



Appeal Decisions

Site visit made on 19 May 2026

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th June 2026

Appeal A Ref: APP/Y3940/C/24/3357357

Red Lion, Axford, Marlborough, Wiltshire SN8 2HA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Michele Giallombardo against an enforcement notice issued by Wiltshire Council.
- The notice was issued on 11 January 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land, consisting of the residential use of the public house unconnected to the use of the Red Lion as a public house.
- The requirements of the notice are to:
 - a) Permanently cease the use of the Red Lion public house for all residential purposes other than for purposes ancillary to the primary use of the premises as a public house.
 - b) Remove from the Land all residential items and paraphernalia ancillary to the unauthorised use of the Land.
- The period for compliance with the requirements is: 6 months from the date the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The enforcement notice is quashed.

Appeal B Ref: APP/Y3940/W/25/3362810

Red Lion, Axford, Marlborough, Wiltshire SN8 2HA

- 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 Michele Giallombardo against the decision of Wiltshire Council.
- The application Ref is PL/2024/10122.
- The development proposed is the change of use of public house (including existing residential accommodation, car park and garden) to a single residential dwelling.

Summary Decision: The appeal is dismissed.

The enforcement notice subject to Appeal A

1. The enforcement notice ("the Notice") identifies the land to which it relates ("the Land") as including all of the buildings that provided the licenced public house premises, landlord's accommodation, associated garage/store type structures and adjoining garden/car park land.
2. The landlord's accommodation can be accessed separately and closed off from the public house by a single door. However, while that could facilitate entirely separate residential accommodation, and it may have once been entirely separate, there is no substantive evidence that it has actually been used as a separate entity in the past. The Land appears to have long been, and still is, in a single unit of occupation with any use of the residential area having been by the landlord of the public house. Direct passage between the areas is available and easy.

3. The landlord's accommodation is generous, with numerous bedrooms or storage areas over the upper floors, and a separate ground floor space that could be used for cooking, dining and living. It could be accessed via a separate external entrance to the public house. At the time of my visit, though, the ground floor room only appeared to be in use for storage. The main public house kitchen was in an active domestic use alongside the adjoining former pub dining room, as was a former pub lounge/bar area adjacent to the landlord's accommodation.
4. The internal link, while only a single door, provides connectivity between the spaces. However, the connectivity and seemingly historic single unit of occupation makes it probable that the whole of the Land is a single planning unit. From that starting point, it is possible that it is in either a single primary public house use with the landlord's accommodation incidental to that, or a mixed use with two primary uses.
5. The breach of planning control alleged is the material change of use of the Land, consisting of the residential use of the public house unconnected to the use of the Red Lion as a public house. Whether or not an enforcement notice targets all, part of, or more than a planning unit, development, and so any breach of planning control, within the meaning of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act"), would only have occurred if there had been a material change of use across the planning unit as a whole.
6. The appellant has interpreted the alleged breach of planning control to be a material change of use to a single dwelling house. That is a reasonable interpretation, given that the allegation clearly refers to the Land as a whole, and alleges the 'residential use of the public house'. It also appears to be the logical use arising from the alleged breach as drafted – i.e. the residential use of the public house unconnected with the use of the Red Lion as a public house, given that the public house use is not actually occurring. Based upon the evidence and my observations at the site visit that residential uses had spread into parts of the public house, that appears to also be a reflection of what is occurring. The Council, however, contends that this is not the allegation.
7. An enforcement notice must inform the recipient with reasonable certainty what they have done and what must be done to remedy it. The difference in opinion is a clear indication that the allegation is not clear. Before determining the appeal, I have a duty to put the Notice in order. I have powers to correct any misdescription or defect in the Notice, provided that no injustice would arise to either the appellant or the Council. If there has been a material change of use, then any correction should specify what the new use is.
8. In a Note to the main parties ("my Note"), I set out my concerns with the allegation as drafted. For the above reasons, I suggested that the breach of planning control might properly be described as the material change of use of the Land to a single dwellinghouse.
9. Correcting the Notice in that way would not cause injustice to the appellant as they have made their case on the understanding that this is what is alleged. However, it is clear from its primary evidence and response to my Note that the Council do not believe that the allegation should be corrected in this way.
10. Indeed, without prejudice to any assessment of the grounds of appeal, I note that the Council's position on ground (d) was and remains that the use must have

continued for 10 years before it was too late to take enforcement action. Even if the original alleged breach could be interpreted as implying a use as a single dwelling house, that is not the Council's position and it has not made a case in respect of a 4 year period that would very clearly apply if the Notice were corrected. Therefore, I am unable to make the necessary correction to the Notice without causing injustice to the Council.

11. In response to my Note, the Council suggested an alternative allegation, being a material change of use of the public house's internal ancillary residential accommodation to an independent dwelling. The Council indicated that if amended in this way, no injustice would arise. However, given what I observed, I am not convinced that this is an accurate description of what has happened.
12. Moreover, correcting the Notice in this way would introduce a different alleged breach of planning control because it would relate to only part of the building, not all of it. Not only has the appellant not had opportunity to make a case in response to that, leading to potential for injustice, it is questionable whether it would actually target the matter that the Council is concerned about – i.e. the residential use of the public house. Both parties could, therefore, suffer injustice if the Notice were corrected as suggested by the Council.
13. I, therefore, conclude that the Notice does not specify with sufficient clarity what the alleged breach of planning control is. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. The Notice is invalid and will be quashed. In this scenario, Appeal A on the grounds set out in Section 174(2) of the 1990 Act does not fall to be considered. While this does not give the appellant any clear guidance as to how the appeal might have been decided, it would be inappropriate to apply the arguments put to an invalid enforcement notice, or to a hypothetically corrected one.

Appeal B

14. Appeal B is against the refusal of planning permission for the use of the Land as a single residential dwelling. The main issue is whether the loss of the community facility has been justified.
15. The site is located within the small settlement of Axford. Core Policy 49 of the Wiltshire Core Strategy 2015 seeks to protect rural services and community facilities such as public houses. Where it is contended that the use is not viable and a change of use away from a community facility is proposed, the policy requires comprehensive marketing of the property, with 8 specific requirements to be met. The Council's officer report argues that 4 of the 8 criteria have not been met.
16. Of these, criterion (ii) demands flexibility in marketing relating to alternative uses. The sales particulars that were prepared made no reference to uses other than the public house, but it is clear that those making enquiries to the selling agents were asking about a variety of uses. While most were interested in residential potential, there is also a record of enquiries relating to a surgery and office use. I, therefore, find that the marketing strategy did not in itself deter those who may have been interested in other uses.

17. Criterion (iv) is similar, requiring marketing to take account of Core Policy 49's hierarchy of preferred uses. The preferred use is the existing one, which is how the details were prepared, and, as already noted other uses do not appear to have necessarily been deterred. In any case, it is not clear what other sort of community use the Council may expect to operate from the site while being part of a profitable business venture, and the local community were unable to progress to purchase while the Land was listed as an asset of community value, or during the appellant's attempt to sell.
18. Criterion (iii) requires marketing at an appropriate price. Examples of recent sales of other public houses have been provided and, while they do not include pictures or any other information, they demonstrate a range within which the appellant's own asking price would fall. While it is unclear whether the relatively poor condition of some parts of the appeal site were comparable to other examples, the selling agents, who have experience and expertise of selling this type of property, confirm that they recommended the initial asking price. I have no reason to find that the price sought was not a reasonable one.
19. That said, it appears that an offer was made in early 2023, that was increased twice. While the prospective purchaser offered below the asking price and sought to convert part of the property to residential, they indicated that they had a desire to retain the public house. The report notes that they felt considerable investment was required, but there is no detailed information about the reasons the offers were rejected. If that was purely on the basis of price, then it could indicate that the price being sought was not realistic, taking account of the site and its condition.
20. It may be that a site owner should not be required to sell an asset for below its worth. However, there is no substantive evidence that the presence of lower offers may not be indication of unrealistic expectations of that worth. This is especially relevant in light of comments in the selling agent's documentation from that prospective purchaser that they could not see justification for an increase in value from the appellant's own purchase price. The marketing was also close on the back of the difficulties facing public houses after the Covid-19 pandemic, that may have affected their value, relative to pre-pandemic times.
21. I note that a further offer was accepted shortly before the service of the Notice, but the unexpected death of the purchaser prevented this being completed. I have no particular details of the terms of that offer and whether it might have indicated that a future sale may have been possible if the site had not then become encumbered with the Notice, which would be a clear deterrent to a prospective purchaser. It has not, therefore, been demonstrated that criterion (iii) has been met.
22. Criterion (vii) requires the lease of the site to be offered without restrictions that might prejudice the reuse as a community facility. There is no evidence that a leasehold has been considered. While anybody could offer such terms, proposing such would be a rather different prospect to the earlier criteria where potential buyers may see a freehold property and pursue its purchase for other uses. It has not been shown that a prospective leaseholder would likely make enquiries about a freehold property.
23. I fully appreciate why a leasehold of the Land could be unattractive, given the amount of investment likely to be required to bring the building and facilities up to a suitable condition. Indeed, it was also reported as a contributory factor to the

demise of the Black Horse Public House in Winterbourne Earls that successive tenants were not prepared to carry out the necessary investment.

24. Nevertheless, I note that in the Appeal A evidence, great emphasis was placed by the appellant on how easily the residential and commercial spaces of the building could be separated. Moreover, it is also stressed there that many public houses are run without any Landlord's accommodation. There is no substantive evidence that such a course of action has been considered as a potential way to retain the community facility.
25. The appellant's intentions and planning history are also relevant here: While I have no fully detailed information of the case put for and comments made in response to a 2019 planning application to change the use of the Land from a public house to a restaurant, the appellant has explained that his intention was to run a restaurant from the building. That this would have necessitated planning permission suggests that it would have been a complete change of use of the building, rather than it sitting alongside a retained public house use, even though part of the trading space was a dining room that could be separated from one or both of former bar areas, depending on the arrangement required. It also proposed making the residential use a separate one.
26. Core Policy 49, before setting out the marketing requirements, indicates that proposals for alternative uses alongside retaining the existing public house use would be supported. I understand that local residents did not react well to the proposal for a restaurant. However, given the change of use of the Land to a restaurant and separate dwelling that was proposed, it appears that it would have resulted in the total loss of the public house.
27. Therefore, it does not appear that the appellant has considered a mixed use of the commercial space, nor – importantly for Policy 49, criterion (vii) – has an attempt been made to offer all or part of the commercial space to a prospective business tenant who may, or may not be responsible for the upkeep of the overall building – depending on the terms of any lease agreements.
28. I understand why, having failed to obtain permission for the restaurant use, the appellant was reluctant to pursue further options at the site. In addition, whether or not the local community would have been receptive to an alternative proposal, it does appear that some renovation of the property was (and is) required, not least to address visible areas of damp in some of the walls. The subsequent impacts and then uncertainty of the Covid-19 pandemic on the hospitality industry, coupled with the appellant's own personal circumstances are further reasons that explain why alternative business proposals have not been pursued.
29. There is also a logic behind the arguments presented as to why a public house at this site might not be viable, even if the building and facilities were already in good condition. Historic viability does not indicate sound business prospects in the current economic climate and it may well be that by 2015, when there is evidence of insufficient demand to sell real ale, the business was already struggling. Some funds may have been generated through the residential development of part of the site, as it was at that time, but it is unclear whether there was any investment back into the business. In any case, the appellant has set out the extent of renovation required upon his purchase.

30. It is certainly possible that it might be difficult to restart a public house business at this site. In particular, Axford is small, placing a likely dependence on creating a 'destination' product and this where there are established public houses in the larger and more accessible settlements either side of Axford. That said, the appellant's stated ease with which the site could be accessed by bus might provide some potential draw.
31. Nevertheless, there is no substantive evidence that a profitable business cannot be run at the site. I appreciate that there is no existing operational business on which to base such an assessment, so it would be wholly theoretical, but business planning can take place based upon assumptions that can then be subject to scrutiny. As noted above, the appellant appears to have bought the premises with a desire not to run the public house, and there is no evidence of a high turn-over of tenants (for example) that might demonstrate repeated failed attempts to run the business. That sets it apart from a seemingly comparable case at the Pinkuah Arms in Pentlow, and noted in documents associated with the *Black Horse*.
32. Policy 49 is focussed on marketing, but does set out that the loss of a community service or facility will only be supported where it can be demonstrated that the site/building is no longer economically viable for an alternative community use, with preference to retain the existing use in the first instance. In the absence of any substantive evidence, I cannot place any significant weight upon future business prospects (or lack thereof), such that they do not indicate that there should be a departure from the requirements of Core Policy 49.
33. The National Planning Policy Framework ("the Framework") indicates that in rural areas, it might be necessary for business needs to be met outside settlements. It also suggests that groups of villages may share various services and facilities. Those principles might guide new development proposals, and imply that in some circumstances, residents might have to travel out of the settlement to use some facilities, but it does not follow from this that businesses should not be re-established or supported on existing sites that once provided such services or facilities.
34. I understand that the appellant is disappointed that the Council seemed reluctant to negotiate and discuss its concerns, especially when the appellant had been specifically invited to make the application. They also perceive that a more collaborative approach seems to have been taken at the *Black Horse*. Nevertheless, this has little to do with the merits of the case and my assessment of the evidence now before me.
35. While there may well be no conflict with CS Core Policies 1 and 2, or 14 – being more focussed with the delivery of new development rather than protection of existing assets, I find that there is a conflict with CS Core Policy 49. This is due to a lack of evidence surrounding compliance with criteria (iii) and (vii). As the key policy relating to the protection of rural services and community facilities, this results in conflict with the development plan read as a whole.
36. Core Policy 49 was drafted and adopted in a different economic climate. However, while marketing strategies may have changed, the precise approach is not prescribed in the policy. It has not been demonstrated that the general aims of the policy are inconsistent with those of the Framework, that there is any reason why

community facilities should not be protected where possible, or that the criteria cannot be sensibly applied to modern circumstances.

37. Nevertheless, the proposal is one for housing. Given that the Council cannot demonstrate a 5 year supply of deliverable housing land, Framework Paragraph 11 d) must also be considered. This indicates that the policies most important for determining the appeal should be deemed out of date, and that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
38. There is already residential accommodation at the site. Even if that can only be occupied in connection with the public house, the benefits in this case would be very small. Although the protection of community facilities are not one of the key policies listed in Framework Paragraph 11 d) ii, to which particular regard should be given, the adverse impacts resulting from the loss of a community facility, from a settlement where there are very few others, are substantial. Therefore, they significantly and demonstrably outweigh the very limited benefits in this case.
39. I, therefore, find that the proposal conflicts with the development plan and there are no material considerations that indicate otherwise that planning permission should be granted. Accordingly, Appeal B should not succeed.

Formal Decisions

Appeal A

40. The enforcement notice is quashed.

Appeal B

41. The appeal is dismissed.

M Bale

INSPECTOR