

# Planning Committee

## Appeals Progress Report

8 November 2012

### Report of Head of Public Protection and Development Management

#### PURPOSE OF REPORT

This report aims to keep members informed upon applications which have been determined by the Council, where new appeals have been lodged. Public Inquiries/hearings scheduled or appeal results achieved.

This report is public
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#### Recommendations

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The Planning Committee is recommended:

- (1) To accept the position statement .

#### Details

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##### New Appeals

- 1.1 **12/00884/ADV – Buck and Bell, 50-52 North Bar Street, Banbury-** appeal by Everards Brewery Ltd against the refusal of advertisement consent for Retrospective- Retention of new signage and lighting to front elevation- Written Reps
- 1.2 **12/00190/ELISTED – The Gate Lodge, 43 Mill Street, Kidlington-** appeal by the Church Commissioners for England against the service of a listed building enforcement notice alleging the alteration of the building without listed building consent by removal of part of the roof truss at first floor level to create a doorway- Written Reps
- 1.3 **12/00726/F- Sorwell, 1 Dog Close, Adderbury-** appeal by Ms I Williams against the refusal of planning permission for the erection of freestanding timber posts (Max 1500mm) connected with garden wires for climbing plants- Householder written reps

## **Forthcoming Public Inquiries and Hearings between 8 November 2012 and 6 December 2012**

- 2.1 **Inquiry commencing at 10.00am on Tuesday 20 November 2012** at the Council Chamber, Bodicote House, White Post Road, Bodicote, Banbury to consider the appeal by Mr M Horgan and Barwood Strategic Land II LLP against the refusal of planning permission of application 12/00080/OUT for residential development of up to 145 dwellings with associated access at OS parcel 5700, South of Salt Way at Crouch Farm, Bloxham Road, Banbury
- 2.2 **Inquiry commencing at 10.00am on Wednesday 28 November 2012** at the Council Chamber, Bodicote House, White Post Road, Bodicote, Banbury to consider the appeals by Bolsterstone Innovative Energy (Ardley) Ltd against the decisions of the Council to refuse to vary condition 21 of the appeal decision relating to aviation issues (11/01932/F) and the Council's refusal to discharge conditions 21 and 22 of the appeal decision relating to aviation issues (08/02495/F) associated with 4no wind turbines and ancillary development at Willow Bank Farm, Fritwell Road, Fewcott

### **Results**

#### **Inspectors appointed by the Secretary of State have:**

- 3.1 **Dismissed the appeal by Mrs Jackie Noquet against the service of enforcement notice 12/00050/EUNDEV at land at Bishops End, Burdrop, Banbury** alleging a breach of planning control - without planning permission, the change of use of the land to use for the storage of a shipping container – The Inspector stated” the container is sited in a prominent position and is a harmfully inappropriate and incongruous addition to an otherwise high quality landscape. It also harms the character and appearance of the Sibford Gower Conservation Area, within which it is sited, and the setting of the Sibford Ferris Conservation Area, whose boundary is close to where it is sited. The harm being caused to the landscape is significant, Bearing in mind that in January 2012 it was indicated to the Council that the container would remain on the land for only a further three months, and regardless of the outcome of the other appeal, the 28 days for compliance set out in the enforcement notice is reasonable and achieves an appropriate balance between the appellant's personal circumstances and the public interest in removing the harm to the landscape as soon as reasonably possible.”
- 3.2 **Dismissed the appeal by Mr Geoffrey R Noquet against the service of an enforcement notice 12/00020/ECOU at Bishops End, Burdrop Banbury** alleging a breach of planning control without planning permission, the material change of use of the land from a public house to a residential dwelling house. The Inspector's

findings are set out in summary –

**Validity of the enforcement notice-**

The lawful use as a public house has ceased because of the unauthorised change of use of the site to use as a residential dwelling house. If Mr and Mrs Noquet cease to use the whole of the building as a residential dwelling house but continue to occupy the residential accommodation that was available at the public house, without using for residential purposes the areas that had been used for the public house, that would not satisfy the terms of the notice, because their occupation would not be ancillary. However, that does not make the notice invalid. The notice is clear in what it requires.

**The appeal on ground (a) and the deemed application for planning permission –**

In this case the evidence (and the large number of third parties representations, from a wide range of local residents and including both parish councils, which are overwhelmingly in favour of the Bishops Blaize being retained as a public house) all points to the importance of the Bishops Blaize as a facility which provided food, drink, and a community meeting place. Representations referred to the Bishops Blaize being at the heart of village life. The Bishops Blaize provided a much valued facility and service and its closure has reduced the ability of the local community to meet its day to day needs. The National Planning Policy Framework therefore requires that its unnecessary loss should be guarded against.

**Viability –**

On the basis of all the evidence, the Inspector concluded that the asking price at this time, even when reduced to £450,000 was unrealistically high. The very large proportion of the asking price represented by the hope value of achieving a material change of use to residential use did not reflect the planning history of the property, or indeed the planning policy background at that time. The absence of any genuine prospective purchasers at the price being sought does not show that the Bishop Blaize was not then viable as a public house as the marketing exercise was flawed.

**Mr & Mrs Noquet's personal circumstances –**

It seems likely that given the history of Mr & Mrs Noquet's dispute with the village for the public house to reopen it would have to be under a new owner. The current value of the property is well below the price Mr & Mrs Noquet purchased the property, and so if they sold it at present market values they would clearly suffer a loss. That is the result of economic conditions and the fall in property prices. It is also a consequence of not accepting one of the offers recorded in the Fleurets letter (all but one of which were higher than the price paid by Mrs Noquet)

Mr & Mrs Noquet may have been holding out for a higher offer, but there was clearly a risk at that time that property prices might fall as well as rise, and that risk would normally be borne by the vendor. It is argued that to force Mr & Mrs Noquet either to run the Bishops Blaize at a loss or to sell at a loss would be a breach of their human

rights under Article 1 of the first protocol of the European Convention on Human Rights. But the protection of property under this provision does not prevent the State enforcing such laws as it deems necessary to control the use of property in accordance with general interest. There is no absolute right to planning permission to change the use of a property to a more lucrative use where property prices have fallen.

The effect on Mr & Mrs Noquet's home and family life must be weighed against the wider public interest. The Inspector concluded that the unauthorised change of use of the property has caused significant harm to the wider public interest. The legitimate public interest can only be adequately safeguarded by the refusal of permission for the change of use and the upholding of the enforcement notice, and dismissal of the appeal would not have a disproportionate effect on Mr & Mrs Noquet.

- 3.3 **Dismissed the application made by Mr & Mrs Noquet for a full award of costs against Cherwell District Council.** The Inspector concluded that unreasonable behaviour by the Council resulting in unnecessary or wasted expense had not been demonstrated.
- 3.4 **Allowed the application made by Cherwell District Council for a partial award of costs against Mr & Mrs Noquet.** The Inspector stated "taking all matters into account, I consider that Mr & Mrs Noquet were well able to understand the process they were involved in. Given their stated intention to instruct Counsel to represent them, they should have taken legal advice at a much earlier stage in proceedings. They had made it very clear up to the last minute that they intended to pursue the ground (d) appeal forcefully, and in the circumstances withdrawing that appeal at such a late stage in the proceedings was unreasonable. That unreasonable behaviour has led to the Council incurring wasted expense in preparing to deal with the ground (d) appeal at the inquiry. "

## Implications

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**Financial:** The cost of defending appeals can normally be met from within existing budgets. Where this is not possible a separate report is made to the Executive to consider the need for a supplementary estimate.

Comments checked by Kate Drinkwater, Service Accountant: [Kate.Drinkwater@cherwelland](mailto:Kate.Drinkwater@cherwelland)

**Legal:** There are no additional legal implications arising for the Council from accepting this recommendation as this is a monitoring report.

Comments checked by Nigel Bell, Team Leader- Planning and Litigation 01295 221687

**Risk Management:** This is a monitoring report where no additional action is proposed. As such there are no risks arising from accepting the recommendation.

Comments checked by Nigel Bell, Team Leader-  
Planning and Litigation 01295 221687

**Wards Affected**

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All

**Document Information**

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<b>Appendix No</b>	<b>Title</b>
-	None
<b>Background Papers</b>	
All papers attached to the planning applications files referred to in this report	
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