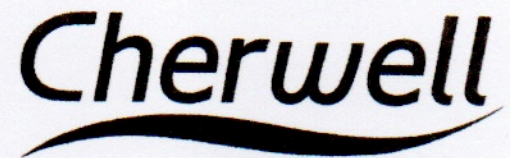


## Strategy & Commissioning

Scott Barnes – Director of Strategy & Commissioning



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28<sup>th</sup> April 2016

Dear Mr and Mrs Noquet,

**Review of the decision to include The Bishops End aka The Bishop Blaize (the Asset) on the Council's list of Assets of Community Value (the List) under the Assets of Community Value (England) Regulations 2012**

Further to the hearing that took place on 18<sup>th</sup> April 2016, I am writing to confirm that I have now concluded my review of the Council's decision to place the Asset on the List pursuant to section 87 of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

I have considered the representations made at the hearing by you, Dr Murray of Sibford Gower Parish Council and Kevin Lerner, the listing officer, in addition to all of the documentation that was considered at the initial registration stage and subsequent review.

In light of the matters that you have raised I have also sought the comments of various Council officers with a responsibility for matters relating to Planning and Licensing, and I have also been assisted in conducting the review by the Council's Head of Law & Governance.

I have also taken into consideration a First Tier Tribunal decision relating to this area of the law namely that involving the Black Swan public house in Amber Valley District Council's area. I have treated this decision as offering useful guidance on how to approach your review request.

You can find further details of this decision at

[http://www.bailii.org/uk/cases/UKFTT/GRC/2015/CR\\_2014\\_0010.html](http://www.bailii.org/uk/cases/UKFTT/GRC/2015/CR_2014_0010.html)

As you are aware, Section 88 of the Localism Act 2011 places a two-stage test on whether or not it is appropriate for an asset to be placed on the List. In the circumstances of this property it is necessary to consider the test in Section 88 (2). The first part of the test is as follows:-



1. That there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community.

Given the previous public house use, and the contents of the Parish Council's nomination form, I take the view that the Asset furthered the social wellbeing and interests of the local community in 2006 including furthering local interests of a social and cultural nature. Indeed I particularly take note that in the Foreword to the Non-Statutory Guidance published by the Department for Communities and Local Government on the Community Right to Bid ("the Guidance") the Minister cites local pubs as the sort of assets that the legislation is meant to involve.

Although there is no statutory definition of 'recent past' I have considered the Government's policy statement 2011 on Assets of Community Value which includes the following: *"With regard to 'recent past', our current view is that we will leave it to the local authority to decide, since 'recent' might be viewed differently in different circumstances. For example, 'recent' might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter"*. I therefore consider that there is not a fixed period that comprises the "recent past" and that this needs to be considered in the context of each specific case.

Whilst it is evident that the Asset has not been a public house for approximately 10 years since closing in 2006, I must consider the length of time that the property has been a public house prior to this date.

Mr Nocquet referred at the hearing to the fact that you had uncovered evidence that the property had been an off licence as recently as circa 1920. However, no evidence has been presented to me to further substantiate this claim, and my own independent research shows that the Asset was first registered as a public house in 1782, under the name The Old Inn, and the name Bishop Blaize was taken from 1816. Its role as a place of public interest was further corroborated by the Parish Council who stated it was used as a community place to hold wakes prior to the 1880s. I could find no mention of it being an off-licence although it is conceivable that, even if this was the case, this would comprise an activity undertaken as part of its role as a public house.

You also referred to information obtained under the Freedom of Information Act which includes an email exchange between Chris Mace, a legal officer acting for Cherwell District Council, and Kevin Larnar, the Officer for the Countryside and Communities, in which Mr Mace is seen to advise Mr Larnar that 5 years would be an appropriate time to term the recent past. My view is that this advice is not binding upon me as the reviewing officer and that, in any event, Mr Larnar advised the hearing that this was an initial view given by Mr Mace in respect of an earlier application, which subsequently changed upon further investigation and in the light of emerging First Tier Tribunal decisions.

I refer above to the Black Swan/Amber Valley decision which I have found to be useful guidance. In the context of the Black Swan having been in use as a public house since 1827 prior to its conversion to a themed pub/restaurant in 1997 and its eventual closure in 2012 the judge stated the following in paragraph 14 of the decision:-

*The "recent past" is not defined in the Localism Act 2011 or any relevant subordinate legislation. What constitutes the "recent past" will depend upon all the circumstances of a particular case. To that extent, the expression is a relative concept. In this regard, it is*



*relevant that the Black Swan operated as a public house for almost 200 years, until its closure in 2012. There is no suggestion by the appellant that the Black Swan was not furthering social wellbeing or interests during any period between 1827 and 1997. There has also been no change of use since 2012.*

Applying this principle to the facts of this case I find that a period of approximately 10 years is within the recent past given the previous continuous use of the asset as a public house for over 230 years.

I should at this point address the First Tribunal decision that you brought to my attention relating to South Norfolk District Council and the King's Head public house. I take the view that this decision has no bearing on my consideration of the review. That case involved an appeal against a listing that was upheld on review notwithstanding the finding of the reviewing officer that the "recent past" test was not satisfied. The Tribunal, as it was obliged to do on those facts, upheld the appeal. The decision offers no view from the Tribunal on how the "recent past test should be applied.

You raised the point that previous applications had failed 3 times because of the recent past issue. I do not accept this assertion as the evidence shows that the application failed because (notwithstanding the lack of planning permission) the Asset was being used for residential purposes. As such it was incapable of being included on the List pursuant to regulation 3 of, and Schedule 1 to, the Assets of Community Value (England) Regulations 2012.

I therefore consider that the first part of the statutory test in section 88(2) is met in this case because 2006 is the "recent past" in the context of this case.

2. **That it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.**

You asserted that the Asset is unlikely to reopen as a public house in future and you have cited a number of reasons for this, including non-viability of this as a business and your desire to change the use to a domestic residence, which has been denied planning approval on several occasions.

However, the Asset is up for sale on the open market as a public house, advertised and valued accordingly by a reputable agent, who is legally obliged not to misrepresent the nature or mislead in its description of the business. Additionally you have also successfully applied for a licence to reopen the Asset as a public house under the name The Pheasant Plucker's Inn. You previously received an offer for the Asset from the Parish Council, which despite your view that this was hugely undervalued, was in my view a genuine offer from the local community to buy and reopen the Asset. The Asset remains on the open market waiting for a buyer.

You made a point about reopening the Asset as an event location with an intention to "bar" certain members of the local community. My view is this would be difficult to enforce and I am not sure how realistic this would be, given that there is every likelihood of the community attending some events, but again shows a clear view to reopen the Asset as a trading business.

In my view therefore, given the Asset is being marketed for sale as a public house, you have applied for a new licence and intend to reopen the Asset, I see no alternative other than to come to the conclusion that it is realistic to think that it will be used for social wellbeing or social interests of the local community in the next 5 years.

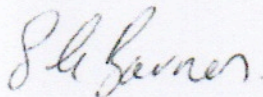


Having taken all of the matters indicated above into account I have accordingly come to the conclusion that the decision that was reached by the Council to place the Bishop Blaize, Burdrop on its List of Assets of Community Value was correct.

You are entitled to appeal against my review decision. Such an appeal must be made to the General Regulatory Chamber of the First Tier Tribunal within 28 days of the date that this letter was sent to you. You may also be entitled to claim compensation for loss and expense incurred through the asset being included on the Council's list. Further information on this right is contained in Section 10 of the Guidance which you can find at

<https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>.

Yours sincerely,



Scott Barnes

Director of Strategy and Commissioning

cc: Sibford Gower Parish Council

Councillor George Reynolds

Kevin Larnier