

**Site Address: Bishops End, Street
Through Burdrop, Burdrop, OX15 5RQ**

**Application Number:
14/01383/CLUP**

Case Officer: Emily Shaw

Recommendation: Refusal

Applicant: Mrs Jackie Noquet

Application Description: Certificate of Lawful use proposed – change of use from A4 to A1

1. Site Description and Proposed Development

- 1 1 The application site is located within the village of Burdrop which lies between Sibford Ferris and Sibford Gower. The site comprises a stone built building with a slate roof. The building is a vacant unauthorised dwelling which was vacated by the current owner in August 2014 and was last used as a public house in 2007. The last use of the building was as an unauthorised dwelling and it was confirmed at the site visits as set out below that there is no A4 use being carried out at the property. To the east of the building lies the car park which was associated with the public house use. There is a garden to the rear of the property which comprises a patio immediately to the rear of the property and a grassed area to the south.
- 1 2 This application seeks a Certificate of Lawful Development concerning a change of use of the property from A4 (drinking establishment) to A1 (Retail)

2. Planning history

- **February 2006** Mrs Noquet purchases Bishop Blaize public house
- **9 February 2006** Application for planning permission for 'single storey bar extension to provide non-smoking restaurant facility'. Permission granted but not implemented
- **4th August 2006** application for 'retrospective - 3 no free standing signs (in accordance with drawing received on 09/11/06)
- **22 August 2006** Planning application submitted for 'change of use of licensed premises to dwelling house'. Application refused
- **29 March 2007** Planning application re-submitted for 'change of use of licensed premises to dwelling house'. Application refused
- **March 2007** Bishop Blaize public house closed
- **16 September 2009** Planning application submitted for 'alterations and extension to barn to provide 4 no en-suite letting rooms'. Application withdrawn
- **3 November 2009** Planning application submitted for 'change of use from closed public house to dwelling'. Application refused
- **5 January 2012** Application submitted for a Certificate of Lawful Use for 'use as a single dwelling house'. Application refused
- **11th January 2012** – PCN served on Mrs Noquet regarding change of use from public house to residential
- **9 February 2012** Enforcement Notice issued in respect of '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)'. Notice appealed
- **10 May 2012** Planning application submitted for 'change of use of vacant public house to C3 residential'. Application refused. Refusal appealed
- **31 May 2012** – Application submitted for a Certificate of Lawful Use for 'use

- as a single dwelling house' Application refused Refusal appealed on 5 November 2013 but appeal rejected by Planning Inspectorate as invalid
- **14-17 August 2012** Public Inquiry held into the appeal against the above-mentioned enforcement notice issued on 9 February 2012
 - **4 October 2012** Enforcement notice appeal dismissed by Sara Morgan LLB (Hons) MA Solicitor, an Inspector appointed by the Secretary of State for Communities and Local Government 6 month period for compliance with enforcement notice begins
 - **29th November 2012** – PCN served on Mrs Noquet regarding bottle store works
 - **29th January 2013** – application submitted for 'Retrospective – new roof to barn, 3 no rooflights and door installed to the upper floor Approved
 - **4 April 2013** Enforcement notice (change of use from public house to residential) compliance period expires
 - **20 May 2013** Planning application submitted by Harrison Projects Ltd for 'erection of two new dwellings' on land forming the car park of the former Bishop Blaize Application withdrawn on 18 July 2013
 - **22 May 2013** Hearing in respect of the above-mentioned appeal against the refusal of planning permission for 'change of use of vacant public house to C3 residential' made 10 May 2012
 - **24 May 2013** Planning application submitted for 'change of use of a redundant barn/store into a 1 bedroom self-contained holiday letting cottage' Appealed due to the Council's failure to determine the application within the statutory time limit Appeal allowed 17 February 2014
 - **30 May 2013** Application submitted for a Certificate of Lawful Use for 'change of use from A4 to A1' Application refused Refusal appealed on 13 August 2013 but subsequently withdrawn
 - **13 August 2013** Planning appeal in respect of change of use application dismissed by Jane Miles BA (Hons) DipTP MRTPI, an Inspector appointed by the Secretary of State for Communities and Local Government
 - **25th September 2013** – Enforcement notice served in respect of unauthorised mobile home
 - **2nd October 2013** – Certificate of lawful use existing – A1 to A4 for sale of wood burning stoves Not proceeded with as fee not paid
 - **1 November 2013** appeal lodged against CLUE 12/00011/CLUE – use as a single dwelling house Withdrawn by the inspector as effective enforcement notice on the site
 - **6th November 2013** – appeal lodged against enforcement notice (mobile home) 20th February appeal is dismissed and notice upheld by David Murray BA (Hons) DMS MRTPI Mobile home removed from the site 4th May 2014
 - **17 December 2013** Summons served on Jacqueline Noquet and Geoffrey Noquet
 - **21st January 2014** – Enforcement notice served on Mr and Mrs Noquet in respect of an unauthorised timber building
 - **11 February 2014** First Hearing Jacqueline Noquet and Geoffrey Noquet plead not guilty
 - **24th March 2014** – Appeal lodged against enforcement notice served regarding timber cabin building
 - **16th September 2014** – appeal dismissed and notice upheld and refusal of

planning permission on the deemed application. Compliance period expires 15th November 2014.

- **29th September 2014** – Mr and Mrs Noquet were found guilty of their failure to comply with the enforcement notice served on them in relation to the unauthorised change of use from Public House to Residential dwelling.

3. Description of the site visits (Friday 12th September and Thursday 18th September)

3.1 The site was visited on two occasions during the assessment of the application. The first visit was carried out on Friday 12th September by Emily Shaw (Principal Planning Officer) and Caroline Roche (Principal Planning Officer) at approximately 10.30am.

The building was not accessible during this visit. On arrival we knocked at the front door but no one answered. There was a closed sign hanging in the window to the right of the door. From looking in through the windows we could see a glass washer tray of glasses, a few bottles/boxes of champagne, a high bar table.

The following was also noted on our visit:

- No other public house signs visible (current or historic), no opening times visible, no menu boards, no licensee plaques obvious.
- Nothing appearing to be directly pub related in the cellar – tools and building type materials.
- Viewing over the access gate revealed enclosed patio area to rear of guest accommodation, domestic CDC waste bins, a caravan, a silver car, a summer house structure and timber palettes.
- Window into the kitchen was blocked by cardboard.

3.2 The site was visited again on the 18th September 2014. The visit was carried out by Emily Shaw and Caroline Roche who met Mr G Noquet at the site. The following observations were made:

- Internal inspection carried out accompanied by Mr Noquet.
- Pile of post on door mat on entering the front door.
- High level table that was visible from previous external inspection remained in the first room when entering through the front door.
- Glass washer tray of glasses, a few bottles/boxes of champagne that were visible close to the window adjacent to the front door had been moved and were located in the second room on/adjacent to what appeared to be a bar type structure.
- High level glasses rack storing glasses adjacent to the bar structure.

- Till adjacent to the bar structure – not known if this was operational
- No other obvious bar type furniture eg Tables and chairs
- The 'domestic' kitchen area was covered over by dust sheets and windows remained obscured by cardboard
- Fridge/freezer was empty and left open
- No physical separation between what may be public areas and domestic/private areas – as you may expect to see in a public house
- Upstairs there was some domestic furniture but did not appear to be in daily use, appeared to be being stored or in the process of being dismantled/moved
- Outside there was some garden furniture, domestic in style, which was largely stacked up
- Caravan still on site
- Log cabin still on site – no change from previous visit
- Silver car was being driven by Mr Noquet but blue sports car now in the locked courtyard

4. Appraisal

- 4.1** Section 55 of the Town and County Planning Act confirms the meaning of development as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'
- 4.2** Section 191 and Section 192 of the Town and Country Planning Act allows for an application to be made to the Local Planning Authority to ascertain whether an existing use of buildings or other land is lawful. If the Local Planning Authority are provided with information satisfying them of the lawfulness of a current use at the time of the application they shall issue a certificate to that effect. S 191(2) states "For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason), and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force"
- 4.3** Section 54 of the Town and Country Planning Act states "Planning permission is required for the carrying out of any development of land" Section 57(4) of the Town and Country Planning Act states that "where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of the Act) it could lawfully have been used if that development had not been carried out"
- 4.4** The Town and County Planning (General Permitted Development) Order 1995, as

amended (2005 No 85), at Part 3, Class C allows the change of use from uses which fall within use class A4 (drinking establishments) to A1 (retail use) Furthermore, The Town and Country (General Permitted Development) Order 1995, as amended (2014 No564), Part 3, Class IA allows for the change of use to C3 (dwellinghouses) from Class A1 (Shops) or A2 (financial and professional services)

5. Appraisal

5.1 S 191(2) states "For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason), and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force " Also, where a particular use or operation on land is forbidden by an enforcement notice, permitted development rights under the Order do not override the notice (Masefield v Taylor [1987] J P L 721)

5.2 The proposed use is contrary to a valid enforcement notice the requirements of which are to cease the residential use of the land except for residential use ancillary to a public house It is clear from the proposed ground floor plan that residential use ancillary to a public house is not proposed, which would breach the enforcement notice

5.3 The provision of Section 57(4) has been set out above and for this section to apply only a former lawful use may be resumed – the relevant former lawful use is as an A4 use, which the application does not propose

5.4 It is clear from the ground floor plan that a mixed residential and retail use of the planning unit is proposed Part 3 of the Permitted Development Order does not permit changes of use from or to a mixed use (see Cocktails Ltd v Secretary of State for Communities and Local Government [2008] EWCA Civ 1523 and Belmont Riding Centre v First Secretary of State [2004] JPL 593) The proposed retail use does not occupy the whole of the ground floor of the building and therefore it is not considered to occupy the same extent that the public house use occupied as this occupied the entire ground floor of the building

Recommendation REFUSE

FIRST SCHEDULE

Change of use from A4 to A1

SECOND SCHEDULE

Bishops End, Street Through Burdrop, Burdrop, Banbury, OX15 5RQ


THIRD SCHEDULE

The proposed change of use set out within the application is not in the Local Planning

Authorities opinion considered to be permitted development for the following reasons

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

Signed Case Officer:



Date: 10/10/14

Signed SPO/TL



Date: 10.10.14

Possible
to delegate
decision: Y TN