



Appeal Decisions

Hearing held on 28 January 2014

Site visit made on 28 January 2014

by Sukie Tamplin Dip TP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 19 May 2014

Appeal A: APP/J1915/A/13/2202546

Roebuck Hotel, Baldock Street, Ware, Hertfordshire SG12 9DR

- 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 One Property Group and Akkeron Hotel Group Ltd against the decision of East Herts District Council.
 - The application Ref 3/13/0333/FP, dated 26 February 2013, was refused by notice dated 17 July 2013.
 - The development proposed is the demolition of the existing hotel and erection of 14 dwellings together with associated access, car parking, landscaping and related works.
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Appeal B: APP/J1915/E/13/2202548

Roebuck Hotel, Baldock Street, Ware, Hertfordshire SG12 9DR

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
 - The appeal is made by One Property Group and Akkeron Hotel Group Ltd against the decision of East Herts District Council.
 - The application Ref 3/13/0334/LC, dated 26 February 2013 was refused by notice dated 17 July 2013.
 - The demolition proposed is the existing hotel and erection of 14 dwellings together with associated access, car parking, landscaping and related works.
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Decisions

1. The appeals are dismissed.

Application for costs

2. At the Hearing an application for costs was made by One Property Group and Akkeron Hotel Group Ltd against East Herts District Council. This application is the subject of a separate Decision.

Main issues

3. The main issues in these appeal are the effects of the proposed development on:
 - the economic wellbeing of East Herts District and Ware in particular;
 - whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework (the Framework).

Procedural matters

4. A draft Unilateral Undertaking (UU) in connection with District and County Council infrastructure was submitted at the Hearing. Because all parties agreed its provisions, I granted a short extension such that the UU could be completed after the Hearing and so that the respective Councils would be able to comment on its drafting. Further correspondence was received from the appellants within the timetable but because the UU was not completed or dated it therefore would have no force. It is not appropriate to agree a further extension to the agreed timetable and thus I have given no weight to the provisions therein.
5. Also at the Hearing, the appellant submitted amendments to the plans subject of the decision comprising drawing references 185.200B and 185.204. It is only appropriate to take these into account if no party would be disadvantaged. In *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* [1982] JPL 37, it was held that the main criterion is whether the development is so changed by such amendments that to grant permission would be to deprive those who should have been consulted of the opportunity of consultation.
6. The alterations to the development amount to an amended internal layout of House Type C to enable compliance with Lifetime Homes standards and a correction of notation on the layout plan. The impact of the changes would not be externally visible. Neither the Council nor other parties present at the Hearing had objection to the substitution of the plans. Accordingly, I consider, as no party would be disadvantaged, that my decision should take these amended plans into account.
7. It emerged at the Hearing that drawing references 185.205A (site sections), does not appear to have been received by the Council at application stage. Accordingly there is no evidence that it was taken into account by any party during the consultation on the application. Neither was it submitted with the appeal documentation. However, because the information on the cross sections appears to be consistent with the site plan and elevation, and having regard to the tests in *Wheatcroft*, I will also take this plan into account, but only in so far as it provides an indicative section because the floor levels of the dwellings are not stipulated on the plans.
8. At application stage the Environment Agency (EA) advised the Council that permission should be refused because the site falls within Flood Zone 3 and the proposed development fails the Sequential Test¹. Notwithstanding this, Members were advised that mitigating factors should be taken into account when assessing the suitability of the site for development and the application was not refused on flood risk grounds. Because the guidance in the Framework says that new development should not be permitted if there are reasonably available sites appropriate for the development with a lower risk of flooding, and this is a matter that is pertinent to my decision I raised flood risk and the Sequential Test as a main issue in the Hearing.
9. After the close of the Hearing the *National Planning Practice Guidance* was published and this in turn cancelled the *Technical Guidance to the National Planning Policy Framework (2012)*. Neither of the main parties considered that

¹ The letter from the EA to the Council dated 2 July 2013, was appended to the EA's representation at appeal stage.

the amended suite of guidance raised any new issues that needed to be addressed.

10. Conservation Area Consent is required for demolition but not for the proposed redevelopment, consequently, notwithstanding the description on the application form I have considered Appeal B in respect of the demolition of the Roebuck Hotel only.
11. The site is in Ware Conservation Area (WCA) and there is agreement in principle between the parties that demolition of the existing hotel would not be acceptable unless there is an approved scheme for the redevelopment of the site. Thus if Appeal A is dismissed Appeal B should also be dismissed. I agree that because the site is prominent in the WCA, consent for demolition should not be granted in the absence of permission for redevelopment. Accordingly it is not necessary to consider the merits of Appeal B other than in tandem with the merits of Appeal A.

Reasons

Economic wellbeing

12. The Roebuck is a long established budget hotel catering primarily for the needs of the commercial business sector. It has grown incrementally over the years and now has most of its bedroom accommodation within a 3 storey flat roofed wing to the north of the original house. The main building accommodates the kitchen, dining room, reception area, the main lounges and bar, and extensive function rooms, some of which situated in various single storey extensions to the south and east. It was purchased as part of a group of Hotels by the appellants in about 2011 for about £1.7m. I was told that at the time of purchase the hotel was 'breaking even' but each year since, the Roebuck has been losing money and, in 2014, a loss of over 19% is forecast. Moreover the Average Room Rate (ARR) has declined from £50.30 to £41.30 although occupancy rates were relatively stable during 2012-2013.
13. The appellants say that the hotel market in the UK regions is dependent on the domestic economy which has been hit by the financial crisis and this type of hotel caters for a competitive market. But it is undisputed that this is the only hotel of its type in Ware or in nearby Hertford. Moreover, I heard that within Ware there has been an upturn in the local economy with large developments programmed to take place, including a major new retail store and an expansion of a multi-national pharmaceutical company said to be a primary employer in the town. Thus, the Council challenge the view that there would be insufficient future demand for accommodation aimed at the commercial sector.
14. The appellants confirmed that it was never the intention of the parent hotel group to retain the hotel and accordingly it has been on the market since 2012. The marketing was described as private and confidential and targeted at matched applicants on a commercial mailing list, together with an advertisement placed on a company website. There have been no expressions of interest other than by residential developers. It is considered that retention of the hotel would not be viable because of its location, which is edge of centre, and the poor condition of the building.
15. In terms of location the evidence was contradictory; other hotels in the vicinity appear to be in the country well away from the range of facilities of Ware, and

- I heard that these hotels are successful and expanding. In contrast, most facilities in Ware are within walking distance of the Roebuck and the car park provides 60 spaces for the 49 rooms.
16. As to condition, it appears that there has been no significant refurbishment of the hotel within the last few years. I saw that the exterior of the building is looking neglected and there is little sign of even basic repairs. The lift has been out of order for about 3 years, and the flat roof over the accommodation wing is leaking. But the facilities of the Roebuck are extensive and the decorative state of the bedrooms is generally fair and in my experience not unlike many older hotels catering for the budget market. However, the flat roof appears to be leaking significantly following the very wet winter. Such roofs have a limited life and it seems to me that it is almost inevitable that the roof covering would need replacing or upgrading as part of the regular maintenance of a flat roofed building.
 17. Moreover, the external appearance and lack of maintenance are likely to have a disadvantageous impact on visitor numbers, although the cost of external decoration works is said to be only about £35,000. This is confirmed both by the hotel manager who said that not all rooms were in use because of the need for maintenance, and the appellants' marketing report which says that occupancy is set to fall as the hotel descends into a greater state of disrepair, should no further investment come forward.
 18. Thus there is an uneasy balance between maintenance and profitability, with an absence in one probably leading to a reduction in the other. The appellants' say that it is not financially viable to refurbish the building and thus it has no future as a going concern; it was only acquired with a view to disposal. The hotel has been marketed with a guide price of £2m and proposed refurbishment would cost about £1.7m, thus it appears to be likely that this would be a disincentive to any future operator.
 19. It seems to me that the guide price is probably set at a level which does not encourage continued use or the redevelopment of the site for an hotel or other employment use. Nonetheless, lack of maintenance is likely to be depressing profitability and there is compelling evidence that the hotel is not viable in its current state. Whether or not the guide price takes into account hope value of residential development is not clear, though the marketing report says that this was set from discussions with the vendor and guaranteed that the vendor would receive offers of a level which satisfied their desire to dispose of the property. There is no evidence before me to justify the guide price for the building in hotel/employment use although I accept that the appellants may view offers in a flexible manner.
 20. There is no cogent evidence that LP Policy EDE2 is not relevant to Hotels. I acknowledge that the Framework says that planning policies should avoid long term protection of sites allocated for employment, but this hotel is an existing employment use and it is undisputed that tourism contributes to the economic wellbeing of the District. Moreover I do not find the circumstances at Ermine Court, relied upon by the appellants to be comparable, as that permission gave weight to material considerations that are not pertinent in this appeal including changes to permitted development rights.
 21. Accordingly I find the claim that the retention of the site or premises for employment uses has been fully explored to be contradictory. I accept on the

one hand that the evidence that the hotel is loss making to be compelling, but on the other hand I find that the guide price, in association with refurbishment costs, is unlikely to be attractive to another operator or employment use.

22. Hence there appears to be an absence of realistic marketing, which should, in my view, take into account the deteriorating physical condition of the building. But in planning terms the Framework says that where there is evidence of neglect, in this case to an unlisted building in WCA, the deteriorated state should not be taken into account in any decision. Thus on balance I conclude that marketing of the site for employment use has not been explored fully and consequently the proposal fails to comply with criterion (a) of LP Policy EDE2. Accordingly the loss of the sole budget hotel in Ware/Hertford serving the commercial business sector would in my judgment have a harmful effect on the economic wellbeing of East Herts District and Ware in particular.

Flood Risk

23. It is common ground that part of the application site lies with Flood Zone 3a². The Framework says the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding and that development should not be permitted if there are reasonably available sites with a lower probability of flooding³. Therefore, as agreed by the appellant's consultants, it was necessary for the Council to undertake the Sequential Test set out in the Framework. The Council confirmed that this was considered and there are alternative sites with a lower flood risk that could accommodate 14 dwellings both within Ware and elsewhere in the District. This was reiterated at the Hearing. In these circumstances the Environment Agency (EA) say that permission should be refused, or dwellings relocated away from areas of risk.
24. But the appellant says that the flood zone maps are derived from coarse modelling and thus using the existing Flood Maps is likely be over-cautious. Moreover it is said that the EA are undertaking a detailed model of the area. But neither the results of later EA modelling, (expected in about summer 2013) nor a detailed bespoke flood analysis have been submitted to support the proposals. Thus, on the evidence before me, 6-7 new dwellings would be sited within Flood Zone 3a. The proposed development therefore fails the Sequential Test.
25. Notwithstanding this, it is suggested that any risk of fluvial flooding could be offset by measures to ensure that there is no loss of flood plain volumes and moreover account should be taken of the existing hotel which is also classified as more vulnerable development. In respect of these measures, the Flood Risk assessment has calculated that the net increase in built development, taking account of the south-western corner of the hotel which is in Flood Zone 3a, would be about 10% or 346sqm. But it seems to me this underestimates the extent of proposed additional development in the flood plain as the calculations do not appear to include the garages or take into account the footprint of houses which would be sited within the footprint of the existing hotel. Yet even if I am wrong on this point the acknowledged loss of 10% of flood plain would be very significant. Although it is feasible that additional floodplain volumes

² Paragraph 5.1: Flood Risk Assessment Ardent Consulting Engineers, February 2013, East Herts Strategic Flood Risk Assessment and Environment Agency Flood Zone Map

³ Paragraph 101: National Planning Policy Framework

could be engineered, no details of these are before me and that argument can be given little weight.

26. The proposed site rises from south to north; spot heights on the road show that this could be by about 3m, but no on-site levels have been provided. Nor are the proposed finished floor levels shown on the proposed site plans. Accordingly the visual effect of ensuring a finished floor level of 41.8 AOD is not clear; but this is a matter that has significant weight because of the possible effect of the heights of the dwellings on the character and appearance of the WCA. Neither is the evidence of the effect of the proposed height of thresholds apparent and this may have implications for meeting Lifetime Homes requirements. In these circumstances and because there is no on-site datum point I am not satisfied that the finished floor heights and hence ridge heights of the dwellings could be adequately controlled by condition.
27. Because the development fails the Sequential Test in the Framework, there is no need to consider the Exceptions Test. However, even if it is accepted that there are mitigating circumstances which indicate that this second test should be considered, it has not been demonstrated that there are adequate measures to safeguard vulnerable occupiers. Accordingly the development would not meet either the tests in the Framework or the aims of Policy ENV19 of the *East Herts Local Plan Second Review April 2007* (LP) which seeks to ensure that the risk to people or property from flooding is not increased⁴. In the absence of evidence to demonstrate otherwise this also weighs against permission.

Other considerations

28. The appellant has agreed in principle that the pressures of the development on local infrastructure would be funded through a UU, but no completed undertaking has been submitted. Accordingly the additional demand on facilities would not be offset by planning contributions in accordance with adopted guidance. This adds to the harm resulting from the proposed development.
29. As to heritage matters I agree with the parties that the existing building has a neutral effect on the WCA, and subject to the uncertainties on ridge heights considered earlier in my decision, the proposed development would not be harmful to its character and appearance. Thus this is not a determinative matter in this appeal.

Conclusions

30. The Council does not have a 5 year housing land supply, and, in accordance with paragraph 49 of the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development. The Council historically relied on housing targets in the East of England Plan but this has been rescinded. Hence there are no adopted housing targets but the Council accept, on the basis of the emerging District Plan, that there is likely to be a significant shortfall of housing land, such that there would be only about a 3-3.5 year supply.
31. Whether or not that shortfall would be resolved in the emerging District Plan is not before me, but the Framework says that inappropriate development in areas at risk of flooding should be avoided by directing development away from

⁴ Footnote 9: National Planning Policy Framework

areas of highest risk. Because the site is partly in Flood Zone 3 and fails the Sequential Test of the Framework, I do not agree that the development amounts to sustainable development.

32. There is no contrary evidence that the site would not be at risk of flooding and this could adversely affect up to 7 of the proposed houses. Because of this harm and my findings that the marketing of the site has not been sufficiently realistic or robust, I shall, on balance, having taken account of all other matters raised, dismiss Appeal A. Consequently there is no approved scheme and demolition without the prospect of redevelopment would harm the character and appearance of WCA. Accordingly I shall also dismiss Appeal B.

Sukie Tamplin

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Trevor Dodkins	Phase 2 Planning and Development Ltd
James Marner	Glenny LLP
Richard Bray	One Property Group Ltd
Nicholas Crawley	Akkeron Hotel Group Ltd
Simon Wilkinson	Acting General Manager, Roebuck Hotel

FOR THE LOCAL PLANNING AUTHORITY:

Tim Hagyard	Development Team Manager (West), East Herts District Council
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INTERESTED PERSONS:

Cllr Phyllis Ballam	East Herts District Council
Cllr John Wing	East Herts District Council
Alexandra Stevens	Hertfordshire County Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Email 27 January updating housing land availability submitted by the Council
- 2 Draft Unilateral Undertaking submitted by the appellant
- 3 Amended plans references 185.200B and 185.204 clarifying room layouts and accommodation submitted by the appellant
4. Drawing reference 185.205A (site sections), submitted by the appellant
5. Roebuck Hotel Key Performance Indicators submitted by the appellant
- 6 Website print out of visitor feed back submitted by the Council
7. Addendum to Statement by Hertfordshire County Council