

CHERWELL DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

Appeal by Mr Geoffrey Richard Noquet against Cherwell District Council's failure to give the requisite notice of its decision in relation to a retrospective application for change of use from public house (sui generis) to hotel/bed and breakfast (Class C1) at The Pheasant Pluckers Inn Burdrop, within the appropriate 8-week determination period.

Appellant: Mr Geoffrey Richard Noquet

Appeal Site: The Pheasant Pluckers Inn, Street Through Burdrop, Burdrop

LPA Reference:

Planning Inspectorate Reference: APP/C3105/W

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1. THE COUNCIL'S CASE

1.1. The appeal is made on the basis of the Council's non-determination of 23/00662/F for the change of use of public house (sui generis) to hotel/bed and breakfast at the Pheasant Pluckers Inn Burdrop. The Council submits that the application is invalid, as there is not sufficient information in order for the decision maker to determine the application as there are no floor plans showing how the building would function for hotel/bed and breakfast purposes nor are there details of the shepherd huts, including details on the application form.

1.2. The appeal site has been subject to a number of applications, including enforcement action. There is a useful summary of the site's planning history from 2006 to 2013 in the Inspector's appeal decision ref. 13/2190714 (Appendix 2) and at paragraph 6 of the last Inspector's appeal decision ref. 18/3216818 (Appendix 4). The application history for the site is as follows:

82/00329/N - Change of use of the premises to a single dwelling (The application was withdrawn as a condition of the approval was that the liquor licence had to be surrendered prior to a decision being issued. The licence was not surrendered, and the pub was sold as a going concern) - Application withdrawn

85/00698/N - Change of use to a single dwelling (resolution to approve the application but a condition of any approval was that the liquor licence had to be surrendered prior to the decision being issued. The landlord at that time wished to keep the pub open and withdrew the application) - Application withdrawn

99/01783/F - Single storey extensions to bar area and to form a new freezer store and replacement garden store, as amended by plans received 5.11.99.- Application permitted

06/00248/F - Single storey bar extension to provide non-smoking restaurant facility. - Application permitted

06/01697/F - **Change of use from licenced premises to dwelling house.** - Application **refused**

07/00630/F - Resubmission of 06/01697/F - **Change of use from licenced premises into dwelling house** - Application **refused**

09/01275/F - Alterations and extension to barn to provide 4no en suite letting rooms. - Application withdrawn

09/01557/F - **Change of use from closed public house to dwelling** - Application **withdrawn**

12/00011/CLUE Certificate of Lawful Use Existing - **Use as a single dwelling house - Application refused. Appeal against subsequent enforcement notice dismissed at Public Inquiry**

12/00678/F - **Change of use of a vacant public house to C3 residential** (as amended by site location plan received 18/07/12) - Application **refused** and **appeal dismissed**

12/00796/CLUE Certificate of Lawful Use Existing - **Use as a single dwelling house** - Application **refused**

13/00116/F - Retrospective - New roof to barn; 3 No rooflights and door installed to the upper floor- Application permitted

13/00743/F - Erection of two new dwellings - Application withdrawn

13/00781/F - Change of use of a redundant barn/store into a 1-bedroom self-contained holiday letting cottage - Undetermined. Non-determination appeal allowed

13/00808/CLUE Certificate of Lawful Use Existing - **Change of use from A4 to A1.- Application refused**

13/01511/CLUE - Certificate of lawful use existing - A1 use for the sale of wood burning stoves and fireside accessories - Application returned

14/01383/CLUP - Certificate of Lawful Use Proposed - **Change of use from A4 to A1 - Application refused**

15/01103/F - Removal of conditions 3 and 4 of planning permission 13/00781/F to allow occupation of holiday let cottage as a separate dwelling - Application refused and appeal dismissed

16/01525/F - Erection of a two-storey cottage with 2 en-suite bedrooms, kitchen, dining and lounge facilities. Permission is also required for the siting of a garden shed - Application refused

16/02030/F - Erection of a single storey building providing 3 No en-suite letting rooms - re-submission of 16/01525/F - Application refused and appeal allowed

17/01981/F - **Change of use from A4 to C3 (ACV Listed) - Application refused and appeal dismissed**

18/01501/F - **Change of use from Class A4 (ACV Listed) to Class C3 dwellinghouse – Appeal against non-determination – Appeal dismissed.**

21/04166/F – Permission is sought to re-position and amend the structure of the previously allowed 3 bedroom building. Refused and appeal dismissed.

1.3. The relevant Planning Policies are the following:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- Villages 1: Village categorisation
- SLE 3: Supporting Tourism Growth

- BSC 12: Indoor Sport, Recreation and Community Facilities
- ESD15: The Character of the Built and Historic Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28: Layout, design and external appearance of new development
- S29: Loss of existing village services
- H21: Conversion of buildings within settlements

Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Town and Country (General Permitted Development) (England) Order 2015 (as amended) (GPDO)
- The Town and Country (Development Management Procedure) (England) Order 2015
- Sibford Ferris, Sibford Gower and Burdrop Conservation Area Appraisal 2012
- Neighbourhood Planning Act 2017
- Localism Act 2011

The application submission

- 1.4. The planning application was originally submitted with a location plan (PDF document entitled "BlockplanA3"), a cover letter (PDF document entitled "confidential") and a letter/document titled Supporting Evidence.
- 1.5. The cover letter begins with an assertion that the Council's Enforcement Officers have pursued the Appellant "unjustly" by "pandering to some malicious villagers" and a second assertion concerning an individual who has objected to the various previous planning applications for change of use of the public house to a dwelling.
- 1.6. The cover letter then contains a supporting statement as to why the Appellant is making the planning application. The cover letter includes analysis of what defines a public house as well as the Appellant's account of some of the elements of the site's planning history, and some statements regarding another public house, The Wykham Arms. It is noted at Section 7 that the Appellant states: "...we only have to open our bar for 1 day per year to satisfy Planning Legislation..." The cover letter, which places emphasis on the public house not being designated an Asset of Community Value.
- 1.7. The Supporting Evidence document relates to previous enforcement investigation by the Council and a complaint regarding an enforcement officer who is not an employee of the Council. The first nine pages of this document is not relevant to the current application or appeal but to previous enforcement investigations. The remainder of this document includes a list of public houses which have apparently been granted planning permission for change of use, some assertions as to why and then discusses

in general terms the viability of public houses and factors which may impact their viability.

- 1.8. Subsequent to the original submission (13.03.23), the Council received a ground floor plan of the premises (05.04.23), which annotates the existing use of the space at ground floor level, without explaining or referring to how the ground floor space would be used under the appeal proposal.

Is the Application Valid

- 1.9. The Council submits that an acknowledgment letter was sent out to the Appellant in error. The Council submits the application/appeal is invalid, as the proposal does not include floor plans or elevations (both proposed or existing) to demonstrate the change of use, and how the building would be used for the purposes stated in the application form.
- 1.10. The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out what is required for the submission of a valid planning application, and this is repeated within the National Planning Practice Guidance (“the NPPG”). This includes plans and drawings. The Council confirmed to the Appellant at the validation stage that a suitable planning statement would be required during the application process in order to assess the change of use from a public house to bed and breakfast/hotel use.
- 1.11. The Appellant states that he does not intend to alter the existing building, and that the floor plans would not be altered to facilitate the proposed change of use. However, there are no details to show how the rooms on the first floor would be used for the purposes of a hotel or bed and breakfast.
- 1.12. Without the first floor plans, or a clear explanation of how the internal floor space at ground or first floor would be used, it is simply not possible for the decision maker to make a full and proper assessment of the appeal proposal.
- 1.13. From the documents submitted with the application, it would appear that the Appellant feels singled out or unfairly treated. The Council would wish to stress that **all** applicants/appellants are subject to the same requirements in the submission of planning applications i.e. the information required in this instance would be necessary irrespective of who the applicant/appellant is.
- 1.14. Indeed, it is the case that – as required by law - the starting point for decisions on planning applications and appeals is local and national planning policy. Third party representations are material considerations, particularly – given the content of the relevant Local Plan policies and the relevant Government guidance in the NPPF – in the case of proposals that would result in the loss of public houses, but decisions are **not** made purely on the basis of particular third party representations.
- 1.15. Rather, the key submissions are those of applicants/appellants, and whether they stand up to scrutiny against local and national planning policy, and it will be readily apparent that the focus of the Council and the focus of Planning Inspectors has been on the viability of the facility as a public house.

- 1.16. The appeal submission states that the Appellant would site 2 shepherd huts within the grounds and lists a variety of other options. The appeal site has an existing hut on site, which does require planning permission, and the Council has requested that the Appellant submits an application to regularise the situation. To date, this has not been received.
- 1.17. The siting of shepherd huts does not constitute a bed and breakfast/hotel use. Rather, the shepherd huts would be ancillary to the public house (and would be acceptable in principle on this basis). The Council submits that the overall use as proposed in the Appellant's appeal statement is Sui Generis, but this is not what has been applied for according to the application form.
- 1.18. No information has been submitted to show the location of the shepherd huts or what they look like, nor are they referred to in the description of development. The shepherd huts should therefore not be considered as part of the appeal process. If the shepherd huts were to be included within the application, additional information and a further fee would have been required to validate the application. Any proposed shepherd huts will require the benefit of planning permission. Therefore, there is insufficient information to determine the overall impact of the proposal and insufficient detail as to what the Appellant wishes to apply for.
- 1.19. If the Planning Inspectorate deems that the application is valid in accordance with the DMPO 2015, the Council would make the following comments on the principle of development of the site.

The Principle of Development

- 1.20. The National Planning Policy Framework ("the NPPF") explains that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 1.21. The general thrust of the NPPF is one of supporting the achievement of sustainable development through the planning system, recognising the need to secure gains in the overarching objectives (economic, social and environmental). It is clear from guidance within the NPPF that sustainability relates to ensuring the physical and natural environment is conserved and enhanced as well as contributing to building a strong economy, physical proximity to key services and promoting sustainable healthy and safe communities. These provisions and aims are reflected in the policies of Cherwell Local Plan 2011-2031 ("CLP 2015") and saved policies of the Cherwell Local Plan 1996 ("CLP 1996").
- 1.22. Paragraph 12 of the NPPF notes that the development plan is the starting point of decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. Cherwell District Council has an up-to-date Local Plan which was adopted on 20th July 2015.
- 1.23. Within the NPPF the Government demonstrates the need for supporting both existing and new community facilities within rural areas. It advises that polices should look to support economic growth in rural areas in order to create jobs and prosperity by taking

a positive approach to sustainable new development; and that there should be support for sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should also include promotion of 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 (NPPF, Para. 84).

1.24. Further, paragraph 93 of the NPPF states that:

To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
- b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;
- c) 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;
- d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and
- e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

1.25. Policy BSC12 of the CLP 2015 does not specifically refer to public houses; however, the policy does cover the provision of community facilities and states that the Council will encourage the provision of community facilities to enhance the sustainability of communities and will seek to protect and enhance existing facilities. Policy SLE 3 further looks to support development which enhances tourism opportunities within the district.

1.26. Saved Policy S29 of the CLP 1996 covers the loss of existing village services. The policy states that proposals that will involve the loss of existing village services which serve the basic needs of the local community will not normally be permitted. The policy does go on to acknowledge, however, 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.

1.27. The Appellant has not provided **any** supporting documentation to demonstrate the public house is no longer financially viable in the long run, and no marketing exercise has been carried out.

1.28. The Council submits that it is very plainly the case that the Appellant has not demonstrated that the building is incapable of being retained as a public house. The Council would draw the Inspector's attention to paragraphs 15, 20 and 28 of the 2019 appeal decision, which remain very relevant to the consideration of the current appeal.

1.29. Given the previous planning history of the site and lack of supporting information, it remains the Council's position that the Pheasant Pluckers Inn could be viable in the long-term, and that the appeal proposal would be contrary to the provision of Saved Policy S29 of the CLP 1996 and to Government guidance in the NPPF.

- 1.30. Indeed, it is clear from the site's planning application history that there have been repeated attempts by the Appellant to change the use of the public house to a dwelling – in 2006, 2007, 2009, 2012 (three times, the first two of those dismissed at appeal, see Appendices 1 and 2), 2013, 2014, 2017 (appeal dismissed, see Appendix 3) and 2018 (appeal dismissed, see Appendix 4). The Council submits that this planning history evidences a clear intention since 2006/7 to change the use of the public house to a dwelling.
- 1.31. Irrespective of that context, but with that context lending further weight, it is very important for the decision maker to be clear as to the distinction between a Class C1 use and a Class C3 use, and for the plans submitted with an application for a change of use from public house to another use to be clear as to the division of use of the internal floor space within the building.
- 1.32. In addition, the Appellant seeks the change of use to include shepherd huts (although not included within the application forms) within the grounds, without altering the internal elements of the building. This appears to form the guest accommodation that would comprise the Class C1 use, and no evidence has been submitted to the contrary. Therefore, the Council submits, it is likely the public house itself would become a dwelling, which is separate from a bed and breakfast/hotel use. This is not the primary basis of the Council's case but adds weight to the harm and policy conflict identified above and by previous Inspectors in dismissing the earlier appeals.

2. Conclusion

- 2.1. The position of the Council is that the application is not valid, as there is insufficient information, i.e. floor plans, elevation drawings and specific supporting information, to enable the decision maker to understand how the change of use would operate or impact on nearby residential amenity, highways, or the character and appearance of the local area. In addition, the Appellant has not demonstrated the long-term viability of the Public House in accordance with Saved Policy S29 of the CLP 1996.
- 2.2. In addition, the Appellant has provided new evidence within the appeal submission for the development of two additional shepherd huts, in addition to the one that exists on site currently (which does not have the benefit of planning permission). However, further information is required to assess the impact upon the character and appearance of the locality, which is a Conservation Area, as well as their impact on residential amenity, highway safety, ecology, etc.
- 2.3. The Inspector is therefore respectfully requested to dismiss the appeal.

3. Proposed conditions

- 3.1. If the Planning Inspector is minded to allow this appeal, the following conditions are recommended for the change of use of the building to hotel/bed and breakfast only:
 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The premises shall be used only for the purpose of hotel/bed and breakfast and for no other purpose whatsoever, including any other purpose in Class C1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in any statutory instrument revoking, amending or re-enacting that order.

Reason: To safeguard the visual amenities of the area and protect the amenities of nearby residents in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policies C28, C28, and S29 of the Cherwell Local Plan 1996.

3. Prior to the first use or occupation of the building for the purposes hereby approved, detailed floor plans to show the location of the guest accommodation and living accommodation and to show how all other internal floor space would be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in strict accordance with the approved details.

Reason: This consent is only granted in view of the special circumstances and needs of the applicant, which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent, in accordance with Saved Policy S29 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

4. The living accommodation hereby approved shall be occupied solely in conjunction with and ancillary to the Pheasant Pluckers Inn Bed and Breakfast, and shall not be sold, leased or occupied as a separate unit of accommodation.

Reason: This consent is only granted in view of the special circumstances and needs of the applicant, which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent, in accordance with Saved Policy S29 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.