



Appeal Decision

Hearing (Virtual) held on 10 August 2022

Site visit made on 17 August 2022

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th August 2022

Appeal Ref: APP/C2741/W/21/3284784

Murton Arms, Moor Lane, Murton, York, North Yorkshire YO19 5UQ

- 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 Ms Ruth Yeadon against City of York Council.
 - The application Ref 21/00396/FUL, is dated 16 February 2021.
 - The development proposed is described as "change of use from public house to residential ground floor apartment".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Policies HW1 and D4 of the emerging City of York Local Plan (CYLP) were considered relevant to the determination of this appeal and a statement update was provided on the position of the CYLP. The Council stated that the CYLP is a material consideration in the determination of this appeal. Given the advanced stage of the CYLP preparation, the lack of significant objections to the emerging Policies relevant to this appeal and consistency with the National Planning Policy Framework (the Framework), the Council consider that moderate weight can be afforded to emerging Policies HW1 and D4. The appellant made no representations on this matter. I have assessed the appeal accordingly.

Main Issues

3. The main issues are
 - Whether the proposal would result in an unnecessary loss of a community facility; and
 - Whether the proposal would preserve or enhance the character or appearance of the Murton Conservation Area.

Reasons

Community facility

4. Emerging Policy HW1 of the CYLP states that development proposals involving the loss of a community facility, or facilities last used for community purposes, will not be supported, unless certain matters can be demonstrated. These matters include providing evidence that demonstrates the facility is no longer

financially viable. The accompanying explanation statement in paragraph 6.10 of emerging Policy HW1 states that evidence that the facility has been marketed for a minimum of a year without success will be required to demonstrate that the facility is unviable.

5. The Framework places emphasis on promoting healthy and safe communities and in paragraph 93 states that decisions should 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.
6. It was confirmed at the Hearing that the appeal property had been marketed for a period over 12 months, from November 2019 to February 2022. The appellant had employed a licensed property agent, Guy Simmonds, to market the property. Various methods of publicity of the property took place including on websites such as Zoopla, Daltons and Rightmove as well as trade journals. The appellant explained that a sale board was not erected at the property as there were concerns of criminality due to the property being empty and it would have been too expensive to employ security.
7. A number of viewings of the property, around seven that were described to me, took place including in 2019 and 2020 however it was explained that none of these potential purchasers could prove sufficient funding to enable purchase of the property. The appellant also described that there were a number of "time wasters" as well as some purchasers who wanted to convert the property into residential. A potential purchaser, who attended the Hearing, viewed the property in February 2022. This potential purchaser indicated that she had approached members of the Parish with a view to possibly running a joint venture at the appeal property. The appellant described to me at the Hearing that enquiries from this potential purchaser had not been followed up for various reasons including that proof of funds had not been provided, a structural survey of the property had been requested and that it was strange that she had been in contact with the Parish. This potential purchaser clarified at the Hearing that she could not get to a position to make an offer on the property however, she was still interested in the premises.
8. The appeal property was put on the market for £425,000. This figure was based on numerous factors, including the asking price before the appellant bought the property, a combination of the price which the appellant bought the property for along with the cost of renovations that she had undertaken to the property, as well as other sale prices in the area. Commercial valuers had valued the property between £425,000 and £450,000, which included all the internal furnishings. The Council had questioned whether this valuation was instead a marketing appraisal as a valuation figure is different to an asking price figure.
9. Financial accounts for the business, prepared by accountants, were provided which showed profit and loss details between August 2017 and April 2018. The accounts show an overall loss in this period of around £84,000 with income being over £19,000. There are discrepancies in these accounts however, as no workers salaries are detailed also the appellant explained that family members and others were owed money for labour work that had been undertaken. There were also queries over the food/drink/pubware expense being higher than the income. The appellant explained that the pub did not receive many customers, particularly from local residents, and there was competition in the area with

several cafes and the Church providing similar facilities to those being offered at the appeal property.

10. The appeal property has been marketed for over a year with considerable interest given the amount of viewings that took place. However, there has been no substantial evidence submitted which indicates why a formal offer of purchase on the property has not been made. There is minimal evidence detailing correspondence between the appellant or Guy Simmonds with potential purchasers of the property that gives any explanation as to why offers of purchase were not made. From the information that is presented to me, it poses the question whether the asking price was possibly too high. The appellant indicated that a reduction in the asking price was not part of the marketing strategy as she felt the price was fair and reasonable.
11. Under the appellants ownership, the appeal property was open for business approximately between August 2017 and January 2018. The appellant explained that the property closed as there were few customers visiting the premises. The Council consider that a period of at least three years is required to establish whether a pub business is going to be viable. It is noted that the appellant had to make initial outlay costs, including building renovation works, which would have had a negative effect on the profit and loss accounts. However, financial accounts only showing a period of up to nine months is not a significant period of time to determine whether a business would have been viable or not.
12. Evidence has been provided showing that the appellant undertook a marketing exercise for the business which included renaming the pub in order to get increased google hits, advertising on social media, distributing flyers in the area, placing advertisement A-boards on main roads, networking opportunities and offering promotional deals. It is noted that there may have been some competition in the area from cafes and operations at the Church, some of which may have been promoted by the Parish Council in community news leaflets. Nevertheless, competition is not an unusual factor in the running of a business and I am not entirely convinced that café businesses and operations that have been undertaken at the Church are directly comparable to a public house. Whilst some offerings may be the same, I consider that a public house would generally offer a different experience.
13. From the evidence provided, I am not satisfied that adequate marketing of the appeal property has been undertaken. There are discrepancies within the financial accounts and given the business was only operating for around a nine month period, I do not find that this is sufficient time to determine whether the use of the property as a public house is unviable. I have had regard to matters such as the rising cost of living including fuel and food price increases, interest rates and inflation rising as well as potential customers having less disposable income. Nevertheless, insufficient evidence has been provided to convince me that the use of the property as a public house would not be viable.
14. Accordingly, the proposal would result in an unnecessary loss of a community facility. The proposal would be contrary to emerging Policy HW1 of the CYLP and the Framework which seeks to protect community facilities and guard against the loss of facilities which contribute to a community's ability to meet day-to-day needs.

15. The Derwent Arms public house has been brought to my attention as an alternative community facility. This public house is around 1.1 miles away from the appeal site and pedestrian links from the village of Murton to the Derwent Arms are substandard. It is unlikely that residents of Murton would travel by foot to visit the Derwent Arms. It was indicated that a bus service runs from Murton past the Derwent Arms however no significant evidence was provided in terms of location of bus stops and frequency of services. Nevertheless, given the location of the Derwent Arms public house, I do not consider this to be a suitable alternative and it would not meet the day-to-day needs of the local community in Murton.

Conservation Area

16. The appeal site sits within the Murton Conservation Area (MCA). In accordance with the duty imposed by section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Moreover, paragraph 199 of the Framework states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
17. The MCA, is characterised predominantly by residential properties with a scattering of other type of buildings including a Church and the appeal property being a public house. It is this primary residential focus with a mix of commercial and public facilities that contributes positively to the character of the MCA.
18. There would be minimal external alterations proposed to the appeal property. However, the activities surrounding the appeal property would be significantly altered as the proposal would result in the loss of a commercial focal point in the village. The character of the appeal property would be changed as general activities including movements to and from the property would be different were the property be used as residential.
19. The Council consider that if the appeal property as a public house is deemed to be viable as a business, then the loss of the property as a public house use would cause less than substantial harm to the character of the MCA. Given my findings on the other main issue, I concur with the Councils assessment that the proposal would cause less than substantial harm to the character of the MCA. In accordance with paragraph 202 of the Framework that harm should be weighed against any public benefits of the proposal.
20. The use of the property as residential would have minimal public benefits. I witnessed at my site visit that the appeal property is beginning to look unkempt with overgrown hedgerow, paint from window frames beginning to peel, graffiti to the rear of property and internal deterioration of the walls and flooring. The proposal would bring a redundant building back into use which would offer some benefit in terms of its appearance within the MCA. Due to the existing state of the building and its location within the MCA, I attribute minimal weight to these identified public benefits. These benefits would not outweigh the harm that would occur as a result of the loss of a public house use.

21. The proposal would, therefore, fail to sustain or enhance the setting, and thereby the significance of, the designated heritage assets. It would not accord with the policies of the Framework which seek to conserve and enhance the historic environment. The proposal would also fail to accord with emerging Policy D4 of the CYLP which seeks development proposals to preserve or enhance the special character and appearance of the conservation area.

Other Matters

22. I have had regard to the appellants statement of case including details of the car park and land to the rear of the property, photographic evidence, lease agreements from previous occupiers of the property, employment of local people and the inability of the community to raise sufficient funds for purchase of the property. Evidence was provided in relation to the matter of the Asset of Community Value (ACV) and the Council confirmed that the appeal property was not listed as an ACV. The appellant also expressed her frustrations with the Parish Council, in particular with a meeting where no one attended other than the Parish Clerk and subsequently the Parish Councils position with regards to potential residential development to the rear of the appeal property.
23. The appellant eloquently expressed her situation and that she had put her heart and soul into the business venture at the appeal property and that it was a big commitment including moving to the area and enrolling her daughter into local school. The appellants employment history has been detailed which incorporates a number of positions in the commercial sector as a catering manager and a bar manager, as well as previously buying and running a public house in Cumbria.
24. The described experiences and commitment of the appellant, as well as the other matters described above would not outweigh the harm I have detailed in the main issues.

Conclusion

25. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding.
26. Therefore, for the reasons given above, the appeal should be dismissed.

Chris Baxter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

R Yeadon Appellant

FOR THE LOCAL PLANNING AUTHORITY:

N Massey City of York Council

B Crux Consultant

INTERESTED PERSONS:

D Waddington Murton Parish Council

R Clancy Murton Parish Council

C O'Callaghan York resident

J Starzynski