

WEST OXFORDSHIRE DISTRICT COUNCIL
LOWLANDS AREA PLANNING SUB-COMMITTEE
MONDAY 19 OCTOBER 2015

**UNAUTHORISED CHANGE OF USE FROM PUB WITH ANCILLARY
RESIDENTIAL ACCOMMODATION TO DWELLING, THE SADDLERS ARMS,
NEW YATT, WITNEY**

REPORT OF THE HEAD OF PLANNING AND STRATEGIC HOUSING

(Contact: Kim Smith, Tel: 01993 861676)

(The decisions on this matter will be a resolution)

1. PURPOSE

To enable the sub-committee to consider whether it is expedient to authorise enforcement action to secure cessation of the Saddlers Arms as a dwelling.

2. RECOMMENDATIONS

- a) That Members authorise the serving of an enforcement notice under section 172 of the Town and Country Planning Act 1990 to secure cessation of the use of the Saddlers Arms as a dwelling within a period of six months from the date the enforcement notice comes into effect and that the Head of Planning and Strategic Housing be authorised to draft the enforcement notice; and
- b) That should the owner of the Saddlers Arms be in breach of the enforcement notice the Head of Legal and Property Services is authorised to commence court proceedings against the owner under section 179 of the Town and Country Planning Act 1990. .

3. BACKGROUND

- 3.1. In July 2013 officers investigated a complaint in respect of an alleged breach of planning control on the land, which alleged of a change of use of the 'Saddlers Arms' public house to a dwelling.
- 3.2. A site visit at that time evidenced that the whole of the property was in residential use. The bar area was still in situ but was not in use. The former commercial kitchen serving the pub had been stripped out and the space was being used as a domestic kitchen and dining area. The bar area and conservatory were being used as living areas by occupiers. In response to the breach of planning control officers were advised that a planning application was to be submitted for a change of use of the pub to a dwelling. A planning application was submitted in September 2013 but subsequently withdrawn in October 2013 to allow for marketing of the property to take place.
- 3.3. A further planning application for change of use of the pub to a dwelling was submitted under reference 14/0081 and refused for the following reason:

By reason of the lack of a sufficient detailed marketing exercise, the application fails to demonstrate that the operation of the premises as a public house is not viable, and as such the proposal is contrary to Policy TLC12 of the West Oxfordshire Local Plan 2011 and the advice of the National Planning Policy Framework.

- 3.4. Following refusal of the application the Lowlands Area Planning Sub Committee resolved to take no enforcement action in respect of the breach of planning control for six months following the date of refusal, that being in March 2014. The decision to take no action was because the pub was in the process of being considered as an asset of community value (ACV) and the Committee decided to delay any enforcement action to allow time for this procedure to take its course.
- 3.5. The pub was listed as an Asset of Community Value in the spring of 2014. Following a further marketing exercise planning application 15/03162 was submitted in an attempt to regularise the on-going unauthorised use of the pub as a dwelling. This application is on the agenda for consideration at the 19 October Lowlands Area Planning Sub Committee with a recommendation of refusal for the following reasons:
1. *Having regard to the limited marketing information submitted with the application and the fact that a seemingly fair and reasonable offer to buy the pub for the benefit of the community was turned down, it has not been demonstrated to the satisfaction of the LPA that the property has been robustly marketed at an appropriate price, for an appropriate period of time, with a true intention to dispose of the property when a seemingly appropriate offer was made. The application is therefore considered contrary to policy TLC12 of the West Oxfordshire Local Plan 2011 and E5 of the emerging Local Plan 2031;*
 - 2 *The freestanding building, to provide pilates/community meeting space by reason of its location forward of the pub within the car parking area serving the pub is considered to result in an unacceptable highly intrusive and alien feature within the village street scene, contrary to policy BE2 of the adopted West Oxfordshire Local Plan 2011 and OS4 of the emerging Local Plan 2031.*
- 3.6. If the Sub Committee refuse application 15/03162 in accordance with your officers' recommendation the expediency of taking formal enforcement action to remedy the breach of planning control needs to be considered to seek to ensure that the development does not become lawful through the passage of time.

Human Rights Act 1998

- 3.7. The Human Rights Act 1998 incorporates into English law most of the rights protected by the European Convention of Human Rights. Section 6 of the Act makes it unlawful to act in a manner which is incompatible with a convention right. The two Convention rights that are relevant to this matter are:
- Article 8 – right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*
- Article 1 of the First Protocol – right of the individual to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

- 3.8. If the sub-committee is minded to authorise enforcement action then before making its decision members need to ask themselves the following questions:
- i) are the planning reasons for taking enforcement action sufficiently important to justify the action?
 - ii) are the enforcement measures proposed proportionate to the planning harm being caused?
 - iii) will the action have a disproportionate effect on the person(s) required to comply?
 - iv) are there alternative measures which would result in less interference with the individual Convention rights but would still achieve the desired planning objective?

Enforcement Action - Expediency of Taking Action

- 3.9. Government guidance advises that where unauthorised development causes significant harm to interests of acknowledged importance formal enforcement action is justified. In addition the Planning Act requires that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. Enforcement action would require the occupants to cease residential occupation of the public house. Such action would potentially result in the current occupiers being evicted from the property that they regard as home. Bearing this in mind it is likely that such action will interfere with their human rights.
- 3.10. However, this interference needs to be weighed against the serious harm caused by the development in terms of the loss of the community facility without adequate evidence that the community facility is not viable and that the only alternative use is as a dwelling. In this respect, the residential use of the pub constitutes a significant breach of planning control. It is considered that the public interest in protecting the community facility from the adverse effect of such unauthorised development outweighs the interference with the occupiers' rights to a peaceful enjoyment of their property/possessions and that there are no alternative lesser options that would remedy the breach of planning control.
- 3.11. The impact upon the occupiers will be considerable but it is not possible to remedy the breach without cessation of residential use and a considerable period has been allowed before enforcement action has been considered to enable the occupier to seek to resolve matters without enforcement action. In respect of the above assessment the taking of enforcement action is considered to have paid due regard to the four relevant tests and as such it is considered expedient to take formal enforcement action to remedy the alleged breach of planning control in the interest of protecting the community facility in accordance with the adopted and emerging Local Plan policies and relevant paragraphs of the NPPF and that these matters justify the interference with the applicants Human Rights.

4. ALTERNATIVES/OPTIONS

The Committee may consider that the harm to interests of acknowledged importance as outlined in this report, is not so 'significant' such that it is expedient to take formal enforcement action or that the occupiers Human Rights are unduly interfered with.

5. FINANCIAL IMPLICATIONS

None at this stage.

6. RISKS

None at this stage.

7. REASONS

See section 3 above.

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Background Papers:
None