

# **Town & Country Planning Act 1990**

## **S78 Appeal**

**APP/X1925/W/17/3188914**

**Proceeding by Public Inquiry**

### **Statement of Case**

On behalf of:

**Save the Cabinet Action Group ['SCAG']**

**A Rule 6 Party**

LPA Ref: 16/02113/1

Description of development:  
Change of Use from A4 Drinking Establishment to C3 Dwelling

Site:  
The Cabinet  
High Street  
Reed  
Herts. SG8 8AH

Local Planning Authority:  
North Hertfordshire District Council

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**The Cabinet High Street Reed Herts SG8 8AH**

**Rule 6 Party**

**Save the Cabinet Action Group**

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- 02 Extracts from the Draft National Planning Policy Framework March 2018
- 03 Land Registry record with plan of the site
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## **1 Background**

1.1 This document has been prepared on behalf of the Rule 6 Party, the Save the Cabinet Action Group ('SCAG'), on the instruction of its chair, Mr Michael Howes.

1.2 Application 16/02113/1 for a material change of use of the Cabinet at Reed from A4 Drinking Establishment to a single C3 residential dwelling was registered by North Herts District Council ('NHDC' or 'the council') on 1<sup>st</sup> September 2016.

1.3 The determination of the application was extended several times to allow the applicant (now appellant) to furnish further information in support of his scheme. NHDC Development Control Committee resolved that planning permission be refused on July 20<sup>th</sup> 2017.

1.4 A copy of a professional transcript of the recording of the Development Control Committee's discussion commissioned by SCAG appears at Annex 1. A copy of the recording of the meeting can be provided to the Inspector on request.

1.5 The appeal scheme was refused by notice dated 21<sup>st</sup> July 2017. The reason for refusal was:

*"In the opinion of the Local Planning Authority the change of use of these premises to residential use would lead to the loss of a valuable community facility, the last public house in Reed. The change of use therefore conflicts with the requirements of paragraphs 28 and 70 of the National Planning Policy Framework 2012 and policy ETC7 of the North Hertfordshire Submission Local Plan (2011-2031)."*

1.6 Until its closure in 2011 following misappropriation of funds by one partner in the business, the Cabinet enjoyed a long and unbroken success over about 300 years serving both the local community and, later, 'destination trade'.

1.7 The site was marketed for freehold sale or lease from August 2011 until its sale to the appellant in 2015. It has not been marketed for any purpose since then.

1.8 The Cabinet was listed as an Asset of Community Value on 2<sup>nd</sup> April 2014 on the nomination of Reed Parish Council ('RPC'). On June 13<sup>th</sup> 2015 the then owner notified the council of their intention to sell and NHDC duly notified RPC.

1.9 During 2014 negotiations were attempted by a consortium of local people (led by Mr Goddard) interested in acquiring the freehold of the premises from then owners Albanwise Ltd. Negotiations were handled by Everard Cole of Cambridge. The fact that these negotiations were underway was widely known locally including by RPC. Evidence

of this interest will appear in Proofs.

1.10 Separately, RPC were aware of the interest of local chef/publican Ivan Titmuss and his considerable efforts to acquire a long leasehold interest in the premises. This evidence has previously been supplied in Appendices to SCAG's original objection.

1.11 The Cabinet, contrary to the suggestion in the appellant's SoC 1.12, is still listed as an Asset of Community Value on NHDC's Register.

1.12 According to the Land Registry, the site was acquired by Richard Kelly Newman as a Trustee of the Newman 2004 Settlement at an address in Epping and the sale for £375, 000 plus £67,500 for VAT was registered on 4<sup>th</sup> December 2015.

## 2 Appeal Site and Surroundings

2.1 The appeal site is a regularly shaped rectangle of land oriented north:south lying to the west of High Street (shown on the Land Registry plan dated 1997 as 'London Road' see Annexe 3). The land slopes up from the road to the Cabinet, giving it a prominent appearance in views along High Street in both directions. There are steps up to the front door and previously there was seating for patrons between the Cabinet and the road.

2.2 To the south (across a boundary wall) and east (across High Street) of the Cabinet's curtilage are residential dwellings and to the west and north across timber fences is open land. (Contrary to the appellant's SoC para 2.3).

2.3 The site is dominated by the Cabinet, an attractive and wholly traditional in appearance Grade II listed Hertfordshire building of painted horizontal planked timbers over a timber frame for the most part. It has later alterations to the rear in more modern masonry. It is of two storeys with a timber outshut to the north previously used as the beer cellar.

2.4 Until its conversion without planning permission to a dwelling, the Cabinet comprised a bar area, separate dining room, snug, kitchen and trade WCs on the ground floor. An historic extension to the side, possibly a stable, was in use as a beer cellar. Managers' ancillary residential accommodation was on the first floor.

2.5 Outside the property benefited from a very large beer garden laid to lawn, with a patio and a dozen trestle tables and seating for circa 60 patrons. A large area laid to tarmac was used as parking for about 25 cars in unmarked bays. To the rear of the car park is a timber shed approximately 5m x 4m, previously in use as a cold store and butchery ancillary to the pub's kitchen operations.

2.6 In the appellant's SoC ('ASoC') paras 1.2 and 1.3, the site is recognised as a

public house in A4 use class. At ASoC para 1.7 it is stated that it was a restaurant with an ancillary bar, suggestive of the A3 use class. In fact its use was as a pub with ancillary food provision. The recent Amendment to the GPDO (SI 2017/0619) created a new Permitted Development Right ('PDR') for A4 conversion to a new AA class for a pub with expanded food provision. The Cabinet would, if returned to hospitality use, benefit from this PDR.

### **3 Proposed Development**

3.1 Retrospective planning permission is sought for the change of use from public house (A4 drinking establishment) to residential dwellinghouse (C3) pursuant to S73A TCPA 1990.

3.2 At S3 of the application form dated 22<sup>nd</sup> August 2016, the applicant has checked 'No' against "Has the building, work or change of use already started?". S14 states the existing use as 'A4 Public House' and that it is not vacant. The question is not "what is the premises' *lawful* use". It was not in use as a pub by that date, having been delisted ('taken out of rating') for Non-Domestic (Business) Rates on 1<sup>st</sup> August 2016. NHDC Licensing says by email dated 31<sup>st</sup> January 2017 that the Cabinet's Premises License was surrendered by Albanwise, the previous owners, on 1<sup>st</sup> November 2015. The first LBC application 16/02129/1LB dated 24<sup>th</sup> August 2016 at S3 states that the works of conversion began on 01/12/2015 and were complete by 01/07/2016.

3.3 Members of SCAG say that Mr Newman was in at least occasional overnight occupation during the summer of 2016 while the works were undertaken. This was not an ancillary residential use of the Cabinet as a pub since it was no longer licensed, trading or paying business rates.

3.4 In the alternative, if the change of use is said to have begun when works to convert it to residential occupation were underway, then this occurred sometime in early 2016, regardless of whether or not it was actually occupied. Under either measure, it was in a primary C3 use as a dwelling house, unlawfully, at the time that the application was made and the declarations at S3 and S14 of the application form are not true.

3.5 Drawing together the above, at the dates of the planning and listed building consent applications the pub use had ceased, the works had all been completed and Mr Newman was using the premises as a residential dwelling, even if it was not his principal home as he contends in various news reports (e.g. Royston Crow Annex 6).

3.6 The application should therefore have been made under S73A of the TCPA for retrospective development. Moreover, the change of use and the retrospectivity of the

application(s) give rise, SCAG says, to Intentional Unauthorised Development (Annexe 5 Written Ministerial Statement). See below at 6.5.1 and 6.5.2.

#### **4 Relevant Planning Policy**

Planning and Compulsory Purchase Act 2004 S38 (6): *If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*

The Local Plan for the present purposes is:

4.1 Saved North Herts District Local Plan No 2 with alterations 1996

4.1.1 Policy 6 Rural Areas Beyond the Green Belt

4.1.2 Policy 16 Archaeology

4.1.3 Policy 25 Re-use of Rural Buildings

4.1.4 Policy 26 Housing

4.1.5 Policy 55 Car Parking

4.1.6 Policy 57 Residential Standards

NHDC's guidance on its website relating to Saved policy indicates that Policies 6, 25 and 26 are inconsistent with the Framework. Equivalent or replacement policies in the SLP2011-2031 which are more consistent are discussed below. The other policies on Car Parking and Residential Standards can be considered uncontentious. Archaeology is considered in the context of Heritage Asset policies in the SLP. No commentary is therefore provided on Saved Policy.

and

4.2 North Herts Proposed Submission Local Plan 2011-2031. The EiP process is ongoing and has not yet been completed. It is unknown whether the LP 2011-31 will have been adopted by the time of the Inquiry. It is, however, well-advanced and can be afforded significant weight.

4.2.1 ETC7 Scattered Services in Towns and Villages

4.2.2 SP10 Healthy Communities

4.2.3 SP13 Historic Environment

4.2.4 HE1 Designated Heritage Assets

- 4.2.5 HE4 Archaeology
- 4.2.6 CGB1 Rural Areas Beyond the Green Belt.
- 4.2.7 CBG4 Existing Rural Buildings
- 4.2.8 ENV3 The historic and natural environment & cultural assets
- 4.2.9 SP12: Green infrastructure, biodiversity and landscape
- 4.2.10 NE6: Designated [and non-designated] biodiversity & geological sites and supporting text 11.47 and 11.48

## **5 Other Material Considerations**

5.1 The National Planning Policy Framework adopted 27<sup>th</sup> March 2012. Hereafter referred to as NPPF2012. Policies pre-fixed P-.

- 5.1.1 Policy P28 (village facilities)
- 5.1.2 Policy P69 (opportunities for members of the community to meet)
- 5.1.3 Policy P70 (plan positively for the use... and protection of... public houses...)
- 5.1.4 Policies 128-134 (heritage assets)
- 5.1.5 Policies 109 (minimising impacts on biodiversity) and 118 (biodiversity and development)

5.2 Draft National Planning Policy Framework 2018. With the Draft Revised NPPF expected to be issued 'in the summer of 2018<sup>1</sup>', it will be in effect by the time the appeal is heard. It is therefore considered to be a material consideration. Annex 1 to the DNPPF2018 refers. Hereafter referred to as DNPPF2018. Policies pre-fixed Para.

5.3 Supporting a prosperous rural economy. Para 84 "planning policies and decisions should enable (d) the retention... of accessible local services and community facilities such as ... public houses..." Analogous to P28 NPPF2012.

5.3.1 Chapter 8: Promoting healthy and safe communities. Para 93. Protection of valued community facilities and local services. Analogous to NPPF2012 P69 & P70

5.3.2 Chapter 16:.Conserving and enhancing the historic environment. Paras 185, 186, 187, 188 (a) & (b), 189 , 190, 191, 192, 197. Analogous to NPPF2012 P128-134.

5.4 The Planning (Listed Buildings & Conservation Areas) Act 1990 S16, S66, S72.

5.5 The Conservation of Habitats and Species Regulations 2017 (SI 2017/1012),

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<sup>1</sup> Chief Planner Newsletter Steve Quartermain April 2018

S10 wild bird habitats; S43 European Protected Species (offences). Replaces the Habitats Directive.

5.6 Registration as an Asset of Community Value.

## 6 The Statement of the Rule 6 Party: Local Plan Policy

6.1 The sole reason for refusal was:

*"In the opinion of the Local Planning Authority, the change of use of these premises to residential use would lead to the loss of a valuable community facility, the last public house in the village of Reed. The change of use therefore conflicts with the requirements of Paragraphs 28 and 70 of the National Planning Policy Framework [2012] and Policy ETC7 of the North Hertfordshire Submission Local Plan 2011-2031."*

6.1.1 SCAG supports the reason for refusal.

6.1.2 Policy ETC7 says

*Planning permission for the loss or change of use of any shops, services or facilities outside the defined retail hierarchy will be granted where: a. there is another shop, service or facility of a similar use available for customers within a convenient walking distance [800m]; and b. The proposed replacement use would complement the function and character of the area.*

*An exception to criterion (a) above will only be permitted if it can be demonstrated that the unit has remained vacant for a year or more, and documentary and viability evidence has been provided that all reasonable attempts to sell or let the premises for similar uses in that period have failed.*

6.1.3 The exception to this policy contains three tests all of which have to be met:

1. The unit has remained vacant for a year or more AND
2. Documentary evidence has been provided that all reasonable attempts to sell or let the premises for similar uses in that period have failed AND
3. Viability evidence has been provided.

6.1.4 Vacancy. It is common ground that the pub use ceased in 2011. The closure which was triggered not by commercial unviability but by business irregularity. Evidence has previously been submitted on this point by Angus Martin, the then owner of the business. The site is currently occupied for residential use and as such is not vacant. In the alternative, there has been no business occupier since 2011 out of a deliberate choice

by the owners, not through a lack of commercial interest or possible operators. On either basis, the Cabinet has not been vacant for one year.

6.1.5 Marketing: It is also acknowledged that the previous owner appeared to market the property for lease and freehold for periods of time between 2011 and 2015. SCAG questions how genuine the marketing actually was. SCAG previously supplied evidence that Ivan Titmuss, now the licensee at the successful Fox & Duck Therfield pursued the lease over a considerable period but was ultimately frustrated. Mr Goddard, a local businessman, on behalf of a local consortium, attempted to acquire the freehold on several occasions. There may have been other interest of which we are unaware. Both Mr Titmuss and Mr Goddard have said that they will attend the Inquiry to support their submissions.

6.1.6 The site has not been marketed for pub use or for any similar use during the appellant's ownership since his acquisition in 2015 Accordingly, the appellant has not provided documentary evidence that all reasonable attempts to sell or let the premises for similar uses in the period of its vacancy have failed. The alternative uses report adduced by the appellant which claims to 'prove' that there is no other similar use for the building possible contains no verifiable research or enquiries as to other suitable alternative uses. The report contains conjecture about the difficulty of altering it to suit another purpose because of its statutory listed status which is unsupported by expert evidence such as an evaluation in the form of, e.g., a costed scheme of works by a qualified conservation specialist to underpin the conclusions reached. This will be further explored in Proofs

6.1.7 Viability: SCAG submitted on or about 5<sup>th</sup> June 2017 in objection to the planning application a preliminary viability assessment by surveyor Anthony Miller FRICS (ret'd), a veteran of more than 50 years experience in the valuation and viability assessment of public houses. He concluded that the Cabinet would be viable as a traditional pub with food offer.

6.1.8 This was followed on or about 26<sup>th</sup> June 2017 by a Rebuttal by SCAG's surveyor Mr Miller of the appellant's ('the Culverhouse Report') and the LPA's (the 'Trinity Solutions Report') viability assessments which had been made available to us on or about 12<sup>th</sup> June. Mr Miller found reasons to disagree with the conclusions of both. Chiefly this was on the basis that only two diametrically opposed business models had been considered by either of the other consultants. Neither had considered the middle ground option selected by Mr Miller which is consistent with the model adopted by Mr Titmuss in support of his negotiations with Albanwise.

6.1.9 In SCAG's view, the new report by Peter Spelman ('the Spelman report')

dated October 2017 also does not demonstrate unviability. Amongst other things, the valuation of the premises at £350k which assumes that the pub is fitted and ready to trade fails to take into account the substantial sums required to repair damage to the building by the unauthorised works and to reinstate pub fixtures and fittings.

6.1.10 In January 2018 I carried out a substantial research exercise examining the achieved sale prices for pubs in the region compares with asking prices for pubs similar to the Cabinet. This clearly demonstrates that the average achieved sale price of village pubs in the region, fitted and trading, is in the region of £265k. We return to this in Proofs.

6.1.11 In oral submissions to the committee on July 20<sup>th</sup>, the case officer incorrectly attributed Mr Miller's observations and criticisms of the Culverhouse and Trinity Solutions to me, and not to him as SCAG's instructed surveyor.

6.1.12 Following the lodging of this appeal, Reed Parish Council applied for borrowing approval from the Ministry of Housing Communities and Local Government ('MHCLG') in the sum of £400k from the Public Works Loan Board ('PWLB') to acquire the freehold and to put the building back into a condition to trade again.

6.1.13 The PWLB application process includes the submission of a business plan, professional valuation and community support. The business plan was written by Reed Parish Council with lay assistance of members of SCAG and professional support from Pub is the Hub, a charity set up to enable pub businesses to flourish. These submissions are all scrutinised by MHCLG officials and, once they are satisfied that the business plan and democratic process are sound, a recommendation to approve the borrowing can be given.

6.1.14 On May 17th of this year, MHCLG approved the borrowing by Reed Parish Council, to be drawn down in two tranches, of the whole amount of £400k. In light of this, and the findings of the Inspector in the Old House at Home appeal decision<sup>2</sup> where he considered that Newnham Parish Council's PWLB lending was sufficient to demonstrate viability, on May 30<sup>th</sup> we invited the appellant to withdraw his appeal. See Annexe 4.

6.1.15 The Old House At Home decision is a material consideration in the determination of this appeal on all of the grounds, but most especially that of viability. The cases are directly analogous. Newnham is a small village with a limited population. It is in a prosperous area within commuting distance of London. Like Reed it has a Village Hall and church but no other services. Newnham Parish Council has secured a Public Works Loan for the acquisition and refitting of the pub, the last in the village. The chief premise of the application and appeal was that the pub was not viable<sup>3</sup>.

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<sup>2</sup> APP/H1705/W/17/3169774 Supplied as part of Annexe 4.

<sup>3</sup> Newnham Parish Council advises that the pub has a new Premises License and is set to reopen in July.

6.1.16 In light of the above, SCAG submits that the Cabinet is, without any doubt, a viable proposition. As such the Appellant has failed to demonstrate by viability evidence that operation of the Cabinet as a pub is unviable and the exception to policy ETC7 is not engaged.

6.1.17 It is also very apparent that NHDC's Planning Committee also rejected the applicant's assertions on viability, preferring instead SCAG's surveyor's approach and conclusions when deciding to refuse the application. The transcript shows that Cllr Fiona Hill, Vice Chair of the Committee, requested that the reason for refusal should include commentary on viability. (See Annexe 1 Transcript). It follows from the above that the protective objective of policy ETC7 applies. First, there are no alternative facilities within 800m as required by the explanatory text and the Manual For Streets. Second, SCAG submits that the loss of the use is harmful to the character and appearance of the area both on social amenity and heritage grounds and as such the proposed development would not 'complement the function and character of the area' as a village and a Conservation Area, thus failing both policy objectives.

## 6.2 SLP SP10 Healthy Communities.

This strategic policy sets an over-arching objective of protecting and promoting social and community facilities and largely reflects national policy in NPPF2012 P28, P69 and P70 and the Draft NPPF 2018, to which we turn below and in Proofs.

6.3 SP13, HE1 and HE4 Historic Environment, Designated Heritage Assets and Archaeology respectively; ENV3. These policies set out firstly at SP13 a strategic policy for the protection of heritage assets. Policies HE1 and HE4 set out development control policies at a finer grain. ENV3 is an overarching environmental strategic policy covering wildlife, heritage assets and cultural assets.

### 6.3.1 Policy HE1: Designated Heritage Assets.

DHAs comprise a wide variety of places protected by statute including Wreck Sites, Historic Battlefields, Parks and Gardens, Scheduled Ancient Monuments, Listed Buildings and Conservation Areas.

6.3.1.1 The proposal to convert a Grade II listed building in a long-established historic use accessible to the public to a private residence is development (a material change of use, S55 TCPA 1990). Development proposals which have the potential to harm designated heritage assets should be the subject of especial scrutiny. The loss of the use harmfully impacts the significance of a designated heritage asset, the listed building. We say that the resulting harm is substantial. The harm to the second affected designated heritage asset, Reed Conservation Area, is assessed at either substantial

harm or at the top end of the range for less than substantial harm (NPPF2012 and DNPPF2018 refer). The test set out in HE1 is that proposals will be approved where they "a. Enable the heritage asset to be used in a manner that secures its conservation and preserves its significance". Loss of the pub use is harmful to both Designated Heritage Assets. Conservation requires that proposals preserve or enhance significance. SCAG says that this proposal does neither.

6.3.1.2 SCAG says that the harm to designated heritage assets is both substantial and/or less than substantial. No heritage statement identifying the heritage assets themselves and their inter-relationship, their significance, impacts, harm or justification for the harm has been submitted, contrary to HE1 (I) (ii) and (iii). This was not an oversight, the requirement (also included in the Pre-Application Checklist) was specifically dispensed with by the LPA. Email correspondence supplied with the original objection refers. Consequently the appellant has not identified or justified the harm as required by both local and national policy.

#### 6.3.2 Policy HE4 Archaeology.

Developers are required by policy (and reflected in the Pre-Application Checklist) to submit at the least a desk-based assessment to identify any potential archaeological interest. NPPF2012 makes plain that heritage asset assessment should include 'at the least consulting the Historic Environment Record'. No such assessment was required by the LPA, contravening this policy. Works at the time and since (now the subject of an Enforcement Report) had and have the potential to affect archaeological interest at a site which has been occupied for at least 300 years.

We will address Heritage matters substantively in Proofs.

#### 6.3.3 CGB1 Rural Areas Beyond the Green Belt.

There are six elements. Elements (a), (c), (e) and (f) do not apply. (b) requires that the development meets a local need [1] for community facilities and services or [2] rural housing. On part [1] of this element, the proposal for the loss of a community facility/purpose is clearly not met since it will directly cause a loss. On part [2] 'local need' for this housing proposal has not been demonstrated. No justification has been produced to meet this element of policy by the appellant. (d) applies but the Cabinet is an existing rural building for the purposes of this policy and no objection can be made on this ground.

### 7 Statement of the Rule 6 Party: Other Material Considerations

#### 7.1 Listed Building and Conservation Area.

7.1.1 The Listed Buildings Act requires at Sections 66(1) and 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* that decision-makers pay special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and of preserving or enhancing the character or appearance of a conservation area.

7.1.2 Following the *Barnwell*<sup>4</sup> case in the High Court and the Court of Appeal and *Forge Field*<sup>5</sup>, both post-dating the NPPF2012, the Draft NPPF2018 policies relating to heritage considerations have been modified and updated. The judgment in *Barnwell*, reprise in *Forge Field*, established the principle that 'great weight should be given to the asset's conservation irrespective of the degree of potential harm' and this wording has been carried into DNPPF2018 Para 189. The effect of these judgments is to give additional weight to the statutory duty, removing the discretion of decision-makers to apportion what weight they choose.

7.1.3 Both national policy and the LPA's SLP Policy HE1 and pre-application checklist require the submission of a heritage statement with any application relating to a heritage asset. SLP Policy SP13 Historic Environment sets out a positive strategy for the protection of heritage assets. In circumstances where the proposal has the potential to cause substantial harm to designated heritage assets (as argued below, the loss of a pub use from a listed building or conservation area has been considered substantial harm by planning authorities), a heritage statement must be indispensable. Correspondence with the LPA's case officer shows that this statutory requirement was simply set aside. This constitutes a statutory breach which was pointed out to the LPA in an email<sup>6</sup> before determination. (Supplied with our original objection).

7.1.4 It is SCAG's case that the harm to the listed building, a designated heritage asset, from the proposed change of use amounts to 'substantial harm' and that therefore the relevant tests under NPPF2012 P133 and/or DNPPF2018 para 191 need to be met. Harm to the conservation area, a designated heritage asset, may be substantial or less than substantial and falls to be considered under either NPPF2012 P133 or P134 and/or DNPPF paras 191 or 192.

7.1.5 The LPA's conservation officer has been consistent in his conclusion that the loss of public house uses in conservation areas is harmful to their character and appearance, and thus their heritage significance, across a series of applications for residential conversion of public houses in the LPA's area over several years. These

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4 *Barnwell Manor Wind Energy Ltd v East Northants DC* [2014] EWCA Civ. 137, and *R (Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin)

5 *(R (aoa) Forge Field Society) v. Sevenoaks DC* [2014] EWHC 1895 (Admin)

6 APP 7 Email re heritage statement P4P/NHDC Feb 2017

conclusions have clearly applied the principle recorded in the 1991 court judgments in, amongst others, *Archer & Thompson*<sup>7</sup> and *Penwith*<sup>8</sup> that changes of use can affect the character of a conservation even without any physical manifestation. Cases include the Fox & Hounds Barley and the Maidens Head Whitwell. Both are listed buildings in conservation areas.

7.1.6 The Cabinet officer report and oral presentation to committee did not carry out the balancing exercise required by S66 and S72 of the Listed Buildings Act and elaborated on in the judgments on *Barnwell*<sup>9</sup> and *Forge Field*<sup>10</sup>, and merely glossed over them.

7.1.7 There was no discussion by Members of heritage matters at the planning committee. Consequently there was no agreement by the LPA that the two designated heritage assets (the listed building and the conservation area) would be preserved or enhanced as required by S72 LBA by the material change of use applied for. We will return in greater depth to heritage matters in Proofs.

## 7.2 Intentional Unauthorised Development (IUD).

7.2.1 IUD became a material planning consideration from 31<sup>st</sup> August 2015, announced through a Chief Planner Newsletter by Steve Quartermain. A Written Ministerial Statement ('the WMS') by DCLG Minister Brandon Lewis was made later that year. (Annexe 5).

7.2.2 In the officer report, oral submissions and committee discussion a number of questions were asked by Members and statements made by officers about the retrospective nature of the application(s). Neither the officer report nor officers present at the meeting raised the material consideration of Intentional Unauthorised Development with Members even though Members expressed significant reservations about this aspect of the application. The case officer dismissed the retrospectivity as 'irrelevant'. (See Annex 1 Transcript).

7.2.3 The applicant purchased the Cabinet at auction in 2015. On that occasion he told Malcolm Chapman of CAMRA that he was intending to turn the Cabinet into a house. He became the beneficial owner by virtue of his standing as a Trustee, on 4<sup>th</sup> December 2015. The Listed Building Consent application records that works began on 1<sup>st</sup> December 2015 and were complete by 1<sup>st</sup> July 2016. As described above at 3.4 the

7 Archer & Thompson v Sec of State 1991 JPL 1027

8 Penwith DC V Sec of State 1986 IEGLR 193

9 Barnwell Manor Wind Energy Ltd v E.Northants DC, English Heritage, National Trust & SSCLG [2014] EWCA Civ 137

10 R (on the application of) Forge Field Society & Others v Sevenoaks DC & Interested Parties [2014] EWHC 1895 (Admin)

application form misrepresented the true position and this cannot have been anything other than deliberate.

7.2.4 Drawing these together, SCAG submits that this constitutes Intentional Unauthorised Development. The appellant set out from the beginning to acquire the building for residential conversion and to carry out the material change of use. As an experienced property professional of 20 years standing he must have known that he would require planning permission and that he did not have it. Moreover he did not apply for it until long after the LPA began an investigation into the site following complaints from the community in 2016. This subject will be explored further in Proofs.

### 7.3 Registration as an Asset of Community Value.

7.3.1 Under the Localism Act 2011 and the 2012 Regulations, community groups of various forms can nominate sites for listing as Assets of Community Value (ACV). There are three principal benefits of doing so.

7.3.2 Firstly, there is an opportunity for defined types of bodies to purchase a freehold or leasehold interest in the ACV when it is offered for sale on the open market under the Community Right to Bid. The bidder need not be the nominator, as long as they satisfy the relevant criteria for valid bidder status.

7.3.3 Secondly, the Non Statutory Advice Note to Local Authorities includes a provision that it is for the local authority (and, by extension, any statutory decision-maker, including the Secretary of State and Planning Inspectorate) to decide whether the listing is material when deciding planning matters and how much weight to accord it. Listing can, and has been, taken into account as a material consideration by planning authorities (including the Inspectorate, on appeal) on both decisions on planning applications and the making of Article 4 Directions.

7.3.4 Thirdly, the local planning authority may compulsorily acquire land for development and other planning purposes pursuant to section 226 TCPA 1990. The acquisition of an Asset of Community Value pursuant to this power may be at the request of community or local bodies where the asset is in danger of being lost because the owner is unwilling to sell (see guidance in the Crichel Down Rules 2015 at paras. 215 – 216 and the SLP 2011 – 2013 supporting text at 14.21, 14.22 and 14.23).

7.3.5 The Draft Local Plan provides, in the supporting text at 5.38, planning support for the retention of Assets of Community Value and this gives effect to the guidance in the Non Statutory Advice Note. This will be explored in greater depth in Proofs.

#### 7.4 Value of the Cabinet to the community.

Both the listing of the Cabinet as an ACV and engagement with the planning process, the RPC Business Plan and SCAG are clear evidence of the 'valued' criterion of NPPF2012 P70 and DNPPF2018 para 93 (c) and (d).

7.5 The continued closure has greatly affected community life in Reed and its environs. This is evidenced in the many objections to the application, an oral contribution to the committee and submissions in the appeal. SCAG's campaign enjoys support from the local MP Sir Oliver Heald and frequent coverage in the local press. Fund-raisers such as the Pop Up Pub events hosted at the Village Hall using Temporary Event Notices have regularly seen attendances of 100+ people. A recent Golf Day raised considerable funds towards SCAG's Fighting Fund.

7.5.1 Reed Parish Council produced its Reed Parish Plan in 2011 ('RPP') which identified the Cabinet as a valued community facility. While there is no exact date of publication, it is clear from the content that by the time of publication of the RPP that the Cabinet was still trading.

7.5.2 RPC secured ACV listing of the Cabinet in 2014. In April 2015 they invited then owners Albanwise Ltd to attend the annual Parish Meeting at which the future of the Cabinet was to be discussed. To SCAG's knowledge, no response was received, nor did Albanwise send a representative to the meeting to answer questions or to engage with the community.

7.5.3 Allegations were made by the appellant's agent in email correspondence with the Inspectorate dated 30<sup>th</sup> April 2018. Firstly the appellant's agent writes of the local community's 'action at the planning committee meeting'. Their attendance and contribution at the meeting demonstrates the value the Cabinet holds for many people.

7.5.4 Secondly the appellant's agent alleges that the appellant has been 'bombarded with letters from local resident [sic] and the Parish Council'. SCAG is not aware that there has been any substantial correspondence, and even if there had been, all that would underline is the value in NPPF P70 terms of the Cabinet to the local community.

7.5.5 Residents in and around Reed are making further written representations in the appeal and a number will attend the inquiry to observe and/or take part in the proceedings.

## **8 Conclusions**

SCAG's case in summary is that the appeal should be dismissed for the following reasons:

8.1 The exception in ETC7 is not engaged because:

8.1.1 Evidence and expert opinion adduced by the campaign during the course of the consideration of the application demonstrates that the Cabinet would be viable as a public house business. This position was supported by the planning committee in refusing permission.

8.1.2 The Parish Council has demonstrated that the Cabinet is viable as a public house and this has been independently verified by MHCLG.

8.2 The loss of a greatly valued community facility and registered ACV is contrary to P70 and Para 93 of national policy and SLP explanatory text 5.38

8.3 Leaving Reed with no local services whatever within the MFS 800m walking distance is contrary to P28 and Para 84 (d) of NPPF2012 and DNPPF2018 and local plan policy ETC7 and its supporting text.

8.4 The identified harm, whether substantial or 'less than substantial', to designated heritage assets is unjustified and inappropriate. Tests in existing and draft local and national policy have not been met. There is no public benefit in the proposal sufficient to outweigh the loss of Reed's only public house, a social facility.

8.5 The appeal scheme is Intentional Unauthorised Development, and this consideration is exacerbated by the harmful works to the listed building carried out to facilitate the change of use.

8.6 In sum, development which harms the social, economic and environmental dimensions of sustainable development is by definition unsustainable and should be refused.

## **9 Costs applications.**

SCAG reserves its position in respect of costs claims on substantive and/or procedural grounds against the other main parties to the appeal. SCAG believes it has been put to both unnecessary and wasted costs through the unreasonable behaviour of both sides during the application and appeal process. Any application(s) will follow in writing prior to the appeal.

**ends**