

Appendix 1

JPPC ref: nw/5133

Laura Bailey  
Planning Officer  
Cherwell District Council

By Email

16<sup>th</sup> June 2014

Dear Laura

**Application 14/00463/F**  
**The Bell Inn, High Street, Hook Norton**

I am writing further to the report to Committee in respect of the above application. Whilst I have not received notification from the Council of the proposed meeting, I do have the following comments to make.

It is my view that the item should be removed from the Committee Agenda this Thursday 19<sup>th</sup> June as there are significant matters which are not addressed and which cannot adequately be dealt with by way of an update.

I have set out as briefly as I can below the areas which I consider need attention.

Should the current application proceed and planning permission be refused, my client's only apparent option then is the appeal procedure. Given that there are matters of fact to be tested and legal submissions necessary I cannot see such an appeal progressing other than by way of a Public Inquiry. Given that I am identifying the shortcomings in the report to Committee now, any such appeal would have to be the subject of an application for a full award of costs by the appellant, should these not be satisfactorily addressed.

#### Use

Paragraph 5.9 of your report identifies that development has two strands. You consider below how the building was "used" (period) and conclude at 5.16 that the level of the use was low during that time and as such no change of use occurred.

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No part of your report however considers the physical changes that have been made to the building in order to assess whether development has occurred. It is very relevant to note that physical changes have been made including the removal of the bar, cellar equipment, WCs, kitchen and the removal of the stair to the former upstairs function room and that those changes were permitted by the Council by the issue of planning permission and listed building consent.

It is our view that the removal of the bar, cellar apparatus, WCs and kitchen are important parts of the consideration as to whether the change of use was material. Clearly those physical works cannot be ignored and allied with the period over which the new use was in place, open and available for use by visiting members of the public, means that the change of use was material.

We are able to provide Statutory Declarations from both the owner, employee and other persons who had knowledge of the A2 use when operating. As you note in your report, despite being aware of the change of use Officers did not choose to visit the site. If we are forced to proceed to the next stage I would question whether the Council would have any witnesses who would be able to provide a similar level of knowledge of the site. Indeed, other witnesses – if not Officers – would be likely to be a visiting member of the public who attended the premises. This they would have done without appointment to enquire as to the services available there, they would by default add weight to the fact that the change of use was material. The photocopiers remain in place in the building and the premises could re-open at any time.

Whilst it is clearly our view that the change of use to A2 was material, the Committee Report is insufficient as it does not go on to consider what the current use of the site is – if indeed it is not A2.

#### Non use for A4

Paragraph 57.08 of the Encyclopaedia of Planning Law deals with the matter of the loss of existing use rights. It states that “the rights to a lawful use of land may be lost in certain circumstances”. Point 5 identifies that such rights can be lost when a use is abandoned.

It refers to *Hartley v Minister for Housing and Local Government (1970)* in which it was held that “if the use has ceased with no intention that it should be resumed, the inference may be drawn that the rights have been abandoned, perhaps leaving the site with a ‘nil’ use”. Permission would then be required for any other use of the building, including its former use.

In *Hughes v SoS for Environment, Transport and the Regions (2000)* it was held that in determining whether a use had been abandoned there should be regard to four factors: the physical condition of the building, the period of non-use, whether there had been any other use and the owner’s intentions.

#### *Condition*

In this instance, the physical condition of the building is such that there is no bar, no cellar apparatus, no WCs and no commercial kitchen / extraction equipment and the first floor former function room has been divorced from the remainder of the former public house. These have the benefit of planning permission and listed building consent from the Council. These were deliberate acts to cease the use of the premises as a public house.

*Period of non use*

The applicant has owned the building for around 18 months and it has not been used as a public house in that time, the above items having been removed on purchase. Prior to that the public house did not trade for some years as I understand it.

*Other uses*

There has been another use of the building since the pub use ended – although we are at odds with the Council as to whether that is “material”.

*Intention*

Most importantly however is the intention of the owner. We have made it quite clear that the building was purchased with the intention of its use for A4 purposes to cease. The applicant lives opposite the building and had no desire to have an A4 use in such close proximity to her dwelling, where her young family live. She purchased the building with the express intention of ceasing its use for A4 purposes.

If, as Officers suggest, the A2 use was *de minimis*, it must still be the case that the A4 use has been abandoned. As such, the assertion at 5.18 of the Committee Report, that the lawful use remains as A4, is incorrect. This is because the owner set out on a clear course, firstly to lose the A4 use and secondly to find a new use for the building. If you do not consider the second part of that intention to have occurred then only the first part must have occurred and as such the building, if not in A2 use as we assert, must be in a nil use.

The site could not therefore be marketed for A4 purposes (paragraph 5.19) as there is no planning permission to use the building as such and no reasonable prospect of planning permission being granted for such a use given Officers comments on residential amenity at 5.33 and 5.34 and highways at 5.35 onwards. Similarly, there is no kitchen and no extraction equipment so no possibility for “food sales” and it is certainly the case that the insertion of a commercial kitchen and associated extraction equipment would be of significant harm to the heritage asset and neighbours’ amenity.

Village Services

Notwithstanding the above, you mention that the site is listed as an asset of community value and Policy S29 which seeks to ensure villages have a suitable level of local services. You do not go on to identify whether there would be any harm to the level of services available in Hook Norton if the change of use to a dwelling is permitted. You identify the presence of 3 other public houses within the village (a village with a population of only a little over 2000 people in total). We have considered the other facilities available within Hook Norton and do not consider that it is lacking in community facilities in any way. In short, there is no other necessary or under-supplied community facility. There is already a wide supply of other meeting halls, clubs and the like. In short, even if you conclude the site is still in A4 use, you have not identified what harm would result if the change of use to a dwellinghouse occurred. I attach a list of other facilities in the village.

Housing land supply

The application seeks planning permission for a change of use of the building to a dwellinghouse. The Committee report identifies policy H21 at the start but at no point does it consider the desirability of such use and the Council’s five year housing land supply. The report is therefore also incomplete as no weight is attributed to the pressing need for dwellings in the District. Similarly, where the assessment of the housing land supply includes reliance on windfall sites such as this, it must be that

small sites such as this, in combination with other such sites around the District, have an important role to play in delivering housing in the District.

I trust the item will be removed from the Agenda and these matters dealt with. I would also welcome the opportunity to meet with Officers to discuss these points prior to any new report being drafted.

Yours sincerely



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Other village meeting places / community facilities (not exhaustive)

Licensed Premises

1. The Sun Inn Public House - which also has a big function room for hire and events
2. The Gate Hangs High
3. The Pear Tree Inn
4. Sports and Social Club – licensed

Meeting spaces

5. Church - now has chairs rather than pews so it can be used for concerts and functions rather than just services
6. Village / Memorial Hall - everything from Garden club to Panto to village market etc.
7. The Hub / Youth Hall- the hall beside the Library
8. Library - which holds small groups from time to time
9. Big Room @ the Baptist Church - many functions, toddler group, concerts etc, Summer Art courses
10. The School Hall- available for hire and toddler groups etc
11. Room at The Brewery where meetings are held - Hook Norton historical society and Hook Norton low Carbon etc

Other facilities

12. The Village Shop - with additional flower shop and estate agent boards
13. Post Office and Stores
14. Hairdressers
15. Vet
16. Dentist
17. Doctors inc. room at surgery which is used for Pilates