



Appeal Decision

Hearing held on 11 April 2019

Site visit made on 11 April 2019

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8th May 2019

Appeal Ref: APP/M1595/W/18/3197444

The Kings Head, The Green, West Tilbury RM18 8TU

- 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 Tamarisk Road Development Limited against the decision of Thurrock Borough Council.
 - The application Ref 17/01446/FUL, dated 23 October 2017, was refused by notice dated 22 December 2017.
 - The development proposed is change of use of a listed building formerly used as a Public House (A4) to a single 4-bedroom residential dwelling (C3), including the removal of the recent toilet block extension and redundant outbuildings/sheds and the creation of a new garage as well as associated changes to the hard and soft landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of a listed building formerly used as a Public House (A4) to a single 4-bedroom residential dwelling (C3), including the removal of the recent toilet block extension and redundant outbuildings/sheds and the creation of a new garage as well as associated changes to the hard and soft landscaping at The Kings Head, The Green, West Tilbury RM18 8TU in accordance with the terms of the application, Ref 17/01446/FUL, dated 23 October 2017, 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: 3513_PL101, 3513_PL102, 3513_PL103, 3513_PL104, 3513_PL105, 3513_PL106, 3513_PL107, 3513_SK108, 3513_PL109, 3513_PL110, 3513_PL111.
 - (3) Written details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the local planning authority prior to their use. The development shall be carried out using the materials as approved.
 - (4) Prior to the occupation of the development hereby permitted, details of both hard and soft landscaping works to be carried out shall be submitted to and approved in writing by the local planning authority. These details shall include the layout of the hard landscaped areas with

the materials and finishes to be used, and details of the soft landscaping works including schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers/densities and details of the planting scheme's implementation, aftercare and maintenance programme. The hard landscaping works shall be carried out as approved prior to first occupation of the development hereby approved. The soft landscaping works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development, unless otherwise first agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.

Application for costs

2. At the hearing an application for costs was made by Tamarisk Road Development Ltd against Thurrock Borough Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is the current and future potential of the appeal site as a community facility and the effect of its loss.

Reasons

4. The appeal site is within the village of West Tilbury and is occupied by The Kings Head, a public house which has been closed since early 2016. It dates from the late 18th century and is a Grade II listed building. It was purchased by the appellant in May 2016 for £300,000 plus VAT and stamp duty. A planning application to convert the public house into 3 dwellings and construct 4 dwellings within the grounds was withdrawn in August 2016, mainly due to heritage and Green Belt issues. The public house was designated as an Asset of Community Value (ACV) in December 2016.
5. Policy CSTP10 of the Thurrock Core Strategy and Policies for Management of Development 2015 (CS) requires, amongst other things, the safeguarding of community facilities and will only allow their loss in circumstances where appropriate facilities of equal or better quality will be provided as part of the development. Although not specifically mentioned in the policy's supporting text, the main parties agree that public houses represent a community facility.
6. The National Planning Policy Framework (NPPF) also recognises that public houses are community facilities. NPPF paragraph 83(d) seeks to retain and develop such facilities, while paragraph 92(c) seeks to guard against the loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.
7. The proposed development would result in the loss of a public house with no replacement, and so would conflict with Policy CSTP10. However, the NPPF does not require replacements in such circumstances and so there is some inconsistency with national policy. Nevertheless, as Policy CSTP10 aims to

retain existing community facilities in line with the NPPF, it can be afforded reasonable weight.

8. At the hearing, the Council confirmed that there is no specific guidance on how to address proposals involving community facilities, and that each proposal is dealt with on a case by case basis. The ACV designation provided a moratorium period on the sale of the public house to anyone other than a community interest group, but this period has expired. Nevertheless, the ACV designation can be a relevant material consideration in planning decisions.
9. The appellant and Council agree that the public house is not commercially viable. These are the findings of the appellant's viability report by Capital Business Strategies (CBS), which are broadly agreed with by Bespoke Property Consultants (BPC) in their review of the report on behalf of the Council. The findings are based on a purchase cost of around £300,000 and refurbishment costs of between £162,000 and £200,000. Once operating costs and the manager's or owner's income is deducted from estimated annual sales of around £210,000, the remaining profit would be between £7,000 and £10,000 per year.
10. The financing of a mortgage to pay for the purchase and refurbishment costs would involve annual repayments of between £32,400 and £47,460, while a mortgage to pay for the refurbishment alone would involve annual repayments of between £11,364 and £18,984. These figures are based on different financing scenarios by CBS and BPC, but in any event, the repayments would exceed the remaining profit, meaning that it would be unviable to operate as a conventional commercial public house.
11. The key area of dispute between the appellant, the Council and interested parties is whether it would be viable for a community group to run the public house. West Tilbury Community Pub Ltd (WTCPL) has been established as a community group and were represented at the hearing. WTCPL state that their group has a range of members with different resources and professional skills that could reduce some of the refurbishment costs. Volunteers would help to run the public house to reduce wages, while opening hours could be tailored to meet demand. A tenant could be appointed by WTCPL to run the business and pay rent to the group. Funding opportunities have been explored by WTCPL, including grants. Nevertheless, I have limited evidence from the WTCPL on the likelihood of securing sufficient financial and voluntary resources.
12. A report by MJD Hughes on behalf of WTCPL values the public house at £330,000. Similar public houses in Essex have been sold or advertised at similar prices. The report considers that annual sales of around £156,000 are achievable to begin with. There are fewer details in the report in terms of operating costs, which casts doubt on operating profits of £31,000. Moreover, the report only allows for £7,000 towards fixtures and fittings to re-open the public house, which is substantially less than the estimated refurbishment costs of either CBS or BPC. Based on my site visit observations, it is evident that the public house needs a large sum spending on it prior to any re-use, with a leak in the roof and collapsed ceilings in some rooms. The report makes no reference to the financing of any purchase and refurbishment, whether by conventional mortgage or by any other means such as grants and/or voluntary efforts. Therefore, the report does not provide sufficient evidence that the public house could be run by a community group in a viable manner.

13. The community in West Tilbury has explored the purchase of the Kings Head with the previous owner (Punch Taverns) and the appellant, but no agreement has been reached over a sale. The appellant has indicated that the minimum purchase price would in reality be around £374,000 to take account of VAT and stamp duty. The building was advertised at auction in May 2017 with a guide price of around £555,000 as part of a 7 dwelling residential development scheme, but failed to meet the reserve. The building is currently being marketed by a local estate agent for a variety of uses subject to planning permission, with the price on application. According to the appellant, there have been 7 or 8 viewings over the last few years but no firm interest due to the refurbishment costs.
14. I note interested parties' comments that the public house was thriving and popular before long-standing tenants retired with the last tenants showing little interest in the running of the business. However, evidence provided by the appellant indicates that the demand for drinks at the public house declined between 2012 and 2016, while its rateable value declined from 2000 onwards. The number of public houses nationally has reduced significantly in recent years. West Tilbury is a small village with a limited population that would make it hard on its own to sustain a public house notwithstanding the benefits of not having to drive. The village is close to large urban areas with the opportunity for many people to travel to the public house including from new housing developments. However, there are several other public houses in the local area and little evidence to suggest that a re-opened Kings Head would attract sufficient custom.
15. The Council considers that it is the responsibility of the appellant to provide evidence to demonstrate that a community-run public house would not be viable. However, I consider that this is difficult for the appellant to achieve as they do not know the requirements and skills of any community group, or the likelihood of such a group securing sufficient funding and voluntary support to purchase, refurbish and operate the public house. Moreover, there is no policy requirement in CS Policy CSTP10 for the appellant to provide such evidence. It is apparent that WTCPL has been attempting to take on the running of the business. However, there is a lack of evidence, including within the MJD Hughes report, to show that WTCPL or any other community group could run the public house in a viable manner.
16. The loss of the public house to residential use would leave West Tilbury with one other community facility in the form of the village hall. It is apparent that this facility provides opportunities for meetings and events, although lacks a licence and is not open to the general public in the same way as a public house. Furthermore, as an ACV, the public house is evidently valued locally. As such, the loss of the public house would have a negative effect on local community facilities. There would also be conflict with CS Policy CSTP10 as noted above and it would not comply with NPPF paragraphs 83(d) and 92(c). However, the degree of negative effect is tempered by the fact that the public house is not viable as a commercial venture, while the evidence is lacking that it could be run in a viable manner by a community group. As such, I only afford moderate weight to the negative effects and policy conflict.
17. Turning to the benefits of the proposed development, it was confirmed at the hearing that the Council cannot demonstrate a 5 year housing land supply, with the figure currently standing at 1.25 years. The provision of a single dwelling

would contribute in a small way towards boosting housing supply, while it would also secure the refurbishment and long-term use of a listed building. As such, I afford moderate weight to the benefits of the development. Therefore, having regard to the presumption in favour of sustainable development in NPPF paragraph 11, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits.

18. In conclusion, it has not been demonstrated that the appeal site has current or future potential as a community facility. The effect of its loss and the conflict with CS Policy CSTP10, while negative, would not be sufficient to dismiss the appeal when weighed against the benefits of the proposed development. Therefore, this indicates that planning permission should be granted in this instance.

Other Matters

19. The Kings Head is a Grade II listed building and located within West Tilbury Conservation Area. The building dates from the late 18th century and has been used as a public house for a long time. The use forms part of the history and function of the building and village. As such, the use contributes positively to the special interest of the listed building and the character and appearance of the conservation area. The change of use would result in harm to the significance of both the listed building and the conservation area.
20. However, as the evidence before me has not demonstrated that a continued public house use is viable, on either a commercial or community basis, the level of harm would be low. The public benefits of the development in terms of securing the long term future of the listed building and providing an additional house to local supply would outweigh the harm.
21. External changes to the building to amend windows and doors and remove a later single storey side extension would have a modest effect on its appearance and could be controlled by condition. Listed building consent (17/01447/LBC) has already been granted for the proposal, including internal changes to room layouts to facilitate residential use. Therefore, the special interest of the listed building and the character and appearance of the conservation area would be preserved.
22. A public house use would generate employment, but as it has not been shown that such a use would be viable, I can give this very little weight. I note concerns about the risk of further dwellings on this site, but any proposal would require a fresh planning application and would need to be considered on its own merits. My attention has been drawn to a dismissed appeal decision for a similar proposal in nearby Grays (APP/M1595/W/16/3154574) but I do not know the full circumstances of that case and have determined this appeal on the evidence before me.

Conditions

23. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for clarity and compliance. Conditions relating to materials and landscaping are necessary in the interests of the character and appearance of the area. The conditions on the listed building consent refer to the provision of specific details including internal works, and so it is not necessary to repeat them on the planning permission.

Conclusion

24. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Raymond Stemp	Raymond Stemp Associates Ltd
Dr Amer Hirmis	Capital Business Strategies Ltd
Paul O’Nion	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Lucy Mannion	Thurrock Borough Council
Andy Leahy	Bespoke Property Consultants

INTERESTED PARTIES WHO SPOKE AT HEARING:

Peter Adams	West Tilbury Community Pub Ltd
Allen Jones	West Tilbury Community Pub Ltd
Kevin Humphreys	