



Appeal Decision

Site visit made on 6 June 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17TH JULY 2023

Appeal Ref: APP/C1435/C/22/3302207

Land at The Lamb Inn, Wartling, East Sussex BN27 1RY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr James Braxton against an enforcement notice issued by Wealden District Council.
- The notice was issued on 31 May 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, change of use of the Land from use as a public house to a use as holiday-let accommodation.
- The requirements of the notice are to: (i) Stop using the Land as holiday-let accommodation.
- The period for compliance with the requirement is: three months after the notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

The Notice

1. Section 55 of the Act sets out the meaning of 'development', which includes the making of any material change in the use of any buildings or other land. The breach of planning control alleged in the enforcement notice refers to a change of use, rather than a material change of use. As a change of use of any buildings or other land will only constitute development requiring planning permission if it is a material change of use, I shall correct the breach of planning control alleged in the enforcement notice accordingly.
2. It is not essential for the enforcement notice to specify the former use of the land affected. In this case, the notice refers to the former use of the appeal site as a public house, but various appeal submissions refer to the former use differently, which I shall address below. To avoid confusion, I shall also correct the breach of planning control alleged to remove unnecessary reference to the former use. These corrections will not cause injustice to any parties.

Ground (b)

3. To be successful under this ground of appeal the appellant would need to demonstrate that the breach of planning control alleged in the enforcement notice has not occurred.
4. The appeal building is a Grade II listed building, historically used as a coaching inn and more recently as a public house with bed and breakfast

accommodation. It comprises bar and restaurant seating areas, kitchen, and customer toilet areas at ground floor level, with front terrace and rear courtyard. At first floor level it has 1 staff bedroom and 5 guest bedrooms with en-suite facilities, and a store/linen room. The appeal site includes a parking area alongside the appeal building. All of the land taken together comprises a single planning unit.

5. Planning permission was granted on 17 December 2012¹ for development described as 'proposed single storey extension to rear courtyard, construction of timber-framed lean-to wood store, alterations to ground floor and conversion of first floor residential flat to provide 5 no. B&B bedrooms with en-suite and staff accommodation' at the appeal site. The evidence indicates that the planning permission was implemented, and that the appeal site was used as a public house with bed and breakfast accommodation as approved until March 2020.
6. The bed and breakfast accommodation comprised the whole of the first floor, with internal staircases linking directly to the bar and seating areas. Before March 2020, guests relied on the ground floor bar and seating areas for breakfast, and staff accommodation remained at first floor level. It is not possible to say that the public house and bed and breakfast accommodation were previously incidental or ancillary to each other. The previous lawful use of the appeal site was therefore a mixed use as a public house with bed and breakfast accommodation. Any restaurant use would have been incidental or ancillary to that mixed use.
7. The public house with bed and breakfast accommodation ceased trading in March 2020 due to financial losses and the COVID-19 pandemic. No physical changes have been made to the building and a premises licence remains in place. As a result of the pandemic, the appeal site was used in 2020/21 for various community purposes, including as a grocery store and for the hosting of events such as socially distanced meals, parish church fundraising, and quiz nights.
8. Since pandemic social distancing restrictions were eased, the appeal site has been used as holiday-let accommodation. The Airbnb listing for the appeal site states: 'Due to the extraordinary circumstances of the coronavirus we are offering our pub as a rental property...' and refers to it being suitable for 14 guests, with 7 bedrooms, 8 beds and 7 bathrooms². Guests sleep in the existing bedroom accommodation at first floor level and have use of the whole property. As the public house has ceased trading, the ground floor is included as part of the holiday-let accommodation on offer, including the bar, kitchen and outside areas.
9. It is claimed that this arrangement is not intended to be permanent and that the ground floor of the appeal building remains available for community use. However, the appellant's intention to recommence the public house element of the former use is dependent on economic matters beyond their control. There is no set time for the public house with bed and breakfast accommodation to recommence trading and there is limited detailed evidence to support claims that the ground floor is readily available, or continues to be regularly used, for any significant level of community activities.

¹ The Council's ref: WD/2012/2184/F

² The Council's Appendix 2: Undated Airbnb listing for a potential 2 night stay from 15 October 2022

10. The information provided suggests the small number of community activities which have taken place since the appeal building has been used as holiday-let accommodation have been intermittent and outside periods when holiday-let accommodation guests have been staying there. I note comments from local residents who claim to have been unaware that it was possible for them to use the appeal site as a public house or for any other community purposes.
11. The Airbnb listing referred to by the Council stated 'the Inn will NOT be open to the public'. The appellant refers to this as unfortunate and has since changed part of the listing so that it reads: 'You have use of this former historic Coaching Inn, which may have shared use with the local community on the ground floor'. However, the 'Guest access' section of the listing remains as follows: 'You have full & exclusive use of a former Coaching Inn, the Inn will NOT be open to the public'³.
12. The appeal site is no longer used as a public house with bed and breakfast accommodation. The evidence indicates that any community uses are sporadic, occasional, and minor events which are of no significance to the new primary use of the appeal site as holiday-let accommodation. It is evident that the breach of planning control alleged in the enforcement notice has occurred.
13. The appeal under ground (b) therefore fails.

Ground (c)

14. To succeed under this ground of appeal the appellant would need to demonstrate that the breach of planning control alleged in the enforcement notice does not constitute a breach of planning control.
15. Section 57 of the Act states that, subject to the provisions of that section, planning permission is required for the carrying out of any development of land. As set out above, to fall within the definition of development, a change of use of any buildings or other land must be material.
16. The current primary use of the appeal site as holiday-let accommodation is quite different to its former mixed use as a public house with bed and breakfast accommodation. Under the former use, guests would not have full control of the appeal site and would share the ground floor with any visiting members of the public. They would have relied on staff to manage and operate the public house with bed and breakfast use. On-site staff would have prepared and served food and drinks and provided general housekeeping services. There would have been areas of the appeal property guests would not have accessed under the former use, such as the kitchen and behind the bar.
17. In comparison to the former use, guests currently have almost full control of the appeal property for the duration of their stay. They can be responsible for providing their own food and drink and they are free to use the kitchen and bar areas if they want to. This remains the case even though catering can be provided, and a premises licence is still held. The appeal property is exclusively theirs to use for the duration of their stay, without needing to share any parts with visiting members of the public, notwithstanding the belated partial amendments to the Airbnb listing referred to above.

³ Airbnb listing dated 9 December 2022 attached to the appellant's Final Comments

18. Although the first floor continues to be used as sleeping accommodation by guests, there is a substantial difference between the former use of the appeal site as a public house with bed and breakfast accommodation and its current use as holiday-let accommodation. This would remain the case even with the occasional community uses of the ground floor I have been referred to. The current use of the appeal site is not therefore authorised by the planning permission referred to above.
19. The change of use from a mixed use as a public house with bed and breakfast accommodation to a primary use as holiday-let accommodation which has taken place was a material change of use which required planning permission. As no planning permission exists for that material change of use, the current use is in breach of planning control.
20. The appeal under ground (c) therefore fails.

Ground (a) and the Deemed Application for Planning Permission

21. Taking all matters raised into account, the main issues relevant to the ground (a) appeal and the deemed application for planning permission are:
 - The effect of the use of the appeal site as holiday-let accommodation on the living conditions of neighbouring residents, with particular regard to noise and disturbance; and
 - Whether the use of the appeal site as holiday-let accommodation has resulted in the unjustified loss of community facilities.

Reasons

Living Conditions of Neighbouring Residents

22. Wartling is a small village and the appeal site is located at its heart, adjacent to the village church and facing onto a tight corner of Wartling Road. It is at an elevated level above that road, with a small terrace to the front. A narrow lane runs along the eastern elevation of the appeal building, leading to various nearby houses and agricultural land, and a parking area which forms part of the appeal site. Other houses face onto Wartling Road too, roughly perpendicular to the front of the appeal building. There is a close, intimate feel to the village, which is interspersed with trees and surrounded by wide open countryside.
23. As the last authorised use of the appeal site was as a public house with bed and breakfast accommodation, this would be the use that the appeal site could lawfully revert to if the enforcement notice was complied with. It is therefore appropriate to compare the impact of the unauthorised use on the living conditions of neighbouring residents to the impact of the former use on those living conditions.
24. There would have been opportunities for high levels of noise and activity associated with the appeal site historically. However, that would have been managed by staff working and/or staying on-site, who would have been on hand to deal with noise complaints and unruly guests and to enforce regular closing hours. This would have controlled late night and early morning noise and activity.

25. I have not been referred to any historic noise complaints relating to the former use of the appeal site. I have been referred to 27 noise complaints relating to the unauthorised use of the appeal site between July 2020 and July 2022⁴. These display a recurring pattern of loud group activity and music emitted from within and outside the appeal building, as alleged by 8 neighbouring residents. Many of those complaints relate to noise experienced after midnight, claiming to affect neighbouring residents' ability to sleep.
26. I have been referred to an email⁵ from the Council's Community Protection Officer to the appellant, which explains that following receipt of noise complaints, the Council undertook a 'noise patrol' at the appeal site on 7 weekend evenings between June and August 2021. During those visits, there was only one instance where guests shouting may have been considered an issue if it was to recur. The email goes on to state that the appellant had agreed to attempt mediation with a complainant to resolve alleged noise issues, but that the complainant did not respond to an offer to take part in that process. This email does not demonstrate that noise issues relating to the unauthorised use have been resolved.
27. There are clear opportunities for people renting the former public house as holiday-let accommodation to organise large group events, even if the number of people staying overnight would be limited by the number of bedrooms at first floor level. This is on account of the extensive space at ground floor level, including outside areas, a commercial kitchen, and the bar area. As no staff are present throughout guests' stays, guests are largely left to manage any disruption they may cause to local residents themselves. There is little to stop them playing music or talking/shouting loudly throughout the night inside or outside the appeal building, even if they are informed of a house rule requiring doors to be closed and guests kept inside the building after 2300.
28. I note that some local residents have taken to contacting the appellant when guests have been disruptive, after raising concerns with the guests themselves. I do not see this as a reasonable or effective means of controlling the noise impacts of the unauthorised use, not least because the appellant does not reside in the village, but also because it cannot reliably prevent unacceptable noise and disturbance being created at unsociable hours.
29. The proximity of the appeal site to neighbouring residential properties in an intimate rural setting means that the unauthorised use, compared to the former lawful use, creates far greater opportunities for significant levels of noise and disturbance to be created at unsociable hours. This causes unacceptable harm to the living conditions of neighbouring residents, contrary to Saved Policy BS14 of the Wealden Local Plan (1998) (LP). This policy requires, amongst other things, the scale and nature of changes between business uses to be compatible with local residential amenities, which is consistent with the National Planning Policy Framework (the Framework).

Community Facilities

30. Anecdotal evidence has been provided relating to how the appeal building was previously used as a community facility prior to the cessation of the former use in March 2020. As a significant part of the former mixed use of the appeal site

⁴ The Council's Appendix 4

⁵ The appellant's Appendix G

included a public house open to visiting members of the public, the appeal site comprised community facilities. For the reasons outlined above, I do not consider the current opportunities for irregular community or public house activities at the appeal site provide a comparable level of community facilities to the former use.

31. The appellant has explained that the operations company for the appeal site ran at a loss of between £27,744 to £72,640 for the years ending 31 January 2018 to 2021 and that after the appeal site was purchased at auction from bank receivership, the business went through 7 head chefs in 10 years of operation⁶. The Council has referred to the appeal site's rateable value as being £41,250 prior to the COVID-19 pandemic, which is said to suggest it was run as a viable business. Other than these details, there is little information before me which confirms whether a mixed use of the appeal site as a public house with bed and breakfast accommodation is viable or unviable.
32. The unauthorised use of the appeal site provides what the appellant has described as a viable use for the heritage asset, consistent with its conservation. This has not been supported by any detailed information or analysis, but I note that its continuing use as holiday-let accommodation suggests that is more profitable than the former use. This does not mean another business operation consistent with the former lawful use would not also be viable and capable of conserving the heritage asset.
33. I have been referred to Saved Policies GD2, BS7 and BS14 of the LP and Policies SPO2 and WCS14 of the Wealden District Core Strategy Local Plan (2013) (CS) with regard to the impact of the breach of planning control on the provision of community facilities, and public house facilities in particular. None of these development plan policies are directly relevant to community or public house facilities, although I note reference in Policy SPO2 to cultural assets, which I shall address in the final planning balance.
34. Paragraph 84 of the Framework explains that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, sustainable rural tourism and leisure development, and the retention and development of accessible local services and community facilities, such as public houses. Paragraph 93 of the Framework sets out that planning decisions should plan positively for the provision and use of community facilities, including public houses, and guard against the unnecessary loss of valued facilities to provide the social, recreational and cultural facilities and services communities need.
35. Alongside the above, the Framework also explains that the purpose of the planning system is to achieve sustainable development, which should take account of local circumstances and that planning decisions should help create conditions in which businesses can invest, expand and adapt, allowing areas to build on their strengths, counter any weaknesses and address the challenges of the future⁷.
36. While it is unclear whether the former use of the appeal site is viable, the Framework provides support for the provision of community facilities, such as public houses. Although the Framework also encourages the adaption of

⁶ Supported by letter dated 23 June 2022 by Handley Roberts LLP

⁷ Paragraphs 7, 9 and 81

businesses to remain sustainable, I am unconvinced on the evidence provided that the breach of planning control is capable of hosting a meaningful level of community facilities. The breach of planning control has resulted in the loss of community facilities, and while that is not contrary to the development plan, it is necessary for me to consider whether it is justified in the planning balance, with regard to the Framework.

Other Matters and Planning Balance

37. The breach of planning control creates benefits to the local area resulting from the support it provides for tourism and employment opportunities. These would be comparable to, and probably less significant than, the support the former lawful use could provide in those respects. Against that, I acknowledge the appellant's point that the former lawful use will not be reinstated for an unknown period as it is claimed to be unviable at present, and that compliance with the enforcement notice would leave the appeal site vacant. That would make no contribution towards tourism or employment opportunities and leave the heritage asset unable to contribute financially to its own conservation.
38. Policy SO2 of the CS seeks to protect the intrinsic quality of the historic environment and the appropriate use of heritage and cultural assets to encourage suitable tourism development and support investment. Paragraph 197 of the Framework encourages local planning authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.
39. I have found that the unauthorised use causes unacceptable harm to the living conditions of local residents on account of the lack of controls over noise and disturbance at unsociable hours. I have not been presented with convincing evidence that this could be resolved through conditions attached to any grant of planning permission which would meet the tests specified at paragraph 56 of the Framework.
40. Although it has been stated that the former lawful use of the appeal site is not viable at present and would not be reinstated if the enforcement notice was to be complied with, there is a lack of evidence that more appropriate alternative uses have been considered. As such, I am unconvinced that the unauthorised use is necessary to conserve the heritage asset or that the appeal site could not be put to other uses which could provide similar tourism and/or employment opportunities alongside meaningful community facilities without harming the living conditions of neighbouring residents.
41. Bringing these matters together, I assign minimal weight to the benefits associated with the unauthorised use and significant weight to the harm it causes to the living conditions of neighbouring residents and to the local community through the loss of community facilities. The unauthorised use is contrary to the development plan taken as a whole and there are no other considerations, including the Framework, which indicate planning permission should be granted.
42. The appeal under ground (a) therefore fails and the deemed application for planning permission is refused.

Ground (f)

43. To be successful under this ground of appeal the appellant would need to demonstrate that the steps required by the enforcement notice to be taken, or the activities required by the enforcement notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
44. It is clear that the purpose of the enforcement notice is to remedy the breach of planning control. The appellant has claimed that the requirement of the enforcement notice to stop using the appeal site as holiday-let accommodation exceeds what is necessary to achieve that purpose. This is on account of the planning permission for the use of the appeal site as a public house with bed and breakfast accommodation.
45. As I have concluded above, there is a clear difference between the use of the appeal site as holiday-let accommodation and its use as a public house with bed and breakfast accommodation. The enforcement notice does not prohibit the appeal site's use for mixed purposes as a public house with bed and breakfast accommodation, as authorised.
46. Condition 5 of the planning permission referred to above requires the first floor accommodation to be used for 'holiday accommodation only' in the context of the authorised use of the appeal site as a public house with bed and breakfast accommodation. That planning permission does not authorise the use of the first floor as holiday accommodation in isolation. The enforcement notice does not affect the planning permission referred to above.
47. The activities required by the enforcement notice to cease do not exceed what is necessary to achieve the enforcement notice's purpose of remedying the breach of planning control.
48. The appeal under ground (f) therefore fails.

Conclusion

49. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice subject to corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

50. It is directed that the enforcement notice is corrected by:
- i) The deletion of the words 'change of use of the Land from use as a public house' at Section 3 and their substitution with the words 'the material change of use of the Land'
51. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Douglas

INSPECTOR