



Appeal Decision

Hearing Held on 27 June 2023

Site visit made on 27 June 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2023

Appeal Ref: APP/C3240/W/22/3313353

Cleveland Arms, High Ercall, Telford TF6 6AE

- 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 John Hickinbottom against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2022/0340, dated 27 March 2022, was refused by notice dated 8 September 2022.
 - The development proposed is conversion of public house (use class sui generis) into 1no. dwelling (use class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. I consider that subsequent description to accurately represent the proposal and I have therefore used it within this decision.
3. The appeal form refers to a company name in the appellant details. However, I have omitted this from the heading above as the right of appeal rests with the original applicant.

Main Issues

4. The main issues in this appeal are:
 - Whether the proposal would comply with local and national planning policy in respect of the protection of community facilities; and
 - Other material considerations.

Reasons

Community Facilities

5. The appeal site is located in the village of High Ercall. The property was a long-established public house in the village although it has been closed since 2016. Nevertheless, the extant permitted use of the property is as a public

house, and as such it remains to be considered as a community facility serving the village. There is an adjoining car park and disused bowling green which are within the control of the appellant, although these are not included within the appeal site boundary apart from an extent of the car park to the rear.

6. Policy EC7 of the Telford and Wrekin Local Plan 2018 (the Local Plan) states that the Council will not support development resulting in the loss of community facilities, unless a number of criteria are met. The Policy refers to a range of use classes, some of which were removed as a result of revisions to the Use Classes Order. This includes Use Class A4 which related to drinking establishments such as public houses, although due to amendments to the Use Classes Order, Class A4 has been deleted and a public house is now considered to be a Sui Generis use. Nevertheless, despite the changes to the use class of the property, the established use of the appeal site is as a community facility and it therefore falls within the remit of Policy EC7.
7. The first criteria of Policy EC7(i) is whether there is an equivalent alternative use or service nearby that provides a similar offer which meets the needs of residents. The appeal site is the only public house in this village, and although reference has been made to public houses in the wider area, they are not accessible by routes conducive to pedestrian access due to factors including the distances involved, the unlit nature of routes and the lack of a dedicated footway. On that basis, these other public houses cannot reasonably be considered to meet the needs of local residents with regards to access to this community use.
8. The village includes a village hall. Typically, the role of a village hall is very different to that of a public house and it would not provide an equivalent alternative facility.
9. That said, the appellant refers to a community bar operated within the village hall and considers that this provides a similar offer to the public house. However, based on the evidence before me, the village hall is not a fully licensed premises, and the temporary bar is used for fundraising or in support of hirers of the hall. The bar only operates once a week, and even then that may be prevented due to the requirements of another hirer of the hall. The bar also does not have a commercial kitchen and only serves snacks, although I am mindful that not all public houses have a substantial food offer. Reference is also made to the community bar being run by unpaid volunteers and staffing difficulties, which may also affect opening times.
10. Due to the characteristics of the community bar, it does not offer the same convenience and range of services that could be expected from a public house, for example in respect of casual walk-in custom. I acknowledge that public houses in rural areas may have reduced opening hours, particularly in the current economic climate. But even then the operation and opening hours of the community bar are much more restricted, and it does not represent an equivalent alternative service for the community compared to that provided by a public house, such as in respect to casual drop-in custom. That said, the popularity of the community bar is a clear indication of the need for the facilities that would be provided by a public house.
11. As a matter of fact and degree, within the terms of Policy EC7(i), I conclude that there is not an equivalent use or service that provides a similar offer to the public house which meets the needs of the community.

12. Notwithstanding the sequence of the criteria of Policy EC7, I will now turn to criteria iii. This sets out that the proposal may be supported if it would provide for a community facility for which there is a demonstrable need. Members of the community at the Hearing referred to an expectation that a public house at the site would include a food offer. However, Policy EC7(iii) is a wider criteria that could include other community uses for which there is an identified need. Nevertheless, the appeal proposal would lead to the creation of a private dwelling, which would not represent a community facility and would therefore not meet the requirement of Policy EC7(iii).
13. As the property has been vacant for more than 12 months, the criteria of Policy EC7(ii) requires that robust evidence is provided of efforts to market the unit over that period. As set out in the supporting text for the policy, this marketing should genuinely reflect the market value in relation to factors including the use and condition of the property.
14. Since the closure of the public house, the property has been marketed on a number of occasions. This included a period from July 2019 to August 2020 where it was initially marketed at £295,000 plus VAT, with subsequent reductions leading to a marketed price of £249,950 plus VAT.
15. A further period of marketing was undertaken from February 2021, with a price of £220,000 for the public house, or for £285,000 when combined with the bowling green.
16. A range of offers were received over the periods of marketing, although these did not progress for a number of reasons including not meeting the appellant's expectations in terms of value, and interested parties not wishing to proceed on the basis of the existing use.
17. The public house as a business has been valued at different times since closure. This included a viability report prepared by Fleurets¹ in 2016 on behalf of the appellant, which assumed a value of £185,000.
18. A more recent report was prepared in 2021 by MJD Hughes² on behalf of the Cleveland Phoenix Charity (CPC) and Ercall Magna Parish Council (EMPC). The CPC is a community interest group which seeks the restoration and reinstatement of the public house. The MJD Hughes report identified a range of valuations for the property from £325,000-£185,000, although it is the latter amount which reflects the current circumstances of the property.
19. What is evident from the above is that a number of market prices and valuations have been proposed for the public house. However, for marketing to be suitably robust within the terms of Policy EC7(ii), this should reflect the condition of the property. The appellant has emphasised the structural issues of the building which have been identified since they purchased the site. This included defective brick piers, the provision of structural supports, and further repair works to the internal floors, walls and chimney structures. The extent and scale of the works undertaken were apparent at my visit.
20. The Fleurets report estimates the cost of further repairs to the property to be £75,000. The MJD Hughes report estimated a cost of between £100,000-£135,000 to return the public house to a condition where it could trade, but

¹ Report Concerning Issues of Economic Viability, June 2016

² Market Appraisal Valuation Instructions, April 2021

those figures did not include compliance matters such as fire safety requirements which could add significantly to the cost of remedial works.

21. The appellant refers to a cost of between £816,000 to £1,008,000 to repair the building to bring it back into use as a public house, which would be significantly greater than the original purchase price of the property and its estimated value as a public house. As explained by the appellant at the Hearing, these figures are based on a Building Cost Information Service (BCIS) area calculation. However, although the BCIS calculations may have a degree of objectivity, they do not represent an appropriate structural survey of the building undertaken by a suitably qualified and experienced surveyor or builder. In this regard, a Tribunal Decision³ in respect of the site as an Asset of Community Value gave the appellant's costings only very limited weight, and based on the evidence before me so do I.
22. Returning to the principle of Policy EC7(ii), the supporting text sets out that the marketing should reflect the condition of the property in order to be suitably robust. The structural integrity of the building is fundamental to this, and the cost of remedial and other compliance works to bring it up to an appropriate standard should be reflected in the guide asking price. Despite the various estimated costs of the works required, it has not been demonstrated that these are based on a robust structural survey. I therefore cannot conclude that the condition of the property has been appropriately allowed for in the marketing of the site.
23. Although offers were made on the property in response to marketing, a number of these failed to progress due to restrictive covenants on the building limiting this to a public house only. I am mindful that the retention of the site as a public house would reflect the wishes of EMPC. However, Policy EC7(iii) allows for the consideration of other community uses for which there is an identified need. The restrictions of the covenant may therefore have deterred potential interest for other community uses which could have met the relevant criteria of Policy EC7.
24. On the matter of the covenant, the appellant highlighted marketing information⁴ which referred to "*...a restriction on title that only allows the premises to be used for A4 or other community facility...*". The reference to 'other community facility' could relate to a wider range of uses which fall within the remit of Policy EC7. However, the initial page of the marketing particulars refers specifically to "*Restriction on title for A3 and A4 use only*", which would be more limited. At the Hearing, the appellant admitted that this was an error in the marketing particulars, but this further undermines the robustness of the marketing exercise.
25. Concerns have also been expressed about the approach of the appellant and their agents to interested parties during the marketing process, including difficulties gaining access to the site, negative comments to queries, or a lack of response. These concerns are anecdotal, and the CPC indicated at the Hearing that they hope they will be able to gain access to undertake a structural survey. Nevertheless, even if the marketing had been carried out appropriately in respect of communication and access, this does not lead me to a different conclusion in respect of the lack of a robust structural survey and

³ Tribunal Reference: CR/2017/0017

⁴ James A Baker Sales Particulars

the effect on the reasonable guide price, as well as the restrictions on use referred to in marketing.

26. Drawing the above together, the proposal would lead to the loss of a community facility contrary to the requirements of Policies SP4, COM1 and EC7 of the Local Plan which together seek to promote sustainable development which protects community facilities in rural areas. The proposal would also be contrary to the National Planning Policy Framework (the Framework) which seeks to provide for the social, recreational and cultural facilities and services that the community needs.

Other Material Considerations

27. In respect of **viability**, the appellant submits that there is no viable future for the building in its use as a public house. They refer to the opinions of Chartered Surveyors as well as the Valuation Office, which in particular refer to the costs of repair to bring the property to a suitable standard to trade as a public house.
28. However, as referred to above, I am not persuaded that substantive evidence has been provided with regards to the structural integrity of the building and the works required to bring it back into operation as a public house or community use. Moreover, the cost of such works should be reflected in the marketing guide price, which may then generate interest from viable businesses.
29. A report prepared by Hotel Solutions⁵ (the HS Report) on behalf of the Council accepts that the site is unlikely to meet the requirements of the more commercially managed operators seeking significant investment returns. However, the HS Report also refers to potential interest from smaller regional operators, entrepreneurial freeholders and community ownership models.
30. A realistic asking price, cognisant of the condition of the property, is crucial to bringing forward viable business interest in the site. A robust marketing exercise is a valid approach to determining whether the appeal site has a viable future as a public house or other community facility. For the reasons stated previously, a robust marketing exercise has not been undertaken.
31. Moreover, even if the appellant's estimated repair costs are taken at face value, this could also affect the viability of the appeal site for the proposed dwelling. The costs of adapting the property for a dwelling would be less than those associated with a public house, for example in relation to fire regulations, but the structural issues relied on by the appellant could equally apply to the residential use of the building. At the Hearing the appellant set out that they are not claiming that the change of use to a dwelling as proposed is viable, and they went on to refer to enabling development on the bowling green to repair the building. However, such enabling development could also support repair works for the community use of the building.
32. The appellant may not wish to sell the property for less than they purchased it for, or for less than anticipated values for alternative development. However, the loss of community facilities should not be driven by an inflated guide price based on hope value at the time of purchase or subsequent scenarios which do not comply with development plan policy.

⁵ Review of Development Proposals & Future Viability, August 2022

33. Based on the evidence before me, it has not been established that the appeal site is no longer viable for a public house or community use. The issue of viability does not therefore weigh in favour of this appeal.
34. The HS Report refers to a **community ownership** model for the appeal property. The CPC is promoting such a model and has asked whether the appellant would be prepared to entertain a sale price of £185,000 for the property in its current condition. However, the CPC has not demonstrated that it has funds in place to meet this price, or that it has a viable business model. On that basis I do not consider the CPC's query in relation to the sale price as representing a formal offer.
35. The CPC explained at the Hearing that a full business case has not been progressed for reasons including previous issues gaining access to the site for structural surveys. Although the CPC is confident that it will now be able to gain access, there remains a significant degree of uncertainty as to whether the resultant offer for the site would be acceptable to the appellant, which could result in wasted expense in undertaking a structural survey and preparing a business case.
36. I am mindful of the uncertainties faced by the CPC in progressing its intentions for the site. But, viewed objectively, the CPC's proposals are not sufficiently developed or robust, and I only give them very limited weight in my consideration of this appeal. However, this does not negate my conclusions on whether other viable businesses would have been identified if the site had been robustly marketed. Moreover, this is without prejudice to the future actions of the CPC, as it may be possible to develop a community ownership business model once issues including the costs arising from structural works and compliance matters have been established.
37. With regards to **heritage assets**, the appeal site is within the High Ercall Conservation Area (CA). The CA boundary was extended to include some of the more significant buildings of the old medieval core of High Ercall, including the appeal site. Although the appeal building is not from the medieval period, it is an important building within the CA representative of the development of High Ercall and is a key element in the historic landscape of the village⁶. This contributes to the importance of the CA as a designated heritage asset, and due to the building's prominence and importance within the CA it represents a non-designated heritage asset.
38. The appeal site is currently vacant, bounded by security fencing and with ground floor windows boarded up. In its current condition, the site detracts from the character and appearance of the CA and the heritage interest of the building. The appeal proposal would introduce an active use into the building and would contribute to its renovation and retention. However, for the reasons stated previously, it has not been demonstrated that the proposal is unviable for a public house or other community use which could equally preserve or enhance character and appearance. Within that context, the contribution of the proposal to the character or appearance of the CA and the significance of the building carries very limited weight in favour of the proposal.
39. I have had regard to other potential benefits arising from the proposal and the comments made at the application and appeal stages. Although the proposal

⁶ High Ercall Conservation Area: Proposed Boundary Extension November 2008

would add to the supply of housing in the area, the benefits arising from a single dwelling would be very limited. There is also no certainty that the site could be sold for further residential development. The operation of the site as a public house could lead to a degree of noise and disturbance. However, even allowing for recent housing development in the immediate vicinity, there is no substantive evidence that the retention of the site as a public house or community use would lead to unacceptable living conditions for nearby residents.

Other Matter

40. The site has previously been identified as an Asset of Community Value (ACV) and an appeal against this was dismissed at a Tribunal, although the bowling green was removed from the list. The Council has confirmed that the ACV was in place for 5 years and expired in July 2022. Despite the expiration of the ACV, this does not negate my conclusions in respect of the contribution of the site to community facilities in this area.

Conclusion

41. I have concluded that the proposal would be contrary to the development plan and the Framework with regards to the protection of community facilities. There are no other material considerations of such weight that indicate that this appeal should be determined otherwise than in accordance with the development plan.
42. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR

Appearances

FOR THE APPELLANT:

John Hickinbottom
Susan King

FOR THE COUNCIL:

Andrew Gittins
Libby Harper

INTERESTED PARTIES:

Cllr Kevin Connor - Ercall Magna Parish Council
Cllr Raymond Wickson - Ercall Magna Parish Council and Trustee of Village Hall
David Haston - Cleveland Phoenix Charity
Cllr Steven Bentley - Ward Member, Telford and Wrekin Council

Document Submitted at the Hearing

Submission from Craig Bunyon - Chairman, High Ercall Village Hall.