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# Appeal Decision

Inquiry opened on 14 August 2012

Site visit made on 16 August 2012

**by Sara Morgan LLB (Hons) MA Solicitor**

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

**Decision date: 4 October 2012**

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## **Appeal Ref: APP/C3105/C/12/2170904 Bishops End, Burdrop, Banbury OX15 5RQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Geoffrey Richard Noquet against an enforcement notice issued by Cherwell District Council.
  - The Council's reference is 12/00011/CLUE.
  - The notice was issued on 9 February 2012.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from a public house (Use Class A4) to a residential dwelling house (Use Class C3).
  - The requirements of the notice are to cease using the land as a residential dwelling house except for residential occupation ancillary to the use of the land as a public house.
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
  - The inquiry sat for 4 days on 14 - 17 August 2012.
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### **Decision**

1. It is directed that the enforcement notice be corrected by substituting the plan attached to this decision for the plan attached to the enforcement notice. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Application for costs**

2. At the Inquiry applications for costs were made by Mr Geoffrey Richard Noquet and Mrs Jacqueline Noquet against Cherwell District Council, and by Cherwell District Council against Mr and Mrs Noquet. These applications are the subject of separate Decisions.

### **Procedural**

3. The appeal was made on the grounds set out in section 174 (2) (d) and (f) as well as on ground (a). However, the appeal on ground (d) was withdrawn before the Inquiry, and the appeal on ground (f) was withdrawn at the Inquiry.
4. Mrs Jacqueline Noquet also submitted an appeal on grounds (a), (d) and (f)<sup>1</sup>, but as the prescribed fees were not paid in respect of her appeal within the

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<sup>1</sup> APP/C3105/C/12/2170905

specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended did not fall to be considered, and the appeal on ground (a) lapsed. Consequently, following the withdrawal of her appeals on grounds (d) and (f) her appeal lapsed in its entirety.

5. It was agreed at the Inquiry that the plan attached to this Decision should be substituted for the plan attached to the Enforcement Notice, as it shows the correct planning unit. This correction can be made without causing injustice to either party, as it reduces the area the subject of the enforcement notice.
6. All oral evidence to the Inquiry was given on oath or under solemn affirmation.

### **Whether the notice is invalid**

7. The last lawful use of Bishops End, as the appeal site is described in the enforcement notice, was as a public house. The public house was called the Bishop Blaize, and was purchased by Mrs Noquet in February 2006. It was closed in March 2007 and has not been used as a public house since that date. When in use as a public house, the ground floor had comprised bar and restaurant areas with cellar, and a kitchen. The first floor provided ancillary residential accommodation, the ground floor kitchen also being used for residential use. At the time of my site visit the ground floor had been converted almost entirely to residential purposes, the bar and most of the public house fittings having been removed, and the whole building was in occupation as a dwelling house.
8. At the Inquiry the Council stated that it did not interpret the enforcement notice as requiring Mr and Mrs Noquet to move out of the appeal property entirely. It was said that if the enforcement notice was upheld they could continue to occupy the area that had always been available for ancillary residential use, although it was also accepted by the Council that the appellant could not be forced to re-open the public house. The appellant has argued that it is unclear in the light of this what the notice requires, because an ancillary use cannot exist if the permitted primary use has ceased to exist.
9. The lawful use as a public house has ceased because of the unauthorised change of use of the site to use as a residential dwelling house. The lawful use could resume by virtue of section 57(4) of the 1990 Act. But the Council is right to acknowledge that it cannot force the public house use to resume, and so the requirement of the enforcement notice is for the use of the building as a residential dwelling house to cease. The notice also includes a saving for ancillary residential use, although strictly that saving is unnecessary because an enforcement notice cannot override the provisions of section 57(4).
10. The current situation is that the use of the whole building has changed to that of a residential dwelling house, and that is the use which the notice requires to cease. If the public house use resumed, then occupation of the residential accommodation that was available at the public house, would satisfy the terms of the notice, provided that occupation could be said to be ancillary to the public house use. But I disagree with the Council's interpretation of the notice. Because the public house use has ceased, the ancillary use cannot exist on its own. If Mr and Mrs Noquet cease to use the whole of the building as a residential dwelling house but continue to occupy the residential accommodation that was available at the public house, without using for residential purposes the areas that had been used for the public house, that

would not satisfy the terms of the notice, because their occupation would not be ancillary. However, that does not make the notice invalid. The notice is clear in what it requires. My conclusion is that the notice is not invalid.

11. It was argued on behalf of the appellant that he has been denied his right to a fair hearing. This it is said is because, acting on the answer given by Mr Dean (the Council's final witness) in cross-examination that Mr and Mrs Noquet could continue to occupy the original residential accommodation as ancillary to the public house although they could not be compelled to re-open the public house, cross-examination proceeded on the basis that the appellants were not being asked to vacate the premises, and Mr Dean was not cross-examined on any points relating to Article 8 of the European Convention of Human Rights. It is, of course, open to the Council under section 173A to waive or relax any requirement of an enforcement notice, although I acknowledge that Mr Dean's answer appears to have been on the basis of a misunderstanding of the effect of the notice.
12. However, Mr Dean had not given any evidence in chief on Article 8, and so there was no evidence of his on that point to be challenged. The appellant's case was heard first at the Inquiry. He had every opportunity to call witnesses and give evidence himself, before Mr Dean's evidence was heard, including any evidence relating to Article 8 issues, and to make submissions on those matters. On that basis I consider that the appellant has not been denied his right to a fair hearing.

## **The appeal on ground (a) and the deemed planning application**

### **Main Issue**

13. The main issue is whether the change of use enforced against accords with local and national policies related to the loss of community facilities. Of relevance to this issue is whether the appeal property would be viable in the long term as a public house.

### **Reasons**

#### *Local and national policy*

14. Saved policy S29<sup>2</sup> of the Cherwell Local Plan (LP), adopted in 1996, provides that proposals involving the loss of existing village services which serve the basic needs of the local community will not normally be permitted. The explanatory text makes reference to the importance of village services, particularly the local shop and pub, to the local community, and indicates that the Council will seek to resist the loss of such facilities wherever possible. But it recognises that it will be difficult to resist the loss of such facilities when they are proven to be no longer financially viable in the long term.
15. As to what constitutes the "local community" here, Burdrop is a hamlet within the parish of Sibford Gower, and lies on the road between Sibford Gower and the adjoining parish and nearby village of Sibford Ferris. There are close connections between the three settlements, not only physically. They are collectively known as "The Sibfords", and the emerging Community Plan<sup>3</sup> covers all three settlements, regarding them as one community. They also

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<sup>2</sup> Carried forward into the non-statutory Cherwell Local Plan 2004 as policy S26

<sup>3</sup> Sibfords Community Plan Consultation Draft 2012

share community services and facilities. In my view "local community" in this case means Burdrop, Sibford Gower and Sibford Ferris together.

16. In the Sibfords there were, until the closure of the Bishop Blaize, two public houses, the other one, the Wykham Arms, in Sibford Gower. The character of the two pubs appears to have been distinctly different, the Wykham Arms being described in evidence as a gastro-pub and a restaurant, with the Bishop Blaize being described as more a local pub and a place for the community to meet and socialise. There is also a village hall in Sibford Gower, which has events monthly, but that would not offer the type of basic village service which would be found in a local public house like the Bishop Blaize.
17. In any event, however, policy S29 explicitly refers to proposals that will involve the *loss* of existing village services, not the *complete loss*. The explanatory paragraph refers to the loss of these facilities being resisted *wherever possible*. That is not consistent with the policy being limited to situations where the loss of the facility would mean that the local community would not be able to meet its basic needs at all, such as where the only public house in a village closes. It is clear on the face of the policy that it would bite in situations where there are, for example, several public houses in a village and one is proposed to be lost. If the change of use of the Bishop Blaize were to be approved, it would result in the permanent loss of a village service meeting the basic needs of the local community. The change of use would thus conflict with policy S29.
18. Policy S29 is consistent with the advice in paragraph 28 of the National Planning Policy Framework ("the Framework") which in particular requires local plans to promote the retention and development of local services and community facilities in villages, such as (inter alia) public houses. The policy is also consistent with the advice in paragraph 70 of the Framework, which requires planning policies and decisions to 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. There is nothing in the Framework to suggest that either of these paragraphs only applies where there is only one such facility in a village. Applying the advice in Annex 1 of the Framework, I therefore attach substantial weight to policy S29, despite its age.
19. The Framework goes further than policy S29, in seeking to protect *valued facilities and services*. In this case the evidence (and the large number of third party representations, from a wide range of local residents and including both parish councils, which are overwhelmingly in favour of the Bishop Blaize being retained as a public house) all points to the importance of the Bishop Blaize as a facility which provided food, drink and a community meeting place. Representations referred to the Bishop Blaize being at the heart of village life. There is very strong evidence from the community of a wish to see the Bishop Blaize retained as a public house, despite the length of time that it has been closed. My conclusion is that the Bishop Blaize provided a much valued facility and service, and that its closure has reduced the ability of the local community to meet its day-to-day needs. The Framework therefore requires that its unnecessary loss should be guarded against.

## *Viability*

### *The 2006-7 marketing exercise*

20. It is argued on behalf of the appellant that a reopened Bishop Blaize would not be viable. The explanatory text to policy S29 acknowledges that facilities should be financially viable in the long term, but there is no guidance in the policy as to how viability should be assessed. The evidence of Council's expert witness, Mr Keane, was that he would not rely solely on a marketing exercise to indicate viability or otherwise. But he would expect one to be carried out because it assists in determining whether a public house is viable. However, he said, if marketing did not give rise to any offers, that would demonstrate that there was a poor market but not necessarily that a property was unviable.
21. The price paid for the Bishop Blaize by Mrs Noquet was £425,000, together with £70,000 for goodwill. At that time, on the basis of the trading figures of the previous owners, the public house was clearly viable. According to Mr Noquet, by about 6 weeks after they took the public house over takings had fallen sharply<sup>4</sup>. They applied for a change of use of the building to a dwelling in August 2006, but that application was refused.
22. Between the summer of 2006 and October 2007 the Bishop Blaize was marketed for sale at £600,000. By March 2007 five offers had been received including one from a local brewery at £525,000, one at £550,000 and two at £575,000. Mr Noquet said that he accepted one of the offers of £575,000 but there was no "proof of funds" and the sale did not progress. It was not clear from Mr Noquet's evidence why the other offers were not pursued.
23. The agents, Fleurets, in their letter of 16 March 2007, described the price at which the property had been marketed as "on the high side". That letter complains that up-to-date accounting information had not been provided despite repeated requests. It says the offers received were at "a level we would expect" bearing in mind the lack of accounts. But it also comments that the requirement by Mr and Mrs Noquet for a "development uplift" clause combined with the fact that the public house was underperforming and was by that time closed<sup>5</sup>, was "creating a hurdle too far" for most prospective purchasers.
24. Mr Keane had been commissioned to report to the Council on the viability of the Bishop Blaize in May 2007, following a further application for a change of use to a private dwelling. At that time he valued the property as a fully operational public house at £575,000, and his view was that the Bishop Blaize was still a viable public house, albeit under new management. Mr Keane also noted in his report that development uplift clauses "rarely help a sale".
25. There was little evidence from the appellant to suggest that at the time of this marketing exercise the Bishop Blaize could not be a viable public house in the long term. It had clearly been viable under the previous owners not so very long before. Mr and Mrs Noquet were making losses while the public house was still open but that appears to have been specifically due to a dispute between Mr and Mrs Noquet and the village. That does not mean to say that

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<sup>4</sup> Mr Noquet says a boycott of the public house was begun by local residents. Local residents who made submissions to the Inquiry said there was no organised boycott, but that they just stopped using the pub.

<sup>5</sup> According to Mr Noquet the public house was closed in March 2007 because it was losing probably £1000 per week.

the Bishop Blaize could not be viable under another operator. Although clearly it would not have been reasonable to expect an offer well below the asking price to be accepted, some of the offers recorded by Fleurets were at or close to Mr Keane's valuation of the Bishop Blaize.

26. Taking all these matters into account, I conclude that the marketing exercise carried out by Fleurets does not show that the public house was unviable at that time. The Fleurets letter strongly suggests that the price sought was unrealistically high, and that the requirement for a development uplift clause may well have deterred some genuine purchasers from making realistic offers. The range of offers reported by Fleurets also suggests that the market was determining that the price sought was too high. Despite that, offers were received, strongly suggesting that there were buyers who considered the public house to be viable as a business. Mr Keane's evidence was that he considered it likely that a sale could have been achieved at this time, and I accept that evidence.

#### *Post-2007*

27. The public house has remained closed since March 2007, and the building was empty for some years until Mr and Mrs Noquet moved back in. It has suffered some water damage during that time. But in addition, economic circumstances have changed dramatically. Mr and Mrs Noquet purchased the Bishop Blaize when the market was high, and marketed it in 2006-7 when it was peaking. Mr Keane's most recent (July 2012) Viability Assessment advised that if the pub was advertised with a market price of £295,000 he would hope that a price of £240,00 - £275,00 might be achieved.
28. After 2007, according to Mr Noquet the property was advertised for sale in the Morning Advertiser, with five advertisements between April and August 2009. The price sought was initially £600,000, reducing to £580,000. Given the outcome of the earlier marketing, and given economic conditions by this time, I consider this price to be unrealistically high.
29. In the summer of 2010 the Bishop Blaize was put on the market through GA Select, an on-line business transfer agent specialising in the sale of licensed premises. The asking price was initially £499,000. It was reduced to £450,000 in September/October 2011. Three offers were received ranging from £190,000 to £330,000. Mr Noquet said that marketing of the property ceased in October 2011 because an insurance claim was finally settled, providing the money necessary to refurbish the building. But Mr Allman of GA Select gave evidence that the property is still available for sale at a price to be negotiated although not advertised on the company's website.
30. Mr Allman gave evidence that the basis on which the initial asking price with his company was arrived at was the price which had been paid when it was purchased by Mr and Mrs Noquet<sup>6</sup>, sales records, reconstructed net profits, comparisons of similar businesses, desirability and uniqueness and an element of hope value to reflect the possibility of a change to residential use. He said that the reduction in asking price to £450,000 was still realistic especially bearing in mind the hope value, which in cross-examination he said was at least 50% of the price sought. He would not have advised Mr and Mrs Noquet to accept the highest offer of £330,000 as the property was worth more in an

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<sup>6</sup> Including what had been paid for goodwill.

alternative use. However, in cross-examination he agreed that £330,000 at the time that offer was made was a reasonable valuation of the property as a public house, without including hope value. Mr Keane's evidence was that £330,000 was a very good offer.

31. However, Mr Allman also said that the advertising details provided about the Bishop Blaize, including the potential for the business, had not taken into account information concerning the trading of the business while Mr and Mrs Noquet had been running it because that information had not been provided, and that he had not been aware of the planning history of the property including the various applications for planning permission for a material change of use to residential which had been refused by the Council or withdrawn.
32. Mr Allman said that the offers made for the public house were not supported by proof that funds to purchase the property were available, but Mr Noquet made it clear in his evidence that he would not have accepted the highest offer made because it was well below the asking price, and Mr Allman's evidence was that he would not advise accepting that offer as the property was worth more in an alternative use.
33. My conclusion, on the basis of all this evidence, is that the asking price at this time, even when reduced to £450,000, was unrealistically high. The very large proportion of the asking price represented by the hope value of achieving a material change of use to residential use did not reflect the planning history of the property, or indeed the planning policy background at that time. The absence of any genuine prospective purchasers at the price being sought does not, show that the Bishop Blaize was not then viable as a public house, as the marketing exercise was flawed.
34. My conclusion with regard to the marketing exercises is that none of them show that there would be no takers for the property if sold as a public house at a realistic open market price. They have not shown, therefore, that the Bishop Blaize would be unviable as a public house in the long term.

*Other evidence of viability*

35. Mr Keane's July 2012 report concludes that the pub is still viable assuming that a new operator came forward and the current owners were prepared to sell at the value determined by the market. His recommendation as to price is based on current comparables, and I consider it reasonably sound.
36. Mr Allman did not produce a written assessment of viability or of current open market value. His oral evidence painted a very different picture of the prospects of the Bishop Blaize from that appearing in his company's sale particulars. His oral assessment of the trading prospects of a re-opened Bishop Blaize is far less optimistic than his company's particulars of sale, which would have been available to prospective purchasers up to October 2011. His assessment in oral evidence to the Inquiry that over £150,000 would need to be spent to upgrade the property so that it could compete with the other public house in the Sibfords similarly does not sit well with the "little upgrade project" referred to in the particulars. No detailed breakdown of this figure was provided. But my impression of the building when I visited was more in line with Mr Keane's evidence of a property in apparently good order, and being lived in, than with Mr Allman's description of the state of the property.

37. I prefer Mr Keane's evidence in his report and to the Inquiry that adequate works could be carried out for £20,000 to allow the various works necessary to bring the Bishop Blaize back into operation, rather than Mr Allman's oral evidence, which although lacking in detail appeared to be inflated and based on an over-specification of the works needed. For similar reasons I prefer Mr Keane's evidence of the sum necessary to replace and/or upgrade fixtures and fittings.
38. Mr Keane has assessed viability using commonly-used methodology including assessing the *Fair Maintainable Trade*, that is to say the trade that could be generated by a reasonably efficient operator and resulting in a calculation of *Fair maintainable operating profit* out of which the operator pays for rent or mortgage payments and receives his own remuneration. This appear to me to be a useful measure of viability. A number of the assumptions on which he has based his conclusions have been attacked. However, his report is a carefully balanced and measured assessment of the future possibilities for the Bishop Blaize, based on standard methodology and his experience of other public houses in the area.
39. Mr Keane has calculated a potential *Fair maintainable operating profit* of around £40,000, and on the basis of the information available I consider that figure to be reasonable. Out of that sum would be taken mortgage repayments. Mr Noquet and Mr Keane have made different assumptions as to the size of any loan, and in reality the buyer's personal circumstances would influence the size of any loan taken out. But Mr Keane's calculations show that a £150,000 loan representing 60% of a value of £250,000 would leave a *Fair maintainable operating profit* of around £28,000, which he considers would be enough to attract an operator, bearing in mind that the operator would be living out of the business.
40. The interest rate on any loan assumed by Mr Keane is lower than that suggested by Mr Allman, but given that Mr Keane's assessment was contained in his carefully considered report and based on the advice of a mortgage broker, and Mr Allman's was given orally (albeit that it was based on rates sought by the banks his company deals with) I prefer Mr Keane's rate<sup>7</sup>. As to whether a buyer would expect a return on the capital outlay other than through capital appreciation, Mr Keane's evidence was that that was not how the market operated, and there is no convincing evidence to the contrary.
41. Mr Keane has assumed a higher turnover in monetary terms than achieved by the previous owners of the Bishop Blaize. He has been criticised for using unopposed village pubs as comparators in arriving at beer sales figures. But he has assumed significantly lower beer sales than had been achieved by the owners prior to Mr and Mrs Noquet. Mr Keane's figures are arrived at using data obtained from various licensing trade sources, and whilst they are clearly assumptions they appear to me to be soundly based.
42. Mr Keane used industry figures to arrive at a figure for overheads as a percentage of turnover. His evidence is that the overheads of the Bishop Blaize would not be any greater than that, and there is no convincing evidence of that being wrong, although he agreed Mr Noquet's figures for overheads were not unreasonable as a package. Mr Keane's figure was an average, and clearly actual figures will vary from the average. However, given his detailed analysis

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<sup>7</sup> Mr Noquet had assumed a slightly lower interest rate than Mr Keane, over a shorter repayment period.



of the Bishop Blaize's circumstances that consideration does not undermine his assessment significantly.

43. It is also said that Mr Keane has not taken into account the cost of the refurbishment works and fitting out required in assessing borrowings. Mr Keane acknowledged in his report that a significant level of extra investment would be needed to allow the Bishop Blaize to re-open, some of which would have been necessary in any event. But he considered that a prudent future operator would budget accordingly, and this would be reflected in any bid. He also acknowledged that without significant cash capital it would be difficult at present to raise finance through the banks, noting that it would be easier to obtain finance once the pub had traded for a while. This approach in my view is realistic and reasonable.
44. Some of the refurbishment and fitting out works would be necessary because of the conversion works carried out by Mr and Mrs Noquet as part of the unauthorised change of use. To the extent that the costs attributable to the closure of the premises and the conversion works would affect viability, I agree with the Council that they should not weigh significantly in the balance in favour of the appeal.
45. Mr Keane acknowledges that the Bishop Blaize would have to attract custom from outside the Sibfords in order to survive. However, according to him that is often the case, and the smaller the village the more the reliance on outside custom. Given his familiarity with the licensing trade in the area I accept his evidence on this point. Reliance on outside trade does not lessen the value to the local community of such a facility, nor does it point to long-term lack of viability.
46. There are a number of public houses in the local area all competing for custom, but the Bishop Blaize has advantages in having a strikingly good view from its rear garden which would be an attraction even when the weather was not fine. That could give it an edge over other public houses in the area. The Bishop Blaize is also well positioned for access from both the Sibfords, being roughly midway between the two main villages. There is no way of telling where customers who might be attracted to the public house from outside the Sibfords would travel to if the Bishop Blaize were not open, and so it cannot be assumed that any more (or longer) car journeys would result from the Bishop Blaize being open and trading.
47. Clearly the pub trade has suffered over the period since 2006. Mr Keane accepted that the local community could not sustain two public houses by themselves, and expressed some concern at the impact a re-opened Bishop Blaize may have on the Wykham Arms. However, his conclusion was that the Bishop Blaize could be somewhat better placed to survive than the Wykham Arms, although as the Wykham Arms is a "destination gastro-pub" the two may be able to co-exist provided they were not in direct competition.
48. Anecdotal evidence suggests the Wykham Arms already attracts trade from outside the Sibfords, and it has been described by some local residents as a restaurant known for its fine dining. Mr Keane's report assumes that a reopened Bishop Blaize would have a different offer from the Wykham Arms. Mr Noquet himself acknowledged in cross-examination that the Bishop Blaize might survive, but at the expense of the Wykham Arms. But there is no evidence to support his suggestion that the frequent turnover of tenants at the

Wykham Arms when the Bishop Blaize was open and thriving is an indicator that the Wykham Arms was trading poorly at that stage. I conclude that there is no clear evidence as to the effect of a re-opened Bishop Blaize on the Wykham Arms.

*Viability - conclusions*

49. Mr Keane's approach to the viability assessment exercise overall has followed accepted methods, and I attach substantial weight to his balanced conclusions, notwithstanding the criticisms made against it. It does not show that the Bishop Blaize would be *no longer financially viable in the long term* (LP policy S29 explanatory paragraphs) and it does not show that the permanent loss of the public house is *necessary* (paragraph 70 of the Framework). The marketing exercises carried out have been flawed, and they have not shown any absence of a market for the Bishop Blaize if offered for sale at open market value.
50. Despite the effect on the pub trade of current economic conditions and other influences such as the smoking ban, Mr Keane's evidence of other public houses in the area which have been closed and subsequently sold and re-opened under new management in recent times shows that there is still demand for public house premises in the local area. That evidence does not support the argument that the Bishop Blaize would not be financially viable in the long term.
51. The appellant referred to a number of previous appeal decisions, but they all predated the publication of the Framework, and they concerned different locations and different Local Plan policies. The Framework has introduced a stronger national policy relating to the loss of community facilities than existed previously, and appeal decisions pre-dating the Framework were therefore made in a different policy context. They are of little or no assistance in this case.
52. The granting of planning permission for the change of use would result in an additional unit of open market housing being provided. However, if the previous lawful use resumed there would be a unit of housing at the property, albeit being smaller and tied to the public house use rather than being open market. The marginal benefits to housing supply that would result from the change of use, even taking account of the current undersupply in the district, would not be sufficient to outweigh the policy conflict or the permanent loss of valued facilities involved in the change of use.
53. I conclude that as it has not been shown that the public house would not be viable in the long term, the change of use of the Bishop Blaize to a residential dwelling conflicts with policy S29 and with the advice in the Framework.

*Mr and Mrs Noquet's personal circumstances*

54. It seems likely that, given the history of Mr and Mrs Noquet's dispute with the village, for the public house to reopen it would have to be under a new owner. Mr Keane's assessment of viability is based on the owner having a commercial mortgage of £150,000, but according to Mrs Noquet she has an outstanding

loan on the property of £240,000<sup>8</sup>. Mr Keane accepted that his figures would only work on a loan of £150,000 or less, and so Mr and Mrs Noquet would be unable to service the existing loan on his figures. However, the public house has been closed for some years, and the decision to close it was Mr and Mrs Noquet's. There is no evidence as to what the outstanding loan position would be if the public house had continued trading.

55. The current value of the property according to Mr Keane is well below the price Mr and Mrs Noquet purchased the property, and so if they sold it at present market values they would clearly suffer a loss. That is the result of economic conditions and the fall in property prices. It is also a consequence of not accepting one of the offers recorded in the Fleurets letter (all but one of which were higher than the price paid by Mrs Noquet). Mr and Mrs Noquet may have been holding out for a higher offer, but there was clearly a risk at that time that property prices might fall as well as rise, and that risk would normally be borne by the vendor.
56. The current value of the property does not show that the public house is not *financially viable in the long term*. It is argued that to force Mr and Mrs Noquet either to run the Bishop Blaize at a loss or to sell at a loss would be a breach of their human rights under Article 1 of the First Protocol of the European Convention on Human Rights (ECHR), because it would be a form of forced sale. But the protection of property under this provision does not prevent the State enforcing such laws as it deems necessary to control the use of property in accordance with the general interest. There is no absolute right to planning permission to change the use of property to a more lucrative use where property values have fallen.
57. It is clear that the community in the Sibfords places a very high value on the Bishop Blaize as a public house. In the past it provided a community facility which could clearly be distinguished from the other, quite limited, community facilities in the locality. The policy relating to community facilities in the Framework places more emphasis on the retention of local services and community facilities than previous national policy, notwithstanding the economic circumstances. The unauthorised change of use of the property has led to the loss of this highly valued and needed local facility, to the detriment of the sustainability of the local community, and in breach of local and national policy. This has caused serious harm to the wider public interest.
58. The policy of protection of valued community facilities represents a legitimate public interest which in the circumstances of this case can only be adequately safeguarded by the refusal of permission and the upholding of the enforcement notice. The serious harm to the wider public interest would outweigh the admittedly significant financial effects on Mr and Mrs Noquet if the appeal was dismissed. These financial effects would not be a disproportionate response to the breach of planning control.
59. The upholding of the enforcement notice could result in Mr and Mrs Noquet having to leave the Bishop Blaize, and consequently they would lose their home. That would have a serious impact on the appellant and his family, and would represent a significant interference with the appellant's home and family

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<sup>8</sup> No details were provided as to the precise terms of this loan. Mrs Noquet said in evidence that she had an arrangement with the bank to make reduced monthly payments. No other information was provided about Mr and Mrs Noquet's financial circumstances.

life. However, the rights under Article 8 of the ECHR are qualified rights, and the effect on Mr and Mrs Noquet's home and family life must also be weighed against the wider public interest. I have concluded that the unauthorised change of use of the property has caused significant harm to that wider public interest. I consider that the legitimate public interest can only be adequately safeguarded by the refusal of permission for the change of use and the upholding of the enforcement notice, and that the dismissal of the appeal would not have a disproportionate effect on Mr and Mrs Noquet.

*Overall conclusions*

60. For all these reasons I conclude, having regard to all matters raised, that the appeal should be dismissed and the enforcement notice upheld.

*Sara Morgan*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr S. Choong	Of Counsel, instructed under the Direct Access Scheme by Mr Noquet
He called	
Mr Geoffrey Richard Noquet	Appellant
Mrs Jacqueline Noquet	Appellant's wife
Mr Ian Woodward-Court	Plainview Planning
BSc, MSc	
Mr Graham Allman	Managing Director GA Select
F.B.I.I.	

### FOR THE LOCAL PLANNING AUTHORITY:

Mr G. Grant	Of Counsel, instructed by Mr Ross Chambers, Solicitor to Cherwell District Council
He called	
Mr John Joseph Keane	Thomas E. Teague Licensed Property Valuers
BA FAVLP	
Mr Simon Dean MA	Planning Case Officer, Cherwell District Council
MRTPI	

### INTERESTED PERSONS:

Ms Charlotte Bird	Local resident
Mr Christopher Radcliffe	Local resident and member of Bishop Blaize Support Group
Mr Richard Butt	Local resident, on behalf of Bishop Blaize Support Group
Mr Cedric Brown	Local resident
Dr Oswyn Murray	Chair, Sibford Gower Parish Council
Ms Joanne Connor	Chair, Sibford Ferris Parish Council

### DOCUMENTS

- 1 Amended enforcement notice plan handed in by the Council
- 2 Appendices to Mr Woodward-Court's evidence handed in by the appellant
- 3 Sibfords Community Plan Consultation Draft handed in by Dr Murray
- 4 Statement of Mrs Noquet
- 5 E-mails between Mrs Noquet and Fleurets, 14 and 15 August 2012 and e-mail from Mrs Noquet to Mr Allman, 15 August 2012
- 6 Bill for legal services in connection with the purchase of the Bishop Blaize, handed in by the appellant
- 7 E-mail exchange between Leah Miller of GA Select and Angela Beard, dated September 2010, handed in by the appellant
- 8 Statement of common ground
- 9 Statement of Mr Radcliffe
- 10 Statement of Bishop Blaize Support Group, handed in by Mr Butt

- 11 Submission on behalf of Sibford Gower Parish Council, handed in by Dr Murray
- 12 Extract from Banbury Guardian 7 June 2007, handed in by Mr Radcliffe
- 13 Letter from Fleurets to Mr and Mrs Noquet dated 16 March 2007, handed in by the appellant
- 14 Advertising material from GA Select relating to marketing of Bishop Blaize, handed in by the appellant
- 15 Closing submissions on behalf of the Council
- 16 Closing submissions and costs application on behalf of the appellant



# Plan

This is the plan referred to in my decision dated: 04.10.2012

by Sara Morgan LLB (Hons) MA Solicitor

Land at: Bishops End, Burdrop, Banbury OX15 5RQ

Reference: APP/C3105/C/12/2170904

Scale: DO NOT SCALE

H.M. LAND REGISTRY		TITLE NUMBER	
		ON103473	
ORDNANCE SURVEY PLAN REFERENCE	SP 3537	SECTION A	Scale 1/1250 Enlarged from 1/2500
COUNTY OXFORDSHIRE	DISTRICT CHERWELL	© Crown copyright 1983	

