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## Appeal Decisions

Hearing held on 22 March 2016

Site visit made on 22 March 2016

**by J Flack BA Solicitor**

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

**Decision date: 15 April 2016**

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### **Appeal A: APP/X1118/W/15/3138722 Stag Inn, Rackenford, Devon EX16 8DT**

- 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 Ms C Palmer against the decision of North Devon District Council.
  - The application Ref 59369, dated 14 May 2015, was refused by notice dated 9 July 2015.
  - The development proposed is demolition of the function room, the provision of a lobby in the kitchen area, the replacement of the concrete tiles on the existing kitchen with natural slate, the finishing of the eastern end of the building to match the existing Inn, formation of bin store, erection of fencing, provision of a new block wall and erection of a bat box on the eastern elevation of the building and the erection of a single dwelling to the rear of the Inn with associated parking and landscaping.
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### **Appeal B: APP/X1118/Y/15/3138732 Stag Inn, Rackenford, Devon EX16 8DT**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Ms C Palmer against the decision of North Devon District Council.
  - The application Ref 59370, dated 14 May 2015, was refused by notice dated 9 July 2015.
  - The works proposed are demolition of the function room, the provision of a lobby in the kitchen area, the replacement of the concrete tiles on the existing kitchen with natural slate, the finishing of the eastern end of the building to match the existing Inn, formation of bin store, erection of fencing, provision of a new block wall and erection of a bat box on the eastern elevation of the building and the erection of a single dwelling to the rear of the Inn with associated parking and landscaping.
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### **Decisions**

1. **Appeal A:** the appeal is dismissed.
2. **Appeal B:** the appeal is dismissed.

### **Main Issues**

3. The main issues are:
  - The effect of the proposal on the provision of community facilities and the viability of the Stag Inn; and

- Whether the proposal would preserve the Grade II listed building known as The Stag Inn, its setting, or any features of special architectural or historic interest that the building possesses.

## Reasons

### *Provision of community facilities and viability of the Stag Inn*

4. Rackenford is an attractive village set in the rolling north Devon countryside. The Stag Inn (the Inn) **lies adjacent to the village's primary school, church and shop**, and together these form a cluster of facilities which define the centre of the village. The Inn is a building of considerable antiquity, although there are various more recent elements to the rear of the principal Inn building. By far the most substantial of these is a large extension containing **the Inn's kitchen**, which adjoins the rear of the principal building, and the function room. The appellant proposes to demolish the latter. To the side of the kitchen is a raised external seating area and a vehicular access which leads to a car parking area adjoining the function room. **Beyond the car park, the remainder of the Inn's** curtilage comprises a large garden area, where the proposed dwelling would be located. The area between the dwelling and the kitchen is proposed to comprise parking spaces serving the Inn and the house, together with planted areas and a bin store adjoining the kitchen.
5. The function room has been not been used since April 2013, having been excluded from subsequent tenancies of the Inn. The evidence before me is that use of the function room prior to April 2013 has varied considerably under different operators of the Inn. The appellant has provided information from booking records for the years 2009 to 2011. This has not been challenged, and shows a low level of use. This comprises regular use by a ladies skittles team together with a very small number of other events. However, although village residents would clearly have been aware of the function room, it appears that it was not actively promoted during that period. As to the years prior to 2009, the undisputed representations of parish councillors and other local residents state that the function room was in use for various community purposes, including parties, discos, dinners, wakes, charity events and meetings. Between March 2012 and March 2013 the Inn was operated by Sean and Scott Standen. Whilst they were not satisfactory tenants in some respects, they appear to have been generally welcomed by local residents, and the evidence of local residents is that considerable use was made of the function room during their tenancy: I understand that a christmas dinner sold out, albeit that it had to be cancelled, and that various parties and events, including a supper club, took place.
6. I saw on my visit that the principal Inn building is subdivided into a series of small rooms, and for this reason alone it would not make an effective substitute for the function room. Moreover, there is some indication that events which have taken place in the principal building since the function room has not been available, such as a wake and a carol service, have resulted in overcrowding, and use of the principal building for events would, to varying degrees, exclude conventional public house use which is also of value to the community.
7. However, the appellant contends that there are community facilities which would represent an alternative to the function room. First amongst these is the Rackenford Club. Conflicting evidence is before me as to the extent to which

- events and activities held at the function room have transferred to the Club. The ladies skittles team has done so, but only after the function room closed. I am not convinced that the Club has otherwise taken over the role of the function room, noting the representations of various residents that some activities and events have transferred to other venues further away or no longer take place for want of a suitable venue.
8. The Club is a members club, and its premises licence limits the provision of alcoholic drinks to members and guests, although I was told that this requirement could be overridden by a temporary events notice. In addition, I understand that the club rules require that non members be signed in by a member and that this is limited to three occasions. However, there are no restrictions on the number of guests who can be signed in. Moreover, the club is established to serve the village, together with other communities in the local area, and the balance of the evidence before me is that it is not unwelcoming to new members.
  9. I thus consider that the membership and guest restrictions are unlikely to operate in practice as a significant bar to the use of the Club as a community events facility. However, there are other factors which count against such use. The Club has limited opening hours, and is dependent on the availability and willingness of the volunteers who run it. Moreover, the available space within the club building is also limited. The first floor is in residential use, and whilst the main room is not greatly smaller than the Inn's function room, the only other room is a small snug which is open to the main room across the bar, and it follows that some events would have the effect of excluding or inconveniencing ordinary use of the club by members. I also saw that the kitchen is much smaller and less well equipped than that of the Inn's function room, which would also serve to limit the type of events which could be accommodated.
  10. The Club is much better provided with parking facilities than the function room, having a large parking area. However, it is situated some distance from the built up area of the village, along an enclosed and unlit rural lane which does not benefit from the 30 mph speed limit to which the village is subject. This lane is thus an environment which would be very unattractive for walking and cycling, particularly after dark or in bad weather. I appreciate that the population of the parish is spread across a rural area, but a large proportion live within the village, and for these residents the Club would be a materially less accessible and convenient facility than the function room. I also note that the Inn is located directly opposite the church, and this would make the function room an extremely convenient facility for wedding receptions and wakes in comparison to the Club.
  11. My attention was drawn to a hall at the rear of the Club's site. This is a larger structure than the function room. However, it has asbestos walls and roof and I understand that it has not been used for several years. This is consistent with its dilapidated internal and external condition. There are no plans to restore and reopen it, and there is no other evidence which suggests that there is a realistic prospect of this occurring, noting in particular that the Club's accounts indicate that it has very limited funds. I conclude that the Rackenford Club would not represent an effective substitute for the function room as a community facility.

12. Policy RAC04 of the draft North Devon and Torridge Local Plan identifies an area of land in the centre of the village for the provision of additional community facilities, including a new village hall, a facility that the village lacks at present. I understand that the plan has yet to be submitted for examination, and although I have no reason to doubt that Policy RAC04 is generally reflective of the wishes of the community, I accord it only moderate weight. In any event, although there are instances of rural communities raising the funds to provide a village hall, I was told that there are no drawings as yet for a hall in Rackenford, nor any identified funding. As things stand at present, therefore, the proposal for a village hall amounts to an aspiration which may or may not come to fruition, and I do not consider that it represents an alternative to the function room.
13. At the hearing, my attention was also drawn to the school hall. Although I understand that the parish council holds its meetings there, and I was told that there is a fully equipped kitchen, there is no suggestion that it is commonly used for other meetings or events. Such use would be constrained by the fact that the hall is part of a working primary school, and would require the agreement of the governors.
14. The costs and income arising from the function room are also relevant to my assessment. Information provided by the appellant indicates substantial heating and lighting costs, but these relate to the Inn as a whole and there is no data specific to the function room alone. Moreover, although I acknowledge that the function room is a large space which would take time to warm up, it is separated from the remainder of the Inn and costs, including staffing costs, would largely be incurred only if and when it was in use. The appellant states that the income generated from the function room for the four years from 2008 to 2011 was less than £500, but at the hearing she clarified that this relates only to hire fees, and does not include any income resulting from food or drink sales arising from use of the function room. Whether such income would arise, and to what extent, would vary according to the nature of the event, the numbers of persons attending and other factors, but it could be very considerable if the event were to be a wake, meal or party.
15. The interior of the function room currently has a tired appearance, and it is separated from the principal Inn building by the kitchen, a connecting corridor which previously existed having quite recently been removed and incorporated into the kitchen. However, this was carried out without listed building consent, and the Council indicated at the hearing that it would be sympathetic to limited alterations to the function room which would improve its viability. Although it would be inappropriate to speculate about the acceptability of major alterations or additions suggested by some residents, it seems to me that there is at least some realistic scope for modest improvements to the functionality and attractiveness of the function room.
16. Drawing all of the above matters together, I conclude that whilst use of the function room has fluctuated, overall it has represented a viable facility of considerable utility and value to the local community, and there is no substantial reason to suppose that it could not perform this role in future. I also conclude that there is no effective alternative facility at present, nor any substantial prospect that one will become available. The demolition of the function room would therefore result in an unacceptable loss of community facilities. Moreover, in the context of the Inn as a whole, I consider that the

function room **is not a hindrance to the Inn's viability but instead** is a resource which, if effectively managed, has potential to contribute to the viability of the Inn.

17. The proposal would also see the removal of the Inn's garden. This has also been excluded from recent tenancies, but has been used as a beer garden in the past. It is located beyond the car parking area at the rear of the Inn and consists of two linked areas of mown grass, beyond which is an area of paddock. The **site's** boundary with this is marked only by a low fence, and the land slopes downhill. Beyond the paddock is a modern agricultural building, but this is set well below the garden. The result is that the former garden area offers very attractive and wide ranging views over the rural landscape beyond the village. It would be a very pleasant place to sit out in the warmer months, providing a verdant rural ambience which the raised seating immediately to the rear of the Inn does not possess. The appellant points to the distance between the garden and the kitchen, but local residents told me that food was brought out to the garden in the past and I do not consider that it would be impractical to do so during the good weather conditions in which customers would be likely to use the garden.
18. The proposal would provide only three parking spaces for the Inn, and I saw on my visit that the village streets in the vicinity of the site are narrow and quite heavily parked. However, there is a recently provided car park a few minutes walk from the Inn, and although this is apparently heavily used by the school, there is no evidence that suggests it is particularly well used at other times. Even so, on site parking is a valuable and desirable facility for a public house to possess. The number of vehicles which the current parking area could accommodate is disputed in the evidence before me. I saw on my visit that the fence dividing the former garden from the parking area has recently been repositioned a little closer to the Inn. Despite this, I saw that five vehicles were parked in line at the front of the function room, and there appeared to be gaps which would probably accommodate two further vehicles.
19. I acknowledge the need to provide turning space, to prevent obstruction of the vehicular right of way along the southern edge of the site, and ensure adequate pedestrian access to the doors of the function room together with access to the area to the side of the function room which is used for storage. However, even allowing for these factors, I consider that the present parking area could accommodate five or six vehicles rather than the four suggested by the appellant, and this would be increased by one or two vehicles if the fence was restored to its former position. I consider therefore that the proposal would result in a loss of onsite parking provision. This would not result in conflict with policy TRA7 of the Local Plan<sup>1</sup> given that this requires only that maximum parking standards would not be exceeded, which would not be the case here by some margin. However, as I have noted, on site parking is a valuable commodity in the context of a public house and the loss arising from the proposal, albeit very modest, adds to my concerns about the effects of the proposal.
20. The appellant considers that the Inn would in any event be viable if the proposal were implemented. Two calculations of turnover are before me. Whilst they are based on 40 covers, and the Inn would have 52 internally and 40 externally, the usability of external covers will clearly vary according to the

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<sup>1</sup> North Devon Local Plan 1995 to 2011, adopted July 2006

time of year and weather conditions. Moreover, these assessments are based on a general Remote Country Inn Classification rather than the circumstances of the Stag Inn, and there is no evidence before me to show that the indicated occupancy or average spend levels have been achieved at the Stag Inn or would be likely to be in future, nor that the costs would be equivalent. There are also some discrepancies between the two calculations, for example in operating costs and occupancy levels, which the appellant was unable to explain other than suggesting that they represented a difference of professional opinion.

21. The appellant has also provided a financial viability appraisal, whose author considers that the Stag Inn would have a fair maintainable turnover of around £150,000 and a Fair Maintainable Operating Profit of £35,000. However, there are no very precise reasons given for this conclusion, and the appellant told me that the author had not visited the Inn. The appraisal asserts that the number of covers is more than adequate to achieve the stated turnover, but no specific reasons are given for this. The appraisal also points to the accounts summary for the year ended 31 July 2014. These show sales of approaching £170,000, but whilst wages costs appear very high, the adjusted profit figure is a loss of over £9000, and is stated to exclude finance and rent, for which no amounts are provided. I also note that the appraisal records that the tenancy at that time did not continue, being replaced by a lease granted to relatives of the tenants, this in turn ending in March 2015 when the keys were handed back and there were substantial rent arrears. Whilst the tenant who then took over continues to operate the Inn, no evidence is before me as to whether a profit is being made.
22. My attention was drawn to competition provided by the Rackenford Club, but in my view this effect of this on the viability of the Inn would be limited, given that the club does not offer food, and the accounts provided to me show that it is a small scale operation compared to the Inn and its turnover shows a pattern of modest but steady decline. Conflicting accounts were given to me of the patronage of the Inn by village residents; my impression was that this has varied over time, the perceived welcome and the quality and value of the food and drink offer being important factors. It seems clear, however, that the Inn cannot expect to survive on village patronage alone. The appellant states that the way forward for the Stag Inn is to become a destination pub for food, but there is no detailed information or business plan as to how this would be achieved, or the suggestion that bed and breakfast accommodation could be provided. The latter is only achievable in any event because the current tenant lives locally. Moreover, the appellant's **evidence details** the great pressures which have faced public houses in recent years, citing acknowledged factors such as the economic recession, increases in duty and cheap supermarket alcoholic drinks. I also note that none of the recent operators of the Inn have, for various reasons, been able to run the Inn business successfully over a sustained period.
23. Taking all these matters into account, I conclude that the viability of the Inn is precarious and vulnerable, and the evidence does not convince me that it is likely to be viable if the proposal proceeds. Although recent tenants have been willing to take on the Inn without the function room and garden, for the reasons I have given earlier, I consider that they nevertheless represent valuable resources through offering flexible opportunities for the future development and diversification of the Inn business. The loss of on site car

- parking resulting from the proposal would be very modest, but adds to my concerns.
24. I acknowledge that the proposed landscaping at the rear of the Inn and replacement of the kitchen roof would improve the ambience of the raised seating area, but any contribution to viability of the Inn would be very limited, and fall far short of outweighing the detrimental effects of the proposal. I conclude overall that the proposal would be unacceptably harmful to the viability of the Inn.
25. The demolition of the function room would amount to the permanent loss of a community facility. Policy COM4 of the Local Plan states this will only be permitted where there is no demand for the facility from the local community, the facility is unviable or there is a replacement or alternative facility of at least equivalent standard and accessibility. For the reasons I have given, those requirements would not be met by the proposal, which would therefore be contrary to Policy COM4. Moreover, the value of the Inn as a community facility is not limited to the function room: I have identified unacceptable harm to the **Inn's viability, and that would be contrary to Policy COM4's overall objective** of preventing the loss of valued community facilities.
26. My findings also lead to a conclusion that the proposal would be contrary to paragraph 70 of the National Planning Policy Framework (the Framework) which states that planning decisions should ensure that community facilities are able to develop and modernise in a way which is sustainable, and retained for the benefit of the community. Paragraph 28 addresses planning policies, but the proposal would nevertheless be at odds with its underlying objective of promoting the retention and development of community facilities in villages.

***Preservation of the listed building and its setting***

27. The list description states that the Stag Inn dates to the C17, but with very possibly earlier origins. It is a very striking and characterful building which provides a focal point for the village, and the distinctive cobbled entrance passage, thatched roof and thick uneven walls of the early elements of the **principal building speak eloquently of its building's antiquity**. However, the kitchen and function room are recent, constructed in the 1970s. This structure has a dark concrete tiled roof which, like the flat roofs of the remaining small additions at the rear, jars with the thatch and slates of the older elements of the Inn. However whilst the architecture of the kitchen and function room is unremarkable, the rendered finish of its walls complements that of the remainder of the building, and its simple pitched roof form, punctuated by limited and irregular doors and windows, gives it something of the character of a barn, a quality which is appropriate to its context. It is set lower than the principal Inn building, which helps it achieve visual subordination despite its substantial depth. I thus consider that, as a structure, the function room does not make a materially positive contribution to the significance of the Inn, but neither does it detract from it. It follows that whilst its demolition would not be materially harmful to the listed building, and landscaping of its former site could be required by condition, it is equally the case that its demolition would not be materially beneficial to the building.
28. Furthermore, I have significant concerns about the proposal in other respects. Very little evidence of the history of the Inn is before me, but the consensus of discussion at the hearing was that it has probably been in use as an inn or

public house for several centuries. It follows that its current use makes an **important contribution to the building's significance** through continuing its historic use and facilitating the legibility of its history and architecture. The loss of the current use would thus be very undesirable, and as I have found that the proposal would be unacceptably harmful to the viability of the Inn, it follows that it would also thereby be harmful to the significance of this listed building and would fail to preserve it.

29. The site of the proposed dwelling forms part of the setting of the Inn, given that it is clearly an element of the surroundings in which the Inn is experienced. I cannot be sure, on the very limited evidence before me, as to whether the site of the dwelling **has always formed part of the Inn's curtilage**, what meaning it may have held over time in relation to the Inn, whether there has been any built development here in the past and what form and function it may have possessed. The extent of the contribution which the garden makes to the setting of the Inn is thus uncertain. However, a precautionary approach to substantial permanent development such as the proposed dwelling is appropriate in the absence, as here, of evidence which meets the standards demanded by paragraph 128 of the Framework. Moreover, and in any event, the garden has a notably open character and in directly connecting the Inn with the countryside beyond, it assists in appreciation of the historic status of the Inn as a key building within a small rural settlement. These attributes would be severely diminished by the proposed dwelling, and that would not be mitigated by the use of traditional materials or the provision of landscaping between the dwelling and the Inn. I conclude therefore that the proposal would be harmful, and therefore fail to preserve, the setting of the listed building.
30. The proposal would therefore be contrary to Policy ENV17 of the Local Plan, which requires that development affecting a listed building preserves its architectural or historic interest and its setting. For the purposes of the Framework, I consider that the proposal would result in less than substantial harm to the significance of the listed building, noting the advice in the **Government's Planning Practice Guidance**<sup>2</sup> that in general terms, substantial harm is a high test, and thus may not arise in many cases. Paragraph 134 of the Framework requires that such harm be weighed against the public benefits of the proposal. However, that is to be undertaken in the context of the general requirement of paragraph 132 that great weight should be given to a heritage **asset's conservation when considering** the impact of a proposed development on its significance, which can be harmed not only by the alteration of an asset but also by development within its setting. This reflects the requirement of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that I have special regard to the desirability of preserving the listed building and its setting.
31. The proposed landscaping at the rear of the Inn would improve this element of **the Inn's setting, and replacement of the kitchen roof** with a more sympathetic material would be beneficial to this element of the building. However, these benefits would be very limited in scope and effect. The contribution of a single dwelling to the housing stock of the village would also be a public benefit, but this would also be very limited. There is no evidence that the proposal would result in any other substantive public benefit. I conclude therefore that the public benefits of the proposal are very limited and do not outweigh the

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<sup>2</sup> Reference ID: 18a-017-20140306

material harm which would be caused to the listed building and its setting. It follows that the proposal would be contrary to the historic environment policies of the Framework.

### *Other matters*

32. I have noted that the Inn has been listed as an asset of community value, but this is not a designation which is directly relevant to planning decisions. Equally, however, whilst there has been no transfer of ownership or operation of the Inn to a community group, this appears overall to be due to an inability to agree terms rather than a lack of interest and I do not regard it as indicating that the community does not value the Inn.
33. Local residents have expressed concerns as to the consequences of the proposal for highway congestion and safety. I do not share those concerns: the access would remain as it is now, there is no suggestion that the parking provision proposed for the dwelling would be inadequate, and the very modest reduction in the parking provision available to the Inn would not have a significant effect on the operation of highways in the vicinity. Concerns have **also been expressed during the Council's consideration of the applications as to the effect on the public right of way which passes along the northern boundary of the Inn's curtilage, but there is no evidence that the proposal would encroach on or otherwise adversely affect this.**

### *Conclusions*

34. I have concluded above that the demolition of the function room would result in an unacceptable loss of community facilities, and that the proposal would be unacceptably harmful to the viability of the Inn. The proposal would also fail to preserve this listed building and its setting. The proposal would be not be contrary to Policy TRA7, but there would be clear and substantial conflict with Policies COM4 and ENV17, and I conclude that the proposal would be contrary to the development plan. Nor would it amount to sustainable development for the purposes of the Framework, given the various conflicts I have identified **with the Framework's policies. I have taken into account all other matters** raised in the evidence before me, but none outweighs the foregoing conclusions. The appeals are therefore dismissed.

*J Flack*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Ms C Palmer	Appellant
Graham Gover LARTPI	Solicitor
Heather Woodman MRTPI	Planning consultant

### FOR THE LOCAL PLANNING AUTHORITY:

Deborah Butler	Planning Officer
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### INTERESTED PARTIES:

Jeremy Yabsley	County and District Councillor
David Cocks	Local resident
Sarah Child	Parish Councillor
Peter Grugeon	Parish Councillor
Graham Lamb	Parish Councillor
Olwen Smith	Clerk to Parish Council
Jane Matthews	Local resident

## **DOCUMENT SUBMITTED AT THE HEARING**

Financial report - calculation of break-even turnover (submitted by the appellant)