



SEPTEMBER 2017

DALE INGRAM (PLANNING FOR PUBS) PLANNING OBJECTION SUBMISSIONS REGARDING THE OLD HOUSE AT HOME (OHAH)

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Brian Conlon
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12th June 2016

Change of Use A4 Public House to C3 Residential Dwellinghouse
The Old House At Home Tylney Lane Newnham Hook Hampshire RG27 9AH
Ref. No: 16/01315/FUL | Received: Thu 14 Apr 2016 | Validated: Tue 26 Apr 2016

Dear Mr Conlon

Planning For Pubs Ltd. is instructed by Newnham Parish Council to object to the application referenced above.

It is my contention, on behalf of my clients, that the application is contrary to local plan and national planning policy (NPPF, 'the Framework') as well as statutory protection for the historic environment and there is no planning benefit to overcome the many reasons why the application should be refused.

Consequently we invite Basingstoke & Dene Borough Council to refuse consent for the development.

I note from correspondence with my instructing client that BDBC has commissioned its own viability assessment and that this is to be received by you within 2 weeks of today's date (or possibly last Friday). On behalf of my client, we reserve the right to comment on any evidence submitted by any party before a decision is taken.

In the interests of natural justice and proper planning procedure I would be grateful if you would publish the additional report on receipt on the council's planning record for this application and allow a week for Newnham Parish Council or their professional team to comment on its content. It would be helpful if you were to notify me once this has been done.

The Parish Council's professional representatives are Anthony Miller FRICS and myself.

Thank you for your time on the telephone when it was agreed that final submissions by the Parish Council must be made no later than this Friday 17th June.

Planning For Pubs Ltd.



Summary of objection:

- the applicants have not supplied a heritage statement (i.e. 'demonstrated a thorough understanding of the heritage asset') required by BDBC's own planning application checklist and policy EM11 (a) respectively and this renders the application invalid. It should not be determined until the applicants can satisfactorily justify the harm to the significance of the heritage assets or should be refused on the basis that one has not been provided.
- the loss of the public house use is unjustifiably harmful to the character of a designated heritage asset contrary to local and national policy EM11(b) & NPPF P134
- the loss of the public house use is unjustifiably harmful to the character of a non-designated heritage asset contrary to local and national policy EM11(b) & NPPF 135
- the proposal does not 'respect the historic interest or local character' of Newnham or retain the significance and character of the affected heritage assets and is consequently contrary to policy EM11(c) and (e)
- there is no planning benefit from the proposal- the premises already incorporates one (ancillary) residential unit
- the description in the application form does not match other parts of the form or supporting documents- is it the whole premises or just the residential parts?
- there has been no pre-application consultation with the local community, particularly the Parish Council, or with the local authority, contrary to P188- 190 and the BDBC application checklist which requires a Statement of Community Involvement
- the applicant has not supplied a wildlife appraisal required by BDBC planning application checklist and Natural England and the site has the potential for birds/bats
- the conversion of the pub to private residential use will result in the permanent loss of employment opportunities for local people and allied businesses



- the licensing record shows no history of trouble and there are no restrictions on the license issued in October 2015
- the loss of the public house use will be detrimental to the economic and social infrastructure and heritage significance of Newnham contrary to policy SD1 Sustainable Development
- the provision of one dwelling is contrary to policy SS6 New Housing in the Countryside, a policy which requires that the Parish Council identify a local need. *There is no local need*, especially one requiring the loss of Newnham's only pub
- under CN7 the applicants have failed to demonstrate clearly that the Old House at home is no longer needed, that its use is unviable or that it is no longer practical or desirable to retain it.
- the community is readying itself to make a bid by preparing a business plan and fundraising to take the pub into local ownership, demonstrating its value under NPPF P69 and P70.
- We provide herewith expert opinion by Anthony Miller FRICS that the premises is viable in use as a public house whether in community ownership or under a commercial free of tie lease
- the previous operators Oliver and Suki Williams made a bid for the freehold in 2013 which they would not have done had it been unviable
- there is no adequate or equivalent substitute within the 800m suggested by Manual For Streets as a suitable distance to walk to local services
- EM10 High Quality Development is not satisfied as the loss of an important social amenity and heritage asset (the use) cannot be regarded as 'high quality development' or good design which must include the way places are experienced by those who live there; no alterations have been proposed to the fabric which would minimise climate change etc



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Appeal Decisions:

Viability & loss of use: Mole Inn Monk Sherborne (BDBC), The Three Crowns Wisborough, Feathers Westminster, Rivers Arms Cheselbourne and the Merry Mouth Chipping Norton.

Harm to Conservation Area from loss of use: Cross Keys Chelsea, Chesham Arms Hackney, Rose & Crown Henley, Feathers Westminster, Plough Shepreth.

ACV Listing material to planning decisions: Centurion Chester, White Lion Goring, White Swan Hunmanby, Chesham Arms Hackney, Golden Lion Camden, Plough Shepreth.

Planning Court Judgements: applications for judicial review

Yew Tree, Chew Stoke: to ACV listing.

Obar Camden v LB Camden: failure to require applicant to assess heritage significance, impact and harm.



1 Introduction

The Old House at Home is a public house which has been in use as such since about the end of the C18th and possibly earlier. It has passed through several different ownerships during its history until 2015 when it was acquired by the present freehold owner Red Oak Taverns Acquisitions Limited (Co Registration No 09697005).

Red Oak Taverns or one of its constituent companies is seeking change of use of all or part of the premises (it is not entirely clear which, see below) from A4 drinking establishment to C3 dwellinghouse.

The Old House at Home was registered as an Asset of Community Value in 2015 and remains on the BDBC Asset Register. No challenge has been made by the owner to the listing.

2 The site

2.1 The Old House at Home is a traditional public house, the front part having been constructed (judging from its appearance and map evidence) during the early to middle of the C19th. It is situated at the bottom of Tylney Lane, historically the chief northern exit from the village, where it joins Newnham Green.

2.2 The pub makes a valuable contribution to the Newnham Conservation Area, being identified in the Character Appraisal as a building of local interest. The conservation area appraisal was adopted as a Supplementary Planning Document in 2004 and thus forms a material consideration in planning and heritage matters. Its identification as a BLL confers 'non-designated heritage asset' status and the full weight of relevant protection in the Local Plan and national policy.



2.3 The conservation area itself benefits from statutory protection under S66 and S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

3 The application

3.1 Identity of the Applicant: Firstly, I note that the planning application (Box 1) is in the generic name of 'Red Oak Taverns'. Companies House records several derivations of this name all registered at Mountcliff House, 154 Brent Street, London, NW4 2DR and sharing at least one director (Mark Grunnell) in common:

RED OAK TAVERNS LIMITED 07793587; RED OAK TAVERNS FINANCE LIMITED 07794380; RED OAK TAVERNS HOLDINGS LIMITED 07793494; RED OAK TAVERNS ACQUISITIONS LIMITED 09697005; RED OAK TAVERNS INTERMEDIARY LIMITED 09705522; RED OAK TAVERNS GROUP HOLDINGS LIMITED 09711521.

'Red Oak Taverns' as such is not a specifically identifiable person, firm or company.

3.2 In a current planning inquiry on the Feathers Linhope Street (Westminster PINS appeal ref 3024042 began 14/6/16, ongoing) a question has been raised by the Inspector as to the identity of the appellant. The company which owns the site has changed hands since the application which is the subject of the appeal was refused. It is not at all clear that the applicant for permission (a Peter Siebenborn, previously but no longer a director of that company) is in fact the appellant and this has caused some difficulty with whether the appeal is a valid one. Applications for consent must be made by individual even if on behalf of another person (an individual or body corporate), and appeals can only be brought by that individual, or with their specific consent, in their name by another party. Who is the applicant and for whose benefit is the permission being applied for?



3.3 Consequently it is unclear by whom, and for whose benefit the planning consent is being applied for and the applicant or his/her agent should make this clear before the application is determined. Planning permission may of course be applied for by any party not just the owner or occupier which means it could ultimately be for the benefit of any of the Red Oak companies. Difficulty in this instance where it is not clear may arise at a later date for any party in knowing for certain who the beneficiary is of any consent. And indeed the planning authorities themselves will need to be able to identify the specific individual and any related company in any enforcement or other action which may be required in respect of conditions, S106 or CIL liability and so on.

3.4 Box 4 : Address details. The site is somewhat quaintly described as 'Living Accommodation The Old House at Home', which means, taken at face value, that in fact consent is only being sought for that part of the site in (ancillary) residential use, when the planning statement and Box 18 (loss of non-residential floorspace) indicate that consent is being sought in respect of the whole of the premises. Consequently there is a conflict both between different sections of the application form and its supporting documents. If consent is only being sought in respect of the living accommodation with no change of use proposed for the ground floor premises, the application is for mixed use A4 and C3 (which would be sui generis). The description needs properly to be clarified.

3.5 Box 5: Applicants declare that no pre-application advice was sought from the local authority. The Parish Council had one unsatisfactory meeting with Mark Grunnell, director of Red Oak Taverns Acquisitions Ltd on May 3rd, i.e. after the application was made. At that meeting they expressed clearly their resistance to the loss of the public house use. NPPF P188-190 refer, especially P189 which draws the applicant's attention to the good sense in consulting the community that will be affected by their proposal



before any application is made. The Parish Council in any case are statutory consultees to any planning matters within their jurisdiction and have made a substantial objection already.

- 3.6 The BDBC application checklist requires a Statement of Community Involvement: none supplied, and indeed no meaningful community consultation carried out either. The single meeting between Mark Grunnell of Red Oak Taverns (various) on May 3rd 2016 referenced above does not constitute 'community consultation', it does not go far enough, and in any case has not been documented and submitted with the application. Other representations will make comments on this meeting.
- 3.7 Box 7: no provision has been made for waste or recycling.
- 3.8 Box 13: Biodiversity. Public houses of traditional design and detailing, especially empty ones, provide attractive sites for bats and nesting birds. The premises has been vacant for 16 months, quite enough time for protected species to have taken up residence, even if they were not there previously. The setting which incorporates a large number of mature trees with farmland beyond is highly likely to be attractive to foraging bats. No wildlife assessment has been supplied with the application and in my view, in the circumstances, should have been.
- 3.9 Box 15: Trees and Hedges. As noted above in 2.6. the site is surrounded by a large number of mature trees and shrubs and part of the site is enclosed by hedging. In any case Newnham is a conservation area and the trees and hedging, especially where they envelope the built form and create a boundary, are essential to its character. The box 'yes' should have been ticked.
- 3.10 Box 17: Residential Units. The form does not make provision for recording that the application will merely substitute a non-ancillary residential use for an ancillary one.



The residential accommodation at the premises was previously used as live-in staff accommodation. There will thus be no net gain in residential provision. Box 'no' should therefore have been checked, and 'existing residential units' should read '1'. There is no planning gain from the proposal.

3.11 Box 19: Public houses of this size typically directly employ up to 6 or 7 staff, and indirectly support up to 19 other jobs in brewing and food production. The loss of the employment use has not been identified in the application form.

3.12 Box 20: the current Premises License (15/01472/PREMT, Designated Premises Supervisor Oliver Williams dated October 2015) records the licensing hours as Monday to Saturday 11:00 - 23:00 and Sunday 12:00 - 22:30 with the hours of opening at the licensee's discretion. The license also records that no restrictions have been placed on it. Any restriction would be indicative of a 'troubled' history, and by all accounts the Old House at Home has not been a source of trouble.

3.13 The requirements of Basingstoke & Deane BC iro applications for full planning consent include a Biodiversity Survey & Report (as noted above at 2.6, none has been provided). More importantly, the Old House at Home as a traditional building with its origins in the C17th or C18th and by virtue of its use, makes a positive contribution to the Newnham conservation area. The pub itself is a non-designated heritage asset and the conservation area is a designated heritage asset. The proposal is harmful, in my professional opinion, to the character of both. Consequently a Heritage Statement should have been provided to satisfy NPPF policies (p128-135) and Local Plan policies on both designated and non-designated heritage assets.

3.14 Moreover, the planning authority has a statutory obligation under the *Planning (Listed Buildings & Conservation Areas) Act 1990*. Section 72 of the act requires that



LPAs pay special attention in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of a conservation area. Indeed the Framework's policies give effect to how this should be done, both the applicant's responsibility and the planning authorities'. I will turn to this and the failure of the application to address the requirements of the Framework later in my objection.

3.15 The application should not have been progressed without a Heritage Statement or a Biodiversity Statement and in my professional opinion, is invalid and cannot lawfully be decided without them. On advice from counsel in an almost identical case, the *Duke of Wellington LB Tower Hamlets* in January 2016, I have to say that deciding the application without the necessary supporting evidence is grounds for a successful application for Judicial Review.

3.16 I refer you to *Obar Camden Ltd V London Borough of Camden [2015] EWHC 2475 (Admin)* (attached) in the Planning Court in 2015, particularly para 4 (1). In that instance Camden's officers were criticised for their failure to require the applicant to assess heritage significance, impact and resulting harm despite a requirement in their Local Plan validation checklist ('CLARPA') for a heritage statement.

3.17 In Shropshire at the Cross Keys Kinnerley Shropshire (attached) in 2014 English Heritage wrote "the application itself does not contain an adequate heritage statement and that would in itself be sufficient grounds for refusal..... [Recommendation] ... insufficient heritage information has been supplied for its proper determination." My emphasis.

3.18 A Heritage Statement by a competent qualified professional should be sought in compliance with BDBC's own planning application checklist before any decision to approve is taken, or to refuse, per *Cross Keys* above, on the grounds that one has not been provided. I urge you not to ignore this element of this submission.



4 The planning context and commentary.

4.1 The Local Plan comprises the Basingstoke & Deane Local Plan 2011-2029 ('BDLP') and the National Planning Policy Framework. The BDLP was adopted on May 26th 2016 and is now the applicable policy, absent any application for judicial review before the 6 week JR period which expires 7th July 2016. Very great weight can therefore be attached to its policies. It is understood that there are no longer any saved policies relevant to this application.

4.2 Relevant BDLP policies include: SD1 Presumption on [sic] Favour of Sustainable Development; SS6 New Housing in the countryside; CN7 Essential Facilities and Services; CN8 Community Leisure and Cultural facilities; EM10 Delivering High Quality Development; EM11 The Historic Environment; Policy EM4 Biodiversity; EP4 Rural Economy; EP5 Rural Tourism. I propose to deal with these each in turn.

4.3 SD1: PFSD policy is a restatement of the NPPF's assertion that SD must be the 'golden thread' which guides policy making and decision taking. SD balances and gives equal weight to all three dimensions of sustainability- the economic, social and environmental.

4.3.1 Public houses, perhaps uniquely, qualify strongly in all three, being

A/ sources of direct and indirect employment and contributing taxes locally (business rates) and nationally (VAT, income tax, NI).

B/ places of social interaction and cohesion and

C/ buildings, for the most part, over 50 years old, and about half of these nationally are located in conservation areas, giving them environmental (heritage) value.



Sustainable neighbourhoods need to be walkable, accessible, well served by public transport and have the facilities needed for day-to-day living without recourse always to a car. The loss of a valued public house is not sustainable development at any level.

4.3.2 Any proposal which fails to give equal and due weight and consideration to each of these is, by definition, not sustainable. No proper consideration has been given by the applicant to the loss of a valued community facility, (P69 & P70, CN7 and ACV), a source of local employment and economic activity (EP4 & EP5) or the harm to two heritage assets (P128-135, EM11).

4.4 SS6 New Housing in the Countryside. (e) stipulates that 'small scale residential proposals .. that meet a locally agreed need..' will be approved, and goes on to specify at 4.71 "new homes [to] enhance or maintain the viability of rural communities and meet identified needs.." and 4.77 "meet a local need agreed in consultation with the Parish Council" i.e. that it is district and parish councils that decide whether, and what type of need there is for development in their areas. It is no wonder Newnham Parish council are so incensed by this application which is attempting to ride roughshod over their long-established and understood protocol. There is simply no need identified by the Parish Council for a single house which would supplant a useful, valued and viable community social facility. Consequently the application fails to meet SS6.

4.5 CN7 Essential Facilities and Services; CN8 Community Leisure and Cultural facilities. I have taken these two together because neither alone deals with the combined intentions of the NPPF P28, P69 & P70, all of which apply to public houses even if P69 does not mention them specifically. In that respect I am sorry to say that in my view CN8 particularly is not compliant with the Framework. No special protection has been afforded by the BDLP to the specific protection afforded to village/rural social and community facilities. For this reason, P28 should be applied as the local plan is



silent in this respect.

4.5.1 CN7 *“Development proposals which would be detrimental to or result in the loss of essential facilities and services that meet community needs and support well-being will only be permitted where it can be clearly demonstrated that:*

a) The service or facility is no longer needed;

or

b) It is demonstrated that it is no longer practical, desirable or viable to retain them;

or

c) The proposals will provide sufficient community benefit to outweigh the loss of the existing facility or service, meeting evidence of a local need.”

4.5.2 The applicants have provided an 'expert' report from Stuart Parsons of Fleurets which seeks to substantiate that the premises are no longer viable in public house use. The Parish Council have commissioned a report of their own from Anthony Miller which demonstrates that Mr Parsons' findings are unreliable and have failed properly to apply the necessary principles required by RICS Guidance. His report is appended.

4.5.3 It is a common failing (I have seen this several times) for surveyors to overlook or ignore the potential for communities to acquire and run community public houses based on a very different model to the standard commercial enterprise. For example, grants and low interest loans are available to community organisations. They may run the premises on a volunteer, or part-volunteer workforce to reduce the staff cost overhead. Most if not all pubs acquired by their communities are run on a not-for-profit basis, any surpluses being reinvested in the



premises or other community projects. Mr Parsons' report does not take account of the ACV buyout or community purchase models.

4.5.4 It is not pubs, the bricks and mortar, which become unviable. There are some pubs which by virtue of their geographic or socio-economic location or a recent history of multiple failure which may be regarded as such, at least in the short to medium term. But it is in fact pub *businesses* which become unviable- either the business model doesn't work or the people running it aren't moving with the times to provide what their customer base wants. It is apparent from the figures obtained by the emeritus Parish Council Chair, Clive Pinder from the pub's previous tenant evidenced in his written submission, that the business was, for many years, perfectly viable.

4.5.5 A significant number of planning appeal decisions in recent years have hinged on the failure of the applicant to properly demonstrate a lack of viability. These include The Three Crowns Wisborough, Cross Keys RBKC, Feathers Westminster, Rivers Arms Cheselbourne and the Merry Mouth Chipping Norton.

4.5.6 The Parish Council firmly believes that under a community-ownership model with a live-in landlord couple (rather than the live-out management as previously), the Old House at Home could be a perfectly viable proposition. The PC is currently working on a Business Plan which will be used to underpin an application for a loan from the Public Works Loan Board and other funding bodies so that they can be in a good position to make a prompt offer if the premises were to be offered for sale under S95 of the Localism Act. I have seen the early draft which is well advanced.

4.5.7 In short the Parish Council assert that the applicants have not 'demonstrated' that the pub is unviable and Mr Miller's report casts doubt on whether it ever was.



Indeed the previous licensees Mr & Mrs Williams¹ made an offer for the freehold to Christies in the order of about £325k in 2013 when it was offered to them following the failure of the previous freehold owner. They would not have done so if they were running an unviable business or had any idea that it might fail in the near future.

4.5.8 Substitute premises. The Fleurets report and Anthony Miller's rebuttal of it propose that there are other public house premises for the community to use. The closest is more than half a mile away and in any case is of a markedly different character to the Old House at Home.

4.5.9 The Manual for Streets *"4.4.1 Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800 m) walking distance of residential areas which residents may access comfortably on foot. However, this is not an upper limit and PPS13 states that walking offers the greatest potential to replace short car trips, particularly those under 2 km."*

There may well be a greater radius for some services, say a convenience store or sports facilities which are likely to be used principally during the day. Most people would not be averse to a 2 or 3 mile cycle, drive or walk to visit a pharmacy, dry cleaners, corner shop or tennis courts, but not to public houses which are chiefly used at night, after dark, and sometimes late into the night on special occasions. The road to the nearest alternative premises, the Hogget, has a footpath but no street lighting and is only accessible by crossing the busy A30. On foot or bicycle the Hogget is 1448m (0.9 miles) from the Old House at Home, comfortably outside the Manual For Streets optimum distance for walkability of 800m.

Moreover, the chief purpose of public houses is the supply of alcoholic beverages,

¹ Personal communication by telephone with Olly Williams 8th June 2016



the consumption of which is an activity incompatible with driving or cycling even a short distance.

4.5.10 In two appeal decisions (Golden Lion Camden, Feathers Westminster para14, appended) the Inspector countered the appellant's 'substitute premises' argument by recognising that while there may be other premises within reach, that they were not equivalent or adequate substitutes for the subject site. This is especially the case where the premises has been nominated or registered as an Asset of Community Value.

4.5.11 On that basis, given that there is sufficient strength of feeling about the desirability of retaining the premises in use, it is definitely needed (the alternatives are neither conveniently accessible nor equivalent), it is practical- following a refurbishment, which all pubs need from time to time anyway and there is no community from the provision of one private dwelling, the policy has not been satisfied.

4.5.12 CN7: Mole Inn, Monk Sherborne, BDBC. I note with much interest the findings of the Inspectorate in the appeal decision relating to a near-identical application (A4 to C3 dwelling). Following a period of uncertain trading, an application was made for the conversion of this last-pub-in-the-village to a house in 2011. Many of the same issues surrounding viability and marketing and value to the local community applied in that instance. The officer recommendation was to approve, the application was refused and committee and the appeal dismissed principally in line with NPPF P28 and then LP2006 policy C8 which did reflect the protection of rural services.

A trawl today of the planning record indicates that the premises may soon reopen as



a pub. A new license for the supply of alcoholic drink on and off the premises together with live and recorded music was issued by BDBC in December 2015.

4.6 EM10 Delivering High Quality Development. The application does not propose any alterations to the fabric of the building. It is difficult to see how the development can therefore meet aspirations for the appropriate adaptation of historic buildings to other uses, greenhouse gases, thermal performance and the like. It cannot therefore be considered a high quality development.

4.7 EM11 The Historic Environment.

4.7.1 The NPPF P128 & P129 requires that applications for *development* (which includes both change of use as well as physical alterations or 'operational development') affecting heritage assets must assess the significance of the heritage asset, the impact of the development on that significance, and where the impact is judged to be harmful, that harm must be justified (P134 designated heritage assets & P135 non-designated heritage assets).

4.7.2 These policies are reflected in the main- but not entirely, and this is a significant oversight in the policy- in EM11 which stipulates that "all development must conserve or enhance the quality of the borough's heritage assets".

EM11(a) requires that applications "must demonstrate a thorough understanding of the heritage asset, how this has informed the proposed development and assess the impact of it on that significance". Signally, nowhere does EM11 require, as the NPPF does at P132 (designated heritage assets) "clear and convincing justification" of "any harm or loss".

EM11(b) requires that "alterations respect ... any other aspects contributing to the significance of the host building". The loss of the public house use, more than any



other alteration, is harmful to its significance. This has been borne out by many appeal decisions relating to listed public houses (attached).

EM11(c) proposals must “demonstrate a thorough understanding of significance, character and setting of conservation areas and how this has informed the proposal.. [and must be] respectful of its historic interest and local character.” No heritage statement of any kind has been supplied with the application. The applicant has failed to meet this requirement of the policy.

EM11(e) proposals must “Retain the significance and character of historic buildings when considering alternative uses and make sensitive use of redundant historic assets.” Since the application fails to identify the significance, assess the impact, identify any harm or justify that harm, I submit that in ceasing the public house use, the proposal does neither of these things. Nor is it sensitive to the site's long-established use as a public house open to the community for social benefit which will be lost, or demonstrated that the use is redundant (“unviable”).

4.7.3 Two heritage assets are harmed by the proposal, one designated – the Newnham Conservation Area- and one non-designated – the Old House at Home itself. Since the proposal is not for demolition, the harm cannot be said to be substantial in either case.

4.7.4 Harm to conservation areas by change of use. Too often, only the impact of physical changes in conservation areas are considered by LPAs. In a High Court case in 1994, the judge (Roy Vandermeer QC) did not agree. Quoting from Mynors (attached):

“It seemed to him quite plain that matters such as the nature of a use and its effect could be of consequence. A change of use might, for example, affect the historic



interest of an area. Or the character of an area might be affected by noise. He wholly rejected the proposition that the test was limited so that the only considerations that could be brought within the compass of S72 were matters affecting physical structures.

This decision will be of assistance particularly in the case of applications for change of use of buildings in conservation areas - where perhaps Conservation Officers may not become involved at all. It emphasises the importance of considering carefully and defining explicitly just what is the special character of each conservation area, so that such applications can be considered in the light of the probable effect of any proposed development on that character.

This case also suggests that factors other than merely those affecting the physical fabric may be relevant when considering proposals affecting listed buildings.”

4.8 Policy EM4 Biodiversity. “Applications for development must include adequate and proportionate information to enable a proper assessment of the implications for biodiversity ...” No appraisal of the site's potential for protected species has been undertaken. This is not a lack which can be overcome by condition. Evidence must be provided with the application and assessed alongside all other material matters.

4.9 EP4 Rural Economy; EP5 Rural Tourism.

4.9.1 The application will be responsible for the loss of an important local employment source, and a destination venue for walkers and stopping off point for motorists and cyclists. Basingstoke Walking Club use the car park for their cars and as the starting and end point for their rambles approximately 3 or 4 times a week. When the pub was open they would often lunch or have a drink there at the end of a morning walk. It is noted that the policies contain no protective cover for existing economic uses or tourism facilities, only the control of new development, but there



will be a harmful impact locally on both counts.

5 Historic significance appraisal.

5.1 It should not be the responsibility of an interested party to supply a lack on the part of an applicant for planning permission. Consequently I have not produced a detailed building history and significance assessment of the Old House At Home or its conservation area. I have undertaken enough research on my own account and been supplied with sufficient historic research materials to make a brief appraisal. These (supplied by lifetime Newnham resident Nigel Bell) are attached as Appendix 1.

5.2 There appears to have been a building or collection of buildings on the site presently occupied by the Old House At Home since the late C18th. Biographical research indicates that the Poulterers were a significant family in the area, landowners and potentially business men of sorts, and that the Old House at Home was for many years owned and/or run by them or by family members by marriage.

5.3 The 2004 Conservation Area Appraisal reads:

“The Old House at Home Pub has a prominent corner site facing the village green and is part of a significant group of buildings along the edge of the green. The building dates from the 19th century and is constructed of red brick (rendered at the front elevation), with a slate roof and a central chimneystack. The existing signage is sympathetic to the character of the Conservation Area, however the timber sash and case windows were recently replaced in PVC.”

5.4 Contribution to the conservation area. Conservation areas are valued as much for their mix of uses as their physical appearance and arrangement. In a traditional village setting like Newnham, the typical historical provision of church, pub and manor



house, grouped within easy range of each other, are present. A pub's contribution to a conservation area is threefold. Visually they are for the most part handsome historic buildings suitable for their context. Its use provides a means of social interaction and recreation. It is in the mix and variety of architectural styles and uses that a conservation area derives its particular heritage value.

Public houses have a singular role to play both as landmarks and wayfinders in the built environment and in their particular value in use to the communities that they serve. After dark, they provide a reassuring presence through their lights and the arrival and departure of their patrons. As described elsewhere, they form a locus of community without which the residential streets become no more than dormitories.

5.5 A brief analysis of the maps and image (photograph c1900) indicates that there was an earlier building standing to the rear of the mid C19th pub we see today, of perhaps the C17th or early C18th, thatched. Mr Bell's mother recalls as a young child watching the roof ablaze. It is not clear how much of that early building still survives since no internal inspection has been possible.

5.6 In any case it was not at all uncommon up until the Second World War for a new public house to be built immediately in front, behind or adjacent to an existing premises if there was space on the plot. Then the old premises would be pulled down. In other cases the new structure would be simply an extension, in what was then the modern architectural idiom of the time, to what was already there. The two bay two storey building under a pitched roof, fronting onto Tylney Lane at Newnham Green is a typical example of the domestic style of both rural and suburban public houses of the early/mid Victorian era, carried out not to a fanciful design by an architect but by a competent local building contractor in local vernacular style and materials.



- 5.7 This is what appears to have happened here, and would explain the relative modest scale- it is not, and was almost certainly never intended to be, a stand-alone structure. To the rear the plan form of the earlier thatched supposed 'beer house' is reflected in the masonry envelope enclosing the kitchen and scullery. There are later extensions which are recorded in the planning history.
- 5.8 The timber framed and clad range to the north west, now dining room, has a barn-type door and a stable door opening onto Tylney Lane. Such structures were legion in the C18th & C19th, and all built to a similar design and materials making them difficult to date with certainty. This trap barn/stable suggests that the publican, a reasonably well-to-do profession of the time, would have kept a pony and trap either exclusively for his own use or, as was very often the case, to take people and goods to the local market or to be hired out with or without a driver (self-drive hire or 'taxi') for those who could not afford their own transport.
- 5.9 The principal significance of any historic building is usually its use. Public houses, generally modest affairs until the pub rebuilding boom of the 1880s and 1890s, and that only in large metropolitan areas, were simply that: houses into which the paying public could come and pay for beer, or spirits and to meet friends, family, neighbours and business contacts for conversation and a variety of pub games.
- 5.10 Architecturally, rural examples are pretty much indistinguishable, except by their hanging standard and building signage, from their surrounding domestic context. Consequently the loss of signage is proportionately more harmful to historic and visual character as it may be the only thing (until you get inside to the bar counter) identifying a pub as anything other than a residential dwelling. Many breweries commissioned significant artists to paint their inn signs and design stoneware wall plaques and tile



panels, such as Carter & Co of Poole. Some of these therefore may be regarded as works of art in their own right. The CAA notes the traditional signage.

5.11 The two bay two storey building with its canted bays fronting onto Tylney Lane at Newnham Green is a typical example of the domestic style of both rural and suburban public houses of the early/ mid Victorian era. The CAA notes its similarity in appearance to the neighbouring Newnham Lodge.

5.12 Setting: the CAA notes the “prominent corner site facing the village green and is part of a significant group of buildings along the edge of the green.” Buildings in the immediate vicinity forming its context are for the most part detached individual family dwellings. The Old House at Home is the only commercial building in the village, and one of only three public buildings including the Church of St Nicholas and the village hall.

5.13 Summary of significance: the Old House at Home's architecture is a typical rather than exceptional example of an early or mid-Victorian public house both in its external appearance and interior layout/plan form. Its location on one of the historically main exits/entrances from and to the village is significant as it is located conveniently for both residential and travelling customers. Its primary significance is its historic use as a public house serving the social and community needs of Newnham and its immediate environs since at least the C18th. It makes a positive contribution to the Newnham Conservation Area both by its traditional historic appearance and use.

6 Non-planning material considerations.

6.1 The Non Statutory Advice Note to Local Authorities issued by DCLG in 2012 reads: “2.20the fact that the site is listed may affect planning decisions - it is open to the Local Planning Authority to decide whether listing as an asset of community value is



a material consideration if an application for change of use is submitted, considering all the circumstances of the case. “

6.2 The applicants appear to have accepted the significance of the Old House at Home as an Asset of Community Value by not pursuing any Review or Appeal to the First Tier Tribunal.

6.3 The community have run a petition “Save Our Pub”, which has over 1000 signatures. This establishes the value of the premises to the local community, underpinning the 'needed' element in CN7 and the ACV listing. The petition is aimed at both the planning authorities and Red Oak Taverns as the freehold owner and developer.

6.4 A significant number of planning decisions at local level and at Appeal have turned on the applicability and weight to be given to the ACV registration of pubs (and other assets) in the decision making process on applications. Dismissed appeals include (all decisions supplied):

The Centurion, Chester; White Lion, Goring; White Swan Hunmanby; Chesham Arms Hackney, Golden Lion Camden.

6.5 Government has considered the planning protection of public houses listed or nominated as Assets of Community Value sufficiently important to amend the General Permitted Development Order (GPDO). From April 2015, no A4 premises listed as an ACV may be subject to a permitted development change of use or demolition without a planning application. Sites not listed are now subject to a 56 day consultation period to allow the necessary application to be made before any PD right in respect of change of use or demolition may be exercised. A key case in this regard is the unlawful demolition of the Carlton Tavern in Westminster which has recently (May 2016) been the subject of



a public inquiry and the Inspectorate's decision is awaited.

- 6.6 Yew Tree Chew Stoke 2015: Planning Court Judicial Review. Judged the materiality of ACV listing to the relevant planning decision. Planning consent & ACV delisting quashed by the court April 2015. Consent subsequently refused on reconsideration when due weight applied. Judgement and subsequent planning decision supplied.

In summary, the application for the loss of this ACV listed public house use to a private dwelling does not satisfy any of the tests laid out in the local plan or national planning policy relating to the protection of community facilities and heritage significance and runs contrary to specific protection for the historic environment laid out in statute.

On behalf of my client, I respectfully request that the application is refused at delegated officer level, or as appropriate, by the BDBC development control committee as it does not comply with policy and because consequently there are ample grounds to robustly defend any consequent appeal.

Dale L Ingram MSc CHE FRSA
Director



7 Author

Dale Ingram has a Masters degree in Conservation of the Historic Environment from Reading University. She is a Fellow of the Royal Society of Arts and Manufactures and a member of many Societies for the study and protection of heritage including the Victorian Society, Georgian Group, Society for the Protection of Ancient Buildings, Tiles and Architectural Ceramics Society, Wallpaper History Society, Society of Architectural Historians of Great Britain, the Pubs History Society and Brewery History Society.

Since 2010, she has specialised in the conservation of public houses and breweries and has undertaken more than 200 heritage appraisals both formal and informal, and analysed and commented on more than 150 planning and listed building applications and enforcement matters relating specifically to pubs and breweries in that time. She has advised or acted on more than 30 Asset of Community Value applications for public houses and a number of ensuing preliminary Reviews and Appeals to the First Tier Tribunal.

Dale is a professionally trained and experienced Expert Witness at planning appeals and in the courts giving opinion on planning matters relating to Landlord & Tenant Act 1954 cases.

This submission is not expert opinion but advocacy on behalf of her client, Newnham Parish Council.

Statement of truth: everything in this submission is true, or I believe it to be true. Where evidence has been provided by others I have identified it as such and where I have been unable to corroborate its truth independently, I have said so.

Neutral Citation Number: [2015] EWHC 2475 (Admin)

Case No: CO/738/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/09/2015

Before :

MR JUSTICE STEWART

Between :

Obar Camden Limited	<u>Claimant</u>
- and -	
The London Borough of Camden	<u>Defendant</u>
- and -	

Vidacraft Limited	<u>Interested</u>
	<u>Party</u>

Tom Cosgrove (instructed by Berwin Leighton Paisner LLP) for the Claimant
Giles Atkinson (instructed by Solicitor for the London Borough of Camden) for the
Defendant

Hearing dates: 05 August 2015

judgement

Mr Justice Stewart :

Introduction

1. On 6 January 2015 the Defendant Council (D) granted full planning permission subject to a section 106 legal agreement in respect of the Hope and Anchor Public House, 74 Crowndale Road, London NW1 1TP. This authorised change of use from public house (class A4) to alternative uses as either retail or estate agent's offices (class A1/A2) at part ground, part basement levels and residential (class C3) to provide 8 flats..., enlargement of existing basement with side lightwell, replacement of single storey rear/side addition with 3 storey rear/side extension and mansard roof with terrace and associated alterations to windows and doors.
2. The Claimant (C) seeks judicial review, pursuant to permission granted by Collins J, of D's decision. C operates a nightclub, live music and performance space (trading as KOKO). C's premises at 1A Camden High Street are a landmark Grade II listed building of national importance and special interest. The application site immediately abuts and shares a party wall with C's premises.

3. On 21 August 2014 D's development control committee resolved to grant permission after considering an Officer's Report (OR).
4. There are 5 Grounds upon the claim is based, the central issues being those of D's approach to designated heritage assets and the assessment of noise.
 - (i) The Camden Local Area Requirements for Planning Applications (CLARPA) required a Heritage Statement to accompany the application to assess and justify the proposal by reference to section 12 NPPF.
 - (ii) Further, the application being for noise sensitive development as defined by NPPF, CLARPA required a noise and vibration impact assessment to accompany the application.

Neither of these was submitted with the application on 10 April 2014. No Heritage Statement was ever submitted but a noise assessment was provided by the Interested Party who had submitted the application. This noise assessment was provided in June 2014, being a letter of 23 June 2014 and a report dated 25 June 2014 by Hann Tucker, Consultants.

5. Pre and post the OR (but prior to the resolution of 21 August 2014) C sent written representations dated 27 May 2014, 22 July 2014 and 18 August 2014 pointing out the heritage and noise issues. They also instructed a noise consultant, Mr Vivian, who expressed concerns as to the absence of any published environmental health consultation response.

Officer Reports

6. I remind myself of certain well known principles in relation to officers' reports. In particular:
 - (i) In the Oxton Farms case¹ Pill LJ said:

“Clear mindedness and clarity of expression are obviously important. However that is not to say that a report is to be construed as if it were a statute or that defects of presentation can often render a decision made following its submission to the council liable to be quashed. The overall fairness of the report, in the context of the statutory test, must be considered.

It has also to be borne in mind that there is usually further opportunity for advice and debate at the relevant council meeting and that the members themselves can be expected to acquire a working knowledge of the statutory test.”

See also Judge LJ who added:

“In my judgement an application for judicial review based on criticisms on the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken. ”

¹ Oxton Farms Etc v Selby District Council [1997] EG 60

- (ii) In R v Mendip DC ex parte Fabre² Sullivan J said about an officer's report:

“Its purpose is not to decide the issue, but to inform the members of the relevant considerations relating to the application. It is not addressed to the world at large but to council members who, by virtue of that membership, may be expected to have substantial local and background knowledge. There would be no point in a planning officer's report setting out in great detail background material, for example, in respect of local topography, development planning policies or matters of planning history if the members were only too familiar with that material. Part of a planning officer's expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report in order to avoid burdening a busy committee with excessive and unnecessary detail...”

- (iii) In R (Siraj) v Kirklees Metropolitan Council³ Sullivan LJ said:

“It has been repeatedly emphasised that officers' reports such as this should not be construed as though they were enactments. They should be read as a whole and in a commonsense manner, bearing in mind the fact that they are addressed to an informed readership, in this case the respondent's planning subcommittee.”

- (iv) In R (Maxwell) v Wiltshire Council⁴ Sales J said:

“The court should focus on the substance of a report by officers given in the present sort of context, to see whether it has sufficiently drawn councillors' attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials...”

- (v) In Lawrence v Fen Tigers Limited⁵ Lord Carnwath said:

“I have found that a planning officer's report, at least in cases where the officer's recommendation is followed, is likely to be a very good indication of the council's consideration of the matter, particularly on such issues as public interest and the effect on the local environment. The fact that not all the members will have shared the same views on all the issues does not detract from the utility of the report as an indication of the general thrust of the council's thinking.”⁶

The Officer's Report – Heritage Issues

7. The following sections are relied upon by D:

² [2000] 80 P&CR 500

³ [2010] EWCA Civ 1286

⁴ [2011] EWHC 1840 (Admin) at (43)

⁵ [2014] UKSC 13 (219)

⁶ See also Richardson v North Yorkshire DC [2003] EWCA Civ. 1860 (35)

“1.2 Immediately on its west side it abuts KOKO, a club/music venue, which is listed Grade II. It is 4 storeys high where it abuts the application site and it is this which would form the backdrop for the proposed development.

1.3 There is a Grade II listed terrace of 12 houses...directly opposite on the south side of Crowndale Road. This terrace dates from the early-mid C19. It is faced in yellow stock brick with rusticated stucco ground floors, it is three storeys high with a basement level. The houses are two windows wide each, they feature square – headed doorways with pilaster-jambs carrying cornice-heads; fanlights and panelled doors. The terrace has a strongly defined stuccoed cornice and parapet line.

1.4 There is also significant terrace at No 48-72 Crowndale Road which dates from the mid-C19, opposite on the east side of the street from the site...

1.5 Both of these terraces Nos 31 to 53 and Nos 48-72 Crowndale Road are crucial in defining the scale, rhythm and character of the street. The site lies within Camden Town Conservation Area and the Camden Town Centre...

4. Consultations

...

Conservation Area Advisory Committee

4.2 Camden Town CAAC – comment:

We generally approve of this application which is ingenious and makes the best of the corner site...

4.4 Two objections have been received from local bars, KOKO and the Purple Turtle, which neighbour the site, a summary of which is provided below⁷

.....

5. Policies

5.1 National Planning Policy Framework 2012

.....

5.3 LDF Core Strategy and Development Policies 2010

...

CS14 Promoting high Quality Places and Conserving Our Heritage

...

⁷ There are then 14 bullet points summarising C’s heritage and noise concerns

DP25 Conserving Camden's Heritage

...

6. Assessment

6.1 The principle (*sic*) considerations to the determination of this application are summarised as follows:

...

Conservation and Design

...

Impact on neighbour amenity:

...

Conservation and Design⁸

....

6.28 In summary it is considered, the proposed development is both in scale and character with the street, and the additional accommodation provided by the infill and mansard would allow the terrace to be read as one as oppose (*sic*) to its convoluted appearance at present.

...

7. Conclusion

7.1 The proposed development is considered to be an appropriate land use and in this instance the loss of the public house is not considered to cause harm to the character of the surrounding area or diminish facilities available to the local community. The proposed extensions would be well integrated with the parent building and would not cause harm to the character or appearance of the conservation area nor would the works result in harm to the amenity enjoyed by neighbouring residents...

7.3 Planning permission is recommended subject to a S106 Legal Agreement.”

Relevant Statutory Materials/Policies

8. These are set out in Appendix 1 to this judgement.

Ground 1: Failure to Assess Heritage Impact of the Proposed Development

9. C contends that the OR was substantially lacking in relation to the assessment of heritage issues. They make 5 specific points, namely that D failed:

⁸ Paragraph 6.21 – 6.28 deal in some detail with the appearance of the proposal in its conservation area and landscape setting

- (i) To assess or identify the “significance” of relevant designated heritage assets, or even to undertake any assessment of whether any “harm” to the significance of the Grade II premises, conservation area and other designated and undesignated heritage assets would result.
 - (ii) To consider (or require the Interested Party to consider) relevant and material National Heritage Policy, being Section 12 NPPF, particularly paragraph 128.
 - (iii) To undertake an assessment against key development plan policies relating to the heritage issues (CS14 and DP25).
 - (iv) To consider and/or assess the proposal against the statutory provisions of Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
 - (v) To identify that the application had not complied with CLARPA by not providing a heritage assessment.
10. In Barnwell Manor Wind Energy Limited v Northamptonshire DC and Others⁹ Sullivan LJ dealt with Sections 66(1)/72(1) of the Listed Buildings Act 1990. In paragraph 26 he stated that Section 70(b) of the Town and Country Planning Act 1990 provided that Section 70(1), conferring the power to grant planning permission, has effect subject to those sections of the Listed Buildings Act. In paragraph 29 he agreed with the Judge’s conclusion that Parliament’s intention in an acting Section 66(1) was that decision makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise.
11. Lindblom J in R (Forge Field Society and others) v Sevenoaks DC and others¹⁰ said at paragraphs 48 – 49
- “48. As the Court of Appeal has made absolutely clear in its recent decision in Barnwell, the duties in sections 66 and 72 of the Listed Buildings Act do not allow a local planning authority to treat the desirability of preserving the settings of listed buildings and the character and appearance of conservation areas as mere material considerations to which it can simply attach such weight as it sees fit. If there was any doubt about this before the decision in Barnwell it has now been firmly dispelled. When an authority finds that a proposed development would harm the setting of a listed building or the character or appearance of a conservation area, it must give that harm considerable importance and weight.
49. This does not mean that an authority's assessment of likely harm to the setting of a listed building or to a conservation area is other than a matter for its own planning judgement. It does not mean that the weight the authority should give to harm which it considers would be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But it is to recognize, as the Court of Appeal emphasized in Barnwell, that a finding of harm to the setting of a listed building or to a conservation area gives rise to

⁹ [2014] EWCA Civ. 137

¹⁰ [2014] EWHC 1896 (Admin)

a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.”

12. I have already set out in some detail the sections in the OR relating to heritage. It must be borne in mind that the committee members are an informed readership along with all the other considerations in the Oxton Farms, Fabre and Siraj cases. The OR specifically assessed in the conclusion¹¹ that the proposal “would not cause harm to the character or appearance of the conservation area”. It is a matter for D’s own planning judgement as to what harm, if any, would be caused. There is nothing to suggest other than that the decision was in accordance with the OR i.e. it would not cause harm to the character or appearance of the conservation area. The OR did assess the harm and commented upon the proposal in this regard in some detail in the report, before coming to the conclusion. But, there was no finding of harm to the setting of the listed buildings/conservation area so as to give rise to the strong statutory presumption against planning permission being granted. Therefore the ratio of the Barnwell Manor case does not come into play.
13. Core Strategy Policy CS14 and DP25 were specifically referred to at paragraph 6.21 of the OR and at paragraph 4.2 it was noted that the Conservation Area Advisory Committee generally approved of the application as being ingenious and making best use of the corner site.
14. I deal first with section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. I have not set out in full paragraphs 6.21 – 6.28 of OR but in my judgement it is clear from reading them that D complied with section 72(1) in that special attention was paid to the desirability of preserving or enhancing the character or appearance of that area (see also DP25). However, although the ratio of the Barnwell Manor case does not come into play, the emphasis in that case and the Forge Field Society case is that section 66 requires the LPA to have special regard to the desirability of preserving the building or its setting and therefore giving considerable importance and weight to this. Nothing approaching this was brought to the attention of members in the OR, thereby not drawing to Council’s attention the proper approach required by law and a material consideration¹². It is said that the members could be expected to acquire a working knowledge of the statutory test¹³. However this was said in the context of familiarity with sections 70(2) and 54A of the 1990 Act. These had not only been set out in the OR in the Oxton Farms case, they were also core provisions of TCPA 1990. The same cannot necessarily be said about section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and this was not referred to at all by officers. In my judgement it is not sufficient in these circumstances to say that these were experienced officers in Camden which has a large number of listed buildings. I therefore accept C’s contention in relation to section 66.
15. As to the four other points made by C, NPPF 128 and CLARPA both required the applicant to describe the significance of any heritage assets affected including any

¹¹ 7.1

¹² See the Maxwell case above.

¹³ Pill LJ in the Oxton Farms case

contribution made by their setting. Nowhere in the OR is there an assessment of the significance of the heritage assets. It is submitted by C that it is not possible to come to a conclusion about harm until an assessment has been made of the significance of the asset affected. Nor were members told that section 12 NPPF (particularly at paragraph 128) required the applicant to describe the significance of heritage assets affected. D accepted that the process had been “truncated” but again emphasised that officers had come to the conclusion that there was no harm and that the Committee were experienced. One wonders in those circumstances why there is the requirement in CLARPA and NPPF paragraph 128 as stated above. The reality is, in my judgement, that these were material considerations which were not considered and therefore the decision is flawed¹⁴.

16. For the above reasons the challenge on Ground 1 succeeds.

Ground 2: Flawed Assessment of Noise Impact

17. Clearly noise was a material consideration and NPPF paragraph 123 and Development Plan Policy DP28¹⁵ are relevant.
18. Further CLARPA required a noise and vibration impact assessment prepared by a qualified acoustician providing details of existing background noise levels measured over 24 hours, proposed noise output, the measures proposed to reduce noise and vibration (e.g. design, orientation, foundation design) and the method used to compile the report and examples of the calculations and assumptions made and, addition, D’s self certified acoustic report checklist.
19. The relevant sections of the OR dealing with noise are paragraph 4.4, where C’s objection is mentioned as follows:

“4.4 Two objections have been received from local bars, KOKO and the Purple Turtle, which neighbour the site, a summary of which is provided below:

- The scheme fails to fully consider the long established character of its surrounding environment and the amenity of future residents. We therefore question the suitability of the site for residential accommodation, unless it can be demonstrated that resident amenity would not be impacted by the existing noise and activities within the Town Centre which include night time economy uses.
- The development is likely to lead to complaints over noise, resulting in a serious threat to established local businesses.
- There are no assurances that the future of existing businesses will be protected.
- Local businesses are an integral part of the creative industry in London, providing significant employment and associated employment in the wider industry.
- A noise report should have been submitted with the planning application.

.....”

¹⁴ cf section 70(2) TCPA 1990; section 38(6) Planning and Compulsory Purchase Act 2004.

¹⁵ Both in Appendix 1 to this judgement

In the assessment section under paragraph 6 the following is stated:

“6.13 With regard to noise, the application site neighbours KOKO which is a late night music venue and there is also the Purple Turtle located opposite at No. 65 Crowndale Road. Both local businesses have objected to the proposal, mainly on the grounds of the impact having residential accommodation at the application site might have on the future operation of their business.

6.14 Looking firstly to the Purple Turtle located to No. 65 Crowndale Road, it is important to note there is an existing terrace of residential properties neighbouring the Purple Turtle from 55 Crowndale Road and extending to the East. Given these residential properties are already in existence and located closer to the Purple Turtle than the application site, the future occupiers would not experience any more noise or disturbance from the Purple Turtle than the existing neighbouring residents and as such the development is unlikely to impact on the future operation of this local business.

6.15 With regard to KOKO, during the course of the application, the applicant has undertaken a noise survey to determine how much noise is evident in the existing building from KOKO late night activities. The noise survey was undertaken from 17:45 on Friday 20 June until 17:45 on Sunday 22 June. (There are then details where noise recorders were placed).

6.16 Whilst on site the noise engineers noted that the noise levels of the first recorder was dominated by structure-borne venue noise, primarily transferred through the party wall, some noise was noted as coming through the window overlooking KOKO’s rear courtyard. Venue noise at the front of the premises close to the second recorder was noted to be lower and overall noise levels subjectively judged to be dominated by airborne street noise.

6.17 Results of the survey indicate that on Friday and Saturday night the noise level at the first recorder increased by 15dB during venue operating hours, therefore not complying with DP28. The second recorder showed no apparent sustained substantial increase in noise levels during venue operating hours and as such would meet DP28.

6.18 To mitigate against the increased levels of noise that would be experienced within the proposed unit, as the noise levels are noted to be through the party wall with KOKO, it would be necessary to fully structurally isolate the proposed residential premises from the KOKO building structure. The noise consultant has recommended the implementation of independent walls, floors and ceilings to noise sensitive habitable rooms...¹⁶ The applicant has confirmed that they are willing to undertake the mitigation measures recommended by

¹⁶ Details are then given of the specifications

the noise assessors and have amended the proposed floor plans to demonstrate the proposed new wall to isolate the new residential accommodation from KOKO.

6.19. Officers consider that with the relevant mitigation measures the proposed residential use would not be inhibited by being adjacent to the late night music venue and would not result in increased noise and complaints which may result in harm to the future operation of the neighbouring businesses. Details of the mitigation measures as noted within the noise report will be secured by condition to be approved prior to commencement of the development. This will ensure the development would provide a suitable standard of accommodation....”

20. To complete the evidential picture in relation to noise it is necessary to note the following:
- (i) C’s letter of 18 August 2014 referred to the noise survey they had submitted in conjunction with the advice from their noise consultant, Mr Vivian. They suggested that their objection on the grounds of noise and lack of mitigation to protect the business could be resolved, being addressed by the use of a robust planning condition relating to noise, including the requirement of a post completion test.
 - (ii) There is a statement from Mr Vivian, dated 13 February 2015 in which he says that he spoke at the committee meeting on 21 August 2014, highlighting the lack of an environmental health representation and that members consequently did not have sufficient information on noise matters to make a decision. He says that in his professional experience it is unusual that a planning application for a residential development abutting a large late night licence premises goes before a planning committee without a formal representation from an environmental health officer. He then records some comments from three councillors which seemed to be supportive of his representations.
 - (iii) A written representation from C was put before members. In this it is recorded that C is perplexed as to why the recommendation was being put forward to the committee in the absence of any consultation with or consideration of expert advice from Camden’s environmental health team. They point out that in their representation dated 22 July 2014 they had proposed conditions but that the committee report made no reference to them.
 - (iv) In the minutes it is recorded that the committee raised questions and concerns with particular regard to the assessment and information from the environmental health team in relation to noise. In response the Planning Officer “stated that the planning department do not receive a separate environmental health report. When specialist advice was required from another department, this was incorporated into the Planning Officer’s report. All the information that the environmental health officers had seen was available online.” It is further recorded that the Planning Officer said that the amendment of the plans to move habitable rooms from the party wall to the front of the building was sensible as there would be a lot of noise transmission through the party wall and, to ensure noise mitigation pressures the proposal included the erection of a wall between the development and C’s premises. Finally the minutes record that there were still strong concerns about this and possible jeopardy to C’s business which was

an asset to Camden. In response planning officers commented that there was already a large residential population in the vicinity and it was an already noisy town centre location. The committee suggested another obligation could be added to ensure there was a management plan to address any noise complaints.

21. The Committee; according to the minutes:¹⁷

“Resolved –

That planning permission be granted subject to a 106 Legal Agreement conditions set out in the report and the following additional conditions and obligations.”

Attached to this judgement is Appendix 2. In that Appendix are the noise conditions the subject of that resolution and the noise conditions in the eventual planning permission. The conditions the subject of the resolution were the same as the conditions in the OR, save that the penultimate sentence in Condition 8 is new and Condition 12 is entirely new. In the planning permission conditions 12 and 13 are new and different from the conditions in the Resolution; though the reasons given for the conditions is the same as before.

22. Having set out the background in some detail it is now necessary to focus on C’s complaints. In short it is said that D erred by not taking into account material representations made by its own officers, namely the environmental health officer, Edward Davies. Pursuant to a freedom of information request submitted on 3 December 2014 C received internal email correspondence on 5 January 2015. I will extract the material parts.

- (i) Mr Davies to D’s Senior Planning Officer, 16 July 2014:

Having looked at the submitted noise report¹⁸ I have the following comments:

“1. The assessment only seems to have taken into account structure borne noise from KOKO into account (*sic*) which is all good and well. But in real life terms the Purple Turtle has its smoking area opposite and noise from patrons as a subjective measure needs to be taken into account as any new resident may be affected by patron noise late at night with windows open.

2. The isolation measures for the proposed development will need to be submitted for consideration as there is insufficient detail for it in the report.

3. As the development is on a very busy corner even late at night the traffic, the report does not take this into account and an assessment will need to be carried out to ensure the effects from traffic noise also is acceptable.

Until these areas are covered I feel the application should be rejected until a more detailed assessment on the noise effects are carried out...”

- (ii) Senior Planning Officer to Mr Davies, 16 July 2014:

¹⁷ See later

¹⁸ i.e. the Hann Tucker Report

“...I just had a couple of queries.

With regard to the Purple Turtle there are already existing neighbouring residents closer to the Purple Turtle at 55 Crowndale Road onwards, therefore future occupiers of the application property wouldn't experience any more noise disturbance than existing occupiers, I don't think we could reject on this point.

Could details of the isolation measures be secured by condition prior to the commencement of development to ensure they would be sufficient enough for the residential accommodation?

With regard to traffic noise, the assessment included a noise meter in a room facing Crowndale Road with the window open,¹⁹ would that not take into account traffic noise?”

Mr Davies responded later on 16 July 2014.

- (i) In relation to the Purple Turtle point he said “We have had complaints of noise from residents in the past re music and noise from patrons and it would be prudent that this noise was taken into account as well as patron noise from KOKO late at night in the noise report. The last thing we need is residents moving in and then start to complain of the noise nuisance from patrons walking passed their open windows. So the report will need to be amended to take this into account.”
 - (ii) He accepted that details of the isolation measures could be secured by a condition prior to the commencement of development.
 - (iii) As regards traffic noise he said “No. An assessment in relation to BS8233 should be made. Could be by following condition.....” He then set out a proposed condition.
23. D's case on this was that Mr Davies was in effect saying that the scheme may have potential noise problems but these could be overcome with appropriate conditions and this was how the development was presented in the OR and how the members approached their determination of the application.
 24. It is necessary to consider carefully paragraph 6.17 – 6.19 of the OR. In 6.17 it was mentioned that the noise level of one recorder did not comply with DP28. In 6.18 it was said that it would be necessary to fully structurally isolate the proposed residential premises from the KOKO building. What then follows is what “the noise consultant has recommended” and that the applicant has confirmed that “they are willing to undertake the mitigation measures recommended by the noise assessors”. If one then reads paragraph 6.19 in that context, an objective reading of the report suggests that there are concerns, that these have been addressed by the noise consultant and accepted by the applicant. And that “details of the (my underlining) mitigation measures as noted within the noise report will be secured by condition to be approved prior to commencement of development.”
 25. There would be no case based on paragraph 2 of Mr Davies' 16 July 2014 email. In respect of that paragraph he had accepted subsequently that day that a condition could be detailed enough and secured by via condition to ensure the isolation measures

¹⁹ This was an error. The window had been closed. This was correctly stated in OR para 6.15. The error is not material to this issue.

proposed in the noise consultants' report would be sufficient for the residential accommodation. The lack of detail was not reported to members but the report did trail in paragraph 6.19 that details of the mitigation measures would be secured so as to be approved prior to commencement of development.

26. The position however is different in relation to Mr Davies' points (i) and (iii). The Purple Turtle issue was raised in paragraph 6.14 OR. There the report essentially says what the planning officer had written to Mr Davies. There is no record of fact that Mr Davies, as the noise expert, disagreed and considered that the noise report needed to be amended to take into account noise from the Purple Turtle. This concern was therefore not put before members and, in my judgement, it should have been. As regards point (iii), members were not told that an assessment of traffic noise should be made and could be dealt with by condition. Again, in my judgement, they should have been. The members were clearly expressing concerns about noise. The tenor of the OR is that so long as the noise consultant's mitigation measures were implemented, this would require further details of those particular mitigation measures, then the proposed residential use would not²⁰ "result in increase noise and complaints which may result in harm to the future operation of the neighbouring businesses." This was not accurate. Therefore the overall effect of the report in relation to noise significantly misled the Committee about material matters which were left uncorrected at the meeting before the relevant decision was taken.²¹
27. Therefore the Claimant succeeds on Ground 2.
28. I should mention that in an email of 26 November 2014 Mr Davies refers to an application for emails of 16 July 2014 to be disclosed and says "There are issues with this one as my original comments were not taken up by planning for some reason. I am not sure if these should be given to a third party as it may leave us open to complaint."

I do not regard this as taking the matter any further. It is for me to decide whether the members were misled. Nevertheless it is corroboration of my judgement on this point.

Ground 3: Failure to Report the Application back to the Committee

29. Paragraph 6.19 of the OR says that the mitigation measures details will be secured by condition to be approved prior to the commencement of the development. The OR contained conditions which, save for the addition of one subsequently added sentence in Condition 8, were the same as those subject to the Resolution.
30. The minutes show that the Committee granted planning permission subject to a S106 agreement including the conditions in the first part of Appendix 2 to this judgement. These minutes were approved by Committee on 11 September 2014. In fact the wording of those conditions was not discussed or available to members during that meeting.
31. Prior to and subsequent to the approval by the Committee on 11 September 2014, there was email correspondence involving the planning officers and the environmental health officers. On 3 September 2014 the Senior Planning Officer wrote to Mr Davies and a noise Technician:

"Following Development Control Committee the application for the change of use from the public house to A1/A2 and

²⁰ Paragraph 6.19

²¹ See Judge LJ in the Oxton Farms case cited above.

residential (C3), was approved by members however they asked for some of the conditions to be amended, would one of you be able to review and let me know you are happy with them and that they cover what is required. If you have any problems can you let me know.”

She then set out condition 8 and condition 12 with the one sentence amendment which appears in the resolution.

32. On 11 September 2014 Mr Davies wrote to Helen Masterson, the Principal Environmental Health Officer:

“My concerns are that we should not specify what is required, just to insist on a more robust design in the basement area. Plus I am very concerned that no environmental survey was carried out for the building envelope, this is standard procedure for residential design.”

On 12 September 2014 Mr Davies wrote to Helen Masterson saying:

“Looking at the conditions, they are all subject to authority approval. At this stage submitted details are not satisfactory and should be rejected.

But we can discuss later.”

(He then suggested some detailed conditions which were a first draft of the noise conditions which eventually transformed into those in the planning permission).

On 12 September 2014 Helen Masterson wrote to the Senior Planning Officer going through the proposed C8 and C12 draft conditions on noise and said that they needed to be changed to the three conditions (drafted by Mr Davis) so as adequately to protect the residential part of the development.

33. C had thought that D’s environmental health team carried out site visits/noise surveys in October 2014 but, according to the Summary Grounds of Defence (paragraph 39) the purpose of the visit on 31 October/1 November 2014 was to ascertain the layout of the building internally and no noise survey was undertaken on that occasion.
34. In R (Couves) v Gravesham Borough Council and another²² Ouseley J considered a resolution that an application be permitted subject to “planning conditions, informatives, referral to the Secretary of State and negotiation of the Section 106 Agreement”. In that context the Learned Judge said that once the committee had reached its decision and wanted to limit what the officer could then do, it could so decide but if it did not do so the power of the officer revives. The power needs no express re-conferring unless it is removed expressly. Therefore a resolution should not be searched for language giving delegated power to the officer, but rather for language removing the power.²³
35. In summary D’s case is that the members expected amendments²⁴, they knew there was a noise problem and accepted that it could be dealt with by conditions. They

²² [2015] EWHC 504 (Admin)

²³ Paragraphs 38, 47 and 48

²⁴ See the email of 3 September 2014. Para 6.19 of the OR suggested that the detail would be secured by condition to be approved prior to the commencement of the development. However, that does not form part of the Resolution or the minutes of the meeting.

expected officers to work on it. Nothing of this sort appears in the minutes. Nor in the resolution. It is difficult to go behind the documents without any evidence save the email of the 3 September 2014 and what officers actually did. Further, what was proposed by the Senior Planning Officer on 3 September 2014 and approved as part of the minutes by Committee on 11 September 2014 was, barring the addition of one sentence, exactly that which had been approved by Committee on 21 August 2014. What happened subsequent to 11 September 2014 were entirely new conditions. They were aiming to deal with the noise problems and the reason given for them was the same as that approved. Nevertheless they were entirely different in character from what had been approved.

36. The difficulty with D's case on this point is that the resolution by the committee was:
- “That planning permission be granted subject to a Section106 legal agreement, conditions set out in the report and the following additional conditions and obligations.”
37. There then followed amended Condition 8 and Condition 12. There is nothing in the resolution or any other document which permits officers to reword the conditions which were specifically added and to which the resolution was expressly made subject. This is a very different position from the Couves case. The language of the resolution did not leave the conditions at large. They were set out in detail.²⁵
38. Therefore in my judgement, if officers wished to remove/amend those conditions they were under a duty to return to committee to have that done.
39. In R (Kides) v South Cambridgeshire DC²⁶ Jonathan Parker LJ said:
- “...where since the passing of the resolution some new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a “material consideration” for the purposes of section 70(2), it must be a counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach (not might reach) the same decision.”
40. Therefore the case succeeds on Ground 3, firstly because officers had no power to redraft the conditions given the express terms of the Resolution and, in any event, because the conditions as approved were regarded by the Environmental Health officers as wholly inadequate, reflecting the concerns expressed by Mr Davies in July 2014, (and more). Therefore the application should have been referred back to Committee.

Ground 4: Irrational and Unlawful Approach to Planning Conditions

²⁵ I should record that there was a further argument by C that, unlike in Couves, there was no delegated power in the officers to grant planning permission/write conditions. This was based on a consideration of D's constitution which dealt with matters delegated and reserved to the Development Control Committee. It is not necessary for me to decide this point given my ruling that the resolution was clear on its face and did not allow officers to reword conditions in the way they did.

²⁶ [2002] EWCA Civ. 1370

41. This ground is based on a statement from Mr Vivian saying that the conditions do not secure the mitigation which members had been advised was required so as to protect the future business interests of a person such as C. Mr Vivian's statement is very detailed. A few extracts will give the flavour:

“Condition 12

....

5.16 ...I would subjectively assess the acceptable criteria as being at a level where those experiencing the vibration would be likely to believe damage could occur to the building structure; i.e. the performance criteria is high and occupants would feel that the building would be noticeably shaking yet there would not be a breach of the condition...

Condition 13

.....

5.26 With noise levels in KOKO of up to 105DB then the condition would allow resultant noise levels in the residential rooms, due to music, of up to $105 - 63 = 42\text{DB}$. Such a level would be clearly noticeable preventing rest and sleep, even though the sound insulation of the wall would be in compliance with the condition. ...

Overall

5.28 The planning conditions relating to noise in the decision notice dated 6 January 2015 require the developer to complete the development in accordance with an incomplete and contradictory set of documents. The technical assessment criteria fails to protect future residents from noise generated by the established and lawful operation of KOKO as low frequency airborne noise is not assessed, vibration measurements allow very high levels of structural movement, and the performance of the separating wall is inadequately specified. These criteria do not ensure reasonable living conditions for future occupants.”

42. In the well known passages from the judgement of Mr Justice Sullivan in R (Newsmith Stainless Limited) v Secretary of State for Environment, Transport and the Regions²⁷ the Learned Judge made it clear that where an expert tribunal is the fact finding body, the threshold of Wednesbury unreasonableness is a difficult obstacle for an applicant to surmount. An applicant alleging an inspector has reached a Wednesbury unreasonable conclusion on matters of planning judgement, faces a particularly daunting task.²⁸ In paragraph 10 of the decision and in the context of an inspector's report Sullivan J said that in exceptional cases it may be necessary to produce additional evidence for example to show “some matter of real importance has been wholly omitted from the Inspector's report”, adding that such cases would be rare and even in those cases applicants should firmly resist the temptation for their evidence to stray into a discussion of planning merits.

²⁷ [2001] EWHC Admin 74

²⁸ Paragraphs 7 and 8

43. D has throughout merely asserted that this is a merits point. Of course the difficulty is that many Wednesbury challenges are merits points. Nevertheless Mr Vivian's report in effect says that the conditions cannot possibly fulfil the aims they seek to achieve. There is no evidence from D. The court would not expect a detailed technical response and would not become involved in such a merits based argument. However there is nothing apart from the fact that the conditions were drafted by D's officers, to refute any of the points made by Mr Vivian. A brief witness statement setting out in summary form why issue was taken with Mr Vivian's conclusions may well have been sufficient. Nevertheless the court is in effect left with a detailed and systematic witness statement alleging irrationality and nothing of real substance to begin to counteract it. Therefore in my judgement C succeeds on this ground also.

Ground 5: Breach of Procedural Requirement

44. Section 327A of the Town and Country Planning Act 1990 requires a Local Planning Authority not to entertain an application if it fails to comply with a requirement as to the form or manner in which an application or a document or other matter which accompanies the application must be made. Pursuant to Section 62(3) of the Act an LPA may require an application for planning permission to include such evidence in support of anything in or relating to the application as they think necessary. D says that the CLARPA document was not a "provision" made under the Act. D submits that it is not a document made under a development order which, under Section 62(1), may make "provision" as to applications for planning permission.²⁹ Rather it is a requirement which the LPA is empowered to make under Section 62(3). The difficulty is that, absent s62(1) and s62(2), the natural construction of s62(3) is CLARPA is a provision made under the Act requiring a heritage assessment and a noise assessment.
45. In my judgement ss62(1) and s62(2) do affect the natural construction of s62(3). The word "provision" is specifically used – in my judgement as a term of art – in those subsections. It is important to note that s327A(1)(a) and (b) essentially mirror s62(2) (a) – (c).
46. My attention was drawn to paragraph 10 of the Town and Country Planning (Development Management Procedure) (England) Order 2010/2184.³⁰ Subparagraph (2) requires an LPA to send an acknowledgement of a planning application once certain matters have been done. Those include any particulars required under s62(3) of the 1990 Act. However, this does not, it seems to me, stipulate that an LPA may not send an acknowledgement if some of the requirements have not been complied with.
47. Therefore, I accept D's submission and Ground 5 fails.

Grant of Relief

48. In any event the Defendant submits that the court should exercise its discretion not to grant relief on the basis that it is highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred. It is not possible to say that this is the case and I grant the relief sought, namely the decision of the London Borough of Camden Council to grant the planning permission (2014/2621/P) on 6 January 2015 to the Interested Party is quashed.

²⁹ S62(2) gives a partial definition of "provision" for the purposes of s62(1).

³⁰ Apparently repealed in April 2015.

ORDER

UPON HEARING Counsel for the Claimant and Defendant on 5 August 2015
AND UPON GIVING judgement for the Claimant
IT IS HEREBY ORDERED THAT:-

1. The planning permission dated 6 January 2015 granted by the Defendant to the Interested Party under reference 2014/2621/P is quashed.
2. The Defendant shall pay the Claimant's costs in the sum of £35,000.

Dated this day of August 2015

Appendix 1

Statute

49. Section 70 Town and Country Planning Act 1990:

“(1) Where an application is made to a local planning authority for planning permission—

(a) subject to sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or

(b) they may refuse planning permission.

(2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations....

(3) Subsection (1) has effect subject to [section 65] and to the following provisions of this Act, to sections 66, 72 and 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and to section 15 of the Health Services Act 1976.

50. Planning (Listed Buildings and Conservation Areas) Act 1990

Section 66:

“(1) In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

Section 72(1):

“In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

51. Planning and Compulsory Purchase Act 2004,

Section 38(6)

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

52. Town and Country Planning Act 1990

Section 62

“(1) A development order may make provision as to applications for planning permission made to a local planning authority.

(2) Provision referred to in subsection (1) includes provision as to—

(a) the form and manner in which the application must be made;

(b) particulars of such matters as are to be included in the application;

(c) documents or other materials as are to accompany the application....

(3) The local planning authority may require that an application for planning permission must include—

(a) such particulars as they think necessary;

(b) such evidence in support of anything in or relating to the application as they think necessary.”

53. Section 327A Town and Country Planning Act 1990

“(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—

(a) the form or manner in which the application must be made;

(b) the form or content of any document or other matter which accompanies the application.

(2) The local planning authority must not entertain such an application if it fails to comply with the requirement.”

Policies

NPPF

“123. Planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts²⁷ on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established;²⁸ and
- identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.”

“12. Conserving and Enhancing the Historic Environment

128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary...

.....”

Local Policy CS14 Promoting High Quality Places and Conserving our Heritage

CS14 - Promoting high quality places and conserving our heritage

The Council will ensure that Camden’s places and buildings are attractive, safe and easy to use by:

- (a) requiring development of the highest standard of design that respects local context and character;
- (b) preserving and enhancing Camden’s rich and diverse heritage assets and their settings, including conservation areas, listed buildings,...

DP25 – Conserving Camden’s Heritage

“Conservation Areas

In order to maintain the character of Camden’s conservation areas, the Council will:

(a) Take account of conservation area statements, appraisals and management plans when assessing applications within conservation areas;

(b) Only permit development within conservation areas that preserves and enhances the character and appearance of that area;

...

Listed Buildings

To preserve or enhance the Borough's listed buildings, the Council will:

....

(g) Not permit development that it considers would cause harm to the setting of a listed building..."

Policy DP28 - Noise and vibration

The Council will seek to ensure that noise and vibration is controlled and managed and will not grant planning permission for:

- a) development likely to generate noise pollution; or
- b) development sensitive to noise in locations with noise pollution, unless appropriate attenuation measures are provided.

Development that exceeds Camden's Noise and Vibration Thresholds will not be permitted.

Appendix 2: Noise Conditions**In Committee**

Amended condition 8

Prior to commencement of development, detailed plans and manufacture specifications of the sound insulation measures recommended within the Noise Impact Assessment Report 20433/NIA1 by Hann Tucker Associates dated 25 June 2014 and Letter from Hann Tucker Associates dated 23 June 2014 and as demonstrated on plan Nos. P102 Rev B, P103 Rev B, P104 Rev B, P105 Rev B and P302 Rev B, shall be submitted to and approved by the local planning authority in writing. Details submitted shall be in accordance with the criteria of BS8233:1999 and should ensure that both airborne and structure-borne noise and vibration are inaudible in all habitable rooms. The sound insulation measures shall be provided in their entirety prior to first occupation and permanently retained thereafter.

Reason: To safeguard the amenities of the future occupiers of the approved residential use in accordance with the requirements of Policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and Policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

Condition 12

Prior to occupation of the residential units hereby approved, noise levels within the flats shall be tested using a representative random sample within each residential unit, to verify compliance with condition 8. A noise report shall be produced containing all raw data and showing how calculations have been made it should include the standards used, measurements locations, raw tabulated and graphically represented data, time, date etc. A copy of this report shall be submitted to and approved in writing by the Local Planning Authority in consultation with an independent noise consultant appointed by the Authority..

Reason: To safeguard the amenities of the future occupiers of the approved residential use in accordance with the requirements of Policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and Policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

In Planning Permission

12. Prior to commencement of the development, details shall submitted to and approved in writing by the local planning authority which demonstrate how the approved residential units would achieve 'Good' internal room and external amenity noise standards in accordance with the criteria of BS8233:1999 and building vibration levels which meet a level that has a low probability of adverse comment as outlined in BS 6472:2008.

Such details to include:

- i. A noise assessment which demonstrates external noise levels including reflected and re-radiated noise and specification and manufacturers details of the sound insulation of the building envelope and acoustically attenuated mechanical ventilation and any other measures required to achieve the noise standards and
- ii. A vibration assessment prepared in accordance with the method specified in BS 6472:2008.

The development shall not be implemented other than in accordance with the details thus approved.

Reason: To safeguard the amenities of the future occupiers of the approved residential use in accordance with the requirements of Policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and Policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

13. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of an enhanced sound insulation value $D_{nT,w}$ and C_{tr} dB of at least 20dB above the Building Regulations value, for the wall structures separating the development from the existing commercial building. A post completion noise assessment shall be carried out where required to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

Reason: To safeguard the amenities of the future occupiers of the approved residential use in accordance with the requirements of Policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and Policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

14. Prior to occupation of the hereby approved units, a post completion noise and vibration assessment shall be carried out from within the approved residential units and external amenity areas to confirm compliance with the noise and vibration criteria submitted for conditions 12 and 13 and any additional steps that may be required to mitigate noise shall be taken, as necessary. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

Reason: To safeguard the amenities of the future occupiers of the approved residential use in accordance with the requirements of Policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and Policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

CO/465/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

BETWEEN:

R (OTA YEW TREE ASSET OF COMMUNITY VALUE LIMITED)

Claimant

-v-

BATH AND NORTH EAST SOMERSET COUNCIL

Defendant

-and-

MISS LANGLEY-THEXTON

Interested Party



ORDER

TAKE NOTICE that we the undersigned acting for the above mentioned parties HEREBY CONSENT to an Order in the following terms, set out in the following 3 pages;

BY CONSENT IT IS ORDERED:

1. Permission to apply for judicial review is granted in claim CO/465/2015.
2. The decision of the Defendant dated 19 December 2014 pursuant to planning application reference 14/02670/FUL be quashed for the reasons stated in the attached Particulars and the matter be remitted to the Defendant for redetermination.
3. That the decision of the Defendant dated 9 January 2015 to de-list the property as an Asset of Community Value be set aside. Further that the decision dated 3 February 2015 in respect of a review of the listing of the property as an Asset of Community Value also be set aside and be remitted to the Defendant for re-consideration.
4. The Defendant to pay the Claimant's costs of this action up to and including the 2 April 2015 (together with two further hours of fee earner's time at a reasonable rate), such costs to be subject to detailed assessment if not agreed.

PARTICULARS

- i. These proceedings concern an application for judicial review by the Claimant against the decision of the Defendant Council dated 19 December 2014 to grant the application for planning permission (change of use) by the Interested Party under reference 14/02670/FUL (the "Decision") of the property at Yew Tree Inn, Pilgrims Way, Chew Stoke, Bristol, Bath and North East Somerset BS40 8TX (the "Property")
- ii. The Defendant has carefully considered the Decision in light of the Statement of Facts and Grounds attached to the Claimant's application for permission for judicial review.
- iii. The Defendant considers that it does not concede ground 1 of the claim as pleaded. However, the Defendant concedes a separate breach of section 38(6) of the Planning and Compulsory Purchase Act ("the 2004 Act") *only* in so far that it is conceded that the Defendant erred in not considering whether the conclusion that the Yew Tree "*could possibly contribute as a village asset*" amounted to "*could provide a needed community facility*" within the terms of Policy CF.7. That error could have been material in the Defendant's decision, in that the Defendant had also concluded that marketing would have been required by the Interested Party if it had been concluded that the Property was "*needed*". The Claimant considers this is a breach of section 38(6) of the 2004 Act which the Claimant considers was the core of ground 1 of its challenge.
- iv. The Defendant does not concede ground 2. The Defendant's planning officer has confirmed that as a matter of fact he did take into account both paragraphs 28 and paragraph 70 of the NPPF and that he considered that Policy CF.7 was to the same material effect, which position has also been accepted by the Planning Inspectorate.
- v. Further, on reviewing the matters underlying this challenge, it came to the Defendant's attention that the planning officer did not as a matter of fact take into account the listing of the Property as an Asset of Community Value and in particular did not take into account the material which underlay that listing because of the existence of a review under s.92 of the Localism Act 2011 ("the 2011 Act"). The Interested Party considers that the planning officer, as set out in the delegated officer's report, did note and take into account the fact that the Property had been listed as an Asset of Community Value but which listing was the subject of a review under s.92 of the 2011 Act at the time. The Claimant notes the respective positions of the Defendant and Interested Party but maintains its position in respect of these matters as set out in the grounds. For the avoidance of any doubt whatsoever, and in accordance with published Government Guidance the Defendant does not accept that:
 - (a) the listing of a property as an Asset of Community Value dictates a particular outcome in the planning process;
 - (b) the status of a property as an Asset of Community Value is necessarily a material consideration in any future planning decision.

However the Defendant is of the view that the material which underlay the listing of the Property as an Asset of Community Value is or could be a material planning consideration in this case. The materiality of any particular piece of evidence together with the weight that is to be attached will be a matter for planning officers to determine on reconsideration.

- vi. As a result of the grant of planning permission for the change of use of the property to a dwelling house, the Council in a decision dated 9 January 2015 de-listed the Property from the Register of Assets of Community Value, an exercise of its discretion because Schedule 1 of the Assets of Community Value (England) Regulations 2012 provides that dwellings are "land which is not of community value (and therefore may not be listed)". In addition the Council issued a decision dated 3 February 2015 in respect of the Interested Party's application to review the listing of the Property as an Asset of Community Value referred to above. The decision letter also referred to the fact that the Property had been removed from the Asset of Community Value Register on 9 January 2015 as a consequence of the decision to grant planning permission for the Property to be used as a dwelling house.
- vii. The Council considers that the consequence of the quashing of the grant of planning permission on the basis that the decision was unlawful under paragraph 2 of this Order should also operate to quash the consequential, associated administrative decisions as the basis for the principal decision has been held to be unlawful (applying *Boddington v British Transport Police* [1999] 2 AC 143). Thus by way of relief the decisions of the Council of 9 January 2015 to de-list the property as an Asset of Community Value and dated 3 February 2015 in respect of a review of the listing of the property as an Asset of Community Value should be quashed so as to reinstate the Property on the Register as an Asset of Community Value and also so as to reinstate the Interested Party's request for a review against the listing of the Property on the Register so as to allow for the review to be re-considered in light of all the relevant circumstances. This is provided for in paragraph 3 of the Order.

For and on behalf of the Claimant

Signed:  ALEX MADDEN (TRICINGS SOLICITORS)
Date: 24/4/15 (PARTNER)

For and on behalf of the Defendant

Signed:  Simon Barnes
Date: 24/4/15

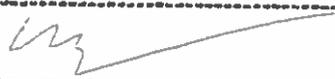
For and on behalf of the Interested Party

Signed: 

Date:

**ADMINISTRATIVE COURT OFFICE
BY CONSENT ORDER AS ASKED**

24 APR 2015



Appeal Decision

Hearing held on 22 March 2016 and 23 March 2016

Site visit made on 23 March 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 May 2016

Appeal Ref: APP/A0665/W/15/3139409

The Centurion, 1 Oldfield Drive, Great Broughton, Chester CH3 5LN

- 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 Alistair Wood (Ideal Care Homes Ltd) against the decision of Cheshire West & Chester Council.
 - The application Ref 15/00239/FUL, dated 16 January 2015, was refused by notice dated 2 June 2015.
 - The development proposed is the demolition of an existing building and the erection of a 2 storey, 64 bed residential care home for older people.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal was amended after it was determined in an attempt to overcome two of the Council's reasons for refusal. However, the appeal process should not be used to evolve a scheme and it is important that the facts before me are essentially the ones considered by the Council and other interested persons.
3. Whilst it is sometimes possible to take minor amendments into account, the ones that have been proposed in this particular instance represent a significant alteration of the scheme and the revisions should therefore form the basis of a fresh application. Consequently, this appeal will be determined according to the details that were submitted at the application stage and the amended scheme will not be considered.
4. Considering the main issues and all of the matters raised at the Hearing I consider the most relevant development plan policies to be CU 1, HO 15 and CF 3 of the Cheshire District Local Plan 2006 (LP) and ENV 6 and SOC 5 of the Cheshire West & Chester Council Local Plan Part One: Strategic Policies 2015 (SP).

Main Issues

5. The main issues, following consideration of all matters raised in the representations and at the Hearing, are the effect of the proposal on:
 - the cultural and social well being of the local community;
-

- the living conditions of nearby residents with regard to outlook and privacy; and
- the character and appearance of the local area.

Reasons

6. The appeal site is situated in a residential area in close proximity to a local shopping centre and a number of other local services comprising Vicar's Cross United Reform Church, Great Broughton Library and Oldfield Primary School. These services are to the west of the appeal site which covers an area of approximately 0.4 ha. The site is currently occupied by a public house, The Centurion. Its frontage is set back and faces Oldfield Drive. Two entrances provide access from this road to parking areas on either side of the building. The proposal would involve the demolition of the public house and the construction of a purpose built 64-bed residential care facility with associated infrastructure. The facility would comprise a two storey building, set near the rear boundary of the plot, with an H-shaped footprint. The south-western elevation would face Oldfield Drive and extend across the majority of the appeal site.

Community well-being

7. The Centurion was purchased by Admiral Taverns in October 2014 as part of a larger acquisition of 111 premises from another pub company. A planning application, that forms the basis of this appeal, was submitted shortly after in January 2015. A sale was agreed with the appellant prior to determination which was conditional on securing planning permission. A licensee was present when the Centurion was acquired and he subsequently surrendered his tenancy after which point a management company was appointed, by the Admiral Taverns, to manage the Centurion until it ceased trading on the 25 January 2016.
8. Both the appellant and Admiral Taverns contend that the use of the premises as a public house is not viable and would remain so under a different occupier. It is alleged that the Centurion has been in a 'steady decline over a period of years'. The main evidence supporting this contention comprises two commissioned reports and a trading, profit and loss account that is based on a three month period immediately prior to the closure. It has also been suggested that a shorter tenancy agreement with a break clause and its subsequent surrender indicated a lack of viability. However, I find this to be an unsubstantiated speculative assertion as it involves the assumed intent of an individual.
9. The first report¹ was produced in April 2015, prior to purchase, and indicates that the licensee was breaking-even and that he was reliant on his pension for an income. The report also indicates a significant investment in the fabric of the building would be required owing to a backlog of repairs. It concludes that any income would be insufficient to support the estimated investment required to bring the property into full repair. As a result, an option to redevelop the site was favoured because it was assumed that the chances of finding a willing investor would be 'extremely unlikely'. However, this assumption was not tested through the open market and therefore not substantiated.

¹ Financial Viability Statement (April 2015). Centurion Public House, Oldfield Drive, Vicar's Cross, Chester. Admiral Taverns Ltd.

10. The second report² was produced in February 2016, after the Centurion ceased trading, which indicates that the cost of immediate repairs would be £62,150 and that a complete refurbishment would cost £574,850. I acknowledge that this did not include potential flat roof repairs or refurbishment of the residential accommodation. Nevertheless, the lower end of this range is significantly less than the repair estimates of the first report. I observed during my site visit that the Centurion appeared to be in a reasonable condition and, whilst dated, it did not strike me as requiring a complete refurbishment. Moreover, the cost of immediate repairs is not prohibitive and could be met by a willing investor. As the fixtures and fittings remain in place it would be a small step to re-open the premises once the repairs are complete in order to generate a financial return. The key question is whether or not this would be sufficient to justify the investment.
11. The submitted accounts estimate the gross annual profit before rent would be around £17,849 and that the net annual profit to a licensee would be around £5,099. Admiral Taverns are of the opinion that the turnover of the Centurion would need to double in order to provide the required level of return on any future investment and a reasonable annual, net profit of around £15,000 for any potential licensee. Notwithstanding the repairs, it is clear to me that profitability will vary according to the tenancy agreement structure and the desired level of return of both the owner and the occupier.
12. In this particular instance I note that a tied tenancy agreement was in place and that profitability would have been greater had the Centurion been free of a tie despite the reduced rent. This is because the 'wet sales' of cold beverages would have increased the estimated gross annual profit by £18,000-£23,000, as established at the Hearing. Furthermore, as different business models are used by different pub companies this would further alter the estimated gross profit margin of the Centurion. Indeed, I note that three different companies had expressed an interest in purchasing it as a going concern. It was confirmed at the Hearing that one of these had approached Admiral Taverns in addition to four developers. Representatives of this company also visited the Centurion on two separate occasions. Despite this interest, it was not placed on the open market and the conditional sale was agreed with the appellant.
13. Consequently, the viability of the Centurion as a going concern was not market-tested and the assertions about its viability can only be narrowly related to one particular business model. Had it been offered for sale on the open market, the results of such an exercise would have provided a useful indication of viability given the lack of conclusive financial evidence to demonstrate substantial losses over a sufficiently long period. Consequently, this would not have been a 'wholly futile exercise' in my view. The fact that no wider marketing was undertaken is a further indication to me that the appellant has failed to make an adequate case concerning financial viability.
14. I now turn to the cultural and social viability of the Centurion. Its cultural and social value was clearly apparent from the number of interested persons who attended the Hearing and the existence of the Centurion Community Action Group (CCAG) which was formed in response to the proposed redevelopment. I note that it was the only community facility in the local area with a full drinks license and that it clearly provided a significant focal point for the local

² Condition and Option Appraisal Report (February 2016). The Centurion Public House, 1 Oldfield Drive, Chester. CBRE Ltd.

community. In addition to supporting various events such as christenings, weddings and funerals it was also used as a regular meeting place for a number of local groups and raised funds for charity. Furthermore, weekly quiz nights and the existence of pool and darts teams also contributed to the cohesiveness and wellbeing of the local community by bringing people together on a regular basis. The value of the Centurion was also expressed through a number of events which were jointly organised between the CCAG and the temporary pub manager. Whilst I accept that this did not result in any sustained increase in profit it nevertheless demonstrates the importance of this facility to the local community. This is also reflected in its listing as an Asset of Community Value under section 87 of the Localism Act 2011. Given the above, I am satisfied that the sense of community provided by the Centurion served an important cultural and social function.

15. The appellant is of the opinion that the local area is well-served by public houses and that a number of alternatives are readily accessible. The closest ones identified by the appellant were the Bridge Inn, approximately 0.5 miles away, and the Peacock, approximately 0.6 miles away. However, it was established at the Hearing that these distances are 'as the crow flies' and therefore not a realistic measure of pedestrian movement. One local resident helpfully pointed out at the Hearing that the shortest route on foot to the nearest pub, the Bridge, was approximately 0.7 miles and required a 30 minute walk from the Centurion. Clearly the degree of access to these establishments would vary but as figure 7 of the Design and Access Statement shows, most of the public houses are clustered to the southwest and are not within easy reach of the majority of the Vicar's Cross community, especially less able individuals. Moreover, it was established at the Hearing that they did not offer the same opportunities for community-based activities.
16. I accept that the care home would provide specialist dementia care for elderly residents and would conform to the minimum standards required by Government³. I also accept that not all of the locally available accommodation would meet these standards. Furthermore, the Council has accepted that there is a quantified need for this type of accommodation and that, within a market catchment area of 5.5 miles, there will be a shortfall of 227 places and 826 places across the Borough in 2016. However, the assessment on which these figures are based was published in April 2015 and more places have since become available through the delivery of other schemes at Heath Lane and Liverpool Road. This would reduce the estimated market catchment area shortfall to 72 places.
17. Whilst it was suggested that existing places were available in the majority of the 27 care homes within a 3 mile radius of the Centurion, this was not substantiated nor could the degree of similarity of these facilities with the proposed scheme be established at the Hearing. Furthermore, an absence of any reported shortfall to local Councillors cannot be taken as a positive indicator of the current situation. This is because the absence of a reported problem does not mean that it does not exist, merely that it hasn't been raised. Given the above and in the absence of any substantiated evidence to the contrary, I am satisfied that a need for the care home has been well established.

³ National Minimum Standards for Care Homes for Older People. A statement of national minimum standards published by the Secretary of State for Health under section 23(1) of the Care Standards Act 2000. February 2003

18. I now turn to the issue of equivalence. Equivalence is an important consideration because saved policy CU 1 of the LP requires that the demolition of buildings last used for cultural or entertainment purposes are replaced by buildings of equal value. The reasoned justification for this policy is to safeguard buildings that make an important contribution to local communities. Whilst I accept that public houses are solely linked to an entertainment function in this justification, paragraphs 69 and 70 of the National Planning Policy Framework 2012 (the Framework) suggest that a broader interpretation is required. This is because it advises that in order to deliver the social, recreational and cultural facilities that a community needs, planning decisions should 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. As it specifically includes public houses within the broader definition of community facilities this is a significant material consideration in this case.
19. It is clear from the evidence before me that there is an established local need for the public house and the care home. Benefits would be derived from both. A public house would provide opportunities for meetings between local people and help to maintain a strong and vibrant community whilst a care home would contribute to the mix of housing and help to maintain a wide choice of quality homes. Whilst I find that these considerations are equally weighted, they would not be equivalent because a public house would serve a wider cross-section of the local community whereas the care home would only benefit one particular group. I note the undisputed fact that 53% of the Great Broughton Parish population are aged between 18 and 65. Consequently, the majority of the local population would not benefit from the care home. Moreover, the scheme has no provision for facilities that would serve any of the community-based functions of the Centurion.
20. Given the above, I conclude that the proposal would cause significant harm to cultural and social well being of the local community and that the care home would not be of equal value. Consequently, it would be contrary to saved policy CU 1 of the LP and paragraph 7 of the Framework. Whilst saved policy CF 3 of the LP permits the loss of existing community facilities, when compensatory facilities of equivalent community benefit are provided, this is only when it is proven that there is no longer a need for the existing facility in the foreseeable future. As this has not been established to my satisfaction the proposal would also be contrary to saved policy CF 3 of the LP. Consequently, this aspect of the development would not be in accordance with the development plan or one of the core aims of the Great Broughton Parish Plan 2014 which is to maintain and increase the availability of indoor meeting places for social and recreation activities within the parish.

Living conditions

21. I observe from my site visit and the plans that two elevations of the proposed building would be in close proximity residential properties on George Close and Thackeray Drive. Bearing in mind the orientation of the habitable rooms and rear gardens of these properties I find that the massing and fenestration of the proposed development would have an overbearing and oppressive impact on outlook and lead to a significant loss of privacy. This impact would be most acute in relation to Nos. 3-4 George Close given the closely situated expanse of the south-eastern elevation with 10 overlooking habitable rooms.

22. I acknowledge that the tall deciduous hedge at the rear of the appeal site would provide some screening during the summer months. However, this would be much reduced during the winter, as I observed during my site visit. Whilst this could be improved through additional planting, any such boundary treatment is impermanent and cannot be relied upon to mitigate the detrimental impact of a permanent structure. This is because it could be removed at any time and may die from natural causes.
23. The appellant is of the opinion that the extent of overlooking would be no more than would be expected in normal, high density housing and that the impact on outlook would be akin to the construction of a 'small terrace'. However, these properties are not part of a high-density housing development and the institutional nature of the building is such that neighbouring residents would be confronted with a much greater extent of fenestration in comparison to a typical residential terrace.
24. The main impact on the residents of Thackeray Drive would arise from material changes in outlook rather than from a loss of privacy. I note the extensively fenestrated first floor lounge and dining area of the south-eastern elevation but find that the separation distance would be sufficient to prevent any significant overlooking of the habitable rooms and gardens of these dwellings. Despite the articulation of this elevation and the achievement of minimum separation distances, the raised ridge of the central roof section and the overall massing of the building would nevertheless lead to a significant and oppressive change in outlook.
25. Given the above, I conclude that the proposal would cause significant harm to the living conditions of nearby residents with regard to outlook and privacy contrary to saved policy HO 15 of the LP and policy SOC 5 of the SP that seek, among other things, to ensure that elderly persons' homes will not harm the living conditions of adjoining residents and that all development avoids adverse impacts on residential amenity. In these respects, the proposal would also be inconsistent with paragraph 17 of the Framework which seeks, among other things, to ensure that decision-taking leads to a good standard of amenity for all existing and future occupants of land and buildings. Consequently, this aspect of the development would not be in accordance with the development plan.

Character & appearance

26. I observed from my site visit that the shopping centre dominates the street scene of Green Lane and the junction of Oldfield Drive and that the proposed building would only be glimpsed through the gap between the centre and the church, along Oldfield Drive. Consequently, the main visual impact would be related to public views from Oldfield Drive and the predominantly private views from Thackeray Drive. I observed that the massing, materials and architecture of the surrounding properties is varied and that the height of the eaves on the proposed building would be comparable to the properties on George Close. I also observed that the ridge height would be approximately 1.5 m higher than the existing two storey element of the Centurion.
27. Despite the fact that the ground rises towards the appeal site from the shopping centre, the proposed building would not dominate the street scene of Oldfield Drive. This is primarily because the positioning of the building towards the rear of the appeal site would help maintain openness and avoid over-

dominance. Although the modified standard design would have an institutional quality, the individual design elements would not be jarring bearing in mind the lack of architectural consistency of the wider area. Furthermore, the massing of the proposed building would not be incongruent given the bulk of the adjacent centre. In this respect it would have an appropriate transitional quality.

28. Given the above, I conclude that the proposal would not cause significant harm to the character and appearance of the local area and that it would therefore be consistent with saved policy HO 15 of the LP and policy ENV 6 of the SP which seek, among other things, to ensure that elderly persons' homes do not have a detrimental effect on the established character of an area and that all development respects local character. Consequently, this aspect of the development would be in accord with the development plan.

Other Matters

29. In addition to the main issues of this appeal some consideration was given highway safety and protected species issues during the course of the Hearing. However, as I have dismissed the appeal for other reasons, these matters were not determinative.
30. The appellant has highlighted the sustainable location and the more effective use of previously developed land that would result from the proposed development. However, neither of these considerations would outweigh the harm that I have identified.

Conclusion

31. For the above reasons and having regard to all other matters raised I conclude that, on balance, the appeal should be dismissed.

Roger Catchpole

INSPECTOR

APPEARANCES

For the Council

Ms B Brown	Senior Planning Officer
Mr N Edwards	Investment & Development Officer
Mr M Orgill	Planning Officer
Mr R Charnley	Planning Officer

For the Appellant

Mr A Wood MA DipTP MRTPI	LNT Planning Manager
Ms J Sutcliffe	LNT Planner
Mr N Barnes	Admiral Taverns Area Manager
Mr A Clifford	Admiral Taverns Property Construction Director

Other Parties

Mr B Hindhaugh BSc PGCert(TEP) FIHE MIHT MIOEE
Centurion Community Action Group (CCAG)

Ms N Jones	CCAG
Ms P Hall	Local Councillor
Mr C Smith	Campaign for Real Ale (CAMRA)
Mr A Pannell	Local Councillor
Mr K Board	Local Councillor
Mr A Green	Local Resident
Rt Hon Chris Matheson MP	Local Member of Parliament
Mr J Quinn	Local Resident
Mr S Murphy	Local Resident
Mr T Jones	CCAG
Ms C Powell	Local Resident
Mr K Porter	CAMRA
Ms J Evans	Local Resident
Mr R Powis	Local Resident
Mr K Scargill	Great Broughton Parish Council
Mrs J Jones	Local Resident
Mr I Cooke	Local Resident
Mrs S Bratley	Local Resident

Submitted Documents

S1 Revised planning conditions

Appeal Decision

Inquiry held on 24 – 25 June 2014 and 10 September 2014

Site visit made on 25 June 2014

by **J A Murray LLB (Hons), Dip.Plan.Env, DMS, Solicitor**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 October 2014

Appeal Ref: APP/U5360/C/13/2209018

Land at The Chesham Arms, 15 Mehetabel Road, London, E9 6DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr M Patel against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 24 October 2013.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of first floor from A4 use to C3 self contained residential flat together with operational development to facilitate the self containment.
- The requirements of the notice are:
 - (i) Cease the use of the first floor as a self contained residential unit;
 - (ii) Remove all partitioning and means of enclosure which facilitates the use of the first floor as a self contained unit;
 - (iii) Make good any damage resulting from compliance with the requirements of this Notice; and
 - (iv) Remove all materials, debris, waste and equipment resulting from compliance with other requirements of this Notice from the Property and its premises.
- The period for compliance with the requirements is 2 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Preliminary matters

1. The allegation in the notice includes reference to “operational development to facilitate the self containment”. However, the works undertaken only affected the interior of the building and, by virtue of section 55(2)(a)(i) of the 1990 Act, they did not constitute development. Leaving aside the question of whether the notice could still include requirement (ii)¹ above, the parties agreed that the allegation should be corrected to delete the reference to operational development and that such correction would not result in any injustice. I will correct the notice accordingly. That being the case, grounds (b) and (c) need only address the use of the first floor.

¹ Having regard to the judgements in *Murfit v Secretary of State for the Environment* [1980] JPL 598 and *Somak Travel v Secretary of State for the Environment* [1987] JPL 630.

2. The parties also agreed that the allegation should strictly refer to a “material change of use” and I am satisfied that I can also make that correction without causing injustice.

Main Issues

3. The main issues are:

Re ground (b)

- Whether the appellant has proved, on the balance of probability, that there has not been a change of use of the first floor of the premises from Class A4 (public house) to self contained residential flat (Class C3 (dwellinghouse)).

Re ground (c)

- Whether the appellant has proved, on the balance of probability, that the change of use to Class C3, if it occurred, did not constitute a breach of planning control.

Re ground (d)

- Whether the appellant has proved, on the balance of probability, that:
 - (a) there was a material change of use of the first floor of the premises to a Class C3 self contained residential flat on or before 24 October 2009; and
 - (b), if there was, that use continued for a period of 4 years after that change.

Re ground (a)/the deemed application

- The acceptability of the change of use of the first floor of the premises to a Class C3 self contained residential flat, having regard to:
 - the extent to which it would be likely, following the expiry of temporary permitted development rights, to lead to the loss of the Class A4 public house, which is registered as an Asset of Community Value;
 - the availability of alternative facilities to meet community need;
 - whether it would at least preserve the character and appearance of the Clapton Square Conservation Area; and
 - any harm to the Chesham Arms as a non-designated heritage asset (a locally listed building).

Re ground (f)

- Whether the steps required by the notice exceed what is necessary to remedy the breach of planning control.

Re ground (g)

- Whether the period of 2 months specified for compliance with the notice is reasonable.

Reasons

Ground (b)

4. The Statement of Common Ground (SOCG)² records agreement between the parties that the first floor of the Chesham Arms has historically been used as a residential flat, ancillary to the primary Class A4 public house (pub) use. Evidence to support this goes back many years and indeed there is nothing to suggest that the first floor has ever been used in any other way, or occupied by

² Inquiry document 8.

anyone other than persons running the pub. There was no separate access to the first floor accommodation, which could only be entered via a staircase located behind the bar.

5. The SOCG and Mr Allen's proof³ also record that the pub ceased trading in October 2012, when the appellant purchased the property. In the summer/autumn of 2013, the appellant undertook works at ground floor level, removing the bar and creating 2 separate office suites, with access via the existing doorway and a corridor. The creation of office accommodation was pursuant to flexible use, temporary permitted development (PD) rights⁴ but, as well as subdividing the ground floor, those internal works resulted in the self containment of the first floor accommodation. In fact, the occupation of the first floor as a self contained residential flat commenced immediately upon completion of the internal works, as an Assured Shorthold Tenancy was granted for 12 months commencing 10 October 2013. At that point, there clearly was a change of use from a primary A4 pub to primary C3, self contained dwellinghouse and any ancillary link was severed.
6. In closing for the appellant, Mr Turney accepted that there was now a residential flat, but contended that the change was not material. That contention is relevant to ground (c), rather than ground (b), which concerns the essential facts in the allegation. I conclude that the appellant has failed to prove, on the balance of probability, that there has not been a change of use of the first floor of the premises from Class A4 (pub) to self contained residential flat (Class C3 (dwellinghouse)). The appeal must therefore fail on ground (b).

Ground (c)

7. In opening⁵, counsel for the local planning authority, Mr Lewis, cited pertinent passages from Sweet and Maxwell's Encyclopedia of Planning Law and Practice (the Encyclopedia), including:
"The protection of ancillary uses remains only so long as the ancillary link is maintained. Thus a residential caravan parked in the curtilage of a dwelling house may be regarded as devoted to an ancillary use so long as it is not used as a separate dwelling." (Paragraph P55.40)
8. In closing⁶ for the appellant, Mr Turney submitted that, in so far as it is found that severance of a tie between the pub and residential flat has occurred (and I find that it plainly has), it has occurred by virtue of the change of use of the ground floor, pursuant to temporary, flexible PD rights. He developed this point to conclude that the severance from the primary use of a use which formerly was authorised only by reason of that ancillary link must be lawful, because it has occurred through a lawful change of use.
9. Though skilfully put, with respect, I do not accept that proposition. Whilst the flexible use PD rights in this case authorise the change of use of the ground floor⁷ for up to 2 years, a condition set out at D.2(d) of Class D provides that, for the purposes of the GPDO and the Use Classes Order, the site retains the use class it had before changing to any of the flexible uses. In this case that

³ Paragraph 1.10 and 1.11.

⁴ Class D of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO).

⁵ See inquiry document 3.

⁶ See inquiry document 27.

⁷ Only the ground floor comes within the size restrictions in the condition in D.1(a) of Class D.

means Class A4 (pub). The exercise of PD rights in relation to the ground floor cannot, as a side effect, authorise a change of use of the first floor from Class A4 pub to Class C3 self contained residential flat. Furthermore, in addition to the works of subdivision, the grant of an Assured Shorthold Tenancy to residents not engaged in the operation of the pub use has severed the functional link with that primary pub use.

10. In so far as the above is insufficient to establish that the change which has taken place is a material one, regard must also be had to the fact that the single planning unit, constituted by the Chesham Arms, including its ancillary first floor residential accommodation, has been subdivided. On this point, Mr Lewis cited, in opening and closing, a further extract from the Encyclopedia:

"A material change in use does not occur automatically upon the subdivision of a planning unit. The primary use of the new units may remain the same as the former primary use of the whole. But the subdivision may have the effect of changing the character of the use and may have planning consequences which indicate that a material change has occurred (see, e.g. Wakelin v Secretary of State for the Environment [1978] JPL 769; Winton v Secretary of State for the Environment [1984] JPL 188). For example, it may form part of a process of intensification of the former use, or result in the severance from the primary use of a link which formerly was authorised only by reason of that ancillary link." (Paragraph P55.49)

11. So, the planning unit has been subdivided, the primary use of the new units differs from that of the former and the ancillary residential use has been severed from the primary pub use. The appellant nevertheless maintains that this has no planning consequences, because residential use of the first floor has continued for many years. However, the lawful use of the site remains as an A4 pub and the GPDO provides that the site shall revert to that lawful use, after the period of flexible use⁸. Bearing these points in mind, ancillary residential accommodation above a pub, in which the operators of that pub reside, is different in character from a self contained residential flat above a pub, which is not operated by the residents of that flat. Whilst I acknowledge that there have always been separate dwellings either side of the pub, the new arrangement could well have implications in terms of residential amenity. Those implications might be addressed through the imposition of conditions but, in the context of ground (c), that is not the point. It is not for me to consider here whether the change of use is acceptable, such that planning permission should be granted; I must merely determine whether it is material.
12. The Council and the Churchwell Residents Group (CRG) cite the potential loss of the pub as a further planning consequence, but I will consider that point under ground (a). For the purposes of ground (c), I am satisfied that, together with the severance of the ancillary link and subdivision of the planning unit, the potential impact on residential amenity is sufficient to show, as a matter of fact and degree, and of law, that there has been a material change of use. I therefore conclude that the appellant has failed to prove, on the balance of probability, that the change of use to Class C3 did not constitute a breach of planning control. Ground (c) therefore fails.

⁸ Class D, condition D.2(e).

Ground (d)

13. The appellant contends that there has been residential use of the property for many years and probably since its construction some 150 years ago. However, as I have concluded that there has been a material change of use, in order to succeed on ground (d), the appellant would have to show that this change took place at least 4 years prior to the issue of the notice, namely on or before 24 October 2009. The appellant does not seek to show that. The evidence is that occupation of the first floor flat, as a self contained unit, commenced on 10 October 2013, after the works of self containment were carried out. Following a somewhat confusing debate during closing submissions, Mr Turney ultimately conceded that, if ground (c) fails, "it is inevitable that ground (d) falls away."
14. I therefore conclude that the appellant has failed to prove on the balance of probability, that there was a material change of use of the first floor of the premises to a Class C3 self contained residential flat on or before 24 October 2009 and ground (d) must fail.

Ground (a)/the deemed application*Policy*

15. The development plan currently comprises the London Plan (LP), the London Borough of Hackney Local Development Framework Core Strategy (CS), adopted November 2010 and the saved policies of the Hackney Unitary Development Plan (UDP). No relevant UDP policies have been brought to my attention but, among other things, LP Policy 7.1 indicates that people should have the best possible access to services. Furthermore, development should, among other things, maximise the opportunity for community inclusion and cohesion and should contribute to people's sense of place.
16. LP Policy 3.16 states that London requires additional and enhanced social infrastructure provision to meet the needs of its growing and diverse population. The supporting text acknowledges that "social infrastructure" covers a wide range of facilities and does not seek to define them. Whilst the list of examples given does not explicitly include pubs, it ends with "many other uses and activities which contribute to making an area more than just a place to live." Mr Johnson maintained that this was capable of including pubs, but not necessarily every pub, and that must be correct. Nevertheless, LP Policy 3.16 only guards against the loss of social infrastructure "in areas of defined need for that type of social infrastructure." Notwithstanding the thrust of support in LP Policies 3.16 and 7.1 for uses which contribute to making an area more than just a place to live, the appeal site is not in an area of defined need and therefore this development cannot strictly breach Policy 3.16.
17. CS Policy 8 provides that the Council will seek to deliver new social infrastructure where the evidence demonstrates it is most needed and in growth areas, such as Hackney Central. The appellant points out that there is no mention of pubs in the Council's Social Infrastructure programme, or other social infrastructure policies. CS Policy 13 seeks to promote community, leisure, entertainment and recreation uses, within major and district centres. CS Policy 15 also encourages the managed expansion of the evening and night-time economy in town centres and the supporting text refers to pubs as part of that. However, this policy says nothing relating to their retention and, for the

Council, Mr Johnson accepted that development plan policy generally favours town centre locations for pubs. The appeal site is close to, but not within the town centre.

18. I shall return to whether the appeal scheme could be said to conflict with LP Policy 7.1, but leaving that aside, the adopted development plan contains no policies which specifically safeguard the continuing existence of pubs. However, Policy DM5 of the draft Hackney Development Management Local Plan (HDMLP), Submission Version (December 2013) provides that the Council will protect existing social and community facilities, including pubs. This is so unless replacement facilities are provided, or the facility is no longer required in its current use and it has been demonstrated that it is no longer suitable for any other community use, for which there is a defined need in the locality.
19. The HDMLP is at a relatively advanced stage and there have been no objections to Policy DM5. In particular, neither the appellant himself, nor the Mayor of London has objected to it. This is notwithstanding the appellant's contention that DM5 is inconsistent with LP Policy 3.16, because it provides protection for any form of social infrastructure, even where it is not in an area of defined need for that type of infrastructure. Nevertheless, I am not convinced that this makes the approach in Policy DM5 inconsistent with the thrust of LP policies. I also note Mrs Ingram's evidence, on behalf of the CRG, that about 8 or 9 London Councils are advancing pub protection policies and none of these require the PH to be in an area of "defined need".
20. Furthermore, as currently drafted, Policy DM5 does not provide blanket protection to all pubs; it only safeguards those which are still required in their current use. At paragraph 3.6.2, the supporting text also draws a distinction between community pubs, that serve predominantly their local residential community, and (i) town centre bars which serve mainly after-work or weekend drinkers; and (ii) food-led pubs, which people visit predominantly to have a meal, rather than to socialise and drink. The text indicates that a key function of community pubs is to serve as a place of social interaction. As Policy DM5 only seeks to protect social and community facilities, only community pubs are safeguarded by it.
21. Pubs are explicitly included in an indicative list of "community facilities" in paragraph 70 of the National Planning Policy Framework (the Framework). Furthermore, that paragraph says that policies and decisions should "guard against the unnecessary loss of valued facilities and services, *particularly* (my emphasis) where this would reduce the community's ability to meet its day-to-day needs." HDMLP Policy DM5 is consistent with this approach. Though it does not use the word "valued", the proviso that the facility must still be required in its current use has much the same effect.
22. Given its relatively advanced state, its consistency with the Framework and the broad thrust of the LP, HDMLP Policy DM5 must carry significant weight in the determination of this appeal. In any event, paragraph 70 of the Framework is clearly an important material consideration in its own right.

The loss of the pub

23. Of course these policies are only relevant if the appeal development would be likely to lead to the loss of the pub but, as is generally the case, I need only decide that question on the balance of probability. I note that the pub closed

about a year before the use of the first floor as a self contained residential flat began. On that basis, the appellant contends that this use of the first floor did not cause the loss of the pub. However, Mr Allen indicated that the appellant's original intention had been to convert the entire building to residential use as flats⁹. It is clear that this is why the pub was closed on the sale to the appellant and Mr Allen said it was no part of the appellant's case to suggest that a pub is no longer viable on this site. In any event, A4 pub use remains the lawful use and, as already indicated, the current temporary office use of the ground floor, pursuant to flexible PD rights, does not affect that. The question is whether allowing the self contained residential use to remain permanently at first floor level would result in the pub use ceasing altogether in the building as a whole.

24. The appellant says the pub use has only ever been carried on at ground floor level and there is no reason why that use could not resume on the ground floor, without ancillary residential accommodation, when the flexible PD rights come to an end. He contends that the site could accommodate what was described as a "lock-up" pub. Although Mr Allen acknowledged that neither he nor his client had any experience in running a pub, he said that there were numerous examples of pubs without ancillary living accommodation, and indeed pubs with separately occupied flats above.
25. For the CRG, Mrs Ingram acknowledged that there was "an element of advocacy" to her evidence. As an activist for the Campaign for Real Ale between 2010 and 2013, alongside her professional work, she contributed to about 60 'save the pub' campaigns as a heritage and planning adviser. She has also specialised in the conservation of pubs and breweries for more than 5 years. Under cross examination, she readily admitted that she does not take on proposals for pub closures, partly because she is busy, but also because it is against her inclination. However, she also said that she only gives support for pubs which she believes have a reasonable chance of success and that many pubs go without people mourning their loss. In any event, Mrs Ingram clearly has considerable knowledge of the pub sector and her evidence was given in a straightforward manner.
26. Mrs Ingram was clear that the likelihood of the pub use resuming is "much reduced, if not entirely erased", if the self contained residential flat use of the first floor is made permanent. There are a number of reasons for this, but she said that the viability of most small pubs relies on containing overheads. Living on the premises avoids the publican having to pay for accommodation elsewhere, at more than nominal rent. For licensing purposes, if the publican lives on site, they can fulfil the role of "designated premises supervisor" (DPS), even when they are off duty. If they do not, another member of staff will need to have a DPS license and this can place an extra burden on the economics of the business. The existence of a separately occupied flat upstairs increases the burden of supervision, including of the outside space, to avoid complaints. Living on site also offers opportunities for diversification, for example offering dry cleaning or parcel delivery and drop-off services.
27. Mrs Ingram cited examples of pubs which do manage without ancillary residential accommodation, the upper floors having been converted to separate

⁹ Indeed this is recorded in the decision notice refusing the appellant's appeal against the registration of the Chesham Arms as an Asset of Community Value. See CRG's Statement of Case (inquiry document 1), page 13 of 136 in the appended bundle.

residential use. However, she explained that these were destination, specialist real ale pubs, forming part of the management's portfolio of premises. They are not local community, neighbourhood pubs, serving families in back street locations, providing social facilities and gardens. Creating a destination pub at the Chesham Arms is not an option, as it takes time to build a reputation. In any event, such examples are exceptional. Mrs Ingram was not aware of a significant number where separation has been achieved with any long-term success, rather the opposite.

28. There was no substantial challenge to this element of Mrs Ingram's evidence through any detailed alternative analysis. The most Mr Allen could say was that other pubs operate without ancillary accommodation and that a pub use could resume on the ground floor of the Chesham Arms and might be even more viable on that basis. He nevertheless confirmed that any offers he had seen for purchase of the Chesham Arms as a pub were on the basis that the whole building would be available for that use, including the ancillary residential accommodation at first floor level.
29. Even if it is accepted that planning conditions might address noise and amenity issues, I am satisfied on the evidence before me that, if I were to grant planning permission for permanent use of the first floor as a self contained residential flat, that would probably result in the pub use not resuming in the building as a whole¹⁰. That probability would arise immediately on the grant of planning permission, notwithstanding that a pub use could not actually resume until cessation of the current ground floor use, pursuant to temporary PD rights.
30. The closure of the Chesham Arms has resulted in a sustained and well supported campaign to "save" it and this alone is evidence of its value as a community facility. However, its registration on 11 March 2013 as an Asset of Community Value (ACV) under the Localism Act 2011 formally recognises that the resumed use of the building as a pub would further the social well being or social interests of the local community¹¹. This is a material consideration of significant weight in this appeal and, in any event, the appellant concedes that the community in general valued this pub¹², while Mrs Ingram said the Chesham Arms was "par excellence, a neighbourhood community pub."
31. I acknowledge that refusal of planning permission on this appeal would not automatically mean that the Chesham Arms would come back into use as a community pub. The appellant cannot be forced to operate it as a pub at all and, even if it were so used, there would be no control over the type of A4 use. However, in answer to my questions, Mr Allen acknowledged that, if the Chesham Arms reopened as a pub, it would be unlikely to do so as a town centre type pub, because of its location. He said it might be attractive as a food-led pub, but it was "hard to say." Mrs Ingram acknowledged that a food-led pub would not be a community facility, but said it is necessary to look at the reality of someone taking on this pub, knowing what the community wants; "they would be foolish to do different."
32. Mr Watson, of the CRG, also argued that, because of its layout, including its garden, and what it meant culturally and historically in the setting of the Conservation Area, the Chesham Arms lends itself to being a community pub.

¹⁰ This reinforces my conclusion on ground (c). See paragraph 12 above.

¹¹ See inquiry document 1, page 14 of 136 in the appended bundle, at paragraph 4.

¹² Mr Allen's proof, paragraph 9.16.

It is on a back street and is physically at the heart of the local residential community, indeed it appears that it was built as such. On the evidence before me, if it is to be actively used as a pub, the Chesham Arms is likely to be a community pub.

Alternative facilities

33. Mr Allen provided a useful survey¹³ of pubs within a 10 minute walking distance of the appeal site and I looked at all of them, during my unaccompanied, pre-inquiry site visit. Whilst the existence of those other pubs means that local residents would be within reasonable walking distance of a drinking opportunity, those alternatives are not at the heart of the local community. They differ in character and none has a garden, though Baxter's has a roof area and the Globe on Morning Lane has an outside seating area at front. In giving evidence for the Council, Mr Johnson said that those other pubs are not well placed to meet the community's needs in terms of social cohesion and such community considerations "go beyond the need for bread and water." The evidence of local residents indicates that there is a need for a neighbourhood family pub in this locality and that the Chesham Arms makes a key contribution to their "sense of place."
34. In terms of HDMLP Policy DM5, the pub use at the Chesham Arms is a social and community facility and the evidence is that this use is still required. It is clearly a valued facility in terms of the Framework, whether or not its loss could be said to reduce the community's ability to meet its "day-to-day needs" and regardless of the existence of other pubs within walking distance. Furthermore, there is no evidence to suggest that the loss of the pub is necessary. In these circumstances, the appeal scheme is contrary to draft HDMLP Policy DM5 and the Framework. In addition, this development diminishes local residents' access to a service and their opportunities for community inclusion and cohesion, whilst eroding their sense of place. It therefore conflicts with LP Policy 7.1.

The Conservation Area

35. The impact on the Clapton Square Conservation Area (CA) is not part of the Council's case, but it is a concern of the CRG. At paragraph 4.4, the CA Appraisal¹⁴ lists the Chesham Arms as one of a number of "focal buildings". On the face of things, this assessment is based primarily on the actual appearance of the building and I accept that the change of use of the first floor to a self contained residential flat need have no material impact on that.
36. However, paragraph 1.1 of the Appraisal also notes that the "special character of CAs "does not come from the quality of their buildings alone." A range of factors can make up the familiar local scene, including "a particular 'mix' of building uses." Mr Perry, as Chair of the Clapton Square Conservation Area Advisory Committee and Trustee of the Hackney Society, described the Chesham Arms as "socially focal, not just physically focal". Furthermore, section 7 of the CA Appraisal also includes a "SWOT" analysis. A number of threats are identified at paragraph 7.4, including "change of use and loss of historic public houses (such as the former Duke of Clarence PH which is now closed and converted to residential)."

¹³ His appendix F.

¹⁴ Inquiry document 13.

37. Mr Allen argued, with some support from paragraph 4.6 of the Appraisal, that the character of this part of the CA is mainly residential and the appeal scheme would preserve that character. However, especially given that the Chesham Arms was incorporated into the Victorian residential development of Mehetabel Road, its contribution to the character of the area should not be overlooked. Mrs Ingram says in her proof¹⁵:

"Public houses have a singular role to play both as landmarks and wayfinders in the built environment and in their particular value in use to the communities that they serve. After dark, they provide a reassuring presence through their lights and the arrival and departure of their patrons...they form a locus of community without which the residential streets become no more than dormitories."

38. The impact on CAs of changes of use, as opposed to solely physical changes, has been recognised in a number of previous appeals referred to at section 9 of Mrs Ingram's proof, in particular that concerning The Phene Arms, Phene Street, London¹⁶. In a very recent appeal concerning The Feathers, 43 Linhope Street, London¹⁷, the Inspector also made some pertinent comments. In that case, some physical changes were proposed to the building, but the change of use was also a factor. At paragraph 19 of his decision, the Inspector found that:

"The existing site contributes positively to the character and appearance of the Conservation Area not only through the physical presence and features of the building but through its long-established use as a traditional back-street public house. Both aspects reflect the historical development of the site and of the wider Conservation Area and both contribute to the visual and functional distinctiveness of the setting. Although the use contrasts with the predominant residential character of this part of the Conservation Area, it brings activity and vitality to the neighbourhood consistent with its charm and heritage and provides a particular sense of local historic focus."

39. In so far as it concerns the use of the pub, that statement is equally applicable to the use of the Chesham Arms. I recognise that existing PD rights, relied on by the appellant, allow for temporary changes of use of pubs, even in CAs. Nevertheless, I am satisfied that the permanent cessation of the use of the Chesham Arms as a pub would be detrimental to the character of the CA. I have already concluded that this development would probably lead to that cessation and it would therefore be contrary to CS Policy 25 and LP Policy 7.8.
40. In terms of the Framework, notwithstanding the recognised threat posed to the CA by the loss of pubs, given the modest scale of the proposal and the lack of significant physical changes to the exterior of the building, the resultant harm to the significance of the CA as a whole would be less than substantial. Nevertheless, against that less than substantial harm, the only public benefit the appellant advances is the provision of an excellent unit of residential accommodation in a sustainable location, in a city which is desperately short of housing. The provision of additional housing is usually a significant benefit but, even in use as a pub, the Chesham Arms is capable of providing ancillary residential accommodation, so this is a largely neutral factor. In any event, it

¹⁵ Paragraph 5.2.1.

¹⁶ Appeal Ref APP/25600/A/12/2172028 & 2175522.

¹⁷ Appeal Ref APP/X5990/A/14/2215985 (inquiry document 17).

does not outweigh the less than substantial harm to the CA and I have a statutory duty¹⁸ to pay special attention to the desirability of at least preserving the character and appearance of the CA.

The locally listed building

41. As a locally listed building, The Chesham Arms is a non-designated heritage asset in its own right. Mrs Ingram pointed out that the English Heritage 'Good Practice Guide for Local Heritage Listing' 2012 refers to the significance of the use of a building. Furthermore, the Local Heritage Listing Assessment Report¹⁹, dated February 2013, refers to the concern about the loss of pubs, highlighted in the CA Appraisal.
42. I am content that the use of a building could be at least part of the reason for it being locally listed. Nevertheless, in this appeal, the CA Appraisal indicates that the borough's locally listed buildings are of local significance "due to their age, architectural detailing or because of some unusual feature." In addition, the justification for the local listing in the specific Assessment Report focuses on historical, architectural, environmental, aesthetic and artistic considerations. It is also of some significance that, even though the lawful A4 planning use was still extant, that local listing process commenced after the pub had ceased operating as such²⁰. In all these circumstances, I conclude that there would not be additional harm associated with the impact on the Chesham Arms as a locally listed building.

Overall conclusion on ground (a)/the deemed application

43. Nevertheless, I conclude on the main issue, that the permanent change of use of the first floor of the premises to a Class C3 self contained residential flat is unacceptable. This is because, notwithstanding the existence of other pubs within walking distance, it would probably result in the loss of the Class A4 public house, which is registered as an Asset of Community Value. Furthermore, as a consequence of that loss, the change of use would not preserve the character of the Clapton Square Conservation Area. The development therefore conflicts with LP Policies 7.1 and 7.8, CS Policy 25, as well as draft HDMLP Policy DM5 and the Framework.
44. However, I must consider the implications of the office use of the ground floor, pursuant to temporary PD rights. On the basis of my own inspection and Mr Watson's evidence as a local resident, I would say that the office use is, at most, low key. That is perhaps reflected in the peppercorn rent under the lease²¹. Nevertheless, I must accept that the office use has commenced and I acknowledge the existence of the lease, for the period 24 March 2014 to 23 March 2016. The start date of that lease conflicts with the date notified by the appellant as the date for commencement of the PD use, namely 1 August 2013. However, whatever the intention behind the notification condition in Class D, D.2(a) of Part 4 of Schedule 2 of the GPDO²², Class D.(b) simply provides that the use will be permitted for a single continuous period of 2 years from the date the use begins. On this basis, Mr Lewis accepted in

¹⁸ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

¹⁹ Inquiry document 6.

²⁰ Whilst the same can be said of the ACV registration process, that statutory regime specifically requires consideration of the use of the building in the recent past and the realistic prospects for its use in the next 5 years.

²¹ Mr Allen's appendix D.

²² In this regard, I note the CRG's full written submissions (inquiry document 20).

closing for the Council that the temporary PD rights would subsist until March 2016 and that seems to me to be correct.

45. Under cross examination, Mr Johnson indicated that it would not be unreasonable to grant temporary planning permission for use of the first floor as a self contained residential flat, as the harm would not arise during the temporary period of PD use on the ground floor. Mr Lewis nevertheless submitted in closing that a period of 18 months or so, up to March 2016, would be too short to justify a temporary permission and he urged me to simply extend the period for compliance with the notice.
46. In my experience, temporary permissions for a year or so are not uncommon. However, as also stressed by Mr Lewis, on expiry of a temporary planning permission, the Council would have to start enforcement action again from scratch. I note Mr Turney's submission that the Council would have the option of seeking an injunction, without issuing another enforcement notice, but that might not be straightforward, especially if the property were still occupied by tenants.
47. The only reason for even considering a temporary permission is the existence of the PD rights, which will end on 23 March 2016 and the unauthorised use should not continue beyond then. The immediate liability to prosecution is likely to be a more effective incentive to ensure that the flat is vacated by that date than the prospect of injunction proceedings and/or another enforcement notice, which could also be appealed. In all the circumstances, I am satisfied that a temporary permission would not be justified and no other conditions can make the development acceptable. For all the reasons given, and having regard to all other matters raised, the appeal must therefore fail on ground (a). I will return to the period for compliance when addressing ground (g).

Ground (f)

48. I have already indicated that the reference to "operational development to facilitate the self containment" should be deleted from the allegation. As drafted, requirement (ii) of the notice nevertheless requires removal of all partitioning and means of enclosure which facilitate the use of the first floor as a self contained unit and requirements (iii) and (iv) flow from that. Having regard to *Murfitt v Secretary of State for the Environment [1980] JPL 598* and *Somak Travel v Secretary of State for the Environment [1987] JPL 630*, the Council argued that the internal works were integral to or part and parcel of the alleged breach of planning control. However, they were also undertaken to facilitate the lawful exercise of temporary permitted development rights in relation to the ground floor. In these circumstances, the notice cannot properly require the removal of those works. Ground (f) therefore succeeds and I will vary the notice by deleting requirements (ii) – (iv).
49. As an aside, Mr Lewis submitted that, having regard to case law²³, the requirement under the PD regime to revert the land to its lawful pub use at the end of the temporary PD period would necessitate removal of the internal works of subdivision anyway. However, it is not for me to determine that point in this appeal.

²³ See inquiry document 5.

Ground (g)

50. As indicated, there is no good reason to require the cessation of the use of the first floor as a self contained residential flat while the exercise of temporary PD rights on the ground floor effectively prevent the use of the building as a pub anyway. The appeal therefore succeeds on ground (g) and I will vary the time for compliance to coincide with the cessation of those PD rights.

Decision

Appeal Ref: APP/U5360/C/13/2209018

51. The enforcement notice is (a) corrected by deleting the original words in section 3 and substituting "Without planning permission, the material change of use of the first floor of the Property from A4 use to C3 self contained residential flat" and (b) varied by: deleting requirements (ii) to (iv) from section 5; and deleting from section 6 the words "2 months after this notice takes effect" and substituting "By 23 March 2016."
52. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Turney of counsel	Instructed by Allen Planning Ltd
He called	
Anthony Allen MRTPI	Allen Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Meyric Lewis of counsel	Instructed by the Corporate Director of Law, Human Resources and Regulatory Services for the London Borough of Hackney
He called	
Michael Johnson BSc MPhil	Planning Enforcement Manager for the London Borough of Hackney

FOR THE CHURCHWELL RESIDENTS GROUP (THE RULE 6 PARTY):

Martyn Williams	Local resident
He called	
James Watson	Local resident
Mrs Dale Ingram MSc CHE FRSA	Planning For Pubs Limited

INTERESTED PERSONS:

Nick Perry	Chair of the Clapton Square Conservation Area Advisory Committee and Trustee of the Hackney Society
Michael Lewis	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1	Churchwell Residents' Group (CRG) Statement of Case (missing from file)
2	Appendix 4 of the London Borough of Hackney Development Management Local Plan (Submission Version December 2013)
3	Council's opening statement
4	CRG's opening statement
5	<i>R oao Hall Hunter Partnership v (1) First Secretary of State (2) Waverley Borough Council and (3) Tuesley Farm Campaign/Residents Group [2006] EWHC 3482</i>
6	Local Heritage Listing Assessment Report re the Chesham Arms
7	Email correspondence between Martyn Williams and Tony Allen 25 June 2013
8	Signed Statement of Common Ground
9	Email correspondence between Tony Allen and Robert Thomas of Remarkable Restaurants Ltd 24 March 2014
10	Council's notice of the inquiry
11	Email from Tony Allen to Martyn Williams dated 28 March 2014, referred to in paragraph 5.21 of Mr Watson's proof
12	Clapton Square Conservation Area Map
13	Clapton Square Conservation Area Appraisal

14	Appendix 6 of the London Borough of Hackney Local Development Framework Core Strategy
15	Correspondence from Remarkable Restaurants Ltd
16	Undated letter from the occupier of 18 Edwards Rd, E17 (Katy), handed to the Council at the Inquiry
17	Appeal decision Ref APP/X5990/A/14/2215985 re The Feathers, 43 Linhope Street, London
18	Planning permission Ref 14/00715/FUL re The Beehive, 6 Crossford Street, London
19	Planning permission Ref 13/AP/3279 re Huntsman and Hounds, 70 Elsted Street, London
20	CRG's submission on commencement of temporary flexible B1 use and proposed conditions
21	Appellant's proposed conditions
22	Drawing No jw564-111 Rev A Existing plans and elevations
23	Drawing No jw564-110 Rev B Proposed plans and elevations
24	The Council's list of suggested conditions
25	Council's closing submissions
26	CRG's closing submissions
27	Appellant's closing submissions



Appeal Decision

Hearing held on 24 July 2012

Site visit made on 24 July 2012

by Christopher Bowden MA (Oxon)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 September 2012

Appeal Ref: APP/K5600/A/12/2172342

The Cross Keys, 1 Lawrence Street, London SW3 5NB

- 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 CKPH Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref. PP/11/01917, dated 13 June 2011, was refused by notice dated 9 December 2011.
 - The development proposed is: *change of use of existing building from Class A4 (drinking establishment) to Class C3 (single family dwelling). Addition of new basement, erection of a roof extension, demolition of existing rear extensions at ground-floor level, erection of new ground-floor rear extension, and reinstatement of garden to the rear.*
-

Decision

1. The appeal is dismissed.

Procedural matters

2. As discussed at the Hearing, the description of the development proposed is taken from the decision notice. I consider that it describes the proposal more accurately than the one given in the application form.
3. At the Hearing, the Council confirmed that the decision notice had omitted in error reference to Core Strategy (CS)¹ Policy CL 3 (*Heritage Assets – Conservation Areas and Historic Spaces*). The inclusion of this policy would not prejudice any interests in this appeal and I have proceeded accordingly.
4. The decision notice mentions Planning Policy Statement 5 *Planning for the Historic Environment* (PPS 5). This has since been replaced by the National Planning Policy Framework (the Framework), published in March 2012. The PPS and the development plan policies cited in the notice (including CS Policy CL 3) are consistent with the thrust of the Framework. Comments made on the Framework by the Council and the appellant and by third parties have been taken into account in determining the appeal.
5. The appellant submitted a signed unilateral undertaking dated 16 July 2012 relating to parking permits and contributions towards community facilities, education and health amounting to £3999 (including monitoring fee). This is considered further below.

¹ Local Development Framework (LDF) Core Strategy for the Royal Borough of Kensington and Chelsea with a Focus on North Kensington Development Plan Document, adopted in 2010

6. My attention has been drawn to a number of decisions allowing or dismissing appeals relating to conversion of public houses for residential purposes. While I have taken these into account I have determined this appeal on its own merits.

Main issue

7. This is the effect of the proposed change of use on the value and significance of the Cross Keys public house as a heritage asset and on the character and appearance of the Cheyne Conservation Area.

Reasons

8. The Cross Keys is a four-storey (including basement) mid-terrace building that operated until May 2012 as a public house and restaurant within Use Class A4 (drinking establishments). It has now ceased trading and the premises are vacant. The surrounding area is predominantly residential. The site lies within the Cheyne Conservation Area (CA).
9. The appeal scheme seeks to change the use of the property to a five-bedroom single-family dwelling (Use Class C3). This involves a number of alterations and additions to the building but the Council does not object to these, subject to suitable conditions.

Policy and principle

10. There is no dispute that public houses constitute a social and community use. The Council seeks to protect such uses in general by way of Policy CK 1 in support of a broader strategic objective (Policy CO 1) for "Keeping Life Local". However, while noting concern about the loss of public houses to residential use, the related text indicates that the Council considers that there is too little evidence to resist their loss "at the present time" (the CS was adopted in December 2010) but that this will be kept under review. In the decision notice, the Council did not rely on this policy but on policies in the London Plan 2011 dealing with such matters as protection of community facilities and social infrastructure and access to services and facilities at neighbourhood level. These form part of the development plan and are more recent than policies in the CS.
11. As regards the CS itself, the Council has cited Policies CL 1 and CL 3 (both supporting the strategic objective (Policy CO 5) for "Renewing the Legacy"). While the focus of these policies and the identified delivery mechanisms is on the built environment, including design aspects, I accept that the character of buildings and their contribution to the wider area, including a conservation area, may include their historic and current use as well as matters of physical form. I therefore agree that these policies are relevant to consideration of the main issue in this appeal.
12. As noted above, the Framework was published after the decision was issued. It is not part of the development plan but it is a material consideration in planning decisions. The Framework includes guidance on "promoting healthy communities". It says (paragraph 70) that to deliver the social, recreational and cultural facilities the community needs, planning policies and decisions should (among other things) 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. The paragraph makes clear that community facilities include public houses.

13. At the Hearing, the Council tabled two draft CS policies on which a period of public consultation had just concluded. They sought to resist the loss of public houses (and certain other Class A uses) providing a wider social role and the change of use of any building where the current use contributes to the character and significance of the surrounding area, and to its sense of place. Their development followed a unanimous Council resolution expressing concern about the loss of community public houses, especially historic ones in conservation areas, and consultation on an "issues and options" paper on protection of public houses in the Borough. It was reported that some 75% of respondents to the recent consultation supported a policy protecting public houses (with 84% support in the earlier consultation).
14. The Council said at the Hearing that these draft policies were already being used for development control purposes. The basic thrust of the public house protection policy in particular appears broadly consistent with paragraph 70 of the Framework but there have been a number of comments on the draft, including some significant objections which it may be premature to consider resolved, even though the Council has prepared responses to them. At this stage of the process, and having regard to paragraph 216 of the Framework, I give the draft policies themselves no more than limited weight in the context of this appeal.
15. It appears that, since the CS was adopted, three more public houses have been lost in the Borough. The Council said at the Hearing that there have been three planning applications involving the loss of public houses since March 2012, with pre-application inquiries for another four. This provides some evidence that the pressure on public houses is increasing. Moreover, while it remains the case that there are public houses within 10 minutes walk in the Borough, I accept that a simple spatial distribution is not of itself a reliable guide to the value placed on public houses by local communities.
16. Overall, therefore, while the draft CS policies carry limited weight at this stage, I consider that the Framework carries significant weight as the adopted CS is in conflict with it in relation to protection of public houses and the Framework is more recent.

Value of the Cross Keys to the local community

17. It is clear that, before it closed, the Cross Keys contributed to meeting the needs of the local community through provision of facilities and as a place of social interaction, for example. There is no dispute that there are other premises to eat and drink in particular lying within 10 minutes' walk of the site – less in the case of the Pig's Ear in Old Church Street, for example. However, even if they were considered, on this basis, to have the potential to contribute to the community's ability to meet its day-to-day needs in place of the Cross Keys, this does not mean that they are equivalent to the Cross Keys in terms of community value. It is evident from the substantial volume of representations in this case that the public house is much valued by the local community as a neighbourhood resource and meeting place and for its contribution to the vibrancy of the local streets, described by one local resident as "eerily quiet" since the Cross Keys closed. It is also clear that it is valued by local people for its heritage associations, not simply as a structure but in relation to its use. This is considered further below.

Viability

18. The appellant represents that the use of the premises as a public house is unviable and would remain so if it were still open, as elaborated in the detailed viability assessment carried out by a registered valuer. The report says that, despite improvements made since the current owner acquired the Cross Keys in 2009, losses have continued. Reference is made to competition with other establishments, lack of passing trade in the premises' non-corner position and the demographics of the area, against a background of general trends in the public house sector. A separate feasibility appraisal was commissioned by third parties, also carried out by a registered valuer, which concludes that the public house is viable on the basis discussed below.
19. The appellant's assessment focuses on accounts for 2010 and 2011, supplemented by the first few months of 2012. This seems a relatively brief period on the basis of which to judge the Cross Keys viable or otherwise as a public house after many years of trading. I note that the application for change of use to residential was submitted less than half way through 2011 and nearly a year before the public house closed. The minutes of the Council's Planning Applications Committee meeting² record the applicant as saying that the public house was breaking even when he took it over in 2009.
20. Be that as it may, there is no dispute that the public house would indeed be profitable³ if operating with conventional gross profit and labour margins. There is, however, disagreement as to handling of bank charges, interest and depreciation, the inclusion or exclusion of which appears to be a key factor in determining whether, on the figures presented, the operation is viable assuming a "reasonably efficient operator". There is concern that the picture is skewed by the purchase price for the property of £3m in 2009 (or a current estimate of it), that such a figure is too high for the property as a public house, and that it is therefore of limited assistance in assessing whether the Cross Keys is fundamentally viable or not as a public house.
21. Either way, it is clear that the Cross Keys has not been marketed by the appellant as a public house. At the Hearing, it was suggested that this was because the demand for it in such use was not there and there was no underlying viability. However, I share the view that this would be best tested by letting the market itself decide so that the outcome of such an exercise could inform a judgement as to whether, in terms of Framework policy, the loss of a facility valued by the community is "necessary". It also seems that a number of other establishments cited as competitors, which I saw during my visit to the area, are located on relatively quiet streets with limited passing trade yet apparently trading successfully.
22. In the light of the above, I am not persuaded that it has been demonstrated conclusively that the Cross Keys is unviable in public house use.

Heritage assets: significance and contribution

23. There appears to have been public house use of the site for some 300 years, although the present building is probably late nineteenth century. The building is not listed. An application for listing was recently rejected by English Heritage

² On 6 December 2011 (at which the scheme was refused)

³ On the basis of Earnings Before Interest Tax Depreciation and Amortisation (EBITDA)

- (EH) as not meeting the relevant criteria but its assessment noted that the Cross Keys is "of clear local significance and high townscape interest."
24. The decision notice refers to the Cross Keys as a heritage asset. The Framework definition of such assets does not preclude those which are not designated or otherwise previously identified by way of local listing, for example. At the Hearing, it was confirmed that the Council does not maintain a local list, although the 1983 CA Proposals Statement mentions it as a "building of note". While the definition of a heritage asset concerns building rather than use, it is in terms of the building having a degree of significance meriting consideration in planning decisions because of its historic interest. 'Significance' itself is defined as "[t]he value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic..."
25. The appellant does not dispute that the physical fabric of the building has (local) architectural and historic interest. That interest in itself gives the building a degree of significance as a non-designated heritage asset. However, its heritage value to the local community goes beyond matters of physical form. EH guidance on conservation principles⁴ identifies a range of heritage values, including historic and communal ones, which should be taken into account in decisions on heritage assets. In the case of the Cross Keys, use of the building for its original purpose (ie continued use as a public house) contributes to the community's view of the historic value of the asset as well as to its social value. This includes its value as a building in communal use and its contribution to a sense of identity in a part of "Old Chelsea" in which the Cross Keys is something of a landmark. These factors, together with the building's acknowledged aesthetic value and lesser evidential value (related to archaeological potential), underline that the overall heritage value of the Cross Keys is substantial, deriving from its use as well as its appearance.
26. As noted previously, the property lies in the Cheyne Conservation Area, a designated heritage asset. Focused around the old centre of Chelsea village the CA has a range of building ages, styles and materials, and a pattern of streets, reflecting the area's historical development from which its significance derives. It is predominantly residential. There are some other uses, including public houses and other Class A uses, that add vibrancy to the CA. However, these are concentrated along the King's Road, with some groups of small shops in Old Church Street, thereby enhancing the contribution of the remaining scattered uses.
27. The Cross Keys itself contributes positively to the character and appearance of the CA not only because of the building itself but also because of its use. The exterior and its original architectural detailing add variety and visual interest to this part of the CA. The building also illustrates the historical development of the site and the wider area. The use of the building as a public house (until its recent closure) also contributes significantly to the character of a part of the CA in which domestic use predominates by bringing activity and vitality to the neighbourhood.

Effect of proposal on heritage assets

28. As regards the Cross Keys as a non-designated heritage asset, the proposal would maintain and to some extent enhance its architectural and historical

⁴ *Conservation Principles* Policies and Guidance for the Sustainable Management of the Historic Environment 2008

significance insofar as it relates to the physical form of the building. This would, however, be outweighed by the substantial harm to the significance of the asset that is derived from continuing use of the building as a public house, as discussed above. Retention of former public house use through retention of features such as "The Cross Keys" sign at parapet level would not overcome this. Although the building is currently vacant, I am not persuaded that its use as a public house is not viable, on the basis considered previously. I do not therefore consider that this proposal would enable the building to remain in active and viable use, or ensure long-term conservation of the heritage asset, in comparison with public house use.

29. Similarly, as regards the Conservation Area as a designated heritage asset, the proposal would maintain and to some extent enhance the architectural and historic contribution of the Cross Keys to its significance in terms of the building's physical form. Residential use of the building would accord with the residential character of this part of the CA. However, loss of the public house use would seriously damage what vibrancy and diversity it has and this would harm the character of the CA as a whole. The fact that there are some other drinking and/or eating establishments, and a few other uses, in the CA would not alter this.
30. I recognise that the property has the benefit of permitted development rights to change to Class A1 (retail), A2 (financial and professional services) and A3 (restaurant and café) use. However, each would have the potential to serve the local community to a greater or lesser extent and to contribute more to the vibrancy of the area than residential use of the building.

Conclusions

31. The proposed change of use was not refused, in terms, on the basis of the loss of the Cross Keys as a community facility but that role – specifically, its continued use as a public house – is clearly an important part of its value and significance as a heritage asset and of its contribution to the CA. On the basis discussed above, the proposal would be detrimental to the character of this part of the CA and would thus fail to preserve or enhance the character or appearance of the CA as a whole.
32. I conclude that the proposed change of use would have a materially harmful effect on the value and significance of the Cross Keys as a heritage asset and on the character and appearance of the Cheyne Conservation Area. As such, and on the basis considered previously, it would conflict with the objectives of the Framework and of development plan policies including LP Policies 3.1, 3.16 and 4.8 and CS Policies CL 1 and CL 3.

Other matters

33. The proposal would add one family-sized home to the Borough's housing stock in a sustainable urban location. While the Council acknowledges that it is behind target in provision of housing, I do not consider that this benefit would outweigh the harm identified above. Although there have apparently been some recent complaints about noise nuisance, the building is in long-standing public house use and there is support for retaining it from people living close to the premises. In principle, the proposal could reduce pressure on on-street parking but it seems likely that many public house customers would not be reliant on the car and, at the Hearing, it was said that closure of the Cross Keys had made no difference to parking problems nearby.

34. As noted above, the appellant submitted a unilateral undertaking relating to financial contributions towards education and other matters. As I propose to dismiss the appeal for other reasons, and the undertaking does not address those objections, I do not consider that a further assessment of it would be justified.

Conclusion

35. For the reasons given above and having regard to all other matters raised, including third party representations, I conclude that the appeal should be dismissed.

Christopher Bowden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nick de Lotbiniere	Savills/The London Planning Practice
Richard Brookes	Turley Associates
Trevor Watson	Davis Coffey Lyons
Amin Taha	Amin Taha Architects
Andrew Bourne	CKPH Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Jones	Senior Planning Officer
Sophia Bix	Conservation and Design Officer
Jonathan Wade	Planning Policy Team Leader
Cllr Tim Aherne	

INTERESTED PERSONS:

Michael Bach	Chelsea Society
Penny Pocock	Local resident
Paul Miller	Local resident
Tanya Hoffman	Local resident
Oscar Charles	Local resident
Dale Ingram	CAMRA
Michael Johnson	The Duke of Wellington Public House
Cllr Gerard Hargreaves	Ward Councillor

DOCUMENTS

- 1 Core Strategy Policy CK 3
- 2 Three representations from local residents
- 3 English Heritage Listing Assessment
- 4 Draft planning policy for the protection of public houses and a draft planning policy relating to use and character (June 2012)
- 5 Summaries of consultation responses to doc 4 and Council comments on/responses to them
- 6 Appeal Decision (Carpenters Arms Public House, Cambridge) (Ref. APP/Q0505/A/12/2168512)
- 7 Chelsea Society document on public house closures etc
- 8 Petition against change of use of Cross Keys Public House
- 9 Cross Keys Feasibility Appraisal (Simon Clarke)
- 10 Map showing Class A and other uses in Cheyne Conservation Area
- 11 Copy of signed and dated unilateral undertaking



The Planning Inspectorate

Appeal Decision

Hearing held on 28 May 2014

Site visit made on 28 May 2014

by **Peter Rose BA MRTPI DMS MCMI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 July 2014

Appeal Ref: APP/X5990/A/14/2215985

The Feathers, 43 Linhope Street, London NW1 6HL

- 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 Siebenborn against the decision of the City of Westminster Council.
- The application Ref 13/09604/FULL, dated 25 September 2013, was refused by notice dated 11 February 2014.
- The development proposed is change of use of No 43 Linhope Street, London NW1 6HL from a public house (pub with a restaurant/kitchen) (Use Class A3) to a single family dwelling (Use Class C3) with external alterations including enclosure of an existing courtyard on ground floor and creation of a new lightwell to the front of an existing basement, 2 Juliet balconies to new sash windows on the first floor, replacement of 2 windows on side elevation with obscure glazed windows.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Whilst the description of the development set out in the application form makes a reference to Use Class A3 (restaurants and cafes), it was not in dispute at the Hearing that the long-established use of the premises has been for the purposes of a public house (Use Class A5, drinking establishments), and that provision of food was a more recent incidental part of the A5 use. I have considered the appeal on that basis.
3. I have taken into account the Government's Planning Practice Guidance (the Guidance), issued on 6 March 2014, in reaching my decision.

Main Issues

4. The main issues are the effect of the proposed development upon:
 - a) the availability of community facilities in the local area, and;
 - b) the character and appearance of the host site and surrounding area, and with particular regard to the designation of the site as an Unlisted Building of Merit, and as to whether the development would preserve or enhance the character or appearance of the Dorset Square Conservation Area.

Reasons*Community facilities*

5. The appeal site comprises a 3-storey building with basement and was until relatively recently used as a public house. The surrounding area is predominantly residential in character.
6. Policy SS 8 of the City of Westminster Unitary Development Plan adopted January 2007 (the UDP) seeks to protect services in locations such as the appeal site because of the convenience and service they provide to local residents, and also to visitors and local businesses. The supporting narrative to Policy SS 8 recognises that traditional public houses are generally considered to add to the character and function of a locality. Policies 3.1 and 3.16 of the London Plan similarly seek to protect and enhance facilities that meet the needs of particular groups and communities.
7. Policy S13 of Westminster's City Plan: Strategic Policies adopted November 2013 (the City Plan) envisages the appeal site as comprising part of an area of residential use with supporting social and community provision. I find these policies to be broadly consistent with the National Planning Policy Framework (the Framework) which encourages planning policies and decisions to plan positively for local community facilities and, as appropriate, to guard against the unnecessary loss of valued facilities and services. The Framework also expressly refers to public houses as community facilities.
8. Although some representations have been received in support of the proposed change of use, it is evident from the considerably greater number of other representations made that the public house use is highly valued by local residents as a community hub. It is seen to function as a meeting place, as a facility for members of the community who would not normally come into contact with each other, and as a contribution to the vitality and security of the neighbourhood. The strength of local opinion is further evidenced by the application and accompanying support for nomination of the site as an Asset of Community Value (ACV).
9. Nevertheless, the premises are currently vacant and have been so since September 2013. I have noted the restricted size of the premises and of the available trading area, the currently limited passing trade, and the likelihood of further expenditure required to re-introduce a public house use. I am also mindful that the Framework and Guidance place emphasis upon ensuring viability and deliverability of development. I have had regard to a range of evidence submitted by the appellant which questions the viability of a public house use. This is supported by more general background information regarding the economic plight of licensed premises in recent years and of other changes necessitating closure of public houses.
10. The supporting narrative to Policy SS 8, however, advises that loss of public houses will only be accepted if they have been vacant and marketed for at least 18 months without success. This is necessary to ensure that, where losses do occur, there is no reasonable prospect of such uses being viable. Although the premises were marketed for sale between July and September 2013, this period falls short of the policy's expectation of 18 months. It would also seem to be a relatively brief period upon which to judge the viability or otherwise of the site as a public house after so many years of trading and given

that it continued to trade up to its point of sale. At the Hearing, it was suggested that the use has been operating since at least the late nineteenth century.

11. Further, the marketing particulars did indicate potential for other non-A5 use rather than just for the continuation of a public house. There also appears to have been little awareness on the part of the local community of the invitation for future interests. The level of support received and articulated through the appeal makes me reluctant to say at this stage that some form of more locally-inspired initiative could not emerge within the period allowed for by the policy, and further opportunity may be afforded to that effect should the nomination as an ACV prove successful. The appellant stated at the Hearing that the premises are currently being marketed for sale. At the time of my visit, however, I saw no publicity to that effect displayed locally at the premises.
12. No specific trading accounts are available for the period leading up to closure but estimated viability calculations have been provided. Whilst the uniqueness of the premises relates to its size and integral relationship to the local area, it does enjoy a highly sustainable location and would appear to be extremely well placed to draw upon other potential central London catchments. I am also unaware of any consideration which may have been given to alternative operating models to ensure a continuation of use. Such possibilities may well contrast with its previous operation and ownership as part of a national chain of premises.
13. For all these reasons, I consider the viability or otherwise of a public house use remains an open question and, more particularly, that the lack of viability of the premises has not been adequately demonstrated for the purposes of Policy SS 8. Further, in terms of Framework policy, I am not satisfied that the loss of a facility clearly valued by the community can be concluded to be 'necessary'. Whilst the Guidance identifies the need for flexibility in matters relating to viability, the extent and robustness of marketing to date does not lead me to reasonably conclude that the community facility is, indeed, unviable.
14. I have also had regard to the availability of a significant number of other public houses in the surrounding area. Each public house has a different character and function and, whilst alternatives are available within walking distance of the appeal site, spatial proximity is not of itself a necessarily reliable guide to the value placed on public houses by local communities or of the particular contribution made to local areas.
15. I therefore conclude that the proposed development would involve loss of a valued community facility which would be harmful to the surrounding community. Accordingly, the development would be contrary to Policy SS 8 of the UDP, to Policy S13 of the City Plan, to Policies 3.1 and 3.16 of the London Plan, and to the Framework.

Character and appearance

16. The appeal site lies towards the end of a 3-storey residential terrace and occupies a prominent position close to the junction of Linhope Street and Ivor Place. The site forms part of the Dorset Square Conservation Area and is designated as an Unlisted Building of Merit in the Council's Dorset Square Conservation Area Audit and Management Proposals document dated

8 December 2008 (the Audit). By definition, the building is considered by the Council to add value to the character and appearance of the Conservation Area.

17. This part of Linhope Street itself is generally characterised by 3-storey terraces of relatively uniform period dwellings. The general impression is one of a distinguished and refined setting reflecting a rich historic character. Although the adjacent properties have some consistency with their original design, the detailed form of properties in this part of the Conservation Area does vary significantly, and the opposite side of Linhope Street also includes an extensive twentieth century residential development of very contrasting style.
18. The ground floor of the appeal site retains a traditional Victorian public house elevation divided by glazed brick pilasters, and the frontage is also acknowledged as a Local Townscape Detail in the Audit. The upper floors reflect the original style of the building, but also include distinctive hanging signage to its main elevation consistent with the appearance and character of a traditional Victorian public house.
19. The existing site contributes positively to the character and appearance of the Conservation Area not only through the physical presence and features of the building but through its long-established use as a traditional back-street public house. Both aspects reflect the historical development of the site and of the wider Conservation Area and both contribute to the visual and functional distinctiveness of the setting. Although the use contrasts with the predominant residential character of this part of the Conservation Area, it brings activity and vitality to the neighbourhood consistent with its charm and heritage and provides a particular sense of local historic focus.
20. Whilst the Council raises concerns regarding the treatment of the proposed elevation, the existing detailing of surrounding properties is mixed. In particular, there are variations in the depth and position of first floor windows and the precise design of the proposed windows could be a matter to be addressed by condition. Balconies and basements also exist in the vicinity. The proposed design has sought to reflect the general style of the setting and, subject to further details, I consider it would not be so discordant as to be harmful in that regard. Nevertheless, the existing ground floor elevation and accompanying features add variety and visual interest to the Conservation Area and these would be lost to the development.
21. I find, therefore, that the proposed development would fail to preserve or enhance the character and appearance of the Conservation Area. Even so, I consider that the appeal building and the scale of development are sufficiently modest such that the harm to the significance of the Conservation Area would be less than substantial. Thus, it is necessary to consider, in accordance with the Framework, whether there would be public benefits to the scheme sufficient to outweigh that harm. I have noted that the scheme would provide additional residential accommodation for the local housing stock and that the site would be brought back into use, but I have found no overall public benefits sufficient to outweigh the harm likely to be caused.
22. I therefore conclude that the existing building and its use contribute both functionally and physically to local distinctiveness, and that the proposed development would be harmful to the character and appearance of both the host building and the surrounding area. Accordingly, the scheme would be contrary to Policies DES 1, DES 5, DES 7 and DES 9 of the UDP, to Policies S25

and S28 of the City Plan, contrary to Supplementary Planning Guidance: Development and Demolition in Conservation Areas 1996 (the SPG), contrary to the Dorset Square Conservation Area Audit, and contrary to the Framework. These policies seek, amongst other matters, to ensure that development reflects local character and distinctiveness, and that unsympathetic alterations are resisted. DES 9(E) of the UDP also expressly states that permission will only be granted for a change of use in a Conservation Area which would serve to either preserve or enhance the character and appearance of the Conservation Area, bearing in mind the detailed viability of the development. The Framework also recognises that Conservation Areas are an irreplaceable resource and requires them to be conserved in a manner appropriate to their significance. It further aims to secure the optimum viable use for designated heritage assets and places great importance upon local distinctiveness.

Other Matters

23. I have considered all other matters raised, including the existing condition of the building and its vacancy. I have noted the potential employment benefits of a public house, and also noted that the converted building would be used as the appellants' main residence. I have considered representations from other third parties, including The Campaign for Real Ale (CAMRA).
24. Regard has been given to references to other Council decisions and to various appeal decisions. Whilst full details of each of those schemes are not before me, the circumstances of each site and of each development will be different, and I am considering the specific planning merits of this particular appeal proposal.
25. The Council has also referred to a possible Article 4 direction to preclude changes of use without the need for a planning application. Such a change of use is a possible fallback position but I have insufficient evidence to conclude that there is a significant probability that such an alternative scheme would be developed under those terms should this appeal be dismissed. Further, Permitted Development would not encompass change of use of the premises to a dwellinghouse as proposed, and those changes which may currently occur would be to other service-related uses falling within Part A of the Schedule to the Town and Country Planning (Use Classes) Order 1987. I therefore attach little weight to this factor.
26. I have also had regard to the Mayor of London's Revised Early Minor Alterations to the London Plan published on 11 October 2013.
27. None of the other matters raised are of such significance, however, either individually or collectively, that they would outweigh the considerations that have led to my conclusions on the main issues.

Conclusion

28. For the above reasons, I conclude the appeal should be dismissed.

Peter Rose

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J P Siebenborn, appellant
Mr M A Siebenborn, appellant
Mr A Ravanshad, Dandi Living Limited
Ms E Siskinova, Dandi Living Limited

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Whitnall, Area Planning Officer
John Wilman, Area Design and Conservation Officer

FOR INTERESTED PARTIES:

Cynthia Poole, St Marylebone Society
David Gibson, Save The Linhope Street Local
Gaby Higgs, local resident
Sara Gibson, local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of application form dated 25 September 2013
2. Copies of publicity relating to application and hearing
3. Copy of letter dated 8 October 2013 from AG & G with enclosures
4. Extracts from the Council's Dorset Square Conservation Area Audit and Management Proposals document dated 8 December 2008

Appeal Decision

Hearing held on 3 September 2014

Site visit made on 3 September 2014

by Peter Rose BA MRTPI DMS MCM1

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 October 2014

Appeal Ref: APP/X5210/A/14/2218740

Golden Lion, 88 Royal College Street, London NW1 0TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Norreys Barn Ltd against the Council of the London Borough of Camden.
 - The application Ref 2013/4793/P is dated 4 September 2013.
 - The development proposed is change of use from public house (Class A4) with ancillary accommodation to public house and function area at ground and lower ground floors respectively and 4 flats (3 x 2 bedroom/3 person and 1 x 3 bedroom/5 person)(Class C3); erection of a 3 storey extension (at 1st and 2nd floors and within the roofspace) on the Pratt Street frontage; lowering of existing basement by 600mm.
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for a partial award of costs has been made by Norreys Barn Ltd against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

Procedural Matters

3. The Council has stated that, had it still been in a position to do so, it would have refused planning permission for the reasons formally set out in its notice titled 'Notification of decision when an appeal has been made' and dated 25 June 2014.
4. A copy of an agreement made pursuant to section 106 of the Town and Country Planning Act 1990 and dated 1 September 2014 was submitted to the Hearing. This seeks to address the Council's concerns in relation to local parking conditions and pedestrian safety. I am satisfied that no interests would be prejudiced by having regard to the agreement in this appeal.
5. The appellant submitted revised drawings to the Hearing by email dated 21 July 2014. The drawings indicate a replacement of the previously proposed roller shutters within the Pratt Street frontage by security folding/collapsible doors. I do not consider that the scheme would be so changed by this modification such that any interests would be prejudiced by having regard to these drawings as part of this appeal.

Main Issues

6. The main issues are the effect of the proposed development upon:
 - a) the availability of community facilities in the local area;
 - b) the character and appearance of the host site and surrounding area, with particular regard to the design of the proposed roller shutters/folding doors;
 - c) local parking conditions;
 - d) pedestrian safety.

Reasons*Community facilities*

7. The appeal site comprises a late nineteenth century four-storey public house with basement located at the junction of Pratt Street and Royal College Street. The building is of attractive traditional design and is a prominent and imposing feature within the local townscape. The surrounding area is of mixed use and contains buildings of varying forms and quality. The Council identifies the site as a non-designated heritage asset and it is proposed for inclusion within the Council's emerging list of buildings of local interest.
8. The premises comprise a main A4 trading area at ground floor, a function room at first floor, and other ancillary facilities within the basement and at second and third floor levels, including ancillary storage facilities and kitchen, a disused dumbwaiter between floors, and residential accommodation. The building is a purpose-designed, traditional public house and its predominant character arises from that physical form and heritage.
9. The Golden Lion was also designated as an Asset of Community Value (ACV) in December 2013 under the Localism Act, 2011. I note that decision was reviewed and reaffirmed in March 2014. The Localism Act defines an ACV to be an actual current use of a building or other land that is not an ancillary use and which furthers the social wellbeing or social interests of the local community. The definition also requires that it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community. The government's *Community Right to Bid: Non-statutory advice note for local authorities* October 2012 advises that it is open to the local planning authority to decide whether listing as an ACV is a material planning consideration, taking into account all the circumstances of the case. I find the designation to be relevant to the particular circumstances of this appeal and I apportion it a reasonable degree of weight as an indication of the significance of the current use to the local community.
10. The National Planning Policy Framework (the Framework) advises that planning decisions should promote opportunities for meetings between members of the community who might not otherwise come into contact with each other. It further states that decisions should plan positively for the provision and use of community facilities such as public houses in order to enhance the sustainability of communities and residential environments.

11. London Plan Policy 3.1 states that proposals involving the loss of facilities that meet the needs of particular groups and communities without adequate justification or provision for replacement should be resisted. Policy 3.16 further states that proposals which would result in a loss of social infrastructure in areas of defined need without realistic proposals for reprovision should be resisted. The supporting text to Policy 4.8 of the recent Draft Further Alterations to the London Plan January 2014, whilst of only limited weight, advises that where there is sufficient evidence of need, community asset value and viability in pub use, boroughs are encouraged to bring forward policies to maintain, manage and enhance public houses.
12. Policy CS10 of the London Borough of Camden Core Strategy 2010-2025 Local Development Framework, 2010 (the Core Strategy) seeks to support the retention and enhancement of existing community, leisure and cultural activities. Policy DP15 of the London Borough of Camden Development Policies 2010-2025 Local Development Framework, 2010 (the Development Policies) states that the Council will protect existing community facilities by resisting their loss unless a replacement facility that meets the needs of the local population is provided. The supporting text to DP15 further advises that the Council will resist the loss of local pubs that serve a community role, for example, by providing space for clubs, meetings etc., unless alternative provision is available nearby or it can be demonstrated to the Council's satisfaction that the premises are no longer economically viable for pub use.
13. The appellant maintains that the proposal is compliant with these policies by seeking to retain an A4 use, and I accept there would, in principle, be no loss of a public house as such. Further, the scheme both acknowledges and responds to a previous appeal decision Ref APP/X5210/A/13/2199667 dated 12 December 2013. This decision related to an application which included conversion of the appeal site into 8 self-contained flats but with no retention of A4 use. The relevant Hearing pre-dated formal designation as an ACV but the decision concluded that The Golden Lion was a local pub that served a local community role and that its somewhat old-fashioned charm appealed to those who go there. The evidence suggested that the premises were popular with and cherished by a good many people as offering something different. I am in no doubt from the strength and depth of support expressed at this further appeal that the public house remains highly valued as an important local community asset, not just in terms of its licensed trade but also as a broader community meeting facility.
14. Nevertheless, all businesses must progress and evolve in order to survive, and the issue is whether the proposals before me take forward the premises without compromising its undoubted value as a community asset. The proposal seeks to retain an A4 use as part of a mixed development of the site involving four self-contained flats and I appreciate that the scheme is packaged to buck the wider trend of public house closures. The scheme would offer significant benefits in terms of A4 use, including improved toilet and kitchen facilities and better access. The appellant also refers to the premises as being dated and in need of renovation and has provided significant expert commercial justification for the detailed form of the A4 accommodation proposed. I have noted that some improvements have been made to the premises in recent years but accept that further upgrading is required.

15. Mere retention of an A4 use, however, would not, in my opinion, be sufficient to satisfy the general expectations of policies broadly seeking to safeguard the community benefits of existing public houses. The extent, configuration and overall quality of the replacement facility are all relevant considerations and, in these regards, I find that the scheme has a number of significant shortcomings.
16. In particular, in order to accommodate a first floor flat, the existing function room at first floor level would be replaced by a facility at basement level. The existing room is of attractive character and provides a relatively open, light space with windows affording outlook across the local area. The replacement facility would be confined to the basement, would have no windows or outlook, and would lose the relative charm of the existing facility. Whilst noting the operational benefits identified, I am not satisfied that the replacement facility would be of comparable quality in terms of community benefit. The previous appeal decision also noted that the existing function room is an important part of the community value of the premises.
17. I am also concerned that, in order to accommodate self-contained access to the upper floor flats and basement and to accommodate incidental storage, part of the main ground floor public trading area, which would form the focus of the commercial operation, would be lost. Whilst facilities such as darts, a piano and a pool table could still theoretically be accommodated, this area is already fairly limited in size and shape and would be further constrained in those regards. Further, the entire premises currently comprise one single A4 planning unit. The proposed scheme would compress the overall extent of the A4 use and would compartmentalise the remaining trading area and function room components into separate, physically confined spaces, thereby losing the wider flexibility and character offered by the existing form and layout.
18. I consider that the sum total of these shortcomings would be to compromise the overall value of the site as a community asset which, in terms of extent, would become a secondary element to the predominant and unrelated use of the site as separate residential accommodation. From the evidence before me, there is a distinction to be drawn between the likely community benefits of the replacement A4 use and the community benefits undoubtedly already conferred by the existing public house. I am not satisfied that the physical composition of the proposed A4 accommodation would be adequate to provide a sustained level of community benefit comparable to the existing facility. In turn, the scheme would carry significant risk in terms of the possible future failure of the site as a community facility and potential loss of the existing community benefits.
19. I have also had regard to the availability of a number of other public houses in the surrounding area. Each public house has a different character and function and I have little basis to conclude that they would offset the particular ambience and community benefits of The Golden Lion.
20. I therefore conclude that the proposed development would compromise and undermine the value of the existing A4 use as a local community facility. Accordingly, the development would be contrary to the underlying aims of Policy CS10 of the Core Strategy, of Policy DP15 of the Development Policies, and to the aims of the London Plan and of the Framework which generally seek to safeguard the community benefits arising from public houses where appropriate.

Character and appearance

21. The Pratt Street elevation is an important feature of the building and of the local townscape. Whilst the building is not statutorily listed, the ground floor element is relatively ornate and comprises a mixture of glazing, timber, tiling and stone with vertical pilasters. The detailed ground floor design forms an integral part of the overall traditional public house elevation and is an important contribution to the distinctiveness of the setting.
22. The scheme would involve points of access within the Pratt Street elevation to be enclosed by either roller shutter doors or by other folding doors. These would appear as relatively random features with contrasting detailed forms and appearance. In either form, this aspect of the scheme would introduce visually discordant elements into an otherwise attractive decorative public house frontage and would fail to respect the wider integrity of the elevation.
23. The Framework advises that, in weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment is required having regard to the scale of any harm or loss and the significance of the heritage asset. I find that less than substantial harm would be caused to the non-designated heritage asset but that would not be out-weighed by overall public benefits otherwise arising from the proposal.
24. I therefore conclude that the proposed development would be harmful to the character and appearance of both the host building and the surrounding area. Accordingly, the scheme would be contrary to Policy CS14 of the Core Strategy and to Policies DP24 and DP25 of the Development Policies. These seek, amongst other matters, to promote high quality design, to conserve the Borough's heritage, and to ensure that development has regard to the character of the existing building and its setting. The Framework also places great importance upon high quality design and upon local distinctiveness.

Local parking conditions and pedestrian safety

25. The planning agreement does not overcome the harm identified in terms of the role of the appeal site as a community facility, or the harm arising from the proposed works in terms of character and appearance. Accordingly, it is not necessary to assess the content of the agreement against the relevant tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, 2010 or with regard to accompanying guidance.

Other Matters

26. Whilst there are questions about the general economic plight of public houses, and this was not a matter for detailed consideration as part of the appeal, I note that the existing publican described the public house as a successful operation and it remains a continuing use.
27. Although questions were raised at the Hearing regarding the viability of the proposed A4 arrangement, I noted the responses given and this has not been a determining factor in my decision.
28. General reference was also made at the Hearing to the appellant's own research of local opinion but full and appropriate details were not formally submitted for consideration in accordance with the relevant appeal procedures and timescales and I attach little weight.

29. I have also noted the presence of development sites in the vicinity of the appeal site as indicated in the Council's Site Allocations Development Plan Document, and the possible implications for the scale of change in the local area.
30. Regard has been given to various references to other appeal and planning decisions. Whilst full details of each of those schemes are not before me, the circumstances of each site and of each development will be different, and I am considering the specific planning merits of this particular appeal proposal.
31. The Council raises no objection to the four flats proposed, or to other associated works contained within the application, and has confirmed that the development is otherwise acceptable. The scheme would also make a contribution towards additional local housing and I apportion limited weight as a benefit in favour of the proposals.
32. I have also had regard to the Mayor of London's Revised Early Minor Alterations to the London Plan published on 11 October 2013.
33. A note was passed to me at the end of the Hearing on behalf of an interested third party, Jessica Francis. The note explained her perceived need to leave the Hearing but I do not consider this matter had any bearing upon the evidence presented or upon the planning merits to be considered.
34. None of the other matters raised are of such significance, either individually or collectively, that they would outweigh the considerations that have led to my conclusions on the main issues.

Conclusion

35. For the above reasons, and with regard to all other matters raised, I conclude the appeal should be dismissed.

Peter Rose

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Stinchcombe QC

Carolyn Apcar

Alan Sherman

Phil Briscoe

Peter Lerner

Graeme Bunn

Leo Murphy

Mark Sanderson

Apcar Smith Planning

BuildTech Building Surveyors

Bellenden Community Research

Peter Lerner Consultancy

Fleurets Leisure Property Specialists

The Arizona Group

Heritage Advisory Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Markwell

Alan Wito

Principal Planning Officer

Senior Planner, Conservation and Design

INTERESTED PERSONS:

Councillor Roger Robinson

Tom Copley

Will Blair

Dale Ingram

Dave Murphy

Shaun Pollard

Pat Logue

James Cantwell

Henry Conlon

Jim Clack

Phillip Stein

Local Councillor

London Assembly Member

Parliamentary Candidate for

Holborn and St Pancras 2015

Planning For Pubs Ltd

Publican, The Golden Lion

Chairman, Save The Golden Lion Committee

Camden Pub Watch

Supporter of The Golden Lion

DOCUMENTS SUBMITTED AT THE HEARING

1. Copies of Hearing notifications
2. Copy of an agreement made under section 106 of the Town and Country Planning Act 1990 dated 1 September 2014
3. Appeal decision APP/X5990/A/14/2215985 dated 8 July 2014 relating to 43 Linhope Street, London NW1 6HL
4. Indicative menu
5. Indicative layouts
6. Floorspace figures
7. Legal Submission by Paul Stinchcombe QC relating to Westminster City Council v SSCLG and Mrs Marilyn Acons [2013] EWHC 690 (Admin)

8. Response of the London Borough of Camden to the appellant's application for costs
9. Undated note from Jessica Francis

Appeal Decision

Site visit made on 7 March 2016

by **Jonathan Hockley BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 March 2016

Appeal Ref: APP/D3125/W/15/3137173

The Merrymouth Inn, Stow Road, Fifield, Chipping Norton OX7 6HR

- 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 Daniel Family Homes against the decision of West Oxfordshire District Council.
 - The application Ref 15/02660/FUL, dated 13 July 2015, was refused by notice dated 10 September 2015.
 - The development proposed is the change of use of existing buildings from a mixed use as public house (Class A4) and hotel (Class C1) to five dwellinghouses (Class C3a).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the appeal site represents a suitable location for housing, having regard to the principles of sustainability and to the viability of the Inn.

Reasons

3. The Merrymouth Inn is located on the fairly busy A424. The closest village is Fifield, a small settlement around half a mile to the east of the Inn. The attractive building has a main 3 storey façade located on the highway edge; this is attached to a 2 storey gabled frontage to the south and a further single storey addition. Various outbuildings and extensions are attached to the rear. The Inn is set in the attractive countryside of the Cotswold Area of Outstanding Natural Beauty (AONB); to the south sweeping views are possible of the surrounding countryside, characterised by its rolling landscape and green fields with hedged boundaries. The proposal seeks to convert the Inn into 5 open market houses; details submitted with the appeal state that affordable housing on the site would not be viable.
 4. The West Oxfordshire Local Plan 2011 was adopted in 2006 (the Local Plan). Policy H4 of this plan concerns the construction of new dwellings in the countryside and states that new additional dwellings in the countryside will only be permitted under certain circumstances, which the proposal as a scheme for 5 open market dwellings would not meet.
 5. Paragraph 55 of the National Planning Policy Framework (the Framework) seeks to promote sustainable development in rural areas by locating housing where it would enhance or maintain the vitality of rural communities. The
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- paragraph states that new isolated homes in the countryside should be avoided unless there are special circumstances including where the development would represent the optimal viable use of a heritage asset; where the development would re-use redundant or disused buildings; or the exceptional quality of the dwelling.
6. Although Fifield is relatively close, this settlement is a small village and does not appear to have any significant services or facilities. I also have no evidence of any bus services which may travel along the A424. New residents of the proposed dwellings would therefore likely need to use private transport to access the majority of their day to day needs. The appellant considers that the proposal would reduce trips to and from the site due to the existing use of the Inn. I have not been provided with any substantive evidence on this issue. However, whilst I note that some customers may travel to the Inn as a destination, as a roadside inn it is likely to be used by many customers as a stop off on the way somewhere and in that respect would not create additional trips in its own right. I am not convinced therefore on the evidence provided that the proposal would reduce overall trips by non-sustainable means. The proposal would result in 5 new homes in an isolated location in the countryside.
 7. The appellant is of the view that the site can be considered as a heritage asset and that the proposal would conserve and enhance the building and its setting within the AONB. The Framework defines heritage asset as a building identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing). The Inn is not a listed building and is not identified by the local planning authority as being a heritage asset. Whilst an attractive old building, it cannot therefore be considered as a heritage asset by the terms of the Framework. The Inn is in use at present and so the proposal would not re-use redundant or disused buildings. The design of the conversion, whilst sympathetic to the existing property and its surroundings would also not be exceptional and I consider that the proposal would have a largely neutral effect on the surrounding area and the character of the AONB. The proposal does not therefore meet any of the exceptions in paragraph 55 of the Framework.
 8. Evidence has been submitted detailing marketing exercises since May 2011 to sell the Inn as a going concern. Accounts detail the low profit that the Inn has been making annually from 2010 to 2013. The Inn has been marketed for sale at close to a million pounds, but despite the lack of stated interest since 2011 the price appears to have been consistently retained at the same level.
 9. It is stated that the property was advertised through national and local newspapers, as well as sites on the internet. However, no substantive evidence of listing or sales details has been provided to me. I am also conscious of the fact that the listing took place during a time of economic downturn and I have no evidence of any advertising since the end of 2014 – and limited substantive evidence of advertising prior to this time. The estate agent notes that negative feedback received includes the remote location of the property, the proximity of the main road and the lack of a local community. However, similar reasons could be considered as positive factors; the Inn stands on a major route into and within the Cotswolds AONB, a large tourist attractant with much potential passing trade.

10. Policy TLC12 of the Local Plan states that development proposals should not result in the loss of useful local services or facilities unless it can be demonstrated that the existing use is not viable or adequate and accessible alternative provision remains. I consider this policy is relevant to the proposal and does not merely cover facilities within a settlement. The policy seeks to guard against the unnecessary loss of all local services and facilities, a category that I consider the Inn would fall under. The appellant suggests that the viability evidence demonstrates that the Inn is not 'useful'. However, for the reasons given above I do not consider that the evidence supplied demonstrates this. The appellant also notes the letters of support in favour of the application. However, as a counterpoint I have also been supplied with letters objecting to the proposal, many from residents of Fifield. I appreciate the relatively wide number of pubs that are present in the wider surrounding area; however I note the lack of similar facilities in the direct surrounding area.
11. Paragraph 70 of the Framework states that planning decisions should guard against the unnecessary loss of valued facilities and services. The evidence I have been provided with, both in terms of the cost of the property, and in terms of a sustained marketing campaign, does not convince me the existing use is not viable or capable of being sold in its present condition. Whilst I can therefore appreciate the parlous condition of the business as evidenced by the accounts provided, the proposal fails to demonstrate that the development would not cause the unnecessary loss of valued facilities and services.
12. I therefore conclude that the appeal site does not represent a suitable location for housing, having regard to the principles of sustainability and to the viability of the Inn. The proposal would be contrary to the Framework and to Policy H4 of the Local Plan. The proposal would also be contrary to Policy TLC12 of the Local Plan.

Other Matters

13. There is disagreement between the parties over whether the Council can demonstrate a five year supply of housing land. The appellant also notes that the Council need to assist Oxford City in meeting their unmet housing need. I find the limited evidence on which I have been provided with inconclusive in this regard. However, even if there were not such a supply of housing land, I consider that the contribution this proposal would make towards addressing the undersupply of housing does not outweigh the fact that the proposal is not the sustainable development for which there is a presumption in favour. In reaching this conclusion I have borne in mind paragraphs 47-49 of the Framework and its guidance in paragraph 17 that planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, as well as the contents of paragraph 70 referred to above.

Conclusion

14. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jon Hockley

INSPECTOR



Appeal Decision

Hearing held and site visit made on 14 August 2012

by Terry G Phillimore MA MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 October 2012

Appeal Ref: APP/H1705/A/12/2173348

Mole Inn, Ramsdell Road, Monk Sherborne, Tadley RG26 5HS

- 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 Mrs Theresa Thompson against the decision of Basingstoke & Deane Borough Council.
 - The application Ref BDB/75357, dated 27 October 2011, was refused by notice dated 22 February 2012.
 - The development proposed is change of use from public house to residential use.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. At the hearing applications for costs were made by the appellant against the Council and by the Council against the appellant. These applications are the subject of separate Decisions.

Main Issue

3. The main issue is whether there is sufficient justification for loss of the existing public house use.

Reasons

4. Policy C8 of the Basingstoke and Deane Borough Local Plan 2006 seeks to prevent the loss of essential local services and facilities. It is consistent with advice in paragraph 28 of the National Planning Policy Framework which requires planning policies to support a prosperous rural economy by, among other ways, promoting the retention and development of local services and community facilities in villages. The policy is therefore up-to-date as well as being part of the development plan.
5. The policy sets out three criteria for exceptions to the normal approach, which are mutually exclusive. The third relates to public service provision and is not relevant to this case. The first is that there is adequate alternative local provision, and the second is where it is demonstrated that it is no longer practical or desirable to retain the service or facility.
6. The appeal site occupies a prominent corner position in the village of Monk Sherborne. The public house is currently closed. Extensive representations both on the planning application and at the hearing indicate that a public house

- within the village is valued as a recreation and community facility and that there is a strong desire for its reopening. There are no other public houses in the village, and the parish hall is a materially different type of facility. There are public houses in other villages in the vicinity. However, the nearest (the White Hart Inn at Charter Alley) is some 1.7km away and involves a walk along an unlit country road. In addition, a public house in another village does not provide an equivalent community facility in terms of the value placed on a public house within Monk Sherborne itself. In this respect there is not adequate alternative local provision, and criterion (i) is not met.
7. With respect to criterion (ii), paragraph 4.33 of the Local Plan states that “applicants may be requested to provide evidence on financial viability of the results of marketing exercises” in support of proposals for alternative uses of sites protected by the policy. Whether the evidence in a particular case is sufficient to satisfy the criterion will be a matter of judgment. Although only of advisory status and therefore carrying limited weight, the Council’s Marketing Guidance Note of 2010 contains some sound indicators that are of assistance, including that a marketing exercise should normally be for a period of at least 12 months and in some circumstances include a review of the price. In this case expert valuation evidence is provided in reports for the appellant (by Savills) and the Council (by Davis Coffey Lyons), with these experts represented at the hearing, and in a report for third parties (by Fleurets).
 8. The public house was owned by the Greene King brewery and operated as a managed house for a period up until 2008. There was a relatively rapid turnover of tenancies, but this does not establish that the premises could not be run successfully under a different business model. The public house was marketed by Savills for Greene King from November 2008 until July 2009. This led to its freehold sale for £325,000 and consequent re-opening by the new owner (Mr Long). Since in this respect this period of marketing was successful, it provides little evidence that a public house use is not viable.
 9. Following the re-opening in August 2009 the establishment was run by Mr Long until closure in March 2010. A summary of accounts indicates that during this period there was a turnover of £49,082 and a loss of £17,054. However, there are not full accounts, and at the hearing it remained imprecise as to what the loss represents. Mr Long described the refurbishment works he undertook, and it was clear that he had approached the business with enthusiasm. He also explained the difficulty he had in attracting and retaining customers. Nevertheless, it can be expected that a new business would take time to establish, but the premises were put back on the market with Savills in November 2009. This evidence over a relatively short period of operation is not conclusive that another operator would not be able to develop a successful business. An average turnover had been achieved of around £1,600 a week. While a turnover of £3,000 per week cited in the Savills marketing material was explained to be an aspiration, it appears that a turnover of around £2,400 would be reasonably attainable having regard to the expert evidence for the Council and third parties. This takes into account the nature of the premises, including with respect to the location and limitations of its layout, parking and other facilities. The experts differ in their assessments of the likely level of net profits, with a range between 25% and 35% of turnover, but even at the lower level the evidence supports that the establishment could be run at a profit.

10. Initial marketing by Savills from November 2009 was on a confidential basis, followed by a period of open marketing at a price of £400,000 from March to June 2010. The premises were then openly marketed by Fleurets for £395,000 from November 2010 to 1 March 2011, when they were bought by the appellant for £330,000 with no intention of running a public house but in order to seek a residential use.
11. Marketing therefore took place with established agents. The hearing was advised that, while this led to a number of expressions of interest in public house use, potential purchasers were unable to obtain finance. However, the open marketing was limited to a period of 7 months. In addition, based on the sale prices previously achieved for the premises and the valuation evidence provided by the Council and third parties, a strong case has been made that the asking price during the marketing was excessive. The Council's estimate of the value as at 1 March 2010 is £250,000, while the valuation for the third parties is £285,000 as at 12 June 2012. It was explained for the appellant that the asking price reflected that offers were being attracted and the premises were caretaken once closed. However, during the period of marketing there was no reduction in price to reflect the closure and that the premises were no longer a going concern, which the expert evidence suggests would have a material effect on value. The need for repairs cited by the appellant would also have a lowering effect on this. The alternative valuations have regard to the likely turnover of the premises and take account of realistic comparisons on a relevant geographical basis.
12. This all leads to a conclusion that the asking price was at a level that would have put off prospective purchasers and made it more difficult for those interested to obtain finance. There has therefore not been a long enough open marketing exercise at a realistic price to demonstrate that continued public house use is not viable. In addition, expressions of interest in purchase for public house use were identified at the hearing. This factor in itself carries limited weight since only an actual purchase would be definitive, but further supports a view that continued public house use remains feasible.
13. The evidence is therefore not sufficient to demonstrate that it is not practical to retain the public house use, and the requirements of policy C8 are not met.

Other Matters

14. Suggestions have been made of ways in which additional car parking could be provided for the public house involving the use of neighbouring land. This would require planning permission and the outcome of any application cannot be certain. I have made my assessment based on the current facilities of the site.
15. The Council raises no other policy objection to residential use of the premises. Having regard to the advice in the National Planning Policy Framework on alternative uses of existing buildings, I have no reason to take a different view.
16. The site lies within the Monk Sherborne Conservation Area which covers the village. The Council identifies the building as an important feature within this, and as a public house it contributes to a mix of uses in the village. Conversely, a long term vacant building would have a negative effect on the Conservation Area. However, in view of the conclusion I have reached on the main issue

with respect to the prospects for retention of a public house use, such a scenario carries little weight in the decision.

17. I have taken into account the officer recommendation for approval, and the Council's grant of permission for a similar proposal at the Crown, Axford. However, my conclusion reflects the evidence presented and the particular circumstances of the case including the features of the village.

Conclusion

18. For the reasons given above I conclude that the appeal should be dismissed.

T G Phillimore

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

A Smith	Caldercotte Group
A Bullas	Savills
M Long	Former owner
A Thompson	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

G Page	Basingstoke and Deane Borough Council
K Miles	Basingstoke and Deane Borough Council
D Mackernan	Davis Coffer Lyons

INTERESTED PERSONS:

Councillor J Leek	Local councillor
Lord Hayter	Monk Sherborne Parish Council
P Hoar	Local resident
J Knight	Local resident
E Hampson	Local resident
F Turner	Local resident
D Harling	Local resident
S Whitehead	Local resident
S Harrison	Local resident
R Turner	Local resident
J King	The Wellington Arms, Baughurst
L Harling	Local resident
N Brownlie	Local resident

DOCUMENT SUBMITTED AT THE HEARING

Appellant's costs application

http://ihbc.org.uk/context_archive/33/mlearned.htm

Charles Mynors MRTPI ARICS Barrister reviews

some recent decisions in the courts of particular relevance to conservation.

M'LEARNED FRIEND

DISCORDANT ACTIVITIES IN CONSERVATION AREAS

Archer and Thompson v Secretary of State and Penwith DC [1991]

JPL 1027 . Queen's Bench Division, 4 December 1990

Permission was refused for the change of use of premises in a conservation area at Causewayhead, Penzance, into a 'family entertainment centre'. The resulting appeal was decided on the basis of written representations, and the Council's refusal was upheld, largely on conservation grounds.

The applicants then appealed to the High Court. Amongst their grounds was that, since a conservation area was to be designated only on the grounds of its architectural or historic interest, the Secretary of State on appeal could only take into account matters such as the environmental effect of a proposed development if they affected the physical qualities of an area.

The judge (Roy Vandermeer QC) did not agree. It seemed to him quite plain that matters such as the nature of a use and its effect could be of consequence. A change of use might, for example, affect the historic interest of an area. Or the character of an area might be affected by noise. He wholly rejected the proposition that the test was limited so that the only considerations that could be brought within the compass of s 72 were matters affecting physical structures.

This decision will be of assistance particularly in the case of applications for change of use of buildings in conservation areas - where perhaps Conservation Officers may not become

involved at all. It emphasises the importance of considering carefully and defining explicitly just what is the special character of each conservation area, so that such applications can be considered in the light of the probable effect of any proposed development on that character.

This case also suggests that factors other than merely those affecting the physical fabric may be relevant when considering proposals affecting listed buildings.

Appeal Decision

Hearing held on 15 & 16 December 2015

Site visit made on 8 September 2015

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 01 February 2016

Appeal Ref: APP/F1230/W/15/3006600

The Rivers Arms, Cheselbourne, Dorchester, Dorset, DT2 7NW

- 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 Arpac Limited against the decision of West Dorset District Council.
 - The application Ref WD/D/14/001300, dated 20 May 2014, was refused by notice dated 21 January 2015.
 - The development proposed is the change of use from public house to 3 dwellinghouses.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Arpac Limited against West Dorset District Council. This application is the subject of a separate Decision.

Procedural Matters

3. This appeal was originally scheduled for determination under the Written Representations procedure as per the requests of the main parties. But having considered the evidence at the time of my site visit I decided that a Hearing should be convened in view of the level of public interest in the village concerning the proposal, and because I needed to question the appellant and the Parish Council about viability issues including the marketing of the site to date. Prior to the Hearing both the appellant and Parish Council were asked to submit additional information to clarify their cases and I have taken this additional documentation into account in my decision, as well as obviously what was said by all sides at the Hearing itself.
4. A Statement of Common Ground signed by the appellant and Council was handed to me at the Hearing, to which I have also had regard. In particular the fact that since the Council's refusal of the application it has adopted the new West Dorset, Weymouth & Portland Local Plan (LP), whose policies supersede those in the former West Dorset District Local Plan 2006 (WDLP). In particular, Policy COM3 of the LP supersedes Policy C6 of the WDLP.

Main Issue

5. The main issue is whether there is sufficient evidence to justify the loss of the pub as a community facility in accordance with local and national planning policy.

Reasons***Relevant Background History of The Rivers Arms***

6. I heard first hand accounts from several longstanding village residents at the Hearing that the pub was successfully run by Mr & Mrs Milford until they sold it to Mr & Mrs Guttridge in 1992. I also heard from residents that Mr Guttridge had 'run down' the pub during his ownership; for instance, by refusing to serve food or only serving it to selected clubs such as the darts team, having very limited availability of different beers, by only serving red wine to customers if they bought a whole bottle rather than just a glass and by failing to keep the premises clean. These accounts are credible.
7. The Guttridges marketed the pub for sale by private treaty through Sidney Phillips from 23 April 2007 onwards at an asking price of £350,000 including the goodwill of the business and the trade furniture, fixings, fittings and effects. These marketing details, presented to me at the Hearing, state that the property would be "ideal for a purchaser looking to develop a business which *by the present owners choice* [my italics] 'just ticks over' with modest wet sales." This indicates to me that the Guttridges, although they may not have deliberately run down the pub, at least had no great interest in making it a successful and profitable business, unlike their predecessors.
8. The pub was closed for business in July 2008 and at about that time the Guttridges applied for planning permission to change the building into a dwelling (LPA Ref 1/D/08/1246), which was refused on 22 August 2008.
9. The property was sold at a Symonds & Sampson auction in October 2010 for £200,000 to a Mr Grant, the Director of TST Properties (Bath) Ltd in which name a planning application for alterations and extensions to the building with associated landlord accommodation and the creation of a new dwelling was submitted in early 2011 (LPA Ref 1/D/11/0389). This was refused by the Council on 30 August 2011 and dismissed on appeal on 15 May 2012¹ but not before Mr Grant had carried out a series of works to the building, which remain to this day as shown on the existing floor plan drawings submitted with the current proposal scheme. I understand that the external works to the rear of the building were unauthorised and that the Council ensured their cessation before they were completed.
10. The internal works have removed all the pub's fixtures, fittings, trade furniture and effects including the bar and the kitchen and appear to have included the erection of two spur walls on both ground and first floors which divide up what appears from the photographs in the Sidney Phillips marketing details to be an open ground floor room when the pub was in operation. In any case the present building, sub-divided in this fashion, cannot realistically be used as a pub and these dividing walls would need to be largely removed if a pub use was to be restored. All this would obviously entail the cost of substantial

¹ APP/F1230/A/11/2167420 (Appeal 1)

building works including making good and fitting out as a pub again, as acknowledged by all the parties.

11. At the Hearing the appellant explained that Mr Grant had borrowed a sum of money from Mr & Mrs Higgins. I was not told what this sum of money was. But following the refusal of the application and its dismissal at appeal Mr Grant defaulted on this loan and as a result the property came into the ownership of the Higgins on 17 January 2014, the beneficial owners of Arpac Limited. I note from the Land Registry title document submitted at the Hearing by Dr Jo Nash, one of the Cheselbourne residents, that the price stated as being paid by the Higgins on 10 January 2014 was £150,000, although I accept that because they acquired it by way of default of a debt that figure may have been a nominal value and does not necessarily reflect the value of the loan.
12. On 31 July 2012 the Higgins submitted an application for change of use of part of the building to a holiday cottage and accommodation as a subordinate part of a scheme for employment, tourism and community use with reduced parking and additional landscaping (retaining the existing use). They lodged an appeal against the Council's failure to determine this application, which was dismissed on 15 August 2013².
13. On 30 September 2013 the property was auctioned by Fox & Sons with a guide price of £185,000 but it did not sell.

Policy Issues

14. The prolonged closure of the pub was a key factor in the Council deciding not to designate it as an Asset of Community Value (ACV) during the course of the determination of the application. In particular I understand from the submissions that it could not be designated as such because the use of the building as a pub was not in existence at the time that the ACV procedure was established under the Localism Act 2011. However, the fact that it was not designated as an ACV does not override the need to assess the proposal in accordance with the development plan.
15. As set out above, LP Policy COM3 has superseded WDLP Policy C6. This is the most relevant development plan policy. COM3, entitled 'The Retention of Local Community Facilities' states:
 - i) *Planning permission for proposals, including change of use, which results in the loss of local community buildings or structures (including sites which were most recently used for this purpose where the use has ceased or the building has been demolished), will not be permitted unless:*
 - *it can be demonstrated that there is no local need for the facility or that such a facility is no longer likely to be viable; and*
 - *an appropriate alternative community use to meet local needs is not needed or likely to be viable.*

The Monitoring Indicator at the base of this Policy is the number of approved applications for change of use from shops, garages, pubs and community buildings to other non-community uses and the Target is no net loss.

² APP/F1230/A/13/2196058 (Appeal 2)

16. LP Policy SUS3 allows the adaptation and change of use of rural buildings outside development boundaries to open market housing within or adjoining an established settlement of more than 200 population, including Cheselbourne. However, that Policy does not override the presumption in Policy COM3 that community facilities such as pubs will be protected.
17. Paragraphs 28 and 70 of the National Planning Policy Framework (NPPF) respectively promote the retention of local services and community facilities in villages including pubs and seek to guard against their unnecessary loss where this would reduce the community's ability to meet its day-to-day needs.
18. Additionally, last year's Written Ministerial Statement on Community Pubs (WMS)³ is also a relevant material consideration, as acknowledged by the appellant. The WMS sets out a number of measures to support the retention of pubs.
19. The combination of this local and national planning policy sets a high hurdle for proposals like this which result in the loss of village pubs, particularly where the pub is the only one in the village, and even if it has already closed down. In essence this means that the onus is on the appellant to demonstrate that the use of this building as a pub or alternative community use to meet local needs is unviable.
20. The supporting text (paragraph 6.3.4 of the LP) states that proposals which would result in the loss of a community facility must demonstrate that efforts have been made to retain it and that opportunities for conversion to alternative community uses have been explored. Evidence submitted should typically include:
 - Details of how the property has been marketed, the length of time that the marketing was active and any changes during this period, and the asking price;
 - Details of the level of interest generated and any offers received;
 - What consultation there had been with local community groups/service providers on possible alternative community uses.

Viability

The Marketing of the Site and the Prospective Asking Price

21. I consider that a 12 month period of continuous marketing would be acceptable. The appellant has provided documentary evidence that the site has been marketed by Fox & Sons from 30 August 2013 to July 2015 and, since June 2015 by Goadsby alone, including since 1 July 2015 by an advertising 'For Sale/To Let' board. This is a more than ample marketing period in itself. Additional marketing has also taken place at various times since 2007. The appellant maintains that there have been no offers made to purchase the site.
22. The asking price for the site has varied markedly since it was first marketed in 2007. The Inspector in Appeal 1 noted in 2012 that it had recently been advertised for £750,000. This was a price that reflected the gross development

³ House of Commons: Written Statement by Kris Hopkins, Parliamentary Under Secretary of State for Communities and Local Government, 26 January 2015

- value of that scheme but is clearly an indication that the property was not at that time being marketed on the basis of its existing floor space and lawful use.
23. Mr Grant paid £200,000 for the property at auction in October 2010. But this was before he embarked on the abortive works to implement the first appeal scheme. These works, as set out above, removed the pub's fixtures and fittings including its bar and kitchen and introduced the spur walls inimical to its restoration. It is agreed between all the parties that it will cost about £300,000 to refit the building as a working pub. This reduces the current value of the property.
24. Evidence was submitted by the Parish Council (PC) that offers have been made for the property since 2008⁴. The first offer was £260,000 made by Andy and Sarah Fox, now the landlords of The Royal Oak at Milborne St Andrew nearby, in late 2008. The appellant points out that at the time the asking price was £350,000. But less than two years later the site was sold at auction for £200,000 to Mr Grant, which indicates that the hoped for value was unrealistic. The e-mail from the Foxes in the PC's statement has no date on it but Mrs Greenwood confirmed that it was sent to her after the end of September 2015 and I have no reason to disbelieve her.
25. The second offer was made by Mr & Mrs Skinner in early 2011. Mrs Skinner was present at the Hearing and was able to confirm that her husband made an offer to Mr Grant, although since she was unable to confirm what that offer was I cannot attribute as much weight to it as those offers which refer to a specific price. Her oral evidence however assures me that Mr Skinner did make an offer, which Mr Grant rejected. This rejection would tally with the £750,000 asking price that Mr Grant was seeking in early 2012 referred to above.
26. The two e-mails from Mr & Mrs DuValle were confirmed as being received by the PC on 11 May 2015 and in September or October 2015 as confirmed by Mrs Greenwood at the Hearing. These e-mails detail that the DuValles, who state that they previously successfully ran The Thimble Inn at Piddlehinton, were interested in buying The Rivers Arms and converting it back into a pub in 2014. But they considered the asking price of £185,000 was too high and stated that the agents (Fox & Sons at the time) said that the owners would not reduce the price because other parties were interested at the time. Their second e-mail confirms that they would have pursued the purchase at a lower price. The DuValles were not present to confirm the contents of these e-mails but I have no reason to believe that the contents are false or inaccurate.
27. I have seen two e-mails from Gary Gilmore, who states he is a publican with 30 years experience, dated 22 April and 25 June 2014. The first of these was given to me by the appellant at the Hearing. It confirms that Mr Gilmore was not prepared to reduce his previous offer of £190,000 for the property given his builder's estimates of around £160,000 to restore the pub use.
28. The second confirms that his offer was made in May 2014 but that he put forward a revised offer to Fox & Sons, which the owners would not accept. Hence these two e-mails are contradictory with regards a second offer. The June e-mail was in response to the advertisement of the planning application and hence may have sought to exaggerate Mr Gilmore's bids or his memory may simply be unclear and so I put no weight on his alleged second offer.

⁴ Additional statement from Parish Council sent to PINs on 16 October 2015

Nonetheless, his builder's estimate of restoring the pub use is considerably less than that of the current figure of around £300,000 and so I conclude that a purchase price of £190,000 remains unrealistic.

29. The appellant also submitted with the application an Affordable Housing Economic Viability Assessment by Tangent Surveyors Ltd. This Assessment stated that the existing use value was considered to be £150,000 in May 2014 but also stated that a land value of less than £96,000 could not be considered reasonable within the context of that viability assessment.
30. The appellant dismisses the above offers and evidence at attempted negotiation and maintained at the Hearing that this was merely hearsay evidence and not therefore conclusive proof that any 'performing' offers were made. I agree that there is no evidence in the appellant's marketing since August 2013 that a 'performing' offer has been made to date. However, the appellant did not deny that the offer and negotiations by Mr Gilmore and the negotiations by the Duvalls did in fact take place. I conclude that they constitute evidence that the appellant was not prepared to sell the property at a price that reasonably reflected the cost of restoring it to its lawful use as a pub.
31. I also conclude that the earlier offers of the Foxes and Skinners indicate that previous owners also rejected reasonable offers for the property. Whilst this was nothing to do with the current owners it does confirm that since 2007/08 the pub has not been marketed at a reasonable price.
32. The appellant states that for much of the recent marketing the building has been advertised by way of 'price on application' and claims that this is used as a last resort to encourage offers, citing an appeal decision by way of support for this claim⁵. But the relevant wording in that decision (in paragraph 9) merely states that the Inspector *had heard* (my italics) that the site had been shown as 'price on application' as a last resort to encourage any offers. In other words that was the appellant's view in that case rather than the Inspector's view. Whilst such advertisement may be viewed by the appellant as a way of stimulating offers, it may also be viewed as off-putting by potential purchasers because they have no idea of the approximate realistic price the seller is likely to accept. On balance I conclude that marketing the site in this way was unlikely to have encouraged realistic bids to come forward from a would-be publican.
33. It appears from the e-mails of Mark Carter in April 2015 and Richard Dale from George and Vulture that there is still potential interest in restoring the building to a pub. It is understandable that Mr Carter does not feel confident he will be able to negotiate a reasonable price for the site whilst the appellant entertains the hope value associated with this appeal proposal. It is unclear why Goadsby did not reply to Mr Dale's e-mail of 14 October 2015 requesting details of The Rivers Arms but I was provided with the full e-mail trail at the Hearing and have no reason to believe that his interest in the site was not genuine.
34. One such unanswered request for details of the property does not confirm that the current marketing exercise is less than serious, especially since Goadsby required payment for their current marketing campaign. However, it is an example of the interest of a potential purchaser that has clearly not been

⁵ APP/G1250/A/13/2209991

- properly addressed. This adds to my concerns about the price that the property has been marketed at.
35. The appellant draws my attention to the viability guidance in Planning Practice Guidance (PPG), in particular paragraphs 4, 16, 17, 23 and 24. Paragraph 16 states that a site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken. Paragraph 23 states that land or site value should provide a competitive return to willing developers and landowners and be informed by comparable, market-based evidence wherever possible.
36. The appellant maintains on the basis of this guidance that it should not make a substantial loss in selling the site and I accept that ordinarily this should be the case, or else a landowner would be unwilling to sell a piece of land. But in this case works including unauthorised external works were carried out, which considerably add to the pub's restoration costs.
37. I acknowledge that these works were carried out by Mr Grant and not by the current owner but the need to undo them reflects on the price that the appellant can reasonably seek for the site. If such speculative or unauthorised works to buildings housing community facilities were not to reasonably reflect on the asking price the carrying out of such works in general would render many such community uses unviable in the future. That would be a perverse incentive to carry out such inappropriate works, which is not the intention of local or national policy.
38. I understand that Mr Miracca, the 'keyholder' and agent for the appellant, had a meeting with the PC but there is no evidence of any further engagement with the community. This does not demonstrate that efforts have been made to retain it, as required under LP Policy COM3.
39. In summary, for the above reasons, the marketing of the site including since the appellant took control of it has not been satisfactory. There has also been no meaningful engagement with the PC or local community by the appellant.

Development Appraisal

40. The appellant's submissions refer to the continued loss of pubs and difficult trading conditions in the current market. It maintains that pubs in such locations as this away from city centres or other 'destinations' close to large population hinterlands will struggle to be viable. Whilst that may be so for setting up new pub businesses based on the Tied House or Pub Company business models, on which the revenue stream in the appellant's development appraisal is based, that does not necessarily hold good for an independent freehold purchaser and there has been no assessment of such a scenario. A new pub business would inevitably take some time to build up but I note in this respect that the development appraisal allows 18 months rent free so this is acknowledged.
41. The amount of money pledged by local residents in the Parish Council's subscription scheme is not a ceiling or necessarily a realistic calculation of a revenue stream for any new pub business at the site. It is simply a minimum pledge of initial support by villagers for such a venture. If a pub was to be a successful business on this site any new owner would have to attract more

than just trade from villagers. (S)he would also need to attract people living in the surrounding rural hinterland and from Dorchester and the Poole/Bournemouth conurbation. But that would be nothing new. Good country pubs have always attracted people from further afield and their viability continues to be dependent on doing so. Nearby examples of this are The Oak at Dewlish and The Brace of Pheasants at Plush, as well as several pubs in the Piddle valley.

42. The appellant points to several disadvantages of the site over nearby pubs. He states that the previous dining room was upstairs which made serving difficult, the sloping nature of the rear of the site precludes its realistic use as a garden, and that access for the disabled is poor. But village residents said that pub customers used to use the rear garden and I see no reason why it could not be adapted for use again, albeit a flat garden would be preferable. I see no reason why the building could not be internally adapted to serve food downstairs, albeit a new kitchen would also need installing.
43. I acknowledge that access up the long ramp behind the car park wall is poor compared to many other local pubs and that the topography of the site militates against significant improvements to access for disabled customers. However, the site has ample parking to the frontage for its size, which will be needed if it is to attract people from further afield. There is also upstairs space to provide some bed and breakfast accommodation in addition to any landlord's accommodation. This is a typical way of adding to a pub's income in such rural areas, and the Parish Council pointed out that this was the case with several local pubs.
44. Substantial work is clearly needed to enable the pub use to resume on the site but it has not been demonstrated why, subject to this work, a successful pub business is incapable of being re-established attracting villagers and those living in the adjoining rural hinterland as well as the nearby urban centres. Whether a new landlord would succeed in doing so would rest on his/her business acumen, marketing and the quality of the food, drink and welcome the pub provided. The fact that the Gutteridges chose to just let the pub 'tick over' does not mean that a new independent landlord could not turn the premises into a viable pub.
45. The appellant cites the first and second appeal decisions on the site as evidence of unviability. The first scheme involved a large extension in order to create a large 'destination' pub with 90 restaurant covers and an expected turnover of £300,000 as well as other non-pub uses. The Inspector doubted whether that would be achieved, in part because the site did not have sufficient car parking for such an operation. The second scheme was a redevelopment proposing the retention of a small café/bar, a holiday cottage and an open market dwelling. In that case the Inspector had no evidence to convince him that the replacement community facility "had a realistic chance of seeing the light of day"⁶.
46. In essence the first appeal scheme would have been an overly large 'destination' pub better suited to a peripheral city location of the kind the appellant referred to in its evidence. The second scheme was simply a residential redevelopment of the site with a token retention of community use floor space which would not likely have been large enough to re-establish a

⁶ Ibid Appeal 2, paragraph 26

functioning viable pub use. Neither scheme envisaged simply restoring the existing building back to a pub; on the contrary, both schemes envisaged selling parts of it as stand alone housing, which would have precluded any secondary income from bed and breakfast. As such they are not directly comparable with this proposal.

47. For these reasons I cannot reasonably conclude from the appellant's development appraisal that re-establishing a pub use on the site is not likely to be viable for an independent owner/landlord. In concluding this I acknowledge that the Local Planning Authority (LPA) did not contest the appellant's development appraisal as such but it and the Parish Council did query the marketing of the site in terms of the likely prospective asking price for the property, and this a key component in assessing the likely overall viability.

The Day-To-Day Needs of the Village

48. I heard representations at the Hearing from a number of village residents about the ongoing need for indoor space for various community events, clubs and associations. The only other facilities in the village are the primary school, church and village hall. The hall is used by the school up until 4.30pm on weekdays and is small with a small kitchen and so it is not always conducive for events or available for the clubs that wish to use it. The church has no parking, toilet or disabled access and could not be expected to function as a pub. No one said that the school could accommodate meetings or events and even if it did the school could not be compared to the village pub in terms of its social function.
49. I acknowledge the appellant's argument that a pub here must be viable and pay its way and is not a free communal meeting place. But it is plain that many residents of the village used the pub and would do so again, and that it could house club events and meetings. Such events would generate custom for the pub because people attending them would buy food or drink or both. The requirement that the pub is viable and the community needs of the village are not mutually exclusive in this respect. I conclude that the above day-to-day needs of the village would help to support the viability of the pub.

Conclusion on Viability

50. It is likely that this site would not be attractive to a brewery chain or Pub Company and that an independent purchaser would be unlikely to secure a mortgage in order to restore the pub use. As such its restoration would be reliant on a cash purchaser. Such an independent buyer would require time to set up a new pub business and it would be reliant on more than local trade. But the location of The Rivers Arms is no more remote than other local successfully trading pubs and I see no realistic reason why a pub business could not flourish here.
51. The site has been marketed for well over 12 months and no 'performing' offers have been received during the period of the appellant's ownership. But the evidence put forward by the PC suggests to me that the owners have been unlikely or unwilling to date to accept an offer that realistically reflects the costs of bringing the building back into use as a functioning pub. As such the marketing of the property has not been satisfactory.

52. For the above reasons I cannot conclude that there is sufficient evidence to justify the loss of the pub as a community facility in accordance with local and national planning policy. The proposed development would be contrary to LP Policy COM3 and paragraphs 28 and 70 of the NPPF.
53. Whilst, as noted by the appellant, the WMS states that planning rules cannot keep pubs open which are not making money, I have considered the viability arguments in depth above and have concluded that it would be possible to re-establish a viable pub on this site. The permanent loss of the pub would therefore also be contrary to the objectives of the WMS.

Other Matters

54. The appellant maintains that leaving the building in its present vacant state harms the landscape of the Area of Outstanding Natural Beauty (AONB) within which it is located. Whilst I accept there would be some harm to the AONB if the building was to become derelict, this is not the case at present and another short marketing period would not significantly harm the scenic beauty of the AONB.
55. The appellant points out that the proposed houses would be likely to attract families who would send their children to the primary school and therefore help to sustain the viability of this very small school in a village with a relatively small population. Whilst this may be the case there is no certainty that the buyers of these dwellings would have school age children. Even if they did, such a benefit would not be as great a benefit to the mass of the local community as the reopening of the village pub would be.

Overall Conclusion

56. For the reasons given above I conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ken Parke	Ken Parke Planning Consultants
Richard Sturt, RICS	Sturt & Company
Paul Miracca	MSP Capital

FOR THE LOCAL PLANNING AUTHORITY:

Jean Marshall, BA (Hons), DipTP, MRTPI	Development Manager
Cllr Margaret Lawrence	DC Committee Councillor
Cllr Stella Jones	DC Committee Councillor

FOR THE PARISH COUNCIL:

Tiggy Greenwood

INTERESTED PERSONS:

Nigel Powell
Patricia Powell
John Greenwood
Christopher Mathews
Simon Roberts
Gwendoline Tomlinson
David Gainey
Susan Widdowson
Dr Jo Nash
Chrissie Skinner
Blake Holt
Christine Coombs
Nicky McKay

DOCUMENTS SUBMITTED AT THE HEARING

1. Signed Statement of Common Ground
2. Revised list of Conditions
3. House of Commons: Written Statement by Kris Hopkins, Parliamentary Under Secretary of State for CLG, 26 January 2015
4. Letter from Oliver Letwin, MP supporting retention of the pub, 8 December 2015
5. Sidney Phillips marketing details dated 23 April 2007
6. E-mail correspondence between Gary Gilmore and James Repper of Fox & Sons 22 & 23 April 2014
7. E-mail correspondence between Richard Dale and Mark Nurse at Goadsby dated 14 October & 8 December 2015

8. E-mail correspondence from Mark Nurse to Paul Miracca confirming erection of Goadsby marketing board erected at the site 1 July 2015
9. Marketing details from BusinessesForSale website dated 16 December 2015
10. Objection from Christopher Mathews dated 15 December 2015
11. PPG guidance on costs at appeal
12. PPG guidance on viability issues
13. Documents of Land Registry ownership and Company House documents containing ownership details of companies that have owned or had charges on the property submitted by Dr Jo Nash
14. Costs decision 2128567 (actually sent in by appellant at my request immediately after close of Hearing on 17 December 2015)

End

Appeal Decision

Site visit made on 21 October 2014

by Jacqueline Wilkinson Reg. Architect IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 October 2014

Appeal Ref: APP/Q3115/A/14/2222161

Rose and Crown, 56 New Street, Henley-on-Thames RG9 2BT

- 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 W. H. Brakspear & Sons against the decision of South Oxfordshire District Council.
 - The application Ref P14/S0063/FUL, dated 9 January 2014, was refused by notice dated 16 April 2014.
 - The development proposed is change of use from public house (A4 use) to a dwelling (C3 use) with alterations. (As amended by drawing 03A accompanying agent's email dated 7th March 2014).
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by W. H. Brakspear & Sons against South Oxfordshire District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposed residential (C3) use on i) the vitality and viability of the local area and ii) whether the character or appearance of the Henley Main Conservation Area would be preserved or enhanced and if not, would there be a public benefit arising from the proposal which would outweigh the harm.

Reasons

4. In assessing this appeal I have found it necessary to clearly distinguish between the concerns of a number of respondents about the loss of the pub, which they state should be regarded as a community facility, and the wider issue of the loss of a commercial use and the effect of that on the vitality and viability of the town centre as a whole.
5. Although it was not cited in the reasons for refusal, the first question I must therefore address is: *Was/is the pub a valued facility? If so, would its loss reduce the community's ability to meet its day-to-day needs?*

6. A local resident has submitted evidence that the Rose and Crown has been in use as a public house under that name at least since the mid-nineteenth century. Letters from local residents speak of the pub being a pleasant traditional small pub in the 1990's with a pleasant ambience. The South Oxfordshire Branch of the Campaign for Real Ale (CAMRA) is concerned about the loss of a pub which served the local community and the loss of a traditional venue which also served the river front area and the theatre.
7. After a good perambulation around the town centre and the river front, I am not persuaded that the pub could be regarded as an essential community facility in the same way as for example, a village pub. Put simply, there are a number of pubs of different sizes and characters within reasonable walking distance which would be likely to cater for the day to day needs of the local community.
8. I therefore conclude that the loss of the Rose and Crown pub would not harm the community's ability to meet its day to day needs. In that respect the proposal would comply with the requirements of the National Planning Policy Framework (the Framework), paragraph 70. South Oxfordshire Local Plan (Local Plan) saved policy CF 1 (*Safeguarding community facilities and services*), which has similar aims, would also be satisfied.

Issue 1: The effect on vitality and viability of the local area

9. The Framework, Section 2: *Ensuring the vitality of town centres* states that local planning authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality. They should define the extent of town centres and primary shopping areas and secondary frontages and make clear which uses will be permitted in such locations. The Planning Practice Guidance (the Guidance) strongly encourages local planning authorities to pursue policies to support the vitality and viability of their town centres.
10. The town centre has two main areas of commercial and leisure activity, the Market Place on the one hand and the river front on the other. Whilst New Street is predominantly residential in character, it is also a main thoroughfare and it is a key route from the upper part of the town to the busy river front area. It is also the location for the town's theatre, a large hotel/pub, as well as some small independent shops and offices. Beyond the defined main shopping frontages this scattering of other uses within the residential streets is a distinctive feature of the town centre and contributes to its attractive, lively and interesting character.
11. South Oxfordshire Core Strategy (Core Strategy) policy CST 1 *Town Centres and shopping* aims to reinforce the local distinctiveness of the market towns, to improve their vitality and viability and encourage more visits. It states that town centres will be supported so that they continue to be the focus for local communities. The extent of primary and secondary shopping frontages has yet to be defined in the Development Management Policies DPD.
12. The appellants point out that New Street is not a primary frontage and there is no local plan policy to protect commercial uses in this street. However, I have not been directed to any policy which states that commercial uses will only be protected in the primary shopping frontages. The appeal site is outside the

- currently defined primary shopping frontage¹, but it is within the defined town centre, where objectives of Core Strategy policy CST 1, would apply.
13. How these broad objectives are to be achieved in Henley is set out in more detail in Core Strategy Policy CSHEN 1, *Strategy for Henley-on-Thames*. This policy resolves to strengthen commerce in the town centre through retail-led mixed use development and by identifying additional retail and leisure floor space, and to improve the attraction of Henley for visitors. Paragraph 10.11 states that Henley would benefit from a greater range of town centre uses to make sure that it maintains its market share. Paragraphs 10.13 and 10.14 encourage mixed uses and visitor accommodation.
 14. Table 8.1 *Amount of existing floor space and quantitative need for additional floor space* shows that Henley will need to provide 9,200 m² of new floor space in the Use Class A1 (shops) to A5 (pubs) in the plan period 2007 to 2027. Table 10.1 *Henley floor space needs*, shows a 2,500 m² growth for Henley in the A3/4/5 Use class (restaurants, cafes and bars). These are figures based on a study updated in 2010. These figures were published after the initial impact of the recession and I accept that they may need updating. However, I have no other evidence before me that would dispute the general assumption that more space would be needed. The loss of the commercial use at the appeal site would therefore be at odds with these stated aims.
 15. The appellants point to recent changes of use in New Street, which they state have set a precedent. Local residents point out that the existence of the Rose and Crown was a factor which was taken into account when the Horse and Groom was allowed to close in 2013. An office adjacent to the appeal site has also been allowed to change use to residential. However, I have assessed this appeal on the basis of the current circumstances and in the light of the Government's most recent Guidance, which I have quoted above.
 16. The appellants have not made the case on viability grounds that the property could not be used for an unencumbered commercial use. The Rose and Crown is a Grade II listed building, with an 18th century facade with an earlier timber framed structure behind, on a narrow burgage plot. In common with so many historic buildings, the interior has both its limitations and attractions, but it has the potential to be used imaginatively and flexibly.
 17. Listed building consent has been granted for the relatively minor changes that would be required to convert the building. The appellants make the case that residential use would provide the optimum viable use and would generate the funds necessary to upgrade the building.
 18. The test of the Framework, set out paragraph 134, applies when a proposal would result in less than substantial harm to the building, which is not the case here. I have no evidence before me that residential use would be the only use which would provide the optimum use for the building.
 19. Letters of support have also been received, some from nearby residents who would welcome the improvement to their amenity. Whilst I accept that some residents have experienced problems with noise and smells, the pub has been in this mixed use town centre location for more than 150 years and other

¹ South Oxfordshire Adopted Policies Map, Henley Inset, 2012.

legislation can deal with statutory nuisance. I give this benefit very limited weight.

20. I therefore conclude that the proposal would harm the vitality and viability of the town centre.

Issue 2: Would the character or appearance of the Henley Main Conservation Area be preserved or enhanced and if not, would there be a public benefit arising from the proposal which would outweigh the harm.

21. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Generally this requirement is interpreted in a purely visual way and I accept that as there would be no change to the appearance of the building, the appearance of the conservation area would be preserved.
22. However, in assessing the issue of the change of use, walking around the town I observed that the overall character of the historic town centre (which is for the most part within the conservation area) stems not only from its substantial collection of historic buildings and its traditional streetscape, but also from its vibrant market town character, with diverse uses and activities in its streets and along the river front. The loss of the commercial use of the appeal building would not preserve this character and it would not be neutral. I therefore attribute some harm to the character of the town centre and the conservation area.
23. I therefore conclude that the proposal, as it would harm the character of the Henley Conservation Area, would fail to comply with the terms of the Act and the requirements of the Framework and the similar aims of Core Strategy policy CSEN3 and saved Local Plan policy CON7.
24. I am required to assess whether the harm I have identified to the character of the conservation area would be justified by a public benefit. As I have concluded above, there would be no particular benefit to the listed building. The benefit in amenity terms to the neighbouring residents would be very limited and hardly public. The gain of one house would be of very limited benefit to the supply of housing in the district. I see no other public benefit, however small, arising from the proposal and I am required to give great weight, under paragraph 132 of Framework, to the conservation of the heritage asset.
25. I therefore conclude that the harm to the character of the conservation area would not be outweighed by a public benefit.

Overall conclusions

26. Listed building consent has been granted for the relatively minor works and I conclude that the special interest of the listed building would be preserved.
27. I have concluded that the broad aims of Core Strategy policies CST 1 and CSHEN 1 would not be supported by the unjustified loss of a commercial use in this location.
28. I place great weight on the need to support the economic vitality and viability of the town centre as a whole and conclude that notwithstanding that the

proposal would not harm the ability of the community to meet its day to day needs, this would not outweigh the harmful impact on the vitality and viability of the town centre through the loss of a commercial use.

29. I have also concluded that the harm to the character of the conservation area would not be outweighed by a public benefit. This adds to my conclusions that the appeal should not succeed.
30. For the above reasons and having taken into account the responses, both for and against the proposal, at the application stage and the appeal stage I conclude that the appeal should be dismissed.

Jacqueline Wilkinson

INSPECTOR



Appeal Decision

Hearing held on 11 April 2012

Site visit made on 11 April 2012

by L Rodgers BEng (Hons) CEng MICE MBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 May 2012

Appeal Ref: APP/W0530/A/11/2167619

The Plough, High Street, Shepreth, Royston SG8 6PP

- 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 MPM Properties (Royston) Ltd against the decision of South Cambridgeshire District Council.
 - The application Ref S/0828/11, dated 15 April 2011, was refused by notice dated 6 September 2011.
 - The development proposed is described as a change of use from a restaurant (Use Class A3) to a residential dwelling (Use Class C3) together with landscape works to the site frontage.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The effect of the proposed development on the provision of community services and facilities in the area.

Procedural matters

3. At the hearing the Appellant submitted a true copy of a Planning Obligation made pursuant to s106 of the Town and Country Planning Act 1990. This is a material consideration that I shall take into account in my determination.
4. The National Planning Policy Framework (NPPF) was published on the 27 March 2012. This was after submission of the appeal but before the hearing - at which the parties were given the opportunity to comment as to its effect on their cases. In determining the appeal I have had regard to the comments made at the hearing as well as to the NPPF itself.

Reasons

Background

5. The Plough is a detached, brick building with a large garden and extensive parking. It is centrally situated within the village of Shepreth and the building itself lies within the Shepreth Conservation Area. The Plough has historically been used as a public house (Use Class A4) and more recently as a bar/restaurant (use Class A3). However, the property is currently not in use as a restaurant and the proposal seeks to convert the premises into a single residential dwelling.

6. Policy SF/1 of the South Cambridgeshire Local Development Framework Development Control Policies DPD 2007 (DPD) aims to protect village services and facilities where their loss would cause an unacceptable reduction in the level of community or service provision in the locality. Village services are said to include shops, post offices, community meeting places and village pubs - although the list is clearly not exhaustive.
7. The policy requires a number of matters to be considered in determining the significance of any loss including the established use, its existing and potential contribution to the social amenity of the local population, the presence of other village services and facilities and the future economic viability of the use including, where appropriate, financial and marketing information.

The established use of the premises

8. Although The Plough had been used as a public house it was converted into a restaurant and bar immediately following its purchase by October Restaurants in 2004; photographs submitted by the Appellant show that substantial changes were made to both the internal layout and decor.
9. The Council accepts that the established use is that of a restaurant in Use Class A3 and confirmed at the hearing that planning permission would be required to revert to an A4 pub use. Whilst local residents state that they were able to use the bar without dining in the restaurant, a matter not disputed by the Appellant, the physical changes shown in the photographs and my observations on site strongly suggest that the bar use was ancillary to that of the restaurant.
10. The bar/restaurant use ceased on the 25 December 2010 and, according to the Appellant, The Plough went into liquidation on the 10 February 2011. Since that time the liquidators have removed the restaurant's fixtures and fittings - including the kitchen equipment. It is therefore abundantly clear that the premises have not been used as a restaurant for more than a year and, notwithstanding that the bar could be used independently of the restaurant, the premises have not functioned in the manner normally expected of a public house for something in excess of seven years.
11. The Appellant points out that the lawful use of the premises is as a restaurant (Use Class A3) and moreover that, when in business, The Plough was regarded as a 'high end' restaurant. The Appellant further argues that such premises have a large catchment area and are unlikely to survive solely on custom from the local populace. As such, The Plough should not be regarded as a village service or facility to be considered under Policy SF/1. Indeed, the Appellant suggests that The Plough should be regarded as a facility within a village rather than a village facility.
12. I have some sympathy with the Appellant's view and it is highly unlikely that The Plough, as a 'high end' restaurant (local residents confirming that prices reflected this description), functioned as a social hub for the village in the way that might normally be expected of a traditional pub.
13. Nevertheless, looking solely at the last use of the premises seems to me to be taking a view which is rather too narrow and simplistic. Indeed, as a number of residents pointed out, if the last use was taken as the sole determinative criterion, changing a pub to Use Class to A3 through permitted development would be a way of circumventing policy restrictions seeking to prevent the loss

of pubs as community facilities. Policy SF/1 itself notes that in addition to considering the established use of the premises, regard must also be had to its potential contribution to the social amenity of the local population.

14. Given that The Plough was once a pub, and notwithstanding the need for planning permission and the appropriate investment, there must at least be the potential for The Plough to be returned to that use. I shall therefore move on to consider the other matters identified in Policy SF/1.

Village services and facilities

15. Policy SF/1 notes that consideration will be given to the presence of other village services which provide an alternative with convenient access by good local public transport services, or by cycling or walking. Although Shepreth does have a number of other services and facilities these are clearly limited. The recently opened coffee shop and the local community hall provide some sort of community focus, but the only facility which can be regarded as providing a realistic alternative to the potential use of The Plough as a public house is the 'Green Man' pub.
16. The Green Man is described as being in the Parish of Shepreth. However, I saw on my visit that it is a considerable distance from the village centre (around 1.6km). It also lies on the opposite side of the A10 from the village centre, the A10 being described by the Council as a 'busy and fast trunk road' - a description with which I concur. Having regard to its location and its public transport links, I am of the view that the Green Man is unlikely to appeal to villagers, other than perhaps those prepared to travel by car. As such its location would act against it becoming a social hub for the village and in my view it would not provide a comparable alternative to a pub sited in the village centre.
17. Shepreth is described in the South Cambridgeshire Local Development Framework Core Strategy (CS) as an 'Infill Village' and the Council notes that "Infill villages are amongst the smallest in South Cambridgeshire, have a poor range of services and facilities and it is often necessary for local residents to travel outside of the village for their daily needs". As such it seems to me that the loss of a potential facility would be acutely felt.

Viability

18. The Appellant has submitted information to show that the former restaurant business operating from The Plough did not prove to be viable, a matter underlined by the fact that the business closed and went into liquidation. The Appellant has also put forward a letter sent to the liquidator of October Restaurants Ltd by the Royal Bank of Scotland Plc's debt recovery department in which it is stated that re-opening of the pub in the current economic climate would not be supported as it is not seen as being financially viable.
19. In contrast, the Council has made submissions suggesting that the site is viable in its current land use. In the Council's view The Plough is capable not only of sustaining a level of net profit adequate to provide an owner operator with appropriate remuneration, but also to fund loan interest and capital repayments for site purchase and essential investment.
20. The Council's assessment is based on a number of assumptions and as such must be subject to some risk. Although some of the factors underlying the

Council's assessment are reasonably easy to account for, such as the condition of the building, matters such as the historic trading record as a pub/restaurant are less reliable as predictors of future performance – particularly taking into account the fact that the premises have not traded as a pub for some time and the changes that have since occurred to the economic climate.

21. Nevertheless, the Appellant accepted at the hearing that despite the failure of the former business it ought to be possible to run some sort of viable pub/restaurant business from the premises. The Plough is reasonably well located and with its garden and car park has appropriate facilities. Despite the need to re-equip the kitchens I see no reason to demur from the view that a viable business could be created.

Marketing

22. The premises were first put onto the market as a restaurant and bar in May 2007 by Christie & Co. The initial asking price was for 'offers in excess of' £675k freehold and during the course of 2007 the premises were marketed through listing on the agent's web site as well as through the circulation of sales particulars and a campaign in the trade press. In November 2008 the asking price was reduced to £590k.
23. A letter from the agents in February 2011 stated that since 2007 the property had been fully exposed to the open market by inclusion on their website and in regular e-mail and mail shots to their database of potential buyers. They also confirmed that the ".....quoted asking price remains £590k freehold".
24. During 4 years of marketing, only three formal offers were received. The first, accepted in October 2007, was for the then asking price of £675k - although the prospective purchaser subsequently pulled out. Following the price reduction in 2008, two further offers were received. One, at £500k, was rejected as being too low as it was insufficient to clear the mortgage on the property but in May 2009 an offer of £570k was accepted – although, again, the prospective purchaser later pulled out.
25. Local residents representing the 'Shepreth Ploughshare' state that it appears as though The Plough was removed from sale in February 2011. The Council also points out that the property was no longer being advertised on Christie & Co's website at the time of its determination and the Appellant confirmed at the hearing that there had been no marketing by Christie & Co in the last year. I understand that this was because the property had been sold to the Appellant 'subject to contract' – the arrangements including an obligation on the Appellant to pursue residential development on the site.
26. Policy SF/1 requires that consideration be given to the results of any efforts to market the premises for a minimum of 12 months at a realistic price. In the Council's view the initial asking price was somewhat ambitious and is likely to have discouraged serious applicants. Whilst the subsequent reduction to £590k was considered a reasonable course of action at the time, the Council nevertheless still considered the asking price to be ambitious – although not so ambitious that it would necessarily discourage interested parties. However, the Council also considers it surprising that no further reductions were made in light of the subsequent economic decline, suggesting that a reasonable expectation of price in 2010 would have been closer to £400k.

27. The Appellant's stance is that the prices sought were realistic given that several formal offers were received. It is also suggested that the basis on which the Council had assessed what it considered a reasonable price expectation was highly dependent on a national average multiple of Fair Maintainable Trade – the Appellant suggesting that regional differences were highly significant and that using the figure for East Anglia would produce a price which would not be far out of line with that being sought.
28. Given that some offers were received for The Plough, it seems that at certain stages of its marketing the asking price was seen by some potential purchasers as being reasonable. However, none of the three offers received proceeded to sale and one was considerably below the then asking price. In my view, the fact that some 4 years of marketing only resulted in two offers close to the asking price must at least raise questions as to whether the property and its asking price were appropriately matched.
29. Indeed, despite a number of viewings since July 2009 no further formal offers were received. Whilst I accept the Appellant's point that the asking price should be reflective of local conditions and that the Council's suggested price of £400k may be too low, bearing in mind the economic climate and the lack of any offers, a further reduction in price between November 2008 and February 2011 might have been expected. The fact that a lower price might not be sufficient to clear the vendor's mortgage commitments may mean that he is unwilling to offer the property for sale at that price - but it does not mean that such lower price is unrealistic in the context of the market.
30. Whilst I am therefore content that the property has been offered to the market for a period well in excess of the minimum 12 months sought by Policy SF/1, I am less convinced that the offer price was realistic throughout that period. In my view the marketing of the property cannot be without some criticism and there is at least limited conflict with Policy SF/1.

Conservation Area

31. The Plough lies within the Shepreth Conservation Area and the statutory test requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
32. In physical terms the effect of the proposed development would, through landscaping of the existing frontage, enhance the appearance of the area. In respect of its character, the Council notes that "Arguably however, the loss of a village facility would affect the social character of this part of the Conservation Area and this would be to the detriment of the area".
33. However, as noted earlier it is debateable as to whether a restaurant provides a village facility. The surrounding development is described by the Council as being predominantly residential of a mix of age and form and in these circumstances it is my view that a change of use from a restaurant to a residential dwelling would, in overall terms, have a neutral effect on the character of the area. I therefore find no conflict with the statutory test.

Other matters

34. In addition to the letters from local residents objecting to the application and the appeal, as well as the accompanying petition, it was made clear at the hearing that there is considerable local opposition to the proposal. Indeed, I

- note that a number of local residents have formed a group known as 'Shepreth Ploughshare' with the intention of returning The Plough to community use - specifically as a community-owned public house.
35. However, the 'Shepreth Ploughshare' does not appear to have passed much beyond its formative stages nor does it appear to have sufficient funds in place with which to achieve its objective of purchasing The Plough and turning it into a community-owned public house. In these circumstances I can give little weight to its intentions. Nevertheless, the formation of 'Shepreth Ploughshare' is indicative of a strong local desire for The Plough to once again become a community facility.
36. The NPPF is clear that part of promoting a strong rural economy is the retention and development of local services and community facilities in villages, including public houses. It also states that the planning system can play an important role in facilitating social interaction and creating healthy and inclusive communities.
37. To support this approach the NPPF seeks for planning authorities to involve all sections of the community in planning decisions and amongst other matters, those decisions should aim to achieve places which promote opportunities for meetings between members of the community. It also notes that policies and decisions should plan positively for the provision of community facilities, including public houses. Although, as the Appellant points out, the NPPF is clear that applications for alternative uses of land or buildings should be treated on their merits having regard to market signals, it goes on to state that regard should also be had to the relative need for different land uses to support sustainable local communities.
38. Given its recent publication and extensive consultation I consider the NPPF to be a weighty material consideration.

Planning obligation

39. The Appellant has submitted a planning obligation pursuant to s106 of the Town and Country Planning Act 1990 that is intended to provide contributions towards such matters as community facilities, recycling receptacles and open space. However, the absence of such an obligation did not form part of the Council's reasoning in refusing the application nor has the Council provided the policy basis for seeking any such contributions. In reaching my determination I have therefore found no need for the obligation - but neither have I accorded it any weight.

Conclusions

40. There are a number of matters that I consider weigh in favour of the proposed development. These include firstly that The Plough has not been a pub for some considerable time and that, notwithstanding its more recent use as a bar/restaurant, its conversion would not deprive the village of something that can currently be justly regarded as a community facility. Secondly, despite marketing the premises as a bar/restaurant for a period of some 4 years, the vendor has failed to secure a buyer. Thirdly, the former restaurant business proved unviable and had to be liquidated. The conversion would also result in a small supplement to the housing stock.

41. However, there are also matters weighing against the conversion. Firstly, the physical attributes of The Plough clearly make it suitable for a pub use and the proposed development would therefore result in the loss of a potential community facility – which it is accepted could be viable. Secondly, there are few other services and facilities in the village and the loss of even a potential facility takes on a particular significance. Thirdly, despite the lengthy period of marketing, I have reservations as to whether the asking price was realistic throughout that period and I do not regard the marketing so far carried out as carrying conclusive weight.
42. Based on the factors above I see the determination as being finely balanced. However, it is obvious that a substantial part of the community sees The Plough as a potentially valuable community facility and I am very much aware that approving the proposal is likely to result in the loss of that potential facility forever. I am also conscious of the weighty support offered by the NPPF to the retention and development of community facilities (including public houses) and its support for the involvement of all sections of the community in planning decisions. Taking these further considerations into account leads me to the conclusion that the loss of The Plough as a potential contributor to the social amenity of the village would be unacceptable.
43. Having had regard to all other matters before me I find nothing to add to or alter my finding above. The appeal must therefore fail.

Lloyd Rodgers

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr P Belton	Januarys
Mr R Muttu	MPM Properties (Royston) Ltd
Mr C Day	October Restaurants
Mr T Nichols	Everard Cole

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Hare	Development Control Officer, South Cambridgeshire District Council
Mr T Wheeler	Fleurets

INTERESTED PERSONS:

Mr D Kendrick	Councillor, Shepreth Parish Council
Mr C Cook	Parish Clerk
Mr D Elliott	'Shepreth Ploughshare' and local resident
Mr C Porter	Melbourn resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Planning Obligation dated 10 April 2012. Submitted by Mr Belton
- 2 South Cambridgeshire District Council Recreation Study (June 2005)
Submitted by Mr Hare
- 3 South Cambridgeshire District Council Community Facilities Assessment
(September 2009) Submitted by Mr Hare



Appeal Decision

Site visit made on 29 November 2011

by David Hogger BA MSc MRTPI MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 December 2011

Appeal Ref: APP/L3815/A/11/2160732

The Three Crowns, Billingshurst Road, Wisborough Green, Billingshurst, West Sussex RH14 0DX

- 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 JMG UK LLP against the decision of Chichester District Council.
 - The application Ref WR/10/05064/FUL, dated 25 October 2010, was refused by notice dated 16 March 2011.
 - The development proposed is single storey guest bedroom accommodation.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have taken into account the Draft National Planning Policy Framework but due to its current status I attach only limited weight to its contents.

Main Issues

3. The main issues are firstly whether or not the proposed development would preserve or enhance the character or appearance of the Wisborough Green Conservation Area; and secondly whether or not the proposal would detract from the setting of The Three Crowns public house, which is a listed building.

Reasons

Wisborough Green Conservation Area

4. The appeal site lies in part of the Conservation Area (CA) which appears relatively loose knit and it is currently part of the open garden area for The Three Crowns public house. The garden can be seen from outside the site and constitutes an attractive open element in the character of the area. The larger of the two proposed buildings would be about 14.5m in length and 6.5m wide, while the smaller building would be about 9.7m by 6.5m. Much of the area between the larger building and the public house would become what is described as a gravel courtyard.
5. In terms of design the proposed single storey buildings would appear as barn-like structures with timber clad walls and plain clay tile hipped roofs and in themselves would not be unattractive. However, the size of the buildings in terms of footprint would be significant and together with the courtyard would introduce an incongruous element of built form into the fabric of the village at

the expense of the open area. The intensification of development would detract from the relatively low density character of this part of the CA.

6. On the first issue I conclude that because of their siting and scale, the two buildings would appear as a visually intrusive element in this part of the CA, to the detriment of its character and appearance. Saved policies BE4 and BE6 of the Chichester District Local Plan First Review (LP) seek to ensure that development, particularly in CAs, would not result in the loss of character or appearance of the area. This proposal would not meet those requirements and the character or appearance of the Wisborough Green CA would not be preserved or enhanced.

The Setting of the Three Crowns Public House

7. The public house includes white painted brick, tile hanging and a clay tile roof and the central part dates back to the 17th century with projecting wings added in the 18th century. It is an important visual element in views from the road and the village green and currently enjoys an attractive and relatively spacious setting to the north and west.
8. The proposed development would be about 12.5m from the listed building at its closest point and although small garden areas would be retained to the west of the site and an open courtyard and area of grass would be provided in the space between the proposed accommodation and the public house, the intensity of the development and its proximity to the listed building would result in an uncomfortable and unacceptable relationship which would be visible from both within and outside the site.
9. On the second issue I conclude that the proposed development, for reasons of scale and proximity, would detract from the setting of the listed building. The requirements of LP saved policy BE4, with regard to protecting listed buildings and their settings, would not be met.

Other Matters and Conclusion

10. Although it is not a matter referred to in the reason for refusal the appellant refers to the business case for the provision of the accommodation and the Planning, Heritage and Conservation Design and Access Statement identifies the investment already made in the pub and the additional refurbishment that is still required. However, there is no detailed business case or substantive evidence to demonstrate conclusively that the dismissal of this appeal would put the future of the business at significant risk. Similarly no evidence was submitted to clearly demonstrate the potential benefits the proposal could make to the local economy. I have therefore only attached little weight to these matters.
11. A number of other matters were raised by interested parties including the precedent set by past decisions; the publican's current intentions; the views of the Council's Historic Buildings Adviser; and the effect of the development on the nearby listed building at Forge Cottage. However, there is no evidence of sufficient strength to outweigh my conclusion that the proposed buildings would be detrimental to the character of the area and the setting of the public house and that the appeal should be dismissed.

David Hogger

Inspector

Appeal Decision

Hearing held on 16 June 2015

Site visits made on 15 & 16 June 2015

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 July 2015

Appeal Ref: APP/Q3115/C/14/2224457

**The White Lion Public House, Goring Road, Goring Heath, Oxfordshire
RG8 7SH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Sat Sandhu against an enforcement notice issued by South Oxfordshire District Council.
 - The notice was issued on 9 July 2014.
 - The breach of planning control as alleged in the notice is the material change of use of the public house use to residential use.
 - The requirement of the notice is to cease the unauthorised residential use of the public house referred to in this notice.
 - The period for compliance with the requirement is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Act as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended is also to be considered.
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Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

Application for costs

2. At the Hearing an application for costs was made by Mr Sandhu against South Oxfordshire District Council and that will be the subject of a separate decision.

Main Issue

3. The main issues in this case are
 - a) whether there is suitable alternative provision of equivalent community value on a site elsewhere in the locality;
 - b) whether this property is not economically viable as a public house,
 - c) and, if there is no alternative provision and it is economically viable, whether any harm results from the closure of this public house.

Reasons

Background

4. Crays Pond is a hamlet of some 90 houses or so that is focussed on the crossroads of the B471 and the B4526, and is located between the larger settlements of Goring, Woodcote and Pangbourne/Whitchurch. The White Lion is next to the crossroads and has been a public house for over 100 years. It is a 2-storey property with various extensions, and it has a sizeable parking area and a large garden.
5. The Appellant accepted that, although a tied house under Greene King, The White Lion had been financially successful when the Pierreponts were the landlords. During their tenancy, which ended in 2008, it gained income from both wet sales and the sale of food, attracting not only residents of Crays Pond but also custom from further afield. However, since they moved on the premises have been in gradual decline with landlords changing regularly, culminating in it having 5 different operators between 2011 and 2013.
6. In July 2013 it was put on the market for sale as a free house. There was no local advertising but rather the sale was advertised solely through Fleurets, a company based in London that specialises in selling public houses and other forms of leisure property. Fleurets notified some 8500 parties that The White Lion was for sale, receiving 120 enquiries and 5 viewings.
7. In August 2013 the premises ceased trading and the licence was surrendered.
8. The Appellant exchanged contracts on the property in September 2013 and completed the sale on 4 October 2013. He intended to run it as an Indian restaurant with staff accommodation above. At the time of purchase he had undertaken no viability appraisal of this operation. He therefore commissioned such an appraisal in October 2013 and on its receipt in December 2013 it was clear to him that a restaurant operation would not be successful here. A viability assessment into the use of the premises as a public house (discussed below) was also undertaken at the end of November 2013, reporting back the following month. The Appellant says he then entered into dialogue to change the building into a house and that was its use when I undertook my visit.
9. Finally, in late October 2013, after the Appellant had bought it, the property was designated as an Asset of Community Value (ACV).

Policy

10. The *National Planning Policy Framework* (the Framework) encourages the retention of community facilities especially in rural areas, as they contribute to the overall aim of sustainable development that runs through national guidance. In my opinion, this is because they can assist in the social cohesion of a settlement, reduce travel, and increase access to services for those whose travel options are limited.
11. Such an approach is reflected in the Council's development plan. Policy CSR3 in the *South Oxfordshire Core Strategy* states that the Council will resist the loss of services and facilities (which includes public houses) in rural areas. That policy is worded in an absolute manner, but its outworking is through Policy CF1 in the *South Oxfordshire Local Plan* (2011). This says that the loss of an essential community facility (an ECF) will not be permitted unless

- i) suitable alternative provision is made for the facility (or similar facilities of equivalent community value) on a site elsewhere in the locality, or
- ii) in the case of a recreational facility, it is not needed or,
- iii) in the case of a commercial service, it is not economically viable.

In the supporting text it confirms that a community facility may be essential because it is one of a limited number in the settlement or area or is fundamental to the quality and convenience of everyday life in the settlement. It was accepted by all that The White Lion should be treated as an ECF.

12. In applying Policy CF1, it was acknowledged that the use of 'or' at the end of criteria (i) and (ii) means only one of the 3 stated criteria need to be satisfied to support the loss of an ECF. The Council also confirmed that there would be compliance with criterion (i) if a similar facility already existed in the locality, and in such circumstances there would be no need for the Appellant to provide a further facility. Moreover, the Appellant and the Council saw Policy CF1 as being in line with the Framework, with neither the Framework nor Core Strategy Policy CSR3 bringing further tests or requirements in to play in relation to this matter. Finally, as this was not a recreational use the parties agreed that criterion (ii) was not relevant to this case. I have no reason to come to different findings concerning these points.
13. I am mindful too that, whilst the designation as an ACV adds weight to my understanding of the role The White Lion played in the hamlet when operating as a public house, there is no reference to such a designation in the Council's policy. Moreover, various other ways the site had been beneficial in the past were mentioned, such as being a place for parents to wait for the school bus or for mobile shops to park, but those are at the behest of the owner and have no bearing on my decision.
14. In assessing schemes against Policy CF1, the Council said it would refer to its own document entitled *Community Facilities Viability Assessment (CFVA)*, which is an informal advisory document based on *The Public House Viability Test* that was prepared by the Campaign for Real Ale (CAMRA). The supporting text to Policy CF1 accepts the CFVA will not be used rigidly but rather as guidance to ensure all steps have been taken to make the business viable. I have therefore treated the CFVA as being informative, though have attached to it little weight.
15. In the light of the above, I share the view of the parties that The White Lion should be considered as an ECF. This is because such an informal meeting place, whether for groups or for individuals, can be said to add to the quality and convenience of everyday life for residents in the hamlet.
16. I therefore consider the proposal against Policy CF1(i) and (iii). In doing this I have taken into account the 2 viability appraisals before me, namely
 - a) the Appellant's appraisal from Davis Coffey Lyons (the DCL appraisal) comprising the report by Mr Mackernan dated December 2013 and the subsequent supporting letter from Mr Hogg dated August 2014, and
 - b) the Council's appraisal by Mr Sunderland (the Council's appraisal) dated February 2014.

In particular I am aware the DCL appraisal concluded that '*The White Lion is incapable of operating as a viable operating public house*'. Furthermore, the Council's appraisal broadly concurred, concluding '*I am unable to see how the White Lion would succeed in today's market place*' and '*it would not be possible for me to see how the White Lion could or would survive as a license premises*'.

17. I appreciate that the authors of these appraisals have a deep experience of the license trade, while Mr Mackernan and Mr Hogg are also Chartered Surveyors, and so I respect the professional and informed basis on which their appraisals have been prepared. However, this does not mean I am required to accept their contents without question. Rather, as with any submissions before me, I need to test the evidence and be confident about its scope and basis. In this case my ability to probe the 2 appraisals was limited as Messers Mackernan, Hogg and Sunderland were not present at the Hearing, and those who were in attendance for the Appellant and the Council were unable to speak with authority on the contents of the appraisals.

Issue a) whether suitable alternative provision exists

18. There is a wide range of uses that can be defined as an ECF under Policy CF1 that includes shops, community halls, places of worship, public houses, garages and so on. In my view, whilst these may all assist in the convenience and quality of everyday life they are not similar as, for example, a shop, a public house and a place of worship serve the locality in different but nonetheless important ways. It therefore follows that the loss of an ECF cannot necessarily be accepted under Policy CF1 merely because another ECF exists nearby, as the 2 may not be used for comparable purposes.
19. The Appellant highlighted 2 other properties in Crays Pond that could be defined as being an ECF. One was a car show room with a garage workshop behind and the other was the scout hut. Even if each of these should be considered as an ECF (which in the case of the scout hut was a matter of debate), to my mind neither can be defined as a similar facility to The White Lion. Clearly the show room and garage would not be a meeting place in anything but the most fleeting of ways. With regard to the scout hut, although that has been used for public gatherings and events it is in private ownership and has to be booked in advance for use when not needed by the uniformed organisations. As such, it cannot be used in the informal manner so characteristic of a public house, and indeed its availability and the refreshments it serves are limited. Therefore, I conclude there are no similar facilities to The White Lion in Crays Pond.
20. However, the Appellant also said that the public house in Hill Bottom to the south and the 2 public houses in Woodcote to the north satisfied the requirement of Policy CF1(i) as they could be defined as being '*in the locality*'.
21. Local residents contended those public houses were of different characters to The White Lion in that they did not cater for families and parked cars as effectively. To my mind though the application of Policy CF1(i) cannot be that finely tuned, as the precise character or nature of a public house lies outside the scope of the planning system.
22. However, the Appellant accepted that it was likely the residents of Crays Pond would have to use a car to access each of those premises, due to the distances involved, the limited pavements and street lighting on the connecting roads

and the lack of a bus service. This is a view that I share. I accept that the residents of Crays Pond already have to travel by car to access many other services. However, a trip to a public house, whether for a meal out, for a meeting or for an evening drink cannot necessarily be linked to other trips they may be making, and so the closure of The White Lion is likely to result in extra vehicle movements.

23. I also consider that, once those living in Crays Pond accept they have to drive to a public house, they may not bother due to the restrictions of drink/drive legislation or lack of access to a vehicle, they may spread themselves between the 3 public houses identified by the Appellant or they may decide to travel further afield to, say, Goring or Whitchurch. As a result, the social cohesion created by the public house for the residents of the hamlet would be very much diminished, and so the contribution of these other public houses to the quality and convenience of everyday life in Crays Pond would be limited.
24. I appreciate that Policy CF1(i) gives no definition of what constitutes '*the locality*'. However, it is appropriate to consider the word within the context of the aims of sustainability and the support for the community that underlie this policy and Policy CSR3. Therefore, given the increased reliance on the car that would result from use of other public houses, and the fact that they would not be readily available to those with no access to personal transport, I consider they cannot be defined as being '*suitable alternative provision ... in the locality*'.
25. Accordingly it has not been shown that there exists suitable alternative provision of similar facilities of equivalent community value in the locality, and so it has not been demonstrated that the loss of The White Lion complies with Policy CF1(i).

Issue b) whether the premises is not economically viable

26. Compliance with Policy CF1(i) though does not prevent closure of an ECF, as it may well be justified under Policy CF1(iii). In that policy the relevant test is whether the premises are '*not economically viable*'. However, in the supporting text 5 key factors are identified to assess whether or not the business is viable, and these are similar but not identical to the advice contained in the CFVA and the CAMRA document. Each of these will be examined in turn below.

1) Trade potential

27. I consider the resident population that could realistically walk to The White Lion is insufficient to support the business, and there is no prospect of this population growing by any material degree in the foreseeable future. This was accepted by the Council, as it acknowledged that the premises' future viability would rely on customers travelling from elsewhere with a resultant dependence on food sales. Such a position though is not unusual and applies to many rural public houses across the country.
28. Moreover, I consider the site's location at a crossroads is a prominent one, as was accepted by Fleurets in its advertising document and in the DCL appraisal. Although when travelling westwards the site is now concealed by planting I am aware the signage has been removed and, if re-instated, there would be an appreciation of the premises for those drivers.

29. I am also mindful that no vehicle counts were offered to me of traffic flow through this junction, but on the 2 occasions I visited it could be described as busy. As such, there would not only be the opportunity for passing trade, but also an awareness of the premises for those living in the wider area.
30. In terms of its internal arrangement, I accept parts of what would be the main bar area would be dark with a low ceiling, but those to my mind could be characterful aspects of the building that would enhance the attractiveness of the premises. I would not expect the conservatory to get unduly hot as it had a tiled pitched roof with overhanging eaves and it could well be practicable to introduce ventilation. Although the Appellant said that opening the doors would impede the circulation around this part of the building, that was refuted by someone who had worked there previously and there was no specific evidence to demonstrate this one way or the other. It was not challenged that its large parking area and garden were benefits for its trade potential, appealing to those arriving by car and to families.
31. In the cases reference was also made to the possibility of extensions, but these were so vague I have been unable to place significant weight on the points that arose. However, I am mindful that in the relatively recent past under the Pierrepoints the premises had been trading successfully in more or less their current form, and no changes in the vicinity were brought to my attention that mean such trading patterns would not now be possible.
32. Therefore, from the evidence before me I cannot infer the site has limited trade potential.

2) Comparable businesses

33. Throughout the appeal process reference was made by all parties to numerous public houses within quite a wide radius of the appeal site. However, I had none of their accounts and so I have no knowledge as to how financially sound (or otherwise) they were. I appreciate too that, especially in rural areas, public houses benefit from having individual characters, and variations in their facilities, their menus, their sizes, their relationships to settlements, their proximities to main roads and so on mean comparisons are difficult.
34. The DCL appraisal said there were '*many more attractive and historic pubs in the immediate area*'. Despite being told this was a judgement by an expert and so should be given some weight, I was unclear as to what was meant by '*attractive*'. As such, the weight I could afford it was not appreciable.
35. The Council's appraisal appeared to place great reliance on the number of customers seen in public houses in the area when they were inspected over a period of an hour or so. However to my mind this can at best be described as a snap shot and it cannot be deemed a representative sample or used to extrapolate trends of attendance. In any event, those visits were undertaken mid-week in February when, even if it was half-term, it would be reasonable to expect custom to be lower. In the absence of any further details to justify its validity, the weight afforded to that evidence is limited. It was also unclear as to how much weight was given to the '*gastro-pubs*' in Bray, as the distance involved and the prices charged there mean it is most unlikely they would be competing with The White Lion.

36. However, despite these reservations about the information relating to other businesses, some general points could be established. Firstly there were already a number of public houses in the area, implying anyone taking over and re-opening The White Lion would face competition. Secondly, I was referred to few other establishments that had such large parking and garden areas as these premises and many had fewer covers. A third point was that some of the public houses that were operating were in less prominent locations. Furthermore, many of these public houses were operating in spite of the 'more attractive' public houses in the area identified by the DCL appraisal. Finally, despite the demographics and falling sales, whilst some premises in the area had closed I was also referred to others that had recently re-opened and appeared to be operating successfully.

37. Consequently, I consider that the information about comparable businesses does not lead me to the view that a public house here would be unsuccessful.

3) The way the business was run

38. The only accounts offered from when The White Lion was trading is an unaudited set that covered the period of September 2011 to August 2012 and was found in the premises. This set of accounts was accompanied by a balance sheet as at 29 April 2012 and information about wet and dry sales in April 2012. Although further accounts had been sought from Greene King none were made available.

39. In my opinion operating accounts are just one element of the assessment that has to be made under Policy CF1(iii), and if such accounts are limited that does not necessarily prevent other evidence showing that a site is not economically viable. I also accept that, based on the income and expenditure on the accounts before me, the premises could not operate viably over the long term. However, the submitted financial information covers a short period and the accounts are not audited, and so caution has to be applied in drawing too many inferences from them. Mindful of this, I am unclear as to how much weight was placed on that information in the DCL appraisal.

40. Furthermore, the success of a public house is due to many factors, not least of which are the character and skills of the landlord. As such, poor accounts do not necessarily indicate that the public house was unviable, but rather might just show the premises were not well managed. Whilst the DCL appraisal says the business was previously run by 'reasonably efficient operators', apart from being told it was based on anecdotal evidence the reasons for that conclusion are unclear.

41. The DCL appraisal also placed weight on the high turnover of traders who 'have tried and been unsuccessful in operating the business'. It is also not apparent as to how much is known about the previous operators, and it seems presumptive to assume these changes have all arisen because of failings in the business as personal circumstances, the financial strength of the landlords or indeed their skills and experience could all have played a part.

42. I have been told that when the Pierreponts were landlords The White Lion was turning over in the region of £700,000 per annum. While that figure was not supported by any accounts and so must be treated with extreme caution, it was nonetheless agreed their tenancy was a time of success for the premises. No sound reason has been offered to explain the variation between the success

of the Pierreponts' tenure (whatever its revenues might have then been) and the conclusions of the DCL appraisal that The White Lion was *'incapable of operating as a viable operating public house'*. Furthermore, it is unclear as to how aware Messrs Mackernan, Hogg and Sunderland were of the time when the Pierreponts were landlords. Knowing that the premises commanded an income even approaching that amount may well have affected the findings of their appraisals, particularly as it would now be a free house.

43. Therefore, I have insufficient information to show that the business cannot be run in a competitive manner.

4) Attempts to sell the business

44. In the appraisals weight was placed on the fact that Greene King, a large business that specialises in public house outlets, had chosen to sell the property. Indeed the DCL appraisal said it was *'inconceivable'* that Greene King would have sold without first considering trading potential.
45. However, the precise reasons why Greene King decided to sell are not known, and while it may be because it considered the outlet was unviable, it could also have been for other reasons such as it did not suit the company's portfolio or Greene King needed capital. Furthermore, it is again of note that Greene King did not apply to change the use to a dwelling. That could have potentially recouped a higher sale price and it would certainly have had the evidence to demonstrate the premises had been unviable had that been the case. Such a step would be particularly understandable as one of the public houses in Woodcote is also owned by Greene King and would experience some competition if The White Lion re-opened. Again though I accept it might well not be Greene King's practice to pursue such applications. The actions of Greene King cannot therefore be given too much weight.
46. Advertising the property for sale through Fleurets was satisfactory, as the company has expertise in the field. The building was on the market for scarcely 2 months, and this short time-scale means the absence of any other firm interest does not demonstrate others thought it was not viable.
47. I am also mindful that the DCL appraisal suggested that if the property were to be resold it should command £600,000. Again, I respect the fact that this figure was offered by a Chartered Surveyor. However, I note firstly that it accords exactly with the price the Appellant paid when he bought the building to be a restaurant, even though he committed to the purchase without any viability assessments. Moreover, I am mindful that since buying the property the Appellant has removed various features from inside, including the kitchen, 2 bars, and the ladies' toilets, and these would need to be replaced if the public house use was to resume. It is acknowledged that the costs of replacing these would have to be borne by any future occupier, and I am therefore unaware as to why the price has not been reduced to allow for these removals.
48. I have also noted the figures presented by the Council for the sale of various other public house premises. I accept the weight that can be attached to this information is very limited as I know little about the location and size of the premises or even, in many cases, the date the sale was completed. However they nonetheless offer the roughest of indications as to the sale prices of public houses, and they fall well below the figure of £600,000 quoted in this instance. The DCL appraisal suggested that The White Lion, as a business proposition, is

unattractive and if this is the case then I am unclear as to the justification for this price. Clearly if it is too high the price would discourage possible buyers and it would have a negative effect on the potential future trading patterns.

49. Finally, the Appellant said he had marketed the site since occupancy through the Council's website, and had also told various residents it was available, but no one had come forward. However, the basis on which it was being offered were unclear, and I was given no details that plainly laid out the terms. Therefore, this action has not had a decisive effect on my reasoning. It is not for me to determine whether such processes accord with the requirements of the ACS designation.
50. Consequently, the attempts to sell the business do not lead me to the view that there is no demand for a public house here.

5) The business advice that has been taken

51. The Appellant confirmed that before he bought the property he had taken no advice on using it as a restaurant or as a public house. As such, the advice he received on those matters had been retrospective. I have had no sight of the appraisal concerning the restaurant, but it would appear the advice concerning the public house use was in line with the DCL appraisal. For the reasons given I have raised questions about that appraisal and the absence of answers to those questions limits the weight I can afford it.

Conclusions when assessed against Policy CF1(iii)

52. In the light of the above, I fully respect the professional basis on which the 2 appraisals were prepared and I appreciate that the experts involved have come to firm conclusions that The White Lion would not be viable. However, the grounds that have led them to those conclusions are not clear to me. It is possible that these areas of uncertainty could have been adequately addressed if the relevant surveyors had been present at the Hearing but, in their absence, they remain unresolved. Therefore I am unable to conclude it has been shown The White Lion is not economically viable as a public house.

Other matters

53. Various other matters were raised by local residents. However, any damage to the protected trees around the site lies outside of this enforcement notice and whether any houses will be proposed on the site in the future is not before me. Although numerous comments were made about the approach taken by the Appellant that is not an issue I have considered as it has no bearing on the planning merits of the case. Moreover, I see no reason why the works detract from the natural beauty of the Area of Outstanding Natural Beauty in which it is located.
54. Finally I am aware this is currently the home for the Appellant and his family. However, no appeal under ground (g) has been lodged contending that the period for compliance is too short. Whilst I fully appreciate that the needs of the children must be a primary consideration in the determination of the case and no matter must be given greater weight, the Appellant has not suggested this outweighs the harm from the loss of the ECF. On balance I come to a similar view, and consider the period for compliance to be sufficient to allow alternative accommodation to be found.

Issue c) Harm resulting from the closure of The White Lion

55. The presumption in favour of sustainable development runs throughout the Framework. Although I accept that buildings should not be kept for uses that are no longer likely, that has not been demonstrated in this case. Rather, I consider that the closure of The White Lion runs contrary to the aims of sustainability as it reduces the opportunity for social cohesion in Crays Pond by removing a meeting place, it increases reliance on the car as people travel further to find a public house, and it diminishes the services that can be accessed by those who have limited transport options.
56. In coming to this view I accept that the inevitable need for custom from outside the hamlet will result in an increase in movements into Crays Pond. However, some may be passing, some may be travelling anyway to a rural public house, and others may be off-set by the residents of Crays Pond having to travel elsewhere. As such, when account is also given to the benefits to the hamlet resulting from the retention of this ECF that does not offer a reason to come to a different view.

Conclusions

57. Accordingly, I conclude there is no suitable alternative provision to The White Lion (or similar facilities of equivalent value) on a site elsewhere in the locality, and based on the evidence before me I am unable to conclude the premises were not economically viable. As such the loss of The White Lion would conflict with the aims of sustainability, and so be contrary to Core Strategy Policy CSR3, Local Plan Policy CF1 and guidance in the Framework. Therefore I dismiss the appeal and refused planning permission for the deemed planning application.

J P Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr N Kirby Agent
Mr S Sandhu Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms K Langford Planning Officer (Enforcement) with the Council
Mr L Viellet Planning Enforcement Officer with the Council

INTERESTED PERSONS:

Mr S Allen Local resident
Ms E Campbell Local resident
Mr C Cole Local resident
Mrs P Cole Local resident
Mr D Cooper Local resident
Mr J Dawe Local publican
Mr F Dixon Local resident
Mr P Dragonetti Local resident representing Crays Pond Parish Council
Mr N Elsome Local resident
Ms D Fisher Local resident
Ms S Graden Local resident
Mr D Graham Local resident
Mr J Green Local resident
Mr C Hurst Local resident
Mr M Johnstone Local resident
Ms M Miles Local resident
Mr A Murphy Local resident
Ms E O'Brien Local resident
Mrs F O'Brien Local resident
Mr G O'Brien Local resident
Ms H Ralston Local resident
Mr T Schulz Local publican
Ms T Wahl Local resident
Mr L Woolley Local resident

DOCUMENTS SUBMITTED AT HEARING

- 1 Statement from Andrew Hill dated 15 June 2015
- 2 Photographs of the site submitted by Mr Hurst
- 3 Statement from Doreen and William Pechey
- 4 Email from Ian Reynolds dated 12 June 2015

Appeal Decisions

Hearing held on 20 October 2015

Site visit made on 20 October 2015

by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 November 2015

Appeal A: APP/H2733/W/15/3007922

The White Swan, 1 Church Hill, Hunmanby, Filey, North Yorkshire

YO14 0JU

- 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 Enterprise Inns plc against the decision of Scarborough Borough Council.
 - The application Ref 13/02588/FL, dated 2 November 2013, was refused by notice dated 22 October 2014.
 - The development proposed is conversion of stables into two houses, conversion of the hairdressers shop into one house and construction of three new houses in the courtyard.
-

Appeal B: APP/H2733/Y/15/3007638

The White Swan, 1 Church Hill, Hunmanby, Filey, North Yorkshire

YO14 0JU

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Enterprise Inns plc against the decision of Scarborough Borough Council.
 - The application Ref 13/02589/LB, dated 2 December 2013, was refused by notice dated 22 October 2014.
 - The works proposed are conversion of the stables into two houses, conversion of the former hairdressers shop into one house, construction of three new houses within the courtyard.
-

Decisions

1. **Appeal A:** The appeal is dismissed.
2. **Appeal B:** The appeal is dismissed.

Preliminary Matters

3. Section 1(5) of the Planning (Listed Buildings & Conservation Areas) Act 1990 (the Act) defines the term 'listed building' and sets out that for the purposes of the Act, any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948 shall be treated as part of the building.
4. The White Swan is a Grade II listed building which dates from the late 18th century. Evidence submitted with the appeal indicates that the shop and the

stables are of a similar date to the public house. It is clear from the evidence that these outbuildings are within the curtilage of the public house; therefore, having regard to the terms of the Act, they must be considered part of the listed building.

5. Prior to the Hearing, the Council withdrew its objection to the Listed Building Consent. I have taken this into consideration. Nevertheless s.16 (2) of the Act requires the decision-maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.

Main Issues

6. On that basis, the main issues are:
 - 1) The effect of the proposal on the special architectural and historic interest and setting of the listed building and, linked to that, whether the proposal would preserve or enhance the character or appearance of the Hunmanby Conservation Area.
 - 2) The effect of the development on the availability of a community facility.
 - 3) The effect of the development on highway and pedestrian safety.
 - 4) Whether the proposal constitutes sustainable development.

Reasons

The effect of the proposal on the listed building, its setting, and on the wider Conservation Area

7. The starting point for the consideration of the proposals is Sections 16 (2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require that special regard is had to the desirability of preserving the listed building, or its setting, or any features of special architectural or historic interest it possesses. Under s.72 (1) of the Act there is a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The glossary to the National Planning Policy Framework (the Framework) defines the setting of a heritage asset as 'the surroundings in which a heritage asset is experienced' and confirms that 'significance derives not only from the asset's physical presence but also from its setting'. Furthermore paragraph 132 of the Framework states that great weight should be given to the conservation of a heritage asset and any harm to its significance should require clear and convincing justification.
8. The White Swan Inn occupies a prominent central position within the village, opposite All Saints Church which is also a listed building. Its significance as a listed building is derived from its historic role in the development of the settlement and its position as a focal point in the community. Its significance is enhanced by the survival of two of its original outbuildings, the former stables and a building last used as a hairdressers shop, and their setting around what would have been part of the original courtyard. The outbuildings and the space in which they are set enable the original use and function of the Inn as a facility for travellers and their horses to be read and understood as a whole. Although the buildings are in need of some investment, the group also makes a

- positive contribution to the character and appearance, and historic significance, of the Conservation Area which includes other Listed Buildings close to the site.
9. The proposal seeks to convert the former stables to two dwellings and the former hairdressers shop to a single dwelling. In addition a terrace of three dwellings is proposed within the courtyard. The remainder of the courtyard would be used as parking space for the residents of the new dwellings and for the public house manager. The access arrangements would remain as they are at present.
 10. The proposed three new dwellings would be sited within the courtyard some 5-6m from the rear boundary of the site, with private gardens areas behind them. No objection has been raised to the specific design of the dwellings and I have no reason to disagree. However, it seems to me that the introduction of three new dwellings into the courtyard, unrelated to the public house, would undermine the historic significance of the group and the setting of the listed building, in terms of their function and form.
 11. I have taken into consideration evidence which suggests that other outbuildings previously occupied the site. These buildings included what appears to be a long narrow building sited adjacent to the western boundary of the courtyard and outbuildings attached to the stables and shop, again running along the boundaries of the site. As with the surviving outbuildings, it is likely that they were used for purposes ancillary to that of the Inn. I acknowledge that the proposed terrace of dwellings would have a long rectangular form similar to that of the outbuildings. However, part of the proposed terrace would be higher than the stable block, it would be a wider building, of a greater scale, and would occupy a more prominent position within the courtyard away from the site boundary. As such it would be more dominant in the courtyard than the existing or previously demolished outbuildings. Moreover, the dwellings would be independent of the public house use and not therefore ancillary or subservient to it in terms of their function.
 12. Consequently the proposed development would cause harm to the setting of the listed building and thereby its significance. In addition, for the same reasons, the proposal would also harm the character and appearance of the Conservation Area. However, as the proposal relates to part, rather than all, of the setting and only part of a much wider Conservation Area, that harm is considered as less than substantial.
 13. The approach of the Framework in paragraph 134 is that where a proposed development would lead to less than substantial harm to a designated heritage asset, this should be weighed against the public benefits of the proposal including securing its optimum viable use. In this case, the public benefit would be in the provision of residential accommodation, adding to housing supply and choice. In addition there would be a contribution towards the provision of affordable housing elsewhere. However, these benefits are limited by the scale of the development and do not therefore outweigh the harm of the proposal to the heritage assets which carries significant weight on the negative side of the balance.
 14. I accept that no objection was raised by the Council to the planning application on these grounds. Nevertheless, the matter was raised by interested parties and I have considered the scheme in the light of the weighty statutory requirements of s 66 (1) and s 72 (1) of the Act.

15. In terms of the proposed works to the Listed Building, s.16 (2) of the Act requires the decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural interest it possesses.
16. The structural report submitted with the application indicates that outbuildings, which are both currently used for storage purposes, are in a reasonable structural condition but require some repair and renovation. Physical alterations to the external walls of the stables would include the provision of new openings to the front and side elevations and the bricking up of openings to the rear. Internally a central staircase would be removed and new staircases constructed. Physical alterations to the shop would include alterations to existing openings, plus new windows to the west elevation and alterations to the internal layout.
17. I accept that the Council has now withdrawn its objection to the granting of listed building consent for the works proposed. Nevertheless, some historic fabric would be lost and there would be an alteration to the plan forms of both buildings. Consequently there would be some, albeit limited, harm to the listed building. Without any planning permission in place for a change of use, the public benefits of the proposal necessary to outweigh that harm would not be realised. As such, in this respect, the proposal also fails the tests of the Framework at paragraph 134.

The effect of the development on the availability of a community facility.

18. Paragraph 70 of the Framework sets out the need to 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. In addition it supports a proactive approach to the sustainable development, modernisation and retention of established facilities for the benefit of the community.
19. There is no doubt in my mind that the White Swan is a well-established and much valued community facility. This is evidenced by the fact that it is listed as an asset of community value ¹ and by the large amount of public interest in this particular case. I understand from all that I have seen and read that the premises are used amongst other things as a meeting place for community groups; as a venue for local and family events; and as a facility for holiday occupants of nearby campsites as well as being enjoyed by local residents as a result of its traditional character and atmosphere.
20. The appellants have made it clear throughout the appeal that the proposal does not relate to The White Swan Inn itself – the public house will remain in terms of the main building and its use. However, the car park would be lost as a result of the new development. Parking provision would be made only for residents of the new dwellings and for the public house manager. The beer garden would also be lost.
21. There is a dispute between the parties as to the proportion of the clientele who park in the car park but nevertheless it seems to me that it is an asset of the business. It is an attraction to those, including elderly residents and tourists, who wish to drive and thereby assists in the functioning of the Inn. The site lies close to a bus stop but I understand that the bus service does not operate

¹ Section 87 of Localism Act 2011

in the evenings and nor is there an evening train service. Public transport options for getting to the site are therefore limited. I accept the appellants' point that some local residents are able to walk to the premises. However, tourists staying at nearby campsites would have more limited options. Similarly the beer garden is also an attraction of these particular premises particularly for families.

22. There is no evidence before me to suggest that the public house is not economically viable. However, it was clear at my site visit that it is in need of a substantial amount of investment. The car park and beer garden, and the outbuildings, which are also a resource, appear to me to have potential to assist in the development of the facility for the benefit of the community. Their loss would remove the potential they offer.
23. I have taken into consideration that there are other pubs or similar facilities within and just outside the settlement including The Cottage Inn which lies immediately adjacent to the site. These other facilities go some way to meeting the community's needs. However, the Framework seeks to guard against the unnecessary loss of valued facilities and I am not persuaded that the presence of other facilities justifies the loss of part of a valued community asset.
24. Consequently I conclude that the appeal proposal would conflict with the objectives of paragraph 70 of the Framework.

The effect of the proposal on highway and pedestrian safety

25. Vehicular access into the site is via the original access, between the Inn and the shop, which connects to the public highway across a section of hardstanding, understood to be common land maintained by the Parish Council. The use of that land as an access is historic and, whilst I have noted the Council's concern, there is no convincing reason before me as to why it should not continue to be used for such purpose in connection with the proposed development.
26. The access is around 3.5m in width. The Council has suggested that visibility splays of 2m x 16m and pedestrian visibility splays of 2m x 2.0m are required at the site access. Both main parties agree that these splays cannot be achieved. However, the access to the site has served a car park for some considerable time. Local residents advise that it is well used and I saw this at my site visits.
27. Whilst I have taken into consideration the Council's concerns that the access is substandard in terms of its width and emerging visibility, it seems to me that speeds of vehicles are, and would continue to be, low due to the restricted width of the access. The appellants are proposing rumble strips to demark the site entrance and to slow traffic further. I noted that the public footpath does not run directly in front of the building and that tables and chairs would discourage pedestrians taking such a route on the north side of the access where visibility is the more restricted. Whilst on the south side it may be possible for a pedestrian to walk close to the existing building, and thereby out of the sight of an emerging driver, it seems to me that the Cross Hill area is used by both pedestrians and vehicles and that drivers would adopt a cautionary approach as they leave the site, as at present.

28. Records indicate that despite being below current standards, the access has operated without any notifiable personal injury accidents. There is no evidence before me to demonstrate that the proposal would significantly increase the use of the access. On this basis I am satisfied that the proposal would not result in any detriment to existing highway conditions, such that it would be a danger to highway or pedestrian safety.

Sustainability

29. The Framework sets out a presumption in favour of sustainable development which, it advises, has three dimensions: economic, social and environmental. The proposal would have some limited economic gains both during the construction period and in terms of on-going economic support for local facilities. The conversion of the outbuildings, which are currently under-utilised, would give them a more economically beneficial use.
30. The proposal would have some social benefits in terms of the provision of additional housing with accessible local services and an element of affordable housing. However, the proposal would result in the loss of the car park and beer garden which would detract from its appeal as a community facility and would remove an opportunity for the development of the facility for the community's benefit.
31. The environmental role of sustainability, the Framework advises, is the contribution to the protection and enhancement of the natural built and historic environment. For the reasons set out, the proposal would not protect or enhance the historic environment. Consequently when assessed against the policies of the Framework taken as a whole, the proposal does not constitute sustainable development.

Other Matters

32. I have taken into consideration the concern of residents that the proposal would result in the loss of public car parking space and thereby exacerbate car parking issues elsewhere. At the time of my visits there were few available parking spaces within Cross Hill or the immediately surrounding roads. I understand from residents that this is a common occurrence although evidence is largely anecdotal and is disputed by the appellant. Parking on Cross Hill is not always available, especially when community events are being held.
33. The Swan Inn car park is privately owned and any parking that occurs there that is not in connection with the use at the public house is at the owner's discretion. However, the proposal would remove parking facilities for public house customers and this would exacerbate the demand for parking in the area. There is no convincing evidence to suggest that this would affect the viability of neighbouring businesses but I accept that it would add to inconvenience for existing town centre users. This was not a reason for the refusal of planning permission and is not determinative but nevertheless the matter adds some weight to my decision.
34. Third parties have also expressed concern about whether the residents of the proposed units would be afforded reasonable living conditions. In my judgement, particularly given the position of the function room at the rear, there could be some disturbance to future residents as a result of activity and noise. In addition, the converted shop would have habitable room windows

immediately adjacent to the access and passing vehicles could also result in noise and disturbance.

35. However, I have noted the tight knit nature of dwellings and businesses in the area and the proximity of residential properties on the opposite side of the Inn. It seems to me that in such a village centre location a degree of noise and disturbance is to be expected. In addition, to an extent, harm could be mitigated by a management plan which could be secured by planning condition. As such I consider that the proposal would afford adequate living conditions to future occupants.

Conclusion

36. As set out above the proposal would result in less than significant harm to the listed building and its setting and to the character and appearance of the Conservation Area. There is a weighty statutory requirement to preserve these heritage assets as set out in the Act. In addition, the proposal would have an adverse effect on a valued community asset. Furthermore I have found that the proposal does not constitute sustainable development when assessed against the Framework taken as a whole. Whilst there are some benefits of the scheme, particularly in relation to the provision of housing, these are limited as a result of the scale of the development and do not therefore outweigh the totality of the harm.
37. Consequently, for the reasons set out above, and taking into account all other matters raised, the appeals are both dismissed.

S Ashworth

INSPECTOR

APPEARANCES

For the Appellant

Doug Jennings - Doug Jennings Planning Services

Lynda Pearson - Enterprise Inns plc

David Leybourne – Architect

Jason French – Enterprise Inns plc

For the Council

Daniel Metcalf – Scarborough Borough Council

Nick Read - Scarborough Borough Council

Interested Parties

Harvey Stockdale – Hunmanby Parish Council

Linda Tindall – Local Resident

John Wragg – Local Resident

Dale Ingram – Planning 4 Pubs Ltd

Helen Gorton – Hunmanby Parish Council

Steve Sinclair – Local Resident

Rosie Adams – Local Resident

Keith Schofield – Local Resident

Paul Broadbent – Local Resident

Christine Broadbent – Local Resident

Andrew Hunter – Local Resident

Peter Norris – Local Resident

Dorothy Vahid- Kasiri – Local Resident

Rosie Craven – Local Resident

Tony Anderson – Local Resident

Jill Callaghan – Local Resident

Jan Paddock – Local Resident

Patricia Bridge – Local Resident

Cllr Michelle Donoghue Moncriffe – Scarborough Borough Council

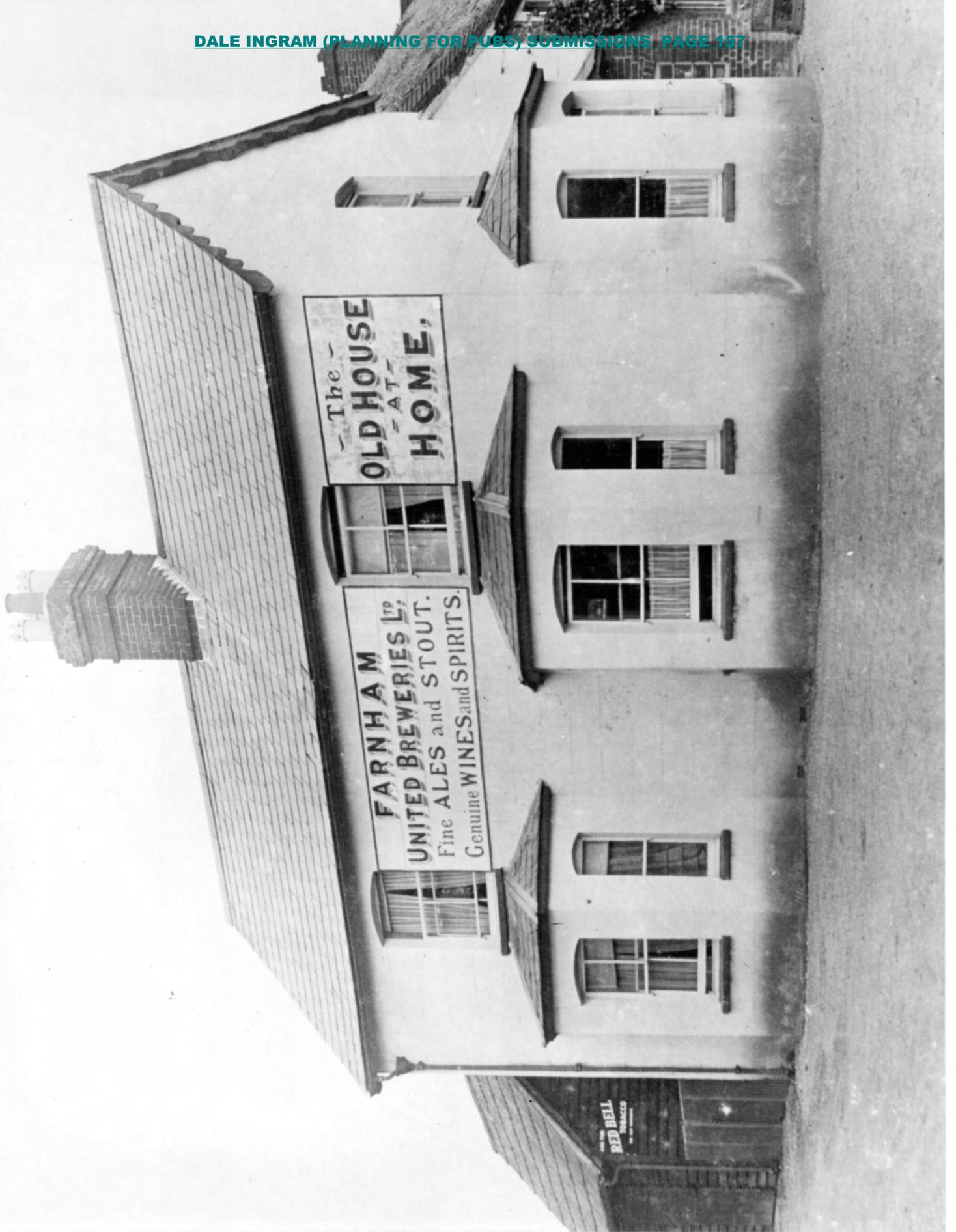
Susan Wragg – Local Resident

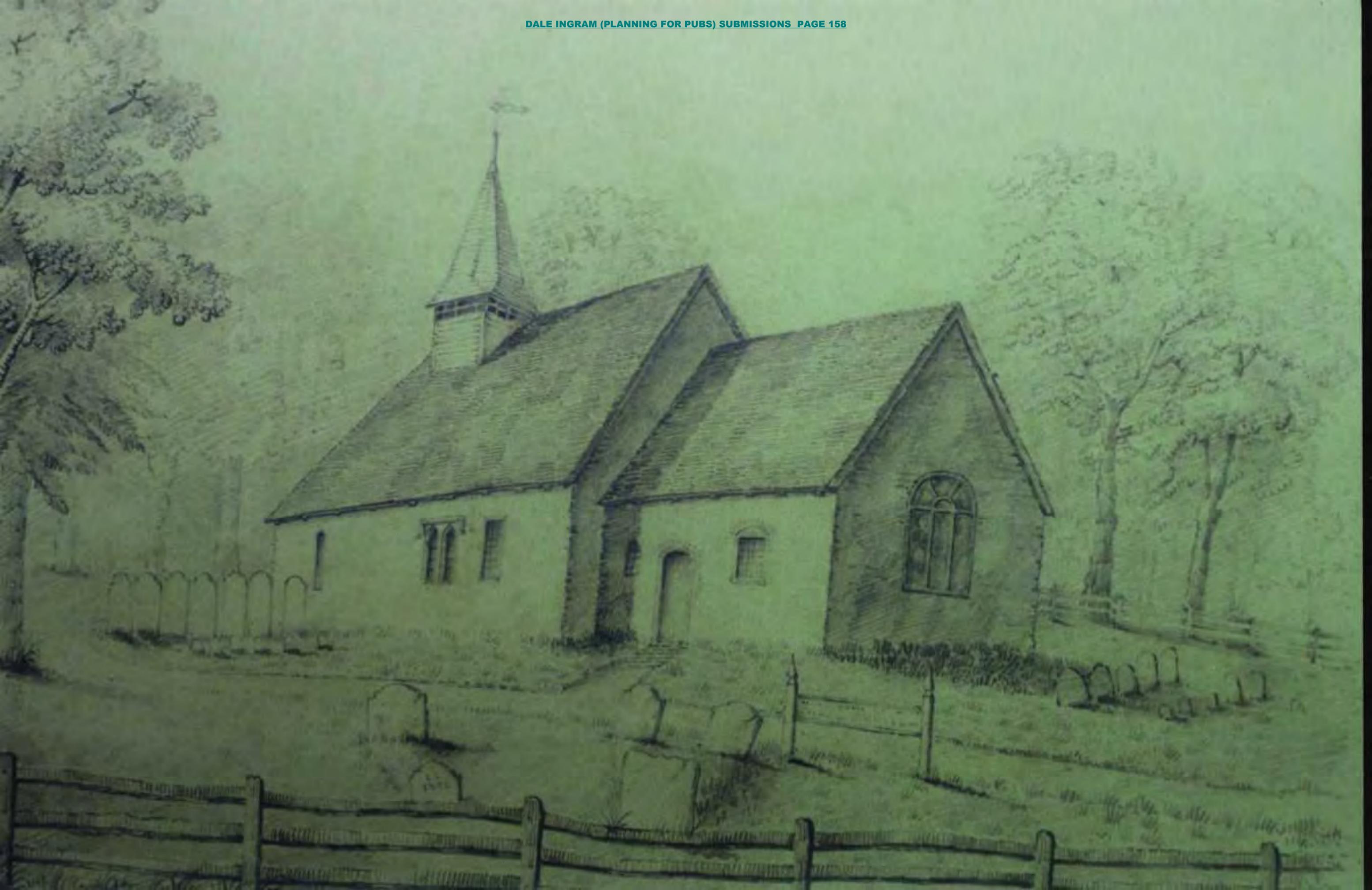
Documents Submitted at the Appeal

Statement of Common Ground

Section 106 Agreement











Webb's Copse

Tinley Cottage 105

Old House at Home 101

Newnham Farm

Rectory

NEWNHAM GREEN

Newnham

S: Nicholas's Church (Rectory)

Manor Farm

Well Copse

Methodist Chapel (Primitive)

Thorn Cottage

N E W

M.P.

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M.P.

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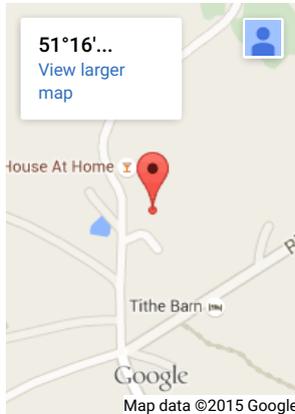
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Old House At Home

Address

Tylney Lane, Newnham Green, Basingstoke, RG27 9AH

Availability

Available

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[APPLY NOW](#)

This is an unique opportunity to acquire this well established quality food (average spend Inclusive of lunch time trade £35+ per head) venue in this much sought out area between Hook and Basingstoke.

The Old House is located in the small village of Newnham Green with easy access to mainline railway and the M3.

The House is in very good condition and has been well looked after, The outside has a seating area with chairs and tables for approx. 20 people. There is a good size car park which can park 20 + cars.

The living accommodation consists of 3 good sized rooms (double bedroom) and a bathroom. There is gas central heating throughout the building.

The trading area/ Kitchen prep. Consists of a covered back yard with walk in refrigeration as well as other auxiliary equipment. you have access from the yard to a Prep room as well as the main kitchen. The prep room and the kitchen are also internally connected. The Kitchen is a full equipped trade kitchen. Between the kitchen and the restaurant is a still room with crockery/cutlery storage and coffee machines etc.

Although a traditional style pub the bar area is used as restaurant with only a small area used as the bar. The restaurant area is spread across two rooms, the first one being the original bars with all the tradition beams an open fires the second area which leads of the bar is the old stables which have been very tastefully converted. This part can be separated from the main area and used for private functions and has its own access to the outside areas.

The house is on offer either on a short or substantial free of tie agreement circa £30000rent per annum.

The Old House at Home, Newnham, Hampshire

Published History¹

1. 1859 *Directory of Hampshire and the Isle of Wight*, William White (1859) p.497
Poulter Benjamin, Beerhouse
2. 1865 *Directory of Hampshire & the Isle of Wight*, Harrod & Co's. (1865) p233
Poulter Benjamin, The Old House
3. 1878 *Directory of Hampshire and the Isle of Wight*, William White (1878) pp336/7
Ilsey J[ose]ph. Vict. Old House at Home

Census Data

4. 1841² Benjamin Polter 50 & Sarah Polter 45. He is described as an agricultural labourer
5. 1851 Benjamin Poulter 60, farm labourer & Sarah Poulter 57, Beer shop keeper
6. 1861 Benjamin Poulter 70, agricultural labourer & Sarah Poulter 67 at the beer shop
7. 1871 Not consulted
8. 1881 Charles and Jane Pink, Publican and landlady aged 56 and 59 respectively
9. 1891 George Bennett (Publican, *The Old House at Home* and Sarah Bennett his wife)
10. 1901 George Bennett (Licensed Victualler) and Sarah Bennett, aged 43 and 45 respectively
11. 1911 Not consulted

Tithe Award 1840 and Tithe Map 1842 HRO 67M80 PD1

12. 1840 Benjamin Poulter owner and occupier of the site.

Church Wardens' Accounts, HRO 67M80 PW1

13. Church Rates 1725 Benjamin Poulter 1½d (in the pound giving rateable value of £1.10s.0d)
1739 George Poulter 1½d
1748 George Poulter 2d (in the pound therefore value £2)
1749/50 George Poulter 2d
1759 George Poulter 3d (in the pound therefore value £3)

Note I have no proof that the Poulter property was an alehouse or beerhouse in 1725 and subsequently, however, I believe it was already a commercial site and not merely a domestic dwelling by comparing the several properties and how they were rated in the various assessments and I suggest even £1.10s.0d was a considerable sum in 1725 and that it had risen to £3 by 1759 suggests it was probably an ale house.

Overseers of the Poor Accounts, HRO 67M80 PO1

14. Poor Rate 1796 Benjamin Poulter 4s.6d. 9 (rated at 1 s.6d. in the pound therefore value £3)
1800 Benjamin Poulter 6s (rated at 2s in the pound therefore valued at £3)

See note above.

Churchyard Rail Responsibility³

15. George Poulter and Benjamin Poulter at various times were responsible for maintaining the 4th Panel of the churchyard rails as shown in an attachment. The attached picture shows Newnham rails pre-1830. This responsibility compares well with Norman (later Varndell) owners of the 'Shop', or Thomas Balding later Bullock, landlords of *The Raven Inn* or Newell, Lambel and Silvester all of whom, I

1 The earlier Directories e.g. Piggot's 1828 or 1844 only seem to take notice of the larger towns e.g. Basingstoke & Odiham, Newnham is not mentioned.

2 The 1841 Census is the first to provide full details about residents of properties.

3 *Hampshire Registers* by Fearon & Williams (1909) page 54,

"...perhaps the most curious and most admirable arrangement of the Churchwardens was that by which the responsibility for keeping the fence of the Churchyard in order was told (*sic*) out to the more substantial parishioners, proportionately to their means. Lists of those responsible for this useful duty occur continually, ordinarily so many "railles" being assigned to one person, so many to another."

believe, held the *Crown Inn* in Newnham – now a private house, Crown Lodge. All of these were responsible for 1 panel each. This implies the Poulterers had a commercial enterprise not just a domestic dwelling.

The Poulterers

The foregoing shows that the Poulter family were closely concerned with The Old House at Home by whatever name it was known. Wills also show they were people of some modest substance⁴ living in Newnham or neighbouring communities e.g. Nately Scures, Up Nately and Mapledurwell. An indication of their substance may be gleaned from the following wills.

16. George Poulter of Nately Scures (now part of Newnham Civil Parish) in a will signed by him dated 20 March 1726 leaves to:

16.1 brother Benjamin £20

16.2 Benjamin's son George⁵ £20

16.3 Benjamin's daughter Joan £20

16.4 Benjamin's other six children £10 each when 21 years old

16.5 Two children of his (the testator's) brother Thomas £20 each

16.6 John the son of brother Thomas' daughter £10 when 21 years old

16.7 Cousin Bartholomew Poulter of Up Nately, husbandman, £10 for maintenance of cousin Thomas Poulter (blind and living with Bartholomew). **Note** these sums totaled £170.

17. Bartholomew Poulter of Up Nately signed his will dated 10 April 1732 giving:

17.1 Brother Thomas 5 shillings

17.2 Nephew Thomas, house and land in Newnham for his life and then to his two daughters

18. George Poulter of Newnham, see §16.2 above, marked his will of 8 June 1784 giving:

18.1 son Benjamin a tenement or cottage and seven rods of garden in Newnham

18.2 son Thomas 'all that my freehold cottage ... and other tenement in Newnham'

18.3 grandson George £5 when 21 years

18.4 son John £5

18.5 daughter Mary £5

18.6 daughter Elizabeth £5

18.7 son William £5

18.8 son Samuel £5

19. A copy of the Poulter Family Tree based on parish registers is attached. It is appropriate to draw attention to Elizabeth Poulter, born 1827 daughter of Benjamin Poulter (1786-1877) who married (1853) Joseph Ilsley. This is the same person identified in §3 above.

Relevant Maps

20. A rather badly damaged estate map, perhaps prepared for the church wardens to use when assessing rates is held at Winchester **HRO 33M71**. It is undated and the schedule that probably once existed is no longer available, but from the writing and some names written on it it is likely to be about 1700. The Green is clearly shown as is the roadway that passes the site of the Old House at Home, this is marked The Lane to Rotherwick (not clearly visible on the attached photograph but clear enough on the original). This is Tylney Lane today. The roadway leading in an easterly direction from the Green, now called Ridge Lane, is marked as A Lane to Rotherwick. Presumably the use of the definite and indefinite articles is significant, and if this is agreed then the main way towards Rotherwick and Hartley Wespall or Mattingley etc was along Tylney Lane.

21. The Tylney estate Map 1774 provides important data. The attached map has East at the top of the page and Tylney Lane cuts between the 'E' and the 'W' of NEWNHAM. The original is held at Winchester **HRO 10M48** and is about 4feet by 5 feet in size. A detail is also attached labelled Newnham

4 They were clearly not rich enough to have paid the Lay Subsidies that I have seen: *East Hampshire Lay Subsidy Assessments 1558-1603* Douglas F. Wick (1988) and *The Hampshire Lay Subsidy Rolls 1586* Ed C.R Davey (HCC 1981). However, Thomas Poulter did pay the Hearth Tax on 2 hearths in Up Nately in 1665, *The Hampshire Hearth Tax Assessment 1665*, Elizabeth Hughes & Philippa White (1991).

5 George Poulter 1699-1790 who lived in Newnham and is cited in §13 and 15 above.

Green 1774 and this shows Tylney Lane and the long stretch of land in George Poulter's ownership together with buildings on it one of which is evidently the pub.

22. My interpretation of the facts emerging from these two maps is that the pub was placed where travellers or drovers to or from the north of the village would find refreshment with the pond immediately to hand for their animals and the Green where they might graze for a while. The obvious place for such a hostelry is where one reaches or leaves a village. There is a parallel because *The Crown Inn*, now Crown Lodge, stood at the top of the hill on Crown Lane in Newnham and again thirsty travellers could refresh themselves, but there was no water for their livestock close by. *The Old White Hart* on the London Road (A.30) in Hook is similarly placed although now the village has extended west of it. Pubs were usually located where passing trade could be exploited: by fords where people might be forced to wait e.g. the former *Red Lion* at water End on the River Lyde, *Crooked Billet* by the Whitewater east of Hook or the former *White Lyon* on the River Hart at Hartford Bridge, Hartley Wintney; also at village entrances especially after a tiring few miles or a steep hill.

23. Another relevant map is Newnham Green 1871 because it confirms the position of the Old House at Home.

Photographs

24. The attached photograph of the Old House at Home *circa* 1900 or before is relevant. At the back can be seen the thatched part which caught fire about 1904. My mother (born 1897) was taken, as a small girl to the crossroads on the Green to see the blaze and remembered it well. According to local tradition the fire engine pumped all the water out of the pond while trying to extinguish the fire, some say the pond never quite recovered. I assume the thatched part was the original beer house and I would have thought the bricked newer front part was built in the middle of the 19th Century but I do not have firm information.

25. The attached photograph of the current building, 2002, shows how little the structure's front part has been altered.

Nigel Bell 3 June 2016

NEWNHAM CHURCHYARD RAIL RESPONSIBILITIES

No	Ft & ins	Panels	1766	1782/86	1796/1812-16	1816/35
1	29'	3	Alexander Wix	Clue	Jn. Rogers	Jn. Rogers
2	28'	4	Edmund Chamberlain, Paper Mill	Chamberl en	Thos. Horn	Ed. Chamb erlin
3	15' 8"	2	James Webb	Webb	J. Horn	Jn. Webb
4	10' 10"	1	George Poulter	Polter	Ben Poulter	Mr. Cooper
5	11' 6"	2	James Webb	Webb	Mrs Bird	Jn. White
6	26' 6"	3	Rush Mason	Mason	Rev.Langdon	Rev. Davis
7	26'	3	Charles Roberson, Sheldons	Stevens	J.W.Clark	Rev.Parke r
8	17'	2	William Naish	Naish	Rowland	?
9	9'	1	Norman, The Shop	Norman	Varndell	?Baldock
10	12' 6"	2	John Keep	Bath Jnr	Hockley	?Bartlett
11	11'	1 + gate	Revd. Dr. Richmond	Richmond	n/a	Mr.Hunter , Rector
12	30'	4	James Webb	Webb	n/a	Mrs.Hewet t
13	15'	2	John Stevens, Tichenors	Chamberl en	J. Horn	Ed.Chamb erlin
14	24'	3	Thomas King	King	J.W.Clark	Mr.Luff
15	28' 6"	4	John Stevens, Hook Farm	Stevens	J.W.Clark	Mr.Luff
16	31' 6"	4	Bernard Lee	Lee	John & James	Rogers
17	10' 4"	1	Thos. Balding, The Raven	Bullock	J. Hewett	Eli Lee
18	8'	1	John Newell	Lambel	J. Harris	Silvester
19	14'	2	Marshall, Crooked Billet	Chamberl en	n/a	?Dorcheste r
20	25'	3	Richard Baffe	Bath	n/a	Baffe
21	18'	2	David Crimble, Lyde Mill	Kite	n/a	Readman
22	16'	1+ gate	Earl Tylney, Malt House	Bath	Rogers	Mr.Ellis

directories of Hampshire Harrod & Co.'s Directory

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Harrod & Co.'s Directory of Hampshire & Isle of Wight, 1865

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NEWNHAM, a parish and village in Basingstoke hundred and union, North Hants, distant 2 miles from Winchfield station, and 4½ E. by N. from Basingstoke. The living is a rectory, with the perpetual curacy of Mapledurwell annexed, annual value £400, with residence; it is in the patronage of the Provost and Fellows of Queen's college, Oxford; the Rev. George Wylie, M.A., is the incumbent. The church is dedicated to St. Nicholas. Lord Dorchester is lord of the manor. The population in 1861 was 367; and the acreage 1,009.

POSTAL REGULATIONS.—Letters through Winchfield, which is also the nearest money-order office and post town.

CARRIER—John Morris, to Basingstoke, Wednesday; Reading Saturday.

Bird H. J., Esq.	Kimber William, farmer
Hellis Thomas, Esq.	Marlow William, farmer, &c.
Wylie Rev. George, M.A., rector	Morris John, grocer and carrier
COMMERCIAL, &c.	Parsons Charlotte, miller and farmer
Beeston John, farmer	Poulter Benjamin, The Old House
Bird John & Henry, farmers	Rogers John and Thomas, farmers
Bird Henry, solicitor	Rogers Miss Elizabeth, shopkeeper
Champion William, Crooked Billet	Steer Joseph, miller
Freeman John, farmer	Smith William, Raven
Goring William, farmer	Varndell John, shopkeeper
Hope George, farmer	Whitfield James, Dorchester Arms

NEWTON VALENCE, a parish and village 5 miles S. from Alton in the hundred of Selborne and Alton union. The living is a vicarage,

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Object Description

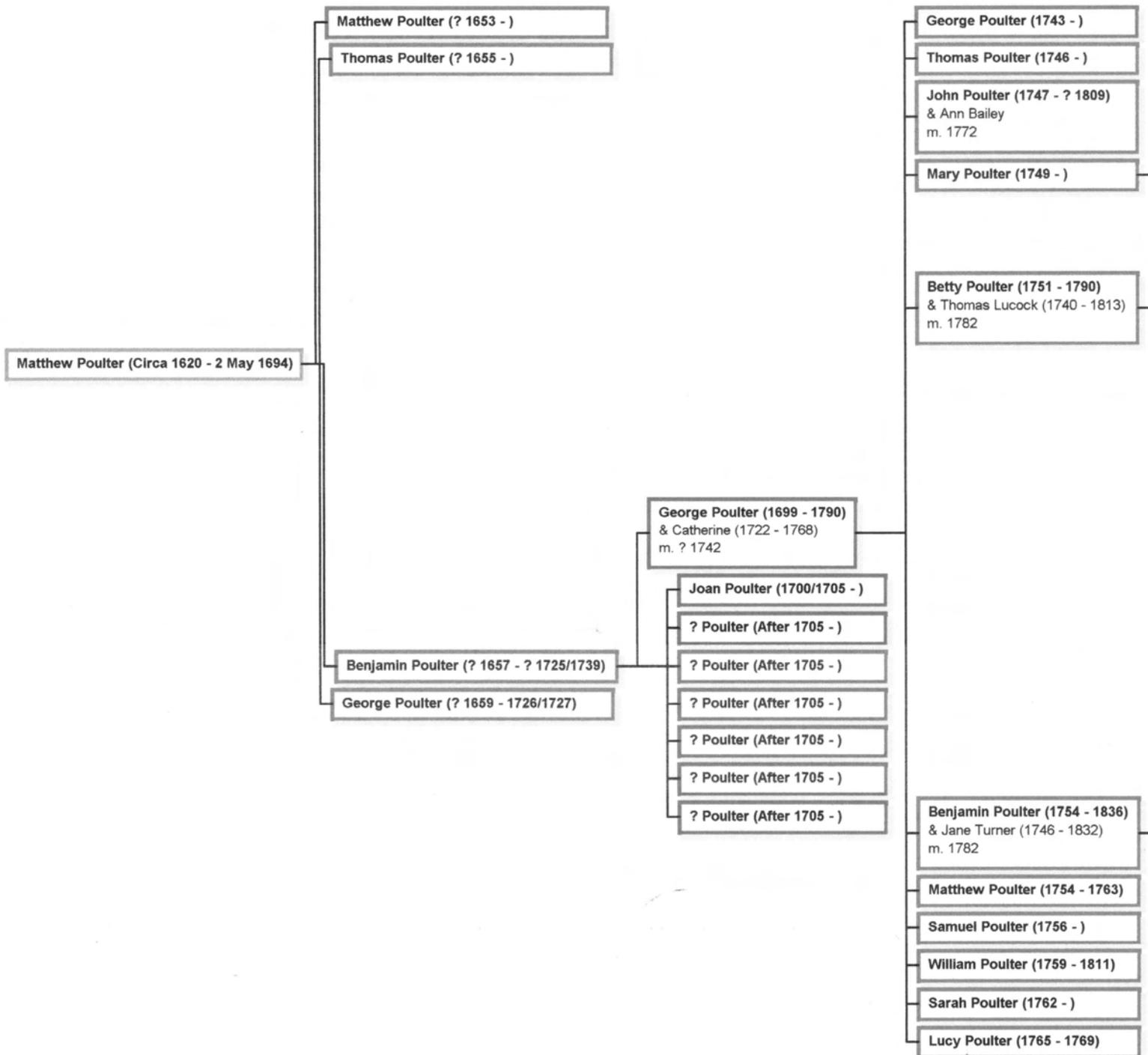
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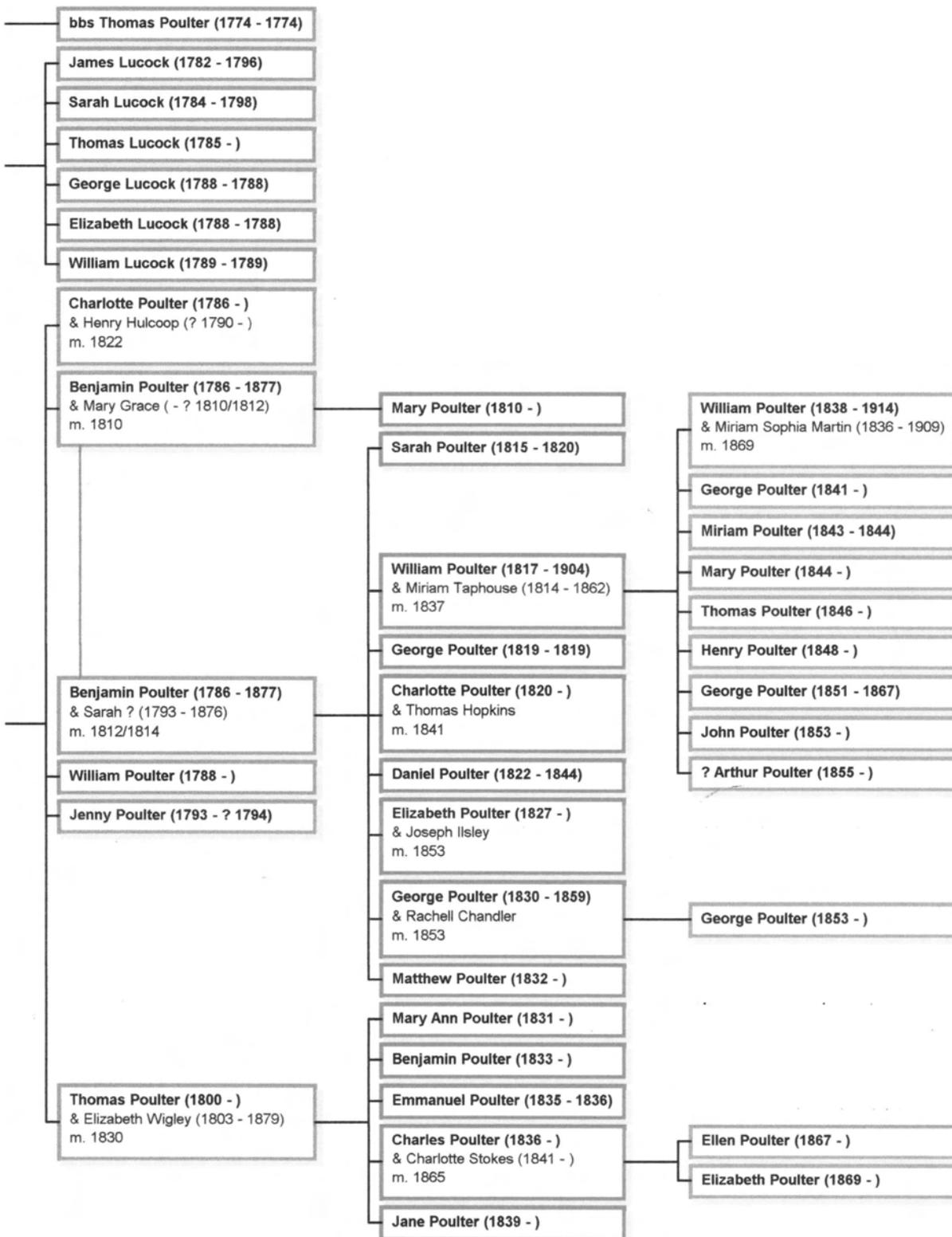
Title Harrod & Co.'s Directory of Hampshire & Isle of Wight, 1865

Full title J. G. Harrod & Co.'s Postal and Commercial Directory of Hampshire with the Isle of Wight, containing a brief descriptive account of the towns, parishes, and villages, followed by a directory. [1865]

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POULTER FAMILY TREE





Directory of Hampshire and the Isle of Wight, 1859

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BASING PARISH. 497

SHOEMAKERS. Chandler Ts. Phillips John	SHOPKEEPERS Brimmer } Martha }	Bargent Wm. Eccott Thos. Everett Maria	Gidge Thos. Weston Chas. and Daniel	WHEELWGTs. & CARPENTERS Brooker Jno.	Gidge Wm. Paris Chas.
--	--------------------------------------	--	---	--	--------------------------

NEWNHAM, a pleasant village, 4½ miles E. by W. of Basingstoke, has in its parish 360 souls, and 1009 acres of hilly land, including part of *Hook Village*. Lord Dorchester is lord of the manor, but part of the soil belongs to the Earl of Mornington and smaller owners. The *Church* (St. Nicholas) is an ancient Norman structure, which was restored in 1847, at the cost of £740. It has a tower and three bells, and its east window is enriched with stained glass. The *rectory*, valued in K.B. at £18. 16s. 8½d., and now at £400, with Mapledurwell curacy annexed to it, is in the patronage of Queen's College, Oxford, and incumbency of the Rev. Geo. Wylie, M.A., who has 30 acres of glebe, and a good Rectory House. The *National School* for this and the parishes of Nately-Scures and Odiham, was built in 1843, at the cost of £470. Here is a small Primitive Methodist Chapel, built in 1840. The poor parishioners have £6 a year from the Duke of Bolton's Charity. (See page 490.)

NEWNHAM DIRECTORY, (See also <i>Hook</i> .) Beeston Mr. John Beeston John, jun., farmer Hope Mary, farmer Hutton James, corn miller, <i>Lyde Mill</i>	Jackman Albert and Martha, <i>National school</i> Marlow Wm., shopkeeper Morris John, shopkeeper, & <i>carrier to Basingstoke and</i> <i>Reading</i> Poulter Benjamin, beerhouse	Rogers Mrs Eliz., shopkpr. Rogers John and Thomas, farmers, <i>Manor farm</i> Whitfield James, vict., <i>Dor-</i> <i>chester Arms</i> Wylie Rev. George, M.A., <i>rector</i>
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NATELY-SCURES, commonly called SCURES, or SKEWERS, is a small scattered

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Object Description

Rating: Based on 0 rating(s)

Title: Directory of Hampshire and the Isle of Wight, 1859

Full title: History, Gazetteer, and Directory of Hampshire and the Isle of Wight, comprising general historical surveys of the county & island, and of the diocese of Winchester; and separate historical, statistical, and topographical descriptions of... all the towns, boroughs, ports... / by William White. [1859]

Subject: Historical directories

Period covered: 1850-1859



**Basingstoke
and Deane**

**Schedule 12
Part A**

Regulation 33, 34

**Premises Licence
BASINGSTOKE & DEANE BOROUGH COUNCIL**

Premises Licence Number	15/01472/PREMT
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Part 1 – Premises Details

Postal address of premises:

The Old House At Home
Tylney Lane
Newnham
Hook
Hampshire RG27 9AH

Telephone no: 01256 762222

Licensable activities authorised by the licence:

Sale of Alcohol

Monday to Saturday	11:00 - 23:00
Sunday	12:00 - 22:30

Adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children. None

The opening hours of the premises At the licensees discretion.

Alcohol is supplied for consumption on and off the premises.

Part 2

Premises licence holder:

31 Haverscroft Industrial Estate
New Road
Attleborough
Norfolk NR17 1YE

Lt Management Services Limited

Telephone no: 01953 450000
Registered Bus no: 5895613

Designated premises supervisor:

Mr Oliver Williams

Personal lic no: 05/02137/PERS_C
Issuing authority: Basingstoke & Deane B C

Annex 1 – Mandatory conditions

Where the Licence Authorises Supply of Alcohol:

- (1) No supply of alcohol may be made under the premises licence:
 - (a) At a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- (2) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 – effective from 1 October 2014

1. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
3. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or (b) an ultraviolet feature.

4. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

**Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014
– effective from 28 May 2014**

5. Alcohol minimum permitted price – on and off sales/supply

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1 —
 - a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - b) “permitted price” is the price found by applying the formula - $P = D + (D \times V)$ where—
 - i) **P** is the permitted price,
 - ii) **D** is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - iii) **V** is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence —
 - i) the holder of the premises licence,
 - ii) the designated premises supervisor (if any) in respect of such a licence, or
 - iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day

Annex 2 – Conditions consistent with the Operating Schedule

General licensing objectives - None.

Prevention of crime and disorder objectives - None.

Public safety objectives - None.

Prevention of public nuisance objectives - None.

Protection of children from harm - None.

Annex 3 – Conditions attached after a hearing by the licensing authority - None.

Annex 4 – Embedded Restrictions pertaining to the converted licence**ON-LICENCES****Licensing Act s.59, 60, 63, 67A, 68, 70, 74, 76, LA 1964**

Alcohol shall not be sold or supplied except during permitted hours.

In this condition, permitted hours means:

- a. On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 11 a.m. to 11 p.m.
- b. On Sundays, other than Christmas Day or New Year's Eve, 12 noon to 10.30 p.m.
- c. On Good Friday, 12 noon to 10.30 p.m.
- d. On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- e. On New Year's Eve, except on a Sunday, 11 a.m. to 11 p.m.
- f. On New Year's Eve on a Sunday, 12 noon to 10.30 p.m.
- g. On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;
- (b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- (c) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;
- (d) consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the licensed premises;
- (e) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (f) the sale of alcohol to a trader or club for the purposes of the trade or club;

- (g) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
- (h) the taking of alcohol from the premises by a person residing there; or
- (i) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or
- (j) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

Children in bars:

No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:

- (1) He is the child of the holder of the premises licence.
- (2) He resides in the premises, but is not employed there.
- (3) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress.
- (4) The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.

In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is, set apart for the service of table meals and alcohol is only sold or supplied to persons as an ancillary to their table meals.

Annex 5 – Plans - See attached.

The Old House At Home

Scale

Building = 1: 100

Car Park = 1: 100

Site Plan =

Date 14th July 2005

Door Fittings

CSD = Selective Closing Device

EF = Emergency Fastenings

FFF = Fastening "Free"

PB = Push bars

RH = Doors Rehung

RS = Roller Shutter

SC = Self closing

SC/A = Doors with auto release

SD = Smoke Door

SP = Sound Proofing

VP = Vision Panel

Windows

FRG = Fire Resisting Glazing

FRG 30 = Fire Resisting 30 mins

FRG 60 = Fire Resisting 60 mins

Fire Resisting Glazing not lower than 1 metre above floor

FRG/ H30 = 30 mins

FRG/ H30 = 60 mins

WO = Width of wall openings (cm)

Staircases

Hrl = Handrail

Grl = Banister/ Guardrail

WP = External Staircase weather protection

CB = Chain/key board

SIGNS

E = Fire Exit

E = Fire Exit (directional sign)

N1 = General Fire Notice

N2 = Staff Fire Notice

N3 = Fire Door "keep locked"

N4 = "Slide to Open"

N5 = "Fire Escape Keep Clear"

N6 = "Fire Door Keep Shut"

N7 = "Method of Calling Fire Brigade"

N8 = "Secure Door unlocked when Premises occupied"

N9 = "No Smoking"

N10 = "In Case of Fire close Curtains"

N11 = "Private"

N14 = "Fire Door - Automatic - Keep Clear - Close at night"

-  Heat Detector
-  Smoke Detector
-  Audible Warning Device
-  Non maintained Emergency Lighting
-  Maintained Emergency Lighting
-  Alarm Call Point
-  Visual Warning Device
-  Fire Alarm Indicator Panel
-  Manual Fire Alarm Sounder
-  Internally Illuminated Fire Exit Sign
-  Internally Illuminated Fire Exit Sign - directional

-  Extent of Licensed Area
-  Area where Alcohol is consumed
-  Bar services/ Alcohol Storage
-  Kitchen/Staff Areas
-  Toilets

-  Non Fire Resistant Door
-  Fire Resistant Door
-  Double Swing Fire Resistant Door
-  Fire Resisting Constructor
-  Access Point

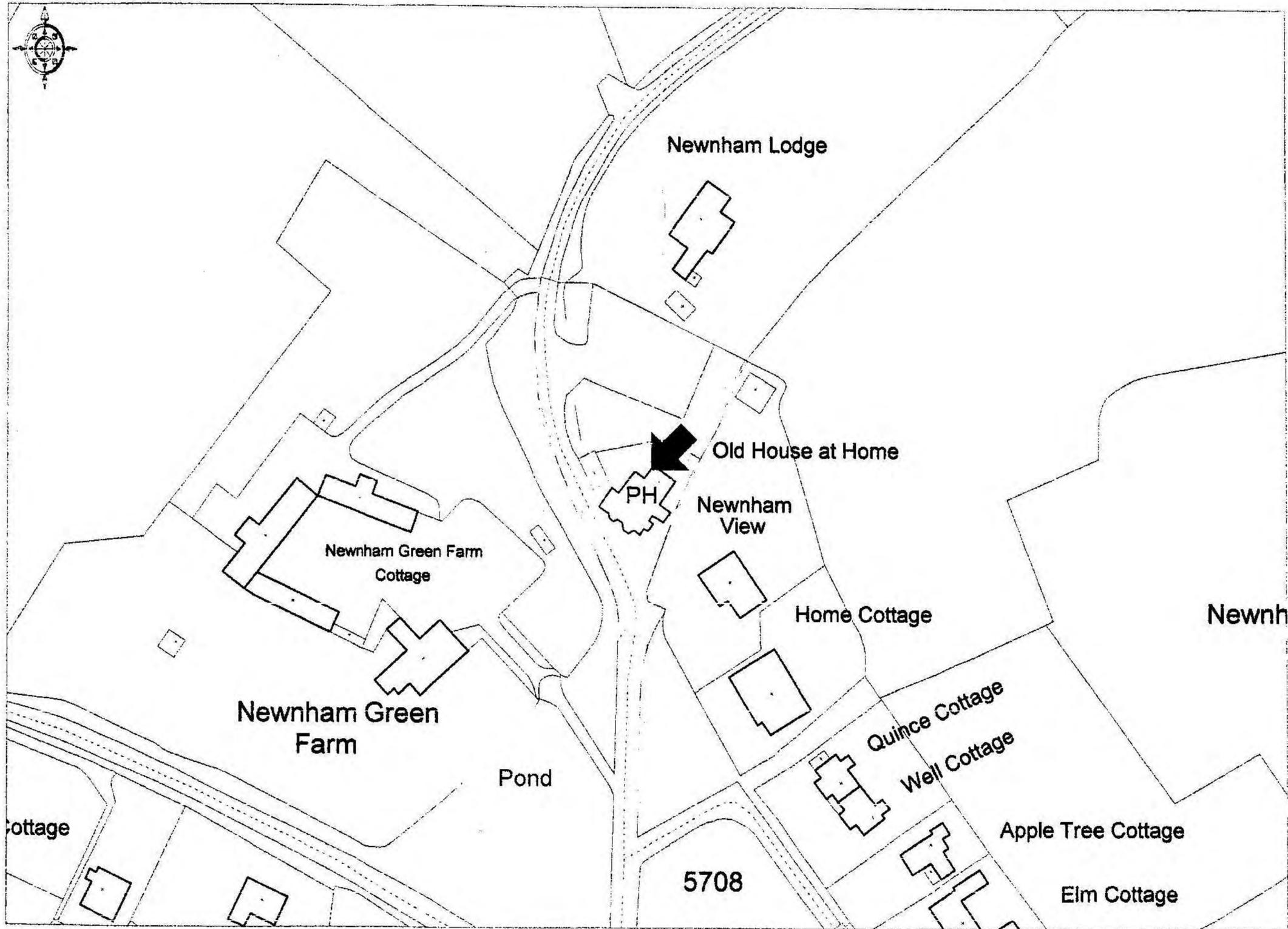
-  Hose Reels
-  Sandbucket
-  Water Bucket
-  Fire Extinguisher Water Type
-  Fire Extinguisher Foam Type
-  Fire Extinguisher Dry Powder
-  Fire Extinguisher Carbon Dioxide
-  Fire Extinguisher Vapourising Liquid Type
-  Fire Blanket
-  Fire Extinguisher Aqueous Film Forming type

PREMPLAN

OS/00388/AR/ENC

The Old House at Home

SENCOORR



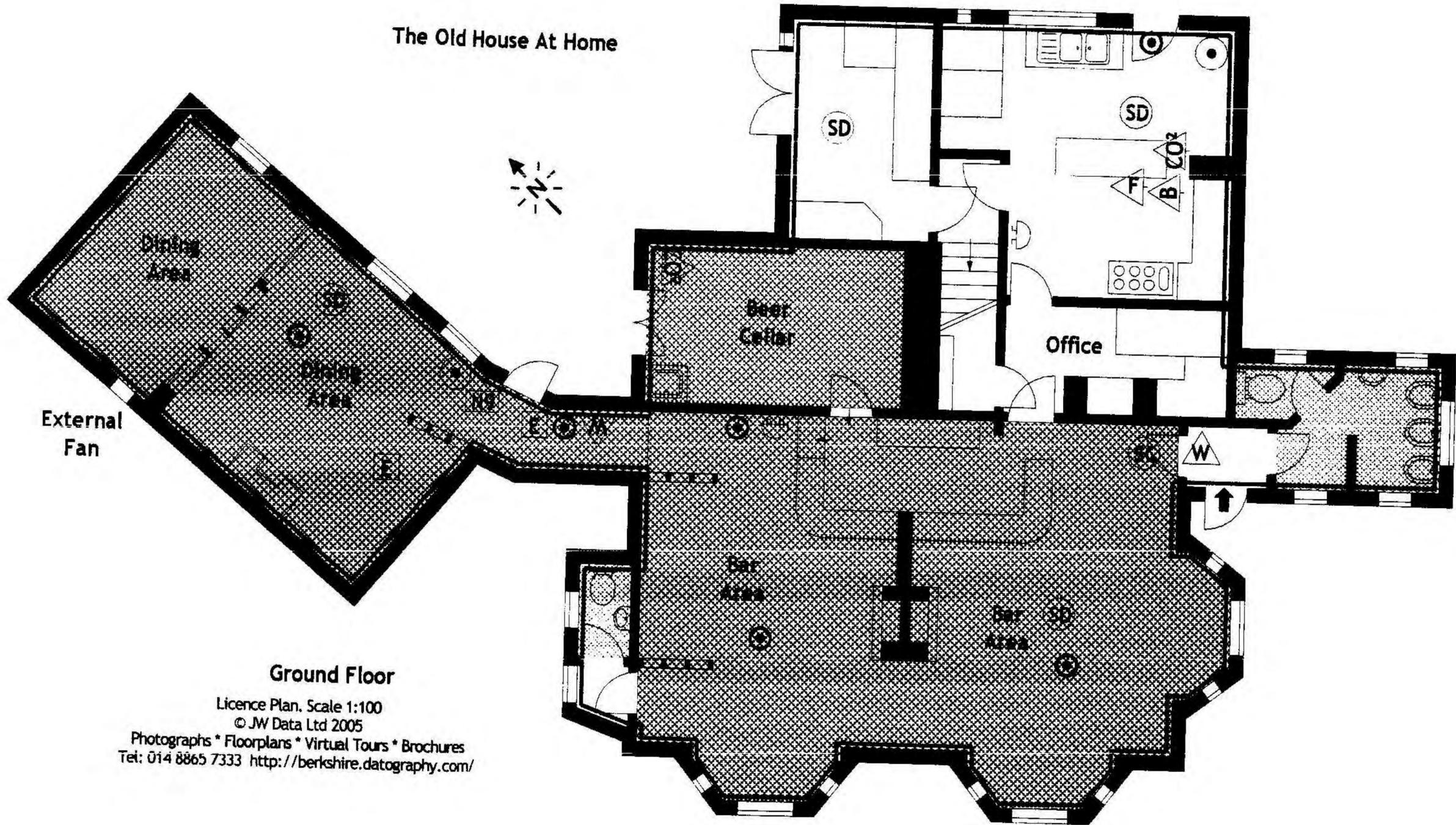
Ordnance Survey

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This map was created by Datography

OS/00388/PRMC

The Old House At Home

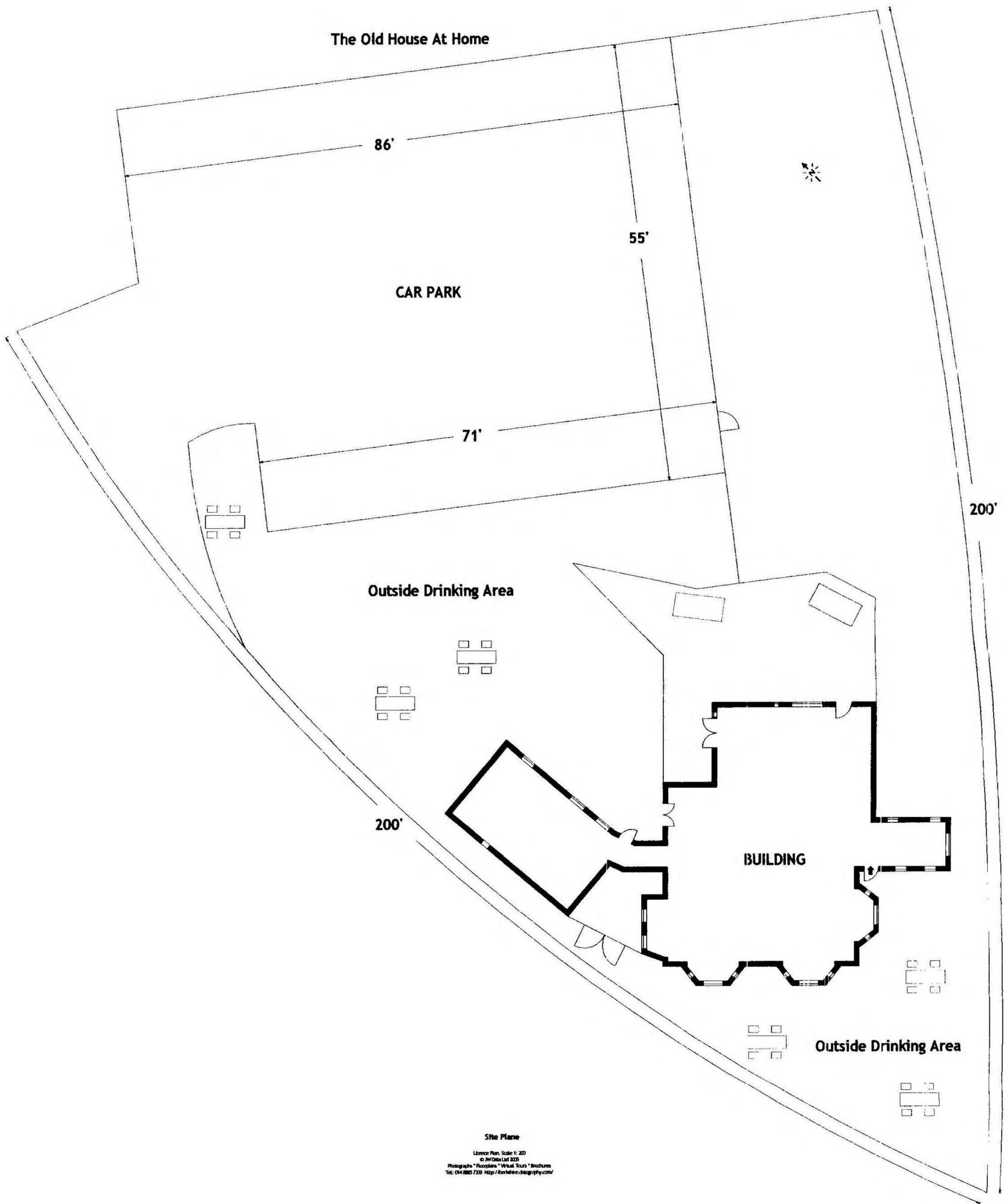


Ground Floor

Licence Plan, Scale 1:100
 © JW Data Ltd 2005
 Photographs * Floorplans * Virtual Tours * Brochures
 Tel: 014 8865 7333 <http://berkshire.datography.com/>

PREMPLAN

05/00388/PREMC





ENGLISH HERITAGE

WEST MIDLANDS OFFICE

Mr Joe Crook
Shropshire Council (Planning Central)
Shirehall
Abbey Foregate
Shrewsbury
Shropshire
SY2 6ND

Direct Dial: 0121 625 6846
Direct Fax: 0121 625 6821

Our ref: P00379970

25 March 2014

Dear Mr Crook

**Notifications under Circular 01/2001, Circular 08/2009 &
T&CP (Development Management Procedure) Order 2010**

**CROSS KEYS INN, KINNERLEY, OSWESTRY, SY10 8DB
Application No 13/05139/FUL**

Thank you for your letter of 5 March 2014 notifying English Heritage of the above application.

Summary

The application should be refused.

English Heritage Advice

The development site affects the setting of The Church of St Mary, Kinnerley, which is a grade II* listed historic building with a tower of c1600 in late gothic style and a nave of 1773-4 in a simple renaissance style by Thomas Farnolds Pritchard. Grade II* listed buildings are in the top 8% of England's listed historic buildings. It is therefore by definition more than special, it is outstanding. The development also affects the setting of the Cross Keys Public House, an undesignated heritage asset that presents a late Georgian front building but apparently also has a medieval cruck framed hall within its externally unassuming rear range. The conjunction of these historically high status buildings indicates an early settlement of some significance, which needs to be thoroughly understood before decisions are taken on development.

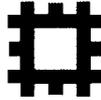
The significance of the site has been investigated very helpfully in the Heritage Statement report supporting the objection by CPRE. The application itself does not include an adequate heritage statement, and that would in itself be sufficient grounds for refusal.

The proposed development would consist of two pairs of semidetached houses, a pair on each side of the Cross Keys Public House. It appears to English Heritage that this development would be far too intensive for this location, and that it would cause harm



THE AXIS 10 HOLLIDAY STREET BIRMINGHAM B1 1TG

Telephone 0121 625 6820 Facsimile 0121 625 6821
www.english-heritage.org.uk



ENGLISH HERITAGE
WEST MIDLANDS OFFICE

to the setting of the church and substantial harm to the setting of the Cross Keys Public House.

Recommendation

This application should be refused on two grounds: it harms the settings of the settings of St Mary's Church and the Cross Keys Public House, and insufficient heritage information has been supplied for its proper determination.

Please contact me if we can be of further assistance. We would be grateful to receive a copy of the decision notice in due course. This will help us to monitor actions related to changes to historic places.

Yours sincerely


John Yates

Inspector of Historic Buildings and Areas
E-mail: john.yates@english-heritage.org.uk



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English Heritage is subject to the Freedom of Information Act, 2000 (FOIA) and Environmental Information Regulations 2004 (EIR). All information held by the organisation will be accessible in response to an information request, unless one of the exemptions in the FOIA or EIR applies.

http://ihbc.org.uk/context_archive/33/mlearned.htm

Charles Mynors MRTPI ARICS Barrister reviews

some recent decisions in the courts of particular relevance to conservation.

M'LEARNED FRIEND

DISCORDANT ACTIVITIES IN CONSERVATION AREAS

Archer and Thompson v Secretary of State and Penwith DC [1991]

JPL 1027 . Queen's Bench Division, 4 December 1990

Permission was refused for the change of use of premises in a conservation area at Causewayhead, Penzance, into a 'family entertainment centre'. The resulting appeal was decided on the basis of written representations, and the Council's refusal was upheld, largely on conservation grounds.

The applicants then appealed to the High Court. Amongst their grounds was that, since a conservation area was to be designated only on the grounds of its architectural or historic interest, the Secretary of State on appeal could only take into account matters such as the environmental effect of a proposed development if they affected the physical qualities of an area.

The judge (Roy Vandermeer QC) did not agree. It seemed to him quite plain that matters such as the nature of a use and its effect could be of consequence. A change of use might, for example, affect the historic interest of an area. Or the character of an area might be affected by noise. He wholly rejected the proposition that the test was limited so that the only considerations that could be brought within the compass of s 72 were matters affecting physical structures.

This decision will be of assistance particularly in the case of applications for change of use of buildings in conservation areas - where perhaps Conservation Officers may not become

involved at all. It emphasises the importance of considering carefully and defining explicitly just what is the special character of each conservation area, so that such applications can be considered in the light of the probable effect of any proposed development on that character.

This case also suggests that factors other than merely those affecting the physical fabric may be relevant when considering proposals affecting listed buildings.



By email: east2@pins.gsi.gov.uk

The Planning Inspectorate

Temple Quay House

2 The Square

Bristol BS1 6PN

16th May 2017

Appeal Reference: APP/H1705/W/17/3169774

Under S78 (2) (a) of the Town and Country Planning Act 1990

(Non-determination of application for development)

Change of Use A4 Public House to C3 Residential Dwellinghouse

The Old House At Home Tylney Lane Newnham Hook Hampshire RG27 9AH

Ref. No: 16/01315/FUL | Received: Thu 14 Apr 2016 | Validated: Tue 26 Apr 2016

Dear Inspector

Planning For Pubs Ltd. is instructed by Newnham Parish Council to make further submissions in the non-determination appeal by Red Oak Taverns.

We have already made very substantial submissions against the proposal during the consultation period in 2016.

The further submissions are responses to the appellant's appeal statement and updating only of our previous objection.

Further evidence has been adduced only where necessary to refute the appellant's claims and to substantiate statements made.

The application is deficient on so many grounds that it must be bound to fail and we respectfully submit that the appeal should be dismissed.

Sincerely

Dale Ingram MSc CHE FRSA

Director



Summary of submission:

- The Old House at Home has a viable future as a public house, and this has been recognised by its listing as an Asset of Community Value: Basingstoke & Deane BC have acknowledged this because the Localism Act and Right To Bid Regulations require that it is 'realistic to think' that the asset could return to that use within 5 years. Consequently the proposal is not in accordance with LP CN7 and Framework P28, P69 and P70.
- My clients and the village more widely aver that: the building is needed and that it is practical, desirable and viable in its established use as a public house. The proposal will neither enhance nor maintain the vitality of Newnham as a rural settlement. Consequently the application is not in compliance with CN7 and breaches Framework policies P28, P55, P69 and P70.
- the applicants have not supplied a heritage statement and this renders the application invalid. No attempt has been made in the appellant's submission to the appeal to address this lack, contrary to LP Heritage policy EM11, BDBC's planning application checklist and Framework policies 128 & 129 and sequential policies on impact and justification.
- No Habitats report has been supplied with the application, and not being able to demonstrate 'no harm' to ecological interests is grounds for dismissal. This lack has not been addressed in the appellant's appeal submission. This is contrary to BDBC's Application Checklist and LP EM4 (1), (3) and (4). Habitats impacts cannot be secured by condition.
- the Parish Council, my client, are not required by any statute, regulation or policy to demonstrate readiness to make a firm bid until the site has been offered for sale under S96 of the Localism Act and the Moratorium has been triggered. Notwithstanding this, the appellant's statement appeared to indicate that the Parish Council had been expected to make a bid. The Parish Council's attempt to gain access to the pub for valuation purposes by their surveyor was rebuffed by the appellant on 5th May. This is contrary to the spirit of relevant LP and Framework policy.



Appendices:

- 1 Email correspondence with Red Oak Tavern dated 05.05.17
- 2 Appeal decision Penny Farthing N Kesteven DC 14.10.16
- 3 Appeal decision Three Tuns South Cambs DC 02.11.16
- 4 Appeal Decision Carlton Tavern Westminster CC 08.07.16
- 5 Appeal decision Black Horse Horsham BC 04.12.13



1 Updates to our submission dated 12.06.16.

1.1 Para 6.5: The Carlton Tavern inquiry resulted in dismissed appeals against Westminster's enforcement notice. The appellants are required to rebuild the pub in facsimile and works to reconstruct the building have begun. Appeal decisions (Appendix 4) 3130605 and 3025122 attached.

1.2 Para 6.6. From 23.5.17 the General Permitted Development Order will be amended to remove permitted development rights for change of use and demolition from A4 Drinking establishments and the permitted development right for demolition of the new mixed use A3/A4 AA use class. As a mixed use the AA use class is sui generis and therefore has no PD rights for change of use. The changes to the GPDO enacted in 2015 for the removal of PD rights only for ACV listed or nominated public houses will fall away.

1.3 Para 4.5.12 Mole Inn Monk Sherborne has reopened following a lengthy closure.

2 Response to Appellant's Statement. These are referenced ROT.n where n is the relevant paragraph.

2.1 ROT.14, 18-29. Viability and Policy CN7. Evidence has been provided both by the Parish Council's submission of November 2016 and in two documents prepared by Anthony Miller FRICS a licensed leisure chartered surveyor of some 50 years experience that the Old House at Home can be a viable public house. Mr Miller's submissions question the conclusions of both 'viability assessments' by Fleuret's and Bruton Knowles.

2.1.1 That the surveyors for the appellant and BDBC who assessed the Old House at Home's viability only focused on commercial for-profit enterprises is apparent by the methodologies used and by Mr Parsons of Fleurets statement that he has "30 years [experience] on both the corporate and private practice sides".

2.1.2 In the Penny Farthing decision (q.v.) the Inspector writes:



“Whilst I note the appellants have stated alternative commercial uses have been explored, I have not been provided with information about these uses and what alternative operating models have been considered to ensure a continuation of use in accordance with Paragraph 70 of the Framework.”

2.1.3 In the Three Tuns decision (attached) the inspector at p14 remarks

“Whilst it is considered that the property may struggle as a commercial business and/or community public house, this does not preclude other uses for the property or ways of being managed and operated. This could include, as suggested by local residents and the Council, a catering company or as a non-profit operation run by the community.”

2.2 ROT.15 The Parish Council's Business Plan. There is no obligation or statutory requirement in either the Local Plan or the Framework to supply a business plan or case, nor is there one under the ACV regime in the Localism Act. Indeed, even when making a bid to acquire a long lease or freehold under S96 of the Localism Act, or to make or defend a listing, parties are not required to supply a business plan or case.

2.2.1 In the First Tier Tribunal, *Moat v North Lincs DC 2015* (CR/2014/0014) Judge Peter Lane's decision records: *“There is no legal requirement for the Parish Council, or anyone else, to present a fully worked-out business case in order for the asset to remain on the list. Each case turns on its own facts. In the present instance, I am satisfied that the work undertaken by Ms Murray and her colleagues [the nominating Parish Council] demonstrates that there is a level of community intent, which makes it more than fanciful that the Dolphin could once more further the social wellbeing or social interests of the local community.”*

2.2.2 Newnham Parish Council have made significant progress working with relevant advisory and funding bodies as well as securing substantial commitment from the village community in preparation for making a bid. This includes a well-advanced application for a substantial loan from the Public Works Loan Board now administered by DCLG for the purpose of



acquiring the freehold, refurbishment, development and working capital etc. I have been provided with the evidence of correspondence and other documents including the Freehold Valuation carried out by the Parish Council's Valuation Surveyor GVA this week and at present these are considered by my clients to be commercial in confidence.

2.3 ROT.27 (1). The Parish Council do not need to provide proof of funds until they are ready to make an unconditional offer and this may be contingent on the triggering of the ACV moratorium. Indeed, the chief providers of funds can require that applications for loan or grant funds can only be made once the premises is on the market or the seller has, at the very least, indicated a willingness to engage in negotiations. (2) The Parish Council are entitled to rely on their own evidence if they wish. (3) The Parish Council's own surveyor Mr Miller has drawn his own conclusions on viability and has critiqued the assessments by Fleurets and Bruton Knowles.

2.4 ROT.29. The Parish Council knows its area and its people. It has taken professional advice and both the Parish Council and Newnham generally are populated with experienced, capable and knowledgeable individuals. They are in no doubt that a successful pub business can be operated at the Old House at Home.

2.5 ROT.30. *"No formal offer has been received from a member of the community or the Parish Council prior or during the application."* ROT.50: *"the Parish Council have made no formal offer for the public house at any given point."*

2.5.1 It was not unreasonable for the Parish Council to suppose that the owner, Red Oak Taverns Acquisitions Ltd. would want to pursue the planning application proceedings to their ultimate conclusion before deciding whether to divest the property. Indeed Red Oak's email of 5th May is consistent with that view. Given the considerable amount of work required to prepare for a bid, the Parish Council are unlikely to carry out much of what is required until the relevant S96 Notice had been received by BDBC.

2.5.2 However, on reading the appellant's statement, my clients viewed the comments in ROT.30 and ROT.50 as an invitation to make a bid. In preparation, they commissioned a freehold



valuation from GVA Surveyors. As part of the surveyor's investigations an email approach was made to Red Oak on May 5th asking for access to the premises for valuation purposes. Mr Grunnell's response and the request are in Appendix 1, where you will see that he clearly states that the Old House at Home 'is not for sale'.

2.5.3 Moreover the appellant's statements ROT.30 and ROT.50 do not say that no interest has been expressed by any party, only that there has been no approach by community members or the Parish Council. How many approaches have Red Oak had from other parties to acquire and run the Old House at Home as a pub?

2.6 ROT.27 & ROT.29 The Parish Council have amongst their members an experienced hospitality professional whose input has been sought. The trading history, even if long in the tooth, shows that the premises has previously traded sufficiently well to employ several staff and for the managers to live off-site.

2.6.1 The model being proposed is much more traditional, with a publican couple living on-site. Moreover the business will not be supply-tied as previously, substantially reducing its costs. Moreover, not-for-profit community enterprises and Parish Councils have access to funds not available to commercial operators. These include low-cost loans and grants from the Public Works Loan Board, Locality, The Plunkett Foundation, Pub is the Hub, the Government's Pub Loan Fund and More Than A Pub, the National Lottery, Architectural Heritage Fund and Cooperatives UK's Community Shares Unit. Many pub buyouts are financed through Crowdfunder initiatives whereby the 'investor' effectively makes an interest-free loan to the enterprise with a payback period over a period of years.

2.6.2 Case Study: Community Shares. The Duke of Marlborough¹, Somersham, Suffolk is a community ACV buyout of a 500 year old Grade II listed timber-framed traditional village inn- a 'pub with rooms'. The Duke is run largely on volunteer labour and while a professional is being sought to manage it on behalf of the community, they will still rely on an element of voluntary

¹ <http://www.savetheduke.net/> I must declare my interest as one of 230+ shareholders in Somersham Community Pub Ltd. (SCPL)



labour to manage overheads. It was bought in March 2017 from the couple who retired 2 years ago after 15 years service. The Community Benefit Society (SCPL) paid £300k for the freehold using a CrowdFunder community share issue. It has no mortgage or debt interest to pay. The transition was orderly and without drama- there was no planning battle. It reopened in March after an 18 month closure.

2.7 ROT.30 - ROT.32 Asset of Community Value. The purpose of the Community Right to Bid (Assets of Community Value) [CRTB] regime is to prevent the loss of valued community infrastructure to redevelopment for non-community uses. The CRTB regime has evolved since the publication of the Localism Act in 2011 in the face of unforeseen consequences.

2.7.1 Firstly the General Permitted Development Order [GPDO] was amended so that from 6th April pubs nominated or listed as ACVs would have to be subject to specific permission for change of use or demolition.

2.7.2 And secondly the GPDO was amended a second time by S22 of the Neighbourhood Planning Act 2017 to remove PDR in respect of both change of use and demolition of A4 premises and demolition of the newly-created A3/A4 mixed use class (AA). Mixed uses being sui generis they have no PDR in respect of change of use but it was necessary for the (inadvertent) PDR for demolition of the new class to be restricted. The new GPDO amendments are effective from 23rd May 2017.

2.7.3 ACV listing, as the Secretary of State established at para 2.20 of the Non-Statutory Advice Note to Local Authorities on the CRTB, may be a material consideration. This is at the discretion of the Local Authority, and by extension, all planning authorities including the Inspectorate and the Secretary of State him/herself. It necessarily follows that, having decided to give weight, it is for the authority to decide how much weight it should have. Consequently, if the authority so decides, it may well be determinative either on its own or tip the scales in a finely-balanced planning judgement.

2.7.4 Appeal decisions published since our consultation submission in June 2016 relevant



to the case are the Three Tuns Guilden Morden (3164310 Appendix 3) and the Penny Farthing North Kesteven (3150763 Appendix 2). Both reference the pubs' registration as Assets of Community Value and the protection of P28, P69 and P70 and heritage polices of the Framework and statute specifically S66 (listed buildings) and S72 (conservation areas) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2.7.5 The choice of Appeal 3001921 (Alexandra PH LB Haringey 2015) in evidence by the appellant against the weight to be accorded to ACV listing is curious because it is quoted from selectively. The Inspector in *Alexandra* also remarks in the dismissed costs decision “*The listing of the property as an Asset of Community Value was also a legitimate material consideration.*” Increasingly planning authorities are giving substantial weight to ACV listing. Where the listing is uncontested, as here, this constitutes acceptance by the owner of its community value.

Heritage matters

2.8 No heritage statement has been provided to demonstrate that there will be no harm to heritage assets or that that harm, where identified, is justified. In the Three Tuns (q.v.) decision the Inspector records:

P24: “In the absence of any detailed assessment of the impact of the proposal on the listed building, the degree of harm cannot be accurately assessed. Whilst the Council have no objection to the removal of the bars within the building, I do not share that certainty as no historical assessment of the works have been undertaken, including whether any historic fabric would be lost. On the basis of the evidence before me, and in light of my findings above with regard to the use of the building, a precautionary approach must be taken. It would be remiss of me to assume that the proposal would mean there was no harm to the listed building, or that its optimum viable use would be as a dwelling.”

2.9 Impact on the Conservation Area. ROT.33- ROT.43. My previous submissions on this ground were substantial and robustly evidenced. The arguments presented in the appellant's

statement do not deal with character as a quality of the way an area is experienced by occupation and activity rather than simply visual matters. The late (18.1.17) Judge Roy Vandermeer's judgement in Archer & Thompson as discussed previously established that use is as much an element of character as appearance. This dimension of heritage value is expounded ably in Ian Nairn's architectural writings, deducing from observation (informed by huge background knowledge) what embodied a sense of place, which often had as much to do with the way that spaces were used and by the people who occupied them as with the architecture that defined them.

2.10 ROT.42 ACV listing requires that the local authority believes that it is 'realistic to think' that a use will resume within the next five years. If the Old House at Home remains closed, that is entirely at the behest of the appellant. Para 126 of the Framework says "*planning authorities should take into account: the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.*"

2.11 Harm to the significance of heritage assets is not good conservation and the loss of the pub's heritage significance in use as such is harm. The Inspector in the Three Tuns (q.v.) decision (paras 15, 22-27) writes:

P15"*Its former use as a public house would have given it a functional focus, which in itself would be part of the significance of the listed building.*"

P25: "*Furthermore, the former use of the building would contribute to its significance and to the character and appearance of the building and that of the conservation area.*"

P27: "*Having another public house operator within the property would retain the significance of the listed building and its contribution towards the character and appearance of the conservation area. In light of my decision above and the requirements of the Framework I have to give this great weight.*"



Social Value and economic context

2.12 ROT.43. “Loss of a desirable [sic] existing use”. Christie & Co.’s Business Outlook 2017 Report records price rises of 4.4% across the pub sector in 2016, indicating a healthy demand. The falling number of pub closures (21/week in 2016 compared with 29/week in 2015) is a marker of increased demand following improved economic conditions. The Old House at Home is not located in an area of economic deprivation: ONS statistics indicate a local household income and professional attainment significantly higher than the national average. There is, in short, disposable income and leisure demand available to support a public house.

2.13 ROT.43 There are numerous instances of where a refused application -with or without a concomitant dismissed appeal - has had the indirect consequence of securing or reinstating a pub use. Typically the following pubs were *closed and under threat* (c) or *trading and under threat* (tt) for three years and have been reprieved in the past two years. The threat in all cases was development of residential dwellings and/or retail use.

2.13.1 These include -this list is not exhaustive- the listed ACVs *Mole Inn Monk Sherborne* (c), *Tally Ho Littlehempstead* (c), *New Inn Amesbury* (tt), *Anglers Rest Bamford* (tt), *George Market Harborough* (c), *White Swan Hunmanby* (tt), *Drovers Inn Gussage All Saints* (c), *Kings Arms Shouldham* (c), *Beehive Horringer* (c), *Antwerp Arms* (c), *Chesham Arms Hackney*(c), *Golden Lion Camden* (tt), *Angel Spinkhill* (c), *Fox & Hounds Charwelton* (c), *Rivers Arms Cheselbourne* (c), *Dartmouth Arms Camden* (c) and *Clifton Hotel St Johns Wood* (c). These locations range from North Yorkshire (Hunmanby) to Dorset (Gussage All Saints). It is not a phenomenon restricted to the relatively affluent south east.

Those in italics are village pubs equivalent in size and community value to the Old House at Home.

2.13.2 The closed Trafalgar Arms Tooting was bought by Youngs Brewery and reopened in 2015, following listing as an ACV while under threat of demolition and redevelopment for housing in 2014. Youngs specifically targeted the Trafalgar because of its ACV listing². The ACV listed Grade

² Personal communication, Director of Property Acquisitions Youngs 2014.



II Black Horse Amberley Sussex has secured consents for the development of the premises as a pub to include letting rooms and new restaurant following a dismissed appeal in 2013 for residential conversion. The appeal specifically addressed the harm to the conservation area from the loss of the PH use (Appendix 5).

2.13.3 Reprieved but not not ACV listed: George & Dragon Hudswell (c), Cross Keys (c) and Phene Arms (c) both Chelsea and the Cross Keys Kinnerley (c). The latter three planning appeal cases predated the Localism Act/ RtB Regulations Sept 2012 although they reopened much later. The George & Dragon closed in 2008, was bought by the community in 2010 and continues to thrive³. The premises include a library and shop. The Anglers Rest Bamford (q.v.) includes a Post Office, gift shop and cafe.

2.13.4 The Falcon in Huntingdon (c) reopened in 2014 after six years closure and The Eagle & Tun in Digbeth (c) reopened in 2016 after seven years closure. The Pheasant Pluckers Inn, aka Bishops End and Bishop Blaize PH (Cherwell DC), closed in 2006, has reopened in 2016 after ten years of repeated refusals, appeals and enforcement action (> 50 planning proceedings).

Conclusion: the refusal of planning consent is very often the precursor to the pub reopening.

Sustainability

ROT.44 - ROT.47. Sustainability of Location. Relevant policy SS6 and Framework P55.

2.14 SS6 (c) requires that the building be redundant or disused. The community's position is that the premises is not redundant, it has a perfectly good future use as a public house, nor is it disused as I am informed that it is presently being occupied as a non-ancillary dwelling (C3). It is not clear on what basis the present residents are in occupation, whether as 'guardians' or as tenants, and no mention is made of this present use in the appellant's appeal statement. SS6 (v) which relates directly to (c) requires that the proposal "Does not result in the requirement for another building to fulfil the function of the building being converted". The community requires a public house as an essential community facility and the village hall is no adequate substitute.

³ Named CAMRA National Pub of the Year 2017 in March.



2.15 P55 of the Framework “55. *To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.*”
The proposal to turn Newnham's only pub into residential uses will neither maintain nor enhance the vitality of the village and consequently is unsustainable.

Conclusion: Development is not sustainable where it harms economic, social and environmental interests. It is our contention that the proposed change of use would be harmful to the character of a designated heritage asset, deprive a community of a valued social facility and be harmful to economic and employment interests. The conversion of one residential use (albeit ancillary to the A4 use) with another does nothing to increase the supply of housing and is unjustified in light of the above.

Consequently we respectfully request that the appeal be dismissed.

Dale Ingram MSc CHE FRSA

Director



Appeal Decision

Hearing and site visit held on 27 March 2013

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 May 2013

Appeal Ref: APP/Y9507/A/12/2186992

Black Horse, High Street, Amberley, Arundel BN18 9NL

- 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 P Marston against the decision of South Downs National Park Authority.
 - The application Ref SDNP/12/01031/FUL, dated 18 June 2012, was refused by notice dated 24 August 2012.
 - The development proposed is change of use from public house to two dwelling units.
-

Decision

1. The appeal is dismissed.

Main Issues

2. In the single reason for refusal, the Council indicates that there is insufficient evidence that there is no longer a demand for continued use of the premises as a public house and that appropriate marketing was not carried out. A concurrent application for listed building consent was also refused but is not subject to appeal. When considering whether to grant planning permission, sections 66 and 72 of the Listed Buildings and Conservation Areas Act 1990, place a duty on the decision maker to pay special attention to the desirability of preserving the character or appearance of the conservation area and preserving the building or any features of special architectural or historic interest which it possesses.
3. The main issues are as follows:
 - Whether the loss of the public house use and conversion of the building to 2 dwellings would unacceptably compromise the provision of community facilities in the area;
 - Whether the proposed change of use would preserve or enhance the character or appearance of the Amberley Conservation Area; and
 - The effect of the proposal on the special interest of the Black Horse, which is listed at Grade II.

Reasons

4. Horsham District Council carries out the planning function of the South Downs National Park Authority (NPA) until such time as the NPA has its own development plan. Core Strategy policy CP 14 of the Horsham District Local Development Framework of 2007 advises that new or improved community

facilities or services will be encouraged in order to enrich the overall quality of life within the District and, particularly, where they meet the identified needs of local communities. It goes on to say that development proposals that would result in the loss of sites and premises currently or last used for the provision of community facilities or services, leisure or cultural activities for the community will be resisted. The wording states *'As a minimum, it will be necessary to demonstrate that continued use as a community facility or service is no longer feasible having regard to appropriate marketing, the demand for the use of the site or premises, its usability, and the identification of a potential future occupier. Where it cannot be shown by these or other means that the community facility or service is surplus to requirements, such a loss may be considered acceptable provided that: a) an alternative facility of equivalent or better quality and scale to meet community needs is available, or will be provided at an equally accessible location within the vicinity; or b) a significant enhancement to the nature and quality of an existing facility will result from the redevelopment for alternative uses of an appropriate proportion of the site'*.

5. The CS is reasonably up to date. The National Planning Policy Framework of 2012 (NPPF) advises in paragraphs 28 and 70 that the retention and development of local services and community facilities in villages, including public houses, should be promoted, to deliver the social, recreational and cultural facilities the community needs. Paragraph 131 advises that the positive contribution that conservation of heritage assets can make to sustainable communities, including their economic vitality, should be taken into account.
6. The history of the Black Horse is somewhat vague before 1800 but it is common ground that a building used for the sale of drink has existed on the site for a very long time. It lies on a prominent corner in the centre of the village of Amberley, close to the village shop and a tea room, in an area that once had many more shops. It consists of 2 distinct linked buildings, one of which contains the pub function with cellars below and living accommodation above, the other a pleasantly proportioned function room with ancillary spaces underneath. The latter was last used for restaurant accommodation and is easily reached from the public bar area. An elevated lawned garden at the rear has views of the village roof tops and the South Downs. The main part of the existing building exhibits typical architectural characteristics of the late 18th/early 19th centuries and retains significant architectural and historic interest associated with its pub use. The external fabric is in good condition, the roof having been repaired recently. The interior is in need of refurbishment and suffers from some damp where parts of the building abut higher ground, but is in fair condition overall.
7. In common with many other public houses, the enterprise has suffered from the smoking ban, commercial pressure from other outlets and the trend to drink at home. Turnover and barrelage declined particularly in the last 3 years in which it was open. However, the evidence indicates that as recently as 2009, before a change in the landlord due to ill health, the pub was operating profitably. In the most recent years, there had been declining interest in the type of food offered, which is acknowledged to be important in attracting custom. There is also significant and reliable evidence over many years of its value to the community in Amberley for social gatherings, entertainment and as a focus for village organisations such as the cricket club. In support of this,

- the Black Horse has been registered as an Asset of Community Value under the Localism Act of 2011.
8. The appellant draws attention to a number of other public houses and licensed premises available in the locality. The closest is The Sportsman, about 800 metres to the east in the hamlet of Cross Gate. This pub operates successfully and has a reputation for its food quality. However the road between Amberley and Cross Gate is narrow, has no footway and is unlit. It seemed to me that Amberley residents would be discouraged from making the journey on foot and I heard that bed and breakfast proprietors in Amberley who used to recommend the Black Horse to their guests for an evening meal now have to provide lifts to and from The Sportsman. I am advised that it has no large function room similar to that at the Black Horse.
 9. There are several establishments at Houghton Bridge adjacent to Amberley Station, including a restaurant, a tea shop and The Bridge Inn. The Amberley Museum nearby has extensive catering facilities but is a seasonal educational attraction. Although there is a footway on the B2139 turnpike road between Amberley and Houghton Bridge, pedestrians would have to walk about 1.6 kilometres and cross this busy road at least twice. This location would not be an attractive option for Amberley residents who do not wish to drive.
 10. Amberley Castle Hotel is nearby but in a very different market. Of the other enterprises referred to, all would be a car drive away. I accept that the population of Amberley, on its own, would be unlikely to be able to support a village pub successfully in the long term, given the competition from other establishments and the pressures on rural businesses and pubs in particular. However, the village lies at the centre of the South Downs National Park and is a popular destination for tourists. These can be walkers on the South Downs Way which passes a short distance to the south; bird watchers who come to observe over wintering species on the extensive protected wetlands to the north of the village which is a Site of Special Scientific Interest; cyclists touring the area and coach tours from home and abroad. The seasonal tea room in Amberley attracts a large number of visitors as does the Amberley Conservation Area as a whole, which contains about 50 listed buildings. The pub also lies on other recognised and popular public rights of way including the West Sussex Literary Trail and the Wey-South Path. These are very significant factors that suggest that there is a substantial tourist market for the pub to exploit. There is evidence that it performed such a role in the past. The recent designation of the National Park is likely to provide an impetus to tourist demand.
 11. Other public meeting rooms in Amberley include the hotel, church hall, surgery, school hall and a music room, but these have disadvantages in terms of size, layout or facilities; and are frequently used for other purposes. They do not provide an alternative community facility of equivalent or better quality and scale, as required by policy CP 14. Other facilities lie outside the village core at Houghton Bridge but are not easily reached except by car.
 12. In assessing the ongoing viability of the pub, the appellant relies on information from a respected agent, Fleurets. Whilst I do not doubt the validity of that advice, it is only by means of a thorough marketing exercise that the potential of others to operate it can be properly measured. Even though at the time of the appellant's purchase and up to the present day, the pub retains all its fixtures and fittings, no marketing has been carried out. Moreover, there is

very little financial information. The professional agent indicates that in principle, rural pubs without a good food reputation and car parking and needing upgrading, struggle to make ends meet. However this falls far short of justification for change of use and permanent closure of an establishment which has clearly received substantial support in the past and enjoys very significant support locally now. The evidence indicates that the alternatives for local residents are difficult to reach and that there is very substantial latent local demand and significant potential demand from tourists and others in the area who desire to eat out. Fleurets acknowledge that the last tenant had the wrong business model in concentrating on liquor sales.

13. There is no designated private car parking available at the Black Horse but there are no parking restrictions in Amberley and plenty of room on the north side of East Street and in other central locations; I do not consider that this matter would put off potential customers. The lack of rooms to let is also identified as a disadvantage but the pub has living accommodation above; it has not been shown that the current lack of bedrooms for guests is critical to its profitable operation or that this should weigh heavily in the balance. The appellant refers to the difficulty of seeing and identifying the pub garden as a destination, but residents point out that the seclusion of the well planted garden with its unusual setting is an asset that deserves better access and publicity. As for the identification of a future pub operator, the appellant indicated that he had been in discussion with several on an informal basis, none of which came to fruition when the pub's circumstances became better known; but there is little evidence of the exact reasons why those discussions failed. On the other hand, there is no lack of enthusiasm amongst the local population who have a track record, in resurrecting the local shop. I cannot dismiss the possibility that there are others who could be identified by marketing. Having regard to the remaining contents and the condition of the building, I also give weight to the suggestion that the amount of investment required to put the pub back on a sustainable financial footing, may not be as high as the appellant suggests.
14. I conclude that it has not been shown that the pub is surplus to requirements or that alternative facilities are available or easily accessible. The Black Horse is a typical village centre pub with very significant character and interest. Its conversion to residential use would conflict with the community facilities protection aims of policy CP 14 of the CS and the similar objectives of the NPPF.

Heritage aspects

15. The *Amberley Conservation Area: Conservation and Design Advice Leaflet No.1* of 1997 provides helpful advice and guidance on the heritage assets in Amberley and their preservation. Whilst now of some age, this booklet remains relevant. The Black Horse is illustrated and identified as a building of large scale in the centre of the village. The heritage value or significance of the area derives not only from the massing and detail of buildings in their setting but also from other aspects of individual assets such as their history and communal value to society. The central location and function of the Black Horse, associated with former agricultural importance of the village and the High Street as a local commercial thoroughfare, forms a valuable contributor to understanding the fabric and evolution of the place. For this reason, the proposed change of use would significantly erode its cultural heritage value.

Given the development value that would attach to the building in residential use, it is extremely unlikely that in the event of conversion, a return to pub use would occur.

16. The proposed residential use would not preserve or enhance the character or appearance of the conservation area and would conflict with the heritage protection aims of policy DC 12 of the Council's General Development Control Policies (GDCP) which form part of the 2007 Local Development Framework. Moreover, the existence of the pub alongside the village shop, pottery and tea room and other activities such as tourist accommodation, contributes to the vitality of the village. The change of use would diminish the usefulness of the centre to villagers and others and would conflict with the aims of paragraph 131 of the NPPF.
17. A large part of the building's architectural and historic interest derives from its traditional use as a pub. Whilst many internal features are not original or have been replaced, the process of partial renewal and replacement over many years itself adds heritage value to the interior because of the layers of interest created intrinsic to its current function. The proposed change of use would remove these and introduce significant changes, including new dormers, openings and stairs that would remove fabric and affect the building's special architectural and historic interest. It has not been shown that the change of use is necessary to preserve the building, which is acknowledged to be in overall good condition. The change of use would conflict with the aims of policy DC 13 of the GDCP.

Conclusion

18. I have taken all the other matters raised into account including the contribution that one additional dwelling would make to the housing stock of the District (bearing in mind that there is a flat on site currently and it would be replaced by 2 family dwellings). However the Black Horse is in a 'Category 2' settlement in a rural area away from the main centres of population and whilst it has some facilities, there are more sustainable locations for new housing. Neither this matter nor any other matter raised outweighs the harm that the proposed change of use would bring about to the community facilities in Amberley and to heritage significance. For all the above reasons, the appeal must be dismissed.

Paul Jackson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ian Woodward-Court	Plainview Planning
William Cuthbert	Fleurets
Peter Marston	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Hazel Corke	Team Leader, South Planning Team
Catherine Jeeter	Design and Conservation Officer
Douglas Wright	Planning Officer

INTERESTED PERSONS:

Patrick Coffey BA Dip TP MRTPI	Representing Amberley Parish Council
Carol Henderson	Amberley Parish Council
Geoffrey Uren	Amberley Parish Council
Grahame Joseph	Amberley Society
James Tolson	Black Horse Action Group
Tim Simpson	Black Horse Action Group
Ian Galbraith	Black Horse Action Group
Averil Sessions	Black Horse Action Group
Geoff Deakins	Black Horse Action Group
Martin Carter	Local resident and accountant to last tenants
Mike Toynbee	Local resident
Timothy Ashbee	Local resident
M P Ashby	Local resident
Leigh Crosswell	Local resident
Margaret Butler	Local resident
Jeffrey Feakins	Local resident
Rosemary Butler	Local resident
Janet Wright	Local resident
Graham Stevenson	Local resident
Jane Arkwright	Local resident
John Fryett	Local resident
Antona Maas	Local resident
Diana van der Klugt	Resident of Pulborough
Wendy Carter	Local resident
Pauline Messenger	Local resident
Charles Shaw	Local resident
Carolyn Shaw	Local resident
Jane Joseph	Resident of Billingshurst
Michael Joseph	Local resident
Peter Lee	Local resident
Geoffrey Davis	Local resident
S Vokins	Local resident
Jacqui Feakins	Local resident
Peter Cozens	Local resident
Karen Cozens	Local resident
John Gillings	Local resident

Steve Kennet	Local resident
Mike Wright	Local resident
Len Wheeler	Local resident
Jo Wheeler	Local resident
Paul Alsey	Local resident
Dee Alsey	Local resident
Fraser Wheeler	Local resident
Sarah Wheeler	Local resident
Tim Ralph	Resident of Ashington
Philip Bentley	Local resident
J Stuart	Resident of Coldwaltham
Tim Wylton	Local resident
R Townsend	Local resident
Pat Morley	Local resident
Vic Heddly	Local resident
Diane Hamilton	Local resident
Pam Keeble	Local resident
Pete Vandendyke	Local resident
Hazel Huskisson	Local resident
Guy Leonard	Local resident
Sue Gillings	Local resident
Rob Rowe	Local resident
Glenys Rowe	Local resident
Vanessa Jones	Local resident
D Herd	Former tenant of Black Horse
Rosalind Simpson	Local resident
Katherine Ohno	Local resident
Janet Bates	Local resident
Susan Paton	Local resident
Angus Davies	Resident of Coldwaltham
Suzanne Coates	Local resident

DOCUMENTS

- 1 Amberley Conservation and Design leaflet No. 1
- 2 Response to appellant's comments on parking by the Black Horse Action Group
- 3 Decision Notice of Assets of Community Value Panel dated 27 February 2013
- 4 Black Horse Action Group comments on Fleurets Viability Report
- 5 Copies of appeal decisions APP/R3650/A/99/1018105 and APP/Q0505/A/11/2167572 submitted by the Black Horse Action Group

Appeal Decisions

Inquiry commenced on 17 May 2016

Site visit made on 24 May 2016

by Graham Dudley

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 July 2016

Appeal A: APP/X5990/C/15/3130605

The Carlton Tavern, Carlton Vale, London NW6 5EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by CLTX Limited against an enforcement notice issued by the City of Westminster Council.
- The Council's reference is RUD 58789.
- The notice was issued on 19 June 2015.
- The breach of planning control as alleged in the notice is the demolition of the Carlton Tavern Public House.
- The requirements of the notice are to rebuild the Carlton Tavern, to match in facsimile the building as it stood immediately prior to its demolition on 8 April 2015, in conformity with the detailed architectural descriptions as to building materials, plan form, exterior and interior, attached to the enforcement notice, and in conformity with the photographs attached for the purposes of illustration.
- The period for compliance with the requirements is 18 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/X5990/W/15/3025122

The Carlton Tavern, Carlton Vale, London NW6 5EU

- 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 CLTX Limited against the decision of City of Westminster Council.
- The application Ref 14/05526/FULL, dated 10 June 2014, was refused by notice dated 13 January 2015.
- The development proposed is for the redevelopment of the site to provide a commercial unit (A4) on the ground and basement floors and to provide a total of 10 residential units.

Procedural and Other Matters

1. The inquiry was held on 17, 18, 19, 20 and 24 May 2016.
2. The Carlton Tavern was not a listed building at the time of demolition and listed building legislation does not apply. The building was also not formally identified as an Asset of Community Value at the time of demolition, although subsequently the use of the site has been identified as such. The council say that for the purposes of the National Planning Policy Framework [the Framework] the building was a heritage asset. The Framework indicates that a heritage asset is a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions,

- because of its heritage interest. 'Heritage asset' includes designated heritage assets and assets identified by the local planning authority (including local listing). There is no formal identification of the building as being historically important or a heritage asset.
3. I acknowledge that Historic England were in the process of listing the building and had found it to be historically important, but up until then there was little recognition of this and the formal process towards listing had not concluded. In my view, the 'identification' of the building is important as how is an owner to know that they have a building of heritage value, unless it has been identified. The appellant would not reasonably have aware that this was likely to be the case until consulted by Historic England during the listing process. I therefore attach little weight in terms of the Framework policy relating to heritage assets.
 4. When the planning application was submitted for the flat development that involved the demolition of the public house, the local planning authority did not object on the grounds of demolition or it being a heritage asset and there was little in the way of comment from interested parties. The application was recommended for approval by officers, although overturned by the planning committee on what appears to be mainly design grounds of the new development. It was argued by some that there was no need to object on the basis of the demolition of the public house as the new building was refused. However, had the local planning authority considered at that time it to be an identified heritage asset and historically important I have little doubt it would have been indicated in the reports, and probably be a reason for refusal.
 5. However, that does not itself mean that the demolition was justified, as clearly matters had changed and Historic England's study of interwar public houses had identified the importance of the public house, unrelated to the application, and the appellant was well aware of that process, because Historic England had consulted the appellant. With Historic England's investigations and listing process taking place it is not unreasonable for the council to reconsider its position on the historic importance of the public house as the subsequent information from Historic England showed it to be a heritage asset.
 6. A case was made by the council and interested parties that what appears to them to be intentional unauthorised development by the appellant should be a material consideration in the appeals. It was also put that the decision should effectively be a deterrent to others in a similar position. While I appreciate the sentiment behind this, it is my view that while the development was unauthorised, no weight should be attached to that, but the case should be considered on its planning merits as a retrospective planning application. However, I also accept that there should be no advantage given to the appellant because the demolition has now occurred.
 7. In coming to this view I have taken into consideration the letter from the Chief Planner on 31 August 2015 relating to intentional unauthorised development. I acknowledge that it introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. However, it is clear that the policy is to apply to all new planning applications and appeals received from 31 August 2015. These appeals are prior to that date and I do not consider it would be reasonable to retrospectively apply the policy, as the appellant would not have been aware of it at the appropriate time.

8. It became apparent that the appellant's planning witness was not qualified, as identified in his evidence. In particular he is not a member of the RTPI and has not completed the Certificate in UK Planning Law. I accept, as put by the council, that this is a serious matter. However, I do not consider that means all the planning evidence should have no weight, but clearly the evidence has to be considered carefully, particularly avoiding areas cut and pasted from other decisions, and the weight attached to some aspects will be diminished.

Decisions

Appeal A

9. The appeal is allowed on ground (g), and the enforcement notice is to be varied by the deletion of 18 months and the substitution of 24 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Appeal B

10. The appeal is dismissed.

Reasons

Section 174 Appeal

Whether the requirements in the notice are adequate to enable the appellant to know what is required to remedy the breach

11. The majority of the building has been demolished, but the demolished materials have been retained on site, albeit in a heap and clearly in a severely damaged state. However, one gable end of the building is largely intact along with part of the return walls/roof, and some of the ground floor structure is retained. The gable wall provides extensive evidence of the structure of the building, including floor heights, roof slopes, windows etc. The ground plan of the building will be readily apparent from the base of the walls. In addition to that there is an extensive photographic record of the main parts of the building internally and externally. There are also plans of the building prior to demolition, produced for the planning application.
12. While I do not consider that much of the detailed fabric, such as the terracotta, glazed features and joinery could be salvaged from the rubble for reuse, there is sufficient material, when combined with the photographic evidence, to allow the details of those features to be identified and replicated. I consider that with all the information available there would be very little need for conjecture in relation to the external or internal arrangement of the building prior to demolition or the components used to build it.
13. The appellant says there is a lack of detail in the enforcement notice to enable the appellant to know what is required to be done. The concern in particular is that it appears to the appellant that the council expects a 'facsimile' to be produced 'exactly' as that existed prior to demolition. I accept that the council's heritage witness did to some extent give that impression, but he clearly acknowledged that every last detail such as socket and pipe positions could not necessarily be reproduced, particularly at upper floor levels where there were fewer photographs.
14. However, whether the notice is precise enough is not a matter for the council's witness, but for law and reasonable interpretation. It is commonly

acknowledged that the appellant is in the best position to know how something was arranged prior to them changing it. In my view, the notice is precise. It makes reference to an expectation to match in facsimile the building as it stood immediately prior to its demolition on 8 April 2015, in conformity with the detailed architectural descriptions as to building materials, plan form, exterior and interior, and photographs attached to the notice. The notice is to be read as a whole, so the requirement to produce a facsimile and match the building as it stood is read together with being in conformity with the details available and as described in the notice. This clearly acknowledges that the rebuilding will use the information and evidence available and is not unreasonable and will be a 'replica' of the original building. I do not consider the notice to be imprecise or unreasonable.

Planning Policy

15. The development plan includes the London Plan [LP], Westminster City Plan: Policies [SP] and saved policies of the Unitary Development Plan [UDP].
16. One of Westminster's strategic objectives of the Spatial Strategy is to increase the supply of housing and as a general principle housing is acceptable on all sites within Westminster and is the priority land use for delivery. However, it also notes that these homes will be designed and constructed to ensure a high quality residential environment. The quality of the residential environment and local characteristics of Westminster's neighbourhoods will continue to be a defining consideration for development proposal. So while housing provision is very important the design and effect on environment also remains a defining consideration.
17. SP Policy S25 relates to heritage and recognises Westminster's wider historic environment. Its extensive heritage assets will be conserved, including conservation areas and open spaces and their setting. SP Policy S34 notes that all social and community floor space will be protected, except where existing provision is being reconfigured, upgraded or re-located in order to improve services. Where the council accepts a loss or reduction in floor space the priority replacement would be residential use.
18. UDP Policy DES1 sets out principles of urban design and conservation. The aim is to ensure the highest standards in the form and quality of new development in order to preserve and enhance the townscape. UDP Policy DES9 relates to Conservation Areas with the aim to preserve and enhance the character and appearance of conservation areas and their settings. This notes buildings identified as of local architectural, historical and topographical interest in adopted conservation area audits will enjoy a general presumption against demolition. Development, although not within the conservation area, that might have a visibly adverse effect upon the area's recognised special character and appearance will not be permitted. UDP Policy DES10 relates to listed buildings with an aim to protect and enhance them, their settings and features of special architectural and historic interest. I do not consider this policy relevant to the appeal as the building was not listed at the time of demolition or thereafter.
19. LP Policy 4.8 provides support for successful and diverse retail sector and related facilities and services. LP Policy 7.8 relates to heritage assets and in planning decisions development should identify, value, conserve and restore,

re-use and incorporate heritage assets, where appropriate. Development affecting heritage assets and their settings should conserve their significance.

Ground (a) and Deemed Planning Application

20. The main issue is whether retrospective planning permission for demolition of the public house should be granted, particularly taking into consideration any heritage and community value of the public house.
21. It is common ground that the demolition of the public house was unauthorised, as prior approval for demolition was not sought as required by the Town and Country Planning (General Permitted Development) (England) Order 2015. It is also common ground that when assessing the retrospective planning application the building should be considered as being in the state it was in prior to the demolition occurring. At that time, Historic England was actively going through the process to consider whether the building should be recommended for listing. In simple terms in that situation the outcome of the listing process would and should be awaited and planning consent for demolition prior to Historic England decision should not be granted. That process has now ceased because of the demolition.
22. There is some difficulty with the current situation because, as noted below, there has inevitably been a considerable effect on the heritage value of the building. To take the effect of the demolition on heritage value into consideration might be giving advantage to the appellant for having demolished the building, and the new policy to take into account intentional demolition post dates the actions. I consider that it is necessary to consider the reality of the situation and therefore the value of the building if reconstructed should be considered, as the planning regime is not intended as a system for punishment for unauthorised actions.
23. Firstly I will consider the heritage value prior to demolition and then following demolition and reconstruction.
24. Historic England decided to undertake a study of urban and suburban public houses built in inter-war England from 1919 to 1939, because of the general loss of this type of building that has started to occur. The appeal building was included in this. It was not included as a reaction to the proposed development at the site, as is often the case, but identified separately, in its own right, to be part of the study. The study started with many buildings being considered for listing, but this was narrowed down and 34 urban and suburban public houses were assessed, with 20 positive recommendations for listing, 7 not to list and 7 rejected at initial assessment. All the recommendations were listed by the Department for Culture, Media and Sports [DCMS]. It was also noted by Historic England that 99.8% of all their recommendations were accepted by DCMS. An email from DCMS confirms that it considered it to be highly likely that DCMS would have listed the building. The appeal building would have been put forward for listing had it not been demolished, so it seems to me to be highly likely that it would have been listed had it not been demolished.
25. Section 12.10 of Volume Two of the Historic England Study sets out the detailed assessment of the Carlton Tavern. The public house was a replacement for a Victorian public house on the same site that was bombed in the First World War. It was designed by the architect Frank J Potter who undertook other work for Charrington and Co. The Carlton Tavern had two principle

elevations, one facing Carlton Vale and the other towards a lane by Paddington Recreation Ground. The recreation ground is currently laid out for many different sports, with a pavilion and café. St Augustine's church, which is a grade I listed building, is opposite. The area around Carlton Tavern was substantially altered by bombing in the Second World War and by subsequent redevelopment in the later half of the 20th century.

26. The Carlton Tavern is identified as having two main storeys, with attic and cellar along with a single storey projection to the rear that served as a luncheon and tea room. It was originally joined to the adjacent building and its gable end remains in place. Its design was plain vernacular style, drawing on Neo-Georgian and Arts and Crafts forms of architecture. It was built of brickwork with significant steel work internally and a tiled and gambrel roof. There are features formed of unglazed, stone coloured, terracotta and decorative glazed tiles, some of which formed an advertisement for the public house and functions within, and for the brewery.
27. Historic England found the exterior to generally have survived as built, apart from glass to some ground floor windows, and doorways into the tea room being later insertions. The main interior was found to consist of three distinct rooms, a public bar, a saloon bar and a luncheon and tea room, then in use as a function room. The previous arrangement for off sales was also identified; probably an 'L' shaped compartment, which was removed some time after 1960. Original counters, joinery, mouldings and other features were identified. The luncheon and tea room was found to be distinct from the other bar rooms in its position, design, service arrangement and size and was the largest of Carlton Tavern's public spaces.
28. After the First World War, public house building was slow and fewer than 25 a year were constructed between 1918 and 1921 and fewer survive, so the Carlton Tavern provided a rare example of the type of work being undertaken by a leading brewery at the time. Historic England noted a growing concern with the improvement of pub facilities in order to raise the reputation of the institution, which by the end of the period was demonstrated by restrained buildings featuring spacious and comfortable interiors, provision of recreation beyond drinking, the encouragement of family-centred leisure, and the service of meals and non-alcoholic drinks.
29. The Carlton Tavern was especially noted for its luncheon and tea room, prominently identified by the external lettering. The luncheon and tea room was archetypical of the improved public house and must have been versatile in its use, which was confirmed by many interested parties at the inquiry. The pub was notable for its restrained design, well planned servery and inter-connecting counters. In other respects, the Carlton Tavern resembles pubs of the pre-First World War period, with such features as the prominent external signage and limited lavatory facilities. Historic England found that the pub provided a good reflection of what was an important moment of transition for the English pub and unusual and notable in proclaiming the name of the brewery. It was found to be an extremely well-preserved example, internally and externally, of a rare, early type of improved pub being built by a nationally significant local brewery. I concur with Historic England that prior to demolition this was a heritage asset worthy of recommending for listing.

30. I now consider the Carlton Tavern's heritage value if rebuilt. A summary of the building's interest was identified by Historic England. Its architectural interest was that of an early inter-war improved public house, carefully detailed and built of good quality materials, showing the vision of a leading London Brewery. If Carlton Tavern were rebuilt, clearly the intrinsic value of the original materials would be a substantial loss to its architectural and historic interest and it would not be an 'early' example of the type. However, I see no reason from the information available why a detailed and accurate reconstruction could not be undertaken. So while it would not be 'early' it would remain a good example as a replica of an early inter-war improved public house, still showing the vision of a leading London brewery at that time. The materials in the reconstruction could be equally good quality and while not the original it would still provide reasonable evidence for the building prior to demolition and be of architectural and historic interest.
31. The plan layout could be readily reconstructed and a reconstructed building could provide a good record of this. While I accept that the original arrangement of the off-sales had changed prior to demolition, the reconstruction would be of the building as demolished and should provide the evidence of the change and that does not add weight against the architectural and historic interest that could be gained from the reconstructed plan form.
32. Clearly the interest generated by the survival of the original building has been lost and that is a significant loss. However, the hierarchy of rooms could be reconstructed, together with fixtures and fittings and decorative treatment as at the time of demolition. External signage would not be the original, but could be reconstructed so the layout and character generated by the signage would be there for people to see.
33. Rarity and date would be affected in that the materials and building would not be original and that is a significant loss. However, the reconstructed building would still show the layout of what was a rare public house and I consider there is a clear benefit to that. The reconstruction would not be of the original date, but it would be a detailed example of the building of that date.
34. The historic interest in the materials is lost, but a reconstruction would be of historic interest, showing the layout and arrangement of an improved public house that would still illustrate the growing concern at the time of raising the reputation of public houses by providing family facilities and reducing drunkenness.
35. I have taken into consideration the historic importance of the architect Frank Potter. He was not a major architect of the time, but did undertake a number of commissions for the brewery and some private houses in Hampstead. However, given his low profile I attach little weight to the building being a representation of the architect's work.
36. Overall, I conclude that the building was of considerable architectural and historic interest prior to demolition and that it is highly likely that it would have been listed. It seems to me that hasty demolition, against what the appellant's advisors would have recommended, as identified at the inquiry, suggests that the appellant was of a similar view. A reconstructed building would obviously lose the historic interest associated with it being an original building using original materials, fixtures and fittings etc. However, reconstruction would provide a substantial amount of evidence about the public house and features

- of importance, such as the plan form and example of an 'improved public house'. I therefore attach considerable weight to reconstruction of the original building.
37. I accept that when reconstructed it would not be a listed building and there is no evidence to show that it would be included on the statutory list in the future, but it would remain the subject of the enforcement notice. However, notwithstanding that, I consider that there is substantial benefit in the reconstruction on historical grounds.
38. At the time the Carlton Tavern was demolished it had not been identified as an asset of community value. However, subsequent to demolition the appeal site has been nominated and listed as an asset of community value.
39. The provisions for assets of community value give communities a right to identify a building or other land that they believe to be of importance to their community's social well-being. The aim is that, if the asset comes up for sale, then the community will be given a fair chance to make a bid to buy it on the open market.
40. These provisions do not restrict in any way who the owner of a listed asset can sell his property to. They do not confer a right of first refusal to community interest groups. The provisions do not place any restriction on what an owner can do with their property, once listed, if it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions – it is open to the Local Planning Authority to decide that listing an asset of community value is a material consideration if an application for any change of use is submitted, considering all the circumstances of the case.
41. Some permitted development rights have been modified to take into consideration assets of community value, removing or modifying the right in respect of them, such as for demolition and some changes of use. The current status as an asset of community value is relevant and although the building has now been demolished, it is not unrealistic to consider that there is a time in the next five years when there could be a non-ancillary use of the land that would further the social well being or social interests of the local community.
42. The notice was not challenged by the appellant, but that is because it proposes an A4 use on the land and in any new development it would not be possible to challenge the fact that the land is likely to have a relevant use and social value. It does not mean that the appellant considers the Carlton Tavern was a greater asset of community value. The appellant says that the benefit to the community can be achieved in the proposed A4 use and this matter should not affect the consideration associated with the demolition.
43. The nomination as an asset of community value is a material consideration in both appeals. In the nomination it was noted that the Carlton Tavern has served the community well as a public house, a venue for celebrations of birth and marriage and a well-used place for memorial services. The Carlton Tavern also has a history of helping local sports and community organisations by facilitating meetings. The attached luncheon room made the Carlton Tavern more than a public house and served as an ideal inclusive setting where important events could take place. Interested parties confirmed this at the inquiry as well as in written submissions. Some also noted the importance of

the church, park and public house as a group, effectively likening them with the centre of a village, so in their view the loss of the public house would affect that character. I consider that it is the historical association, past usage, layout of the spaces, character and appearance of the previous building that has considerable important for the community.

44. I acknowledge that the proposed public house facility could be adapted to have the character inside to the landlord/owner's choice. However, from the evidence presented by interested parties, it was clear that the value of the original building was not simply a matter of it being a public house or A4 use, but was associated with the character, appearance and arrangement of the Carlton Tavern, prior to demolition and the associations this had for use for many different occasions.
45. The floor area of the proposed facility would be smaller and the outside arrangement would be extremely small and not nearly as adaptable as a larger garden space, and a considerable part of the proposed floor space is in a basement, which would not be nearly as pleasant as a ground floor space leading to a garden, as provided by the luncheon and tea room. With the proposed appeal scheme the A4 part of the development would not have been a prominent feature in the same way as the Carlton Tavern was, but a very small and integral part of the housing scheme.
46. Therefore, any facility provided, accepting it could be fitted out well, would to my mind be unlikely to be as valuable to the community as the Carlton Tavern and I attach a little weight to the loss of the Carlton Tavern as an asset of community value.
47. I have considered in detail below the proposed scheme together with consideration of the character and appearance of the surrounding area. The Carlton Tavern was an attractive building in the area and although of much smaller scale and of a different character to the nearby flats was an appropriate scale and design at the entrance to the park and was reflected by the small scale house on the opposite side of the entrance. While not within the conservation area, and probably never intended to be, it was within the setting of the Maida Vale Conservation Area. It provided a facility for users of the park and I accept that it would have been perceived as part of the 'village' together with the nearby church and recreation ground. Its demolition is a loss to the character and appearance of the area and harms the setting of the conservation area.
48. The appellant has put forward a scheme for redevelopment of the site that would include an A4 use. I have considered that application below under the Section 78 appeal and found it not to be acceptable and therefore I attach little weight to redevelopment of the site with that scheme. Other schemes could be proposed that might be more acceptable on the site, which could have benefits associated with housing provision and could accord with the priority to provide housing. However, I cannot envisage what form or size of development might be acceptable, or make a judgement about whether the benefit of any potential schemes might outweigh the harm that has been identified through demolition of the Carlton Tavern and warrant not rebuilding it.
49. Overall, I acknowledge that there may be potential benefits in providing additional housing, some of which might be affordable and that there could be an A4 facility on the site, but any weight to that is limited as the appellant has

not provided a scheme that demonstrates on the balance of probability that a viable scheme could be found. Without an appropriate scheme the site would be left open and unused, which would be to the detriment of the setting of the conservation area as the benefits of the existing building and the contribution it makes to the character and appearance of the area have been lost. The heritage value of the building, as identified by Historic England, has also been lost. In terms of the conservation area, I do not consider that any public benefits would outweigh the harm caused by the loss of the building on the setting of the conservation area. I conclude that retrospective planning permission for the demolition of the Carlton Tavern should not be granted. The development would not accord with SP Policies S25 and S34, UDP Policies DES1 and DES9 and LP Policies 4.8 and 7.8.

Ground (f)

50. The issue under ground (f) is whether the requirement to rebuild the public house exceeds what is necessary to remedy the breach or any injury to amenity.
51. The enforcement notice is directed at remedying the breach of demolition of the Carlton Tavern. Therefore the requirement to reconstruct the building as it was before is not unreasonable and does not exceed what is necessary to remedy the harm of demolition. It is argued that demolition of the public house has not caused harm to local amenity and that the harm that has been caused could be remedied by clearance of the appeal site. For the reasons set out under ground (a) I do not accept that the demolition has caused no harm to amenity. The lesser step of clearing the site would improve the character and appearance of the area in relation to the current demolition site, but it would not remedy the harm caused by loss of the building by its demolition.
52. The appeal on ground (f) fails.

Ground (g)

53. The issue is whether the period allowed for the remedy is reasonable. The appellant identifies the difficulties that would be involved in reconstructing the building, including the sourcing/manufacture of the joinery and other fixtures and fittings. There is no detailed information about the time this would take to back up those assertions. However, from experience I consider that it would be very time consuming preparing drawings and specifications and sourcing the specialist companies that would be required to reproduce some of the now more unusual or decorative fittings before construction starts. The construction period would also be time consuming. I accept that if the appellant has started the work, but not quite completed it, then the council does not have to take enforcement action. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, the 24 months requested by the appellant is reasonable and I shall extend the period from 18 months to 24 months for compliance with the notice. The appeal under ground (g) succeeds.

Section 78 Appeal

54. The main issue is the effect of the proposed development on the character and appearance of the surrounding area, including taking into consideration views into and out of the adjacent Maida Vale Conservation Area and its setting.

55. Part of the land around the Carlton Tavern is within the conservation area, but the building itself is outside of the conservation area. Key features of the conservation area include the generally early residential suburb, served by small groups of shops, but with some commercial activity, including the BBC. Different parts of the conservation area have different characters, including the stuccoed villas and terraces beside the canal, poly-chrome brick faced town houses and red brick mansions, and these reflect the changing styles of development over the period that the area was formed.
56. I consider originally the Maida Vale Conservation Area's architectural and historic interest related to the opulent and stuccoed terraces and villas mainly of the early 19th Century that were present in the streets originally identified and designated as the conservation area. It was later decided that the Victorian and Edwardian buildings were also considered of worth and should be added to the conservation area. The Paddington Recreation Ground, which was first laid out in 1889, was seen to be an important open space associated with the conservation area, around which the subsequent Edwardian mansions were laid out and is an integral and important part of the conservation area.
57. The Carlton Tavern was not included in the conservation area and there is no evidence to indicate whether it was considered for inclusion. However, given its proximity to the edge of the conservation with part of its grounds included, I consider that it is very likely that it would have been considered and for whatever reason it was decided that it would be excluded. However, that does not mean that it does not make a contribution to the park and conservation area. It is clearly within the setting of the conservation area and visible within views to and from the conservation area.
58. The immediate area of the Carlton Tavern is mixed. To one side is the Maida Vale Conservation Area, particularly the Paddington Recreation Ground, and on the other side the housing area formed mainly by blocks of flats. The heights of these vary a little, but are generally reasonably low, with those near to the Carlton Tavern being about 4 storeys high. The designs externally have pronounced horizontal division provided by the exposed floor edge and then vertical sub-division provided by the brick cross walls. This provides a box like main structure infilled with windows, balconies and brickwork. This gives the appearance of the elevations being formed by a number of rectangles with various forms of infilling.
59. The architect has considered the context of the appeal site and found these buildings to be a main feature of the character and appearance of the area and they have been used as a main influence for the appeal scheme. However, the form of construction has been kept decidedly modern and not copied the existing buildings, with a main frame with decorative panel infilling and windows. The scale and proportion of the individual parts of the building have maintained that of the adjacent buildings, and the overall height would be similar.
60. Overall, I consider that the principle of the design is good and while some question was raised about materials and colours, these are matters that could be resolved through appropriate conditions.
61. The Carlton Vale entrance to the park is a main entrance, with a small car park and access to the council's maintenance yard. The entrance area has considerable vegetation and the trees within the park are prominent features

from Carlton Vale. While there are 4 storey blocks of flats on either side, at the entrance, the scale of development is lessened on one side, with a small-scale house and previously on the other side, Carlton Tavern. To my mind, while the entrance to the recreation ground is not an ornate or decorative feature, the transition from housing development to the recreation ground is important and the reduced bulk and massing of the buildings adjacent is an important aspect of that and of views into the conservation area.

62. While the principle of the adjacent flat blocks has been used as a main influence, the design has then followed, to some extent, the previous location of the Carlton Tavern, in particular the forward location in relation to Carlton Vale, which is considerably different from the more set back position of the adjacent flats. In addition, the building has been 'extended', from the back of the previous pub position, towards the park and again well beyond the rear of the adjacent flats. To relieve the impact of the proposed building on the park and access road, stepping has been introduced into the elevations and the roof steps down to the rear, forming terraces.
63. In principle this is not an unreasonable approach to fitting the building into its environment. However, while I appreciate that a developer is required to make maximum use of a site, that has to be on the basis that the overall building would be acceptable in that environment. In this case, while I acknowledge the appropriate principle of the design, the resulting building would be far too bulky in the context, extending out both front and rear from the building adjacent, to which the principle of the design is related.
64. The considerable bulk and mass in this location close to the access of the recreation ground and extending rearwards towards the recreation ground beyond the current location of development would result in an incongruous and alien arrangement, harming the important transition area from the housing to the recreation ground. I accept that from within the main body of the recreation ground the development would be well screened by the band of trees and vegetation, but the access is clearly well used and the transition from recreation ground to residential area is important when entering and leaving it and when passing the entrance, going along Carlton Vale. To that extent the proposal would harm the views into and out of the Maida Vale Conservation Area and not preserve its setting.
65. I acknowledge that there would be considerable benefits through the provision of the type and large size of flats proposed and the contribution towards affordable housing and tree planting in the area, secured by an undertaking. I note that the council has a good 5 year housing land supply, but that does not mean that more housing should not be provided if appropriate and weight given to the benefits it would bring. I therefore attach considerable weight to this. I also note the provision of the A4 use which, as noted above, is not as good as that originally provided by Carlton Tavern. Nevertheless it would still be a beneficial part of the scheme and I attach some weight to it. However, taking all these factors into consideration I do not consider that the benefits of the development outweigh the harm identified, including to the Maida Vale Conservation Area. In terms of the Framework and sustainable development, the proposal would make significant contributions in terms of its social and economic role, but because of the harm to the character and appearance of the area, it would not protect the built environment and on balance, I do not consider it to be sustainable development. I have also taken into consideration

the loss of the former public house which as identified under Appeal A, ground (a), could still make a reasonable contribution in terms of historic heritage and this adds weight to my conclusion. I conclude that planning permission for the proposed development should not be granted. The development would not accord with SP Policies S25 and S34, UDP Policies DES1 and DES9 and LP Policies 4.8 and 7.8.

Graham Dudley

Inspector

APPEARANCES**FOR THE APPELLANT:**

Rupert Warren QC
 He called
 Dr Nicholas Doggett BA Director and Head of Asset Heritage Consulting
 PhD Cert Archaeol MCIfA
 IHBC
 Stephanie Brooks Chartered Architect, Director of Brooks Murray
 Architects
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FOR THE LOCAL PLANNING AUTHORITY:

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INTERESTED PARTIES:

Nigel Barker Historic England
 Cllr Rita Begum
 Cllr Jan Prendergast
 John Simmance Friends of Carlton Tavern
 Poly Robertson Rebuild Carlton Tavern
 Corin Levick
 Chris Price
 Robin Banks
 Oz Rankin Hockey Club

DOCUMENTS

Document 1 Notification letter
 2 Revised undertaking
 3 Appellant's opening statement
 4 Council's opening statement
 5 Information regarding Carlton Tavern Steelwork
 6 Cllr Begun's script
 7 Email from Historic England 18 May 2016
 8 Enforcement appeal committee report
 9 Robin Banks – written submission
 10 Listing information Park Crescent and Covent Garden
 Underground Station
 11 English Heritage (Historic England) document Changing London re

- Covent Garden Underground Station
- 12 View from Paddington Recreation Ground (Brooks Murray Architects)
- 13 Extract from Spatial Strategy related to housing
- 14 Extract from Spatial Strategy relating to increased supply of housing
- 15 Conditions, Undertaking and policies
- 16 Councillor Prendergast submissions
- 17 Mr Rafferty – Qualifications and Experience
- 18 Appellant’s suggestions related to conditions
- 19 Photographs and historic maps from Mr Banks
- 20 Council’s closing submissions
- 21 Appellant’s closing submissions
- 22 Legal references and appeal decisions

Appeal Decision

Site visit made on 13 September 2016

by **David Troy BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14th October 2016

Appeal Ref: APP/R2520/W/16/3150763

The Penny Farthing, Station Road, Timberland, Lincolnshire LN4 3SA

- 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 and Mrs Robert Pickles against the decision of North Kesteven District Council.
 - The application Ref 16/0087/FUL, dated 20 January 2016, was refused by notice dated 13 April 2016.
 - The development proposed is change of use from public house to residential with 2 new houses in the car park.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council's statement and decision notice refers to Policy LP15 of the emerging Submission Draft Central Lincolnshire Local Plan (CLLP) (April 2016). The CLLP has been submitted for examination. However, as I am not aware of specific objections that may have been made nor the outcome of any examination in terms of an Inspector's report, accordingly it is at a stage that significantly limits the weight I can give to it as a material consideration.

Main Issue

3. The main issue is whether or not it has been adequately demonstrated that reasonable efforts have been made to find a purchaser, tenant or operator willing to continue the business or a business of a similar value to the local community.

Reasons

4. The Penny Farthing public house is a two storey building located in the village of Timberland. Residential properties are located to the west, north east and south. The public house car park is located immediately to the north of the main public house building with access off Station Road.
 5. Saved Policy R3 of the North Kesteven Local Plan 2007 (LP) states that planning permission will be granted for proposals that will result in the loss of retail, social or community facilities that serve the local community only if there are adequate alternative facilities locally, equivalent facilities have been or are to be provided elsewhere in the area, or the existing use is not viable in the longer term. The supporting narrative in paragraph 6.15 to Saved Policy R3 of
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the LP advises that where application for the change of use of such premises as public houses are received, the applicant will normally be expected to demonstrate that the business is no longer economically viable (and cannot be expected to return to viability in the foreseeable future) and that reasonable efforts have been made to find a purchaser, tenant or operator willing to continue the business (or a business of a similar value to the local community) without success. From the evidence provided, the Council are not questioning whether the business in its current form is no longer economically viable but whether there have been reasonable efforts to market the premises.

6. I find this policy to be broadly consistent with Paragraph 28 of the National Planning Policy Framework (the Framework) which encourages planning policies and decisions to plan positively for local community facilities that support the rural economy and as appropriate, to guard against the unnecessary loss of valued facilities and services. The Framework also expressly refers to public houses as community facilities. Paragraph 70 of the Framework encourages planning policies and decisions to plan positively for the provision and shared use of local community facilities, such as public houses, that enhance the sustainability of communities and to guard against the unnecessary loss of valued facilities and services.
7. The proposal would involve the change of use of public house premises into two dwellings and the construction of two additional detached dwellings on the car park. Allowing the change of use would permanently remove the last remaining pub from the village that has recently lost its shop/post office. The appellants however take the position that the pub is not a valued community asset as demonstrated by the lack of use by locals which has led to the downturn in trade in the last few years. This they consider is also down to a number of factors including changes in the drinking and eating habits of the customers, legislation and the smoking ban law.
8. The premises are currently vacant and have been so since September 2014. I have noted the restricted size of the premises and of the available trading area, the currently limited passing trade, the comments about the investment by the appellants in the public house in recent years and the likelihood of further expenditure required to re-introduce a public house use. I am also mindful that the Framework place emphasis upon ensuring viability and deliverability of development. I have had regard to the range of evidence submitted by the appellants including the Public House Viability Test carried out using the guidance provided by CAMRA. This is supported by more general background information regarding the economic plight of licenced premises in recent years.
9. The appellants state that the premises have been marketed since 2012. However, from the representation received there appears to have been little awareness on the part of the local community of the invitation for future interest in the pub, some doubts raised about whether or not the pub has been continually marketed during the period and also that prospective purchasers attempts to view the pub have been thwarted. The appellants have stated that they have continually marketed the premises as a public house. At the time of site visit, however, I saw no publicity to that effect displayed at the premises. I have not been supplied with any evidence or marketing particulars to clarify in more detail what enquiries have been received, the date the property was viewed and comments made by prospective purchasers.

10. The appellants have also stated that to date they have received one offer and only two people have been shown around the premises. The one offer received was made by a local resident and turned down by the appellants as being too low. The local resident has stated that they are still willing to enter into negotiations to buy the pub and from the other representations received from the parish council and local residents there maybe interest from other parties. Given the level of support received articulated through the appeal and the current interest in purchasing the pub, I consider at this stage that there is still potential opportunity for a more locally-inspired initiative to emerge. Further opportunity may also arise following the registration of the pub as an Asset of Community Value (ACV).
11. Whilst I note the appellants have stated alternative commercial uses have been explored, I have not been provided with information about these uses and what alternative operating models have been considered to ensure a continuation of use in accordance with Paragraph 70 of the Framework.
12. I have had regard to the availability of a number of other public houses in the surrounding area. Each public house has a different character and function, and whilst alternatives are available nearby, spatial proximity is not in itself a necessarily reliable guide to the value placed on public houses by local communities, or of the particular contribution to local areas. It is evident from the considerable number of representations made that the public house is highly valued by local residents and is seen as a contribution to the vitality of the village. The strength of local opinion is further evidenced by the fact that the Penny Farthing was registered as an ACV in June 2015.
13. For all of these reasons, I consider that reasonable efforts have not been made to find a purchaser, tenant or operator willing to continue the business (or a business of a similar value to the local community) to fulfil the requirements of Saved Policy R3 of the LP. Further, in terms of the Framework, I am not satisfied that the loss of a facility clearly valued by the community can be concluded to be 'necessary'.
14. I therefore conclude that the proposed development would involve the loss of a valued community facility which would be harmful to the surrounding community. The development would therefore conflict with Saved Policy R3 of the LP that, amongst other things, seeks to protect the loss of community facilities unless alternative provision is made or the existing use is not viable in the longer term. In addition, it would conflict with paragraphs 28 and 70 of the Framework that seek to plan positively for local community facilities that support the rural economy, enhance the sustainability of communities and to guard against the unnecessary loss of valued facilities and services.

Conclusion

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR

Appeal Decision

Hearing held on 28 June 2016 and 26 July 2016

Site visit made on 26 July 2016

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 November 2016

Appeal Ref: APP/W0530/W/16/3144471

**The Three Tuns Public House, 30 High Street, Guilden Morden,
Cambridgeshire SG8 0JP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Florin Interiors Ltd against South Cambridgeshire District Council.
 - The application Ref S/1527/15/FL, is dated 17 June 2015.
 - The development proposed is the change of use from A4 (drinking establishment) to C3 (single residential dwelling house).
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Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural Matters

2. If the Council had been in a position to determine the application, planning permission would have been refused for reasons relating to the reduction in the level of community and service provision in Guilden Morden.
 3. The listing description refers to the property as the Three Tuns public house. Both the Council and the appellant refer to the property as 30 High Street and also as the Three Tuns public house. From the evidence before me including what I saw at my visit, it is the same building. For the avoidance of doubt, and with the agreement of the Council and appellant, I have referred to the property as the Three Tuns public house.
 4. The Three Tuns is a grade II listed building, within the Guilden Morden Conservation Area. There are other listed buildings nearby. As required by Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have paid special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and of preserving or enhancing the character or appearance of a conservation area.
 5. The application form described the proposal as being the change of use from A4 / A2 to single residential dwelling house (C3). The appellant's appeal form described the proposal as being the change of use from A4 (drinking establishment) to C3 (single residential dwelling house). At the hearing the main parties explained that the description of the proposed development had
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been altered and agreed when the application was validated, and that it should be the change of use from A4 (drinking establishment) to C3 (single residential dwelling house). With the agreement of the main parties I have referred to that description above. As the application was considered by the Council on that basis I do not consider this would breach natural justice.

Main Issue

6. The main issue is the effect of the loss of a community facility in the form of the Three Tuns public house on the provision of community services and facilities in the village.

Reasons

Background

7. The Three Tuns is a detached render and tiled building with a large garden and generous parking provision. There are two bars on the ground floor of the property, along with associated store rooms and a commercial kitchen, and a basement cellar below. The upper floor provides residential accommodation. Centrally positioned within the village of Guilden Morden the former public house is surrounded by residential development, including some properties that are listed.
8. Policy SF/1 of South Cambridgeshire District Council's Local Development Framework Development Control Policies (2007) (DCP) seeks to protect village services and facilities where such loss would cause an unacceptable reduction in the level of community or service provision in the locality. The policy includes public houses within the list of services and facilities. In determining the significance of the loss the policy requires the consideration of the established use of the premises and its existing and potential contribution to the social amenity of the local population, the presence of other services and facilities which would be an alternative with convenient access, and the future economic viability of the use, including financial information and efforts to market the premises.
9. The aims of this policy are broadly consistent with objectives of the National Planning Policy Framework (the Framework). A core planning principle of the Framework is that sufficient community facilities and services should be delivered to meet local needs. Paragraph 69 seeks to facilitate social interaction and inclusive communities, whilst paragraph 70 states that to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should 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. Community facilities include public houses. A requirement of paragraph 28 is that planning policies should support the promotion and retention of local services and community facilities in villages.

Established Use

10. Since the public house's closure part of one of the ground floor rooms has been converted to provide an office for the appellant's interior design business. The rest of the property remains as it was left when the business closed. From my visit to the property it was apparent that a floor-ceiling height partition had been erected around the bar so as to separate it from the office. Whether this

partial change of use and associated alterations requires planning permission or listed building consent would be a matter for the Council to address. Nevertheless, at the hearing it was agreed by the main parties that the property is a vacant public house. Having regard to the evidence before me, I have no reason to disagree and have considered the appeal on this basis. Given this, I shall consider the other matters identified in DCP Policy SF/1.

Village Services and Facilities

11. Local residents have described the Three Tuns as having offered an opportunity for family friendly dining, and a place where individuals and community groups could meet. In addition it appears there was permission in the 1960s for the siting of three caravans within the public house's garden. Whether this is an extant use was not clear but on the basis of the evidence provided the premises offered wet trade and food on a daily basis, including both lunchtimes and in the evenings.
12. Having considered the differing evidence between third parties and the appellant as regards the nature of events held at the public house, their frequency and last occurrence, it appears that in addition to the wet trade and food, a range of other services were offered, including takeaways, a place for informal socialising, and as a venue for a variety of events, ranging from barbeques to vintage vehicle gatherings. When open the Three Tuns would have provided a valued village facility, meeting a number of community and individual needs. Its designation as an Asset of Community Value reflects its value within the community.
13. There is another public house within the village, and after the closure of the appeal property, the Edward VII has provided an alternative venue, with some of the events and meetings held in the Three Tuns now being held there. The Edward VII is located centrally in the village, close to the village recreation ground and hall, and unlike the other public houses in the surrounding villages could be accessed by many local residents without having to travel by car. Whilst The Edward VII may not provide an experience suited to everyone's tastes or offer daily food, it does provide an opportunity to accommodate some of the village activities that were occurring at the Three Tuns. There is also a village hall close to the Edward VII, and this in itself could provide a venue for meetings and activities. As such there is an alternative public house conveniently located to many residents that makes a contribution towards the social amenity of the local population.

Potential Contribution

14. DCP Policy SF/1 also requires consideration of the potential contribution to the social amenity of the local population. The Three Tuns was a tied public house, and was closed by the brewery Greene King before its purchase by the appellant. Evidence of the previous business is limited, but sales and profits were falling before closure. Nevertheless, I cannot be sure whether the previous business operated to its full potential. Whilst it is considered that the property may struggle as a commercial business and / or community public house, this does not preclude other uses for the property or ways of being managed and operated. This could include, as suggested by local residents and the Council, a catering company or as a non-profit operation run by the community. It does not follow that other owners and / or the uses would experience the same problems as experienced by Greene King.

Future Economic Viability

15. There has been little investment in the property since its closure, nor is it clear what occurred before this or what opportunities were taken to promote and diversify the business. I accept there would be costs in starting a new business particularly following one that had been closed, and that the property's former business history may deter some purchasers. Some maintenance repairs would be required, but the appellant's Building Survey Report refers to a number of works that are not essential, whilst other costs, such as an extension, would be a matter for future occupiers to consider.
16. Moreover the operation of a tied public house would be very different to one that was free of a tie. I accept the public house industry can be difficult, but the Council have pointed out that the industry is changing, and I have no reason to disagree with this. The Three Tuns has a central position within the village, generous gardens and parking, as well as living accommodation. Even though the public house has been closed for some time, this does not determine that other businesses would fail, or that re-opening the Three Tuns would cause the closure of the Edward VII.

Marketing

17. DCP Policy SF/1 also requires that consideration is given to the results of any efforts to market the premises for a minimum of twelve months at a realistic price. The Council consider the marketing of the property as a public house for £295,000 was a realistic price, and based on the evidence before me, I have no reason to disagree.
18. The public house closed in January 2013, and was purchased by the appellant in August 2013 for £300,000. This is much less than the minimum time period required by DCP Policy SF/1. As an Asset of Community Value this would have included a six week moratorium period for the local community to respond. In the absence of any such interest, the property was purchased by the appellant with an offer being accepted by Greene King in early June 2013. The brewery would have sought to maximise purchase price, but despite the limited information regarding other offers, there was at least one other from a business that sought to purchase the property as a public house. Nor can I be sure whether the rapid sale of the property would have denied others an opportunity.

Conclusion

19. There is another public house in the village that offers an alternative for some of the services and facilities formerly provided by the Three Tuns. The appeal property was offered at a realistic price, but the marketing was for a much shorter time than that required in DCP Policy SF/1. This would have restricted the opportunity for the property to re-open. Accepting the costs and investment required to re-open the public house, the potential to vary and adapt the business has not been fully explored. For these reasons the proposed change of use would conflict with the requirements of DCP Policy SF/1 and those of the Framework.

Conservation and Listed Building Matters

20. The Three Tuns is a grade II listed building within the Guilden Morden Conservation Area. This detached two storey building has an L-shaped plan
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- form, with modern side and rear extensions and a front entrance porch. To the front are historic casement and sliding sash timber windows. Although externally rendered and painted, internally the timber frame is evident in several rooms. The age of the building, its construction and form, and its location in the village are part of the special interest and significance of this listed building.
21. Guilden Morden has a settlement pattern largely defined by its roads and lanes. The presence of gardens and a number of mature trees gives a verdant and spacious nature to the conservation area. The large garden of the appeal site, along with the trees within it contributes towards this character. Whilst surrounded by mostly residential properties of varying styles and ages, the property forms an attractive building on a corner position within the village. Its former use as a public house would have given it a functional focus, which in itself would be part of the significance of the listed building.
 22. The Framework requires that planning applications should be supported by a description of the proposal on the significance of a heritage asset. The appellant did not provide a heritage statement. Whilst the main parties consider the proposal would not affect the character and appearance of the conservation area or the architectural or historic interest of the listed building, I have a statutory duty to consider the requirements of Sections 66 and 72 of the Act, whilst DCP Policies CH/3 and CH/5 require planning applications to be determined in accordance with legislative provisions and national policy.
 23. Even with the appellant's structural survey, limited information has been provided as regards the impact of the proposal on the significance of designated heritage assets. Nor was anyone at the hearing able to provide information concerning the building's history including how long it had been in use as a public house. The Council's recent inspection of the building found it to be weather tight, and it was also apparent from my visit that many of the fixtures and fittings of the former use remain.
 24. In the absence of any detailed assessment of the impact of the proposal on the listed building, the degree of harm cannot be accurately assessed. Whilst the Council have no objection to the removal of the bars within the building, I do not share that certainty as no historical assessment of the works have been undertaken, including whether any historic fabric would be lost. On the basis of the evidence before me, and in light of my findings above with regard to the use of the building, a precautionary approach must be taken. It would be remiss of me to assume that the proposal would mean there was no harm to the listed building, or that its optimum viable use would be as a dwelling.
 25. Furthermore, the former use of the building would contribute to its significance and to the character and appearance of the building and that of the conservation area. In addition to being an attractive historic property within the village that contributes towards the charm of the area, its former use would have been very different to that of a residential dwelling. I accept the building is mostly surrounded by residential properties, but its use and location within the village would have made it a focus.
 26. I have considered the benefit of having a use for the building, and I note the Council considers this to be an important matter. I agree that it is better to have a use for a building rather than for it to be vacant, but the Framework makes it clear that where a building has been neglected, this should not be
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taken into account in any decision. Having another public house operator within the property would retain the significance of the listed building and its contribution towards the character and appearance of the conservation area. In light of my decision above and the requirements of the Framework I have to give this great weight.

27. The change of use would be less than substantial harm to the significance of the listed building and conservation area, due to the size of the conservation area and the level of change and proposed alterations to the listed building. However, the public benefits of having a residential use within the building would not outweigh the harm I have found. For the reasons given the proposal would be contrary to the statutory duties of the Act, the historic environment policies of the Framework, and those of the DCP referred to above.
28. To the south of the appeal property are other listed buildings, and taken together with the appeal property, these form a cluster of historic buildings within the conservation area. However, the appeal property is set apart from these, and in view of this separation, the change of use would have a neutral impact on the settings of the nearby listed buildings.
29. Concern has been raised by local residents that a partial change of use and works to the listed building have already occurred. As the appeal scheme is solely for the change of use albeit with the removal of the bars, I have considered it on that basis. Any development and / or works that have occurred without the benefit of planning permission or listed building consent would fall to be pursued by other means separate from my consideration of the appeal proposal and are not therefore matters for me to consider.

Other Matters

Emerging Development Plan

30. The Council have referred to policies within an emerging development plan, the South Cambridgeshire Local Plan proposed submission (2013). However, whilst I have considered the policies referred to, the plan has not yet been examined in public, and this limits the weight that can be attached to them.

Additional Housing

31. Local residents have referred to an application for 36 new homes within the village that would increase the local population. However, the application has not yet been determined by the Council, and even if it gains permission the population increase would be some time in the future. As such this matter has had little bearing on my consideration of the appeal.

Conclusion

32. For the reasons given above and having considered all other matters raised, the appeal is dismissed and planning permission is refused.

J J Evans

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Beverley England	Appellant
Matthew Hare	Agent
Justin Cain	Pinders

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Ballantyne-Way	Consultant acting on behalf of South Cambridgeshire District Council
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INTERESTED PARTIES:

John Harrison ACIS	Local resident
Lesley Harrison	Local resident
Rebecca Ward	Local resident
Patricia Dellar	Local resident
John Dellar	Local resident
Graham Dellar	Local resident
Brian Haines	Local resident
Doreen Mitchell	Local resident
William Sanger	Local resident
Michael Berry	Local resident
Sally Birrell	Local resident
Dennis Tear	Local resident
C F Paget-Wilkes	Local resident
Maggie Paget-Wilkes	Local resident
Ken Lock	Local resident
Sophie Johnston	Local resident
Jacqueline Lock	Local resident
Colin Beales	Local resident
Jane Boyd	Local resident
Jane Friedlander	Local resident
Kirk Saban	Local resident

Graham Walker	Local resident
Alan Boyd	Local resident
Sarah Fryer	Local resident
Barry Holme	Local resident
Cllr C Murfitt	Councillor
Dale Ingram MSC CHE FRSA	Planning For Pubs
Scott Stemp	Counsel

DOCUMENTS

Statement of Common Ground, dated 21st June 2016.

Email dated 7 July 2015, concerning the application description.

Neighbourhood Statistics from the Office for National Statistics concerning car or van availability, 2011 for the Mordens.

Site location plan for 2 Foxhill Road, Guilden Morden.

Policies DP/1, DP/2, DP/3, DP/4, DP/5, DP/7, CH/2, CH/3, CH/4, CH/5, CH/6 and SF/1 of the South Cambridgeshire District Council Development Control Policies (2007)

Policies S/3, S/4, S/7, S/8, S/10, S/11, NH/13, NH/14, SC/2, SC/3 and SC/4 of the South Cambridgeshire Local Plan Proposed Submission (2013).

Decision Notice and site location plan for SC/65/465.

Listings for 4 Silver Street, 32, 36, 39, 41 and 43 High Street, and barn south of 39, 41 and 43 High Street.

Appeal decision ref: APP/W3520/W/16/3143123

Promap Site area, scale of 1:1250

Letter from N Hamilton, dated 23 June 2016

Email dated 14 January 2016, from Bob Whittle

Policy ST/6 of the South Cambridgeshire District Council Local Development Framework Core Strategy (2007)

Application form and drawings 2_REV_1 and 1.REV_9

Email dated 22 July 2016, from Beverley England

Re: OHAH - Old House at Home

Susan Turner <su.newnham@btinternet.com>

Fri 05/05/2017 15:10

Old House Newnham

To: Mark Grunnell <mark@redoakcp.com>;

Cc: Dale Ingram <dale@planning4pubs.co.uk>; June James <june@softstone.co.uk>; Christopher Ainsworth <Christopher.Ainsworth@freeths.co.uk>;

Dear Mr Grunnell

Thank you for your email.
Your prompt response is much appreciated.

Kind regards
Susan Turner
Clerk to Newnham Parish Council

On 5 May 2017, at 14:59, Mark Grunnell wrote:

Dear Ms Turner,

The Old House at Home is not for sale and accordingly, the request for access is denied. Any attempt to access our property will be deemed to be trespassing and our lawyers (copied in) are instructed to take the appropriate action.

Regards,

Mark Grunnell
Director
Red Oak Taverns Limited

From: Susan Turner <su.newnham@btinternet.com>
Date: Friday, 5 May 2017 at 13:25
To: Mark Grunnell <mark@redoakcp.com>
Cc: Dale Ingram <dale@planning4pubs.co.uk>, June James <june@softstone.co.uk>
Subject: OHAH - Old House at Home

Dear Mr Grunnell

The Parish Council is seeking access for a surveyor to the Old House at Home on Monday 8th May at 11 am for the purposes of a valuation survey to inform an offer to Red Oak for the freehold or long leasehold of the premises.

A letter requesting access is attached.
I would be most grateful for your earliest response

Kind regards
Susan Turner
Clerk to Newnham Parish Council



Mark Grunnell
Red Oak Taverns
Mountcliff House
154 Brent Street
London
NW4 2DR
mark@redoakcp.com

5th May 2017

Reference Old House at Home, Tylney Lane, Newnham RG27 9AH

Dear Mr Grunnell

Newnham Parish Council has commissioned a formal appraisal of capital value for the Old House at Home and requests Red Oak Taverns' consent for access.

The valuer would like to inspect the pub on next Monday 8th May and will be at the property at 1100hrs.

Understanding you have tenants currently occupying the pub, this will hopefully not be inconvenient?

I would be most grateful for your reply by return.

Kind regards

A handwritten signature in black ink, appearing to read 'Susan Turner'. The signature is written in a cursive style and is positioned above the printed name of the sender.

Susan Turner
Clerk to Newnham Parish Council