

Appeal Decisions

Hearing held on 2 October 2013

Site visit made 2 October 2013

by M C J Nunn BA BPL LLB LLM BCL MRTPI

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

Decision date: 26 November 2013

Appeal A Ref: APP/P0240/A/13/2198005

The Green Dragon, 69 High Street, Gravenhurst, Bedfordshire, MK45 4HZ

- 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 J C Gill Developments Ltd against the decision of Central Bedfordshire Council.
 - The application Ref: CB/12/04056/FULL, dated 15 October 2012, was refused by notice dated 22 January 2013.
 - The development is described as 'change of use from existing public house to single domestic residential house; new single garage and all ancillary works'.
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Appeal B Ref: APP/P0240/A/13/2197986

The Green Dragon, 69 High Street, Gravenhurst, Bedfordshire, MK45 4HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by J C Gill Developments Ltd against the decision of Central Bedfordshire Council.
 - The application Ref: CB/13/00751/OUT, dated 1 March 2013, was refused by notice dated 30 April 2013.
 - The development is described as 'proposed detached one bedroom bungalow and all ancillary works'.
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Decisions

Appeal A

1. Appeal A is allowed and planning permission granted for the change of use from existing public house to single domestic residential house, new single garage and all ancillary works, at The Green Dragon, 69 High Street, Gravenhurst, Bedfordshire, MK45 4HZ, in accordance with the terms of the application Ref: CB/12/04056/FULL, dated 15 October 2012, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
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- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1213.PL.01 (Block Plan), 1213.PL.02 (Floor Plans, Sections and Elevations).
- 3) The materials to be used in the construction of the external surfaces of the garage hereby permitted shall match those used in the existing main building.
- 4) No development shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. The approved works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 5) The development hereby permitted shall not be occupied until the means of vehicular access to the highway, including visibility splays, has been provided in accordance with details to be submitted to and approved by the local planning authority.

Appeal B

2. Appeal B is dismissed.

Procedural Matters

3. At the start of the hearing, I enquired about the absence of a Statement of Case from the Council for both Appeals A and B. Although the Council stated that two statements had been sent to the Planning Inspectorate on 23 July 2013, there is no record of these having been received.
4. At the hearing itself, the Council offered copies of its Statements and I adjourned the hearing for a period to allow time for them to be read.¹ After the adjournment, I asked the appellant's representatives if they had had sufficient time to digest the contents of the statements, or whether they would prefer to adjourn the hearing to a later date. They confirmed that they were happy to proceed that day and did not feel disadvantaged.
5. The topographical survey listed on the Council's decision notice in respect of Appeal A was not originally supplied to me. However, this has subsequently been provided.
6. Appeal B is made in outline with all matters reserved for subsequent determination. I have assessed the appeal accordingly.
7. A planning obligation, amended after the hearing, has been submitted. I deal with this in the body of my decision.

¹ I understand the appellant's representatives had been supplied with copies by the Council the day before the hearing on 1 October 2013

8. An application for a partial award of costs was made at the hearing by J C Gill Developments Ltd against Central Bedfordshire Council. This application is subject of a separate decision.

Main Issues

9. Given all that I have read, the discussions at the hearing, and including local representations received, I consider the main issues to be:

For Appeal A:

- i. whether the proposal would be acceptable having regard to national and local policies aimed at protecting public houses in villages;
- ii. the effect on living conditions at No 71 High Street, in terms of outlook;

For Appeal B:

- iii. whether the proposed new dwelling would unacceptably reduce parking provision for the adjacent public house and whether the resulting configuration of car parking would be safe in highway terms;
- iv. the effect of the proposed new dwelling on highway safety;
- v. the effect of the proposed new dwelling on the character and appearance of the area;
- vi. whether a planning obligation is necessary.

Reasons

Appeal A

Background

10. The appeal site comprises a two storey former public house located within the settlement envelope of Gravenhurst, a small village within a rural area. Originally, the site comprised a substantial adjacent car park and garden area although the car park is now significantly reduced in size, and the garden area entirely lost, following the construction of a detached dwelling (No 71 High Street), granted permission by the Council in August 2011.² Visually, the former public house appears as part of the built up area of the village. The wider surrounding area comprises open countryside. The public house has been closed since January 2012, after intermittent trading periods.
11. At my site visit, it was apparent that all the fixtures associated with the public house use had been removed, including all signage advertising the building as 'The Green Dragon'. The ground floor had been stripped out, with all vestiges of a bar and drinking facilities eradicated. The ground floor area had been refurbished, with a small kitchen area, and toilets, and is currently a vacant empty space.³ Part of the ground floor area, which previously comprised a

² Council Ref 11/01872/FULL

³ The premises are being advertised for use as a "village shop", (printout of S R Wood & Sons Ltd webpage advertising appeal site for sale / let, submitted by the Council at the hearing).

kitchen for the public house, has now been severed to form part of a separate residential unit.⁴

Policy Framework

12. Of relevance to Appeal A is the National Planning Policy Framework ('The Framework'). In particular, Paragraph 28 makes it clear that in order to support a prosperous rural economy, planning decisions should, amongst other things, promote the retention and development of local services and community facilities in villages, including public houses. In a similar vein, Paragraph 69 states that planning decisions should aim to promote opportunities for meetings between members of the community. Paragraph 70 requires that planning decisions should plan positively for the provision of community facilities, such as public houses, and guard against the unnecessary loss of valued facilities and services.
13. This approach is reflected in local policy and specifically Policy DM8 of the Core Strategy and Development Management Policies (CS) adopted in 2009.⁵ Essentially, this policy states that permission will not be granted for proposals resulting in the loss of public houses in villages unless two criteria are met: first, there are other facilities performing the same function within easy walking distance of the village community; and second, the applicant provides evidence that there is no prospect of the use continuing.
14. In respect of the first criterion, it is common ground between the parties that, although there are various public houses in the wider area, none are within easy walking distance. In respect of the second, the appellant argues that the public house use is not viable and has submitted evidence to demonstrate this in the form of a 'viability report'.⁶ Furthermore, in support, the appellant also argues that the public house was not a 'valued facility' in the sense required by the Framework. I deal with these various matters below.

Whether a 'valued facility'

15. The appellant argues that the Framework does not impose a 'blanket ban' on the loss of public houses, but only seeks the retention of 'valued facilities'. In this case, the appellant highlights that the public house was unable to operate profitably because of the lack of use by local people, and that only a relatively small number of letters were received in support of retaining the facility. On this basis, it is argued the Green Dragon was not valued.
16. However, it seems to me that a number of the local representations, including from Gravenhurst Parish Council, make it clear that the facility was valued. Comments refer to the public house being "very popular with villagers and greatly missed", and that it was "its social hub". Reference is also made to the loss of the village's shop, its post office, and a church, and that there are no other similar local facilities that can be reached on foot. To me, these submissions do not support the notion that the 'Green Dragon' was not valued.

⁴ At the hearing, the Council mentioned that some of these works, in particular the formation of a separate residential unit, may require planning permission which has not been sought.

⁵ The Council also refers to Supplementary Planning Guidance: "Retention of the Last Village Pub", published December 2002. This provides further guidance on retaining rural public houses, but it refers to Policy TCS17 of the previous development plan, now no longer extant.

⁶ Report of Trinity Solutions Consultancy Ltd, dated 13 July 2013, prepared by Michael Lawton

17. Having regard to the Framework, I consider that rural public houses are important in terms of the social fabric of a community, and that they can also provide economic benefits to rural areas through the attraction of visitors. However, since the public house is now closed, it cannot be regarded as a current valued asset in practical terms. Nonetheless, given that the public house was the only facility in the village, and there appears to be significant support for it in the village, borne out by a number of the representations, I conclude it was a valued facility when it operated.

Viability and Marketing

18. The public house was purchased by the appellant in August 2010, and was already closed at that time. It then re-opened for two short separate trading periods with two different tenant managers. The first trading period was from February 2011 to May 2011. According to the appellant, the public house was operating at a loss of £186.37 per week. Aggregated over a year, this would amount to an annual loss of £9,691.24 per annum.
19. The second trading period was from June 2011 to January 2012, and appears to have achieved slightly higher levels of trade. The Council and some local residents argue that, especially during the second trading period, anecdotal evidence was that the public house was reasonably popular and trading quite well. The appellant, in contrast, estimates a loss of around £100 per week during this period, representing an annual loss of £5,200 over the year, although no accounts are available to substantiate this.
20. The Council and some local residents say the public house was closed suddenly by the appellant without apparent justification. The Council has suggested that this was to reinforce the appellant's case that the use was not viable, and the preferred use of the building for residential purposes could be justified. Attention is also drawn to the fact that the tenant managers did not have access to the commercial kitchen, meaning no food could be sold, but only 'wet sales'. It also seems the associated residential unit over the public house was let out separately. I agree these factors would adversely affect the ability of the public house to operate viably and successfully.
21. At the hearing, the question was put why both trading periods were so short, on the basis that insufficient time was given to enable the businesses to properly establish. However, the appellant said it was clear early on that the business would not achieve adequate profitability, and therefore the decision was made to terminate trading on both occasions, before losses mounted.
22. I understand the appellant's desire not to continue to operate an unprofitable business. I also accept that various factors in recent years have generally affected this sector. These include increasing retail alcohol sales from supermarkets, the smoking ban, increased fuel prices, fundamental changes in what people do in their leisure time, changes in drinking habits, as well as the general economic downturn. The site itself is in a remote location, with a limited local population and poor public transport links. I accept all these factors may have affected viability.
23. In further support of its case, the appellant has argued that the freehold property has been marketed for sale, but without success. The appellant also says the building was offered to the Parish Council, but it is not clear on what

terms or price. However, the Council says the lack of success is likely to be because of the excessive asking price of £325,000. I understand that the property was originally purchased in 2010 by the appellant for £260,000. The new dwelling at No 71 High Street granted permission on part of the car park and garden was sold for £430,000 in September 2012.

24. Ultimately, the correct price for a business / property is the price someone is prepared to pay for it, and not necessarily the price required by the vendors. I agree with the Council that the price of £325,000 does appear particularly full, bearing in mind a large proportion of the original property has been sold off, and a new property constructed and subsequently sold for a substantial amount of money. I am therefore not surprised that the marketing of the property has been unsuccessful, given the excessive asking price.

Balancing exercise and overall findings on the first issue

25. I consider that, contrary to the appellant's assertions, the public house was regarded as a valued facility when it was open. Furthermore, in my view the appellant has done little to foster the business. In fact, many of his actions have directly undermined its ability to operate viably. In particular, the building's facilities have been severely diminished, including the loss of much of the parking area, as well as the attractive outside garden amenity area, and the removal of the kitchen area.
26. However, the Council has hardly helped matters. Granting permission for a substantial dwelling on a large part of the site was inimical to its continued viability as a public house. By significantly reducing its car park, and removing its garden area, the property is far less attractive for this use. Whilst internally the building could feasibly be once again fitted out as a public house, the construction of the new dwelling and the loss of parking and garden are irreversible.
27. At the hearing, the Council mentioned that some of the works undertaken, in particular the formation of a separate residential unit within the building, may have required planning permission which has not been sought. However, I understand that no formal investigations or enforcement action has been initiated by the Council to rectify this. Such inertia has not enhanced the prospects of the 'Green Dragon' continuing viably.
28. I accept the public house sector generally is now in difficulty because of various factors, including changes in drinking patterns, competition from supermarket sales and the smoking ban, to name a few. Moreover, the appellant's viability report also indicates that based on a number of different scenarios, the 'Green Dragon' would not be commercially viable.⁷ Although the Council at the hearing questioned some of the assumptions made in the calculations, I accept that the costs of purchasing the premises, together with the works required to make them fully functional, would make future profitability very difficult.
29. Realistically, I consider that there is little prospect of the resumption of the former public house use without very substantial investment. Even in the unlikely event this were to occur, I consider its future prospects would be highly precarious. Furthermore, despite a general lack of documentary

⁷ Report of Trinity Solutions Consultancy Ltd, Pages 14 & 15

financial evidence, the very modest turnover apparently achieved during the two separate trading periods would indicate an insufficient and unsustainable level to operate viably in the longer term. Indeed, this view is corroborated by the Council's own viability report.⁸

30. To sum up, and balancing all these factors together, it seems to me that the building, as it is currently configured, is physically now no longer capable of properly functioning as a viable public house. Given the site's isolated remote rural location, the remaining diminutive parking area makes the public house far less appealing for any future operator. The loss of the garden also makes it much less attractive.

31. Therefore, having regard to national and local policies aimed at protecting public houses in villages, I conclude on the first issue there is sufficient evidence to conclude that there is no prospect of the public house use continuing. As a consequence, there would be no conflict with Policy DM8 of the CS.

Effect on living conditions

32. Although not part of the Council's case, concerns have been raised by a local resident regarding the effect of the proposed new garage on living conditions at No 71 High Street. In particular, it is said that the garage abutting the boundary with this property, would cause an enclosing effect on the rear garden. However, the overall height of the garage's pitched roof would not be excessively high and so I am not persuaded this is a valid reason, in itself, for the appeal to fail.

33. Therefore, taking all the above into account, I propose to allow Appeal A.

Appeal B

Loss of parking for public house

34. Turning to Appeal B, the Council states in its submissions that there was no 'in principle' objection to a dwelling on this site and that the "support for residential development is not in dispute". However, at the hearing the Council confirmed that there was an 'in principle' objection, based on its concerns that the site's development would unacceptably reduce parking provision for the public house, adversely affecting its attractiveness and viability. It is also argued that the resulting configuration of the reduced car park would be unsafe in highway terms.

35. Discussions at the hearing centred around what is a suitable parking standard for the public house. The Council sought to rely on the *Bedfordshire Highway Development Control Design Guide 1995* ("the 1995 Guide") which provides guidance on parking for public houses. There was a discussion at the hearing as to whether these were a maximum or minimum standard.⁹ However, as this document is now cancelled, the appellant submits that I should not rely on it. The Council also referred to the *Central Bedfordshire Local Transport Plan: Appendix F Parking Strategy*, but this does not provide a parking standard for public houses, only for restaurants.

⁸ Caldecotte Consultants: Public House Viability Report, page 6

⁹ Further submissions on this issue have been received from both the appellant and Council since the hearing

36. I acknowledge that the 1995 Guide is now cancelled, and cannot therefore have any formal status. However, in the absence of other relevant guidance, it nonetheless provides some indication of what might be an appropriate parking provision for the public house. The Council calculates that applying the 1995 Guide, there would be a requirement for around 16 spaces for the public house. However, following the grant of planning permission for the dwelling at No 71, the number of spaces has now been reduced to around 11 spaces, well below the recommended standard in the 1995 Guide. This reinforces my view that the parking currently available at the site is inadequate for an isolated rural public house and confirms my opinion that the viability of the public house has already been jeopardized by the construction of the adjacent new dwelling.
37. To conclude on this issue, the parking area has already been critically reduced and thus the harm in terms of parking loss has already occurred. However, my decision to allow Appeal A means that this ground for refusal effectively falls away. For similar reasons, it is unnecessary for me to consider further the Council's detailed concerns regarding the proposed layout and access arrangements of the retained car park.

Effect of new dwelling on highway safety

38. At the hearing, the Council's stance on whether the new dwelling would harm highway safety was somewhat confused. On the one hand, the Highway Officer appeared to be arguing that it would not be possible to achieve adequate visibility splays for the new dwelling at the site, particularly given its location on a bend in the road. On the other, the Planning Officer said this was not part of the Council's highway case, on the basis that the application is made in outline with all matters reserved. Given the absence of a refusal ground on this issue, I take the Council's position to be that there is no formal objection on this issue.
39. However, I am far from convinced that the proposed dwelling would not prejudice highway safety, even though permission is sought only in outline. I am not convinced that access at any point into the site could safely be achieved. At my site visit, it was quite apparent that, as a consequence of the position of the site on a sharp bend, the visibility for cars entering and exiting the site would inevitably be restricted. This problem would be exacerbated because there is limited room for vehicle manoeuvring within the site because of its diminutive size, and it may be necessary for vehicles to reverse in or out of the access rather than travel in forward gear.
40. At the time of my site visit the road did not appear to be heavily trafficked. Nonetheless, I consider that the particular location of the proposed dwelling on this sharp bend could give rise to cars edging out on to the road without proper or adequate visibility, thereby significantly prejudicing highway safety.
41. I therefore conclude on this issue that the proposal would harm highway safety. It would conflict with Policy DM3 of the CS which, amongst other things, requires developments to incorporate appropriate access.

Effect of new dwelling on character and appearance of the area

42. The Council has not raised concerns regarding the dwelling's effect on the character and appearance of the area, nor does it form a refusal ground for

Appeal B. Both the Council and appellant say that, since the application is in outline, matters such as layout, appearance, and scale would be resolved at reserved matters stage. However, local residents have raised concerns. At the hearing, the appellant acknowledged that the submitted plan showed a dwelling that was very large for the site, occupying a good proportion of the severed plot. It was accepted that the layout was not entirely satisfactory, given the size of the plot.

43. I accept that the drawing is only illustrative, and should be considered accordingly. That said, I am not persuaded by either the Council's or appellant's stance on this matter. Indeed, I share local residents concerns. If I am to allow this appeal thus establishing the principle of a dwelling on the site, I must be satisfied that it would not harm the character and appearance of the locality. On the information before me, I am not able to conclude this is so.
44. In particular, I am not persuaded that, given the restricted size of the plot, it would be possible to satisfactorily accommodate a dwelling here, especially given the proximity of the former public house building and the new dwelling at No 71 to the boundaries of the appeal site. I am concerned the proposal would appear shoe-horned on to the site in relation to its neighbours and result in a cramped form of development, harmful to the village's character.
45. I therefore find on this issue that the proposal would harm the character and appearance of the area. It would be contrary to Policy CS14 and DM3 of the CS. Both require development to be of the highest quality, respecting local context and distinctiveness.

Planning Obligation

46. A Planning Obligation, dated 24 September 2013, was originally submitted prior to the hearing, in the event I was minded to allow the appeal. Following the hearing, a revised obligation was submitted, dated 24 October 2013. This makes minor revisions to wording, although its substantive provisions remain unchanged. It would secure a range of financial contributions totalling £3,437, as detailed in the matrix attached in the Second Schedule. At the hearing, the Council confirmed that the planning obligation's provisions were satisfactory. However, as I propose to dismiss Appeal B for other reasons, it is unnecessary for me to consider the obligation in further detail, or in terms of the tests set out in the Framework or the Community Infrastructure Regulations.

Overall Conclusion and Conditions

47. In respect of Appeal A, I find that the 'Green Dragon' was once a valued local facility. However, having regard to national and local policies aimed at protecting public houses in villages, it is now no longer viable as a public house. I also find that the scheme would not significantly affect the living conditions of No 71 High Street, in terms of outlook. Therefore, I propose to allow Appeal A subject to conditions.
48. With regards to Appeal B, I have found that the previous permission for the dwelling at No 71 High Street has already unacceptably reduced parking provision for the public house. As a consequence, and given my findings in relation to Appeal A, this ground for refusal cannot be sustained. However, I find that the new dwelling would harm highway safety as well as the character

and appearance of the area. These are valid and sufficient reasons that mean Appeal B cannot succeed.

49. I have reviewed the conditions suggested by the Council in relation to Appeal A. Having regard to the advice set out in Circular 11/95: '*The Use of Conditions in Planning Permissions*', I have imposed a commencement condition to comply with the relevant legislation. For the avoidance of doubt, a condition is necessary to ensure the development is carried out in accordance with the approved plans. Conditions relating to materials and landscaping are necessary to safeguard the character of the area. At the hearing, there was some discussion as to the achievability of the visibility splays specified in the Council's suggested highway condition. I shall impose a condition requiring access arrangements, including the provision of visibility splays, to be provided in accordance with details to be approved by the Council. The Council has also suggested a condition which would restrict permitted development rights but I am not persuaded that there are specific reasons in this case why this is necessary. I have reworded the suggested conditions for succinctness, to aid clarity and to accord with the terms of the Circular.
50. For the reasons above, and having regard to all other matter raised, I conclude that Appeal A should be allowed, but Appeal B should be dismissed.

Matthew C J Nunn

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Francis Caldwell Aragon Land and Planning Ltd

Mr Michael Lawton Trinity Solutions

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Spragg Planning Officer, Central Bedfordshire Council

Mr Paul Sturgess Caldecott Consultants Ltd

Mr David Ager Highways Officer, Central Bedfordshire Council

INTERESTED PERSONS

David and Ester Gatehouse Local residents

Helen and Philip Mitchell Local residents

DOCUMENTS SUBMITTED AT THE HEARING

Statement of Case on behalf of Central Bedfordshire Council
(APP/P0240/A/13/2198005)

Statement of Case on behalf of Central Bedfordshire Council
(APP/P0240/A/13/2197986)

Printout of S R Wood & Sons Ltd webpage advertising appeal site for sale and/or
let, submitted by the Council