

Your ref:  
Our ref: 1481 2 LMS MAG

25 March 2022

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Head of Development, Economic and Cultural Services  
North Kesteven District Council  
Kesteven Street  
Sleaford  
NG34 7EF

Dear Sir

MS LISA GREGORY  
THE BELL AT COLEBY, 3 FAR STREET, COLEBY, LINCOLN, LN5 0AH  
PROPOSED CHANGE OF USE FROM RESTAURANT (CLASS E(b)) TO DWELLING  
(CLASS C3) RESUBMISSION OF 21/1368/PMA  
PRIOR NOTIFICATION APPLICATION, CLASS MA, PART 3, SCHEDULE 2, TOWN  
AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND)  
ORDER 2015

Please find attached an application, submitted via email, for the above proposal being a resubmission of application 21/1368/PMA withdrawn in October 2021.

The first application was withdrawn following notification by the local planning authority that information had come to light in relation to business rates. The information was identified towards the very end of the determination period and as the applicant had little time to respond, the application was withdrawn.

We have had the opportunity to review the information that was presented and now resubmit the application to change the use of the restaurant to a dwelling. The local planning authority identified two declarations signed by Mr Paul Vidic, Managing Director of the Bell Inn, in 2017/18 in relation to non-domestic rates and in 2018/19 regarding retail rates.

An application for rates relief was made erroneously in response to unsolicited forms received from North Kesteven District Council, and the money has been repaid to the Council to reflect the lawful use of the building as a restaurant. The applicant, Ms Gregory, would not have signed the declarations and, one cannot undo the lawful use of a property or site in planning terms by declaring it to be something else; that would be perverse.

The June 2021 planning appeal decision (LPA ref 20/1361/FUL, Appeal reference APP/R2520/W/20/3265723) in relation to the change of use of The Bell to a dwelling dealt with the planning merits of the loss of a community facility. During the course of the appeal, there was debate over whether the use of the building amounted to a public house or a restaurant. The Inspector in reaching his decision opined that, "The evidence before me in respect of the existing use of the premises is not wholly conclusive." However, the test of proof in planning terms is "the balance of probability" which is the civil test and not 'beyond all reasonable doubt' which is the criminal test of proof.





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Accordingly, the Inspector, having gone through the evidence, concluded the following: -

“The cumulative evidence suggests to me that whilst The Bell retains all of the physical characteristics of a public house, it has not operated as one in the traditional sense most recently. On the evidence before me and the balance of probabilities, I consider that, so far as it is relevant to this particular appeal, the appeal site has primarily functioned as a restaurant during the appellant’s ownership and this change first occurred at some point during the period when planning permission was not required for the change of use from a public house to a restaurant.”

Therefore, in planning terms the Inspector clearly applied the appropriate test and was satisfied that the lawful use of the premises was that of a restaurant and not a public house.

Since the appeal decision, the restaurant has been vacant for a continuous period of at least 3 months immediately prior to the date of this application for prior approval (it closed for good in March 2020) and the cumulative floor space of the existing building changing use under Class MA does not exceed 1500sqm.

We also confirm that the building and curtilage:

Do not form part of a site of special scientific interest;  
Do not form part of a listed building or land within its curtilage;  
Do not form part of a scheduled monument or land within its curtilage;  
Do not form part of a safety hazard area; or  
is or forms part of a military explosives storage area.

To assist the local planning authority in the determination of the application, we would also confirm the following: -

(a) transport impacts of the development, particularly to ensure safe site access;

The restaurant has a car park with access onto Far Street and, having regard to the reduction in traffic associated with the change of use, safe access can, therefore, be provided for the occupiers of the new dwelling.






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(b) contamination risks in relation to the building;

Having regard to the lawful use of the premises, there is no suggestion that the site has any contamination risks that would pose a danger to future occupiers.

(c) flooding risks in relation to the building;

The application site lies within Flood Zone 1 as shown on the Environment Agency's Flood Zone maps and there is no history of flooding at the site.

(d) impacts of noise from commercial premises on the intended occupiers of the development;

The application site is located within what is a predominantly residential area in a quiet rural village and, accordingly, there are no noise generating uses which would have a detrimental impact on the occupiers of the building

(e) where—

- (i) the building is located in a conservation area, and
  - (ii) the development involves a change of use of the whole or part of the ground floor,
- the impact of that change of use on the character or sustainability of the conservation area;

The application site does lie within the Coleby Conservation Area. In March 2021 the Government announced its intention to support housing delivery, economic recovery and public service infrastructure. Part of this involves the consolidation and simplification of permitted development rights which included the establishment of Class MA. In allowing the change of use from Class E to Class C3, it was recognised that this ability might have some impact on the character or sustainability of conservation areas. This is particularly the case where the loss of a shop in an otherwise retail frontage might have a detrimental impact on the sustainability of the conservation area. In publicising the outcome of the consultation exercise on supporting housing delivery and public service infrastructure in March 2021, the Government identified that "...in recognition of the conservation value that retail frontage can bring to conservation areas the right would allow for prior approval of the impact of the loss of the ground floor use to residential." Clearly, the loss of a former restaurant in an otherwise exclusively residential area will have no impact on the sustainability of the Coleby Conservation Area. Indeed, as the restaurant has been closed since March 2020, the introduction of the proposed use will result in an enhancement to the Conservation Area.






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Page 4 of 4

Your ref:  
Our ref: 1482 2 LMS MAG

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**(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;**

The proposed plans provide adequate light to all habitable rooms

**(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses.**

There are no such uses in close proximity to the site and, therefore, no impact on future occupiers.

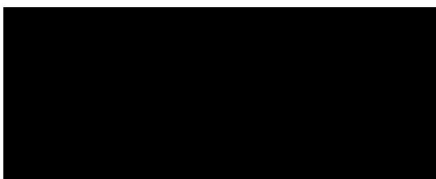
**Conclusion**

The Planning Inspector when deciding the planning appeal in 2021 was clearly satisfied that the lawful use of the building was as a restaurant as the language used demonstrated that the test of the balance of probability was used.

An erroneous statement to the contrary cannot result in a change to the lawful use of a building.

The requirements of Class MA have been met and we would, therefore, invite the local planning authority to approve the application accordingly. However, should you require any further information please do not hesitate to contact us.

Yours faithfully



Lewis M Smith MRTPI

Enclosure: Application Form  
Location Plan  
Block plan  
Existing Floor Plans and Elevations  
Proposed Floor Plans and Elevations  
CIL Form






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