



Appeal Decision

Inquiry Held on 4 – 6 February 2020

Site visit made on 6 February 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2020

Appeal Ref: APP/D0121/W/19/3237905

Lord Nelson, 58 Main Road, Cleeve, BS49 4NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Tout of Tout Limited against the decision of North Somerset Council.
 - The application Ref 17/P/5406/FUL, dated 7 December 2017, was refused by notice dated 9 May 2019.
 - The development proposed is the demolition of the former Lord Nelson Public House and the mixed-use redevelopment, incorporating petrol filling station with associated retail store and air/water facilities, replacement lounge bar/restaurant, hair and beauty salon and owner's office accommodation.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the former Lord Nelson Public House and the mixed-use redevelopment, incorporating petrol filling station with associated retail store and air/water facilities, replacement lounge bar/restaurant, hair and beauty salon and owner's office accommodation at the Lord Nelson, 58 Main Road, Cleeve, BS49 4NR in accordance with the terms of the application reference 17/P/5406/FUL, dated 7 December 2017, subject to the conditions set out in the schedule attached to this decision.

Procedural Matters

2. The appeal site is within the Green Belt. This is noted in the officer's delegated report, but has not been considered in any great detail by the Council either in the report or in its evidence to the Inquiry. This is a matter that has been raised by interested parties. It is not, however, the subject of any of the Council's reasons for refusal.
3. The National Planning Policy Framework (the Framework) informs that new buildings in the Green Belt should be regarded as inappropriate. Both paragraphs 145 and 146 confirm that there are exceptions to this. Having considered the development in the context of the Framework, it would not benefit from the exception that allows for the replacement of an existing building within the Green Belt. Whilst the replacement building would incorporate a bar/restaurant use, it would also include other uses. The new building would not, therefore, be in the same use as the one it would replace.

4. Notwithstanding this, another exception is limited infilling in villages. Although the appeal site is large in comparison, it is mainly surrounded by existing adjoining development, as well as the main A370 road. Within this context, I am satisfied that the development would amount to limited infilling within the village of Cleeve.
5. Accordingly, I find that the proposal would not amount to inappropriate development within the Green Belt and I have not included this as a main issue in this appeal.

Main Issues

6. The main issues in this case are as follows:
 - The effect of the development on the living conditions of the neighbouring occupiers with regard to outlook, as well as noise and light generated by the development;
 - The effect of the development on protected species with regard to light generated by the development; and
 - Whether or not the loss of the local heritage asset is acceptable.

Reasons

Living Conditions

7. The appeal site is currently occupied by a public house (PH) with a beer garden to the rear and car parking to the side; the public house and car park run alongside the A370 (Main Road) through Cleeve. The development proposed comprises the demolition of the existing building and erection of a multi-use building which would be predominantly two storey. It would have a single storey element along the boundary of the appeal site with 56 Main Road. A petrol filling station (PFS) would be located adjacent to the new building and would occupy the majority of the existing car park with the remaining parking area retained for parking to serve the development. Additional parking is also proposed in replacement of the current beer garden.
8. There are a number of residential properties either adjoining or in close proximity to the appeal site. The effect of the development on the occupiers of these residential properties was identified as including matters of (i) outlook, (ii) light, and (iii) noise and disturbance. I have considered each of these matters as follows.

(i) Outlook:

9. The footprint of the existing PH is close to the boundary of the appeal site adjoining 56 Main Road and Walnut Lodge and is clearly visible from the gardens of these adjoining dwellings, as well as from the front of Little Halt. Indeed, the existing building (including its extensions) is a substantial presence when viewed from the gardens of these properties. The footprint of the proposed multi-use building would be closer again to these boundaries and, when viewed from the gardens of both Little Halt and Walnut Lodge, would appear to be more substantial when compared to the existing PH. In

- particular, the building would appear a more solid structure when compared to the fragmented nature of the rear extension and rear roof profile of the PH.
10. Notwithstanding this, the development would only affect the outlook when viewed from the front garden of Little Halt and from the kitchen and bedroom windows in its front elevation. The view from this property would be of the single storey element of the development with the two-storey element beyond. Having regard to this, the degree of separation between the site and Little Halt, and the orientation of this dwelling to the new building, the development would not appear overbearing when viewed from this property.
 11. With regard to the effect of the development on Walnut Lodge, in view of its orientation the development would not dominate the outlook from the front or rear elevation of this dwelling. Indeed, the development would be closest to the garage and driveway serving Walnut Lodge and there would be a degree of separation between it and the private garden space around the dwelling, such that the development would not appear unacceptably overbearing when residents use these garden areas.
 12. Turning to No 56, the side elevation of this dwelling would be within a metre or so of the side elevation of the single storey element of the proposed building. This element would run along a substantial length of the shared boundary, such that it would be viewed from both the front and rear gardens of the property and from the windows in the front and rear elevation of the dwelling. Notwithstanding this, the single storey height of this element of the building, together with the slope of the roof away from the boundary would result in a form of development that would not dominate the outlook from the dwelling or appear overbearing when viewed from the front or rear gardens. Furthermore, there would be a minimal appreciation of the two-storey element from the gardens of No 56 as it would be set some way off the shared boundary. The effect of the development on No 56 would, therefore, be acceptable.
 13. The residential properties of 60 Main Road and The Orchard both adjoin the existing car park of the PH. The PFS canopy would be closer to these dwellings and their gardens when compared to the existing built development. Whilst the canopy would be visible from these adjoining properties, from the gardens in particular, it would not appear overbearing, particularly as the structure would be open sided and there would be a sufficient degree of separation between it and these neighbouring dwellings.
 14. My attention has been drawn to the effect of the development on residents opposite the appeal site. Having regard to the degree of separation between the site and the properties along Millier Road, the development would have a minimal impact on the living conditions of these nearby occupiers with regard to the matter of outlook.
 15. In summary on the matter of the effect of the development on the outlook from adjoining and nearby residential properties, having regard to the location and scale of the existing building on the site, the development proposed would not harmfully change the living conditions of the occupiers of adjacent dwellings.

(ii) Light:

16. An amended External Light Environmental Impact Assessment (dated 7 January 2020) has been submitted and supplemented by a proof of evidence from the Appellant's lighting specialist. The assessment included a proposed lighting layout plan¹ which modelled the likely effect of the development from the external lighting proposed for the scheme. This demonstrates that lighting could be designed and directed such that lighting levels would steeply decline close to the boundary of the site and that the lighting design would reduce the impact in terms of contrast with the recognised low levels of ambient light in the area. The evidence demonstrates that it is unlikely that light would trespass onto adjoining land, particularly taking into account the proposed 2 metre high boundary treatment around the site.
17. The assessment also compared the likely effect of light from existing light sources on site, some of which would result in light spilling onto land adjoining the existing car park (No 60 and The Orchard) and onto the adjoining highway.
18. Whilst the Council acknowledges the results of the assessment, its particular concern was in relation to the effect of light reflected from either transient or fixed items under the petrol station canopy or under other proposed light sources; that this was not taken into account in the assessment. Its concern was also in respect of glare during foggy or damp weather conditions.
19. The appellant's lighting specialist confirmed that whilst light from reflection may well be experienced, this would not be so great as to cause an issue to nearby residents. Similarly, it is likely that any effect from light as a result of glare would only be experienced in certain weather conditions. Even in those specific conditions there is no substantiated evidence before me to suggest that the effect of glare would be unacceptable. The appellant suggested that any of these effects would be mitigated to a degree by the boundary enclosure.
20. Interested parties also expressed concern with regard to light spill resulting from vehicles manoeuvring about the site. I noted that the site is fairly level and, as such, it is unlikely that vehicle lights would raise, encroaching onto adjoining land above the proposed 2 metre high enclosure. Furthermore, the evidence before me does not support the concerns of residents with regard to vehicle lights pointing towards the properties along Millier Road, opposite the site. Having regard to the distance between the site and these dwellings as well as the intervening vegetation and boundary treatments, it is unlikely that the development would have an unacceptable effect in respect of light trespass into these properties.
21. Having regard to all of the above, and noting that the proposed opening hours (0700 to 2300) would mean that vehicle movement on the site would cease and external lights would be switched off outside of these times, I conclude that the development would not be unacceptable with regard its effect on the living conditions of neighbouring occupiers as a result of light. In reaching this conclusion I have taken into account the lack of any technical evidence to contradict the appellant's case on this matter.

¹ The amended drawing DM75 – Proposed Lighting Layout (luminaire isolux) within the External Light Environmental Impact Assessment (dated 7 January 2020)

(iii) Noise and Disturbance:

22. The appellant has provided an updated noise assessment, the methodology of which was agreed by the Council's noise specialist. The assessment and the accompanying technical evidence conclude that, whilst the assessment indicated that there would be an incident of background noise levels being exceeded, the development would not have an adverse impact on the living conditions of neighbours by virtue of noise from plant or activity on the site. I also note that as the PH was not open at the time of either assessments; the appellant confirmed that background noise levels recorded are likely to have been elevated had the PH been open during the assessments.
23. Whilst the Council does not dispute the technical results of the assessment, it's concerns, shared by interested parties, are that the use of the site would intensify and that the effect of short-lived bursts of noise caused, for example, by the shutting of car doors would disturb local residents; thus rendering the development unacceptable.
24. I note that in order to undertake a noise assessment neither background nor predicted noise levels are expressed as a maximum. However, the assessment confirms that the **lowest** of the median, mode and mean noise levels recorded were used as the baseline figure for the background noise level. Furthermore, the predicted noise levels provided in the assessment, as shown on table 6-2², have been calculated taking into account the short-lived instantaneous instances of noise that the development is likely to generate, together with an appropriate sound penalty³. I am, therefore, satisfied that the results of the comparison⁴ are reliable in terms of assessing the likely effects of the development with regard to noise.
25. Notwithstanding this, I acknowledge that some instances of short-lived bursts of noise might be discernible above the background noise from the receptors identified, and that for some receptors these instances might be more likely in the late evening (i.e. 2200 to 2300). However, it is not reasonable in this case to compare the noise generated by the proposed development with noise generated by the existing situation (i.e. the site without an active use). In this regard, there is no dispute that the lawful use of the site and building is as a PH. Whilst there was some discussion at the Inquiry as to whether this is a legitimate fallback position, the appellant was clear that for financial reasons the site must be put to some use. Accordingly, comparisons of the proposed situation with the situation resulting from an active use of the site is appropriate. Indeed, both parties refer to the active PH use in comparison with the proposed use in relation to the matter of noise. I shall, therefore, use the same comparison.
26. I acknowledge that patrons of the PH are likely to have stayed longer at the site than patrons would in the proposed development. However, PH patrons would have generated the same short-lived bursts of noise that would be generated by the propose development (i.e. car doors slamming). Furthermore, the use of the beer garden would also have resulted in instances of short-lived bursts of noise from children playing or raised voices. I also note

² Page 28 of the SLR Noise Assessment dated December 2019.

³ Section 6.0 of the SLR Noise Assessment dated December 2019

⁴ In the last column of Table 6-2 of the SLR Noise Assessment dated December 2019

that the licence granted for the PH⁵ permitted opening hours, as well as live and recorded music, until 2300 most days and later on other days.

27. In view of the above, it is clear that the PH use would have generated a degree of noise. In some instances, the type of noise that would have been generated is comparable to that which would be generated by the proposed development. I acknowledge that in all likelihood noise generated on the site would be over a longer period throughout the day. However, taking account of the existing background noise levels and the comparisons made in the assessment results, that are not disputed by the Council, a more intensive use of the site over a longer period of the day is not likely to result in substantial adverse effects. Accordingly, it is unlikely that the development would generate noise and disturbance to a degree that would be harmful to the living conditions of the neighbouring occupiers. In reaching this conclusion, I have had regard to the proposed hours of operation that would prevent activity on the site during the recognised night-time hours.
28. I note the concerns of interested parties with regard to the potential use of the car parking areas outside of the proposed opening hours. Whilst I have not substantiated evidence to suggest that such activity is likely, this would be a matter for the Police.
29. In summary on this first main issue, I acknowledge the strength of objection from interested parties with regard to the potential impact of the development on their enjoyment of their properties and their day to day lives; I do not underestimate the concerns of those living near the appeal site. However, in the absence of any evidence to suggest that the development would cause an unacceptable degree of detriment in respect of noise, light, and outlook, I can only conclude that it would be appropriate in terms of its effect on the living conditions of neighbouring occupiers. In this regard, the development would not conflict with the requirements of Policy CS3 (Environmental impacts and flood risk assessment) of the North Somerset Council Core Strategy adopted 2017 (CS) or Policy DM32 (High quality design and placemaking) of the North Somerset Council Development Management Policies - Sites and Policies Plan (Part 1) Adopted July 2016 (the NSSPP). These policies do not permit development that would cause harm to amenity or prejudice the living conditions of adjoining occupiers as a result of it having an overbearing impact. Policy DM32 also encourages high quality design that is appropriate to its position within the landscape and/or townscape.

Protected Species

30. The appeal site is within close proximity to the designated North Somerset and Mendip Bats Special Area of Conservation (SAC). The SAC has two components; the site of special scientific interest (SSSI) at King's Wood and Urchin Wood and the Brockley Hall Stables SSSI. The first is around 280 metres to the south of the site and the second some 1.9km north-east of the site. The two species of bat supported by the SAC are the lesser horseshoe bat and the less common greater horseshoe bat. There is also a known lesser horseshoe bat maternity roost within 400 metres of the site.
31. The Council confirm that habitats close to the SAC are significant to sustaining the breeding population of horseshoe bats, including the juvenile bats. An area

⁵ Inquiry Document 9.

- around the SAC has been identified as a juvenile sustenance zone (JSZ), which is important for commuting and foraging to support the adult females and juveniles of the species. The appeal site is within the JSZ.
32. The application was accompanied by an ecological appraisal⁶ and a bat survey report⁷. Having regard to the results of the bat survey, it is common ground that there are no bat roosts on the site; it is unlikely that the site provides a significant foraging resource for bats; but that part of the appeal site is used by SAC bats for commuting.
 33. The appellant also undertook an initial habitat regulations assessment in November 2017⁸, as well as a later shadow habitats regulations assessment⁹ in January 2020. Both conclude that, with mitigation, there would be no adverse effect on the integrity of the SAC as a result of the development.
 34. Initially, the Council had suggested that the mitigation proposed was insufficient and that the parts of the site used by the SAC bats should be retained and protected to support the overall conservation objective for the SAC. However, during the course of the Inquiry the Council's position changed and the parties agreed that, subject to the imposition of appropriate conditions, there would be no adverse effects on the integrity of the SAC.
 35. Notwithstanding the above, in determining this appeal I am the competent authority for the purposes of regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). In compliance with regulation 63 of the Habitats Regulations I have had regard to all relevant evidence before me, including the consultation responses from Natural England¹⁰.
 36. With regard to the provisions of regulation 63(1) of the Habitats Regulations, it is clear that the proposal is not directly connected with or necessary to the management of the protected site. Furthermore, I note the location of the development within the JSZ and proximity of the site to SAC bat commuting routes. Whilst it was agreed that there are no other plans or projects that ought to be taken into account in combination with the proposed development subject of this appeal, I cannot be certain that the development alone is unlikely to have a significant effect on the nearby European site. Accordingly, I must undertake an 'Appropriate Assessment' in compliance with regulation 63(1).
 37. I have already outlined details of the habitat and species for which the SAC has been designated. I have also identified the relationship between the appeal site and the SAC. Furthermore, I have no reason to disagree with the common ground between the parties on the importance of the appeal site and surrounding area to the integrity of the SAC, which is particularly for the purposes of commuting. I have also had regard to the objectives of the SAC, as set out in the evidence¹¹.

⁶ Engain Ecological Appraisal dated 14 June 2017 – CD A32.

⁷ Engain Bat Survey Report and Assessment dated 25 November 2017 – CD A33.

⁸ Engain HRA Report dated 20 July 2018 – CD A42.

⁹ Aspect Shadow Habitat Regulations Assessment dated January 2020 – Appendix 5778/3 of Dr Dan Simpson's proof of evidence.

¹⁰ Dated 26 November 2019 - Appendix 5778/2 of Dr Dan Simpson's proof of evidence; and dated 30 January 2020 – received by e-mail to The Planning Inspectorate on the same date.

¹¹ Annexe 2 of Appendix 5778/3 of Dr Dan Simpson's proof of evidence.

38. Evidence submitted to the Inquiry demonstrates that SAC bats are known to commute in the area of the appeal site from the SAC (which is to the south of the A370) to the pasture land on the opposite side of the A370, broadly to the north of the appeal site. The activity recorded in the bat survey is consistent with this. The proposal would bring lighting to parts of the site that are not currently lit. The scheme would also develop the beer garden in order to provide a car parking area, together its associated lighting. This is of particular concern as it is likely that SAC bats use part of the appeal site for commuting. Accordingly, I agree with the appellant's conclusions¹², that in the absence of mitigation, there is a potential for an adverse effect on SAC bats and, therefore, the integrity of the SAC.
39. Turning to the proposed mitigation, I note that the commuting route is already interrupted by the streetlights along the A370. These switch off between the hours of midnight to 0500¹³. The opening hours proposed by the appellant would not include these hours and it was agreed that a condition could be imposed to require all external lighting on the site to be switched off outside of the proposed hours of opening. Furthermore, the lighting scheme and boundary treatment have been designed so as to minimise light trespass along the edges of the site, thus reducing the effect of the development on the corridor currently used by the SAC bats, as shown on plan number 5778/HRA8¹⁴. This plan also shows the enhancement of boundary vegetation with a scheme designed to encourage the use of this corridor.
40. In addition, the parties have agreed a number of conditions to secure the proposed mitigation, control all external lighting on the site and require a scheme of mitigation during the construction phase.
41. Having regard to the above, I am satisfied that the adverse effects of the development on the SAC bats can be mitigated and that the necessary mitigation can be secured. Accordingly, the development would not adversely affect the integrity of the SAC.
42. In addition to the conclusions above, both the Framework and the development plan require the enhancement of biodiversity as well as its protection. In this regard the scheme proposes the retention and enhancement of land to the south of the appeal site, outside of the developed area, for the provision of a night roost for SAC bats and improved planting to encourage foraging and commuting. These improvements can be secured by conditions.
43. Finally, aside from the effect of the development on the SAC bats, interested parties have concerns that the development would have an adverse effect on the general ecological value of the site and surroundings. Whilst these concerns are noted, the substantial ecological evidence before me does not support them.
44. Having regard to all of the above, I conclude that the development would not have an unacceptable effect on protected species and would, therefore, comply with CS Policy CS4 (Nature conservation) as well as NSSPP Policy DM8 (Nature Conservation). These do not permit development that has an adverse impact on identified sites of international importance and require, amongst other

¹² Paragraph 5.6.1 of Dr Dan Simpson's proof of evidence.

¹³ The mechanism to switch the lights on and off is not adjusted to account for day light saving.

¹⁴ As shown on plan number 5778/HRA8 of Dr Dan Simpson's proof of evidence.

matters, the protection and enhancement of important habitats. The development would also comply with paragraphs 175 and 176 of the Framework.

Heritage Asset

45. North Somerset's Historic Environment Record (HER) for the current and previous building¹⁵ describes the Lord Nelson as a Roadhouse Pub that was built in the 1930's in a traditional Tudor-Revival style. The HER informs that the PH replaced a small inn and posting house, The Nelson Inn, which dated from the early 1800s. Although the building was considered by Historic England for listing in 2017, it was not recommended for listing. Furthermore, the Council do not have an adopted 'local list'. Nonetheless, it is common ground between the parties that the building is a heritage asset, albeit non-designated.
46. In addition to the relevant local plan policies CS5 (Landscape and the Historic Environment) of the CS and DM7 (Non-designated heritage assets) of the NSSPP, the Framework provides guidance on proposals effecting heritage assets. At paragraph 192 it requires account to be taken of:
 - a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - c) the desirability of new development making a positive contribution to local character and distinctiveness.
47. Paragraph 197 of the Framework also informs that, when considering applications that affect non-designated heritage assets the effect on the significance of it should be taken into account, and that a balanced judgement would be required having regard to the scale of any harm or loss, and the significance of the heritage asset.
48. The building is an example of a shift in the style of public houses that were built during the inter-war period. The 'Tudor' style of the building's design is one of a number of styles used in such roadside public houses that were built during that period and is found in other examples¹⁶. There are other inter-war roadside public houses in nearby villages that are in current use, in particular The Rising Sun in Backwell and The Star in Congresbury. Indeed, the Council advise that 14 examples exist in North Somerset along the A370¹⁷. Such examples are also found in the wider south west region¹⁸. As these all provide examples to illustrate the change that occurred in the type of public houses built during the inter-war period, as referred to by the Council¹⁹, the local significance of the building is limited in terms of its rarity. Whilst I acknowledge that the Lord Nelson still retains a skittle alley, that alone would not alter my conclusion with regard to the rarity of the PH as a whole.

¹⁵ HER numbers 47044-MNS8737 and 8994-MNS2428 - Inquiry Document 1.

¹⁶ Including the building's sister pub, the Eastfield Inn in Bristol - paragraph 5.2.4 of Dr Kate Hudson-McAulay's proof of evidence.

¹⁷ Paragraph 5.2.12 of Dr Kate Hudson-McAulay's proof of evidence

¹⁸ Paragraph 5.2.6 of Dr Kate Hudson-McAulay's proof of evidence and her Appendix 7.

¹⁹ Paragraph 5.2.7 of Dr Kate Hudson-McAulay's proof of evidence.

49. The Council suggest that the Lord Nelson has a value as part of a group with the other examples of such PH's. However, the buildings do not form a collection by virtue of their proximity to each other and I have little evidence to suggest that the buildings are socially or historically connected, other than by their use, type and period within which they were built. In this regard I cannot agree that there would be a group value as would usually be considered in a heritage context.
50. As noted above, the building has a 'Tudor' style of design and, whilst it has been significantly altered externally, these alterations have not affected the front elevation to a significant degree. Furthermore, the original wings of the building (the dining room and skittle alley) are still legible. Notwithstanding this, the HER informs that the design of the building is 'competent and typical rather than noteworthy'. While the design of the building and its materials are unusual within the immediate context of the site, its local significance is low in terms of its aesthetic interest, particularly as other examples of its design exist in the local (North Somerset and south west area).
51. Internally, the layout of the building has been extensively altered, so much so that it is difficult to appreciate the value of the majority of the remaining original features it contains. Whilst the layout alterations and the extensions to the building were carried out in response to the more recent trend for open plan eating and drinking establishments, they have been extensive. Accordingly, the original layout of the building is no longer clearly legible. This diminishes the building's ability to illustrate its historic interest, i.e. the change in the approach to the design of such public houses during the inter-war period, as referred to by the Council.
52. I acknowledge the historical associations with the building, particularly those during WWII and the value the Council and interested parties place on these associations. However, the evidence suggests that the use of the building by popular celebrities during WWII was short lived. Furthermore, the other WWII associations would have been usual in other such buildings that existed at this time in nearby villages or in the wider North Somerset area. In view of this I cannot conclude that the building's historical associations result in it having a high degree of local significance.
53. Furthermore, it is clear that interested parties attribute significant value to the building in terms of its community value as a PH. Whilst I acknowledge the importance of such a community use to local residents, this would not add to the local significance of the building in a heritage context.
54. The building does possess a landmark quality that is to its credit. Indeed, this is a matter referred to in representations from interested parties. The setting of the building contributes to this quality.
55. In summary on the matter of the building's significance, I acknowledge the value the Council place on the building. Whilst I agree that the building is an illustration of design and legislation changes for PH's during the inter-war period, having regard to my findings above, I conclude that the significance of the Lord Nelson PH as a heritage asset is low.
56. Notwithstanding the above, the development would result in the total loss of the heritage asset and, therefore, its significance. As I have concluded that the significance of the building is low, the weight to be afforded to the harm

- resulting from its loss is also low. Nevertheless, such harm weighs against the development.
57. Paragraph 192 of the Framework requires that I take account of the desirability of sustaining and enhancing the significance of heritage assets; the presumption is that preservation is desirable. Paragraph 192 also requires account to be taken of the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality, **and** the desirability of new development making a positive contribution to local character and distinctiveness.
58. At present the building makes little contribution to any of the aspects of sustainability within the Framework. The appellant's evidence was that neither the re-establishment of the PH use nor the adaptation of the building to achieve the mixed use proposed would be viable. Whilst I acknowledge that evidence was not submitted to expand upon this, I have no doubt that the appellant considered these options when considering how to use the site. Furthermore, there was little evidence to suggest that some other operator could establish a viable use of the current building. Whilst the appellant confirmed that a pub operator showed an interest in the property in 2016 (at the time he purchased the site), it is not known if that operator made an offer on the building. Accordingly, there is limited evidence before me to assist in determining whether the building could make a positive contribution of the sort envisaged in paragraph 192 b) of the Framework.
59. What I do have before me is a viable scheme that would clearly make a positive contribution to the sustainability of the community of Cleeve, not least to local character and distinctiveness²⁰. The benefits of the scheme have been highlighted by the appellant and include the creation of around 50 jobs, which would be substantially more than those generated by the PH. I have no reason to conclude that it is unlikely that jobs created by the development would not be filled by residents of Cleeve, as suggested by interested parties. Furthermore, jobs would also be created during the construction phase.
60. The development would provide a mix of uses in one central location within the village. The majority of these uses would be community facilities, including a convenience store akin to a mini supermarket, a hairdresser, a beauty salon, a bar/restaurant, an office and a petrol filling station. Interested parties suggest that Cleeve is already well served in terms of such facilities and have suggested that the development would have an adverse effect on local business. However, I have little evidence to support these concerns; to my mind there would be no harm in increasing the amount and range of facilities within the village. Indeed, having regard to the type of uses proposed, it is likely that the development would make a positive contribution to the social wellbeing of the community and would result in an overall positive contribution to the sustainability credentials of the village. These benefits have been highlighted in many of the 100 or so letters of support for the scheme.
61. Interested parties suggest that the PFS would not contribute to the Government's aims of reducing carbon emissions. It is acknowledged that the Government's current aim is to phase out the sale of vehicles that rely on petrol and diesel. The appellant confirmed that the long-term plan for the business would go beyond the Government's deadlines for this. As such, the

²⁰ Paragraph 192 c) of the Framework.

appellant's evidence is that the development would not only open with electric vehicle charging points, but would expand upon this facility in the future. Accordingly, the development would contribute to the Government's aims. Until that time, the development would mean that local residents would have to travel less to refuel. These matters can only be a benefit of the scheme that weigh in its favour.

62. In terms of the environmental objective of sustainability, whilst the development would result in the loss of a building that has a landmark quality within the village, the scheme proposes a building of a similar scale to the PH. Interested parties have concerns with regard to the design of the scheme and its size in relation to the existing built development in the area. However, there is no objection from the Council with regard to its design in terms of its effect on the character and appearance of its surroundings. I would agree with this. Indeed, the building would be a well-designed prominent development within the local vernacular and proffer its own landmark quality.
63. When dealing with non-designated heritage assets, the Framework requires a balanced judgement to be made. On the one hand, I agree with the Council, that there is a general presumption in favour of retaining any heritage asset. However, the desirability of doing so is dependent on the significance of the asset and the effect the development would have on its significance. Whilst in this case the development would result in the total loss of its significance, as I have found the significance of the PH to be low, I have attributed a low degree of harm to its loss.
64. In addition, the appellant's evidence is limited in terms of the lack of viability of the re-use of the building, including the re-establishment of the PH. Accordingly, the harm in this case is not entirely justified by the lack of viability or interest in the re-use of this heritage asset.
65. Weighing in favour of the development, I have identified considerable benefits to the scheme. It would contribute to the community of Cleeve by achieving all three of the overarching objectives of the Framework²¹ and, in this regard, would easily be considered to be sustainable development. Furthermore, having regard to the appellant's business background and the role the development would play in his overall business plan, I am satisfied that the development would proceed after the loss of the heritage asset has occurred, in accordance with paragraph 198 of the Framework.
66. My decision in this case is finely balanced. The harm resulting from the loss of any heritage asset is not to be taken lightly, but in this case the benefits of the scheme and the overall positive contribution it would make to the community of Cleeve tip the balance in its favour. Accordingly, the loss of the local heritage asset in this case would be acceptable.
67. In reaching this conclusion, I have had regard to the CS Policy CS5 (Landscape and the Historic Environment) and NSSPP Policy DM7 (Non-designated heritage assets). Whilst both policies support the conservation of the historic environment of North Somerset, they require the decision maker to take into account the building's significance and whether it warrants protection from removal. In view of my assessment in this case, my decision complies with these policies.

²¹ As listed in paragraph 8 of the Framework.

68. I have had regard to the appeal decisions referred to by the Council. As I do not have the details that would have been available to the decision maker in these cases I am unable to make an informed comparison. Notwithstanding this, in the cases referred to it is clear that the balancing exercise has been undertaken and that the appeals have been dismissed as the balance has tipped against the development. In those cases the significance of the heritage asset may well have been greater, resulting in the decision maker attributing greater harm to their loss. Furthermore, the benefits of those schemes may not be comparable to those of the proposal before me. The examples referred to by the Council demonstrate that when undertaking the balancing exercise each case must be considered on its merits.

Other Matters

69. I note the significant objection to the development, much of which has been considered already in this decision. I now consider the remaining matters that have been raised by interested parties.
70. The representations with regard to highway and car parking matters including concerns about queuing traffic on the adjoining highway network; pedestrian safety; the car park capacity; and effect of large delivery vehicles to the site. However, the evidence before me, including the consultation response from the Council's highway engineer, concludes that the proposal would not have an adverse effect upon the road network, highway safety or pedestrian safety. Accordingly, in the event that the development would result in additional vehicle movements in the area or queuing during busy periods, this would be an inconvenience but would not lead to a harmful effect upon pedestrian and highway safety; nor would it be a reason to withhold planning permission.
71. Interested parties suggest that the development would contribute to air pollution in the area. Whilst vehicle activity would increase on the site, I have no substantiated evidence to suggest that such an increase would have a significant adverse effect with regard to air pollution.
72. There are concerns from interested parties with regard to the location of a PFS in close proximity to residential properties. My attention has also been drawn to the need for the developer to comply with legislation relating to the storage and sale of petrol, diesel and other such items. The appellant has experience in establishing and operating facilities similar to that now proposed and I have no doubt that the necessary steps would be taken to comply with all relevant legislation, particularly that relating to PFS's. Furthermore, I note the Council have not objected to the development on this basis and I have no reason to conclude otherwise.

Conditions

73. The conditions set out in the accompanying schedule are based on those suggested and agreed by the main parties. Where necessary I have amended the wording suggested in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance. The pre-commencement conditions were also discussed and agreed by the parties during the Inquiry.
74. The ecological mitigation and enhancement details, together with the construction management plan and conditions relating to the external lighting

- are essential in the interests of ensuring the development would not have an adverse effect on protected species, including the SAC bats.
75. The building survey record and programme of archaeological works are necessary in view of the heritage value of the building, and the historical use and development of the site.
76. As the landscaping of this development and its means of enclosure are essential in the interests of ecology, good design and the living conditions of nearby residents, the conditions relating to these matters are necessary. As is the requirement for details of sustainable surface water drainage in the interest of the environment and to prevent flooding. Details of materials are required to ensure the design of the development is acceptable.
77. The requirement for details of mechanical ventilation and for the storage and collection of waste are required in the interests of the living conditions of nearby residents. For the same reason it is also necessary to limit the noise generated by external plant and machinery; to control the hours of operation; to ensure certain windows in the development are obscurely glaze and non-openable; to remove certain permitted development rights that would allow the alteration of these windows in the future; and to restrict the hours of activities relating to deliveries and collections, including the means of fuel delivery to the site.
78. Completion of the parking areas is necessary to ensure there would be sufficient provision and a condition requiring the use of micro renewable or low carbon technologies is imposed in the interests of securing sustainable development.
79. The bar/restaurant within the development would be an essential element of the scheme not only in mitigating the loss of the PH as a heritage asset, but also in terms of the benefits of the scheme that weigh in its favour. The conditions requiring the implementation of this element of the scheme and controlling the loss of this use in the future are, therefore, essential. The appellant has not suggested that he would be unable to comply with the conditions and as the evidence indicates that the site would be developed, retained and operated by the appellant, I am satisfied that the conditions would be reasonable in all other regards.

Conclusion

80. Whilst I understand the apprehension of local residents, there is no substantive evidence to justify the dismissal of the appeal on the grounds of harm to living conditions. The development would also be acceptable in terms of its impact on protected species. The benefits of the scheme would, on balance, weigh in favour of the development, despite it resulting in the loss of a non-designated heritage asset. In reaching these conclusions I have not found conflict with the development plan.
81. For these reasons I conclude that the appeal should be allowed.

J Moss

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader of Counsel

Instructed by Head of Development
Management at North Somerset Council

He called:

Mr Michael Cole Dip TP

North Somerset Council

Dr Kate Hudson- McAulay BSc

North Somerset Council

(Hons) MSc PhD Assoc IHBC

Susan Stangroom BSc (Hons)

North Somerset Council

(UCL)

Richard Allard

North Somerset Council

FOR THE APPELLANT:

Hugh Richards of No5 Chambers

He called:

Jonathan Tout

Appellant

Chris Scott BA MA MCIfA

Partner at Solstice Heritage LLP

Graham White

Senior Consultant and Managing Director of
GWLC Lighting Consultancy

Michelle Jane Dawson BSc MSc

Principal Acoustic Consultant at SLR
Consulting Limited

MIOA

Tim Farley BA(Hons) Dip TP MRTPI

Director of Copesticks Ltd

Dr Dan Simpson BSc(Hons),

Technical Director of Aspect Ecology

PhD(Bris), CEcol, MCIEEM

INTERESTED PERSONS:

Hilary Burn

On behalf of Cleeve Parish Council

Peter Stringer

Local Resident

George Stringer

Local Resident

Joan Stringer

Local Resident

G Pritchard

Local Resident

R J Williams

Local Resident

Louise Tranmer

Local Resident

J Walters

Local Resident

R Morley

Local Resident

J Ashman

Local Resident

D Ashman

Local Resident

Richard Ball

Local Resident

K Binham

Local Resident

S J Higgins

Local Resident

D Veale

Local Resident

G Osmund

Local Resident

Tom Clifford

Local Resident

Anita Joyce

Local Resident

Carol Laid

Local Resident

INQUIRY DOCUMENTS

1. Historic Environment Record numbers 47044-MNS8737 and 8994-MNS2428
2. Council e-mails regarding ecology
3. Extract and of plan number 6808-PO2 with annotation.
4. Opening statement made on behalf of the appellant
5. Opening statement made on behalf of North Somerset Council
6. Planning permission decision notice reference 00/P/0083/F3
7. Statement of Mr Williams
8. Updated ecology statement of common ground
9. Licence for the Lord Nelson PH
10. Submission from Mr Richard Ball
11. Submission from Mr Pritchard
12. Letters from Mr Williams
13. Closing submissions made on behalf of North Somerset Council
14. Closing submissions made on behalf of the appellant.
15. Amended list of conditions

Documents Submitted following the close of the Inquiry:

1. Email from Louise Tranmer dated 23 February 2020.

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiry of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - 6808 SLP – Site Location Plan
 - 6806 BLP - Block Plan
 - 6808 P01 rev A - Existing site plan
 - 6808 P02 rev A - Existing elevations
 - 6808 P03 rev A - Existing roof plan
 - 6808 P04 rev O - Proposed site plan
 - 6808 P05 rev C - Proposed site elevations
 - 6808 P06 rev F - Proposed building elevations
 - 6808 P07 rev C - Proposed ground floor plan
 - 6808 P08 rev D - Proposed first floor plan
 - 6808 P09 rev B - Proposed roof plan
- 3) Notwithstanding the submitted details, no development shall commence until ecological mitigation and enhancement plans and details for the site and the land outlined in blue on plan number 6808 SLP (entitled Site Location Plan) have been submitted to and approved in writing by the Local Planning Authority. The plans and details shall include:
 - i) The location and details of one lesser horseshoe bat night roost feature, two dormouse boxes, four tree bat roosting boxes, three bird nesting boxes, and a hedgehog shelter;
 - ii) A locally appropriate native planting scheme comprising locally appropriate native shrubs, native honeysuckle, and native hedgerow flora to provide moth and butterfly larval food plants, nectar sources, berries and seeds for insects and birds;
 - iii) A management and maintenance plan to include regular mulching of native shrubs; and
 - iv) A scheme of monitoring.

The development shall not be occupied until the ecological mitigation and enhancement has been implemented in accordance with the approved plans and details. The ecological mitigation and enhancement shall thereafter be retained in accordance with the approved plans and details for so long as the use of the development continues.
- 4) No development shall commence, including site enabling works, until a Construction Environment Management Plan (CEMP) for the site and land outlined in blue on plan number 6808 SLP (entitled Site Location Plan) and accompanying documents have been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include or be accompanied by:

- i) updated surveys undertaken by an appropriately qualified specialist for protected species including bats, nesting birds, badgers, reptiles and dormice;
- ii) details of temporary fencing;
- iii) method of works;
- iv) siting and installation of services such as drainage;
- v) sensitive storage locations for materials and soils (shown on submitted plans);
- vi) measures for disposal of waste and prevention of pollution;
- vii) measures for avoidance and mitigation of harm to legally protected and Section 41 species and wild mammals, to include provision of removal of any Section 41 species to appropriate habitat (e.g. Common Toad, Hedgehog);
- viii) specification of buffers and fencing for the protection of ecological features and trees in accordance with BS 5837:2012;
- ix) details of construction lighting so as to avoid light spill to retained and off-site wildlife habitats; and
- x) the appointment of an Ecological Clerk of Works with responsibility for the implementation of the CEMP, to advise project management staff and contractors on ecological issues and legal requirements, and to ensure mitigation measures are implemented.

The development shall be carried out in accordance with the approved CEMP.

- 5) No development shall take place including demolition until a Level 2 Building Survey Record of the existing building has been undertaken and the report submitted to and approved in writing by the Local Planning Authority. The building survey must be carried out in accordance with Historic England guidelines.
- 6) No development shall take place within the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which shall have first been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work must provide a controlled watching brief during groundworks on the site, with provision for excavation of any significant deposits or features encountered and shall be carried out by a competent person or persons and shall be completed in accordance with the approved written scheme of investigation.
- 7) Notwithstanding the submitted details, no development shall commence until a scheme of all hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of existing and proposed ground levels on the site; indications of all existing trees, hedgerows and other planting, identify those to be retained and set out measures for their protection throughout the course of development; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; and a programme of implementation.

- 8) Prior to the occupation of the development hereby permitted all hard landscaping shall be completed in accordance with the approved details of hard landscaping. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) Prior to the occupation of the development hereby permitted all surface water drainage works shall be completed in accordance with details that have first been submitted to and approved in writing by the local planning authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system (SUDS) in accordance with the principles set out in the National Planning Policy Framework, associated Planning Practice Guidance and the non-statutory technical standards for sustainable drainage systems. The results of this assessment shall be provided to the Local Planning Authority with the submitted drainage details. The surface water drainage shall be designed to ensure that there is no surcharging for a 1 in 30 year event and no internal property flooding for a 1 in 100 year event + 40% allowance for climate change. The submitted details shall also:
- a) provide information about the design storm period and intensity, the method employed to delay, control and reduce the surface water discharge rate and volume from the site by 30% and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - b) provide a plan indicating flood exceedance routes, both on and off site, in the event of a blockage or rainfall event that exceeds the designed capacity of the system;
 - c) ensure that sufficient treatment trains are implemented to avoid contamination and pollution of local rhynes and habitats in line with the *SUDS Manual C753*;
 - d) Include appropriate measures to prevent runoff of oil, petrol and detergents to protect the local environment; and
 - e) Include a maintenance schedule for the SUDS.

The surface water drainage shall be checked upon installation by a suitably qualified and experienced drainage engineer and written confirmation that the system has been checked and certified as acceptable by the drainage engineer shall be submitted to the Local Planning Authority prior to the occupation of the development hereby approved.

- 10) Prior to the occupation of the development hereby permitted all means of enclosure shall be completed in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. The details shall include the height, length and materials of all enclosures as well as details of an acoustic enclosure along the boundaries of the site shared with the adjoining residential properties, its acoustic properties and supporting noise data. The means of enclosure shall thereafter be retained

in accordance with the approved details for so long as the use of the development continues.

- 11) Prior to the first use of the bar/restaurant hereby permitted equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme that shall have first been submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 12) Prior to the occupation of the development hereby permitted all parking areas shall be provided in accordance with the approved plans and specifications. The parking areas shall thereafter be retained in accordance with the approved details and shall not be used except for the parking of vehicles in connection with the development hereby permitted.
- 13) Prior to the occupation of the development hereby permitted the windows on the southern elevation (side elevation as noted on drawing No.68088-P06-F) shall be fitted with obscure glazing. The obscure glazing used shall provide a degree of obscuration no less obscure than that which is provided by privacy level 3 of the Pilkington Group Limited textured glass range as defined in publication "Pilkington Decorative Glass Range" (published November 2017). These windows shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification), the obscure glazing and method of opening shall thereafter be retained.
- 14) The development hereby permitted shall not be occupied until measures to generate 10% (less if agreed with the local planning authority) of the energy required by the use of the development (measured in kilowatt hours - KWh) through the use of micro renewable or low carbon technologies have been implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved measures shall thereafter be retained in accordance with the approved details for so long as the use of the development continues.
- 15) The development hereby permitted shall not be occupied until space and facilities for the separate storage and collection of waste and recycling materials have been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The facilities shall thereafter be retained in accordance with the approved details and shall only be used in association with the development.
- 16) The development hereby permitted shall be completed in materials the details of which shall have first been submitted to and approved in writing by the Local Planning Authority.
- 17) The proposed bar/restaurant shall be brought into use within 3 months of the first occupation of the building hereby permitted.

- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification, the bar/restaurant within the building hereby permitted shall not be used for any purpose other than as a bar/restaurant.
- 19) The premises shall not be open to the public except between the hours of 0700 to 2300.
- 20) The noise rating level of all external plant either singly or in combination, shall not exceed background noise levels when assessed in accordance with BS4142:2014 at the nearest noise sensitive property.
- 21) No deliveries or collections shall take place via the rear delivery doors on the south elevation of the building hereby permitted between the hours of 1830 to 0730 Mondays to Saturdays or at any time on Sundays, bank holidays or public holidays.
- 22) No delivery vehicles or refrigeration units shall be parked on the site with their engine or motor running between the hours of 1830 to 0730 Mondays to Saturdays or at any time on Sundays, Bank holidays or Public Holidays.
- 23) No deliveries or collections using vehicles exceeding 7.5 tonnes gross vehicle weight shall take place between the hours of 1830 to 0730 Mondays to Saturdays or at any time on Sundays, Bank holidays and Public Holidays.
- 24) Fuel deliveries to the site shall be offloaded using gravity only and the tanker engine shall remain switched off during delivery.
- 25) Notwithstanding the submitted details, no external lighting shall be installed until details of the external lighting and its operation have been submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - (i) a specification of the type and location of the proposed lighting;
 - (ii) nighttime lux level site contour plans showing the existing baseline and proposed lux levels at 2m above ground level at site boundaries at 11pm, with sufficient resolution to include the 0.5lux contour;
 - (iii) design and planting features to be implemented to ensure bat corridors are protected from light spill, ensuring an average lux levels of below 1 lux, aiming for below 0.5lux where pre-existing, and not to exceed 1 lux at periphery of bat corridors;
 - (iv) Measures to avoid light spill on to retained horseshoe bat habitats to retain as dark and unlit at below 1 lux; aiming for below 0.5lux where feasible.

All external lighting shall be installed and operated in accordance with the approved details and shall be switched off outside the hours of 0700 to 2300.

- 26) No external lighting shall be installed until a scheme of light monitoring has been submitted to and approved in writing by the Local Planning Authority. The scheme of light monitoring shall include:
- i) measures to ensure that at least 1m width of the eastern boundary of the rear parking area and at least 0.5 width along the eastern boundary of the forecourt is retained unlit by on site lighting; and
 - ii) details of timings and dates of light checks.

Following the installation of external lighting the scheme of light monitoring shall thereafter be implemented and carried out in year's one, two and five following its implementation.