



Appeal Decisions

Hearing Held on 23 February 2021

Site visit made on 24 February 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2021

Appeal A Ref: APP/P1615/C/19/3237062

Appeal B Ref: APP/P1615/C/19/3237063

Land at Greyhound Inn, The Slad, Popes Hill, Newnham, Gloucestershire GL14 1JX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 'Act').
- **Appeal A** is made by Mr Anthony James Moule and **Appeal B** is made by Mrs Carol Annette Moule against an enforcement notice issued by Forest of Dean District Council.
- The enforcement notice was issued on 14 August 2019.
- The breach of planning control as alleged in the notice is: *Without planning permission the material change of use of the land to a self-contained separate residential dwellinghouse, and the construction of an access gate adjacent to the highway over 1 metre in height to the south of the site, and a fence with associated gates adjacent to the highway over 1 metre in height to the north of the site.*
- The requirements of the notice are:
 - 1) Cease the use of the land as a self-contained residential dwelling.
 - 2) Remove all associated residential paraphernalia from the land.
 - 3) Demolish the access gates and associated fences, or lower them to 1 metre in height, in the location as marked with the blue hatched area on the attached site location plan.
 - 4) Remove all resultant materials generated from compliance with Step 3 above.
- The period for compliance with the requirements is 12 months for Steps 1 and 2, and 2 months for Steps 3 and 4.
- **Appeal A** is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
- **Appeal B** is an identical appeal. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under s177(5) of the Act does not fall to be considered and the appeal will proceed on grounds (c) and (f) only.

Summary decision Appeal A: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice as corrected and varied is upheld, as set out below in the Formal Decision.

Summary decision Appeal B: The appeal succeeds in part and the enforcement notice is upheld, as corrected and varied in the terms set out below in the Formal Decision.

Appeal C Ref: APP/P1615/W/19/3239604

Greyhound Inn, The Slad, Popes Hill, Newnham, Gloucestershire GL14 1JX

- 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 and Mrs Tony and Carol Moule against the decision of Forest of Dean District Council.
- The application Ref P1124/19/FUL, dated 17 July 2019, was refused by notice dated 24 September 2019.

- The development proposed is for the erection of 1.8 metre high closed board fencing and gates.

Summary decision Appeal C: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary matters

1. Planning Appeal C seeks only planning permission for the 'Erection of 1.8m high closed board fence and gates', which the submitted plans show are located on the northern site boundary. As the fence and gates also form part of the alleged matters enforced against in Appeal A and the planning considerations are the same I will deal with the planning merits of both appeals together.
2. The description of development in the heading above for Appeal C is taken from the Council's decision notice as it is more succinct than the appellants' description. It is also the same description the appellants used on their appeal form. I have removed the word 'retrospective' as it is not a definition of development.
3. The address for Appeal C is taken from the appeal form, as this corresponds with the enforcement address and is similar to the Council's address on the decision notice. The reference to road junctions in the original application is of limited assistance when they are not shown on the plans.

Matters Relating to the Notice

4. There were several matters that were discussed at the Hearing that have a bearing on the enforcement notice and the subsequent appeals.

The plan

5. The Council confirmed that it no longer wishes to enforce against the timber gates to the south of the site, now that the fence has been removed from this boundary, and intends to rely on s173(11) of the Act to grant planning permission for them.
6. Leading on from this, the Council confirmed that Step 3 of the enforcement notice relates only to the fence and gates to the north of the site, and that the plan attached to the enforcement notice should have excluded the blue hatched area indicating the gates to the south of the site. At the Hearing both parties agreed there would be no injustice if the plan was substituted by a corrected plan showing only the gates and fence to the north of the site hatched blue. I agree. Thus, the hatched blue area marking the gates to the south should be deleted from the plan. I will substitute the plan accordingly.

Appeals on Ground (c)

7. In response to the Council's confirmation that planning permission be granted for the gates to the south of the site, the appellants withdrew their ground (c) appeals.

Allegation

8. In light of the preceding matters above, the parties agreed that reference to the gates to the south of the site could be struck out of the allegation without

causing any injustice. I will use my powers under s176(1) of the Act to vary the terms of the notice accordingly.

Consequences for the appeals

9. Resulting from the above:-

- Appeal A – as the allegation is corrected, the ground (a) appeal and deemed planning application now only relate to *“the material change of use of the land to a self-contained separate residential dwellinghouse, and the construction of a fence with associated gates adjacent to the highway over 1 metre in height to the north of the site”*. The appeal on ground (f) proceeds unchanged.
- Appeal B proceeds only on ground (f).
- Appeal C proceeds unchanged.

Background

10. The appeal property is a public house called the Greyhound Inn of some 125 years standing. It has been closed since about September 2016 following an armed robbery and an arson attack. The appellants bought the fire-damaged property at the end of August 2017 for £220,000 after having had a survey done. They set about rectifying the fire damage and refurbishing the property. However, within approximately three months on 1 November 2017 they submitted a planning application¹ for the *“Change of use from public house/restaurant to dwelling. Internal and external alterations and the erection of 1.8m high close boarded fence and gates to the north and south of the property”* (‘the first application’).
11. The application was dismissed on appeal². At the time, limited viability information had been submitted and the property had not been marketed. The Council has since served an enforcement notice, which is the subject of enforcement Appeals A and B.
12. Following the appeal decision, on 17 July 2019 the appellants submitted a separate planning application³ for the *“Erection of 1.8m high closed board fence and gates”* (‘the second application’). This was refused and the application is now the subject of Appeal C.
13. The business has not traded for over 4 years and remains closed. It has not opened or traded at all under the appellants’ ownership and there is currently no premises licence.
14. The business has been marketed for sale since July/August 2019. It was first offered for £395,000 as a ‘former public house’. A few months later it was marketed with specialist business agents⁴ at the price of £240,000. At the time of the Hearing the price had been reduced to £230,000 and there had been 13 viewings. An offer for the asking price, but to include some land the

¹ LPA ref: P1764/14/FUL refused 19 February 2018

² PINS appeal ref: APP/P1615/W/18/3198223 dated 14 November 2018

³ LPA Ref: P/1124/19/FUL refused 24 September 2019

⁴ Sydney Phillips

appellants wish to retain, was received in November 2020 but has not been accepted.

15. Due to the Covid-19 pandemic the Hearing has been postponed a number of times. With the subsequent passage of time and a new agent acting for the appellants, both parties submitted updates to their evidence, which I have accepted. During the Hearing both sides were able to comment on each other's submissions.

Appeal A on Ground (a), the Deemed Planning Application, and Appeal C

Main Issues

16. The main issues in this case are:-

- Whether there would be compliance with local and national policies that seek to protect existing community facilities, and
- The effect of the fence and gates on the northern site boundary on the character and appearance of the area.

Reasons

Protection of an existing community facility

17. Core Strategy⁵ Policy CSP.8 seeks to retain access to community facilities and specifically identifies public houses as a community facility. Their loss is not permitted unless alternative suitable and convenient facilities are available or will be made available as part of the proposal. The policy goes on to state that exceptions will only apply where it can be demonstrated that, in the case of commercially provided services, the facilities are no longer viable and cannot be made so.
18. The Greyhound Inn, with its garden, outbuildings and car park for approximately 20 vehicles, is situated on the A4151 (Elton Road) that connects the town of Cinderford (approximately 4 kms to the west) with the A48 trunk road to the east, which in turn links Cardiff and Gloucester. It lies within the rural Parish of Littledean, whose namesake is the nearest settlement approximately 1.8 kms to the west.
19. The public house sits prominently on the corner of the A4151, The Slad and a narrow lane that runs along the northern edge of the site. Pope's Hill is signposted off the main road and extends steeply up the hillside from the premises and the valley in which it sits. The area is broadly comprised of sporadic and dispersed properties, although there is a small cluster of dwellings by the Greyhound Inn at the junction and a few dispersed properties along the A4151. As such the property lies in a countryside location.
20. Should the appeal succeed then the entire premises would become a self-contained dwelling, with no public house function at all.
21. The parties agreed that the community which the Greyhound Inn serves is small and is focused on a walking distance population. The appellants' agent regards the walking catchment of the premises to be slightly shorter than the 1000 metre radius shown by the first agent, which extends approximately up

⁵ Adopted February 2012

to the road junction by Flaxely⁶ as the crow flies. The Council considers accessible and convenient facilities to be those within easy walking distance of approximately 800-1600 metres.

22. However, as reported by the parties, the area is characterised by steep hilly terrain with narrow lanes, no pavements or street lighting. This would likely serve as a deterrent to some people, especially late at night and in the winter. This was endorsed by some of the third parties. Along the main road there is a narrow pavement, but this only extends a short distance along the property frontage, from the junction with The Slad to the Public Right of Way (PRoW) at the site's western limit. Beyond this short section of pavement in either direction there is only vegetated verge to walk on, that would further limit walking. From my visit and my drive along The Slad and surrounding lanes, I consider that 800 metres is a more realistic theoretical walking distance radius. For the purposes of the appeal I find this puts the 'community' loosely encircled by The Slad and the few properties along the A4151.
23. To further illustrate the limited extent of the local community, the appellants counted 40 households within 800 metres of the site, most of which lie to the north and up the hill encircled by The Slad. Based on census-sourced parish data this gives an estimated walking catchment community of some 92 people, including children and the elderly. In the absence of evidence to the contrary from the Council I have no reason to disagree.
24. There are a number of public houses within a wider 5kms driving radius of the site that would be accessible and convenient to those with a car, but these are beyond the 'walking distance community'. I saw the bus stops outside and opposite the Greyhound Inn providing some public transport accessibility. I note that some third parties refer to Littledean being the community hub with a number of public houses, as well as other facilities, in Westbury on Severn, Broadoak and Blaisdon. That may be so, but they are not within easy walking distance of the Greyhound Inn. Hence, I find there are no other alternative suitable or convenient public houses available within walking distance of the existing public house.
25. The appellants points out that Policy CSP.8 pre-dates the National Planning Policy Framework⁷ (the 'Framework'). Paragraph 92c) of the Framework states that to provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should, amongst other things, 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. The appellant argues that Policy CSP.8 and its 'catch-all' protection is more onerous than the Framework as it does not require assessment of 'valued' facilities, and should have less than full weight as a result.
26. Under section 38(6)⁸ decisions should be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration. Paragraph 213 of the Framework makes clear that due weight should be given to policies that pre-date the Framework according to their degree of consistency with it.

⁶ Appellants' Appendix 19 shows a 1000 metre radius from the site.

⁷ The Framework was published in March 2012, revised 24 July 2018 and updated 19 February 2019.

⁸ Planning and Compulsory Purchase Act 2004

27. The Framework does not define 'valued' to aid in the interpretation of paragraph 92c). The appellant offers the view that a facility's value can be gauged by whether the community speak out or campaign to protect and retain it. The appellant claims the community is silent and hence the Greyhound Inn is not valued.
28. It is clear from the public consultation responses provided to me that there is limited commentary from local residents relating specifically to the closure and permanent loss of the Greyhound Inn, either to resist or support its closure. Littledean Parish Council had 'no comments to make' and did not attend the Hearing. I am informed that the Greyhound Inn has not been made an Asset of Community Value.
29. These factors might suggest that the local community is 'silent' or at least not in uproar about the loss of the public house. However, the premises has been closed for over 4 years and has not operated as a community facility in that time. It is not unreasonable, therefore, that some locals may regard the closure and loss of the Greyhound Inn as a fait-accompli without realising that the public house is still technically, in planning terms, an identified community facility. Therefore, it cannot be deduced with any level of certainty if this public house is a 'valued' community facility under paragraph 92c) of the Framework. Nevertheless, there are other policies within the Framework which clearly do apply.
30. It is clear from paragraph 83d) of the Framework that planning decisions should enable the retention of community facilities, recognising their role in supporting a prosperous rural economy. Public houses are expressly mentioned as facilities to be retained. Furthermore, under paragraph 91a) planning decisions should aim to achieve healthy, inclusive and safe places, which promote social interaction, including opportunities for meetings between people. Public houses can do this.
31. Notwithstanding that the value of a facility is not an express requirement of Policy CSP.8, this does not diminish the fact that other policies within the Framework clearly do apply and which support the retention of public houses. I therefore find that Policy CSP.8 is consistent with the main thrust of the provisions within paragraphs 83d) and 91a) of the Framework which do not require a facility to be 'valued'.

Marketing

32. Policy CSP.8 allows the loss of commercial community facilities as an exception where they are no longer viable or cannot be made viable. Part of this process would involve marketing the premises as an existing public house business.
33. As already described, the property was first marketed for sale in August 2019. This was almost 2 years after the appellants purchased it and nearly a year after the previous appeal decision. The specialist agent's sales particulars describe the property as a "quaint cottage style country pub" that "requires further investment prior to opening as a public house/restaurant or other leisure business". The particulars also state that the premises are closed and have never traded under the appellants, but they have spent circa £150,000 improving the fabric of the building.

34. There has been some interest from licenced trade professionals, but no interest from pub companies, breweries or restaurant operators. There has been some interest from people wanting alternative uses and the Council has had some pre-application enquiries. The feedback from some viewers suggests they have been put off by the extra money and work that would need to be spent to turn the interior back into a public house.
35. The sales particulars also state that the appellants are retaining a section of land at the far end of the car park which currently contains a garage and timber stables. There has been one offer from someone wanting to operate a micro-brewery. The Council has advised the prospective purchaser that as a rule of thumb, more than half of the building would need to be available to the public as a community facility. The potential purchaser also wanted to buy the retained land. The offer has been rejected because the appellants have concerns about the purchaser's credentials and lack of a business plan. Whilst it is up to the appellants who they sell to, it is not a requirement to ascertain whether a potential purchaser has a business plan to successfully operate a public house.
36. The land the appellants wish to retain currently comprises the detached garage, timber stables and grass area to the west of the building and which extends around two sides of the car park. I saw on my visit that whilst there is a timber ranch-style fence along the northern edge of the land with the car park, the land is not currently separated from the car park. Access to this land is currently via the gates, on the north or south boundary, and across the pub car park. The sales particulars say the retained land will have its own access. Nonetheless, the proximity of the 'retained' land to the car park and the uncertainty over its intended use could fetter the site and the extra money the appellants are wanting for it could all serve to deter potential purchasers.
37. On my visit I also observed that the sale boards erected at the property only proclaim 'For Sale' and display the agents name and phone number. An existing free-standing pole sign for the public house remains, but it is overgrown and not readily visible and readable. Furthermore, the pub name sign has been removed from the side elevation of the property. As a result, there is very little to indicate to passers-by that a public house is for sale.
38. Whilst the property has been marketed for a little over 18 months, the majority of that time has been while the country has been subject to periods of national lockdown and other restrictions that commenced in March 2020 in response to the Coronavirus/Covid-19 pandemic. As a result, much of the hospitality trade closed. Furthermore, the first 'lockdown' in particular would likely have had some effect on the interest shown in the business and the number of viewings, especially when property viewings were not allowed for a period of time and people were advised to 'stay at home' and only travel if essential. Clearly, this would have been the case for most properties nationally on the market during this time and is not unique to the appellants. There is nothing to say that the value put on public houses as places to meet other people might not increase in the future.
39. Although the pandemic has been unprecedented and its after-effect on the hospitably trade and society's habits in general are unknown, I am not satisfied that the marketing period reflects the situation in which to properly evaluate interest in the business. Moreover, the retention of some of the land

and the sales boards making no reference to the sale of a public house compound my concerns. Thus, I am not satisfied that marketing opportunities have been maximised.

Viability

40. The fact that an offer has not been accepted does not necessarily indicate the business is unviable.
41. At the Hearing Mrs Moule candidly explained that they bought the property after searching for a pub to buy. With her significant experience in the hospitality trade, including having owned and run a pub, she planned to run the business with her sister. Furthermore, with her love of cooking she wanted to serve good basic food and Sunday lunches. She explained the premises had a 'nice feel' and was excited by the prospect.
42. During refurbishment of the property it became apparent that more work was needed than initially thought. In addition, the catering kitchen and restaurant were deemed too small to cater on the scale they considered necessary to recoup what they had spent and to make the business work. Within 3 months they submitted the first application to change the use of the premises into a dwelling without having actually traded.
43. The appellants admit they did not do sufficient research about the property and the trading situation in the area. There appears to have been little trading account information available to the appellants at the time of purchase. Some trading figures have since been acquired from a previous operator dating from 2010/2011 that show two years of loss which appear to back up anecdotal evidence about dwindling trade. However, as those figures are almost a decade old and show only a two-year snapshot in time by one operator, they cannot, in my mind, be relied upon as a barometer of the business trade and hence I find they are of little significance.
44. There have also been a number of different owners and leaseholders over the years, with varying lengths of trading. The parties acknowledged that this does not necessarily reflect viability, as people's reasons for ceasing to trade can be many as premises can be run or managed in very different ways that can affect trade, and people's personal and financial circumstances can have a bearing. Furthermore, the struggles and closures that public houses face generally and changes that supermarket sales of alcohol have made to home drinking are well documented.
45. In their updated evidence, the appellants have calculated the necessary turnover required for the Greyhound Inn to be viable. Using a 20% Return on Capital Employed (ROCE) assessment, based on an asking price of £230,000 and £124,000⁹ costs needed to install the bar and kitchen, a return of £70,800 per year would be required. Based on a community wet-led pub (90:10 ratio of drink to food) industry-standard trading model¹⁰ and a gross profit margin of about 50%, the business would require a turnover of £141,600 per year, or £11,800 per month. Using Office for National Statistics records from 2018 on weekly spend by households on 'alcoholic drinks away from home' and the 40 households counted within the walking catchment, the appellants calculate this would equate to a turnover of £272 per week or

⁹ Quotation for works from ARD Developments dated 18 June 2019

¹⁰ 2018 British Beer and Pub Association 'Running a Pub' guide to costs.

£14,000 per year. This local-based trade falls short of the required turnover. The turnover could be even less if that household spend was split between the two other licensed premises in Littledean, even if they are not within walking distance.

46. The appellant's agent refers to other trading models being available but because the shortfall is so substantial he considers this would serve no purpose. However, Mrs Moule expressed her desire to cook and serve good food, but no models showing a greater food ratio have been provided for comparison or to show that a food bias would not make the difference the appellants allege. There was also some suggestion during the Hearing that buyers prefer premises that are already refurbished, but there is no evidence before me that the condition of the Greyhound Inn has influenced its future viability.
47. Mrs Moule admitted that they briefly considered having Shepherds' Huts for paying guests in the grounds but the road would make it noisy. They also considered doing Bed & Breakfast. They also thought the main road, with traffic going fast downhill, would not deliver the passing trade they needed. There are no costings put forward to show how these conclusions were reached. Furthermore, the appellants have not opened and traded as a public house since purchasing it, so there is no recent trading evidence. Ultimately, there is very little information before me to illustrate that available options and measures to maximise profits were explored in any detail to support the appellants' contention that the Greyhound Inn could not be made viable as a public house.
48. The parties agreed that a locals-only trade would not support a viable business, and this is borne out to some extent by the calculations from the wet-led pub model. However, they also suggested that that if a facility relies on a wider catchment for its trade or becomes a destination pub, such as one that may be run by a celebrity chef, it moves away from being a community facility. There is nothing in Policy CSP.8 or the Framework to suggest that a community facility must be the sole preserve of the local community it serves or that it must rely only on local trade.
49. The current sales particulars describe the premises as being close to Gloucester making it *"an excellent location for those working in the city and an ideal 'drive out' location...It borders the Royal Forest of Dean, which is a mecca for outdoor sports enthusiasts, especially of those of mountain biking, walking, kayaking, and climbing"*.
50. The Greyhound Inn is prominently located on a main road, with easy access to a sizeable car park. It also has an attractive patio and garden area for outdoor seating. Being located in an area close to tourist and other attractions associated with the Forest of Dean and the Wye Valley Area of Outstanding Natural Beauty, it theoretically has potential to attract passing trade to complement local trade. This reinforces my view that the opportunities of the Greyhound Inn have not been fully explored to demonstrate that the business cannot be made viable.
51. At the time of the previous appeal decision, the GPDO¹¹ had been amended to remove public houses (drinking establishments) from being able to change to

¹¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

other Class A uses as 'permitted development' without the need for express planning permission. This distinction was not made clear in the previous appeal decision. Whilst readers of the appeal decision might gain the impression that there is a wider range of permitted uses available to them, the Inspector did not list any other uses. Furthermore, the current sales particulars make no reference to the GPDO and other uses, but clearly state that interested parties will need to make their own assessment of the business's future viability. Therefore, I find this matter would not be so misleading to potential purchasers as to affect the saleability or viability of the business.

52. I understand the premises were flooded twice last year, in February and December 2020, due to heavy rains with water running off the road and the brook through the site bursting its banks. This is evident from the submitted photographs and from my visit, where the aftermath inside and outside the building was plain to see. I was also able to appreciate some of the engineering works required to channel sections of the brook to prevent future flooding, which I understand would cost approximately £12,000. Whilst I sympathise with the appellants that the damage caused is upsetting and an additional cost to put right, this is a situation affecting the property regardless of its use.
53. To conclude on this main issue, whilst there appears to be little local public outcry at the potential loss of the Greyhound Inn to suggest it is not a 'valued' community facility, a public house is nonetheless an identified community facility whose retention both local and national policy generally support. I find the premises is the only public house within walking distance, which the parties agree is the local community it serves, even though there are other drinking establishments within a wider driving distance. The premises has been closed for over 4 years and only marketed for just over 18 months, much of which has been during the Covid-19 pandemic, which is a unique experience and which is likely to have had some effect on interest and viewings. I am not satisfied that the property has been marketed for a sufficient period out with the pandemic to be able to properly assess interest and demand. Nor am I satisfied that other complementary business ideas and ventures have been adequately explored to demonstrate the business is not viable, or that it cannot be made so.
54. Accordingly, I find the appeal development relating to the change of use of the public house to a self-contained dwelling would be contrary to Core Strategy Policy CSP.8 and Allocations Plan Policy AP.1 which seek to retain community facilities and improve the economic, social, and environmental conditions of the area. It would also be contrary to paragraphs 83d) and 91a) of the Framework that seek to retain such facilities.

Character and appearance

55. A 1.8m high close boarded fence, approximately 26.5 metres in length, has been erected along part of the site's northern boundary with the lane. It follows the side of the building up to and beyond the car park entrance. Due to ground level differences, the gates into the car park are set down lower than the road, and are set back from the road as the fence splays into the site. Due to the orientation of the building to the lane, the fence starts close to the building but then extends away from it, creating a triangle of land

behind it which currently houses an oil tank and wheelie bins. The fence continues for a short distance the other side of the gates.

56. When determining the first application the Council found the fence and gates did not materially harm the character and appearance of the area. However, the Council came to the opposite view when determining the second application, despite there being no differences in the design or alignment of the fence and gates. The Council maintains this latter stance in its Statement of Case for this appeal.
57. The Council has drawn my attention to the Council's district-wide residential Design Guide¹² and to the table of 'Materials and Construction' on page 23 to suggest that timber boundaries can only be for agriculture. However, the pre-amble to this table makes clear that the table is a breakdown of architectural elements relating to the construction of stone, rendered, brick and timber houses and buildings. As the appeal development is for gates and a fence, I find page 23 is of little relevance. However, the section on 'Boundaries' requires them to correspond to the dominant vernacular, which I saw to be hedgerow in the vicinity of the site.
58. The Council also refers me to its Landscape Supplementary Planning Document¹³ and the Landscape Character Assessment¹⁴. The site falls within the 'Ridges and Valleys' character type, and lies on the boundary of the Character Areas 10b (Littledean Ridge) and 10d (Breakheart Hill). These are broad-brush descriptions of the area as broadly pasture farmland with a strong pattern of well-maintained hedgerows and deciduous woodlands on the ridges and slopes of the area and a dispersed character of settlements.
59. There is hedgerow opposite the appeal fence and further along the lane. The fence and gates introduce a hard solid boundary to a country lane, which does have an urbanising effect to this part of the rural lane.
60. However, the submitted photographs show that before the fence was erected, the access into the car park already existed and there was no enclosure along this boundary, although the relatively blank elevation of the building provided much of the boundary treatment up until the entrance to the car park. The photographs also show that various paraphernalia associated with the public house, including beer barrels and wheelie bins, were also visible.
61. The building is close to the junction with The Slad and there are a number of residential properties clustered around the junction. The appeal property is therefore located in proximity to other built development, and not remotely located along the lane. The fence and gates enclose an existing access and gap in the roadside boundary, and serves as a boundary to a property with some residential credentials. It is also screening from view a large expanse of tarmac car park, which would have been on full view from the lane before the fence was erected. Furthermore, it is not unreasonable for the appellants to want to secure their land and this can be done under permitted development anyway, up to a height of 1 metre.
62. Taking account of the gap that already existed in the roadside hedge, the existing access, the expanse of car park and proximity to other built

¹² Adopted as Supplementary Planning Guidance on 6 August 1998

¹³ Adopted March 2007

¹⁴ Final Draft Report November 2002

development, I find the 1.8 metre high fence and gates are functional and visually appropriate and not unduly out of character in this location.

63. On my visit I saw the timber fence along the main road enclosing the listed Camp Farm opposite the appeal site. I also saw another property on the main road to the east with timber fencing. I have not been informed about the planning status of these fences, and there is no indication from the Council that it had an issue with either of them.
64. For the reasons above I find the gates and fence do not materially harm the character and appearance of the area. Accordingly, I find no conflict with Core Strategy Policy CSP.1 and Allocation Plan Policies AP.1 and AP.4, which collectively seek to ensure development respects its context taking account of local character and contributing to improving the local environment. Nor do I find they offend the guidance in the Framework that encourages good design.
65. Policy CSP.4 relates more to the location of development to promote thriving sustainable communities and is not directly relevant to the erection of a fence.

Conditions

66. Any condition needs to meet the tests as set out in the Framework and the national Planning Practice Guidance.
67. The Council has suggested two conditions. The first requires the fence and gates to be finished in a colour to be approved by the Council within 3 months. The parties accepted that acceptable fence colours are likely to be either brown or a dark/forest green. I will impose a condition requiring, within 3 months of the date of this decision, that the fence and gates are painted/stained a colour to be first submitted to and agreed with the Council.
68. As the gates and fence already exist, a condition is usually worded to include some sanction if they were not coloured within the specified timescale. However, the parties agreed that in this particular instance there was no need for a sanction as the Council confirmed it is content to rely upon its powers for a breach of condition.
69. The second condition seeks to remove permitted development rights for roof extensions, as the building occupies a visually prominent and elevated position. The Council's sustainability officer also suggested two conditions to protect bats. However, as I am refusing the change of use to a dwelling there is no need to impose these conditions on an existing situation.

Split decision

70. I have the powers to issue a split decision should I find parts of the appeal scheme to be acceptable and other parts unacceptable, provided those parts are severable from each other, both physically and functionally. At the Hearing both parties agreed that a split decision was feasible.

Conclusion on the Ground (a) Appeal, the Deemed Planning Application and Appeal C

71. Accordingly, for the reasons given above, I conclude that the ground (a) appeal and the deemed planning application should succeed in part only. I will make a split decision and grant planning permission on the application

deemed to have been made for one part of the alleged matters (namely the fence and associated access gates to the north of the site) subject to a condition, but otherwise I will refuse to grant planning permission on the other part (namely the material change of use of the land to a self-contained separate residential dwellinghouse).

72. On Appeal C, the appeal is allowed and planning permission is granted for the erection of 1.8 metre high closed board fencing and gates (on the northern site boundary) subject to a condition.

Appeals A and B on Ground (f)

73. The appeals on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control or injury to amenity, which has been caused by any such breach, as the case may be.
74. The ground (f) appeals have been made solely in relation to Step 2 of the notice, which requires the removal of all associated residential paraphernalia from the land. The purpose of the notice, as varied, with regards to Step 2 is to remedy the alleged breach by removing the residential paraphernalia from the land, associated with the use as a self-contained residential dwelling.
75. Accordingly, the appeals on ground (f) could only succeed if the appellants can show that the requirements of the notice are excessive to remedy the breach and 'lesser steps' would achieve the same end.
76. The appellants claim that the existence of residential paraphernalia is consistent with the lawful use of the site as a public house with ancillary residential accommodation, and sometimes there may be fluidity in how the accommodation is used. For example, the catering kitchen may be used by the family when not being used to cater for pub customers. The premises may be closed to the public some days of the week, such that the family could use the ground floor accommodation as well.
77. It was evident at the Hearing that the wording of Step 2 caused both parties some confusion, due to a lack of clarity as to what was "residential paraphernalia" and what was to be removed when the public house would be permitted to have some ancillary residential essential use. A standard dictionary definition of paraphernalia is 'miscellaneous articles or objects or pieces of equipment'. The agent acting for the Council, who was not the author of the notice, clarified that it referred to items of domestic paraphernalia not associated with a public house and would include items inside the property and outside in the grounds.
78. Acknowledging that ancillary residential accommodation can exist with the use of the property as a public house, the Council suggested at the Hearing that Steps 1 and 2 could be combined to include reference to 'removal of all residential paraphernalia from areas not used for purposes ancillary to the lawful use as a public house'. I find this to be an acceptable variation.
79. For the reasons given above I conclude that the requirements are excessive to some degree and therefore the appeals on ground (f) succeed to that extent. I will vary the enforcement notice accordingly, prior to upholding it.

Overall Conclusion

80. For the reasons given above I conclude that the appeals should succeed in part only. Following correction and variation of the notice, I will grant planning permission for one part of the alleged matter the subject of the enforcement notice (the fence and associated access gates to the north of the site) and allow Appeal C for these gates and fence. Otherwise I will uphold the notice and refuse to grant planning permission on the other part (the change of use to a self-contained residential dwellinghouse). Appeals A and B on ground (f) succeed in part.
81. As planning permission is granted for the gates and fence the requirements of the notice will not change but the appellant can rely on s180 of the Act. This provides that the notice will cease to have effect so far as it is inconsistent with the permission. However, the notice is not quashed and does not cease to have effect altogether.

Formal Decisions

Enforcement Appeal A :

82. It is directed that the enforcement notice is corrected and varied as follows:-
- In the allegation **delete** the words “an access gate adjacent to the highway over 1 metre in height to the south of the site and”.
 - **Substitute** the plan attached to the notice with the Plan attached to this decision.
 - In Step 1 **insert** at the end “and remove all residential paraphernalia from areas not used for purposes ancillary to the lawful use as a public house”.
 - **Delete** Step 2.
83. Subject to these corrections and variations, Appeal A is allowed insofar as it relates to the construction of the fence with associated access gates adjacent to the highway over 1 metre in height to the north of the site. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the fence with associated access gates adjacent to the highway over 1 metre in height to the north of the site at Land at Greyhound Inn, The Slad, Popes Hill, Newnham, Gloucestershire GL14 1JX subject to the following condition:
- 1) Within 3 months of the date of this decision the gates and fence hereby approved shall be painted/stained in accordance with details previously submitted to and approved in writing by the local planning authority and shall thereafter be maintained as approved. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
84. Appeal A is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the change of use of the land to a self-contained separate residential dwellinghouse. Planning permission is refused in respect

of the change of use of the land to a self-contained separate residential dwellinghouse on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Enforcement Appeal B

85. It is directed that the enforcement notice is corrected and varied as follows:-

- In the allegation **delete** the words “an access gate adjacent to the highway over 1 metre in height to the south of the site and”.
- **Substitute** the plan attached to the notice with the Plan attached to this decision.
- In Step 1 **insert** at the end “and remove all residential paraphernalia from areas not used for purposes ancillary to the lawful use as a public house”.
- **Delete** Step 2.

86. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Planning Appeal C:

87. The appeal is allowed and planning permission is granted for the construction of a fence with associated access gates adjacent to the highway over 1 metre in height to the north of the site at Land at Greyhound Inn, The Slad, Popes Hill, Newnham, Gloucestershire GL14 1JX subject to the following condition:-

1. Within 3 months of the date of this decision the gates and fence hereby approved shall be painted/stained in accordance with details previously submitted to and approved in writing by the local planning authority and shall thereafter be maintained as approved.

K Stephens
INSPECTOR

APPEARANCES

For the Appellants:

David Staddon – PJS Development Solutions Ltd

Mrs Moule – Appellant

Danielle Issac - local resident

For the Local Planning Authority:

Chris Wood – Planning Appeals Officer, West Oxfordshire District Council, acting on behalf of Forest of Dean District Council

Interested Persons:

Mark Bennett

Esther Swann

Documents submitted during the hearing:

Appellants' typed statement



Plan

This is the plan referred to in my decision dated: 9 April 2021

by **K Stephens BSc(Hons) MTP MRTPI**

**Land at: Greyhound Inn, The Slad, Popes Hill, Newnham,
Gloucestershire GL14 1JX**

Appeal Refs: APP/P1615/C/19/3237062 and APP/P1615/C/19/3237063

Scale: NOT TO SCALE

