
Appeal Decision

Site visit made on 20 September 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Appeal Ref: APP/E2001/X/22/3313489

Travellers Rest, Main Street, Long Riston, Yorkshire HU11 5JF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Wayne Low against the decision of East Riding of Yorkshire Council.
- The application Ref 22/02904/CLE, dated 31 August 2022, was refused by notice dated 8 November 2022.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').
- The development for which a certificate of lawful use or development is sought is the erection of a public house to comply with an enforcement notice.

Summary Decision: the appeal is dismissed.

Main Issue

1. The main issue in the case is whether the Council's refusal to grant a certificate of lawfulness was well-founded.

Reasons

2. The appeal concerns works required to reinstate a building formerly used as a public house lying in the Conservation Area of Long Riston. The appeal site comprises part of a wider site against which an enforcement notice was issued by the Council in December 2020, the present site omitting the former car park to the south and the retained part of the building now known as the 'Micro Pig' to the north.
3. The appellant seeks a lawful development certificate in respect of the works that have been carried out. The notice was the subject of appeal and upheld with corrections and variations in May 2021 (APP/E2001/C/21/3268305). No corrections were made to the allegation, which was of the demolition of an unlisted building known formerly as The Travellers Rest in the Long Riston Conservation Area. The Council's reasons for issuing the notice were extensively expressed, identifying two central issues. The first was the effects of the demolition on the Long Riston Conservation Area. The second concerned the loss of the community facility of the public house.
4. On appeal, amendments were made to the requirements, with the result that the recipient of the notice was required to:

Rebuild the public house so as to recreate it as similar as possible to the demolished building prior to its demolition. For the avoidance of doubt such

restoration shall include, but not be limited to steps (a) to (b) as set out below...

5. Step (a) then required the recipient to:

Implement construction works as are required in order to reinstate the building to its former dimensions and style as a public house including the provision of customer toilets within the building and all necessary services and utilities. For the avoidance of doubt the dimensions and style are depicted on the photographs annexed to the enforcement notice and the Location plan and floor plan 2507C.

6. In fact the plan annexed to the notice, dating from 1971, was described as a 'General Arrangement' drawing, numbered 750/2, but elements of it were reproduced by both parties to the appeal and I understand there to be no dispute about it.
7. Step (b) concerned the materials to be used in the construction of the building. Further requirements including the layout, finishing and signage were omitted on appeal, either because of unnecessary duplication with other requirements or because they amounted to alterations which would not have constituted a breach of planning control, per section 173(7)(b) of the 1990 Act.
8. These steps effectively required works to address the Council's two reasons for issuing the notice: first, to restore the building in a form appropriate to the Conservation Area, namely by reinstating its former appearance; and secondly, to restore it in a way suitable for use as a public house.
9. Additionally, retrospective planning permission was granted for the demolition of part of the building demolished, consisting of a later extension to the south providing customer lavatories.
10. At around the same time as the enforcement action having been taken, applications for development were being pursued at the (wider) site. Applications to redevelop the site for housing were refused and dismissed on appeal, on the sole ground of the loss of a community facility, the Inspector there (APP/E2001/W/20/3259827 and 3259822) concluding that although the Micro Pig would provide a satisfactory replacement, the planning status of it was uncertain as was the likely longevity of its use as a public house. It was not open at the time of my site visit, but appeared to be functioning as a small public house and has apparently done so successfully since 2020. No information as to the likely viability of the Travellers Rest was recorded by that Inspector, although it was understood to have struggled financially from 2010 until its closure in 2017.
11. Nonetheless such planning considerations are not my concern here, because what I am tasked with determining is whether, as a matter of fact, and applying a standard of probabilities for the appellant to demonstrate where any legal matters of proof arise, the requirements of the enforcement notice have been complied with. If they have, the appellant is entitled to the certificate of lawfulness sought. If not, then the consequence would be that there is now a breach of the notice, with its compliance period having expired. Whether or not the requirements of the notice would be sufficiently specific to found any prosecution is not a matter for my consideration: there is no suggestion that

the notice itself is invalid and so whether its requirements have now been complied with is straightforwardly a question of fact for me to decide.

12. The matters for consideration when determining a lawful development certificate application will be familiar to the parties to the appeal. Nonetheless it is important to reiterate that, although it is necessary to have regard to whether the Council's reasons for issuing the enforcement notice have been satisfactorily addressed, I am not concerned with the merits of either the use or the appearance of the building. Whilst these matters are undoubtedly of importance to the appellant and to others, they do not properly fall within the scope of the questions that arise in this appeal.
13. Although the 'dimensions and style' of the replacement building have formed the main considerations of the parties' cases, together with whether sufficient provision has been made of customer toilets and necessary services and utilities, the overarching requirement of the notice is to 'rebuild the public house so as to recreate it as similar as possible' to the former building. This does not, as the previous Inspector opined, require recreating the precise internal layout, but nonetheless a suitable internal layout to meet the needs of the new building, in its intended use as a public house, would be required.

External appearance

14. There are several variations from the former plans and photographs, even acknowledging that some deviation may be necessary in the light of the appellant's contention that the plans served with the notice are not accurately reproduced. Whether any of those changes have a beneficial or adverse impact on the Conservation Area is not a matter in issue in this appeal.
15. Minor external changes are apparent from the front elevation, such as the southern part, including the square bay window to the ground floor, not appearing to be recessed as much as previously; changes to the window fenestration and the extent of the reveals; and the absence of a fascia above the two principal bay windows to which the former 'Travellers Rest' sign was affixed. As to these, and having regard to the Conservation Officer's comments, albeit in relation to a different application, that the form of the public house has been replicated, I find no significant deviation from the requirements of the notice apparent from the front that would in themselves prevent the issuing of a certificate.
16. More significant changes have taken place to the rear, whereby the southern projecting extension has been built on a different footprint (having been 'squared off') and now consists of two storeys rather than the earlier single storey. This is a material difference, and this change alone means that I am unable to find that the public house has been rebuilt as similar as possible to the demolished building including the dimensions as depicted in the relevant photographs and plans annexed to the notice.
17. Other changes are apparent, such as the squaring off of the central two storey offshoot and the inclusion of much additional fenestration to the rear and the southern side. Overall, however, with the exception of the additional second storey extension to the south which alone means the appeal cannot succeed, I would otherwise have found there to have been substantial compliance with the notice's requirement to recreate the building's external appearance.

Internal works

18. Internally, and turning to the question of the suitability of the building for its function as a public house, is a somewhat different story, because it is immediately evident upon inspection that the property has not been designed as a rebuild of the public house.
19. The separation, both physical and apparently of ownership, from the Micro Pig element of the building means that the public house cannot be said to have been rebuilt: it is now two, albeit attached, buildings. Although the appellant suggests that it is possible to knock through an opening between the two, this has not as yet been done.
20. The property now lacks the benefit of a cellar, depicted on the former plans as sited slightly below the bar area and with an external door, presumably to assist deliveries. Although it may be possible to run a public house without a beer cellar, it would be unlikely for one of this size and the lack of one, or of any suitable storage area, presents an obvious viability constraint. The only internal storage area depicted on the present plans is found on the first floor in a windowed carpeted room, accessed via a staircase involving two 90° turns.
21. No external storage is presently available. The building has been fenced off from the car park. A narrow passageway to the south leads to the building's southern entrance door and to the two separate rear fenced garden areas that have been created.
22. The fence separating those two separate garden areas is placed commensurately with the internal cavity wall opening at the ground floor between what are apparently designed to be two separate dwellinghouses, each with a separate internal staircase and independent living facilities either in place or as depicted on plans supplied by the Council. Although three separate bathrooms are depicted to the first floor, the ground floor finds a single understairs WC adjoining the 'bar' area with only a single door leading to it.
23. The Inspector deciding the former appeal required the 'provision of customer toilets' which at least implies more than one, and without a separate lobby area this single lavatory is unlikely to be suitable for customers of a public house potentially serving food and again constrains its potential viability. It is not designed to be accessible. Whilst the appellant notes that further toilets could easily be installed if required, at the time of writing the existence of only a single toilet (of doubtful suitability) means that the requirement of the notice to include the provision of customer toilets has not been achieved.
24. Nor can it be said in other respects that the notice's requirements to achieve the 'style' of a public house or to provide 'all necessary services and utilities' have been met. Presently, there is no bar or any evidence of any services to facilitate the creation of one. This makes the application somewhat premature, although even if a bar area were to be installed it would not affect my conclusion that the building's layout makes it unsuitable to function as a public house. Nor is there a car park, this having been fenced off and presently unavailable and not forming part of the application site. The ground floor kitchen is a domestic rather than commercial one, again constraining the potential viability of the use.

25. Other factors either indicate the intended purpose of the building, or affect its potential function as a public house, or both. Two separate sets of meters have been installed, apparently to each putative dwelling. Whilst the appellant contends that one set is intended for the upstairs manager's flat it is not explained why the landlord or manager of the public house would have a separate supply. Fire precautions are limited to domestic smoke alarms. There appears no scope to store any commercial waste within the appeal site, the passageway between the building and the adjoining fence appearing too narrow for any commercial waste bins. The car park would be inconvenient (and presently impossible) to access for this purpose.

Conclusion

26. I have had regard to all the matters raised in representations and by the parties, but nonetheless the failure to reconstruct the building to its former dimensions without material deviation is fatal to the appeal.

27. Nor in any event would I have found that what exists is a rebuilt public house. Internally, this is far from its style. It is plainly unsuitable for such a use, lacking in particular the provision of adequate customer toilets and all necessary services and utilities including suitable storage areas, car parking or even a bar.

28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a public house to comply with an enforcement notice at the Travellers Rest, Long Riston, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

29. The appeal is dismissed.

Laura Renaudon

INSPECTOR