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# 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**

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**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.
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## 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 decision<sup>1</sup> dated 4 October 2012.
5. As the grounds of appeal against the enforcement notice included ground (a)<sup>2</sup>, 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

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<sup>1</sup> Appeal ref: APP/C3105/C/12/2170904

<sup>2</sup> 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 plan<sup>3</sup>. 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 decision<sup>4</sup>. 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"<sup>5</sup>: 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

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<sup>3</sup> 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

<sup>4</sup> 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

<sup>5</sup> 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 range<sup>6</sup>. 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 costs<sup>7</sup>. 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 value<sup>8</sup>. 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

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<sup>6</sup> 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

<sup>7</sup> 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)

<sup>8</sup> 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 viability<sup>9</sup>. I cannot therefore agree with the appellant's view that an earlier paragraph<sup>10</sup> 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 flawed<sup>11</sup>, 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

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<sup>9</sup> In paragraph 49 of the 2012 appeal decision

<sup>10</sup> Paragraph 38 of the 2012 appeal decision

<sup>11</sup> 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 possible<sup>12</sup>. 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 rights<sup>13</sup> 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

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<sup>12</sup> Paragraph 28 of the *Framework* refers, as well as paragraph 70

<sup>13</sup> 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