



Appeal Decision

Site visit made on 6th February 2025

by Jonathan Price BA(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th February 2025

Appeal Ref: APP/Z1510/W/24/3352799

Pinkuah Arms, Pinkuah Lane, Pentlow, Essex CO10 7JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Bird and Sons Ltd against the decision of Braintree District Council.
 - The application Ref is 24/00325/FUL.
 - The development proposed is change of use from public house to dwellinghouse.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from public house to dwellinghouse at Pinkuah Arms, Pinkuah Lane, Pentlow, Essex CO10 7JW in accordance with the terms of the application, Ref 24/00325/FUL, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The proposal relates to a vacant public house fronting Pinkuah Lane near to where it ends. During the application stage, it transpired that the area in front of the building was public highway. The local highway authority had objected due to its enclosure and the prevention of public passage. Prior to the Council's decision, a revised plan was submitted by the appellant amending the red line to remove this area.
3. The Council had not accepted the revised plan, and its decision was based on the original red line. The amended plan forms part of the appeal documentation on which all parties originally making representations have been notified. These had mainly been over the loss of the public house. Some comments referred to the available turning space the revised plan now omits. The Council objects to the amended plan due to this removing any defensible space in front of the proposed dwelling. If accepted, it adds an additional, putative refusal reason over the proposed dwelling offering poor living conditions, due to lack of privacy.
4. Having applied the tests in the 'Holborn Studios' judgement¹, I consider that this amendment does not involve a substantial difference nor makes a fundamental change to the scheme determined by the Council. I am satisfied that it would not be unfair not to reconsult on this change or that my acceptance of the revisions would deprive those who were entitled to be consulted that opportunity, given the nature of the change made. Therefore, my decision is based on the amended red line plan.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Main Issues

5. The effect of the proposal on

- local community services and facilities,
- the significance of the appeal property as a non-designated heritage asset (NDHA),
- the free and safe passage of all highway users, and
- future living conditions, with particular regard to privacy.

Reasons

Local community services and facilities

6. The National Planning Policy Framework (the Framework) states in paragraph 88 that policies and decisions should enable the retention of accessible local services and community facilities, including public houses. To provide the social, recreational and cultural facilities and services the community needs, paragraph 98 requires that planning policies and decisions plan positively for the provision and use of community facilities, including public houses, to enhance the sustainability of communities and residential environments.
7. The proposal relates to a disused public house. It is located within housing along Pinkuah Lane. Along with the adjacent development fronting School Road, this forms a small cluster of housing in the southern part of Pentlow Parish. This falls outside the settlement hierarchy defined in the Braintree District Local Plan 2013-2033 (LP), which ranks these on sustainability criteria, relative to size, function and services offered. Being a location that lies outside defined development boundaries, LP Policy LPP 1 restricts proposals here to those appropriate to the countryside.
8. LP Policy LPP 40 permits the residential conversion of buildings in the countryside subject to meeting certain criteria. It requires applications be supported by a frame and structural survey. However, rather than a conversion, this proposal is a change of use. It is to a building originally built as a dwelling and later used as a public house, where the existing structure and space is reused for domestic purposes. There is no evidence that the building is structurally unsound. Because this is principally a change of use and no structural alterations are required, Policy LPP 40 is not determinative in this particular case.
9. Most relevant is LP Policy LPP 61. This seeks to protect existing community facilities, such as public houses, to meet local needs, foster sustainability and reduce the need to travel. The latter is particularly the case in the villages and countryside, where there is less likely to be alternative provision within a reasonable distance. To seek to retain this public house as a community facility, Policy LPP 61 requires an independently verified and robust marketing exercise to have been carried out, demonstrating it to be unviable, with little or no prospect of it being viable in the future. The supporting text in 5.56 clarifies this exercise as a marketing and viability appraisal, independently verified at the cost of the applicant before the application is determined, covering at least a 12-month period. The policy also requires all other reasonable options for retaining the public house to have been considered.

10. The Pinkuah Arms ceased trading at the end of 2021. Whilst not currently operational, the change of use to a dwelling would result in its permanent loss as a public house serving this settlement. This would result in harm through losing a facility with the potential to provide support to the local economy, promote social interaction and foster a sustainable rural community.
11. The appellant accepts that the public house has not recently been offered for sale on the open market, in conflict with criterion 1 of Policy LPP 61. However, it is argued that this would be a futile exercise on the basis of its demonstrable unviability as a future operation. It is also argued that an unsuccessful marketing exercise provides no conclusive proof over lack of viability. My decision therefore turns on whether there is sufficient evidence to conclude that a future public house use is unviable for this building, regardless of the lack of any supporting marketing exercise.
12. In recent years, when the Pinkuah Arms had Asset of Community Value (ACV) status, there had been a succession of operators who had seemingly failed to sustain a profitable operation. In its report of 23 May 2023, when resolving not to renew ACV status, the Council had found there not to have been a significant community use of the Pinkuah Arms in the recent past, with the majority of that relating to when a takeaway burger business operated during Covid lockdown dispensations.
13. The success of a public house relates partly to how well it is managed to attract local custom. There is no 'open book' evidence showing the financial accounts of the various operators at the Pinkuah Arms, to demonstrate the viability situation in recent years. Nevertheless, the evident lack of business profitability experienced by a series of these can reasonably relate to the ad hoc and infrequent community use found by the Council when considering the 2023 ACV re-application. This evidence, and the resulting loss of ACV status, is clearly indicative of unviability and weighs in favour of the proposed change of use to a dwelling.
14. The property is within the countryside with a small catchment population, in a local area where any significant future housing growth is restricted by planning policy. In such circumstances, there would be insufficient local custom to alone sustain a viable pub operation. Within a relatively inconspicuous location at the end of a rural lane, the Pinkuah Arms is both poorly accessible by public transport and not well-placed to attract passing trade. Furthermore, the evidence shows no obvious gap in the market for a public house in this locality, with a significant number already operating within a five-mile radius of the appeal site.
15. To attempt to compete successfully with these existing operations, the Pinkuah Arms would need substantial refurbishment, which is a cost factor reducing the commercial attractiveness of reopening it as a public house. The relatively small amount of internal floorspace limits the cover necessary to sustain a profitable food and drink offer, without costly extensions to the building. To diversify, for example by providing bed and breakfast accommodation, would require further floorspace. The first floor would presently only just about accommodate a live-in manager. Other side line activities, such as campsite and caravan provision, might well be restricted under LP policy.

16. The appellant provides professional advice from a local estate agent², with knowledge of the relevant property market. This sets out the drawbacks of the appeal building and its location in delivering a financially viable public house operation. A further viability study by Savills³ accompanied the appeal, prepared by specialists in this sector. This provides general validation of the previous estate agent's findings over the current and longer term financial non-viability of a public house use at this site. The Council has provided no specialist viability evidence of its own.
17. Whilst the evidence provided is specific to the public house trade, the constraints of location, catchment population and refurbishment costs would apply to the viability of alternative community uses. There is no trading account evidence of previous tenants, due to freeholders not being privy to this information. Nevertheless, the appellant's evidence makes assumptions over pub turnover derived from experienced practitioners in the licensed trade market. The Council queries the assumptions made over wet/dry trade split, although this would not alter the general argument over a lack of profitability.
18. The Savills report acknowledges that in general the UK pub market is in a relatively strong position. However, this would not necessarily apply directly to the circumstances at the Pinkuah Arms, for the reasons provided in the evidence. Whilst the existing premises would likely be more attractive to an individual rather than a chained pub operator, the high commercial risk involved in a venture here would still apply. In respect of refurbishment costs, there is no evidence to suggest these have been over-estimated.
19. The Pinkuah Arms might be just the right size to provide a valuable community facility in a location lacking any other services. However, it has been closed for over four years; a victim of the difficult economic circumstances facing this sector in recent years. Whilst market conditions may now have stabilised, this does not alter the unfavourable factors relating to this particular property. It is located in a small community which has evidently not provided enough custom to sustain a business for any great period, as shown by the high turnover of tenants prior to its closure. The location is not well placed as to attract passing trade. Coupled with the high cost entailed in refurbishing adequately to compete with established destination establishments, I am satisfied that reopening this public house would be a risky and unattractive commercial proposition.
20. LP Policy LPP 61 seeks to retain all existing community services and facilities where they met an identified local need. Although not supported by an independently verified and robust marketing exercise, I am nonetheless satisfied the evidence demonstrates the Pinkuah Arms to be unviable as a public house. Due to LP policies restraining growth in the countryside, there is little or no prospect of this, or any other reasonable options for retention, becoming viable in the future. Consequently, I conclude that the proposed change of use to a dwelling, and its effect on local community services and facilities would be permissible under Policy LPP 61 when considered in the round.

² Letter from ML Property Consultants dated 24 January 2024.

³ Viability Study the Pinkuah Arms, September 2024 by Savills.

Significance of NDHA

21. The appeal is supported by a heritage statement⁴, in accordance with paragraph 207 of the Framework. This describes the significance of the heritage asset affected by this proposal, including any contribution made by its setting, thereby satisfying LP Policy LPP 57. I have considered this heritage statement in the light of the comments from the Council's historic buildings consultant.
22. The evidence is that the Pinkuah Arms is a former farmhouse dating from around 1700. It is a two-storey, three bay house with the central part occupied by a front entrance and tall ridge chimney stack, with the steep roof pitch indicating it might once have been thatched. It is unlisted, and therefore not considered to be of special architectural or historic interest. It nevertheless possesses value as a former farmhouse and an example of historic domestic architecture. The change of use proposed would not alter the architectural character of the building and its visual appearance would not be harmed. Indeed, it would be enhanced by moving its car parking to the side and by some landscaping, thus providing a visual improvement to its setting and the general street scene.
23. This small farmhouse began selling home-brewed beer in the 19th century and became the Pinkuah Arms, a public house, in the early 20th century. As such, this building has local historic significance as a former farmer's house with communal value as a beer house and public house, forming a part of local collective memory. It is common ground that because of this local interest the building can be deemed a NDHA.
24. Paragraph 216 of the Framework advises that the effect on the significance of a NDHA requires a balanced judgement, having regard to the scale of any harm or loss and the significance of the heritage asset. I disagree with the Council's historic buildings consultant that this proposal would have a particularly profound impact on the historic interest of the NDHA by ending its use as a public house and substantially reducing its communal and social value. The change of use of heritage assets, both designated and undesignated, is commonly required to secure their long-term survival. In this case, this proposal would preserve the building and its original appearance as a farmhouse. This would therefore remain in place as a permanent and largely unaltered reminder of its former use as a public house.
25. In heritage terms, I find this proposal to be acceptable on balance and compliant with LP Policy SP 7, through responding positively to local character and preserving and enhancing both the quality of the locality and an asset of historical value.

Passage of highway users

26. The grassed area immediately in front of the Pinkuah Arms, and the hard surfaced parking area between this and Pinkuah Lane, are historically designated parts of the public highway despite falling under the ownership of the appellant. The local highway authority had objected to this proposal as it would enclose this highway land and prevent public passage over it.

⁴ John Selby Consultancy 9 September 2024.

27. Pinkuah Lane would remain passable without this land, although the hard surfaced area does provide some turning space at its end. Should the appeal be allowed, the surfaced area would no longer be required for pub parking and an application could be made to remove this part of the public highway. The appellant advises me that other properties in Pinkuah Lane have appropriated former highway land as part of their front gardens. I have no evidence to dispute this.
28. However, by accepting the revised site plan, the proposal would no longer encroach onto highway land, nor cause any obstruction and preserve a right of free and safe passage for all highway users, overcoming the Council's third reason for refusal. The proposal thereby complies with the relevant parts of LP Policies SP7 and LPP 52.

Living conditions

29. There is no evidence the local highway authority wishes to hard surface the grassed area immediately in front of the building. This area provides no visible clue to being public highway. It would leave a notional front garden, albeit in an open plan form. Given the lightly peopled nature of the rural surroundings, this grassed area would be sufficient to deter any significant public encroachment or loss of privacy. Clearly being a private residence, I doubt that many passersby would walk across this grass to then be able to see through its front windows. Therefore, I consider the proposal would provide adequate living conditions for future occupiers, with regard to privacy and security, in accordance with LP policies SP 7 and LPP 52.

Conclusion and conditions

30. The proposal would comply with the development plan when read as a whole. I have considered all the evidence, including the opposing representations made to the Council at the application stage. However, I consider that material considerations would not indicate the appeal be determined otherwise than in accordance with the development plan. In addition to the standard three-year time limit for commencement, conditions are necessary specifying the approved plans and requiring landscaping and on-site car parking. Subject to these, I conclude that the appeal be allowed.

Jonathan Price

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2054/23/01; 2054/23/02; 2054/23/03 Rev B.
- 3) Prior to commencement of the development hereby approved, details of all hard and soft landscaping, gates/fences/walls or other means of enclosure shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate a detailed specification including plant/tree

types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment where appropriate. A watering and maintenance regime shall be provided. The landscaping scheme shall be carried out in accordance with the approved details. The approved landscaping scheme shall be carried out during the first available planting season after the commencement of the development. Any trees or plants which die, are removed or become seriously damaged, or diseased within a period of five years from the completion of the development shall be replaced in the next planting season with others of a similar size and species. All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the local planning authority. The details shall include position, design, height and materials of the enclosures. The enclosures as approved shall be carried out as approved, prior to the first use of the development hereby permitted and shall be permanently maintained as such.

- 4) The development hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with drawing 2054/23/03 Rev B. Thereafter those spaces shall be retained for the parking of vehicles only.
