affordable properties, and questioning the need for more houses in the village. I have also been advised at a late stage in the

proceedings that there is a well on the site. However, no definitive evidence for this has been supplied, and in any event this matter would be covered by the condition requiring surface water drainage details.

29. Whilst I note these and other concerns, none are sufficient to alter the considerations that have led to my conclusion. Therefore, for the reasons given above, and having regard to all other matters raised, I consider the appeal should be allowed.

*Nigel Harrison*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. The layout details shall provide for a minimum of twenty parking spaces and a minimum garden area of 130sqm specifically allocated to serve the former Swan public house.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a scheme to protect all retained trees and hedges on the site. The scheme shall accord with the recommendations for tree retention and protection set out in the British Standards for trees on development sites (BS5837: 2005 *Trees in Relation to Construction*). The erection of fencing for the protection of all retained trees shall be undertaken in accordance with the approved scheme before any equipment, machinery or materials are brought onto the site, and shall be retained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored, placed or burned in any fenced area and the ground levels within them shall not be altered, nor any excavation be made, without the prior written consent of the local planning authority.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) The parking of site operatives and visitors' vehicles;
  - ii) Storage of plant and materials used in constructing the development;
  - iii) Loading and unloading of plant and materials.
  - iv) Measures to be taken to prevent mud from vehicles leaving the site from being deposited on the highway.

- 6) No development shall take place until works for the disposal of foul drainage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the local planning authority.
- 7) No development shall take place until a scheme for the disposal of surface water from the site without increasing flood risk has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed in writing by the local planning authority.
- 8) The access hereby approved shall not be brought into use until the existing access has been permanently closed off and the existing access retained as footway in accordance with details to be first submitted to and approved in writing by the local planning authority.
- 9) No dwelling on the site shall be occupied until a pedestrian footway linking the new access to the existing A442 footway has been provided in accordance with details to be submitted to and approved in writing by the local planning authority.
- 10) No development shall take place until a scheme showing details for the parking, turning, loading and unloading of vehicles have been submitted to and approved in writing by the local planning authority. The approved scheme shall be laid out and surfaced prior to the first occupation of any dwelling on the site, and shall be retained at all times for the specified purpose.
- 11) No development shall take place until details of the provision of mitigation measures designed to provide suitable commensurate alternative bat roosts, including 2 No 'bat bricks' or 'bat boxes', 2 No 'bird boxes' or 'bird bricks', and 1 No invertebrate box shall be submitted to and agreed in writing by the local planning authority. No dwelling shall be occupied until the agreed measures have been fully implemented.

(End of conditions)

## **APPEARANCES**

### FOR THE APPELLANT:

Andrew Ward	(8 August and 29 November 2013)	RG & P
John Goodman	(8 August and 29 November 2013)	Assured Property Group
Robin Mence	(29 November 2013 only)	Sidney Phillips

### FOR THE LOCAL PLANNING AUTHORITY:

Mathew Thomas	(8 August and 29 November 2013)	Telford and Wrekin Council
Valerie Hulme	(8 August 2013 only)	Telford and Wrekin Council
Dianne Ferriday	(29 November 2013 only)	Telford and Wrekin Council

### INTERESTED PERSONS:

Councillor Stephen Bentley	(8 August and 29 November 2013)
S Wall	(8 August 2013 only)
Wendy Flower	(29 November 2013 only)

## **DOCUMENTS**

- 1 Minutes of meeting of Plans Board held on 16 May 2012
- 2 Planning Officer's Report to Plans Board held on 16 May 2012
- 3 Signed and dated Unilateral Planning Obligation
- 4 Extract and plan from HM Land Registry
- 5 Sales Particulars Swan Inn: Sidney Phillips