

## CHERWELL DISTRICT COUNCIL

### TOWN AND COUNTRY PLANNING ACT 1990: Section 195 – Lawful Development Certificate Appeal

Appeal by, Mrs J Noquet, against the decision by Cherwell District Council to refuse a Certificate of Lawful Application Proposed for the Change of use from A4 to A1 at Bishops End, Street Through Burdrop, Burdrop, Banbury, OX15 5RQ.

Appellant : Mrs J Noquet  
Appeal Site : Bishops End, Street Through Burdrop, Burdrop,  
Banbury, OX15 5RQ  
  
LPA Reference : 14/01383/CLUP  
Planning Inspectorate : APP/C3105/X/14/2227213  
Reference

#### 1 SITE LOCATION AND DESCRIPTION

- 1.1 The application site is located within the village of Burdrop which lies between Sibford Ferris and Sibford Gower, a site location plan can be found at Appendix A. The site comprises a stone built building with a slate roof. The building 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.

## 2 RELEVANT PLANNING HISTORY

- 2.1 The relevant planning history is set out within the Officer's delegated report which is appended to this report at Appendix B. Mr and Mrs Noquet were convicted at Oxford Magistrates' Court on 29 September 2014 for the offence of failing to comply with a planning enforcement notice, by occupying Bishops End as a residential dwelling.

## 3 APPEAL PROPOSAL

- 3.1 This appeal relates to the refusal of a Certificate of Lawful Development Proposed (CLUP) concerning a change of use of the property from A4 (drinking establishment) to A1 (Retail).

## 4 STATEMENT OF CASE

- 4.1 Sections 191 and 192 of the Town and Country Planning Act allow for an application to be made to the Local Planning Authority to ascertain whether an existing use of buildings or other land is lawful and whether a proposed use of buildings or land is lawful. S.191(2) States " For the purpose 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 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) – See copy of case note at Appendix [E] and paragraph 3B-2016.2 of the Planning Encyclopaedia which states as follows:

***Use contrary to an enforcement notice***

*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); but it is arguable that if the Order were amended so as to grant permission for the retention of the prohibited buildings or works, or the continuance of a prohibited use, the prohibition in the enforcement notice might cease to that extent to have effect, by virtue of the 1990 Act, s.180.*

- 4.2 It is the Local Planning Authority's opinion that 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, see copy of the Enforcement

Notice at Appendix [F]. It is clear from the proposed ground floor plan that a mixed residential and retail use is proposed, which would breach the clear requirements of the enforcement notice.

4.3 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 be lawfully have been used if that development had not been carried out”. For section 57(4) 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 and furthermore this use was not evident at the recent visits to the site.

4.4 It is clear from the ground floor plan that a mixed use residential and retail use of the building 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 attached at Appendix [G] and *Belmont Riding Centre v. First Secretary of State* [2004] JPL 593 attached at appendix [H]). 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 area that the public house use occupied as this occupied the entire ground floor of the building. Therefore, even if a public house use had resumed (which the Local Planning Authority does not accept) there is not a clear change of use from A4 to A1 proposed and this could not be considered to be permitted development under Part 3 of the Town and Country Planning (General Permitted Development) Order 1995.

## **5 CONCLUSIONS**

5.1 It is the opinion of the Local Planning Authority that the proposed development would not be lawful for the reasons set out above. Accordingly the Inspector is respectfully requested to uphold the decision made by the LPA and dismiss this appeal.

## **6 Appendix**

**Appendix A: Site Location Plan**

**Appendix B: Officer’s delegated report**

**Appendix C: photos from site visit on the 12<sup>th</sup> September 2014**

**Appendix D: photos from site visit on the 18<sup>th</sup> September 2014**

**Appendix E: Extract from Planning Encyclopaedia**

**Appendix F: copy of the Enforcement Notice**

**Appendix G: Cocktails Ltd v. Secretary of State for Communities and Local Government [2008] EWCA Civ. 1523**

**Appendix H: Belmont Riding Centre v. First Secretary of State [2004] JPL 593**

**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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Date: 25th November 2014