

TOWN AND COUNTRY PLANNING ACT 1990
OBSERVATIONS ON BEHALF OF THE SAVE THE CABINET ACTION GROUP

Site Address: The Cabinet, High Street, Reed, Royston, SG8 8HA

APPEAL BY Mr Richard Newman

AGAINST AN ENFORCEMENT NOTICE

Planning Inspectorate Ref: APP/X1925/C/19/3234786

NHDC Ref: 16/00001/1ENF

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Introduction

1. These observations are submitted on behalf of the Save The Cabinet Action Group (SCAG). SCAG was established in late 2016 with a view to preserving The Cabinet, a 400-year-old Grade II-listed building, the last pub in the village of Reed, and reinstating it as a trading public house.

2. Alongside Reed Parish Council, SCAG has led the resistance to the various planning and listed building applications made with the intention of converting The Cabinet permanently into a dwelling-house. To that end it has engaged an expert planning and heritage consultant and a lawyer, raising funds to do so through donations and through numerous fundraising events which have enjoyed popular community support.
3. These observations relate to the appeal against an enforcement notice dated 18 July 2019 issued by the local planning authority, North Hertfordshire District Council (“NHDC”). It requires the appellant to cease the unauthorised use of the premises as a residence. SCAG supports NHDC’s decision to issue the EN.
4. As set out below, SCAG takes the view that some of the points made on behalf of the appellant in his Appeal Statement are misleading and the arguments misconceived. We have seen the statement submitted by NHDC in resisting this appeal. Notwithstanding our support for NHDC, we consider that SCAG is best placed to address some of the points raised by the appellant.
5. These observations were shown to Reed Parish Council before submission. They agreed with them and have written to HM Planning Inspectorate confirming this.

Planning history

6. For clarity, the various planning and listed building applications referred to in these observations and their status at the time of writing are:
 - 16/02113/1 The retrospective application for planning permission for change of use made in September 2016 (“the change of use application”): refused; appeal (reference AP/18/00011/REF) dismissed
 - 16/02129/1LB The retrospective application for listed building consent made in September 2016 (“the 2016 listed building application”); undetermined
 - 17/01524/1LB A retrospective application made in July 2017 for retention of vaulted ceilings and other matters (“the 2017 application”); undetermined

- 19/00341/FP and 19/00342/LBC Applications made in February 2019 for planning and listed building consent to subdivide the premises (“the February 2019 applications”); refused
- 19/01222/LBC A further application made in May 2019 for listed building consent (“the May 2019 application”); undetermined.

Background

7. The Cabinet, until then a popular and thriving public house, closed in 2011 after substantial funds were misappropriated, leading to the bankruptcy of the publican. It was registered as an Asset of Community Value (ACV) on 2 April 2014. The listing was due to expire in April 2019, but The Cabinet was re-listed on 29 March 2019, so its ACV status will now last until March 2024.
8. Various financially credible parties approached the vendors with a view to buying or renting The Cabinet with a view to running it as a pub. These included
 - (a) Ivan Titmuss, now the publican at the Fox and Duck, Therfield – his negotiations to lease The Cabinet took place in late 2011-2012 (statement at Annex 1);
 - (b) Philip Goddard, who made an offer of £380k as part of a consortium, to buy the freehold in 2013 (letter confirming offer at Annex 2), and a telephone bid to the auctioneer in 2015 of £250k (see also paragraph 27(b) below and Annex 7).
9. These offers came to nothing, and The Cabinet remained closed until 2015, when it was sold at auction to the appellant, an experienced property developer, for £375k + VAT-source: Land Registry, a price significantly higher than its value as a pub.
10. The appellant carried out significant works which converted The Cabinet into a house without first seeking planning permission or listed building consent, only applying for these retrospectively in August 2016, following numerous reports to the planning authority from December 2015 onwards.
11. We note from NHDC’s written statement in resisting this Appeal (paragraph 5.16 *et seq*) that NHDC served a Planning Contravention Notice on the appellant on 25 May 2016 and

that the appellant responded on 22 June 2016. As a consequence of this enquiry, he was invited to make applications for the change of use and the works undertaken (the 2016 applications).

12. The 2016 applications generated a significant public response. Some 90 individual written objections were submitted, a significant number in the light of Reed's complement of about 140 houses, and that is when the Save the Cabinet Action Group was formed.
13. On 20 July 2017, the Planning Control Committee at North Hertfordshire District Council refused the 2016 change of use application; an appeal was subsequently lodged. The 2016 listed building application was not considered. A new retrospective listed building application (the 2017 application) was submitted a few days before the change of use decision.
14. The appeal against refusal of the change of use application was heard by way of a Public Inquiry, at which SCAG was a Rule 6 party, on 6-8 November 2018. Some 50 or so members of the public attended the Inquiry each day in support of SCAG. The appeal was dismissed on 10 December 2018 (APP/X1925/W/17/3188914; decision supplied with NHDC's observations).
15. In February 2019 the appellant submitted new planning and listed building applications designed to subdivide The Cabinet, so that three rooms would be used as a small pub, while the lion's share would be a house. Both were refused on planning and listed building grounds by delegated decisions dated 3 April 2019. One of the reasons for refusal of the listed building consent application was that insufficient evidence had been presented in order to assess and justify the impact of the works on the fabric of the building.
16. In May 2019, a further application for listed building consent was submitted, described as being to "facilitate reinstatement of The Cabinet as a pub" but in sum it also appears to include all those works contained in the 2016 and 2017 LBC applications, so that any decision on the 2019 LBC application would also deal with the previous ones. See our commentary below in respect of paragraph 43 of the Appeal Statement. At the time of

preparing these Observations, this application remains undetermined. The 2016 and 2017 listed building consent applications also remain undetermined.

17. On 18 July 2019 NHDC issued an enforcement notice, the subject of these proceedings, requiring the appellant to cease the unauthorised use of the premises as a residence.

Comments on the Appeal Statement

18. We have the following comments on the appellant's statement of case covering corrections, omissions and misleading statements.

- (a) Para 7: The Cabinet was not in use as a cafe or restaurant (Use Class A3) at the time it was marketed; its current lawful and previous use throughout its history is as a public house albeit with a good food offer.
- (b) Para 8: Auction: the appellant was not the only bidder. A telephone bid was made by Philip Goddard, a local resident. Mr Goddard confirmed in a written statement available at the Inquiry that he had made this bid.
- (c) Para 9: The appellant took possession of the property soon after he acquired the freehold at auction in November 2015. It is not known – and the statement does not say – when the appellant began to use the premises as a residential dwelling house. It has been reported by members of the Parish Council and SCAG that a substantial scheme of alterations began in about December 2015 which continued until at least August 2016. Given the extent of the works, which included the removal and replacement of sanitary ware and the removal and replacement of the trade kitchen with a domestic one, for much of that time the premises would have been uninhabitable as a dwellinghouse. It was registered for Council Tax from 1st August 2016 so it is reasonable to consider that it was in that use from at least that time.
- (d) Para 33: Fleuret's withdrew from the instruction to market the premises on or about 16th July 2019 after we wrote to them about the misleading statements published as part of the sales particulars.

- (e) Para 34: we are aware of a number of parties who expressed interest in acquiring the freehold or a long leasehold – these are detailed in paragraph 27(b) and 27(c) below. There is no reason to suppose the Cabinet will remain unlet or unsold unless the appellant continues to refuse to engage with parties wishing to deal.
- (f) Para 35: The premises licence was applied for at the time the appellant was in discussions with Mr Toulson-Burke and his business partners (see paragraph 27(c)). The application was made in preparation for their operation of the premises.
- (g) Para 36: The Appeal was heard by way of a Public Inquiry, at which all three parties, including SCAG as a Rule 6 Party, were represented by counsel who were able to examine and cross-examine the witnesses on their evidence, and not an informal Hearing. In the decision the Inspector concluded that the Cabinet could be a viable enterprise if sold at a price reflecting its established lawful use discounted by a substantial sum for the repair and reinstatement works required to bring it back into use. There is no suggestion on the part of SCAG or indeed any party other than the appellant – certainly not the Inspector – that only a “community concern (i.e. at a minimal profit with a much reduced purchase price)” running a pub/restaurant could be successful. The “much reduced purchase price” in any case refers to the discounting for the cost of repair to undo unsympathetic alterations already carried out and refitting to bring the Cabinet back into use, which any party would have to bear, commercial or community.
- (h) Para 38: SCAG has contested the 2019 LBC application for reasons given below in respect of paragraph 43.
- (i) Para 39: there is no indication by the LPA as to when any decision(s) will be taken on the outstanding applications.
- (j) Para 43 of the appellant's statement makes reference to an objection being raised by SCAG to this application. We have objected on the basis that many of the works already carried out to the listed building which form part of the applications during its conversion to a private dwellinghouse are harmful to its

special interest as such. Consequently, they should be refused, and enforcement action taken to require the appellant to restore the building to the condition it was in before they took place. The only objection raised in connection with those elements which would be necessary to refit and operate the premises as a public house, i.e. those parts of the May 2019 LBC application which are additional to those previously applied for, are that they are inadequately detailed and from the information submitted the impact on the listed building cannot be adequately assessed. This is, in essence, the same as the reason for refusal given by the LPA in its decision earlier in the year on the February 2019 applications.

Observations on the grounds of appeal

19. The appeal is brought on grounds (e) and (g) of the statutory grounds set out in section 174(2) of the Town and Country Planning Act 1990 (“the Act”).

Ground (e): Service of the notice

20. The appellant argues that service was ineffective because the notice was not served on those other than Richard Kelly Newman who are said to form part of the “Newman 2004 Settlement Trust” named in the Land Registry entry which appears at Appendix 2 to the appellant’s Appeal Statement.

21. Section 172(2)(b) of the Act requires the local planning authority to serve an enforcement notice

“on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.”

22. The requirement of the Act is satisfied if the local authority serves the notice on persons which *in its opinion* have an interest in the land, being an interest that is materially affected (one might infer adversely) by the notice. NHDC has described the enquiries they made in order to form their opinion at paragraph 5.10 *et seq* of their statement. In particular, we note the appellant’s response (supplied by NHDC at appendix 8 to their

observations) to the planning contravention notice served on the appellant in May 2016, in which

- (a) In response to the question, "Please state the nature of your interest in the property (Owner/Tenant etc)" the appellant stated "Owner";
- (b) In answer to the question, "Does anyone else have an interest in the property (i.e. Landlord / Mortgage Company)", the appellant responded "N/A".

It would appear reasonable for the local planning authority to rely on these responses, alongside their other investigations, in forming their opinion and it is clear from paragraph 5.22 of their statement that they have done so.

23. SCAG was not party to the service itself. Based on the documentation provided by the appellant and by NHDC, we offer the following observations:

- (a) The Appeal Statement says that the notice was posted to the address of the Trust at PO Box 6000, as well as being posted through the door of The Cabinet and put on public display; it also states that the notice was addressed to Richard Kelly Newman and persons unknown;
- (b) The Appeal Statement says that Philip Roy, Rita and Kate Laura Newman are trustees; however, no evidence has been offered as to the nature of the Trust and who the beneficiaries are; the Land Registry entry provides no further information as to the capacity of the named people;
- (c) Throughout the various planning and listed buildings applications and during the Public Inquiry, the appellant appeared conspicuously to act alone, aided only by his lawyers and other advisers; the other parties named have until now played no part in these proceedings; we note, moreover, that NHDC have confirmed at para 5.23 of their statement that each of the various planning applications made in respect of The Cabinet has been in the name of the appellant with no reference to any other parties;
- (d) Only the appellant is using the premises as a residence. The Appeal Statement fails to offer any evidence as to as to how it is said any interests of other trustees

or the un-named beneficiaries of the Trust would be materially affected by the notice, or by the appellant being required to cease that unauthorised use;

(e) On the contrary, one imagines that the Trust might be better off without a breach of planning law being perpetrated against one of its assets and, indeed, that other trustees might prefer The Cabinet to be vacated in accordance with the notice;

(f) While it accepted that Trust law is not part of planning law and forms a different and separate regime, the law's requirements as to the duties of trustees appear relevant here. The appellant is said to be a trustee of the Trust. In consequence he is under a fiduciary duty to act in the best interests of the Trust and the beneficiaries of the Trust. It is inconceivable that a trustee acting in accordance with that duty would fail to inform any other trustees or beneficiaries with a genuine interest in the land of the notice whether or not that interest was materially affected;

(g) In any event, no evidence has been brought forward as to any prejudice to the appellant, the Trust, the trustees or the beneficiaries following from the alleged failure of service. Accordingly, even if it is found that service was defective, we invite the Inspector to disregard the matter in accordance with section 176(5) of the Act.

Ground (g): Time for compliance falls short of what should reasonably be allowed

24. The appellant argues, in effect, that his current application for listed building consent means that he should be given more time to cease his unauthorised use of the premises as a dwelling house. The outcome of other planning matters, unless they directly relate to the matter being enforced against, such as an application for planning permission for the development complained of, is immaterial. The grant of consent for the alterations or works to refit the Cabinet as a public house would not rectify the breach of planning control which is an unauthorised change of use. There is no guarantee, and in the light of the planning history at the site, in our opinion little likelihood, that the site would return to public house use merely by the grant of that consent. As a preliminary to the

use being reinstated, there is a requirement that the unlawful residential use ceases and, accordingly, that the enforcement notice is upheld.

25. The Action Group notes that the unauthorised use of the premises has extended over a period of at least three years since late 2016; that it has continued notwithstanding refusal of planning permission for change of use in July 2017 and following dismissal of the appeal in December 2018, and that the enforcement notice, issued some 8 months after the appeal decision, would allow him a further 6 months from 18 August 2019 to comply with its requirements, that is to say, until 17 February 2020 – or 14 months after the appeal was dismissed. This is not a case where the enforcement action can be said to have come to any surprise to the appellant, for example by virtue of the breach being perpetrated by some other party and only coming to his attention as a consequence of the service of the Notice.

26. The appellant's statement includes many pages of irrelevant and extraneous matter which is immaterial to the case at hand and it is not clear what purpose this evidence is intended to serve. We invite the Inspector to ignore it. We cannot, however, allow the various fallacious and tendentious statements to go unchallenged in case our failure to address them indicates to the appellant that we accept his statement's version of events as truthful or accurate. These were robustly addressed and contradicted in evidence in any case during the 2018 Public Inquiry into the appeal against the refusal of planning permission for the development which is presently the subject of this enforcement action and appeal.

27. Marketing: It is said at paragraphs 33 and 34 of the Appeal Statement that the appellant has been marketing the property, initially with Fleurets and subsequently with other agents, without success. The Action Group would welcome a genuine attempt by the appellant to market the premises as a pub at a reasonable asking price – however:

- (a) The appellant's asking price for the property when it was offered for sale by Fleurets was £595,000 (see particulars at Annex 3). This is significantly higher than its value according to the evidence given to the Public Inquiry and accepted by the Inspector, which was that the true market value based on the lawful use of the property was nearer £250,000 to £280,000 – a figure which would need to

be discounted to take account of the substantial cost of reinstating the premises as a pub (see valuations at Annexes 4 and 5);

- (b) The Action Group are aware of various expressions of interest, including a generous offer from Dr David Grainger, a well-intentional private individual who lives in nearby Barkway, of some £350,000 (see email at annex 6) – again significantly higher than the market value evinced at the Public Inquiry – which have been rejected by or on behalf of the appellant. Reed Parish Council also made an offer (annex 7) supported by borrowing authority from the Ministry of Housing, Communities and Local Government (letter from the Ministry dated 17 May 2018 (annex 8); it, too, was rejected. A third offer made by Mr Philip Goddard, whose long-term interest in acquiring The Cabinet to run it as a pub is also referred to at paragraph 8(b) above, was also rejected (annex 9). Any of these offers, if accepted, would have enjoyed the support of the Action Group and the wider community.
- (c) David Toulson-Burke, who is an established bar/restaurant operator, entered into negotiations to lease the property. We understand this interest was withdrawn after the appellant insisted on his proposal only to reinstate a small part of the premises as a pub; this led the putative lessee to question the appellant's sincerity and to doubt whether the appellant's intentions were consistent with running a viable business (annex 10);
- (d) It follows that the appellant's unrealistic asking price and other conditions are such as to call into question whether this is, or has been, a genuine marketing exercise; there is, moreover, every reason to suppose that if the appellant were to take a more realistic approach to the offers that have been made there is every reason to suppose that The Cabinet could readily be transferred to a new owner or lessee and operate successfully.

28. May 2019 listed building application – The appellant argues in para 37 *et seq* of the Appeal Statement that, in order for the public house to be run as a commercially viable operation, the existing works need to be regularised and further works required to

reinstate the bar and to separate the living accommodation. He complains at paragraph 43 that the May 2019 application is again subject to local objection. These arguments are highly misleading for the following reasons:

- (a) The February 2019 applications (19/00341/FP) were for planning and listed building consent to subdivide the premises, so that the main part of the building would remain a dwelling house, and a smaller area at the northern end of the property would open as a small pub. No provision was made for a kitchen or for any accommodation for a lessee or manager of the small pub. These applications were refused on both planning and listed building grounds in April 2019;
- (b) In relation to the February 2019 applications, the Action Group offered the view that the proposal for a small pub with a house attached was doomed to commercial failure, and that this would allow the appellant to achieve his ambition to change the use of the entire premises permanently to a house. The appellant's continuing ambition is, presumably inadvertently, laid bare in para 32 of the Appeal Statement, where it is said that he has accepted that change of use is not going to be granted "in the current political climate" – implying an expectation that if reinstatement of the entire property as a pub is delayed long enough the "political climate" might change;
- (c) The May 2019 listed building application bears striking similarities to the February 2019 applications, in that the main bar would be in the same area identified for it in the February proposal and other areas could easily be sealed off and used in practice as a residence. Before the appellant's works in 2016, the main bar was in the area marked "Lounge" between the areas marked "bar" and "staff reception room" in the May 2019 application, so the suggestion that the proposal would "reinstate" the bar is incorrect. The addition of a door up a step to a corridor leading to a so-called "accessible" WC at the opposite end of the building, a small serving hatch to the lounge, and a small kitchen (arguably in an unsuitable location), are the main distinguishing features from the February application. The Action Group is of the opinion that these are an attempt thinly to disguise the appellant's true intention only to open the small bar to the public

whilst maintaining the larger part of premises as a house – the scheme set out in the refused February 2019 application – a view further evidenced by the limitation in the Premises Licence – see below. In the opinion of the Action Group, retention of a large part of the ground floor as a house is inconsistent with the April 2019 refusal of planning permission for change of use, which was in any case not appealed.

29. Premises licence – The Appeal Statement states at paragraph 36 that the appellant has applied for and obtained a premises licence. His application was based on the floor plan provided in the May 2019 application for listed building consent. The Appeal Statement omits to mention that the licence includes a condition that no more than 50 people would be allowed on the premises at any one time due to the limited proposed provision of WCs – far fewer than The Cabinet could accommodate in its original configuration when it had capacity for 52 covers in the restaurant alone, alongside drinking customers and the substantial outdoor areas. This tends to confirm the view that the appellant’s intention is only to open part of the premises as a pub.

30. Alternative residential accommodation – At paragraph 44 of the Appeal Statement, echoing para 11, the appellant argues that, notwithstanding that he is “keen to comply” with the requirements of the enforcement notice, The Cabinet is his only residential accommodation. We note the account (para 5.27 *et seq* of NHDC’s statement) of the conversation between the appellant and the Enforcement Officer, during which it is said that the appellant stated that he did not require housing assistance and had other options available to him.

31. That would be unsurprising. Some cursory research into the appellant’s business affairs, for example by reference to his directorships recorded at Companies House, indicates that he is a man of very considerable property and other interests. Any suggestion that he would be made homeless or find it difficult to source alternative accommodation is not borne out by the evidence. As before, this enforcement action can have come as no surprise to the appellant, so he must have given consideration to how his

accommodation needs could be met in the event that the appeal were to fail and the notice be upheld. In particular, regard should be had to the following:

- (a) RKN Developments Limited, of which the appellant is the only director (see Companies House record at annex 11), owns two properties (land registry entries at annex 12):

1 Polo Cottages, Plot 1, Bury Green Farm, Millfield Lane, Little Hadham, Ware SG11 2ED; Land Registry reference HD571807; believed to be rented out

2 Polo Cottages, Plot 2, Bury Green Farm, Little Hadham, Ware SG11 2ED; Land registry reference HD571810; believed at the time of writing to be to be vacant

- (b) Two local witnesses (Mr Philip Blenkinsop, who lives diagonally opposite The Cabinet, and Mr Michael Howes, Chair of SCAG, who is a regular dog-walker) have offered evidence that the appellant is at best a part-time occupant of The Cabinet. Both state that vehicle movements and the lack of lights in the property in the evenings lead them to suppose that the appellant often vacates the property. The emails are at Annex 13.

Conclusion

32. The intention of the Action Group in submitting these observations is to further its aim to preserve the last pub in Reed and to bring about the reopening of the whole of it as a trading public house. The evidence strongly suggests that the appellant has no intention of doing so, and such schemes as he has put forward would lead at best to partial reopening which, in both the local authority and the Action Group's opinions, would be unviable and certain to fail. Whilst we welcomed the stated intention on the part of the appellant to market the pub, his conduct of the supposed marketing exercise is inconsistent with a genuine intention to part with the property at anything close to its true value – or, indeed, at all. Moreover, it seems to us fairly obvious that a public house available with immediate vacant possession (as would occur if the enforcement

notice were upheld and complied with) is a much more attractive proposition to purchasers than one with a “sitting tenant” claiming that he has nowhere to go.

33. We therefore welcomed NHDC’s action to give proper effect to the definitive refusal of planning permission for change of use by taking enforcement action; we also welcome their action in resisting this appeal.

34. In particular, we conclude that the appellant’s arguments that service of the notice was ineffective are misconceived, and that the arguments concerning time for compliance with the requirements of the enforcement notice are wholly without merit.

35. It seems likely to us that the appellant may make further representations in respect of the appeal, including providing late evidence during the response period. While it is understood that there is “normally” no opportunity for interested parties (or indeed the LPA) to make further representations, in such an instance we respectfully request in advance that the Inspector take into account a further submission from us if it appears necessary.

36. Accordingly, we invite the Inspector to dismiss the appeal.

Edwin Kilby

Vice Chair

On behalf of Save the Cabinet Action Group