

The Bell Inn, High Street Hook Norton

14/00463/F

Ward: Hook Norton

District Councillor: Cllr R Jelf

Case Officer: Laura Bailey

Recommendation: Refusal

Applicant: Mrs Zoe Shapland-Fawcett

Application Description: Change of use of former Bell Inn from mixed use within A2/C3 to wholly residential use.

Committee Referral: Call in request by Chairman **Committee Date:** 17th July 2014

1. Site Description and Proposed Development

- 1.1 The Bell Inn is a Grade II listed public house in the centre of Hook Norton, within the Conservation Area (in the village centre character area as identified in the 2007 appraisal). It sits opposite and adjacent to two other Grade II listed buildings. The site is also located within an area of high archaeological interest. The building is in coursed ironstone rubble, with ironstone quoins and a steeply pitched plain tile roof. The fenestration, stonework and detailing to the building are indicative of the past of the building and add to its special historic interest.
- 1.2 The site is not currently being used as a public house, but is in the process of being converted, with a view to using the premises as a residential dwelling. There have been several planning and listed building applications relating to the internal and external alterations (outlined in the planning history section below).
- 1.3 This application seeks planning permission for a change of use of the premises from a mixed A2/C3 use to a wholly residential use. This submission does not seek consent for any internal or external alterations.
- 1.4 Members may recall that this application was withdrawn from the 19th June 2014 schedule at the applicant's request.

2. Application Publicity

- 2.1 The application has been advertised by way of site notice, press notice and neighbour notification letters. The final date for comment was 8th May 2014 and 16 objections have been received as a result of this process. In summary, the following points were raised:
 - Village is expanding, so the loss of the pub should be resisted
 - Lack of parking provision and increased demand
 - Dangerous access
 - Using loopholes to get round planning system
 - Photocopying shop was only nominally used (if at all)
 - Committee should regard this as a change of use from A4 (pub) to C3
 - Building is Asset of Community Value

- Change of use would set an undesirable precedent
- Consortium of villages ready and willing to purchase the site
- Alterations to listed building detrimental to the historic value of the property
- Only independent operation (freehold) in the village
- It is a pub, not a photocopying shop
- Egregious interpretation of the GPDO
- Oldest public house in the village
- Business use appears invalid

Full responses can be viewed via the Council's Public Access system online.

3. Consultations

- 3.1 **Hook Norton Parish Council:** Strongly object to the proposal stating:
- The vehicular access is in a very dangerous place on a tight, blind corner.
 - The building has been a public house and commercial premises for many generations, certainly since 1830 and probably before.
 - As the village is now expanding we need more space for shops and pubs to serve the expanding population.
 - The Bell passes the CAMRA viability test and there are people who would have bought it to run as a pub, had they been given the opportunity to do so when it was last sold.
 - We'd also like to remind the officer that the Bell is now registered as an asset under the Community Right to Buy Scheme.

Cherwell District Council Consultees

- 3.2 **Design and Conservation:** I regret that this listed building is not to be used as a pub. However, I do not believe that a change to wholly residential use would necessarily damage the special interests of the listed building or the character or appearance of the conservation area any more than its current use (professional services).

Any physical alterations to the building would require listed building consent.

Oxfordshire County Council Consultees

- 3.3 **OCC Highways:** No objection, subject to a condition requiring 5 off street car parking spaces.

Other consultations

- 3.4 **CAMRA:** CAMRA believe that retention of pubs allows them to continue to: * meet the needs of differing communities by maintaining a healthy and varied choice for the consumer; * ensure a place of informal social meeting, eating and drinking; * provide a place of employment for the Landlord and family and in many cases full and part time staff; * enliven the local economy through purchasing from other local outlets/shops and bringing visitors to the local area. Public Houses are explicitly classified as community facilities in the National Planning Policy Framework [NPPF]. As community facility, recognised by Cherwell DC as an Asset of Community Value, the Bell Inn falls within the scope of policy S29 of the adopted Cherwell Local Plan [CLP],

policies EMP5 and S26 of the Non-Statutory Cherwell Local Plan 2011, as well as policy SLE1 of the Proposed Submission Local Plan of 2012. Para 28 of NPPF states: "To promote a strong rural economy, local and neighbourhood plans should... promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship." Para 70 of NPPF states: "To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: * plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments; * 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;..." There is nothing in the NPPF to suggest that either of these paragraphs only applies where there is only one such facility in a village. In addition, CLP S29 explicitly refers to proposals that will involve the loss of existing village services, not the complete loss. Furthermore, recent Planning Inspectorate decisions (e.g. APP/C3105/C/12/2170904, para 16) note that something like a village hall holding regular events "would not offer the type of basic village service which would be found in a local public house..." As such, policy presumes against change of use to residential unless the public house use can be shown not to be able to be made viable. No independent viability case has shown that the Bell Inn cannot be made viable. We therefore urge the council to refuse this application.

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)

Policy S29 – Loss of existing village services

Policy H21 – Conversion of buildings to residential within settlements

Policy C30 – Adequate standard of amenity

4.2 Other Material Policy and Guidance

National Planning Policy Framework

Planning Practice Guidance

Cherwell Local Plan – Submission January 2014

The Submission Local Plan has been through public consultation and was submitted to PINs in January 2014. The Submission Local Plan does not have Development Plan status but is a material planning consideration. The Plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case:

SLE1: Employment development – change of use of employment site

PSD1: Presumption in favour of sustainable development

5. Appraisal

5.1 The key issues for consideration in this application are:

- Relevant planning history
- Principle of a change of use
- Impact on heritage assets
- Neighbour amenity
- Highway safety

Relevant Planning History

5.2 A planning application for a change of use of the public house (A4) to wholly residential was withdrawn in September 2011 (11/00894/F refers).

5.3 Planning and listed building consent was granted in 2013 for various internal and external alterations to the building (13/00100/F and 13/00101/LB refers).

Principle of a change of use

- 5.4 As all planning applications must be determined in accordance with development plans unless material considerations are indicated otherwise, the logical starting point for this application is the adopted Local Plan. The importance of village services and amenities is set out in Policy S29 of the adopted Cherwell Local Plan 1996. This policy states that *“Proposals that will involve the loss of existing village services which serve the basic needs of the local community will not normally be permitted”*. The supporting text to the policy sets out that in adopting that policy the Council *“recognises the importance of village services, particularly the local shop and pub, to the local community and will seek to resist the loss of such facilities whenever possible. However, it is also recognised that it will be difficult to resist the loss of such facilities when they are proven to be no longer financially viable in the long term”*.
- 5.5 One of the core planning principles contained within the NPPF states that both plan making and decision taking should take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.
- 5.6 Paragraph 28 of the NPPF also states that planning policies should support economic growth in rural areas and promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship.
- 5.7 The Submission Local Plan also seeks to promote a good quality of life for villages and rural areas through protecting, maintaining and improving local services, wherever possible (para C205 refers).
- 5.8 The applicants assert that the use of the premises as a pub ceased in April 2013, when they implemented permitted development rights to change its use to A2 (Professional services), which came into force in 2005 by virtue of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2005.

5.9 In order to assist in determining whether a change of use has occurred (i.e. 'development'), section 55 of the Town and Country Planning Act of 1990 offers a twofold definition of development as:

'the carrying out of building, engineering, mining or other operations in, on, over or under the land, or the making of any material change in the use of any buildings or other land'

5.10 In the legal case, *Parkes v Secretary of State for the Environment (1978)*, comments were made about this definition, stating that, 'the first half, 'operations', comprises activities which result in some physical alteration to the land which has some degree of permanence in relation to the land itself – whereas the second half 'use' comprises activities which are done in, alongside or on the land, but do not interfere with the actual physical characteristics of the land'

5.11 In this case, it needs to be established whether there has indeed been a material change of use of the premises from A4 to A2. 'Material' is not defined in the act; it is a question of fact and degree. Case law can also provide useful guidance as to what constitutes a material change of use.

5.12 In the case of *Kwik Save Discount Group Ltd v Secretary of State for the Environment (1981)*, the Court of Appeal upheld the finding of an Inspector that the use of a showroom for the sale of cars by concessionaires for one month, in which five cars were sold and the subsequent opening of a retail discount store was not such as to permit the use by virtue of the use Classes Order. It was held that the use of the premises as a "shop for the sale of motor vehicles" was "de minimis" and so minimal as to be "of no planning significance" and to be disregarded for the purposes of permitted development rights.

5.13 In this case, the Parish Council alerted the District Council in April 2013 of the potential change of use of the premises for use as a photocopying shop. The case officer at that time sought to confirm the change of use with the applicant's agent, which was done so via email correspondence on 17th April 2013. The case officer also confirmed that the change of use was PD under the aforementioned GPDO. No site visit was undertaken at that time.

5.14 The applicant states that the photocopy shop was open week days Mon-Fri 10am - 4pm from April 2013. The agent states that they employed an assistant from April to September at £150 per week (6 months). Thereafter, up until the end of the year it remained open and available, either with someone on site or a number left (the applicant lives opposite the site and would therefore come across if anyone required photocopying done).

5.15 The photocopying shop closed in the late summer of 2013 (end of September). It was then marketed by Berry Morris from October 2013 for a period of 4 to 5 months, seeking an alternative A2 user, without apparent success.

5.16 However, in my view, the lawful use of the premises remains A4 as the information that has been supplied in support of the application is insufficient to justify a formal change of use. This is based on the following:

- No evidence of sales to indicate the level of use (except for an email from the applicant stating that they took less than £30 per week, which would indicate a very low level of use in any case)
- The use was only taking place in a small area of the pub – the rest was left as a pub (but in the process of being converted to a dwelling)
- Numerous representations from villagers confirming that the level of use was nominal, if anything at all

5.17 As set out in the policy context above, the issue of viability is an important element in assessing the acceptability or otherwise of an application of this sort. The policies require that the application must clearly demonstrate the lack of viability of a business in order for an application to succeed. Demonstrating viability requires an assessment of the trade at present, the trade potential, competition, sales and advice.

5.18 Whilst it may be accepted that the current A2 use is not viable and arguably does not serve the basic needs of the community, given that the change of use has not been lawfully established, the lawful use of the premises remains A4.

5.19 The submission is not supported by any marketing information relating to the use of the site for A4. The 2011 submission for a change of use to residential (from A4) included a brief statement from the commercial letting agents which set out the time for which the business had been advertised. The statement concluded by noting that no interest was received for continued licensed use and that all interest was instead for use as private residential. The statement concluded that “the lack of demand for continued licensed use provides a very strong argument to demonstrate that this particular pub is unviable given the alternate provisions and amenities already serving the residents of Hook Norton”.

5.20 However, this argument was not accepted by Officers at that time, given the limitations of the marketing information supplied, in that it failed to set out any reductions in the advertised sale price, or any further efforts made by the vendors to improve the chances of selling The Bell as a business rather than as a residential development opportunity.

5.21 Furthermore, reliance on the non-viability of the business was made solely on the basis of wet-sales, despite the sales particulars making reference to food sales (referring to the restaurant and trade kitchen) potential.

5.22 Of further significance to this issue is a recent appeal decision relating to the ‘Bishops Blaize’, in which the applicants have repeatedly attempted to secure planning permission for a change of use of the public house to residential.

5.23 In the most recent, dismissed, appeal decision (which related to a ‘change of use of a vacant public house to C3 residential’), the Inspector surmised that:

I highlight a notable difference between LP Policy 29 and the much more recent Framework. The explanatory text to the former recognises that it will be difficult to resist the loss of village services ‘when they are proven to be no

longer financially viable in the long term'. Paragraph 70 of the Framework, however, does not mention proving viability, financial or otherwise.

5.24 The Inspector concludes by stating:

LP Policy 29 anticipates long term viability being assessed in financial terms, but that must now be tempered by policy guidance in the Framework which promotes retention of rural facilities, including pubs, and seeks to guard against their unnecessary loss. Taking account of all the aspects of viability explored above, I find insufficient grounds to conclude the pub would not be viable in the long term and thus insufficient justification to allow the loss of this valued facility.

5.25 Taking the above rationale into account, I consider that the listing of the pub as an Asset of Community Value (ACV) to be a material consideration in the determination of this proposal, as it backs up the clear intention in the Framework that valued facilities and services in rural villages should be retained if at all possible. The Bell was listed as an ACV on the 19th July 2013 and representations from villages and the Parish confirm an interest in purchasing the premises to run as a pub.

5.26 The level of public objection to the scheme also highlights the importance of The Bell as a social facility in the village; residents of sixteen local properties wrote in to object to the scheme. In a village the size of Hook Norton, with three existing pubs also supported, it clearly demonstrates the importance of the facility to a section of the village.

5.27 In conclusion therefore, it is considered that there is insufficient evidence to suggest that The Bell cannot be made viable, and that the loss of this amenity would cause harm to the character and community of the village.

Impact on heritage assets

5.28 As the building is Grade II listed and lies within the Hook Norton Conservation Area, the impact of the proposal on these heritage assets must also be considered in determining this application.

5.29 The agents have clarified that the submission does not involve any internal or external alterations to the building; it purely relates to a change of use. In any case, many of the alterations approved as part of the 2013 applications have already been undertaken.

5.30 The Conservation Officer has stated that a change of use to a residential dwelling would have no greater impact to the significance of the listed building or the character and appearance of the Conservation Area than an A2 use.

5.31 Notwithstanding Officer's position on the current lawful use of the building, given that the existing Permitted Development regime effectively allows changes of use from A4 to a variety of other uses which could ultimately change the character of a building, it is considered that a change of use to residential would not be any more harmful. Any further internal or external alterations would require listed building consent.

- 5.32 Officers therefore consider that the significance of the Conservation Area and listed building would be sustained, in accordance with the requirements of the NPPF.

Residential amenity

- 5.33 The proposed change of use from a public house to a residential use has the potential to be more in keeping with and appropriate in the area, given the predominance of residential properties in close proximity to the site.
- 5.34 The proposal is, therefore, considered to comply with Policy C30 of the adopted Cherwell Local Plan and guidance in the NPPF.

Highway Safety and access

- 5.35 The Local Highway Authority raises no objection to the proposal, subject to a condition requiring five off street car parking spaces on site. It is considered that there would be sufficient space on site to create this level of parking provision.
- 5.36 There have been numerous representations referring to the inadequacy of the access and parking problems. However, the proposed change of use will not result in a level of vehicle movements to/from the site over and above the current lawful use of the site as a pub. Refusal of the application on this basis is therefore unlikely to be sustained at appeal.
- 5.37 Officers therefore consider that the change of use would not result in detriment to highway safety and would therefore comply with the requirements of the NPPF.

Matters arising since the last meeting

- 5.38 The applicant's agent sent a written response in relation to the report scheduled for the 19th June committee. This letter is attached as appendix 1 to this report.
- 5.39 Officers would comment on its content, following the headings as set out in the letter for ease of reference as follows;

Use

- 5.40 The agent states that the report fails to mention the physical alterations to the building that have taken place and that this fact is important as to whether there has been a material change of use from A4.
- 5.41 The committee report refers to physical alterations that have occurred in several places (paragraphs 1.2, 5.3 and 5.16 refer), accepting that it does not explain the specific alterations as set out in Mr Warner's letter.
- 5.42 In any case, Officers do not consider that the physical alterations that have occurred dictate on their own the change of use of the premises to A2. The removal of the bar, cellar and other paraphernalia associated with the pub use does not render the lawful use as a public house extinct (or abandoned) and

is not on its own determinative that there has been a genuine material change of use to A2. All uses have periods of inactivity, such as weekends, holiday periods, lease changes etc. Accordingly, there will be cases where it becomes a matter of judgement whether the "break" can be said to represent a permanent cessation of the use, and thus loss of continuity, or something less in which the site or premises can properly be described as remaining in use throughout.

- 5.43 As observed by the judge in *Panton and Farmer v Secretary of State for the Environment* (1998), a use may decline, become inactive and lie dormant but can still exist in the sense that it has not been abandoned.
- 5.44 The report clearly sets out what Officers consider the lawful use of the premises to be in paragraph 5.18 (A4).

Non use for A4

- 5.45 The agents assert that if the use of the building for A2 is not accepted, that the lawful use cannot be A4 as it has been abandoned. The agents consider that the site would therefore have a 'nil' use.
- 5.46 The agents refer to the case of *Secretary of State for the Environment, Transport and Regions v. Hughes* and state that in determining whether a use has been abandoned, regard must be had to four factors: the physical condition of the building, the period of non use, whether there had been and other use and the owners intentions. Addressing each in turn:

Condition – The bar and cellar have been removed. However, these elements could be re-installed (subject to any necessary LB consent). WC's still exist and there is space within the premises to prepare food.

Period of non-use – Contrary to the agent's assertion, several representations have stated that the public house operated continuously through to the day it was purchased by the current owners (September 2012). The period of non-use is therefore much shorter than the agent claims.

Other uses – The Council does not consider that the use of the premises has changed; the A2 use is de minimis.

Intention – The agent states that the applicant's 'express intention to cease its use for A4 purposes' is 'most important'.

- 5.47 The headnote to the report of the Court of Appeal's judgement in the aforementioned case makes it clear that any judgement reached in respect of the issue of abandonment is to be an objective one. However, in this case, the agents place a considerable amount of weight on the applicant's intentions, i.e. that the building was purchased with the intention of its use for A4 purposes to cease. This is not the correct approach. In exercising an objective judgment, a consideration of the subjective intention of the owner does not carry greater significance than other relevant factors.
- 5.48 Having made an objective assessment of all relevant factors, Officers do not consider that the use of the pub has been abandoned. As mentioned above,

the use can simply be regarded as dormant and still exist in the sense that it has not been abandoned.

Village services

- 5.49 The agent states that the committee report fails to explain the harm that would occur as a result of the loss of The Bell, given the existence of other pubs in the village. As a response to this point, I refer Members to a fairly recent appeal decision in relation to the Bishops Blaize (12/00678/F refers), where the Inspector commented on this point specifically (paragraphs 17 -19 inclusive refer);
- 5.50 ...policy S29 explicitly refers to proposals that will involve the loss of existing village services, not the complete loss. The explanatory paragraph refers to the loss of these facilities being resisted wherever possible. That is not consistent with the policy being limited to situations where the loss of the facility would mean that the local community would not be able to meet its basic needs at all, such as where the only public house in a village closes. It is clear on the face of the policy that it would bite in situations where there are, for example, several public houses in a village and one is proposed to be lost. If the change of use of the Bishop Blaize were to be approved, it would result in the permanent loss of a village service meeting the basic needs of the local community. The change of use would thus conflict with policy S29.
- 5.51 *Policy S29 is consistent with the advice in paragraph 28 of the National Planning Policy Framework (“the Framework”) which in particular requires local plans to promote the retention and development of local services and community facilities in villages, such as (inter alia) public houses. The policy is also consistent with the advice in paragraph 70 of the Framework, which requires planning policies and decisions 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. There is nothing in the Framework to suggest that either of these paragraphs only applies where there is only one such facility in a village. Applying the advice in Annex 1 of the Framework, I therefore attach substantial weight to policy S29, despite its age.*
- 5.52 *The Framework goes further than policy S29, in seeking to protect valued facilities and services. In this case the evidence (and the large number of third party representations, from a wide range of local residents and including both parish councils, which are overwhelmingly in favour of the Bishop Blaize being retained as a public house) all points to the importance of the Bishop Blaize as a facility which provided food, drink and a community meeting place. Representations referred to the Bishop Blaize being at the heart of village life. There is very strong evidence from the community of a wish to see the Bishop Blaize retained as a public house, despite the length of time that it has been closed. My conclusion is that the Bishop Blaize provided a much valued facility and service, and that its closure has reduced the ability of the local community to meet its day-to-day needs. The Framework therefore requires that its unnecessary loss should be guarded against.*
- 5.53 There are stark similarities between this case and the Bishops Blaize, not least in relation to the overwhelming desire in the village to retain The Bell as

a public house. In any case, it is clear that the Framework and Policy S29 of the ACLP seeks to prevent the loss of existing village services, irrespective of the existence of other village services in the community.

Housing Land Supply

- 5.54 At the time of writing the committee report, the Council was able to demonstrate a five year supply of housing land. Since the publication of the report, the Council has updated its position and is no longer able to demonstrate a 5 year supply of housing land.
- 5.55 However, in relation to this case, I consider that the contribution made by the proposal towards the housing shortfall in the District would be negligible, and the effect of the development on the undersupply would be so marginal as to not outweigh the harm by way of loss of an important, valued local facility.
- 5.56 In this case the Framework does not support development that would result in adverse impacts which would significantly and demonstrably outweigh the benefits.
- 5.57 In addition to the Council's response, a lengthy response has been received from a village resident. The summary of the response is set out below and the full version may be obtained from the Council's website, via Public Access.

The applicants have relentlessly pursued their own agenda with no regard to the wider community in which they live. From their point of view this is all about making money on The Bell and increasing the value of their current home before moving on to the next project. Works have been carried out without the necessary permissions being applied for all to achieve that goal. That continues to this day as the applicants have now removed The Bell sign from the front of the building. I am told (Claire Sutton) that is another breach of condition which will need to be investigated under CDCs enforcement powers.

When retrospective applications have been submitted, they have not fully detailed the plans for The Bell which the agent now states were always there and as such CDC have not been able to judge them on their true merits.

This village needs a wide range of facilities, now more than ever, and since the Bell has been closed to us it has left a void which the other pubs cannot fill. The Shaplunds were made an offer to buy the pub back at a small profit shortly after they purchased it and we still hope that The Bell can be returned to community usage.

If this application were to be granted it would basically promote another level of planning anarchy – you can do what you want, whether a building is listed, a community building or whatever.

I therefore commend your initial recommendation for the application to be refused and request that you have the courage to stick with this.

Conclusions

5.58 Officers consider that the current lawful use of the premises is A4. No evidence has been supplied to demonstrate that the use of the premises as a public house is unviable/cannot be made viable and as such, the loss of the use of this important community facility would be contrary to Policy S29 of the Cherwell Local Plan and central Government guidance contained in the NPPF.

Engagement

5.59 A 2012 amendment to the Town and Country Planning (Development Management Procedure) Order and the NPPF requires that Local Planning Authority's demonstrate that they have worked with the applicant/agent in a positive and proactive way. It is considered that the duty to be positive and proactive has been discharged through dialogue with the applicant's agent to establish the extent of the application submission and gather additional supporting information.

6. Recommendation

Refusal, for the following reason:

1. The proposal would result in the loss of an Asset of Community Value, that is The Bell, Public House. The applicant has failed to demonstrate that the Public House is unviable in the long term. As such, the loss of the service would lead to an unacceptable impact on the character of the area and the local community and would therefore be contrary to Policy S29 of the adopted Cherwell Local Plan 1996, paragraphs C.205 and C.206 of the Submission Cherwell Local Plan 2014 and central Government guidance contained in the National Planning Policy Framework.

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way through dialogue with the applicant's agent to establish the extent of the application submission and gather additional supporting information.

Case Officer: Laura Bailey

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