



Appeal Decisions

Site visit made on 10 July 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2023

Appeal A Ref: APP/V0510/C/22/3303870

Lazy Otter, Cambridge Road, Stretham, Ely CB6 3LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeal is made by Miss Rita Walsh against an enforcement notice issued by East Cambridgeshire District Council.
 - The notice was issued on 29 June 2022.
 - The breach of planning control as alleged in the notice is:
The unauthorised material change of use, consisting of the independent residential use of a public house.
 - The requirements of the notice are to:
Cease the unauthorised use of the public house and land as an independent residential unit (Use Class C3).
 - The period for compliance with the requirement is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Act. 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.
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Appeal B Ref: APP/V0510/W/22/3303864

Lazy Otter, Cambridge Road, Stretham, Ely CB6 3LU

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by Miss Rita Walsh against the decision of East Cambridgeshire District Council.
 - The application Ref 22/00022/FUL, dated 7 April 2022, was refused by notice dated 17 June 2022.
 - The development proposed is change of use of public house (sui generis (formerly A4)) to dwellinghouse (C3).
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Decision

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - at paragraph 5, adding the word "residential" between the word "unauthorised" and the word "use"; and
 - at paragraph 5, deleting the words "as an independent residential unit (Use Class C3)" and replace with the words "other than for purposes ancillary to the primary use of the premises as a public house".
2. Subject to the corrections, 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 Act.

Appeal B

3. The appeal is dismissed.

Applications for costs

4. An application for costs was made by Miss Rita Walsh against East Cambridgeshire District Council. This application is the subject of a separate Decision.

Procedural Matters

5. The appeal was lodged on grounds (a) and (b) only. However, part of the appellants case is also that their residential occupation of the property does not constitute a material change of use. I consider that this argument properly falls to be considered as an appeal under ground (c); that there has not been a breach of planning control. The Council's detailed case, made clear in their submitted evidence, is that the change of use constitutes a breach of planning control. It would not therefore prejudice the Council's case for me to also consider the appeal on ground (c).
6. The established use of the appeal building is a public house with ancillary living accommodation on the first floor. With consideration to section 57(4) of the Act, the notice requirement at paragraph 5 would be more clearly expressed by preventing residential use of the property other than the lawful use of the first floor for as ancillary residential accommodation to the primary use of the premises as a public house.
7. I am satisfied that neither the appellant nor the Council will be prejudiced by making this correction to the notice. I will therefore do so using powers available to me under s 176(1) of the Act.

Appeal A – ground (b) and (c)

8. An appeal on ground (b) is a claim that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact.
9. An appeal on ground (c) is that the matters alleged at Section 3 of the enforcement notice, if they occurred, do not constitute a breach of planning control. The onus of proof in ground (b) and (c) appeals is on the appellant and the test of the evidence is on the balance of probability.
10. The application form for application Ref 22/00022/FUL stated that the change of use from public house to residential had been completed by December 2021. A statutory declaration has been submitted by the appellant claiming that the part of the application referring to the change of use being completed had been incorrectly filled out. The appellant insists that they had completed the application incorrectly because they were living in the upstairs residential part of the building at the time the application form was submitted. That being said, the appellants evidence also states that they temporarily slept in the ground floor public house area for a period whilst repairs were undertaken upstairs. Whilst beer pumps and cellar fittings have been removed by the brewery along with glasses placed in storage. The appellant states that the public house could reopen for trading and that no change of use has taken place.
11. The Council's position on this matter relates primarily to a site visit by the Enforcement Officer in February 2022, in which it is alleged that the appellant confirmed that they were living downstairs as there was no boiler upstairs and that it was their intention of living in the public house as a residential property.

The Council also indicate that there were no cooking facilities in the upstairs accommodation at the time of that site visit.

12. At my site inspection, I saw that the bar remained in place and the commercial kitchen was intact although seemed largely unused. The Gents WC (as described on the existing drawing¹) contains cupboards with work tops along with washing machines. A shower had also been installed in one of the toilet cubicles and what appeared to be a washing basket full of clothes was also in this room. There were a number of residential items scattered around the ground floor premises, which would not normally be considered typical features of a public house, these included bathmats, ornaments, stacks of towels, clothes drying racks, ironing board, vacuum cleaner. There was also domestic style furniture such as sets of drawers, a mirror and bins. Boxes of clothes, towels and bedding materials were stacked up with also a bed and a mattress although these were positioned on their side with a sheet draped over.
13. Located behind the bar area were tea and coffee making facilities, along with the storage of cups and glasses, boxes containing food items and several fridges. In the room adjoining the bar area there was a sink as well as an array of kitchen equipment including pots and pans, plates, bowls, tea towels, food storage containers, cheese grater, a microwave, a combined oven and hob unit and some food items. There was also a Wi-Fi router that appeared to be in operation as it was illuminated.
14. The appellant's evidence is limited, with the argument being that the premises retains features which would allow the building to be reopened as a public house. However, it is the use of the property that is relevant. There is no evidence before me, from either party, that the building has been actively in use as a public house since at least before November 2021 and that is consistent with the Council's evidence, the appellant's evidence and my own observations. That being the case the use of the property changed to residential use alone for a considerable period of time before the enforcement notice was issued. On the balance of probability, I conclude that the use of the public house changed to solely residential use before the notice was issued.
15. Consequently, the appellant has failed to demonstrate that at the date the notice was issued the matters alleged had not occurred, and the appeal on ground (b) must fail.
16. At the date the notice was issued the only active use of the property was for residential use. The change of use as solely for residential accommodation is materially different in character and effect from its use as a public house. The change of use from one to the other is therefore a "material change of use" and constitutes "development" as defined at Section 55 of the Act.
17. Planning permission is required for the development. However, there are no permitted development rights to make such a change within the Town and Country Planning (General Permitted Development) Order 2015, and no planning permission has been granted by the Council.
18. Consequently, the making of a material change of use from public house to residential accommodation amounts to "development". Since the development

¹ Drawing number: 6511/EX01

has been carried out without the required planning permission it thereby constitutes a breach of planning control.

19. Therefore, the appeal on ground (c) fail.

Appeal A – ground (a) and Appeal B

20. The ground (a) of appeal A is that planning permission ought to be granted for the matters alleged in the notice. The proposed development in appeal B is effectively the same to the matters alleged in the notice. To avoid duplication I have dealt with the appeals together, except where otherwise indicated.

Main Issue

21. The main issue is whether the proposal would result in the unnecessary loss of a community facility.

Reasons

22. Policy COM 3 of the East Cambridgeshire Local Plan 2015 (ECLP) states that proposal that would lead to the loss of commercial community facilities will only be permitted if it can be demonstrated that the current use or an alternative community use is not financially viable and that all reasonable efforts have been made to sell or let the property for community purposes at a realistic price for at least twelve months.

23. A Viability Report (VR) has been submitted which includes information on marketing, viability, village statistics, comparative salaries, trade levels, licensing trade, post covid-19 economy and effects of the war in Ukraine. In terms of viability, the VR concludes that the Lazy Otter business is not viable as around £755,750 would be required to purchase the Lazy Otter as a wise business investment. The Council disagree with these viability conclusions with queries on matters such as turnover. Whilst it is understood the Lazy Otter has not been operating for a number of years and the covid-19 pandemic would have affected operations, a financial statement² which only provides figures for 2017 and 2018 does not offer a sound indication on the financial position of the public house business. The appellant has detailed the difficulties of operating a public house business at present with various statistics and data being quoted including approximately 60% of all pubs running at a loss across the UK. This nevertheless does not provide compelling evidence related directly to the Lazy Otter business.

24. The premises was marketed approximately between the dates of January 2019 until November 2021, with the appellant purchasing the premises in November 2021. There is insufficient evidence that the premises has been marketed since November 2021 or whether the premises has been operating as a public house business.

25. From the submitted evidence, I am not satisfied that sufficient justification has been provided to demonstrate that the use of the premises as a public house cannot be financially viable either for the appellant or for another user. There is also no compelling evidence before me which indicates that since the appellants have owned the premises, that all reasonable efforts have been

² Appendix C of appellant statement of case

made to sell or let the property for community purposes at a realistic price for at least twelve months.

26. Accordingly, the change of use of the premises to residential is an unnecessary loss of a commercial community facility and is therefore contrary to Policy COM 3 of the ECLP.
27. I have had regard to the appellant statement of case and supporting evidence. These raise matters including no community right to buy, other similar establishments in the area, need and demand, location of the site, population in the area, public transport and footpaths. These matters however do not lead me to a different conclusion and that the change of use does not meet the requirements set out in Policy COM 3 of the ECLP.
28. My attention has been drawn to appeal decision APP/P0240/W/18/3207772. However, I do not consider appeal APP/P0240/W/18/3207772 to be directly comparable to these appeals, particularly with regards to location and robustness of viability and marketing evidence. In any event, I have considered these appeals on their own merits.

Conclusion on Appeal A – ground (a) and Appeal B

29. For all these reasons, I conclude that the change of use does result in an unnecessary loss of a commercial community facility. As such, it conflicts with the development plan as a whole and there are no other considerations including the provisions of the National Planning Policy Framework, which outweighs this finding.
30. Appeal A on ground (a) therefore fails and both appeals should be dismissed.

Chris Baxter

INSPECTOR