The Planning Inspectorate

Appeal Decision

Hearing held on 27 June 2023

Site visit made on 27 June 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 August 2023

Appeal Ref: APP/W1145/W/22/3312735
The Laurels Inn, Petrockstowe EX20 3HJ

- 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 & Mrs Johnson against the decision of Torridge District Council.
- The application Ref.1/1118/2021/FUL, dated 21 September 2021, was refused by notice dated 10 June 2022.
- The development proposed is the change of use from a mixed use of public house and private dwelling to solely a private dwelling.

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing applications for costs were made by the appellants against the Council and by the Council against the appellants. These applications are the subject of separate Decisions.

Main Issue

3. This is whether the proposed change of use is acceptable, or not, in the light of the development plan, and Policy ST22(3) of the North Devon and Torridge Local Plan 2011-2031 (LP) in particular, and any other material considerations.

Reasons

4. LP Policy ST22 deals with what it terms community services and facilities. Section (3) of the policy addresses itself to the potential loss of such services and/or facilities. It says that development that involves the loss of community services and facilities will not be supported unless there is compelling evidence to demonstrate: (a) the existing use is no longer commercially viable or could not be made commercially viable; or (b) there is alternative local provision that is accessible to the local community by walking or cycling; and in either case (c) the premises are no longer required to meet the needs of the local community.

5. Paragraphs 8.9 and 8.10 of the explanatory text associated with LP Policy ST22 explain the approach to assessing application for the change of use of existing facilities. I note the points made on behalf of the appellants about the status of explanatory text in relation to what the actual policy sets out, but it seems to

me that paragraphs 8.9 and 8.10, in the way they explain how the Council will approach assessment under the aegis of the policy, function as explanatory text is intended to function. While what they say is not part of the policy itself, it is relevant to the application of the policy. It cannot simply be set aside[1].

6. Paragraph 8.9 says (and I summarise) that in assessing applications for change of use of existing facilities, a thorough analysis of the existing operation will be required along with details of the efforts made to secure the future and the viability of the business. In all instances it must be demonstrated that, of central relevance, (d) the facility is not commercially viable. In order to determine this, it is said that the Council will require submission of trading accounts for the last three full years in which the facility was operating as a full-time business.

7. Paragraph 8.10 sets out that commercially operated facilities must further demonstrate that a comprehensive sustained marketing campaign (to be agreed in advance by the Council) has been undertaken for its existing use, offering the facility for sale using an agreed realistic valuation of the premises, for a period of at least twelve months before an application is submitted.

8. That the appellants have not followed the requirements of paragraphs 8.9 and 8.10 to the letter is not, in my view, fatal to the case advanced on their behalf. However, the material the appellants have put forward has to be considered in the light of what is said in those paragraphs, in order to form a conclusion against the actual policy.

9. In terms of viability, contrary to the submission made on behalf of the appellants, the accounts do not demonstrate conclusively that the facility is not viable. For both years covered by the accounts[2], there was a surplus. I accept that the appellants have invested in the business using their own savings, and their labour, and did not draw salaries. However, that must be seen in the context of the fact that the public house was also the appellants' home. All the accounts that have been submitted show is that the business, in the manner the appellants operated it, did not make as much of a surplus as they would have wished. They do not describe a situation where it could safely be concluded that no other operator, or operators, could run the premises in a more successful way.

10. That is why the issue of marketing is so important. For all that has been said about it, there is an essential contradiction in the conduct of the marketing exercise that has taken place. On the one hand, I am told, on behalf of the appellants, that the business is failing and not viable, and that the public house trade generally is becoming more and more marginal, making it difficult to sell a country pub. However, on the other hand, the Laurels Inn has been marketed for sale at a little under £400,000 (pre-pandemic) and is currently on the market at £450,000. Those figures need to be seen in the light of the fact that the appellants purchased the Laurels Inn in 2017 for £269,000. It may well be that the recent marketing takes account of the potential for outbuildings to be converted to guest accommodation, but that cannot adequately explain why so great an uplift has been applied to a business that is said to be failing.

[1] I do not consider that my reasoning on this matter is at odds with the approach of my colleague Inspector in APP/W1145/W/21/3269314
[2] 2018/19 and 2020

11. Further, I note that an offer of around the asking price was received in 2020. That strongly suggests to me that at the time, someone clearly thought the business had at least the potential to be viable, contrary to the viability case advanced by the appellants. The sale fell through with the onset of the pandemic, but that does not undermine my finding.

12. I am told that post-pandemic, the prospects for public houses generally, and rural public houses especially, have become yet more difficult, hence the closure of the premises in September 2021. That may well be so. Nevertheless, I find it impossible to square that with the fact that the Laurels Inn is currently being marketed at a price £50,000 more than it was pre-pandemic.

13. Taking all those points together, I do not consider that the marketing campaign has been a sufficiently realistic one.

14. In that overall context, I am of the firm view that the evidence provided on behalf of the appellants is anything but compelling and it does not demonstrate that use of the Laurels Inn as a public house is not viable or could not be made commercially viable. The proposed change of use does not comply, therefore, with Policy ST22(3)(a).

15. Turning to (3)(b), there are two main points to be made. First, the village hall does not, in my view, provide an alternative local provision. It does not operate like a public house in that it relies on events; it does not cater for the opportunistic, as opposed to planned, visit. It is, therefore, no substitute for a public house. While there are public houses in nearby villages, these are not readily accessible by walking or cycling. I appreciate that when there was consideration of the matter, it was found that the Laurels Inn was not an Asset of Community Value. However, that consideration has a different scope and basis to the one required under Policy ST22(3)(b). In my view, what is proposed here does not accord with Policy ST22(3)(b).

16. Bearing in mind the way that Policy ST22(3) works, that is the end of the matter, but I will address (3)(c) for the same of completeness. It is very clear from what I heard at the hearing, and read in the representations, that the ability to access a public house in the village is something that is very much valued. It cannot be said, realistically, that the premises are no longer required to meet the needs of the local community.

17. Bringing all those points together, the proposed change of use plainly fails to comply with LP Policy ST22(3). The next question is whether there are any material considerations that would justify a decision contrary to the provisions of the development plan, in this case.

18. It has been argued that because the premises ceased operation as a public house in September 2021, the change of use proposed would not result in the loss of a community service or facility. I do not consider that argument to be one that justifies the change of use proposed because it would remove the potential for another operator or operators to carry out the business of a public house from the premises, without a fresh grant of planning permission. That potential is part of what Policy ST22(3) seeks to protect. While I appreciate that the Council might well support such an application, it would undoubtedly make the property less attractive to a potential operator. Indeed, a potential operator might have to purchase the property as a private dwelling, and then carry out significant works, in order to then turn it back into a public house.

19. In the challenging environment for rural public houses, that seems to me very unlikely and if planning permission is granted for the change of use of the premises to a private dwelling, it is very difficult to see how a public house would ever be operated from the premises again.

20. I accept that the appellants are under no obligation to re-open the public house and can continue to live in the property. Again though, one must treat this matter with care because it would be open to the Council to take enforcement action if they became concerned that the balance between the public house and residential uses of the premises was tipping too far towards the residential element. In that way, the potential for a public house to be operated once again from the premises can be protected.

21. With those points in mind, I do not consider that the closure of the public house in September 2021, and the implications that flow from that, are sufficient, as material considerations, to set aside the approach of the development plan and Policy ST22(3) in particular. There are no other material considerations that are weighty enough to justify a decision contrary to the development plan either.

Other Matters

22. The Council refused planning permission for two reasons but in the lead up to the Hearing confirmed that the second of those two reasons, relating to design, and the provision of what was termed 'private amenity space' would not be pursued on the basis that the issues raised could be addressed by a condition that covered any boundary treatments. That seems to me an eminently sensible approach and in that context, I have taken the matter no further.

Conclusion

23. For the reasons given above I conclude that the appeal should be dismissed.

Paul Griffiths

INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Mr John Gower	Quiet Water Consultancy
Mr & Mrs Johnson	Appellants

FOR THE LOCAL PLANNING AUTHORITY

Ms Odette Challaby	Counsel
Ms Sara Boyle	Development Management Team Leader

INTERESTED PERSONS

Kate Smith	Local Resident
Cheryl Cottle-Hunkin	District Councillor
Malcolm Busby	Chair of Trustees of Baxter Hall and Parish Council
Mike Thompson	Local Resident
Lise Linney	Local Resident

DOCUMENTS

Document 1	Council's Response to Costs Application and Costs Application
Document 2	Appellants' Response to Council's Costs Response
Documents 3	Appellants' Response to Council's Costs Applications