

CHERWELL DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990

Appeal by Mr Geoffrey Richard Noquet against the decision by Cherwell District Council to refuse planning permission for change of use from A4 to C3 (ACV Listed) of The Pheasant Pluckers Inn Burdrop.

Appellant : Mr Geoffrey Richard Noquet
Appeal Site : The Pheasant Pluckers Inn
Street Through Burdrop
Burdrop
LPA Reference : 17/01981/F
Planning Inspectorate Reference : APP/C3105/W/17/3191365

Contents:

1. Council's Case
2. Comments in response to The Appellant's Statement of Case
3. Conclusion
4. Suggested Conditions

Appendix (i) - CAMRA Viability Test

Appendix (ii) - Bruton Knowles Viability Assessment Report

Appendix (iii) - APP/C3105/C/12/2170904 Appeal Decision Notice

Appendix (iv) - APP/C3105/A/13/2190714 Appeal Decision Notice

1 THE COUNCIL'S CASE

- 1.1 The site and its context are set out within the officer's planning committee report (PCR) and this has not significantly changed since the assessment of the application and preparation of the report. The policy context is also set out in PCR and this has not changed since the preparation of the report. The PCR has already been sent with the Questionnaire, it is therefore not considered necessary to repeat these elements within

the body of this statement.

- 1.2 The Council wishes to rely on the information contained within the PCR to support its case against the refusal of planning permission for the change of use, from A4 to C3 (ACV Listed), of The Pheasant Pluckers Inn, Burdrop. However, the Council would also like to respond to a number of matters raised within the applicant's appeal statement dated 25/01/2018, as set out below.

2 COMMENTS IN RESPONSE TO THE APPELLANT'S STATEMENT OF CASE

- 2.1 The following comments are provided in the same order and referenced in the same manner as they appear in the Appellant's Statement of Case (ASoC).
- 2.2 Paragraph 1.1 of the ASoC suggests that the refusal failed to give due consideration of 'Expert Valuations and Marketing Exercise' evidence provided to the Council in support of the application. The evidence was a material consideration during the determination of the application (PCR paragraphs 8.23), but was considered lacking in substance and detail to support and demonstrate that a robust marketing exercise had been undertaken at a realistic valuation. The valuation figures provided during the application were not detailed. It is unclear as to what the valuation was based upon; whether this was based on bricks and mortar or whether it included the business as an on-going concern.
- 2.3 Whilst some limited financial details were submitted, no detailed certified accounts were provided to the Council during the application. The lack of detail and a request for further information was expressed to the appellant (at the time of application) during a site visit and in email correspondence. Limited financial details were provided by the applicant in response to such requests and this is detailed in the PCR at para. 8.24.
- 2.4 Paragraph 1.4 of the ASoC refers to the CAMRA Viability Test (attached at Appendix (i)) and suggests that the Council failed to give due consideration this test. Whilst a useful tool in guiding an assessment of viability of Public Houses, this document has not been formally adopted by Cherwell District Council (CDC).
- 2.5 In light of the lack of any up-to-date viability assessment being submitted by the applicant at the time of application the Council commissioned its own viability assessment, carried out by Bruton Knowles (BK) a firm of national property consultants. The assessment carried by BK (report attached at Appendix (ii)) in many respects follows similar principles in its assessment as those set out in the CAMRA Viability Test.

- 2.6 Paragraph 2.1 of the ASoC states that: *“The BK Viability Report clearly states at 11.2 that the Public House is NOT VIABLE as it currently stands....”*. This statement is factually incorrect. Paragraph 11.2 of the BK report refers to negative factors, including the lack of a properly fitted, working bar service area (with the original bar having previously been replaced by the applicants), that weigh heavily against the Public House being viable in its current format. These negative factors are discussed in the PCR at Paragraph 8.25.
- 2.7 The BK report (Para. 11.3) indicates that an extension of the tradable area of the Public House would allow sufficient space for viability. In this respect the Council has previously been supportive of the expansion of the property in 2006 granting approval for a single storey extension (~28m² of additional floor space) under ref. 06/00248/F; albeit that this permission was never implemented. Whilst the appellant’s comments are noted in respect of additional parking requirements of any subsequent increased floor space, it should be noted that in permitting the 2006 application the Council were accepting of the level of parking provision, subject to an increase of two additional parking spaces.
- 2.8 Council officers see no reason why a scheme for a similar sized single storey extension would not be supported in the current policy context, and could be achievable within the context of the site, subject to the existing parking area being cleared of obstructions currently in place and with a minor extension of this area.
- 2.9 Paragraph 2.10 - 5.6 of the ASoC comments on comparisons with other Public Houses within the area. It is unclear whether the figures quoted for the Chandlers Arms at paragraphs 2.12 and 2.13 are certified audited accounts of that Public House or the appellant’s estimation of such. Notwithstanding this, the Chandler’s Arms and the Bell at Shenington are highlighted as being of comparable sized businesses in similar contexts to that of the Pheasant Pluckers Inn, that appear to be currently operating viably; with no substantiated evidence to the contrary being submitted with the application or this subsequent appeal.
- 2.10 Paragraph 6 - 6.3 of the ASoC refers to third party objections and suggests that the case officer’s opinion that there remains significant support for the Public House is incorrect. There were 33 individual items of correspondence received in objection (and further follow-up comments made by some of the individuals in addition to this number) to the proposals (a matter of public record) during the application, this coupled with the Parish Council’s comments in relation to the Public Meeting held 20th June 2016, at which

approximately 100 residents were present, is considered sufficient evidence to demonstrate significant continuing local support, that has been sustained over the numerous applications that have been made by the applicants, over what is now a twelve year period.

3 CONCLUSION

- 3.1 Rural pubs are, important in terms of the social fabric of the community, a fact recognised by the NPPF and the Councils Development Plan policies, and they can also provide economic benefits to rural areas through the attraction of visitors.
- 3.2 As noted by previous inspectors in reaching their decisions in dismissing appeals (APP/C3105/C/12/2170904 in 2012 (attached at Appendix iii) and APP/C3105/A/13/2190714 in 2013 attached at Appendix iv)) against previously refused applications at the site, the proposed change of use of the Pheasant Pluckers Inn has been consistently considered contrary to the provisions and aims of saved Policy S29 of the Cherwell Local Plan 1996 and policy guidance within the NPPF, and aside from the passage of time and changes in the economic climate, it is considered that there has been no significant change in the context of the site since these previous decisions. It remains the opinion of the Council, supported by local views of the Parish Council and local residents, that there is still a desire within the local community to see the Pheasant Pluckers Inn (formerly Bishop Blaize) retained as a public house and become once again a valuable community asset.
- 3.3 The Pheasant Pluckers Inn is clearly not viable whilst being run under the current business model, with limited offerings and irregular opening hours and regrettably the owners appear to have lost the support of the local community, as has previously been noted in previous inspector's decisions, and the lack of viability of the existing business would clearly impact on the valuation of the property as an on-going concern.
- 3.4 It is the Council's opinion that the application, subject of this appeal, failed to satisfactorily demonstrate that the public house has been appropriately marketed with a clear detailed independent valuation and failed to satisfactorily demonstrate that the existing use could not be viable. The Council considers that the Public House has been an asset in the past and has potential to be an asset in the future if run on a more commercial basis.
- 3.5 Notwithstanding the external alterations that have previously taken place at the site,

which detract from the building clearly announcing itself as a Public House, the Public House is in itself considered an important feature that adds to the local distinctiveness and character of the surrounding Conservation Area and the general ambience of this rural village location.

- 3.6 It is considered that the limited benefit in replacing the existing ancillary residential accommodation with that of a residential dwelling, does not outweigh the harm that would be caused through the loss of the Public House as a community facility, and Designated Asset of Community Value, and further impacts on the character of the area as identified within the PCR and above.
- 3.7 For the reasons set out in the Council's decision, and justified in the officer's planning committee report, and information above the Inspector is respectfully requested to dismiss the appeal.

4 SUGGESTED CONDITIONS

- 4.1 Without prejudice to the preceding statement, if the Inspector is minded to allow this appeal, the District Council do not consider that there would be the need for any conditions to make the proposals acceptable in planning terms.

Officer: Bob Neville

Dated: May 2018

Appendix (i) - CAMRA Viability Test

Public House Viability Test



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www.camra.org.uk/localcouncils

November 2015

What is CAMRA?

CAMRA, the Campaign for Real Ale, is an independent, voluntary organisation of 175,000 members that campaigns for real ale, cider and perry. CAMRA supports well-run pubs and believes their continued existence plays a crucial role in community life.

Introduction

Pubs across England are under threat as never before. Despite both the National Planning Policy Framework (NPPF) and many Local Plans containing pub protection policies, an estimated 29 pubs permanently close every week. In many cases, the owners of these threatened pubs are seeking to convert them to other uses to make a short-term profit at the expense of the interests and needs of the local community.

As campaigners on behalf of British pub-goers, CAMRA sees the protection of public houses as one of its highest priorities. While not all pubs can be saved, too many pubs are being lost even where there is strong local support to keep them. Many of the pubs that have called last orders for the final time could have continued serving their local communities in the right hands.

For local residents and pub campaigners, the planning process is the main opportunity to influence decisions affecting the future of their local pub. With recent legislation to strengthen Assets of Community Value (ACVs), planning permission is now needed before any nominated pub can be demolished or converted to another use, giving local people even more of a say.

Applicants hoping to change the use of a pub will very often claim that the pub is “not viable”, meaning that no licensee could reasonably be expected to make a living from it. The applicants might claim that the area has too many pubs, the premises are too small, the catchment area is not large enough and so on. The local planning authority has to evaluate whether these claims are well founded or not. Below you will find a standard, objective test which will assist planning decision makers to make fair, open and informed judgements on the question of viability.



The Public House Viability Test



To assess the continued viability of a pub business the question to address is what the business could achieve if it were run efficiently by management committed to maximising its success.

Assessing Trade Potential

1. Local trade

- What is the location of the pub? Is it in a village, suburban area, town centre or isolated countryside?
- What is the catchment area of the pub?
- How many adults live within a one mile radius?
- In rural areas, how many adults live within a ten mile radius?
- Are there any developments planned for the area? Industrial, residential, strategic projects?
- Is there a daytime working population?

2. Customer potential

- Does the pub act as a focus for community activities? Sports teams, social groups, local societies, community meetings etc?
- Is the pub in a well visited/popular location? Is it in a picturesque town or village, on a canal/river side, on a long distance footpath, or on a cycle route?

- Does the pub appeal to those who regularly drive out to pubs?
- Is tourism encouraged in the area?
- Has the pub ever been included in any visitor or tourist guide?

3. Competition

- In rural areas, how many pubs are there within a one mile radius and within a five mile radius?
- In urban areas, how many pubs are there within reasonable walking distance?
- Bearing in mind that people like to have choices, does the pub, by its character, location, design, potentially cater for different groups of people from those of its nearest competitor(s)?
- If not, could the pub be developed to cater for different groups?

4. Flexibility of the site

- Does the pub have unused rooms or outbuildings that could be brought into use? Function rooms, store rooms etc.
- Is the site large enough to allow for building extensions?
- Have planning applications ever been submitted to extend/develop the pub building? If yes, when and what was the outcome?

- If planning consent was not available for building work, is any adjoining land suitable for any other use? Camping facility etc.
- Has the pub been well maintained?

5. Parking

- Is there access to appropriate numbers of car parking spaces?
- If not, is there any scope for expansion?

6. Public Transport

- Is there a bus stop outside or near the pub and/or a rail station within easy walking distance?
- How frequent and reliable is public transport in the area?
- Has the pub made actual/potential customers aware of any public transport services available to/from it?
- Are there taxi firms in the locality?
- If yes, has the pub entered any favourable agreements with a local taxi firm?

7. Multiple Use

- In light of government guidance through the National Planning Policy Framework (see the Appendix) what is the extent of community facilities in the local area – is there a shop, post office, community centre etc?
- If the pub is the sole remaining facility within the area, is there scope for the pub to combine its function with that of a shop, post office or other community use, bed & breakfast or self-catering – especially in tourist areas?

8. Partial loss

These questions come into play if the application seeks changes which would reduce the size of the pub or convert non-public areas, such as licensee accommodation, to other uses.

- How would the proposals impact on the long-term financial health of the business? Would a smaller pub still be able to attract sufficient trade? Would the smaller size make it less attractive to customers e.g. because there were reduced facilities such as no meeting room, less parking, smaller garden?
- Would any loss of licensee accommodation make the pub less attractive to potential future publicans?

9. Competition case studies

- Are there any successful pubs in neighbouring areas of similar population density?
- What factors are contributing to their success?

10. The business – past and present

Having built up a picture of the business potential of the pub, it may be relevant to question why the pub is not thriving and why the owners are seeking change of use.

- Does the pub management team have local support? Has the team taken steps in the last year or so to try engaging with the local community and has the dialogue affected the way the pub operates?

- Has the pub been managed better in the past? Is there any evidence to support this? Are trading figures available for the last four years and/or from previous management regimes?
- Have there been recent efforts to ensure viability? e.g. has the pub opened regularly and at convenient hours? Conversely, have hours/facilities been reduced?
- Has the focus/theme of the pub changed recently?
- Is the pub taking advantage of the income opportunities offered by serving food? How many times a day is food served? How many times a week? Are catering facilities being optimised?
- Has the rent/repair policy of the owner undermined the viability of the pub?
- Does the pub offer an attractive range of drinks, especially quality real ales?
- Are there any possible unclaimed reliefs? e.g. where rate abatement is not granted automatically but has to be claimed.
- Does the pub promote itself effectively to potential customers? e.g. does it have an eye-catching and informative website?

11. The sale

- Where and how often has the pub been advertised for sale? Has it been advertised for at least 12 months? In particular, has the sale been placed with specialist licensed trade and/or local agents?
- Has the pub been offered for sale as a going concern?

- Has the pub been offered at a realistic competitive price? (Information to enable this to be analysed can be obtained from The Publican and Morning Advertiser newspapers and from Fleurets, specialist Chartered Surveyors)
- If yes, how many offers have been received?
- Have any valuations been carried out?
- Has the pub been closed for any length of time? Is it currently closed?
- Does the sale price of the pub, as a business, reflect its recent trading?

Case studies

In the following cases, the appellant used the issue of nonviability as a reason to convert a pub. However, the Inspector agreed that viability was a relevant and crucial issue and felt that in the right hands the pubs concerned could be a viable business. In reaching this conclusion, the Inspector clearly took the view that an objective assessment could be made about the likely future viability of the pub.

The Pheasant Inn

Britons Lane, Shropshire WV16 4TA

The owners of The Pheasant Inn wanted to convert it to a private dwelling, claiming it was no longer viable. The Council refused their application because it was the only pub in the village and they felt that the owners had not tried to diversify their business before selling it, such

as by upgrading the food offer, adding a B&B, using space for a village shop or post office, etc. At appeal, the Inspector noted that the small immediate population and lack of public transport were negative factors in terms of viability. However, the pub did have potential to extend and to capitalise on its location in a tourist area. He found that the pub was indeed a valued local facility and could become a viable business in the future. Its loss would therefore conflict with local and national policies on the retention of community facilities.

(ref APP/L3245/A/13/2192177)

The Crown

Ollands Rd, Reepham NR10 4EJ

The Crown was one of only three pubs in a small Norfolk market town. Its owner applied to convert the pub to residential use but the local planning policy was to refuse such an application unless there was an alternative pub nearby and it had been on the market for a reasonable period of time without any offers. On the first criteria the Inspector observed that while another pub was 600 metres away, it served a different catchment and type of customer. With regards to the second criteria, it was unclear how the asking price had been calculated despite the property having been up for sale for three years. The Inspector felt that the lack of interest in operating the pub as a going concern did not sufficiently show that the business itself was not viable in the short, medium or long-term. Nor did the

information presented demonstrate that no licensee could reasonably be expected to make a living from the enterprise. The proposed development would be inconsistent with both local and national policies on the conversion of pubs.

(ref. APP/K2610/A/13/2196244)

The Feathers

43 Linhope Street, London

In a residential area of Westminster, London, the owner of The Feathers pub wished to convert it into a house and argued its non-viability. The Council had a policy in place that it would only accept the loss of a pub if it had been on the market for at least 18 months without a buyer. In this case, marketing had been for a much shorter period and the pub had been nominated as an Asset of Community Value by the local community. The Inspector concluded that the viability of the pub remained an open question and that the lack of viability had not been adequately demonstrated for the purpose of the Council's policy. In terms of the NPPF he was not satisfied that the loss of a facility clearly valued by the community could be regarded as 'necessary'. He noted the significant number of other pubs in the surrounding area but each had a different character and function – spatial proximity was not of itself a necessarily reliable guide to the value of the pub or of its contribution to the local area.

(ref APP/X5990/A/14/2215985)

Conclusions

The Public House Viability Test does not seek to protect the continued existence of each and every pub. Times and circumstances do change and some pubs will find themselves struggling to continue. It does, however, help all concerned in such cases – local authorities, public house owners, public house users and Planning Inspectors – by providing a fact-based method to rigorously scrutinise and test the future viability of a pub against a set of well-accepted measures.

Appendix - the NPPF

Until recently, national government planning guidance was contained in various Planning Policy Statements which ran to over 1,000 pages. They were replaced in March 2012 by the National Planning Policy Framework (NPPF), which comprises of just 52 pages of mostly high-level guidance. NPPF policies take precedence where there is any conflict with Local Plans and will always be a material consideration in planning decisions.

NPPF Paragraph 70 is especially relevant to planning applications which concern pubs. It requires LPAs to “plan positively for the provision and use of shared space, community

facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments”. It goes on that LPAs must “guard against unnecessary loss of valued facilities where this would reduce the community’s ability to meet its day-to-day needs” and “ensure that established facilities and services....are retained for the benefit of the community.” Note that this policy applies to pubs in all communities, not just rural ones.

Paragraph 7 states that the planning system should create “accessible local services that reflect the community’s needs” while paragraph 17 requires planning to “deliver community and cultural facilities and services to meet local needs”.

Paragraph 28 promotes “the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship”

Paragraph 23 recognises “town centres as the heart of their communities” and instructs LPAs to pursue policies to support their viability and vitality.

Additional Resources

For additional resources for local councils, please visit <http://www.camra.org.uk/local-councils>

For any queries please contact planningadvice@camra.org.uk or call 01727 867 201



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Appendix (ii) - Bruton Knowles Viability Assessment Report

Date: 13th November 2017
Our ref: ECS/32276
Your ref: 17/01981/F

Bob Neville
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Dear Sir,

The Pheasant Pluckers Public House, Burdrop, Banbury OX15 5RJ**1. Introduction and Instructions**

- 1.1 I am Eric Spencer, an Associate with Bruton Knowles. I am a Member of the Royal Institution of Chartered Surveyors (No. 1127987), an RICS Registered Valuer and an RICS Accredited Expert Witness. I have specialised in the sale, valuation and assessment of hospitality and licensed property since 1996.
- 1.2 I have recently provided expert advice to various clients on the basis of similar instructions to those set out below. These clients have included your Council, the Welsh Assembly Government, London Borough of Hammersmith & Fulham, Chiltern District Council, Basingstoke & Deane District Council, West Lindsey District Council and Torbay Council.
- 1.3 Bruton Knowles is a leading national practice of Property Consultants, which has been established since 1852. The firm employs over 60 Chartered Surveyors, including a leisure property team.
- 1.4 Following receipt of your instructions referred to within the attached copy e-mail at Appendix One, I confirm that the Council requires me to convey my opinion of the potential future viability of the Pheasant Pluckers Inn as a public house, to be used for advisory purposes in the consideration of a planning application for the Change of Use of the property from a Public House to a Residential Dwelling.
- 1.5 I have not received instructions to give my opinion of or commentary upon any business plan or specific income projections and accordingly I have not done so. However some of my commentary below refers to the challenges facing operators in the sector and the economic factors which influence the potential success and/or failure of trading public houses.

2. The Property

- 2.1 I confirm that I visited the site on the 24th October 2017, when I met Mr & Mrs Noquet and carried out a full inspection of the building and facilities therein.
- 2.2 The property is a detached 2 storey public house of period design, probably originally a simple cottage or house which started brewing beer for villagers. It is situated in Burdrop, a hamlet connecting the villages of Sibford Gower and Sibford Ferris. It is in a marginal location in respect of visibility and general passing traffic.

- 2.3 The property offers approximately 63 square metres of useable public space and ancillary accommodation on the ground floor, with private quarters on the first floor. In my opinion this space will limit the ability of the pub to trade effectively. Externally there is a beer garden and car park with 18 vehicle spaces, together with a holiday letting cottage.
- 2.4 I estimate that the current accommodation could accommodate approximately 20 drinkers and up to 35 diners.
- 2.5 However the current temporary bar arrangement is not sustainable and further space would have to be utilised to install a permanent bar servery with pertinent 'back of house' space, probably close to the cellar, therefore losing some bar seating space.
- 2.6 There is a 'galley' style commercial kitchen off the dining area and a beer cellar off the entrance lobby.
- 2.7 This not a large building and the consequences of this are referred to in the section on viability below.
- 2.8 The property has a good-sized, south facing rear garden area and an enclosed car park to its eastern side, with space for approximately 15 vehicles if carefully parked. This could be extended. There is a further area of sloping land which has not been considered.

3. History

- 3.1 I understand, principally from the published evidence, that the current owners of the Bishop Blaize (as it was then) acquired the property during 2006, apparently seeking a new opportunity.
- 3.2 I understand anecdotally that there have been differences of opinion locally regarding the operation of the business and that local patronage is very limited.
- 3.3 I note that the property has been registered as an Asset of Community Value. I also note that the 'community' has not proffered an offer to acquire the property.
- 3.4 I note that previous planning applications for Change of Use from a public house to a residential dwelling have been refused by Cherwell District Council and dismissed on appeal.
- 3.5 I further note that the property has an attached holiday letting cottage following grant of Planning Permission on appeal.
- 3.6 I understand that the current owners decided to try and sell the property and business in late 2014 and engaged Sidney Phillips & Co., a national Licensed Property Agent to market the property for them. This is dealt with in section 5 below.

4. Location

- 4.1 The Sibfords comprise 3 adjacent hamlets forming a medium size village situated between Banbury and Shipston-on-Stour in the north Cotswolds, just outside the designated AONB.
- 4.2 I note from demographic information that the property lies within a rural area with Banbury and, Shipston-on-Stour and Chipping Norton being just outside its 5 mile radius but within a 20-minute contour of it, presenting a potential catchment of in excess of 120,000 people. The '20-minute contour' is a demographic tool used principally by retail researchers to determine the distance a site is from local population centres. 20 minutes is assumed to be the optimum drive-time from home to venue.
- 4.3 The communities are not located on arterial or distributor routes.

5. Market Commentary

- 5.1 There is extensive, well-documented data in respect of the decline in business suffered overall by pubs across the UK and specifically the fall in volumes of wet sales of all kinds across the sector.
- 5.2 Recently much of that specific decline has been driven by supermarket and convenience retailers using aggressive pricing on alcohol as a loss leader to drive footfall which has accelerated a commensurate and continuing change in social habits.
- 5.3 The statistics in respect of the decline in sales show that overall the amount of beer sold in pubs has just about halved over the 14 year period, a trend which continues. Current research by CAMRA shows that the rate of pub closures in the UK has stabilised at about 25 per week and this statistic is emphasised by the number of premises licences voluntarily revoked.
- 5.4 This trend mirrors that shown in the beer sales graphs which demonstrate a long-term decline in alcohol sales through on- and off-sales. As such, venues are competing for a diminishing market and 'natural selection' will determine that some of these outlets become unviable and have to find alternative uses. It is important to acknowledge that dining pubs in particular have to compete with all food and beverage outlets, not just other pubs, and that the choice of these in the catchment area (20-minute contour) of The Pheasant Pluckers is varied and extensive when garden centres, visitor attractions and similar outlets are included. This factor makes it more difficult still for an operator to define a Unique Selling Point for a venue.
- 5.5 Conversely the rapid growth in the casual dining sector has been very noticeable, particularly in town centres and retail parks where specific brands have opened in direct competition with each other. Italian-style brands are particularly prevalent, although there is continued proliferation across the sector. The choice of venues and easy accessibility to them (no booking, on-line booking, extensive car parking, etc.) increases competition and dilutes loyalty across the dining sector. There is now further dilution due to internet ordering services such as Just Eat and Hungry House.
- 5.6 In respect of the sale of a specific asset a number of factors will determine levels of interest and offers. The principal feature of any property for sale is the asking price. Buyers will generally have a good idea of their budget, which determines the price range they will search in.
- 5.7 Well-informed buyers will also have a reasonable idea of the type of business they are looking for and the trading level they require or would like to achieve.
- 5.8 Buyers will also sometimes have a defined area in which they are searching; however business buyers are generally reasonably flexible on location as they are more interested in potential and income, so the quality of any business or the opportunities it presents will override geographical considerations in many cases.

6. Competition

- 6.1 I physically researched the area after inspecting the property and noted that there is a large variety of pubs, restaurants and other eating places competing for customers in the area.
- 6.2 Due to the limited size of The Sibfords, the Pheasant Pluckers Inn will have to compete with outlets further afield and I noted that there is significant competition from other pubs in the surrounding villages within a 5-mile radius of the property, with at least 28 outlets. The closest competitor is the Wykham Arms, half-a-mile away.
- 6.3 Further significant competition will come from larger centres including Banbury, Shipston, Chipping Norton, Bloxham and Moreton-in-Marsh.

- 6.4 It must also be understood that changes in consumers leisure pursuits and habits have resulted in cafes, restaurants, convenience stores and outlets with food and beverage offerings all now being direct competition for traditional public house business.
- 6.5 At an immediate local level The Sibfords are not of sufficient size, in my opinion, to create enough sustainable business for the Pheasant Pluckers just from the local residents. The Wykham Arms is more prominently situated in Sibford Gower, is more visible and has better parking provision.
- 6.6 I have prepared an inventory of competing local outlets at Appendix Three, which is comprehensive but by no means exhaustive.

7. Style of Operation

- 7.1 Broadly there are 3 types of public house operation, namely Gastro pub, young person's venue and wet-led community local.
- 7.2 The first of these requires sufficient space to offer a comprehensive restaurant style of service whilst still catering to 'local' drinkers. Ideal properties will have up to 70 covers or more, a separate wet bar and outdoor space for al-fresco dining, preferably with a garden. In my opinion this is the style of operation that is most likely to be successful in this location.
- 7.3 In respect of the second type of venue, younger drinkers tend to prefer a 'circuit' where their favoured venues are close to each other. Whilst some form of music promotion may create increased demand from a younger demographic, I consider it very unlikely that a significant younger population actually lives in the vicinity and this type of operation is highly unlikely to either be viable or desirable in the village.
- 7.4 The third pub use would be as a wet-led community local, a format in which the business apparently traded some years ago, this also being the style of pub that has suffered the greatest attrition in the last 5 years.

8. The Business

- 8.1 I have no information regarding the previous history of the business. A recent accounts summary shows income from the holiday cottage and the Shepherd's Hut.
- 8.2 However it is most apparent that the level of business is consistently low. It may be that the current owners have chosen to trade at the current level for personal reasons; however the trading level will certainly not be attractive to the majority of potential buyers/operators.
- 8.3 I am aware anecdotally of differences of opinion between the current owners of the Pheasant Pluckers Inn and various members of the village. Sentiment and goodwill is an important factor in any business and a principal requirement in hospitality. This is not a planning matter although I mention it as I have come across such differences in other cases, where viability of the business has been questioned.

9. Viability Considerations

- 9.1 To determine whether or not a licensed business is viable it is critical to emphasise the specific difference between turnover, costs of operation, trading profit and viability. High turnover is not in isolation an indicator of success and derivation of a trading profit does not specifically mean that a business is sustainable or viable.

9.2 This is the pertinent point in respect of the property continuing to trade as a public house, which depends upon 3 factors:

- a) the physical attributes of the property and its ability to provide sufficient space and amenity to promote a good level of trade;
- b) the immediate physical environment surrounding the property and its influence upon the desirability of the property as a venue;
- c) sufficient demand from the target market for the service and 'experience' offered by an operator, and;
- d) the ability of that operation to provide a sufficient return on operational investment by way of trading profit AND return on capital investment by way of rent or coverage of property costs.

- In respect of (a) I consider that the only viable trading model for the Pheasant Pluckers Inn in this location would be as a Gastro Pub, catering to a wider local or regional market than the immediate village. However in my opinion the building is not physically big enough to accommodate the relevant necessary space for a successful operation. I would suggest a simple conservatory-style extension into the garden may provide sufficient additional seating;
- In respect of (b) I consider that the immediate environment is most attractive and that the wider demographic may consider a renovated property to be a desirable venue. There is some anecdotal evidence of this recently with the Chandlers Arms at Epwell.
- In respect of (c) I have concerns that the venue is physically capable of coping with sufficient demand to generate the return required to confirm viability. It is likely that some degree of building extension will be necessary. I note objectors' comments to the current planning application have common themes, one of which that the pub has previously been 'thriving', 'vibrant' and a community hub. Any operator will have to take account of these sentiments.
- In respect of (d) I consider that the actual likely operational costs and capital renovation costs would have to be proven by formulation of a pertinent business plan incorporating feasibility profiling.

10. Viability Test

10.1 I note in a planning appeal decision document dated 22nd of May 2013 reference APP/C3105/A/13/2190714 that the Inspector made comments in respect of viability which assumed that £27,000 per annum was the likely return or profit to be sufficient for the operators of the subject property for viability purposes.

10.2 I hold a different opinion which is based upon my assessment of the hours necessary to be worked by a couple in a successful public house. I have calculated the annual hours assuming the business is closed on Monday and Tuesday, which would equate to 69 hours per week each, being 138 hours per week in total and 7,176 hours per annum.

10.3 At the current National Living Wage of £7.50 per hour this equates to an income of £53,820 per annum which would be required, assuming that the national living wage was acceptable to them and a viable return for them as recompense for the owners' investment.

- 10.4 A return of £27,000 pa would aggregate to an hourly rate of £3.76 per hour and I consider that the vast majority of people would refuse to work for such a low rate of pay.
- 10.5 Making assumptions that the above figure is a viable income and that the business could deliver a 20% operating profit, a net turnover of £269,100 per annum would be required.
- 10.6 Making further assumptions that the operation would be biased towards food and an average spend per head of £20 each would prevail, to achieve the turnover assumed above would require the patronage of 13,455 customers per annum, which effectively equates to 52 covers per day assuming a 5 day week from Wednesday to Sunday.
- 10.7 My assertions above are vulnerable to sensitivity analysis, particularly the assumptions of spend per customer and trade throughput. However, I consider that weekend trade would be busier than earlier in the week, with considerable potential to generate more business than the 'average spend' required. Operators may also choose to open 6 or seven days per week. In addition, the £20 per head average assumes that a customer would eat a two course meal and have a single drink, so the likelihood of a higher spend per head is good for a proportion of cases.
- 10.8 It may well be counter-argued that this average figure would not be achieved on Wednesday or possibly Thursday in an average week, although if the business is open for lunchtime and evening trade and potentially open all day on Saturday and Sunday, in my opinion this level of the trade should be achievable.
- 10.9 I have made the above statement to provide an illustration of the likely true cost of running a public house and the likely true return to the owner, particularly in a situation where the property and its location provide significant challenges to attempts to increase trading levels.

11. Conclusion

- 11.1 My primary consideration in determining the viability of the Pheasant Pluckers Inn as a trading entity, disregarding any individual circumstances or financial resources of any of the interested parties, must be to have regard to the current condition and layout of the property, the likely level of business and profit it may potentially generate, and then determine whether the profit level would be considered sufficient by a potential operator.
- 11.2 However it must be stressed that there are certain negative factors that cannot be overcome in promoting a different strategy for the Pheasant Pluckers Inn in its current configuration, the two principal ones being lack of a properly fitted, working bar service area and corresponding lack of trading space should a full bar be installed; in my opinion these two factors weigh heavily against the Pheasant Pluckers Inn being viable in its current format.
- 11.3 However if an extension to the trading area was added at the rear, subject to suitable design and grant of planning permission, then in my opinion the configuration could be amended to provide sufficient trading space for viability.
- 11.4 I have engaged in general, informal discussions with property agents within the sector and the overall trend for successful trading freehold pubs in the northern Home Counties is of sales being achieved at multiples of 6x–7x Fair Maintainable Profit; applying the higher multiple to my opinion of the sustainable level of operating profit generated by the NLW calculation derives a figure of £376,740. This figure is close to the previously quoted asking price of £395,000; although achievement of a sale at this price would depend upon generation of the turnover and profit levels to which I have alluded above. The pub would therefore currently have to be sold within the trade as a 'life-style' business, where a price is determined by reference to the building value with an adjustment for trade. Such a deal would have to be financed from cash resources as the majority of lenders would expect a loan to be covered by a secure trading position. It is also likely to have a detrimental impact on the price achievable for the property in its current guise, as a buyer would not consider any additional sum for 'goodwill'.
- 11.5 The viability test in this instance is simply the potential future ability of the pub to survive as a trading entity on commercial terms, coupled with the cost of renovation and conversion required to create a different venue to generate further trade. In this instance my opinion is that the limiting factors highlighted above make any major investment for business purposes a higher than average financial risk but do not negate viability.
- 11.6 The location is such that an operator would have to run a business biased towards food sales and promote it regionally, rather than just locally. In addition medium to long-term viability will depend upon engagement with the local community to retain goodwill and to prevent any disaffection in respect of matters such as parking should the business become very successful, as the car park is of limited size. The entire site has sufficient land potentially to provide further parking facilities. I have not paid specific regard to the holiday letting cottage, which will provide supplementary income to the main business.
- 11.7 I note that The Chandlers Arms in Epwell was renovated and refurbished, then sold recently as a going concern. From an external inspection this property appears to be of a similar size to the Pheasant Pluckers Inn, although old marketing details show it to be smaller when it was sold; it also

has a marginal location. The Bell Inn at Shenington was sold in April 2016 and appears to continue to trade successfully. Both of these pubs are 'destination' venues. In my opinion both would be unable to rely simply upon trade generated within their immediate communities, so their continued success demonstrates that the wider catchment area provides an environment and demographic that does support village pubs.

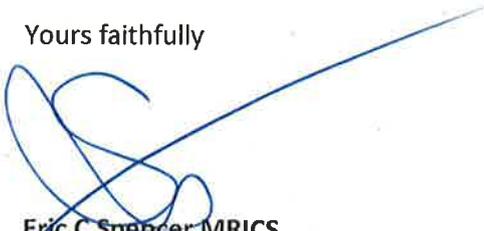
Statement

Given the above information, having inspected the property and its locality, researched the competing outlets in the market and considered potential achievable trading levels, I consider that the Pheasant Pluckers Inn can still be viable as a public house, subject to certain factors and improvements as highlighted above.

I trust that this review is suitable for your needs and enables the Council to make an informed decision in this matter.

Should you have any queries, please do not hesitate to contact me.

Yours faithfully



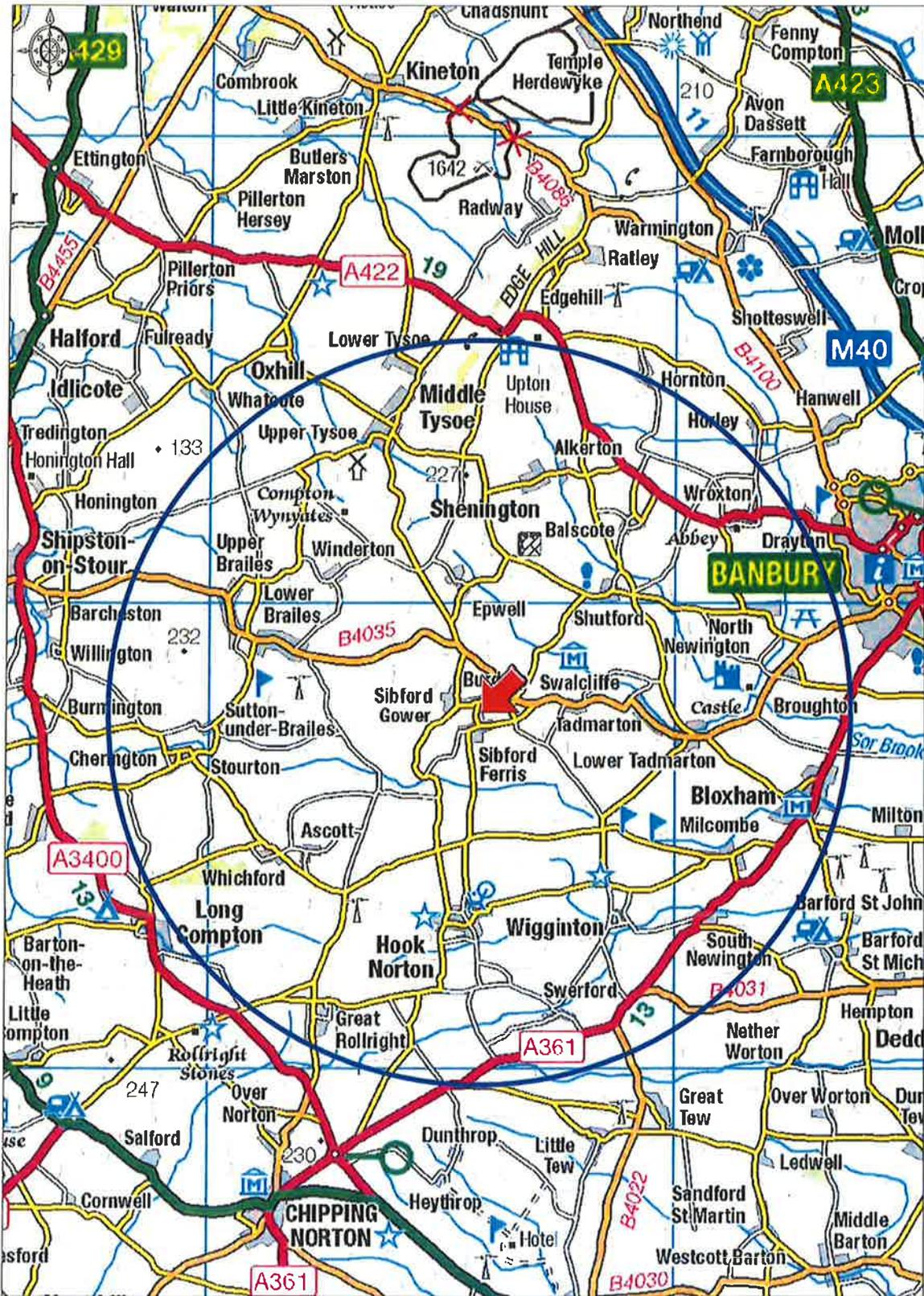
Eric C. Spencer MRICS
RICS Registered Valuer
RICS Accredited Expert Witness
Associate

Encs.

- | | |
|------------------|---|
| Appendix One – | Location Plan (5 mile radius) |
| Appendix Two - | Instructions |
| Appendix Three - | Inventory of Competing Outlets |
| Appendix Four - | Standard Terms & Conditions of Engagement |

Appendix One

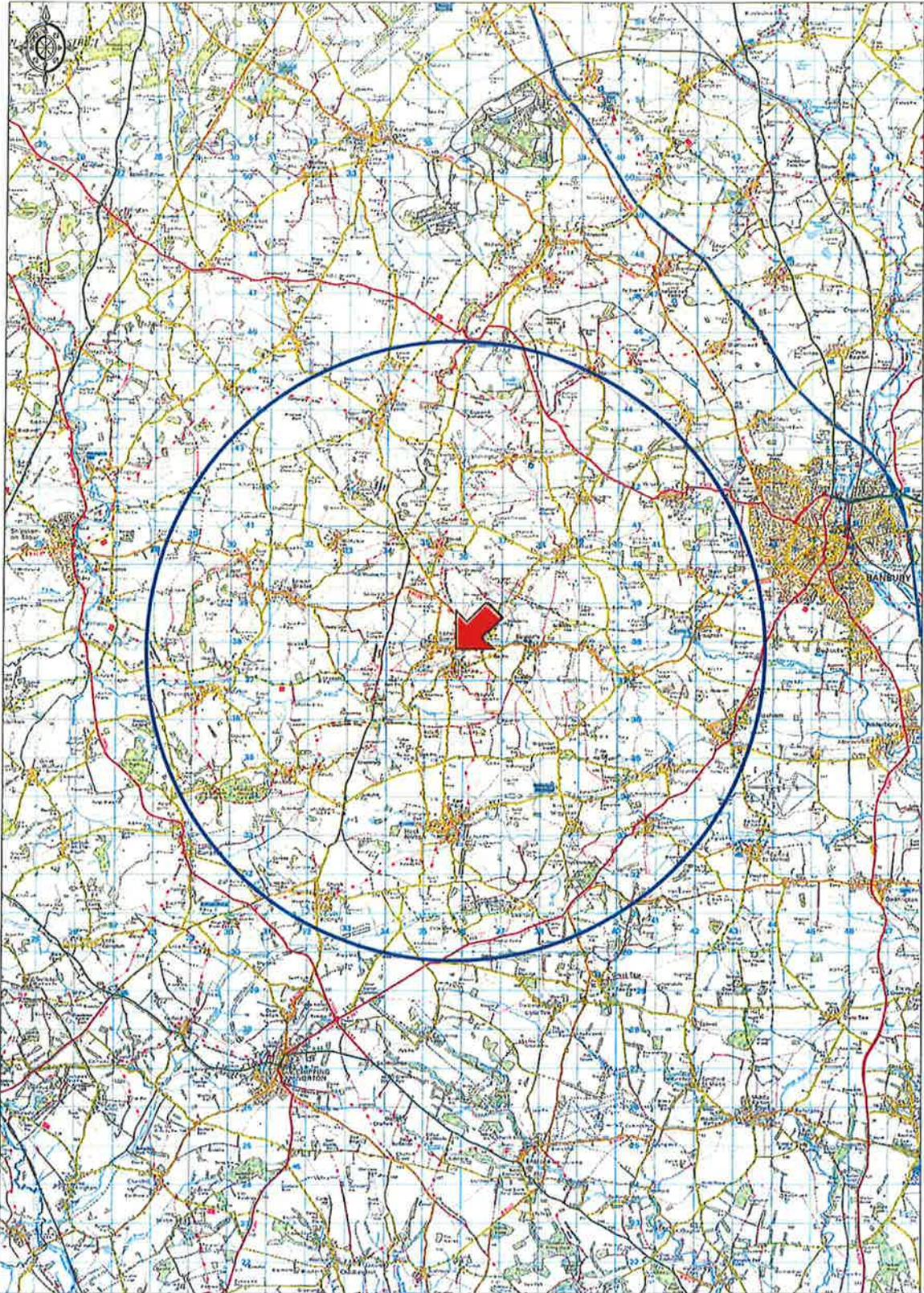
Location Plan



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Prepared by Bruton Knowles,
for Identification Purposes Only



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Prepared by Bruton Knowles,
for Identification Purposes Only

Appendix Two

Instruction

Sam Spencer

From: Alex Keen <Alex.Keen@cherwellandsouthnorthants.gov.uk>
Sent: 17 October 2017 17:58
To: Sam Spencer
Cc: Bob Neville
Subject: RE: 17/01981/F - Change of use of the Pheasant Pluckers Inn Burdrop [BK-BK.FID407540]

Dear Sam,

Bob has asked me to respond to your email below, as he is on leave tomorrow. I am happy to agree the quote and would be grateful if you could proceed with the work ASAP. Bob is due to visit the site this Thursday afternoon, so if that is convenient for you please can you liaise with him Thursday morning about timings? It will not be before 14:30. If Thursday is not convenient, you will need to arrange an alternative time/date via Bob.

Thanks – Alex

Alex Keen BA (Joint Hons) MA MRTPI
Manager – Minor Developments
Development Management
Cherwell District Council and South Northants Council
Direct Line: 01295 221812 | Ext: 1812
Email: alex.keen@cherwellandsouthnorthants.gov.uk

Details of applications are available to view through Cherwell District Council's Online Planning Service at <http://www.publicaccess.cherwell.gov.uk/online-applications> and South Northants Council's Online Planning Service at <http://snc.planning-register.co.uk/>

South Northamptonshire Council, The Forum, Moat Lane, Towcester NN12 6AD www.southnorthants.gov.uk
www.facebook.com/southnorthantscouncil Twitter: @SNorthantsC
Cherwell District Council, Bodicote House, Bodicote, Banbury OX15 4AA www.cherwell-dc.gov.uk
www.facebook.com/cherwelldistrictcouncil Twitter @Cherwellcouncil

From: Sam Spencer [<mailto:Sam.Spencer@brutonknowles.co.uk>]
Sent: 16 October 2017 10:09
To: Guy Emmerson; Bob Neville
Subject: RE: 17/01981/F - Change of use of the Pheasant Pluckers Inn Burdrop [BK-BK.FID407540]

Dear Bob

To follow up Guy's apology, we've had all sorts of fun and games with our mails this last week as we have 'migrated' systems.

I have had a quick look at the location and should be able to meet your deadline if I can inspect late this week or early next.

Are the applicants likely to give me access? Also have you had sight of recent accounts?

Our fee last year was £175 per hour which has increased by £10 per hour for expert work to £185 per hour. I estimate a total of 15 hours including the visit and travelling time, which will be a total of £2,775 + VAT.

I trust that this is acceptable and look forward to hearing from you

Kind regards

Sam Spencer MRICS

To: Bob Neville

Subject: FW: 17/01981/F - Change of use of the Pheasant Pluckers Inn Burdrop

Bob

Many thanks for your email which I am forwarding on to my colleague Sam Spencer who is our pub expert and who dealt with the case at Wardington.

Sam – could you get in touch with Bob to provide a fee quote please ?

Regards

Guy Emmerson
Development Partner

Bruton Knowles, 2 Paris, Parklands, Railton Road, Guildford, Surrey GU2 9JX
Tel: 01483 238380 Mob:07808 904480 Fax: 01483 238399

www.brutonknowles.co.uk  Please consider the environment before printing this e-mail

<image001.jpg>

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<image002.png> <image003.png>

From: Bob Neville [<mailto:Bob.Neville@cherwellandsouthnorthants.gov.uk>]

Sent: 09 October 2017 15:40

To: Guy Emmerson <Guy.Emmerson@brutonknowles.co.uk>

Subject: 17/01981/F - Change of use of the Pheasant Pluckers Inn Burdrop

Good afternoon

You recently dealt with a colleague of mine Matt Chadwick and advised on an application for the change of use from a public house to a dwelling, including a small extension at The Plough Inn in Wardington in Oxfordshire.

I am the case officer on a similar application at the Pheasant Pluckers Inn in Burdrop (17/01981/F - Change of use from A4 to C3 (ACV Listed)). The site has a somewhat complex planning history stretching back over a number of years with previous applications and appeals being refused/dismissed in the past. The applicants have submitted very little viability information with the current application but are claiming that the business is not viable in their supporting statement (copy attached), thereby justifying a change of use to residential.

I am emailing you to ask whether you could give a quote to assess the viability of the public house on behalf of Cherwell Council and how much this would be.

If there is any further information that you require, do not hesitate to contact me.

Regards

Bob Neville MSc
Senior Planning Officer
Development Management

Appendix Three

Inventory of Competing Outlets (5 mile radius)

Pheasant Pluckers Inn**Inventory of Competing Outlets**

Wyckham Arms, Sibford Gower
Stags Head, Swalcliffe
The Gate, Brailes
The George Inn, Brailes
The Royal British Legion, Brailes
The Lapet, Tadmartin
The Saye and Sele, Broughton
George & Dragon, Shutford
The Butchers, Balscote
Peacock, Upper Tysoe
White Swan, Wiggington
Fuzzy Duck, Armscote
The Bell, Shennington
White Hart, Newbold-on-Stour
Chandlers, Epwell
Halford Bridge Inn, Halford
Chequers Inn, Ettington
Horse & Groom, Milcombe
Peacock, Oxhill
Royal Oak, Whatcote
Cherrington Arms, Stourton
Farriers Arms, Todenham
Red Lion, Long Compton
Norman Knight, Whichford
The Swan, Kineton
Pear Tree, Hook Norton
Sun, Hook Norton
Wild Chilli, Hook Norton
Gates Hang High, Hook Norton
Blinking Owl, North Newington
Duck on the Pond, South Newington
The Masons Arms, Swerford

Additional Competition

Wyatts, Rollrights

The Spar, Hook Norton

The Village Shop, Long Compton

Whichford Pottery & Kitchen

Significant competition in Moreton-in-Marsh, Bloxham, Shipston-on-Stour.

Indian restaurant, shop and coffee shop at Kineton.

Further extensive competition in Banbury.

Appendix Four

Standard Terms and Conditions of Engagement

Standard Terms & Conditions of Engagement

1 R.I.C.S. Valuation Standards

Our valuation has been made in accordance with the RICS Valuation – Global Standards 2017, this firm being independent Valuers as defined in the manual.

2 Basis/Bases of Valuation

In accordance with your instructions, our valuation has been prepared under one or more of the following bases of valuation.

Market Value (MV) is :-

“The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.”

The interpretative commentary contained within Valuation Technical and Performance Standard 4 (VPS4) of the RICS Valuation – Global Standards 2017 forms an integral part of this definition.

Market Rent (MR) is :-

“The estimated amount for which an interest in real property should be leased on the date of valuation between a willing lessor and a willing lessee on appropriate lease terms in an arm’s-length transaction after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.”

The interpretative commentary contained within VPS4 of the RICS Valuation – Global Standards 2017 forms an integral part of this definition.

Existing Use Value (EUV) is :-

“The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s-length transaction, after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion, assuming that the buyer is granted vacant possession of all parts of the property required by the business and disregarding potential alternative uses and any other characteristics of the property that would cause its Market Value to differ from that needed to replace the remaining service potential at least cost.”

Fair Value (FV) is :-

The definition adopted by the International Accounting Standards Board (IASB) in IFRS 13:

The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

The interpretative commentary contained within VPS4 of the RICS Valuation – Global Standards 2017 forms an integral part of this definition.

Market Value having regard to Trading Potential is :-

Defined in VGPA4 of RICS Valuation – Global Standards 2017 and a trade related property is considered to be an individual trading entity and is typically valued on the assumption that there will be a continuation of trading.

3 Scope & Title

We have not carried out formal searches of Local Authority Registers or on Title and it has therefore been assumed that no onerous or restrictive covenants attach to Title. You should rely on your solicitor in these matters and we reserve the right to amend our valuation should any encumbrance be shown to materially affect the value of the property. For owner occupied properties, our valuation assumes vacant possession would be given by the vendor upon completion of a disposal. For tenanted premises, our valuation is subject to the information on tenancies contained within our Report unless otherwise stated. Our valuation is made on the assumption that information given to us, either verbally or in writing by the Bank, your representatives or from any official sources (including, where relevant, the Borrower, the vendor, the selling agents and the Local Authority), is capable of formal substantiation. Our valuation also assumes that the property is free from any borrowings or encumbrances, unless otherwise stated.

4 Condition

We have not carried out a building survey or tested services, nor have we inspected those parts of the property which are covered, unexposed or inaccessible and such parts have been assumed to be in good repair and condition. We cannot express an opinion about, or advise upon, the condition of uninspected parts and our Report should not be taken as making any implied representation or statement about such parts. We have not arranged for any investigations to be carried out to determine whether or not any deleterious or hazardous material has been used in the construction of the property, or has since been incorporated, and we are therefore unable to report that the property is free from risk in this respect. For the purpose of our valuation we have assumed that such investigation would not disclose the presence of any such material to any significant extent.

With specific regard to the Control of Asbestos Regulations 2006, we will reflect the content of any written risk assessment provided, however where a risk assessment has not been carried out or is not available, we will assume that a risk assessment would not reveal any matters which could affect value.

We are under no duty to and have not a) moved anything; b) used a moisture detecting meter; c) arranged for the testing of electrical, heating or other service installations; or d) carried out an environmental audit. We have also assumed that no radon gas is present at the property. Unless stated to the contrary, no investigations have been carried out to determine whether the site has a history of instability and we are, therefore, unable to report that the property is free from risk in this respect. We have assumed, for the purpose of the valuation, that such investigation would not disclose the presence of any such problems

5 Contamination

We will not identify the existence of contamination unless either reports have been made available to us in this respect or, during the course of our inspection, we conclude that there may be material contamination at the property or on any neighbouring land. In the latter case we will report this possible contamination immediately with a view to a decision being taken as to whether the valuation instructions are to be amended. Otherwise, our valuation has been undertaken on the assumption that no contaminative or potentially contaminative uses have ever been carried out on the property. Should it be established subsequently that contamination does exist at the property or on any neighbouring land, or that the premises have been or are being put to any contaminative use, this might reduce the values reported.

6 Local Authority Enquiries

Where appropriate, verbal enquiries have been made of the local authority and unless otherwise stated, we have assumed that there are no planning proposals, highway improvements or compulsory acquisition schemes likely to affect value. We have also assumed planning consent and all other statutory requirements have been obtained and complied with for the erection and occupation of the building. Formal searches have not been made and we reserve the right to amend our valuation should information at variance to these assumptions be forthcoming. No allowance has been made for rights, obligations or liabilities arising from the Defective Premises Act 1972 or the Disability Discrimination Act 1995.

7 Fixtures & Fittings and Plant and Machinery

Unless stated to the contrary, our valuation has excluded any element of goodwill, trade equipment and moveable fixtures and fittings attached to the property. We have also excluded any stock associated with the business. Our valuation includes only such items as form part of the normal building services installations and any items in the nature of specialist or the present occupiers process plant and machinery have been excluded. No equipment or fixtures and fittings have been tested in respect of Electrical Equipment Regulations and Gas Safety Regulations and we assume that where appropriate all such equipment meets the necessary legislation.

8 Sources, Extent and Non-Disclosure of Information

In preparing our valuation we have relied upon such information as has been provided by the client or building occupier in respect of tenure, tenancies, planning consent and any other relevant information. Where leases or other documents have been produced to us, our Report so states. Otherwise, such information should be verified and in the event of significant variation from the information initially given to us, our valuation could require adjustment.

9 VAT, Taxation and Costs of Acquisition or Realisation

No allowance has been made for costs of acquisition or realisation of the property, nor for any liability for taxation which may arise on disposal whether actual or notional, e.g. VAT, Inheritance Tax or Capital Gains Tax. Unless stated to the contrary it is assumed that where there is an imposition or otherwise of VAT on the rent that the lessee will be able to fully reclaim the VAT paid.

10. Reinstatement Cost

Where we have been requested to provide our opinion of the buildings' reinstatement cost, we confirm that we have not carried out a formal estimate of the reinstatement value of the premises. The figure provided is for guidance purposes only and we recommend that a formal assessment is obtained from a specialist insurance valuer if insurance cover is to be effected. However, our informal estimate is inclusive of site clearance, demolition, statutory and professional fees but excludes VAT, loss of rent, the cost of alternative accommodation for the reinstatement period and inflation during the policy year or the rebuilding period.

11. Future Prospects

Where our Report contains any statement as to the prospect of future growth in rental and/or capital values, it should be appreciated that such growth may not occur and that the values can fall as well as rise.

12. Disclaimer

Our valuation is provided only for the purpose agreed with the instructing client and will be for the sole use of the client. As such, it is confidential to the client and his professional advisers. We accept responsibility to the client alone that the report has been prepared with the skill, care and diligence which may reasonably be expected of a competent valuer but accept no responsibility whatsoever to any other person who relies upon the report at his own risk. Neither the whole nor any part of the Valuation Report may be included in any published document, circular or statement nor published in any way without our written approval of the form and context in which it may appear. We undertake all services only on the basis of these terms which shall apply to the exclusion of any other terms and conditions which the client may seek to impose. No variation of these terms shall be binding unless agreed in writing by an authorised representative of BK and the client.

Where we are providing one or more valuations of a property or properties ("the Property"), in circumstances where you have already made a loan secured (whether wholly or partially) against the Property, and you make further loan or loans secured on the Property in reliance of our valuation(s), our liability to you for any loss that you incur arising from our valuation(s) will be limited to the lesser of: (1) the further sum (if any) that you lend in reliance of our valuation(s); or (2) the difference between our valuation(s) and the true value of the Property at the date of our valuation(s). This limitation of liability applies irrespective of whether, in making a loan based on our valuation(s), you have released the original charge and executed a new charge, or lent additional sums against the original charge. We will not be liable for any loss arising from the original loan (including any extensions to that loan prior to our valuation(s)) that you made, secured by the Property, unless: (1) We carried out the original valuation(s) of the Property; (2) You made the original loan in reliance of our valuation(s); and (3) Our original valuation(s) was negligent.



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

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.
-

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)¹, but as the prescribed fees were not paid in respect of her appeal within the

¹ 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 S29² 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 Plan³ covers all three settlements, regarding them as one community. They also

² Carried forward into the non-statutory Cherwell Local Plan 2004 as policy S26

³ 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 sharply⁴. 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 closed⁵, 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

⁴ 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.

⁵ 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 Noquet⁶, 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

⁶ 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 rate⁷. 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

⁷ 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 £240,000⁸. 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

⁸ 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

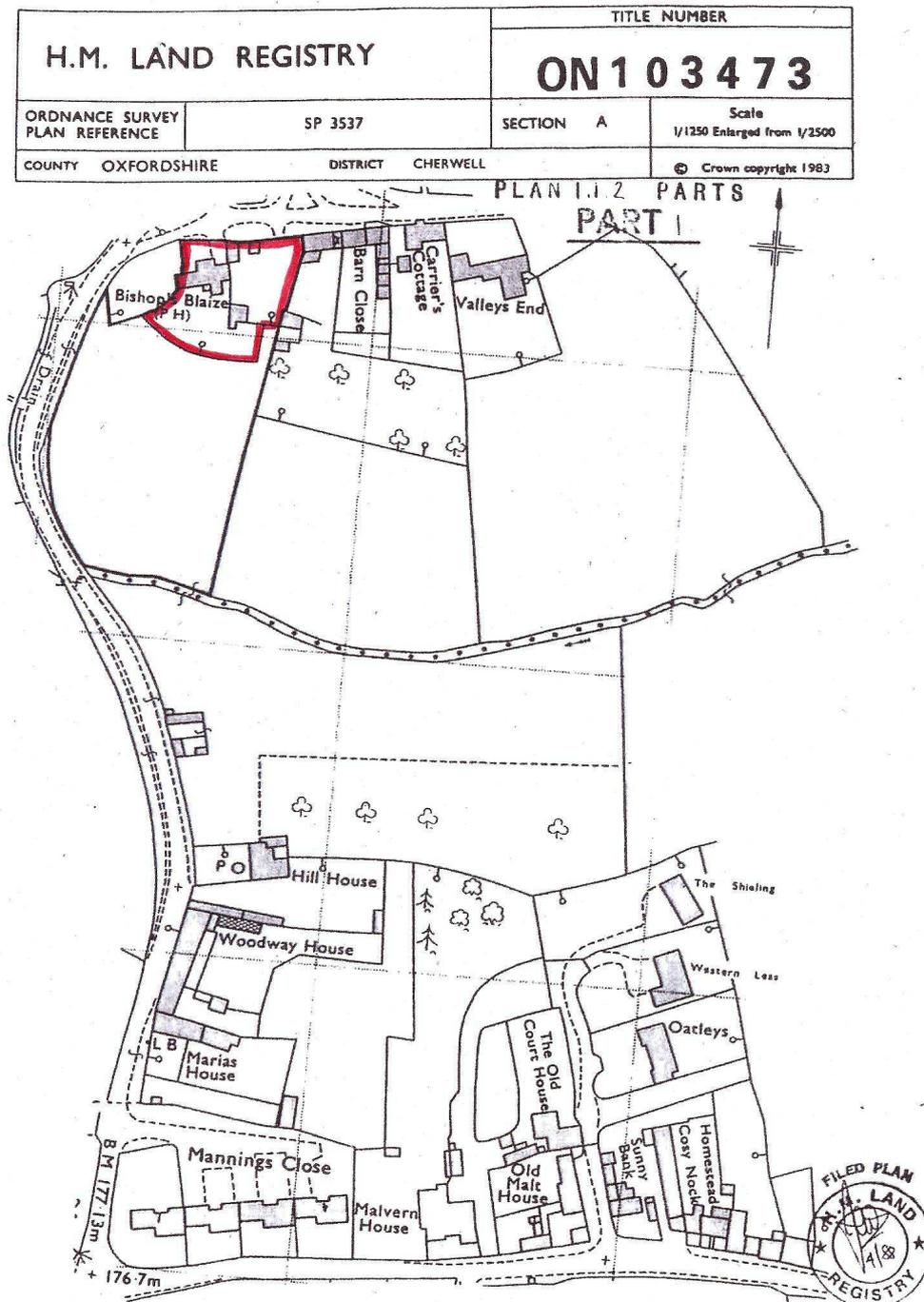
This is the plan referred to in my decision dated: 04.10.2012

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





Appeal Decision

Hearing held and site visit made on 22 May 2013

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 13 August 2013

Appeal Ref: APP/C3105/A/13/2190714

Bishops End, Burdrop, Banbury, Oxfordshire OX15 5RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Geoffrey Richard Noquet against the decision of Cherwell District Council.
 - The application ref: 12/00678/F, dated 2 May 2012, was refused by notice dated 20 July 2012
 - The development proposed is change of use of a vacant public house to C3 residential.
-

Decision

1. The appeal is dismissed.

Preliminary Matter, Background & Main Issue

2. As agreed at the hearing, I have determined the appeal on the basis that the amended site plan, received by the Council on 18 July 2012, identifies the appeal site.
3. Key elements of the background to this appeal include the following points. Mrs Noquet bought the public house, formerly known as the Bishop Blaize, as a going concern in February 2006. The freehold pub, in a rural village setting, closed for business in March 2007 and has not been used as such since then. From 2006 onwards there has been a series of planning applications to convert it to a wholly residential use, and also two applications for a certificate of lawfulness, none of which has been approved. Some internal works to the pub were undertaken to facilitate its use for wholly residential purposes. In February 2012 the Council issued an enforcement notice requiring use of the building as a residential dwelling house to cease.
4. The appellant then submitted this appeal application for the change of use. Planning permission was refused by the Council shortly before a public inquiry began, in August 2012, into a previously lodged appeal against the enforcement notice. The notice (as corrected) was upheld in the subsequent appeal decision¹ dated 4 October 2012.
5. As the grounds of appeal against the enforcement notice included ground (a)², the appellant had an opportunity to make his case during the 2012 inquiry as to why permission should be granted (in the light of previous applications and the Council's refusal of this appeal application). The 2012 Inspector's decision

¹ Appeal ref: APP/C3105/C/12/2170904

² That planning permission should be granted

sets out in detail her reasons for concluding that the planning application deemed to be made should be refused, on the basis of the evidence before her. The Council's witnesses included Mr Keane, who provided evidence on viability matters. However, I understand that the appellant's witnesses did not include anyone with specialist expertise in the viability of public houses, albeit one witness (Mr Allman) gave evidence on valuation matters.

6. Notwithstanding the grounds of appeal set out when this current appeal was first submitted, it has since been clarified and is common ground between the Council and appellant that Mr Voysey's report on viability (for the appellant) contains new evidence that was not available to the 2012 Inspector. In this appeal the appellant's case focuses mainly on that new evidence relating to viability. Nonetheless, I have had regard to points made on other matters in the 2012 appeal decision, in written evidence before me and in discussion at the hearing, as explained in the reasoning below.
7. Since last October the South East Plan has ceased to be part of the development plan³. Also, I understand there has been some change in the use of the appeal property since last October, in that a retail enterprise has been introduced. Many local residents' letters refer to this turn of events, but it is common ground between the Council and appellant that any retail use is a separate matter from the one at issue in this appeal: I agree, and shall not consider it further.
8. In the particular circumstances of this case the **main issue** in this appeal is whether or not the proposal accords with development plan and national policy relating to the loss of community facilities, principally in terms of whether or not the appeal property could be viable in the long term as a public house.

Reasons

9. In the light of the background set out above, I endorse the previous Inspector's findings relating to the development plan and national policy context, as set out in paragraphs 14 to 19 of her decision⁴. In short, she concludes firstly that use as a dwelling and the consequential loss of the pub would conflict with LP Policy 29 and with the *Framework*. Secondly, the pub had previously provided a much valued facility and service, and its closure has reduced the local community's ability to meet its day-to-day needs. As she concludes at the end of paragraph 19, "the *Framework* therefore requires that its unnecessary loss should be guarded against"⁵: I agree.
10. In addition, I highlight a notable difference between LP Policy 29 and the much more recent *Framework*. The explanatory text to the former recognises that it will be difficult to resist the loss of village services 'when they are proven to be no longer financially viable in the long term'. Paragraph 70 of the *Framework*, however, does not mention proving viability, financial or otherwise.
11. From the evidence relating to viability before me, most notably from Mr Voysey and Mr Keane, it has become apparent that in many respects the findings of these two expert witnesses are not so very far apart. Both have used a

³ SEP Policy BE5 is mentioned in the Council's refusal reason but, as its general aims are reflected in the Cherwell Local Plan (LP) and in the *National Planning Policy Framework*, its revocation is of little significance in this case

⁴ The Inspector also referred to the emerging Sibfords Community Plan: I heard that this is a non-statutory plan (and not a neighbourhood plan) which has now been completed and adopted by Sibford Gower and Sibford Ferris Parish Councils

⁵ Essentially as set out in paragraph 70 of the *Framework*

commonly accepted methodology, including calculations of 'fair maintainable trade' (FMT) and 'fair maintainable operating profit' (FMOP). Mr Voysey estimates FMT at some £180,000 per annum compared with Mr Keane's estimate (derived by a different method) of £200,000 pa: their estimates of overheads on profit are 36.9% and 36.3% respectively. Mr Voysey puts FMOP at around £38,500 pa, compared with Mr Keane's figure of roughly £40,000 pa. It is acknowledged in the appellant's statement that this difference is marginal.

12. Mr Keane suggests a reasonable price for the freehold pub would be between £240,000 and £275,000, while Mr Voysey's figure of £262,500 is not far off the middle of that range⁶. These figures are consistent with prices sought and/or achieved for other broadly comparable pubs, provided in evidence from both parties, and I find them realistic in the current economic climate.
13. The more significant differences between the two sides lie in their assumptions about how the pub would be financed and the likely level of remuneration to the operator(s), assuming roughly £27,000 pa as the minimum likely to be sufficient as the operator's own income for viability purposes. The estimated total finance required would be the purchase price plus around £20,000 (Mr Keane) or £30,000 (Mr Voysey) for start-up costs⁷. Mr Keane assumes a commercial mortgage of £150,000 (representing 60% of a value of £250,000) at 5% over 20 years (equating to payments of some £12,000 per annum and thus a residual income of £28,000). This interest rate is substantiated in a letter from SidneyPhillips, a specialist hotel & licensed property agent, and I do not find it unrealistic. The letter also refers to the difficulties in obtaining loans of more than 50% of the freehold market value of licensed premises.
14. Mr Voysey refers to a wider range of sources for his assumption of a 6.5% interest rate, albeit none are substantiated by documentary evidence. He applies this rate to a 15 year loan to produce an annual finance cost of some £30,000 pa, thus reducing income to only £8,500. However, whilst Mr Voysey acknowledges that a purchaser would only be able to borrow a proportion of his estimated total finance cost of £292,500, he also includes provision for a return on the capital investment. He suggests that a potential operator would expect such a return (to reflect the opportunity cost of their investment) as well as income from the business.
15. In support of the latter point, Mr Voysey cites the recent RICS Guidance Note, 'Financial Viability in Planning'. As I understand it, however, this guidance relates primarily to built development projects and assessing the impact of planning obligations, which is a markedly different scenario from buying a single freehold rural pub and running it as an ongoing business. Thus I am not persuaded that such an approach is appropriate.
16. An alternative put forward for the appellant is a loan of 50% of £292,500 which I find more realistic, even though it would exceed 50% of the freehold value⁸. At £146,250 it would be slightly less than the amount assumed by Mr Keane. If taken over 20 rather than 15 years (and it was not suggested this would be unrealistic) the cost per annum would be less than the £15,000 pa cited in the

⁶ Both figures are in stark contrast to the purchase price of £425,000 (with an additional £70,000 for goodwill) paid by Mrs Noquet in 2006 when the market for such properties was very much stronger than at present

⁷ Mainly re-instating fittings, general refurbishment and purchasing stock (albeit the 2012 Inspector agreed (at paragraph 44) that, to the extent that any costs attributable to the unauthorised change of use would affect viability, they should not weigh significantly in the balance in favour of the appeal)

⁸ Because this sum includes the £30,000 start-up costs

- appellant's hearing statement. If the interest rate was also 5% rather than 6.5%, which does not appear unrealistic, the cost would be marginally less than in Mr Keane's estimate.
17. With regard to the suggested income of around £27,000 pa, the appellant suggests this would be unlikely to attract a couple when employment in other spheres could provide them with regular income for fewer hours without the stresses and strains of running a pub. That may be so but, as was discussed during the hearing, most people are aware of the hours and effort involved in running a country pub and thus, to some extent, they make a lifestyle choice in taking it on. An income level of around £27,000 pa is a useful benchmark but a small amount of shortfall, especially in the first few years, would not in itself prove non-viability.
 18. I appreciate assessing viability is difficult in the case of a pub that has not operated since 2007. Small variations in one or more of the many relevant factors can produce quite different results, but that is more or less inevitable in hypothetical exercises of this kind. However, having carefully considered the new evidence from Mr Voysey, in the light of all the other evidence given in writing and at the hearing, I find his viability exercise insufficient in itself to prove the pub is no longer financially viable in the long term.
 19. In considering other aspects of viability, I note the appellant's view that there is no need for any marketing exercise. However the previous Inspector in her decision clearly takes into account the marketing that had been carried out: she gives substantial weight to Mr Keane's evidence on overall viability but also refers specifically to the marketing exercises in her conclusions on viability⁹. I cannot therefore agree with the appellant's view that an earlier paragraph¹⁰ in her decision indicates a marketing exercise is not necessary.
 20. On the same point, three appeal decisions were submitted for the appellant, but the most recent dates back to 2007 and the particular combinations of relevant policy and other factors vary, from each other and from this appeal proposal. Whilst there may be situations where marketing exercises do not assist greatly, that does not mean as a matter of general principle that such exercises are unnecessary. The previous marketing of the former Bishop Blaize pub and the 2012 Inspector's finding that it was flawed¹¹, remain a material consideration in my determination of this appeal and no substantive evidence of any recent marketing has been provided.
 21. I have borne in mind the general background of the current economic climate, the decline in the fortunes of public houses in recent years and the number and nature of other pubs in the wider locality, as updated during the hearing. I find it significant that the pub was profitable prior to purchase by Mrs Noquet; that this is not a case where there has been a series of several unsuccessful attempts to keep the pub business going; that there are independent pubs in the wider locality that appear to be succeeding.
 22. I have read and heard about the particular attributes of both the former Bishop Blaize and the nearby Wykham Arms, in Sibford Gower. Having also seen both premises I agree with those, including the previous Inspector, who consider that the long views over the countryside from the garden of the appeal

⁹ In paragraph 49 of the 2012 appeal decision

¹⁰ Paragraph 38 of the 2012 appeal decision

¹¹ Largely due to an unrealistically high asking price

- property could give it an edge over other pubs in the area. Taking account of submissions from Sibford Gower Parish Council and from local residents as to how the Bishop Blaize has been used by the community in the past, and their suggestions for its future use, it is not unreasonable to assume that, if it were to re-open, it could do so with a different offer from the Wykham Arms and that there might be some scope to expand and/or diversify the business.
23. The actions taken by the local community since the previous appeal decision last October are also relevant. An initial enquiry about a village buyout of the pub for £240,000 was rejected by the Noquets. The (Sibford Gower) Parish Council is confident that a sum within the £240,000-£275,000 range could be raised by public subscription from the two Sibford parishes and has sought advice from the Plunkett Foundation about making a community bid for the property should it come up for sale. It has also initiated an application to the Council to list the pub as an 'asset of community value', albeit no information was available at the hearing about the progress or outcome of that application.
24. The possibility of the pub being listed as an asset of community value cannot, in itself, carry any weight in my assessment of viability in this case. However the provisions for such listing, introduced relatively recently, back up the clear intention in the *Framework* that valued facilities and services in rural villages should be retained if at all possible¹². Moreover I find the Parish Council's carefully considered approach to how the pub might be run, if the opportunity arose for the community to buy it, no less valid for being proposed by that community on the basis of an outright purchase. It appears to represent a reasonable and viable alternative means of ensuring that the much valued pub facility is not unnecessarily lost.
25. There is no doubt that selling the pub at its current market value would mean a financial loss for the Noquets, but that is not a material consideration in assessing its long term viability. The previous Inspector clearly set out her views in relation to this and the matter of human rights¹³ and, in the absence of any further submissions in the latter respect, I agree with her views.
26. As I noted at the outset, LP Policy 29 anticipates long term viability being assessed in financial terms, but that must now be tempered by policy guidance in the *Framework* which promotes retention of rural facilities, including pubs, and seeks to guard against their unnecessary loss. Taking account of all the aspects of viability explored above, I find insufficient grounds to conclude the pub would not be viable in the long term and thus insufficient justification to allow the loss of this valued facility. I have had regard to all other matters raised, including additional information submitted by the Council and appellant at the hearing. However I have found nothing so significant as to outweigh my conclusion that allowing a change of use to a dwelling would conflict with LP Policy 29 and especially with policy guidance in the *Framework*. It follows therefore that the appeal must fail.

Jane Miles

INSPECTOR

¹² Paragraph 28 of the *Framework* refers, as well as paragraph 70

¹³ Most notably in paragraph 56 of the 2012 appeal decision

APPEARANCES

FOR THE APPELLANT:

Mr S Choong of Counsel	Instructed by Mr Noquet under the Direct Access Scheme
Mr Barry Voysey	Voysey Limited
Mr Geoffrey Noquet	Appellant
Mrs Jacqueline Noquet	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Mr Simon Dean	Planning Officer, Cherwell District Council
Mr John Joseph Keane	Thomas E Teague Licensed Property Valuers

INTERESTED PERSONS:

Dr Oswyn Murray	Chair of Sibford Gower Parish Council
Mr Richard Butt	Local resident, and on behalf of Bishop Blaize Support Group
Mr Cedric Brown	Local resident
Ms Daisy Saddler	Local resident
Mr Bill Barton	Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

- 1 Addendum to Mr Keane's viability assessment
- 2 Bundle of additional information submitted by the appellant
- 3 Set of 3 appeal decisions referred to in the appellant's hearing statement
- 4 Bundle of appeal decisions submitted by the Council
- 5 Copy of amended site plan, as received by the Council on 18 July 2012
- 6 Copy of Dr Murray's statement to the hearing
- 7 Written submission from the Bishop Blaize Support Group, submitted by Mr Butt