



Appeal Decision

Site Visit made on 31 March 2021

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2021

Appeal Ref: APP/R2520/W/20/3265723

The Bell Inn, 3 Far Lane, Coleby, Lincoln, LN5 0AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Paul Vidic (The Bell at Coleby) against North Kesteven District Council.
 - The application Ref 20/1361/FUL, is dated 7 October 2020.
 - The development proposed is change of use from Use Class E (Restaurants and Cafes) to Use Class C3 (Dwellinghouse).
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Decision

1. The appeal is dismissed and planning permission for change of use from Use Class E (Restaurants and Cafes) to Use Class C3 (Dwellinghouse) is refused.

Application for costs

2. An application for costs was made by Mr Paul Vidic against North Kesteven District Council. This application is subject to a separate Decision.

Preliminary Matters

3. The appeal is made against the Council's failure to give notice of its decision within the prescribed period. The Council's case and its putative reason for refusal are set out in its appeal statement. I consider the appeal on this basis.
4. The Council requested that the description of development be amended based on its position regarding the lawful use of the property. I set out my reasoning on this issue below, but in short I have not found it necessary for the purpose of this appeal to amend the description of development given by the appellant.

Main Issues

5. The first main issue is whether or not the existing use of the property constitutes a community facility for the purposes of the development plan. If so, the subsequent issues are whether the proposed change of use would result in the unacceptable loss of a local community facility and whether the proposal would be a suitable location for housing.

Reasons

Whether a community facility

6. The Bell is a presently closed establishment in the village of Coleby. A long-time public house, it has been owned by the appellant since 2011, who describes its use since that time as a restaurant, and this is reflected in the

description of development given on the application form. This characterisation is disputed by the Council and interested parties, including Coleby Parish Council, who consider the lawful use to be a public house with expanded food provision and B&B accommodation, and that the recent focus of the establishment on food service does not amount to a material change of use. I am not provided with a lawful development certificate confirming the lawful use of the property, but I am aware that, at the time the appellant acquired the property, and until 2017, planning permission was not required for the change of use from a public house (Class A4) to a restaurant (Class A3).

7. The evidence before me in respect of the existing use of the premises is not wholly conclusive. There is some agreement that food service has most recently been the core element of the business, and representations from local residents appear to corroborate this. Details including menus, website information and personal statements offer some weight to the appellant's position. The large commercial kitchen is also an indicator that food service was a significant part of the business. One factor I find indicative is the opening hours of the premises, which appear more in line with a restaurant use as described by the appellant, rather than a public house which would be expected to operate longer hours, particularly into the evenings and during the day on weekends. The Council does not dispute these opening hours.
8. The cumulative evidence suggests to me that whilst The Bell retains all of the physical characteristics of a public house, it has not operated as one in the traditional sense most recently. On the evidence before me and the balance of probabilities, I consider that, so far as it is relevant to this particular appeal, the appeal site has primarily functioned as a restaurant during the appellant's ownership and this change first occurred at some point during the period when planning permission was not required for the change of use from a public house to a restaurant. I consider the proposal against relevant development plan policies on this basis.
9. Policy LP15 of the Central Lincolnshire Local Plan (April 2017) (the CLLP) refers to community facilities. The policy lists public houses as a community facility, but does not list restaurants. However, the use of the words 'such as' indicate it is not a closed list. The supporting text describes community facilities as essential to the delivery of integrated, inclusive and sustainable development because they encourage community cohesion and social interaction; improve the 'liveability' of places; encourage healthy lifestyles; make a positive contribution to social wellbeing; and can provide employment opportunities.
10. The policy states that, in most instances, the loss of an existing community facility will not be supported, and redevelopment of a community facility for an alternative land use will only be permitted where at least one of three criteria is met: (a) the facility is demonstrably no longer fit for purpose and the site is not viable to be redeveloped for a new community facility; (b) the service provision provided by the facility is met by alternative provision that exists within reasonable proximity, or (c) the proposal includes the provision of a new community facility of similar nature and of a similar or greater size in a suitable on- or off-site location.
11. The Coleby Parish Neighbourhood Plan (CPNP) was adopted in January 2018 and forms part of the development plan for the area. It refers to 'the two pubs' as among the community facilities in the parish and adds that strong desire to

retain the village's community facilities and to enhance them as opportunities arise. Policy 6 states that proposals that involve the loss of any existing community facility will not be supported unless their loss can be adequately justified. The Bell is specifically identified as a community facility for the purposes of Policy 6.

12. In this case, the appellant's position is effectively that, as a restaurant, the appeal premises does not constitute a community facility, and therefore the requirements of Policy LP15 are not engaged, though the appellant nevertheless presents arguments that the proposal complies with the requirements the policy. Moreover, the appellant argues that The Bell was included erroneously as a community facility under Policy 6 of the CPNP in spite of his written objections at the consultation stage, which he says were ignored. The appellant also points to two failed efforts to nominate The Bell as an asset of community value (ACV) in 2015 and 2020 as evidence of its lack of value to the community. The appellant stresses that The Bell has most recently operated as a high-end destination restaurant, drawing patrons from a wide catchment area outside the village, and not catering to the same extent to locals. It is argued that local residents instead frequent The Tempest which operates as a traditional village pub, with food service and social events.
13. The Council argues that the premises has continued to advertise itself as a 'pub restaurant' and that it has held various events for local residents over the years. I also note in evidence that The Bell has operated as a venue for private functions, including weddings. The Council further argues that the B&B facilities at The Bell are the only forms of tourist accommodation in the village and are a further indication of its role as a community facility.
14. I recognise that, in many instances, a restaurant may not be regarded as a community facility, particularly where there are several to choose from in a given area. However, within a small village where facilities are limited, the role of such facilities in terms of serving the community is likely to be greater. It is evident that The Bell has a long history of serving the community as a public house, but that this role has diminished in recent years, particularly under the current owner. However, a restaurant can still fulfil at least some of the criteria for community facilities under Policy LP15. In this case, the evidence before me indicates that the service provided by The Bell, in that it facilitates gatherings, parties and events, does encourage community cohesion and social interaction. The presence of a destination restaurant in the village is also likely to improve the 'liveability' of Coleby by having an additional facility for local residents to avail of, something referred to in representations received from interested parties. Significantly, many representations also attest to The Bell providing longstanding employment opportunities for local residents, particularly young people. For these reasons, I find that The Bell, even in its current guise, meets with several of the relevant criteria and can be regarded as a community facility for the purposes of Policy LP15.
15. In respect of Policy 6, it is not my role in this appeal to re-consider the basis upon which the CPNP was formulated and adopted. The Bell has been specifically identified as a community facility within the CPNP and this forms part of the adopted development plan for the area. It is also the most recently adopted part of the development plan and followed a public referendum. Therefore, I afford this policy significant weight.

16. Whilst I recognise that two attempts to nominate The Bell as an ACV have failed, this process is separate to the planning process and is subject to specific, narrow tests set out in the relevant legislation. I note the most recent application was turned down due to insufficient evidence being provided to satisfy the statutory tests. The main purpose of the ACV process is also to provide an opportunity for the community to purchase the building, but it is not necessary for a property to be an ACV to be protected under Policy LP15. Accordingly, I afford limited weight to this factor, and it does not dissuade me from my overall view, for the reasons set out above, that The Bell constitutes a community facility under the development plan.
17. Consequently, the proposed change of use would result in the loss of a community facility. Therefore, the assessment turns to whether this loss is justified, having regard to the further criteria of Policies LP15 and 6.

LP15(a) Whether site is no longer fit for purpose

18. I saw at my site visit that, in physical terms, the building remains fit for purpose as a public house or a restaurant, with a functional bar area, large commercial kitchen, indoor and outdoor seating areas, a sizable car park and accommodation upstairs.
19. The appellant argues that the business is no longer viable, a situation made worse by the Covid-19 pandemic. In particular, the appellant cites the intimate internal layout of the premises as being unfit for purpose in terms of complying with government social distancing measures.
20. I am presented with no specific financial information to demonstrate the unviability of the business. From the representations made, the business traded up to the point it was forced to close in line with the rest of the hospitality industry nationally. I have no firm evidence that the business was not viable at the point it closed. I recognise the unprecedented challenge the subsequent months has presented for the hospitality industry as a whole, and it is inevitable that not all businesses will emerge on the other side able to continue as before. However, many will, and given the issue here is the potential permanent loss of a longstanding community facility, it is not sufficient to cite Covid-19 in general terms as justification for the proposed change of use.
21. I understand the appellant's concerns over the internal layout of the premises given the social distancing rules put in place to combat the current pandemic. However, the rules around hospitality uses have changed throughout the pandemic, ranging from complete closure to takeaway only, outdoor eating and indoor eating with preventative measures. At the time of writing, indoor dining has resumed as the country gradually emerges from lockdown, with the intention that all social distancing restrictions will be lifted by mid-summer of 2021. There is no guarantee that this will represent the end of Covid-19 restrictions, but the direction of travel is towards an eventual return to normal operations, including in the hospitality industry.
22. Given this context, I am not persuaded by the appellant's arguments that the premises are not fit for purpose as they cannot accommodate social distancing or provide adequate ventilation. This has not been an issue for most of the past year as premises have not been allowed to open, and the signals from the government are that social distancing restrictions will not be required in the

long term. Moreover, businesses have taken many different, often inventive, approaches to adapt to social distancing rules, but the evidence before me does not indicate that any failed attempts have been made to accommodate social distancing measures that would support the appellant's position.

23. The appellant also makes reference to an older clientele who may be dissuaded from returning to The Bell following the pandemic. This is little more than speculation, and it would be expected that a business seeking to continue trading would explore how to attract a different demographic before deciding to cease trading. I have no evidence the appellant has explored other options for the business, and I give limited weight to these arguments.
24. The appellant also states that it is unlikely another operator would realistically utilise the site. However, there is no evidence before me that the site has been marketed to prospective buyers, and the appellant's claim in this respect is unsubstantiated. Instead, it is indicated that the appellant intends to move his food service business to The Thorold Arms, around 1.5 miles north in the village of Harmston. I understand The Thorold Arms to be a traditional pub, possibly smaller in size than The Bell. It is unexplained why the appellant feels able to trade from this premises, but cannot continue to do so from The Bell, which is within his ownership.
25. Moreover, given the sound condition of the premises, I am not convinced that it would not generate any interest from other prospective operators. In fact, the evidence I do have indicates that there is local interest in acquiring the premises for the purposes of trading again as a public house. The policy also requires that other community uses are explored, and there is no evidence before me that this has been done.
26. The appellant points to interested parties' complaints about parking problems on Far Lane as evidence of The Bell not being valued by the community. However, I have limited evidence as to the extent or frequency of such problems. I note that a car park to the west of the premises has been re-developed for housing, but there is still a fairly large car park to the eastern side, which appears to be able to accommodate up to 18 cars. Consequently, I am not persuaded that any overspill parking onto Far Lane is so significant as to justify the total loss of the existing facility.
27. Taking these considerations together, I find that the premises are not unfit for purpose, nor has it been demonstrated that the business is financially unviable or that it cannot be redeveloped as another community facility. Consequently, the proposal conflicts with criterion (a) of Policy LP15.
28. On this matter, I note that the Council's Economic Development Team (EDT) raised concern at the potential loss of the business but, on balance, did not oppose the proposal having regard to the appellant's evidence. However, this was not the position ultimately taken forward by the Council. Nonetheless, whilst I have had regard to the comments of the EDT, I have reached my own planning judgment based on the totality of evidence put to me.

LP15(b) Whether there is alternative provision within reasonable proximity

29. The appellant argues that The Tempest, located some 350 metres away, provides alternative provision and there would be no detrimental impact on the community as a result. In contrast, the Council, Parish Council and interested

parties draw distinction between the services provided by The Bell and The Tempest.

30. I understand The Tempest reopened recently as a community pub following a period of closure. On the evidence before me, it is a traditional public house with a beer garden. It serves food as part of its offer. In this respect, there is an element of overlap between the two businesses. However, the appellant has stressed that The Bell has traded as a high quality restaurant and not as a traditional public house. In this respect, the two operations are different, one catering for those wishing to meet for a casual drink and/or meal, the other primarily for pre-booked meals. The difference in trading hours also distinguishes the two businesses.
31. For these reasons, I find that the loss of the high quality restaurant service provided by The Bell would not be met in the alternative by The Tempest, and the proposal would therefore conflict with criterion (b) of Policy LP15.

LP15(c) Whether the proposal includes the provision of a new community facility

32. The proposal would not include provision of a new community facility either on-site or off-site, and so would not accord with criterion (c) of Policy LP15.

Conclusions on loss of community facility

33. I consider, on the evidence before me, that The Bell has operated most recently as a restaurant, but nevertheless, its particular role and service in the village means it constitutes a community facility for the purposes of the development plan. For the reasons set out, I conclude that the proposal would result in the loss of this facility, to the detriment of the wellbeing and social, recreational and leisure needs of the community. The evidence before me does not demonstrate that the proposal would meet any of the exceptions set out in policy that would justify the loss of the community facility, and therefore the proposal would conflict with Policies LP15 of the CLLP and Policy 6 of the CPNP.
34. There would also be conflict with the National Planning Policy Framework which sets out that decisions should plan positively for the provision and use of community facilities and other local services to enhance the sustainability of communities and residential environments, and 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.

Location for housing

35. In terms of the proposed residential use, Coleby is classed as a 'small village' in the sixth tier of Policy LP2 of the CLLP, which permits small scale development of up to four dwellings in 'appropriate locations'. An 'appropriate location' is defined to mean a location which, among other criteria, does not conflict, when taken as a whole, with national policy or policies in the CLLP. There is no dispute that Coleby is capable of receiving more housing development, as the anticipated level of growth set out under Policy LP4 has not yet been exceeded. The site is also sequentially preferable under Policy LP4 in that it would make use of an existing brownfield site within the developed footprint of Coleby. However, in light of my conclusions above, the proposal would not represent an 'appropriate location' for housing in this case, given the identified conflict with the development plan in respect of the loss of community facilities. Therefore, there would be conflict with the aims of Policy LP2 of the CLLP.

Other Matters

Heritage Matters

36. The site lies within the Coleby Conservation Area (CCA) and is close to the Grade I Listed All Saints Church. The Council concluded that neither of these designated heritage assets would be adversely affected by the proposal. The CCA covers most of the village, its significance, from what I saw, deriving from its organic layout evoking its development over time, and its attractive stone built cottages and boundary walls. The proposal would involve limited external alterations to the property which would have very limited effect on the appearance of the building and would preserve the character and appearance of the CCA.
37. The listed church forms an historic focal point in the heart of the village, but this prominence would not be affected by the proposal, nor would the ability to appreciate the church and its setting. Consequently, the proposal would preserve the setting of All Saints Church.

Permitted development rights

38. The appellant indicates that the proposed change of use could be effected through exercising recently introduced permitted development (PD) rights allowing the change of use of unused Class E commercial premises to Class C3 residential use. However, under the new Class MA¹ of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), this change of use is subject to a prior approval process, an application for which may not be made before 1 August 2021. Moreover, the matters to be considered under the prior approval process include, where the proposal involves the change of use of the ground floor of a building within a conservation area, the effect of that change of use on the character or sustainability of the conservation area. Such criteria would fall to be assessed for the appeal site in an application for prior approval.
39. Therefore, whilst these PD rights have been introduced, there is no possibility of the appellant making an application before 1 August 2021, and even then, the application would fall to be assessed on its merits against the relevant conditions, limitations and restrictions of the GPDO. As such, there is no certainty that the change of use sought under this appeal could be otherwise effected under PD. Consequently, I place limited weight on this as a potential fall-back position for the appellant and it does not represent a material consideration that outweighs the identified conflict with the development plan.

Human rights

40. The appellant raises the potential infringement of his human rights, which I understand relates to Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, which states that everyone has the right to respect for his private and family life, his home and his correspondence, and that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder

¹ As inserted by The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

41. In this case, the appellant indicates the first floor accommodation at The Bell to be his sole place of residence and it is his desire to create a family home at the property. However, whilst dismissal of the appeal would prevent conversion of the ground floor to create extra living accommodation, it would not deprive the appellant of his home or the ability to continue to reside at the property. Use of the appeal site, as with any building, is subject to the planning system, and the right under Article 8 is a qualified right, allowing interference of that right in certain circumstances. In this case, there are legitimate and well-established planning policy aims to protect community facilities from permanent loss, and I consider that greater weight attaches to the public interest in this case. Dismissal of the appeal would therefore be necessary and proportionate and would not result in a violation of the appellant's human rights.

Benefits

42. The proposal would provide a large, family sized dwelling house and, in terms of market housing, it would provide a net gain of one, given the present accommodation is tied to the business use on the ground floor. The Council indicates that it is able to demonstrate a five year supply of deliverable housing sites, and therefore the benefit of an additional dwelling in this case would be very limited. There would be economic benefits for local contractors involved in refitting the ground floor for residential accommodation, but these would be temporary and minor in scale. There would be a reduction in traffic to and from a single dwelling compared to a commercial use, and likely a reduction in general activity and noise on the site, but these would again be limited benefits for neighbours' living conditions in view of the small scale of the existing use.

Other Issues Raised

43. I have had regard to all of the correspondence submitted by interested parties, and to other issues raised therein which have not been addressed in my considerations above. I do not dismiss these other issues, but from what I have seen and read, none would be significant enough to attract further material weight either for or against the proposal. Consequently, I do not consider it necessary to address them in further detail.
44. It is not lost on me that relationships between the appellant and members of the Parish Council have been strained over the years. However, whether or not one or more parties have taken actions deemed objectionable by others, this is not in itself a determinative matter, and I have considered the appeal, without prejudice, on its own planning merits.
45. I have had regard to the suggested conditions put forward by the Council, and the appellant's responses to these. However, none of these conditions would address the harm identified, nor do I find any other conditions would be appropriate in this case.

Conclusion

46. The proposed loss of a community facility to residential use would result in conflict with the development plan, taken as a whole, to which I afford significant weight. Other material considerations put forward in this case attract limited weight and do not indicate that permission should be forthcoming in

spite of this conflict with the development plan. Therefore, for the reasons set out, and having regard to all matters raised, I conclude that the appeal should be dismissed.

K Savage

INSPECTOR