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# Appeal Decision

Site visit made on 11 April 2022

**by Gareth W Thomas BSc (Hons) MSc (Dist) DMS MRTPI**

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

**Decision date: 23 June 2022**

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**Appeal Ref: APP/W1850/W/21/3269986**

**Crown and Sceptre Inn, 7 Sherford Street, Bromyard, Herefordshire  
HR7 4DL**

- 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 Jude Kennefick against the decision of Herefordshire Council.
  - The application Ref 202216, dated 9 July 2020, was refused by notice dated 17 February 2021.
  - The development proposed is for the conversion of a public house into a house.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Listed Building Consent (LBC) has been granted<sup>1</sup> for the proposed works associated with the conversion of the pub to a house. The proposed works therefore are deemed to preserve the architectural and historic significance of this Grade II listed building and accordingly, I am satisfied that my duties under section 66 of the Planning (Listed Buildings and Conservation Areas) Act have been discharged by the granting of LBC. Although the site lies within the designated Bromyard Conservation Area, the Council has not raised any issue in relation to the effects on the character or appearance of the conservation area and I have no reason to disagree with its assessment in this regard. Accordingly, I am satisfied that my duties under section 72(1) are also discharged.
3. Whilst the Council's decision was made on a single ground only, it now believes that there has been a change in circumstances sufficient for it to oppose the scheme on the basis of a policy requirement that seeks to retain community facilities such as public houses. The change in circumstances relates to the planning history of the appeal premises and whether there is a fall-back position that warrants the relevant policy to be applied albeit belatedly. I deal with this matter at this point given that it has the prospect of influencing the main issues in this appeal.
4. The Council explains that planning permission was previously granted for the conversion of the appeal premises into 3 x 1 bed flats, the demolition of a function room and associated building to facilitate the provision of 11 car parking spaces and the development of 4 x 2 bed new build flats at a time when it could not demonstrate that it had a 5-year supply of deliverable housing sites. This permission was important in the context of the current

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<sup>1</sup> Council Reference P202217/L

appeal as the predecessor owner of the property had undertaken a marketing exercise during the period July 2016 and January 2018, which demonstrated that at the time, there was little interest in purchasing the pub as a going concern. This evidence was accepted by the Council and planning permission granted subject to conditions. This planning consent has since lapsed.

5. The Council now suggests that a new marketing exercise should be undertaken and cite an appeal decision<sup>2</sup> for the conversion of a vacant pub in a village close to Bromyard where the Inspector agreed with the Council that evidence of marketing during the 12 months preceding the submission of any new application should be provided with any proposal involving the loss of community facilities. I deal with this matter later.

## **Main Issues**

6. Accordingly, the main issues in this appeal are whether the appeal development would firstly, have a likely significant effect, whether alone or in combination with other plans or projects, on the River Wye Special Area of Conservation (the SAC) and secondly, be appropriate having regard to local and national policies that seek to retain local services and community facilities.

## **Reasons**

### *Effects on the SAC*

7. The need to protect and safeguard Special Areas of Conservation means development proposals are considered in the light of the Conservation of Habitats and Species Regulations 2017 (the Regulations), with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species. The Regulations require the decision-maker, before granting consent for a plan or project, to carry out an appropriate assessment in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. If the appropriate assessment shows that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest and compensatory measures will be provided.
8. The SAC covers an extensive part of the River Wye and its tributaries. Its conservation objectives relate to the maintenance or restoration of the wide range of species and their natural habitats for which the SAC has been designated, to ensure the site's integrity is maintained. One concern is that the nutrient regime of the SAC, and in particular its phosphate levels, should be protected, as this can affect the range of species and the habitats that can survive in these rivers. As a result, targets for phosphate levels have been set, and they are being exceeded on the catchment of the River Lugg, meaning it is now in an unfavourable condition. Where a European designated site is considered to be 'failing' its conservation objectives, there is limited scope for the approval of development which may have additional damaging effects both in isolation or cumulatively with other projects.
9. The River Wye SAC Nutrient Management Plan states that nationally the main source of phosphates in rivers is thought to be sewage effluent. From the

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<sup>2</sup> APP/W1850/W/19/3242467 Wheatsheaf Inn, Whitbourne

appeal site, foul drainage would go into a foul sewer, which would then join a combined sewer and be taken to the Bromyard water reclamation works (WRW) that discharges a final outfall into the catchment of the River Lugg and part of the SAC. The Council explains that when the relevant utilities company treats sewage, it is unable to remove all the phosphate. The standard that Dwr Cymru cleans the water to varies between treatment works, but in all cases exceeds the river target. Therefore, any additional flows going to the WRW will lead to an increase in the quantity of water being discharged from the treatment works, and in turn, be adding phosphate into the river.

10. The appellant supported by counsel opinion believes that the opportunity to reopen the public house facility comprises an important fallback position. Simply, the pub could be reopened without planning permission. Also, in support of the application, the appellant had submitted a comparative waste water flows report, which demonstrated that a fully operational public house would be likely to have a much greater impact on the SAC than that of a single dwellinghouse. Moreover, it is claimed that the appeal property is presently partly occupied as the manager's flat is in use and therefore, at worst, the appeal scheme involving a 5-bedroom house would have a negligible effect on phosphate pathways as there would be minimal increase in effluent flows from a single household.
11. However, the evidence submitted using the British Water Flows & Loads 4 methodology relies on the flows likely from the previous public house use. This fails to acknowledge the fact that the pub use ceased in 2016 and before Natural England's confirmation that the River Lugg SAC was failing its conservation status. There is therefore a failure to demonstrate that the appeal scheme would not add to the existing nutrient burden or that it would achieve 'nutrient neutrality'. In the absence of evidence to the contrary, then additional nutrient loads could enter the water environment causing significant adverse effects on the European Site and its features of interest. Whilst the appellant relies on the prospect of the pub use being resurrected, in adopting a precautionary approach, which is what I am required to do when applying the Regulations, I am unable to disregard the potential that the pub will remain closed and therefore the fall-back position claimed cannot be considered a material consideration. The appellant draws my attention to a similar proposal for a scheme that would discharge to the Leominster WRW, where Dwr Cymru has the same discharge permit requirements and where the Council accepted a comparative based approach. However, I have insufficient information on the background to reach any reasonable comparison between the two schemes or that the previous use at No.1 Richmond Villas ceased its use prior to Natural England's confirmation of failing status.
12. Although I recognise that the likely nitrogen generation from a large single dwelling house as opposed to a two-bedroom manager's flat would not be substantial, in adopting a precautionary approach and, particularly given the lack of appropriate mitigation or the opportunity to apply alternative solutions and there being no imperative reasons as to why development should be carried out, I cannot be confident that no significant adverse effects on the integrity of the European Site would arise either in isolation or in combination with other plans or projects. Even if I was to find that the impact of this proposal would be *de minimis*, for the purposes of the Regulations I am also bound to consider the prospect of other schemes coming forward which might give rise to cumulative harm.

13. Until strategic solutions are developed in consultation with Natural England, to which individual proposals can contribute, it will remain difficult for smaller developments such as the appeal scheme to demonstrate nutrient neutrality. However, that does not negate my duty, as competent authority under the Regulations, to find that there would be no adverse effect on the integrity of the European Site before agreeing to the proposal.
14. Without the necessary evidence and mitigation at the decision stage, I am unable to undertake an Appropriate Assessment. The reliance on the so-called 'fall-back' position does not provide the satisfaction necessary as I cannot conclude that adverse effects on the integrity of the European Site would not arise from this development, in combination with other development. It would therefore be in conflict with Regulations and the National Planning Policy Framework (the Framework), and also with policy LD2 of the Herefordshire Core Strategy (the Core Strategy), which states that new developments that would harm the sites of European importance will not be permitted.

*The loss of a community facility*

15. The Council now seeks to add a further reason for refusal. Policy SC1 seeks to retain existing social and community facilities including pubs. There are exceptions to such a policy approach where the loss of such facilities can be justified. The evidence suggests that sustained marketing of the property had been undertaken at a time when the Council could not demonstrate a 5-year housing supply. It now has one and believes that the vacant pub should be marketed once again, presumably for a further 12 months in line with the written text accompanying the policy.
16. I am aware that the property is a Grade II listed building and that its reuse and maintenance comprises an important material consideration. I am also conscious that the policy provides for alternative approaches in terms of its assessment criteria as explained in an appeal decision<sup>3</sup> involving the Wheatsheaf Inn at Whitbourne. Here, the Inspector identified that the policy included three criteria that could justify the loss of community facilities and noted that the word 'or' was inserted after the first two criteria to indicate an alternative approach to the assessment of proposals. The third criterion however still required to be carried out notwithstanding the employment of either of the chosen preceding criterion.
17. In the case of this appeal, I am satisfied that adequate alternative pub and restaurant facilities exist in Bromyard that in my opinion are adequate to satisfy the needs of the community. Thus, criterion 1 is satisfied and I need not consider criterion 2. But, as noted above and applied by the Inspector in the Whitbourne appeal, the third criterion still needs to be satisfied. This requires that where appropriate, the particular community facility has been vacant and marketed for community use without success.
18. As in the case of the Wheatsheaf Inn, the appeal property has not been the subject of recent marketing with the appellant relying on marketing undertaken by the pub's previous owners some 4 years ago. Based on the evidence at face value, there is little to distinguish between the two appeals in terms of the requirement to market the facility for a period of 12 months. Similarly, as in the previous appeal, there is no evidence to suggest that the condition of the

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<sup>3</sup> APP/W1850/W/19/3242467

current appeal building would preclude its reopening as a pub and that it remains fit for purpose.

19. In the absence of a recent marketing and viability exercise that is able to demonstrate that the building will not be able to sustain community uses going forward, the proposal would be in conflict with Policy SC1, which requires amongst other things to retain community facilities where possible. I return to this in the planning balance.

### **Planning Balance and Conclusion**

20. In the appeal case concerning the Wheatsheaf Inn, the Inspector was particularly mindful of the building's location within a rural village setting which contained a lack of community services and facilities with little alternatives available to its residents that would avoid the use of private vehicles. Given the particular circumstances that arise in the current appeal, including the desire to safeguard the building's important heritage significance, coupled with my observations that Bromyard residents enjoy a good range of services and facilities that are more typical of a larger market town unlike their counterparts living in remoter rural villages, I would agree with the appellant that the circumstances are very different to those considered by the previous Inspector at Whitbourne.
21. Whilst an up-to-date marketing exercise would have better informed the present viability of sustaining the public house, I am cognizant of the recent pandemic and the present economic climate, which has conspired to significantly and irretrievably affect businesses of this type and I have little confidence that there would be very much change in the conclusions previously reached. These factors would on balance have been sufficient to outweigh the harm caused by the breach in Policy SC1 had I been able to determine in favour of the appeal.
22. However, given my duties under the Habitats Regulations, my findings in respect of European Sites are determinative and in accordance with Paragraph 180 of the National Planning Policy Framework I must conclude that the appeal should fail.

*Gareth W Thomas*

INSPECTOR