



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 22/02/11

gan Ian Osborne BA DipTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 15/03/11

Appeal Decision

Site visit made on 22/02/11

by Ian Osborne BA DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 15/03/11

Appeal A Ref: APP/H6955/A/10/2134550

Appeal B Ref: APP/H6955/C/10/2135094

Site address: The Trotting Mare Public House, Overton, Wrexham LL13 0LE

The Welsh Ministers have transferred the authority to decide these 2 appeals to me as the appointed Inspector

Appeal A

- This appeal is made under section 78 of the Town and Country Planning Act against a refusal to grant planning permission.
- The appeal is made by Mr Gary Millington against the decision of the Wrexham County Borough Council.
- The application Ref P/2010/0003 dated 04/01/10 was refused by notice dated 18/02/10.
- The application seeks retrospective permission for the change of use of part of this public house to use as part of a private residence.

Appeal B

- This appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Gary Millington against an enforcement notice issued by the Wrexham County Borough Council.
- The Council's reference is PG/2010/0013 and the notice was issued on 28/07/10.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of part of the Trotting Mare Public House to form part of the private residence of the public house, the approximate position of which is edged blue on the plan attached to the notice.
- The requirements of the notice are:
 1. Cease use of that part of the Trotting Mare Public House identified in the allegation for residential purpose.
 2. Remove all furniture and other domestic items from the former bar area of the public house.
- The period for compliance with these requirements is 28 days after the notice takes effect.
- The appeal is proceeding only on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. As this appeal is fee exempt because of that paid in respect of the application in appeal A, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: Both appeals are allowed, the enforcement notice as varied is quashed, and planning permission is granted as set out in the Formal Decision below.

Procedural matters

1. Since the change of use of part of the ground floor of the public house to use for private residential purposes had already taken place at the date of the application in appeal A, I have dealt with this appeal as one arising from an application made under

section 73(A) of the Act, as amended, for planning permission for development carried out without such permission.

2. I have considered the possibility that the planning unit in this case may have a lawful mixed use for public house and private residential purposes, and therefore whether planning permission is required for the change which has taken place. However as the Appellant has specifically sought retrospective permission and has not appealed on ground (c) against the enforcement notice, I have dealt with both appeals solely on the basis on which they have been made.

Matters relating to the enforcement notice

3. In the interests of clarity and consistency, the first requirement of the notice should specifically refer to the ground floor area edged blue on the plan attached to the notice. However, as the cessation of the residential use would require the removal of all domestic furniture and other similar items from the floor space concerned, the second requirement is both unnecessary and unjustified.
4. I have therefore varied the requirements of the notice accordingly, which I consider I am able to do without injustice to either the Council or the Appellant.

Main Issue

5. The main issue in both these appeals is the effect of the change of use of part of the public house to private residential purposes on the viability of this community facility.

Reasons

6. The appeal premises are located in an area of scattered houses and other buildings in the small hamlet of Knolton which spreads out along this stretch of the A528 some 2kms south of the village of Overton. The appeal building has a frontage to this road and, at the time of my visit, included 2 storeys of residential use on its left hand side, a substantial single-storey restaurant on its right hand side, and a large play barn to the rear of this restaurant. To the left of this building there is a large car park and to the rear of this is a medium-sized caravan park on which there was a substantial number of caravans. All these uses share a common main access from the A528.
7. Internally the ground floor of the two-storey part has been changed from a public bar to a private sitting room, and the interconnecting door between the former bar and the existing restaurant has been walled up. The stairs to the first-floor bedrooms go up from behind a lockable door near to the kitchen for the former public house and restaurant but they now lead almost directly from the ground-floor residential area.
8. Policy S9 of the 2005 adopted *Wrexham Unitary Development Plan 1996-2011* [UDP] indicates that, in locations such as this, proposals that entail the loss of commercial facilities will only be permitted where : (a) the use is no longer viable and all reasonable attempts to sell or let the business over a 12 month period have proved unsuccessful; or (b) the building is in a derelict or unsightly condition and the proposal would bring about substantial environmental improvements; and (c) the loss of the facility would not prove detrimental to the social and economic fabric of its locality. Policy CLF1 has similar objectives and specifically includes public houses.
9. It is not clear to me whether the 3 tests in Policy S9 are mutually exclusive or whether (b) and (c) need to be considered together as they are joined by 'and'. However, since the appeal building is neither derelict nor unsightly, I do not consider that test (b) is applicable in this case. In any case the Council's refusal notice and their

reasons for issuing the enforcement notice both emphasise the lack of evidence submitted by the Appellant of recent unsuccessful efforts to sell or let the public house and restaurant business, and the likely loss of the public house as a whole because of the change to residential purposes of the former bar area.

10. Given that the floor area of the restaurant that remains is about the same as that of the former bar, that the restaurant has a small bar for serving drinks, and that the large kitchen still remains to prepare food for the restaurant, I consider that there is still a substantial Class A3 use on this site which is available to serve both local residents and visitors to the adjoining caravan park. I do not consider therefore that the change of use of part of the ground floor of this building from public bar to private residential purposes is out of accordance with criterion (c) of Policy S9 of the UDP, since less than half of the former commercial floor space facility has changed use. In these circumstances the lack of information about recent attempts to sell or let the business as a whole is of little weight.
11. I conclude therefore on the main issue that the change of use of part of the public house to private residential purposes which has occurred is unlikely to have a harmful effect on the viability of this community facility. I appreciate that the Council are concerned that permission in this case may make it more difficult for them to resist a future change of use of the restaurant to residential purposes. However, every case must be considered on its merits and the possible total loss of this community facility would need to be assessed in the light of Policy S9 – or its successor – at the time.
12. The Council do not suggest any conditions which they would wish me to attach to any permission. Since the use the subject of both these appeals has already started, I have therefore granted permission unconditionally.

Formal Decision

Appeal A

13. I allow the appeal and grant retrospective planning permission for the change of use of part of the ground floor of the public house to use as part of a private residence at The Trotting Mare Public House, Knolton, Overton, Wrexham LL13 0LE in accordance with application Ref P/2010/0003 dated 04/01/10 and the plans submitted with it.

Appeal B

14. I direct that the enforcement notice be varied by the deletion of the requirements and the substitution of:

Cease the residential use of the ground floor of the Trotting Mare Public House edged blue on the plan attached to the notice.

15. Subject to this variation I allow the appeal and direct that the enforcement notice be quashed. I also grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act, as amended, for the development already carried out, namely the change of use of part of the ground floor of the public house to use as part of a private residence at The Trotting Mare Public House, Knolton, Overton, Wrexham LL13 0LE edged blue on the plan attached to the notice.

Ian Osborne

Inspector