



Appeal Decision

Site visit made on 8 August 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/X0415/W/21/3282171

The Swan Public House, Blackwell Hall Lane, Ley Hill HP5 1UT

- 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 and Mrs N and C Byatt against the decision of Buckinghamshire Council (Chiltern Area).
 - The application Ref PL/20/3086/FA, dated 17 September 2020, was refused by notice dated 10 March 2021.
 - The development proposed is change of use from public house (sui generis) to a single dwelling (C3) to include provision of on-site parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposed development would result in the unacceptable loss of a community facility, and whether it would preserve the special architectural and historic interest of the listed building and its setting.

Reasons

Community facility

3. The appeal site relates to The Swan public house which is a Grade II listed building located on the western side of Blackwell Hall Lane. The first floor level of the property is in use as ancillary residential accommodation. The building was designated as an Asset of Community Value (ACV) in November 2018. The building is opposite Ley Hill Common and directly to the south of The Crown public house, which is the only other public house in Ley Hill. Neighbouring properties are otherwise in residential use. The site lies within the Green Belt.
4. Saved Policy GB24 of the Chiltern District Local Plan 1997 consolidated in 2007 and 2011 (Local Plan) allows the change of use of buildings in use for local community purposes only if a replacement building is provided or the facility is no longer required for any other community use in the village and adjoining area where the facility is located. Policy CS29 of the Core Strategy for Chiltern District 2011 (Core Strategy) only permits the loss of community assets in exceptional circumstances.
5. Local Plan Policy GB11 states, amongst other things, subject to there being no conflict with saved Policy GB24 the Council will not regard the re-use of a non-residential building in the Green Belt for residential accommodation as inappropriate development, subject to a number of requirements, which include, amongst others, that where the building is listed the conversion would

facilitate its retention but would not harm its special interest. I find no reason to disagree with the Council's view that the change of use of the public house to a dwelling would not be inappropriate development in the Green Belt.

6. There are strong objections from the Parish Council and local residents to the proposed change of use. Whilst that does not demonstrate the viability of the premises, it indicates that the public house is highly valued as a community facility by local residents as evidenced by its registration as an ACV. The building provides the inhabitants of the village and those visiting it with an alternative offering to the adjacent public house, The Crown.
7. While the financial accounts show losses from 2017 onwards, the business appears to have been profitable in earlier years. The local interest group Ley Hill Community Pub Limited (LHCPL) have set out how the purchase of the appeal property is intended to be financed and how it could be viable as a food led venue. LHCPL's operating model includes a 5 year business plan with the pub operating at a modest profit in Year 2. This indicates that there is a reasonable likelihood and a level of confidence that the public house could become a viable business. Whilst the negotiations between the owner and LHCPL appear to have stalled, there is a genuine interest from the local community in the retention and reuse of the premises as a public house and community facility. I consider that there is a reasonable likelihood that the property could be retained as a public house.
8. During my site visit I noted that the fence erected to the rear of the public house has effectively subdivided the plot and significantly reduced the size of the rear garden of the public house. That part of the plot that has been fenced off is not within the appeal site but remains within the appellants' ownership. Whilst there is no substantive evidence before me to suggest that the owners sought to deliberately run down the business, the subdivision of the plot has made the public house garden a less useable space and reduced potential alternative business models, such as one with more emphasis on outdoor dining. There is no compelling evidence to demonstrate that the size of the public house, and its kitchen in particular, would be unable to cope with the number of covers if the full garden area was utilised.
9. There is no substantive evidence to suggest that alternative business models, such as one offering high quality evening meals, have been explored by the appellants, or what effect these would have on the viability of the premises. The appellants' surveyor considers that in this location the business would have to be run strongly biased towards food sales, which is what LHCPL have proposed as part of their business plan. Whilst the appellants argues that the appeal site does not to have sufficient parking facilities, there does not appear to be a lack of parking opportunities in the surrounding area and the site is within easy walking distance of properties in the village.
10. The appellants argue that the relevant development policies and paragraphs 84 and 93 of the National Planning Policy Framework (the Framework) do not specify that viability and marketing are required to justify the loss of a facility. However, the implications of saved Local Plan Policy GB24 are clear that it must be demonstrated that the facility is no longer required for any community use. In any case, the property has been marketed by two agencies as a public house. The report by the appellants' surveyor concludes that there was a lack of interest to purchase the property to continue its use as a public house due to

- a variety of factors, including competition from The Crown and other nearby establishments, and the sale of alcohol and food at the Cricket Club opposite. The Council's consultant acknowledged that there appeared to be little interest in the property other than for alternative uses as an office or as a day nursery.
11. I have had regard to the reports provided by the appellants' surveyor, the Council's consultant, together with the viability assessment commissioned by LHCPL. These reports indicate that the asking price for the property was unrealistically high. I agree with that conclusion, particularly given the generally lower asking prices for other comparable public houses in Buckinghamshire. The asking price is an important factor in the marketing of a property. It would be open to a potential buyer to submit a lower offer, but an unrealistically high asking price would be likely to have deterred some potential buyers from making an offer.
 12. For these reasons I consider that it has not been demonstrated that the property has been marketed at a realistic price. There is also no explanation as to why no consideration was given to renting the property. Based on the evidence before me, I cannot be satisfied that the marketing undertaken clearly shows that there is no demand for the existing use or another community use in line with saved Local Plan Policy GB24. There is competition in the local area for trade, particularly from The Crown. However, there is insufficient evidence before me to show that the public house use is no longer needed or viable in this location, particularly given the likely upturn in economic activity following the Covid 19 pandemic.
 13. I acknowledge that there is alternative provision of public houses in the wider area and other community facilities. Whilst I give the presence of alternative provision some weight, given the deficiencies in the marketing exercise, I am not satisfied that there is not the demand for the premises to be run as a community facility or that such use would not be viable. As such, the presence of alternative public houses does not outweigh the concerns about the adequacy of the marketing exercise that has been undertaken.
 14. I note that the Council did not object to the loss of the public house use in connection with previous applications for change of use to a day nursery¹. However, that proposal involved an alternative community use, to which there is not an in-principle policy objection. Previous applications for change of use to a pair of semi-detached dwellings were reported to the Planning Committee in August 2020². The Officer recommendation did not include the loss of the public house as a reason for refusal. However, the applications were withdrawn before determination and Members may well have reached a different conclusion on the matter.
 15. There appear to be important differences between the appeal proposal and the appeal decision relating to The Green Dragon in Haddenham³. It was demonstrated to the Inspector's satisfaction that the public house was unviable. There were more pubs and dining establishments in that village compared to only one other pub in Ley Hill. Alternative business models were explored for The Green Dragon, but still with little interest. I have considered

¹ Council Ref. CH/2018/0231/HB and CH/2017/2353/FA

² Council Ref. PL/20/0335/FA and PL/20/0336/FA

³ Appeal Ref. APP/J0405/W/20/3260807

the appeal scheme on its own merits on the basis of the evidence provided and have reached a different conclusion in this case.

16. For the above reasons I conclude that the proposed development would result in the unacceptable loss of a community facility. It would fail to comply with saved Policies GB11 and GB24 of the Local Plan, and Policy CS29 of the Core Strategy. It would also be contrary to paragraphs 84 and 93 of the Framework, which, amongst other things, seek to retain community facilities, including public houses.

Listed Building

17. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require me to have special regard to the desirability of preserving the building, or its setting or any features of special architectural or historic interest it possesses.
18. The Swan public house dates from the 16th century. The northern two timber framed bays were constructed in 1520, with the southern brick wing added in 1680. The evidence indicates that it was originally used as three cottages. However, from at least the 1840s parts of the building were used as a public house, and by 1881, the entire building was in that use.
19. Based on the evidence before me, and the definition of significance (for heritage policy) contained within the Framework, I consider the significance of the building to be derived from its age, historic use, form and architectural features, such as exposed timber frame, narrow winding staircase and original plan form. Its prominent location with views across the common to the building and setting in relation to other nearby buildings, together with its historical and communal value as a public house, all contribute positively to the significance of the building and the character of the area.
20. The building has been used for a considerable length of time as a public house. Whilst the proposal would return it to residential use, the building has a long-standing historic function as a public house with strong ties to the local community and it was listed during its use as a public house. The proposed change of use of the building would result in the loss of the historic function of the public house and community facility and would thereby diminish its historic and cultural significance. Whilst the loss of the public house use was not at issue in an appeal at the White Horse Inn⁴, in this case I find that the historic use of the building is an important aspect of its significance.
21. Although the Council raise concerns about possible alterations to the building to facilitate the proposed use as a dwelling, the appeal scheme does not propose any internal or external alterations to the building itself and there is no substantive evidence before me to indicate that the proposal would harm the historic fabric of the building.
22. The appellants submit that the rear fence is now lawful due to the passage of time. Be that as it may, the fence and subdivision of the public house garden have little effect on the open setting of the building, which I consider is derived largely from its relationship to the common opposite. Therefore, I consider that the fence to the rear of the building and the subdivision of the plot do not detract from the setting of the building. The provision of a small number of car

⁴ Appeal ref. APP/J1915/W/20/3245571 and APP/J1915/Y/20/3245561

parking spaces discreetly located at the rear of the building would also have no harmful effect on the building's setting. Any future proposals for the land that has been fenced off would need to be considered on their own merits.

23. Notwithstanding the above, I conclude that the change of use of the public house would not preserve the special interest of the listed building. The proposal would conflict with the requirements of the Act and saved Policies LB1 and LB4 of the Local Plan, which together seek to protect the special architectural or historic interest of listed buildings. For the reasons given above, I find no conflict with Local Plan Policy LB2, which seeks to protect the setting of listed buildings.
24. I attach great importance and weight to the harm identified to the significance of the designated heritage asset especially as it is an irreplaceable resource and any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification. However, as no internal or external alterations are proposed, I find the harm would be less than substantial. Paragraph 202 of the Framework requires that, in the case of designated heritage assets, the harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
25. The proposal would make a contribution to securing the retention of the building in the long-term. However, I am not satisfied that the details before me adequately demonstrate that there is no demand for the existing use or another community use. Indeed, the evidence provided by LHCPL indicates that there is a demand for the continued use of the building as a community run public house.
26. Since the appeal building already contains ancillary residential accommodation, the proposal would not result in any net gain in residential units. The weight attributable to this matter is limited.
27. I find that the benefits of the proposal would not be sufficient to outweigh the harm identified to the significance of the heritage asset, to which I afford great weight, and the proposal would not meet the aims of paragraph 189 of the Framework, to conserve the heritage asset in a manner appropriate to its significance.

Other Matters

28. The appeal site is within the Zone of Influence of the Chiltern Beechwoods Special Area of Conservation (SAC) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). The Habitat Regulations require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC. Had I been minded to allow the appeal I would have found it necessary to investigate this matter in greater detail. However, as I am dismissing the appeal for other reasons, there is no need for me to consider this matter further.
29. I note the appellants' concerns with the way the Council has handled the application, but I have considered the appeal on its planning merits alone.

Conclusion

30. The proposal would not accord with the Development Plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this.

31. For the above reasons, I conclude that the appeal should be dismissed.

M Offerenshaw

INSPECTOR