

Appeal Decision

Hearing Held on 14 January 2020

Site visit made on 14 January 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2020

Appeal Ref: APP/W1850/W/19/3239091
Newtown House, Lower Eggleton HR8 2UG

- 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 Willmott against the decision of Herefordshire Council.
 - The application Ref 191533, dated 30 April 2019, was refused by notice dated 13 August 2019.
 - The development proposed is change of use of redundant public house to dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted by Mr & Mrs Willmott, however, the appeal has been submitted in Mr Willmott's name. The appeal therefore proceeds in the name of Mr Willmott only.
3. The address given on the application form includes the text 'A4103 from Moorend Wychend Road to Grove Farm Road.' Since such a description would not normally form part of an address, it was agreed at the hearing that it should be omitted from the address.

Main Issue

4. The main issue is whether the proposed change of use would unacceptably compromise the provision of community facilities in the area.

Reasons

5. Newtown House is located in the settlement of Newtown¹ and comprises a substantial building situated in a prominent location near to the crossroads with the A4103 and the A417. The appellant purchased the property, formally the Newtown Inn, in around 2012. Although the property is a public house, the appellant has not operated the site as such since he acquired it and works to convert the building to a residential premises have been carried out, which have been the subject of an enforcement investigation by the Council.
6. A previous appeal at the site, for the change of use from A4 drinking establishment to C3 dwelling house was dismissed, reference APP/W1850/A/13/2198409. In this case, the Inspector concluded that the loss

¹ As shown in the Yarkhill Neighbourhood Development Plan 2018-2031, July 2018

of the public house was not acceptable in the light of policies dealing with the loss of community facilities and services.

7. Policy SC1 of the Herefordshire Local Plan Core Strategy (HLPCS) 2011-2031² states that existing facilities will be retained, unless it can be demonstrated that an appropriate alternative facility is available, or can be provided to meet the needs of the community affected; or it can be shown that the facility is no longer required, viable or is no longer fit for purpose; and where appropriate, it has been vacant and marketed for community use without success. Although not contained within the policy, paragraph 5.1.36 of the HLPCS explains that evidence of marketing for a period of at least 12 months should be provided with any proposals involving the loss of community facilities.
8. The appellant asserts that the policy is unduly restrictive and is difficult to implement leaving a lot for decision makers to adjudicate. It is also asserted that the Council has not adopted the same policy stance with regard to rural garages or rural shops, leading to a plethora of dilapidated buildings in the Herefordshire area. Whilst Policy SC1 does not set out in detail what evidence would be required to demonstrate compliance, given the different types of facility which would fall to be considered by this policy, it is reasonable to consider proposals on a case by case basis.
9. Policy Y10 of the Yarkhill Neighbourhood Development Plan (YNDP) 2018-2031³ states that development which contributes towards the improvement of existing, or provision of new community facilities, amongst other things, will be encouraged. Although not specifically identified in the policy, the Newtown Inn is discussed in the supporting text. It is noted that the Parish Council has registered the property as a community asset.
10. The National Planning Policy Framework (the 'Framework')(2019) paragraph 83(d) states that decisions should enable the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open spaces cultural buildings, public houses and places of worship. Although the site is not currently used as a public house, from the evidence before me, its lawful use is a public house as any conversion to residential was done without the benefit of planning permission. Accordingly, Policy SC1 of the HLPCS, Policy Y10 of the YNDP and paragraph 83(d) of the Framework are of particular relevance to my consideration of the appeal before me.

Is an appropriate alternative facility available?

11. The appellant asserts that Yarkhill Village Hall is an alternative community facility which is of a far higher standard than those that were or could be provided at the Newtown Inn. Mr Hughes, Chairman of Yarkhill Parish Council advised during the hearing that there are no catering facilities at the village hall, nor is it licenced. Furthermore, it must be booked at a cost. On this basis, I agree with the previous Inspector's findings that Yarkhill Village Hall would not be an appropriate alternative facility as it does not offer the informal social gathering place provided by a public house.
12. The Inspector in the previous appeal also considered the presence of a number of other public houses in the vicinity of the appeal property. I have no

² Adopted October 2015

³ July 2018

substantive evidence that provision of such facilities in the area has increased since this decision. Indeed, it was commented by both parties during the hearing that the Hopton Arms has since closed. Although I saw that there are other pubs in the wider area, these are some distance from the appeal site and as such, residents of Newtown are unlikely to choose to access them on foot and concur with the Inspector's findings that, given their distance from the appeal site, they would not offer an equivalent community benefit in a convenient and accessible location.

Is the facility no longer required?

13. The appellant asserts that decline in the pub trade is a national trend and suggested during the hearing that this is as a result of government health guidance which indicates that drinking should be undertaken to a lesser degree and that as a consequence, they (pubs) are not required. However, Mr Haslam of CAMRA advised at the hearing that the general environment for pubs is showing improvement, with several reopening in the area and that hundreds of new public houses opened during 2019 reversing decades of decline. Whether or not there is a national decline in pub trade, given the general aim of national and local policy to secure the retention of such facilities, I consider the national trend should not be determinative.
14. The appellant asserts that the continued closure of the public house and the fact that the Parish Council has chosen not to buy it despite it having been identified as an asset of community value under the Localism Act 2011 Community Right to Bid, is indicative that it is of no value to the community. However, Mr Hughes advised during the hearing that whilst it is of value to the community, Yarkhill is a small community and could not afford to purchase the property. Moreover, the decision not to operate the public house as an ongoing concern was made by the owners and is not itself indicative of a lack of demand.
15. The appellant raises concern regarding some of the objections raised against the application and states that few, if any, are on genuine planning policy grounds. However, whilst I have not received a petition, I have received representations from the community council and interested parties which indicate evidence of community value. Furthermore, the YNDP confirms in paragraph 9.9 that 'the pub was quite popular with local residents'. Therefore, on the evidence before me, I conclude that the facility is of value to the facility and is still required by the community.

Is the facility viable or fit for purpose?

16. Prior to the appellant purchasing the property it was operated as a public house. The previous company went into administration and the property was sold to the appellant as a public house. The previous Inspector considered matters relating to the property's viability as a public house and in particular considered the pub-co model and issues regarding a lack of maintenance. The appellant asserted during the hearing that this underscores a lack of viability.
17. The property is located in a prominent position along a road which appeared well used at the time of my visit. Whilst this is just a snapshot in time, as the road links Hereford and Worcester, I consider this is likely to be representative. The property's position close to the traffic lights on such a well used route with

limited alternative provision would suggest that a public house in this location could serve both local needs as well as passing trade.

18. The property has undergone works to remove fixtures and fittings which would be required in order for the property to function as a public house. Whilst further investment would therefore be required, I have no substantive evidence that the works required would be prohibitively expensive so as to render the public house unviable. The property is a reasonable size with outdoor space and a car park. With some further investment, I see no reason why the public house could not be viable in the future.
19. Whilst the property has remained closed since the previous Inspector's decision was issued, on the basis of the evidence before me, which includes representations from previous operators of the public house, I consider that the conclusion drawn by the previous Inspector remains of relevance, that in view of the landlord's insolvency, and in the absence of accounts or other evidence to the contrary, it seems more likely that the decline was due to the 'pub co' model operated and the demise of the landlord.

Has it been marketed for community use?

20. It is not disputed that the property has been marketed. However, what is disputed is whether the property was marketed at a reasonable price given its lawful use and condition and whether the marketing undertaken was sufficiently robust. The appellant asserted at the hearing that the valuation is immaterial and that what is important is that the property has been marketed.
21. Hereford CAMRA has drawn my attention to appeal decisions relating to The Fox and Hounds⁴. Although the appeal relates to a different site, the Inspector concluded the price at which a property is marketed is important, a point which I fully agree with. Although it would be open to a potential buyer to put in a lower offer, an unrealistically high asking price is likely to put off potential buyers since it is an indicator of the approximate level that the seller hopes to achieve.
22. Whilst I accept that the price paid for the property by the appellant is not necessarily an indicator of its current value, I would expect an independent valuation to have been obtained to verify whether the asking price for the property is reasonable. The appellant states that the Parish Council and the Council have been informally requested to obtain an independent valuation should they so wish. The suggestion was also made at the hearing that I should seek independent advice in this respect. However, I firmly believe the onus should be on the appellant, not the decision maker, to demonstrate compliance with policy. This approach appears generally consistent with that taken in respect of other decisions within Herefordshire⁵ and elsewhere⁶, where such matters have been considered.
23. The appellant asserts that two valuations have been obtained and has drawn my attention to letters from Sidney Phillips Limited⁷ and Fleurets⁸. The Sidney Phillips letter details the price that the property has been for sale at and

⁴ APP/X1925/W/16/3154355, APP/X1925/W/16/3154356, APP/X1925/W/16/3154357

⁵ APP/W1850/W/15/3063801, APP/W1850/W/18/3199884, APP/W1850/A/06/2020945

⁶ APP/P1615/W/18/3198223, APP/X5990/W/15/3024042, APP/C3105/W/17/3191365, APP/X1925/W/17/3188914, APP/H1705/W/18/3204499, APP/Y2003/W/16/3150479

⁷ Annex 3 of the appellant's Statement of Case

⁸ Annex 2 of the appellant's Statement of Case

- provides brief details of the marketing undertaken, including details of websites on which the property has been listed. The letter does not detail how the price was arrived at, nor does it say whether this is a reasonable price to market the property at given its condition and lawful use. I am therefore not persuaded that this letter constitutes a valuation.
24. The Fleurets letter is based upon a previous sale of the property in 2006 and concludes that the asking price is justified. However, the author of the letter did not visit the property to carry out a valuation and reserved the right to amend his views based on the property's condition and how long it has been closed. The appellant asserts that it is not necessary for someone to see a property to value it. However, the condition of a property, which can only be ascertained from viewing a property, is highly likely to influence the value of a property.
25. Fixtures and fittings such as the bar and toilets, have been removed from the premises. Whether or not these were removed to convert the property, the changes made to the premises would be likely to decrease its value as a public house, since changes would need to be made by an investor to enable the premises to operate. Furthermore, the length of time that the premises has not been operated as a public house is likely to have had an effect on its value, bearing in mind the need for an investor to be clear what a likely return may be. Thus, I do not agree that this document constitutes a valuation.
26. Hereford CAMRA assert that the asking price for the appeal property is 'seriously out of kilter with current market expectations' and has drawn my attention to a number of public houses which have been sold in recent years and which sold for sums, in some cases, significantly less than the asking price of the appeal property. Although not definitive, this evidence casts significant doubt as to whether the asking price for the appeal property is reasonable.
27. The Community Council has criticised the Sidney Phillips website and the fact that interested parties are required to sign up for an account to obtain details. Concern is also raised that details of the property cannot be found on Zoopla. No extracts of the advertisements placed on the specified commercial and trade websites have been provided and as such, I have no confidence in the efficacy of the marketing carried out. Thus, I conclude that the marketing carried out by the appellant was not sufficiently robust.
28. Thus, for the reasons given above, the proposed change of use would result in the loss of a valued community facility and would therefore unacceptably compromise the provision of community facilities in the area, contrary to policies SC1 of the HLPCS, Y10 of the YNDP and the Framework, the requirements of which are set out above.

Other Matters

29. The appeal site lies within the River Lugg sub-catchment of the River Wye Special Area of Conservation. Since the appeal has failed for other reasons, no further consideration of Habitat Regulations Assessment is required. However, if the circumstances leading to a grant of permission had been present, in the absence of secured mitigation I would have been required to give further consideration to the impact upon the European Site in accordance with the Habitats Regulations.

30. The appellant disputes the relevance of policies SS4 and MT1 and asserted during the hearing that neither should apply to the appeal scheme. Policy SS4 of the HLPCS seeks to ensure that new development is designed and located to minimise the impacts on the transport network and Policy MT1 of the HLPCS seeks to promote access to services by means other than private motorised transport. The appellant asserts that there would be a reduction in vehicle movements as a result of the appeal scheme. Whilst I do not agree that the policies are not of relevance, I agree that, given the above, the appeal scheme would not conflict with Policies SS4 and MT1.
31. It is not disputed that the appeal site is located within the settlement boundary of Newtown, as identified within the Yarkhill Neighbourhood Development Plan. However, for the reasons set out above, the appeal scheme conflicts with Policy SC1 of the HLPCS and paragraph 83(d) of the Framework and its location within the settlement boundary is therefore not determinative in this instance. Whilst there would be social benefit arising from the provision of a single dwelling, such benefits would be very limited and would not outweigh the harm I have identified arising from the loss of the public house.
32. The circumstances of the occupants have been drawn to my attention and in particular the health of the appellant. However, I have no details of this, nor is it clear how this should weigh in support of the appeal scheme. Whilst I appreciate that such matters may be sensitive, without further detail I am unable to afford this any substantive weight in my consideration of the appeal scheme.
33. The appellant has raised concern regarding the advice provided by the Council at the pre-application stage. However, I have no substantive evidence that the advice provided by the Council conflicts with its approach following the submission of the application. Furthermore, I have considered the appeal on its own merits.
34. It has been requested by an interested party that I consider whether the right of appeal has been exercised in a reasonable manner and if not, to award costs against the appellant. The concerns raised by the interested party relate to the merits of the appellant's case. The Planning Practice Guidance advises that an award will not be made in favour of, or against interested parties, where a finding of unreasonable behaviour by one of the principle parties relates to the merits of the appeal⁹. I have set out my consideration of the case above and do not therefore consider it necessary to issue a separate Costs Decision in this case.

Conclusion

35. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

M Savage

INSPECTOR

⁹ Paragraph 056 Reference ID:16-056-20161210

APPEARANCES

FOR THE APPELLANT:

John Kendrick

FOR THE LOCAL PLANNING AUTHORITY

Josh Bailey

Herefordshire Council

INTERESTED PARTIES

Mark Haslam

CAMRA (Campaign for Real Ale)

Jeff Hughes

Yarkhill Parish Council