
Appeal Decisions

Site visit made on 13 August 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 3 September 2019

Appeal A: APP/Z1510/W/19/3219776

The Cherry Tree, Knowl Green, Belchamp St Paul CO10 7BY

- 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 R Everitt against the decision of Braintree District Council.
 - The application Ref 18/00623/FUL, dated 19 March 2018, was refused by notice dated 3 July 2018.
 - The development proposed is conversion of redundant Public House and self-contained flat to two dwellings.
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Appeal B: APP/Z1510/Y/19/3219777

The Cherry Tree, Knowl Green, Belchamp St Paul CO10 7BY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr R Everitt against the decision of Braintree District Council.
 - The application Ref 18/00624/LBC, dated 19 March 2018, was refused by notice dated 3 July 2018.
 - The works proposed are conversion of redundant Public House and self-contained flat to two dwellings.
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Decisions

1. The appeals are dismissed.

Preliminary Matter

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the relevant sections to this appeal have not materially altered. As such, in the circumstances of this case I do not consider that it is necessary to seek the further views of the parties. I am required to consider the appeal on the basis of the current Framework.
3. An emerging plan (EP), the Braintree District Publication Draft Local Plan (2017), was submitted to the Secretary of State on 9 October 2017. It is not part of the adopted development plan. It is not clear, from the evidence before me, as to the extent to which any objections to the policies cited by the Council are unresolved or when the EP is likely to be adopted. As such, the policies cited have limited weight and they do not alter my conclusions.

Main Issue – both appeals

4. A main issue is whether the proposed works would preserve the special architectural and historic interest of a grade II listed building, The Cherry Tree,

and its setting and whether any harm would be caused to the significance of the designated heritage asset.

Main Issues – Appeal A

5. Additional main issues in this appeal are: -

- Whether the loss of a community facility in the form of The Cherry Tree public house would be justified;
- Whether the site is a suitable location for housing with regard to development plan policies and the Framework in respect of rural housing.

Background

6. The Cherry Tree is a listed building that has been used as public house, at least, since the end of the 19th Century and it is situated on the edge of the hamlet of Knowl Green. The appellant bought the appeal property in 2004. However, due to a number of different circumstances it would appear that the operation of the public house was problematic, and it has not been open for business since 2013/14. Planning and Listed Building applications were submitted in 2015 to convert and adapt The Cherry Tree into 4 dwellings. These applications were refused and the associated appeals¹ were dismissed in 2016. It would appear that those appeals included a proposal to convert the detached garage into a dwelling and separate applications were submitted in 2018 for the erection of a dwelling in lieu of the detached garage. Those separate applications are not before me for determination. Since 2017 the property has been marketed for £499,950.

Reasons

Heritage asset – both appeals

7. The appeal building is timber framed, plastered with a thatched roof. There are a number of later additions and alterations to the building and there are detached outbuildings within its generous grounds. There is an appreciable sized area to the one side of the building that would serve as a carpark and a garden area to the rear with children's play equipment.
8. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
9. The list description states that the property dates from the late-17th Century. From the details available to me, including the listing description, I consider that the significance and special interest of the listed building is largely derived from its age, form, fabric, architectural features and long-standing use as a public house. It follows that the listed building has aesthetic, historic, evidential and communal values that contribute to its significance as a heritage asset. The significance of the listed building is mainly experienced from within its curtilage. Even though, the modern extensions screen parts of the listed building the significance of the public house can be readily appreciated from within its grounds. The grounds appear to have been associated functionally

¹ APP/Z1510/W/15/3136819 & APP/Z1510/Y/15/3136808

with the building for a considerable time. As such, the generous grounds can be treated as forming part of The Cherry Tree's setting and they make a valuable contribution to its significance.

10. The proposal would involve the demolition of the existing single storey extensions to the rear of the building, the removal of the existing porch to the front, alterations to fenestration and materials, new canopies, 2-storey and single storey extensions to the rear and internal alterations. The Council has raised no objections to the demolition of the single storey extensions, removal of the porch, alterations to fenestration and materials, new canopies and internal alterations.
11. From my observations, the single storey extensions and porch appear to be modern additions to the building. The fenestration to be altered also appears to be modern and the proposed materials and canopies would be sympathetic to the aesthetic value of the building. The internal alterations largely affect the modern sections of the building therefore, the amount of historic fabric to be removed in these respects is minimal. Consequently, I consider that these parts of the proposal would constitute negligible harm to the special interest/significance of the listed building.
12. Nevertheless, the 2-storey part of the extension on Plot1 would coincide with the whole of the rear of the thatched part of the building and the ridge of its roof would only be slightly lower than that of the thatched roof. As such, this extension would visually have a substantially greater height and massing than the existing structures that are to be replaced when viewed from the rear garden area. Consequently, it would effectively mask a large part of the rear of the thatched part of the listed building within views from the garden areas. Moreover, modern extensions would dominate the rear elevation of the listed building in those views and the ability to appreciate the significance of the listed building from the garden areas would be considerably eroded.
13. In addition, the loss of the building's use as a public house would erode the communal and historic value that this long-standing, principal use contributes to the heritage asset's significance.
14. I acknowledge that when viewed from the highway the proposed front and side elevations, shown as N.W and N.E on the submitted plans, would have a more sympathetic appearance to the vernacular style of the listed building than the existing elevations. The link extension and the 2-storey extension would mean that part of the thatched roof to the rear could be reinstated. These parts of the proposal offer some mitigation for the harm identified above and some aspects of it would individually constitute negligible harm. However, overall its impact would fail to preserve the special architectural and historic interest of the listed building and its setting contrary to the expectations of the Act. I must attach considerable importance and weight to these considerations when reaching my decision.
15. The previous appeal decisions on the site did not relate to a 2-storey extension to the rear, therefore in this respect they are not directly comparable to the scheme before me. In any case, I am required to determine the appeals on their individual merits.
16. Taking into account all of the above I conclude that the harm caused to the listed building, would, in the context of the significance of the heritage asset as

a whole and in the language of the Framework, be less than substantial. In those circumstances, paragraph 196 of the Framework says that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I will return to this matter below.

Community facility – Appeal A

17. The development plan includes the Braintree District Local Plan Review (BDLPR) (2005) and the Braintree District Council Local Development Framework Core Strategy (CS) (2011). BDLPR Policies RLP128 and RLP151 seek, amongst other things, that proposals which would lead to the loss of village and key community facilities or services, outside the urban areas, will not be permitted/will be resisted unless sufficient evidence is provided to demonstrate that they are not viable and that all options for their continuance have been fully explored.
18. These policies predate the publication of the Framework. Its paragraphs 83 d) and 92 c) state that; planning decisions should enable the retention and development of accessible local services and community facilities, such as public houses; to provide the social, recreational and cultural facilities and services the community needs, planning decisions should 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. Nonetheless, having regard to paragraph 213 of the Framework I consider that those policies are broadly consistent with the Framework.
19. The evidence before me indicates that before the public house closed the business had not generated a profit for a number of years. However, the appellant has indicated that each of the tenants did not appear to efficiently or effectively manage the business for a number of reasons. The building has been marketed since 2017 and the appellant has stated that the only interest in it has been as a dwelling. I note that the sales particulars for the building clearly state that the building is a public house but the title to one of the particulars is for a '*detached house for sale*'. I can therefore, understand why there may have been confusion as to whether the site has been marketed as a dwelling or public house.
20. In addition, there is little evidence before me, from any party, to indicate that the future viability of a public house based on potential revenues and costs has been assessed. There are numerous factors that can have a considerable effect on the outcome of an assessment of viability. It is clear that the location of the site has a number of advantages and disadvantages. The building itself is an attractive thatched period property with extensions. It is within a hamlet and the population of that settlement and other nearby settlements would be able to walk and drive to it. It has a large parking area and attractive rear garden area with children's play equipment. There would appear to be room internally for a dining area that could also be used as a function room.
21. However, there is dispute as to the extent to which The Cherry Tree was used and supported by local residents when it was last open and I have no evidence to indicate that the building has ever been listed as an Asset of Community Value. I acknowledge that the time elapsed since the property was last operated would be a hurdle for any person now wishing to re-establish the business, given that former customers will have patronised alternative public

houses and that in terms of establishing a reputation it would effectively be starting from scratch. It is also apparent that a significant amount of investment in re-equipping the commercial areas of the building would be required in order to get the business up and running again.

22. Nevertheless, in arriving at a realistic purchase price for any property, its condition and the cost of bringing it into active use would be reflected in the purchase price. In my experience, even pubs in rural locations can be viable if they can attract customers from a wide area through events and providing high quality food. However, there is a public house within the adjacent settlement that would provide similar facilities and appears to be well established.
23. The asking price for the property appears to have been based on a comparison with other public houses in the surrounding area rather than on the previous turnover and accounts of the business. However, the submitted details for public houses indicate that the prices vary considerably from £115,000 to £675,000 and it is not clear from the details provided as to why the prices are so varied. The properties with a similar asking price to that of the appeal building appear to be operating as a business or have only recently closed and some have letting rooms available. The appellant has stated that he has spent a considerable amount of money on the business and in relation to a potentially fraudulent purchase of it. I appreciate the appellant's desire to recover or reduce his losses and that it would have been disheartening when he had to close the business.
24. Nonetheless, the price at which a property is marketed is important. Whilst the price does not preclude an interested buyer putting in a lower offer it indicates the approximate level the seller hopes to recoup and most prospective bidders would be unlikely to put in offers substantially below the asking price. The lack of interest by any commercial operators or other parties, either suggests the price is too high when taking into account the costs of refitting works required or that the marketing was itself insufficient or ineffective.
25. Based on the evidence, even though the specific financial viability has not been assessed by any of the main parties, it is apparent that no one outcome is assured. It would be significantly challenging to re-establish the public house as a viable business. Nevertheless, I do not consider that it has been demonstrated on the balance of probability, that the property would not potentially have as good a chance as other local pubs of being viable and successful provided it could be purchased at a realistic price to account for the necessary works required.
26. There is some evidence from local residents that the public house was a valued facility when it was open. Moreover, whilst the rural location would be challenging for another commercial business such as a play centre or children's nursery there is little evidence to indicate whether there is a requirement for any other facility to meet the rural community's day-to-day needs. In addition, there is little to suggest that the appellant has engaged with the local community or the Council to explore whether there any alternative facilities required.
27. Taking into account all of the above, I do not consider that it has been demonstrated that the use of The Cherry Tree as a public house would not be viable and that all options for its continuance have been fully explored. It follows that the loss of the community facility is not justified and the proposal

would conflict with BDLPR Policies RLP128 and RLP151 and paragraphs 83 d) and 92 c) of the Framework. Given my findings above in relation to paragraph 213 of the Framework the conflict with these policies has considerable weight.

Suitable location- Appeal A

28. BDLPR Policy RLP2 advises that new development will be confined to the areas within Town Development Boundaries and Village Envelopes and that outside these areas countryside policies will apply. The supporting text to this policy states that the boundaries are intended to protect the countryside surrounding settlements; prevent extension of ribbon development and sporadic development and protect non-renewable and natural resources in accordance with national policies. CS Policy CS5 is entitled the Countryside and indicates that development outside town development boundaries, village envelopes and industrial development limits will be strictly controlled to uses appropriate to the countryside in order to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside.
29. There is no dispute that the appeal site is not located within a town development boundary or village envelope identified in the development plan and it is therefore located, in policy terms, in the countryside. The proposal would not provide for uses appropriate to the countryside and as such the scheme would conflict with these policies. However, whilst I have found that the proposal would harm the significance of the heritage asset there is little evidence to indicate that the proposal would adversely affect the landscape character, biodiversity or geodiversity. In addition, as the proposal would reuse an existing building it would not extend ribbon development or result in sporadic development. Furthermore, the building has included an element of residential use with the public house, albeit it has been tied to that use.
30. Moreover, I acknowledge that the opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Based on my observations there are limited services and facilities within Knowl Green and Belchamp St Paul and I have little evidence of any local public transport provision. It is therefore, likely that the location of the appeal site is such that anyone living there would require the use of a private car to gain access to most day-to-day services. Nevertheless, the traffic generation and greenhouse gas emissions attributable to the development are likely to be appreciably less than that associated with the use of the building as a public house. As a result, the proposal would not conflict with CS Policy CS7 which, amongst other things, seeks to reduce the impact of development upon climate change.
31. Paragraph 78 of the Framework sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, the contribution 2 dwellings and their occupants would make to the vitality of the rural community would be small.
32. Paragraph 79 of the Framework states that local planning authorities should avoid the development of isolated homes in the countryside unless one or more of certain circumstances apply. The appeal site is close to other buildings and dwellings that form the hamlet of Knowl Green. Consequently, I do not consider that the proposal would result in the development of isolated dwellings and there is no need for me to consider whether the proposal would meet the circumstances a) to e) in this respect.

33. Even though the proposal would comply with CS Policy CS7 and paragraphs 78 and 79 of the Framework it would conflict with BDLPR Policy RLP2 and CS Policy CS5. However, the proposal would comply with the aims of these policies. Furthermore, with regard to paragraph 213 of Framework these policies are more restrictive than that of the Framework as they do not consider the reuse of buildings in the countryside. Consequently, the conflict with these policies has limited weight.
34. The previous Inspector did not consider whether the site is a suitable location for housing. However, that Inspector would have determined those cases based on the evidence before them as I am required to do.

Other matters

35. Reference has been made by the appellant to a court judgement² and I have had regard to it. I consider that the judgement supports the approach taken in this decision.
36. The appellant has drawn my attention to a development that has been approved in Knowl Green. However, it would appear from the information before me that this related to the replacement of a dwelling with 2 dwellings and did not involve a public house or a listed building. As such, I do not consider that the case is directly comparable to that before me therefore, it has limited weight. In any case, I am required to determine the appeals on their own merits.
37. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to these appeals.
38. I note the appellant's concern regarding the Parish Council's conduct and comments made by them. However, that is not a matter for my consideration in the context of this appeal decision.

Overall balance

39. From the details provided, I consider the main public benefits resulting from the scheme would be the provision 2 dwellings and the economic and social benefits that would arise from the conversion/construction works and their occupation.
40. The building has been unused and vacant for an appreciable time and there is some damage due to a number of break-ins/vandalism. Nevertheless, I noted that internally there is little evidence of any damage due to water ingress or lack of heating. Externally, the building is in need of some repairs but at the present time these minor defects do not appear to be adversely affecting the fabric of the building. The majority of the windows and doors are presently boarded up to avoid further break-ins and vandalism.
41. Whilst, I understand why the windows and doors have been boarded up, in my experience boarding them up externally can draw attention to the vacant state of the property. In addition, if this was to be left in place for an extended period of time the method of boarding up would need to be investigated to ensure adequate ventilation is maintained. I also noted that there was a series

² Braintree District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 2743 (Admin)

of containers across the front boundary of the site and the site generally has an unkempt and neglected appearance. In combination these factors highlight that the building is vacant and they could be altered to reduce the risks attributable to that vacancy.

42. I acknowledge that the best way to ensure that the special interest and significance of the listed building is preserved would be by its viable reuse and that putting it into a beneficial use can be reasonably treated as a public benefit. Nevertheless, an extension of the size of that proposed is not the only way to convert the building to residential use. Moreover, given my findings in relation to the viability of the public house that use would remain the optimum viable use of the building. Whilst residential use might be the more profitable it would not represent its optimum use where a less harmful alternative exists.
43. As such, I consider the overall public benefits of the proposal would be modest. Nonetheless, given the general encouragement within the Framework for boosting the supply of housing, I give these benefits appreciable weight.
44. Even though, I have found that the harm to the significance of the heritage asset is less than substantial it is not to be treated as a less than substantial objection to the proposal. The public benefits attributable to the proposal would be appreciable. Nevertheless, in my judgement their weight would not outweigh the great weight to be given to the harm to the heritage asset. As such, the proposal would not comply with paragraph 196 of the Framework.
45. It would also conflict with CS Policy CS9 which seeks, amongst other things to protect and enhance the historic environment and BDLPR Policy RLP100 which states that development involving alterations, extensions and changes of use will only be permitted where the proposed works do not harm the setting and character of the building. These policies do not reflect the balance required within paragraph 196 of the Framework therefore this conflict has moderate weight.
46. The Council has stated that it is not clear as to whether it can currently demonstrate a 5 year supply of deliverable housing (5HLS). The appellant has brought to my attention a number of appeal/planning decisions in relation to this matter. Nonetheless, even if I considered, that the Council could not demonstrate a 5HLS and therefore, with regard to footnote 7, point d) of paragraph 11 of the Framework applied in this case, point i. of that paragraph states that planning permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
47. Such areas/assets include designated heritage assets (Footnote 6). Having regard to my findings that the proposal would result in harm to the designated heritage asset and paragraph 196 of the Framework I consider that the application of the Framework's policies in relation to this asset provides a clear reason for refusing the proposal. Consequently, the presumption in favour of sustainable development contained in the Framework would not weigh in support of the proposal.
48. I have found that the proposal would conflict with BDLPR Policies RLP128, RLP151, RLP2, RLP 100 and CS Policies CS5 and CS9. Whilst, I have found that the weight to be given to this conflict is considerable, limited and moderate I conclude that the proposal would conflict with the development

plan as a whole. Consequently, whilst there would be benefits associated with the proposal, I consider that there are no material considerations, including the provisions of the Framework, of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan.

Conclusion

49. For these reasons, and having had regard to all other matters raised, I conclude that both appeals should be dismissed.

D. Boffin

INSPECTOR