
Appeal Decision

Hearing Held on 21 September 2023

Site visit made on 21 September 2023

by Jonathon Parsons MSc BSc DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2023

Appeal Ref: APP/D4635/W/23/3319946

The Old Stags Head, 65 Church Hill, Penn, Wolverhampton WV4 5JB

- 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 Jasdeep Sahota (3B1Y Ltd) against the decision of Wolverhampton City Council.
 - The application Ref 22/00045/FUL, dated 17 January 2022, was refused by notice dated 7 October 2022.
 - The development proposed is the change of use and extension of The Old Stags Head Public House, to provide a 6-bed family home (Use Class C3). Erection of retaining wall in rear garden.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council refused planning permission for the proposal on the basis of detrimental harm to the health of trees due to the proximity of retaining walls. The Council now raises no objections subject to an appropriately worded planning condition requiring arboricultural protection measures. In this regard, there would be no raised levels within the root protection areas (RPAs) of these trees and, walls would be outside of the RPAs. There is no reason to disagree with the Council's revised view and no need to consider this issue further.
3. The Old Stags Head public house was formally registered as an Asset of Community Value, a day before the hearing, which will be considered within this decision. At the hearing, plans, cross-sections and visualisations were presented that showed parts of the public house to be demolished, the retaining walls and the completed development in context. They show no material changes to the proposal and are considered within this decision. The site and surrounding area was visited on the date indicated above, rather than additionally on another date, as suggested at the hearing.

Main Issues

4. The site is within the Green Belt and so the main issues for the appeal are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;

- the Openness of the Green Belt;
- heritage assets, having regard to the Vicarage Road (Penn) Conservation Area and The Old Stags Head public house, a non-designated heritage asset (NDHA);
- the provision of community facilities; and
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

5. Paragraph 149 of the Framework establishes that new buildings or development are inappropriate unless they fall within listed exceptions. The exception at dispute is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
6. Main parties have calculated the volume and footprint of the existing public house as of 1 July 1948, and calculated the resulting cumulative increase based on the retained side extension and proposed extension. In terms of volume increase, it would be approximately 80%. For footprint increase, the main parties' calculations differ, but even taking the appellant's lower calculation on footprint, it would be 100%. Such increases would be significant.
7. Disproportionate is not defined in the Framework and there is also no local plan policy, guidance or appeal decision to assist. Determining disproportionate is therefore a matter of judgement taking into account the nature of the proposal. Judging disproportionateness purely on volume and footprint increases would be a crude type of measurement taken on their own.
8. The proposed extension would be narrow in width, set in significantly from the ends of the building, set down significantly from its roof ridge, designed with a flat roof and partly subsumed with a rising ground slope. However, it would extend considerably beyond the back of the building, being far greater in depth than that of the original. It would also have a height of nearly 6m and its flat roof would be above the roof eaves level of the building. Taking into the account the extension's depth, height and design relationship with the host building, along with the increases in volume and footprint, the proposal would result in a significant cumulative and disproportionate increase in size.
9. No other exceptions have been put forward under Framework paragraphs 149 or 150, the latter covering other forms of development considered exceptions, and nor are any considered relevant, based on the nature of the scheme. For all these reasons, the proposal represents inappropriate development in the Green Belt.

Openness of the Green Belt

10. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

11. Taking the appellant's figures, the two storey extension would have a footprint and volume of approximately of 110m² and 540m³. It would reach a height of almost 6m and would extend considerably back into the site, although rear extensions and an outbuilding would be demolished to accommodate this. With retention of the original pub building and side extension, demolition of rear extensions and outbuilding, there would be a development footprint decrease of approximately -9.4% and a volume increase of approximately 13%.
12. The public house is within a built-up area of the village of Penn and suburban area of Wolverhampton. It directly fronts onto Pennwood Lane and its junction with Sedgeley Road, and beyond this, the former car park. The building has a wide frontage, screening much of the proposed extension from the public realm. Vegetation screens the development from Pennwood Ridge, a dwelling behind the site. However, due to its height and extent, public views of the extension would be visible in gaps either side of the frontage building above fencing and gates.
13. The Black Country Green Belt Study (BCGBS)¹ assessed the appeal site in relation to the five purposes of the Green Belt detailed in paragraph 137 of the Framework. In accordance with the BCGBS, the site makes a weak/no contribution to the purposes of checking the unrestricted sprawl of large built-up areas and the preventing of the merging of neighbouring towns. The purposes of preserving the setting and special character of historic towns, and assisting urban regeneration are not relevant. For the purpose of assisting the safeguarding of the countryside from encroachment, the BCGBS does identify the site as retaining some degree of openness and a relationship with surrounding countryside. The site is compromised by urbanising development within and adjoining it, but it still retains a spacious landscaped quality bordering the countryside and therefore, there is a limited conflict with this purpose.
14. Taking into account the visual and spatial aspect of the loss of openness, and the other considerations, including the limited conflict with one of the five purposes for Green Belt designation, the greater effect on the openness of the Green Belt would be small and the harm would be limited.

Heritage Assets

15. The public house was in use until it ceased trading in October 2018. Opposite, there is a large hard surfaced area that was used for vehicle parking for the public house but this is not part of the proposal. The NDHA is two storey, with single storey side and rear extensions, and lies within the Vicarage Road (Penn) Conservation Area.
16. Its frontage has cream coloured paint brickwork and varied sized timber casement windows, and is sited hard up against the pavement edge. The two storeys comprise three bays, with an off-centre entrance with a projecting pitched roof canopy above, which is sited between large windows. There is a large ground floor fascia sign and a small window on the other end of the

¹ Black Country Green Belt Study – Stage 1 and 2 Report, including Appendices, prepared by LUC, September 2019.

building on the frontage. At the first floor, there are smaller windows. There are white painted surrounds around the windows. The roof is pitched with flank gables, with one side comprising lower height double pitched roofs with a valley in between.

17. The Council details the public house's existence since at least 1818. As a central facility serving the community, in proximity to a medieval church, St Bartholomew's, and a village green, it reflects the historic layout of the village. A context that was much more rural in character prior to more recent 20th century development within the area. It had a community function, forming an important aspect of people's collective memory and identity, with its activity and a role in the social interaction of the village.
18. The public house has been extended to the side and rear. The windows are modern, despite being timber, and the front entrance has been relocated from where it was formerly. Some brickwork has been patched up poorly and there is detracting commercial paraphernalia, including ventilation vents, external wiring, and satellite dishes. There is also hard surfacing, modern fencing and a dilapidated outbuilding. Nevertheless, the building has a traditional aesthetic reflecting its public house origins when Penn was a rural village. Its external form, use of materials and external detailing, and its historical community use, are architectural and historic qualities that contribute to its significance as a NDHA.
19. The Vicarage Road (Penn) Conservation Area comprises traditional designed housing, green space and mature landscaping, as well as the NDHA, and derives its settlement pattern from the late 17th century. It also has public amenities including the church, its hall, and schools. There is a range of buildings of differing styles and ages, but the prevailing qualities are of traditional design, use of high quality materials, many buildings finished with red brick and tiling, and landscaped surroundings. Much of the Conservation Area borders onto open countryside. Whilst the village has been developed in the 20th century, many of its buildings retain a traditional rural appearance reflecting the area's historic development, as emphasised within the Vicarage Road (Penn) Conservation Area Appraisal and Management Plan.
20. For all these reasons, the significance and special interest of the Conservation Area derives from its traditional and rural architecture, and its historic development as a village within the countryside. Forming a central historical part of the Conservation Area and having a rural aesthetic, the NDHA has qualities contributing to its significance and contributes positively to the Conservation Area.

Effects of proposal

21. The rear extension would be centrally located to the back of the public house, stepped back from either end, and would replace existing unsightly single storey extensions and additions. It would be constructed with facing brick to match the existing building. There would be a striking contemporary design, with a flat sedum roof, and floor to ceiling glazing within slim constructed metal window and door framing. The proposal would secure re-use of a NDHA within the Conservation Area and the building's main façade would be

retained, repaired and unsightly paraphernalia removed, such as vents, satellite dishes, etc, representing heritage benefit.

22. No objections are raised to the principle of a contemporary design but in this instance, the bulk of this two storey extension, with little physical articulation, its extensive glazing, and flat roof would contrast markedly with the older traditional design of the public house. The extension would extend considerably back into the site, with its depth far greater than that of the original building. The flat roof would jar awkwardly with the pitched roof due to its extent and position above the main eaves of the host building. Despite clarification, there would also be extensive retaining walls, with little visual relief, alongside the access and parking areas that merge with the extension giving rise to detrimental massing. By reason of its size and design, the extension would not be subservient and together with its extensive retaining walls, would adversely affect the rural character and appearance of the original building.
23. There would also be a vehicular entrance with electric sliding gate and brick wall adjacent to 1 Pennwood Lane. There is existing fencing here but the proposed boundary treatments would be more substantive and urbanising. They would contrast with the landscaped and informal lower height mix of low brick walls and railings, hedges and open frontages, which contribute to the semi-rural qualities of the Conservation Area. The change of use would also result in the loss of the historic public house use, including its role as a community facility, and activity associated with it, within the core of the Conservation Area. Such loss of visible activity would not be compensated by the activity of a single dwelling that would be less public.
24. For all these reasons, the proposal would adversely affect the architectural and historic qualities of the NDHA and its significance. It would also harm the significance and special interest of the Conservation Area, by failing to preserve its character and appearance, as a whole, in conflict with S72(1) of the Planning (Listed Buildings and Conservations Areas) Act 1990.

Community facilities

25. The public house was previously owned by a major brewery company and operated successfully as a tenancy for many years. Parties have agreed it historically traded as a drink led community local with a basic food offering, comprising classic pub dishes. However, it was sold to a public house operator in 2013 until it ceased trading in 2018 and during this time, struggled to successfully operate as a public house given changes of licensees, temporary closures and bad reviews.
26. For proposals involving the loss of public houses, Policy C3 of the Wolverhampton Unitary Development Plan (UDP) 2001 -2011 seeks to limit the loss of such facilities. The policy details requirements to be addressed, 1. there is no longer a need for the facility; 2. there are other existing facilities, in locations that are reasonably accessible including on foot by members of the community served, which would accommodate any community activities displaced by the proposed development; 3. the proposal would involve the replacement of the facility in an equally convenient location; or 4. it would not be possible to retain the facility or provide an

- alternative facility because, despite all reasonable efforts, this would not be economically viable.
27. Main parties have agreed that any new public house offering would be food-led with strong local drink sale element, and that destination food custom would be important. Operators could include an entrepreneur style of owner/operator running the business. Penns Residents Association are also wanting to run it as a community public house/facility.
28. To address requirement 4, the appellant has submitted a viability report (VR)² and a Structural Report³. Within the VR and the Council's Report as to Viability Issues 2022 (RVI22)⁴, revenue/cost appraisals detail Fair Maintainable Turnover (FMT) and Gross Profit from drink and food sales, and costs, including operational and finance, to derive annual profit/loss. The appellant's VR and RV122 details an Annual Loss and Profit respectively. The main differences between parties relate to the amount of food sales, Gross Margins from drink and food sales (profit after subtracting the costs of goods) and finance costs, due to the repair and refurbishment costs being substantially higher within the appellant's appraisal.
29. In terms of overall FMT, the Council's higher figure of food sales accounts for a difference of approximately £57k. However, the public house is located on the edge of the Wolverhampton urban area, with large areas of surrounding countryside, and as a result has a diminished customer population base, compared to many other public houses within the area, that are generally sited within more populated residential areas. The surroundings are pleasant with the church, the nearby common and network of footpaths leading to other areas but there are no overriding setting advantages, such as waterside location, or historic interest features, such as tourist attraction, to encourage destination-led trade.
30. Based on my site visit, the kitchen is not large, sited behind the bar with an entrance to its side. The overall dining floorspace is also not large compared to many of the other public houses in the area. Under the appellant's VR, the dining area would provide for about 40 covers whilst the outside courtyard, when available, would provide a similar amount. The size and position of kitchen was considered no impediment by third parties involved with the operation of the public house. The Council's consultant suggested a full menu could be offered, with a couple of specials, but the public house struggled to be successful between 2013 and 2018 for the reasons indicated.
31. During this period, licensees signed up to a franchise agreement with the pub operator. As indicated by the appellant's VR, these agreements entailed the pub operator covering the majority of costs (all stock, overheads and all repairs/decoration) whilst the self-employed licensee would receive a percentage of net turn-over, usually between 15% and 20%, and pay council tax and public liability insurance. No detailed evidence has been put forward to prove why such agreements are problematic for licensees.

² Viability Report, Old Stags Head, 65 Church Hill, Penn, Wolverhampton WV4 5JB, Colliers, March 2023.

³ Summary Condition Survey, The Old Stags Head, 65 Church Hill, Penn, Wolverhampton WV4 5JB, Colliers, March 2023.

⁴ Report as to Viability Issues, The Old Stags Head, 65 Church Hill, Penn, Wolverhampton WV4 5JB, Morgan and Clarke, May 2022.

32. The nearby Spring Hill public house shows high food sales in its accounts, but it is directly not comparable given its larger size, higher FMT, and restaurant focus, with an emphasis on fish. The Council's higher food sales is also influenced by their consultant's experience with a Dorset local public house but this is located within a different part of the country. There are also 6 other public houses within about a mile of The Old Stags Head and more beyond this radius. Whilst this could indicate a buoyant market, it also indicates clientele would have a range of facilities to choose from, and therefore offers competition for food sales. For all these reasons, the appellant's figures on food sales and overall FMT are more persuasive and realistic.
33. Turning to Gross Profit on drink and food sales, the Council assumes a margins of 65.5% as opposed to the appellant's 56%. The appellant's margin is driven by the need for good value food to attract and sustain loyalty, and UK Hospitality data. The UK Hospitality data used is for 'Community local category of public houses' rather than managed public houses. It is dated but there is no evidence that external factors affecting margins, such as energy costs, have improved. Energy costs are a significant part of trading entities affecting the pricing of goods and there is no evidence before me that energy prices have recovered to levels previously. There is a higher margin within Spring Hill's accounts but for the reasons indicated, this public house is not directly comparable. For all these reasons, the appellant's Gross Profit figure, lower by about £63k compared to the Council's, is again more persuasive and realistic.
34. The appellant's VR incorporated a refurbishment/repair costs figure of £720k derived from a CS whereas the latest Council Report as to Viability Issues 2023⁵ (RVI23) indicates a cost of £250k. The CS includes a substantive cost for contractor and professional fees, more relevant for a corporate operator than an entrepreneur or community operator, where such costs may be borne differently. In the absence of a full detailed structural survey, costs relating to the restoration of roofs, walls and internal features are not justified.
35. Sensitivity analysis (SA) of the revenue/cost appraisals was undertaken using a refurbishment/repair costs of £250k and £437,637 (with contractor and professional fees deducted). For these costs, the Council's SA showed a profit but the appellant's SA analysis showed a Loss of -£6,505 and a Profit of £6,408 for these cost values. The Council's SA shows Profit sufficient for an operator to make a satisfactory income and living, but the appellant's SA does not. The Council's SA incorporates a higher Gross Profit based on its higher FMT and Gross Profit margin. For the reasons indicated, the appellant's figures and viability assessment are more persuasive and realistic on these matters and therefore, the viability of a public house has not been proven.
36. The site has been marketed at a price higher than the agreed asking price assumed in both the revenue/cost appraisals. However, irrespective of whether the marketing has been carried out acceptably, the appellant's revenue/cost appraisal demonstrates that a public house use would be unviable and therefore, attracting an owner or partnership to operate the public house would be extremely difficult.

⁵ Report as to Viability Issues, The Old Stags Head, 65 Church Hill, Penn, Wolverhampton WV4 5JB, Morgan and Clarke, May 2023.

37. Penns Residents Association put forward the ACV nomination and it intended to use the public house as a Hub in a Pub, with a variety of uses being considered, café, local cultural archive, visitor centre, meeting place for community groups as well as a public house. The association has been registered as a community interest Company (CIC) and it is looking to gain charitable status to benefit any community use operation. Following ACV nomination, plans are being developed, including a coffee shop and funding assessed. The association is looking to gain 'Levelling Up' grant funding of 80% with it providing 20% for its community facility scheme. The headquarters of the governments Levelling Up department is based in Wolverhampton. Meetings are held regularly with many representatives having experience in fund applications.
38. However, there is no evidence of any successful grant application and whilst there is clear community support, there is little detail on whether funds from the community will be secured, even if there is a grant given. Furthermore, the business plan/model is still being developed and as indicated above, the appellant's revenue/cost appraisal does not demonstrate viability. For these reasons, only limited weight can be given to the ACV listing at this stage.
39. Under UDP Policy C3, the public house use would be unviable as a public house and requirement 4 would be satisfied. Turning to other policy requirements, there is substantial support for the retention of the public house. It was used as a meeting place for the local community, including local groups, family events, events associated with the church and nearby school, receptions, as well as pub events, like quizzes, and has been listed as an ACV.
40. However, limited weight is given to the ACV and under the policy, consideration has to be given to community facilities provided by the public house and not to those, which could be provided. There are six public houses and facilities nearby, like the Golf Club and church hall, within about a mile. Corporate public houses may be less welcoming and lack a sense of being a local facility, but the alternative public houses provide for a range of tastes, including drinks and food options, entertainment, and sports viewing. Pedestrian access to the two of the nearby public houses would be along highways lacking dedicated footpaths but there are other public house facilities within reasonable walking distances taking not much more than 10 minutes. Furthermore, the topography of the area is not so severe to discourage walking especially along pavements. In terms of meetings, it is inevitable that rooms for meetings can be booked up but there is no detailed evidence of difficulties, especially if booked ahead.
41. For all these reasons, the remaining policy requirements are satisfied, and the loss of the public house use has been justified based on the evidence before me. The proposal complies with Policy C3 of the UDP and paragraph 93 of the Framework, which states decisions should guard against the unnecessary loss of valued and services, particularly where this would reduce the community's ability to meet its day-to-day needs.

Heritage, Green Belt and Planning Balance

42. The proposal would secure the re-use of a vacant building and a dwelling use would prevent the building falling into a poor state. Evidence indicates a public

house use is not viable. The external appearance of the NDHA would be repaired and improved through the demolition of unsightly extensions and paraphernalia, and re-use would prevent the buildings deteriorating in appearance and significance. A family dwelling would be created meeting needs within the city. There would be improvement to the building's energy efficiency beyond that required under building regulations which would reduce harmful carbon emissions during the lifetime of the development. During construction and repair/restoration, there would be employment benefitting the local economy. However, the significance of the NDHA would be adversely affected. Given the adverse nature of the design, scale and massing of the scheme, this harm would be overriding and determinative.

43. The degree of harm to the significance of the Conservation Area, as a designated asset, would, in terms of the Framework, be less than substantial. In accordance with paragraph 202 of the Framework, the harm should be weighed against the public benefits of the proposal. There are heritage, social, environmental and economic benefits but the proposal would fail to preserve the character and appearance of the Conservation Area. Given this, the benefits would not be sufficient to outweigh the less than substantial harm identified and the considerable importance and weight this carries for the Conservation Area. Accordingly, the proposal would conflict with Policies HE1, HE4, HE5, D6, D8, D9 and D12 of the UDP and Policies CSP4 and ENV2 of the Black Country Core Strategy 2011, which collectively and amongst other matters, require high quality design that respects its surroundings, and that where it affects heritage assets, it preserves or enhances assets.
44. For the Green Belt balance, the creation of a family dwelling, improvement to the building's energy, economic benefits during construction, securing a use for the NDHA in a Conservation Area and removal of unsightly commercial paraphernalia on the building would provide benefits that weigh significantly in favour of the proposal. However, Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Although limited, there would be harm to the openness of the Green Belt. The Framework establishes substantial weight should be given to any harm to the Green Belt.
45. In addition to the Green Belt harm, the proposal would harm the significance of a NDHA, and the significance and special interest of a Conservation Area, the latter attracting considerable weight. For these reasons, 'Very special circumstances' do not exist as the harm to the Green Belt by reason of inappropriateness and other harm is not clearly outweighed by other considerations. Accordingly, the proposal would conflict with Policies G1, G2 and G3 of the UDP, which collectively and amongst other matters, states inappropriate development will not be permitted except in special circumstances.
46. For all these reasons, the proposal would conflict with the development plan taken as a whole. There would be no material considerations to indicate that the proposal should be determined other than in accordance with the development plan and therefore, planning permission should be refused.

Conclusion

47. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR

APPEARANCES

For Appellant

S Davies, Kings Counsel	No5 Chambers
A Thornton	Simply Planning
J Hodgkins	Simply Planning
M Royle	Colliers International
K Martyn	Donald Insall Associates
J Sahota	Appellant

Local Planning Authority

V Kaul	Wolverhampton City Council
D Morgan	Morgan & Clarke
J Holiday	Wolverhampton City Council

Third Parties

Dr Arko Sen	Penns Residents Association
A Roberts	Resident
A Durman	Resident
P Brookes	Resident
Rev Preb B Whitmore	Resident
S Beck	Resident

Documents received at and after the hearing

1. Black Country Green Belt Study – Stage 1 and 2 Report, prepared by LUC , September 2019.
2. Black Country Green Belt Study – Appendices (namely Pages 171 – 172)
3. Plans, cross-sections and visualisations, drawing number: 2009-PL-31-B. drawing number: 2009-PL32-A, view from courtyard looking east (indicative visualisation), view from yard looking west (indicative visualisation) and demolition overlay – Drawing number: 2009-PL-12-D.
4. Appellant's Sensitivity Analysis (SA) of its viability assessment, having regard to repairs and decoration of 50k, 100k, 150k, 200k, 250k and 300k, Colliers International, 21 September 2023.
5. Appellant's SA of Council viability assessment, having regard to repairs and decoration of £250K, Colliers International, 21 September 2023.
6. Council SA of its viability, having regard to repairs and decoration of 250K, 427,637, Morgan and Clarke, 25 September 2023.
7. Letter clarifying status of Penns Residents Association as a Community Interest Company and progress in taking on the public house as a community facility, dated 25 September 2023.
8. Letter from Council, with updates on Local Plan status, numerical analysis on size increase on site, and bat condition, dated 26 September 2023.
9. Letter from appellant's agent, with confirmation of acceptability of bat condition, and numerical analysis size on size increase on site, dated 29 September 2023.
10. Letter from appellant's agent, commenting on Council's SA and Penns Residents Association as Community Interest Company and progress in taking on the public house as a community facility, 4 October 2023.