

## Appeal Decision Notice

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Decision by Michael Shiel, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/110/810
- Site address: Midmar Inn, Midmar, Inverurie AB51 7LX
- Appeal by Mr D Cooper & Ms D Begg against the decision by Aberdeenshire Council.
- Application for planning permission no. G/APP/2008/0932, dated 13 March 2008, refused by notice dated 14 November 2008.
- The development proposed: Change of use of building (part public house and part private residence) to residential and extension to dwellinghouse.
- Date of site visit by Reporter: 24 June 2009

Date of appeal decision: 27 July 2009

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### Decision

I dismiss the appeal and refuse planning permission.

### Reasoning

1. The determining issues in this appeal are whether: (1) the proposal complies with the provisions of the development plan and, particularly, whether the change of use of the public house to residential would entail a loss of employment use or a community facility contrary to those provisions; and (2) there are any material considerations that warrant determining the appeal other than in accordance with the development plan. The development plan for the area comprises North-East Scotland Together, the Aberdeen and Aberdeenshire Structure Plan 2001-2016 (NEST) and the Aberdeenshire Local Plan 2006.

2. The building is on the south side of the B9119 road, about 3.5 km west of Echt and a similar distance south-east of Midmar, a very small settlement containing about 20 houses, a primary school, and what appears to be a relatively newly refurbished and extended village hall. Echt is somewhat larger. Both are designated in the local plan as Rural Service Centres, the role of which is to act as a focal point for development in rural locations, but the appeal site lies in the open countryside between them in an area with a dispersed settlement pattern. The building on the site contains a public house (closed since September 2007) and a dwelling. The original building dates from the 19<sup>th</sup> century but the first public house licence appears to have been obtained in about 1945.



3. The council accepts that there are no specific development plan policies resisting the change of use of a public house or community facility to residential use. It has argued, however, that this proposal would result in a loss of an employment site, contrary to local plan policy Emp\1. I am doubtful whether that policy was intended to protect every employment use, however small and whatever its location. Nonetheless, I have assessed this proposal against the terms of the policy. Development for non-employment uses on employment land will be refused unless one of three criteria is met. The first is that the non-employment use does not prejudice the strategic employment land requirement; a clear indication that the policy is not directed towards small scale employment uses. The council accepts that the loss of the public house would have no impact on the strategic employment land requirement. However, its planning officer's report states that an operating public house would inevitably provide *local* (his emphasis) employment and that, in this context, criterion (a) regarding strategic employment land is not relevant. That argument is not tenable. The council cannot rely on policy Emp\1 to support its refusal and then ignore one of its fundamental criteria because it does not suit the circumstances of the case.

4. As the development need only meet one of the first three criteria, there is no requirement to demonstrate that it meets criteria (b) and (c). Thus, whilst considerable weight has been placed by the council and objectors on the lack of open marketing of these premises, I find that it is not vital to the question of compliance with policy Emp\1 in this case. Provided one of the first three criteria is met, the development must also comply with criteria (d) and (e); the first of which states that it respects the character and amenity of the surrounding area, and is landscaped accordingly. I am satisfied that the reference to landscaping indicates that it is the visual character and amenity that is to be considered under this criterion; and that the proposed change of use would not conflict with this requirement. Criterion (e), referring to compatibility with neighbouring employment uses, is not applicable in this case. All told I conclude that, setting aside any doubts about its relevance, the proposal does not conflict with policy Emp\1.

5. A second strand of the council's reason for refusal relates to the general sustainability principles in local plan policy Gen\1; in particular indicators (f), (l) and (m). The first of these is that the proposal does not impact negatively on the character of the surrounding area, including its landscape character, environment or amenity. I concluded above that the change of use would not adversely affect the landscape character or visual amenity of the area. The proposed extension, although large, is of an appropriate design and materials, and there are no adverse environmental implications of the development. I accept, however, that the loss of a public house facility could, in the broadest sense, have a negative effect on the amenity of the area.

6. Although it might comply with the specific requirements of policy Emp\1, the proposed development would conflict in general terms with indicator (l) in that the conversion to a wholly residential use would not provide new, or help support, existing local employment. Indicator (m) is whether the proposal helps support existing community services and facilities. Community facilities are defined in the local plan as those which support or enhance a community, whether publicly or privately owned, and examples are given such as a hall, children's nursery or church. The definition expressly excludes hotels, but is silent on public houses. Whilst this lack of clarity is unfortunate, I accept that the

presence of a public house would normally enhance a rural community. Although a private commercial business, the traditional “local” public house would expect to draw much of its trade from the immediately surrounding area, whilst also providing a focal point and social facility for the area.

7. There is substantial opposition to the potential loss of this public house, although many of the objections come from people outwith the local area. There is also a degree of inconsistency in some of the views expressed in that, at the same time as decrying the loss of a local facility they argue that a viable business could be achieved by catering for people from a wider area; for example, the growing population in Westhill. There are successful establishments in the area which no doubt rely on this wider catchment – at Dunecht, Garlogie and the nearby “The Millers” retail centre and restaurant. Equally, the availability of a larger population in the wider area is no guarantee of success, as illustrated by the former Cowdray Arms at Echt, which closed last year and is now on the market, albeit still as a restaurant/public house. I have no doubt that the traditional model of the rural public house referred to above is under strain for a variety of social, commercial and legislative reasons and that the difficulty this creates for operators should not be under-estimated. Nevertheless, the change of use of this public house would conflict with indicator (m) of policy Gen\1. Overall, therefore, it would not be consistent with a number of the sustainability indicators in that policy, and I conclude that this proposal would conflict with the provisions of the development plan.

8. Amongst the other material considerations to be taken into account is whether there is a realistic prospect of retaining a public house use at this location, in order to continue to provide a facility for the local community as well as meeting other commercial objectives. From my inspection of the premises, it appears that they provided fairly standard public house accommodation with very limited kitchen facilities. The whole building is very run down and there has clearly been an under-investment in its maintenance for a considerable period. It is not for me to judge why that has occurred, but I note the submission from the previous owners, who operated the public house for a number of years, about the struggle they had to “make ends meet”. Nonetheless the present appellants presumably bought it as a going concern in 2004 and at least in some knowledge of the physical condition of the building. The trading figures supplied show a modest profit in 2005-2006 and a loss in 2006-2007, during which period a decision may already have been taken to close down. There is clearly no obligation on a privately owned business to continue trading at a loss in order to provide a service to the community. However, the planning system is not primarily concerned with the circumstances of specific individuals or businesses, but with the appropriate use of land and buildings.

9. Any new venture using this building is likely to involve very considerable investment and significant operating costs. The present condition of the building may be a disincentive to prospective investors although it would be reflected in its valuation if the property was offered on the open market, as has not occurred. I consider that the establishment of the Friends of the Midmar Inn Community Company (FMICC), and its registration of a community interest in this property under the Land Reform (Scotland) Act 2003, represent a serious attempt to secure its future for a use which makes a positive contribution to the community. Whilst separate from the planning process, I do not accept that this should be

discounted as a material consideration. In agreeing to register the community interest, the Scottish Ministers have accepted that there is a public interest involved, and the first part of the new Scottish Planning Policy makes clear that the planning system operates in the long term public interest. Whilst the Land Reform Act focuses on the ownership of land in the public interest and the planning system considers the use of land, it would seem perverse to ignore the degree of coincidence in their objectives.

10. Neither the refusal of planning permission nor the registration of the community interest obliges the appellants to place the property on the market. However, notwithstanding uncertainty over the future of the public house, they are equally not prevented from carrying out repairs to the existing dwelling to make it more comfortable for their occupation, and which would be likely to improve the overall value of the property. Overall, I consider that the absence of open marketing of the property at an independent valuation as a public house and dwelling means that it has not been conclusively demonstrated that it could not continue in a use which, at the same time as being commercially viable, would provide a facility of benefit to the local rural community.

11. In fairness to the appellants such a period of marketing should not last indefinitely, but I consider a minimum of six months would be necessary, during which time the FMICC would also be able to develop its own proposals. I note the submissions made for the appellants that this property contains their home, but I am satisfied that, from a planning point of view, the building has a dual use and the dwelling cannot be considered as the primary use. Its situation, therefore, is different from most residential properties and, in purchasing such a property, it should not be expected that, should the business close, permission would automatically be forthcoming for conversion to residential use.

12. I have given careful consideration to all the submissions made, including the reference to another appeal decision which has some parallels to this case. However, each case must be considered on its merits. Overall, I conclude that this proposal conflicts with the provisions of the development plan, and that current material considerations do not warrant the granting of permission but rather support the determination of the appeal in accordance with those provisions. However, if realistic proposals for its re-use as a public house are not forthcoming after a reasonable period of open marketing, it would be necessary to re-assess that conclusion. As that position has not yet been reached, I find that this appeal should fail.

***This is a true and certified copy of the decision issued on 27 July 2009***

MICHAEL D SHIEL  
Reporter