

WINTERBOURNE 19/00346/FULD Pins ref: 3237025	Winterbourne Arms Winterbourne Newbury Berkshire RG20 8BB	Conversion of existing public house to a residential dwelling.	Dele Refusal	Dismissed 21.01.2020
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Procedural Matters

An application for costs was made by Mr. Nicholas Roffe against West Berkshire Council. This application is the subject of a separate Decision.

The date of the application in the banner heading above was confirmed at the hearing as this information is redacted in the copy of the application provided to the Inspector.

The appellant submitted two bat survey reports and a letter in relation to past marketing of the pub in support of the appeal, each seeking to address the Council's reasons for refusal. The Inspector noted the Council's objection to the submission of such evidence on the basis that it has not been subject of consultation. However, whilst submission of such evidence is not unusual in the context of an appeal, aside from the proposal to install a bat tube, no change has been made to the appeal proposal. Furthermore, the Inspector could see no obvious way in which his consideration of two bat reports and letter on past marketing would prejudice the interests of any party, and none has otherwise been identified. He therefore took this evidence into account in his reasons below, and was satisfied that the interests of no party would be prejudiced by his doing so.

Main Issues

The main issues are the effects of the development on:-

- local vitality;
- the significance of a non-designated heritage asset; and
- bats.

Reasons

Vitality

West Berkshire Council Supplementary Planning Guidance No. 19 Public Houses 2000 (the SPG) provide a list of restrictive criteria to be considered in the context of applications involving the loss of public houses. The SPG is almost 20 years old, nonetheless the Inspector considered that it remains generally relevant to the interpretation of more recent policies cited by the Council, and set out within the West Berkshire Core Strategy (2006-2026) Development Plan Document 2012 (the CS) and the Housing Site Allocations DPD (2006-2026) 2017 (the HSA). Moreover, he saw no fundamental conflict between the approach set out in the SPG and paragraph 83(d) of the National Planning Policy Framework (the Framework), which states that decisions should enable the retention and development of accessible local services and facilities, including public houses.

Winterbourne is a very small settlement within which the Winterbourne Arms occupies a reasonably central position. The past importance of the pub as a community facility is disputed by the appellant, citing factors such as its reliance on broader trade, and its lack of hosted activities such as clubs. Be that as it may, relative to the size of the local community, and lack of other community facilities, the Inspector saw no reason to believe that the pub played anything other than an important role in village life prior to its closure in 2017, offering a place to meet and socialise, as too employment opportunities. The extent to which the use was valued is indeed clearly reflected in the high level of public representation made in relation to the planning application, and further submissions made in relation to the appeal.

The testimony of the previous owner indicates that closure of the pub in 2017 was for personal rather than financial reasons. The appellant bought the pub in 2018. At this time the pub had been on the market for 10 months, and thus longer than the SPG requirement for a minimum of 6 months marketing. The appellant however confirmed at the hearing that in purchasing the Winterbourne Arms his intention was to reopen it and to continue running it as a pub. As such, regardless of how much interest was shown by other individuals or organisations during the marketing process, what their particular motives might have been, and how long marketing went on for, the marketing process was itself ultimately successful as it found a buyer who wished to operate the business. This fact is not altered by the appellant's subsequent decision not to reopen the pub.

The Inspector also noted the fact that the pub has since been registered as an Asset of Community Value (ACV), and the steps taken by the Parish Meeting to assemble funding to potentially purchase the pub if marketed. The ACV registration is subject of appeal, and assembly of funding remains at a very early stage. However, in each regard circumstances have changed since the pub was last marketed, and interest in a resumption of its use demonstrably exists.

For the above reasons, past marketing of the pub under a different owner cannot be considered to prove that were the exercise to be undertaken again, it would fail. It is not in any case any adequate substitute for up-to-date evidence.

Viability nonetheless remains in dispute. Both parties rely on a viability report (VR) commissioned by the Council. Here the Inspector acknowledged that interested parties dispute the validity of the VR for a number of reasons, and he considered that its lack of any firm basis in past accounts reduces certainty. The main parties nonetheless agreed at the hearing that the VR indicates that viability essentially turns on the condition of the building, and the level of investment that would be required to rectify this. Even acknowledging the limitations of the VR, it was indeed apparent from his visit that the building is in poor repair, and that substantial investment would be required to remedy this. In this regard however it was also agreed by the main parties that condition is a factor taken into account in valuation.

On this basis, were the building in full repair, its value would clearly be greater than if not. The difference in value would, if not wholly, be substantially reflective of the costs involved in undertaking remedial work. As such an incoming buyer with resources sufficient to purchase the pub in full repair, would presumably be equally capable of covering the costs of remedial work, provided this was properly accounted for in the valuation.

The extent to which this basic formula was considered by the appellant when purchasing the pub is disputed, including by the previous owner, who claims that an allowance was made in the price paid by the appellant. This was indeed less than the price at which the pub was marketed. At the Hearing the appellant also made reference to a plan to develop a dwelling in the grounds, which would presumably have provided a further source of funds, though no permission for this appears to have been sought. Whatever the reason for the appellant's decision not to reopen the pub following its purchase may have been however, this cannot be taken as a reliable indication of the pub's potential to be viable in a different, and securely financed ownership.

The Inspector acknowledged that the VR considers that the pub would not attract interest from other buyers given the element of risk involved. However, in the absence of any up-to-date and realistic marketing of the building at a price which is clearly reflective of both its current condition and public house use, it has yet to be proven whether the need for remedial works in fact renders its use unviable, or therefore that the use is truly redundant.

The appellant has drawn attention to other pubs which exist in the wider area, and which local residents can make use of instead. The character of these pubs however varies, and not all offer the same types of service. Moreover, they all require travel, and as they are obviously located outside Winterbourne, they clearly cannot provide direct or adequate substitute for a facility physically located at the centre of the village community.

As the pub has now been closed for more than two years, harm to the social and economic vitality of the community, and indeed related harm to its sustainability, has accrued over this period. This harm would be made permanent were the use of the Winterbourne Arms to change. Such harm would be unacceptable in the absence of demonstrable redundancy of the use proven by realistic up-to-date marketing.

For the reasons outlined above the Inspector concluded that the development would have an unacceptably harmful effect on local vitality. It would therefore conflict with Policy C4 (ii) of the HSA, which, in the context of the conversion of existing redundant buildings in the countryside requires proof of redundancy; Area

Delivery Plan Policy 5 of the CS, which amongst other things seek to support, encourage and protect small businesses in the North Wessex Downs Area of Outstanding Natural Beauty (the AONB); supporting guidance in the SPG; and relevant provisions set out in the Framework, and outlined above.

Non-designated heritage asset

The Council has identified the Winterbourne Arms as a non-designated heritage asset. The Inspector also noted the evidence on heritage matters presented by interested parties.

Externally the building appears to be of late nineteenth century date, but it may also incorporate elements of an earlier building. The size of the building, and its apparently mock Tudor architecture, provide it with a distinctive appearance. In addition to providing public house facilities, the building is said to have hosted a bakery and shop in the past. It has therefore played an important long term role within the economic and social life of the community, albeit not solely as a public house.

In his view the significance of the building therefore principally resides in its architectural appearance and visual presence within the village streetscene, as too evidence of the past functions the building has served within the village community. In this regard the use of the building clearly has a bearing on the way in which this significance is experienced and appreciated, by local people in particular.

The development would not involve any change to the exterior of the building, and the renovation works required would be much the same as the works that would need to be undertaken if the building were to remain in use as a pub. These would help to secure the physical integrity of the building fabric. The appellant has also confirmed that the pub sign could be retained. Externally therefore, there would be little change.

The Inspector's attention was drawn to changes which would occur inside, principally including removal of the bar. However, changes to the interior could occur whether or not the pub changed use and would not generally be subject of any control. The internal changes proposed are in any case quite modest.

The design of the building is not sufficiently specialised that use in a specific way is essential in order to enable the design to be understood. In this context a change to residential use would not appear incongruous. Traces of past public house use would remain, in the same way as does evidence of other uses to which the building has been put in the past.

The change of use would mean that historic social and economic role the building has played within the village community would permanently cease, and the way in which the building was experienced and appreciated would change. In view of his reasons above however, and making a balanced judgement in accordance with paragraph 197 of the Framework, any harm this would cause to the heritage interest of the building overall would be limited, and not unacceptable in its effect.

The Inspector acknowledged the Council refused planning permission partly on the basis that no heritage impact assessment was provided. In this context paragraph 189 of the Framework indeed states that applicants should be required to describe the significance of any heritage assets affected, in a level of detail proportionate to the assets' importance and sufficient to understand potential impact. Paragraph 190 of the Framework indicates a similar responsibility for local planning authorities when assessing an application. In this regard, notwithstanding the absence of information from the appellant, the Inspector was satisfied that he had sufficient information to reach the view set out above.

For the reasons set out above the Inspector concluded that the development would not cause any unacceptable harm to the Winterbourne Arms as a non-designated heritage asset. It would therefore comply with Policy CS19 of the CS, which amongst other things, seeks to ensure the conservation and, where appropriate, enhancement of heritage assets and their settings; and Policy CS14 of the CS which seeks to secure design that respects and enhances the character and appearance of the area.

Bats

The decision notice makes generalised reference to protected species. In this regard the Council confirmed at the hearing that the species of particular concern is bats. The suitability of the building for use by bats is confirmed in the appellant's Preliminary Roost Assessment submitted with the appeal. This also confirmed the potential for the development to have an impact on bats.

An Emergence Survey (ES) was subsequently undertaken, and the results of this were also submitted with the appeal. Though this recorded a high level of activity by bats in the vicinity of the site, it did not show any bats entering or leaving the building. On this basis, if the conversion was undertaken within the 12 month period within which the ES is valid, it is unlikely that it would have an adverse effect on bats. Any planning permission would clearly endure for longer than this, however general legal obligations and licensing requirements in respect of bats would continue to apply regardless.

The ES also sets out modest enhancement measures relating to lighting and provision of a bat tube, each of which could be secured by condition.

The Inspector noted the three appeal decisions referenced by the Council, however insofar as these relate to appeals dismissed partly on grounds on a lack of evidence related to protected species, they are not relevant. This is because the required information has been supplied.

For the reasons set out above the Inspector concluded that the development would not have an adverse effect on bats. It would therefore comply with Policy CS17 of the CS which seeks to conserve and enhance biodiversity across West Berkshire.

Other Matters

As the site is located within the AONB the Inspector had regard to the statutory purposes of the AONB's designation, which are, most particularly, to conserve and enhance the natural beauty of the area; and paragraph 172 of the Framework, which states that great weight should be given to conserving and enhancing landscape and scenic beauty within ANOBs. In this context the site has very little exposure within the wider landscape and is well related to

surrounding development. As the external appearance of the building would not in any case be subject to change, the landscape and scenic beauty of the AONB would be preserved.

Interested parties drew his attention to a number of listed buildings within the general vicinity of the Winterbourne Arms, and the potential for the development to affect their settings. These listed buildings are the Winterbourne War Memorial, a dovecote, and dwellings consisting of Pedlars, The Shack, and April Cottage. Most form components of the same general streetscene as the Winterbourne Arms. Other than this however the Winterbourne Arms makes no obvious or direct contribution to the significance of these buildings. As the external appearance of the Winterbourne Arms would be left unchanged, it follows that the general contribution it makes to the settings of these buildings within the streetscene would be preserved.

The appellant states that residential use of the site would deliver a number of benefits over its use as a pub. These include less noise, and less disturbance of neighbours, less environmental harm generated as a result of travel by patrons, and better use of the site. However, whilst noise and disturbance do not appear to have been factors giving rise to any significant local concern, the need for travel instead exists for local residents who must drive long distances to access alternative facilities. Furthermore, as use of the site as a public house would, if active, provide a range of social and economic benefits for the local community, use for housing, which would not deliver the same level of benefit, cannot be considered a 'better' use. The benefits advanced by the appellant do not therefore alter the Inspector's view of the merits of the appeal scheme.

Conclusion

For the reasons set out above he concluded that the appeal should be dismissed.

Costs Decision

The application for an award of costs is dismissed.

Reasons

The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

The applicant claims that the Council acted unreasonably on grounds which the Inspector summarised as:-

- a) making vague, generalised or inaccurate assertions in relation to viability and marketing, which are unsupported by any objective analysis, and indeed refusing planning permission partly on this basis;
- b) failing to request information in relation to heritage and ecology at the application stage which could have avoided refusal on these grounds; and
- c) failure to withdraw its reason for refusal on ecological grounds despite evidence being presented, necessitating additional costs in relation to an expert witness.

The Viability Report (VR) commissioned by the Council reached a view that the Winterbourne Arms could not be viably returned to use as a pub. It nonetheless also indicated that viability turned on the condition of the building. In this regard, whilst the VR touches briefly on past marketing, it does not consider valuation. The marketing evidence is itself old, relating to the sale by the previous owner to the appellant. There is therefore no up-to-date marketing evidence based on a realistic valuation of the building in its current condition. As neither the

VR nor the marketing evidence can therefore be held to prove that the Winterbourne Arms has no future as a public house, the Council did not act unreasonably in arriving at the view that the pub was potentially viable, or therefore refusing permission partly on this basis. Ground (a) therefore fails.

The PPG states that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, however behaviour and actions at the time of the planning application can be taken into account. In this regard the Council does not dispute that information on heritage and ecological matters was not requested at application stage. In the Inspector's view this was unreasonable. Given his findings in relation to ground (a) however, it is apparent that even if the Council had sought this information, it would have made no difference to the Council's decision, which was principally concerned with the proposed change of use. It would also not therefore have avoided the case coming to appeal.

In relation to the appeal itself, the applicant incurred costs in commissioning the bat surveys. The same costs would however have been incurred had the surveys been undertaken at or before application stage. Insofar as these surveys were essential, the related costs were necessary. Little or no expense appears to have been generated in relation to heritage at appeal stage. Indeed, no heritage impact assessment or other detailed evaluation of the matter was provided by the applicant. In the absence of any unnecessary or wasted expense, ground (b) fails.

Following submission of the bat surveys with the appeal it would have been reasonable for the Council to withdraw the related reason for refusal, and accept that the matter could be dealt with by condition. This is because the surveys set out in no uncertain terms that bats were absent from the building, and that enhancements could be achieved. The Council's stance however appears to have been to continue to defend the principle of its original refusal, rather than to accept that the reason was no longer valid. This was unreasonable.

The Inspector acknowledged that the applicant therefore engaged an ecology consultant to attend the hearing as an expert witness. He also noted that the applicant warned the Council in advance of his intention to do so. Be that as it may however, in view of his finding above, it was not essential for the consultant to attend the hearing. Indeed, in the absence of any substantive case on the Council's side, this served little purpose other than to confirm the content of the survey reports. The expense involved was therefore unnecessary. However, in the Inspector's view this could have been reasonably anticipated by the applicant, and therefore simply avoided. He therefore placed the responsibility for this expense with the applicant rather than with the Council. Consequently, ground (c) fails.

Whilst not forming one of the main grounds of the application for costs, the applicant additionally notes a delay in the Council's determination of the planning application. The date of determination was extended twice. It is apparent that the first extension of time was agreed, but it is unclear whether the second extension, which expired on the date the Council issued its decision, was also agreed. It is therefore unclear whether or not the Council acted unreasonably in this regard. Either way, the delay did not cause any obvious wasted or unnecessary expense in the context of the appeal, and therefore no basis for an award of costs exists.

Conclusion

For the reasons set out above the Inspector concluded that the applicant's claim for a full award of costs should be dismissed.

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