



Appeal Decision

Site visit made on 25 February 2025

by **A Tucker BA (Hons) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 11 March 2025

Appeal Ref: APP/X0415/W/24/3348879

The Swan Public House, Blackwell Hall Lane, Ley Hill, Buckinghamshire HP5 1UT

- 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 Mr C Alexander of Ashridge Property Ltd against the decision of Buckinghamshire Council.
 - The application Ref is PL/23/2286/FA.
 - The development proposed is change of use to nursery with associated internal alterations.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use to nursery with associated internal alterations at The Swan Public House, Blackwell Hall Lane, Ley Hill, Buckinghamshire HP5 1UT, in accordance with the terms of the application, Ref PL/23/2286/FA, subject to the conditions in the attached schedule.

Preliminary Matters

2. The Swan is a grade II listed building¹. An application for listed building consent (LBC) for those aspects of the proposal that also require LBC was also submitted to the Council². The LBC was granted. The appeal has therefore been made in respect of the Council's refusal of the planning permission only.
3. On 12 December 2024 the Government published its revised National Planning Policy Framework. Its content relative to the main issue of the appeal is largely unchanged. It has not therefore been necessary for me to give the main parties opportunity to comment on this matter.

Main Issue

4. The effect of the proposal upon the living conditions of the neighbouring dwellings, with particular regard to noise.

Reasons

5. The proposal is to change the use of the building from a pub to a children's nursery. The primary concern is the use of the area outside the building for children's play, and the potential for the noise generated by this to be a nuisance to those who live nearby. The building is in a peaceful rural area. It is towards one end of a small linear settlement with dwellings nearby and a neighbouring pub to the north. Opposite the building, on the other side of the road is a Common that

¹ List Entry Number: 1124768

² Council ref: PL/23/228/HB

includes a cricket pitch and golf course and appears to be an area that is popular for walking and other outdoor recreational activities. Therefore, although the area is rural, there is an existing level of noise and activity.

6. The existing pub would have generated a considerable level of background noise, particularly when it was operating successfully in the past. Evidence shows that this included regular live music events. The existing garden has the potential to be used regularly by customers eating and drinking at the pub. This could extend late into the evening with groups of adults potentially chatting and laughing loudly as is typical of a popular pub with a garden, particularly during times of good weather and long summer evenings. In addition, the regular comings and goings of customers at the front of the building would cause a level of disturbance, and this could have a harmful impact, particularly when it is late in the evening.
7. I appreciate that the pub has not operated at this level for a number of years. However, under new ownership or management it has the potential to do so again. I therefore need to compare this existing use and the potential noise that would be generated if it was fully operational again with the noise and activity that would be generated by the proposal.
8. In contrast to the pub, the nursery use would only be during day time and weekday hours. Thus, the use would have no impact on those who live nearby at the weekends, when people most typically will not be working.
9. The level of noise that would be generated would be limited to that from children of pre-school age using the outside area for play. Whilst I accept that it is a subjective matter, it is difficult to agree that the sound of young children playing outside, most often in small groups as explained in the submissions, could be considered incongruous, intrinsically disturbing, or detrimental to those who live nearby. On the contrary, such sounds are usually regarded positively and will be heard alongside other noises generated locally from the neighbouring pub and activities on the common. They would thus not be experienced in isolation.
10. I accept that the noise of children playing would be sporadic and could spike on occasion. However, these characteristics would be very similar to the noise of people outside the pub chatting and laughing together, and it would be very unlikely for children outside to always be shouting or using a raised voice as referred to in the submitted Noise Impact Assessment (NIA)³.
11. The NIA is detailed and makes a careful and thorough assessment of the likely effect of the change of use, based on relevant guidance and a worse case scenario. The Council questions the methodology, but the reasons set out in the further responses explain how the assessment was approached to ensure that it was as robust and useful as it could be. I am thus satisfied that its findings should be afforded significant weight. The report suggests that the noise would be noticeable but not intrusive. The noise would only occur during the day on a weekday and would be no more harmful or intrusive than the noise generated by the pub when in normal operation.
12. In terms of mitigation, a noise management plan is offered by the appellant. However, managing the use of the outside area so that it is not used for play

³ Cass Allen Architectural & Environmental Consultants Noise Impact Assessment The Swan, Ley Hill Ref RP01-23381-R2 11 July 2023.

before 09:00 and after 17:30 would prevent disturbance early in the morning or at the end of the afternoon, and would be sufficient to mitigate the very modest impact of the proposal and reduce the potential grounds for future noise complaints. Further noise management measures suggested would not be necessary, given the low impact of the noise and the way that it compares with noise that could be generated when the building is put to its current lawful use.

13. The submissions also refer to the impact of vehicle movements associated with the new use. In terms of the number of movements over a day, evidence demonstrates that these would be less than if the pub was operating normally. It is likely that there would be a concentration of vehicle movements at the beginning and end of the day as children arrive and are taken home. These would take place at the area at the front of the building, which is not directly adjacent to any dwellings, and would be similar to other vehicle movements associated with the neighbouring pub and other nearby uses such as those at the common.
14. Policies GC3 and GC7 of the Chiltern District Local Plan 1997 (LP) refer to noise and amenity impacts. Policy GC3 states that where amenities are impaired to a significant degree planning permission will be refused. Policy GC7 refers to an unacceptable degree of disturbance. Paragraphs 174 and 185 of the Framework refer to an unacceptable risk and significant adverse impacts. In this context, whilst there would be some change to the noise experienced by those who live close to the site, it would not be so significant or unacceptable that it should mean that the proposal should fail when assessed against these Policies.
15. In summary, the proposal would not have a harmful effect on the living conditions of the occupiers of neighbouring dwellings. It would thus accord with Policies GC3 and GC7 of the LP and the relevant provisions of the Framework.

Other Matters

16. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) require the decision maker to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. No changes are proposed to the building's exterior. Internal changes are modest, and based on the evidence before me and my visit to the site I see no reason to disagree with the Council when it concluded that the special interest of the building would be safeguarded.
17. There are detailed comments before me from third parties regarding the loss of the pub and the principle of the change of use. This includes evidence about how the pub was run when it was last open and its viability. Whilst I acknowledge the strength of feeling about this, the development plan must be the starting point. In this case the Council advises that a nursery use falls under the LP definition of a community facility and the proposal is therefore to change the use of the building from one community facility to another, with no overall loss.
18. Policy LB4 of the LP provides a set of criteria that need to be satisfied if a new use for a listed building is to be permitted. The first is to demonstrate that the existing use cannot reasonably be continued. There is evidence before me to support the loss of the pub, although this is contradicted by the evidence to support its continued use. The building would however remain in a community use and there would be no overall loss when assessed against other Policies of the plan.

19. Policy LB4 serves to manage the impact on a listed building rather than retain a particular use. Supporting text suggests that generally the best use for a listed building is the use for which it was originally designed. Whilst its use as a pub is long standing, the building was originally built as a dwelling. The details show that the proposed use can be accommodated relatively easily. It would remain as a single entity and in a use that benefits the community in terms of the service it provides and employment generation. I am therefore satisfied that the principle of the change of use is acceptable when assessed against the Council's Policies.
20. In terms of whether the level of support to retain the pub use should weigh against this, I find that the development plan position is clear and the case for making a decision that does not accord with the plan is significantly weakened by the fact that an operating pub remains immediately next door to the appeal building. Therefore, it is not necessary for this to be a main issue of the appeal.
21. In terms of traffic impacts and the adequacy of the existing parking provision, I note that this is a matter that has been considered in detail by the Council's highway specialist, who found the proposal to be acceptable. Submissions refer to the inadequacy of the existing parking provision and the increased number of lorries using the road; however, the key thing is to assess this against the existing lawful use. Evidence before me states that the vehicle movements associated with the proposed use and the parking requirement would be considerably lower than the existing. Accordingly, I am satisfied that the proposal would not harm highway safety, and this also does not need to be a main issue of this appeal.
22. Submissions refer to existing childcare provision in the area and whether there is a need for the proposed use. There is however no requirement in the Council's Policies to assess this.

Conditions

23. I have had regard to the conditions suggested by the Council. I have considered these against the tests in the Framework and the Planning Practice Guidance. I have imposed condition 2 to specify the approved plans, to give certainty.
24. Condition 3 is necessary to control the hours of operation, to manage the impact of the business on the living conditions of those who live nearby. I have added to this a restriction on the hours that the play area can be used, in accordance with the appellant's proposal, as this would ensure that there will be no noise from the play area early in the morning or at the end of the afternoon.
25. A condition is suggested to secure details of new materials. No external changes are shown on the plans, and the application form specifies that none are included within the proposal. Internal alterations are not development, and it would therefore not be appropriate to impose a condition to require the submission of details relating to this. The same principle applies to the condition suggested to secure details of the new internal staircase.

Conclusion

26. For the reasons given above the appeal should be allowed.

A Tucker

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 drawing nos TSW/01, TSW/02, TSW/03, TSW/04, TSW/05, and P22862/HR/1.
- 3) The use hereby permitted shall only take place between the following hours: 07:30 to 18:30 on Mondays to Fridays and at no time on Saturdays, Sundays or Public and Bank Holidays. The outdoor play area shall only be used between the following hours: 09:00 to 17:30 on Mondays to Fridays and at no time on Saturdays, Sundays or Public and Bank Holidays.