



Appeal Decisions

Site visit made on 10 March 2026

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State

Decision date: 10 April 2026

Appeal A Ref: APP/K0425/X/25/3358624

The Mash Inn, Horseshoe Road, Radnage, Buckinghamshire, HP14 4EB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by The C.A. and T.L. Leaver Family Settlement 2019 against the decision of Buckinghamshire Council - West Area (Wycombe).
- The application ref 23/07658/CLE, dated 24 October 2023, was refused by notice dated 16 July 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is Mixed use comprising restaurant (Class E(b)) with letting/guest rooms.

Appeal B Ref: APP/K0425/W/24/3358205

The Mash Inn, Horseshoe Road, Radnage, Buckinghamshire, HP14 4EB

- 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 The C.A. and T.L. Leaver Family Settlement 2019 against the decision of Buckinghamshire Council - West Area (Wycombe).
- The application Ref is 23/06000/FUL.
- The development proposed is Change of use of the existing restaurant with guest accommodation, associated single storey detached outbuilding and land (use class E(b)) to form 1 x 5-bed detached dwelling together with parking, outbuilding and hard/soft landscaping to create residential amenity space (use class C3).

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal A - LDC

3. An LDC is not an application for planning permission. Its purpose is to enable the appellant and others to ascertain whether specific operations or activities would be lawful. The burden of proof is upon the appellant. The test of the evidence is one of balance of probability. The appeal concerns only the lawfulness of the matter for which the LDC is sought, not its planning merits. The decision is based on the facts of the case and on relevant planning law and judicial authority.
4. An application under section 191(1)(a) of the Act seeks to establish whether an existing use of buildings or other land is lawful. Section 191(2)(a) confirms that a use is lawful at any time if no enforcement action may then be taken in respect of

it, whether because it did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no relevant enforcement notice in this case.

5. Section 191(4) of the Act sets out that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect. The Council was not satisfied on the evidence provided that the specified use had taken place continuously for a period of ten years, a reference to section 171B of the Act which sets out the time limits for taking enforcement action.

Reasons

6. The main issue in a section 195 appeal is whether the Council's decision to refuse to grant an LDC was well-founded. Although I am not confined to the Council's reasons for refusing to issue the LDC, the basis of the application was that if a change of use requiring planning permission had occurred at all, the use, namely the mixed use specified, has continued for substantially in excess of 10 years.
7. As I noted above, the burden of proof is on the appellant. There is however a nuance in the application, and also contained within the Legal Opinion accompanying the application and this appeal, and indeed in the Appeal B submissions, which I shall deal with first. This is the treatment of the guest/letting rooms. The headline description is one of a mixed use. The concept of a mixed use is one of two or more primary uses existing within the same planning unit or unit of occupation. One is not ancillary to the other, although there may be ancillary uses associated with each primary use. In mixed use cases, the use of the land or buildings is the single mixed use with all its component activities.
8. Typically, and all the more so with establishments in the countryside, where a public house or restaurant provides some accommodation for guests, that use will be ancillary to the primary pub or restaurant use. It may also be that the accommodation element is entirely separate or severable from the pub/restaurant use, though carried out in the same planning unit. That would be a mixed use. It could also be the case that the accommodation becomes the dominant use, which would be more akin to a hotel use. All of the evidence before me suggests that the letting/guest rooms use was a use ancillary to the primary use of the buildings and land as a pub or restaurant. On the odd occasion that the accommodation is mentioned it appears to be a Bed and Breakfast offer, which would typically be ancillary to a country pub or restaurant use. Aside from the description of the use in the application, there is no cogent evidence before me of a primary use for accommodation. I note that the Legal Opinion and the statement accompanying the application suggest that the use is either a restaurant with ancillary guest rooms or the mixed use. The accommodation component has not been analysed in any detail by either the Council or the application, also suggesting that it is not in fact a primary component. I shall therefore treat this application as seeking to establish that the lawful use of the appeal site is as a restaurant within Class E(b) of the Use Classes Order. Had I determined the appeal on the basis of the mixed use it would inevitably have failed on the basis of the inadequacy of the information provided.

9. There appears to be no dispute that when the premises was acquired by the former proprietor, SC, in 2005, it was a public house known as The Three Horseshoes. There is no evidence to support a contrary view, and it was stated as such in a 2002 planning application as the existing use. SC ran the premises from late 2005 until it went into liquidation in October 2015, having ceased trading before that. Mr Mash took ownership of the property in March 2016 and started trading from the premises in August 2016 as The Mash Inn. The Mash Inn ceased trading at the end of January 2023.
10. In April 2005 The Town and Country Planning (Use Classes) Order 1987 (the UCO) was amended so as to disaggregate the former Use Class A3 (Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises), which covered all types of catering establishment, including pubs, wine bars, cafés/restaurants and hot food take-aways, into Use Classes A3 (restaurants and cafés), A4 (drinking establishments) and A5 (hot food take-aways). Class AA of The Town and Country Planning (General Permitted Development) (England) Order 1995 (the 1995 GDPO) permitted the change of use of a building from a use falling within Use Class A4 (drinking establishments) or A5 (hot food take-aways) to a use falling within Use Class A3 (restaurants and cafés). Hence when SC took over the premises it could have changed use to a restaurant use as permitted development. Restrictions on this change of use were, however, introduced in April 2015. GDPO 2015 Part 3 Class B provided that where the premises was either nominated or designated as an “asset of community value” (ACV), as was the case here¹, the change of use was not permitted for a period of 5 years from the date of listing.
11. Thus if The Three Horseshoes had changed use from A4 public house to an A3 restaurant during SC’s proprietorship up until April 2015, that would have been lawful, as would any subsequent restaurant use if there had been no intervening use. However, if the premises had remained as a public house until The Mash Inn started trading as a restaurant, if it had, that change of use would not have been GDPO permitted development. Hence the lawfulness of the use of The Mash Inn as a restaurant depends on the use of the premises when SC was the proprietor. The application was made on the basis of immunity from enforcement, and the Council dealt with it as such, but ultimately it does not matter which route is taken to establishing lawfulness in this case. Had the premises been a restaurant prior to April 2015 there would not have been a breach of planning control.
12. There was certainly an element of food provision prior to 2005, as evident in floor plans submitted with a planning application made by the previous owners in 2002 which show the premises laid out with bar areas at the front and much of the rear annotated as ‘dining’. SC had been a chef in London before he took over The Three Horseshoes in 2005 and appears to have had an aspiration to offer ‘fine dining’ as the food offer. This is evident from newspaper reviews, some public consultation responses to a 2014 planning application, and statements by customers of SC submitted in support of the appeal application. The area dedicated to dining was enlarged during SCs proprietorship and annotated as ‘restaurant’ in a 2006 planning application, and upon liquidation the nature of SCs business was described as licenced restaurant. Apparently, SC advised Mr Mash by email in 2015 that the split of food to drink sales had been 75:25.

¹ The Three Horseshoes was listed as an asset of community value in 27/02/2015 (expired 26/02/2020) and extended 09/03/2020, but was delisted 06/04/2023.

13. Some of this evidence cannot be given significant weight. The customer statements are remarkably similar in form and not in the form of a statutory declaration, while the extracts from the 2014 planning application consultation appear incomplete and lack context. I consider the restaurant reviews to have been focussed on the food element in any case, rather than the distinction between Use Classes A3 and A4.
14. There is also evidence to the contrary. The 2014 planning application, which was to change the use to a dwellinghouse, identified the existing use as a public house, as did the accompanying planning statement, and the Council's evidence is that the objections to that application included substantial evidence that the Three Horseshoes was regularly used by local residents as a public house. The Three Horseshoes was classed as a public house for Council Tax purposes, as was The Mash Inn, and the Premises Licence application for The Mash Inn stated that The Three Horseshoes Inn had been operating as a public house and inn for a number of years. It was also designated as an ACV in 2015 and 2020, despite an objection by SC on the basis that it had been used by him for Use Class A3 purposes, indicating that there was sufficient evidence to the contrary.
15. While the breakdown in turnover between food and drink is more indicative of a A3 use, it is an unsupported assertion, so can only be given moderate weight in my view. But in any case, neither the revenue derived from each activity or the extent of the areas given over to either purpose is determinative of the use class. Use Class A4 (public house, wine bar or other drinking establishment) can cover premises that offer a wide range of activity, including accommodation, entertainment and food, and much the same could be said of Use Class A3, such that interpretation of the Use Classes Order can involve finely balanced judgements, particularly when "gastro-pubs" are involved, as appears to be the case here. The use of the property as a public house serving food prior to 2005 is not really disputed, and it appears to have been in public house use for at least 2 centuries during which no doubt the offer and clientele varied. While it appears that SC made a more conscious effort to gain a reputation for fine dining, possibly to attract a wider range of customers or increased clientele, the increased focus on food sales does not necessarily mean that the primary use of the building changed from the sale and consumption of alcohol on the premises to one where the primary purpose was in-house dining. There is evidence that some patrons came to drink only, and regularly, and that there was no requirement that food be consumed, and of course there is evidence of customers who came primarily to eat.
16. Having regard to the burden of proof, I consider that there is not, however, adequate evidence to enable me to conclude, on the balance of probabilities, that the primary use of the premises changed between 2005 and 2015 from a public house to a restaurant. The appellant has concentrated on the use by SC, and the very limited evidence of the character of the use when trading as The Mash Inn would not enable me to conclude with any confidence that the use did in fact change to a restaurant use then. That would be a matter of fact and degree based on the evidence, but I do not need to make a determination on that point for the purposes of this appeal. I conclude accordingly that the Council's decision to refuse to issue an LDC was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B – planning appeal

17. Following appeal A above, there is not cogent evidence before me to indicate that the lawful use of the property is other than as a public house, and I shall determine the appeal on that basis, notwithstanding the reference to a “restaurant with letting rooms” in the description of the development proposed. It is in a rural area within the Chilterns National Landscape. It is also within the Green Belt, but the proposed change of use would not be inappropriate development in the Green Belt. The reason for refusal of the application relates to the loss of the rural public house use as a community facility, which, without justification, is considered not to be in the interests of the economic and social wellbeing of the local community and to adversely affect the understanding or enjoyment of the AONB, resulting in a loss of interest and vitality in the area, fewer opportunities for community activities, and a greater need for travel. This is claimed to constitute an adverse reduction in the mix of uses in the locale with a negative impact upon the way the area functions.
18. Policy DM29 Wycombe District Local Plan is the most relevant development plan policy. It seeks to ensure that development meets the full range of needs for community facilities, including through the retention of existing facilities, or through the provision of new or extended facilities. Public houses are among the identified range of facilities required for communities to meet their day to day needs for social, recreational and cultural activity. Policy DM29 requires that land or buildings currently or last occupied for community use should be retained unless it has been clearly demonstrated through an exhaustive needs assessment that the land and/or buildings proposed to be lost are surplus to any community needs.
19. Because of the history of the site, as should be clear from Appeal A, the appellant argues that Policy DM29 is not engaged because its last use was as a restaurant, which is not among the facilities listed in the text accompanying Policy DM29. The list is not in any case exhaustive, but in the absence of sufficient evidence to the contrary I consider the current lawful use of the property to be as a public house. It was a public house when The Mash Inn started trading, and while I acknowledge that the Council accepted that it was then a restaurant for the purposes of ACV listing, that is not a determination of the use for the purposes of the UCO, and it is subject to its own specific regulations. Listing as an ACV can be a material consideration in planning decisions, but a property or facility does not need to be so designated to engage Policy DM29. Furthermore, there is evidence that The Mash Inn was in fact frequented by locals as a public house, which indicates that it was a facility that served to enhance the sustainability of the community. In the circumstances I am satisfied that the property is one that is subject to Policy DM29.
20. The Policy DM29 accompanying text states that there is a presumption that protected community uses should be retained, and the policy clearly places the onus firmly on the developer to demonstrate that the premises is surplus to any community needs. The appellant has purported to have conducted a needs assessment, but in reality the key document is no more than a list of restaurants, drinking establishments/bars and cafes, along with other community facilities, in Stokenchurch and Radnage and its environs. Other than that they appear to rely on a needs assessment document provided for a former public house and hotel in Cadmore End which the Council accepted as satisfactory. The Cadmore End premises appear to have been quite different in character, including a claim to have primarily catered to ‘captive customers’, but while listing the facilities in the same format as the appellants’ document, that document also provides a bespoke

contextual needs analysis of that community, an analysis that I consider would not transfer to the community relevant to the appeal proposal. Some context is provided in the appeal statement, including that the Council's Community Facilities Strategy found in 2009 that the Stokenchurch and Radnage electoral ward was not deficient in community facilities, but that does not indicate that a contemporary assessment is not necessary. No specific methodology is required, the relevant Supplementary Planning Document (SPD) being out of date, but the assessment undertaken falls far short of what might be considered satisfactory, in my view. There is no analysis of the needs of the immediate community, and no engagement whatsoever. Surprisingly, no marketing of the property appears to have been undertaken, although a marketing exercise did apparently support the Cadmore End application relied upon. While not strictly required given that the SPD is out of date, it is something I would have expected to see in an exhaustive needs assessment given the underlying reliance on the failure of the two previous operators to indicate lack of need or value to the local community.

21. In short, the evidence before me does not come close to demonstrating that the public house is surplus to any community needs. The proposal thus fails to accord with Policy DM29. The loss of a rural public house with guest accommodation in attractive countryside is also likely to adversely affect the appeal of the area to visitors, with negative consequences for the enjoyment and understanding of the National Landscape, contrary to the aims of Policy DM30. I consider also that this historic and attractive public house within the small hamlet of Bennett End would, when open, provide a focal point that would contribute significantly to its character, vitality, functionality and sustainability, such that its loss without adequate justification is contrary to Policy DM35. In the absence of an appropriate marketing exercise to demonstrate that it is unlikely to resume trading I consider that it is still capable of that contribution.
22. I find accordingly that the proposal would conflict with the development plan read as a whole. Since it involves the provision of housing and the Council has an inadequate supply of deliverable housing sites, the National Planning Policy Framework (NPPF) nonetheless requires that planning permission be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The NPPF advises guarding against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. The provision a dwelling is a benefit, but I consider in this case that harm arising from the unjustified loss of an important community facility, along with adverse consequences for the enjoyment and understanding of the National Landscape and community character and function, does significantly and demonstrably outweigh the modest benefit of the provision of a single dwelling. In these circumstances the appeal must be dismissed and planning permission refused.

Paul Dignan

INSPECTOR