**APP/C3105/W/15/3136680**

**IN THE NORTHERN OXFORDSHIRE MAGISTRATES COURT**

**BETWEEN:**

**CHERWELL DISTRICT COUNCIL**

**PROSECUTION**

**AND**

**(1) GEOFFREY NOQUET**

**(2) JACQUELINE NOQUET**

**DEFENDANTS**

**CLOSING SUBMISSIONS ON**

**BEHALF OF THE DEFENDANTS**

1. The evidence in this case has been clarified by the trial. Both cases have bene put. Where there is conflict in the evidence it is submitted that the Noquet’s evidence is to be preferred. That is for three reasons:-

(a) There is evidence of a failure of proper disclosure by the prosecution. This is not counsel’s hyperbole but clear beyond doubt. There has been some disclosure of unused material but it has been inadequate to the point of misleading the court. The duty of disclosure is to disclosure all material which might damage the prosecution case. There has been no disclosure from:

(i) The licensing department of the council who viewed the public house opened on the 28th August 2013 as just that. The assertion that it was not was simply assertion when the prosecution are in possession of evidence that would settle the matter, i.e. the licensing officers.

(ii) It is clear that the purpose of the opening in August 2013 was to reactivate the public house use. The council knew that in advance and had received a positive view of the proosed opening from, at the very least, Mr Wyatt. This is plain from the email of 22nd August 2013 at Exhibit 1 page 16.

(iii) The email to Ross Chambers from Richard Butt dated 14th March 2014; Exhibit 3; in which Mr Butt stated;

*“I appreciate that you are concerned about any communication with me/the BBSG direct and I can understand your reasons for doing so.”*

The Noquets as defendants were entitled to full disclosure and that has plainly not happened and the failure is deliberate.

(iv) The dishonest and misleading approach of the council does have a direct bearing on both of the defences advanced as set below. It is not going too far to say that the approach was dishonest and misleading. Both Mr Wyatt and Ms Shaw broke their oath in the witness box. Both told you they went to see and assess the public house use on 28th August 2013. That was not honest evidence, they already knew exactly what was to happen. They also knew their visit was a farce as a decision to prosecute had effectively been taken.

(b) The Noquets good character.

(c) The burden of proof. The Noquets need not prove anything other than a genuine attempt to comply with the Enforcement Notice in August 2013. Once they have done that it is, as this is a criminal case, for the prosecution to satisfy you so that you are sure that the offence has bene committed and the defence does not apply.

2. It is a very serious and sad reflection on this case that not only have the Noquets been persecuted but also have been misled by those who serve the community, and all of the community. Again that is a serious charge made on their behalf but it is justified.

(a) They have been subject to a campaign of the most extraordinary harassment for over 7 years by members of the community. They have been harangued at a public inquiry, see Mr Deans note at divider 12 of Mr Noquet’s statement (and corroborated by Mr Wyatt). They have been spied upon and log kept by the BBSG see Exhibit pages 32-4, 66, 67, 73 etc. there is also the detail of the horrific abuse set out in Mr Noquet’s witness statement.

(b) They have been ill served by the council encouraging a belief that they could remain at the premises without opening the public house prior to the 2012 inquiry.

(c) The council did not see fit to serve any form of enforcement notice until 9th February 2012. The public house had already been closed for 5 years.

(d) The council did not see fit to serve a Stop Notice nor seek a civil injunction against the Noquets to enforce the enforcement notice they have gone straight to prosecution. In no other case has this council or as far as anyone is aware has any other council. Mr Wyatt and Ms Shaw were quite shameless about that

(e) The council has misled this court by suggesting through Mr Wyatt and Ms Shaw that the downstairs of the premises were for public house use only. That was plainly not true. Mr and Mrs Noquet were entitled to use the downstairs as part of the ancillary use.

(f) They have been harangued in the witness box for not selling the public house in 2007. There was no Enforcement Notice in 2007. They did not have to do anything.

(g) They have been harangued for not selling at a huge loss to the community, i.e. their tormentor Mr Butt. Why should they? If they can sell the property for £500,000 as their agent suggests then that is a matter for them. Quite why the council are so keen that Mr Butt and his friends make a huge profit out of their tormenting of the Noquets is a mystery and has never been explained. That they could make a profit is clear because they could, for the reason set out below immediately change the use.

(h) The council served the Enforcement Notice and have brought this unique prosecution supposedly to save a community asset. In fact that is untrue. On 16th July 2014 the council determined that the Bishops Blaize had no community value because it was not being used as a public house but also because it is council policy (although Ms Shaw denied knowledge of the policy) that it has to have furthered the *‘social wellbeing or social interests of the local community in the recent past’* and recent past means the last five years, see divider 10 Mr Noquet’s witness statement.

3. Given those matters and given the burden of proof which rests upon the prosecution it is submitted that the evidence of the council should be treated with scepticism and the evidence of the Noquets accepted.

4. The basic facts are as follows:-

(a) Mr and Mrs Noquet are of good character and have been very successful publicans.

(b) They purchased the Bishops Blaize with the intention of it becoming a successful public house, focusing on food service.

(c) That intention is corroborated by the @£40,000 spent on the property to develop it as a public house.

(d) The public house was boycotted by the locals, its customers. It very rapidly went to a positon whereby it was losing £1,000 per week.

(e) The Noquets arranged for managers to take over but that did not work.

(f) They tried to reopen in 2009 with rooms but did not do so because of the difficulties in obtaining planning permission.

(g) They have always engaged with the local planning authority even if they have not been treated fairly.

(h) No formal action was taken against them until the Enforcement Notice dated 9th February 2012.

(i) The Notice was appealed unsuccessfully following the inquiry conducted by Sara Morgan in October 2012.

(j) That the Noquets have resided at the property largely since 2011.

(k) They have spoken to the council, Mr Dean and Mr Wyatt, in order to make such arrangements as would satisfy the council.

(l) Mr Wyatt encouraged them to think that they could reopen the public house use briefly so as then to ratchet down the use class to a shop.

(m) Mr Noquet’s email of 23rd September illustrates what Mr Wyatt accepted was a genuine attempt to comply with the Notice, see trial bundle page 46-7.

5. The Defendants have pleaded not guilty to a single information each alleging that between 21st June 2013 and 19th September 2013 they (charged individually) failed to comply with a planning enforcement notice dated 9th February 2012 issued by Cherwell DC. The allegation is that the Defendants used the Bishops Blaize public house in Burdrop, Banbury as a residential dwelling house between those dates other than as ancillary to use of the property as a public house.

6. The Defendants jointly rely upon the following three matters in their defence:-

7. No breach of the notice. The property has always been a public house through the period of the Defendants ownership, since March 2006 until a change of use to a shop selling stoves and associated equipment in 2013. The Defendants have not always resided at the property.

8. It is the wording of the Enforcement Notice which I all important not any particular interpretation of it. The wording of the enforcement notice does not preclude the Noquets from living at the premises. The public house use was in abeyance for 5 years before the notice was served. It was still a public house albeit shut. It could have reopened at any time, as it did in August 2013.

9. There have been no cases where the residence of the landlord and landlady has been said to have taken over the public house as solely a domestic residence when the public house is shut or when the licence is not in force.

10. That was the interpretation of the council before the 2012 inquiry and it was correct. Whilst this is not a civil case the prosecuting authorities own view of the interpretation should be accepted. No explanation for the change of stance has been offered by the authority, again a serious failure of proper disclosure in accordance with the Code for Crown Prosecutors.

11. That the court can look at the meaning of a condition is clear from Miah v Secretary of State for the Environment [1986] J.P.L. 756 (trial bundle page 403xiv).

12. The second defence is that on 28th August 2013 the public house use resumed, that was permitted by section 57(4) of the Town and Country Planning Act 1990. This was recognised by the inspector Sara Morgan in the 2012 Inquiry, decision paragraph 9, trial bundle page 18.

13. It is said that public house use did not resume. It clearly did. The premises were licenced and offered alcoholic and other drink for retail sale. The council may say that it was not like an ordinary village pub. That is nonsense. It was a village pub. It did not have draught beer, it may have been small (but that was at the behest of the council) and it was only open briefly but it was.

14. If it is said that it was not public house use then that is simply wrong. The only difference between the Bishops Blaize before it was shut in 2006 and on the 28th August 2013 was that there was no draught beer and the area was smaller. The landlord of a public house can open for as long as he likes or not as the case may be.

15. If the council are to satisfy you so that you are sure that this was not public house use then some far clearer authority is required than simply Ms Shaw saying it was not a pub.

16. If it was public house use then the right to down ratchet became available and that is what the Noquets did. A change of use from Use Class A4 (Drinking Establishment) to use Class A1 (Shop) does not require planning permission being within the Town and Country Planning (General Permitted Development) Order 1995.

17. Thirdly there is the statutory defence under Section 179(3) of the Town and Country Planning Act 1990 which provides:-

*“..it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice”*.

Authority informs us that the defence is subject to the rider of reasonableness.

18. In R v David Wood, Court of Appeal Criminal Division 25th May 2001 the proper approach was set out (Lord Justice Mantell paragraph 26):-

Considering each count (*charge*) separately has the prosecution made you sure (*criminal standard of proof*) that (1) the defendant was served with a valid enforcement notice by the District Council? And (2) the defendant failed to comply with that notice?

If the answer to either of those questions is No then the defendant is not guilty.

**Defence say did comply with notice whilst living in the residential part and/or by opening the public house on 28th August 2013.**

If the answer to both questions is yes then go on to consider, has the defendant shown that it is more probable or likely than not (*civil standard of proof*) that in failing to comply with the notice he did everything that he could reasonably be expected to do? If the answer to this is yes then he is not guilty.

**The defence case is that in discussions with Mr Wyatt the scheme which was carried out in August 2013 was developed. It was put into effect openly and in the genuine belief that it would satisfy both the law and the council.**

**GRAEME SAMPSON**

**3PB Barristers, London**

**Counsel (instructed by direct access) for the Defendants**