

---

## Appeal Decisions

Site visit made on 8 November 2016

**by S J Papworth DipArch(Glos) RIBA**

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

**Decision date: 11 November 2016**

---

### **Appeal A: APP/X2220/W/16/3153138**

#### **The Red Lion, Canterbury Road, Wingham, Kent CT3 1BB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Martin Towns against Dover District Council.
  - The application Ref DOV/15/00292, is dated 27 March 2015.
  - The development proposed is change of use and conversion to 2 dwellings (1x4 bed/1x5bed), works to create car parking and erection of boundary treatment including demolition of existing toilet block and outbuilding.
- 

### **Appeal B: APP/X2220/Y/16/3153139**

#### **The Red Lion, Canterbury Road, Wingham, Kent CT3 1BB**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
  - The appeal is made by Mr Martin Towns against Dover District Council.
  - The application Ref DOV/15/00293 is dated 27 March 2015.
  - The works proposed are internal and external alterations to facilitate conversion into 2 dwellings including erection of party wall, blocking of existing doorway, insertion of new window to ground floor south elevation, demolition of existing lean to toilet block and curtilage listed outbuilding.
- 

### **Decision Appeal A**

1. I allow the appeal and grant planning permission for change of use and conversion to 2 dwellings (1x4 bed/1x5bed), works to create car parking and erection of boundary treatment including demolition of existing toilet block and outbuilding at The Red Lion, Canterbury Road, Wingham, Kent CT3 1BB in accordance with the terms of the application, Ref DOV/15/00292 dated 27 March 2015, subject to conditions 1) to 12) on the attached schedule.

### **Decision Appeal B**

2. I allow the appeal and grant listed building consent for internal and external alterations to facilitate conversion into 2 dwellings including erection of party wall, blocking of existing doorway, insertion of new window to ground floor south elevation, demolition of existing lean to toilet block and curtilage listed outbuilding at The Red Lion, Canterbury Road, Wingham, Kent CT3 1BB in accordance with the terms of the application Ref DOV/15/00293 dated 27 March 2015 and the plans submitted with it subject to conditions 1) to 5) on the attached schedule.
-

## **Application for Costs**

3. An application for costs was made by Mr Martin Towns against Dover District Council. This application will be the subject of a separate Decision.

## **Main Issues**

4. In both Appeal A and Appeal B, a main issue is;
  - The effect of the proposal on the significance of the listed building and its setting within the Wingham Conservation Area.
5. In Appeal A only, a main issue is;
  - The effect of the proposal on the economic and social viability of the community.

## **Reasons**

### *Background and Policy*

6. The descriptions used in the bullet points to the headings above are taken from the Appeal Forms and appear also on the heading to the Council's Report to the Committee which resolved that had it been determining the applications, planning permission and listed building consent would have been granted subject to conditions. That information was conveyed to the Planning Inspectorate by e-mail dated 28 September 2016.
7. Whilst the Council are not contesting the appeals, there was considerable community interest in the application and the proposed loss of the public house. Since the jurisdiction had already passed to the Planning Inspectorate prior to the Council's resolution, there is a need to consider the proposals, and those concerns, as if the application had been made to the Secretary of State in the first instance.
8. The premises were added to the list of Assets of Community Value by decision notice 15 May 2015, but a review of that decision under the Assets of Community Value (England) Regulations 2012 found procedural irregularities such that the matter was considered afresh, and the decision of 24 August 2015 was to remove the Red Lion from the list.
9. Core Strategy Policy CP1 sets out the settlement hierarchy with Wingham being a Local Centre; a secondary focus for development in the rural area; suitable for a scale of development that would reinforce its role as a provider of services to it and adjacent communities. Reference has been made to Policy DM2 which states that permission for changes of use or redevelopment of land and buildings currently or last in use for employment purposes will only be granted if the land or buildings are no longer viable or appropriate for employment use. However the supporting text makes clear that the aim of the policy is to protect Class B uses. Permission will be given for the re-use or conversion of structurally sound, permanent buildings within Local Centres such as Wingham for commercial, community or private residential uses under Policy DM4, and it is the latter which is proposed in this appeal.
10. Policy DM24 on the retention of rural shops and pubs is of particular relevance and states that planning permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social

viability of the community that it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub (as appropriate) have failed. The supporting text makes clear that when applications are submitted for the change of use of a rural shop or pub account will be taken of its importance to the community that it serves and the range of other facilities and services that would remain. Permission for alternative uses will not be given if the community would be left without any local shops or facilities, or the range would be seriously diminished, unless the applicant has established that a shop or pub use is no longer commercially viable.

11. The building is listed Grade II\* and sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The premises are within the Wingham Conservation Area and Section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
12. Paragraph 132 of the National Planning Policy Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. The courts have determined that considerable importance and weight should be given to harm found to the significance of listed buildings.

#### *Listed Building*

13. Grade II\* listed buildings account for only a small percentage of all listed buildings, and hence the requirement of paragraph 132 of the Framework is that the weight to be accorded its conservation is higher.
14. The building is in public house planning use now, but has not has not always been in that use, with the list description referring to it standing on the site of, and maybe incorporating parts of Wingham College, and being at some stage the market house, the manor court and the Sessions House until 1883, with an early sessions book preserved and on display inside. The description further identifies a 1400 building extended in that century and the next and again in the nineteenth century.
15. Whilst much of the features are retained, the public house use has introduced incongruous fire precaution additions, extensions and particularly on the upper floor, unattractive and harmful subdivision of rooms. Against these shortcomings should be weighed the public access that the use provides, allowing appreciation of the features that are of significance.
16. The proposed residential use would remove many of the later incongruous features and the large size of the building divided between only two dwellings would allow a less intensive use of rooms so that such as *en suite* facilities to bedrooms would not involve harmful subdivision. On the ground floor the use of rooms would follow very much the layout of the structural frame and would bring about the removal of later additions and fittings to better reveal the significance of the historic building.

17. The required party wall between the two dwellings would run across the building from west to east and has been positioned to miss historic fabric and structure whilst providing the security and sound proofing needed. Similarly the external works to provide parking and garden areas would not undermine the setting of the building to the rear. The removal of the curtilage listed building would not cause harm as it appears to display limited original features and is not essential to the understanding of the building. The large tree in the grounds already has consent for its removal.
18. In conclusion, and having regard to the long history of the building, only part of which concerns a public house, the change of use to residential and the works required to bring that change about would not cause serious harm. There would however be some harm through the loss of public access and through the insertion of the party wall. The level of harm is 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. This will be considered in the planning balance which follows the next main issue.

#### *Economic and Social Viability of the Community*

19. It is clear that since the building is no longer on the list of Assets of Community Value, it is able to take advantage of Part 3, Class A of Schedule 2 of the Town and Country Planning (general Permitted Development) (England) Order 2015 by which a change of use from Class A4 drinking establishments to Class A1 shops or Class A2 financial and professional services, can be carried out without express permission. There would however still be a need for planning permission for any physical works and listed building consent for any works that affect the interest of the listed building, but the principle of loss of the public house would not be in contention.
20. From the wording of Policy DM24 it is clear that there is a two-stage test; firstly, would harm be caused, and only if harm is found, the need secondly for viability and marketing to be considered. One way of measuring 'importance to the community' would be the Asset of Community Value regime, but that case has not been found. The settlement would not be left without any public house and the provision in the supporting text is to take account also of the facilities and services that would remain, and whether the range would be *seriously* diminished.
21. Wingham is a main road village but there is room either side of the road through the main part of the settlement for quiet enjoyment of the facilities on offer. Along that part is The Anchor Inn public house which appears thriving and attractive with its space in front and areas to the side and rear. It is said that it has music at times, but that would not preclude it providing alternative services to the Red Lion and its location and access appear superior. The other establishment is The Dog Inn, just to the west along Canterbury Road from the Red Lion, which presents a somewhat more 'up-market' appearance to The Anchor Inn and is described for its food and accommodation. It has space to the rear and parking.
22. By comparison, the Red Lion, notwithstanding its prominent position and attractive external appearance, appears to have had limited space other than parking to the rear. The location with two busy roads alongside does not

appear to present such an attractive environment when compared to either of the other two public houses.

23. Third party representation considers that there is conflict with the aims of policy on tourism in Wingham, and certainly there are aspects of the village and facilities nearby such as the wildlife park, that would attract visitors. Whilst the area around the Red Lion is significantly affected by traffic, the parish church is located beyond the junction and visitors would be passing the premises, albeit on the south side of the road due to the lack of footway here. Nevertheless, The Dog Inn would still provide facilities for visitors, although the opportunity to view the inside of the listed Red Lion would no longer feature in their visit.
24. Looking then at Policy DM24, the policy wording does not seek to quantify or qualify 'harm', although the supporting text does use the phrases 'the loss of these facilities *can* be a *severe* blow to the local community' and 'the range would be *seriously* diminished'. Whilst the evidence is that there would not be serious harm such as the reduction in services, and the effect would not be a severe blow, it is not possible in the terms of the policy wording to conclude that there would be no harm, as any reduction in the range, choice and variety available would cause some harm, although for the reasons set out above, this would be limited.
25. In view of this and for completeness, the second part of the policy should be considered and this is the viability and marketing test. A tour of the building revealed the need for further works and a reduction in the accommodation that could be offered due to the fire precaution regime. Either sums of money will need to be spent to bring back into use the abandoned rooms, or the premises would be severely limited in what it could offer. The appellant has supplied evidence of the need and likely cost, and the marketing has not produced viable offers that would be likely to lead to the retention of the public house. During the period when the premises were on the list of Assets of Community Value there would have been restrictions on the otherwise permitted change of use to Classes A1 and A2, but that time limit no longer applies. In any event, no firm, substantiated offer was forthcoming to retain the existing use while the Council's decision on the change of use that is proposed was deferred.
26. The listed nature of the building, particularly being at Grade II\*, would limit the possibilities for a thorough-going upgrade of the fire precautions, and whilst the additional doors on the ground floor have been inserted in a thoughtful way, they still jar somewhat with the historic fabric. The layout proposed for the residential use shows that *en-suite* accommodation can be provided that is far less intrusive to the historic layout of the building, as set out in the previous main issue, but such work adds to the costs to be recouped through a use that has failed previously.
27. It is concluded on the evidence presented that the provisions of Policy DM24 have been met, as the level of harm would be limited, and the premises are no longer commercially viable, with genuine and adequate attempts to market the premises as a pub having failed.
28. Lastly it is asserted by third parties that there is no need for additional housing in Wingham. However, the Council is stated to be unable to demonstrate a five year supply of housing land as required by paragraph 47 of the Framework, and this failure leads to consideration under paragraph 14, the presumption in

favour of sustainable development. In this case however, whilst there are no impacts that significantly and demonstrably outweigh the benefits, it is the alternative that counts in this case, and this provides for approving development proposals that accord with the Development Plan without delay.

### *Planning Balance*

29. The loss of the public house could occur through the permitted development regime, and the residential use provides the opportunity to retain features of historic or architectural interest, albeit no longer generally available to the public to appreciate inside the building. The present use is not entirely benign with regard to the listed building but overall some limited harm would be caused. That resulting from the loss of the public house has been justified through the marketing and viability evidence, but the harm to the listed building requires public benefits to be weighed in the balance.
30. The provision of housing in this highly sustainable location, close to remaining services and facilities, transport links and some employment would be a public benefit, particularly in view of the five year housing land supply situation. The improvements to the spatial presentation of the listed building and finding a viable future use weigh heavily too. In the balance, the limited harm is outweighed by the public benefits, such that the requirements of paragraph 132 and 134 of the Framework are met, as are the statutory tests in the 1990 Act and the provisions of Policies CP1, CM4 and CM24.

### **Conditions**

31. The Council put forward conditions in each case which would provide for materials to be approved; the layout of parking, turning, entry onto the road, cycle storage and drainage to be provided at the appropriate time; an archaeological involvement as requested; and covering the timing of demolition and other removals. On the latter points, it would be prudent to request details of any making good as it is not certain at present what will be uncovered. A condition is required on the planning permission, as suggested, naming the drawings, because otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans as this provides certainty.
32. Conditions on the listed building consent should cover the insertion of services including ventilation. The appellant however objected to the proposed condition to prevent cleaning, as well as painting or other surface treatment on any internal or external timbers as being too restrictive as it would strictly prevent cleaning during the life of the building, so that re-wording of this condition would be required.
33. A condition is proposed preventing removal of the sessions book. This is in a glass case fixed to the wall of the bar, in what would become a living room to one of the houses. The appellant considers this condition unnecessary as listed building consent would be required in any event. It appears that the item should be treated as a fixture and the appellant is therefore correct, particularly as the item is mentioned in the listing description. It is not for this Decision to pre-empt any future application, but thought should be given at that time as to whether this would be the best place for the item, its value resides in being in the place where it was once used, but also through being accessible to public view. Being left within the rooms of a private dwelling

would rob it of some value, and leave it open to loss and damage, however accidental. For the avoidance of doubt and as a signal to the future occupiers, the suggested condition should be retained with an additional requirement to inform the occupiers of the nature of the item, its importance and care.

## **Conclusions**

34. The effect on the listed building is acceptable and justified, and the change of use to residential would further the need to boost the supply of housing and would accord with the provisions of the Development Plan which seek to ensure that the loss of a public house is controlled. For the reasons given above it is concluded that both appeals should succeed.

*S J Papworth*

## **INSPECTOR**

### **Schedule of Conditions; Appeal A Planning Permission**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 150714/02D, 07F, 08E, 09B and 10B; and RLW/15/sk01-03.
- 3) No development above ground level shall take place in respect of the garden wall hereby permitted until a sample panel of brickwork to show bonding and type and style of pointing has been made available to view and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) The area shown on the approved drawings as vehicle parking space and turning space shall be provided, surfaced and drained before the first of the dwellings occupied, and shall be retained for that use thereafter whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, and re-enacting that Order with or without modification).
- 5) No development shall take place until details of bicycle storage facilities have been submitted to and approved in writing by the Local Planning Authority. The approved bicycle storage shall be completed prior to the first occupation of the development and shall thereafter be retained solely for that purpose.
- 6) Before the development is occupied or brought into use the vehicle turning area to allow for vehicles to exit the site in a forward gear, shall be provided in accordance with the approved details and that area shall be permanently retained and kept available for the said purpose.
- 7) All hard-standing for parking, turning and access shall be 60mm Marshalls Leyblok Bracken concrete block paving in accordance with the approved drawings.

- 8) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has previously been submitted to and approved in writing by the Local Planning Authority.
- 9) Before the construction of the highway access hereby permitted, details to prevent the discharge of surface water on the public highway shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved plans.
- 10) The visibility splay shown on the approved plans shall be provided prior to the occupation of the first dwelling and thereafter shall be so maintained. No structure, tree or plant within the approved splay shall exceed 900mm in height.
- 11) Before occupation of the dwelling hereby approved the buildings shown for removal on the approved plan shall be demolished and all materials arising therefrom shall be removed from the site, unless recycled on-site.
- 12) Prior to the demolition of the buildings pursuant to Condition 11) above, details of making good to exposed surfaces shall have been submitted to and approved in writing by the Local Planning Authority, and the making good shall be carried out as approved.

Schedule of Conditions; Appeal B Listed Building Consent

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) Prior to the commencement of works the following details shall be submitted to and approved in writing by the Local Planning Authority and the works thereafter shall be carried out in accordance with the approved details:
  - a) Details of mechanical ventilation, flues, soil, vent or other pipes to be installed including location, dimensions, colour, material and method of fixing.
  - b) Detailed drawings to scale 1:1 or 1:5 of typical details of all new joinery, including mouldings and glazing bars. Details of finishes shall also be included.
- 3) No painting or other surface treatment shall be carried out on any internal or external timbers at any time. Any proposals for cleaning other than dusting shall have first been submitted to and approved in writing by the Local Planning Authority.
- 4) The Sessions Book will remain *in situ* and shall not be removed or relocated without formal approval from the Local Planning Authority.
- 5) The requirements of conditions 3) and 4) above shall be brought to the attention of the future occupiers as part of a handover pack that shall have first been submitted to and approved in writing by the Local Planning Authority.