



Appeal Decision

Hearing held on 12 December 2023

Site visit made on 13 December 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Appeal Ref: APP/J3015/W/23/3317327

Gardeners Inn, Awsworth Lane, Cossall, Nottingham NG16 2RZ

- 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 Matt Eley (NG9 Properties Ltd) against the decision of Broxtowe Borough Council.
 - The application Ref 22/00228/FUL, dated 9 March 2022, was refused by notice dated 15 December 2022.
 - The development proposed is demolition of existing public house and to construct 5 no. detached dwellings and associated parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs has been made by Mr Matt Eley (NG9 Properties Ltd) against Broxtowe Borough Council. This is the subject of a separate decision.

Preliminary Matter

3. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The main parties have been afforded the opportunity to comment on the revised Framework and I have taken the responses received into consideration. References hereafter in the decision to the Framework are to the December 2023 version.

Main Issue

4. The main issue is whether the proposal would result in the unjustified loss of a valued local community facility.

Reasons

Background and Policy Context

5. The appeal relates to the Gardeners Inn (hereafter 'the Gardeners'), a public house located to the southern side of the village of Awsworth, but within the parish of Cossall, which is a smaller, physically separate village located some one mile south of the site. Therefore, whilst the site lies within the contiguous built-up area of Awsworth, many local residents consider the area to the south of Westby Lane, including the Gardeners, to form part of Cossall.

6. The public house ceased trading in January 2022, since when I was told that the building has been subject to vandalism and theft, leaving it in a state of disrepair internally. My site visit confirmed there has been damage to ceilings, walls, windows and other fixtures, and equipment has been removed from the bar area. There was also deep standing water in the cellar. Part of the car park for the public house has been sold and planning permission granted for four dwellings in 2020, which are under construction.
7. Policy 13 of the Aligned Core Strategies Part 1 Local Plan (September 2014) (the ACS) supports the further provision of culture, tourism and sporting facilities, with existing cultural, tourism and sporting facilities protected and their further development supported, where appropriate. The Council stated at the hearing that it considers public houses to fall within the scope of 'cultural' facilities, notwithstanding that this is not explicitly stated within the policy or its justification. However, the appellant did not dispute the Council's interpretation of the policy, and I have considered the appeal on the basis of public houses having a cultural function.
8. The Framework at Paragraph 97 supports the provision and use of community facilities, including public houses, to enhance the sustainability of communities and residential environments; and states that the unnecessary loss of valued facilities and services should be guarded against, particularly where this would reduce the community's ability to meet its day-to-day needs.
9. Neither Policy 13 nor the Framework set out specific requirements for demonstrating that an existing cultural or community facility is no longer required. In particular, it is not defined what 'where appropriate' means under Policy 13(d) in terms of the circumstances where existing facilities will be protected and their further development supported. There is also no supplementary guidance on this topic. Therefore, it is a matter of planning judgement whether the circumstances are such that it is appropriate to protect the public house. It is also necessary to have regard to the Framework test and determine whether the public house should be regarded as a 'valued facility', within which I include evidence of local demand and the likelihood of the site operating as a viable enterprise in the future; and whether its loss would reduce the community's ability to meet its day-to-day needs, taking into account other available facilities in the area.
10. In the main, the appellant argues that the site is not viable as a public house and that there are alternative facilities nearby to serve the needs of the community. The Council's position is that insufficient information has been provided to demonstrate that there is no longer a need for a public house in this location. There has been significant response to public consultation from local residents supporting the retention of the pub. A Community Benefit Society, the Friends of the Gardeners Inn Limited (FTGI), has also made representations in writing and at the hearing.

Whether a valued facility

11. The present owners acquired the site in July 2021, with the then landlady continuing to run the pub on the existing lease until closure in January 2022, with the lease expiring in February 2022. At the hearing, I heard competing versions of events preceding the pub's closure, with the appellant arguing that the pub was in long-term decline, with low trading levels and a limited food

- offering, but interested parties describing a well-used facility frequented by families, sports teams and local groups, with popular Sunday roasts.
12. From the many representations made and my own observations, the Gardeners was the main public house for residents on the southern side of Ashworth and the village of Cossall. Interested parties attest to it being a longstanding fixture of the area since the 1960s and to it being a family-friendly pub, unlike other public houses in the area. Whilst I heard from the appellant about recent problems with anti-social behaviour at the Gardeners, the overwhelming sentiment expressed in comments from local residents is of the public house having an important role as a meeting and socialising space for local residents, including for events such as birthday parties and funerals. I was also told of a forthcoming development of some 250 new homes nearby, which would introduce a significant new population for whom a local public house to this side of Awsworth would be an important facility.
 13. Although not determinative in itself, the Gardeners was listed as an Asset of Community Value (ACV) in 2016, before being removed from the list in November 2021. I was told at the hearing that an application to renew the ACV status had inadvertently not been made, and that its removal as an ACV by the local authority was based in large part on statements by the landowner that it was not intended to use the premises as a public house in the following five years. Setting aside the circumstances of its removal as an ACV, its initial listing as such is an indicator of local value in the Gardeners.
 14. The appellant also points to a lack of community offers to buy the pub during the time it was listed as an ACV. However, the evidence indicates that the pub was trading throughout the time, with the exception of lockdown periods during the Covid-19 pandemic. There is also no clear evidence that the site was actively marketed for sale during this time, or that the pub was otherwise in danger of closing. As such, I do not regard a failure to make an offer during this time as evidence of a lack of local value for the public house.
 15. Overall, the evidence before me points to a public house which served a broad area of Awsworth and Cossall before its closure. The formation of the FTGI and its sustained efforts to develop a proposal to re-open the Gardeners, when many such local efforts fall by the wayside, adds to my view that the public house is valued, and its permanent loss would be keenly felt. It would also run contrary to the Framework aim of planning positively for community facilities, particularly in light of the additional housing under construction locally.

Viability

16. Notwithstanding my findings above, I recognise that local sentiment alone is not sufficient to sustain a commercial enterprise, and it is reasonable to consider whether the business is viable. The appellant points to a number of unpaid debts at the time the pub ceased trading, and Companies House records from 2017 showing low levels of profits, as evidence of unviability. It also provides a letter from a commercial property advisor dated November 2022 which advances further reasons, such as the unlikelihood of Greene King selling a viable pub in 2016, competition from other pubs locally, a lack of facilities and recent travails for the wider hospitality sector due to rising costs and changing consumer behaviours.

17. Whilst I understand that full details of the past trading accounts for the pub have not been obtainable, the appellant's evidence is limited to a selection of final bills showing outstanding debts at the time the previous tenancy ended. However, the fact that some debts existed is not persuasive evidence that the business as a whole is unviable, as these may have been brought about by any number of factors specific to the operator at the time, rather than being a consequence of wider economic conditions.
18. Moreover, although I acknowledge the points made about the recent difficulties faced by the hospitality sector, this is not sufficient evidence to demonstrate that this specific public house is no longer viable. It was also explained by the Council and interested parties at the hearing that Greene King's sale of the Gardeners in 2016 followed its acquisition of a local pub chain and its subsequent streamlining of its estate to prevent competition between its own pubs locally. As such, whilst Greene King may have favoured the retention of other more profitable or better located pubs in its portfolio, this is not sufficient evidence to determine that the Gardeners was unviable.
19. In addition, no details from Companies House have been provided in evidence to show the claimed low levels of profit. The appellant also referred several times to industry data showing the pub was, and would be, unviable, but no actual data has been put to me. In these respects, the appellant's evidence does not demonstrate with confidence that the pub was unviable at the time it closed and there is no subsequent trading period under a different landlord that may support the appellant's position regarding trading difficulties.
20. I also heard differing accounts of events between the appellant's purchase of the Gardeners in June 2021 and previous landlady leaving in January 2022, with the appellant maintaining that the premises was in a poor state of repair and valuable fixtures and fittings were removed, a claim disputed by interested parties who point to a renovation some eight years ago and the addition of outdoor seating as recent positive improvements. I do not have precise details of the condition of the building at the time the pub closed, but given it traded up to that point, it is reasonable to consider that any issues were mainly cosmetic. My site visit showed that the building has suffered damage since it closed. The appellant states that steps were taken to address this, including installing cameras and working with the police, but on the evidence before me, most of the deterioration has occurred since the Gardeners closed, not before.
21. I accept that the condition of the site means it would require significant investment to be fully restored as an operational public house. The FTGI has produced a business plan setting out estimates for funding, repairs and operational costs and revenues for the first five years, with repairs put at some £200,000. The appellant criticises these estimates as being significantly short of what would be required. However, the plan has been produced without full access to the property to make complete assessments of the work required. It was also stressed by the FTGI that works would occur in stages as funding and labour was available, with only the most essential works undertaken first and with input from local residents and tradespeople on a volunteer basis to reduce costs. I saw on site that, despite the poor internal condition, the building did not appear wholly beyond repair, and it is reasonable to think that, unlike a pub company seeking to undertake a single, large renovation, a community group would take a more gradual approach based on the availability of funding.

Therefore, whilst costs may well be higher than estimated by the FTGI at this stage, this does not necessarily mean its proposals should be disregarded.

22. The business plan points to pledged funding from local people of £140,000 to date and to ongoing applications for government and other funding. I recognise that these are not yet actual funds, and I saw a number of discrepancies in the calculations set out in the business plan which would require correction. However, these are necessarily estimated figures at this stage, and the plan shows genuine intent by the FTGI to secure ownership of the Gardeners and run it as a community pub, with other potential uses, such as a post office, possible over time. Though the business plan may not be flawless, the appellant has produced no substantive evidence to the contrary beyond anecdotal statements made at the hearing regarding potential repair and running costs. Therefore, I am not of the view that the FTGI's interest should be disregarded as evidence that the Gardeners could be viable if re-opened.
23. The appellant also points out that it would expect to achieve in the order of £500,000 to cover the original purchase price and costs incurred since. The FTGI points to a valuation of £200,000-225,000 in April 2023, albeit I understand this was based on available information rather than a full site appraisal by an estate agent. Ultimately, I have no formal valuation before me to establish which figure is more realistic, though the appellant's position that the site has not lost any value despite how it has deteriorated is unconvincing.
24. Whilst there is no specific requirement under Policy 13 to market the property for a certain period of time, national policy seeks to resist the *unnecessary* loss of valued facilities, and in this respect, marketing of the business at a reasonable price, if shown not to have generated any genuine interest from prospective buyers, would be a useful means of demonstrating that the business is not viable in the long term, and one which is commonly undertaken as part of similar proposals elsewhere and advocated by publications such as the CAMRA Public House Viability Test¹. However, the appellant has not formally marketed the property, and I give limited weight to comments made at the hearing regarding informal discussions the appellant held with a local councillor and with the FTGI, or the appellant's position that no-one would take on the business in its current state. This is not comparable to actually testing the open market, wherein a realistic value for the site may also emerge.
25. In contrast, the timeline of events put to me indicates that the appellant did not intend to continue running the pub with a different tenant after the previous lease expired in February 2022, as evidenced by the statements made prior to this in respect of the ACV status. Rather, the appellant's intentions to redevelop the site became clear with the submission of the planning application shortly after in March 2022.
26. Overall, there is limited evidence before me from the appellant to establish whether the Gardeners was a viable public house when it last operated, with no trading accounts or other estimates of running costs provided. In the absence of any formal marketing, I also cannot be certain that there is no long-term prospect for the Gardeners under another owner. However, the evidence put forward by the FTGI suggests there is a party committed to re-opening the Gardeners, notwithstanding that its business plan is a work in progress. Therefore, it remains to be shown that the Gardeners is unviable as a business,

¹ Campaign for Real Ale (CAMRA), January 2020

and it has not been demonstrated that its loss is justified on this basis. Consequently, I find that the loss of the Gardeners, being potentially still viable as a public house, would be unnecessary and contrary to the Framework.

Whether community could still meet its day-to-day needs

27. The appellant draws attention to alternative venues in the area. Each of these venues could easily be reached by car, but this is not conducive to the consumption of alcohol, and therefore I have considered the potential walking times and routes in the alternative to visiting the Gardeners.
28. The Gate Inn and The Hogs Head are located to the northern side of Awsworth. I heard the Gate Inn is trading well and has some comparable facilities such as a skittle alley and on-site parking. However, it does not offer hot food and is located adjacent to an industrial area. It is also around 15 minutes' walk from the appeal site and considerably further from residents in Cossall village itself.
29. The Hogs Head is beyond the built up area and I am told focuses on food service and business stays. At around 25 minutes' walk from the appeal site, it is unlikely to be well visited on foot by those living to the south side of Awsworth or in Cossall.
30. The Crown Inn is less than 10 minutes' walk north and, though I was told it was not comparable to the Gardeners in terms of welcoming families or offering food and has had recent periods of closure due to landlord turnover. A new micropub nearby, 40 Bridges, has enjoyed success since opening, but has limited capacity of around twenty patrons and a different offer focusing on craft beers, with noise restrictions due to the proximity of nearby dwellings.
31. The Dewdrop Inn is located towards Ilkeston, some one mile from the appeal site, and beyond the built-up areas of both Awsworth and Cossall. It does not have off-street parking and access on foot would be via a busy A-road which would not be conducive to walking by residents living near the Gardeners.
32. The appellant also mentions the village halls in both Awsworth and Cossall. Both undoubtedly serve a valuable function as meeting and event spaces, but I was told they operate on a booking basis and so do not offer the same opportunity for casual social gathering as would a public house. Similarly, hot food takeaways do not offer space for social gathering. The farm café adjacent to the appeal site is an alternative venue for people to meet, but it operates only in the daytime and does not serve alcohol, and therefore is not an alternative to the Gardeners.
33. The appellant argues that, between them, these other venues would meet the day-to-day needs of local residents. I accept that these other venues could offer facilities comparable to the Gardeners, such as meeting spaces and food service. However, the value placed upon local public houses is more than simply the facilities they offer, but also their location, character, atmosphere and quality. In these respects, none of the other public houses offers the same experience or convenience of location as patrons of the Gardeners experienced, and none are located within the parish of Cossall, which would lose its only public house. In addition, the Gardeners offers a large floorspace suitable as a venue for parties and other occasions, which I did not hear were a feature of other venues locally. For these reasons, I find that there is not sufficient alternative provision in the local area to offset the loss of the Gardeners.

Conclusions on main issue

34. Drawing these considerations together, I find that the Gardeners is a valued community facility for which there is not suitable alternative provision in the area. The appellant's evidence furthermore does not demonstrate that the public house is no longer viable as a business. Consequently, the proposed demolition of the public house and its replacement with dwellings would result in the unnecessary and permanent loss of a valued community facility which would reduce the community's ability to meet its day-to-day needs. This would be contrary to the aims of the Framework and Policy 13 of the ACS.

Other Matters

35. The main parties are not in dispute over any other matter. The Council has not raised objection in terms of the design of the proposed dwellings, which would continue the linear pattern under construction next door. Nor are any concerns raised by the Council in respect of residents living conditions or highway safety, and on the evidence before me, I have no reasons to disagree.

36. Whilst the site has suffered damage, the exterior is still largely sound and the open parts of the site are not an especially poor condition. As such, the site does not detract from the character and appearance of the area to an extent that redevelopment of the site would be a notable benefit. In any event, it is within the gift of the landowner to separately address the condition of the site. This is not a matter attracting favourable weight, therefore.

Conclusion

37. The proposal would deliver five family-sized dwellings which would contribute to the Framework objective of significantly boosting the supply of homes. However, the Council indicates it can demonstrate a five year supply of deliverable housing sites, a position not challenged by the appellant. Therefore, whilst a benefit, the proposal would not be essential for meeting housing targets and so attracts limited weight given its small scale.

38. There would be further benefits from economic activity during construction and subsequently from residents spending money locally, but these would again be limited given the scale of the development, and further offset by the permanent loss of a public house and its potential to generate revenue and employment in the local area.

39. Set against this, the unjustified loss of a public house would result in conflict with the development plan and the aims of the Framework to support the provision and retention of community facilities to meet the needs of the community. I afford significant weight to these conflicts.

40. Overall, I conclude that material considerations in this case, taken cumulatively, are not sufficient to outweigh the identified conflict with the development plan, and do not indicate that planning permission should be forthcoming in spite of this conflict.

41. Therefore, the appeal should be dismissed.

K Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Eley	Appellant, NG9 Properties Ltd
Claire Preston MRTPI	JMI Planning
Jon Imber	JMI Planning

FOR THE LOCAL PLANNING AUTHORITY:

Steve Simms	Planning Manager
Oliver Wells MRTPI	Senior Planning Officer

INTERESTED PARTIES:

Rob Bryant	Friends of the Gardeners Inn Limited
Andrew Ludlow	Secretary, Nottinghamshire CAMRA
Brian Dench	Local Resident
Susanna Alls	Local Resident
Richard Hutchinson	Director, NG9 Properties Ltd

Documents submitted after the hearing

Responses from Council (dated 21 December 2023) and appellant (dated 2 January 2024) to Inspector request of 20 December 2023 for comments on new National Planning Policy Framework.
