



Appeal Decisions

Site visit made on 20 November 2023

by David Nicholson RIBA IHBC

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

Decision date: 4 December 2023

The Red Lion Inn, Main Street, Babcary, Somerton TA11 7ED

- The appeals are made by Mr & Mrs C Garrard against the decisions of South Somerset District Council¹.
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Appeal A: APP/R3325/W/22/3309133

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The application Ref 21/01051/FUL, dated 18 May 2021, was refused by notice dated 19 May 2022.
 - The development proposed is for²: Changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house.
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Appeal B: APP/R3325/Y/22/3309132

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 [PLBCAA] against a refusal to grant listed building consent.
 - The application Ref. 21/01052/LBC, dated 18 May 2021, was refused by notice dated 19 May 2022.
 - The works proposed are partial-rebuilding and partial-realignment of front boundary wall adjoined to the North end of the West elevation of the Red Lion Inn.
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Appeal C: APP/R3325/W/22/3309137

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The application Ref. 21/01053/OUT, dated 26 March 2021, was refused by notice dated 19 May 2022.
 - The development proposed is: Erection of 2no. detached new dwellings within the Red Lion Inn car park, and adaptation of existing vehicular access.
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Decisions

1. Appeals A, B and C are dismissed.

Procedural matters

2. In Appeal C, matters are reserved except for access, layout and scale.

¹ A single unitary council, called Somerset Council was formed on 1 April 2023

² The original application and wording for Appeal A were altered by the Council. The revised wording is confirmed in the Appellants' draft of the Statement of Common Ground, and I have dealt with it on this basis.

Main Issues

3. The main issues are effects of the proposed development on:
 - a. the long-term viability and future of The Red Lion Inn;
 - b. the Grade II listed building and its setting;
 - c. highway safety as a result of a potential increase in on-street parking;
 - d. the living conditions of neighbouring residents.
 - e. phosphate levels on the Somerset Levels and Moors Ramsar.

Issues a-d relate to Appeal A; issue b to Appeal B; and all 5 relate to Appeal C.

Reasons

4. Babcary enjoys a church, a recreation ground and the Red Lion Inn. The site comprises the public house and recently rebuilt outbuildings comprising a Barn, Den and marquee used for tourist accommodation, breakfasts and functions. Beyond this is a vehicular access onto a large car park.

Viability

5. The Red Lion Inn is a successful food and drink pub with 6 ensuite bedrooms and a space for functions. The Appellants have achieved this through considerable effort and investment over the last 20 years, particularly in the demolition and rebuilding of an existing outbuilding to provide the bedrooms and function room. These, and a large car park, are all included in the pub's designation as an Asset of Community Value³.
6. The overall scheme (all 3 appeals) would replace the outbuildings with a single house, the car park with two new dwellings, and introduce a new parking area around the pub with a new access alongside a rebuilt wall. Three viability reports have been submitted, from the Appellants, the Council and the Parish Council, with additional advice from CAMRA⁴.
7. The Appellants' Viability Report argued that, even without the letting rooms, the pub would still represent a significant and profitable business, which would have market appeal, and that a smaller business with a lower asking price would be more accessible to a wider range of purchasers.
8. From the submitted accounts, I accept that the pub is currently an extremely well run business which could continue without the added letting rooms. However, much of this may be down to the skill of the incumbents that might not be replicated under different ownership, as witnessed by the large number of other pubs in the area which have closed. For many rural pubs, diversification into tourist accommodation has become very popular and is likely to have made a big difference to their success. CAMRA also considered that removing a very significant income stream would be detrimental to viability and the long term good of the community.

³ The Officer Report notes that: ... *the Council added the building and its associated land to its [ACV] list on 3rd September 2020. An appeal against this ... was subsequently dismissed on 1st July 2021, the Tribunal Judge concluding that The Red Lion Inn, including the public house, the Barn, the Den, the marquee area, the garden including the outside pizza area and the whole car park, was correctly listed as an ACV.*

⁴ Campaign for Real Ale. This produces the CAMRA Public House Viability Test

9. I note that the Appellants have claimed that the letting rooms have never contributed much to their business, and that the Council's figures for the profitability of this element may be wide of the mark. They add that the target occupancy must now be 80% which is hard to achieve. On the other hand, that difficulty might be as a result of the Appellants' focus on a successful food and drink offer, or because the cost of conversion was more than the income could readily service, or some other reason. For other operators, the balance might be skewed the other way, or the mutual relationship between the two might make the difference between success and failure.
10. I accept that a higher price for the business overall would limit the number of people who might be able to express an interest in acquiring it. However, I also consider that the market is likely to set its own level, based on its profitability as a pub with letting rooms, rather than the cost of conversion.
11. A marketing campaign in 2019 targeting corporate operators at a guide price of £1,500,000 was unsuccessful, but it is not evident to me that this was because of a lack of interest rather than limited marketing at a high asking price. I accept that reduced borrowings would improve viability for the current owners with current debts. However, given the trend towards pubs having overnight accommodation, I find that in the long term it is more likely that letting income would improve future viability overall.
12. While I acknowledge that many pubs thrive without letting rooms, many others do not and, in my view, the letting rooms and function spaces provide added flexibility of income and are likely to be a significant positive factor in the long-term viability of the Red Lion. The loss of these assets should weigh heavily against the likelihood of the long term viability of the business.
13. I have noted that there may have been an increase in Airbnb lettings, but to my mind these appeal to a different customer base than those who want to stay in a pub with an excellent food offer.
14. There are proposals to make the nearby A303 into a dual carriageway which might reduce passing trade. However, the evidence before me suggests that the pub's success is mostly as a food destination which is therefore unlikely to be enormously affected by these changes. Although only a small factor, if anything, the A303 works would make it more important for viability that the business maintains diversification through its letting rooms.
15. For Appeals A and C, the scheme would conflict with South Somerset Local Plan 2006-2028 (LP) Policy EP15 which does not permit proposals that would result in a significant or total loss of site and/or premises currently or last used for a local shop, post office, public house, community or cultural facility or other service that contributes towards the sustainability of a local settlement unless the applicant demonstrates that: alternative provision of equivalent or better quality, is available within the settlement or that there is no reasonable prospect of retention of the existing use as it is unviable as demonstrated by a viability assessment, and all reasonable efforts to secure suitable alternative business or community re-use or social enterprise have been made.
16. The proposals would be contrary to policy in paragraph 93 of the National Planning Policy Framework (NPPF§93) which expects decisions to guard against the unnecessary loss of valued facilities and services (including public houses).

Heritage

17. The Red Lion Inn is a Grade II listed building. It has 17th Century origins with several later additions and was probably converted to a public house in Victorian times. It is built of local lias stone, roughly cut and squared, under thatched roofs between coped gables and brick chimney stacks. I find that its significance lies in the survival of its historic fabric, its long standing use as a public house, and its sympathetic setting.
18. Appeal B relates to a section of the front boundary wall which, by proximity, should be considered as a part of the Grade II structure for Listed Building Consent purposes. The section of wall sits forward of the pub and, together with a close boarded wooden fence and a dense hedge, encloses a bin storage area. It is about 1m high with 'cock and hen' capping stones. It is not known when it was originally erected, but the Heritage Statement concluded that this was a later iteration of a former boundary where there was once the gable end of an ancillary building. Either way, I consider that it contributes to the significance of the listed pub.
19. The proposal is to removal and re-position this wall for a new vehicular access. There was no dispute that the proposal represents less than substantial harm⁵ to the significance of the Red Lion Inn, albeit at the lower end of this scale. I saw that the wall is beginning to fall down, but also that it is far from beyond repair. Even if the wall may have been rebuilt previously, and/or belonged to a different building, I consider that it is probably of a significant age and that the proposals would result in harmful alterations to the wall.
20. I have noted the argument that the new arrangement might be more attractive. I am not persuaded of this, but even if that were the case, to my mind that would not justify the loss of historic fabric. I am aware that an old permission would have allowed the insertion of a gate in connection with a toilet block but the balance there would have been different. Moreover, even if the degree of harm would be at a very low level, historic buildings are at risk of substantial harm from successive alterations.
21. The proposed works to the front boundary wall would fail to have adequate regard to the need to preserve the listed building, as required by section 20 of the PLBCAA, and by NPPF§194, which requires clear and convincing justification for any harm to, or loss of a designated heritage asset. This includes low level harm such as the proposals for the wall. Under NPPF§202, any less than substantial harm is to be weighed against the public benefits, which I do below.
22. The Heritage Statement acknowledges, as it must, that the communal value of any public house in a village setting is an important component and should be taken into consideration when balancing the impact to the significance of a heritage asset as part of its setting. I have also found that part of the special interest and significance of the listed building is its use as a pub. For the above reasons, I find that the conversion of the Barn and Den would be likely to affect viability.
23. With regard to Appeals A and C, the introduction of parking close to the listed pub would be unsympathetic to its setting. The proposed change of use and loss of car park would be contrary to LP Policy EQ3 which expects all

⁵ As referred to in NPPF§202 and subsequent case law

development to safeguard or where appropriate enhance the significance, character, setting and local distinctiveness of heritage assets.

Parking

24. The proposed conversion and new dwellings would result in the loss of the existing car park with new but smaller areas of parking around the pub. Conditions could ensure their provision across the three appeals. The local highway authority did not object. While the reduced car park would be likely to increase on-street parking, I find that it would not amount to severe harm to highway safety or to the road network, as referred to by NPPF§111, and so development should not be prevented on highways grounds. This outweighs any conflict which might arise with LP parking Policies TA5 and TA6.

Living conditions

25. The site is close to neighbouring dwellings to the north and the proposed vehicular access to the new car park would be adjacent to these. Even in its reduced size, the car park is likely to be well used, particularly late in the evening when the pub closes. On the other hand, the Council's Environmental Health Officer raised no objections, and signs could be erected reminding customers to leave quietly. Consequently, while I accept that the combination of car doors closing, engines starting and cars driving away may create some noise and disturbance close to adjacent houses, I find that the harm, and any conflict with LP policies EQ2 and EQ7 should not of itself prevent the scheme.

Phosphate levels

26. The site lies within the catchment to the Somerset Levels and Moors Ramsar, designated as a Special Protection Area and a Site of Special Scientific Interest for its rare aquatic invertebrates. The Council claimed that any new housing, including single dwellings, would increase the phosphates in foul water and harm the environmental conditions for these species. There is currently no means of strategic mitigation for phosphates, and no site-specific proposals. In the absence of mitigation, the new houses would have a likely adverse effect on the integrity of the Ramsar site due to the additional discharge of nutrients⁶. It would be contrary to NPPF paragraph 180(a)⁷, and LP Policy EQ4⁸.
27. However, taken as a whole, the scheme would remove the 6 letting bedrooms and reduce the phosphate discharge from these. Conditions could be imposed linking the appeals together. Consequently, I doubt that there would be a significant change in the overall levels of phosphate discharge and so no conflict with regulations or policies.

Benefits

28. Babcary has three of the key services which qualify it to be considered under LP Policy SS2 for Development in Rural Settlements. This restricts development other than in a limited number of circumstances, including meeting identified housing needs, and only where it is commensurate with the scale and character

⁶ contrary to the Conservation of Habitats and Species Regulations 2017 and The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

⁷ which states that planning decisions permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for.

⁸ which does not allow development unless it can be demonstrated that it will not result in any adverse impact on the integrity of national and international wildlife and landscape designations, including features outside the site boundaries that ecologically support the conservation of the designated site,

of the settlement. The Council cannot currently demonstrate a five year supply of housing land⁹. The Council accepted that Babcary is a broadly sustainable location, with basic facilities and reasonable transport links, where the principle of some limited residential development within the village should be considered acceptable. I accept that weight should be given to the overall benefit of new dwellings. Nevertheless, in the context of the overall need in the district, this should be limited.

Overall balances

29. I have found that the proposals would be likely to undermine viability, rather than improve it, and give relatively limited weight to the benefits of new dwellings in this location. Consequently, for the NPPF§202 balance in Appeal B, I find that the less than substantial harm to the wall, and the risk the scheme would pose to its significance as a pub, would not be outweighed by the public benefits, and that Appeal B should fail.
30. I conclude that the risk to viability, and the additional harm to heritage, means that Appeals A and C would both be contrary to the development plan as a whole.
31. For the reasons given above, and having regard to all other matters raised including a footpath, the potential for flooding, and land ownership, I conclude that all the appeals should be dismissed.

David Nicholson

INSPECTOR

⁹ In line with advice in PPG Housing Supply and Delivery, paragraph 025 Reference ID: 68-025-20190722, the strategic housing requirement policies can continue to be used as the housing requirement for calculating supply where they are less than 5 years old or older.