

Appeal Decisions

Site visit made on 15 September 2016

by Julia Gregory BSc (Hons), BTP, MRTPI, MCMI

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

Decision date: 10 November 2016

Appeal A: APP/F0114/W/16/3147896

The Yew Tree Inn, Pilgrims Way, Chew Stoke, Bristol, BS40 8TX

- 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 K Langley-Thexton against the decision of Bath & North East Somerset Council.
 - The application Ref 14/02670/FUL, dated 3 June 2014, was refused by notice dated 19 October 2015.
 - The development proposed is change of use from public house (Class A4) (with ancillary first floor residential accommodation) to dwellinghouse (Class C3).
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Appeal B: APP/F0114/C/16/3149728

The Yew Tree Inn, Pilgrims Way, Chew Stoke, Bristol, BS40 8TX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by K Langley-Thexton against an enforcement notice issued by Bath & North East Somerset Council.
 - The notice was issued on 7 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of a building situated on the Land ("Building") from a public house (use Class A4) to a residential dwellinghouse (use Class C3).
 - The requirement of the notice are stop using the building as a residential dwelling house.
 - The period for compliance with the requirement is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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Preliminary matters

1. The Council granted planning permission for the change of use from public house (Class A4) (with ancillary first floor residential accommodation) to dwellinghouse (Class C3) on 19 December 2014. That permission was quashed by a High Court Order dated 24 April 2015. Subsequently the Council decided to refuse the application and issued the enforcement notice the subject of appeal B.
 2. The appeal site lies within the Chew Stoke Conservation Area where it is a statutory duty to consider whether development would preserve or enhance the character or appearance of the Conservation Area. The change of use does not specify any significant external alterations to the premises and there has been no assertion that the duty would not be complied with. On the basis of the evidence provided and what I saw on my site visit, I have no reason to disagree.
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3. The appeal site lies within the Green Belt. The National Planning Policy Framework specifies that the re-use of a building of permanent and substantial construction is not inappropriate development in the Green Belt so long as it preserves openness and the purposes of including land in the Green Belt. It is not asserted by the Council that the development would amount to inappropriate development in the Green Belt. I have no reason to disagree.

Appeal B ground (c) appeal

4. This ground of appeal is that the matters stated in the notice which gives rise to the breach of planning control, if they have occurred, did not constitute a breach of planning control.
5. S55(1) of the Town and Country Planning Act 1990 (the Act) defines development as including the making of a material change of use of any buildings or other land. Whether or not there has been a material change of use is a matter of fact and degree.
6. There is no dispute between the parties that this building was used for Class A4 use with ancillary residential use on the first floor prior to the appellant's acquisition. There is also no disagreement that the public house is no longer trading and there is no current liquor licence. The last licence was surrendered in July 2013. The appellant appears to be arguing that there has not been a change of use as there has always been residential accommodation at first floor.
7. There is no evidence submitted by the appellant to demonstrate that the ground floor is not being used as part of a single dwellinghouse. The bar has been removed as have the ladies and gents toilet facilities. A bathroom is in the course of being installed downstairs and the sole kitchen for the property is that which was previously that serving the public house. The first floor no longer has kitchen facilities and so cannot at present operate as self contained ancillary living accommodation.
8. On my site visit I saw that because of the poor physical condition of the premises the accommodation downstairs was in a state of some dishevelment, but there was furniture and possessions apparent that were compatible with the space being used as the habitable rooms of a single dwellinghouse.
9. I conclude that as a matter of fact and degree, a material change of use to the development alleged has occurred.
10. The appellants say that the use commenced after the Council initially granted planning permission for the change of use but as that planning permission has been quashed there is no planning permission for it. The use does not constitute any development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) or the Order it replaced. The appeal on ground (c) therefore fails.
11. My conclusions on this matter do not deprive the appellant of any rights to use the property for any lawful purpose.

Appeal A and Appeal B ground (a) appeal

Main Issue

12. The main issue is the effect on the provision of public houses within the locality.

Reasons

13. The Yew Tree Inn is situated within the village of Chew Stoke. It is a substantial detached building set back from Pilgrims Way on higher ground. It has a car park to the rear and extensive garden areas to the front and rear. The appellant wishes to use the whole of the premises as a dwelling house.
14. Saved policy CF.7 of the Bath and North East Somerset Local Plan including Minerals and Waste policies- Adopted October 2007 (LP) seeks to resist the change of use of public houses which provide or could provide a needed community facility in that locality unless it complies with one of 2 criterion.
15. The first criterion is that the operation of a public house serving the local community is not viable and the premises have been effectively marketed as a public house without success. The second is that the development would result in the provision of alternative facilities of equivalent or greater benefit to the local community. Since the change of use would not result in any alternative facilities the second criterion of the policy cannot be relied upon.
16. Policy CF.7 is relatively consistent with paragraph 70 of the National Planning Policy Framework (the Framework) which advises that planning policies and decisions should guard against the unnecessary loss of valued facilities and services. Furthermore paragraph 28 of the Framework supports the retention of local services and community facilities in villages, including public houses.
17. There is a distinction that can be drawn between the wording of the policy and the Framework because the policy uses the word 'needed' whereas the Framework uses the term 'valued'. Needed and valued facilities may be one and the same thing but might also be different because a valued facility may not be needed. I have taken the Framework into account as well as the provisions of the development plan in reaching my conclusions.
18. Since the appellant became the owner of the Yew Tree Inn some 3 years ago the premises has not operated as a Public House. As the premises is not trading the first matter to consider is not whether it does provide but whether it could provide a needed community facility.
19. Chew Stoke has a variety of community facilities where meetings and activities could also be held. There is a village hall with bar and kitchen facilities, a bowling club and club house, a rugby club with bar and hot food and a cricket club. Other community facilities nearby are a primary school, secondary school and leisure centre on Chew Lane, churches, and a medical centre.
20. There is another public house in Chew Stoke and the landlord has concerns over whether the village can support two pubs. The appellant has also brought to my attention a substantial number of public houses relatively close by. Chew Stoke only has a population of some 991 at the 2011 census according to the appellant. Nonetheless, the public house could serve also the wider area.

21. I acknowledge that some alterations to configuration might be desirable or required. Nonetheless, the premises has a size and layout that could be used as a Public house and has a car park and beer garden.
22. The village is quite compact and much of it is within easy walking distance of the property. I acknowledge that Pilgrims Lane lacks a footway in the vicinity of the premises and the property is not central. Also the vehicular access to the car park is steep and narrow at an awkward junction, but there is little to suggest that this has caused any significant issues. Furthermore, I see no reason why the use of the premises as a public house could not serve the local community and provide a needed community facility in that locality albeit that it has other facilities including another pub.
23. As a public house this could provide for drinking, eating and socialising and as a focus for community events. Whatever has happened in the past, there is potential for the premises to be well managed and to provide a useful and attractive place to meet which would amount to a needed community facility whatever trading implications that might have for other public houses or community facilities in the locality.
24. There are those locally who say that the pub was not well run and there had been trouble with some customers. Nonetheless, many representations are from those who regret the closure of the public house and would wish to see it re-open. These people value the public house. It has been registered as an Asset of Community Value. For these reasons I conclude that the Yew Tree Inn is a valued community facility as described in the Framework.
25. Turning now to whether the use as a public house is viable. The accompanying text to the policy specifies that there is no benefit in a public house being protected from redevelopment if there is no realistic prospect of the public house being successfully or attractively operated from the premises and criterion (i) takes into account whether the operation of a public house is viable.
26. The appellant argues that the use of the premises as a public house is not viable. The appellant states that she bought the premises with the intention of running the premises as a public house. I understand that the property was bought for £275,000. There is no indication of a mortgage. Furthermore, there is nothing to indicate whether the appellant had a survey conducted or used the condition of the premises to negotiate a price reduction.
27. Because the pub use is not in operation there are no current trading figures. The previous Rateable Value was £8300 which would according to the appellant have likely been based on estimated Fair Maintainable Receipts of approximately £120,000 per annum as at 1 April 2008.
28. The appellant seeks to rely on an assessment of fair maintainable trade and fair operating profit based on estimates to achieve a fair maintainable operating profit of £21,959 a year.
29. Since purchasing the premises the appellant has become aware of the extent of repairs that are required to the premises. The appellant's surveyor summarises that the property is dated, unkempt and in very poor condition generally.
30. The property requires complete refurbishment including major structural repair works to the main roof, external walls and floors. The appellant's surveyor

estimates that it would cost in the region of £250,000 excluding vat for building and remodelling for public house use and possibly more. It would then need to be fitted out with a new commercial kitchen and equipment, a bar and new furniture. This could add another £100,000 to costs.

31. From the building survey and report on the condition submitted and from what I saw of the property, I have little doubt that substantial sums would be required to be spent on the premises to make it suitable for use as a public house. A builder has described it as uninhabitable in its current condition and it would require substantial sums being spent on it whatever its future use. The premises operated as a pub before and if enough money was pumped into its renovation and there was a willingness to operate it as such, it could operate as a public house once more.
32. Against the income would need to be set the costs of repairing the premises and the cost of any borrowing to achieve that renovation. This cost would be substantial, but there is no information about the appellant's financial circumstances to indicate that borrowing would be required.
33. I understand that there are trading difficulties for public houses generally. There is a documented steep decline in wet sales. Drink driving laws, a change in drinking habits, the smoking ban and the general economic situation have all been cited as contributory factors to the decline.
34. I have no trading figures to be able to know whether the previous occupier traded profitably. Furthermore any such information would now be dated. Since the premises has been poorly maintained over the years, trading difficulties may have been related. Whilst acknowledging that the property is in the Green Belt and a Conservation Area I do not know whether the property could be extended since there has been no planning application in that regard. I am simply unable to conclude that it would not be viable since so much would be dependent on how the business was operated.
35. Whatever the viability conclusions, criterion (i) also requires the premises to have been effectively marketed as a public house without success. Since the appellant bought the premises on the basis that she would use it as a public house it cannot be argued that the marketing as a public house was unsuccessful. The appellant cannot rely on marketing prior to her purchase. Furthermore, she has not marketed the premises as a public house since purchase and so cannot say that has been without success.
36. I conclude that the change of use would result in a loss of public houses in the locality, which would be contrary to LP policy CF.7 and paragraph 70 of the Framework. The appeal A and appeal B ground (a) appeal therefore fail.

Conclusion

37. For the reasons given above I conclude that the appeals should not succeed. I dismiss the appeals and uphold the enforcement notice

Decision- Appeal A - APP/F0114/W/16/3147896

38. Appeal A is dismissed.

Decision- Appeal B - APP/F0114/C/16/3149728

39. Appeal B is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Julia Gregory

Inspector