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## Appeal Decision

Site Visit made on [Event Date]

**by E Brownless BA (Hons) Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: Thursday, 08 July 2021**

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**Appeal Ref: APP/F2605/W/20/3260603**

**The Black Swan Public House, The Street, Little Dunham, PE32 2DG**

- 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 Ward against the decision of Breckland Council.
  - The application Ref: 3PL/2020/0571/F, dated 8 June 2020, was refused by notice dated 28 July 2020.
  - The development proposed is a change of use from a mixed Public House/Cafe to a single dwellinghouse.
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### Decision

1. The appeal is allowed and planning permission is granted for a change of use from a mixed Public House/Cafe to a single dwellinghouse at The Black Swan Public House, The Street, Little Dunham, PE32 2DG in accordance with the terms of the application, Ref: 3PL/2020/0571/F, dated 8 June 2020, and the plans submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 19022/01 Location Plan; 19022/02 Floor Plans as existing; 19022/03; 19022/04; 19022/05; Planning Statement dated June 2020.
  - 3) Prior to the first occupation of the development hereby permitted the vehicular access, parking, turning area and access visibility shall be constructed in accordance with a detailed scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. Surface water drainage shall be intercepted and disposed of separately so that it does not discharge from or onto the highway. The development shall be carried out in accordance with the approved plans and thereafter retained at all times for those purposes.

### Main Issue

2. The main issue is whether the proposed change of use would comply with local and national planning policies which seek to protect existing community facilities.

### Reasons

#### *Policy background*

3. Policy COM04 of the Breckland Local Plan (2019)(LP) seeks to protect community facilities to ensure the vitality of settlements and to support a rural

economy and sustainable community. The supporting text to the policy recognises that community facilities such as public houses perform a valuable role in providing for daily needs in local communities. The loss of a valued local community facility or service can have an adverse impact on the wellbeing and social interaction of that community.

4. Proposals which would lead to the loss of a local community building will not be permitted unless it can be demonstrated that there is no local need for the facility, or that its continuing function is no longer viable following appropriate marketing, or where an equivalent facility is available to serve the same community. A public house would fall within the category of a village facility. The use of the word "or" means that it is not necessary for the purposes of LP Policy COM04, for the appellant to demonstrate that the pub is not needed or there is a satisfactory alternative if it is shown that the Black Swan is no longer viable.
5. Although a considerable period of time has elapsed since the use of the public house ceased, it still remains to be considered as being most recently used as a public house. I do not accept the appellant's argument in this regard, and I therefore attribute full weight to Policy COM04 of the LP.
6. The National Planning Policy Framework (the Framework) promotes policies and decisions which plan positively for the provision of community facilities, including public houses, to enhance the sustainability of communities and residential environments<sup>1</sup>. It also aims to guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs.

### *Viability*

7. The appellant acquired the Black Swan in September 2015 for a sum of £207,500. At that time, it had been vacant since 2013. The appellant embarked upon a scheme of repair and renovation which cost in the region of £65,000. Improvements included a new timber servery/bar, redecoration of the bar and lounge, renewal work to the public toilets, kitchen, bathroom, a new heating system, some replacement windows, repairs to the roof and damp proofing to some walls. Following renovations, the Black Swan reopened but after a short period of trading of approximately seven months, it has remained closed since May 2017.
8. A similar unsuccessful planning application<sup>2</sup> for a change of use from a public house to a residential dwelling was refused in November 2019. No appeal was made against that decision. However, as part of that application the Council commissioned a Valuation Report (the VR), dated September 2019. I have been provided with a copy of the VR and I have had regard to the findings of the External Valuer (the EV).
9. I have not been provided with any detailed financial information regarding the brief period in which the Black Swan was trading in 2017. Despite this, the EV states that the appellant failed to cover their expenditure in spite of a good public launch during 7 months of trading by the current owner. Moreover, the EV makes reference to the Black Swan having had a difficult time trading over the past 16 years and it being 'probably too small to offer a sustainable wet

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<sup>1</sup> Paragraph 92a) of the National Planning Policy Framework

<sup>2</sup> Planning Reference: 3PL/2019/0806/F

- and dry trade for the area of Little Dunham and neighbouring villages'. The VR goes on to give market commentary and notes that there appears to be a lack of demand for a rural Norfolk village public house, which has seen a decline as customer habits have changed.
10. The Council consider that the appeal property has not been robustly marketed and has been over-valued such that the price has been a deterrent to those wishing to take on the Black Swan as a going concern.
  11. LP Policy COM04 does not prescribe how a marketing exercise should be undertaken nor a minimum period of time during which it should be conducted. However, on the basis of the evidence before me it would appear that the Black Swan has been almost continually marketed for sale since its closure in 2017. Initially it was marketed at a price of £375,000 by a specialist commercial property selling agent and despite the property particulars being sent out to approximately 5500 applicants on their database, only two viewings ensued. An offer to purchase the property was subject to residential use being allowed. A change of selling agent and a number of price reductions subsequently followed. This generated some 16 viewings but no offers to purchase the appeal building were achieved. It is the Council's case that the appellant had set the price unrealistically high.
  12. At the time of the VR the property was being marketed for sale at a price in the region of £295,000. Whilst this figure clearly exceeds the EVs figure of £250,000, there is little evidence to substantiate the Council's view and moreover, the VR makes it clear that values can change over time. In any event, it would have been open to a potential purchaser to have offered a lower price, but there is little evidence before me to demonstrate that this was the case.
  13. Crucially, since January 2020, the Black Swan has been offered for sale at £250,000, this being the price set out by the EV. Albeit the property has continued to attract interest on the online selling portal, no offers have been forthcoming at the revised price. Those individuals showing interest in the property have no desire to operate the business and others require a residential mortgage. Reference has been made by the Council to the property being marketed during a period of uncertainty due to the Covid-19 pandemic. Clearly, the hospitality industry has suffered from long periods of closure throughout the pandemic and the prospect of attracting a buyer will undoubtedly have deteriorated. However, I am mindful that the marketing period at the revised price began prior to the pandemic, and the evidence still indicates that the public house was not an attractive option to prospective buyers. There is no supplemental VR before me to suggest that the figure of £250,000 is inaccurate.
  14. Overall, the appellant's evidence demonstrates that the property has been marketed for sale by a number of agents. For part of the time, including from September 2020 onwards, it has been marketed by a specialist commercial property selling agent. It has been included on a number of property selling portals and it has been advertised in local and regional newspapers. Importantly, it has been offered for sale at a price suggested by the EV for in excess of 12 months, which I consider to be a reasonable period. Despite this, there have been no offers to purchase the appeal property as a public house nor has any sale been achieved. In my view, this indicates that it has been

adequately demonstrated that the Black Swan has been appropriately marketed for sale.

15. In addition to the above, there are a number of other factors that lead me to the conclusion that the public house is no longer viable. It is clear to me that the appellant has sought to increase the potential of the business to attract customers by reason of the considerable investment made to refurbish the property. Nonetheless, it appears that it could not rely on the local community in terms of numbers to make it economic to run. It would therefore need to operate as a destination pub where people will make the effort to visit. However, there are also other public houses nearby including one at Sporle, approximately one mile away and others at Litcham, Necton and Brisley which are said to be trading successfully. Given the proximity of these alternative public houses and the relatively sparse population, there is no evidence before me that persuades me that all of these public houses could run at a profit. In reaching this view, I have had regard to the comments of the EV who noted that local competition from public houses in Sporle and Swaffham command the market for this type of enterprise.
16. Additionally, the interior space within the Black Swan is small and the existing facilities limit the potential for serving food and drink. These observations concur with the EVs view that the Black Swan was 'too small to offer a sustainable wet and dry trade for the area of Little Dunham'.
17. No other public house exists in Little Dunham. Local residents attest to the fact that the Black Swan was a popular and much-loved facility until its closure. In my view, this indicates that the public house was once, and could become in the future, a facility of local value. An alternative facility is not simply one where a customer could be served a drink, but one where the local population of Little Dunham could meet up with the option of attending without a reliance on a private motor vehicle. The alternative public houses put forward by the appellant are in nearby settlements and are at a distance from the community of Little Dunham that would likely require access by private motor vehicle.
18. The Black Swan has not actively formed part of the life of the community since its closure in 2017. In the absence of any suitable alternative in the settlement, the change of use would result in a permanent loss of a valued community facility. There has been no offer from the community to take on the Black Swan and it is not registered as an asset of community value. However, this does not undermine its value as a community facility.
19. Nevertheless, I find that the property has been thoroughly exposed for a sale at a realistic price and for a reasonable period of time. As no serious interest has been shown and taking account of the matters above, I find that the evidence demonstrates that the Black Swan is no longer a viable enterprise. In terms of national policy, I find there has not been an 'unnecessary' loss of a community facility under paragraph 92c) as the public house has been demonstrated to be no longer viable.
20. Accordingly, the proposal would accord with the provision of local and national policies which seek to support the protection of existing community facilities. There would be no conflict with LP Policy COM04 and the proposal would accord with provisions of the development plan.

## **Other Matters**

21. I have had regard to a number of objections made by third parties including the Parish Council. Many of these relate to the way the Black Swan was operated and the attitude of the appellant to potential purchasers. My attention is also drawn to the Campaign for Real Ale Public House Viability Test. However, there is no substantive evidence that any of the matters raised would have altered the position on viability. Whilst concerns are expressed over the intentions of the appellant for the property, my decision is made having regard to the facts and the application of local and national planning policy.
22. Reference has been made to recent residential development within the village, a reduction in the number of individuals commuting for work purposes, home-working and a general desire to relocate to the countryside. However, there is little evidence before me regarding the extent of the new developments and in any event, any future additional residents within the village or changes to working patterns does not alter my findings above.

## **Conditions**

23. I have imposed the standard time condition and in the interest of certainty I have also imposed conditions relating to the approved plans. I have omitted some documents from this condition as they are unnecessary.
24. In the interests of highway safety and on the basis that the existing parking area will be altered to reduce the overall number of car parking spaces, I have imposed a condition requiring the access, parking, turning, visibility access and surface water drainage to be constructed according to approved details and thereafter retained.
25. The Council seek a condition requiring net gains for biodiversity. However, no policy basis or justification has been provided by the Council and given that there are no significant external changes proposed as part of the appeal scheme, I have not imposed a condition in this instance.

## **Conclusion**

26. For the reasons given above I conclude that the appeal should be allowed.

*E Brownless*

INSPECTOR