

SECTION B – MATTERS FOR INFORMATION

APPEALS DETERMINED

a) Planning Appeals

Appeal Ref: A2019/5004 **Planning Ref:** P2019/5070

PINS Ref: APP/Y6930/A/19/3238694

Applicant: Mr S Bailey

Proposal: Change of Use from Public House (Class A3) to a Dwelling (Class C3)

Site Address: Farmers Arms, Glynneath Road, Resolven SA11 4DW

Appeal Method: Written Representations

Decision Date: 21st January 2020

Decision: Allowed

[Appeal Decision Letter](#) and [Costs Decision](#)

Members will recall that this application was refused at Committee on 30th July 2019 (contrary to Officers recommendation). The appeal was heard by Written representations, and a separate application was made against the Council for a full award of costs citing the Council's unreasonable behaviour (summary provided at end of this report).

The main issue concerned whether the proposed change of use of the public house as an important local community facility would meet the requirements of Policy SC2 of the Adopted LDP, having regard to the criteria set out within the policy.

The Inspector noted that PPW recognises that public houses can play an important economic and social role in the local community and their loss can have a detrimental impact, and the economic and social function of public houses should be taken into account when considering applications for a change of use into residential

or other uses, and that this approach is reflected within Policy SC2 (Protection of Existing Community Facilities) of the LDP which resists the loss of important community facilities unless it can be demonstrated that the facility is surplus to requirements and the existing use is no longer viable.

Notwithstanding the fact that the planning officer's report concluded that the Farmers Arms was not an 'important' community facility, the Inspector noted that there was opposition to the loss of this public house, including 20 individual representations from the local community and a petition received by the Council at the application stage, together with concerns raised by the Community Council, Ward Member, adjoining Ward Member from Glynneath and local residents over the loss of the Public House.

These representations indicated that the potential loss of this pub is of great concern to many residents in Resolven, Abergarwed and surrounding areas. The representations indicate, for example, that the pub was a hub of the community and that if the current owners intended to continue using the property as a pub they would receive the full support and custom from the local community.

Taking into account these matters and that the retention of the appeal property as a public house has generated considerable support within the area, the Inspector deemed it to be a valued and important community facility. However, he acknowledged that assessing the 'Importance' of a community facility is a difficult task. It is within this context that he dealt with the tests set out within Policy SC2.

In reviewing the submitted evidence, the Inspector noted that the Appellant provided a detailed breakdown of the other facilities found within Resolven, and the Inspector 'saw for himself' that the village contains a number of other local shops and community facilities and that the appeal property is somewhat detached from the main part of Resolven on the opposite side of the A465. He stated that the availability of other facilities allied to the location of the pub are not conducive to attracting additional customers.

The Inspector also noted the marketing evidence and concluded that it was "clear from the evidence submitted that the public house

was put up for sale for over two years at realistic prices as a public house and has been reduced in price to increase the chances of a sale, but this has been unsuccessful". Accordingly he was satisfied that the marketing campaign was undertaken in a diligent and comprehensive manner in an attempt to sell the public house as a going concern. Whilst he noted that there is significant local interest in the continuance of trading, he was of the opinion that the Appellants' evidence was compelling and sufficient to test the current market conditions for the public house.

He also noted that no interest was shown for alternative uses and no sale was completed, and there appears to be little appetite within the market both locally and nationally for a business opportunity at the appeal property. Accordingly he concluded that the evidence satisfactorily demonstrated that all reasonable efforts had been made to market the premises as a commercial use.

In terms of viability, the Inspector reviewed the submitted accounts and the appellant's viability study which provided an assessment of the long-term viability of the Property as a licensed premises. In summary the report concluded that the Public House was commercially unviable in the medium to long term, and in the absence of critical examination of such figures the Inspector saw no reason to question the evidence before him.

Noting that re-opening the public house would require a huge amount of repairs and refurbishment to attract customers, and that this would raise significant expenditure costs, the Inspector expressed serious concerns over the long term viability of a business operating from the premises as demonstrated by the reduction in profits.

Overall the evidence before him was thus sufficiently thorough and wide ranging to constitute a solid case for the proposed development in the balance of harm to the community. As a result of this, he was sufficiently persuaded that it has been clearly demonstrated, in line with the requirements of LDP Policy SC2, that the Farmers Arms has become surplus to requirements and the existing use is longer viable.

Accordingly the appeal was ALLOWED and planning permission granted.

Application for an Award of Costs

In considering the applicant's request for a full award of costs against the Council, the Inspector noted the guidance in section 12.3 of the Welsh Government's Development Management Manual (DMM) and the associated Section 12 Annex '*Award of Costs*' ('the Annex') which advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.

In terms of the advice as contained within the Annex, unreasonable behaviour can be procedural i.e. relating to the process, or substantive i.e. relating to issues of substance arising from the merits of an appeal or application.

In summary, the Appellant stated that the unreasonable actions of the Council prevented development which should clearly be permitted, having regard to its accord with the development plan and any other material considerations. Furthermore, the Council failed to substantiate its case with any compelling evidence.

The Inspector noted that the application was refused against officers' recommendation, but also that the DMM states that a local planning authority is not bound to adopt the advice given by its officers or received from statutory consultees. It is, however, expected to show that it had reasonable planning grounds for taking a decision contrary to such advice and that it is able to produce relevant evidence to support their decision.

In his decision, the Inspector concluded that he was sufficiently persuaded that it had been clearly demonstrated that the Farmers Arms has become surplus to requirements and the existing use was longer viable. The development thus did accord with Policy SC2 of the LDP.

However, while noting that this was contrary to the Council's final decision, he considered that the Council had not acted unreasonably in preventing the development and had reasonably articulated its concerns and substantiated the reasons for refusal in relation to the development plan.

While the Council had accepted the Appellant's evidence in relation to the annual accounts, and did not question the validity of the Appellant's Viability Study or prepared its own critique of the report, he nevertheless considered the Council's appeal statement provided some degree of specific, reasoned, and objective analysis of the proposed development and reasonably articulated its concerns on the main policy matters with adequate analysis of the context of the site and surroundings and the harm that would be caused by the loss of the community facility.

Therefore, he considered the Council provided adequate and reasonable written evidence in defence of its case which took into account all the relevant evidence supplied by the Appellant, the representations from third parties as well as planning policy considerations.

Noting that a judgement had to be made based on the material planning considerations, the nature of the proposed development and the perceived impact of the loss of the Farmers Arms on the local community, he thus concluded that the Council provided sufficient evidence to form a respectable basis for the stance taken on the issues raised. Therefore, the decision the Council took was not unreasonable in terms of costs referred to in the Annex.

Accordingly the application for an award of costs was **DISMISSED** with the Council's decision to refuse permission not amounting to unreasonable behaviour.