



**Regeneration and Planning
Development management**
London Borough of Camden
Town Hall
Judd Street
LONDON
WC1H 8ND

Tel: 020 7974 4444
Textlink 020 7974 6866
Planning :@camden.gov.uk
www.camden.gov.uk/planning

Date: 23rd December 2016
Our ref: 20824672
Contact: Neil McDonald
Direct line: 020 7974 2061
Email: neil.mcdonald@camden.gov.uk

Keir Starmer QC, MP
Member of Parliament for Holborn & St Pancras
House of Commons
London
SW1 0AA

Dear Keir Starmer MP,

Ethiopian Orthodox Church, Laxton Place London NW1 3PT (Ref. 20824672)

I refer to your enquiry on behalf of Rev. Kefeyalew Aschalew regarding the Debre Genet Ethiopian Orthodox Church and their concerns about their future occupancy of St Anne's Church on Laxton Place NW1.

The church building they refer to forms part of a site which is currently the subject of a planning application by the site owners, British Land. If granted the application would entail the demolition of the church building to make way for a part 6/part 9 storey block of flats to be provided in association with an office extension at the adjacent commercial building 1 Triton Square, affordable workspace, reprovision of a gym and retail, food and drink uses. The application (ref. 2016/6069/P) was received by the Council in November and is being assessed by officers following public consultation. A committee date has so far not been scheduled but is anticipated in around February/March 2017 should it be recommended for approval.

From the information submitted with the application the Ethiopian Orthodox Church is understood to have originally entered into a lease with the Catholic Diocese in 2013. British Land acquired the site in March 2014, extended the lease in June 2016 and agreed a further extension until September 2017 (on a rent free basis).

Whether or not the Ethiopian Orthodox Church knew of the long term plans for the building is not a material issue in the assessment of the application. However Camden's Development Plan does have a policy (DP15) aimed at protecting community facilities, which includes places of worship and is therefore of key relevance to the circumstances of this case. DP15 states that the Council will resist the loss of community facilities unless;

- a) a replacement facility that meets the needs of the local population is provided; or

- b) the specific community facility is no longer required and its loss would not lead to a shortfall in provision of that specific facility. Furthermore, where this is the case, evidence will be required to demonstrate that there is no demand for any other suitable community use on the site.

The application is therefore required to meet either one or other of the above criteria.

Currently the application is still in its assessment period. The circumstances of the church and the level of protection to be accorded to it are not straightforward –especially as the church appears to have come to occupy the building as a temporary use while the owners properly considered its long term future. We will need to look carefully at the rental terms which the Ethiopian Orthodox Church signed up to on their initial occupation as this will form an important part of the exercise in determining whether there is a realistically sustainable demand for a church or other suitable community facility on the site. Any marketing evidence to show that the premises have been offered at a reasonable charge to community groups or voluntary organisations over a 12 month period will also be considered.

You ask about whether the Council could offer assistance to the Church in finding alternative premises. Occasionally premises do become available however there is a limited supply as the Council has been in the process of reviewing its property portfolio to maximise income and redevelopment opportunities for affordable housing and other identified priorities in the Borough. Sites are limited and especially so for places of worship which need adequate separation from neighbouring residential uses given the comings and goings and noise issues they can generate. We would therefore look to the applicant to address the need for any replacement facility if this is required in line with the Council's policy as outlined above. However I have in the meantime raised the matter with the Head of Camden's Property Services so that the Church can be contacted should anything become available.

At present there is still much work to be done in assessing the application and further information is required to feed into this. It is therefore impossible to predict a clear timescale for any decision at this stage. Should the application be recommended for approval, we will notify the Church representatives of the committee date.

I hope you find the information in this letter helpful. If you have any further questions regarding this matter please do not hesitate to contact Neil McDonald, Team Manager Development Management (South Area) (neil.mcdonald@camden.gov.uk or 0207 974 2061).

Yours sincerely,

David T. Joyce

David Joyce
Director of Regeneration and Planning

cc- Gavin Haynes, Head of Property Services



Hearing held on the 7 February 2006

by J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MIBT

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
100 King Wing
The Quay House
The Square
Single Quay
London E1 6PY
0117 372 6872
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date _____

13 MAR 2006

Appeal A Appeal Ref: APP/E2734/A/04/1171396

Site Address: 17-17A Cavendish Avenue, Harrogate, North Yorkshire, HG2 8HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the failure of Harrogate Borough Council to reach a decision within the prescribed period.
- The appeal is made by C K Batchelor Limited.
- The application (Ref No: 6.79.351.D.FUL) is dated the 16 July 2004.
- The proposal is for a mixed development comprising 9 No. flats and floor space for modern community facility with parking and landscaping.

Summary of Decision: The appeal is dismissed.

Appeal B Appeal Ref: APP/E2734/E/04/1171397

Site Address: 17-17A Cavendish Avenue, Harrogate, North Yorkshire, HG2 8HY

- The appeal is made under section 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against the failure of Harrogate Borough Council to reach a decision within the prescribed period.
- The appeal is made by C K Batchelor Limited.
- The application (Ref No: 6.79.351.N.CON) is dated the 16 July 2004.
- The proposal is for the demolition of a 3-storey detached building and single storey building at the rear.

Summary of Decision: The appeal is dismissed.

Clarification

1. Following submission of the application, two of the drawings were amended. These pertain to the elevations, floor plans and site layout shown originally on Drawing Nos. 2800-1 and 2800-2 and as revised on Drawings Nos. 2800-01A and 2800-02A. The Council confirmed that the amended drawings were available to it when considering the application. On this basis, I am content that no-one's position would be materially prejudiced or worsened and have, therefore, considered the appeal on the basis of the revised plans.
2. Although the Council failed to determine the applications within the prescribed periods, it did subsequently consider them and advanced putative reasons for refusal.
3. Those in respect of Appeal A are:
 1. The proposed Use Class D1 replacement community facility does not qualify as a replacement facility and the applicant has not submitted any of the marketing information required under Criterion C of Policy CFX. The application is contrary to Policy CFX and consequently Policies H6 and HX.
 2. The original dwelling has a positive contribution to the Conservation Area. Its demolition will be detrimental to the character and appearance of the

Conservation Area and therefore contrary to Policies HD3, HD20 and A1 of the Harrogate District Local Plan and Policy E4 of the North Yorkshire County Structure Plan.

3. The plot fill, size and bulk of the rear building represents over development of the site and would have an overbearing impact on neighbouring residents to the detriment of their residential amenity, contrary to Policies H6, HD20 and A1 of the Harrogate District Local Plan.
4. As for Appeal B: The putative reason for refusal is:-
 1. The demolition of the original building facing Cavendish Avenue would result in the loss of a prominent building that has a positive contribution to the Conservation Area. No appraisal has been produced to justify the demolition of the buildings. The proposal is therefore contrary to advice within PPG15, to Policy HG3 of the Harrogate District Local Plan and Policy E4 of the North Yorkshire County Structure Plan.

Policy Framework

5. I am obliged to determine these appeals in accordance with the provisions of the Development Plan, unless the material considerations indicate otherwise. In this case, the Regional Spatial Strategy (RSS) did not form part of the Development Plan when the applications were considered. As such, no reliance is placed on the Regional Planning Guidance or the emerging RSS, other than the Appellant's reference to the fact that the reuse of previously developed brownfield land forms a priority. Otherwise the statutory Development Plan for the area includes the North Yorkshire County Structure Plan (SP) and the Harrogate District Local Plan (LP). Insofar as the LP is concerned, this was adopted in 2001 and underwent selective alterations in May 2004. Although the recent LP alterations look to restrict some housing developments, the appeal proposal would satisfy Criterion 4 of LP Policy HX and, therefore, subject to according with the other Development Plan policies, there are no in principle objections to the reuse of the appeal site for residential purposes.

Appeal A

Main Issues

6. I consider that the main issues to be decided in this appeal are first, the effect the proposal would have on the character and appearance of the Harrogate Conservation Area; **secondly, the need for replacement community facilities**; thirdly, the implications for neighbours' interests with particular reference to outlook, privacy/overlooking and noise/disturbance; and, finally, the consequences for highway safety and/or the free flow of traffic on Cavendish Avenue arising from the parking and access arrangements proposed.

Inspector's Reasons

The Effect on the Conservation Area

7. The Planning (Listed Building and Conservation Areas) Act 1990 places an obligation on the decision maker to consider the desirability of preserving or enhancing the character or appearance of Conservation Areas. This is carried forward into Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15). Within the Development Plan, Policy 4 of the SP and LP Policy HD3 afford buildings and areas of special townscape interest the strictest protection and resist the demolition of non-listed buildings, which make a positive contribution to the character or appearance of Conservation Areas. In this case, the appeal site lies in the South Stray sub-area of the Harrogate Conservation Area. This Conservation Area is extensive and the Council has produced a booklet, which identifies the Cavendish Avenue area as one where the general character, rather than the architectural quality of individual buildings, merits its inclusion in the Conservation Area.
8. From my inspection of the site and surroundings, I agree with the Appellants that the buildings are varied and, whereas the predominant character could be said to be established through the use of stone or brick/render and buildings exhibiting steep roofs, there are some, mainly later, examples of infill or replacement, such as that next door at Cavendish Court, where this is manifestly not the case. Having said this, I do not consider that these 'relaxations' create a precedent for further loss or variation of the prevailing character. In fact, it may be that, in such circumstances, stricter control is warranted to prevent the incremental erosion of the particular characteristics that justify the area's inclusion in the designated Conservation Area.
9. As for the appeal buildings themselves and the frontage within which they lie, I have no hesitation in concluding that the rear bungalow and former laundry make no positive contribution to the Conservation Area. In fact, with the roof-scape of the bungalow being visible fleetingly from Cavendish Avenue they represent a minor detraction from the steep roofs and higher buildings around. It is, therefore, the frontage building that constitutes the main area of debate and, in discussions on merit, there are clearly two distinct points of view.
10. From the Council's perspective, it considers that the building, albeit amended with somewhat inappropriate side and rear extensions, still contributes positively to the street scene and wider area. On the other hand, the Appellants contend that the side and rear extensions jar in the townscape and detract from the character and appearance of this part of the Conservation Area and benefits would arise from their demolition. For my part, I am more inclined to the Council's view that the demolition of the front building on the appeal site and replacement with the proposal would have a detrimental rather than benign or positive effect on the character and appearance of the Conservation Area.
11. As I walked along Cavendish Avenue in both directions, while alien architecturally to the host building, I could not actually see the rear extension from any appreciable length of the Avenue. Consequently, I believe its retention, even in its present state, would be largely neutral. As for the side extension, which clearly reduces the symmetry of the host building from points on the Avenue immediately opposite, it sits very close to No. 15 such that, once again, any extended views of it are denied for most of the length of the Avenue.

12. On balance, therefore, whereas I accept that some small benefits would accompany demolition of the discordant elements, I firmly believe that this should not be at the expense of the whole, which I am certain is worth retaining.
13. Looking at the proposed replacement building to front Cavendish Avenue I have no hesitation in recognising that the architect has drawn on all his skills to produce the best available design, commensurate with providing the desired floor space. It is in achieving this level of accommodation that I suspect has led to the introduction of features, such as an obvious 3-storey appearance and changes to the roof configuration, which are less sympathetic to the broadly defining characteristics of the area. Even allowing that policy guidance does not seek preservation of the Conservation Area without change, I am firm in my belief that design of any replacement or infill could, perhaps, reflect the general characteristics more closely than the current appeal proposal.
14. For these reasons, and even were I to accept that the design of the replacement building were acceptable, I conclude on the first issue that the loss of the present building would not preserve or enhance, but harm the character and appearance of this part of the Harrogate Conservation Area.

The Need for Replacement Community Facilities

15. With respect to this issue, the arguments revolve around the Council's Policy CFX, which is one introduced during the selective revision to the LP. Essentially this Policy advises that proposals involving the loss of land or premises in community use, including nursing homes, will not be permitted except where one or more of three circumstances can be demonstrated. I look at each of these in turn.
16. The first is that the continued community use would cause unacceptable planning problems. In this case, this is not argued by the Appellants nor suggested by the Council or local residents.
17. The second is far more contentious and relates to the necessary level of satisfactory replacement that should be provided in either an on or off site location. Much of the debate turned on whether replacement meant the equivalent or some lesser, albeit perhaps more appropriate type of provision. From my reading of Criterion B and the supporting explanation, I conclude that the wording which says "to be 'satisfactory', the replacement facility must fully address the community needs met by the existing facility" leaves little room for manoeuvre. Whether we like the obligations implicit in the Policy or not or even if it is thought to be less relevant today, it says what it says, and we are 'duty bound' to move to Criterion C. Having said this, in this case one might draw further support for this interpretation of Criterion B from the Inspector's Report into objections to the selective alterations to the Harrogate District Local Plan, which concluded as recently as 2004 that care homes should be included in the list of community facilities to be protected by Policy CFX.
18. Faced with the circumstance where neither Criterion A nor B can be satisfied, a loss of community facilities may still be justified under Criterion C. To meet with this Criterion the developer needs to provide a sequential test based on demonstrating a lack of viability of the existing use and demonstrating that there is no reasonable prospect of securing a

satisfactory, viable alternative community use. In this regard, evidence of marketing to meet the requirements of stages 1 and 2 of Criterion C is required. Having looked at the evidence and representations, I harbour no doubt that the Council is correct in concluding that the necessary assessment has not been carried out and documented such as to demonstrate that either option would not be viable within the terms of the Criterion. Even though there is some evidence of marketing, I do not find this to be comprehensive. Perhaps more importantly, there were no viability assessments submitted with the application or evidence.

19. I recognise that to some extent this may have arisen as a consequence of encouraging negotiations carried out between the Appellants and the Council's Officer prior to formal consideration by the Council. Notwithstanding, the Policy aims and criteria embodied within it are clear and, and as accepted by the Appellants in answer to my question, failure to conform was a high risk strategy.
20. As a consequence of these points, I am convinced that the present proposal does not comply with obligations evinced by LP Policy CFX.
21. In reaching this conclusion, I have taken into account that the nursing home has been closed for some time and that expressions of interests in continuing the use have been limited and delivered in representation rather than evidential form. I have recognised, also, that the updated regulations for care home facilities are likely to impose costs on reopening and re-licensing any future care home premises on the appeal site. On this matter, however, I firmly believe that some allowance for these costs should be made when establishing the market value of the site and buildings with such an established use and the restrictive nature of LP Policy CFX. Lastly, I have attached virtually no weight to the general deterioration of the buildings or ravages of vandalism that have occurred on the site. To do so would encourage applicants desirous of securing a beneficial planning permission to neglect sites and buildings and this is clearly not in the public interest.

Neighbour's Amenities

22. Looking first at the front block, I am satisfied that, although there would be some changes to the outlook for neighbours either side, these fall within acceptable levels. This is especially so, having regard to the Government's policy thrust of making the best use of urban development land through sustainable development and preserving greenfield sites.
23. Moving to the rear building proposed, I consider that in this regard the Council and local residents have a much stronger argument. In particular, I am concerned with the outlook and privacy to the sitting rooms in two of the existing flats in Cavendish Court. Here, while I agree that there would be some benefit from a reduction in the depth of the rear building within the site, a significant built element, 2½- 3 storeys high would advance to a position much closer to the rear flats in Cavendish Court. Recognising that there is, and likely to remain, some form of tree screen between Cavendish Court and the appeal site the effects may be lessened to some extent during the summer. However, there can be no guarantee that the screen would be retained and I detected much less towards the rear, where the relatively close relationship of the kitchen window in the first floor of the appeal proposal to sitting room windows within the Cavendish Court flats would allow

views almost directly and at a distance, which I anticipate would materially lessen the level of privacy available to existing residents.

24. Assessing lastly the noise and disturbance aspects, I agree with the Appellants that the traffic generated by the proposed flats and reduced community facilities would be unlikely to intrude on the side rooms of No. 15 any more than a continuation of the existing use. By imposing a condition requiring the maintenance of a physical barrier control, parking for the rear flats could be made distinctly separate from those spaces designed to serve the front building, including the community use. Manoeuvring within the rear car parking area might be more obtrusive with the loss of what was said to be the former laundry. However, on site it became clear that No. 15 had erected a second garage, not shown on the site plans, and that this would screen activity and noise to a greater extent. In addition, a condition could be attached, requiring boundary attenuation to keep the impact of noise at a minimum.
25. In summary on this issue, whereas the outlook and noise/disturbance considerations raise only very minor concerns, I do agree with the Council and residents that the potential loss of privacy for the two flats at the rear of Cavendish Court would be most undesirable and run counter to Policies HD20, H6 and A1, designed to deliver protection in this regard.

Access and Parking

26. As I indicated during the Hearing, the Government's view on parking provision is that no developer should be asked to provide more off-street car parking than they wish, unless a shortfall would result in a detriment such as an increased highway safety risk that could not be addressed by the introduction of traffic management measures. In this case, no such arguments are advanced by the Council in any objective sense. Accordingly, as was accepted by the Appellants, the use of the community facility would attract visitors that would most likely park on the highway. Had there been any accident data or other cogent concerns advanced then I would have had little hesitation in agreeing that the number of off-street car parking spaces should be increased. However, in the absence of this, and recognising the relatively generous width of Cavendish Avenue, I consider that this objection lacks substance.
27. Looking at the access to Cavendish Avenue itself, I agree that the widening of the front access would be beneficial in allowing vehicles to enter and leave the site much more easily than if the single gate entrance were retained. As I see it, however, the improved width further along the drive would barely, if at all, allow even two small vehicles to pass. Put another way, so long as the widened access was available at the front, I am satisfied that the remaining length of single width access would work in an acceptable manner. As such, I do not believe that the need to provide an improved route to the rear adds any weight to justify the demolition of the side and rear extensions to the original building fronting Cavendish Avenue.

Summary and Conclusions

28. I conclude that the proposal would not preserve or enhance the character or appearance of this part of the Harrogate Conservation Area. As such, it would conflict with SP Policy E4 and LP Policy HD3. As for examining the submissions in relation to the retention of

community facilities, my understanding of the policy aims lead me firmly to the Council's view that viability and marketing have not been demonstrated in accord with the guidance published in relation to Policy CFX. Evaluating the reasonable expectation of neighbours, this is much more finely balanced. Even so, I agree that the potential loss of privacy towards the rear of the site counts against the proposal and, even allowing for the inevitable consequences of more dense development, runs counter to LP Policies HD20, H6 and A1. Finally, albeit the proposals are likely to generate additional parking on Cavendish Avenue, I am satisfied that there are no convincing arguments for requiring more on-site parking provisions and am content that the access should work adequately.

29. I have taken into account all other matters raised in the evidence and representations, but have found nothing of such significance as to outweigh the material planning considerations leading to my conclusion that this appeal runs counter to Development Plan Policies referred to above and should, therefore, fail.

Appeal B

Main Issue

30. I consider that the main issue to be decided in this appeal is the effect demolition of the appeal buildings would have on the character and appearance of the Harrogate Conservation Area.

Inspector's Reasons

31. As concluded above, I would have no objection to the demolition of those buildings to the rear of the appeal site. Nevertheless, I conclude that, despite the more recent accretions, demolition of the building fronting Cavendish Avenue would have a detrimental as opposed to benign or beneficial effect on the character or appearance of the Conservation Area. As such, the demolition would conflict with SP Policy E4 and LP Policy HD3.
32. Incidentally, even had I accepted that demolition of the buildings on the appeal site would be acceptable in terms of the effect of preserving or enhancing the character or appearance of the Conservation Area, no demolition would be acceptable under LP Policy HD3 until a contract for the carrying out redevelopment works had been made and planning permission for those works have been granted. This of course is not the case here, where I have dismissed the appeal in respect of the redevelopment of the appeal site. Under these circumstances, and while recognising the relatively unsafe nature of the rear buildings following a fire, it would not seem possible, however sensible and pragmatic, to issue a split decision in this regard. Accordingly, the integrity of these buildings will have to be maintained, for the time being, commensurate with health and safety requirements.
33. I have taken into account all other matters raised in the evidence and representations, but have found nothing of such significance as to outweigh the material planning considerations leading to my conclusion that the demolition of the buildings on the appeal site would conflict with Development Plan policies referred to above, and should, therefore, fail.


INSPECTOR

APPEARANCES

FOR C K BATCHELOR LIMITED:

Mr A Rallinson BSC(Hons) Dip T MRTPI Turley Associates, 33, Park Place, Leeds LS1 2RY

Mr A Jackson Architect 48 Walton Park, Pannal, Harrogate, HG3 1EJ

FOR HARROGATE BOROUGH COUNCIL:

Mrs L Drake Planning Officer with Harrogate Borough Council

Ms K Lane Planning Officer with Harrogate Borough Council

INTERESTED PERSONS AND PARTIES:

Mr D H Rennie 31 Cavendish Avenue, Harrogate, HG2 8HY

Sqd. Leader B Evans MBE 1 Cavendish Court, Cavendish Avenue, Harrogate, HG2 8HY
MRAeS RAF

Mr T and Mrs C Wright 3 Cavendish Court, Cavendish Avenue, Harrogate, HG2 8HY

DOCUMENTS

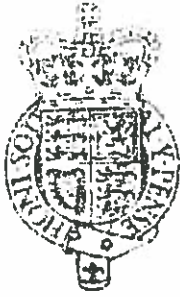
Document 1 Attendance Sheet

Document 2 Letter of Notification and Circulation List

Document 3 Letters in Response to Appeal Advertisement

Document 4 Extracts from the Local Plan Selective Alterations Inspectors Report

Document 5 Correspondence from Nicholls Tyreman, Estate Agents, Valuers, Surveyors and Letting Agents



Appeal Decision

Site visit made on 11 December 2001

by **Richard Ogier BA MRTPI**

an Inspector appointed by the Secretary of State for Transport,
Local Government and the Regions

COMPASS

The Planning Inspectorate
AND Kite Wing
BY Temple Quay House
The Square
Temple Quay
Bristol BS1 6PN
Tel: 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date **24 DEC 2001**

Appeal Ref: APP/U5360/A/01/1070436
100 Amhurst Park, London N16

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by North London Progressive Synagogue against the Council of the London Borough of Hackney.
- The application (Ref. 2001/0693) is dated 6 March 2001.
- The development proposed is a **change of use to residential**

Summary of Decision: The appeal is dismissed, and planning permission refused.

Main Issues

1. I consider that there are two main issues in this appeal. They are:
 - (1) the need for the appeal building to be retained as a place of religious worship or for community use, and
 - (2) the effect of the proposed change of use on the privacy of neighbouring residents.

Planning Policy

2. Section 54A of the Town and Country Planning Act 1990 states that where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. The development plan for this area is the London Borough of Hackney Unitary Development Plan (UDP). Under Policy CS3 the Council will seek to ensure the retention and provision of community facilities. Policy CS8 and in particular its supporting text provides for the Council favourably to consider the retention of existing places of worship located in residential areas, subject to other Plan policies.
3. UDP Policy EQ1 contains general criteria for the consideration of development proposals, including (H) the effect of a proposed use on adjoining buildings or land. Policy H20 applies criteria to housing development proposals, including (B) consideration of the privacy of adjoining occupiers. Policy TR6 requires that matters such as traffic generation, impact on traffic congestion and availability of public transport be taken into account in the consideration of new development proposals.
4. I do not consider other UDP Policies referred to by the appellant or Council, namely HO12 (House Conversions) or HO13 (Conversions within original Envelope) to be directly relevant to the appeal proposal to change the use of an existing place of religious worship to residential use.

Reasons

First Issue – loss of place of worship; community use

5. The appellants state that their proposal arises from a change in the demographic distribution of members of the Synagogue over the past 20 years. The Synagogue is seeking alternative, smaller premises in the area, and therefore wishes to sell the existing synagogue for residential purposes. The congregation is declining in numbers, and the cost of maintaining the large building cannot be reconciled. I understand the difficulty that this presents for the appellants.
6. On the other hand, the Council has drawn my attention to the pressures that existing community services face in Hackney, due as the Council sees it to a projected increase in population and a general lack of suitable land or buildings available for community purposes. The Council through UDP Policy CS3 therefore seeks to protect the existing level of community services and also to accommodate existing unmet and newly arising community needs. Notwithstanding this, the Council would wish through UDP Policy CS8 to encourage the retention of existing places of worship in residential areas. I note that no representations have been made by either party about whether there are housing supply provisions or objectives in the UDP which might need to be weighed against those of Policies CS3 and CS8.
7. Applying both policies to the appeal building, it appears that the Council would look favourably on a change of use of the Synagogue to community purposes, if it were clear that there were no longer a demand for its use as a place of worship. No evidence has been provided by the Council of the need by community interests for further accommodation within the Borough. Neither have the appellants indicated what attempts, if any, they have made to test the market demand for the continued use of their building as a place of worship or alternatively for community purposes, having regard to the provisions of UDP policies CS3 and CS8.
8. I accept that the appellants are seeking a decision in principle as to residential use and understandably do not wish to incur substantial costs in preparing a scheme of residential accommodation when the principle of residential use has not been determined. However, there is little evidential basis for me to determine either that there is no apparent demand for the continued use of the building for the purposes of worship other than the circumstances the existing membership find themselves in, or for any clear view about the need and likely interest in the use of the building for community purposes.
9. I therefore conclude that as there is no clear evidence of a lack of general demand for the appeal building to be retained as a place of religious worship or put to community use, having regard to the objectives of UDP Policies CS1 and CS3, these provisions of the UDP which act against the proposal to change the use of the appeal building to residential use, should prevail.

Second issue – residential privacy

10. The existing synagogue has large coloured glass windows that face the eastern boundary of the appeal site. Some of these windows could, if they were clear glazed, have the potential to permit the overlooking of the adjoining rear gardens of 96 and 98 Amhurst Park, despite some boundary trees. The residential occupiers of No. 98 have expressed concern that if the

building were converted to residential use, they would suffer a loss of privacy in what they refer to as their secluded rear garden.

11. I accept that potential problems of loss of privacy due to overlooking can sometimes be resolved by the sensitive and innovative design of new residential accommodation. It is possible that if the Synagogue were to be converted to residential use, the detailed design of the individual units could be developed to minimise the incidence of overlooking across the boundary of the appeal site with 98 Amhurst Park. However I do not see this as necessarily an easy task in the case of the appeal building, because in my view not all the units that could be potentially created from the building could rely upon roof fenestration or other opportunities as an alternative source of natural light.
12. I therefore conclude on the basis of the information available to me and my site visit that the proposed change of use would have the potential to cause a material reduction in the privacy of the occupiers of neighbouring residential properties by reason of overlooking, contrary to UDP Policies EQ1(H) and HO20(B).

Other Matters

13. I have considered whether the proposed change of use would raise any issues of traffic generation or parking that would put it in conflict with UDP Policy TR6. Although a neighbour has expressed some concerns over parking, the Council has not raised any issues in regard to traffic or highways matters. I do not consider on the basis of the information before me, that any fundamental difficulties are likely to arise in terms of compliance with Policy TR6.
14. I have concluded that the objections I have raised to the appeal proposal could not be overcome by the imposition of reasonable conditions of planning permission.

Conclusions

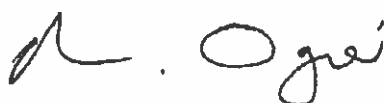
15. For the reasons given above and having regard to all other matters raised including the interest that the appellants state has been expressed in the appeal site by housing associations and other residential developers, I conclude that the appeal should be dismissed.

Formal Decision

16. In exercise of the powers transferred to me, I dismiss the appeal and refuse planning permission for the development described in the introduction to this Decision.

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.



Inspector



Appeal Decision

Hearing held on 11 August 2015

Site visit made on 11 August 2015

by Thomas Shields MA DipURP MRTPI

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

Decision date: 10 September 2015

Appeal Ref: APP/W1850/W/15/3063801

The Fountain Inn, Lyston Lane, Orcop, Hereford, HR2 8EP

- 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 and Mrs Lee against the decision of Herefordshire Council.
 - The application Ref P142753/F, dated 24 September 2014, was refused by notice dated 10 November 2014.
 - The development proposed is change of use of a redundant Public House into one residential dwelling.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would be acceptable having regard to planning policies concerning community facilities.

Reasons

3. The Fountain Inn Public House (PH) is an attractive traditionally constructed two storey building set behind a large car park to the front, with gardens to the side and rear, and situated prominently in the attractive elevated rural settlement of Orcop Hill. Containing approximately 61 dwellings, Orcop Hill is the largest of the small rural settlements within the wider Orcop parish area.
4. The appellants confirm that the PH has not traded since it closed in July 2012 and now seek to change the use of the premises to a single dwelling.
5. Paragraph 7 of the National Planning Policy Framework (2012) (the Framework) sets out that there is a social as well as environmental and economic dimensions to sustainable development. Paragraph 69 of the Framework states that planning decisions should aim to promote opportunities for meetings between members of the community. Paragraph 28 states that in order to promote a strong rural economy, local and neighbourhood plans should, amongst other things, promote the retention of local services and community facilities in villages; these include public houses. In addition, paragraph 70 of the Framework states that to deliver the social, recreational and cultural facilities and services a community needs, planning policies and decisions should, amongst other things, guard against the unnecessary loss of valued facilities and services. I attach substantial weight to the Framework in reaching my decision.

6. Policy TCR14 of the UDP¹ relates to village commercial facilities and, as set out at paragraph 7.6 of the policy's supporting text, such facilities include public houses. With particular relevance to this appeal the policy states:

"Applications for change of use leading to the loss of such facilities will only be permitted where it can be demonstrated that the existing use is no longer viable and unlikely to become so, that all means of retaining the facility have been explored taking into account the importance off the facility to the local community'.

7. With regard to the application of Policy TCR14 I note the appellants' view that Orcop Hill is not defined in the UDP, or anywhere else, as a 'village' and hence, it is argued, the PH should not be regarded to fall within Policy TCR14 as a 'village commercial facility'. However, the UDP refers to 'settlements' rather than 'villages' and describes Orcop Hill as a dispersed settlement. In this context I consider that the term 'village' in the policy title is descriptive, rather than definitive, as to the policy's application. Moreover, the wording of the policy refers to the importance of the facility to the 'the local community'; reflective of the wording in paragraph 70 of the Framework.
8. Having regard to all of the above, I consider that Policy TCR14 is consistent with the aims and objectives of paragraphs 28 and 70 of the Framework and accordingly I attach significant weight to it in reaching my decision.
9. UDP Policy CF6 is also referred to by the Council. It also seeks to protect against the unnecessary loss of community facilities and to that extent I consider is also consistent with the Framework. However, in the circumstances of a loss of a facility it imposes a burden of requiring an alternative provision of equal community benefit at the same location, or at a different but accessible and convenient location. This goes beyond both the 'test' and requirements of Policy TCR14 (see paragraph 6 above), and beyond the provisions of paragraphs 28 and 70 of Framework. Moreover, the policy's supporting text (paragraph 13.5.2) makes clear that it does not specifically apply to public houses, but rather that it complements Policy TCR14. Given these factors, I attach greater weight to Policy TCR14 in reaching my decision.
10. There was considerable dispute at the Hearing as to the value and importance of the PH to the local community. In this regard I note the appellants' contention that, following an application, the PH was not registered by the Council as an ACV, and that this demonstrates a lack of value to the community. Also, amongst other matters, the appellants contend, based on their personal experience, that the PH was not well supported in terms of attendance, ultimately leading to its economic decline and closure; this in itself being self-evident of low community value.
11. However, the purpose of ACV listing is to provide the community with an opportunity to purchase the property. It does not necessary follow that its non-listing means that it is not of value or importance to the community. While I acknowledge the appellants' comments in respect of past attendance, I also cannot disregard the substantial level of representations submitted from local residents and the Parish Council opposing the proposed development and seeking to retain the PH. Also, given the distances to the nearest other public

¹ Herefordshire Unitary Development Plan (March 2007)

houses in the area, I am not convinced of the view held that its loss to the community would be insignificant.

12. On the balance of the evidence before me I find that in terms of Policy TCR14 and the Framework, the PH should be regarded as a valued facility of importance to the community.
13. Together with the appellants' oral evidence at the Hearing the submitted trading records demonstrate that the limited barrellage, turnover, and consequently the profitability of the PH, declined significantly from 2010 onwards such that it became an unrealistic business operation. I have no reason to doubt the appellants' evidence in this regard and it was not disputed by the Council. I also acknowledge the appellants' stated difficulties in trading due to the general economic downturn in recent years, competition from low supermarket prices, rural location, and other factors referred to at the Hearing.
14. However, Policy TCR14 requires that in order to avoid unnecessary loss of a valued facility it should be demonstrated that it would be unlikely to become viable, and that all means of retaining the facility have been explored.
15. In this regard I note from the submitted building survey, and also from my own observations during my visit to the appeal site, that the premises are structurally sound. That said, for public liability insurance and viability purposes I consider that any future operation of the PH would likely require some financial investment in refurbishment of the building and its amenities. Overall however, the evidence before me does not lead me to conclude that the PH could not be viable in the future given appropriate financial investment together with an alternative business model and customer offer.
16. In order to assist in establishing whether a facility could be viable in future, and that all means of retaining the facility have been explored, Policy TCR14 requires a period of marketing to be carried out. In respect of marketing the evidence submitted is unclear. The information provided from the marketing agent is brief and superficial. For example, it does not provide robust unequivocal detail of the different pricing levels and periods of time at which the PH was advertised. Notwithstanding this lack of clarity, the marketing evidently produced 1,725 requests for sales particulars, 22 viewings, and 2 purchasers; one of whom, referred to at the Hearing as the second purchaser, withdrew from the purchase only because of their inability to sell their own house.
17. It therefore seems to me that there remains a level of interest and confidence in prospective purchasers that the PH would be a viable business proposition, despite the general economic climate and locational and other difficulties previously described. Overall, I find that it has not been demonstrated that it would be unlikely to become viable and that all means of retaining the facility have been explored.
18. In overall conclusion I consider that the proposed development would result in an unnecessary loss of a valued community facility in conflict with Policy TCR14 and the provisions of the Framework referred to previously.
19. I have taken account of the Council's lack of a 5 year supply of housing and that the proposal would provide a family sized dwelling to the existing stock of housing, and I sympathise with the appellant's personal circumstances given

the closure of the PH. However, given that I have found that sufficient justification for the loss of the PH has not been demonstrated, these matters do not outweigh the loss of the PH or lead me to reach a different decision.

Conclusion

20. For all the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J Kendrick
Mr and Mrs Lee

Procurow Planning Services Ltd
Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Matt Tompkins (MPlan)
David Harlow

Senior planning Officer
Ward Councillor

INTERESTED PERSONS:

Barry Shaw

Chair of Friends of the Fountain Inn and local
resident

Margaret Bowen

Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Minutes of the Orcop Parish Council Meeting 25 June 2014
2. Minutes of the Orcop Parish Council Meeting 23 August 2012
3. Emerging Core Strategy Policy SC1
4. Fountain Inn trading accounts spreadsheet

My name is Dagmawit Sleshi and I writing this personal statement to express my disappointment in hearing that we are going to lose our church. I am 24 years old and have just completed my final year of Electrical and Electronic engineering degree at the university of Hertfordshire. I have been a member of Debre Genet Holy Trinity church since 2008, and as a youth member the church has helped me to learn and develop both mentally and spiritually.

I feel overwhelmed by my emotions when I am writing this letter, because Debre Genet Holy Trinity church has been guiding and supporting the community for the past 10 years and has changed many peoples' life. The church provides an environment where young people can learn and practice leadership skills and focus on ethical decision making. It has been able to reach at-risk young people and offer much needed care and support.

The church is firmly rooted within the life of the wider parish community, and that wherever possible, young people are provided with the opportunity to participate in the life of the parish community. Through the programmes, activities and ethos of the church, the parish council guide and support young people, and acts as mentors and role models in their personal, social and spiritual development. The programmes that the church provides creates opportunity for the young people to develop into mature and responsible adults who will play an important role within their communities and the wider society. We have been informed that in a very short time we will not have a place to worship and get the much need support for the young people. I believe that this decision will affect lots of peoples' lives, especially young people. Now, I do ask the people concerned to re-evaluate the decision and at least to give us time to implement the changes required to maintain the services provided by the church to the community.

Dear Sir or Madame

I writing to address my deep concern regarding the closure of Debra General Holy Trinity Ethiopian Orthodox Tewahedo Church located in Laxton Road, Warren Street. I became a member in 2012 and have been attending ever since. I am a 28 year old female who is working as a scientific officer in Essex.

I came to this country at the age of 10 from Addis Ababa, Ethiopia. Before attending church, I didn't know about my faith and culture. I embraced the multicultural society around my surrounding. I was involved in drugs activity, social disturbance and drinking. I became a concern for my family as they saw me confused and lost in life.

When I started coming to this church, I start connect to the truth and gain hope again in life. My faith turn my life completely. I become part of a very strong Christian community. I gained positive people in my life. The spiritual fathers guided me to start a new life. I started respecting my family and my society. I started following the service in the church which helped me built a very strong foundation to my faith.

This church is highly critical to what we are today. The church raises all her children to become an outstanding citizen. The church help me change my life positively and without this church, I wouldn't know what would happen to me.

This is a plea to ask you not to close our church.

Many thanks

Seble Lemma

To whom it may concern,

My name is Mahlet Giorgis, an active member of the Ethiopian Orthodox church (Debre Genet Holy Trinity) located in Warren Street. I am writing this letter on behalf of the Ethiopian orthodox youth to ask for support in publicising the issues that our church is currently enduring.

The church was established 10 years ago and has just celebrated its anniversary in May 2016. Debre Genet Holy Trinity Church has become the second home to 500 plus orthodox believers. There is a weekly congregation every Sunday and bible study sessions every Thursday including special religious ceremonies through out the year. For instance, Epiphany, Easter, Christmas, etc. Many of the youth including myself have been attending this church since it opened its doors.

Our church has informed us that we are being evicted; this is due to the site being re-developed in to affordable housing. Despite hearing this devastating news flyers has been sent out to local residents by the land developers stating that the church was neglected and inactive, when in fact it has been fully functional over the past four years. We are utterly disappointed to accept this news and we wish to be heard in bringing fair action to the dishonest information.

Considerable evidence indicates that religious involvement drives society in to a positive light. The regular practice of religion also encourages such beneficial effects on mental health as less depression (a modern epidemic), less crime, more self-esteem and greater family and martial happiness.

The church has played a big contribution at different stages of my life through my education, career and social life. It has helped me and many others endure difficult stages and presented us with lifetime friends. When I look at the countless active youth who are at the stage I was once, I can't imagine how their future would shape without our churches existence. The church is their identify and fundamental to their friendship and religion.

It has been extremely heartbreaking and difficult to come into terms with it since orthodox youth are all full of hope, faith and love, destroying this community means taking away their identity. Therefore losing our church will have an enormous impact on the orthodox youth in to leading to negative lifestyles.

We urge you to re consider or reevaluate the immoral and unfair decision that has been put to place to destroy communities like this in order to fulfill the land developers 'supemormal' profits.

Yours faithfully
Mahlet Giorgis