



Appeal Decision

Site Visit made on 13 May 2021

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2021

Appeal Ref: APP/K2420/W/21/3269215

22 Main Street, Newbold Verdon LE9 9NN

- 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 Graeme Ferriman against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 20/00472/FUL, dated 15 May 2020, was refused by notice dated 19 August 2020.
 - The development proposed is the change of use to Class C3 for conversion of the existing Public House, part demolition of existing structures, eaves and roof raised over rear section of building, single storey extension and alterations
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to Class C3 for conversion of the existing Public House, part demolition of existing structures, eaves and roof raised over rear section of building, single storey extension and alterations at 22 Main Street, Newbold Verdon LE9 9NN in accordance with the terms of the application, Ref 20/00472/FUL, dated 18 May 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Unless otherwise agreed under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: AVD-528-MSN-PL01, AVD-528-MSN-PL02, AVD-528-MSN-PL03, AVD-528-MSN-PL04 Rev A & AVD-528-MSN -PL05 Rev A.
 - 3) No development above foundation level shall commence until details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
 - 4) Notwithstanding any details on the approved plans, all new windows and external doors shall be of a painted timber finish. No such windows or external doors shall be installed until details of their construction (at a scale of 1:1 to 1:20) and paint colour have been submitted to and approved in writing by the local planning authority. The new windows and external doors shall be installed in accordance with the approved details and painted in the approved colour within 3 months of installation, and thereafter retained as such.
 - 5) Prior to first occupation of the dwelling hereby approved, details (including a timetable for when it is to be first displayed) shall be submitted to and approved in writing by the local planning authority of

the hanging sign on the front elevation, and the approved hanging sign shall thereafter be displayed in accordance with the approved timetable and thereafter retained at all times.

- 6) The dwelling hereby permitted shall not be occupied until such time as the parking and turning facilities have been provided in accordance with Drawing Number AVD-528-MSN-PL04 Rev A. That on-site parking and turning provision shall thereafter be retained.

Main Issues

2. The main issues in this case are

- a) whether the proposal would result in the inappropriate loss of a community facility in the village and
- b) whether it would fail to preserve the character or appearance of the Newbold Verdon Conservation Area and its effect on its significance as a designated heritage asset.

Reasons

The loss of a community facility

3. In line with the *National Planning Policy Framework* (the Framework), in rural areas it is reasonable that communities should maintain a balance of facilities, so as to promote sustainability and community cohesion. Policy DM25 of the *Site Allocations and Development Management Policies DPD* (the DPD) states that the redevelopment or loss of community facilities will only be appropriate if compliance with any of the 3 initial criteria can be demonstrated. The only one identified as relevant to this case is criterion (b), which says

There is a surplus of the facility type within the immediate locality exceeding the needs of the community’.

Of the other 2, criterion (a) concerns the provision of replacement facilities whilst criterion (c) is about the loss of a small portion of the site allowing wider community benefits on the remainder, neither of which are applicable in this instance. However, the policy goes on to state that where none of these 3 initial criteria can be demonstrated, then the loss of the community facility will only be accepted if it has been proactively marketed (criterion d) and offered to the local community (criterion e). Therefore, the need to test a scheme against criteria (d) and (e) is only required if the proposal has failed to satisfy any of the 3 initial criteria, whilst, in turn, compliance with one of the 3 initial criteria means there is no need to progress to criterion (d) or criterion (e).

4. Policy 7 of the *Local Development Framework Core Strategy* similarly seeks to protect key services in rural centres such as Newbold Verdon. However, it outlines a different approach to considering such proposals, saying that the Council will

resist the loss of local shops and facilities in Key Rural Centres unless it is demonstrated that the ... facilities can no longer operate in a viable manner.

Consequently, in this policy viability is a decisive matter from the outset, whilst in DPD Policy DM25 it is not found amongst the 3 initial criteria against which such schemes are assessed. Mindful of this conflict within the development

plan, I am relying on the policy in the last document to be adopted, approved or published, which, in this case, is the DPD. I shall therefore proceed on that basis in relation to the tests for whether or not the loss of a local facility should be resisted.

5. Paragraph 17.4 of the supporting text to DPD Policy DM25 identifies a public house in a rural area as being a community facility. However, while criterion (b) refers to there being a surplus of facilities exceeding the community's needs there is no definition given as to what constitutes a surplus or how it should be measured. Rather, the only specific guidance is found in paragraph 17.8 of the supporting text, which says

The loss of an existing facility should not result in a reduction in the community's ability to meet its day to day needs. For example, this could be the loss of the last congregational space, public house or school in the village.

Whilst this is only offered as an example, it is of note that it considers a conflict to the policy would arise with the loss of 'the last' public house. Furthermore, throughout the supporting text there is emphasis on the facility serving the community, so it is reasonable to assume that should inform how the 'immediate locality' is defined when considering DPD Policy DM25(b).

6. The appeal property used to be known as the Old White Swan (though also called The Swan Inn in the submissions). It was a public house until it closed in March 2020 having been for sale since the previous September.
7. In its reason for refusal the Council highlighted a failure to satisfy criteria (d) and (e) of DPD Policy DM25, so making clear it considered the scheme would conflict with criterion (b). It has said the appellant had failed to demonstrate that changing the premises to a dwelling would not result in the loss of an 'important community facility', but it has not explained why, amongst community facilities, this could be important. In any event, the policy context highlighted above makes no reference to the importance of a facility being an issue if the criteria of DPD Policy DM25 are met.
8. The appellant alleged compliance with criterion (b) because he contended there were a number of other comparable facilities around. He drew attention to various public houses in neighbouring villages, but they are generally a few kilometres away and accessed along country roads, many of which are unlit and have no pavements. To my mind they are therefore not readily accessible to the community and so do not lie within the 'immediate locality'. Reference was also made to a coffee shop and a take-away in Newbold Verdon, but they are not specifically identified as a community facility in the policy's supporting text, and they provide a different service and role to that of a public house. Similarly, while the sports field and pavilion, the church hall and the library's meeting rooms can all be used to host community events, again those would be very different facilities to the Old White Swan when it was open.
9. However, in Newbold Verdon there is another public house called The Jubilee (or the Jubilee Inn), as well as the Newbold Verdon Sports and Social Club. I accept the latter is slightly different to a public house, but nonetheless consider there are sufficient similarities for it to be treated as the same type of facility. Both are near to the appeal site and lie close to the centre of the village. The Council and local residents said these were not comparable to the Old White

Swan as they were less family-oriented, did not cater for the same trade, and did not have the benefit of its large rear garden. If there is more than one public house or club in a settlement though it is to be expected they will each have some unique aspects, will each have some different attributes and will each seek to appeal to slightly different markets. In any event, I am not in a position to place significant weight on their styles of operation as the character of established individual premises lies outside of the control of the planning system, and could well change in the future.

10. Therefore, I do not doubt these other 2 establishments are, in some ways, different to the Old White Swan, but it does not follow that The Jubilee and the sports and social club cannot be treated as being the same type of facility serving the community for the purposes of DPD Policy DM25. This means that if the Old White Swan did not reopen, whether or not this appeal was upheld, it would not constitute the loss of the last such facility in the village, as certainly one comparable facility and quite possibly 2 (depending on how one defined the sports and social club) would remain to serve the community. Consequently, the scheme would not conflict with DPD Policy DM25(b) or the approach outlined in its supporting text.
11. It was said that The Jubilee and the sports and social club were not financially robust and so had uncertain futures, but there was no substantive evidence to demonstrate that they could not be taken into account in this assessment.
12. The Council and local residents said there was not a surplus as there was still a need, especially as further housing in the village was coming forward. Moreover, the lack of evidence around marketing and viability means it had not been shown this public house was no longer required. Settlement size though is not highlighted in the policy in relation to criterion (b). Furthermore, that criterion does not identify a lack of viability or marketing interest as a way of showing a surplus exists. Rather, as stated, marketing is expressly raised as an exercise necessary under criterion (d) of the policy, which is only undertaken if none of the initial 3 criteria have been satisfied.
13. Putting that aside, the appellant has outlined how the site was marketed and the responses received, and I accept that evidence. Although the appeal premises were marketed for slightly less than the minimum of 6 months advised in the Council's *Employment Land and Premises Study*, I have no basis to consider such a shortfall has had an appreciable effect on the outcome. Otherwise, I have little to support the contention of there not being a surplus beyond the generalised statements of need. As discussed above, to justify a conflict with policy the 'need' cannot be associated purely with the fact that the Old White Swan might have had a different character or serve a different market to The Jubilee and the sports and social club.
14. The appellant's contention that the premises are unviable is similarly a generalised assertion not supported by evidence. However, there is no explicit requirement for a lack of viability to be demonstrated to achieve compliance with criterion (b) of DPD Policy DM25. Therefore, in the absence of any definition or clearer direction as to how a surplus should be defined beyond that given in paragraph 17.8 of the DPD, I consider it reasonable to follow the approach he has taken, namely that if the Old White Swan did not reopen the one and possibly 2 similar establishments remaining in the village would be sufficient to accord with the policy requirement.

15. Accordingly, the proposal does not conflict with DPD Policy DM25(b). Consequently, I consider there is no need to explore whether the premises have been suitably marketed or offered to the community, as those criteria only apply if criteria (a), (b) or (c) cannot be demonstrated. Therefore, I conclude that the development would not result in an inappropriate loss of a community facility in the village, and so would not conflict with Policy 7 in the Core Strategy, insofar as it seeks to safeguard community facilities, DPD Policy DM25, or the Framework.

The heritage impact

16. The Framework says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Moreover, "*clear and convincing justification*" is required to justify any harm to the significance of a designated heritage asset.
17. The Newbold Verdon Conservation Area is focussed on a wide street lined with cottages running up to the church. As such, its character and appearance are influenced by the scale and nature of the architecture that reflects the settlement's simple historic rural origins, and these add appreciably to its significance.
18. The appeal property is not listed, but rather is identified as a non-designated heritage asset and an important building in the conservation area. Its simple detailing, form, window sizes and materials mean that physically it reflects the character and appearance of the conservation area and so contributes positively to its significance. It is proposed to add a rear extension of a suitable design and remove a modern addition that relates poorly to the building, and the materials used could be agreed by condition. It has also been accepted that to safeguard the historic environment a condition could be imposed requiring timber windows be installed instead of the uPVC ones initially proposed. These physical alterations would therefore be to the benefit of the conservation area and would not harm its significance.
19. Although a long-standing public house, its scale, elevational treatment and design broadly sympathise with the rows of cottages that line the street to the west. I therefore accept that its former use may not be readily apparent into the future. Moreover, the Council cited further harm to the conservation area would occur because the loss of activity around the site and the removal of advertisements mean it would no longer be a focus.
20. However, I am not satisfied that its use meant the building was an appreciable focus that contributed positively to the significance of the conservation area or that it was a landmark that stood out in a notable manner. This is because the building itself is not of a distinctive design so often associated with public houses, and any such importance or focus is not mentioned in the conservation area appraisal, despite the conservation area's relatively small size and the presence of few other non-residential buildings. I acknowledge that the use of this building has been a part of the history of the conservation area, and I accept that without its external advertising it will appear different. However, despite those points I consider its operation as a public house has not added to the conservation area's significance as a designated heritage asset, and so that significance would not be diminished by this proposal. Moreover, no harm would be caused to the significance of the appeal property as a non-designated

heritage asset. The appellant suggested retaining a hanging sign at the premises, and insofar as the former use needs referencing, that would be a benefit and could be secured by condition.

21. In coming to this view, I have noted the appeal decision concerning The Feathers Public House in London. That building though was specifically referenced in the relevant conservation area audit, and was of a particularly distinctive design that contrasted markedly with the buildings around, while its large front windows created quite an active frontage to the streetscape. Therefore, in my opinion it did not have a comparable impact on the conservation area to the Old White Swan, and so does not lead me to a different decision.
22. Accordingly, I conclude the development would not fail to preserve the character or appearance of the Newbold Verdon Conservation Area, and so would not harm its significance as a designated heritage asset. It would also not cause harm to the Old White Swan as a non-designated heritage asset. Consequently, it would not conflict with DPD Policies DM11 and DM12, which together seek to safeguard the historic environment.

Other matters

23. Given the proposal seeks a residential use rather than a public house, I consider there would be no adverse effects on the living conditions in general, or the privacy in particular, of neighbouring residents. Whilst premises would have employed some staff, I have insufficient evidence to consider the loss of employment would be a reason to dismiss the appeal.

Conditions

24. The proposal should be in accordance with the approved plans for the avoidance of doubt. Moreover, to safeguard the historic environment the windows should be of timber and their design, the materials and hanging sign should be agreed, while in the interests of highway safety it is reasonable to secure parking provision.
25. On the evidence before me though it has not been shown contamination should be a specific issue here, or, given the scale of the scheme, that particular control should be imposed on construction times. There is also no basis to consider a fencing condition is needed to safeguard privacy. Moreover, even being mindful of its location in a conservation area, I have no clear justification to support the removal of 'permitted development rights' or to show that removing such rights here would pass the tests of reasonableness or necessity. I therefore impose none of those conditions.

Conclusions

26. For the reasons given I conclude that the appeal should succeed.

JP Sargent

INSPECTOR