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## Appeal Decision

Site visit made on 26 June 2018

**by David Murray BA (Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> July 2018**

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**Appeal Ref: APP/C3105/W/17/3191365**

**The Pheasant Plucker's Inn (also known as 'Bishop Blaize' public house)  
Burdrop, Banbury, Oxon, OX15 5RQ.**

- 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 Mr G R Noquet against the decision of Cherwell District Council.
  - The application Ref. 17/01981/F, dated 26 September 2017, was refused by notice dated 24 November 2017.
  - The development proposed is a change of use from (Class) A4 to (Class) C3.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether it is demonstrated that the public house, as an Asset of Community Value (ACV), cannot be financially viable in the long term, and if the change of use accords with the provisions of the development plan and national guidance.

### Reasons

#### *Background*

3. The appeal site comprises former pub premises in the hamlet of Burdrop which lies in the countryside close to the adjoining villages of Sibford Gower and Sibford Ferris, which are collectively known as 'the Sibfords'. The premises were previously known as 'the Pheasant Plucker's Inn' and then as the 'Bishops Blaize', when open as a public house but more recently the property has been known as 'Bishops End'. I understand that the premises were bought by Mrs Noquet in 2006 and closed in 2007, although the public house re-opened for a short period later.
4. The planning history of the appeal site is extensive. Applications to change the use of the premises to a dwellinghouse were refused in 2006, 2007, 2012 and certificates of lawfulness as a dwellinghouse were refused in 2012, 2013 and 2014. An appeal against an enforcement notice issued in 2012 against an alleged material change of use of the public house to a dwelling was dismissed in 2012 under ref APP/C3010/FC/12/2170904 (referred to as the 2012 appeal). A subsequent appeal into the refusal of the 2012 application for a change of use of the pub to dwelling was dismissed in 2013 under ref. APP/C3105/A/13/2190714 (referred to as 2013 appeal).

5. It is evident that in February 2016 the property was listed as an Asset of Community Value (ACV) under the Localism Act.

*Policy Context*

6. The development plan for the area includes the Council's Cherwell Local Plan 2011-2031 Part 1 (CLPP1) adopted in 2015 and saved policies in the Cherwell Local Plan 1996 (the 1996LP). The latter plan may be given weight depending on the degree of consistency of saved policies with the more recent National Planning Policy Framework (the Framework).
7. In the stated reason for refusal the Council refers to CLPP1 Policy ESD15 but this refers to the character of the 'Built and Historic Environment'. Whereas the officer report to the planning committee indicates that policy BSC12 of the CLPP1 is relevant and this indicates that the provision of community facilities to enhance the sustainability of communities will be enhanced and the Council will seek to protect and enhance existing facilities.
8. Moreover, saved Policy S29 of the 1996 LP specifies that the loss of existing services which serve the basic needs of the local community will not normally be permitted. This is broadly consistent with the Framework which advises in paragraph 70 (2<sup>nd</sup> bullet point), in the context of Promoting Healthy Communities, that planning decisions should 'guard against the unnecessary loss of valued facilities and services particularly where this would reduce the community's ability to meet its day-to-day needs.' The saved policy should therefore be given significant weight. Nevertheless, in the reasoned justification which accompanies Policy S29 (paragraph 4.72) the Council generally accepts that it will be difficult to resist the loss of such a facility if it is proven to be no longer financially viable in the long term. 'Viability' is not a test put forward in the Framework.
9. It is evidence to me from the long planning history of the site that the local community regarded the Pheasant Pluckers Inn as a much valued facility, providing food, drink and a community meeting place. It was used to meet their day to day needs, culminating in the designation of the building as a ACV, whereas the appellant and owner of the property has maintained for long time that the premises are not viable as a pub.

*Whether viable in the long term*

10. Some of the evidence submitted by the appellant refers to the general state of pub closures in the country, and where in other councils and appeal decisions elsewhere it has been accepted that a pub has been shown to not be viable. However, I have regarded these as only for general context and I have considered this case on the specific evidence and representations put to me.
11. The issue of viability was considered by the Inspector in the 2012 enforcement appeal. Following an Inquiry the Inspector considered the 2006-7 marketing exercise put forward by the appellant but concluded that it did not show that the public house was unviable and that the price for the property sought at that time, even when reduced to £450,000, was unrealistically high. The Inspector concluded that it had not been shown that the public house would not be viable in the long term. In the 2013 appeal the Inspector also concluded that there were insufficient grounds to establish that the pub would not be viable in the

- long term and that the change of use conflicted with saved Policy 29 and the provisions of the Framework.
12. Since that time, I understand that the public house was re-opened in July 2016 but the appellant says that it was closed in January 2017 because of a lack of trade. Nevertheless the pub facilities remain. At my site visit I noted that in the bar area there was a small bar top with a serving area behind with liquor in optics and a chiller cabinet with bottles. The bar area had casual seating with sofas and chairs and there was also a more formal dining area with tables and chairs. I also noted a commercial type kitchen with pub cooking facilities separate from a domestic kitchen. Outside there were was a large garden and a loose surfaced parking area which I would describe as extensive and this was closed off from the highway by gates.
  13. The application the subject of the appeal included details of a marketing exercise undertaken between Oct 2015 and August 2017. The appellants' evidence includes a copy of the sales particulars drawn up by Sidney Phillips (Licensed property specialists) which specify the freehold price sought for the property as £395,000. The appellant says that the marketing exercise resulted in: 3237 persons downloading the property details; 32 viewings and 4 offers none of which were close to the asking price. The appellant says that this is clear evidence of no individual, company or group coming forward to acquire the business at its true current value.
  14. The application is also supported by a viability appraisal prepared by Mr B Voysey (MRICS). The report (now referred to as BV Report) is undated but it states that it was prepared following instructions given by the appellant in November 2012. This appears to be evidence that was taken account of by the Inspector in the 2013 appeal. The report concludes that the Bishop Blaize is not a viable proposition because: the poor return on investment does not reflect the financial risk involved; an investor would be unlikely to raise the capital required to improve the property; there is considerable competition in the area from other premises offering food and it would be difficult to capture market share; and the most appropriate use would be for 'wet sales' which have declined substantially over recent years. Mr Voysey concludes that the criteria set out in Policy S29 was met at that time and it was clear that the pub is not viable in the long term.
  15. In order to consider the viability of the public house the Council commissioned a report from Bruton Knowles (Property Consultants) which is dated 13 November 2017 (now referred to as the BK report). The report highlights the general decline in business suffered by pubs in the UK and the fall in volumes in 'wet sales'. The report also noted the local competition with other pubs and restaurants in the area including the Wykham Arms in Sibford Gower. Further, as the public house was closed for many of the recent years, the report notes that the financial information available on the business is limited.
  16. Following analysis, the BK report considers that 'the Sibfords' together are not of sufficient size to create a sustainable business just for local residents and suggest that a 'gastro-pub' is the only viable trading model rather than as a 'wet-led community local'. Further, a realistic solution would require and have to finance considerable changes/improvements to the bar area and car parking, and to increase the seating area to add 'sufficient trading space for viability'. Subject to considerable caveats and noted adverse factors, such as the higher

than average financial risk for investors, the BK Report concludes with a statement that the pub can still be viable as a public house. As this expert opinion is given by a RICS Valuer I have to give considerable weight to the assessment and these conclusions.

17. The findings of the BK Report are disputed or given little weight by the appellant particularly as the report is said to understate the financial risk involved for investors and because of the problems expressed over possible or necessary improvements to the pub and its car park. However, it appears to me that there is little financial information available on the business to assess a realistic value in the current market and its future potential. Further, from my observation at my site visit I do not share the appellant's misgivings about the better use and expansion of the premises and the car park. The car park appeared to me to be of a good to large size for a rural public house and I am not convinced that a huge retaining wall is needed as suggested for its extension or better use.
18. The parties also refer to a CAMRA<sup>1</sup> viability test and although this does not have any formal planning status it provides a helpful, if informal, methodology on assessing viability. The appellant submits that the test is met on the basis that no one else believes that they can make it viable. However, on the information put forward I am not satisfied that the following aspects have been meaningfully explored: activities undertaken to increase customer potential at the pub; the promotion of multiple use; and utilising the flexibility of the site. Nor do I find that the pub has been offered for sale at a realistic competitive price reflecting current market conditions. I am therefore not satisfied that the proposal so far has met the detailed suggestions set out in the CAMRA test.
19. In concluding on this issue of viability I have given most weight to the finding of the BK Report as this is up to date and based on expert opinion. I find that there is evidence to support the Council's case that the appellant has not demonstrated that the lawful use of the premises as a public house cannot be made viable in the long term despite the pub being shut at the moment. Therefore, I conclude on this issue that the proposed change of use to a dwelling house would conflict with saved Policy S29 of the 1996LP; CLPP1 Policy BSC12; and the guidance in the Framework to safeguard against the loss of what has been a valued local facility.

### *Planning Balance*

20. In bringing this conclusion on the main issue into the wider planning balance, the conflict with the development plan suggests that the appeal should not be allowed. However, I have to say that the balance of considerations in favour of the development plan policy is marginal. I have serious concerns about whether there is enough adult population in 'the Sibfords' to sustain another pub and also that a move towards a 'gastro-pub' may put the appeal site premises in direct competition with the Wykham Arms in Sibford Gower.
21. However, to my mind a critical event in the overall judgement is the designation of the building as an ACV. The appellant recognises that the main purpose of such designation is to allow the community to make a reasonable bid to buy the property if and when it comes onto the market. The representations submitted on the appeal do not suggest to me that that has

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<sup>1</sup> Campaign for Real Ale, a campaigning group started in 1971.

happened in a clear and positive way. To the contrary, the representations indicate clear local tensions between the appellant and his wife and many others in the local community. The allegation that the premises have been boycotted by the locals in the past will not help secure the reinstatement of the pub. Notwithstanding this, I consider that the onus now lies with the local community to demonstrate that the pub can be viable in the long term and make a considered offer to purchase. Further, the scope for such a solution should not be open-ended and the local community should in my view be able to complete this activity within a reasonably short period.

22. As the proposal stands, I conclude that it has not been demonstrated that the public house premises cannot be made financially viable in the long term and that the proposed change of use of the building to a dwellinghouse from its lawful use as a public house would conflict with the provisions of saved policy S29 of the 1996 Local Plan, CLPP1 Policy BSC12 and the national policy in the Framework. This conflict is not outweighed by any other consideration and this indicates that the appeal should not be allowed.

### **Conclusion**

23. For the reasons given above I conclude that the appeal should be dismissed.

*David Murray*

INSPECTOR