

Appeal Decisions

Hearing held on 8 November 2016

Site visit made on 8 November 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 01 December 2016

Appeal A Ref: APP/X1925/W/16/3154355

The Fox and Hounds, High Street, Barley, Royston, Hertfordshire SG8 8HU

- 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 Adrian Parkes of Parkes Barley Ltd against the decision of North Hertfordshire District Council.
 - The application Ref 15/01892/1, dated 6 July 2015, was refused by notice dated 15 January 2016.
 - The development proposed is the change of use and conversion of the existing public house to provide two 4-bedroom dwellings, with associated car parking spaces, new vehicular access onto High Street following closure of existing vehicular access, alterations to existing vehicular access onto Church End and ancillary works.
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Appeal B Ref: APP/X1925/Y/16/3154356

The Fox and Hounds, High Street, Barley, Royston, Hertfordshire SG8 8HU

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Adrian Parkes of Parkes Barley Ltd against the decision of North Hertfordshire District Council.
 - The application Ref 15/01893/1LB, dated 6 July 2015, was refused by notice dated 15 January 2016.
 - The works proposed are replacing two doors on the east elevation with windows and internal alterations to facilitate change of use of the public house to two 4-bedroom dwellings.
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Appeal C Ref: APP/X1925/W/16/3154357

The Fox and Hounds, High Street, Barley, Royston, Hertfordshire SG8 8HU

- 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 Adrian Parkes of Parkes Barley Ltd against the decision of North Hertfordshire District Council.
 - The application Ref 15/01894/1, dated 14 July 2015, was refused by notice dated 15 January 2016.
 - The development proposed is the erection of one 2-bedroom dwelling with two associated car parking spaces, alterations to existing access onto Church End and ancillary works.
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Decisions

1. The appeals are dismissed.
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Application for costs

2. At the Hearing an application for costs was made by Parkes Barley Ltd against North Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant submitted a revised proposed layout plan for the two dwellings in the pub building as part of the appeal (Ref MT/AP/015/029/04 Revision B). I made it clear at the Hearing that I would deal with Appeals A and B on the basis of this plan because the amendments to the internal layout would not prejudice anyone.

Main Issues

4. The main issues in these appeals are whether:
 - (a) the pub has been adequately marketed and whether it would be likely to be financially viable in the future
 - (b) the proposed developments as a whole, including the change of use, would preserve the listed building and preserve or enhance the character or appearance of the Barley Conservation Area.

Reasons

Policy and Background Regarding Proposed Change of Use

5. There are no relevant 'saved' policies in the development plan, the North Hertfordshire District Local Plan with Alterations. The Local Planning Authority (LPA) has sought to rely on national policy in the National Planning Policy Framework (NPPF).
6. In particular NPPF paragraph 28 states that local and neighbourhood plans should promote the retention and development of local services and community facilities in villages including pubs. The emerging local plan¹ (ELP) is currently the subject of public consultation until the 30 November 2016.
7. Draft Policy ETC7 states that planning permission for the loss of shops, services and facilities in villages like this will be granted where there is another shop, service or facility of a similar use within a convenient walking distance and where the proposed replacement use would complement the function and character of the area. It was agreed at the Hearing by both main parties that limited weight should be attached to this Policy. I agree because the ELP is at a comparatively early stage in its gestation, this policy could change and I am unaware of the level of objection to it. There is no in principle objection to residential use on the site by the LPA, only to the loss of the pub and the impact on heritage designations.
8. NPPF paragraph 70 states that in order to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should guard against the unnecessary loss of valued facilities, particularly where this would reduce the community's ability to meet its day-to-day needs.

¹ North Hertfordshire District Council Proposed Submission Local Plan 2011-2031

9. The LPA and appellant agree that The Fox and Hounds is a valued community facility, as evidenced by the large number of detailed objections to the proposed change of use and the attendance of many villagers at the Hearing. I attach little weight to the appellant's argument that it was the lack of patronage of the pub by village residents that in part resulted in the business closing due to its inability to make a profit. This is because many village residents have detailed instances of poor customer service or an inadequate choice of food or drink, which goes to the heart of what constitutes a good pub and which may well explain their dwindling patronage.
10. Additionally, the pub was listed as an Asset of Community Value (ACV) on 27 May 2016 and its Review confirmed it as such on 14 September, albeit that the appellant has appealed this decision to the appropriate higher authority. The ACV is not determinative of this appeal but it indicates, as the appellant concedes, evidence of community value.
11. There is another pub in the village, The Chequers. Although The Chequers is within a reasonable walking distance of the site, it is located at the top of the hill on the western edge of the village and anyone walking to it would have to negotiate a stretch of road with no footway and no street lights. It would be possible to do so but it would be a longer walk for most of Barley's residents compared to The Fox and Hounds, which is centrally located in the village and much more accessible, and it is unlikely that villagers would do so at night. I noticed on my visit that The Chequers is also a smaller pub, which could not accommodate as many people. For these reasons I consider the loss of the pub would reduce the community's ability to meet its day-to-day needs, albeit not remove its ability to meet its need for a public house because The Chequers would remain.
12. The central issue in Appeal A is therefore whether the loss of the pub is unnecessary, as the LPA, Parish Council and many residents claim, or necessary because it is simply financially unviable given the costs of the repairs that the building urgently needs, as the appellant claims. I address this matter below, but first I consider whether the property has been adequately marketed as a pub, which is necessary given the clash with NPPF policy.

Marketing

13. Mr Parkes purchased the property in February 2011 for £372,000 plus £21,500 for fixtures and fittings and reopened it in April 2011. Less than a year later, in early January 2012, it was being marketed for sale by Everard and Cole, national licensed property agents, at £495,000.
14. The appellant has provided evidence to show that the pub was under-trading before he bought it and lost money during his tenure so it is unclear why it was considered that the property had increased in value by £123,000 or 33% in less than a year. This is especially so given that only fairly basic repairs appear to have been carried out in terms of the works specified as necessary in the Cayford Building Survey Report of 13 December 2010; for instance, no repairs or investigative work to the chimney stacks were carried out and the roof was not re-covered as recommended.²

² As set out on page 15 of Stephen Culverhouse's Viability Submissions at Appeal dated 10 June 2016

15. The price at which a property is marketed is important. Whilst the price does not preclude an interested buyer putting in a lower offer it indicates the approximate level the seller hopes to recoup and most prospective bidders would be unlikely to put in offers substantially below the asking price. It seems to me that £495,000 was an unjustified asking price at the time, which would have been likely to deter prospective publicans. This is backed up by the view of Mr Griffiths, one of the two people who viewed the property, who it is stated in Everard and Cole's marketing summary could not see the value "anywhere close" to their marketing figure³. Everard and Cole marketed the property until 13 December 2013, a period of nearly two years, which is a more than adequate period of time, but I give little weight to this because of the inflated asking price.
16. The price was reduced to £395,000 when Marshalls started marketing the property on 6 May 2014. It was marketed at this price until 15 July 2015, when the application was submitted. I acknowledge the appellant's point that the price was reduced before the northern part of the original pub site was sold with the benefit of the February 2014 planning permission for a pair of semi-detached dwellings. But it is clear from the marketing details that this northern residential plot was always excluded from the sale. It is not disputed that this plot was sold for £200,000 in September 2015.
17. Whilst I acknowledge that this does not mean that £200,000 must simply be deducted from the original value of the site I would question whether reducing the price by only £100,000 was sufficiently realistic. This is especially given that the original asking price was inflated and because the need for repairs had become more urgent over time.
18. I see that the Marshalls marketing campaign attracted an offer of £300,000 from a Mr Brakenboro on 30 May 2014⁴. I also understand that Kathryn Brown made an offer of £260,000 in November 2014 following an independent valuation by Everard and Cole⁵. Another informal offer was received in July 2015 for £350,000⁶. All these offers were rejected.
19. The appellant argues that the valuation is justified by reference to data provided by Mr Culverhouse comparing evidence of selling price and turnover across eleven different public houses for sale in the region in 2014, and because Sidney Phillips also valued the property at this price. However, whilst acknowledging the former figures the lack of bidders either suggests the price was too high when taking into account the costs of the repair and redecoration works required or that the marketing was itself insufficient or ineffective.
20. For these reasons I conclude that the Marshalls asking price of £395,000 was also not a realistic asking price for the property. The marketing summary on page 23 of the original Culverhouse report is unclear because the print is too faint and in any case it only covers the first month of marketing. The PC argued that Marshalls is not a specialist agent for licensed premises and Rightmove is a residential website. I agree that this is the case and so I attribute less weight to the Marshalls marketing than to that by Everard and Cole.

³ Mr Culverhouse's original Viability Report & Business Appraisal dated 17 September 2015, page 20

⁴ Ibid page 24

⁵ Valuation Report for Kathryn Brown by Tom Nichols of Everard and Cole dated 15 April 2015

⁶ Paragraph 5.18 of appellant's appeal statement

21. Combined with my concern about the asking price I agree with the LPA that the evidence provided by the appellant in respect of this most recent period of marketing, between May 2014 and July 2015, is not sufficient for me to conclude that the marketing of the pub has been adequate despite it having taken place for a period in excess of a year.
22. The appellant stated that Marshalls also marketed the pub 'informally' between July 2015 and May 2016 in that if someone phoned the office asking about pubs for sale they were provided with the details for The Fox and Hounds, that Sidney Phillips also did so between January and May 2016 and that Everard and Cole had done so between December 2013 and May 2014. However, I attach little weight to this since it does not appear to have resulted in any viewings, or none that I have been informed of, and it cannot realistically be considered to be proper and effective marketing.
23. Mr Wade stated at the Hearing that the value of the pub had increased because the market for pubs had improved along with most property since Mr Parkes purchased the site in 2011, along with that for most property. But I have considerable doubts that the market for pubs improved during this period for the reasons set out on pages 31 to 33 of the original Culverhouse viability report.
24. In conclusion, the price that Everard and Cole marketed the pub at was too high, which would have put off potential pub landlords. The reduced price at which Marshalls marketed it was also too high and took insufficient account of the decreased value of the site resulting from the loss of the northern part of the land. Marshalls is also a predominantly residential estate agent as is Rightmove, and such websites are unlikely to maximise potential buyers. Such marketing was therefore inadequate. Even so, such marketing did attract three offers but all were rejected by Mr Parkes, albeit they were from property developers rather than prospective landlords. Indeed this further demonstrates that the price was too high to attract a publican.

Future Viability

25. The LPA argues that the pub could still be viable if the asking price was reduced to a reasonable enough level to allow a purchaser to repair and redecorate the building to a sufficient standard to enable trading to resume. In contrast the appellant argues that the works required to do so would make a pub business uneconomic and that in any case there is too much competition locally for The Fox and Hounds to flourish.
26. The appellant does not accept that the report by Trinity Solutions Consultancy Ltd (TSC) is an independent review of Mr Culverhouse's Viability Report because it was commissioned and paid for by the LPA. I do not accept this argument. It is no less independent than the Culverhouse Report itself, which was commissioned and paid for by the appellant.
27. I consider the TSC report to be a generally balanced assessment. It concludes that a pub would be unviable either as a 'Local Pub with Food' or as a 'High Quality Food Led Gastro Pub' at an asking price of £395,000 plus an allowance for the costs of works. It uses CAMRA's widely respected Public House Viability Test and merely shows that if the asking price was to be reduced to £285,000 and the cost of the works capped at £100,000 then it would in principle be capable of turning a profit by its second year of operation.

28. The appellant argues that this amount is nowhere near enough to bring the building and the site up to a state of repair and redecoration that would enable it to reopen as a pub. This is because the urgent works required within 12 months as set out in the Barker report⁷ total £325,260 and in the more recent Fabric quote⁸ £335,280 inclusive of VAT.
29. However, the LPA has pointed out that these quotes seem to be on the high side for many of the works proposed and I agree. For instance £20,000 for external decoration (£25,000 in the Barker quote) seems high given that the roof repair is dealt with separately and would itself be high at £55,000. Many other individual items in these quotes also appear to be on the high side for the works identified.
30. A new kitchen is said to cost £85,000. Mr Lawton of TSC suggested that this was a very high figure even for a restaurant/pub of 150 covers, which this pub does not have. Whilst I understand from the appellant that some of the portable kitchen equipment was stolen in break-ins and that the extractor and oven have depreciated beyond their useful life, they were clearly being used by his top-level chef until he left in December 2013. Although items including kitchen items depreciate I doubt that they have all depreciated to zero considering the appellant paid £21,500 for them in 2011. The thefts occurred during the appellant's ownership of the pub when he was responsible for its security. Whilst I do not dispute that a new kitchen is needed, this need is at least in part attributable to the appellant, notwithstanding that I consider £85,000 appears to be an inflated figure for its cost.
31. However, it is clear that £100,000 of works would not cover the costs of necessary urgent works. Mr Lawton suggested it would need between £150,000 and £200,000 spending on it now. He does not specifically justify how this figure was arrived at but it seems to me that a figure of approximately £200,000 would be likely to be sufficient for works to allow the pub to reopen because it is more realistic than the overly high quotes by Barker and Fabric. Even if the works were to cost £250,000, this should be reflected in a lower asking price to take them into account.
32. The TSC report states that the pub would be viable at a price of £385,000 (including £100,000 for the cost of the works). But if the works were to cost £250,000 then the value of the pub is only £135,000, which probably means that it should not be marketed at a price above £200,000. The fact that the appellant paid £372,000 for it in 2011 is irrelevant. The value of property can rise and fall and there is no onus on the planning system to ensure that people always make a profit in buying and selling it, which is an inherently risky business.
33. The appellant has also already recouped £200,000 from the sale of part of the site, albeit that he states that this money was used to pay off debts. So if it was only necessary to spend £200,000 on the works, as Mr Lawton does not unreasonably suggest in my view, then an asking price of £185,000 may still be achieved, which together totals more than the original price the appellant paid for the site in any case.

⁷ Building Survey by Barker Associates LLP 24 & 29 March 2016

⁸ Quote by Fabric Integration 18 May 2016, Appendix M of appellant's appeal statement

34. The value of a site rises and falls as a result of many factors, including in terms of commercial sites whether the business occupying it is successful. The appellant has described how despite his best efforts he has been unable to make a profit running the pub, which is why he was forced to close it. But that does not necessarily mean that another operator would not be able to do so if the site could be acquired for a reasonable price.
35. From the written representations and the evidence presented at the Hearing it appears to me that one of the reasons the pub did not make a profit was because the cost of wages in particular was disproportionately high compared to industry norms as a proportion of turnover. The appellant has, for instance, detailed the high cost incurred by the top level chef employed until December 2013. However, the typical menus provided⁹ do not appear to me to be any more than standard pub fare and the prices are lower than those typical of a gastro pub and do not appear to justify the high wage costs of a top level chef.
36. The high costs of wages may have been in part because of the need for Mr Parkes to be away during the week for the personal reasons he described at the Hearing. But this does not mean that another resident landlord could not run the pub with wages as a lower proportion of turnover.
37. I have detailed above why villagers' patronage of the pub may have dwindled. Competition with the other pubs in surrounding villages documented in the Culverhouse report may also have been a factor. Undoubtedly for pubs to be viable in this day and age it is necessary for them to attract more than local village custom by offering a welcoming environment and a good choice of quality food and drink. But there is no reason why this pub is incapable of attracting such clientele as these other pubs do. Just because the appellant was not able to do so does not mean that another publican could not.
38. The pub is located in a central position in a large village, which is within easy and convenient walking distance of most of its population. Its prime position in the village combined with its retained outdoor space, which would still provide sufficient parking and garden area for its customers, would mean that it would potentially have as good a chance as other local pubs of being viable and successful provided it could be purchased at a realistic price to account for the necessary works required.
39. This leads me to consider the impact of the proposed new house on Church End on the pub's future viability (Appeal C). This dwelling and its garden would remove the only remaining open area of the site that could feasibly be used as a pub garden, given that the current garden area to the north has already been sold off for residential development and the rest of the site is required for car parking. Customers of country pubs like this would expect it to have a garden for sitting out in the summer and hence the lack of one would harm its future prospects of being viable. For this reason the proposal in Appeal C would be unacceptable and contrary to NPPF paragraph 70.
40. I acknowledge the appellant's comments about the limited likelihood and feasibility of the LPA Conservation Officer's sketch proposals to open up the ground floor space of the pub and also that such works would add considerably to the cost of the overall works. But according to villagers the pub traded well under the previous landlord, which was during the financial recession, and so I

⁹ In Appendix K of appellant's appeal statement

have no reason to believe that such structural work would actually be necessary to re-establish a viable pub.

41. For the above reasons I conclude that the pub would, subject to it being marketed at a reasonable price and to the land fronting onto Church End being retained as set out above, be likely to be financially viable in the future.

Heritage Matters

42. It was agreed by the LPA's Conservation Officer that the internal physical alterations to the pub as contained in the revised layout plans and the preservation and maintenance of the pub sign that traverses Church End would be acceptable subject to appropriate conditions. There would be no serious loss of historic fabric.
43. The LPA argues that the loss of the pub's open curtilage would fail to preserve the setting of the Grade II listed building but it appears that this argument is more to do with the loss of the pub use than any impact on its physical setting. The appellant's Heritage Statement of Case (HSC) explains the historic progression of the listed building and its setting since its seventeenth century origins. It seems clear from historic photographs¹⁰ that there used to be a house located in approximately the same position as that proposed for the new house in Appeal C. In any case the new house would be nearly 12 metres away from the nearest part of the listed building. For these reasons I conclude that there would be no significant harm to the setting of the listed building.
44. Mr Blick for the appellant argued that there were also other outbuildings on the site and that it was not therefore open historically as Mr Simmons maintains. I agree that some outbuildings are shown on the 1877 map extract and note that Mr Blick says the last one was only removed by the time of the 1981 Edition of the OS Map although I have seen no photographic evidence of such. The site appears to have been at least partly if not mainly open since the designation of the Barley Conservation Area in 1969. But its current open nature, which mainly comprises a tarmac car park, does little to enhance the character or appearance of the conservation area and the proposed dwellings and their gardens would not in my view harm its overall physical character or appearance.
45. The LPA argues that the loss of the pub use would itself be harmful to the listed building and conservation area. The appellant in contrast contests that so long as the proposed use would not harm historic fabric and the historic pub use remains perceptible the loss of the pub use would not harm the building's heritage significance.
46. However, the HSC at paragraphs 4.7 and 6.2 clearly acknowledges the importance of the pub use, which dates back to 1797, albeit the original seventeenth century building was built as a house. The HSC cites various recent planning decisions where this was an issue but the most relevant one is that cited by Mr Simmons for the LPA, The Black Horse at Amberley appeal decision¹¹.

¹⁰ Heritage Statement of Case by Nathan Blick, Cotswold Archaeology, May 2016 – Photos LB8, 9 & 10 on pages 41 & 42

¹¹ APP/Y9507/A/12/2186992

47. This is because in that case the Inspector identified the pub as a building of large scale in the centre of the village whose heritage value or significance derived not only from the building itself but also from its communal history and value to society. He considered that The Black Horse, in its location within the village High Street, formed a valuable contributor to understanding the fabric and evolution of the place and for these reasons its loss would significantly erode the cultural value of that place. He concluded that the development value that would attach to the building in residential use meant that it was extremely unlikely that it would ever return to pub use. Moreover, the existence of the pub alongside the village shop, pottery and tea room and other activities such as tourist accommodation, was held to contribute to the vitality of the village.
48. The circumstances of this case are very similar and similar considerations therefore apply. The Hare and Hounds is a dominant building on a key bend on the main road in the centre of Barley, close to the village stores/post office, Parish Church and the village hall as well as opposite Richmond Coaches, a key employment site. It has been used as a pub for over 200 years and is a key part of the cultural life of Barley, as attested by very many residents. I conclude that its loss, especially given that it is unnecessary, would diminish the usefulness of the centre of Barley to villagers and others and would conflict with paragraph 131 of the NPPF, in the same way that the previous Inspector considered the loss of The Black Horse would diminish the usefulness of the centre of Amberley.
49. I agree with the appellant that the key significance of the listed building is its historic form and fabric and that since the loss of the pub use would not harm its historic fabric or setting there would be no loss of significance.
50. But I conclude its loss would fail to preserve or enhance the character of the Barley Conservation Area because the pub use is a central aspect of the historic and cultural development and vitality of uses within this central part of the village. The 'perceived' retention of the pub use, as would be shown by the two new dwellings in the building being named as per the last two names of the pub, would be insufficient to preserve this key cultural feature of the conservation area.

Appeal B

51. Although the physical alterations to the listed building would themselves be unobjectionable, they could not be carried out because I have concluded that the loss of the pub is unnecessary and contrary to national policy. Because these works are only required to fulfil the change of use to two dwellings such works are themselves unnecessary and therefore unacceptable, and so Appeal B is also dismissed.

Conclusion

52. For the reasons given above I conclude that all the appeals should be dismissed.

Nick Fagan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Adrian Parkes	Appellant
Mark Bassett	Freeths LLP
Mathew Wade	Musson Liggins
Nathan Blick	Cotswold Archaeology

FOR THE LOCAL PLANNING AUTHORITY:

Naomi Reynard	Planning Officer
Mark Simmons	Conservation Officer
Michael Lawton	Trinity Solutions Consultancy (TSC)

INTERESTED PERSONS

Jeremy Carlisle	Barley Parish Council
Yvonne Lee	Barley Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

1. North Hertfordshire District Council Local Plan 2011-2031, Proposed Submission version October 2016 including Proposals Maps (eLP)
2. Building Survey Report by AP Cayford FRICS, 13 December
3. Marshalls marketing leaflet
4. Valuation Report for Kathryn Brown by Tom Nichols of Everard and Cole, 15 April 2015
5. Appeal against ACV listing to First Tier Tribunal, 11 October 2016
6. Confirmation of Tribunal's receipt of such, email of 11 October 2016 and related email correspondence with PINS from appellant

End of Documents List