



Appeal Decision

Site visit made on 12 November 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/L3245/X/18/3215230

**The former Pheasant Inn, Britons Lane, The Smithies, Bridgenorth
WV16 4TA**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Simon Reed against the decision of Shropshire Council.
 - The application, Ref 17/05642/CPE, dated 21 November 2017, was refused by notice dated 30 April 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the change of use from a public house (A4) to a residential dwelling house (C3).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Background

2. The appeal concerns a building known as The Pheasant Inn which is situated in a rural area. For many years it was used as a public house until it closed in 2012. The public house use included primarily two public areas. These are referred to as the lower lounge, situated in the oldest part of the building where a small bar is positioned, and the upper lounge, a later addition, so called as there are three steps up to it from the lower lounge. Each lounge has an entrance from the front elevation overlooking Britons Lane. There is also a beer cellar accessed via a trap door behind the bar and public toilets to the rear of the building.
3. The building also has a generous area of residential accommodation comprising a kitchen/diner, a living room and a utility room at ground level and five bedrooms and two bathrooms at first floor level. It is situated in a large plot set back from the road with a hard standing area to the front and lawns to the side and rear. Some of this external space was used as a pub garden while the area to the rear of the building was for private garden purposes, in connection with the residential use.
4. After the public house closed, the appellants began to use the lower and upper lounges some time later for residential purposes and incorporated their use into the residential use of the rest of the building. I will describe their actions in detail in due course.

5. Prior to the submission of the application, the appellants sought planning permission in 2004 to use the building for residential purposes. This application was refused and dismissed on appeal. Thereafter the public house closed on the 31 March 2012 and the appellants submitted another application for residential use in June 2012. This application was also refused and dismissed on appeal. For a period of time the building was listed as an Asset of Community Value. This means that if the appellants had decided to sell, a moratorium period would be triggered that would allow the community to bid to purchase the property on the open market. The listing expired on the 11 June 2018.
6. From all I have read and following my inspection of the site, it is considered that before the public house closed the site comprised one planning unit in a mixed use as a public house and residential unit. The appellants now seek to establish that the use of the whole property for residential purposes is lawful.

Main Issue

7. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well founded. That turns on whether the appellants can show, on the balance of probabilities, that the material change of use to a dwelling house took place more than four years before the date of the application (that is the 21 November 2013, the relevant date). The appellants also have to show that the use has continued, without material interruption, thereafter so as to be immune from enforcement.

Reasons

The appellants' case

8. The appellants have submitted a significant amount of documentary evidence to demonstrate the lawfulness of their case. It comprises, in the main, a statutory declaration from Mr Reed, with various appendices, and a statutory declaration from Mr S Butler, a former Licensing Magistrate. There are also numerous letters of support from friends and former users of the public house who confirm the appellants' claims. Following the refusal of the application, there are also additional letters of support and photographs of the property from Britons Lane.
9. The public house use ceased in March 2012 and Mr Reed states "Immediately from this point" he began to use the lower and upper lounge for residential purposes. This was because, in the main, these rooms were warmer than his living room to the rear of the building. This room was a later addition to the building and has no cavity wall insulation. In the winter months when it is heated there is a lot of condensation. This was tolerated when the public house was open as the appellants spent most of their time working in the public house.
10. Mr Reed then states after the second appeal decision was issued on the 27 August 2013, that he began works to convert/change the former bar areas to living accommodation. The fitted carpet was removed from the lower lounge and rugs were placed on the tiled floor. Two sofas, a footstool, a table lamp, and a coffee table were also brought into the room, together with the television, family photographs and ornaments. He also states "At around this time" he chose to relocate The Pheasant Inn hanging sign to the wall in the

lower lounge but according to the dated photographs, this does not appear until November 2015.

11. In the upper lounge, the appellant placed a large dining table, a bookcase, ornaments, a table lamp, a radio and family photographs. All furniture associated with the public house that was no longer needed was sold at auction. Looking at the photographs this appears to have comprised mainly small tables and chairs which are no longer present but the appellants have kept a bench and a pew.
12. In the bar area, all beer pumps, pulls, optics and glasses were removed and the cellar was cleared of all pipe work. The shelves behind the bar are now used to store wine, music/CDs and various homemade jams and chutneys. A heavy curtain has also been fitted across the bar area. Externally, all signage together with all outdoor seating and garden furniture was removed and in September 2013 works began to enclose the frontage of the property with a fence and hedge. The quotation for the work is dated the 16 August 2013. Thus, Mr Reed states "By September 2013", the former public bar area and associated space was used solely for residential purposes.
13. To evidence continuous residential use, the appellants include photographs of occasions which show their family relaxing in both rooms and friends and family at dinners and gatherings. The actual photographs from 2013 and 2014 are not dated but the appellants provide a date whereas those from 2015 are dated on the actual photograph.
14. During the determination of the application, Mr Reed submitted a letter dated the 15 February 2018 in which he gives further information about how he has used the building since the closure of the public house. When it was in operation, he always made use of the door into the utility room as his main entrance door to access the building. After the public house closed, he began using the door into the lower lounge as his main entrance into the property.
15. The second statutory declaration is by Mr Butler. He met the appellants about 1990 when he was the Licensing Magistrate. Part of his duties was to visit public houses to carry out inspections until 2003, when the licensing regime passed to the Council. He became a friend of the appellants and states he has seen the inside of the public house before and after the works carried out by them. In particular, he recalls around October 2013 driving past the premises and seeing the new fence and hedge. He also states he noted the main bar areas to the front of the property had changed in appearance and were being used as part of the residential accommodation. He includes a photograph dated the 11 July 2017 with his declaration. This shows him sitting in the lower lounge and he states the arrangement of the furniture has been the same since August 2013.
16. The letters supporting the appellants' claims are from the occupier of a nearby property, a former neighbour from 2009 to 2017, a maintenance man, a family member and friends who have visited the property when it was in use as a public house and afterwards. All remark on the use of the former public house space as having been turned into a home by the appellants. The maintenance man confirmed he removed light fittings no longer needed and all the public house signage. A former neighbour, who looked after the property when the appellants were away, used to feed the cat and switch the lights on and off. As a result, they saw how the former public house area had changed.

17. During the determination of the application more letters of support were received from neighbours, friends and family. Many confirm that they knew what the lower lounge and upper lounge looked like when the public house was open and how the rooms had changed and been used after the public house was closed. Other comments made point out that from Britons Lane it is impossible to see much inside the lower lounge due to the small windows; from a neighbouring property it is possible to see a light shining through the side window in the lower lounge of an evening; and that changes can be seen through the open lower lounge doorway.
18. After the application was determined and in order to support the appeal there is a further bundle of letters from people who have written previously as well as from the children of the appellants. All express surprise at the decision and the way their comments were summarised in the Council's officer's report. They write to reaffirm that they have seen and experienced continuous residential use of the former public house areas. They provide some more details of residential use such as seeing shopping being taken through the lower lounge door; that when it was a public house making use of the kitchen for coffee and meals and how that has changed now to the former public house areas; and what can be seen from Britons Lane depends on a variety of factors.
19. Finally, the appellants submit photographs of the property during the evening with the lights on and off and the curtains opened and closed. These seek to make the point that with the lights on and curtains closed in the lower lounge, it is not possible to see any light when passing directly in front of the building to gauge whether anyone is using that room. Other photographs show that from two neighbouring properties it is possible to see a light on from the side window of the lower lounge even in the evening.

The Council's case

20. This is based on a number of letters from people who live in the area and further afield. Many state that they walk/drive/cycle past the site on a regular basis and that they have kept an eye on the place since the last appeal decision. At no time has anyone seen any lights on or any activity or smoke from the chimneys in the last four years. Some state that they can still see the small tables and chairs that were part of the public house and that there has been frost or condensation on the windows. Most comment that they have only seen activity since the application was submitted.
21. In addition, the Council state that the public toilets remain in situ and the commercial cooking equipment (fryer and extract) remain as well. The living room at the rear of the building also remains furnished as a lounge.

Assessment

22. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by 'independent' evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is provided that it is sufficiently precise and unambiguous.

23. It has been held in case law that in assessing when the change of use of premises to residential use has taken place, the physical state of the premises is very important but it is not decisive. The actual, intended or attempted use is also important but again, it is not decisive, as these matters have to be looked at in the round.
24. From all I have read and seen, it seems to me that it was the appellants' clear intention to make use of the whole property as a residential unit following the last appeal decision in August 2013. This is demonstrated by the erection of a fence and the planting of a hedge to enclose the forecourt and the re-arrangement of the furniture in the lower and upper lounges. In particular, photographs show that the lower lounge contained small tables and hard back chairs when it was a public house. In their place now there are two sofas, a padded footstool, a coffee table and a television. A small table has been kept, as also a bench from when the room was a bar but it now contains family mementos and framed photographs, which are visible in all the appellants' submitted photographs. In addition, the old fitted carpet has been removed and in its place there are now new rugs.
25. Similar changes have taken place to the upper lounge where there has been the removal of most of the bar furniture, save for a pew and the fitted window seat, and the introduction of a dining table, chairs and personal effects such as a bookcase, ornaments and a radio.
26. The Council take the view that the level of physical alterations is minimal as the public toilets, the commercial cooking equipment in the kitchen, the wooden bar and some bar furniture and the living room at the rear of the building remains furnished.
27. However, beginning with the living room, it is not unusual in a building this size for there to be two sitting areas. The living room is described as being cold in the winter but to my mind it is possible it is used in the summer as it is a light and airy room and I saw it has a view over some of the garden. Just because a room is unused, it does not mean that the furniture is removed. In the same way as a guest bedroom is largely dormant most of the time, nevertheless the bed remains ready to be used. For me, the most telling aspect of the appellants' intentions is the repositioning of the television from the living room to the lower lounge. The photographs over the years show that it has also been upgraded to a better model and this is a firm indication that in the evenings the lower lounge is where the appellants have been relaxing over the years.
28. The size of the commercial cooking equipment is modest and appears to be no bigger than domestic deep fat fryers available on the market today. One of the fryers though has been removed leaving just one on the worktop and the photographs show they are easily moved around. This is no different from a large food processor which might be placed on the worktop by a keen amateur cook. The extraction equipment is also no larger than what could be installed over a range cooker, which are fashionable at present. As the children of the appellants point out, their parents are not the generation that throws things away simply because they are old.
29. This brings me to the retention of some of the public house "furniture". It would appear that the appellants have carefully considered what would still be of use and would fit the age and style of the building in choosing what to keep.

There is no doubt though, that with the removal of the bar pumps and pipe work from the bar, the appellants' intention was to cease the public house use and keep the bar as a memento of the history of the building together with the former hanging sign, now affixed to the wall in the lower lounge.

30. With regard to the former public toilets, although the appellants have not said so, it is considered their removal would be expensive and a matter that they might not wish to deal with, if at all, prior to the determination of the LDC. In the meantime, they use them for domestic storage and as a convenient ground floor toilet.
31. I turn now to consider "continuous use". Some third parties question whether the lower and upper lounges have been continuously used since the 21 November 2013. This is because they regularly pass the site on foot, by bicycle or in a car at all times of the day and evening and do not see activity in the lower and upper lounges.
32. This however could be for a number of reasons. At the site visit I saw that the lower lounge windows are small and sit slightly below the level of the road due to the fall of the land. There was also a tree at the western edge of the property and parked cars on the frontage that would impede a clear view of the windows at times. If passing in a car, even at a low speed, I doubt much would be seen. For walkers and cyclists, unless someone was standing up in the lower lounge, people sitting on the sofa would not be seen as it is so low. This is apparent from some of the appellants' photographs.
33. The upper lounge has a large bay sash window which affords a good view into this room from Britons Lane over the front boundary hedge. The appellants' photographs show that this room is used for dining and other activities that require good light, such as reading or sewing. There were also photographs of social gatherings with the curtains open, which would have been visible to anyone passing by at the time.
34. Some third parties refer to these rooms being in darkness of an evening and therefore question whether the rooms have been continuously used. The appellants' photographs show though with the curtains drawn in the lower lounge it is not possible to see whether the lights are on from Britons Lane. This is because the curtains have pelmets and are very full. The curtains in the upper lounge appeared to be thinner and the lights are visible through them but as this room is used for dining, the lights would only be on for a short period before the appellants retired to the lower lounge to relax. The nearest neighbours with a good view of the side window in the lower lounge both state that they regularly see lights shining through this window. The appellants' photographs also show this window with a light on in the evening is visible from those properties.
35. With regard to the absence of smoke from the chimneys in the lower and upper lounges, at the site visit I saw that there is a multi-fuel burner in the upper lounge that provides hot water for the whole property. Mr Reed states that this is lit every day for six months of the year to heat the radiators as well. The photographs also show that the fire in the lower lounge is also lit at times.
36. As to the supposition that although the rooms are furnished for residential use, they are only used as such on an occasional basis when friends and family visit, it is considered that this is most unlikely. This is for the simple reason that

most people would not go to the extent of fundamentally re-arranging their living accommodation if it was only to be used seldomly.

37. Remarks have been made that the appellants' evidence is only derived from family and friends. However, it is not clear where else they would obtain evidence if not from those who have regularly stayed with them over the years and been entertained before and after the changes were made. It seems to me that they are best placed to support the appellants' case. In any event, the maintenance man who is, it seems, neither family nor friend, supports their case.
38. The Council also refer to the marketing of the public house to support their refusal. The appellants' estate agent confirms though whilst the premises have remained on his books there has been no active marketing for a number of years. Even if there had been, that does not demonstrate the lack of a residential use of the lower and upper lounges.
39. In arriving at my conclusion I am conscious that the LDC application has attracted widespread opposition locally expressed through a number of individual letters. It is inevitable when seeking to document a material change of use that sometimes some of the evidence is inconsistent. For example, Mr Reed remembers putting up the public house sign in the lower lounge earlier than the photographs record. The Council also see contradictions in Mr Butler's evidence but this is not apparent to me when the relevant date is the 21 November 2013 in any event. This is why the test for the evidence is "on the balance of probabilities", namely what is more likely than not. That balance of the evidence need only be slightly more than half in order to satisfy the test but that is not to say that what has been submitted by those who challenge the appellants' evidence is untrue.
40. It is considered, whilst there appears to be some minor inconsistencies, having regard to the totality of the evidence, they do not make the appellants' version of events less than probable. In my view the appellants' evidence is sufficiently precise and unambiguous to support the residential use of the former public house areas and, as such, I conclude that the material change of use of the building to residential took place before the relevant date. The development is therefore lawful.

Conclusion

41. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the material change of use from a public house (A4) to a residential dwelling house (C3) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Fleming

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 21 November 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The material change of use from a public house (A4) to a residential dwelling house (C3) took place by 21 November 2013 at the latest. This use became lawful by continuing for a period of over four years prior to the date of submission of the application and does not contravene the requirements of any enforcement notice in force.

Signed

D Fleming

Inspector

Date: 20 December 2019

Reference: APP/L3245/X/18/3215230

First Schedule

The material change of use from a public house (A4) to a residential dwelling house (C3).

Second Schedule

Land at: The former Pheasant Inn, Britons Lane, The Smithies, Bridgenorth
WV16 4TA

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated:20 December 2019

by **D Fleming BA (Hons) MRTPI**

Land at: The former Pheasant Inn, Britons Lane, The Smithies, Bridgnorth
WV16 4TA

Reference: APP/L3245/X/18/3215230

Scale: nts



