



Appeal Decision

Site visit made on 31 March 2025

by R Catchpole BSc (hons) PhD MCIEEM IHBC

an Inspector appointed by the Secretary of State

Decision date: 14th April 2025

Appeal Ref: APP/U2750/W/25/3358695

Three Hares Inn, Main Street, Bilbrough, York YO23 3PH

- 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 the Wellington Pub Company against the decision of North Yorkshire Council.
 - The application (Ref: ZG2024/0800/FUL) was refused by notice dated 16 October 2024.
 - The development proposed is a change of use from sui generis to residential including internal and external alterations and the creation of a new parking area.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether there is sufficient justification for the proposed change of use and the loss of a community asset with regard to viability and marketing.

Preliminary Matter

3. As the proposed development is in a Conservation Area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). Although the appeal site is within the Bilbrough Conservation Area (the CA), the limited extent of the external works is such that there would be no substantive changes to either its character or appearance. Consequently, I am satisfied that the significance of the CA would be preserved and that this would be consistent with the purposes of this Act.

Reasons

4. The Three Hares Inn (the Inn) is a two storey, brick built, detached property with a pantile roof. It occupies a rectangular shaped plot which is situated between Main Street and Back Lane. The building fronts onto Main Street. Residential dwellings flank and face it. A pub garden is situated at the rear of the building, beyond which is a large car park which has a vehicular access from Back Lane. The car park does not form part of the appeal site.
5. The conversion would result in a single, 5 bedroom dwelling. Two bedrooms would be located at first floor level with a further two being located within the existing attic conversion. Another bedroom would be located at ground floor level. The balance of the accommodation is set across the ground floor, where the existing public bar and dining spaces would be re-purposed to suit domestic living accommodation.

6. The existing coaching arch would be utilised for vehicular access to a parking area at the rear of the building. The remaining area would form part of the dwelling's private amenity space. No external changes are proposed to the front elevation although some are proposed to the single storey extensions to the rear.
7. The Inn was nominated by Bilbrough Parish Council and designated as an Asset of Community Value (ACV) on 6 July 2020. As it remains on the register for five years, its listing will consequently expire on 6 July 2025. When a listed asset is made available for sale, a moratorium on the sale (of up to six months) may be invoked, providing local community groups with a better chance to raise finance, develop a business and to make a bid to buy or lease the asset on the open market. In this instance the property was offered on a commercial leasehold basis for a period of 20 years.
8. The property has been marketed through a specialist agent for approximately 16 months on this basis. There have been six formal viewings, only one of which led to further discussions, with no formal bids for the leasehold having been made either by a local community group or any commercial interests. I am satisfied that the property was exposed to a wide cross-section of the market and that the marketing effort was sustained. The appellant suggests the market does not view the pub favourably and a viability assessment suggests that it is not currently in a position to trade¹.
9. This assessment suggests that a new operator would have to invest around £200,000 before it could re-open and that the local population is too small for the pub to be wet-led, although this is unsupported by any trading accounts. It goes on to suggest that diversification or multiple use is constrained by the physical nature of the building and that the most viable focus of any future business would be food.
10. This is consistent with the observations of interested parties who highlight the fact that the Inn held two AA rosettes at one point and drew customers from a wide area. I also note that part of the constraint relating to diversification is inevitably linked to the leasehold offer. This is because significant capital investment capable of providing greater space for additional income generation, such as guest accommodation, would not occur. A substantial plot is associated with this property which could be reconfigured to give greater flexibility under different circumstances.
11. The viability assessment is based on the Campaign for Real Ale (CAMRA) Public House Viability Test but I note that there are a number of omissions that undermine its conclusions, not least a failure to consider past trading accounts which provide the most accurate basis for determining a viability baseline. In terms of potential customers, I also find the catchment to be understated. Firstly, because there is a pathway from the Premier Inn, over the A64 flyover, which is approximately 1.1 miles away. Although the Sun Inn at Colton is highlighted as an alternative, it is further away and does not currently function as a public house according to interested parties. Secondly, because CAMRA recommend a 10-mile radius to determine customer potential for rural premises.
12. On this basis, interested parties suggest that this places the Inn within reach of a number of settlements including York, Wetherby, Boston Spa, Tadcaster, Copmanthorpe, Bishopthorpe, Wheldrake, Elvington, Wilberfoss, Stamford Bridge,

¹ Viability Assessment, Thomas E Teague, 11th August 2024

Strensall, Haxby and the Poppletons. The total population within reach, according to 2021 census, is around 303,600 people of which there are likely to be over 240,000 adults over 18 years of age. Moreover, Thorp Arch Trading Estate and Marston Business Park are around 7.2 and 8.7 miles away respectively and Askham Bryan Agricultural College is only around 1.9 miles away. Interested parties also observe that students from the university college have, over the last couple of years, contributed greatly to the revenue of the Inn.

13. Given the above, I find that this evidence does not fully demonstrate that the premises are no longer viable for retail use. However, I do find the marketing to be satisfactory.
14. The Council notes that there was considerable public interest, particularly in relation to preserving its current use, but that the lease offering was not an attractive option. It suggests that the local community would be interested in purchasing rather than leasing the property and that this could generate suitable bids. The Council consequently considers it appropriate to also offer the site as a freehold in order to show that 'genuine and sustained attempts to market it on reasonable grounds' has occurred, as set out in Part B of Policy S3 of the Selby District Local Plan 2005 (the LP).
15. More fully, this part of Policy S3 deals with the loss of existing facilities and states the loss of shops or a public house will not be permitted unless it can be demonstrated that there is alternative provision for a similar type of use within reasonable walking distance; or it can be shown that the business is no longer viable for retail purposes within its existing use class, and that it has remained unsold or unlet for a substantial period of time, despite genuine and sustained attempts to market it on reasonable terms. As there are no other pubs within walking distance, only the second limb of this test applies.
16. The supporting text to the policy adds that the Council will resist a change of use unless it can be shown to be no longer viable for retail use and that reasonable attempts have been made to sell or let the business on an operational basis. It goes on to consider what constitutes a reasonable period of time and suggests that less than six months is likely to be inappropriate and the offered terms should compare with similar premises and locations that are being let or sold for the existing use.
17. This means that the test can be passed either on the basis of a leasehold or a freehold offer. Had genuine and sustained attempts only related to the sale of a premises then this would have been reflected in the supporting text. Just because a freehold sale is preferred by the local community this does not change this policy context. As such, the Council has gone beyond the meaning of the policy when it suggests that there is a requirement to consider a dual approach. There is no basis on which to require a freehold sale to also be explored in order to comply with this policy.
18. This is reflected in the wording of the Localism Act 2011 (as amended) (the Act) where a relevant disposal can either be through a freehold vacant possession or a leasehold. However, s96(6) states that a qualifying leasehold estate means, an estate by virtue of a lease of the land for a term which, when granted, has at least 25 years to run. The appellant has only offered a 20-year lease in this instance which falls short of the expectations of the Act. The appellant considers that this

does not place any restriction on owner and considers the lease period to be acceptable, as set out below. However, the Council and interested parties suggest that the terms of the leasehold offer are unreasonable due to the extent of the dilapidations, which are estimated to be around £200,000 by the appellants own expert.

19. As highlighted above, the supporting text of Policy S3 makes it clear that the terms of an offer should be comparable with similar premises and locations that are being let or sold for the existing use. In this respect, the appellant points out that the leasehold terms for the majority of Wellington pubs are on the same terms as those offered for the Inn. This comprises a 20 year, free of tie, fully insuring and repairing lease. The appellant points out that other public houses have been successfully let on this basis and highlights the King's Arms in Meopham as well as the Abbey Inn in Byland in this respect. I also note the two additional pubs that were highlighted in the marketing report by Fleurets.
20. Be that as it may, it is unclear whether or not these examples are directly comparable in terms of how long they have ceased trading and the extent of any repairs or refurbishment that may have been required to enable them to re-open. Moreover, the potential income from a similar catchment of customers would also need to be present for any robust comparisons to be made.
21. Whilst I accept that the offered terms are representative of a large proportion of commercial leases within the industry, the context will clearly vary in terms of refurbishment costs and the potential income of individual premises. The appellant has not established that the Inn is comparable to other premises and locations in these respects. Although I accept that lease negotiations typically take account of any repairs or maintenance, there is insufficient evidence to indicate that it is not viable or that it has been marketed on reasonable terms from a policy perspective, despite the sustained attempt. The length of the lease also does not constitute a 'relevant disposal' from a statutory perspective.
22. Given the above, I conclude that the proposal conflicts with Policy S3 of the LP and policy SP14 of the Selby District Core Strategy Local Plan 2013. The latter seeks, among other things, to support local services outside established town centres. It would also be inconsistent with the paragraphs 88(d) and 98(a) of the National Planning Policy Framework (2024) and the requirements of the Act.

Other Matter

23. The Council points out that the proposal is subject to mandatory Biodiversity Net Gain (BNG) and points out that there will be a requirement to submit a BNG Plan before development commences. The Council is concerned about how any off-site BNG would be legally secured in the event that permission is granted. However, the approval of a BNG Plan and securing of the necessary gains, which are subject to the discharge of the standard pre-commencement condition, are not an appropriate consideration prior to permission being granted.

Conclusion

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

R Catchpole

INSPECTOR