

DELEGATED DECISION REPORT

APPLICATION NUMBER

161228

20 Wye Street, Ross-on-Wye Herefordshire, HR9 7BT

CASE OFFICER: Mr C Brace

DATE OF SITE VISIT: Numerous

Relevant Development Plan Policies:

- SS1 – Presumption in favour of Sustainable Development
- SS2 – Delivering new homes
- SS3 – Releasing land for housing development
- SS6 – Environmental quality and local distinctiveness
- SS7 – Addressing climate change
- SC1 – Social and community facilities
- SD1 – Sustainable design and energy efficiency
- RA2 – Housing in settlements outside Hereford and the market towns
- LD1 – Landscape and townscape
- LD2 – Biodiversity and geodiversity
- LD3 – Green infrastructure
- SD1 – Sustainable Design and Energy Efficiency
- SD3 – Sustainable water management and water resources

Relevant Site History: 161275/F –Construction of single storey building to serve soft drinks etc – Approved w/conditions

153457/F – Change of use of premises from Public House to residential and conversion of property into 4 number residential units – Withdrawn

CONSULTATIONS

| | Consulted | No Response | No objection | Qualified Comment | Object |
|-------------------------------|-----------|-------------|--------------|-------------------|--------|
| Parish Council | √ | | √ | √ | |
| Transportation | √ | √ | | | |
| Ecology | √ | | | | √ |
| Environment Agency | √ | | | | √ |
| Neighbour letter/ Site Notice | √ | | | | √ x 6 |
| Other | | | | | |
| CAMRA | √ | | | | √ |
| Natural England | √ | | √ | | |
| Local Member | √ | | | | √ |

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The application is located in Ross on Wye featuring The Riverside Inn public house. The pub is currently closed. The site is in the Wye Valley AONB and conservation area, furthermore the land is in Flood Zone 2 and 3 as identified by the Environment Agency.

The site adjoins further land associated with the Riverside Inn to the north east, and is surrounded by public open space North and West. This open space forms part of the attractive setting of the River Wye. A footpath adjoins the West boundary, intersecting the public open space and providing access to the river and riverside footpaths. Wye Street adjoins South..

The proposal is for the retention of existing public house, change of use of premises into 1 number 2 bed dwelling & 2 number 3 bed dwellings

Representations:

Ross on Wye Town Council has no objection provided that the pub area of the building retains its status and is not included in the change of use to residential.

Six letters of objection have been received, comments are summarised as –

- Object to the loss of the public house
- Retained pub set up to fail
- Pub is valued
- The site floods
- The owners have not demonstrated a lack of viability as they have never run it as a pub
- A valuable tourism resource
- Amenity of proposed dwellings is poor

CAMRA object to the application on the following summarised grounds –

- Partial conversion will undermine the pub's commercial viability
- Absence of any marketing of the premises as a public house
- Negative impact the proposal will have on social and economic well-being

Detailed reference is made to local and national planning policies and previous appeal decisions.

The Environment Agency objects commenting any revised FRA would need to confirm whether the ground floor can be raised and how that raised level would relate to the historic and modelled levels. The agents' letter and amended plans confirm a revised floor level but doesn't state how this relates to the flood levels at this location. As stated in a previous response internal flooding of between 0.71 and 2.13 metres of depth would be predicted with the historic and modelled flood level respectively. The EA therefore maintain objection.

Natural England has no objection.

The Council's Environmental Health Officer notes The proposed development is within 250m of a closed landfill site. As such it is recommended a condition be appended to any approval to ensure this risk is suitably considered.

The Council's Ecologist has no obvious concerns in regard to the general ecology of the area except the potential impact of any additional external lighting associated with the development, in particular of the patio area as this will look directly out over the River Wye which is designated as Special Area for Conservation (SAC) and Site of Special Scientific Interest and is potentially used after sunset by commuting and foraging bats and otters – both protected species. To ensure that the council's duty under the NERC Act and Wildlife & Countryside Act is shown due diligence and in accordance with Core Strategy policies LD1 and LD2 a detailed lighting plan utilising input from a qualified ecologist on protected species be supplied before any non objection from the Ecologist could be recorded.

Local Member objects to the proposal and agreed a delegated refusal.

Pre-application discussion:

None

Constraints:

Impact on the character and appearance of an AONB
Impact on the character and appearance of a conservation area
Impact on the setting of listed buildings
SSSI impact zone
SSSI
SAC
BAP habitat
Community facility
Flood zone 2 and 3

Appraisal:

Despite the applicant being made aware of the proposal's clear conflict with policy verbally and in writing during the determination of this and the preceding application, and the Council's willingness to hold determination so suitable attempts at policy compliance could occur, these pro active approaches have been rejected by the applicant and as such refusal is recommended as follows –

Planning application is recommended to be refused on the following grounds:

- Partial conversion will undermine the pub's commercial viability
- Absence of any marketing of the premises as a public house
- Negative impact the proposal will have on social and economic well-being
- Flood risk

- Ecology

Policy SC1 and NPPF paragraph 28 and 70 looks to retain valued social and community facilities. Such loss of, or change of use of facilities or part thereof will only be permitted on the basis of robust, credible assessment and marketing. It is clear from representations received for this and the previous withdrawn application, the public house is valued and was well used.

The NPPF seeks to support a prosperous rural economy. It states that local plans should, amongst other things, promote the retention of local services and community facilities in villages, including public houses. The Framework also emphasises the need to promote healthy communities including through guarding against the unnecessary loss of valued facilities. These national policies are directly relevant to the change of use here.

Summarised, national policy promotes a prosperous, healthy rural economy and guards against the loss of valued facilities. The Herefordshire Core Strategy reflects this and requires evidence of the lack of potential viability and that options for retention have been explored. The Core Strategy permits loss of a facility that contributes to the needs of a community only where a suitable alternative is available or evidence is presented that the facility is not required and could not accommodate an alternative.

Core Strategy policy SC1 states *Existing facilities will be retained, unless it can be demonstrated that an appropriate alternative facility is available, or can be provided to meet the needs of the community affected; or it can be shown that the facility is no longer required, viable or is no longer fit for purpose; and where appropriate, it has been vacant and marketed for community use without success.*

The Supporting and explanatory text states local retail premises, village halls, churches and public houses...are often at the heart of the community and provide a place for the local community to meet, to socialise and to fulfil the day to day convenience needs of the local community. In some locations it is becoming increasingly difficult to retain services, shops and public houses; however it is essential that support is given to enable businesses to continue to serve the local community.

In such cases, flexibility should be given to enable local shops, services or public houses to diversify into ancillary retail and tourism opportunities or community ownership through the 'Community Right to Bid' process. This flexibility may enable the business to continue to serve the local community.

Where a business is shown to be no longer viable, the first alternative should be to investigate whether an alternative community use is possible. In order to demonstrate that alternative community uses have been considered, evidence of marketing for a period of at least 12 months should be provided with any proposals involving the loss of community facilities.

Partial Conversion and affect on Viability

In the applicant's Design & Access statement for previous application reference 153457 for conversion to residential use and associated new residential development, it was stated

“...the property is now unlet and boarded up because there is no financial viability to its use as licensed premises.” It then further stated “These premises have previously been let as a public house but they have all failed to make it a viable business.”

This proposal seeks to leave a reduced pub area that involves the partial conversion of the licensed premises into residential units. Therefore, the Riverside Inn will be considerably smaller and more limited in its scope than at present.

This proposal will make the pub considerably less attractive to a potential operator for a number of reasons:

- The reduction in floor space will reduce the physical capacity of the venue. It will reduce the number of customers it can serve and accommodate and further frustrate the ability to hold events in the future (including live music).
- The opportunity to expand and enhance the pub's business by increasing the pub's operational area and/or by adding new amenities will be considerably reduced if not lost for good.
- The proximity of the residual pub in relation to the three residential units (they would be within the same building) will create nuisance issues for the residents such as noise and cooking smells and will likely prove to be extremely difficult for anyone operating the pub. It will further greatly reduce what they are capable of doing and may leave them open to legal redress from Environmental Health.

In light of the above, it is unclear how a pub that the applicant deems to be commercially non-viable could possibly become viable in a considerably reduced form.

It is reported that the current owner of the Riverside Inn (the applicant) has never operated the Riverside Inn as a pub business and, therefore it can be argued, is not in an informed position to judge the commercial impact of the changes (as proposed) on the pub's business potential. There is no stated intent by the applicant in any of the documentation to operate the pub at any time in the future. Moreover, no undertaking is given as to the future operation or marketing of the business. If partially converted there is no accompanying guarantee it will re-open.

In so constraining the pub's size, scope and present and future operational potential will greatly undermine its commercial viability, therefore, it would become significantly less attractive to a potential buyer who might wish to operate it as a licensed business. The Council shares CAMRA's view that the pub would likely be rendered commercially non-viable and no buyer would be interested. This application represents a *de facto* permanent loss of the Riverside Inn and the first phase of the total loss of The Riverside Inn has a commercial and community facility.

Marketing

There is no evidence provided with this application that any marketing exercise has been undertaken since the applicant purchased the premises in July 2014. The applicant as expressed in agents letter received 14th October 2016 rejects the requirement to do so on the

basis part of the public house is retained. This is despite the clear necessity for such marketing where a economic or community facility is to be reduced or lost as described by NPPF and local plan policy.

It is acknowledged that the Riverside Inn is currently closed and in need of considerable investment in its fabric and facilities. However, the freehold of the premises was acquired by the current owners, based on HM Land Registry records for only £190,000 freehold in July 2014, a price which recognises the need for funding remedial works to the premises and its 'closed' status.

CAMRA reports on experience from pubs elsewhere in Herefordshire, if the Riverside Inn was now marketed at a realistic price cognisant of its original purchase price; current condition, and lack of recent trading, that there is the significant likelihood of there being interest in the premises from alternative pub operators.

Regarding the Riverside Inn, There are a number of factors in the pub's favour:

- It's location by the river has always been an attraction to both townspeople and visitors. In recent years a bandstand has been added to further attract people to the locale.
- The grassed area adjacent the pub is a regular venue for special events for which the Riverside Inn is in an excellent position to take commercial advantage.
- It has a history of having darts, pool and other teams, as well as organising quizzes and other events. These provided extra trade, particularly in the winter months, and there is no obvious reason why these can't be resurrected by a new operator.
- As a 'freehouse' the licensee will have bought supplies (including beer, wine and spirits) at free trade prices, something most other pubs (including the nearby Hope & Anchor and Man of Ross) in the town can't do due to their ownership by the big brewers and pub companies. The free-of-tie status affords the pub a major commercial advantage over its product-tied competitors.

The Riverside Inn is distinctively different in its character, location, circumstances and customer appeal compared to other pubs in Ross. It is a both a freehouse and enjoys a uniquely attractive riverside location. The locals and visitors who used it will have chosen it over other pubs for numerous reasons: for some it will have been a valued local; for visitors an enjoyable destination venue, and for those attending riverside events a convenient facility. It can be these things again, if afforded the opportunity to trade again under new ownership. An opportunity denied by no marketing being undertaken.

In correspondence relating to the previous application reference 153457, an ex-licensee of the Riverside Inn, Mr Michael Hall, states he believes it can trade again successfully for these and other reasons. Based on these factors it has enjoyed a strong trading history in the past. In 2002 it registered a gross turnover of £400,000 according to Mr. Hall's letter.

Social and Economic Impact

The proposal would ultimately result in the permanent loss of the Riverside Inn. This will create a number of harmful social and economic effects:

- There will be local people who used the Riverside Inn who can no longer go there, this includes both town residents and visitors to the town. Therefore, this will result in a net loss of social amenity
- It will result in the permanent loss of a business enterprise, with the associated reduction of local employment opportunity – impacting on the young and those seeking part-time work the hardest.
- There will be a loss of economic activity per se, further reducing the vibrancy of the local economy. There will also be an associated permanent knock-on to local suppliers who have historically supplied the Riverside Inn.
- It will have a negative affect on the attractiveness of Ross-on-Wye as a tourist and/or day visitor destination to the detriment of the town and south Herefordshire.

The National Planning Policy Framework (NPPF) and local planning policies raise the expectation that social amenities such as pubs will be protected where they provide vital social and economic amenity, and that there is a requirement that commercial non-viability is clearly demonstrated and, further, that exhaustive efforts have first been made to sell a pub to an alternative operator before conversion to an another use is considered. Moreover, these policies require consideration of pubs on the merits of their individual circumstances, irrespective as to whether they are in town or country or nearby to other pubs.

The NPPF Paragraph 70 also raises an expectation that a pub's land, amenities and future potential should be retained and protected for future potential development of the amenity and its business. An appeal determination from February 2013 regarding the earlier refusal of planning permission by Herefordshire Council for land at the Bull Ring Inn, Kingstone, Hereford HR2 9HE (PINs ref: APP/W1850/A/12/2183572) is relevant to this case are the inspector's comments states: *"Paragraph 70 [of the NPPF] goes beyond the retention of existing facilities and requires local planning authorities to actively plan for their provision, use, development and modernisation...."*

What is proposed here with this application is entirely at odds with this appeal decision and Secretary of State's appointed Inspector's interpretation and use of NPPF paragraph 70. In fact, with the land in this case being directly employed in the pub's day-to-day business, it can be argued that the protection and justification of refusal is even stronger than at the Bull Ring.

As such the proposal would diminish the viability of a community facility and economic resource without justification and lead to that facility being at a long term risk, restricting its capacity, functionality and ability to expand and diversify, contrary to Core Strategy policies SS1 and SC1 and the relevant aims and objectives of the NPPF. This application will result in the partial conversion of a pub, such that it will be likely rendered commercially non-viable due to the reduction in its ability to trade. Moreover, there has, to date, been no effort by the

applicant to first market the premises as a public house business before considering an alternative use. These matters mean that the application is contrary to the relevant national and local planning policies described above.

Flood Risk

The FRA includes the historic flood level and details the potential depths of flooding internally and on the access/egress route during the historic and modelled 1 in 100 year plus climate change event. Our view is that the development would not be safe in flood risk terms given the potential internal flooding of the building, particularly compared to the modelled level. The FRA needs to confirm whether the ground floor can be raised and how the proposed floor level would related to the historic and modelled levels.

Given the potential depths of flooding at this location the LPA need to be satisfied that the proposed use of 4 residential units is suitable for this building. At the current time the Environment Agency's opinion is that the building would be better suited to Less Vulnerable development on the ground floor given the potential depths of flooding and the risk to occupants over the lifetime of the development. The EA appreciate that the existing use is *More Vulnerable* but at least any internal flooding of the ground floor would only impact upon a public house rather than people's living rooms (though again the EA accept they will have an upstairs refuge as they are not self-contained ground floor flats). Also the proposals would result in an intensification of use putting more people in an area vulnerable to flooding.

As such the proposal is contrary to policies SS1, SS7 and SD3 and the relevant aims and objectives of the NPPF.

Ecology

Although there's no objection from Natural England issues are raised by the Council's Ecologist. Again, these are matters that could have been addressed through pre application advice being sought or through responding to the comments which were put in the public domain on the Council's website.

The potential impact of any additional external lighting associated with the development as not been assessed, in particular of the patio area as this will look directly out over the River Wye which is designated as Special Area for Conservation (SAC) and Site of Special Scientific Interest and is potentially used after sunset by commuting and foraging bats and otters – both protected species. To ensure that the council's duty under the NERC Act and Wildlife & Countryside Act is shown due diligence and in accordance with Core Strategy policies LD1 and LD2 refusal is recommended.

Summary

The proposal represents development the Ministerial Statement in the foreword of the NPPF that the Government seeks to avoid and is considered not in compliance with wider planning aims and objectives at national and local level, creating harm to an existing rural economic and community facilities' long term vitality and viability whilst providing a dwelling that undermines the character and appearance of the locality and has compromised amenity. As

such the benefits of the development are not outweighed by the harm identified and refusal is recommended.

RECOMMENDATION: **PERMIT** ☐ **REFUSE** ☒

REASONS FOR REFUSAL:

1. The proposal would diminish the viability of a community facility and economic resource without adequate justification or marketing and lead to that facility being at a long term risk, restricting its capacity, functionality and ability to expand and diversify, contrary to Core Strategy policies SS1 and SC1 and the relevant aims and objectives of the National Planning Policy Framework.
2. The relationship of the proposed dwellings with the retained public house would impact upon the potential functionality and range of functions the public house could run through conflicts in amenity. Furthermore, given the relationship between the public house and proposal there are unacceptable risks to the dwellings amenity levels. The curtailing of the viability of the public house through protecting the amenity of the proposed dwelling is unacceptable. As such the proposal is contrary to Herefordshire Core Strategy policies SD1, SS1, RA2 and SC1 and the relevant aims and objectives of the National Planning Policy Framework.
3. The proposal results in a vulnerable use being located within a flood zone without suitable justification or mitigation and unnecessarily as there is no overriding need to provide housing in such a vulnerable location given other land availability within and around Ross on Wye. As such the proposal represents unsustainable development and intensification of use resulting in more people in a location prone to flooding and flood risk. As such the proposal is contrary to Herefordshire Core Strategy policies SS1, SS7 and SD3 and the relevant aims and objectives of the National Planning Policy Framework.
4. The proposal has not assessed the impact of any additional external lighting associated with the development. The site is adjacent and overlooks the River Wye which is designated as Special Area for Conservation (SAC) and Site of Special Scientific Interest and is potentially used after sunset by commuting and foraging bats and otters – both protected species. As such the proposal is contrary to the NERC Act and Wildlife & Countryside Act, relevant aims and objectives of the National Planning Policy Framework and Herefordshire Core Strategy policies LD1 and LD2.

Informatives

1. **Refused, unable to overcome issues**

CP

Signed:

Dated: 11/11/2016

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT ☐

REFUSE ☒

FW

Signed:

Dated: 11 November 2016