

Appeal Decision

Hearing held on 17 May 2016

Site visits made on 16 and 17 May 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 July 2016

Appeal Ref: APP/W3520/W/16/3143228

The Cross Keys, Main Road, Henley, Ipswich IP6 0QP

- 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 Mr R Hammond, Fernwick Ltd against the decision of Mid Suffolk District Council.
 - The application Ref 3349/15, dated 16 September 2015, was refused by notice dated 3 December 2015.
 - The development proposed is change of use of existing public house to residential dwelling including removal of part of existing car park.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant confirmed at the hearing that the name of the company is 'Fernwick Ltd', as opposed to 'Fenwick Ltd' as stated on the application forms.
3. The Cross Keys was nominated as an Asset of Community Value (ACV) under Part 5 Chapter 3 of the Localism Act 2011. The appellant has sought a review of the Council's decision to list the property as an ACV. That review confirmed the listing and a formal appeal has been lodged with the Independent Tribunal (CR/2015/0024). At the time of writing the outcome of this Tribunal is unknown. Nevertheless, I regard the listing as an ACV a material consideration that I have taken into account in determining this appeal.

Main Issues

4. The main issues in this case are:
 - Whether the proposed change of use would result in the permanent loss of a valued local facility;
 - Whether reasonable efforts have, or have not been made to maintain a viable business; and
 - Whether the business has been marketed at the correct market value and on appropriate terms.

Reasons

5. The Cross Keys public house is located on the south-eastern side of a rural cross road approximately 1 kilometre north of the village of Henley. A car park is situated to the south of the building and a farm house and associated buildings diagonally opposite. The pub closed in August 2014.
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Permanent loss of a valued local facility

6. Paragraph 28 of the National Planning Policy Framework (the Framework) makes clear that in order to support a prosperous rural economy local planning authorities should, amongst other things, promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship. In addition, paragraph 70 of the Framework states that planning policies and decisions should plan positively for the provision and use of shared space and community facilities, such as public houses to enhance the sustainability of communities and to guard 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.
7. Policy CS2 of the Mid-Suffolk Core Strategy (CS) (2008) states that in the countryside development will be restricted to defined categories in accordance with other policies. These include the re-use and adaptation of buildings for appropriate purposes, community services and facilities to meet a proven local need and employment generating uses. Policy E6 of the Local Plan (Local Plan) 1998 (Saved Policies) seeks to protect existing employment generating uses unless there is significant public benefit arising from its conversion to non-employment generating uses.
8. The Supplementary Planning Guidance (SPG)-Retention of Shops, Post Offices and Public Houses in Villages (2004) sets out the Council's position with specific regard to the conversion of pubs to dwellings. The SPG is not a formal planning document and cannot, therefore, be given the same weight as a Development Plan Document. However, I consider that the SPG is consistent with the Framework and this was agreed by the parties. Relevant aspects of the Camra Pub Viability Test 2015 are also addressed as an integral part of my reasoning.
9. The SPG states that there will be support for the retention of facilities where they can be shown to be viable. The change of use of a village public house to an alternative use will not be permitted unless a number of criteria are met including that there should be at least one other public house exists within the settlement boundary or within easy walking distance to it. The village has a population of approximately 560 and is classified as a 'secondary village'. There is no public house within the village of Henley or its immediate surroundings other than the Cross Keys. The proposal conflicts with the SPG in this respect.
10. It is suggested that the Community Centre performs many of the functions and services that historically have been provided by pubs including a bar, meeting room for local interest groups, space for wedding parties and larger functions to meet and dine and consequently provides a reasonable alternative to the public house. However, whilst the Community Centre has a licensed bar, I note that this is only open two nights a week on Wednesday's and Friday's and it also does not serve food on a regular basis. Consequently, I consider that it is not operating at a level to provide a reasonable alternative to or indeed compete with the pub.
11. The SPG advises that in the situation where a public house is outside the settlement boundary, a location that is within easy walking distance of the settlement boundary would be acceptable. It further advises that an acceptable walking distance would be 200m-300m. In this case the distance from the pub to the settlement boundary is approximately 700m which the appellant contends is too far for people to walk as the road is unlit and does not have a footpath. However, the local community consider that people regularly walk such distances in rural areas. I agree that whilst

beyond the recommended distance in the SPG, the pub is within an acceptable walking distance in the context of a rural area.

12. The appellant points to eighteen public houses within a five mile radius which provide a range of services and that the appeal site is 4.8 miles from Ipswich Town Centre. It is also suggested that the pub does not have the 'old world charm' of other pubs in the area. However, having viewed the interior of the Cross Keys, I noted that the pub was pleasant and had some character and could thus attract visitors from a wider catchment. Whilst there are a number of pubs in the wider area; these are not within walking distance of the village and would not, therefore, meet the criteria set out in the SPG.
13. The SPD also requires applicants to demonstrate that there is no evidence of significant support from the community for the retention of the pub. The appellant has kept a record of regular customers that visited the pub during the 40 weeks of trading, amounting to only 11. However, a written copy of this record has not been submitted in evidence and it is not clear how a regular customer has been defined. Furthermore, the pub would also be likely to rely on non-local and passing trade as it is within 5 miles of Ipswich. He contends that the pub has not formed part of the life of the community for some time. However, in contrast to that strong evidence was heard from the local community that when the pub was open it was very busy, particularly Sunday lunch times and Friday nights. Monthly quiz nights were also very well attended as were special events such as the opening. Indeed some local groups used to meet in the pub until it closed and they subsequently relocated to the Community Centre.
14. The listing of a building as an ACV can be an indication of the value that the local community place on a property to further the social wellbeing or social interests of the local community. Whilst the listing has not led to a community offer during the moratorium period, this in itself does not diminish the case for retaining the facility as a free enterprise. Henley Parish Council opposes the change of use and a significant number of objections were received to the planning application including a petition of over 100 signatures and a small census of the Henley area was also undertaken. I consider that this shows significant support for the retention of the pub and consequently the proposal does not meet this requirement of the SPD.
15. Allowing the change of use would permanently remove the last remaining pub within walking distance of Henley. Rural pubs are, however, important in terms of the social fabric of the community, a fact recognised by both the Framework and the SPG and they can also provide economic benefits to rural areas through the attraction of visitors. Taking into account that the retention of the pub has generated considerable support within the community and has been listed as an ACV, I consider that it can be deemed to be a valued local facility. In arriving at this conclusion I am aware that the pub is presently closed and it cannot, therefore, be a current asset in practical terms, however, from the evidence before me I consider that it has been an asset in the past and has potential to be an asset in the future.
16. I, therefore, conclude that the proposal would result in the permanent loss of a valued local facility and which would have a harmful effect on the social vitality of the community. The proposal would, therefore, be contrary to the SPG, Policy E6 of the Local Plan and paragraphs 28 and 70 of the Framework.

Whether reasonable efforts have, or have not been made to maintain a viable business

17. The appellant opened the public house in November 2013 after carrying out renovation work. Significant efforts were made to establish the business based on a

food led strategy. This included hiring a professional chef, leaflet distribution prior to the opening, articles in local newspapers and the use of social media. Efforts continued with regular quiz nights which were highly successful and local groups also met in the pub. The Christmas period was very busy and local people said that the pub was full on quiz nights and regularly busy for example on Friday nights and Sunday lunch times.

18. The potential for diversification of the business was discussed with planning officers of the Council. A previous planning application¹ included the erection of a new dwelling to provide staff accommodation; however, the application was refused. The appellant has also considered the potential for holiday accommodation in the form of chalets or static caravans and the potential for a bed and breakfast involving an extension to the property; however, these ideas were dismissed on the basis of the significant capital investment which would be required and that they would not provide the family accommodation which they required. As this part of Suffolk is not a tourist destination the appellant considered that the return on any investment would be questionable. Given the pub's location outside of the village the pub was not considered appropriate for multiple uses.
19. Evidence was heard from the community that the appellant appeared to lose interest in the pub following the refusal of planning permission for a new dwelling in May 2014 and that the opening hours of the pub started to become erratic thereafter. This affected the business, as people started to go elsewhere as the pub could not be relied upon. The pub closed in August 2014 after having only been open for 9 months.
20. The SPD requires that at least one years worth of management accounts is provided in support of such applications. I note that this requirement is significantly less than the requirement for 4 years worth of accounts as set out in the Camra Pub Viability Test (2015).
21. Two sets of accounts are before me, one supplied at the planning application stage and an updated set received at the hearing. The first set shows that the business generated a small net profit whilst the updated set shows a significant loss. At the hearing both the appellant and his accountant stated that they did not know the origins of the first set of accounts. The non-compatibility of the two sets of accounts has not been satisfactorily resolved. In the absence of a satisfactory explanation I can only give limited weight to both sets of accounts which in any event fall short of the time period required by the SPG.
22. The appellant considers that the business would need to have a turnover of £4000 per week, net of VAT, in order to be profitable. On the basis of the original accounts the business was taking around this figure. Indeed the Council's professional agent considers that making adjustments for extraordinary expenditure these accounts show that a decent net profit could be generated.
23. However, on the basis of the updated accounts the business was taking well below this figure and on this basis the business would not be viable. However, it is noted that the appellant hired a professional chef and that the salary was taken out of the business. The Council's professional agent suggested that a couple could run the business, one of whom could prepare the meals, which would make the business more profitable.

¹ Planning application reference 3626/13

24. The updated accounts show sales over a monthly/quarterly basis. As expected sales are high over the Christmas period with a decrease in January and February. However, it is clear that the takings had started to increase most likely reflecting the start of the summer. Takings then start to decrease reflecting the reduced opening hours. It is not clear why the opening hours were reduced and the pub was closed at a time when business had clearly started to pick up and during the summer period when trade is likely to increase.
25. The Council's professional agent indicates that public houses tend to run on three year cycles and that it could take that long to establish a business. The business was effectively started from scratch and I consider it unlikely that it could turn a reasonable profit in such a short space of time. However, that does not mean that it would not be viable in the longer term. Indeed the pub has clearly achieved some success in the short time it was open until the opening hours became more erratic. No accounts have been provided for the period before November 2013 so it is not possible to assess any possible long term trends. I noted on my site visit that the pub is in good condition and could easily be re-opened.
26. I note the appellant's reference to the 'chequered history' of the pub over the past 20 years, however, no details or evidence has been submitted in support of this assertion and it is not, therefore, possible to draw any conclusions regarding viability on this basis.
27. In conclusion, I do not consider that nine months is long enough to establish a successful business. Consequently, I do not consider that it has been demonstrated that the appellant has made sufficient attempts to maintain a viable public house business or genuinely consider diversification of the business. The proposal would, therefore, be contrary to the SPD.

Marketing

28. The SPG requires that applicants demonstrate that the property has been advertised for sale for a minimum of 12 months including supporting literature. Letters from the marketing agent Fleurets set out a range of measures which have been undertaken in order to sell the property as a public house. These included marketing on the Company's website, in national and regional media, the local press and regular advertisements in trade publications. Parties agree that the marketing of the property was extensive and indeed appeared to generate significant initial expressions of interest; however, this did not translate into firm offers. The Council consider that this is due to a number of factors relating to the terms upon which the property was marketed.
29. The property was initially put on the market for a price of £350,000 in July 2014 for a period of 6 months. The Council are concerned that this price was too high and appeared to be contrary to advice from one agent who suggested a marketing price of £295,000. Nevertheless, the asking price of the property was reduced from £350,000 to £295,000 at the request of the Council. The property was marketed at the reduced price from February 2015 to the present day. In my view consideration should have been given to lowering the price further once the pub had closed as this would have raised doubt in potential buyers mind regarding the viability of the pub. The Council's professional agent considers that £275,000 would be a realistic price when closed taking account of its residual value. The appellant indicated that he would now be prepared to accept this price, were an offer forthcoming.
30. The property was marketed with an overage clause relating to any uplift in value arising from residential development within the site. This overage clause continues

to be included despite an application for the erection of a new dwelling in conjunction with the public house being refused in May 2014. This may have acted as a deterrent to some buyers, although not the more seasoned entrepreneur. Nevertheless, the clause may be viewed as a marketing tactic to flag up that the property is not being sold as a pub, but as a development opportunity. The inclusion of the weekly turnover of £2,000 in the particulars may also have acted as a deterrent.

31. Two offers were received for the property, one from a consortium from the community and a separate offer from a single member of the same consortium up to £230,000 with an immediate 5% deposit (in advance of the moratorium period of the ACV). This offer was rejected by the appellant, without discussion, on the basis that it did not cover the appellant's initial purchase and capital investment necessary to refurbish the property. I also note a letter from someone in the hospitality trade who is interested in buying the property who considers that the property presents a particular set of assets which would suit their style of operation, although an offer has not yet been made.
32. To conclude on the third main issue, whilst the minimum period for marketing required by the SPD has been met and the marketing campaign has been extensive, it has not been sufficiently demonstrated that the price and terms upon which the property has been marketed are realistic and appropriate. The proposal is, therefore, contrary to the requirements of the SPD.

Other Matters

33. Attention is drawn to an appeal decision² relating to The White Horse Inn, Hitchen which was allowed. However, substantial evidence was provided in terms of the trading record of the pub in comparison to that provided for the appeal proposal.
34. Attention is also drawn to an appeal decision³ for The Bull Inn a China Shop, however, this relates to a former pub which had been converted into a shop. The Inspector concluded that the use as a bric-a-brac shop was not considered to constitute a valued local facility. Neither case is, therefore, directly comparable to the appeal proposal which limits the weight which I can attach to them in my decision.

Overall Planning Balance and Conclusion

35. I have found that the Cross Keys pub can be deemed to be a valued local facility. I have also found that whilst the marketing exercise has been extensive, it has not been demonstrated that the property has been marketed at a realistic price or on appropriate terms. Furthermore, I do not consider that, due to the short time which the pub was open, it has been clearly demonstrated that the pub cannot become a viable business in the future. Consequently, there is direct conflict with Policy E6 of the Local Plan, the SPG and paragraphs 28 and 70 of the Framework. Whilst the proposal would have some benefit in terms of providing additional residential accommodation, this benefit would not outweigh the significant harm which I have identified. For the reasons stated above and taking into account all other considerations I, therefore, dismiss the appeal.

Caroline Mulloy

INSPECTOR

² App/D3505/W/14/3001531

³ App/D3505/W/15/3006718

APPEARANCES

FOR THE APPELLANT:

Roy Hammond	Fernwick Limited
Martin Price	East Coast Planning Services
John Phillips	John Phillips and Co Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Edward Gittins	BA (Hons) Dip TP FRTPI	Edward Gittins and Associates
Johnathan Reubin	MRICS	Chartered Surveyor

INTERESTED PERSONS:

Johnathan Bloye	Resident
Sue Cosford	Resident
Kevin Griggs	Chair Henley Parish Council
John Field	Suffolk County Councillor and Mid-Suffolk District Councillor

Documents

- 1) Statement of Common Ground.
- 2) Cross Key Pub Updated Accounts-Figures Extracted (Nov 13-Aug 14).
- 3) Letter from Fleurets dated 4 May 2016 containing updated marketing information.
- 4) Letter from Dr Daniel Poulter MP for Central Suffolk and North Ipswich.
- 5) Offer letter from J Bloye dated 3 November 2014 to Fleurets.
- 6) Letter from Fleurets to My Bloye dated 12 November 2014.
- 7) Report to Executive-6 February 2004 Supplementary Planning Guidance: Retention of Shops, Post Offices and Public Houses in Villages.
- 8) Letter dated 2 July 2003 from Mid-Suffolk District Council entitled Draft Supplementary Planning guidance: Retention of Shops, Post Offices and Public Houses in Villages including circulation list.
- 9) List of conditions.