



# Appeal Decision

Site visit made on 25 July 2023

by **C Butcher BSc MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13 September 2023**

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**Appeal Ref: APP/X1118/W/22/3304892**

**The White Hart, Station Road, Bratton Fleming, Barnstaple EX31 4SB**

- 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 Mr Philip Milton against the decision of North Devon District Council.
  - The application Ref 74082, dated 14 September 2021, was refused by notice dated 7 April 2022.
  - The development proposed is given as conversion and extensions to form five open market dwelling units and one dwelling unit for social rent.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The Council's officer report sets out that, at the time that the planning application was determined, the Council was unable to demonstrate a five year supply of deliverable sites for housing. However, during the course of the appeal, the Council has provided evidence to show that this situation has changed and a five year supply can now be demonstrated. The appellant has not disputed the accuracy of the Council's current stated position, and it is necessary for me to make my decision based on the most up to date evidence available to me. As such, I shall consider the appeal based on Paragraph 11d and footnote 8 of the National Planning Policy Framework (the Framework) not being engaged.

## Main Issues

3. The main issues are: (i) whether or not the proposed development would be acceptable, having particular regard to the acceptability of the permanent loss of a public house in this location, the viability of the use of the property as a public house, and the adequacy of the marketing of the property; (ii) the effect of the proposed development on the character and appearance of the surrounding area, including the setting of the Grade II listed Church of St. Peter; and (iii) whether or not adequate contributions towards affordable housing and open space would be secured.

## Reasons

### *Loss of public house*

4. The White Hart is situated in the heart of the village of Bratton Fleming and has been closed since 2012. The appellant bought the property in 2014 but it has not been re-opened. It was previously recognised as an Asset of Community

Value, although a recent legal decision has removed that designation on the basis that the building has not been in use as a public house for quite some time. The appellant therefore argues that the building should not be considered as a community facility under the auspices of Policy ST22 of the North Devon and Torridge Local Plan, October 2018 (LP). However, the property has historically been a public house for many years, and since it closed, it has not been used for any other purpose, beyond accommodating security personnel to temporarily look after the site. Therefore, despite the length of time that has passed, any proposal to convert the building to residential use would still result in the permanent loss of a community facility. LP Policy ST22 is therefore the most important policy for the determination of this appeal.

5. Where development involves the loss of a community facility, LP Policy ST22 requires compelling evidence to demonstrate the existing use is no longer commercially viable (or could not be made commercially viable) or that there is alternative provision accessible to the local community by walking or cycling, and, in either case, the premises are no longer required to meet the needs of the local community.
6. The appellant has provided evidence, in the form of a viability assessment undertaken by Thomas E. Teague, which concludes that retaining the building as a public house would not be viable. It highlights, amongst other findings, that there would be significant costs associated with refurbishment, that constraints apply to the property's layout, that alternative facilities exist locally, and that estimated operating profit would be insufficient to cover the cost of servicing financial commitments and the need to make a profit.
7. I observed during my site visit that, externally, the building does not appear to be in a significant state of disrepair. However, it is clear from the evidence that a substantial amount of money would be required to bring the building back into use as a public house. A breakdown of these estimated costs is provided within the viability assessment.
8. It is likely that some of these costs, particularly those associated with decoration and general upkeep, would be a result of the fact that the building has remained empty for several years under the current owner. While significant investment would be required, this would be a one-off expense and it is possible that a future owner would be willing to meet these costs. Furthermore, the initial level of investment required does not mean that the ongoing business would be unviable.
9. The viability appraisal paints a fairly bleak picture in terms of the viability of the business should the building be returned into use as a public house. However, given that it has not been open for several years, and there is therefore no recent data to utilise, these figures are far from certain. While previous owners or landlords may have struggled to make The White Hart a viable business, and it is the case that many public houses have closed in recent years, there are many others that continue to be run successfully, including in fairly remote villages nearby such as The Pyne Arms at East Down and The Black Venus at Challacombe. It is also reasonable to consider that any new operator would have the opportunity to impose their own specific business model and that any future trading approach would likely differ, at least in some respects, to past operations at the site.

10. Moreover, a public house in this location has certain advantages. Firstly, the village is situated in an area of North Devon that attracts significant tourism throughout the year. A good quality public house would therefore attract business from passing holiday makers, including walkers and cyclists, and so would not be wholly reliant on the local community. There is also currently no other pub in the village, which is a settlement of not insignificant size. While there is a sports club, it does not currently appear to be open for business. Even if it were to re-open in the future, it is situated on the very edge of the village, some distance away from the majority of houses and the Council has also noted that it previously required a membership. A sports club is also unlikely to have the same character or facilities of a public house, or provide the same experience for customers. In terms of its location and offering, it is therefore not directly comparable with The White Hart and it is unlikely that it would provide significant competition for trade.
11. The appellant has set out that the public house was marketed under the previous ownership between 2012 and 2014. However, this took place some time ago in what was then a very challenging economic climate. Given the length of time that has passed, this marketing exercise can only be afforded very limited weight. Indeed, without evidence from a much more recent period of marketing, I cannot be certain that there would be no interest in purchasing the building as a public house. The appellant notes that the building was previously offered for sale to the local community. However, the fact that local residents were not able to raise the necessary funds at that time does not demonstrate that the public house could not be re-opened. Indeed, the recent planning application<sup>1</sup>, submitted by the Bratton Fleming Community Benefit Society, demonstrates that there is still an interest in taking on the building as a community hub.
12. With regards to alternative local provision, I have already set out that there is no other pub in the village, and that the sports club would not be a comparable facility, even if it were to re-open. There are several public houses in nearby villages, however, these are not close enough to reasonably expect the residents of Bratton Fleming to walk or cycle to them. It therefore follows that The White Hart is still required to meet the needs of the local community. Indeed, when open, The White Hart would have formed part of a community 'hub' at the centre of the village, alongside other facilities such as the church, primary school, pre-school and village store.
13. As a result, even when acknowledging any operational constraints associated with the premises' internal layout, I am not satisfied that it has been adequately demonstrated that the use of the building as a public house is no longer commercially viable or could not be made viable. This is particularly due to the lack of any evidence in relation to recent marketing of the site for that use. It has also not been demonstrated that the public house is no longer required to meet local needs or that there are alternative facilities nearby. The proposed development would therefore cause harm and conflicts with LP Policies ST22 and BRF. Taken together, the relevant aspects of these policies seek to maintain existing community facilities.

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<sup>1</sup> Planning application reference: 77022

### *Character and appearance*

14. The appeal site is located within the centre of the village of Bratton Fleming. The surrounding area is predominantly characterised by one or two storey buildings of varying styles, sizes and uses. Being a rural village, the built form is fairly low density and there is a general feeling of spaciousness. However, while there are several larger dwellings with substantial gardens, there are also smaller buildings in the immediate area that are set close to the road within tightly bounded plots of land.
15. The existing building on the appeal site comprises the original two storey public house which has had different elements added to it over time. The proposed development would involve the addition of further built form to the overall structure to provide a total of six dwellings. Most noticeably, a new two storey building would be built on the western part of the site, while the single storey element of the existing building, which fronts onto Station Road on the northern part of the site, would also become two storeys in height.
16. When viewed from the front of the building, the proposed two storey elements would be visible above the existing ridgeline. However, this would be a result of the topography of the site rather than the proposed development being excessively tall. Indeed, given that the proposed development would not be more than two storeys in height, it would not appear out of keeping with the surrounds.
17. The proposed building which would form Unit F would be situated very close to the road. However, the existing building already tightly bounds that part of Station Road and so adding a further structure in that location would not cause harm, particularly as there is already a tall wooden fence on that boundary which means there is currently no clear feeling of openness. The existing garden would largely be retained, and so the current feeling of spaciousness to the north of the site would not be reduced to any significant degree. The Council has noted that the roofline of the proposed two storey element on the northern part of the site, which would form Units D and E, would create a 'valley'. However, given the variety of building styles in the village, this would not appear particularly unusual or incongruous with the surroundings.
18. The site is also close to the boundary of the Grade II listed Church of St. Peter, which is to the northwest of the site. Its significance and special interest as a designated heritage asset is drawn in-part from its relevance to the historic evolution of the village, its distinctive architectural features, and its role and function as a visual and social landmark. Mindful of the statutory duty set out in s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have had special regard to the desirability of preserving its setting. Given the size of the church, including its tower, and its position as the focal point of the village, its setting is appreciated from a reasonable distance. However, The White Hart already exists within its setting. The proposed additions to the built form would be proportionate and would not look out of place with the surroundings in terms of design, height or overall mass. The proposed dwellings would also still be situated some distance from the curtilage of the church. As such, I am satisfied that the significance or special interest of the heritage asset would not be harmed as a result of the proposed development within its setting.

19. I therefore conclude that the proposed development would not cause harm to the character and appearance of the surrounding area or to the heritage significance of the Church of St. Peter. It is therefore in conformity with LP Policies DM01, DM04 and BRP in so far as these policies seek to ensure that development proposals respect existing development and their surroundings in terms of form, scale, and design.

#### *Affordable housing and open space*

20. LP Policy DM23 requires residential development in Local Centres and Villages without development boundaries to provide an affordable housing focused development in accordance with the requirements of LP Policy ST19 - Affordable Housing on Exception Sites. This equates to the on-site delivery of one affordable dwelling in addition to a financial contribution. Meanwhile, LP Policy DM10 requires development to provide new accessible green infrastructure, including public open space and built facilities, in accordance with adopted standards.

21. From the evidence before me, the appellant is not resistant to the principle of making necessary contributions towards affordable housing and open space and has produced a draft legal agreement. However, no completed legal agreement is before me to secure the necessary provisions. Thus, in the absence of an appropriate and completed mechanism to secure contributions, I must conclude that adequate contributions towards affordable housing and open space have not been secured. There is resultant harm based on contributions made necessary by the development not being delivered. The scheme conflicts with LP Policies DM10, ST19, ST23 and DM23 in so far as these policies set out that developments will be expected to provide, or contribute towards the timely provision of physical, social and green infrastructure made necessary by the specific and/or cumulative impact of those developments.

#### **Other Matters**

22. The Council's officer report notes that the site is within the 10km buffer zone of both the Exmoor and Quantock Oakwoods and Exmoor Heaths Special Areas of Conservation. However, as I am dismissing this appeal, I do not need to consider this matter further.

23. In terms of scheme benefits, a total of six additional dwellings would be provided and the Framework reaffirms the Government's objective of significantly boosting the supply of homes and making effective use of land. When factoring in the relatively modest scale of development under consideration, this benefit attracts moderate weight. The development would also create jobs during the construction phase and would, most particularly once occupied, provide support to the local economy and local community facilities. These benefits attract limited weight due to the scale of development under consideration. As the site is previously developed and located at the heart of a settlement, I also apportion meaningful positive weight to the proposal making an effective use of land. Nevertheless, the proposal's benefits, considered cumulatively, would be relatively modest and would not outweigh the multiple harms I have identified.

24. I note here that, even had a fit-for-purpose legal agreement been completed and put before me, the delivery of one affordable unit on-site alongside a

proportionate off-site contribution would not have made a very clear or noticeable difference to the available supply of affordable housing, either across the District as a whole or in the Bratton Fleming area. For the avoidance of doubt, any additional benefit in this specific sense would have been limited and the overall outcome of the appeal would not have been affected.

### **Conclusion**

25. I have found that the appeal proposal would cause harm in relation to the permanent loss of a community facility. This is an important matter and conflicts with policies in the development plan which are most important in determining the appeal. I have also identified a failure to secure appropriate affordable housing and open space contributions, in addition to associated policy conflicts. Consequently, the proposal would conflict with the development plan taken as a whole. This is notwithstanding the fact that I have found no harm in relation to character and appearance. Moreover, there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. The appeal is therefore dismissed.

*C Butcher*

INSPECTOR