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Planning Officer  
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Council Offices  
Gernon Road  
Letchworth Garden City  
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20<sup>th</sup> March 2019

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**Planning Application: 19/00341/FP** | *Sub-division of the building to be part retained as a public house and part change of use to a single dwellinghouse. Creation of new car parking for public house. Erection of a 1.8m high close boarded timber fence on the line of the rear shared boundary between the retained Public House and the new dwelling. (Amended description only).*

**Listed Building Consent Application: 19/00342/LBC** | *Internal alterations to facilitate the sub-division of the building to be part retained as a public house and part change of use to a single dwellinghouse. (Amended description only).*

*Applications submitted and validated 13<sup>th</sup> February 2019*

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Dear Ms McDonald

I am instructed to write to you on behalf of the Save the Cabinet Action Group ('SCAG') in OBJECTION to the applications described above.

In the case of the application for planning permission, the chief considerations under S55 of the principal Planning Act 1990 (change of use and operational development) are:

- the wholly predictable consequential loss of the Asset of Community Value registered public house use by the diminution of the planning unit and its ancillary facilities to unviable dimensions
- the building works required to facilitate the change of use
- the impact of the public house use on the residential use with respect to noise and other amenity issues

contrary to local plan and national planning policy for the retention of valued community facilities and neighbour amenity.

In the case of the application for Listed Buildings Consent under the Listed Buildings Act 1990, the chief considerations are the effects on the special interest of the Cabinet as a listed building and on the character of the Reed Conservation Area, both designated heritage assets from:

- the loss of the majority of the public house to residential use under the present proposal
- the predictable consequential complete loss of the pub use which would result from its diminution to unviable dimensions
- the works required to facilitate the change of use including the internal alterations and effect of the fence and hardstanding on the setting

contrary to local plan and national policy relating to heritage conservation and statutory protection for designated heritage assets.

It is my client's contention that the proposal constitutes a Trojan Horse for the complete loss of the public house use in due course.

Evidence and opinion to substantiate this position follow in the substantive objection paragraphs at Section 3.

Contents

Section	page(s)
1 Introduction	4
2 Author	4-5
3 Summary of Objection	6-9
4 Present Status of the Site	9
5 The Applications: commentary and criticisms	10-14
6 Materiality of Asset of Community Value registration	14
7 Trojan Horses	15-16
8 Conclusion	17-18

Appendices, all pre-fixed 'SCAG'

Supporting evidence:

Appendix 1 Cabinet History  
 Appendix 2 Appeal Decision 3188914  
 Appendix 3 Sales Particulars 2018  
 Appendix 4 RPC Offer to Buy 2019  
 Appendix 5 Lease Interest David Toulson Burke 2019  
 Appendix 6 Philip Goddard Offer 2019  
 Appendix 7 DCL Squirrel Marketing 2018

Appeal Decisions:

PINS Ref:

APP Green Man 2013	APP/P0240/A/13/2198005 & 2197986
APP White Lady 2014	APP/Y2620/A/14/2214049
APP Rivers Arms 2013	APP/F1230/A/13/2196058
APP Chesham Arms Hackney 2014	APP/U5360/C/13/2209018
APP Golden Lion Camden 2013	APP/X5210/A/13/2199667
APP White Swan Hunmanby 2016	APP/H2733/W/15/3007922 & /3007638
APP Three Tuns 2016	APP/W0530/W/16/3144471
APP White Lion 2017	APP/J0405/W/17/3176674
APP Centurion 2016	APP/A0665/W/15/3139409

## 1 .Introduction.

- 1.1 The Cabinet public house at High Street Reed Hertfordshire SG8 8AH is a Grade II listed building, designated by the Department for the Environment (now DCMS) in 1984.
- 1.2 The site has been subject to a number of alterations since it was first constructed in about the C17th but has demonstrably been in public house use throughout most of its history. See *SCAG Appendix 1: Cabinet History* extracted from the objection made in 2017 to the earlier proposal for conversion of the whole of the premises to residential use.
- 1.3 The refusal of the application for residential use was considered at a public inquiry in November 2018. The Inspector's decision in the appeal (*SCAG Appendix 2 Appeal Decision 3188914*) concluded that the loss of the use would cause less than substantial harm to the affected heritage assets. He found that given there was demonstrable interest in the purchase of the Cabinet as well as viability evidence that the pub could return to profitable use that proposal was not the 'optimum viable use' required by NPPF Policy.

## 2 Author

- 2.1 *I am an historic buildings and planning consultant of 16 years experience. I have a Masters degree in Conservation of the Historic Environment from Reading University. I have practised as an independent consultant since 2008, having previously worked at SAVE Britain's Heritage and for Stephen Levrant, the conservation architect. From 2006-2010 I was a member of Wandsworth Borough Council's Conservation Areas Advisory Committee (WCAAC) advising the authority on conservation and design matters.*
- 2.2 *Between 2001- 2010 I worked on a wide variety of projects including country houses, non-conformist and cemetery chapels and pubs and breweries. I have specialised almost exclusively in the licensed leisure sector since 2010. Two schemes in which I was instructed have been nominated for heritage awards; the Grade II Sekforde Arms in Clerkenwell (winner, RIBA London Conservation Award 2018) and locally listed Putney Cemetery Chapels, London (nominee RICS Conservation Award 2019, result to be announced 2<sup>nd</sup> May 2019). The Sekforde is still in pub use; the redundant chapels are in residential use.*
- 2.3 *In the past 10 years I have made, taken part in, analysed, commented on or objected to more than 200 planning and listed building consent applications affecting pubs and breweries. My clients include owner/operators, breweries, local authorities (planning policy), developers (for enabling development to return or keep pubs in use), the Campaign*

*for Real Ale and community campaign groups. In 2017 I contributed to the Department for Communities and Local Government in the amendments to the Neighbourhood Planning Bill relating to pubs and permitted development and the resulting General Permitted Development (Amendment) (No 2) Order 2017.*

- 2.4 *I have a forensic knowledge of the Assets of Community Value regime under the Localism Act 2011, representing and advising nominators during the application, Review and First Tier Tribunal appeal stages of more than 30 public house registrations.*
- 2.5 *I have undertaken a comprehensive programme of training as an Expert Witness through ProSols and The Academy of Expert Witnesses and have professional experience of giving opinion and evidence in the courts (Landlord & Tenant Act) and at planning public inquiries.*
- 2.6 *Professional affiliations and memberships: Brewery History Society, Pub History Society, Society of Architectural Historians of Great Britain, Tiles and Architectural Ceramics Society, Victorian Society, Georgian Group, Society for the Protection of Ancient Buildings, the Wallpaper History Society, Urban Design Group. I am a Fellow of the Royal Society of Arts (FRSA).*
- 2.7 *From 2010 to 2013 I worked pro bono as a volunteer for the Campaign for Real Ale, advising and acting for community pub campaign groups and lobbying for better protection of public houses in local, regional and national planning policy. I was a member of the Pub Heritage Group, Planning Advisory Group, London Region Pub Protection Adviser and Pub Protection Officer, SW London branch. In 2013 I was awarded CAMRA's National Campaigner of the Year Award in recognition of my work on pubs campaigns and policy making. For reasons of professional objectivity, I am no longer a member and consequently hold no CAMRA portfolios.*
- 2.8 *In 2014 I was nominated for a Wandsworth Civic Award for lobbying for better pubs protection in the borough. This culminated in the issue of a borough-wide Article 4 Direction removing permitted development rights for change of use and demolition from 120 of the borough's pubs. The Direction was issued in October 2016 and became effective in October 2017.*
- 2.9 *I am a shareholder in three ACV community pubs projects, the Garibaldi in Bourne End Bucks., the Puzzle Hall Pub in Yorkshire and the Duke of Marlborough in Somersham, Suffolk.*

## 2.10 Planning For Pubs Services

- 2.10.1 The company advises and acts for a variety of clients. Advice has been given to local authorities, developers, tenant and brewery operators and intending purchasers on heritage conservation, planning and community engagement matters in pre-acquisition and PP/LB consent applications and related appeals. I have advised a number of local authorities on planning policy protection for pubs.
- 2.10.2 I have worked with and instructed architects and other built and natural environment specialists in devising appropriate schemes of alteration and repair and the change of use of redundant spaces and buildings to new uses.
- 2.10.3 I do not accept instructions for the change of use of public houses' trade and operational spaces (e.g. kitchens, cellars and gardens) to non-pub uses.
- 2.10.4 Since 2010 I have assisted, advised and/or represented more than 100 campaign groups, individuals and Parish Councils resisting change of use applications.

## 3 .Summary

- 3.1 *The application does not comprise sustainable development and should be refused.*
- 3.1.1 *The diminution of the use and the predictable consequential loss of the use which would occur by causing the premises to become unviable thereby constitute less than substantial harm to both the listed building and the conservation area (the environmental dimension) contrary to emerging LP HE1 and Framework policies on the conservation of heritage assets P189-194, 196. Any harm requires clear and unequivocal justification, which has not been made out.*
- 3.1.2 *The assessment of significance and impact falls far short of the standard required to assess or justify the harm to the affected heritage assets which would occur if the applications were permitted. This is contrary to the LPA's own validation process and Local Plan and Framework policies on the conservation of heritage assets P189-194, 196. This alone is sufficient grounds to refuse the applications.*
- 3.1.3 *The application for listed building consent for the alterations detailed neither preserves nor enhances the Cabinet, as a designated heritage asset, as required by S66 of the PLBCA 1990.*

- 3.2 *Furthermore the building appears to have subjected to rather more works than are detailed in the application. These we contend were not Urgent Works in S9 of the PLBCA 1990, but instead was a wholesale makeover which it appears, has been carried out without traditional materials, methods and workmanship. These further damage the significance of the building through loss of or harm to early fabric and the traditional plan form, contrary to S66.*
- 3.3 *The application for change of use to a mixed use as C3 residential and A4 drinking establishment, in diminishing its character in the latter use, neither preserves nor enhances the principal building nor the Reed Conservation Area and consequently is contrary to both S66 and S72 of the PLBCA 1990.*
- 3.4 *The predictable consequential total loss of the PH use which is of sufficient value to the community to be registered by the LA as an Asset of Community Value represents harm to the social dimension, contrary to emerging LP ETC7 explanatory text 5.36 and Framework policies P83, P91 and P92.*
- 3.5 *The diminution of and potential consequential complete loss of a commercial and employment use constitutes harm to the economic dimension of sustainability. Evidence is provided with this objection that interest in the whole of the premises both for a freehold sale and a long lease is documented. The application is contrary to the requirement in the supporting text para 5.36 to 2018 Draft ETC7<sup>1</sup> that the application **“will need to be supported with evidence that at least twelve months of active marketing has been undertaken. This will include an assessment of market signals, including that the marketing has been conducted appropriately given the terms, rental values and / or sales values of the site and similar properties, the benefits of the proposed use(s) and the impact on the community of such a loss of shops, services or similar facilities.”***
- 3.6 *NHDC's own planning framework identifies that Reed is an unsustainable location for new development because 'it has no shop'. Diversification options which could make use of the site by increasing rather than decreasing its commercial offer or services have not*

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<sup>1</sup> We note, however, that neither the policy nor the supporting text require evidence of no interest in the premises for ongoing (or alternative community) use to justify a change of use. We also question the watering down of ETC7 in its amended form which no longer requires that the site be vacant during the marketing period or that alternative community uses have been explored or that the premises be professionally and objectively assessed as unviable before permission will be granted for a non-community use. As drafted an applicant need only demonstrate evidence of marketing while trading and need not show that there was no interest. Such a policy would allow the conversion of highly successful premises to other uses. This cannot be the intention of any protective policy. These elements of the policy should be considered before adoption.

*been explored.*

- 3.7 *The applicant has provided no evidence that the Cabinet has been offered for sale during his tenure, contrary to the supporting text 5.36 in draft ETC7 2018 that the premises be marketed. SCAG's own evidence is that the premises were marketed in early 2019 (SCAG Appendix 3 Sales Particulars) at an inflated price reflecting its current, but unlawful, use as a dwelling. The owner did not comply with the requirement under the Localism Act that the local authority be informed of the owner's intention to dispose so that the nominating party (Reed Parish Council) might take advantage of the disposal restrictions imposed by virtue of the Act and its associated Regulations. Notwithstanding that, the Parish Council has made an offer to the applicant for the whole of the premises (SCAG Appendix 4 RPC Offer to Buy 2019.)*
- 3.8 *No evidence has been offered by the applicant that the premises in its present lawful use and configuration as a public house is, and would remain forever, unviable contrary to the requirement of the supporting text 5.36 to draft ETC7 2018. To the contrary, SCAG's evidence is that there is interest in both the purchase of the Cabinet's freehold and a lease of the premises in its entirety for its ongoing use. (SCAG Appendix 4 RPC Offer to Buy 2019; SCAG Appendix 5 Lease Interest David Toulson Burke 2019 and SCAG Appendix 6 Philip Goddard Offer 2019). Consequently the applicant cannot argue that the proposal represents the 'optimum viable use' as required under NPPF P196.*
- 3.9 *The diminution of the services the Cabinet could offer if the application were to succeed, and the consequential permanent loss of the pub from Reed will render the village even less sustainable as a location for new development than it already is, limiting the potential for further minor windfall development to meet housing development targets.*
- 3.10 *The co-location of a non-ancillary residential use and a commercial use in such close proximity would not accord with local and national planning policy protecting neighbour amenity; the chief objectionable element being noise. No noise attenuation or mitigation measures are proposed in either application either internally or externally and it thereby follows that there is no guarantee that suitable measures can be put in place which would respect the historic fabric and plan form of the building so as to afford residential occupants of the new dwelling a high standard of living accommodation.*
- 3.11 *We note the comments of NHDC's Environmental Health Officer with regard to noise transmission and suggested condition. While s/he is right to say that Building Regs control the transmission of sound, there is no detail provided with the application to*



*demonstrate that the required standard can be achieved in a way that respects the fabric and layout of the listed building. The drawing provided merely states that the application proposes at ground floor to “block opening with 1hr FR [fire resistant] twin stud partition” with no mention of sound attenuation measures. There is no detail provided about how sound or fire attenuation along the length of the party wall on both floors between the new use and the retained pub use will be achieved. If it cannot be achieved in a way that is judged to preserve or enhance the designated heritage asset then permission and consent should be refused. Secondly, the condition suggested by the EHO would be intended in effect to ensure that the residential part would remain ancillary to the pub use. As many appeal decisions demonstrate, there is no obligation on the part of an applicant or owner to resume a pub use at the premises- it could merely be blocked off and left closed. This is foreseeably likely given that the reduced pub area is likely to be unviable.*

4 The present status of the site.

4.1 In correspondence between my client and the local authority dated 14<sup>th</sup> March 2019 (email Simon Ellis to Michael Howes of SCAG) they were informed that the applicant and current resident had been advised to cease use of the Cabinet as a dwelling house and to notify them when he had done so. An undertaking was given by the Planning officer that SCAG would be told when this notice had been given, and/or when any decision had been made on enforcing against the unlawful continuing occupation of the Cabinet as a dwelling. It appears that no such assurance has been received by either party. Consequently it appears that the breach of planning control is continuing.

4.2 In an exchange between me and the Case Officer at the public inquiry in November 2018 it was accepted by her that if the appeal were dismissed then enforcement would naturally follow. While it is appreciated that Enforcement is the last resort, the breach complained of has been continuing for a period of more than three years and unless action is taken soon the change of use will become valid by the effluxion of time under the 'Four Year Rule'.

4.3 NHDC's draft local plan at paras 14.22 and 14.23 provides that under the right circumstances it is in a position to exercise its rights of Compulsory Purchase for Assets of Community Value on request by an aggrieved community. This appears to be such a case. It is difficult to imagine a more appropriate example.

4.4 NHDC's text on CPO powers is underpinned by S226 of the Principal Planning Act 1990 and Section 16 of the Compulsory Purchase Act 2015. The latter states:

*“Authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as Assets of Community Value, that are in danger of being lost where the owner of the asset is unwilling to sell, or vacant commercial properties that are detracting from the vitality of an area.”*

4.5 Offers have been made by both Reed Parish Council and Philip Goddard to purchase the freehold of the Cabinet (evidence supplied in appendices). Moreover, it appears that the marketing undertaken by Fleuret's has secured interest in a lease of the premises (evidence supplied in appendices) from David Toulson-Burke, a well-established hospitality operator. Mr Toulson Burke owns or is a partner in Eleven A in Ely, a highly regarded (TripAdvisor reviews) wine bar/bistro established in 2017. SCAG and the Parish Council are set to engage in direct discussions with Mr Toulson Burke imminently.

4.6 SCAG has sought to maintain a positive dialogue with North Herts District Council's planning department through meetings and correspondence. The Action Group has the continued support of their MP, Sir Oliver Heald, Reed Parish Council and local Ward Councillor Gerald Morris as well as the backing of the local community.

## 5 The Applications: commentary and criticisms.

5.1 The drawings.

5.1.1 These detail some of the measures that would be required for the separation of the dwelling from the retained pub use. Signally, two of the detailed alterations – the installation of a domestic kitchen and the reinstallation of a bar counter are indicated as likely to require further applications for listed building consent. It follows therefore that the application is inadequately detailed for the purposes of both planning permission (the kitchen will need to have external venting which may require specific permission) and listed building consent. If the kitchen installation and/or the bar counter and fittings cannot be made to respect the fabric of the building and planning controls, such consent(s) is/are likely to be withheld with the result that any permission or consent granted under these applications would be rendered incapable of implementation. Both applications should be refused.

5.1.2 No detail has been provided as to how sound or fire attenuation is to be

achieved to the required Building Regs standards along the whole of the length and height of the vertical party wall between the two uses. This may not be achievable in a way that respects the historic fabric of the building. Consequentially the application for listed building consent must fail on the basis of insufficient evidence.

5.1.3 No detail has been provided of the proposed fence to separate the garden of the dwelling from that of the pub and its new car park except its height. No indicative drawing of its appearance or consideration of the effect of the fence on the setting or views of the listed building has been submitted. Even an acoustic fence is unlikely to provide sufficient sound attenuation to protect residents in the dwelling from noise from the pub garden and the comings and goings of pub patrons and the movements of vehicles in the car park (conversation, doors slamming etc).

5.1.4 In the White Lady 2014<sup>2</sup> appeal at paras 8, 12 and 13 the inspector considers the amenity impacts of a public house in relation to an application for a non-ancillary residential use adjacent. The appeal was dismissed principally for the reason that noise impacts on residents in the new dwelling would be unacceptable in local and national planning policy.

5.1.5 The fence will have a detrimental effect on views of the rear of the premises. The drawings do not make clear what is proposed at the front. A dotted line dividing the garden from the front elevation to the road is suggestive of a further barrier of some sort but this has not been detailed and so it is not possible to assess its impact on the setting of the listed building. Any construction which blocks or intrudes into views of the front elevation would be especially harmful in visual terms to its special interest as a listed building and to the character and appearance of the Reed Conservation Area. The fence to the rear and any subdivision at the front should therefore be considered unacceptable in principle on both planning and listed buildings grounds.

Parking, servicing, traffic and highways.

5.1.6 This proposal is objectionable on several fronts. The pub already has an adequate car park for about 20 or 22 cars. The reduced parking provision, with two of the spaces at the western end only accessible by reversing the length of the car park, and possibly in from the road -meaning that it is likely that they would rarely be used, thus further reducing parking capacity- would be inadequate to service the business. This may have consequential effects on the viability of the public house if patrons arrive,

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<sup>2</sup> APP White Lady APP/Y2620/A/14/2214049

find they cannot park and decide to go elsewhere and then, remembering the limited parking do not return in future.

5.1.7 Secondly, the conversion of green space forming part of the setting of the listed building on its north side to grey or black tarmac hardstanding would be harmful to its special character by impacting on its largely countryside surroundings.

5.1.8 Thirdly the proposed car park will not provide adequate access for servicing, with delivery and refuse vehicles being unable to enter and exit the site in a forward gear, as required by the Manual for Streets, leading to deliveries and collections having to be made from the road, which is already narrow. This is likely to lead to conflicts between delivery and refuse vehicles and pedestrians and other road users.

5.1.9 Waste: No proposals for the separation and storage of waste have been specified and so it cannot be said that these would be adequate for the servicing of either the dwelling or the public house. The latter especially is likely to generate appreciable waste when casks/kegs, empty bottles and so on are considered and no allowance has been made for this. Taken together, these form adequate reasons for refusal.

5.1.10 Conclusion: On both planning and listed buildings grounds the application in respect of the car park element should be refused.

5.2 The Design & Access Statement/ Planning Statement.

5.2.1 Neither the D&AS nor any Planning Statement have been published with the other application documents on the planning portal. I am grateful to the Duty Planning Officer for sending the D&AS to me by email on March 21<sup>st</sup>. It advances no arguments on either planning or listed buildings grounds for the proposed development. It rehearses the same arguments for the unauthorised works to the building, some of which were detailed in the outstanding applications for listed building consent dated 2017 and 2018, and many of which were not. The missing works have not been accounted for in the present application for listed building consent either.

5.2.2 The D&AS on p2 records incorrectly that listed buildings consent was refused at appeal. The effects of the proposed change of use on the character of the listed building were considered by the Inspector. This is the statutory requirement under the Listed Buildings Act, and one of the reasons given for dismissing the appeal was the effect of the loss of the Cabinet's use on the special interest of the listed building's character as a

pub, which is not the same. Indeed, the decision specifically observes that the listed buildings applications were not the subject of the appeal. Moreover, since they are yet to be determined, they could not have been.

5.2.3 The D&AS fails to provide compelling or indeed any evidence that the subdivision of the listed building, a public house registered as an Asset of Community Value by the local authority, is necessary either to protect its use as a pub (as a community facility) or to preserve or enhance its special interest as a listed building. No evidence has been advanced in any supporting documents that the premises has been marketed. This is contrary to local and national planning policy and the Listed Buildings Act which seek to protect community facilities and designated heritage assets.

5.2.4 The D&AS records that some discussion has taken place with the Parish Council about their adoption of the retained pub unit to run it as a community enterprise of some sort. The Parish Council have addressed this in their objection to these applications, in which they record that their view is that the pub cannot be viable in this reduced form with inadequate parking, limited garden, no kitchen facility and no ancillary residential accommodation to ensure their business plan can be delivered. Moreover, the Parish Council have now made an offer to the applicant to acquire the freehold of the whole of the premises for pub use, although this is not mentioned in their submission. No evidence is advanced in the application that there has been any marketing or interest by established pub operators in the reduced floor plan 'pub'.

### 5.3 The Heritage Statement.

5.3.1 The purpose of a Heritage Statement is, firstly, to identify those elements which make up the special interest of a heritage asset, whether statutorily listed or not; secondly, to consider the impact of the proposed development (change of use and/or works under either S55 of the Principal Act 1990 or the Listed Buildings Act 1990) on the special character of the heritage asset and then (only then), where any harm is identified, to justify that harm.

5.3.2 The Heritage Statement has not fully detailed all of the works already undertaken nor has it properly considered, detailed or specified the works which would be required to return the Cabinet to pub use and to make the proposed dwelling fit for purpose as such. Indeed the drawings indicate that further applications for listed building consent are likely to be required in order to bring about the new uses. No detail has been provided on adequate sound and fire separation, the appearance of the

proposed fence or the impact of the proposed replacement car park on the character and setting of the listed building or the character of the Reed Conservation Area.

5.3.3 The application for the change of use of most of the subject building to non-ancillary residential – as we saw in the appeal decision in December- falls to be considered in the light of S16, S66 and S72 of the Listed Buildings Act. The Heritage Statement does not address the effect the reduction in the floorspace and facilities or the proposed works to facilitate the change of use would have on the special character of the listed building. As we saw previously the Inspector decided that loss of the use constituted harm to the heritage asset; it therefore follows that loss of key operational elements must also constitute harm, especially where a subsequent and consequent loss of the totality of the use is eminently predictable.

5.3.4 The application for listed building consent is therefore inadequately detailed and should be refused on the basis that the authority cannot adequately assess the effect of the proposed alterations on the special character of the listed building, contrary to local plan and national policy and the Listed Buildings Act and should therefore be refused.

## 6 Materiality of Asset of Community Value registration.

6.1 Many PINS decisions have dismissed appeals for the loss of public houses (or material parts thereof including meeting/function rooms, kitchen and/or car parking) where the community value is evidenced by listing as Assets of Community Value including Three Tuns, White Lion, Centurion, Chesham Arms, Golden Lion, White Swan. All decisions supplied.

6.1.1 In the Three Tuns case, an appeal against the conversion of the whole of the premises to residential use was dismissed chiefly in respect of the loss of the ACV listed community asset as well as on heritage. The Three Tuns has been acquired by a community group and is scheduled to reopen in April (latest information).

6.1.2 The White Swan: loss of the car park and ancillary curtilage buildings to non-ancillary residential development (even though there were no proposals affecting the principal listed building itself) was recognised by an Inspector in 2016 as being harmful to its on-going value as a community asset, as well as the actual and potential consequential harm on the listed building from the proposed development on its character and setting.

7 .Trojan Horse principle.

7.1 A Trojan Horse application is one which ostensibly retains part of the building in pub use while the remainder is developed for non-ancillary uses, usually residential. Such parts include upper floors previously in use as ancillary residential accommodation for the landlord and/or staff, car parking, barns and storage buildings and so on.

7.2 The consequential loss of the pub use – whether deliberate on the part of the developer or simply because the remaining pub use simply was unviable in its reduced dimensions and services and therefore subsequently failed or found no tenant- is, in the great majority of cases, inevitable.

7.2.1 In evidence of this at *SCAG Appendix 7 DCL Squirrel Marketing 2018* (submitted in support for a current application for pub to residential use in Westminster) describes how, despite the pub being located in Maida Vale, a wealthy London enclave, they were (allegedly) unable to secure a new tenant. The reason given is that *“operators did not like the fact that there was [non-ancillary] residential accommodation above as they were worried about complaints from the residents.”* Noise and amenity issues are planning considerations- the implications for conflicts between non-ancillary residential uses and the commercial use are clear. Complaints of this nature will be considered by the licensing authority and conditions may be imposed on the premises license which affect the viability of ongoing pub use, such as a restriction in opening hours or the requirement for door staff to monitor customer movements and noise. The upper floors, previously ancillary accommodation, were converted to non-ancillary residential use in 2003.

7.3 The concept of the Trojan Horse was identified, if not named, in the Green Dragon decision of 2013<sup>3</sup>. where the Inspector remarked, in allowing an appeal for the subsequent conversion of the 'retained' public house to residential use:

*“26. However, the Council has hardly helped matters. Granting permission [18 months previously] for a substantial dwelling on a large part of the site [pub garden and car park] was inimical to its continued viability as a public house. By significantly reducing its car park, and removing its garden area, the property is far less attractive for this use. Whilst internally the building could feasibly be once again fitted out as a public house, the*

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<sup>3</sup> APP Green Dragon MK45 – PINS APP/P0240/A/13/2198005 & 2197986

*construction of the new dwelling and the loss of parking and garden are irreversible.”*

7.4 A number of PINS decisions have dismissed appeals for the potential consequential loss (where part of the site is proposed for non-ancillary development), of public houses including the Rivers Arms, Chesham Arms, Golden Lion, White Swan. All decisions supplied.

7.5 In the Rivers Arms 2013 decision, the Inspector considered an appeal against the refusal of planning permission for the conversion of parts of this capacious public house in a rural village location to other uses, including C3 holiday accommodation, with retention of part in use as a 'café/bar' with ancillary residential. In it he gives the “Trojan Horse” principle a name.

*11. The Council [West Dorset DC] has not seriously suggested that either of the two proposed tourism related uses would be inimical to local policy, but considers the café/bar's viability as dubious. The Council, accordingly, views this aspect of the development as a form of Trojan horse in the sense that it considers that future pressure would inevitably arise, were the appeal allowed, to convert it into residential accommodation.”*

The Rivers Arms was acquired in 2017 by a commercial operator, refurbished and reopened to considerable on-line acclaim, in late 2017 and continues to trade successfully in its original form and dimensions.

7.6 The consequential loss of the Chesham Arms, a listed ACV, to wholly residential use at a later date if an appeal against an enforcement notice to cease the use of the upper floor as non-ancillary residential accommodation had succeeded was recognised by the inspector in that 2014 decision.

## 8 Conclusion:

8.1 The applications as framed are inadequate for the purpose of deciding the planning and listed building applications and should be refused.

8.1.1 The works required to facilitate the change of use of the greater part of the premises to residential use have not been detailed; indeed the drawings show that these may have to be the subject of a further application for listed buildings consent.



- 8.1.2 The works required to facilitate the reuse of that part intended for public house use have not been detailed and the drawings indicate that these may require further application(s) for listed building consent.
- 8.1.3 The Heritage Statement and Design & Access Statement fail to identify what works are actually required and no detail has been provided of the fence or the hard-standing to be used as replacement car parking. No detail has been provided of adequate Building Regs compliant sound attenuation or fire separation between the uses; these, once specified, may not secure listed buildings consent.
- 8.1.4 The Heritage Statement does not do what it is required to do. No analysis of the impact of the proposed change of use or works to the premises has been carried out or any assessment of harm made nor any justification for any harm. No argument has been advanced that the change of use constitutes 'enabling development' or that the proposal is the optimum viable use.
- 8.1.5 No evidence has been advanced that the reduced footprint of the retained public house is or could be viable, for example by an experienced operator's business plan and/or an offer to lease the premises as proposed.
- 8.2 There is ongoing interest evidenced in this submission of continuing use of the premises in its unaltered form by both an experienced operator and the Parish Council. The latter is fully funded by the Public Works Loan Board, subject to a full survey and detailed schedules of works to reverse unauthorised alterations and to refit the premises suitable to trade. The application constitutes a Trojan Horse for the ultimate conversion of the whole of the premises to non-ancillary use which would represent a consequential loss of its standing as an Asset of Community Value.
- 8.3 The application as framed would reduced the community's ability to meet its day-to-day needs from the loss of various elements of a fully-functioning public house, such as kitchen, adequate car parking/servicing and garden area.
- 8.4 There could be conflicts with any future non-ancillary occupier of the residential dwelling thus created, leading to licensing review which could either deprive the Cabinet of any use as a pub or severely truncate its operation such as the imposition of limited opening hours.
- 8.4.1 The loss of much of the floorspace as well as the ancillary living accommodation would be harmful to the ongoing use of the premises in use as a pub. Any economic

benefit is likely to be limited in comparison with the employment opportunities a full-service public house (such as that envisaged by the Parish Council).

8.4.2 The fence would obscure views of the rear of the Cabinet and any potential fence to the front would have an impact on the visual appeal of the building as well as a detrimental effect on the character of the Reed Conservation Area. No detail has been provided of any sound attenuation it may provide or of its appearance.

8.4.3 The loss of car parking and the ability to effectively service the public house use from the reduced area allocated would be harmful to the ongoing viability of the Cabinet as well as have potential harmful traffic and highways effects.

8.4.4 The applications fail to meet the three objectives of sustainable development. They are harmful to economic interests, to social/community interests and to environmental interests. They are unsustainable.

8.5 Both applications should be refused.