
Appeal Decision

Hearing Held on 18 January 2022

Site visit made on 19 January 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/D3125/W/21/3275882

Chilli Pepper, Broadwell, Lechlade, Oxfordshire GL7 3QS

- 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 Francesca Barrow of Ormonds Development and Management Ltd against the decision of West Oxfordshire District Council.
 - The application Ref 20/02358/FUL, dated 4 September 2020, was refused by notice dated 14 January 2021.
 - The development proposed is the change of use from Restaurant/Bar (A3) to Residential (C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It was confirmed by the appellant at the hearing that the proposal was for the change of use to a single dwelling house, and I have determined the appeal on that basis.

Main Issues

3. The main issues are whether the use of the building as a public house is a viable one, and whether appropriate alternative provision remains elsewhere.

Reasons

4. The wider beneficial role and place that public houses can play in enhancing the welfare of the local community, particularly in rural locations, is recognised in national policy. Paragraph 93 of the National Planning Policy Framework (the Framework) requires planning decisions to plan positively for the provision and use of public houses and to guard against the unnecessary loss of valued facilities and services. Paragraph 84(d) of the Framework states that planning decisions should enable the retention of accessible local services and community facilities, such as public houses as part of supporting a prosperous rural economy.
5. Policy E5 of the West Oxfordshire Local Plan 2031, Adopted September 2018 (LP) aligns with the national policy by seeking to support the retention of local services and community facilities including public houses. Development that would result in the loss of a public house will only be supported in specified circumstances. Effectively, these are that (1) the existing use is no longer

viable and is incapable of being made viable and (2) appropriate alternative provision of at least equivalent suitability and accessibility, particularly by foot, will remain. The wording of policy E5 requires both to be clearly shown.

Viability

6. There was broad agreement between the parties at the hearing that there was no such thing as a 'typical' public house. Therefore, pin-pointing the combination of circumstances that results in the success or otherwise of a public house enterprise is difficult as it involves so many variable factors. These include matters pertaining to location, the condition and facilities provided by the building, the price, quality and consistency of the services provided as well as the ambition and personal skills of the publican. In turn these are affected by wider economic cycles and social changes. Hence, it was unsurprising that references were made to the impacts arising from the Covid-19 pandemic, Brexit and rising energy prices on the hospitality sector. Consequently, it is a dynamic and complex area.
7. Policy E5 of the LP not only requires it to be clearly shown that the existing use is no longer viable but also that the use is incapable of being made viable. A deliberately stringent threshold has been set to reflect the importance of retaining such facilities wherever possible, and in recognition that once lost, they are probably unlikely to be reinstated. The policy requires a robust marketing exercise to have taken place to support any case regarding unviability.
8. The historic maps reflect that a public house has existed at the site in the village of Broadwell for many years. However, the pub/restaurant closed in 2009/2010¹ and has not traded as such since. My attention was drawn to the impact of events preceding the closure, including disruption from flooding in 2007 and extended works by Thames Water. Nevertheless, these were considered in a previous appeal decision² that concerned a similar change of use to the one before me and therefore, the findings of the Inspector in that case are a material consideration of notable weight. Based on the accounting and viability information before him, he concluded in 2010 that it failed to provide a convincing case that the use of the building as a public house was no longer viable.
9. Over a decade has passed since the previous appeal decision. However, as the pub/restaurant has not operated in the intervening period, no recent specific financial information exists. Neither has detailed financial information regarding the bed and breakfast accommodation been provided. Accordingly, the most relevant financial information as to the likely future performance of the public house is the indicative projected stabilised financial performance outlined in the viability assessment³, which although informed, is nevertheless, an estimate. This indicates that on a freehold basis there would be a small profit, but it is asserted that it would be so far behind industry benchmarks so as not to be commercially viable.
10. However, it is acknowledged in the viability assessment that the projections given are indicative and could vary. Moreover, there is a disclaimer in the

¹ Paragraph 6.2(e), Appellant's Appeal Statement and page 18, Viability Assessment prepared by Christie & Co, April 2021

² Appeal decision APP/D3125/A/10/2125810 dated 3 November 2010

³ Page 21, Viability Assessment prepared by Christie & Co, April 2021

document that states that chiefly due to the impact of Covid-19 all the assumptions and forecasts are prepared when there is material uncertainty. It was qualified at the hearing that the degree of variance due to this factor, or others was unlikely to be so significant as to positively affect the viability of the property.

11. Nevertheless, there are further reasons that undermine my confidence in the projection. Firstly, it states that the projected revenue has been calculated based on historic Chilli Pepper figures and thereafter adjusted. However, the historic trading period was short and volatile, which the previous Inspector found to result in a mixed picture. I am not assured that this would be a particularly sound foundation upon which to base confident projections over a decade later. Moreover, it appears that a different approach has been taken regarding the predicted wage costs as a higher percentage figure of revenue is employed than would be suggested by the historic performance overview provided, which indicates some inconsistency in the approach.
12. Most significantly, no allowance appears to have been made regarding the potential revenue arising from accommodation as a component of a future public house operation. This is somewhat surprising given that there is an accommodation annexe with five rooms at the appeal site. The appellant confirmed at the hearing that, notwithstanding a subsequent failed attempt to operate as a bed and breakfast operation, the public house and letting rooms have never operated together. Therefore, accommodation income would not have featured in the historic performance overview given in the assessment⁴. Additional revenue from ancillary accommodation could potentially augment the degree of profitability for a future public house enterprise.
13. In addition, I am not satisfied that a cogent explanation has been given for why the future of the Chilli Pepper should be fruitless when apparently there are many other well-run operations in the local market⁵. In this regard the context does not appear to have significantly changed since the previous appeal decision. I observed some of these public houses as part of my site visit. A reasonable proportion of those identified in the viability assessment are described as privately owned and so would not necessarily benefit from the economic advantages derived from being part of a larger group. The majority were also stone built historic buildings. As such, there is limited basis to assume that the associated overheads would be fundamentally different to that of the appeal site, especially given that refurbishment works have taken place since it last operated as a public house. Rather than the presence of these destination food-led public houses being an indicator of ruinous competition, it seems equally likely that it reflects a high level of demand.
14. Overall, these factors lead me to attribute limited weight to the estimated projection in the viability report.
15. My observations of the site were that despite the development of part of the former grounds for residential development⁶, it nevertheless has retained a good area for off street parking, as well as a pleasant patio outside space. It comprises an aesthetically pleasing historic building that appeared to be in reasonably good condition and in an attractive rural setting. Therefore, it still

⁴ Page 18, Viability Assessment prepared by Christie & Co, April 2021

⁵ Page 12, Viability Assessment prepared by Christie & Co, April 2021

⁶ Planning application 14/0128/P/OP

- possesses obviously advantageous attributes, some of which were highlighted by the previous inspector⁷.
16. On the face of it these would resonate with its positioning as a destination food-led business with accommodation in a popular tourist area near to recreational walking and cycling routes. Such a model would generally rely upon drawing in custom from a wider catchment area in addition to the local relatively affluent community. Hence, it would not necessarily be incompatible with limited passing trade and a small immediately local population.
 17. Moreover, there are some shortcomings in the marketing strategy. The appellant explained at the hearing that the guide price of £1.345m for the property was based on the recommendation of the sole estate agent involved in the most recent marketing exercise. However, their opinion was, and remains that the property is better suited for residential use⁸. In the absence of any contextual information in the marketing report to show the recent selling prices of comparable public houses, it is not clearly shown that the guide price was a realistic one for the existing use. Even when later reduced to £1.25m, this appears implausibly high by comparison to the freehold sale price of £420k given in the viability assessment for the nearest public house, The Bell Inn, Langford in 2017⁹. It was brought to my attention that in 2017, The Bell Inn did not benefit from ancillary letting accommodation. Even so, that would not fully explain such a significant price difference.
 18. My concerns are generally reinforced by the previous marketing information dated 2012¹⁰ supplied shortly before the hearing. The description in that document refers to the potential to have a sizeable 5-6 bedroom house with a five bedroom annexe and the associated guide price in excess of £1million is likely to have reflected that approach.
 19. The guide price given in the most recent marketing exercise was likely to have discouraged interest from potential buyers and may provide some explanation as to why the 60 direct enquiries requesting further information (including the guide price) following marketing on Rightmove Commercial only translated to four formal viewings.
 20. Furthermore, from the perspective of marketing the existing public house, in the absence of a viability assessment to justify such an approach, the introduction of a two lot marketing strategy lacked focus and was somewhat confused. The suggested creation of a semi-detached house as a separate lot would have considerably reduced the size of the public house and left it without a commercial kitchen. It also seems likely to have removed the conservatory and adjacent rear outdoor seating area. If anything, it would have diminished the positive attributes of the existing public house and consequently, was likely to have been distracting and ultimately off-putting to potential commercial buyers. Overall, these factors lead me to find that the marketing undertaken in this case fell short of the robust exercise required by policy E5 of the LP.
 21. In coming to my view, I have taken account of the comments of the Council's Business Development Officer. However, I note that his ultimate

⁷ Paragraph 8

⁸ Section 3.0, Marketing report prepared by Savills, dated April 2021

⁹ Local Market Characteristics - Competitor Analysis, page 13, Viability Assessment prepared by Christie & Co, April 2021

¹⁰ John D Wood & Co letter dated 21.2.12

recommendation was one made on balance. In any event, I am required to come to my own view considering the entirety of the evidence before me. Therefore, although the comments weigh in favour of the proposal, they do not outweigh the concerns I have outlined regarding the viability evidence.

22. Accordingly, I find that it has not been clearly shown that the existing use is incapable of being made viable as is required by policy E5 of the LP. It follows that the proposal would conflict with that policy.

Alternative provision

23. There are no other public houses in Broadwell or the adjoining settlement of Kencot. However, with the benefit of access to a car, there are a good selection of other public houses within a short driving distance. At the hearing the Council articulated that this would not be the same as having a public house which could act as a social hub for the local community. Be that as it may, as the appeal site has not traded for over a decade it evidently has not been serving the community in this way for a considerable period, and the evidence that the Chilli Pepper ever functioned in that manner is not strong.
24. Nevertheless, policy E5 of the LP explicitly refers to alternative provision having equivalent accessibility, particularly by foot. The three nearest pubs at around 2km or less away are The Bell Inn at Langford, The Five Alls at Filkins and The Plough Inn at Alvescot. The most direct routes to The Five Alls and The Plough Inn would involve public rights of way across fields to avoid an otherwise fairly lengthy walk via roads. Whilst these routes may be reasonably pleasant in daylight, fine weather and when journey time is not pressured, in muddy, wet or dark conditions the distance would prove challenging to all but the most determined and more physically able pedestrians.
25. The Bell Inn at Langford is the closest facility, and I undertook to walk there and back from Broadwell as part of my site visit. Most of the route is along an unlit, rural lane with little footpath provision and limited surveillance. I accept that it is certainly possible to access The Bell Inn on foot. However, the combination of the length and nature of the route would be likely to deter many during inclement weather or in the dark, conditions often encountered in autumn and winter evenings.
26. During the hearing there was some discussion that Kencot village hall could provide a suitable venue for community social events. Even so, the frequency of such events is uncertain, and it was not suggested that it was a licenced premises. Moreover, it is unlikely to be suitably equipped to regularly cater for food and beverages. Therefore, it would not be equivalent to the social environment normally provided by a public house.
27. Accordingly, although the nearest public houses make suitable alternative provision in terms of the services offered, they do not have equivalent accessibility for pedestrians living near the appeal site. Therefore, in this respect the proposal would further conflict with policy E5 of the LP.

Other matters

28. The Council's decision notice also cites policy E1 of the LP which, amongst other things, seeks to protect existing employment sites from non-employment uses. However, the policy wording defines employment sites as those which include predominantly office-based, industrial or storage and distribution

activities (B class uses) or related sui generis uses. At the hearing the Council conceded that the public house use did not fall within the definition of an existing employment site. Therefore, policy E1 of the LP is of little relevance to the circumstances of this appeal, and I find no conflict with it. However, this would not lead me to find otherwise in relation to the main issues.

Conclusion

29. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹¹. There are no material considerations in this case that attract such weight so as to justify my determining the development other than in accordance with the adopted development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

APPEARANCES

FOR THE APPELLANT

Simon Bell, Barrister, Clerksroom

Francesca Barrow, Appellant

Leila Rezazad, Appellant

FOR THE LOCAL PLANNING AUTHORITY

Chris Wood, Senior Planning Officer (Appeals)

INTERESTED PARTIES

Mike Hough, Chair of Broadwell Parish Meeting

Documents read out during the hearing, handed in shortly afterwards

Email from Savills, dated 10 January 2022

Email from Christie & Co, dated 17 January 2022