

Cherwell District Council

Town and Country Planning Act 1990 (As Amended)

Appeals by:

Mr G R Noquet and Mrs J Noquet

Enforcement Appeal

The change of use of the public house to a residential
dwellinghouse

PROOF OF EVIDENCE
of
SIMON DEAN

**Planning Case Officer, Public Protection and Development
Management, Cherwell District Council**

Bishops End, Burdrop, Banbury, OX15 5RQ

PINS Refs: APP/C3105/C/12/2170904
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Introduction

- i. My name is Simon Richard Dean. I have a Masters Degree in Spatial Planning and have been employed by this Council in a development control position since February 2008. I have been a Licentiate Member of the Royal Town Planning Institute since December 2010. I was the Case Officer for the most recent application for a lawful development certificate (reference 12/00011/CLUE) on this site, but have had no involvement in the other applications. I will be responsible for presenting professional planning evidence at this Inquiry on behalf of Cherwell District Council.

The Appeal Site and Surroundings

1. The appeal relates to a substantial stone built property under a slate roof, on the edge of Burdrop, overlooking the 'Sib-valley' which separates Sibford Gower and Burdrop from Sibford Ferris. Whilst there are three settlements, they are functionally and socially linked, with each of the settlements providing services and custom for the other.
2. The site is within the Sibford Gower and Burdrop Conservation Area; first designated in January 1988. That Conservation Area, as well as the contiguous Sibford Ferris Conservation Area was subject to a review and appraisal in April 2012 (see Appendix 1).
3. The site lies within the locally designated Area of High Landscape Value and there are several Grade II listed buildings opposite and adjacent to this site. The building is not listed.

Planning History

4. The appeal site has been the subject of the following planning applications:
 - 12/00796/CLUE – Certificate of Lawful Use Existing – Use as a single dwelling house; refused
 - 12/00678/F – Change of use of a vacant public house to C3 residential; refused
 - 12/00011/CLUE – Certificate of Lawful Use Existing – Use as a single dwelling house; refused
 - 09/01275/F – Alterations and extensions to barn to provide 4no. en-suite letting rooms; withdrawn
 - 09/01557/F – Change of use from closed public house to dwelling; withdrawn
 - 07/00630/F – Resubmission of 06/01697/F - Change of use from licensed premises to dwelling house; refused
 - 06/01697/F – Change of use from licensed premises to dwelling house; refused

Provisions of the Development Plan and other Policy Documents

5. For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant elements of the adopted Development Plan for the area, including the appeal site, comprise the South East Plan 2009 and the adopted Cherwell Local Plan 1996 (adopted 6th November 1996).
6. The National Planning Policy Framework, published after the service of the enforcement notice is a material consideration.
7. Other material considerations include Circular 10/97 – Enforcing Planning Control; Circular 11/95 – The Use of Conditions in Planning Permissions; and the Sibford Ferris, Sibford Gower and Burdrop Conservation Area Appraisal April 2012 and the non-statutory Cherwell Local Plan 2004.
8. The policies of the development plans relevant to this case are as set out below. Policy extracts have previously been submitted with the Council's Appeal Questionnaire form to the Inspectorate.

Adopted Cherwell Local Plan 1996	
Saved Policy	Description
S29	Loss of existing village services

The Enforcement Notice

9. Enforcement Notice 12/00020/ECOOU was served on the site on 11th of January 2012 and would have taken effect on 12th March 2012. An appeal against the notice was received on 16 February 2012. The appeal was made valid by the Inspectorate on 03 April 2012.
10. The Inspectorate has accepted that the appeals should proceed on grounds (a), (d), and (f).

The Case for the Local Planning Authority

Ground (a) – That planning permission should be granted for what is alleged in the notice.

11. As all planning applications must be determined in accordance with development plans unless material considerations indicate otherwise, the logical starting point for this application is the adopted Local Plan. The importance of village services and amenities is set out in Policy S29 of the adopted Cherwell Local Plan 1996. This policy states that “*Proposals that will involve the loss of existing village services which serve the basic needs of the local community will not normally be permitted*”. The supporting text to the policy sets out that in adopting that policy the Council “*recognises the importance of village services, particularly the local shop and pub, to the local community and will seek to resist the loss of such facilities whenever possible. However, it is also recognised 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*”.
12. Whilst the change of use must be assessed against the particular policy and the development plan as a whole, it is important to set out in detail the interpretation and understanding of the intention of the policy.
13. From the wording of the policy and the supporting text, it is clear that public houses are to be considered as “*village services*” owing largely to their role in community and social cohesion. It is of vital importance to note that the policy does not impose a simple restriction on the loss of village services, but imposes a burden of proof on those seeking approval for the loss of such services (in planning terms by change of use, not of course in economic terms). This is clearly acknowledged where the policy notes that such changes will not “*normally*” be permitted, and in the supporting text where it is set out that the Council will resist the loss of such facilities “*whenever possible*” and acknowledges the difficulty in resisting such proposals where they are “*proven*” to be no longer “*financially viable in the long term*”.
14. The exposition of the required burden of proof set out in the supporting text raises two issues which are of vital importance to this case; ‘proof’ and ‘long term viability’. In order for the appeal to succeed on ground (a), the appellants must be able to prove that the public house is no longer financially viable in the long term.
15. The National Planning Policy Framework, published in March 2012, does not change the statutory status of the development plan as the basis for planning decision making, but is a material consideration in decision making.
16. Paragraphs 214 and 215 of the Framework set out the criteria by which extant development plan policies are accorded weight following the publication of the Framework. Paragraph 215 states that due weight should be accorded to pre-2004 policies according to their degree of consistency with the Framework.
17. The Framework places a strong emphasis on the social role of planning in delivering sustainable development through the provision of and (by logical extension) the protection of community facilities. This is made explicit in

Section 3 ('Supporting a prosperous rural economy') where the National Planning Policy Framework sets out the conformity of saved policy S29 (and therefore its continued weight), stating that "*plans should... promote the retention... of local services and community facilities in villages, such as... public houses*" (paragraph 28). The weight of saved policy S29 is further reinforced in Section 8 ('Promoting healthy communities'), where decision makers are encouraged to take decisions which "*plan positively for the...community facilities*" (paragraph 70) and to "*guard against the unnecessary loss of valued facilities and services*" (paragraph 70).

18. It is clear therefore that central government policy is supportive of, and recognises the importance of the retention of community facilities. It is also clearly established that a public house is an important community facility.
19. This Council's understanding of the intention of the Framework with regard to community facilities has also been recently supported by the Inspectorate (notably in appeal reference 2167572, attached as Appendix 2).
20. As such, the saved policy retains full weight owing to its degree of conformity with the Framework, the key issue in considering the matters alleged in the notice is the viability of the business and whether or not the viability (or lack thereof) has been properly demonstrated.
21. Although the relevant saved policy referred to in the Enforcement Notice retains full weight, the Council does acknowledge that as a policy written in 1996, its relevance to planning decision making some sixteen years later may be questioned.
22. It is important to note therefore that whilst it never became a formal part of the development plan, the non-statutory Cherwell Local Plan, published in 2004 as a material consideration for development control purposes, effectively repeated Policy S29 (Appendix 3— status letter of NSCLP and policy S26). The policy in that plan (S26) stated that "*Proposals that will result in the loss of an existing village service which serves the basic needs of the local community will not be permitted, unless there is conclusive evidence that the provision of the service is no longer viable and that it cannot be made viable.*"
23. Although that policy was not referred to in the Enforcement Notice, it does lend increased weight to the saved policy which forms the basis of the notice. The repetition of the saved policy in the now abandoned plan (which was programmed to run until 2011) clearly demonstrates that although the saved policy dates from 1996, the intention and need for the policy was still considered appropriate in 2004. Coupled with the already discussed impact of the Framework, the policy is still appropriate and relevant to the modern planning system.
24. The saved Policy S29, and the reliance upon it in this case is lent further weight when looking at similar applications across the District in recent years. The most notable recent case relates to a public house in Hethe (Application reference 10/01340/F, Committee report and decision notice attached as Appendix 4). In that case, the application was refused as "*The proposal has failed to adequately demonstrate that the business is unviable in the longer term such that closure is inevitable. The marketing price is likely to be too*

high and there is insufficient evidence to show how that valuation was arrived at. On this basis, the loss of this village service which serves the basic needs of the local community cannot be justified at this time in accordance with policy S29 of the adopted Cherwell Local Plan and policy S26 of the non-statutory Cherwell Local Plan". That decision was unchallenged and the public house in question has since been renovated, extended and appears to be trading well. Whilst there is a clear difference in approach between urban and rural public houses, this is to be expected given the wording of the policy. The appeal case, and the examples given here are rural cases, as there is no similar planning policy for the urban areas.

25. In looking at previous decisions, it is important to note that policy S29 is not used as a method of flatly refusing to accept an application for the change of use of a public house to a private dwelling house. There are examples where applications have been refused where evidence is *"insufficient... [and] ... would result in an unjustified loss of a village facility"* (The White Hart, Adderbury; application reference 01/00845/F, decision notice attached as Appendix 5), but have then been approved where such evidence and justification has been provided (as happened at The White Hart).
26. Where the viability of a public house appears to be borderline, the Council has in previous cases erred on the side of caution. This approach reflects the view that the inability of an operator to make a public house viable does not in itself mean that another operator could not do so. It also recognises that allowing a change of use without strong evidence of lack of long-term viability does not allow any other operators to have that opportunity.
27. The impact of the implementation of a change of use such as this on a rural community has the potential to cause harm to the character of the village and the level of community facilities provided. Despite the existence of another public house within the adjacent settlement, the loss of this facility would remove a facility which had previously served the villagers. The importance of community facilities is reflected in the content and direction of national government policy as well as in the adopted Local Plan Policy. The importance of village facilities is further emphasised by the 'saving' of the 1996 Local Plan Policy and the degree of conformity of that policy with the Framework.
28. In addition to the local and national policy support for the retention, wherever possible, of essential village services, such as public houses, it is clear that there is also strong local support. This is clearly shown in the third-party representations on this appeal which make significant reference to the importance of the facility to the community. Responses referring to the site as a *"central hub where young and old can meet up and be part of a village community"* (Spencer) are far from atypical. The concept of the public house as a meeting place is reiterated by many of the respondents; *"a vibrant meeting place for villagers and a hub of the community"* (Bristow), *"focal point for local gatherings and acted as a link point for [the] community"* (Earle), *"much more valuable to the community as a public house providing...a village hub"* (Gikes) and *"an indispensable amenity...an integral part of village life"* (Consibee).

29. In addition to the third party comments which add to the weight of concerns over the loss of the public house as a community facility, it is important to note that the weight of representations received has previously been held to add weight to the possibility of the facility being viable in the long term. This approach is supported by that taken by the Inspector in a similar application in Great Rollright (PINS reference 2134643, attached as Appendix 6) who noted that *“the strength of local opinion which was positive about regaining a PH, adds weight to my view that the lawful use... as a PH should be retained to enable it to come back into active use”*.
30. The Council has commissioned a study by Mr John Keane of Thomas E Teague into the viability of the site as a public house (report attached at Appendix 7). The report is clear that although the viability of the public house is compromised by the pub not having traded since 2007, few structural alterations have been carried out. The report concludes that the pub is still viable assuming that a new operator came forward and the current owners were prepared to sell at a value determined by the market. Concern is expressed regarding the long term survival of both pubs but with a sufficiently differentiated offer it is possible that both pubs could co-exist.
31. In reaching this conclusion, the Viability Assessment discusses in some detail the (attempted) sales and trading history of the property since it came into the ownership of the appellants.
32. Although this history is clearly discussed in the Viability Assessment, there are a number of salient points which are relevant to the interpretation of Policy S29. In 2006/07, the public house was put up for sale at an asking price of £600,000. When the public house was offered for sale at that time, two offers were received for £575,000. This interest was however tempered by the appellants failing to provide up to date trading figures.
33. Following the serious water-leak at the public house in 2009, Fisher German valued the property at between £300,000 and 350,000. It was put up for auction with a guide price of £250,000 to £300,000 due to the damage caused by the water leak. The pub was withdrawn from the auction before the sale.
34. When the public house was again put on the market in 2010, the asking price was £499,000 and later reduced to £450,000 in 2011. Offers were reportedly received ranging from £190,000 to £330,000.
35. Although this marketing information may be superficially used to demonstrate that no buyers could be found for the site as a public house, it does in fact demonstrate that the market was not put off either by the length of time that the pub had been closed for, or by the condition of the building and the work required to restore it to trading condition.
36. Both the length of the closure of the public house, and the continued depression in the public house market will have affected the value of the site, but it is considered that were the site to be offered for sale at a reasonable price (taking into account those two factors), then a sale would be likely and future viability be in prospect.

37. The Viability Assessment sets out in some detail that the pub could be made viable on the basis of a value at £250,000; with this value giving a level of remuneration likely to attract an operator. This price is clearly supported by the market which despite the condition and the length of closure appears to be “*willing to form its own view as to value*”.
38. The clear conclusion of the Viability Assessment is therefore that the public house could be made viable but only if it were operated against a realistic expectation of return and against a realistic valuation of the site as a business. It is unfortunate for the appellant that their purchase of the property was at a time (and therefore a price) when the property market was at its peak, and that this peak has since passed and failed to return. That the appellants are unwilling to operate the public house on the basis of the current market value (and the levels of remuneration to be expected on the basis of that value) does not satisfy the requirements of the relevant policy.
39. The wording of the Enforcement Notice states that it “*has not been demonstrated that the use as a public house is no longer financially viable in the long term*”. This makes clear that the relevant policy requires an applicant (or the appellant in this case) to demonstrate that the public house is not viable in the long term. Despite the evidence of the appellant submitted pursuant to this appeal, the Council does not consider that sufficient evidence has been submitted to prove that the public house is no longer financially viable, only stated that it is closed and has been for some time. Approval of the change of use through the ground (a) appeal would therefore undermine the proper application of the planning system, by pre-empting direct competition between the two public houses and depriving the market of the opportunity to decide which of the public houses is financially viable in the long term (including the possibility that both public houses would be financially viable in the long term). As shown above, that the public house has been closed since 2007 does not in itself satisfy the requirements of the policy, just removes the chance for the planning system to properly exercise control. The closure of the public house and its unlawful change of use wholly to residential is not considered to demonstrate lack of viability, but is instead a ‘self-inflicted wound’ which deprives the planning system of the opportunity to control or consider such a change of use.
40. Whilst the appellant may not either wish to, or be able to re-open and operate the public house as a long term viable business, it does not necessarily hold that another operator may not be able to. The permanent loss of such a facility, and the permanent loss of the opportunity for another operator to try, is not therefore justified or acceptable, especially in light of the information which demonstrates that were the site to be sold for a reasonable price, the public house could be made viable.
41. The importance of demonstrating a lack of viability and demonstrating adequate marketing of the public house in order to establish the lack of demand is reinforced by a notable recent appeal decision. At The Unicorn in Great Rollright (PINS reference 2134643, attached as Appendix 6) the Inspector held that there was no evidence to properly demonstrate lack of viability, nor was there sufficient evidence of appropriate or successful marketing to suggest that there is no viable future use.

42. Moving away from issues directly related to saved policy S29 of the adopted Cherwell Local Plan 1996, the matters under consideration must also be considered against the tests set out in the Planning (Listed Buildings and Conservation Areas) Act 1990. Namely, whether the proposal would preserve or enhance the character or appearance of the designated Conservation Area, and whether the proposal would harm the setting or significance of the surrounding listed buildings.
43. It is important to acknowledge that the Conservation Area issues lie outside the wording of the Enforcement Notice. However, the same issues are clearly relevant to the ground (a) appeal owing to the statutory duty set out above. It is in considering that statutory duty that the recently published (post-service of the Enforcement Notice) Conservation Area Appraisal becomes a material consideration which must be referred to, but was not cited in the wording of the Notice.
44. With regards to the Conservation Area, the relevant primary legislation requires that planning applications in such areas must preserve or enhance the character or appearance of the Conservation Area. It is considered that allowing the change of use of the site from a public house to a private residence would change the character of the Conservation Area as it would permanently alter the appearance and use of this prominent building in the centre of the Conservation Area. There is a fundamental difference between the level of activity associated with a public house and a private dwelling house; a public house will be in receipt of deliveries and customers (typically by car or on foot), whereas the level of activity associated with a private dwelling house is much more limited.
45. Similarly the change of use would lead to a change in the appearance of the Conservation Area. A functional public house which has a very different appearance to a private residence, albeit a converted public house. The appearance of a public house is intended to make plain the essentially public use of the building, whereas a private dwelling is inherently more private. Although the site is surrounded by other private dwellings, the former mixture of the private and public houses added to the appearance of the Conservation Area, and it is this mixture which would be lost.
46. It is clear therefore that the proposal cannot be considered to preserve either the character or appearance of the Conservation Area and therefore fails the tests set out in the legislation.
47. The Conservation Area Appraisal reinforces the importance of the public house to the character of the Conservation Area. It notes the significance of the building, as a non-designated heritage asset making a positive contribution to the area, and also as a building worthy of inclusion on a 'local-list' of buildings of special architectural or historic significance, and notes the degree of desire locally to see the public house re-opened.
48. With regard to the setting and significance of the surrounding listed buildings, the site is relatively distinct from those listed buildings. As such, the change of use could not be considered likely to harm the setting or significance of those listed buildings. The contribution that it makes to their setting is predominantly

made up of its method of construction, its vernacular architecture and the spatial relationship of the buildings.

49. It is clear that the relevant national and local policy, coupled with the strength of local feeling, means it would be inappropriate to allow this change of use at this time, without strong and clear justification that the use of the public house is not financially viable in the long term as required by the policy.
50. Without prejudice to the ultimate determination of the ground (a) appeal, the Council requests that should this element of the appeal be allowed, that the approval should be subject to a condition limiting the domestic curtilage of the dwelling to an area shown as enclosed on the plan attached to the notice. The Council would wish to see such a condition in order to ensure that the character and appearance of the two Conservation Areas would not be harmed by permitted development on the valley side to the rear of the site.

Ground (d) – That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

51. The appellant has stated that at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The appellant suggests that their residential use of the entire public house has been continuous for a period of more than four years (from the date the public house ceased trading on 09 March 2007, until the submission of the first application for a lawful development certificate on 25 January 2012).
52. It is clear from the judgement of the Court of Appeal in *Swale BC v First Secretary of State and Lee* [2005] EWCA Civ 1568 that a decision maker faced with a contention of immunity by reference to the time period identified in section 171B(2) of the 1990 Act must be satisfied by reference to evidence of continuous actual residential use as a single dwellinghouse. As Keene LJ stated at paragraph 29:- *“A building may not be used at certain times for any purpose at all. The fact that it is not put to some alternative use does not demonstrate that it was in residential use, which is the real issue. Likewise, the Inspector emphasises in paragraph 21 that once initial repairs had been carried out “the barn appears to have been fitted and available for residential use from then onwards”. That I am bound to say is irrelevant. The decision-maker is required to consider not the buildings availability or suitability for residential use, but whether it was actually put to such use”.*
53. The appellant has not presented any evidence in the documents relating to this appeal which substantiate the claim that the use of the site as a dwelling house has been continuous for a period of no less than four years. In fact, the appellant themselves explicitly deny this; stating in ‘Statement 2’ that *“we have never claimed that we lived uninterruptedly in the property; nevertheless we have stated that we have used the premises regularly”.*
54. The evidence from the appellant does however set out a chronology of events which led to a court-ordered forced sale of their property, over a period from 2008 to 2009 without the appellant being aware of proceedings. The appellant apparently became aware of these proceedings in June 2009 when they returned to the UK (according to ‘Statement 1’). That this could have occurred weakens the case for a continuous four year use of the site as a private dwellinghouse.

55. As noted in the 'Planning History' section above, there has been a recent application for a lawful development certificate which sought to regularise the use of the public house as a dwelling house. This application was refused as the evidence presented did not establish on the balance of probabilities that the use had been continuous for no less than four years.
56. The evidence presented with that application set out that the public house closed on 09 March 2007 and that the customer furniture was replaced with domestic furniture. The evidence goes on to state that a burst pipe in 2009 rendered the property uninhabitable and that work started to restore the property to residential use in July 2011. Letters were also provided which set out that wholly residential use occurred from 2007. These letters do not however establish that on the balance of probabilities the use has been continuous for a period of four years or more.
57. In addition to the evidence presented by the appellant relating to the ground (d) appeal, it is important for the Inspector to have regard to the application form submitted by the appellant for a certificate of lawfulness (application reference 12/00011/CLUE, attached as Appendix 8). Section 10 of this form states that the use (of the closed public house as a private dwelling house) began on 10 March 2007. It then states that the use was interrupted when "*an escape of water prevented occupancy between April 2009 and October 2011*". I consider that this is compelling evidence that the premises have not been continually used as a dwellinghouse for a four year period from 10 March 2007.
58. A statement prepared by Sandra Madeley, Recovery Team Leader in the Council's Finance and Procurement department is attached at Appendix 9. Records with that department indicate that there was a period of zero occupancy from 10 March 2009 to 5 October 2011. A Class A2 structural repairs exemption was awarded between 10 March 2009 and 9 March 2010. The property must be empty for this exemption to be awarded. A zero occupiers unfurnished long term exemption was awarded for the period 10 March 2010 to 5 October 2011.
59. In addition to the weakness of the evidence already presented to the Council and the Inspectorate, the inconsistency of the appellants' position is also evident in their application forms for the changes of use on this site.
60. In application reference 09/01557/F, made on 03 November 2009 (application forms at Appendix 10), the appellant states that the current use of the site is as "*a closed public house that has been recently damaged by an escape of water and rendered uninhabitable*". In response to the question 'Is the site currently vacant?' the answer was 'Yes'. In section 3 of the application form it asks the question "has the building, work or change of use already started'. The answer was 'No'.
61. Application reference 09/01275/F, made on 13 November 2009 (application forms at Appendix 11) also states that the current use of the site is as a "*closed public house*". Somewhat confusingly, that application answers the question 'Is the site currently vacant?' in the negative.

62. In the most recent application for the change of use of the public house to a dwelling house, reference 12/00678/F (application forms at Appendix 12) the development applied for is described as "*Change of use of a vacant public house to C3 residential*". The form then notes that the use has not already started.
63. This evidence presented by the appellant, and most notably that submitted for the refused application for a lawful development certificate, demonstrates that the use has not been continuous and that full residential rights over the site cannot be considered to have accrued.
64. There is however a clear distinction between a site which has an established lawful use as a private dwelling house retaining its lawful use through periods of non-use, and a site going through the process of accruing a lawful right for use as a dwelling house.
65. I also note the large number of representations from local people with direct knowledge of the site who cast doubt on the claim that the premises have been occupied as a single residential dwelling for a continuous period of four years. The Inspector will have the representations submitted to the Planning Inspectorate but I draw attention to the following comments (attached as Appendix 13):
- i) "I am a resident of over 30 years & as a retiree and despite what Mr and Mrs Noquet may say, they have only been living sporadically in the village since September 2011...The Noquets lived in Spain from Dec 2007 – July 2011" (Bristow)
 - ii) "Mr and Mrs Noquet have not resided at the Bishop Blaize during most of their ownership but lived in Spain. During this period a serious flood made the property uninhabitable and it was left untouched for many months.....A court order was issued to sell the property by auction to cover unpaid debts, Mr Noquet returned from Spain settled the outstanding money involved and was able to stop the sale" (Mulley)
 - iii) "...the family have not been in residence here in Sibford at least since October 2007...They only made occasional visits and then only for a few days at a time. They did not "move back in" following refurbishment, as Mrs Noquet's original application suggests. They had not been in residence there in the first place, and the refurbishment was only necessary because they had not been in residence" (Pidgeon)
 - iv) "I have not been aware (and neither was my husband) of any residential use of the Bishop Blaize other than within the past year. We both frequently pass by the Bishop Blaize and saw no signs until the past year of its continued use as a residence" (Hawley)
 - v) "...the owners have recently changed the business area into residential accommodation and also changed the adjacent buildings into living accommodation – all without planning permission. These changes have been completed recently – in late 2011/2012 following a period of non residence when Mr and Mrs Moquet only visited the property infrequently and for short periods of time from September 2007 – 2011. The property was neglected, left severely damaged by a major water leak and became a scar due to its prominent position in the conservation area" (Hicks)

vi) From December 2007 the property was vacant (and suffered a serious flood in 2009) until the owners returned from living abroad in June 2011” (Murray, on behalf of Sibford Gower Parish Council)

vii) They have not lived in the Bishop Blaize for the last four years – there is proof that they lived in Spain from December 2007 until July 2011 (Skowronski)

viii) “Mr and Mrs Noquet have not lived continuously or uninterrupted in the public house business area since March 2007. In fact they have hardly lived in the building at all since March 2007 – a total of about 15 months over the last five years (from March '07 until September '07 and again from September 2012 [means 2011?] until the time of writing (May 2012)...Also the electricity was cut off in October '08 and a water pipe burst most likely (we believe) in January '09 (the coldest part of the coldest winter for 20 years...) causing substantial internal damage but Mr and Mrs Noquet did not know of either of these events until April '09 when they returned to sort the water leak. They left almost immediately and only returned to try to stop a Court Order to sell the property in July '09” (Sibford Ferris Parish Council)

ix) “It is our understanding from neighbours of the pub in Burdrop that following its closure in March 2007 the applicants were only infrequent visitors, staying only occasional nights. We have also been made aware that the electricity supplier had to gain forced entry to disconnect the supply in October 2008, and following this in early 2009 a water leak ran unabated for around two months inside the property” (North Oxfordshire branch of Campaign for Real Ale)

x) “The Noquets left the pub in the hands of novice caretakers shortly before they shut the pub in 2007 and went to live in Spain. The pub was left empty and fell into disrepair including a major water leakage whilst they were in Spain....The Noquets returned to the Bishops Blaize (sic) around Sept 2011...” (Radcliffe)

xi) “With reference to the claim that the property has been used for accommodation since 2007, I believe that the pub has been empty for a large part of this period and the owners were living in Spain. Therefore it has not been used as a residence since it was closed as a pub. There was a flood during this time, while the property was empty, which caused substantial damage” (Leyburn)

xii) “As a regular walker in the area it was clear to me that the building was not used as a residence until recently – and certainly not since 2007” (Earle)

xiii) “There are numerous photographs of the damage done to the interior of the Bishop Blaize due to an unchecked water leak. It would not have been possible for anyone to inhabit such a toxic environment as Mr and Mrs Noquet discovered when they eventually returned from Spain and bought a mobile home to live in” (Bird)

xiv) “I walk past the Bishop Blaize twice a week with my dogs and have done for probably 20 years or more, I can assure the case officer that Mr and Mrs Noquet were not living at the Bishop Blaize from March 2007 until mid 2011” (Butt)

xv) “They have definitely not lived in the Blaize continuously for four years as they claim. I have lived a few hundred yards up the road from the property for the entire period and walk past almost every day with my dog. The pub was empty for most of 2008 and 2009” (A Skowronska)

xvi) "I regularly walk and drive past the property and can confirm that it has not been lived in continuously since 2007. It was left to languish whilst the Noquets were abroad and suffered from severe neglect, flooding etc" (Gandy)

xvii) "...they also claim they have used the premises for residential purposes since 2007 however in 2007 they moved out to pursue business interests in Spain returning in the spring of 2011. During their absence the property remained unoccupied so could not have been used for residential purposes" (Lutter)

xviii) "I know for a fact that no one resided at the Bishop Blaize from late 2007 until 2011. I walked and drove past the Bishop Blaize on numerous occasions during the period and there was never any sign of anyone living there. The gutters were sagging, the grass and hedges were overgrown and the borders hadn't been weeded" (H Butt)

xix) "The Noquets have not lived in the property since March 2007. They lived in Spain and only returned last year, allowing the property to fall into massive disrepair" (Morbey)

xx) "I was in the UK 3 years ago and wanted to meet up with some Sibford Old Scholars at the Bishop Blaize only to find the Bishop Blaize closed and apparently deserted. (Gardens over grown guttering hanging off the roof etc etc)" (Metcalf)

xxi) "The Bishop's Blaize public house has been empty/uninhabited for at least 2.5 years. The 'owner' has been living in Spain and this is widely known to be correct by all local residents in Burdrop and Sibford Gower" (Wimbush)

xxii) "I was somewhat surprised to find that Mrs Noquet claims to have been living in the Bishop Blaize continuously for over 4 years as she was NOT living there when I went to look at the pub with a view to purchasing it in September/Oct 2010 neither was any one else it was virtually derelict hence the price that I offered for it of £220k" (Beard)

xxiii) "We live close to the Bishop Blaize and walk past the building on a daily basis. We have therefore been able to observe the comings and goings there since the Noquets took over the business as a going concern. We believe that the public house was allowed to run down and that the Noquets did not appear to use the building as their main residence until they began renovation work to amalgamate the public areas into the existing ancillary residential element of the building last year" (Murasik)

xxiv) "I believe it to be unlikely that the appellant has used the property for accommodation and residential purposes since March 2007. During that time they made occasional visits, but it was not their residence. They let the property deteriorate to such an extent that it was uninhabitable. In practice, I understand that they were resident in Sunningdale and in Spain" (Thomas)

xxv) "Mr and Mrs Noquet did not return to the pub after it was closed, and it was empty for quite some time. It was only evident that Mr and Mrs Noquet were living in the property during 2011, when they began to undo the state of disrepair that the building had fallen into" (Chard)

xxvi) "I have lived in Burdrop all my life and I can see the Bishops Blaize from my home...the owners have not lived in the Bishops Blaize all the time in the last 4 years" (Davis)

xxvii) "The property was left empty for considerable periods of time, though they did occasionally occupy the first floor of the building presumably so not to invalidate their trading licence. Due to the sporadic occupancy the appearance of the property and its grounds deteriorated considerably, culminating in an internal flood..." (Gale)

xxviii) "The building, far from being lived in (Ground D), was left empty and neglected for a number of years causing considerable deterioration of the fabric" (Wealsby)

xxix) "...I would also like to comment on the claim that the defendants have lived at the property since 2007. If this is to be considered in the course of the appeal I feel compelled to state I am absolutely certain that this is untrue. My property overlooks the Bishops End (nee Blaize). After a short spell in 2006/2007 there has been no visible evidence of occupation until very recently. I believe there to be persons in residence now but this is a recent circumstance within the last 6 months" (Cullen)

66. I consider that the above comments speak for themselves and represent compelling evidence that the premises have not been occupied as a single dwelling house for a continuous period of no less than four years.

67. Several of the representations from local people refer to a Court Order for the sale of the Bishop Blaize to repay judgement debts owed by Mr and Mrs Noquet to a former employee. This matter was reported in the Banbury Guardian on 15 July 2009 (Appendix 14). The article reports that "Mr and Mrs Noquet left their pub to live in Spain and the property became seriously run down". I consider this supports the statement made by many villagers that the property was left to become derelict following the closure of the Bishop Blaize culminating in serious internal damage due to water leakage in early 2009.

Ground (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

68. The Council does not consider that the steps required to comply with the terms of the notice are excessive.

69. There are no lesser steps which could overcome the objections to the development which has occurred as it is the change of use itself which is the objectionable action.

70. Furthermore, the appellant has been aware since the public house was first closed that use of the public areas for use as part of their private dwelling required planning permission and that use as such without permission was unauthorised.

Comments on the Appellant's Grounds of Appeal

71. The LPA wishes to stress that it has not 'pre-judged' any of the applications made relating to this site. Decisions have been taken with regard to the development plan and material considerations where indicated. The application for a Certificate of Lawfulness was refused as the application did not prove that on the balance of probabilities the use was lawful.
72. It is clear that there are separate legal matters relating to this property which are not related to the functions of the Council as Local Planning Authority and are not material to the consideration of this appeal.
73. The appellant has suggested that the allowing the change of use of the public house to a dwellinghouse would assist in the delivery of housing across the district. The Council does not consider that this is a valid argument as the change would only provide for a larger dwelling than already exists on the site (being the ancillary first floor accommodation) rather than additional dwellings in the district.
74. Statement 3, page 3 of the appellant's evidence notes the "*LPA's determination to keep both pubs open for this small village regardless of viability*". It is important to reiterate that the Council is not necessarily seeking to keep both pubs open, regardless of viability, but is instead seeking to ensure that the democratic process is upheld and that any change of use is only allowed with full regard to the requirements of the policy and the satisfactory demonstration of a lack of long term viability.
75. The LPA does wish to note that despite the specific wording of the Enforcement Notice, the appellant has still failed to demonstrate, in their evidence, that the use of the site as a public house is no longer financially viable.

Conclusion

76. It is therefore concluded that the appellant has failed to demonstrate that planning permission should be granted for the breach alleged in the notice, failed to demonstrate that the time limit for taking enforcement action has passed and has failed to demonstrate that the steps required to comply with the notice are unreasonable.
77. The planning system is a democratic process that fundamentally exists to regulate the use and development of land in the public interest. For private citizens to prejudice that public interest through the subversion of that process is fundamentally at odds with the existence of the system and deprives the public of the opportunity to influence the outcome of the planning process.
78. It is respectfully requested that the enforcement notice be upheld.