

Parish: STANSTEAD**Location: White Hart Inn, Lower Street****Proposal: Continued use of public house as single dwelling****Applicant: Mr M Wilson & Ms A Sell****Case Officer: Lynda Bacon****Date for Determination: 18.09.09**

THE SITE

1. The White Hart Inn is located in and fronts on to the northern side of Lower Street, within the built up area boundary of Stanstead, (a non-sustainable village), and within a Special Landscape Area. Land immediately to the north of the application site is designated as an Area of Visual and/or Recreational Amenity. To the north-west and fronting Upper Street is the Stanstead Village Community Centre.
2. The application site amounts to 0.06 hectares of land and comprises the White Hart Inn, together with its associated parking and garden areas. The White Hart Inn is a Grade II Listed Building, mainly two-storeys in height and with an elongated single-storey wing that projects to the rear along the eastern side boundary
3. The primary use of the White Hart Inn has been as public house with associated ancillary residential accommodation. A public house has operated from within the ground floor rooms, at the southern end of the main building and the 'bar' is retained. The remainder of the ground floor within the main building, together with the first floor above has been used for ancillary residential purposes. The single-storey rear wing has been converted for use as 4 rooms for holiday/short stay lettings.

THE PROPOSAL

4. The use of the White Hart Inn as a public house has ceased and the former trading areas are now in use as additional residential accommodation in connection with the existing residential use of the premises. Planning permission is therefore sought to continue using the property as a single dwellinghouse only.
5. The application is accompanied by a supporting statement which is essentially that submitted with the enforcement appeal considered under B/04/09/ENF (see below). The basis of which is that the change of use to single dwellinghouse commenced when the applicants purchased the property in 2001 and as such its continued use is immune from enforcement action. In respect of Policy CR20 it is confirmed that no formal marketing exercise has been carried out however, the property has continued to be marketed as a public house but with no interest resulting.
6. During the processing of the application the applicant, via the agent, was asked to provide full details of all marketing undertaken to date, together with details of all interest generated. In response the agent has submitted further information to support the application in the form of a summary of the case for the applicants, together with a copy of the sale particulars produced when the premises was marketed for a further period commencing 25 October 2007.

7. This further information identifies the following summarised points:

- The White Hart was acquired by the applicants in August 2001 after the pub had ceased trading for at least 8 months.
- An enforcement notice was not served on the applicants within 4 years of their occupation of the premises.
- The Council wrote to the applicants in April 2004 stating that observations had been made during the enforcement appeal hearing (on 18 November 2003) to the effect that the bar areas of the White Hart were in use for residential purposes.
- The Council as rating authority were notified in October 2001 that the property was used for “residential only” and the rating list for Council Tax purposes was altered accordingly.
- The Council did not take enforcement action until 29 November 2007, over 4 years from the Hearing inspection date and at the time the notice was served, the property had been used as a single private dwelling for a period in excess of 6 years.
- The enforcement notice was quashed by decision letter dated 17 September 2008, (14 months ago) on the basis that it was invalid for failing to precisely identify what was meant by the ‘trading area’. The Council have not served any fresh notice.
- Whilst Policy CR20 is clearly a material consideration, the application includes significant information which is also material to the consideration of the proposal and addresses reasons as to why Policy CR20 can be said to have been reasonably overcome in this case.
- An example where the requirement for marketing under Policy CR19 was not pursued is cited. The same approach should be adopted with this application.
- Consideration should be given as to whether it is possible for any commercial use of the premises to now take place without planning permission being required given that the residential use has immunity.
- The premises was marketed for freehold offers in the region of £450,000 as if it were still a public house for a further period commencing 25 October 2007, that marketing failed to produce any offers although it appeared on the agent’s website and particulars were handed out.
- The local community is very well served by a successful and thriving, recently extended community centre within metres of the former White Hart public house.
- The material change of use took place on 22 August 2001 and has continued since. Through the passage of time it has now become immune from enforcement action and there is no reason why planning permission should not be granted to formalise this long-standing change of use.

RELEVANT HISTORY

8. 2008 – Enforcement notice quashed on appeal by decision dated 17 September 2008. The enforcement notice issued on 29 November 2007 and served in respect of the alleged ‘material change of use of the premises from a disused public house with associated living accommodation to use as a dwellinghouse’ was found to be invalid and the notice was quashed (B/04/09/ENF). The determining Inspector did not comment on the planning merits of the case but reminded the Council that where enforcement action has proved to be invalid, they have a further 4 years in which to issue a subsequent notice. The Council therefore has until September 2012 to serve a valid enforcement notice.
9. 2003 – Planning permission was refused for the change of the public house to a single dwelling (B/01/00885). The reason for refusal referred to the fact that the application had not been able to demonstrate to the satisfaction of the Council that the public house was no longer needed by the local community, that it was no longer commercially viable, and that the premises had been explored fully either as a going concern or for alternative forms of community or employment use. The subsequent appeal was dismissed by decision letter dated 4 December 2003 and the determining Inspector commented that the evidence

submitted fell well short of that required to show that the pub was unlikely to be commercially viable and that the loss of the pub would be likely to harm the social and economic well being of the village. Furthermore, the Inspector concluded that the change of use from that of a pub and the likely pressure to remove related pub fittings would alter a long-standing and interesting aspect of the property's history, which would detract from its special historic interest

10. 1997 – Change of use of outbuilding from entertainments room to 4 rooms for holiday/short lets and external alterations granted planning permission (B/97/01199).
11. 1983 – Change of use of outbuilding to restaurant refused planning permission (B/83/00311).

NATIONAL GUIDANCE

12. **PPS1** (Delivering Sustainable Development)
13. **PPS4** (Planning for Sustainable Economic Growth)
14. **PPS7** (Sustainable Development in Rural Areas)
15. **PPG15** (Planning and the Historic Environment)

PLANNING POLICIES

16. The Development Plan comprises the East of England Plan, adopted 2008, saved policies in the Suffolk Structure Plan, adopted 2001, and the Babergh Local Plan (Alteration No. 2) adopted 2006. The following policies are relevant to this proposal:

East of England Plan - 2008

- **SS1** – Achieving Sustainable Development

Babergh Local Plan (Alteration No.2) 2006

- **EM24** (Retention of employment sites)
- **CR04** (Special Landscape Areas)
- **CR20** (Protecting existing village facilities)
- **CN06** (Listed buildings)

The relevant documents can be viewed via the internet. Please see Page 4 for details.

CONSULTATIONS

17. PC – No objections. In the current economic climate public houses are shutting all the time, it is unlikely that this property could ever again trade as such. If change of use is not given the property may well become neglected and fall into disrepair
18. LHA – Do not wish to restrict the grant of planning permission.

REPRESENTATIONS

19. None received.

PLANNING CONSIDERATIONS

20. The issues central to the determination of this application are:
- i) Impact on the village community,
 - ii) Immunity from enforcement control,
 - iii) Appeal decisions, impact on the Listed Building and the Special Landscape Area and impact upon occupants of neighbouring properties.

Impact on the village community

21. Government planning policies relating to sustainable development are reported within Planning Policy Guidance Notes (PPG's) and Statements (PPS's). PPS1 sets out the Government's general objectives and strategies for achieving sustainable development through the planning system. It states sustainable development is the core principle underpinning planning. At the heart of sustainable development is the simple idea of ensuring a better quality of life for everyone, now and for future generations.
22. PPS4 sets out the Government policies and objectives that aim to achieve sustainable economic growth and to raise the quality of life in rural areas by promoting thriving, inclusive and locally distinctive rural communities. It also seeks to remedy any identified deficiencies in local facilities to serve people's day to day needs and help address social exclusion
23. PPS7 confirms that people who live or work in rural areas should have reasonable access to a range of services and facilities and that local plan policies should support a wide range of economic activity in rural areas, together with the retention of local facilities such as public houses. Policies EM24 and CR20 seek to deliver these objectives whereby existing employment sites are safeguarded by Policy EM24, whilst Policy CR20 will resist the loss of existing village facilities, including public houses, unless all alternative business possibilities have been explored. Both policies require that an agreed and sustained marketing campaign be undertaken to demonstrate that other forms of business use have been fully explored or that there is no longer a need for a particular local facility in the community
24. The application has been submitted without an agreed marketing campaign although it is known that the property has been marketed previously. The applicant, via the agent has been asked to submit full details of the marketing undertaken to date so that officers could ascertain whether such marketing could be used to satisfy local plan policies, however only a copy of the sales particulars have been received. The application therefore must be assessed on its own merits and without the benefit of marketing evidence. In this particular instance, the circumstances behind the proposal are considered to be material to the determination of the application as opposed to refusing the application on the basis of inadequate marketing.
25. The circumstances are that the public house ceased trading in early 2001 and this facility was therefore lost to the village 9 years ago. The White Hart Inn was the only pub in the village and the Inspector who dismissed the appeal in 2003 opined that whilst the community centre nearby 'is no doubt filling part of the gap currently left by the closure of the pub, the proposal would nonetheless lead to the loss of the only pub in the village' and that 'there are significant differences between a public house and a community centre, not least in terms of licensing laws'. He went on to conclude that 'the change of use of the pub would be likely to harm the social and economic well being of the village'. This opinion still remains pertinent to the consideration of the proposal today.

26. It is accepted that in addition to the Community Centre facilities, there is also a Church within the village however; the village school, shop and post office have been lost such that the village is now defined as non-sustainable elsewhere in the Local Plan (Policy HS03).

Immunity from enforcement control

27. It could however, be argued that the weight apportioned to the Inspector's 2003 decision diminishes over time as the length of time that the pub has been closed increases. Furthermore, the question of whether the change of use is now immune from enforcement control and therefore lawful, is material to the determination of this application. The applicant's agent is of the opinion that the material change of use took place on 22 August 2001 and has continued ever since and that because the Council did not take enforcement action within the 4 years from when the applicants first occupied the premises and commenced its use as a single dwelling, the use is now immune from enforcement control. The implications of which being that the enforcement notice that was served on 29 November 2007 was out of time and the fact that the notice was later found to be invalid by the 2008 appeal decision (effectively extending the time in which the Council can serve a corrected notice to 17 September 2012) is irrelevant, because the Council can only serve a corrected enforcement notice if the original notice was served in time and it is now too late to serve a corrected notice.
28. The agents assertion that the change of use is now immune from enforcement control is challenged by evidence held on Council enforcement files and whilst it is acknowledged that there are discrepancies in both the applicant's and the Council's cases, the application to be determined is an application for planning permission and not a Certificate of Lawfulness for an Existing Use or Development (CLEUD), which would test the issue of immunity on the 'balance of probabilities' based on the strength of evidence presented by both parties, usually given under oath.
29. Nonetheless, the White Hart has been used as a single dwellinghouse for some time now and the harm caused to the social and economic well being of the village, which occurred some 9 years ago has been mitigated, in part, by the availability of the Community Centre nearby. The fact that the immunity issue remains unresolved and that it is not clear cut, together with the fact that the village has been without its pub for 9 years now, leads to the conclusion that on balance, any further harm caused by regularising the situation is not of sufficient weight to warrant the refusal of the application.

Appeal decisions, Impact on the listed building and the SLA and impact upon the occupants of neighbouring properties

30. It was the opinion of the Inspector determining the 2003 appeal that the evidence submitted at that time fell well short of that required to show that the pub was unlikely to be commercially viable and he concluded that the loss of the pub would be likely to harm the social and economic well being of the village. Furthermore, the Inspector commented that the change of use from that of a pub and the likely pressure to remove related pub fittings would alter a long-standing and interesting aspect of the property's history, which would detract from its special historic interest
31. In terms of the impact of the proposal on the character of the listed building, the application to be determined is to regularise the change of use only and does not include any proposed works to the fabric of the listed building, which would require a separate application for listed building consent and would be judged on its own merits in due course. The comments of the 2003 appeal Inspector in relation to the fact that the change of use would detract from the special historic interest of this building is therefore still relevant, however the removal of any historic related pub fittings would fall to be considered under any application for Listed Building Consent that may be submitted in the future. The change of use alone is not considered to be sufficiently harmful to the special historic interest of this building to warrant refusing the application on this basis. Furthermore, the

proposal will not impact on the wider setting of the Special Landscape Area, given that the premises is situated within an existing village setting, where residential uses dominate

32. In respect of neighbouring amenity, it is considered that as the remainder of the premises is currently in use for residential purposes, the expansion of this use into the trading area on the ground floor will not adversely affect neighbouring amenity as the existing use will not be intensified as such, and the premises will continue to be used as a single dwellinghouse.
33. The 2008 enforcement appeal found the enforcement notice to be invalid but did not consider the planning merits and is relevant in so far as it has extended the time period for the Council to issue a further enforcement notice, if planning permission is refused and it is considered expedient to take further enforcement action now

REASONS FOR APPROVAL

34. The proposal, which comprises the continued use of the premises as a single dwelling, has been assessed under the requirements of policies CR20 and EM24 of the Babergh Local Plan Alteration No.2 (2006) and it is considered that in this particular instance, the policy requirements for a sustained marketing campaign to be carried out are outweighed by other material considerations. In other respects the proposal is considered to be in accordance with saved policies CR04 and CN06 of the Babergh Local Plan Alteration No.2 (2006), in so far as the proposal would not harm the special historic interest of the listed building, nor harm the landscape quality of the Special Landscape Area and would not materially reduce the amenities enjoyed by occupants of neighbouring properties.

RECOMMENDATION

That planning permission be granted.