

Don & Committee Report

Item No: 3

Reference: DC/17/03074

Case Officer: John Pateman-Gee

Ward: Claydon & Barham.

Ward Member/s: Cllr James Caston. Cllr John Whitehead.

Description of Development

Planning Application - Change of use of existing public house to residential dwelling including removal of part of existing car park (revised application following refusal of Application 3349/15).

Location

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

Parish: Henley

Site Area: 4295 m²

Conservation Area:

Listed Building:

Received: 20/06/2017

Expiry Date: 16/08/2017

Application Type: FUL - Full Planning Application

Development Type: Change of Use

Environmental Impact Assessment:

Applicant: Fernwick Ltd

Agent: NWA Planning

DOCUMENTS SUBMITTED FOR CONSIDERATION

The application, plans and documents submitted by the Applicant can be viewed online at www.midsuffolk.gov.uk.

PART ONE – REASON FOR REFERENCE TO COMMITTEE

The Head of Economy considers the application to be of a controversial nature having regard to the planning reasoning expressed by the Parish Council and planning history.

PART TWO – APPLICATION BACKGROUND

History

The planning history relevant to the application site is listed below. A detailed assessment of the planning history including any material Planning Appeals will be carried out as needed in Part Three:

3349/15	Change of use of existing public house to residential dwelling including removal of part of existing car park, revised application following refusal of application 1799/15	Refused 03/12/2015 and Dismissed at Appeal
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Appeal Decision Conclusion:-

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.

1799/15	Change of use of existing public house to residential dwelling including removal of part of existing car park	Refused 16/07/2015
3579/14	Change of use of existing public house to residential dwelling including removal of part of existing car park	Withdrawn 22/01/2015
3626/13	Demolition of outbuilding and extension of car park. Alteration works to existing public house and erection of new dwelling for use	Refused 27/05/2014

in conjunction with the public house.

1103/07 Erection of a single 3-bedroom dwelling with associated parking on part of the existing car park

Withdrawn 08/06/2007

All Policies Identified As Relevant

The proposal has been assessed with regard to adopted development plan policies, the National Planning Policy Framework and all other material considerations. Highlighted local and national policies are listed below. Detailed assessment of policies in relation to the recommendation and issues highlighted in this case will be carried out within the assessment:

Summary of Policies

CS01 - Settlement Hierarchy
CS02 - Development in the Countryside & Countryside Villages
CS05 - Mid Suffolk's Environment
FC01 - Presumption In Favour Of Sustainable Development
FC01_1 - Mid Suffolk Approach To Delivering Sustainable Development
CS06 - Services and Infrastructure
E06 - Retention of use within existing industrial/commercial areas
GP01 - Design and layout of development
HB13 - Protecting Ancient Monuments
H09 - Conversion of rural buildings to dwellings
H07 - Restricting housing development unrelated to needs of countryside
H13 - Design and layout of housing development
T10 - Highway Considerations in Development

Details of Previous Committee / Resolutions and any member site visit

None

Details of any Pre Application Advice

The application was previously refused planning permission contrary on 16th July 2015 following committee on 15th July 2015. Since the previous refusal the applicant has undertaken further marketing of the site, and new supporting information submitted. No detailed pre-application advice has been sought since the previous application.

Consultations and Representations

During the course of the application Consultation and Representations from third parties have been received. These are summarised below.

A: Summary of Consultations

Henley Parish Clerk

Henley Parish Council objects; The Parish Council has consistently opposed applications for change of use to residential and sees no reason to change that view. In the right hands and with proper planning and marketing, the pub could be a successful venue bringing visitors to the village and providing employment; it is incorrect to infer that the Parish Council does not support the pub as an asset. Three full-price bids have been received by the owner while he was marketing the property and all were declined. At least one of the bids was for use of the property as a licensed hospitality venue including a café/tea-room and vintage shop and the argument that the property could not be sold fails on the basis of that bid alone. Distance is not a deterrent, and nor is setting to the viability of the pub. It is incorrect to suggest that Henley Community Centre in some way meets all the needs of everyone in the village for hospitality. The Community Centre is a valued feature but it does not provide any kind of restaurant or café service except on special occasions, and the bar is only open on a very limited basis. Villagers travel on a regular basis to pubs, restaurants and cafes and there is no reason whatever to suppose they will not be willing to travel to the Cross Keys if the offering is right. The Parish Council notes that the owner only opened the Cross Keys for business from November 2014 until the summer of 2015, since when it has stood empty (apart from the owner's residence) and unused for any commercial purpose. The latest set of trading accounts submitted with the application are challenged as were the previous two sets of accounts for the same period. The pub was only open for about six months and the owner has been offered the full asking price for it on three separate. The Parish Council believes the Cross Keys site has potential as a hospitality venue of benefit to the village and the wider area, and that the current application should be refused

SCC - Highways

Recommends that any permission should include a condition requiring any means of frontage enclosure (hedge) to be set back 2.4 metres from the edge of the carriageway of the adjacent highway.

Heritage Team

The Heritage Team considers that the proposal would cause no harm to any heritage asset because the building's modest contribution to the character of the area is not affected by the alterations proposed. The Heritage Team recommends approval.

Historic England

On the basis of the information available to date, there is no need to notify or consult Historic England on this application under the relevant statutory provisions.

B: Representations

This is a summary of the representations received.

69 letters of objection from a variety of properties within the Ipswich area have been received. The material considerations raised in these are summarised as:

- Infrequent opening hours and overpriced food quality
 - Advertised selling price too high
 - Central point for the Henley community for generations
 - Too many village pubs being closed down
 - Popular local pub that serves the community
 - It is the last bastion of amenity in the village of Henley
 - Current use not promoted enough
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- Investment required but the pub has potential
- Loss of a community asset

23 letters of support have been received. The material considerations raised in these are summarised as:

- Not enough local support
- The pub was not used enough to make the business viable
- Location is too isolated to be a successful business
- Change of use preferable to being left vacant

PART THREE – ASSESSMENT OF APPLICATION

From an assessment of relevant planning policy and guidance, representations received, the planning designations and other material issues the main planning considerations considered relevant to this case are set out including the reason/s for the decision, any alternative options considered and rejected. Where a decision is taken under a specific express authorisation, the names of any Member of the Council or local government body who has declared a conflict of interest are recorded.

1. The Site and Surroundings

1.1. The Cross Keys public house is located on the south-eastern side of a rural crossroads approximately 1 kilometre north of the village of Henley. There is a car park to the south of the building, and a dwelling a short distance beyond that. Diagonally opposite the public house is a farmhouse and associated buildings; otherwise the site lies in generally open countryside.

2. The Proposal

2.1. Change of use of existing public house to residential dwelling including removal of part of existing car park only.

3. Summary of Policy Position and Principle

The Local Plan 1998 (Saved Policies)

The application site lies approx. 1km north of the village of Henley. As such, it is located in the countryside. There are no policies within the Local Plan that specifically relate to the conversion of public houses to dwellings. However, Policy E6 – Retention of individual industrial and commercial sites seeks to protect existing employment generating uses (eg. A4) unless there is significant public benefit of its conversion to non-employment generating uses (eg. C3).

Core Strategy (2008) and Core Strategy Focussed Review (2012)

Core Strategy Policy CS2 sets out categories of development that may be acceptable in the rural area, dependent on any proposals being in accordance with other Core Strategy Policies. This includes the possible conversion of rural buildings, the reuse and adaptation of buildings for appropriate purposes, community services and facilities to meet a proven local need and employment generating proposals. Policy CS5 provides that *"All development will maintain and enhance the environment, including the historic environment, and retain the local distinctiveness of the area"*.

The Core Strategy Focused Review (CSFR) was adopted by Full Council on 20 December 2012 and should be read as a supplement to Mid Suffolk's adopted Core Strategy (2008). This document updates some of the policies of the 2008 Core Strategy. The document does introduce new policy considerations, including Policy FC 1 - Presumption in favour of sustainable development that refers to the National Planning Policy Framework (NPPF) objectives and Policy FC 1.1 - Mid Suffolk approach to delivering Sustainable Development.

NPPF

The Council acknowledges that it is unable to demonstrate a five-year supply of deliverable housing land, as required by paragraph 47 of the Framework. Accordingly, in accordance with paragraph 49 of the Framework, the proposal should be considered in the context of the presumption in favour of sustainable development.

For the purposes of decision taking, that means granting planning permission unless the **adverse effects of doing so would significantly and demonstrably** outweigh the benefits, when assessed against the policies of the Framework, taken as a whole.

The NPPF also states in Section 3 'Supporting a prosperous rural economy', Paragraph 28 that: *'To promote a strong rural economy, local and neighbourhood plans should: Promote the retention and development of local services and community facilities in villages, such as shops, meeting places, sports venues, cultural buildings, public houses and places of worship.'*

Whilst there is the presumption in favour of sustainable development and a lack of a 5 year land supply, the minimal gain to the housing provision should be weighed carefully against the potential loss of a community asset.

SPD

Supplementary Planning Guidance – Retention of Shops, Post Offices and Public Houses in Villages (Adopted February 2004) sets out the Council's position with specific regard to the conversion of pubs to dwellings. This states that there will be '...support for the retention of facilities, where they can be shown to be viable...'. Paragraph 5.4 of SPD goes on to state:

'The change of use of a village public house to an alternative use will not be permitted unless:

- 1. At least one other public house exists within the settlement boundary or within easy walking distance to it; and*
- 2. It can be demonstrated by the applicant that all reasonable efforts have been made to sell or let (without restrictive covenant) the property as a public house, and that it is not economically viable; and*
- 3. There is no evidence of significant support from the community for the retention of the public house*

If permission is granted for change of use, preference will be given to the premises remaining in some form of community or employment use; as long as there are no significant traffic, amenity, environmental or conservation problems as a result.

The council will require applicants to provide information on the following matters to enable full evaluation of their proposals'

A. At least one other public house exists within the settlement boundary or within easy walking distance to it; and

In relation to the first point from the SPD set out above, the submitted Design and Access states that Henley Village Hall is within the settlement boundary and provides a good range of services, including alcohol sales. Easy walking distance is defined in the SPD as being 200- 300m from the settlement boundary. For reference, the application site is approx. 700m outside the settlement boundary, and given the 'easy walking' distance highlighted above the premises should only be considered as an 'ancillary' community facility, that due to its location out with the settlement boundary has subsequently become unsustainable. Furthermore, there is not a footpath or street lighting leading from the village to the application site, and the highway has an unrestricted speed limit meaning that the subsequent walk to/from the pub from the village would have demonstrable safety issues in terms of road safety for pedestrians.

Whilst the last dedicated public house in the immediate vicinity of Henley, the Village Hall is licenced for alcohol sales and is within the settlement boundary, unlike the pub subject of this application. The appeal decision by the Planning Inspectorate for refused application 3349/15 highlights that the Village Hall, while having a licensed bar, only opens two nights a week (Wednesday and Friday), and as it does not serve food on a regular basis it was considered the Village Hall was not therefore operating at a level to provide a reasonable alternative to or compete with the pub.

In respect of the above consideration, while opening a limited number of nights for the sale of alcohol on the premises, the licensed bar operating within the Village Hall has the potential to provide an increase in the number of nights that the bar is opened through applying for an amendment to the current license provision for the premises. This would allow the premises to operate at a level that would provide a successful alternative to the pub, should such demand be there from local residents. Furthermore, as the Hall is located within the existing settlement boundary of the village, this would ensure the provision of a sustainable and safe community facility that could be enjoyed by local residents and visitors alike.

On this basis it is concluded that the site is not within the settlement boundary, not within easy walking distance and even if this was not the case, there is alternatives available. Accordingly, the element is considered to be satisfied.

B. It can be demonstrated by the applicant that all reasonable efforts have been made to sell or let (without restrictive covenant) the property as a public house, and that it is not economically viable; and

In respect of the second criteria it should also be noted that there is no definition of "reasonable" and so assessment of the extent of efforts made to sell or let the property is highly subjective. At the same time this is the main issue the previous Appeal was dismissed for as the Inspector 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. This is something the applicant for this application is trying to address. The adopted planning guidance provides further details within the document detailed below:-

- The property is required to have been advertised for sale for a minimum of 12 months. Information should include selling agent's literature, valuations and offers that have been received on the property.

Information has been provided in Appendix 3 (Updated Marketing Report) of the supporting Planning Statement accompanying this application, which identifies the marketing undertaken in respect of the sale of the premises. The property has been marketed since instruction by the applicant on 31 July 2014 by 'Fleurets' (Leisure Property Specialists). Information provided states that the property has been extensively advertised in both nationally and regionally media, as well as Fleurets website since August 2014. Over the 32 month period that the property has been marketed, with sales particulars sent to 1,446 interested parties and 27,328 notifications sent out in respect of the availability of the property, including a reduction in the asking price from September 2016, a total of 20 people have formally inspected the property. Since lowering the price, only three freehold offers were received for the property. However, none of these offers were looking to purchase the property and continue with its current use. One additional acceptable offer for a freehold was recently received directly from a third party, however this offer was subsequently withdrawn.

Marketing commenced based on a sales price of £350,000 in October 2014 with advertisement via Fleurets Leisure Property Specialist. Marketing included an advertisement on the estate agents website, in regional and national media, the local press and regular advertisement in trade publications.

The asking price of the property was subsequently reduced from £350,000 to £295,000 in February 2015 following concerns raised by the Planning Officer that the asking price as set out in the previous application ref. 3579/14 appeared high. Further marketing was undertaken based on the reduced price of £295,000 from February 2015 to present. No offers were reported.

Valuation of the pub has been provided from local estate agents to substantiate the asking price of £295,000. For information, the pub was purchased by the applicant in September 2013 for £190,000 and was subsequently refurbished with a stated investment of circa £73,657.

In relation to the points set out in the SPD, the applicant has provided information for the marketing of the property since October 2014 to May 2017 (date letter received from the selling agent). The subsequent marketing for the premises has been over a period of three years (36 months) before this application is considered by Committee.

- *Information on the annual accounts/turn over of the premises for the most recent trading year should be submitted to the Local Planning Authority. These should take the form as if submitted to HM Inland Revenue and not just a single line 'the losses were...£***'*

The profit and loss accounts for the period that the public house was in operation have been submitted. This covers the period of November 2013 to August 2014. This shows a significant net loss for the period. No further details are available due to the premises no longer operating. Information submitted demonstrates the significant investment made in the initial start-up of the pub in new equipment. This can be taken as a demonstration of the intention of the owner to operate the business under its established use. Due to the limited period in which the pub was in operation under the current owner, the accounts available are limited. An appeal was made by the applicant to the premises being

identified as an Asset of Community Value, which was appealed by the applicant and the appeal subsequently upheld at tribunal on 22 July 2016. This tribunal decision clearly demonstrates beyond doubt that the established use is now no longer viable, nor would it appear such use would be sustainable or achievable in the future.

- Evidence needs to be submitted on the opening hours of the premises, and attempts at diversification to sell/provide a wider product range/let rooms.

No details of the opening hours of the pub have been provided. However, third party representation makes reference to sporadic opening hours. Information provided by the applicant as Appendix 3 of the supporting statement sets out some of the offerings put in place in an attempt to create a thriving facility for locals and visitors alike, however without the required local core support this was not sustained. Diversification of the business to support the existing was previously discussed with the applicant prior to any application to convert the pub to a dwelling. Previous submissions included the erection of a new dwelling in the rear garden of the site to allow additional staff accommodation. An application for this was refused at committee under application reference 3626/14.

Furthermore, alternative uses of holiday accommodation and extension of the existing building were discussed with the applicant prior to previous submissions for the change of use to residential. Consideration was given to these options but subsequently discounted. The reasons for discounting are based on the financial investment required to establish holiday accommodation. Additionally, extension of the existing building is not considered practical due to the layout of the existing building and site boundaries. The submitted design and access statement provides an assessment of these alternatives.

- Whether an application for financial assistance by an application to the Local Authority for rate relief has been made.

This is unknown, however reviewing this Council's criteria for rate relief it is unlikely that this business would qualify or at least it would be for a short temporary period only.

- Whether an application to the Local Authority to accommodate multiple use of the premises has been made.

An application was submitted and subsequently refused for the erection of a single dwelling in the rear garden of the site. It was proposed that this would allow additional accommodation for staff and support the ongoing viability of the business. No other applications for alternative uses have been submitted.

On this basis it is concluded that it can be demonstrated by the applicant that all reasonable efforts have been made to sell or let (without restrictive covenant) the property as a public house, and that it is not economically viable. Accordingly, the element is considered to be satisfied.

C. There is no evidence of significant support from the community for the retention of the public house

A fundamental problem with this criterion is the failure to define "community" and so again this is a subjective term. For example how many letters represent a community? Is approximately 30 from a range of properties in the wider Ipswich area and a parish council objection enough to represent a community given the size of the village/parish? Should you consider the comments from the wider area or just local customers that could be expected to use the public house?

The policy guidance provides some further detail on this point to help judge this criterion as reproduced below:-

There must be a significant expression of public support and evidence illustrated, this should include:

- *Considerable support in the form of letters expressing local concern is strong evidence of support;*
- *The expressed concern of the Parish Council, which should be based on consultation with 'the public to be valid.*

Third party representation has been received, as summarised above, including 69 objections and 23 letters of support from a range of properties in the parish of Henley. These letters of representation cover a number of points of view in respect of the proposal, both in objection to, and support of, the proposed change of use (also summarised above).

The pub was registered as an Asset of Community Value. The applicant appealed against the listing of the Cross Keys as an Asset of Community Value to the First-Tier Tribunal, and a decision was made on 22 July 2016 to uphold this appeal. The findings of the First Tribunal judge, Simon Bird QC, a leading planning barrister, were diametrically opposed to the findings of the planning appeal inspector, and amount to a convincing rejection of the inspector's reasons for refusal of the planning application appeal. This decision to uphold the appeal was based on a number of reasons, including the following findings of fact:

- i. That it is not realistic to think that there is a time in the next five years when there could be non-ancillary use of the Cross Keys that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community;
- ii. That the undisputed evidence is that the Cross Keys has struggled under more than one landlord and that there is no submissions made on behalf of the Council in this appeal to indicate that there is any prospect of that position changing in the next five years;
- iii. That the evidence of the marketing of the premises shows that the Cross Keys has no commercial attraction and that taken as a whole the overall marketing period is a substantial one;
- iv. That there is therefore no evidence that this pub, in this location, is likely to have any attraction to those with a different business model to that of the appellant in the future;
- v. That there is no evidence of interest in the pub at a lower value. Two offers of £250,000 were received from local residents which were conditional on there being no overage clause allowing the appellant to claw back the increase in the value of the premises in the event of planning permission subsequently being granted for residential conversion of the pub. This provides little support for the argument that there would have been

- genuine interest from potential operators of the pub, particularly those who might operate on a non-commercial basis had the asking price been lower, and consequently little weight is attached to these offers;
- vi. That the community support for retention of the Cross Keys as a pub has to be seen in context. That support is for the continued protection of the use rather than any clear support in the form of willingness to take on the Cross Keys and to attempt to run it as a going concern. And;
 - vii. That it is not realistic to think that the public house use could be made of the building in the next five years, and that it is also not realistic to think that the building could be used for any other use that would further the social wellbeing of social interests of the local community. No relevant evidence has been submitted to indicate that suitable and sustainable alternative uses could materialise in the next five years.

Accordingly, the listing as an Asset of Community Value was appealed and the appeal upheld at tribunal. As a result, it is considered that the premises is no longer considered as an Asset of Community Value.

The extent of community support is subjective, and the number of letters received and Parish Council response is considered to be a significant level of interest. However, this should be taken into account in relation to the viability of the pub and whether the letters would reasonably translate in to profitability for the current use and this is not considered to be likely. On balance with consideration of all the elements of the SPD it is considered that this policy has been substantially complied with.

4. Sustainability Assessment Of Proposal

4.1. The proposed conversion would re-use an existing building in the countryside. The provision of one new dwelling in the rural area would be of marginal benefit to the Council's provision of a five year land supply. The sustainability of the proposed use as a dwelling is considered in relation to the existing use as a pub. Neither the existing or proposed use benefits from a footpath link to the nearest settlement.

4.2. Taking the above points into account it is considered that the proposed use as a dwelling is likely to be less dependent upon the private motor vehicle than the use of the site as a pub. Whilst policy would usually restrict a new dwelling in the countryside, the proposed change of use is unlikely to result in any significant change in the character and appearance of the area to any significant or demonstrable detrimental degree.

On that basis, it is considered that the change of use to a dwelling would have a net gain in the sustainable use of the site whilst providing a marginal benefit to the Council's five year land supply, and should therefore be supported.

5. Site Access, Parking And Highway Safety Considerations

5.1. There are no objections from a highways safety perspective based on the use of the existing access.

6. Design And Layout [Impact On Street Scene]

6.1. The application seeks permission for the change of use of the building only. No structural changes are proposed as part of this application and, therefore, there are no changes to the design and layout of the site.

7. Impact On Residential Amenity

7.1. There are no significant amenity issues.

8. Biodiversity And Protected Species

8.1. The change of use is not considered to result in harm to any known biodiversity interests.

9. Details Of Financial Benefits / Implications (S155 Housing and Planning Act 2016)

9.1. Change of use of the building would result in the net gain of a dwelling and this would result in Council Tax requirements, but this would not be material to the planning considerations of the case. There are no known benefits or implications that would be material considerations.

PART FOUR – CONCLUSION

10. Planning Balance

10.1. The proposed development would result in the loss of the last public house within the vicinity of Henley. However, the public house has been shown to have had limited financial success under the current and previous management. The property has been adequately marketed for a time in excess of the required period as set out in the relevant SPD. Furthermore, it is considered that the marketing undertaken prior to this application is more than reasonable.

10.2. Significant numbers of representations have been received objection to the loss of the pub. However, this has not been substantiated by sales or offers to purchase the pub with its established use. The rural location and poor linkage to the nearest settlement is likely to have had a bearing on the attractiveness of the building as a viable and sustainable business investment.

10.3. The provision of community facilities is of significant importance in the consideration of applications in relation to the NPPF and with particular reference to the SPD. However, the site that is subject of this application is not well linked to an existing settlement and has undergone significant marketing without investment based on its current use. Although not a traditional pub, there are services provided within the village through the Village Hall, which has an existing drinks license and provides sales albeit it on a limited number of night. However, the Village Hall does therefore have the capacity to investigate an increase to this offering and provide an increased number of nights for the sale of food and drink for consumption on the premises, should sufficient local interest support this. Furthermore, there are a wide range of alternative pubs within a short drive of Henley.

10.4. Taking the location and marketing into account, appeal decision, policy position and planning balance, it is considered that in this instance the conversion of the pub to a single dwelling is acceptable, and planning permission should therefore be approved.

RECOMMENDATION

That authority be delegated to Corporate Manager - Growth & Sustainable Planning to Grant Planning Permission subject to the following conditions:

- Standard Time Limit
- Approved Plans