



Appeal Decisions

Site visit made on 1 August 2017

by Paul Dignan MSc PhD

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

Decision date: 25 August 2017

Appeal A: APP/P2114/X/16/3156444

Roadside Inn, Nettlestone Green, Seaview, PO34 5DX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Questmap Limited against the decision of Isle of Wight Council.
 - The application Ref. P/00678/15, dated 20 May 2015, was refused by notice dated 3 June 2016.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is Use Class A1 (shop) relating to the area shaded orange on the site layout plan together with ancillary storage within the existing outbuildings identified on the site layout plan (these buildings are not shaded orange).
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Appeal B: APP/P2114/W/16/3165764

Roadside Inn, Nettlestone Green, Seaview, PO34 5DX

- 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 Questmap Limited against the decision of Isle of Wight Council.
 - The application Ref. P/00767/15, dated 22 May 2015, was refused by notice dated 23 June 2016.
 - The development proposed is Change of use of letting rooms associated with former public house (at first floor level) to create 2 no. 1 bedroom apartments and 1 no. 2 bedroom apartment.
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Decisions

Appeal A

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Appeal B

2. The appeal is allowed and planning permission is granted for Change of use of letting rooms associated with former public house (at first floor level) to create 2 no. 1 bedroom apartments and 1 no. 2 bedroom apartment at Roadside Inn, Nettlestone Green, Seaview, PO34 5DX in accordance with the terms of the application, Ref P/00767/15, dated 22 May 2015, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos. 059 001 006 Rev A, 059 001 007 Rev B and 059 001 008 Rev B.
- 3) No further dwelling shall be occupied until space has been laid out within the site for 3 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.

Application for costs

3. An application for costs was made by Questmap Limited against Isle of Wight Council. This application is the subject of a separate Decision.

Appeal A - LDC

4. Both appeals concern the same property, a 2-storey former public house with a bar and kitchen on the ground floor and landlord's accommodation and rooms to let on the upper floor. The public house ceased trading in 2014 and was purchased by the appellant company, which has expressed an intention to develop it as a shop on the ground floor with flats above. Up until 6 April 2015 a change of use of a public house (Use Class A4 of the Schedule to the UCO¹) to use as a shop (UCO Class A1) was development permitted by Class A of Part 3 of Schedule 2 to the GPDO². After 6 April 2015 a restriction was placed on that change of use where a property was nominated or designated as an Asset of Community Value (ACT) under Part 5 Chapter 3 of the Localism Act 2011. The property was nominated as an ACT on 31 March 2015 and listed as such on 9 April 2015.
5. The application and appeal seeks to establish that a change of use of the property from UCO Class A4 to UCO Class A1 took place on 31 March 2015 and was therefore lawful before the GPDO amendment of 6 April 2015. The 6 April 2015 GPDO amendment had no retrospective effect. Use of the property as a shop carried with it a permitted development right under Class F of Part 3 of Schedule 2 to the GPDO for the change of use of the building to a mixed use for any purpose within UCO Class A1 (shops) and as up to two flats.
6. In its consideration of the appeal and subsequently the Council has used a modified description: "Continued use of ground floor as retail (Class A1)." The appellant has adopted this description in its appeal statements and accordingly I shall adopt it as the mutually agreed description of the development for which the LDC is sought.
7. The appellant's account of event is that it engaged Mr David Slathers from 23 March 2015 to carry out works to enable the use of the ground floor of the building as a shop. Mr Slathers made a statutory declaration on 30th March 2015 that he had carried out works for the conversion, described as "broadly comprised the removal of the former bar equipment, furniture, bar and flooring". He then made a further statutory declaration on 2 April 2015 that he had been engaged on 30 March 2015 to "manage/ operate the retail store at the former Roadside Inn" and further that "The store was open for business for the first time on 31 March 2015 and trades Monday-Friday between the hours of 10.30am-4pm from the ground floor of the building." Photographs of items

¹ The Town and Country Planning (Use Classes) Order 1987

² The Town and Country Planning (General Permitted Development) Order 1995

for sale within the premises, along with signs saying that payment could be made in cash only, have been provided. The items for sale described in the statutory declaration of 31 March 2015 as "Clocks, Cufflinks, Photo Frames, Hair accessories, Sanitary Wear, and Clothing" can be seen in the photographs, as can a banner hung outside declaring "Discount Store". A handwritten list of stock was provided, along with a list of sales (4) with matching sales dockets, and a "shop sales" sheet indicating that the shop was open on 31 March to 2 April 2015, then closed until 7th April 2015, again all hand-written. Apparently newspaper advertising took place later in April 2015, and the property was subsequently re-classified for Council Tax purposes, backdated to 31 March 2015, but since these events post-dated the GPDO amendment they can have little bearing on the matter at issue.

8. There appears to be no dispute that the relatively limited works to the former bar area had taken place by 31 March 2015, that the external signage was present and that there were items for sale within the building at that time. An account of a visit by a local Councillor, Cllr Barry, on 2nd April 2015 noted the items, though he was unable to gain access. However, the Council considered that the appellant had failed to demonstrate, on the balance of probabilities, that the shop had actually opened to the public on 31st March 2015, or indeed on any day prior to the GPDO change on 6th April 2015. This is because it has statutory declarations from neighbours, some of whom lived just opposite, that the shop did not open on 31st March 2015, and that it did not in fact open until after Easter 2015, that is by 7th April at the earliest.
9. What is not clear from the submissions of the interested parties who made statutory declarations is how they were certain that the shop was not open. None of the declarations refer to having attempted to enter or visit the shop. It is clear from Cllr Barry's visit on 2nd April 2015 that the signage, rudimentary as it was, indicated that the shop was open, notwithstanding that he was unable to get in on that day, and that the contents of the shop were much as Mr Stathers claimed were present on 31st March. Mr Stathers' statutory declaration of about 1 year later is that he did open the shop to the public for at least 4-5 hours on 31st March 2015 and that he made sales for cash on that day. Further, it is clear from his earlier declarations that there was a firm intention to make the change of use to a shop, primarily to take advantage of the associated permitted development rights, and the evidence indicates that the shop was stocked and ready to go, such as it was, by 30th March, so it would have taken little more than Mr Stathers' presence to commence the use on 31st March. I consider therefore, on the balance of probabilities, that his declarations of 2nd April and subsequently that he did trade on 31st March can be taken at face value. Accordingly I conclude that the change of use from Use Class A4 to Use Class A1 was effected on that day, and that the use was lawful before the 6th April 2015 amendment, and hence remained lawful thereafter.
10. It follows that the decision of the Council to refuse the LDC was not well founded, and this appeal succeeds accordingly and I will therefore exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B – against the refusal of planning permission

11. The Council assessed this proposal on the basis that the lawful use of the property remained as a public house. It did not have any concerns regarding the broad principle of development, but its reasons for refusing planning

permission for the conversion of the upper floor to flats related to the loss of public house facilities with implications for its viability, the loss of tourism bed spaces, to the detriment of the local economy, unacceptable living conditions for occupiers by reason of the relationship with the public house use on the ground floor, and the effect on highway safety. In the light of my decision on Appeal A, the only relevant reason now is the effect on highway safety, and then only partly.

12. The highway safety concerns arose primarily from the increase in the use of the existing access from Nettlestone Green, which is sub-standard in that visibility to the north is impeded to an extent by the front garden wall. However, having regard to the fallback position of the provision of 2 flats above the retail premises as permitted development, I consider that the increased use of the access that can be attributed to a single flat would not be so great as to justify withholding planning permission, considering that the access is long established and serves a good sized car park.
13. The impact of increased pedestrian use has also been raised, but again this would only need to be considered in respect of a single additional flat and in this context I have not seen any evidence of likely harm. From what I saw the site appears reasonably well served in relation to travel on foot. The Council's concerns about parking provision can be satisfactorily addressed by condition.
14. Overall I consider that the proposal would not conflict with Policies SP7, DM2 and DM17 of the Island Plan Core Strategy so far as they relate to accessibility and safe and sustainable travel.
15. The Council's suggested conditions are the standard commencement condition and a condition requiring accordance with the submitted plans, which I agree is necessary for clarity and in the interests of good planning. In the interests of highway safety I shall also impose a condition requiring the provision of parking bays and turning/manoeuvring areas within the site to ensure that cars can enter and leave the site in a forward gear, in line with the Highway Authority comments.
16. From the evidence available I consider that the development accords with the provisions of the development plan, read as a whole. Accordingly, having considered all other matters raised I allow the appeal.

Paul Dignan

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 20 May 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use was commenced on 31st March 2015 at which time it was development permitted by Class A of Part 3 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995, then in force.

Signed

Paul Dignan

Inspector

Date: 25 August 2017

Reference: APP/P2114/X/16/3156444

First Schedule

Continued use of ground floor as retail (Class A1)

Second Schedule

Land at Roadside Inn, Nettlestone Green, Seaview, PO34 5DX

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 25 August 2017

by Paul Dignan MSc PhD

Land at: Roadside Inn, Nettlestone Green, Seaview, PO34 5DX

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