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## Appeal Decision

Hearing held on 5 July 2016

Site visit made on 5 July 2016

**by J Flack BA Solicitor**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 21 July 2016**

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**Appeal Ref: APP/W3520/W/16/3143123**

**Dukes Head, High Street, Coddendam, Suffolk IP6 9PN**

- 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 Clerks Well Properties Ltd against the decision of Mid Suffolk District Council.
  - The application Ref 2051/15, dated 10 June 2015, was refused by notice dated 13 August 2015.
  - The development proposed is change of use from public house with living accommodation to dwelling.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. Following the discussion of the proposal at the hearing, I consider that the main issues for my assessment are:
  - Whether the proposal would result in the loss of a valued community facility, and if so, whether that loss would be acceptable; and
  - Whether the proposal would preserve the Grade II listed building known as the Dukes Head (listed as the Dukes Head Inn), and whether it would preserve the character or appearance of the Coddendam Conservation Area.

### Reasons

#### *Loss of community facility*

3. The Dukes Head fronts directly onto High Street in the centre of Coddendam. Internally its trading area comprises two rooms on either side of an entrance lobby, a single bar serving both rooms. Two single storey rear extensions provide kitchen and toilet facilities. To the rear of the building is a surfaced yard area which provides parking facilities for about 8 cars. Beyond this, up a flight of steps, is a substantial rectangular area of land. At present this is overgrown with tall grass and brambles, but it forms part of the appeal site and the evidence before me is that it was formerly used in association with the public house use of the Dukes Head.
4. The Dukes Head closed in October 2014. It is the only public house in the village, but the appellants draw attention to the Coddendam Country Club (the

Club) which is located on High Street a short distance away from the Dukes Head. The Club was established many decades ago, and operates as a private **members' club**. It would not be as attractive as a public house for spontaneous or occasional use, but the evidence before me is that the Club is welcoming to new members, membership is in practice available to all in the village, and that membership fees are low. The private membership operation of the Club thus causes me only limited concern. I was told that the trading area of the Club is broadly equivalent to that of the Dukes Head, and it appears that various events take place there. However, the opening hours of the Club are limited, albeit that slightly extended hours have just been introduced for the summer, and there is no garden, the only outdoor facility being a very small verandah. Nor is there a kitchen, and this very severely restricts the ability of the Club to provide food.

5. The circumstances of the Club and the Dukes Head are such that, overall, I consider that the former would not provide an adequate substitute for the latter. Nor would the village hall or the very limited café facilities offered by the village shop. This is reflected by the concerns of local residents in response to the closure of the Dukes Head and the appeal proposal. I acknowledge that there have been a few supportive representations, but these are greatly outnumbered by objections. Moreover, although the objectors represent only a **small percentage of the village's residents**, it is to be expected that only a proportion of those who have views on a development proposal will express them by way of a formal representation. I consider therefore that the level of objecting representations is indicative of a considerable degree of local concern.
6. In addition, I note that village residents have formed the Save The Dukes Head Group (the SDHG). Although the SDHG does not yet have a formal constitution, the evidence before me of its activities to date demonstrates considerable commitment, determination and organisation in the furtherance of its aim of securing the retention of public house use of the Dukes Head. The SDHG has been instrumental in a successful application to include the inclusion of the **Dukes Head on the Council's list of Assets of Community Value. Whilst this** regime operates independently from planning, the list inclusion is nevertheless indicative of **the Dukes Head's** importance to the village. Furthermore, the SDHG has carried out a very comprehensive survey of local residents. The results show that a high degree of importance is attached by the 87 respondents to the retention of the Dukes Head as a pub and village amenity. The SDHG has also been active in pursuing attempts to purchase the Dukes Head, although no finalised business plan is yet in place.
7. Taking all of the above matters together, I conclude that the evidence before me provides an ample demonstration that the Dukes Head is a valued community facility.
8. Paragraph 69 of the National Planning Policy Framework (the Framework) emphasises the important role of the planning system in facilitating social interaction and creating healthy, inclusive communities, and paragraph 70 states that to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should guard against the unnecessary loss of valued facilities and services. Moreover, the objectives of paragraph 28 in supporting a prosperous rural economy include promotion of the retention and development of local services and community facilities in

villages, including public houses. The Framework thus provides a high degree of support, albeit not absolute or unconditional, for the retention of public houses in rural communities. This is a matter of considerable importance to my assessment in the absence of any development plan policies which deal specifically with proposals which would involve the loss of community facilities.

9. **Paragraph 70 of the Framework does not define the term “unnecessary loss”.** However, assessment of this clearly requires a structured assessment of relevant factors. The parties concur that the Council’s Supplementary Planning Guidance (the SPG)<sup>1</sup> is a material consideration. Although the SPG is of considerable age, and the challenges facing rural public houses have probably become more severe, its structured approach of testing proposed changes of use of public houses against evidence of viability and other criteria seems to me fundamentally in accordance with the Framework. My attention is also drawn to the CAMRA public house viability test, and whilst this is not a planning document its criteria are also of some relevance to my assessment. However, and in any event, the acceptability of the proposal is to be judged on the evidence which is before me at appeal.
10. The SPG requires that all reasonable efforts have been made to sell or let the property as a public house. Marketing of the Dukes Head, by a specialist agent, commenced in November 2014. Marketing activities prior to June 2015 include **particulars on the agent’s website and various advertisements**. Since that time the Dukes Head has continued to be on the market, although the appellant was unable to confirm specific details of marketing activities and the sale board was removed a few months ago. The period and intensity of marketing seem to me adequate, and I note that despite a large number of expressions of interest there have been few offers. However, the garden has been excluded from the sale. Although the garden is at present overgrown with tall grass and brambles, and accessed via a **flight of steps, it forms part of the Dukes Head’s curtilage** and the evidence before me is that was formerly used as a beer garden and for various village events. As such it has potential for providing an attractive and valuable facility. There is no obvious justification for its exclusion, and this would in my view have reduced the attractiveness of the Dukes Head to potential buyers.
11. In any case, I have more substantial concerns as to the adequacy of the marketing. No asking or guide price has been provided, and in this context the basis on which the appellant has assessed the acceptability of the offers made by the SDHG and others is of considerable significance. At the hearing, the appellant stated a view that offers should be accepted or rejected on the basis of residential value, and that recovery of its acquisition costs was also a relevant consideration. I do not concur. The planning purpose of marketing in the context of the proposal is to establish whether there is demand for and interest in the building as a public house, and there is no planning permission for a purely residential use. Assessment of offers for the Dukes Head should therefore have reflected its current public house use, its condition and that it is not a going concern. Taking into account also that no valuation evidence is before me, I am unconvinced that **the appellant’s rejection of the offers** received to date has been reasonable and justified, and I conclude that the marketing conducted to date has been unacceptably deficient.

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<sup>1</sup> Retention of Shops, Post Offices and Public Houses in Villages, adopted February 2004

12. The appellant has provided some evidence as to the income and costs incurred by the previous tenant. However, none of the information is presented in the form of formal accounts, no information is provided for 2013/14 and only a bare summary is given for the year ended April 2015. The tenant at the time did not attend the hearing and the appellant was unable to tell me what items were comprised in the stated sales cost amounts, to explain the apparently high motor costs or widely varying income figures between some years.
13. These matters reduce the reliance I can place on the submitted figures, but they are nevertheless indicative of substantive losses during the relevant period. However, the attitude and skill of the operator is a significant factor in the success or failure of any public house. The unchallenged evidence of Mr Waters, an interested party, is that the operator of a free house would be able to achieve significantly higher margins on drinks sales than are indicated by the submitted figures. Moreover, no evidence has been presented to me to contradict the consistent picture emerging from the representations of local residents and the SDHG survey results that in the years immediately preceding its closure, the Dukes Head was unwelcoming and run down, and the tenant unenthusiastic. Moreover, no food was served, nor was the garden used, and in my view these are both matters which would offer substantive potential for developing the business. I acknowledge however that the trading area available for covers is not very large, and extensions of this would encroach into the limited car parking area and require careful consideration of the impact on this listed building.
14. Various other matters relevant to viability have been raised before me by the parties and interested persons, although no formal study or technical analysis has been provided. As a drinking establishment, the Club would present some competition to the Dukes Head, but the two co-existed successfully in the past for many years. Given the differences in opening hours and facilities which I have identified, there is clear potential for the Dukes Head to develop in ways which would differentiate its offer, and overall I do not consider that the Club would pose a compelling barrier to the viability of the Dukes Head. Although there are a number of other public houses within a short drive time of Coddenham, there are also nearby settlements which have no public house and would offer potential customers. As to the populations of Coddenham and nearby villages, the limitations of the settlement hierarchy provided by Policy CS1 of the Core Strategy<sup>2</sup> means that significant growth is very unlikely. However the SDHG survey respondent results are indicative of a wide range of ages within Coddenham and substantial interest in patronising the Dukes Head, and there is no convincing evidence before me that recent demographic and lifestyle changes would very substantially affect the potential for patronage compared to periods when the Dukes Head was trading successfully.
15. The Dukes Head car park is small and could not be expanded without very substantial works to the bank between it and the garden area. This diminishes the appeal of the Dukes Head to drivers, but only to a limited extent given that unrestricted, albeit limited, on street parking is available. It might be possible for the first floor to be converted to use for bed and breakfast or holiday accommodation, but I accord limited weight to this as potential operators other than the SDHG would be likely to require the upper floor for their own residential use, and the impact of conversion works on the listed building would

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<sup>2</sup> Core Strategy Development Plan Document, adopted September 2008

be a significant consideration. Nor is there any realistic possibility of using the Dukes Head for additional community services such as a shop or post office, for the village already has these facilities. However, Coddenham is a very attractive historic village and lies on a busy B road. I was told that there are holiday cottages within the village, that the locality is popular with walkers and cyclists, and that visitors are attracted to village events. Although the Dukes Head currently has a neglected appearance both externally and internally, it still possesses clear historic charm which could readily be enhanced by redecoration and refurbishment, and it would have potential to attract trade from visitors to the village and surrounding area as well as from people driving through the village along High Street.

16. Taking account of all the matter raised before me, it is clear that re-establishing the Dukes Head as a successful public house would present substantive challenges. However, I am not convinced that these could not be overcome by an effective and enthusiastic operator who had acquired the premises at a reasonable price. I have identified trading potential in various respects and clear opportunities to improve it. There is thus a realistic possibility that public house use of the Dukes Head would be successful and viable, and I conclude overall on this main issue that the proposal would result in the unacceptable loss of a valued community facility.

***Listed building and conservation area***

17. The proposal amounts only to the change of use of the Dukes Head: any alterations or other works to the building necessary to implement this would be for future assessment. On this basis the Council did not refuse the application on the grounds of its effect on the subject listed building or conservation area, and its heritage officer considered that the impact would be neutral.
18. However, as this is a proposal which affects a listed building, it follows that section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the listed building or any features of special architectural or historic interest which it possesses. Similarly, section 72 of the Act requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. These are clear and important duties, and I consider that it would be inappropriate for me to simply assume that the absence of proposed works necessarily means that there would be no harmful impact on the listed building or the conservation area. That is instead a matter which should be carefully considered in the light of the individual qualities of these heritage assets, and a precautionary approach is appropriate given that, as paragraph 126 of the Framework reminds, heritage assets are an irreplaceable resource.
19. No assessment of the significance of the heritage assets and the impact of the proposal on them is before me. This is contrary to the expectations of paragraph 128 of the Framework, which states that, as a minimum, the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. The appellant has provided no information as to the history of the Dukes Head. However, it is stated to be a public house in the list description and Mr Waters, an interested party, states in his appeal representation that C19 census information indicates that it was a beer house in 1861. At the hearing, no one **was able to give me any other information about the building's history, but it is**

possible that it has been in public house use for a very significant part of its life. It is also possible that this may have materially influenced or contributed to the evolution of the building as an example of Suffolk vernacular architecture. It may be that, as the appellant suggested at the hearing, that **there are no remarkable aspects or incidents arising from the building's public house use** which would make it stand out from other historic buildings in that use. However, no one has investigated this.

20. On the evidence before me, there is at least a possibility that public house use of the Dukes Head listed building makes a substantial positive contribution to its significance by serving to continue, reveal and make legible an important element of its special historic or architectural interest. I conclude therefore that the proposal would not preserve this listed building.
21. As one of a number of listed buildings in the centre of the village, the Dukes Head makes a substantial contribution to the conservation area. Moreover, the **Council's Coddendam** conservation area appraisal notes that the Dukes Head is the last of the three public houses which the village once had to survive in its original use, a process which has been mirrored by the diminution of the wide variety of the trades and businesses which the village once possessed. Whilst the relevant passages are statements of facts, their inclusion in the appraisal is indicative that they are material to the qualities of the conservation area, and I consider that public house use of the Dukes Head is of value through providing an ongoing manifestation of and linkage to **earlier phases of the village's evolution and history. Moreover, I concur with the Council's view expressed at the hearing that public house use of the Dukes Head serves to create interest and variety in the street scene, and this would not be adequately continued by retaining the pub sign or other physical signifiers of the former use.** I thus conclude that the proposal would not preserve the character or appearance of the conservation area.

### ***Benefits of the proposal***

22. The Council accepts that it cannot demonstrate the five year supply of deliverable housing sites demanded by the Framework. However, the proposal is for a single dwelling and the Dukes Head already provides a residential unit, albeit on the basis of accommodation ancillary to the public house use. The benefits of the proposal in addressing the shortfall of housing in the **Council's** area would thus be insignificant.
23. Provided planning permission and listed building consent were obtained for works necessary to implement to the change of use, the proposal would secure the future of the listed building. However, this does not amount to a significant benefit, as it could also be secured by continued public house use and I have concluded that there is a realistic possibility that this would be successful and viable.
24. The appellant contends that the reduced vehicular movements arising from the proposal would bring about road safety benefits, but although visibility from the access is limited, the benefits would be modest as movements arising from public house use would not be very numerous given the limited car parking. The proposal would remove the possibility of noise and disturbance to adjoining residential occupiers which may sometimes arise from a public house use, but such issues can be controlled by environmental health legislation and nothing in the evidence before me suggests that the Dukes Head has given rise to

concerns in this respect in the past. Overall, I conclude that the benefits of the proposal would be minor.

***Policy and overall conclusions***

25. The parties concur that given the absence of a five year supply of housing sites and the absence of development plan policies concerning the loss community facilities, the proposal should be considered on the basis set out at paragraph 14 of the Framework and Policy FC1 of the Focused Review<sup>3</sup>, this being that, unless material considerations indicate otherwise, permission should normally be granted unless adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework.
26. I have concluded on the first main issue that the proposal would result in the unacceptable loss of a valued community facility. It would therefore be **contrary to the Framework's policies relating to community facilities, and also** to the objectives of the SPG. Moreover, Policy E6 of the Local Plan<sup>4</sup> seeks to recognise the importance of individual commercial sites in providing local employment opportunities. Whilst the Dukes Head is clearly a minor site with limited potential for providing employment, this potential would be permanently lost and the proposal would not provide the significant benefit for the surrounding environment which the Policy seeks. Paragraph 2.34 of the supporting text to Policy CS1 of the Core Strategy identifies that secondary villages will benefit from small-scale development to meet local needs, including housing and community facilities. The proposal would not make a significant contribution to meeting housing need, and would instead result in the unacceptable loss of a community facility. It would thus be contrary to the objectives of Policy CS1.
27. I have concluded on the second main issue that the proposal would not preserve the listed building or the character or appearance of the conservation area. The proposal would therefore conflict with Policy HB1 of the Local Plan, which aims to protect the character of buildings of architectural or historic interest, and Policy HB8, which gives priority to protecting the character and appearance of conservation areas. For the purposes of the Framework, the listed building and the conservation area are designated heritage assets. Within the overall context of these assets, the proposal would lead to less than substantial harm to their significance. However, paragraph 134 of the Framework requires that such harm be weighed against the public benefits of the proposal and paragraph 132 requires that great weight be apportioned to **the assets' conservation**. Although the benefits I have identified would be public in nature, they would be minor and insufficient to outweigh my findings of harm. The proposal would therefore be contrary to the historic environment policies of the Framework.
28. In my assessment of the proposal I have identified only minor benefits, whereas I have found that there would be conflict with the policies of the Framework relating to community facilities and the historic environment. The adverse impacts of the proposal would thus significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework for the purposes of paragraph 14, and there would be conflict with the equivalent

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<sup>3</sup> Core Strategy Focused Review, adopted December 2012

<sup>4</sup> Mid Suffolk Local Plan, adopted September 1998

provisions of Policy FC1 of the Focused Review. Given also the conflicts I have found with other policies of the development plan relevant to the proposal, I conclude that the proposal would be in overall conflict with the development plan.

29. For the above reasons, the appeal is dismissed.

*J Flack*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Phil Cobbold	Planning consultant
Richard Buss	Appellant
Blake Gorst	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Stephen Burgess MRTPI	Planning Officer
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### INTERESTED PARTIES:

Roger Waters  
Elaine Thomas  
Julian Hall  
Nigel Smith  
Ray Collins  
Sue Wythe  
Fred Garrard

## **DOCUMENTS SUBMITTED AT THE HEARING**

(All documents submitted by the appellant)

1. Save the Dukes Head Questionnaire responses
2. Print of Coddendam Country Club Facebook pages
3. Print of Coddendam Village Website page – Country Club
4. Photographs of Country Club poster signs
5. Photographs of interior of Country Club