

Appeal Decision

Site visit made on 8 March 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2023

Appeal Ref: APP/M2515/W/22/3302162

West End Tap, 108 Newland Street West, Lincoln LN1 1PH

- 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 Nigel Delahey against the decision of the City of Lincoln Council.
 - The application Ref 2021/0621/FUL, dated 23 July 2021, was refused by notice dated 26 April 2022.
 - The development proposed is the change of use of ground floor bar, alterations and extensions, to provide 2 no. dwellings within the existing building and erection of a new dwelling to the rear of the site.
-

Decision

1. The appeal is allowed and permission is granted for the change of use of ground floor bar, alterations and extensions, to provide 2 no. dwellings within the existing building and erection of a new dwelling to the rear of the site at West End Tap, 108 Newland Street West, Lincoln LN1 1PH, in accordance with the terms of the application, Ref 2021/0621/FUL, dated 23 July 2021, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr Nigel Delahey against the City of Lincoln Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the public house business is viable and whether any nearby public house would offer a comparable facility for the community.

Reasons

4. The proposal is for the final closure of the public house, the conversion of the ground floor bar and flat above into two maisonettes, and the demolition of rear outbuildings to allow for an extension and erection of a further dwelling. There is no objection to the physical works proposed, the reasons for refusal relate solely to the loss of the public house and whether an equivalent local facility would be available. The premises have been shut for some time.
5. The public house occupies a street corner position within a densely populated area of traditional Victorian terraced housing. The premises are restricted in size with a relatively small L shaped bar, small snug, rear yard with toilets in a separate outside block and smoking shelter. Ancillary accommodation includes a small kitchen on the ground floor, basement storage and first floor flat. The trading area is estimated to accommodate no more than 30 covers in total.

6. The appeal is accompanied by a detailed viability report from specialist leisure surveyors Fleurets, who conclude considerable investment would be required to bring the premises up to standard with inside toilets. With such investment but no possibility of a food offer, an annual turnover of £100,000 might be possible giving a potential gross profit of £62,000 pa. However, with operating costs estimated at £40,000 the net profit would be just £22,000, an insufficient sum to provide reasonable remuneration of £33,000 pa for the owners and to service the cost of finance which could be £21,500. Overall, the annual loss involved in reopening the premises as a public house is predicted to be about £32,500 pa and thus not an economically viable proposition for 'any party who is subject to the norms of profit motivation'. Any reopening would also be 'subject to a high risk of business failure'. The Council offer no assessment or critique of the report or any contrary viability evidence and none is provided by other interested parties.
7. According to the committee report, the premises were put up for sale by Punch Pubs & Co in 2013 following periods of intermittent trading which had led that group to consider it a failing pub. After acquisition and refurbishment by the current owners, the business again proved unsuccessful, was incorporated into their other businesses and finally leased to a private operator who also ran into difficulties. This amounts to a clear track record of failure and Fleurets analysis suggests any new owner would fare no better.
8. In addition, there are public houses nearby which offer alternative facilities for the community. The appellant identifies eleven within one kilometre. Most obviously these include the very similar street corner pub Queen in the West and the gastropub The Horse and Groom, both within a five minute walk, which serve the immediate neighbourhood. Slightly further away are The Barge, The Square Sail (Wetherspoons) and The Royal William IV on Brayford Waterfront and several others in the city centre. Together these various pubs offer a wide range of nearby facilities to suit all tastes.
9. The Council argue that these may not be of equivalent value to the community, and point to the numerous objections to the proposal, the establishment of the 'Keep the Tap Running' community group and the designation of the public house as an Asset of Community Value. Whilst every public house is unique and this represents a respectable level of support, this does not necessarily constitute a sufficiently numerous and distinctive clientele to warrant retention of the facility. In this case the Asset of Community Value mechanism provides an opportunity for the public house to be purchased by a community interest group when sold by the current owners which is likely prior to redevelopment. This provides a suitable safeguard for the public house to be retained should support in the local community be sufficient when the time comes.
10. Policy LP15 of the Central Lincolnshire Local Plan 2017 precludes the loss of existing community facilities unless the facility is demonstrably no longer fit for purpose or there is alternative provision within reasonable proximity. In this case, for the reasons explained above, the public house business is not viable in the conventional sense and nearby public houses offer comparable facilities for the community. The proposal thus complies with Policy LP15 and there is no reason to withhold planning permission.

Other matters

11. The appellant has entered a Section 106 unilateral planning obligation dated 8 March 2022 to ensure that the new properties are not occupied by students due to an imbalance in the local community.
12. The Council has suggested four conditions should the appeal be allowed which have been considered against the relevant tests. In addition to the standard implementation time limit a condition setting out the approved plans is necessary in the interests of certainty. Further conditions to control the details of the materials to be used and to control any unexpected contamination are necessary to ensure the satisfactory appearance of the development and to control potential sources of pollution.

Conclusion

13. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Existing Location Plan Idc3444-PL-02
Existing Block Plan Idc3444-PL-03
Proposed Block Plan Idc3444-PL-04
Existing & Proposed Plans Elevations & Sections Idc3444-PL-01
- 3) No development (excluding demolition) shall take place until full details (and samples if requested) of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall then be carried out strictly in accordance with the approved details.
- 4) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. In these circumstances an investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared which is to be submitted to and be approved in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared for approval in writing by the local planning authority. Where no unexpected contamination is found written confirmation of this must be provided to the local planning authority prior to any occupation of the site.