



Appeal Decision

Hearing Held on 14 December 2020

Site visit made on 15 December 2020

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/Z1510/C/19/3222037

**The Kings Head Public House, Chapel Road, Ridgewell, Halstead, Essex
CO9 4RU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Dawn Brailsford against an enforcement notice issued by Braintree District Council.
- The enforcement notice was issued on 7 January 2019.
- The breach of planning control as alleged in the notice is without planning permission, a material change in the use from a public house with ancillary residential accommodation to sole residential use.
- The requirement of the notice is to cease the residential use of the building.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(f)&(g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. Before the Hearing an application for costs was made by Mrs Dawn Brailsford against the Council. This application is the subject of a separate Decision.

Preliminary Matters

2. An appeal was brought on ground (b) to argue that the matters as alleged had not occurred. Following discussion on the implications of success on ground (b), the appellant decided to withdraw this ground of appeal. The appeal proceeds on ground (a),(f) and (g) only.
3. The Council refers to Paragraphs 28 and 70 of the National Planning Policy Framework ('the Framework'). These references are out-of-date since the document was updated in February 2019. The ground (a) appeal falls to be considered against the policies within the current Framework.

Matters relating to the enforcement notice

4. The appellant argues that the reasons for issuing the enforcement notice are not clearly set out. The enforcement notice states that there were two failed planning applications in 2015 and 2017 for a change of use from a public house

- to residential. However, it does not say why a residential use contravenes the listed adopted and emerging policies or what other harm arises.
5. Pursuant to Regulation 4(a) of The Town and Country Planning (Enforcement Notice and Appeals)(England) Regulations 2002 an enforcement notice must specify the reasons why the local planning authority consider it expedient to issue the notice. A complete omission of reasons as required by Regulation 4(a) would render an enforcement notice a nullity, but minimal reasons will not normally do so.
 6. It is also settled case law that a notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it.
 7. In this case, the Council identified a breach and that two planning applications had been refused for the same use as that now enforced against albeit the wrong year is given for one of the applications. It further identifies that the Council considers the appellant and her family have resided in the public house unlawfully. However, the notice fails to say *why* that use is unlawful and *what* objections cannot be overcome by planning conditions. It is necessary to go behind the notice to obtain that information.
 8. The last planning application had been refused on 18 June 2018. This had set out in some detail the reasons for refusal. Essentially those reasons related to national and local policies which seek to protect community facilities, such as public houses, unless there is sufficient evidence that they are no longer economically viable. The appellant has relied upon the reasons given in the earlier 2018 refusal of planning permission for a sole residential use of the property to formulate the appeal.
 9. The 'reasons' section should have said more to explain why the Council had concluded it expedient to issue the notice. On the basis that the notice does identify the 'permanent' residential use to be unlawful for which planning permission has been refused, I consider there to be just enough information for the notice to fulfil the legal requirements. I am reinforced in that view by the fact that the appellant was able to formulate an appeal addressing the key issues. Her advocate further agreed with the Council that the notice is not null.

The appeal on ground (a) and the deemed planning application

Background

10. The Kings Head Public House occupies a Grade II listed building in a conservation area located along the A1017 road within the village of Ridgewell containing in the region of 216¹ households and a population of just over 500 or so. The village lies between Haverhill and Halstead which are 5 and 9 miles away respectively. The building is thought to date from circa 1500. It appears to have originally been built as a dwelling before becoming a public house.
11. It is undisputed that the lawful use of the property is as a public house with ancillary residential accommodation. The internal arrangement is typical of one found at a public house with the trading area on the ground floor and residential accommodation above. There is a single kitchen located on the ground floor which served the pub for commercial purposes as well as private

¹ Figure from the 2011 Census

use by the residents. The floor layout plans show the existing first floor laid out with four bedrooms, family bathroom and a small living area on the landing.

12. Apart from The Kings Head there is a second public house within the village called The White Horse. There are very few other local facilities, most notably a village hall, Church and primary school. A village shop which had become a takeaway restaurant has now closed.
13. The Kings Head ceased trading as a public house on 28 March 2016 and has remained closed ever since. The deemed planning application arising under the ground (a) appeal is for the sole residential use of the property.

Main Issue

14. The main issue is whether or not there would be compliance with local and national policies which seek to protect existing community facilities.

Relevant Policies

15. Policy RLP 128 of the Braintree District Local Plan Review, 2005, provides that within rural areas, support will be given to the continuance of services and facilities, in order to maintain community life. Proposals which would lead to the loss of village facilities will not be permitted unless sufficient evidence is provided to demonstrate that they are not viable and that all options for their continuance have been fully explored. Clearly, a public house would fall within the category of a village facility.
16. The pub is included in the List of Assets of Community Value ('ACV') maintained by the Council under the Localism Act 2011 and has been so listed since December 2016. Policy RLP 151 sets out that proposals that would result in the loss of key community facilities or services, outside the urban areas, will be resisted, unless sufficient evidence is provided to demonstrate that they are not economically viable and that all other options for their continuance have been fully explored, or they are replaced in an equally good, or more sustainable location.
17. Similarly, Policy CS11 of the Council's Core Strategy, 2011 resists the loss of existing services and facilities (including local community facilities) unless there is sufficient evidence that they are no longer viable or needed or satisfactory alternatives are available. Discussion took place at the Hearing on whether this particular policy is met because there is a 'satisfactory alternative' in the form of another pub in the village. The use of the word "or" means that it is not necessary for the purposes of this policy for the appellant to demonstrate that the Kings Head is no longer viable if it is shown that either the pub is not needed or there is a satisfactory alternative.
18. The White Horse is a larger public house offering food and drink along with guest rooms and parking available. By all accounts it is a popular destination pub. Clearly, it provides a satisfactory alternative eating and drinking establishment within the village. Whilst local people may prefer to have the choice of venues, that is not a requirement of this particular policy.
19. Notwithstanding compliance with Policy CS11, the grant of planning permission for the change of use would result in the loss of a community facility which would only accord with RLP Policies 128 and 151 if it can be demonstrated that The Kings Head is not economically viable and all other options have been

explored.

20. This approach is broadly supported by Paragraph 92 of the Framework which, at sub-paragraph a), promotes policies and decisions which plan positively for the provision of community facilities (including public houses) to enhance the sustainability of communities and residential environments. Sub-paragraph c) also seeks to 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. Furthermore, Paragraph 83d) provides that decisions should enable the retention and development of accessible local services and community facilities, such as public houses.

Reasons

21. The appellant acquired the Kings Head in June 2013 for a sum of around £185,000 plus VAT. At that time, it had been on the market for about 6 years and last used as a Thai restaurant and bar. Immediately after acquisition the appellant embarked upon a major repair and renovation project. She describes the building as being poorly neglected after a succession of tenancies. It is acknowledged by the Council that the extensive works had a positive effect upon the heritage asset which is visually prominent within the street scene.
22. The pub was re-opened once the renovations were complete in August 2014. The trading days excluded Monday and Tuesdays. A chef and staff were hired to offer a varied food menu. Local real ales were stocked and changed weekly along with local lagers and ciders resulting in the award of Best Cider Pub in West Essex 2016 by CAMRA².
23. Despite various initiatives, the appellant says she was unable to draw a wage during the 20-month period it was open. As finances became strained staffing levels were reduced to a minimum and strict measures put in place to reduce outlay by reducing the amount of products purchased in an attempt to maximise profits. After consultation with the appellant's accountant, the decision was taken to close the pub "before repaying the business debts became impossible". A summary of the trading profit and loss account for the year ended 31 October 2015 verifies that the pub suffered a net loss and continued to trade at a loss for the part of the year that it remained opened.
24. Shortly after its closure marketing began in April 2016 for the sale of the freehold or leasehold interest as a public house with first floor accommodation.
25. The Kings Head was first marketed at a freehold price of £425,000 or £20,000 per annum rent for the leasehold interest. The advice obtained from four other agents indicated an appropriate asking price in excess of £385,000-£395,000. The Council's own consultant advised that whilst the freehold price was high it was not outrageously so when considering the price paid together with the amount spent on repair and refurbishment. Over a 7 month period the marketing resulted in one viewing, but no offer.
26. The asking price was subsequently reduced to £399,950 in July 2017 and the property has remained on the market for sale at that sum ever since.
27. When the pub became an ACV in December 2016, the effect was to restrict the

² Campaign for Real Ale

owner from disposing of the pub unless certain conditions were met. The community right to bid allowed a qualifying community interest group wanting to buy the ACV being able to trigger a 6-month moratorium. The owner is not compelled to sell to such a group, but the moratorium affords time for funds to be raised. In this instance a community group was established but the moratorium period expired in August 2017 without any offer having been made. In consequence, the owner is free to dispose of the property to whosoever she wishes.

28. In the meantime, the appellant had submitted an unsuccessful planning application in September 2016 for a change of use of the premises from a public house to a sole residential use, followed by another in December 2017³. No appeals were made against those decisions.
29. The appellant and her family have remained in occupation after the pub closed. The property has continued to be marketed throughout as a public house. A 'for sale' board is prominently displayed at the front of the property and the pub is listed for sale on several websites. No works of alteration have been carried out since the closure and all the commercial fittings and furniture remain so that the pub could re-open "within a matter of days".
30. After marketing for 18 months, interest was generated in the form of a further three viewings resulting in one 'cash' offer being made substantially below the asking price. There was one other conditional 2-year rent to buy offer which was considered unsuitable from a financial perspective. A prospective buyer from London, who had demonstrated through his Solicitors that he had funds available, withdrew his interest after undertaking a viewing.
31. The Council considers that the property has not been robustly marketed, is over-valued and the terms of sale are a deterrent.
32. The Council was unable to say how else the pub might be marketed but expressed concern over it being advertised as requiring a 'cash buyer'. This approach was taken upon the advice of the second marketing agents who were instructed to market the pub from 26 July 2018 when the previous agent retired. As specialist agents in the licensed trade they advised that finding a buyer would be very difficult and that a cash buyer must be sought since a commercial mortgage was very unlikely to be forthcoming.
33. A representative from the agents attended the Hearing and explained how it is 'almost impossible to get a mortgage to buy a pub' and that no Bank would lend on the figures produced by the appellant. They would lend only to experienced operators on 3 years' worth of figures. There was no point in discussing or agreeing a viewing if the interested party was unable to make an offer to buy. This wasted time and incurred cost.
34. The agent further advised that only the freehold licensed premises and trade contents should be offered because there was no goodwill as the business had ceased to trade. It was explained that the permission of the lender would be required to offer a lease and a tenant would need to make a profit to pay the rent. No-one would take on a lease when rent was payable from day one.
35. Another cause of the Council's concern is the term of sale for an overage

³ Council refs: 16/01605/FUL & 17/02170/FUL refused on 3 February 2017 and 18 June 2018, respectively.

- provision requiring payment to the seller of 50% of the uplift in value if planning permission is secured for a residential use within 50 years. The agent maintained that this is a perfectly reasonable and normal approach. He gave the Railway Inn, Aldeburgh as an example of another pub recently sold with similar provision. The agent suggested that these clauses are common and a vendor would be naïve not to include one. Ultimately, the Council has no contrary professional evidence to indicate that such an approach is unreasonable and likely to deter a buyer intending to operate a public house.
36. The only other option identified by the Council as a way to try to prevent loss of the pub was a further reduction in price to see if that might generate more interest. The answer given to this was that the appellant needed to achieve a certain amount and the asking price would not preclude lower offers being made in any event. The appellant's agent stated that even if there were a significant reduction in price it would not alter the fact that a cash buyer would be needed with near enough £400,000 available to invest.
37. The appellant had instructed a Chartered Surveyor to complete a valuation and assessment on the marketing and viability of the pub. A 'viability report' was also commissioned by the appellant from her marketing agents as national specialists in the sale of licensed businesses. An updated supplemental report from March 2020 is also supplied. This explains how the market has changed over recent years. Key factors identified are younger adults using pubs less in preference for clubs or drinking from home, declining beer sales and year on falling alcohol consumption and increased staffing costs. Other factors which influence and impede the marketability of The Kings Head are said to be its location on a secondary road with no nearby attractions, public transport and a limited catchment area of perhaps 5 miles. Of most significance is the presence of a another, larger public house in the village which has more parking, a restaurant and family accommodation available.
38. I observed that The Kings Head is located along a fairly busy road where there could be passing trade. However, I accept the appellant's argument that the limited parking available hampered its prospect of becoming a destination pub to which customers would travel. The Council claims that the enclosure of the frontage has made it less inviting and more akin to a domestic residence. What I saw was a low level hedge with a well-maintained pattern of ornately cut planting providing an attractive display. The inn sign remains in place. It is positioned centrally in front of the building to attract maximum attention and can be easily seen in the approach from each direction. It is unmistakably a pub. The pub garden is not visible from the public domain but there is no evidence that this is a factor in the future viability of the pub.
39. The Council sought its own reports from two separate Chartered Surveyors who it instructed to provide valuation advice. Following a request made under the Freedom of Information Act 2000 it has emerged that the Council's first Surveyor had in his draft report agreed with the appellant's agent that the location and catchment result in limited trading potential making it a struggle to attract adequate business. The Council requested removal of these comments from the final report.
40. As it was, the first Surveyor advised the Council to seek a valuation by a specialist licenced trade surveyor and valuer. When the second Chartered Surveyor sent his draft report to the Council the covering email advised that:

"the asking price is not relevant as this is a small village and this is the second pub. Far too risky even for a community pub. There's the real issue."

41. In the report that followed, the second Surveyor advised the Council that *"The issue here is not a slightly inflated asking price but more to do with viability of having a second pub in a village of 216 households. There is frankly, just not enough business to go round which is why the pub struggled for many years as a tied house, a commercially leased house and a free-house."*
42. Thus, despite the Council's arguments presented at appeal, its own evidence provided a very clear steer that the asking price was not the issue. Rather, it was the competition from another established pub in a small village with limited catchment which posed too great a risk to attract a buyer.
43. There are other factors identified by the appellant's specialist agents which impede the marketability of the pub. The property suffers from having a small kitchen for commercial purposes with limited food preparation areas and inadequate storage. The internal layout is awkward for meals to be delivered from the kitchen to some bar/restaurant areas whilst avoiding walking past the toilets. This necessitates carrying meals past the front door. Opportunities to alter or extend the building are restricted by its listed status. A change in drinking culture has led to a general decline in the sale of on-trade beer volumes making it difficult for 'wet' dependant pubs to survive. A further factor identified has been the introduction of workplace pensions which have increased staff costs. A combination of factors impeded the successful operation of the business.
44. While local residents say the pub was popular and the local CAMRA group indicates it was successful, they are sentiments expressed without reference to the accounts.
45. No trading figures are available to know how successful or otherwise the pub was when it was previously owned by two large commercial public house chains. The last of these apparently specialises in community public houses and yet sold the pub to the appellant after some years. It is presumed by the appellant's experts that the previous owners had disposed of their interest due to the pub being unprofitable, but this cannot be confirmed either way.
46. An adjusted net profit computation for the year ending 31 October 2015 seeks to illustrate to a purchaser what could be achieved without the personal costs of the same operator. This shows a modest net profit could be achieved but not at a level that would financially support a couple, which the agent stated was the standard criteria.
47. The appellant's agent opined that the future of the village pub looks bleak and the position has only become worse during the global coronavirus pandemic. Clearly, the hospitality industry has suffered from long periods of closure throughout the ongoing pandemic. Prospects of attracting a buyer in this climate will undoubtedly have deteriorated. If that is set aside, the evidence still indicates that even before the pandemic The Kings Head had not been trading profitably and the specialists were united in their concerns over its future viability. Indeed, there is consensus among the professionals who have provided specialist advice to both sides that there is not enough business to support two pubs in the village.

48. Discussion took place at the Hearing on whether 20 months of trading is sufficient to gauge the ongoing viability of the business. The Council considers that given the level of investment undertaken it was not long enough and that any new business may expect to take some time before turning a profit. However, the Council has nothing to rely upon beyond mere supposition to suggest that the period of time was inadequate.
49. In response the appellant's expert suggested that most people would expect to break even in the first year else they would not invest in the first place. In his view, it would be apparent in the first 6 months if 'things were not on track' and 20 months is 'quite long enough'. The point was made that unless the operator has sufficient capital, the business cannot continue without sufficient trade because the loss simply gets bigger and bigger.
50. When I queried what information the Council required in order to be satisfied that a business was not viable, the Officer advised that 12 months robust marketing evidence was expected. This should include details of to whom the marketing was directed, who has been notified, the amount of interest generated and whether there had been viewings and offers. The Council does not usually ask for sets of accounts but the Officer suggested that on reflection perhaps it should have done and they could have been provided.
51. The parties agreed that there is no specific definition or assessment of viability for the purposes of policy. The appellant's legal representative suggested that it should be an objective process which looks at the economic practicability in respect of the particular property. The Council acknowledged that its approach to viability had been marketing led.
52. They are not necessarily one and the same. Nevertheless, a useful indicator of future viability can be whether there is a demand for the business in the current market. Whilst the Council is critical of the approach taken by the appellant, it has relied upon the views of its Officers which are unsupported by its own external advice. In contrast, the appellant has produced specialist evidence on both viability and the marketing exercise undertaken.
53. From a marketing perspective, the appellant's specialist agents advise that the property has been thoroughly exposed for sale for a reasonable period and price. As no serious interest has been shown they conclude that a sale as a licensed premises is very unlikely. In terms of viability, they conclude that the pub was 'demonstrably a non-viable business, the closure of which was wholly justified'. The Council has no substantive evidence to indicate to the contrary. In fact, the independent advice it received appears to corroborate the appellant's evidence that the pub is unviable.
54. In summary, there is a satisfactory alternative pub available for there to be compliance with Policy CS11. The weight of evidence shows that The Kings Head is not economically viable and all other options have been explored to comply with RLP Policies 128 and 151. In terms of national policy, paragraphs 83d) and 92 of the Framework may be read together. There has not been an 'unnecessary' loss of a community facility under paragraph 92c) as the pub has been demonstrated to be no longer viable. The needs of the community are met through the other village pub and so the sustainability of the village is unaffected. Paragraphs 83d) and 92 are not offended.
55. Accordingly, the sole residential use of the Kings Head complies with local and

national policies which seek to protect existing community facilities.

Other Matters

56. Comments were made by the Council's Historic Buildings Officer that the use ceases centuries of trading and its loss as a pub would cause harm to the building's community and historic interest as a heritage asset. The Council accepted, however, that there would be no physical changes to the building to sustain a heritage objection.
57. Various objections have been made by third parties. Many of these relate to the way that the pub was operated, but there is no substantive evidence that any of the matters raised would have altered the position on viability. Whilst concerns are expressed over the appellant's intentions for the property, my decision must be taken on the facts and the application of relevant policy.

Conclusion on ground (a) and the deemed planning application

58. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

Conditions

59. Despite the Council not requesting any conditions in this eventuality, the appellant suggested three possible conditions which were discussed at the Hearing. I have considered these conditions in accordance with Paragraph 55 of the Framework and the national Planning Practice Guidance.
60. Following the withdrawal of the ground (b) appeal, it is uncontested that a sole residential use is taking place. As the use is retrospective rather than prospective (as described by the appellant) there is no need for the standard time limit condition because the development has already begun.
61. The Council insisted that a condition is unnecessary to limit the use to that of a single dwellinghouse particularly given that the listed status of the building would require consent in any event to physical alterations. I have concerns nonetheless that there could be other residential uses which could have planning consequences and in the interests of clarity I consider it appropriate to restrict the use in the way suggested by the appellant.
62. There is currently on-site parking for 8-10 cars. In the interests of highway safety, the appellant proposes the retention of at least 2 parking spaces together with turning space. The parties agreed that such a condition is reasonable and I consider it necessary to ensure that on-site parking is retained for the stated reason.

Formal Decision

63. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at The Kings Head Public House, Chapel Road, Ridgewell, Halstead, Essex CO9 4RU, as shown on the plan attached to the notice, for sole residential use subject to the following conditions:

- (1) The premises shall not be used for any purpose other than a single dwellinghouse.
- (2) Space shall be kept available at all times for no less than 2 vehicles to be parked within the site and for vehicles to turn so that they may enter and leave the site in forward gear.

KR Seward

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Melanie Corbishley, BA HONS, MA	Senior Planning Officer
Trevor Lawrence	Planning Enforcement Officer

FOR THE APPELLANT:

Mr John Dagg, MRTPI	Of Counsel
Mrs Dawn Brailsford	Appellant
Stephen Tucker, FAVLP FBII, MICBA	Director, Humberstones