

CHERWELL DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

Appellant : Mr Geoffrey Richard Noquet

Appeal Site : Bishops End, Burdrop, Banbury, OX15 5RQ

Description : Change of use of a vacant public house to C3 residential (as amended by site location plan received 18/07/12)

LPA Reference : 12/00678/F

Planning Inspectorate Reference : APP/C3105/A/13/2190714

1 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal relates to a substantial stone built property under a slate roof, on the edge of Burdrop, overlooking the 'Sib-valley' which separates Sibford Gower and Burdrop from Sibford Ferris. Whilst there are three settlements, they are functionally and socially linked, with each of the settlements providing services and custom for the other.
- 1.2 The site is within the Sibford Gower and Burdrop Conservation Area; first designated in January 1988. That Conservation Area, as well as the contiguous Sibford Ferris Conservation Area was subject to a review and appraisal in April 2012.
- 1.3 The site lies within the locally designated Area of High Landscape Value and there are several Grade II listed buildings opposite and adjacent to this site. The building is not listed.
- 1.4 The appeal proposal seeks permission to change the use of the site from a public house to a single dwelling.
- 1.5 The existing public house has an ancillary flat on the first floor.
- 1.6 The red-line for the appeal proposal includes the main building, barn, bottle store, car park and garden area. The land to the South of the site was excluded from the application red-line area during the application process.

2 RELEVANT PLANNING HISTORY

- 2.1 There have been a number of similar applications for this development on this site, and the history of these is set out at some length in the original officer report for the appeal proposal (Appendix 1 para 5.4) and in the Council Proof of Evidence accompanying the most recent enforcement appeal on the site (Appendix 2).
- 2.2 Most importantly for this appeal, there was recently an enforcement appeal on this site, heard by Sara Morgan between the 14th and 16th of August 2012, and determined on the 4th of October 2012 (see Appendix 3 for the Decision Letter).
- 2.3 Although an appeal against an Enforcement Notice, the appeal was only considered on ground (a) and a deemed application was therefore made. That appeal was dismissed, with the Inspector concluding 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"*
- 2.4 The assessment of the appeal proposal, carried out both by the Council (and its professional advisors, see Appendix 4) and by the Inspector (Appendix 3) remains relevant and valid for the appeal proposal.

3 POLICY CONSIDERATIONS

- 3.1 The Cherwell Local Plan was adopted in November 1996 and covers the period up to 2001. On 27 September 2007 a number of the Local Plan Policies were not saved, whereas the remaining Policies were endorsed by the Secretary of State as being saved policies as approved by the Executive and submitted by the Council. The saved policies are to be used until such time as they are replaced by new policies under the Council's Local Development Framework documents.
- 3.2 As all planning applications must be determined in accordance with development plans unless material considerations indicate otherwise, the logical starting point for this application is the adopted Local Plan, as set out in the reason for refusal. The importance of village services and amenities is set out in Policy S29 of the adopted Cherwell Local Plan 1996. This policy states that *"Proposals that will involve the loss of existing village services which serve the basic needs of the local community will not normally be permitted"*. The supporting text to the policy sets out that in adopting that policy the Council *"recognises the importance of village services, particularly the local shop and pub, to the local community and will seek to resist the loss of such facilities whenever possible. However, it is also recognised that it will be difficult to resist the loss of such facilities when they are proven to be no longer financially viable in the long term"*.
- 3.3 Also referred to in the decision notice is Policy S26 of the non-statutory Cherwell Local Plan 2004. Whilst this plan never became a formal part of the development plan, the non-statutory Cherwell Local Plan, was published in 2004 as a material consideration for development control purposes, and effectively repeats Policy S29 (Appendix 5). The policy in that plan (S26) stated that *"Proposals that will result in the loss of an existing village service which serves the basic needs of the local community will not be permitted, unless there is conclusive evidence that the provision of the service is no longer viable and that it cannot be made viable."*
- 3.4 This policy lends increased weight to the saved policy which forms the basis of the reason for refusal. The repetition of the saved policy in the now abandoned plan (which was programmed to run until 2011) clearly demonstrates that although the saved policy dates from 1996, the intention and need for the policy was still considered appropriate in

2004. Coupled with the already discussed impact of the Framework, the policy is still appropriate and relevant to the modern planning system.

- 3.5 The reason for refusal also references Policy BE5 of the South East Plan 2009. This Policy, titled "*Village Management*" refers to the need, primarily in plan-making, to "*positively plan... [for the]... continued viability of local services*".
- 3.6 However, as Statutory Instrument No. 427 of 2013 (laid before Parliament on the 28th February 2013, and coming into effect on the 25th of March 2013) abolishes the South East Plan, the Council does not intend to pursue this point with regard to defending this appeal.
- 3.7 The National Planning Policy Framework, published in March 2012, does not change the statutory status of the development plan as the basis for planning decision making, but is a material consideration in decision making.
- 3.8 Paragraphs 214 and 215 of the Framework set out the criteria by which extant development plan policies are accorded weight following the publication of the Framework. Paragraph 215 states that due weight should be accorded to pre-2004 policies according to their degree of consistency with the Framework.
- 3.9 The Framework places a strong emphasis on the social role of planning in delivering sustainable development through the provision of and (by logical extension) the protection of community facilities. This is made explicit in Section 3 ('Supporting a prosperous rural economy') where the National Planning Policy Framework sets out the conformity of saved policy S29 (and therefore its continued weight), stating that "*plans should... promote the retention... of local services and community facilities in villages, such as... public houses*" (paragraph 28). The weight of saved policy S29 is further reinforced in Section 8 ('Promoting healthy communities'), where decision makers are encouraged to take decisions which "*plan positively for the...community facilities*" (paragraph 70) and to "*guard against the unnecessary loss of valued facilities and services*" (paragraph 70).
- 3.10 It is clear therefore that central government policy is supportive of, and recognises the importance of the retention of community facilities. It is also clearly established that a public house is an important community facility.

4 THE COUNCIL'S STATEMENT OF CASE

- 4.1 The Council considers that the proposal is unacceptable on the basis of the provisions of the development plan and other material considerations.
- 4.2 It is clear, both from Section 3 above and the papers, referred to elsewhere, relating to the previous appeal that the proposal is, and remains, contrary to the adopted saved policies of this Council. The proposal is also contrary to government policy set out in the National Planning Policy Framework.
- 4.3 The appellants have failed to prove that the facility is no longer financially viable in the long term and there have been no material changes in circumstance since the 2012 appeal.
- 4.4 The case for the Council, including the assessment of viability has been explained at some length, and in some detail in the Proof of Evidence, the full viability report, and the

appeal decision relating to the 2012 enforcement appeal (Appendices 2, 4, 3). It is not therefore considered necessary to rehearse those arguments here.

- 4.5 With regards to the Conservation Area, the relevant primary legislation requires that planning applications in such areas must preserve or enhance the character or appearance of the Conservation Area. Permanently changing the site from a public house to a private residence would change the character of the Conservation Area as it would permanently alter the appearance and use of this prominent building in the centre of the Conservation Area. Similarly the physical works required for the change of use would change the appearance of the Conservation Area as a functional public house has a very different appearance to a private residence, albeit a converted public house. It is clear therefore that the proposal cannot be considered to preserve either the character or appearance of the Conservation Area and does therefore fail the test set out in the legislation.
- 4.6 It is important to note however that the Conservation Area issues have not formed a part of the reason for refusal of this application and this point will be pursued no further.

5 COMMENTS ON THE APPELLANT'S GROUNDS OF APPEAL

- 5.1 The Council has examined the appellant's appeal statement and has the following general comments to make in relation to it.
- 5.2 The appellant's Grounds of Appeal do not fundamentally alter the position of the Council with regard to the merits of the proposal or its compliance with the development plan.
- 5.3 The appellant has made reference to the reporting by the Case Officer of the comments made by contributors to the application and on the appropriateness of the report. A planning appeal is not the place to assess such complaints; they should be made through the established complaints process. The appellant also alleges that the reduced number of objections to this application is material evidence of the acceptance of the position with regard to this site by the residents of the village. The Council disagrees with this position and would instead suggest that the level of public involvement in the enforcement appeal (see Appendix 2) is more representative of the level of public engagement.
- 5.4 The appellant has alleged that there was insufficient time for the Thomas Teague viability report to be fully assessed by both parties before determination of this application in July. The relevance of the Thomas Teague report, and the validity of the findings were however fully assessed in the recent appeal decision (Appendix 3); notably paragraphs 26, 34 and paragraphs 49 to 53.
- 5.5 The appellant has also made reference to the changed situation on the site, setting out that the lawful use of the site is now A1, as allowed under the Use Classes Order.
- 5.6 Whilst the Council does not dispute that planning permission is not required for a change of use from A4 to A1, it does not necessarily concur with the appellant that the change that has occurred is lawful or that it changes the currently approved lawful use of the property. It is clear from the 2012 appeal decision that the property is currently in an (albeit unlawful) C3 use, from which there is no permitted change. As such, the current use of planning unit appears to be a mixed A1/C3 use comprising of the unauthorised residential use of the main former public house building and the A1 use of the former

bottlestore , likely in fact to be *sui generis* and therefore not a permitted change allowed under the Circular.

- 5.7 In any event, even if the change of use were to be lawful, that change does not address the reason for refusal of this planning application. There are other, more appropriate avenues for seeking to regularise such a change of use.
- 5.8 Notwithstanding the above, the Council does not consider that the alleged change of use affects the fundamental objection of this authority to the appeal proposal; that the proposal would result in the loss of a village service which on the basis of the application and the contributions received is not conclusively demonstrated as being no longer viable.

6 CONCLUSION

- 6.1 In conclusion, it is considered that the appeal proposal is clearly contrary to the provisions of saved Policy S29 of the adopted Cherwell Local Plan 1996, as amplified by Policy S26 of the non-statutory Cherwell Local Plan 2004. The appeal proposal is also clearly contrary to the strengthened test for the loss of community facilities set out in the National Planning Policy Framework.
- 6.2 In addition, there has been no material change in the circumstances surrounding, and context to the appeal proposals since the dismissal of the ground (a) Enforcement Appeal in October 2012.
- 6.3 As such, the Inspector is respectfully requested to dismiss the appeal.

7 CONDITIONS

- 7.1 Without prejudice to the ultimate determination of the appeal, the Council requests that should this element of the appeal be allowed, that the approval should be subject to a condition limiting the domestic curtilage of the dwelling to the area shown as enclosed on the plan accompanying the planning application, excluding the area currently used as the car park. The Council would wish to see such a condition in order to ensure that the character and appearance of the two Conservation Areas would not be harmed by permitted development on the valley-side to the rear of the site.

8 APPENDICES

- 1) Officer report for appeal scheme
- 2) Cherwell District Council Proof of evidence for Enforcement Appeal (Ref #2170904)
- 3) Enforcement Appeal Decision (Ref # 2170904)
- 4) Thomas Teague Viability report submitted for Enforcement Appeal (Ref # 2170904)
- 5) Status letter of NSCLP and policy S26

Documents referred to in this statement are available for inspection at Cherwell District Council, Bodicote House, Bodicote, Banbury during normal office hours.

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