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# Appeal Decision

Site visit made on 14 July 2015

**by Tim Belcher FCII, LLB (Hons), Solicitor (Non Practising)**

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

**Decision date: 27 August 2015**

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**Appeal Ref: APP/C3105/X/14/2227213**  
**Bishops End, Burdrop, Banbury, OX15 5RQ**

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act) against a failure to give notice within the prescribed period of a decision on an application for a Certificate of Lawful Use or Development (CLU).
  - The appeal is made by Jacqueline Eileen Noquet against Cherwell District Council (the Council).
  - The application (Reference 14/01383/CLUP) is dated 15 August 2014.
  - The application was made under Section 192(1)(a) of the 1990 Act.
  - The use for which a CLU is sought is a change of use from an A4 use to an A1 use.
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## Decision

1. The appeal is dismissed.

## Procedural and Relevant Background Matters

2. Bishops End was a public house when it was acquired by the appellant in February 2006.
3. In March 2007 Bishops End closed for business as a public house. I understand that it may have briefly re-opened and then closed sometime in August/September of 2013.
4. In February 2012 an Enforcement Notice was issued relating to the unauthorised change of use of Bishops End from a public house to a residential dwelling-house. The appeal against the Enforcement Notice was dismissed in October 2012. The requirement of the Enforcement Notice was to cease using Bishops End as a residential dwelling-house except for residential occupation ancillary to the use of Bishops End as a public house.
5. In February 2013 an A1 use of part of Bishops End commenced. The A1 use related to part of the ground floor at Bishops End for the sale of wood burning stoves and fireplace accessories. This use finished in July 2014. Throughout that period the appellant and her husband lived at Bishops End. They left Bishops End in mid-August 2014.
6. Also in July 2014 the Council granted planning permission for part of Bishops End (an attached barn) to be used as holiday accommodation. I understand that the conversion works have been carried out but as at the date of my site visit the use had not commenced.
7. The application for the CLU states that Bishops End, "is a vacant public house (A4) and we seek to formalise the proposed change of use to A1 as allowed

under the class uses Act. The current use (A4) is lawful by virtue of 57/4 of the 1990 Act”.

8. I do not agree with the appellant that Bishops End was a vacant A4 use at the time the CLU application was made – its last use was a mixed use of A1 (sale of wood burning stoves etc.) and a residential use. That mixed use was unauthorised.
9. The appellant’s appeal form was received by the Planning Inspectorate on 12 October 2014. The Council’s decision on the CLU application is dated 10 October 2014 but it was not posted to the appellant until about 14 October 2014.
10. The Council’s decision on the application would have been that:

“The proposed change of use set out within the application is not in the Local Planning Authorities (sic) opinion considered to be permitted development for the following reasons:

- The proposed use which proposes a mixed residential and retail use is contrary to a valid enforcement notice the requirements of which are to cease the residential use of the land except for residential use ancillary to a public house. It is clear from the proposed ground floor plan that residential use ancillary to a public house is not proposed, which would breach the enforcement notice.
- For Section 57(4) only a former lawful use may be resumed – the relevant former lawful use is an A4 use, which the application does not propose.”

## **Reasons**

11. The ground floor plan, which the Council determined the CLU against, showed only part of the ground floor to be used as a retail use and/or an office use ancillary to the retail use. The remainder of the ground floor was not included in the area of the building to which the CLU application relates. This remaining area would lawfully remain as part of the public house or residential accommodation ancillary to the public house use. I acknowledge that it is difficult to envisage how the remaining part of Bishops End could be used for its lawful use if the proposed A1 use was implemented.
12. Section 57(4) of the 1990 Act explains that where an Enforcement Notice has been issued in respect of any development of land, planning permission is not required for the use of that land for the purposes for which it could lawfully have been used if that unauthorised development had not been carried out.
13. Accordingly, this statutory provision would allow the appellant to revert the use of Bishops End to its former use as a public house.
14. The appellant asserts that she is entitled to change the use of the relevant part of Bishops End from its lawful A4 use to an A1 use by virtue of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Part 3, Class A of Schedule 2 of the GPDO (the Class A Provisions) permits development consisting of a change of use of a building from a use falling within Class A4 (drinking establishment) to a use falling within Class A1 (shops).

15. In my assessment those permitted development rights can only be exercised if Bishops End is in use or last used as an A4 use. In other words the appellant cannot begin to rely on the Class A Provisions until Bishops End is being, or was last used, as a public house. That is not the case here. Bishops End was vacant at the date of the application and its last use is explained in paragraph 8 above. Accordingly, the Class A Provisions do not apply in this case.

16. For the reasons given above I conclude that:

a) Had the Council refused to grant the CLU in respect of a change of use from an A4 use to an A1 use prior to the appeal being received by the Planning Inspectorate that decision would have been well-founded.

b) The appeal should not succeed.

Accordingly, I will exercise the powers transferred to me in Section 195(3) of the 1990 Act and dismiss the appeal.

*Tim Belcher*

**Inspector**