



Appeal Decision

Site visit made on 1 May 2025

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th May 2025

Appeal Ref: APP/R2520/C/24/3341028

Land at Bell Inn, 3 Far Lane, Coleby, Lincoln LN5 0AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Mr Paul Vidic against an enforcement notice issued by North Kesteven District Council.
- The notice was issued on 19 February 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a Public House ('Sui Generis') to a single dwelling house.
- The requirements of the notice are to:
 - (a) Cease the use of the land as a residential dwellinghouse, except for residential occupation ancillary to the use of the land as a public house.
 - (b) Remove from the land all residential items and paraphernalia currently stored in the former bar/restaurant area on the ground floor of the property.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the material change of use of the Land from a Public House ('Sui Generis') to a single dwelling house at Land at Bell Inn, 3 Far Lane, Coleby, Lincoln LN5 0AH as shown on the plan attached to the notice and subject to the conditions detailed in the attached schedule.

Appeal on ground (b) and (c)

2. An appeal on ground (b) is a claim that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact.
3. An appeal on ground (c) is that the matters alleged at Section 3 of the notice, if they occurred, do not constitute a breach of planning control. The onus of proof in ground (b) and (c) appeals is on the appellant and the test of the evidence is on the balance of probability.
4. The appellant claims that the authorised use of the appeal premises is a restaurant at ground floor with residential accommodation at first floor. The appellant details that the premises has traded as a restaurant from April 2011 to 2020, with evidence to support this including correspondence from the appellant with regards to an Asset of Community Value (ACV) nomination in 2021 and a 2021 appeal decision¹. The Council contest this argument stating that signed declarations for

¹ Appeal Ref: APP/R2520/W/20/3265723

public house rates relief indicate the appeal premises traded as a public house in 2017 and 2018.

5. The letter in appendix APP2 of the appellants statement of case is a response from the appellant to a nomination for the appeal premises to be made an ACV. This letter details the appellants argument that the premises is a restaurant whilst it is clear that the Parish Council in nominating the appeal premises as an ACV consider the premises to be a public house.
6. The Inspector for the 2021 appeal decision stated that *“the evidence before me in respect of the existing use of the premises is not wholly conclusive”* but went on to find that *“on the evidence before me and the balance of probabilities, I consider that, so far as it is relevant to this particular appeal, the appeal site has primarily functioned as a restaurant”*. In reaching this finding the Inspector refers to evidence such as representations from local residents including details like menus, website information and personal statements, as well as the large commercial kitchen and the opening hours of the premises.
7. Appendix N of the Councils statement of case includes a letter from the Council with reference to public house business rates relief and an application form for this business rates relief which is completed, signed and dated by the appellant, Paul Vidic. This application form includes a declaration that confirms that a public house is currently trading. The Inspector for the 2021 appeal decision did not have this public house business rates relief information as evidence when making their decision. The appellant claims that this business rates relief application was completed and submitted in error and that money was returned as soon as the mistake was made aware of. There is however minimal evidence of any returned money in this respect.
8. Whilst the Inspector for the 2021 appeal decision did find that the appeal premises had primarily functioned as a restaurant, the Inspector did state that the evidence for the use of the premises was not wholly conclusive. Further evidence, that was not before the 2021 Inspector, has now been provided, this being the public house business rates relief application form. This document clearly confirms that the appellant declared that a public house was trading from the premises on the date of 13 July 2017, when this application form for public house relief was signed and dated by the appellant. There is minimal evidence to convince me that this document was completed in error. Based on all the evidence before me, and on the balance of probability, I find that appeal premises authorised use is that of a public house.
9. It has been described that the appeal site was originally three dwellings that was converted into a public house at ground floor with residential at first floor. The appellant states that he lived in the property whilst running the business from the premises and that when the business was closed to the public, the ground floor would be an extension to his living accommodation – not least to use the commercial grade kitchen for cooking in a domestic capacity and to benefit from the more comfortable/spacious surroundings and open fire on the ground floor.
10. The Council refer to a telephone conversation with a Lisa Gregory (described as Director at The Bell at Coleby Ltd) on 17 November 2023, in which she allegedly stated that the whole building was in residential use. There are no specific notes or commentary of the exact telephone conversation with Lisa Gregory. A Planning

Contravention Notice (PCN) was issued by the Council which the appellant completed and returned dated 13 December 2023. This PCN states that the ground floor is in residential use describing the appellant, partners and house guests using the living room, dining room and kitchen as living accommodation. The PCN explains that the premises had a residential element at ground floor during the period when the business was being ran. However, the appellant further states in the PCN that when the business closed, the residential use became the overriding element.

11. At my site inspection, I saw that the commercial kitchen had largely been removed although there were metal benches still in place with shelving containing items such as glasses, plates, jugs with coffee machines also on the benches. There were a number of residential items scattered around the ground floor premises, which would not normally be considered typical features of a commercial premises, these included lamps, suitcases, heaters, vacuum cleaners, boxes of files, a tennis racket. There was also a Wi-Fi router that appeared to be in operation as it was illuminated.
12. The appellant's evidence is limited, relying on the argument that the Council had inspected the premises in June 2023 and confirmed that it wasn't a dwelling house at that time. There is no compelling evidence before me, from either party, that the building has been actively in use as a commercial enterprise since at least before March 2020 when the appellant details in the PCN the business closed. That being the case the use of the property changed to a residential dwelling house for a considerable period of time before the enforcement notice was issued. On the balance of probability, I conclude that the use of the appeal site as a public house changed to solely residential use before the notice was issued.
13. Consequently, the appellant has failed to demonstrate that at the date the notice was issued the matters alleged had not occurred, and the appeal on ground (b) must fail.
14. At the date the notice was issued the only active use of the appeal premises was for residential use. The change of use as solely for residential accommodation is materially different in character and effect from its use as a public house. The change of use from one to the other is therefore a "material change of use" and constitutes "development" as defined at Section 55 of the Act.
15. Planning permission is required for the development. However, there are no permitted development rights to make such a change within the Town and Country Planning (General Permitted Development) Order 2015, and no planning permission has been granted by the Council.
16. Consequently, the making of a material change of use from public house to residential accommodation amounts to "development". Since the development has been carried out without the required planning permission it thereby constitutes a breach of planning control.
17. Therefore, the appeal on ground (c) fails.

Appeal on ground (a)

18. The appeal on ground (a) is that planning permission should be granted for the matters alleged in the notice.

Main issue

19. The main issue is whether the change of use of the building to a residential property would result in the unnecessary loss of a community facility.

Reasons

20. Policy S50 of the Central Lincolnshire Local Plan April 2023 (CLLP) states that the loss of an existing community facility to provide an alternative land use will only be permitted if it is demonstrated that either a) the facility is no longer fit for purpose and is not viable for another community facility; or b) the service provided by the facility is met by alternative provision that exists within reasonable proximity: what is deemed as reasonable proximity will depend on the nature of the facility and its associated catchment; or c) the proposal includes a new community facility of similar nature.
21. The Coleby Parish Neighbourhood Plan (CPNP) identifies the appeal premises, The Bell at Coleby, as a community facility. Policy 6 of the CPNP states that proposals that involve the loss of any existing community facility will not be supported unless their loss can be adequately justified.
22. There is minimal evidence detailing that the appeal site is not viable for another community facility and it is clear that the development for a residential dwelling house is not a new community facility. The development therefore does not accord with sub-paragraphs a) and c) of Policy S50.
23. The Tempest public house is located within the village of Coleby within close walking distance to the appeal site. The Inspector in the 2021 appeal decision disregarded the Tempest as an alternative provision as it was considered the operations from each premises were different, the appeal site trading as a high-quality restaurant and the Tempest as a traditional public house. Given the submission of additional evidence with this appeal, I have now found that the use of the appeal property is that of a public house which the Council affirm in the enforcement notice and agreed by some interested parties and the Parish Council. Whilst public houses can operate in different forms, for example some may offer differing levels of food service, the Tempest and the appeal site nevertheless are both the same use as public houses.
24. Accordingly, I find that given the use and location of the Tempest public house, the service that can be provided at the appeal site is met by alternative provision, that being the Tempest, which already exists within reasonable proximity to the appeal site. The development is therefore justified and would not result in the unnecessary loss of a community facility. The development would be in accordance with sub-paragraph b) of Policy S50 of the CLLP and would not conflict with Policy 6 of the CPNP.

Conditions

25. In the interests of the character and appearance of the area, I have imposed conditions relating to landscaping and boundary treatment. To prevent undue risk to highway safety a condition is necessary in relation to parking. To safeguard living conditions of neighbouring properties and in the interests of protecting heritage assets, a condition restricting permitted development rights is necessary.

26. The Council also requested a condition relating to Biodiversity Net Gain (BNG). Section 3(1)(a) of the Biodiversity Gain Requirements (Exemptions) Regulations 2024 states that the biodiversity gain planning condition does not apply in relation to planning permission for small development where the application for planning permission was made before 2 April 2024. As this appeal was submitted on 19 March 2024, I consider section 3(1)(a) is applicable and the development is exempt from BNG. Therefore, a condition relating to BNG is not necessary.

Conclusion

27. The development does not conflict with the development plan as a whole and there are no other considerations, including the provisions of the National Planning Policy Framework, which outweighs this finding.
28. Therefore, for the reasons given above, I conclude that the appeal on ground (a) should succeed, and the appeal should be allowed.
29. On this basis there is no need to consider the appeal on ground (f).

Chris Baxter

INSPECTOR

Schedule of Conditions

- 1) Unless within six months of the date of this decision a scheme for vehicle parking facilities, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within two months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Unless within six months of the date of this decision a scheme for landscaping including boundary treatment, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B, C, D and E of Part 1 of Schedule 2 to the Order shall be undertaken.