



Appeal Decision

Site visit made on 21 February 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal Ref: APP/Z1510/C/22/3290978

Land at il Salice (formerly known as) The Willows Inn, The Street, Cressing, Essex CM77 8DQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by ALESSANDRO13 LTD against an enforcement notice issued by Braintree District Council.
 - The notice, numbered 19/00363/COU3, was issued on 10 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use from a Public House to a Restaurant.
 - The requirements of the notice are to: Cease the restaurant use of the premises.
 - The period for compliance with the requirement is: 4 (four) calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

2. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. In a legal ground of appeal, the burden of proof is firmly on the appellant to make out their case, on the balance of probabilities. Planning merits are not relevant to a legal ground of appeal, which must be considered in light of the facts and the law.
3. The main thrust of the appellant's case is that the premises is a public house with food offering. Clientele are stated to be free to purchase and consume stand alone alcoholic beverages providing they meet the legal criterion to do so, while Italian food is also offered to seated diners. Wet and dry consumption is offered, and clientele choose how they wish to use the facility.
4. The appellant has not appealed under ground (c), which is that those matters (the matters stated in the breach as constituting the breach of planning control, if they occurred) do not constitute a breach of planning control. However, where a material change of use is alleged, the question of materiality goes to whether planning permission is required and there has been a breach of planning control.
5. In considering whether the alleged breach has occurred, therefore, I will need to consider whether a material change of use has occurred, which should be properly considered under ground (c). Since the Council has responded to the appellant's case, I consider it would not be prejudiced by me dealing with the appeal under grounds (b) and (c).

6. Section 55 of the Act sets out the meaning of development, which includes the making of any material change in the use of buildings or other land. Paragraph 55(2)(f) states that in the case of buildings...which are used for a purpose of any class specified in an order..., the use of the buildings...subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class shall not be taken to involve development of the land.
7. The use of a premises as a public house is *sui generis*, which is a Latin term, meaning of its own kind whereas a restaurant use falls under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO). The implication of this is that a change of use from a public house to a restaurant is not exempted from the definition of development by section 55(2)(f) of the Act.
8. Prior to changes to the UCO in 2020, use as a public house fell within an A4 use and use as a restaurant fell within an A3 use. Class B of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO), permitted the change of use of a building from a use falling within Class A4 (drinking establishments....to a use falling within Class A3 (restaurants and cafes) subject to certain conditions and limitations. However, development was not permitted if the building is a "community asset". It is not disputed that the premises was designated as an Asset of Community Value in 2015 and relisted in 2020 and so it would not have been permitted by the GPDO prior to 2020.
9. Following changes to the GPDO in 2021, Class AA of Part 3 of Schedule 2 of the GPDO was introduced which permits a change of use of a building and any land within its curtilage (a) from a use falling within 3(6)(p) (which includes a public house) of the UCO to a use falling within article 3(6)(q) (drinking establishment with expanded food provision) of that Order. However, the changes are subject to savings and transitional provisions and do not apply retrospectively. Furthermore, they do not grant permission for the material change of use from a public house to a restaurant.
10. The implications of the above is that the material change of use of a public house to a restaurant is development for which planning permission is required. Although the Town and Country Planning (Use Classes) Order 1987 (as amended) refers to use as a 'public house', I am unaware of any legal definition of a public house. The Oxford English Dictionary (OED) describes a public house as 'an establishment for the sale of beer and other drinks, and sometimes also food, to be consumed on the premises.'
11. In my experience, public houses generally allow patrons to drink without needing to order food. Although tables may be laid for food, there are usually seating areas where patrons can simply drink. As a consequence, public houses offer a relatively informal space where people can meet and are often seen as playing an important role in terms of the community. Indeed, I note the appeal premises has been registered as an Asset of Community Value, reflecting its importance to the social interests of the local community
12. A restaurant, by contrast, is defined as by the OED as 'a place where people pay to sit and eat meals that are cooked and served on the premises.' Pre-booking is often required and although patrons can consume drinks, they are usually served in addition to food. A restaurant is likely to draw customers from

a wider area and although locals may well still use the premises, the frequency with which they attend is likely to be less due to the cost involved in purchasing a meal. Its importance in terms of the social interests of the local community is therefore likely to be much less.

13. Signage to the front of the premises states 'Open for Lunch & Dinner' and 'il Salice Ristorante Italiano', which I understand means 'The Willows Restaurant'. Inside the building, the majority of tables appeared laid out for dinner, with table cloths, cutlery, folded napkins, side plates and wine glasses. Two bar stools were positioned at the bar and an unlaid table was present near to the bar area. A low level table and two seats were also located at another bar area, along with another two bar stools. Outside, to the front of the building, I saw there are a number of benches with parasols.
14. The Council has provided me with screenshots of the website for the premises. Within the screenshot the premises is described as 'Il Salice Italian restaurant'. The extract goes on to advise there is a 'welcome bar where diners can meet up prior to their meal.' And 'During fine weather we are able to offer al fresco dining'. Bar stools are not evident by the bar in the photograph shown in the screenshot and the round table which was unlaid at the time of my visit is laid for dining, with napkins, cutlery and wine glasses.
15. Photographs taken by the Council in September 2019 show a similar layout to that shown on the appellant's website, with no bar stools evident at either section of bar. While the appellant may not oblige individuals to purchase a meal, given the description of the premises on signage and its website as a restaurant¹ and the layout of the premises, which in my view appears laid out as a restaurant, individuals visiting Il Salice are highly likely to perceive it to be a restaurant and are therefore unlikely to visit to simply order a drink.
16. Indeed, a number of interested parties advise they do not feel able to visit the premises simply to order a drink. While these representations are unsworn, which must limit their weight, given the layout of the premises, I do not doubt that individuals just seeking a drink would feel deterred from doing so, even if the appellant does not actively prevent it.
17. While the bar may be fully stocked and in its original historic position, there is no substantive evidence to show that the premises serves stand alone alcoholic beverages to those not wishing to have a meal. Although by the time of my site visit seating appears to have been provided for individuals wishing to drink rather than order a meal, this is limited in extent compared with the tables laid out for dining. I therefore consider the vast majority of clientele are likely to use the premises for dining. Furthermore, from the photographs provided, it seems such seating may well have been provided following the service of the enforcement notice.
18. Thus, for the reasons given above, I find, on the balance of probabilities, that the alleged material change of use has occurred as a matter of fact and there has been a breach of planning control, for which no planning permission has been obtained. The appeal under ground (b) and hidden ground (c) must therefore fail.

¹ Notwithstanding the term Il Salice means The Willows.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

M Savage

INSPECTOR