



Appeal Decision

Site visit made on 9 March 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 26 April 2021

Appeal Ref: APP/Y3615/C/20/3259273

The Jovial Sailor, Portsmouth Road, Ripley, Woking, GU23 6EZ

- 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 Mr C Price (Barons Pubs Ltd), against an enforcement notice issued by Guildford Borough Council.
- The enforcement notice, numbered EN/19/00170, was issued on 13 August 2020.
- The breach of planning control as alleged in the notice is, without planning permission, carrying out operational development compromising the:
 - (i) Erection of three buildings, fixed seating and tables ("the dining barns") in the approximate position highlighted green on the attached plan B;
 - (ii) Erection of an extension ("bottle bar") to the South-East elevation of the main building in the approximate position highlighted red on the attached plan B;
 - (iii) Erection of a brick built structure in the approximate position marked with a cross on the attached plan B.
- The requirements of the notice are:
 - (i) Demolish the three buildings, seating and tables ("dining barns") shown in the approximate position shaded in green on the attached plan B;
 - (ii) Demolish the extension ("the bottle bar") to the South-East elevation of the main building in the approximate position highlighted red on the attached plan B;
 - (iii) Demolish the brick built structure shown in the approximate position marked with a cross on the attached plan B;
 - (iv) Permanently remove from the land all materials and debris arising from the works outlined in steps (i), (ii), and (iii) above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. 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 Town and Country Planning Act 1990 as amended for the development already carried out, namely the erection of three buildings, fixed seating and tables ("the dining barns"); the erection of an extension ("bottle bar"); and the erection of a brick built structure at The Jovial Sailor, Portsmouth Road, Ripley, Woking, GU23 6EZ, in the locations marked on the plan attached to the notice.
2. **Preliminary Matters**
3. Having regard to the arguments advanced in respect of the appeal, I offered the parties opportunity to comment on the Government's Roadmap out of lockdown, contained in its COVID-19 Response – Spring 2021, which was

published post final comments. No comments were received from the Council whilst the appellant argues that the need for the facilities at The Jovial Sailor, which allow for the management of social interaction, will remain for a considerable period of time. I have considered such matters as part of my reasoning below.

The Appeal on Ground (a) and the Deemed Planning Application

The Site, Planning History and Main Issues

4. The appeal relates to the Jovial Sailor public house, located within the Green Belt. The site also includes its associated car park, patio, beer garden and play area.
5. The three 'dining barns' are positioned within the patio area to the rear of the pub, near to its main entrance. They are timber structures of a similar size and appearance to a typical garden shed. Fixed external booth style tables and benches are positioned in the spaces between the dining barns. The single storey bottle bar extends from the pub's rear elevation nearby. The brick built structure is attached to the return side wall from which the bottle bar extends and comprises covered shelving.
6. A retrospective planning application for the three dining barns and outside bottle bar was dismissed on appeal in March 2020¹. In that decision the Inspector concluded that the development amounted to inappropriate development in the Green Belt. The appellant's case does not seek to argue otherwise.
7. Submissions are made in respect of openness and very special circumstances - the latter on the basis that they were not fully explained for the previous appeal and that in the intervening period the operational needs of businesses in the hospitality industry have changed significantly as a result of the COVID-19 pandemic.
8. Consequently, the main issues are the effect on openness and whether the harm by reason of inappropriateness, and any other harm, is now clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Openness

9. As set out in paragraph 133 of the National Planning Policy Framework (the Framework), the essential characteristics of Green Belts are their openness and their permanence.
10. The Inspector for the previous decision found that within its context, the dining barns and the bottle bar have no material effect on the visual openness of the Green Belt. However, the development was found to erode spatial openness to a modest extent. Based on my own observations, I agree. The introduction of natural landscaping between the car park and the seating area would not change or alleviate the effect on spatial openness. Rather, it would likely have the opposite effect.
11. It does not appear that the brick built structure formed part of the previous appeal proposal. Given its limited size and position, it has very little effect on

¹ Appeal Ref: APP/Y3615/W/19/3239863

openness. I reach the same conclusion for the fixed seating and tables positioned between the barns.

12. Nevertheless, I find no reason to arrive at a different conclusion from that of the previous Inspector in that openness is not preserved by the bottle bar and dining barns, contrary to the essential characteristics of Green Belts, as set out in the Framework.

Other considerations

13. Policy P2 of the Guildford Borough Local Plan: Strategy and Sites 2015-2034 (adopted 2019) (LP) seeks to protect Green Belt from inappropriate development in accordance with the Framework. The Framework provides that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances². Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations³.
14. I recognize that the previous appeal decision was made prior to the full extent, and implications, of the COVID-19 pandemic being realised. Although there is now a Roadmap out of lockdown trading remains restricted, making the outdoor space more important. It may be that the operational and capacity constraints associated with social distancing and other measures put in place to cut transmission will be removed within the period for compliance with the notice, but, it is an evolving picture and that may not be the case.
15. Part of the appellant's case is that the likelihood of COVID-19 transmission is substantially lower in the open air than indoors. However, the fairly close confines of the dining barns cannot be reasonably compared to outdoor seating, particularly if the front doors are closed. That said, the representation received clearly demonstrates that they are an attractive proposition for one or two households in their respective 'bubbles'.
16. Although the distance between the main internal bar and the outside seating area is not significant, the route is likely to get congested with customers. I therefore accept that the bottle bar is likely to materially improve the operation of the public house as a whole and the outdoor space in particular, as well as allowing greater scope to comply with social distancing requirements.
17. I have noted the appellants submission that during the 2019/2020 'winter season'⁴ the dining sheds were used by a minimum of 2084 covers creating an income of £46,706.00 and generating 1,668 of labour hours. The appellant also states that pre-COVID-19 the bar and sheds generated £300,000 extra sales, equating to 10,714 extra labour hours, which is the equivalent of five full-time or 13.3 part-time jobs.
18. Whilst I have no reason to question those figures, the absence of any corroborating evidence has the effect of reducing the weight I am able to attach to them. That said, a significant amount of representation has been made in favour of the alleged development which suggests that the dining

² Paragraph 143

³ Paragraph 144

⁴ 1 October 2019 to 29 February 2020

sheds are well used. On that basis the income and jobs generated are unsurprising.

19. Moreover, I accept that capacity is a key factor directly affecting viability. To that end, the dining barns materially off-set the reduction in internal covers arising from meeting social distancing requirements. Even without those restrictions, the barns add 18 covers and a differing offer to customers. Indeed, it is clear from the representation received that many customers express a clear preference of using the barns over the main part of the public house on the basis that they are dog and children friendly, easily accessible, and provide a safe environment for the vulnerable, elderly and individuals with special needs.
20. Although the previous Inspector found there to be no clear evidence that the bottle bar is critical to attracting customers to the outside space, it is likely that COVID-19 will have changed that. To that end, the possibility of visiting the pub and not having to go inside at all will be an attractive proposition to some customers, particularly those most vulnerable. Again, that is clearly borne out in the representation received. Given the experiences of the last 12 months, I envisage that attraction and operational benefit remaining for some time after social distancing and other restrictions have been lifted.
21. I note that the Council has reasonably queried why the bottle bar requires an extension and could not just form part of the original building with provision for outdoor serving. However, I saw at my site visit that the internal configuration of the pub does not obviously lend itself to doing so.
22. I also saw that the public house places considerable stock in its beer garden, with numerous outdoor benches and a play area. The outdoor bar and dining barns clearly enhance the attractiveness of the space and the substantial level of public support demonstrates their popularity and value to the local community.
23. I accept that as the outside bar is manned during working hours, it allows better supervision of the children's play area and activities within the beer garden as a whole. However, it has not been shown that the outside bar is essential to meet the premises licensing objectives, which must be met in any event. Such considerations therefore attract limited weight.

Green Belt balance

24. Bringing the above together, it is accepted that the bottle bar, dining barns and brick built structure are inappropriate development, which, by definition is harmful to the Green Belt and should not be approved except in very special circumstances. In accordance with LP Policy P2 and the Framework, I am required to give substantial weight to any Green Belt harm. However, the effect of the barns and bottle bar on openness is modest whilst the brick built structure and fixed seating have very little effect on openness. The purposes of Green Belt are not be unduly affected. That is the totality of the harms.
25. I saw at my site visit that there is a garden centre directly opposite the car park to the public house with many sheds and summer house structures for sale, in full view from the road. There is also a shed factory further along the road, again with numerous sheds on display across its site frontage. Therefore, although the siting of the sheds in association with the public house is

somewhat quirky, they are not an alien feature to the area. Indeed, the sheds in the garden centre and factory have a much greater visual effect than the three dining barns. However, the absence of harm to the character and appearance of the area is a neutral factor in my assessment.

26. I recognise the effect of the COVID-19 pandemic on the appellant's business. However, that cannot, on its own, amount to very special circumstances because the same argument could be repeated all too often, resulting in cumulative and significant harm to the Green Belt. Nevertheless, I accept, that in this particular case, the effects of the pandemic represent a material change in circumstances since the previous appeal decision.
27. Even without the issues and constraints associated with COVID-19, the bottle bar and dining barns clearly provide operational and capacity benefits to the public house. I also agree with the previous Inspector that they make a good first impression, enhance customer experience and encourage return trips.
28. Whilst it has not been demonstrated that they are critical to the pub's financial viability and to the jobs of those employed at the head office, I accept that they provide a very welcome and significant increase to the pub's income stream, which in turn will help protect jobs. That is all the more important having regard to the restrictions over the last 12 months which have had a very significant impact on the economy, of which the hospitality industry is a core part. I am very mindful therefore that constraining the operation of the public house by requiring the removal of facilities which clearly assist in its safe operation during the pandemic, even if they were not initially erected for that purpose, runs counter to supporting the hospitality sector as the economy reopens.
29. That is important in the context of paragraph 80 of the Framework, which states that planning decisions should *"help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development."* Paragraph 83 also states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas and the retention and development of accessible local services and community facilities, such as public houses.
30. It is plainly evident from the representations received that the public house is very popular and regarded as an important community facility. It is also evident, that the dining barns and bottle bar have elevated that popularity and have become an attraction in their own right. Paragraph 92 of the Framework is therefore relevant. It states that planning decisions should plan positively for the provision and use of community facilities (such as public houses) to enhance the sustainability of communities and residential environments and to ensure that such facilities are able to develop and modernise, and are retained for the benefit of the community.
31. I have noted the Council's suggestion that other temporary options might be pursued such as a marquee to provide outdoor seating during the pandemic. However, a marquee is likely to have a greater effect on openness than the modest structures that comprise the alleged development.

32. I am very mindful of the importance of enforcement and consistency in maintaining public confidence in the planning system. A recent appeal decision relating to most of the of the alleged development is therefore clearly a material consideration and regard should be had to it. Indeed, there must be very sound reasons for me to reach differing conclusions to the previous Inspector.
33. In light of the arguments now advanced, business needs considerations are elevated from modest, as previously found, to significant. Similarly, the contribution of the dining barns and outdoor bar to the success and popularity of the public house as a community asset, and providing optimal employment provision, is also, now, greater than modest. In my view, the community benefits should now be afforded at least moderate weight. The effects of the COVID-19 pandemic also represent a material change in circumstances and the associated operational and financial benefits amount to other considerations which attract moderate weight, albeit (hopefully), more temporary in nature.
34. I therefore find that the above reasoning logically takes me to conclude that the weight of the other considerations now clearly outweighs the totality of the harms. Looking at the case as a whole, I consider that very special circumstances now exist which justify the development. On that basis, I do not find conflict with LP Policy P2 or section 13 of the Framework.

Conclusion

35. For the reasons given above, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the dining barns, bottle bar and brick built structure as described in the enforcement notice. The Council has not suggested that conditions ought to be imposed on any grant of permission, and I find no conditions to be necessary. In these circumstances, the appeals on grounds (f) and (g) do not fall to be considered.

Richard S Jones

INSPECTOR