
Appeal Decision

Hearing held on 21 February 2017

Site visit made on 21 February 2017

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 04 May 2017

Appeal Ref: APP/P1045/W/16/3163696 The Ostrich Inn, Longford, Derby DE6 3AH

- 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 New River Property Trust No 4 against the decision of Derbyshire Dales District Council.
 - The application Ref 16/00220/FUL, dated 17 March 2016, was refused by notice dated 27 May 2016.
 - The development proposed is change of use of existing public house (A4) to form a single residential property (C3).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of existing public house (A4) to form a single residential property at The Ostrich Inn, Longford, Derby DE6 3AH in accordance with the terms of the application, Ref 16/00220/FUL, dated 17 March 2016, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by New River Property Trust against Derbyshire Dales District Council. This application is the subject of a separate Decision.

Main Issue

3. This is whether the loss of the public house and its conversion to a dwelling would unacceptably compromise the provision of community facilities in the area, with particular regard to planning policy.

Reasons

4. Saved policy S12 of the Local Plan¹ seeks to avoid the loss of important local services and facilities and is in two parts. The loss of a service or facility is subject to there being adequate alternative facilities in the locality or the applicant demonstrating that the existing use is no longer financially or commercially viable and there are no other viable means of maintaining the existing use. In light of paragraph 215 of the National Planning Policy Framework (the Framework), the weight attributed to policy is dependent on the consistency of the policy with the Framework. The Framework, at

¹ Derbyshire Dales Local Plan (November 2005)

paragraph 70, seeks to *guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs*. Whilst the criteria for assessing the appropriateness of loss differ, the overriding aims of saved policy S12 and paragraph 70 are the same; to prevent the loss of facilities that are important to the community. For this reason policy S12 is largely consistent with the Framework and as a result I give moderate weight to it.

5. In refusing the planning application, the Council considered the proposal contrary to the second part of saved policy S12 relating to viability, on the basis that insufficient information had been submitted with the planning application to determine if the existing public house is no longer financially or commercially viable, or that there are no other means of maintaining the existing use.
6. The Ostrich Inn traded as a traditional rural pub supporting a wide range of activities including a music festival and bonfire night celebrations and benefitted from the adjoining field as a caravanning and camping site. The public house's long term tenancy has since ceased, as have the activities. Since this tenancy ceased there have been a succession of tenants and evidence shows that since 2013 there have been repeated months when the takings have not exceeded £4000/month. When accounting for the deductions needed to cover costs such as the cost of capital and insurance, a return on capital of up to 20%, which is expected by most pub operators, is not being made. During the summer months operations have been more profitable, however, the average takings over the year remain insufficient to generate the profit demanded by pub operators.
7. The most recent tenant operates at the premises on a select number of evenings in the week and on Saturday and Sunday afternoons and evenings and serves food and drink. The tenant is supported by Marston's who pays the gas and electricity bills and supplies the beer with a percentage of the turnover being given to the tenant to cover costs such as wages and bills. For the Ostrich Inn, this percentage is in the region of 30%; in excess of 17%-20% which is more typical of the support that Marston's offers. Current operations are therefore heavily supported by Marston's with insufficient profits being made to sustain the business.
8. Food is currently served at the Ostrich Inn via an extensive menu. Evidence of the revenue from food was unavailable. The appellant explained that through a recent marketing exercise a food-led pub operator concluded that there is an insufficient catchment to support a pub focused on food, particularly given the competition from a growing number of gastro-pubs within the locality. The size of the catchment required was not stated, however, the Inn is within the open countryside and serves a modest sized population which implies limited trade. Furthermore, there is strong competition from surrounding pubs; the Red Lion, just over 1 mile from the Ostrich Inn serves food within a recently refurbished restaurant; the Three Horseshoes, just over 1.5 miles away from the appeal site has recently re-invented itself, serving high end food and drink; and The Saracens Head, just over 2 miles away is a country gastro-pub.
9. The option to run the premises as a competitive gastro-pub was considered. To do so would require a significant investment in the premises; not least to enlarge the kitchen and bar area to create the space needed for a pub that

specializes in high-end beer and food. When taking into account the limited catchment and local competition, a gastro-pub presents a high risk to a potential investor. Food alone, therefore, would not be a viable means to maintain the existing use.

10. Consideration has been given to refurbishing the premises to create a more attractive offer. It is estimated that an investment of over £300,000 would be required to put the Inn into a reasonable state of repair and therefore attract greater custom. To achieve a return on capital of up to 20%, a clear profit of £5000/month would be required over 5 years. Given the difficulty in sustaining takings of £4000/month before costs, a clear profit of £5000/month is ambitious and therefore refurbishment alone is not a viable option.
11. Using the premises as a bed and breakfast and reinstating the field for camping are reported to have been explored but to no avail. It is reasonable to surmise that the costs of making physical changes to the premises for a bed and breakfast, together with the additional costs of obtaining planning permission present a risk to a potential investor. However, as with the option to raise an income from the camping field, there is insufficient evidence before me to rule out these options as ways to maintain the existing use. I attach little weight, therefore, to these options in support of the requirement in saved policy S12 to identify no other viable means of maintaining the existing use.
12. The first part of saved policy S12 seeks to ensure that the development would not result in the loss of an important local facility or service *unless there are adequate alternative facilities in the locality*. It is necessary, therefore, to first establish the importance of the Ostrich Inn as a local facility.
13. The Inn is designated as an Asset of Community Value (ACV). The threshold for designating an ACV is relatively low with the local authority needing to have a realistic belief that the facility has a community use that could continue. The weight I attach to the designation of the premises as an ACV, therefore, is limited. Notwithstanding this, the ACV refers to a variety of activities that have taken place at the Inn in the past, including British Legion meetings, local bonfire night celebrations and being host to dominoes teams and the local elections. These activities have now ceased; in part as a result of changing tenancies. At the time of the hearing a pub quiz was imminent with seven people expected to attend. Beyond this, little in the way of community activities were taking place; instead there was hope that the activities would return if the premises could be invested in.
14. Concerns expressed by residents state that the Inn is a valuable public meeting place and a place where people enjoy a drink. I have no details before me on the nature and frequency of the meetings to conclude that the Inn is used regularly for meetings. Indeed, the function room is in a state of disrepair and is not conducive to meetings. Furthermore, whilst I have no doubt that residents do enjoy a drink at the Inn, the financial information does not demonstrate that it generates sufficient trade to make the business viable.
15. The Inn is within the open countryside and is therefore not within the heart of the village. Although accessible on foot from the village via public footpaths, the footpaths are, at times, difficult to follow, with sections poorly marked and the ground uneven and muddy. An alternative route on surrounding roads is unlit and hazardous; the lack of footpaths and the lack of fast moving traffic makes the route undesirable for pedestrians. The Inn is not, therefore, in a

location where the community can access it readily, other than by motor car, to meet their day-to-day needs.

16. A limited number of objections relative to the size of the community² were received in response to the planning application. A petition of over eighty signatures was submitted in response to the appeal, however only a small number of these signatures relate to residents who live locally.
17. In all, the evidence does not indicate that the Inn is an important local facility. During successive tenancies, activities have moved to other premises within the locality; darts are played at another public house, voting takes place at the local school and meetings are held in the local Pump House and at the Red Lion. There is no evidence to suggest that these alternative facilities are inadequate to meet the needs of the local community, furthermore, there was no indication that the activities that have ceased are dependent on the Inn being a viable business for them to return. In all, I find that there are adequate alternative facilities in the locality.
18. Returning to saved policy S12, I have found that there are adequate alternative facilities in the locality and therefore the proposal would comply with the first part of saved policy S12. I have also found that the existing use is no longer financially or commercially viable but other viable means of maintaining the existing use have not been demonstrated satisfactorily. The requirement in saved policy S12 is that a proposal complies with one or other of the two parts. Having found that the proposed change of use would comply with the first part of saved policy S12, I find no conflict with the development plan to consider dismissing the appeal on these grounds and in light of the policy's consistency with the Framework, I attach moderate weight to this.

Other considerations

19. The Council draws attention to the supporting text to policy S12 which states that *as part of their submissions for planning permission applicants will be required to demonstrate the extent to which they have marketed the business as a going concern*. A High Court decision³ confirms that something in the supporting text, if not referred to in the policy itself, cannot have the same force as a policy. The weight that I can give to the need for a marketing campaign, therefore, is equally limited. Since February 2016 the Ostrich Inn has been marketed, initially on a leasehold basis and then a freehold. The appellant reported that marketing was open ended with no guide price stated and advertising cast widely via mailshots, websites and targeted advertising to pub operators, including independent pub operators which the appellant identified as the premises potentially suiting. A number of people made enquiries and visited the property but no second viewings were requested. Interested parties raised concerns relating to viability; that the costs of refurbishment were high, the catchment area is small and borrowing would be difficult given the unviable nature of the business. Consequently no bids had been made to close the marketing exercise. Whilst I have no reason to doubt the appellant's assertions, I do not have evidence of the marketing campaign, beyond the particulars of the property, to be satisfied that the appellant has

² 10 objections out of a local population of 349 were received in response to the planning application.

³ *Cherkley Campaign Ltd, R (on the application of) v Mole Valley District Council & Anor* [2014] EWCA Civ 567 (07 May 2014) (paragraph 16).

demonstrated satisfactorily the marketing of the property as a going concern. However, given the limited weight attached to this requirement, the conflict with policy S12 is limited in this regard.

20. My attention is also drawn to policy HC15 of the Draft Local Plan⁴. The Draft Local Plan has been subject to consultation but awaits an examination and therefore I can attach limited weight to its policies. Policy HC15 is in two parts; the first part supports proposals that protect, retain or enhance existing community facilities; the second part states that where *development involves the loss of a community asset or facilities...including public houses (and) Assets of Community Value*, it must be demonstrated that (a) there is evidence to demonstrate that the existing use is no longer needed to serve the needs of the community, (b) the existing facility is no longer commercially viable, as demonstrated through a marketing exercise (as detailed) and (c) the use of the facility has been offered to the local community for their acquisition/operation at a realistic price. I have found that the use of the Ostrich Inn as a public house is no longer needed to serve the needs of the community. It has not been demonstrated that the marketing exercise carried out was for a continuous period of 12 months, nor offered to the local community. I find, therefore, that the proposal would conflict with policy HC15, although the weight I attach to this conflict is limited.
21. Paragraph 28 of the Framework promotes the retention and development of local services and community facilities in villages. As the Inn is located in the open countryside, east of the village of Longford, paragraph 28 does not apply.
22. The proposed development would include no external alterations and therefore would not impact on the character and appearance of the surrounding area or on the Longford Conservation Area. The Council raised no objection to the siting or design of the proposal and in the absence of any evidence to suggest otherwise, I concur. Any subsequent amendments to the development proposed and that require planning permission would be subject to a planning application and further consultation with the local community. Until such time the matter of character and appearance does not carry any weight in my decision.

Conditions

23. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance. In addition to the standard time limitation for commencement, I have imposed a condition requiring the submission and approval of landscaping details in the interests of the character and appearance of the area.

Balancing and Conclusion

24. Contrary to the Council's view I have found that the existing use is no longer financially or commercially viable although the limited weight to the alternative options to maintain the existing use means that the proposal would not be wholly compliant with the second part of saved policy S12. I have, however, found that there are adequate alternative facilities in the locality and therefore the proposed development would comply with the first part of saved policy S12.

⁴ Deposit Draft Derbyshire Dales Local Plan (August 2016)

25. The reading of saved policy S12 is such that a proposed development needs to comply with one part or other of the policy, not both. As the development would comply with the first part of the policy, the development would accord with the development plan, although the weight given to this in light of the policy's compliance with the Framework is moderate. In light of the limited weight afforded to the other considerations, I find no substantive reason to dissuade me from my findings that the development would be compliant with the development plan.
26. In coming to this conclusion I have taken into account the sentiments expressed by local residents for the loss of the Inn, however, the Inn is clearly not viable. When considering the proposal against planning policy, the proposal would not unacceptably compromise the provision of community facilities in the area or unacceptably reduce the community's ability to meet its day-to-day needs. The proposal would not, therefore, be contrary to saved policy S12 or paragraph 70 of the Framework. For this reason the appeal is allowed.

R Walmsley

INSPECTOR

CONDITIONS SCHEDULE

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. Prior to the occupation of the premises as a single dwelling a scheme for hard and soft landscape works relating to the curtilage of the dwelling shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - a. all vegetation to be retained including details of the canopy spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
 - b. measures for the protection of retained vegetation during the course of development;
 - c. all plant species, planting sizes, planting densities, the number of each species to be planted and plant protection;
 - d. finished site levels and contours;
 - e. means of enclosure;
 - f. hard surfacing materials; and,
 - g. a timetable for the proposed works.

The hard landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.

3. All planting, seeding or turfing comprised in the approved details of landscaping referred to under condition 2 shall be carried out in the first planting and seeding season following the first occupation of the building or the completion of the development, whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the local planning authority.

APPEARANCES

FOR THE APPELLANT:

Victoria Hutton	39 Essex Chambers
Monique Royale	Colliers International
Rachel Jones	Simply Planning
Justin Thomas	New River Property Trust No 4

FOR THE LOCAL PLANNING AUTHORITY:

Chris Whitmore	Area Planning Officer, Derbyshire Dales District Council
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INTERESTED PERSONS:

Michael Tunnicliffe	Parish Council
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DOCUMENTS SUBMITTED DURING THE HEARING:

Document 1 – Legal Note: Appeal by New River Property Trust No.4. The Ostrich Inn, Long Lane, Longford, Ashbourne.

Document 2 – Statement of Common Ground, Hearing date 21st February 2017.

Document 3 – Application for Costs, Appeal by New River Property Trust No.4. The Ostrich Inn, Long Lane, Longford, Ashbourne.