

Case Officer: Shona King

Applicant: Mr James Day

Proposal: Change of Use of The Bell Inn Public House (Sui Generis Use) to use as a dwellinghouse (Class C3 Use) and associated minor external alterations to the building and works

Ward: Cropredy, Sibfords And Wroxton

Councillors: Councillor Brant, Councillor Chapman and Councillor Webb

Reason for Referral: Called in by Councillor Brant and Councillor Chapman for the following reasons: Significant public interest

Expiry Date: 24 March 2025

Committee Date: 15 May 2025

SUMMARY RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

MAIN REPORT

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located within the village of Great Bourton and lies on the junction of Main Street and Manor Road, to the west of All Saints Church. It has an authorised use as a public house, known as The Bell Inn, with an associated residential flat on the first floor. The building has a garden to the rear and south side, with a large car park area to the north.

2. CONSTRAINTS

- 2.1. The application site is opposite the Grade II listed church and lychgate.
- 2.2. The premises have recently been listed as an Asset of Community Value, dated 27 January 2025.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. Planning permission is sought for the change of use of the public house (sui generis) to a single dwelling (Class C3) along with alterations to the building to include the rebuilding of a rear porch with a pitched roof and an oak frame, alterations to an existing single-storey roof, the insertion of 2x roof lights, a bi-folding door and new brick wall as part of the utility, the removal of 2 chimneys and alterations to the roof junction between the single storey element and the two storey part of the building. A door opening in the rear elevation would also be altered to form a window.

4. RELEVANT PLANNING HISTORY

- 4.1. There is no planning history directly relevant to this proposal.

5. PRE-APPLICATION DISCUSSIONS

- 5.1. The following pre-application discussions have taken place with regard to this proposal:

24/01680/PREAPP - Clarification of current first floor C3 residential use. Change of Use from a public house to a residential dwelling. Insertion of a bi-folding door replacing an existing double door. Strip and remove existing roof covering and replace with existing tiles

- 5.2. The advice given set out the information required to accompany a planning application in order to assess the viability of the premises as a going concern and whether there is a market for such a premises. Minor external alterations to the building would require planning permission unless a change of use to residential were to be implemented and the dwelling occupied.

6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **29 December 2024**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. The comments and issues raised by third parties are summarised as follows:

Objections (239)

- Procedural - Inaccuracies on application form
- Principle (actions of applicant) - Building works and stripping out have taken place prior to an application; Extent of works proposed/already undertaken; Question state of pub and reasons for stripping; It hasn't been opened or run as a pub by the applicant to see if it is viable
- Principle (actions of previous owners) - Suggests neglect by landlords/brewery and lack of investment
- Principle (loss of public house facility) - Precedent for other pubs if allowed; Against national and local policy and planning procedures; Impact on village and community; Financial impact on other businesses; Loss of community/village facility/hub; Listed as an Asset of Community Value; Support of local residents for the pub; Only pub in the village; Not proven to be unviable; Financially viable as a freehold or with a different business model; Community would have considered buying/running the pub but not given the opportunity; Community not advised of sale of pub for residential use; Community pubs can be successful with the right management/landlord/tenant and support from the community; Community run pub would not need to make a profit; Save The Bell Inn Group has provided financial projections if run as a community pub – full document available on the Council's website; Used to be a thriving pub; Lack of long-term marketing; Brewery tie has an impact on viability as a pub

- Principle (issues with the submitted viability assessment) – Trading area not too small; Layout of kitchen area can be changed; Size of car park adequate; Location prominent on main road through the village; Contradict the submitted viability assessment's analysis of market conditions; Other pubs not in walking distance or attractive/lack garden; Poor bus service to access other pubs More homes in villages not needed; Sale price too high for consideration as a business; Sufficient population to support a pub; Catchment area sufficient as The Bell would be the only pub serving The Bourtons; Pessimistic projections for capital expenditure, loan interest, revenues and costs; No explanation for figures in viability assessment; Numerous opportunities to add to revenues; Loss of local employment potential
- Other issues with the application submission - Matters raised in pre-application advice not adequately addressed; Criticism of supporting financial information; Lack of accounts/financial statements; Criticises methodology, terms of reference, economic assumptions and financial projections in submitted viability assessment; Assessment biased and partial; The report refers to a different village; Considers evidence of condition of pub to be anecdotal; Marketing of pub not reported correctly in viability assessment
- Other matters - Reinstatement should be enforced; Condition of sale that it should be maintained as a pub; Query regarding VAT payable on the sale; Negative impact on house prices
- Impact on character/appearance of building
- Loss of heritage/culture/history
- CDC has promoted development of pubs in new communities
- Planning system should protect public interests

Support (9)

- Community had time to fund purchase of pub
- If so well regarded why no longer financially viable
- Other pubs competing for trade

Comments from Hook Norton Brewery (HNB) - setting out their rationale for selling the pub

- Purchased the pub in 1899. Traded satisfactorily until late 2019 with a succession of 'Tenants at Will' since
- Covid, changing leisure habits, pressure placed on the "leisure pound", and expectations led to rapid decline in profitability – tenants all failed within 1 year of starting to trade
- HNB tries to avoid selling pubs but demographics, location and size of The Bell meant that it is no longer viable as a trading concern.

- Site had not been able to attract permanent tenant for 5yrs+ despite investment and peppercorn rents - £520pa (£10pw)
- The site is too small with not enough dining covers to make a food operation viable
- Lack of support from the village - turnover was too low to enable break-even point. On an opening night 50 – 70 people, within a week 10 people in total on a Friday / Saturday night.
- Annual barrellage from 2020 onwards was in the region of 60 – 80bb per annum. (lower during Covid)
- Costs of running the pub were prohibitive along with rising utility and minimum wage costs

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

7. RESPONSE TO CONSULTATION

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

7.2. GREAT BOURTON PARISH COUNCIL: (Original comments) **Objects** for the following reasons:

- Only pub in the village
- Lack of investment in pub by former owner
- Lack of support by former owner for long-term strategy to keep it viable
- Hook Norton Brewery committed to keep the Parish Council informed regarding potential interested parties but failed to
- Local group formed and survey of local people carried out – overwhelming support for maintaining the pub as a village asset
- Save The Bell Inn Group (STBIG) was formed and work underway to raise funds to buy the building if Asset of Community Value application is successful and current owner agrees to sell
- Saved Policy S29 of Cherwell Local Plan 1996 relevant
- STBIG working on alternative vision of viability
- Local planning policies support retention of pubs as vital community assets specifically where it relates to the only one in a community
- The pub in Little Bourton has recently closed and its future is uncertain
- The two villages are separate communities and historically little support in either village for the pub in the other
- CLP contains a commitment to retain last pubs in villages

- Accepts The Bell has been on the market for over 12 months but refutes that it was suitably valued to attract potential pub buyers.
- Lack of active marketing, refused to provide sales/turnover figures and allowed interior to deteriorate putting off buyers
- Whilst viability report indicates that the pub is not profitable a community owned pub would only require that it covers its operating costs in the short term

7.3. GREAT BOURTON PARISH COUNCIL: Response to Independent Consultant report on financial viability:

- Concerned that CDC's financial viability report responds to the applicant's report
- It doesn't take into account viability as a community run pub only as a commercially run enterprise
- STBIG has created a detailed proposal to acquire, refurbish and operate The Bell. This includes detailed budgets and is fully funded.
- Represents a clear viable opportunity for The Bell to be retained as a community owned pub – no need to meet the financial returns of a commercially owned/operated one.
- The independent report on future viability should include this option.
- Councillors on the Planning Committee should be fully and properly briefed
- Independent report comments on extensive internal refurbishment as the pub interior has been stripped of all fixtures and fittings by the applicant prior to the application. This increases the cost of re-opening as a pub
- CDC granted ACV listing. This indicates that it supports the retention of the pub as an important part of the village and its value as a community hub
- Consider it strange that officers have not considered this alternative in their commissioned report
- Flies in the face of CDC's granting of ACV listing

7.4. OCC HIGHWAYS: **No objections** subject to conditions relating to turning and car parking and cycle parking.

7.5. BUILDING CONTROL: Live Building Regulations application for this change of use and work has commenced on site

7.6. ANDREW GOLLAND ASSOCIATES (COUNCIL INSTRUCTED CONSULTANT PROVIDING ADVICE ON EVIDENCE SUBMITTED): Concludes that there would be an economic future for the pub assuming it was now operative but gearing for a longer-term loan would need to be modest. There may be operators who might take it on. However, the likely renovation and re-fitting costs would be substantial and would result in a loss financially.

8. RELEVANT PLANNING POLICY AND GUIDANCE

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 ('CLP 2015') was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- BSC12 – Indoor sport Recreation and Community Facilities
- ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment
- ESD15 The Character of the Built and Historic Environment
- Villages 1 – Village Categorisation

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- S29 - Existing village services
- C28 - Layout, design and external appearance of new development
- C30 - Design of new residential development

OTHER MATERIAL CONSIDERATIONS

- National Planning Policy Framework
- Planning Practice Guidance (PPG)
- Assets of Community Value – Policy Statement DCLG (Sept 2011)
- The Localism Act 2011
- The Assets of Community Value (England) Regulations 2012
- Community Ownership Fund: Prospectus DLUHC and MHCLG (July 2021)
- Cherwell Residential Design Guide (2018)

9. APPRAISAL

- 9.1. The key issues for consideration in this case are:

- Principle of development
- Design, and impact on the character of the area
- Heritage impact
- Residential amenity
- Highway safety
- Ecology impact

Principle of Development

Loss of public house

Policy Context

- 9.2. Paragraph 88 of the National Planning Policy Framework (NPPF) sets out that planning policies and decisions should enable the retention and development of

accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

- 9.3. Policy BSC 12 of the CLP 2015 states that the Council will encourage the provision of community facilities to enhance the sustainability of communities through the protection and enhancement of existing facilities.
- 9.4. Saved Policy S29 of the CLP 1996 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 explanatory text states that the Council recognises the importance of village services, particularly the local shop and pub. The policy also recognises 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.

Assessment

- 9.5. The public house was previously owned as a freehold by Hook Norton Brewery, and it is understood that the pub was last trading in January 2023. The Brewery commenced marketing of the pub as a freehold in May 2023 and the current owner, the applicant, purchased it in May 2024.
- 9.6. The current owners sought pre-application advice from the Council to change the use to a dwelling in June 2024. The pre-application advice set out the information required to support a planning application in order to assess the viability of the premises as a going concern and whether there was a market for such a premises. This included:
- Reasons for the closure – account records for at least the last 3 years of trading, which needs to include trade prior to the pandemic
 - Viability assessment – as a facility rather than a particular business/business model
 - How the premises has been marketed, where, for how long, at what price (and whether the price has been reduced or not)
 - Comments from those that have viewed the premises
 - The local market – pubs in the local area that are open and those that have closed/been sold over the last few years
- 9.4. This planning application was submitted in December 2024. The application is accompanied by an Economic Viability report prepared by Fleurets (Chartered Surveyors, Property Consultants and Agents) and a Planning Statement prepared by the applicant's agents. These reports are available to view in full on the Council's website and the following discussion only covers the main elements of these. The agent advises that there are no past trading accounts available, which is a significant gap in the application submission.
- 9.5. According to the submitted Economic Viability Report the premises was marketed by Savills, as sole selling agents, at £350,000 with a note stating that VAT would be applicable. The sales particulars state that the freehold price had been reduced but it is not known when this reduction occurred or by how much it was reduced by. A representation has been made suggesting that the sale of the pub was subject to a clause in the sale contract that determined that the building could not be operated as a pub and that the sale was as a private dwelling to avoid VAT being charged on

the transfer. This would have the effect of reducing the cost of buying the premises. This matter is currently being investigated.

- 9.6. It is understood that Savills reported 8 formal viewings during the marketing period. It is reported that one party expressed an interest in buying the premises as a going concern as a pub but ultimately concluded that it was not viable and two further parties expressed interest in a restaurant use but again concluded that it was not viable. It appears that the remaining viewings were for uses other than a pub/restaurant use.
- 9.7. The Fleurets report concludes that the property does not have an economically sustainable future in trading as a public house or pub-restaurant due to:
- its location
 - its physical condition
 - the facilities it is capable of offering
 - the absence of any records of past trade history
 - the external factors currently impacting on the trade performance of public houses
 - the scale and nature of the existing public house competition which serves the local rural district
- 9.8. In order to consider the robustness of the information provided by the applicant the Council instructed an independent advisor, Andrew Golland Associates, to review the submitted information. The Golland review broadly agrees with the figures within the Fleurets report advising they are reasonable and are benchmarked against industry standard data. The Golland review states that the costs of re-instatement are large and would probably require on-going costs of finance and that, if the pub was operative and in good condition, there would be an economic future for the pub but the owner/operator would have to have small or nil interest costs.
- 9.9. Officers note that the internal fixtures and fittings have been stripped out by the applicant prior to either the submission of the planning application for the change of use, or planning permission being granted, and the refurbishment costs would now be significant to enable the pub to re-open. In light of the Golland review's conclusions, the applicant's actions in this regard have made the facility less viable than it would otherwise have been.
- 9.10. The agent has stated that the building was in a poor condition at the time of the sale following a year of being unoccupied and possible underinvestment by the previous owners. The applicant and his daughter make similar statements. The sale particulars include interior photographs of the premises taken at what is assumed is the start of the marketing process but there is no other evidence or any other photographs to counter the argument regarding the state of the building at the point of sale and the commencement of the internal works. Planning permission is not required for any internal works as the building is not listed and the works do not constitute development.
- 9.11. Due to the lack of evidence to the contrary the application must be determined in accordance with the evidence/information that is before Members and Officers. The cost of refurbishment set against the income from a pub use would suggest that the use is no longer financially viable in the long term.

- 9.12. Critically, the rationale submitted by the Operations Manager at Hook Norton Brewery also implies that the pub was no longer financially viable, hence the reason for selling it, due to the location and size as well as rising costs and changes in people's habits and expectations. As such officers conclude that it would be difficult to resist the loss of the facility in accordance with saved Policy S29 of the CLP 1996.
- 9.13. A representation has been made suggesting that the sale of the pub was subject to a clause in the sale contract that determined that the building could not be operated as a pub and that the sale was as a private dwelling to avoid VAT being charged on the transfer. This would have the effect of reducing the cost of buying the premises. This matter is currently being investigated.
- 9.14. A significant number of representations have been made objecting to the loss of the pub. Whilst the existence of other pubs and facilities have been referred to in the reports in neighbouring/nearby villages and settlements, these are not likely to be accessed on foot on a regular basis due to distance local topography and lack of footways and are unlikely to serve as a community meeting place for the residents of Great Bourton.
- 9.15. The Bell is clearly considered to be of value to the village/community and this is acknowledged with the listing of the building as an Asset of Community Value (ACV) in January this year. A community group has been formed to try to buy The Bell and to run it as a community pub/facility; however, the pub is not for sale and the ACV legislation does not take effect until the property is on the market. Even with the obvious, substantial community support, the Council cannot make the current owner re-open the pub or make them sell it. The applicant is currently appealing against the ACV listing and has made an application for compensation resulting from the loss of property value arising from the listing.
- 9.16. The representations made by the Parish Council and the community led 'Save The Bell Inn Group' refer to the lack of assessment by officers of the premises as a community pub and how it could be viable as such a facility with community support and the right management. If it were to be operated as a community pub the costs to do so are likely to be less and such an enterprise can be financially successful at break-even point. A commercially run pub is unlikely to be successful if there is little or no profit to be made. The application before us relates to the loss of a commercially run pub and this is the basis for the assessment. It is not possible to assess the likelihood of attracting the right management or ensuring sufficient community support to make the premises financially viable in the long term.

Conclusion

- 9.17. Officers agree with the general conclusions of the Council's consultant and, whilst there are reservations over the length of time the premises was marketed, the vendor is not the applicant. It is considered that, on balance, the change of use of the pub to residential complies with the relevant development plan policies.
- 9.18. Overall, therefore, whilst the loss of a village public house is regrettable, in this specific case there is considered to be adequate justification – principally that presented by Hook Norton Brewery – for the change of use of the public house. As such, on balance, officers consider the proposal would not conflict with Policy BSC12 of the CLP 2015, Saved Policy S29 of the CLP 1996 and Government advice in the NPPF.

Design, and impact on the character of the area

- 9.19. Policy ESD15 of the CLP 2015 requires new development to respect its context and take the opportunities available to improve the character and appearance of the area and the way it functions. These development plan policies are consistent with national planning policy in the NPPF which places great weight on the importance of good design achieving sustainable development.
- 9.20. Saved Policy C28 of the CLP 1996 exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context.
- 9.21. Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority.
- 9.22. The proposed alterations to the building are considered to be relatively minor, comprising the addition of a porch extension to the side (northern) elevation, the reconfiguration of the roof junction between the main part of the building and the rear single storey element, the extension of the roof of a further single storey element, the insertion of 2x roof lights and a bi-folding door, the construction of a new brick wall as part of the utility, the removal of 2 chimneys and the replacement of a door opening in the rear elevation with a smaller window opening. The existing timber picket style fence would be replaced with metal estate railings.
- 9.24. Whilst the loss of the chimney on the main building is regrettable a second chimney on this part of the building remains. The remainder of the works are of a scale that is in keeping with the size of the building and are considered to be sympathetic to its character and appearance. It is proposed to use natural stone brick and tiles to match existing materials.
- 9.25. It is considered that the development would not cause harm to the character, or the visual amenities of the area and that the development is therefore acceptable in this regard.

Heritage Impact

- 9.26. The development affects the setting of a Grade II listed church and lychgate.
- 9.27. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...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.* Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.28. Listed Buildings are designated heritage assets, and Paragraph 212 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2015 echoes this guidance.
- 9.29. Whilst the premises has been a public house for a considerable amount of time, the change of use of the building to a dwelling is not considered to adversely affect the setting of the adjacent listed buildings. The external alterations to the building are considered to be sympathetic to the setting of the listed building in terms of the design and appearance. They are relatively minor and restricted, on the whole, to

the rear and side elevations and do not have a direct impact on the setting of the listed buildings.

- 9.30. As such the development would not result in harm to the significance of the listed buildings and the proposals are considered to be in accordance with policy ESD15 of the CLP 2015 as well as national planning policy set out within the NPPF in this regard.

Residential amenity

- 9.31. Policy ESD15 of the CLP 2015 states that new development proposals should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.
- 9.32. Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority.
- 9.33. The alterations to the building would not give rise to any significant impacts on the residential amenities of neighbouring properties given the relationship with surrounding dwellings. The first floor is already used for residential purposes and as such there would not be any additional overlooking caused by the change of use.
- 9.34. The use of the premises as a dwelling would not result in any increase in levels of noise and disturbance to neighbouring properties as the activities and noise associated with a pub are more than those associated with a single residence.
- 9.35. Overall, the impact on residential neighbours is considered to be acceptable.

Highway safety

- 9.36. Policy ESD15 of the CLP 2015 states that new development proposals should be designed to deliver high quality safe, attractive, durable, and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions.
- 9.37. The Local Highway Authority has commented that the development is unlikely to generate any additional vehicle movements from the access point when compared to the previous use. However, conditions are recommended relating to turning and parking of vehicles and the provision of sufficient cycle parking facilities.
- 9.38. Based on the comments from the Local Highway Authority, it is concluded that the proposal would not result in any significant adverse impact on highway safety and therefore that the proposal is acceptable in highway terms.

Ecology Impact

Legislative context

- 9.39. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.

- 9.40. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.41. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.42. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
1. Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
 2. That there is no satisfactory alternative.
 3. That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.43. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipelines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

Policy Context

- 9.44. Paragraph 187 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.45. Paragraph 193 states that when determining planning applications, local planning authorities ('LPAs') should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

- 9.46. Paragraph 198 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
- 9.47. Policy ESD10 of the CLP 2015 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.48. This policy is supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.49. The Planning Practice Guidance dated 2014 post dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that LPAs should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

Assessment

- 9.50. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- 9.51. present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

It also states that LPAs can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
 - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 9.52. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains buildings of traditional construction and therefore has the potential to be suitable habitat for bats and breeding birds.
- 9.53. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a licence for the development. In so doing the authority has to consider itself whether the development meets the 3 derogation tests listed above.

- 9.54. In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.
- 9.55. The application is supported by a detailed protected species survey which concluded that no evidence of bats was found, the building has negligible potential to support roosting bats and as the proposed works are very limited in scale, the risk of impacts to bats are considered to be very low. In terms of nesting birds, evidence was found in the eaves areas that are not directly affected by the proposals, but alterations to the roof line of the single-storey west extension would be undertaken in close proximity. It was recommended that works should be timed to avoid the nesting period where possible and enhanced nesting habitat for house sparrow could take the form of externally mounted sparrow terraces located under the eaves of west elevation.
- 9.56. Officers are satisfied, on this basis that subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.
- 9.57. In terms of Biodiversity Net Gain (BNG), it is considered that the development is exempt from mandatory BNG as it meets the criteria for the de minimis exemption as the development area is smaller than 25 square metres and because the development area only impacts an existing area of paved yard.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. The loss of the public house is regrettable. However, for the reasons set out above, it is concluded that the proposed development does not conflict with the relevant Development Plan policies and guidance listed at section 8 of this report and so is considered to be sustainable development.
- 10.2. Whilst the building is listed as an ACV, which indicates that the premises/use is of significant value to the community, the full weight of this doesn't come into effect unless the premises is to be sold and therefore other material considerations outweigh the ACV status.
- 10.3. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

11. RECOMMENDATION

DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)

CONDITIONS

Time Limit

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Compliance with Plans

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the form, the site location plan and the drawings numbered 7999 01, 7999 02, 7999 03, 7999 04 and 7999 06.

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

Conditions To Be Discharged Prior To First Use/Occupation

3. Prior to the first occupation of the development hereby approved, full specification details (including construction, layout, surfacing and drainage) of the turning area and 2 parking spaces within the curtilage of the site, arranged so that motor vehicles may enter, turn round and leave in a forward direction and vehicles may park off the highway, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Thereafter and prior to the first occupation of the development the turning area and car parking spaces shall be constructed in accordance with the approved details and shall be retained for the parking and manoeuvring of vehicles at all times thereafter.

Reason - In the interests of highway safety, to ensure the provision of off-street car parking and to comply with Government guidance contained within the National Planning Policy Framework.

4. Prior to the first use or occupation of the dwelling hereby permitted, access to covered cycle parking facilities shall be provided on the site in accordance with details which shall be firstly submitted to and approved in writing by the Local Planning Authority. Thereafter, the covered cycle parking facilities shall be permanently retained and maintained for the parking of cycles in connection with the development.

Reason - In the interests of sustainability, to ensure a satisfactory form of development and to comply with Government guidance contained within the National Planning Policy Framework.

Compliance Conditions

5. The development hereby permitted shall not be carried out other than in accordance with the recommendations set out in the Preliminary Bat Roost Assessment prepared by Swift Ecology dated 25th November 2024 unless otherwise agreed in writing by the local planning authority.

Reason: To protect habitats and/or species of importance to nature conservation from significant harm in accordance with government guidance contained within the National Planning Policy Framework.

CASE OFFICER: Shona King