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# Appeal Decision

**by D H Brier BA MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 April 2020**

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**Appeal Ref: APP/C3105/C/19/3226706**

**The Kings Head, 92 East Street, Fritwell, Bicester OX27 7QF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr C Shellard against an enforcement notice issued by Cherwell District Council.
  - The enforcement notice was issued on 14 March 2019.
  - The breach of planning control as alleged in the notice is change of use from a public house to use as a single dwelling house.
  - The requirement of the notice is cease the use of the public house as a single dwelling.
  - The period for compliance with the requirement is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. It is directed that the enforcement notice be corrected in section 5 by the deletion of "public house" and its substitution by "property". Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

## Preliminary Matter: The Notice

2. No appeal has been made on ground (f), nor has appellant queried the wording of the requirement set out in the notice. Be that as it may, I am concerned that there is an element of inconsistency between the allegation and the requirement. While the former refers to change of use *from* a public house, the requirement still refers to the public house use. To my mind, this imparts an degree of uncertainty into the notice and should be rectified. This can be done simply by deleting the words 'public house' from the requirement and replacing them with 'property'. I have the power to correct the notice and I am satisfied that correcting it in the manner indicated would not cause injustice to the parties.

## Reasons

3. Ground (d) is a legal ground of appeal, distinct from any planning merits. The Courts have held that in such an instance, the onus on proving it lies with the appellant. The test for the evidence is the balance of probability.
4. In order for the appeal to succeed it has to be demonstrated that at the time the enforcement notice was issued it was too late to take enforcement action. In particular, it has to be shown that the use in question commenced more than 4 years before the notice was issued and has continued actively

throughout the subsequent 4 year period. The relevant date in this instance is 14 March 2015.

5. In essence, the appellant's case is based upon the premise that the public house ceased trading on 18 May 2014, since when the premises have been used continually as a private dwelling. I accept that the date given for the cessation of trading is well before the relevant date, but the mere cessation of trading is not necessarily a firm indication either that a change of use has occurred, or that the public house use had ceased to exist.
6. I am also concerned that no evidence – documentary or otherwise - which might help shed additional light on the matter has been adduced by the appellant. My concern is fuelled further by evidence put forward by the Council, together with information provided by the local Parish Council. Not only is this somewhat at odds with what the appellant says, but I am also mindful that none of it has been called into question by the appellant. Moreover, I find it somewhat difficult to reconcile the appellant's current stance with information he previously gave to the Council.
7. In particular, my attention has been drawn to the appellant's responses contained in a Planning Contravention Notice (PCN) dated 22 May 2018<sup>1</sup>. In it the use of the property is stated as, "*public house – currently up for sale*". In response to the question 'has the use changed from a public house to a dwelling?', the answer is "*No*". And, although the reply to question 13 indicates that the property ceased trading as a public house at Easter 2014, it is also stated that "*The property is a public house*". In addition, in the reply to question 21, it is noted that the property is "*insured as a public house*". As I see it, rather than supporting the premise upon which the appeal is based, all these responses tend to contradict it.
8. I am mindful that some clarification of the responses in the PCN was given to the Council<sup>2</sup>, but the appellant has not offered any substantive explanation for the apparent discrepancies between what is contained in the PCN and what is now claimed. Nor has the Council officer's finding following a site inspection on 22 May 2018, that there was no residential use on the ground floor of the building and the impression that it was very much how a public house would be expected to look, been challenged either. My attention has also been drawn to information contained in a planning application for the change of use of the premises to a house submitted in June 2018<sup>3</sup>. The answer to the question 'has the change of use already started?', is "*No*". And the current use of the property is described as "*Redundant public house*". This too is very much at odds with the main thrust of the appeal.
9. I also have read that Council Tax records indicate that the property was unoccupied between August 2014 and August 2016. In addition, the local Parish Council refer to the building appearing to be uninhabited between 2014 and 2017. It may be that the latter date is later than the Council's record, but as it is reasonable to assume that a body such as the Parish Council would have a good knowledge of a building such as a public house within the village, I am inclined to attach a good deal of weight to their observations which generally accord with the Council's evidence.

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<sup>1</sup> Appendix 2 to the Council's statement.

<sup>2</sup> Ibid, Appendix 5: email from Mr D Berlouis dated 2 September 2019.

<sup>3</sup> Planning application reference 18/01168F.

10. The paucity of substantive evidence on the part of the appellant, together with the inconsistencies between the information tendered by him in the not-too-distant past and his current stance, impart a high degree of inconclusiveness into his case. Accordingly, therefore, I am not satisfied that the burden of proof that rests with the appellant has been discharged. I find the appellant's case insufficiently clear and unambiguous to demonstrate on the balance of probability that at the time the notice was issued it was too late to take enforcement action.
11. The appeal therefore fails.

*D H Brier*

Inspector