



Appeal Decision

Site visit made on 16 July 2019

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2019

Appeal Ref: APP/C3105/W/18/3216818

The Pheasant Pluckers Inn, Burdrop, Banbury, Oxon, OX15 5RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Geoffrey Richard Noquet against Cherwell District Council.
 - The application Ref: 18/01501/F is dated 20 August 2018.
 - The development proposed is described as a change of use from A4 (ACV Listed) to C3.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address given on the planning application form is stated as 'Street Through Burdrop' and it does not reference a postal town. I note that the street does not appear to have a postal name, therefore for the avoidance of confusion I have used the address set out in the Planning Appeal Form.
3. The appeal has been submitted due to the failure of the Council to give notice of its decision within the prescribed time period. The Council has subsequently advised it would have refused the application for the following reason:

The proposal would result in the loss of a valued village service and Asset of Community Value which, on the basis of the application and the submissions received, it has not been demonstrated to be unviable in the long-term. As such, the loss of the public house would lead to an unacceptable impact on the local community and also on the character and appearance of the conservation area and would therefore be contrary to saved Policy S29 of the Cherwell Local Plan 1996, Policies ESD 15 and BSC 12 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance and advice on supporting and building a strong, competitive economy and promoting healthy and safe communities contained within the National Planning Policy Framework.

4. I have noted the Council's concerns in considering the main issues.

Main Issues

5. The main issues are:
 - Whether it is demonstrated that the public house, as an Asset of Community Value (ACV), cannot be financially viable in the longer term;

- The effect of the proposed development upon locally and nationally designated heritage assets;

Reasons

Background

6. The appeal site comprises a public house premises (herein referenced as 'pub') in the hamlet of Burdrop which lies in the countryside close to the villages of Sibford Gower and Sibford Ferris. The pub was previously known as the 'Bishops Blaize', and more recently the 'Pheasant Pluckers Inn'. The planning history of the appeal site is extensive, so I shall only summarise the history for context. The premises were bought by Mr and Mrs Noquet in 2006 and closed initially in 2007. Previous appeal decisions explain that following the initial 2007 closure, the pub has been open for varying limited intervals and limited hours, up to at least 2017.
7. Applications to change the use of the premises from a pub to a dwelling/house submitted in 2006, 2007, 2012 have been refused planning permission and two certificates of lawfulness for use as a dwelling/house submitted in 2012 were also refused. An appeal against an enforcement notice issued in 2012 for an alleged material change of use of the pub to a dwelling was dismissed in 2012 under Ref: APP/C3105/C/12/2170904 (the 2012 appeal). An appeal against the refusal of the 2012 application to change the use to a dwelling was dismissed in 2013 under Ref: APP/C3105/A/13/2190714 (the 2013 appeal).
8. In February 2016 the pub was listed as an Asset of Community Value (ACV) under the Localism Act 2011. In 2017 a planning application was refused for a change of use from the pub to a dwelling/house. This was dismissed at appeal in 2018 under Ref: APP/C3105/W/17/3191365 (the 2018 appeal) issued on 4 July 2018.
9. The decision letters for the 2012, 2013 and 2018 appeals have been submitted in evidence by the Council, and I have duly noted their contents. The appellant has emphasised that they have submitted the current application following what they consider to be their compliance with the Inspector's findings in 2018.

Planning Policy Context

10. The development plan includes the Cherwell Local Plan 2011-2031 Part 1 (2015) (CLPP1) and saved policies in the Cherwell Local Plan (1996) (the CLP). Whilst there is general support for the provision of a single dwelling within the built-up limits (Policy Villages 1 of the CLPP1), Policy S29 of the CLP states that proposals involving the loss of existing village services that serve the basic needs of the local community will not normally be permitted. The explanatory text to the policy acknowledges the difficulty of resisting this when they are proven to be no longer financially viable in the long term. Policy BSC12 of the CLPP1 seeks to encourage facilities to enhance the sustainability of communities.
11. Paragraphs 83 and 92 of the National Planning Policy Framework (the Framework) require that planning decisions retain and guard against the unnecessary loss of valued and accessible facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. Whilst the Framework not does not specifically mention proving viability, saved

Policy S29 of the CLP and Policy BSC12 of the CLPP1 are considered compliant with the objectives of the Framework and therefore given significant weight.

Longer Term Viability

12. The value of the pub to the local community is evidenced in its designation as an Asset of Community Value (an ACV) and acknowledged in the 2012, 2013 and 2018 appeal decisions, in spite of it appearing not have been opened permanently for full and regular hours since 2007. Representations submitted to this application and appeal indicate support for retaining the facility.
13. The 2012 appeal Inspector concluded that various marketing exercises by the appellant had set the price unrealistically high and had not demonstrated that the pub was not viable in the longer term. In the 2013 appeal the Inspector considered viability taking into account expert evidence from the appellant and the Council which suggested a value between £240,000 – £275,000¹ for the premises. Whilst this was considerably below what the appellant paid in 2006, the Inspector concluded that there were insufficient grounds to conclude the pub would not be viable in the long term.
14. The 2018 Inspector considered a report by a Chartered Surveyor (commissioned by the Council in 2017) and the results of marketing by the appellant to sell the pub between October 2015 – August 2017, for around £395,000. The Inspector concluded: the balance in favour of the development plan was marginal; doubts over the local population to sustain a second pub/gastropub; and, the suggested onus on the local community to demonstrate viability and make a considered bid for pub in spite of poor relations between the community and the appellants. The Inspector concluded overall, that it had not been demonstrated that the pub cannot be made viable in the longer term, so the change of use would conflict with the development plan and the Framework. In this current appeal the appellant, is relying upon the concluding remarks from the Inspector, suggesting the community make a considered bid for the premises.
15. Unlike the previous three appeals, I have not been in receipt of detailed expert evidence in respect of viability. The appellant has provided some press articles setting out the rate of public house closures in recent years. Whilst I acknowledge the challenges facing rural public houses, the articles add little qualified weight in respect of proving financial viability, either way. At my site visit I found the pub equipped in a similar manner to that described in the 2018 appeal².
16. Following the issue of the 2018 appeal decision letter on 4 July 2018, on 5 July 2018 the appellant notified the Council's ACV Officer and a public notice was placed by the Council giving interested parties, six weeks to make a written request to be considered as potential buyers on behalf of the community. If none do so, then the owner is free to sell the asset on the open market without restriction for a 'protected period'. The appellant states that no notifications were received during the six-week period and so is indicative that the community do not believe the public house is financially viable.
17. Some of the representations, and rebuttals by the appellant, focus upon whether the appellant has correctly adhered to the Localism Act 2011 and ACV

¹ Summarised in paragraph 12 of appeal decision letter APP/C3105/A/13/2190714

² Summarised in paragraph 12 of appeal decision letter APP/3105/W/17/3191365

Regulations 2011 during the six-week period. I do not have enough information before me to determine this. However, this matter is not a determinative test to demonstrate whether the pub is or is not financially viable in the longer term. The results of the six-week moratorium only determines the next procedures for the potential disposal or sale of an asset.

18. The Council and some representations advise that two offers have been made for the premises (in the region of £250,000) understood to be on behalf of the Bishop's Blaize Support Group (the BBSG) outside of the six-week period. It is not known whether the appellants have received these. This indicates interest and a will within the community to retain the facility, at a value in-line with the 2013 estimations. Although this is far lower than the £395,000 from the 2015 – 2017 marketing and the £375,000 suggested in an email from the appellant from another agent in 2019.
19. The appellant has contested the support for the purchase of the pub by a community group and questioned the numbers and existence of the BBSG. I have not received evidence of the nature of the group, its constitution or its numbers. However, I am persuaded by the representations to this application and appeal (including the support of two Parish Councils) and the ACV status, that there is considerable community support to re-open the pub. I do not consider the nature and number of representations submitted (some 11 – 12 years after the initial pub closure) to demonstrate a lack of support for the campaign to re-open the pub.
20. On this matter, no meaningful evidence has been submitted by the appellant that demonstrates the pub is unviable in the longer term. Therefore, the proposed development would be contrary to Policy S29 of the CLP and Policy BSC12 of the CLPP1. These policies seek to retain and enhance community facilities which serve the basic needs of the local community. The development would also be contrary to paragraphs 83 and 92 of the Framework which require planning decisions retain and guard against the unnecessary loss of valued and accessible facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.

Heritage assets

21. The site lies within the Sibford Gower and Burdrop Conservation Area (the SGBCA) and the building is identified as a Locally Significant Asset within the Conservation Area Appraisal (2012). There is also Grade II Listed Buildings within the vicinity of the site. The position of the pub part of the way up a steep valley in front of a small green area means that it is prominently sited from most directions.
22. Within the SGBCA there is a statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The pub premises lies within the setting of five Grade II Listed Buildings (Barn Close, Bentons, Carrier's Cottage, Church of Holy Trinity, Shephard's Knoll and West Side Cottage). Therefore, special regard should be given to the desirability of preserving their setting as required under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
23. Paragraph 192 of the Framework requires account be taken of new development making a positive contribution to local character. Paragraph 193

requires that when considering the impact upon the significance of a heritage asset great weight should be given to the asset's conservation. Where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal (paragraph 196). I note the Council's concerns that in spite of there being no operational development, the removal of the signage and the loss of a historical focal point for the community would not sustain the character and appearance of the SGBCA.

24. The SGBCA Appraisal refers to the premises as the 'former' Bishop's Blaize public house, which gives the appearance of having been lost, in spite of its lawful use. Signage has also been removed but stored in the car park. I consider that the proposed change of use would have a small adverse effect upon the character and appearance of the SGBCA as a consequence of permanently losing a traditional focal point of the community. For these same reasons it would also result in a small amount of harm to the special architectural and historic interest of a Locally Significant Asset.
25. In terms of the statutorily listed buildings, although there is a clear inter-visibility between them and the premises, aside of the listing descriptions (which do not reference the pub) I have not been provided with any evidence of any harm to the special architectural and historic interest of the buildings. Therefore, I do not consider the development would have a perceptible impact upon the significance of the five listed buildings.
26. For the reasons set out above the proposed development would be contrary to Policy H21 of the CLP which states the conversion of a building to a dwelling would not be considered favourably where the use would be detrimental to the special character and interest of a building of historic or architectural significance. It would also be contrary to Policy ESD15 of the CLPP1 which (amongst other matters) requires high design standards and that development conserves, sustains and enhances heritage assets in accordance with advice in the Framework. As I consider the harm to be less than substantial harm, as required by the Framework, the harm needs to be balanced against the other public benefits of the proposed development. I will return to this in my overall conclusion.

Other Matters

27. I acknowledge the comments with regard to the Council's handling of the application and interpretation of the previous appeal decision, and also the concerns about a representative of the Parish Council. However, I confirm I have determined on its planning merits only.

Conclusions

28. Whilst I note the 2018 Inspector's concerns about the size of the population of the villages to sustain a second pub, there was and still is a requirement upon the appellant, to demonstrate that the pub would not be viable in the long term. The serving of the notice of the initial moratorium period, simply does not achieve this. Therefore, I consider that the proposed development conflicts with the development plan and the Framework in respect of the retention of community facilities. The proposed development would have a small adverse effect upon the SGBCA, and a building of local historical significance, which attracts weight against the proposal.

29. In considering the public benefits of the proposal, the provision of one dwelling might result in a small short-term benefit to the construction industry through the conversion process. As there is already an ancillary dwelling, there would be no overall increase in housing provision. I consider that there would be greater adverse social and economic impacts from losing a public house, which would result in a loss of limited local employment opportunities and loss of a community facility. Therefore, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
30. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Dan Szymanski

INSPECTOR