
Appeal Decision

Hearing held on 2 February 2017

Site visit made on 2 February 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 27 February 2017

Appeal Ref: APP/A4710/W/16/3157837

**The Holywell Inn, 249 Stainland Road, Holywell Green,
Calderdale HX4 9AE**

- 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 Christopher Gale against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 15/01442/CON, dated 28 October 2015, was refused by notice dated 4 March 2016.
 - The development proposed is conversion of public house and outbuildings to 6 apartments.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:-
 - Whether the proposed development accords with the development plan; and
 - If it does not, whether there are there material considerations, including the National Planning Policy Framework, which indicate that permission should be granted.

Reasons

Background

3. The Holywell Inn is a traditional stone built public house located at the junction of Station Road with the B62112 Stainland Road, which bisects the village of Holywell Green. It is very near the convenience store, post office and fish and chip shop. There is also a bus shelter outside the premises and a school crossing patrol operates here at the relevant times of the day to serve the needs of pupils attending the nearby primary school. If Holywell Green is a distinct community separate from Stainland to the west, it would be fair to say that, geographically at least, this section of Stainland Road represents the centre.

4. The topography is steep and Stainland Road rises along the side of a ridge towards the more linear settlement which gives it its name, whereas Station Road descends steeply into the valley of the Holywell Brook which contains industrial premises and a disused railway in addition to a cluster of tightly knit terraced streets in the corner formed by the two roads.
5. Housing in the village appears to have diversified over time since the original growth of the industrial settlement in Victorian times. Twentieth century housing is concentrated in estates; Bradley View around the primary school, West View and The Crescent further to the west, and in the vicinity of Shaw Lane closer in to the village centre, with some further such development at the eastern extremity of the settlement at Greaves Fold near the hotel complex known as 'The Rock'. Victorian properties of varying description are interspersed amongst the later development.
6. It is understood that the Holywell Inn, purpose-built as a public house with cellars and bedrooms, has traded more or less continuously as a public house of one description or another since 1822 but certainly from around that time. It ceased trading as a public house a few months after acquisition by the current owner, who is the appellant, and has since been vacant but secured. According to the Land Registry record it was acquired by the appellant on 24 June 2011 for £120,000 plus VAT.
7. It had, according to agents' particulars, been marketed for £180,000 net of VAT, a similar price to The British Oak (£185,000 net) in Wakefield. This was acquired simultaneously by the appellant at a price again recorded by the Land Registry as £120,000 plus VAT. I understand that the Land Registry records simply reflect a straight two way split of the £240,000 plus VAT agreed for the two properties as a 'bundle', reflecting what appears to have been a substantial discount on the asking price for the Holywell Inn. This has been explained¹ to the Chairman of the Holywell Community Pub Ltd (HCP) by the business agent Ernest Wilson & Co Ltd, in the context of its efforts to mediate the difference between the parties as to the value of the property.
8. The appellant explained at the hearing that, although he had limited experience of the licensed trade himself, he acquired the Holywell Inn as an investment with a view to turning its fortunes round, as it had not prospered under the ownership of Admiral Taverns. With this in mind he initially kept on the incumbent tenant, I was told, and apparently reduced the rent. Despite this, it seems that the pub continued to struggle and, at the end of December 2011, some six months after being acquired by the appellant, the doors of the Holywell Inn were closed for the last time. An application to convert it to housing was refused but the subsequent appeal was withdrawn and the condition of the building, understandably, has continued to deteriorate since. Fuller details of the planning history are set out in the officer's report on the subsequent application subject to this appeal and in the Statement of Common Ground (SoCG).
9. Although HCP, through the offices of an individual, has sought to acquire the building for cash, with a view to running it as a pub, and more besides, for the benefit of the community, no agreement on price has been reached and it is clear from all the evidence before me, including the SoCG, that negotiations have become mired in disagreement across a range of issues. Evidence

¹ Letter from Mr Jonathan Holmes to Mr John Walsh dated 1st May 2015

regarding value conflicts in some respects, but it is clear that HCP are constrained from meeting the aspirations of the owner by the professional advice they have received to date, including from the agents who originally facilitated the sale to the appellant. There is a substantial gap to bridge.

10. It is also clear to me from the planning history that the property is not without an element of 'hope value', a concept referred to in certain of the valuations carried out. Be that as it may, and despite its reputedly dismal condition internally, the Holywell Inn, in its current use, was designated an Asset of Community Value² by the Council in March 2013. This does not preclude, in planning policy terms, a change of use, but it is a material consideration nonetheless.

Accordance with development plan

11. In terms of design, residential amenity and parking, the Council accepts that there would be no conflict with the development plan, namely the Replacement Calderdale Unitary Development Plan (RCUDP). Policies BE1, BE2 and T18 respectively address those matters and I have no reason to disagree with the Council's assessment.
12. The Council further accepts that policy H2 is not up-to-date by reason of paragraph 49 of the National Planning Policy Framework ('the Framework') as it has only 4.8 years' supply of housing, a figure not disputed by any party. HCP suggests that the 'weighted' presumption in favour of sustainable development set out in paragraph 14 of the Framework is disengaged by reason of a recent legal ruling³ concerning paragraph 134 of the Framework. It suggested that that paragraph 70 restricts development in a manner that is analogous to paragraph 134 of the Framework which requires less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal, including securing its optimum viable use. The Council, which relies on the test in paragraph 14 in any event, does not share that interpretation and, bearing in mind also that it is for the Courts to decide the law, I am not persuaded that it is necessary for me to rely on footnote 9 to the Framework for the purposes of deciding this case, for reasons which I return to below.
13. Given that the proposal at issue is for housing, I acknowledge the appellant's contention that policy H2, which is permissive of housing in Primary Housing Areas, and the national imperative to boost significantly the supply of housing set out in the Framework pulls in a different direction to the RCUDP policy CF5, upon which the Council principally relies, but it is not at all uncommon for policies to pull in opposing directions – an apparent dilemma generally resolved by the weight to be variously applied to them. In this case, in the context of a 4.8 year land supply, as opposed to the requisite 5 year supply, and the small contribution that the proposed apartments would make to the borough's needs as a whole, I concur with the Council's view that undue weight should not be ascribed to the benefits of the housing. Indeed I accord only limited weight to that aspect of the appellant's case.
14. In doing so, I am conscious that the explanation to policy H2 itself is clear that the Primary Housing Areas are not intended to accommodate housing to the

² Under Section 87 of the Localism Act 2011

³ Doc 3 Transcript of Forest of Dean Council v SoSCLG and Gladman Developments Ltd [2016] EWHC 421 (Admin)

exclusion of all else. It states⁴, amongst other things, that... *"these housing areas will contain and require a mix of non-residential uses which support and enhance residential amenity by providing much needed local facilities such as shops, schools, religious and community buildings and public houses"*.

15. That observation within the RCUDP is consistent with the underlying intentions of its policy CF5, which specifically addresses development involving the loss, including through change of use, of village shops, post offices, public houses or hotels. That policy, it seems to me, is entirely consistent with the intentions expressed in paragraph 70 of the Framework. It is axiomatic that communities cannot function properly if housing is the only use of buildings, notwithstanding the importance of adequate numerical provision of dwellings and, applying paragraph 215 of the Framework, I have no hesitation in concluding that CF5 should continue to be accorded full weight as adopted development plan policy.
16. The policy requires those who would remove a community facility subject to the policy, in this case a public house, to demonstrably satisfy all of the four criteria enumerated. I address the topic of each criterion in turn:-

Need for the facility in the local area

17. I have not been presented with any reasonably objective index of need for public houses linked, for example, to population and its density. However, bearing in mind the drink-drive laws and the popular conception of a 'local', I do not consider it an unreasonable aspiration for communities to enjoy at least one such facility within easy walking distance. It is, moreover, clear from the local interest in this case and the individual letters submitted to the Council that local residents consider Holywell Green to be a distinct community separate, for example, from Stainland, a sentiment that is supported by the geography of the area as I have described it. Stainland is accessible but the establishments there would be an appreciable walk, especially, in view of the terrain, for the elderly and less mobile. Moreover, whilst I undertook the walk with relative ease on a pleasant afternoon prior to the hearing, I can see that in poor weather, especially at night, it would not be pleasant.
18. I can see also that efforts have been made to imbue the The Rock with something of the atmosphere of a 'local' notwithstanding what appears to be its primary function as a hotel/conference facility. However, this facility is relatively peripheral to much of Holywell Green for essentially the same reasons that facilities in Stainland are and, if anything, the gradient would be more of a deterrent even supposing its management were successful in making it attractive to a wide range of local customers.
19. Nor do I see that public houses can necessarily be restricted in number to enhance their viability, as the suggestion appears to have been made in connection with The Rock. That would deny the important role of competition and complementarity so that, for example, some might attract custom by their food offering and other facilities, whereas others might tend to be 'wet-led'.
20. It seems to me that the 'need' for a public house is as much about demand and perception as objective assessment and, whilst I am conscious that the licensed trade has been suffering difficulties, often said to be exacerbated by changing habits, the drink-drive laws and the smoking ban, people do still

⁴ Paragraph 5.4

continue to frequent public houses; and in this case the Holywell Inn has been used as such for almost two centuries. In that context it would be remarkable indeed if its recent difficulties could be ascribed solely to social and legal factors.

21. That the trade of the Holywell Inn has declined over the years seems beyond doubt, albeit I have been presented with no specific accounts to quantify that in business terms, but rather anecdotal evidence from a wide variety of local people who have made representations. This evidence also suggests that its troubles are relatively recent in the context of its long history and that they seem to have broadly coincided with the period since around the turn of the present century during which holding companies and a variety of relatively short term tenancies have been the pattern, rather than the historic control previously exercised by the Whitbread Brewery and management by longer term tenants. It seems that investment has been curtailed and custom has declined in a somewhat coincidental pairing.
22. The appellant asserts that need is catered for elsewhere; at the Rock, The Duke of York, the '1885' pub and restaurant, the Rose and Crown (all three in Stainland), The Queen and the Travellers' Rest (both in West Vale) and the two golf clubs in the area. It seems to me that the golf clubs would naturally tend to cater for different needs but I have briefly examined the circumstances and nature of each of the others mentioned and it is apparent that they are all markedly different, each possibly catering to its own specific clientele and/or specific locality. In any event the acquisition of the Holywell Inn as a going concern would have been an extraordinarily risky venture if the proximity and proliferation of other establishments were truly an indication of lack of need.
23. Need or demand for a public house does not guarantee success but, equally, lack of success does not necessarily indicate a lack of need or demand. The pub trade is notoriously challenging and it seems to me that, in the case of the Holywell Inn, the essential and mutually reinforcing ingredients of competence, commitment, energy and imagination have been in short supply in recent years, with a consequential and entirely predictable cycle of decline in the fortunes of the establishment having been experienced. This is well documented by the HCP and at first sight the Holywell Inn would not seem to be the sort of establishment where such a decline would be expected. It is not isolated within the countryside but neither is it in a marginalised urban area. Superficially at least it is an attractive, solid looking establishment at the heart of the village in a prominent location on a main road and evocative of the best welcoming traditions of such establishments. The 'Publicans Choice' website⁵ advertised for a tenant prior to closure with the description "*Lovely village pub, with all original features, excellent village spirit with regards to supporting their local pub.*" In addition to a potentially reliable walk-in evening trade from the village itself, bearing in mind its central location, it seems to me well placed to attract passing trade at, for example, lunchtime. Despite the lack of dedicated parking, there is no shortage of daytime on-street opportunity on Station Road.
24. As it is, the appellant's analysis of need goes little further than an enumeration of potential competitors; and the fact that he regards its value as higher than might be regarded as typical for pubs in the region⁶ suggests that he

⁵ Appendix 6 to submission by HCP

⁶ Appendix 12 to submission by HCP – 'comparable sales' appended to letter of 27/03/13 from Fleurets to HCP

considered, initially at least, that it had potential. Indeed he made it clear to me that it was his intention to realise that potential.

25. For all these reasons, despite the evident failure of recent times, and apparent lack of support from local customers⁷ as long ago as 2007, when the pub was owned by Admiral Taverns on a tied basis, I am not persuaded that the appellant's unfortunate experience and subsequent analysis indicates that the facility is not needed or that a latent demand does not exist. The evidence of HCP and individuals is that the community lacks what it used to have – an agreeable central social meeting place that the tradition of the 'local' best represents. The evidence of at least one former tenant, as noted above, does suggest a lack of need, if that equates to local support at the time of his tenancy, but there may be a variety of other factors, including lack of investment in maintaining the interior to an adequate standard, to explain why a public house that has historically survived at the centre of the community through constantly changing circumstances, including wars and depressions, has in recent years suffered a steep decline.
26. Many reasons for that are proffered by HCP and others. Different reasons are proffered by the appellant; but on the evidence before me I do not consider it has been conclusively demonstrated that there is no need for this particular public house. The appellant was clear that he saw potential and sought to maintain it as a pub, on his own admission with limited experience in the field, but in the event quickly decided to cut his losses and close it. His unfortunate experience in that respect is not to my mind necessarily a conclusive argument that the pub is not needed; rather it suggests, with hindsight, that a different approach may have been called for.
27. In short, it cannot be said that the first criterion of policy CF5 is satisfied. The fact that the Council has listed the Holywell Inn, in its present use, as a Community Asset adds weight, in the context of the objects of the policy, to the suggestion that it is a needed facility.
28. The Holywell Inn, at the present time, is simply a building with an authorised planning use, namely as a "*public house, wine-bar or other drinking establishment*"⁸. The fact that it is listed as a Community Asset currently constrains the scope to change its use through the exercise of permitted development rights.⁹ The market value of the building is a matter of dispute between HCP, who wish to acquire it, and the appellant who, it seems, is unwilling to sell it for the sort of price HCP have been advised is reasonable. Neither the value nor the dispute is a matter for me.

Viability as an operating business

29. The authorised use has not been carried out for five years and in that sense it is not an operating business. The appellant says he bought it essentially as a going concern with a view to operating it as such but I have no audited accounts to demonstrate whether or not it was viable at the time of acquisition. The appellant's building surveyor subsequently costed the extension and conversion of the building from a public house to a public house and restaurant, the so-called 'community scheme' (and also conversion to 6

⁷ Statement of Martin Conway dated 10/03/14

⁸ Class A4 of the Town and Country Planning (Use Classes) Order 1987 (as amended)

⁹ Ref: The Town and Country Planning (General Permitted Development) (England) Order 2015

apartments, a cheaper option) in October 2015. The cost of the 'community scheme' (assuming a start in the last quarter of 2016) was estimated at £469,000 plus VAT if applicable.¹⁰ He reported in detail to the appellant on the condition of the building in December 2012. At that time it was concluded that *"refurbishment of the existing building, including the first and second floors would be in the region of £201,566 plus VAT to enable the house and living accommodation to be brought back into use"*.¹¹

30. Clearly, those costings relate to alternative scenarios regarding the future of the Holywell Inn. Another perspective is offered by Fleurets on behalf of HCP.¹² Under the heading of feasibility as a public house it is noted that it is the "only public house in Holywell Green" (albeit this does not take into account the pub-like bar currently in operation at The Rock) but notes the competition in the surrounding area before concluding that it would need to trade as a wet led operation and would be unlikely to attract trade from beyond Holywell Green and the surrounding villages. It then notes that viability would be dependent on repair and refurbishment costs and the cost of acquisition, before advising as follows

"If the property were to be fully repaired and refurbished, I would envisage a trading potential in the region of £3,000-£4,000 per week, in which case I could see a property achieving a sale in the region of £170,000-£200,000. Taking into account the likely investment required to achieve this level of trade at an estimated £80-£100,000, and allowing a small profit to reward the operator for their time and effort in carrying out the scheme and turning the business round, it would suggest that the likely sale price of this property as a public house in its present condition, would be at or below £100,000."

31. In the subsequent summary the specialist surveying practice notes that they undertook an extensive (2 year) marketing campaign prior to concluding a sale (to the appellant) in June 2011, further noting the deterioration in the condition, especially internally, of the property and a refusal of planning permission, suggesting it to be in a significantly worse condition and situation than when it was sold for £120,000.¹³

32. Fleurets' overall conclusion was as follows:-

"I am of the opinion that as a public house an appropriate sale price is likely to be below £100,000 but taking into account the potential alternative use of the property, I would consider that a sale price in the region of £105,000-£110,000 would be reasonable in view of all the circumstances detailed above."

33. It is noteworthy that a locally based independent auctioneer and valuer also advised HCP by letter dated 25 March 2015, on the basis, inter alia, of "zero" goodwill, and anticipated necessary refurbishment that the value of the property subject to contract between willing buyer and seller (using the "accepted Whitby formula" based on main floor area) was £105,000.

34. Thus it seems that, notwithstanding the significant costs predicted by the appellant's building surveyor, professional opinion, including professional opinion specific to the pub trade, is to the effect that on the basis of simple

¹⁰Report of 23 October 2015

¹¹ Report of 17 December 2012 paragraph 9.4

¹² Appendix 12 to submission by HCP – letter of 27/03/13 from Fleurets to HCP

¹³ i.e. the price recorded at the land Registry

refurbishment as a traditional public house and realistic expectations as to purchase price, the Holywell Inn could well have a future along the lines of its historic use. Clearly, that assumes competent management and adequate entrepreneurial flair.

35. That said, I can see that a more ambitious 'front-end loaded' approach, for example comprehensive refurbishment, repair and extension to create a totally refurbished property with a restaurant at day one, would, under conventional business models of loan finance secured against capital value, be a dubious prospect.
36. Certainly since his decision to close the Holywell Inn the appellant is understandably constrained in thinking conventionally about viability, whatever his expectations of reasonable return at the time of acquisition and in that sense the viability of the Holywell Inn could be said to be questionable, not least in view of the deterioration in its condition that is very evident on internal inspection. Crucially, however, that goes directly to the acquisition cost for any party seeking to run it as a viable business, whether for a conventional wet-led local only or as a more ambitious and diverse enterprise.
37. All in all the evidence on viability is mixed. Having seen the condition of the building internally I would say that it would be challenging to refit the basically sound shell for anybody wishing to restore it quickly to its former viability as a village local. However, the evidence on value, including from surveyors specialising in the pub trade, suggests that with realism on the part of all, appropriate skill and enthusiasm on the part of the operator, so as to create an attractive offer and a welcoming environment, and an associated restoration of local support that has clearly (for a variety of reasons, it seems) evaporated over the last decade or so, the public house at issue could still have a future as such, providing finance is available, or could be made available on suitable terms.
38. I acknowledge that this is not a view shared by the appellant on the basis of his original aspiration and subsequent, albeit relatively short-lived, experience of trading pub ownership, but there is no compelling evidence supported by, for example, audited accounts to demonstrate that, in the hands of others, failure would be the only certain outcome.
39. For all the reasons I have given, I consider that resumption of the use of the building as a pub is clearly not a viable proposition in its current ownership but I also consider that there is some evidence at least to suggest that, in the right circumstances, it could be returned to use on a viable basis. In terms of the second criterion of the policy, therefore, whilst it has clearly ceased to operate as a viable business, it cannot safely be concluded that the future use of the building as a public house is, in principle, a 'lost cause' in viability terms.

Possibility of retention through community enterprise

40. The fundamental pre-requisite for retention of a community facility through community enterprise is of course the existence of a body of people willing to invest time and resources in developing and running such an enterprise. Given the history, track record to date and profile of the HCP, which has been responsible for a variety of initiatives to bring the community together with the ultimate object of securing control of the Holywell Inn and running it as a

community enterprise, I am in no doubt that the necessary commitment potentially exists within the community to do exactly that.

41. The essential will to conduct such a venture and the enthusiasm to carry it through is of course only a starting point. Success cannot be guaranteed in such a venture, as it cannot be guaranteed in any conventional and purely commercially motivated enterprise. Purchase or lease of the property at issue is a further pre-requisite if the Holywell Inn is to become the permanent base for the organisation which has sprung up in response to the possibility that the Holywell Inn might cease to be a public house at the centre of the village.
42. Mere refusal of the current proposal to convert the Holywell Inn to housing clearly would not, of itself, open up the possibility that the pub could be run by HCP; and the disagreement over the terms of disposal that was so evident at the hearing is not within my remit to adjudicate or material to my decision in any event. Attitudes and perceptions do change over time but neither can it safely be predicted that dismissal of this appeal would facilitate realisation of the HCP ambition to acquire the building. Other potential purchasers could conceivably emerge or the building may effectively be kept off the market.
43. That said, it is reasonable to assume that permission for a use of significantly higher value to private enterprise is likely to remove for all time the possibility that the Holywell Inn might be retained by a community owned and managed enterprise of the type contemplated by policy CF5. It seems to me that such possibilities are central to manner in which the policy is intended to operate in the sense that it can only be intended to promote the concept of community enterprise to retain needed facilities as an option of first resort ahead of more obviously lucrative alternative futures that would give rise to the loss of such facilities. The policy requires that all reasonable efforts have been made to investigate the possibility of setting up a community owned and managed enterprise.
44. The policy is unclear as to exactly where responsibility lies for such investigative work is but it is plain that owners of relevant properties may not necessarily be incentivised to seriously undertake such work. Therefore the possibility falls to be considered irrespective of current ownership circumstances which might, for any number of reasons, change in any event. The explanation to policy CF5 is clear, at paragraph 10.28, that... *"The Council is keen to ensure that all alternative methods of management have been explored and ruled out before a grant of permission is given."*
45. In this case it is very evident that there is already a community based organisation in existence, namely HCP, set up as an industrial and provident society, that is enthusiastic to take on the challenge if it has the opportunity to do so, albeit constrained by its avowed intention that it must be prudently managed as a viable enterprise with a return of profit to the community investing in it.
46. To that end HCP has commissioned a professionally prepared business plan. This is to the effect that with capital investment backed by loan finance in the order of £400,000 repayable with interest over 20 years, imaginative and energetic management and a comprehensive programme of refurbishment and extension into the existing garage to increase the sales area and provide a bistro-style alternative, complementary to the traditional heart of the premises and separately accessible from outside, combined with a range of offerings to

appeal to different sections of the community and passing trade, and a programme of events to increase profile and turnover, a healthy net profit could be achieved.

47. A business plan is of course only as good as its assumptions and the realisation of its aspirations. In this case, moreover, it is reliant on a purchase price of £100,000 for the premises and refurbishment/extension costs of £238,000, a figure that would fall well short of the £469,000 latterly calculated by the appellant's building surveyor for a conceptualisation of the 'community scheme'. The HCP representatives were not able to explain the building costs in detail beyond inclusion of costs of the order of the £201,566 calculated by the appellant's surveyor in 2012 for renovation works, but I am not persuaded that like is being compared with like, or that the appellant's latest costings, which are solely concerned with building/refurbishment works can meaningfully be taken in isolation from a trade-specific business plan based on community enterprise, as this is the essential context for the 'community scheme' or any variation thereof. It seems to me in any event that, in practice, there are numerous ways in which costs can be deferred, spread, reduced or avoided, if ultimately unnecessary, so as to keep them down; and HCP, I was told anticipate, in practice, a gradualist approach.
48. Nevertheless, it is clear that substantial upfront costs would be incurred under any scenario and the projected profitability in the business plan, between sixty and seventy thousand pounds net per annum, could be very significantly eroded by building/refurbishment costs of the order predicted by the appellant, albeit if all other assumptions were to hold good they would not be altogether eradicated. A conventional loan in the commercial market might be rendered more expensive or withheld on the perception of greater risk and it is clear to me that the HCP business plan cannot be regarded as definitive at this juncture. Were it to be carried forward into action in any form the HCP would need to be well advised every step of the way.
49. On the positive side, the HCP already seem to be demonstrating commercial acumen and it also has to be recognised that a business 'plan' is precisely that, with reality likely to be affected by changing variables over time in both positive and negative ways. In answer to my question, HCP confirmed that it represented a strategy rather than a blueprint and I have no reason to consider, on that basis, that it is insufficiently robust to identify and broadly chart a credible course ahead. It has, moreover, been independently scrutinised and endorsed by the review panel for the 'More than a Pub Programme' such that HCP's application for finance (loan and grant) can now progress to the next level involving an assessment by the programme's loan provider, Keyfund, and an independent assessment by an adviser from the Plunkett Foundation.¹⁴
50. In terms of policy CF5, despite the current uncertainty and wide scope for variance in respect of ultimate refurbishment and extension costs, I consider the initial success of the HCP in engaging the attention of the 'More than a Pub Programme', on the basis of its business plan as it currently stands, demonstrates that reasonable efforts are being made to investigate the possibility of setting up a community owned and managed enterprise. Moreover, given the stage HCP has reached and the support it has received

¹⁴ Doc 5

without even the certainty of having acquired the Holywell Inn, it is clear that such reasonable efforts have by no means been exhausted.

Future viability

51. Given my conclusions under the previous topic it cannot be said that there is no reasonable prospect of the Holywell Inn becoming a viable business in the future. Under current ownership it is clearly not a viable proposition. The circumstances and perceptions of the appellant are not conducive to that. It might even struggle to be viable in terms of the conventional approach of the licensed trade, albeit valuation advice is clearly to the effect that, if acquired as a conventional public house at a price which reflects the expenditure required and thereafter managed appropriately, it could become so. Importantly, however, it does seem that an imaginative community venture of the type that specialist organisations involved in community enterprise might support and assist in practical ways does hold out a reasonable prospect of viability under that alternative model, whether that be operated by HCP as the local current contender or some other vehicle of that type.

Conclusion on first issue

52. The policy is specific in the way it sets out its expectations of applications for development which would involve the loss of any of the listed facilities. All four criteria must be addressed before permission is granted on the basis of policy compliance. Failure to satisfy even one of those criteria would therefore potentially bring the proposal into conflict with the policy given that a clear balance of the considerations that the criteria address is required to demonstrate the facility to be uneconomic or surplus to requirements. As it is, I have concluded that at least three of the four criteria have not been satisfactorily addressed and that leads inexorably to the conclusion that it is not clear that the facility is either surplus to requirements or uneconomic. That in turn is conclusive that the proposed development to convert the public house to apartments does not accord with the RCUDP policy CF5.
53. Furthermore, given the explicit rationale of policy H2, which encourages and is permissive of additional housing in Primary Housing Areas subject to the contextual intention of maintaining them as balanced communities, it seems to me that the development plan taken as a whole stands against the proposal at issue because the weight in this case is substantially with the intentions of policy CF5. Public houses, amongst other things, are singled out as community facilities worthy of retention, if at all possible.

Material considerations

54. Numerous appeal decisions concerning the redevelopment of pubs for alternative uses have been canvassed by the parties and I am aware of other examples which have not. The HCP legal representative made the very pertinent observation that it is in the nature of the topic that all such cases turn on highly individual circumstances and, whilst they are potentially material, their actual materiality is, in practice very limited. I concur with that analysis. Decisions elsewhere cannot provide a template or demand a like approach because circumstances differ so widely. The circumstances in this case are in any event highly individual given the existence of a community

- enterprise set up with the specific object of restoring the Holywell Inn to the hub of village life.
55. The Framework is plainly an important material consideration and, amongst other things, it aims to boost significantly the supply of housing. However, that is not to the exclusion of other important factors contributing to sustainable development, sustainable communities and sustainable residential environments. Paragraph 70, read in context, is very clear that is the case.
56. Although policy H2 of the plan is not up-to-date by virtue of paragraph 49 of the Framework and I remain unconvinced as to the applicability of footnote 9 to the subject matter of paragraph 70, the 'weighted presumption' in favour of sustainable development would not operate in favour of the proposed development in any event. My reasons for this are set out below.
57. First of all, the development plan is neither silent nor absent in the case of the loss of pubs. Policy CF5 is the most directly relevant policy of the development plan. It is quite specific and in this instance there would be a clear breach of its terms and intentions if the appeal were to be allowed. That policy, moreover, is entirely consistent with the intentions of paragraph 70 of the Framework.
58. Secondly, bearing in mind the Council's position that the weighted presumption of paragraph 14 of the Framework is engaged because there is an inadequate supply of housing borough-wide and that H2 is not therefore up-to-date, even though it is generally permissive rather than restrictive of housing, I consider there would be adverse impacts arising from the grant of planning permission which would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
59. The three dimensions of sustainable development - economic, social and environmental - are inseparable from the 'golden thread' running through the decision making process and it is clear that paragraphs 18–219 of the Framework taken as a whole¹⁵ are fundamentally concerned, amongst other things, with the creation and maintenance of sustainable communities which are pleasant places in which to live. Adequate housing supply is of course important and achieving that is a national imperative. However, it is no part of Framework policy to pursue that to the exclusion of all else. An appropriately balanced approach is the clear intention, having due regard to the three dimensions referred to.
60. There are of course economic and social benefits that would be certain to flow from the creation of six small dwellings, but set against the economic and social benefits of restoring the Holywell Inn to its traditional role as a principal focus for social activity and interaction within the village, whilst creating ongoing employment in the context of a successful community enterprise of the type envisaged by HCP, these are relatively limited and capable, moreover, of being achieved in other ways, for example through a new-build scheme. The loss of the Holywell Inn from the centre of the village, on the other hand, would be a permanent detraction from the life of the community. Even allowing for the residual uncertainty as to the ability of HCP or another such organisation to reverse the fortunes of the Holywell Inn in the manner contemplated by the third criterion of Policy CF5, it would be wholly premature in the

¹⁵ Ref. paragraph 6 of Framework

circumstances evident here, to conclude that all reasonable efforts have been made to retain this important community facility by investigating the possibility of setting up a community owned and managed enterprise.

61. Amongst other things, the Framework as a whole emphasises the importance of the plan-led system and therefore conscious departure from the intentions of policy CF5 in that respect would be a distinctly negative outcome in terms of social and economic consequences. Environmentally, the retention of the building would of course be a beneficial outcome if sensitive conversion to housing retaining its essential qualities and visual contribution but, equally, successful retention in its present use would achieve that. Moreover, a lively and well maintained social venue at the centre of the village is likely to contribute to a pleasant ambience more significantly than the relatively passive option of apartments within the building. In environmental terms also the balance of advantage therefore resides with a well-run and well maintained public house.
62. For all the reasons I have given, I am firmly of the view that, in this particular instance, the adverse impacts of allowing the appeal would, in social, economic and environmental terms, significantly and demonstrably outweigh the benefits of the proposed conversion to housing when assessed against the policies of the Framework taken as a whole. The presumption in favour of sustainable development set out in its paragraph 14 does not therefore favour a departure from the intentions of policy CF5 of the Council's local plan notwithstanding that policy H2 is accepted by the Council to be not up-to-date for the purposes of paragraph 49.

Other matters

63. A further material consideration was raised by HCP towards the end of the hearing, namely that the current application is not supported by an up-to-date bat survey, or any bat survey at all, even though a condition of an approval originally recommended by officers (but not followed by the Council)¹⁶ would have required mitigation as recommended by the bat survey carried out September 2012. That survey is not before me and the appellant's response is to the effect that no such survey was asked for by the Council on this occasion.
64. Submissions were made by HCP to the effect that, by virtue of Article 12 of The Habitats Directive¹⁷ concerning protected species, it would be unlawful for me to allow the appeal; as the presence or otherwise of bats and the extent to which they might be affected is "unknown".
65. Whilst the appellant suggests the matter could be dealt with by condition, the advice of the relevant circular¹⁸ is that surveys required by condition after the grant of planning permission should only be entertained in exceptional circumstances. Bearing in mind that mitigation has clearly been recommended previously, it seems on the face of it that there is a reasonable likelihood of bats being present and affected by the proposed development. However, it is pertinent to note that the officer's report on the application which was supported by a bat survey stated that (the proposal)... *"is within an area identified as having a greater likelihood of bat roosts being present. A bat*

¹⁶ Application Ref 12/01089/FUL

¹⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

¹⁸ Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within the Planning System*

survey was submitted with the application and this found the building to have negligible or low bat roost potential."

66. Moreover, the circular also advises to the effect that a proportionate approach should only require surveys for protected species if there is a reasonable likelihood of protected species being present and affected by the development.
67. The appellant was not in a position to counter the HCP point on this matter with legal submissions and it is not for me to determine the law in any event. Suffice it to say that in the circumstances, and bearing in mind that time has elapsed and the building has remained vacant, it would arguably be incautious, notwithstanding the earlier survey conclusion reported, were I to allow the appeal without updated information at least concerning the prospect of bats being affected. However, the difficulty that the HCP submission would otherwise lead to does not arise because of my specific conclusions on the main issues, including the material consideration of Framework policy.

Overall conclusion

68. On analysis, for the reasons I have set out, the proposed development is, in this instance, in clear conflict with Policy CF5 of the RCUDP. Policy H2 might arguably pull in a different direction but the balance of planning advantage, in the context of the Framework, which was long-established as the principal expression of relevant national policy at the time of the Council's decision (even though the RCUDP itself pre-dates it), is currently very much in favour of retaining the Holywell Inn in its present use in order that policy CF5 is given adequate opportunity to work as the Council intends. The proposed development does not therefore represent sustainable development for the purposes of paragraph 14 of the Framework.
69. Material considerations which might otherwise indicate that permission should be granted are for the most part necessarily the concern of the analysis required in determining accordance or otherwise with policy CF5 and, whilst I have taken into account all other matters raised, no other material considerations, including those embodied in the Framework, sufficient to outweigh the clear conflict with the development plan taken as a whole have been identified.
70. On that basis alone, I am driven to the conclusion that the appeal should be dismissed. That conclusion is to a limited extent reinforced by, but in no sense reliant upon, the proposition raised concerning potential compromise to biodiversity interests and relevant law and practice in that regard.

Keith Manning

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr C Gale	Appellant
Mr J Holmes	Ernest Wilson
Mr D Hough MRICS	Building Surveyor

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Dunn	Planning Officer
Mr N Scanlon	Locum Planning Solicitor

INTERESTED PERSONS:

Mr J Walsh	Chairman: Holywell Community Pub Ltd
Mr S Stemp	Of Counsel
Mr C Judd	Vice-Chairman: Holywell Community Pub Ltd
Mr M Stead	Director: Holywell Community Pub Ltd
Cllr Pearson	Ward councillor
Mr D Humphreys	Local Resident

DOCUMENTS

- 1 Council's notification letters and list of those notified
- 2 Decision notice First-Tier Tribunal General Regulatory Chamber
Community Right to Bid CR/2013/0003 *Spirit Pub Co. Ltd/Friends
of Tumbledown Dick*
- 3 Transcript *Forest of Dean District Council v SSCLG and Gladman
Developments Ltd* [2016] EWHC 421 (Admin)
- 4 Dwg No 2011/05/02 A from Application 11/01578
- 5 Letter of 31/01/17 from Plunkett Foundation to Holywell
Community Pub Ltd
- 6 Sundry press coverage regarding management of The Rock