



Appeal Decision

Hearing held on 24 April 2012

Site visit made on 24 April 2012

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 2 May 2012

Appeal Ref: APP/M1005/A/11/2167333

Yew Tree Inn, Yew Tree Hill, Holloway, Matlock, Derbyshire, DE4 5AR

- 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 and Mrs C A Westnedge against the decision of Amber Valley Borough Council.
 - The application Ref: AVA/2011/0415 dated 6 April 2011, was refused by notice dated 20 June 2011.
 - The development proposed is change of use of former Yew Tree Inn Public House to form one dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. On 27 March 2012 the Government published the *National Planning Policy Framework* (NPPF). The documents listed at Annex 3 of the NPPF, which include most pre-existing Planning Policy Guidance Notes (PPG's) and Planning Policy Statements (PPS's) are now cancelled. I have taken into account the policies in the NPPF, heard what the main parties said on them, and have attached full weight to the saved development plan policies referred to.

Main Issue

3. I consider the one main issue is whether the proposed change of use would result in the loss of a local facility which could play an important role in sustaining the social and economic life of the village, having regard to the national and local policy background which seeks to support community facilities in rural communities.

Reasons

4. NPPF Policy 28 says local planning authorities should promote the retention and development of local services and community facilities in villages, including public houses. With similar aims, Policy 69 adds that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. To this end, Policy 70 specifically says that planning policies and decisions should 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.

5. At the local level, saved Policy LC11 of the Amber Valley Borough Local Plan (LP) accords with these aims of the NPPF and says that the change of use of community facilities will only be permitted where it can be demonstrated that there is insufficient local demand to justify or sustain their existing use. The accompanying text to the policy expands on this by saying there is a need to protect community facilities from any other potential uses unless it can be shown that there is no demand for their continued use.
6. A public house is generally regarded as a key facility and the large volume of representations from local residents indicates the extent to which the community regrets its loss. The Yew Tree is located in the centre of the village within easy walking distance of a large number of properties, and until closure in 2008 was the only public house this in fairly large village of about 600 residents. The closest public house still operating is the Jug and Glass at Holloway. Although within the same joint parish it is about 1.7km from the site, and I accept is not within particularly easy walking distance for the majority of residents. Since closure in 2008 the appellants have continued to occupy the residential accommodation on the upper floors.
7. The evidence before me suggests that the public house played an important part in village life, and was used as a meeting place for several local groups. Many residents say it was less well frequented in the years leading up to its closure for a variety of reasons. A lack of investment in the property, the welcome given to customers, inconsistent beer/food quality, and reduced opening hours, are all mentioned. This is strongly contested by the appellants, and in any event, such comments are subjective to a large degree, and cannot be tested now that the public house has closed.
8. Notwithstanding this, the public house remained fully operational albeit with falling revenues. In 2007 the appellants attempted to diversify the business with a proposal to build holiday flats on part of the car park, although this was rejected by the Council for design and access reasons. The audited accounts submitted for the years 2005-2008 confirm this position, showing that a net loss was returned in three of the four years, with only a very modest profit (£854) in 2006. Although accounts were not presented for the period before 2005, the appellants say profits had gradually been falling since the start of the decade. However, there is nothing before me that points unequivocally to the lack of a viable business operating for the first ten years or so after the current appellants took up the tenancy and subsequently purchased the freehold in 1991, or indeed prior to that date under different ownership or management.
9. Whilst I accept that the public house was unprofitable for a considerable period, and apparently was not frequented by local people in large numbers in the years leading up to closure, this could change in time and under different operating circumstances. Once the facility is lost, it is unlikely to be regained by the village.
10. I turn now to the marketing exercise undertaken to sell the premises since December 2008. I understand that there have been 18 viewings in total. The appellants confirmed at the Hearing that although the pub is still listed with the *Hawksmoor* Group, active attempts to promote the sale have now ceased and viewings have not taken place for some time.
11. I have serious reservations regarding the adequacy and robustness of the marketing strategy in this case. For example, a number of factors in the

agent's particulars and newspaper advertisements might have put a negative spin on the property and affected the inability to find a buyer. From the outset the premises were offered for sale "with potential for a wide variety of uses including public house, community uses, and residential accommodation". Nor can I rule out the possibility that had the appellants used an agent specialising in this type of property, and relied on national as well as local newspaper advertising, this may have improved the chance of a sale.

12. Throughout the marketing period no asking price was disclosed and interested persons were simply invited to "make an offer". To my mind this does not enable potential purchasers to make meaningful comparisons with other premises on the market within their budget. Indeed, it was only revealed at the Hearing that the appellants have expectations of realising somewhere in the region of £250,000- £300,000. I was supplied with details of three other public houses for sale locally: The Canal Inn at Bullbridge, for which £250,000 plus VAT is sought; the Hop Inn at Openwoodgate (£199,000 plus VAT); and the Greenhill Hotel at Riddings (£195,000 plus VAT). I accept it is invidious to make meaningful comparisons in terms of value, as much depends on location, condition of the building, and many other factors. However, like the Yew Tree, these public houses are all offered with the benefit of freehold tenure and have ample living accommodation and car parking, although the Canal Inn additionally includes a camping site and the Hop Inn has letting bedrooms.
13. It is not disputed that a £150,000 offer to buy the Yew Tree on behalf of the community was made in June 2011, though rejected by the appellants as being unrealistically low. That is a decision for them. However, the length of time that has elapsed since the premises were first marketed, the downturn in the property market, the amount of modernisation and improvement work needed, and the price of comparable freehold licensed premises must all be taken into account. From the evidence it is not possible to say whether the financial backing is in place for such a purchase, but whilst there is a possibility of it materialising, the presence of this offer remains an important factor. I am also aware from the representations that serious interest was expressed by two other public house owners in the area. Whilst these did not lead to formally-made offers, taken together these various expressions of interest lead me to conclude that there is sufficient demand to justify or sustain the existing use.
14. I appreciate the pressures under which public houses have to operate in the present economic climate, and note the appellant's comments that the recent smoking ban and increasingly tendency for people to drink at home has had a marked effect on public house trade in recent years. This is not disputed. However, the Yew Tree is located in an attractive area with considerable visitor appeal. It is close to many well known tourist attractions, is on the edge of the Derwent Valley World Heritage Site, and is located in attractive and popular walking country. The village is also well known for its Florence Nightingale connections and this attracts many visitors. Whilst the Jug and Glass benefits from a main road location; and bed and breakfast accommodation may assist trade at other public houses, the attractions and attractiveness of the area together with the combined population of the joint parish could, in my view, also be used to work to the advantage of the Yew Tree.
15. I have been referred to a recent appeal decision at the New Inn, Somercotes (Ref: APP/M/1005/A/09/2096348). Although dismissed for other reasons, the Inspector on that occasion was satisfied that sufficient financial evidence had

been submitted to demonstrate that the pub was no longer viable, and that the proposal would not lead to the loss of a valuable community facility. However, the circumstances are somewhat different from those in this appeal. The New Inn is not located in a village, but in a more suburban setting. There are also a number of other public houses nearby, and the Inspector considered there was insufficient local demand to sustain them all. Nor was evidence of any difficulty arising from the closure of the public house put forward by the community. In any event, each application and appeal will be dealt with on its own merits.

Other Matters

16. The site is within the Holloway Conservation Area where LP Policy ENV27 applies. This requires proposals to respect the existing building and surroundings, and to preserve or enhance the character or appearance of the conservation area. However, there would be no significant changes to the appearance of the building, and on this basis the Council has raised no overriding objections.
17. Nonetheless, NPPF Policy 131 says local planning authorities should also take account of the positive contribution that the conservation of heritage assets can make to sustainable communities (including their economic vitality). In this regard I agree with the Council that, although less quantifiable than any physical impact, the permanent loss of the public house would have a detrimental impact on the social character and vitality of the conservation area. This consideration adds weight to my findings on the main issue.
18. I note that the Planning Officer recommended approval of the application to the Planning Committee. However, I am satisfied that the Council has adequately substantiated its reasons for refusal, supporting its views that the proposal would conflict with LP Policy LC11.

Conclusion

19. The evidence does not convince me that the Yew Tree could not be operated in a commercially viable manner, and thereby make a positive contribution to the community. Whilst I appreciate it has not traded for some time, I consider its permanent loss to residential use would be harmful to the social and economic life of the village of Holloway. The appellants say they do not intend to re-open the public house, but were I to allow the appeal for this reason it would encourage other property owners to pursue vacancy as a way of achieving a change of use that might otherwise be unacceptable.
20. In conclusion, whilst I sympathise with the appellants' predicament and desire to continue living in what has become the family home, I do not find that the facts in this case justify a departure from the aims of national and local policy which seek to retain facilities that contribute to a community's vitality and sustainability. Therefore, for the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Lawson	Agent, 2 Cities Planning Consultancy
Brian P Egerton	Hawksmoor
Clive Westnedge	Appellant
Carole Westnedge	Appellant
Lynn Lound	Relative of appellant
Jim Lound	Relative of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jon Millhouse	Planning Design Practice
Cllr David Taylor	Member, Alport Ward, Amber Valley Borough Council

INTERESTED PERSONS:

J Alan Crow	Chesterfield branch of CAMRA (Campaign For Real Ale)
Michael Wysor	Local resident
Helen Aldred	Local resident
Ian Foster	Local resident
Sandra Meakin	Local resident
Susan Davies	Local resident
N Gregor McGregor	Local resident

DOCUMENTS

1 Sales particulars for other public houses from Fleurets