

Mark Simmons
Conservation Officer
North Herts. District Council
Council Offices
Gernon Road
Letchworth Garden City
Hertfordshire SG6 3JF

23rd August 2017

Objection

Planning Application:

17/01524/1LB: Retention of insulated vaulted ceilings to the games room at ground floor and across the first floor following removal of horizontal ceilings at first floor

at The Cabinet, High Street, Reed, Hertfordshire SG8 8AH

Dear Mr Simmons

I am instructed to write to you on behalf of the Save the Cabinet in Reed Campaign in opposition to the listed building consent application currently being considered by North Herts. District Council.

This document is in two parts: the text, with a summary on p3/4, and Appendices. As the starting point for this objection was our previous submission on the application for planning permission for change of use and the first Listed Building Consent application much of the same argument and evidence has been repeated. Where new evidence and argument has been made, these are in the Andalus font, a bold sans serif, to enable you to identify them easily. I hope this assists.

The application breaches local and national planning policy, legislation protecting the historic environment and published guidance on the determination of planning applications relating to premises registered as Assets of Community Value under the Localism Act 2011.

I argue below that development which harms the historic environment and deprives a community of a valued community asset, without any discernible countervailing economic or public benefit, is by definition unsustainable and consequently should be refused permission.

Sincerely

Dale L Ingram MSc CHE FRSA
Director

Planning For Pubs Ltd.

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Planning For Pubs Ltd.

<i>Contents</i>	<i>page</i>
List of Appendices	4, 5
1. Introduction	6
2. Author	7, 8
3. Summary	9, 10
4. Heritage assessment	11- 22
5. Planning history	23
6. The applications	24
7. Asset of Community Value	25 - 27
8. Objection	28 - 46
9. Sustainability	47 - 49
10. Conclusion	50, 51

Appendices

- APP 1 Photographs and maps – two parts
- APP 2 *Appeal decisions. Numbers given are PINS References*
- | | |
|----------------------------|--|
| White Lion HP23: | 3130704, 3130705, 3131920 (one document) |
| Three Tuns Guilden Morden: | 3144471 |
| Fox & Hounds Barley | 3154355 |
| Yew Tree Chew Stoke: | 3149728 3147896 (one document) |
| Dukes Head IP6 | 3143123 |
| Rivers Arms Cheselbourne | 3006600 |
| Rose & Crown Croydon | 2136134 |
| 17 Ladygate Beverley | 3160951 |
| Chequers Box 2003 | 1098049 |
| Unicorn OX7 | 2134643 |
| Cross Keys SW3 | 2172342 |
| Phene Arms SW3 | 2172028 |
| Admiral Hardy | 3169238 |
| Chesham Arms | 2209018 |
- APP 3 *Planning Court Judicial Review judgements:*
- Obar Camden (Koko)
- The Cock & Bottle, Bradford
- Barnwell Manor Wind Energy Ltd v East Northants DC and others [2014]
- EWCA Civ 137
- Yew Tree Chew Stoke – Bath & NE Somerset
- APP 4 Witness Statement by Graham Stuart: interior works.
- APP 5 National Monuments Record of the Cabinet
- APP 6 Historic Environment Record: map of heritage assets in Reed
- APP 7 Email re heritage statement P4P/NHDC Feb 2017
- APP 8 Spare
- APP 9 Spare
- APP 10 Historic England Cross Keys Kinnerley 2014

- APP 11 Spare
- APP 12 Archer & Thompson v Secretary of State 1991
- APP 13 Malcolm Chapman (CAMRA) Statement
- APP 14 *Intentional Unauthorised Development – Written Ministerial Statement***
(WMS 2015)
- APP 15 *Letter from the Chief Planner S. Quartermain ref WMS 2015***
- APP 16 *Appeal Decisions referencing Intentional Unauthorised Development.***

1 Introduction

The Cabinet public house at Reed was added to the Statutory List at Grade II in 1989. The Reed Conservation Area was designated in 1974 and its boundary altered in 1979. Consequently both are Designated Heritage Assets protected under S66 and S72 respectively of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Evidence suggests that the Cabinet has been in use as a public house since at least 1806, and probably longer.

It has been run successfully as a public house in a variety of formats throughout the twentieth century and no evidence has been uncovered to suggest that it has ever been unviable as a commercial enterprise. Indeed, as described in this this document and supporting evidence and opinion from Anthony Miller FRICS, it has a history of having one of the most robust commercial profiles of any of the pubs in the district.

The site was sold in 2015 to the present freehold owner who has now made an application for change of use of the site from A4 drinking establishment to C3 residential dwelling with an allied application for listed buildings consent for operational development.

The application has been a source of contention in the local community, who have no adequate substitute within a reasonable distance.

I have been instructed to analyse the applications and to make observations and criticisms where warranted in objection to a/ the loss of the public house use and b/ the operational development proposed and that which has already taken place at the site without consent, contrary to S9 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

I am instructed as advocate with expert knowledge. That is, to present my opinion in making the case on behalf of the local community based on the evidence provided to me by my clients and from personal research and my own knowledge.

Statement of truth:

I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

I am not instructed under any conditional fee arrangement nor do I have any conflicts of interest of any kind.

Dale Ingram

Planning For Pubs Ltd.

2 Author

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 on the staff of 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 planners on conservation and design matters.

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.

In the past 7 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 and the resulting General Permitted Development (Amendment) Order 2017.

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.

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.

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).

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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.

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 becomes effective in October 2017.

I am a shareholder in two ACV community pubs projects, the Garibaldi in Bourne End, Bucks. and the Duke of Marlborough in Somersham, Suffolk.

Planning For Pubs Services

The company advises and acts for a variety of clients. Advice has been given to developers, tenant and brewery operators and intending purchasers on heritage conservation, planning and community engagement matters in pre-acquisition and related PP/LB consent applications.

I have worked with and instructed architects and other built and natural environment specialists in devising appropriate schemes of alteration and repair and change of use of redundant spaces and buildings to new uses, almost invariably ancillary to the pub.

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.

Since 2010 I have assisted, advised and/or represented more than 100 pub campaign groups resisting change of use applications.

3 Summary

3.1 *The application does not comprise sustainable development.*

3.1.1 *The loss of the use and the physical works which have been undertaken constitute substantial harm to both the listed building and the conservation area (the environmental dimension) contrary to emerging LP HE1, SP13 and Framework policies on the conservation of heritage assets P128, 129, 130, 131-135.*

3.1.2 *No **meaningful** assessment of significance, impact, harm or justification has been carried out, contrary to the LPA's own validation process and Local Plan and Framework policies on the conservation of heritage assets P128, 129, 131-135. This alone is sufficient grounds to refuse the application.*

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 *Some of the works may be regarded as so harmful that they justify criminal prosecution under S7 of the PLBCA 1990.*

3.4 ***The alterations detailed (and those not detailed in the application but described in the witness statement of Mr Stuart) neither preserve nor enhance the principal building nor the Reed Conservation Area and consequently are contrary to both S66 and S72 of the PLBCA 1990.***

3.5 ***the loss of the PH fittings** from a building which is of sufficient value to the community to be proposed and recognised by the LA as an Asset of Community Value represents harm to the Cabinet's communal value, contrary to emerging LP ETC7 explanatory text 5.36 and Framework policies P28, 69 and 70.*

3.6 ***The failure adequately to assess alternative uses which would be less harmful to the Cabinet's heritage significance (e.g another commercial/ employment***

use) means that its optimum viable use has not been argued adequately or at all. This is contrary to the requirement in ETC7 that the premises must be marketed during the period of closure 'for similar uses'. Notably, not the same use, but a similar use. NHDC's own planning framework identifies that Reed is an unsustainable location for new development because 'it has no shop'.

3.7 *The applicant has provided no evidence that the Cabinet has been offered for sale during his tenure (i.e. not in the past 2 years), contrary to the exception in ETC7 that the premises be marketed during its closure period and the requirement in P133 of the Framework which requires evidence that charitable or other ownership is demonstrably not possible.*

3.8 *The evidence proffered in the two Culverhouse reports that the use is unviable is absolutely unconvincing and our own expert opinion and evidence has roundly rebutted this. Unviability has not been proven, contrary to the policy in ETC7 and Framework policy 134.*

3.9 ***We commend BathNES DC's example (Yew Tree PH) in issuing an Enforcement Notice (appeals dismissed 2016) to cease the residential use and a Listed Building Enforcement Notice to reverse the harmful alterations.***

3.10 ***The continuing use of the premises as a dwelling is unlawful and the loss of the use of the building and the works undertaken to it are harmful to its significance as a designated heritage asset, and we invite the local authority to refuse consent for the works for the reasons that***

(a) it constitutes Intentional Unauthorised Development which from 2015 is a material consideration (WMS 2015). and

(b) the works and the loss of the use are harmful to the building's special interest as a designated heritage asset and that harm has not been justified, contrary to S66 and S72 of the Listed Buildings Act and local and national policy on the protection of heritage assets.

3.11 ***Habitats matters: per our para 10.12 below, the application has not dealt with the applicant's responsibility to meet the requirements of the Habitats Directive. This is particularly germane to this application as it affects the roof structure(s) which form suitable habitat for birds and bats. No assessment has been provided to show that no harm has been caused or that that harm can be mitigated. This is sufficient reason to refuse the application.***

4 Heritage assessment

4.1 Notes on the assessment.

A/ NPPF P128 and P129 require **the applicant** to carry out an assessment of the heritage significance of any assets affected by their development proposal(s), then to assess any impact on that significance, and where the impact is harmful, to justify the harm. At the least, the Historic Environment Record should be consulted. (Appendix 7 and 4.9.1-4.9.3).

B1/ The Framework makes clear that it is the applicant's responsibility to commission and submit the necessary evidence to the planning authority. I have supplied at least five appeal decisions and a letter of advice from Historic England which make plain both that the onus is on the applicant to supply the necessary report, and that applications where either there is none or that provided does not adequately meet Framework heritage policy requirements, the application should either be invalidated or refused. A written representation to North Herts District Council on this subject and their reply appear at Appendix 7. I contend, on behalf of my clients, and having previously taken Counsel's opinion in near-identical circumstances, that in not requiring the applicant to provide a heritage statement, the council are wrong in law on this point.

B2/ The *Lakota*¹ judgement §18 from the First Tier Tribunal, HH Judge Shanks sitting with Richard Fox and Alison Lowton, made the following useful point about interested parties.

"[Bristol City Council] maintained in effect that the Association and (it must follow) the public at large could have managed without the information requested because it would have been open to them to obtain their own viability report on the Lakota building based, if they saw fit, on the plans lodged with the application by the developer.... Nor do they address the general mismatch (which we believe we can properly take account of) between the resources of developers and residents' groups."* (My emphasis)

It is, I suggest, manifestly unjust that my client, the Save the Cabinet Action Group, must perforce pay qualified consultants to carry out work to a professional standard which the planning system requires an applicant for consent to provide.

(C) The budget did not allow for repeated visits to the archive or to NHDC's offices to consult archival/historic planning and licensing records. Consequently, I have undertaken a

¹ In the First Tier Tribunal Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association EA/2010/0012 10 December 2010.

limited heritage appraisal based on desk research (archives, internet, published sources) and a single external viewing of the premises from the public domain on January 14th 2017. Photographs appear in the Images (APP 1 Photographs). The heritage assessment is not as detailed as it would be if I had had access to the interior and been directed to sources of earlier planning records which are not available online.

D/ North Herts District Council [NHDC] were asked by my clients in an email to provide information on where and how historic planning records could be accessed to which there has been no answer. (Email Edwin Kilby/Mike Howes to Ingrid Howard cc Anne McDonald, Richard Tiffin 16.01.2017). **There was a later telephone conversation between me and Mr Tiffin in which he conceded that historic planning records could be made available to personal callers with an appointment made in advance.**

E/ NHDC were also asked to provide copies of licensing records held on file. Licensing applications require submission of floor plans and these are a useful source of information on the layout and evolution of premises interiors over time. These have not been supplied and my client's request to access the file in person was refused, contrary to S8 of the Licensing Act 2003 . (Email Edwin Kilby/Mike Howes to Ingrid Howard cc Anne McDonald, Richard Tiffin 16.01.2017 and NHDC Licensing Dept.)

F/ There is no access to the interior as the premises is not currently trading and consequently it has not been possible to assess any material changes which have been undertaken to the fabric or layout nor to assess how accurately the previously consented applications have been or were implemented.

G/ The community has secured a witness statement from local resident Graham Stuart, a building contractor specialising in plastering. The statement records Mr Stuart's recollection of works underway at the Cabinet in June 2016. From this I have compiled a schedule of works which have not been recorded in either of the listed building consent applications. This statement appears at Appendix 4. A signed and witnessed copy of the statement will be sent to you.

H/ Consequently I will confine myself to firstly, laying out the history of the building, then assessing its heritage significance with reference to Historic England principles, some observations on the Reed Conservation Area and finally will remark on **the physical works at the site which are the subject of this application.**

Location:

4.2 The Cabinet public house stands to the west of High Street, Reed, Hertfordshire SG8 8AH. The main front faces on to the High Street, and the building is oriented north:south. The land on which it stands slopes up gently from the road, giving it an elevated and highly visible position in the streetscape. The principal building stands on the east of its substantial plot, with a generous grassed beer garden on the west and north bounded to the west and south by trees. There is a car park for about 20 vehicles to the south surfaced in hard standing. This is crossed diagonally by a public footpath which traverses the land from its SW corner to adjoin the road immediately adjacent to the pub. The path was established at least by 1868².

4.3 To the rear of the plot on the west side of the car park is a timber shed-type structure under a pantiled roof. This was constructed before, or has more recently replaced, a structure present in 1975³, under which would appear to lie a well. The present use of this building is unknown.

4.4 To the NE corner of the site next to the road is a small pond. This may be another remnant of a mediaeval moated site, of which there are at least eight recorded examples in the vicinity of Reed. Opposite the Cabinet is Drage's Farm (Listed Building (Grade II) 162609: DRAGES FARM HOUSE) which appears from scaffolding erected around it to be currently (January 2017) undergoing building works after an extended period of vacancy.

Heritage Assets

4.5 There are a number of designated heritage assets directly and indirectly affected by the proposals. These include the Grade II listed Cabinet and the Reed Village Conservation Area, and by association with the harm to the character of the conservation area, the settings of listed buildings within the conservation area.

4.6 There is no published Character Assessment/ Appraisal for the Conservation Area which defines its special interest or significance. "*It was designated in June 1974 with a first boundary amendment occurring in December 1979*"⁴. I have been advised by the planning department that they do not hold any records for the conservation area as it was designated prior to the creation of North Hertfordshire as a planning authority. Enquiry of

2 Ordnance Survey map 1868 First Edition 1:2500.

3 Ordnance Survey map 1975. No structure is visible in earlier maps at the 1:2500 scale.

4 Planning Officer report to committee on application **13/01999/ 1 20.03.2014**.

Hertfordshire County Council has been unfruitful nor does there appear to be a record kept at HRO in Hertford.

4.7 While there is, consequently, no directly attributable evidence for the significance attached to the Cabinet as an element of the Reed Conservation Area, **numerous appeal decisions have turned on the loss of public house features (bar counter, signage and so on) use being harmful to the significance of heritage assets. These include the Rose & Crown Croydon (supplied).** There is no reason to see why the Planning Inspectorate ('PINS') might reach a different conclusion in this instance if the application is refused.

4.8 The significance of the Cabinet as a heritage asset is partly described by the List description. I will then go on to deal with its evidential, historic, aesthetic, and communal values being those aspects of a heritage asset which make up its significance (Historic England, *Conservation Principles, Policy and Guidance* 2008 pp27-32).

List Description:

4.8.1 The Cabinet was listed at Grade II in 1987, and the list description from the Historic England database records:

List Entry Summary

This building is listed under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended for its special architectural or historic interest.

Name: THE CABINET PUBLIC HOUSE List entry Number: 1175747

Location THE CABINET PUBLIC HOUSE, HIGH STREET

County: Hertfordshire District: North Hertfordshire District Type: District Authority

Parish: Reed

Grade: II Date first listed: 03-Jun-1987 UID: 162606

Details REED HIGH STREET TL 33 NE (West side) Reed

3/148 The Cabinet Public House

GV II

Public house. Late C17 or early C18, extended C19 and C20. Timber frame on brick base. Weatherboarded. Steeply pitched tiled roof. Originally 2 bays, extended by 1 bay to left with further additions at both ends. 2 storeys. Ground floor: entrance to left of original centre, recessed plank door in architrave with dentilled and bracketed hood, to left two 3 light small pane flush frame casements, to right one of 2 panes, all with hoodboards. First floor three 2 light small pane casements. Coved eaves. Cross axial ridge stack at original left end, part rebuilt. To rear a C19 continuous lean-to outshut behind main range and first added bay, weatherboarded and rendered. Rendered upper part of rear wall on main block with some comb pargetting. Short C20 gabled addition to left end, set back slightly. 1 storey mid C20 addition to right end with an entrance. Beyond this to right a C19 weatherboarded and slate

roofed outbuilding with 2 doors to front. Interior: chamfered axial bearer, stop chamfered fireplace lintel.

Listing NGR: TL3639436049.

History:

4.8.2 Early history. The Historic Environment Record (APP 6) indicates that both Reed and its immediate and wider environs has been a place of settled human habitation since at least prehistoric times (NMR Excavation Record). Several Scheduled Ancient Monuments dot the area including earthworks and the remains of mediaeval moats. St Mary's, listed at Grade I, dates from the early C11th, indicating a continuous pattern of settlement of more than 1000 years.

HER Records from the Heritage Gateway.

4.8.3 Designated Heritage Assets

Title	Type	Location	Grade
CHURCH OF ST MARY	Listing	CHURCH OF ST MARY, CHURCH LANE, REED, Reed, North Hertfordshire, Hertfordshire	I
CRABTREE COTTAGE	Listing	CRABTREE COTTAGE, CROW LANE, REED, Reed, North Hertfordshire, Hertfordshire	II
DRAGES FARM HOUSE	Listing	DRAGES FARM HOUSE, HIGH STREET, REED, Reed, North Hertfordshire, Hertfordshire	II
REED HALL	Listing	REED HALL, CHURCH LANE, REED, Reed, North Hertfordshire, Hertfordshire	II
NORTH FARM HOUSE	Listing	NORTH FARM HOUSE, CROW LANE, REED, Reed, North Hertfordshire, Hertfordshire	II
THE CABINET PUBLIC HOUSE	Listing	THE CABINET PUBLIC HOUSE, HIGH STREET, REED, Reed, North Hertfordshire, Hertfordshire	II
THE WOOLPACK	Listing	THE WOOLPACK, LONDON ROAD (A10), Reed, North Hertfordshire, Hertfordshire	II
MILESTONE	Listing	MILESTONE, LONDON ROAD (A10), Therfield, North Hertfordshire, Hertfordshire	II
COSYKOT	Listing	COSYKOT, HIGH STREET, REED, Reed, North Hertfordshire, Hertfordshire	II
WISBRIDGE FARM	Listing	WISBRIDGE FARM HOUSE, HIGH	II

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HOUSE		STREET, REED, Reed, North Hertfordshire, Hertfordshire	
MILESTONE	Listing	MILESTONE, LONDON ROAD (A10), Therfield, North Hertfordshire, Hertfordshire	II
GOODFELLOWS FARM HOUSE	Listing	GOODFELLOWS FARM HOUSE, CHURCH LANE, REED, Reed, North Hertfordshire, Hertfordshire	II
BARN AND SHED ABOUT 30 METRES NORTH OF QUEENBURY (NOT LISTED)	Listing	BARN AND SHED ABOUT 30 METRES NORTH OF QUEENBURY (NOT LISTED), DRIFTWAY BARN AND SHED ABOUT 30 METRES NORTH OF QUEENBURY (NOT LISTED), CHURCH LANE, REED, Reed, North Hertfordshire, Hertfordshire	II
Moated site, Goodfellows.	Scheduling	Reed, North Hertfordshire, Hertfordshire	Not Applicable to this List Entry
Double moat and fishpond, Queenbury	Scheduling	Reed, North Hertfordshire, Hertfordshire	Not Applicable to this List Entry
Reed Hall moated site, Reed	Scheduling	Reed, North Hertfordshire, Hertfordshire	Not Applicable to this List Entry
Bush Wood moated site and hollow-way	Scheduling	Reed, North Hertfordshire, Hertfordshire	Not Applicable to this List Entry

4.8.4 National Monuments Record Excavation Index

[REED PUMPING STATION](#)

Site code: RDPS07. Monitoring of groundworks for a rising main recorded an earlier drainage ditch. Information from OASIS Online Form. NMR Microfilm Index; PRN: 10863. HERTFORDSHIRE, NORTH HERTFORDSHIRE, REED

[REED HALL, CHURCH LANE](#)

Site code: HN617. Monitoring of groundworks for a new riding arena recorded undated gullies and a ditch. Information from OASIS Online Form. HERTFORDSHIRE, NORTH HERTFORDSHIRE, REED

[MILL KORNER, JACKSONS LANE](#)

Site code: REED-1-1998. Monitoring of redevelopment groundworks recorded possible medieval ditches. Funded by Church Green Developments Ltd. HERTFORDSHIRE, NORTH HERTFORDSHIRE, REED

[REED FIRST SCHOOL, JACKSON'S LANE](#)

Site code: RJL02. Monitoring of extension groundworks recorded no significant archaeological activity. HERTFORDSHIRE, NORTH HERTFORDSHIRE, REED

REED HALL, REED

Site code: REED-3 1999. Evaluation in advance of proposed development recorded prehistoric finds but no significant archaeological features. NMR Microfilm Index PRN: 7831 (NB No working copy of microfilm held at NMR at present.)
HERTFORDSHIRE, NORTH HERTFORDSHIRE, REED

4.8.5 Hertfordshire HER – County Records Office

A visit was made to the archives on 14th January 2017 and records sought for the Cabinet but not for any other records. There is presently an error with the search facility on Heritage Gateway so that no results could be retrieved for archaeology. “*Hertfordshire HER & St Albans UAD: An error occurred*”.

The Cabinet: Building History

4.9 An undated leaflet *Barkway Parish: Public Rights of Way* guide says “The Cabinet began life as a tiny weather-boarded house and was once used as a meeting house by exiled French Huguenots.” This has not been verified by any primary sources, but the establishment of lace-making and weaving occurred in the mid C16th when Walloons arrived from Belgium. They were much assisted by the arrival of the Huguenot refugees beginning in 1685 and continuing for a decade or longer.

4.10 Quoted in THE HUGUENOTS, THEIR SETTLEMENTS, CHURCHES, AND INDUSTRIES IN ENGLAND AND IRELAND. By SAMUEL SMILES⁵ Mrs. Pallisek — History of Lace, p. 353. “*De Foe, in his Tour through the Whole Island of Great Britain [published 1724-7], writes, “Through the whole south part of this county, as far as the borders of Buckinghamshire and Hertfordshire, the people are taken up with the manufacture of bone-lace, in which they are wonderfully exercised and improved within these few years past,” most probably in consequence of the arrival of the French settlers after the Revocation of the Edict of Nantes.*”

4.11 If true, it is possible that the Cabinet, dated late C17th by the list description was in fact constructed as a meeting house for the Huguenot population in the area. It is not at all uncommon for small congregations to adopt or construct buildings of domestic appearance and scale for worship purposes. This would be an early indication of both its evidential and historic significance as well as being a communal use and therefore of heritage value in that sense also.

⁵ http://archive.org/stream/huguenotstheirse00smil/huguenotstheirse00smil_djvu.txt Accessed 12.1.2017 Published London John Murray 1881.

4.12 According to Johnson⁶, there has been a public house in Reed since at least 1657 when it was kept by Hugh Ivens. He says “*whether this was the later Cabinet is unknown*”. He continues “*In 1806 the Cabinet (named at that date) was held by Ann Valentine⁷ and was acquired ... in the C19th by J & J E Phillips⁸ of Royston, brewers.*” A photograph of the Cabinet obtained from the National Monuments Record in Swindon shows that at the time it was taken (1960) it was owned by Manns Brewery. The NMR record map of assets within 1km of the centre of Reed forms Appendix 5.

4.12.1 The OS map for 1878 shows a Red Lion between Reed Green and Reed End, to the south and west of the junction of The Joint and London Road/A10. A building of late C18th appearance stands there now, seemingly a dwelling. It is three bays under a slate roof and with curious later projecting bay windows to either side of the central door on the ground floor roofed over to form a porch.

4.12.2 The Statutory List records the Woolpack, Grade II, half a mile south of the 'Red Lion' site, on the east side of the London Rd/A10 on the corner of Blacksmiths Lane. A handsome thatched mid C17th building in a prominent position, it was converted some years ago and is no longer a PH.

Occupation & ownership

4.13 By the Census of 1851 the Cabinet was being run by Daniel and Martha Drage. He gives his occupation as Agricultural Labourer and Publican. There are further references to the Cabinet and the Drage family in Reed in the newspapers throughout the C19th from 1842 onwards⁹. It was not at all uncommon for farmers to double up in this way, with the wife working as 'brewster' in the scullery or an outshot to the rear, while the husband came home at night to be the 'host'¹⁰. In 1891 The Woolpack was being run by William Gilbey who is described in the Census as “Publican and Farm Labourer”. With Drage's Farm across the road, this was seemingly a joint family enterprise. In 1866 Daniel Drage's death from head injuries following a fall from a cart and an assault by his wife Martha is recorded in the local paper.

- In the 1871 Census Martha's parents have moved in with her and her son George

⁶ William Branch Johnson “Hertfordshire Inns: Part One East Herts.” Letchworth Printers Ltd. Letchworth, Herts. 1962

⁷ Verified in the Hertford Records Office 14.1.17 : OS/VAR/535 Recognizance Anne Valentine Victualler Cabinet Reed 17/09/1806

⁸ J & JE Phillips Brewers in Royston fl from c 1725 to 1949, when acquired by Greens wine & spirit merchants. Brewery History Society online; “Brewers in Hertfordshire” Allan Whitaker 2006. The transfer of the business to Manns is not recorded.

⁹ Find My Past website provided both Census and Newspaper references. January 2017.

¹⁰ A tradition which continues even to the present day. Nick Hoare, farrier and publican runs the White Horse in Quidhampton with his wife.

to the 'Cabinet' at Reed.

- By 1881 'The Cabinet Inn' is occupied by Alfred Bonfield, who gives his occupation as Blacksmith, and his family. Again, it was not at all uncommon for the tenant to hold two occupations- farmer or blacksmith or shopkeeper as well as ale house keeper or publican. The publican blacksmith's customers could refresh themselves while waiting for their horses to be shod or implements or wheels repaired, giving the blacksmith a second source of income. Hence the many pubs called the "Three Horseshoes" "Anvil" and "Blacksmiths Arms" and the preoccupation with vehicles (waggon, ploughs and coaches) and horses of every colour. A great many traditional pubs had a forge tucked away behind the main building, as at the Grade II Black Horse in Brent Pelham where it (or a replacement) survives today as 'The Old Smithy', a dwelling.
- The 1891 Census records William Burns, 'publican' and his wife Emily in possession.
- George Hills, 'publican and farm bailiff' with his wife and five dependants are recorded there in 1901.
- George & Mary Ann his wife and four dependants still in occupation in 1911. The Cabinet is recorded as having 6 rooms, 'not including kitchen, scullery, lobby, bathrooms, hallways' etc.

Information supplied by campaign group members on more recent history:

- up to 1997 Sedgwick Rough family: Various, some good and some not.
- 1997-1998 Greg Molen *Very successful, very quickly.*
- 1998-2003 Owned by Denby & Jane St. John-Williams, managed by Ross Moynihan and Justin Scarborough-Taylor.
- 2003-2005 Paul Bloxham & Co Paul Bloxham and PJ (brother in law) *Well remembered Rugby World Cup breakfasts & lunches.*
- 2005-2008 Simon Smith & Mark Hagger, Simon, Dawn and others. *Biggest Cabinet era for weddings.*
- 2008-2011 Albanwise: managed successfully by Angus Martin and Tracey.

- 2011 Pub closed due to alleged financial misappropriation.
- 2011-2015 Albanwise – Pub remained closed.
- 2015-present Richard Newman.

4.14 Conclusion: the Cabinet has, demonstrably, been in continuous operation as a pub since at least 1806, and possibly from the C17th.

Significance Assessment.

4.15 Evidential value: “the potential of a place to yield evidence about past human activity”. The Cabinet as a 'public house' is evidence of the community's social interaction and bodily sustenance. **If the Rights of Way guide is correct and the site was previously used as a non-conformist place of worship by a now long-forgotten community of lace-weavers, this would add to its evidential and historic values.** Pubs are places specifically designed for interaction between members of a community and for the provision of hospitality for travellers passing through. Applied to the Cabinet, the physical manifestation of the Cabinet as a vernacular building, evolved and adapted over time, is evidence of human activity in the form of building construction. Early fabric recorded in the list description indicates an accomplished embodiment of architectural attainment. Its location approximately at the centre of the scattered settlement attests to its social and service function. The Cabinet's communal use and the architectural and historic character make a positive contribution to the character of the conservation area.

4.16 Historic value: “the ways in which past people, events and aspects of life can be connected through a place to the present – it tends to be illustrative or associative”. The Cabinet is listed Grade II for its 'group value', that is, as an element within the historic built environment of Reed village and as such is a building making a positive contribution to the Conservation Area of which it is an integral part. It has a long historic association with the Drage family, settled in the village and immediate area for hundreds of years. As a locus of community interaction where residents have come together to mark important life events as well as casual daily interaction, the Cabinet's historic value connecting the past to the present is apparent. The Reed Conservation Area as a designated heritage asset is valued both for its varied historic architectural character and for the variety of uses: residential, farming and its sole pub.

4.17 Aesthetic value: “the ways in which people draw sensory and intellectual

stimulation from a place”. Aesthetic values pertain chiefly to a site's visual appeal. The Cabinet is an exemplar of vernacular Hertfordshire architecture and sits familiarly, comfortably and easily in its built and geographic context. Weatherboarding, a pitched roof and a detached building standing in a commodious plot, make the Cabinet typical of the character of its surroundings. A key element of its aesthetic appreciation and identifier as a public house and hence its character and aesthetic significance was its signage, which has been lost. The loss of these signifiers of use harm its Landmark Status, described by Historic England¹¹ as “*An asset with strong communal or historical associations, or because it has especially striking aesthetic value, may be singled out as a landmark within the local scene.*”

4.18 Communal value: “*the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory*”. Historic England¹² describes “*Social and Communal: Value Relating to places perceived as a source of local identity, distinctiveness, **social interaction** and coherence, sometimes residing in intangible aspects of heritage, contributing to the ‘collective memory’ of a place.*” The chief significance of any heritage asset¹³, and this is especially true of public house is its function, that is, the pub as a place of social interaction. This is proved both in the many objections to the loss of the public house use and by its resulting registration as an Asset of Community Value (ACV) under the Localism Act. Common to all successful ACV nominations are the testimonies of pub users who associate their local pub with important life events and day-to-day social interaction in friend, family or common interest groups. *Communal value* underpins the policy objectives of paragraphs 28, 69 and 70 of the Framework.

4.19 Evolution over time. Buildings evolve over time to meet the needs of their users and occupants. The Cabinet is no exception. The list description identifies several phases of development from the late C17th to C20th. All fabric and alterations recorded in the planning history at §5 dating from before 1989 (the date of listing) are protected under the Planning (Listed Buildings and Conservation Areas) Act 1990. The present built form is indicative of a public house use which has flourished at the premises, requiring additions over time to accommodate the trade.

4.20 Summary of significance. Ranked in order of importance:

1 Communal Value. The Cabinet is chiefly valued as a place of social interaction and

11 Local Heritage Listing: Historic England Advice Note 7 2016

12 Local Heritage Listing: Historic England Advice Note 7 2016

13 What would a church be without worship? A brewery without brewing? A school without learning?

communal memory. High.

2 Evidential and historic values. As a repository of human activity; an evolved public house demonstrating its changing fortunes over time. High.

3 Aesthetic value. The Cabinet is typical rather than exceptional. In its architectural features it shares many of its characteristics with other pubs in the Hertfordshire/Cambridgeshire area. Medium.

4 The Cabinet does not have any values ranked at less than medium, except for any unauthorised works which are, or could become, harmful to the fabric, planform, layout and consequently our understanding and appreciation of it as an historic artefact.

5 Planning history

NO DOCS – no documents found with online record. It is not clear from many of the entries whether the applications were refused, withdrawn or approved. Where the outcome of an application is known, this is shown.

UPRN: 100081129499

Works carried out prior to, and thus included in, the statutory listing are in italics

Change of use from public house to dwelling and listed buildings consent for development 16/02113/1 and 16/02129/LBC [Present applications]

Retention of timber decking ballustrade [sic] and brick supports over pond
Ref. No: 06/02249/1 Status: Decided – NO DOCS – COND PERMISSION

Retention of timber decking ballustrade [sic] and brick supports over pond
Ref. No: 06/00208/1 Status: Decided – **REFUSED: harm to setting of LB & failure to preserve or enhance the Conservation Area**

Single storey rear dining room extension (as variation to listed building consent 99/0774/1LB granted Ref. No: 03/00331/1LB Status: Decided – NO DOCS:

Single storey rear extension to dining area, provision of retaining wall, steps and terrace.
Five...
Ref. No: 03/00692/1 Status: Decided - NO DOCS – COND PERMISSION

Single storey rear dining room extension and additional 2 car parking spaces (as amended by dra...
Ref. No: 99/00773/1 Status: Decided - NO DOCS – COND PERMISSION

Single storey rear dining room extension (as amended by drawings received on 8.7.99)
Ref. No: 99/00774/1LB Status: Decided - NO DOCS
(assumed permitted as PP for works described above at 99/00773/1)

Removal of internal stud wall and internal alterations
Ref. No: 97/00108/1LB Status: Decided - NO DOCS

Removal of existing internal walls, installation of new studwork partitions and formation of new ...
Ref. No: 89/00028/1 Status: Decided - NO DOCS

Erection of single storey rear extension to public house.
Ref. No: 85/01262/1 Status: Decided - NO DOCS – STD COND PERMISSION

Single storey kitchen.
Ref. No: 76/00495/1 Status: Decided – NO DOCS – STD COND PERMISSION

6 The application.

6.1 16/02129/LBC Retention of internal and external alterations, in association with conversion from Public House to single residence.

The application is retrospective in respect of the physical alterations. We argue that since the present C3 residential use is unlawful that the existing lawful use of the premises is still A4.

While the building has undergone a number of alterations since listing, some more unsympathetic than others, its physical manifestation retains a significant element of its architectural and historic interest to continue to merit its statutory listing status. The loss of the pub sign, signage to the front and the loss of the bar counter are harmful to the historic, aesthetic, communal and evidential significance of the Cabinet.

6.2 Alterations included in the drawings in the application ref: 16/001/A/01/A Aug 2016

6.2.1 Ground floor:

Change of use:

- bar extension to 'office';
- bar (snug) to 'room';
- space unknown to 'shower room';
- restaurant area to 'kitchen'
- front bar to 'lounge';
- rear room to 'lounge';
- kitchen- to 'lounge/dining';
- beer cellar to 'games room'.

Works:

- Shower room- new partitions installed and new sanitaryware;
- 'room' (prev snug)– original brick floor taken [sic] and relaid on polythene dpm;
- 'lounge/dining' – existing stud partition, door and frame removed;
- plasterboard cladding to staircase removed;

- rotten chipboard cladding removed both sides of partition to expose studs;
- 'lounge' (front) – SVP (Soil Vent Pipe) above ground removed from NW corner,
- new SVP installed to SE corner;
- timber stud partition installed to tie/buttress front wall to fireplace;
- kitchen – new units fitted;
- rear 'lounge' doors sealed and dry-lined internally;
- 'shower room' new sanitaryware;
- 'games room' misted glass infill to door opening.

6.2.2 First Floor:

Works: new stud partitions to form bathroom, new sanitaryware.

No detail in the limited Heritage Statement or in the notes on the drawing has been provided of the materials or methods used in the works carried out, such as specifications for plaster or timbers.

6.3 Works identified by personal observation and from the witness statement by Graham Stuart compared with photographs from sales particulars and online images in Appendices 1 and 7:

6.3.1 Interior: Front bar area:

- digging up the floor to foundation level and laying of concrete screed and re-bedding reclaimed tiles in same;
- removal of timber dado panelling and plaster from walls;
- removal of the bar counter and shelving forming the back bar;

Works forming the present application for Listed Building Consent:

- **removal of horizontal soffit ceilings above bedrooms and**
- **installation of modern gypsum plasterboard between the rafters.**

6.3.2 External:

- Removal of all signage from the building itself

- removal of standard hanging sign;
- removal of 'Japanese garden' style decking and bridge on the pond area.
- Evidence for the loss of signage shown in Appendix 1.

7 11/01524/1LB Listed Building Consent for plasterboard ceilings.

7.1 Asset of Community Value. The registration underpins the Cabinet's communal value as a heritage asset.

7.2 The Assets of Community Value regime is made up of statute, Chapter 3 of the Localism Act 2011, secondary legislation, the Right to Bid Regulations 2012 and the Secretary of State's '*Community Right to Bid: non-statutory advice note for local authorities*' 4th October 2012.

7.3 Since the introduction of the Regulations in 2012, a sufficient body of case law has developed to draw conclusions about the Inspectorate and the Planning Court's approach to the weight to be accorded to listing as an Asset of Community Value in the determination of planning applications.

7.4 Firstly, a number of appeal decisions have concluded that community support for a pub, even where not listed or even where listing has been reversed on appeal, is of sufficient relevance to constitute 'valued' in the NPPF P70 sense and to dismiss the appeals based on it.

Three examples include:

The Fountain Inn Orcop (3063801) 2015 – A4 to C3 dwelling: not listed as ACV by LA but Inspector found community value satisfied by level of objections and the lack of accessible alternative premises

The Bantam RG7 (3138150) 2016 – A4 to C3 dwelling: listed as ACV and then reversed at review. Appeal dismissed reference P28, P69 and P70 of the Framework and community support.

The Lamb RG9 (3146302) 2016 – A4 to C3 dwelling: not listed as ACV. Appeal dismissed reference P28, p69 and P70 of the Framework and local support; no accessible alternatives.

7.5 Many PINS decisions have dismissed appeals for the loss, and even the potential consequential loss (where part of the site is proposed for non-ancillary development), of public house **uses** where the community value is evidenced by listing as Assets of Community Value including Three Tuns, Penny Farthing, White Lion, Centurion, Chesham Arms, Golden Lion, White Swan. All decisions supplied.

7.6 In the planning court in 2015 a Judicial Review of Bath & NES quashed the council's decision to grant consent for the residential conversion of the Yew Tree Inn. The related de-listing of the Yew Tree Inn as an ACV (consequential on the residential use exclusion of the ACV regime) was also quashed and the Yew Tree was reinstated to the ACV Register. On reconsideration of the application the council refused consent on community value grounds and commenced enforcement proceedings against the applicant for unauthorised change of use from pub to dwellinghouse. The appeals against the refusal (3149728) and the enforcement notice (3147896) were both dismissed by the Inspectorate in late 2016.

7.7 Mr Culverhouse (whose submissions contain no details of professional or academic qualifications or specialist training in the built environment or law or in the duties of experts) has been paid by the developer to deliver an opinion on (*inter alia*) the status of the Cabinet's registration as an ACV under the provisions of the Localism Act 2011 and its related Regulations. Those of his submissions that we have seen lack the necessary rigour and objectivity required of experts, contain no evidence for his bare assertions and consequently any representations by him are advocacy and not expert testimony. His representation should be disregarded as it sheds little, if any, light on the subject. **The Culverhouse Viability Assessment, once made available to us for independent verification, did not lead us to an alternative view.**

8 Objection

8.1 To the application for Listed Buildings Consent.

8.1.1 Planning authorities have a statutory duty under S 16, s66(1) and S 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building (S66) and/or the conservation area (S72) or its setting or any features of special architectural or historic interest which it possesses.

8.1.2 North Hertfordshire Saved local plan policy makes little reference to heritage conservation matters, confining itself to archaeology and making no mention of policy specifically to protect designated or non-designated heritage assets. Consequently it is inconsistent with the Framework. The draft Local Plan is still at the pre-submission stage and has yet to become adopted policy. It is, however, at a fairly advanced stage and Policy HE1 is to a certain extent, but not entirely, consistent with paragraphs 128-135 of the Framework. **Policy SP13 Historic Environment, especially "(a) Maintaining a strong presumption in favour of the retention, preservation and enhancement of heritage assets and their setting"; is relevant but has not yet been adopted.** For that reason the policies in the Framework should be applied.

8.1.3 Both the Framework P128 and 129 and NHDC HE1 require that Planning applications relating to Designated Heritage Assets shall [my emphasis] be accompanied by a Heritage Assessment/Justification Statement to:

i. Assess the significance of heritage assets, including their setting, impacted by the proposal

ii Justify and detail the impacts of any proposal upon the significance of the designated heritage assets; and

iii Inform any necessary mitigation measures to minimise or mitigate against any identified harms;

Planning permission for development proposals affecting Designated Heritage Assets or their setting will be granted where they (as applicable)

a/ enable the heritage asset to be used in a manner that secures its conservation and preserves its significance;

b/ [not applicable]

8.1.4 No **adequate** significance assessment, evaluation of impact or justification for the works has been provided by the applicant. Indeed, as detailed at 6.3.1 and 6.3.2 **the present application does not cover many of the works** that have already been undertaken to the building. The application cannot lawfully be determined without full justification bases on an assessment of significance and harm, and there seems no reason to believe the courts would take a different view if an approval were challenged at judicial review. In support of this position there have been several significant cases relating to the failure properly to assess significance and justify identifiable harm to DHAs in the Planning Court, including Barnwell, Obar Camden (Koko), the Cock & Bottle Bradford and the Yew Tree Chew Stoke (all supplied).

8.1.5 Historic England in its 25th March 2014 assessment of a scheme at the Cross Keys Kinnerley¹⁴ in Shropshire¹⁵ (APP 10) advised that *“the application itself does not contain an adequate heritage statement and that would in itself be sufficient grounds for refusal.”*

8.1.6 **Notwithstanding the email correspondence between me and NHDC (APP 7) Historic England’s published advice on the requirement for heritage statements is**

“Listed Buildings

When making a decision on all listed building consent applications or any decision on a planning application for development that affects a listed building or its setting, a local planning authority must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Preservation in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged.

This obligation, found in sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (1), applies to all decisions concerning listed buildings.

The recent Court of Appeal decision in the case of Barnwell vs East Northamptonshire DC 2014(2) made it clear that in enacting section 66(1) of the

14 The Cross Keys was subsequently listed in 2014 at Grade II. The 2013 application was refused on settings and pub protection grounds. There was a 2014 application for the conversion of the Cross Keys to 3 dwellings, also refused. There is a well-supported current application for alterations to improve the trade areas including a new kitchen, the formation of two flats above, one for publican’s use and one for letting as part of the pub business, and conversion of one g/f bay to a convenience shop. The proposed scheme in its principles (the officers are still considering the detail of the works proposed) is a model of the right approach to the conservation of historic public houses. That is, diversification and extension of ancillary uses which protect the principal significance of the listed building, its use.

15 13/05139/FUL | Erection of four dwellings; retention of public house; formation of new vehicular accesses and alterations to existing car parking arrangement; associated landscaping | Cross Keys Inn Kinnerley Oswestry SY10 8DB

Planning (Listed Buildings and Conservation Areas) Act 1990 (1) Parliament's intention was that 'decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings' when carrying out the balancing exercise'. Decision-making policies in the NPPF (3) and in the local development plan are also to be applied, but they cannot directly conflict with or avoid the obligatory consideration in these statutory provisions."

8.1.7 Since policies in the NPPF are a material consideration in the determination of relevant applications for consent, not requiring the applicant to provide robust professional evidence on this point is a failure to have regard to a material consideration and leaves the authority susceptible to a successful application for judicial review. Key cases have been supplied in evidence for this position and it cannot be brushed aside. The OR in respect of 12/02113/1 for planning permission for the change of use does not address our previous submission in connection with that application and the earlier application for LBC, where it was pointed out that the authority had previously required a Heritage Statement in support of an almost identical application for residential change of use at the Fox & Hounds Barley.

8.1.8 The Dukes Head PINS decision at para 19 also refers to the applicant's responsibility (and in that case, failure to) to "as a minimum, [consult] the relevant historic environment record ['HER'].. and [assess] the heritage assets using appropriate expertise where necessary" quoted directly from the Framework policy. **The applicant has not produced any evidence of having consulted the HER nor that the assets have been assessed using appropriate expertise. The 'Heritage Statement' supplied appears to have been devised by the scheme designer, but it contains no authorship detail of any kind. Consequently it cannot be considered reliable evidence.**

8.1.9 In the 31st May 2017 decision on the Admiral Hardy (3169238) the Inspector's closing para giving the single reason for dismissing the appeals for planning permission and listed building consent, reads [the lack of specific details on the works and their impact on the designated heritage assets] "34. *The conclusion is that the possibility of harm to the historic and architectural interest of the listed building is such that it cannot be overcome with conditions with a satisfactory degree of certainty. In view of this, both the planning appeal and the listed building appeal should be dismissed on listed building grounds.*"

8.1.10 In the Unicorn appeal the Inspector remarks

“8. [because the works to be undertaken have not been adequately detailed para 7] .. *I am unable to adequately understand the extent of the impact of the proposal on the significance of the heritage asset from the application and supporting documents, which is sufficient reason by itself to dismiss the appeal.*”

8.1.11 It is noted that the applicants for permission for residential conversion of the Fox & Hounds at Barley did submit a heritage assessment and it is not clear why the council has decided to dispense with the requirement in the Cabinet's case. **This is especially concerning in the light of the Written Ministerial Statement on Intentional Unauthorised Works, since the building has been subjected to both unlawful works and an unlawful change of use.**

8.1.12 The Chequers Box decision of 2003, while rather long in the tooth, has various useful observations, including at para 18 (works to LB already carried out) '*it is difficult to judge the former state of the building... Para 3.42 of PPG15 advises that consent should not be granted merely to recognise a fait accompli...*' The Framework takes a slightly different approach and says at P130 "*Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.*" Unauthorised alterations to historic fabric where not properly justified constitute 'deliberate.. damage'. Consequently the council should take no account of the unauthorised development and determine the application as though it had not happened.

8.1.13 The risk for the applicant, which has (allegedly) been recognised by him is that he may have to restore the building to its previous state. When the applications are refused, enforcement can follow to ensure that the building is returned to its previous configuration. The applicant claims to have had a site meeting with the Conservation or Planning Enforcement Officer but no date has been provided and no evidence relating to this meeting or the discussion has been adduced in the planning record or the Officer Report. Development is not authorised unless consent has been given in writing. If such written consent exists it should be published, and given its absence we believe it does not exist. **In the consideration of this application, the council should make written reference to the site meeting and to the discussions which took place and any assurances given by either side.**

8.1.14 I have some sympathy for the Parish Council, quoted at para 3.2 in the undated Officer Report presently to be found on the planning application record online.

To paraphrase their submission, it appears that the authority are taking their duties toward the historic environment rather lightly. It does not inspire confidence in the planning system amongst my clients.

8.1.15 6.2.1 to 6.3.2 above deal with the change of use of the various spaces and the works undertaken to facilitate the change of use as well as the felling of a tree.

8.1.16 Taking the change of use as a preliminary point, the loss of the use of the building as a public house constitutes substantial harm to its significance both on social and communal value grounds and its historic associations with the life of the village since at least 1806. Local planning authorities are not commonly found to take account of change of use as a detrimental impact on a heritage asset (see e.g. para 17 Dukes Head). In this instance we note that the authority's conservation officer has commented on the loss of the use being harmful to the character of the conservation area, reflecting the observations of the late Judge Roy Vandermeer in the *Archer* case 1991 (supplied) and of the Inspector in the Fox & Hounds Barley (3154355). **We note, moreover, the Conservation Officer's remarks on the same ground in the Fox & Hounds case, which were given appropriate weight in the decision to refuse that application partly for conservation and partly for community asset reasons. It is noted moreover that the Fox & Hounds had not been listed as an ACV either at first instance or by the time of the appeal.**

8.1.17 However, the Inspectorate ('PINS') has issued numerous decisions where a primary or substantial reason for dismissal, under the requirement of S66 and S72 of the PLBCA 1990 to preserve or enhance designated heritage assets, was precisely this point, i.e. that the loss of the use constitutes 'substantial harm' to designated heritage assets under P133 of the Framework. Key examples include the Rose & Crown Croydon (LB & CA), Cross Keys Chelsea (CA), White Lion (CA), Three Tuns (LB & CA) and the Dukes Head (LB & CA) (all supplied).

8.1.18 E.g. Dukes Head 2016 "20. *On the evidence before me, there is at least a possibility that public house use of the Dukes Head listed building makes a substantial positive contribution to its significance by serving to continue, reveal and make legible an important element of its special historic or architectural interest. I conclude therefore that the proposal [A4 to C3] would not preserve this listed building.*"

8.1.19 Dukes Head 2016 "21. *As one of a number of listed buildings in the centre*

of the village, the Dukes Head makes a substantial contribution to the conservation area. I consider that public house use of the Dukes Head is of value through providing an ongoing manifestation of and linkage to earlier phases of the village's evolution and history. .. public house use of the Dukes Head serves to create interest and variety in the street scene, and this would not be adequately continued by retaining the pub sign or other physical signifiers of the former use. I thus conclude that the proposal would not preserve the character or appearance of the conservation area."

8.1.20 In both the Cross Keys and Phene Arms decisions the Inspectors concluded that the loss of the use would constitute 'substantial harm' to the character of the conservation areas as designated heritage assets. While neither pub is statutorily listed, the Inspector in the Cross Keys concluded at para 28 "**substantial harm** [would be caused by the loss of the use] **to the significance of the asset [i.e. the conservation area] that is derived from continuing use of the building as a public house**". The Cross Keys decision is admirable for the comprehensive way in which the Inspector deals with communal use as an element of heritage significance, harm to heritage assets and a number of other elements germane to the Cabinet case including viability.

8.1.21 In April the authority advised the applicant (per the White Lion case) to undertake further investigations into the reuse of the Cabinet either in its present lawful use as a public house or for other community uses. It is understood that the authority's requirements included consultation with the local community, marketing and consideration of alternative community uses.

8.1.22 The applicant secured a legal opinion from Douglas Taylor QC of Francis Taylor Building chambers, dated 8th May 2017. It examines (a) whether planning policy requires the authority to consider the retention of the Cabinet in other forms of community use other than as a public house and (b) whether the applicant can be required to investigate retention of the public house use or alternative community uses.

8.1.23 Mr Douglas rightly points out that neither NHDC's saved or emerging policies reflect the requirements more clearly expressed in the Chilterns District Council plan policy GB24 requiring evidence of investigations into retention or alternative uses. The emerging policy does however require that the applicant provide evidence of marketing 'for similar uses'. Signally the policy does not require the same use but a similar one. Another community or social facility may be viable and the market tested to

demonstrate that it is not.

8.1.24 If one were to say that that is a strained construction of the draft policy, and with all due respect to Mr Douglas who is, after all, instructed as advocate and not as an independent expert, he has not taken account of the relevant policy tests in the NPPF dealing with heritage assets generally and designated heritage assets specifically. These are 128 – 135, with 132, 133 and 134 being especially germane.

8.1.25 Moreover, the applicant did not, as required by NHDC, (a) market the premises nor (b) consult with the local community. Thus an opportunity for the applicant to comply with the requirement of P₁₃₃ to explore “conservation by grant-funding or some form of charitable or public ownership” was lost. In the Yew Tree appeals, the Inspector usefully remarks “35. Whatever the viability conclusions, criterion (i) also requires the premises to have been effectively marketed as a public house without success. Since the appellant bought the premises on the basis that she would use it as a public house [as the applicant claims in this instance, see the Culverhouse Viability Report p7] it cannot be argued that the marketing as a public house was unsuccessful. The appellant cannot rely on marketing prior to her purchase. Furthermore, she has not marketed the premises as a public house since purchase and so cannot say that has been without success.”

8.1.26 At para 4.3.16 of the OR (16/02113/1), it reads ‘given the marketing information that has been provided’. No marketing was undertaken by the applicant and consequently no evidence can be adduced to support the position that it would not be acquired either for PH use or another community use. This para goes on to make a series of speculative assertions about alterations which may (or may not) be required to make the building suitable for an alternative use, without any evidence.

8.1.27 Para 132 of the Framework deals with the impact of development on designated heritage assets and their settings, and states that “any harm or loss should require clear and convincing justification”. That is, the harm may be substantial or less than substantial, but the consideration of the conservation of the heritage asset takes absolute precedence, per the *Barnwell* case. It cannot be regarded as one of a number of material considerations to which the authority can apply whatever weight it chooses, or none at all. In the Case Officer’s report

¹⁶ Such an enterprise is completely separate from the Assets of Community Value regime which applies to all sites of whatever age independently of their heritage value. Building Preservation Trusts have been in existence for more than 100 years, one of the most significant, the National Trust, being established in 1895. Hundreds of other BPTs were established during the C20th, long before the advent of the NPPF and the Localism Act. In a recent conversation with York Preservation Trust which owns 40+ historic buildings, they remarked when asked that they didn't own any pubs 'But we'd like to. Do you know any we could buy?'

on the application for change of use, para 4.3.10, the Conservation Officer identifies that there is harm to the Conservation Area (although no comment appears to have been made on harm to the listed building's significance). The failure to give adequate consideration to the special protection afforded by the Listed Buildings Act means that the argument about viability and alternative uses is immaterial.

8.1.28 Para 133 of the Framework then provides guidance on the approach to be taken where there is 'substantial harm'. As demonstrated above, the harm to both designated assets is assessed as substantial and therefore the tests in P133 must be met before local authorities can give consent.

Planning authorities should refuse consent "*unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: [my emphasis]*

- *the nature of the heritage asset prevents all reasonable uses of the site; and*
- *no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- *conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and*
- *the harm or loss is outweighed by the benefit of bringing the site back into use."*

8.1.29 The applicant has also provided a "Change of Use Appraisal" by S.G. Culverhouse of Change-of-Use.com. Mr Culverhouse is a sometime publican and estate agent specialising in assisting developers in securing planning consent for the change of use of public houses to non-community uses. He claims no qualifications in law or the built environment, he is not a chartered surveyor, planner or historic buildings consultant. He does not demonstrate any experience in having worked on schemes for the retention of public houses in use either as pubs or in other community uses. If he had, there would be more credibility in his claim that no such scheme could be implemented at the Cabinet. **Indeed, NHDC's own surveyor questions Mr Culverhouse's methodology, and states that it lacks "veracity".**

8.1.30 Similarly, Mr Culverhouse has not taken account of the relevant paragraphs of the NPPF. These apply in this instance because the Local Plan is not in conformity with the Framework. He has failed to apply the tests in NPPF P133 which do indeed

require that the applicant market the premises, [**and**] prove that there is no charitable or other public ownership potential, [**and**] demonstrate that the nature of the heritage asset precludes all reasonable uses [**and**] that the harm is outweighed by bringing the site back into use. **It is immaterial therefore whether the Local Plan contains such a policy, because if it does not, then it is not in conformity with national policy and consequently policies in the NPPF apply.**

8.1.31 P133 Bullet 1: the site does not preclude all reasonable uses. Test not met.

8.1.32 **P133 Bullet 2: the applicant has not provided any evidence that the site has been marketed since his ownership of it (see 8.1.23 above, Yew Tree). We have provided expert opinion in the report by licensed leisure surveyor Anthony Miller FRICS (retd) accompanied by evidence from three parties that there has been and is interest in its ongoing and viable commercial use as a pub. If the premises were to be offered on the open market, my clients could, depending on the nature of other interest in its acquisition by commercial operators, pursue a community initiative either as the Parish Council or as a Community Interest Company or similar under the Localism Act Right to Bid. Given previous interest by other parties in leasing or purchasing the freehold for commercial operation as a pub, we can confidently predict that there would be genuine interest in keeping it in use. Test not met.**

8.1.33 P133 Bullet 3: the applicant has not even attempted to demonstrate that a charitable or public ownership (or community buy-out) is not possible, because no consultation has taken place. Test not met.

8.1.34 P133 Bullet 4: the applicant has not acknowledged the substantial harm arising to both heritage assets from the loss of the pub use, and given that the use is perfectly viable, as evidenced by us, that harm is most certainly not outweighed by the sanctioning of Mr Newman's unauthorised change of use and harmful alterations to the building. 'Substantial harm' requires 'substantial public benefit'. There is no public benefit, even if one were to allow that the conservation of heritage assets could be considered such, because the works undertaken to the listed building are themselves harmful.

8.1.35 The view may be taken that the individual impacts, assessed separately, constitute 'less than substantial harm' under P134. Taken cumulatively, however, the harm to heritage assets from a series of such impacts may together constitute 'substantial harm'. Being as it may, if the harm to either of the affected designated

heritage assets were judged by the authority to be less than substantial, then para 134 of the Framework applies. This requires that [1] 'any harm should be weighed against the [2] public benefits of the proposal including securing its [3] optimum [4] viable use'.

[1] 'Any harm', even if less than substantial, as we have seen in *Barnwell*, has to be **clearly and convincingly justified and schemes which do not should attract significant weight in the planning balance against the grant of consent.**

[2] There are no public benefits to the conversion of the Cabinet to private dwelling, only the applicant's personal gain. Moreover, the assertion in the Culverhouse Change of Use Assessment (1.6 p3) that the "historical character of the building must be protected at all costs" sounds a false note in the light of the quantum and nature of unauthorised and harmful interventions already undertaken by the applicant. **Moreover, given that the principal element of significance relates to its use as a public house, protecting the 'historical' [sic] character of the building at all costs means that its public house use should be reinstated without question, at whatever financial detriment to his client.**

[3] The 'optimum' use is that which causes least harm to the significance of the heritage assets affected both in the short and the long term. Almost invariably this means the retention of the original, existing or long-established use. It is not hard to argue that the optimum use, given its listing as an Asset of Community Value and the primary significance as a designated heritage asset of its use, is as a public house. **This reinstatement would require no works harmful to its character as a heritage asset because all that would be required is the reinstallation of cellar cooling, trade kitchen, extraction, customer toilets and bar counter and fittings all of which would constitute repair.**

[4] 'Viable' use. Our evidence is that there was and continues to be active **commercial** and/or community interest in the acquisition of the Cabinet as a pub; that while in use as such it as always commercially successful – indeed its evolution and extension/reordering over time indicates a flourishing enterprise. Moreover, its closure in 2011 had nothing to do with the business 'failing' as asserted erroneously by the Culverhouse Change of Use Assessment (7.6, p16). It was related to financial irregularities detailed in Mr Martin's statement. Ivan Titmuss's statement details his dealings with Albanwise where his belief in the future of the Cabinet meant that he invested £9000, a very significant sum, in wasted costs in his pursuit of the lease. **He would not have done so to acquire premises which could not be commercially**

viable.

8.1.36 Works.

Critique of and objection to the application.

1. It is retrospective. The OR 16/02113/1 at 5.1 correctly states “the Council is required [legally obliged] to have regard to the provisions of the development plan and any other material considerations.” The development plan is the current Local Plan (saved policies where they are consistent with the Framework) and other relevant material considerations in the Framework where the LP is silent, out of date or otherwise inconsistent with it. An additional material consideration is the Written Ministerial Statement relating to Intentional Unauthorised Development (‘WMS 2015’) and the accompanying letter from Steve Quartermain to Chief Planning Officers. (APP 15 &16).

There is a statement contained in the 16/02113/1 planning application OR 4.3.17 “Many of these objections have been raised on the basis that the application is retrospective..... [the retrospective nature of the application] does not change the key issues.. namely... viability and the impact on the character of the conservation area...

Members cannot refuse planning permission simply on the basis that it is retrospective... the planning merits must be judged [as for a prospective application]”.

This is, I am afraid to say, incorrect. The officer report has failed to take account of a material consideration, the Written Ministerial Statement 2015 on Intentional Unauthorised Development (IUD), and is therefore wrong in law. The authority, either in the person of the Planning Control Committee, or an Officer acting under delegated powers is indeed entitled to refuse permission entirely on the basis of IUD. The more gratuitous, blatant and unrepentant the breach(es)¹⁷, the greater weight should be accorded to the WMS in deciding any application. Where the application seeks to retrospectively gain listed buildings approval for works which should be refused, or fails to fully and honestly detail the works carried out (whether on the applicant's own account, or previously by some other party), the weight afforded to the WMS should be very significant.

In order to demonstrate that the breach was ‘intentional’ one must first establish to what extent the applicant would have been aware of their legal duties under the planning and listed buildings regime, and then having established a reasonable presumption of competence, that the applicant wilfully evaded those

17 One commentator has speculated that the Fidler 'Straw Castle' case

duties.

Records consulted at Companies House recently (APP 17 & 18) show that Mr Newman has a very long career in the property sector, describing himself variously as "Director Developer, Newman Property (Group) Ltd; Builder, Spitfire Processing Ltd. and RKN Developments Ltd.; Property Developer RKN Properties Ltd.; RKN Waste Management Ltd.; Property Cons. Newman New Homes Ltd., Property Cons. Spitfire Processing Ltd., RKN Developments Ltd., Newman Property (Group) Ltd., Sindell Properties Ltd.". The appointments range from 2005 to the present day and paint a picture of a thoroughly versed operator in the property development sector. Mr Newman would have been well aware of his obligations to seek planning permission and listed building consent for the change of use and works. The element of 'competence' or at least a proper working knowledge of the planning system can be inferred from this evidence.

Whether the applicant wilfully evaded that responsibility. According to the Land Register, the applicant acquired the site on November 19th 2015, and the present application shows that the works began on 1st December 2015 and continued until 1st July 2016. For the works to have begun so promptly would have taken considerable preparation and forethought and it seems inconceivable in the light of the evidence of Mr Newman's long career in property that he could have overlooked the necessity for planning permission for the change of use and listed buildings consent both for the change of use and for the works of alteration. Indeed, it seems from Mr Stuart's account that Mr Newman continued to work on the premises even after the local authority alerted him to the necessity for permission.

Secondly, whether the development (change of use and works of alteration) were unauthorised. No consents for the material change of use existed at the time of Mr Newman's purchase in November or by the time of the works beginning. Consequently the development was unauthorised.

Thirdly, whether what was carried out constituted 'development'. S55 of the principal Planning Act 1990 defines 'development' as "the making of any material change in the use of any buildings or other land" [and other things]. The change of use from A4 public house to C3 residential dwelling is a material change of use requiring consent- and this has now been refused by notice given 21st July 2017 [16/02113/1].

Given that the change of use harms the significance of both the principal listed building (the Cabinet) and the character of the Reed Conservation Area, and the application for the development has now been refused, there appears to be no

justification for the works of alteration, still less justification which is both 'clear and convincing'.

2. The 'Heritage Statement' does not address all of the works described in the statement by Mr Stuart (APP 4), many of which are harmful to the physical fabric, structure and plan form. The only item addressed in this application is the installation of plasterboard. No photographs have been supplied of the appearance before and after the works. It appears that the rafters of the roof on the first floor were not previously plastered as they would have been obscured by the horizontal ceiling. The correct materials and method for such an intervention would be traditional timber laths and lime plaster and a breathable insulation material. All are readily available so there is no possible justification for the use of non-breathable gypsum plasterboard in this listed building. Painting non-breathable gypsum plaster with breathable lime wash is of no benefit to the building. No specification has been given of the type or thickness of insulation installed. The replacement of ceilings, whether taken down by party who sold the property to Mr Newman or by Mr Newman himself, would restore the traditional plan form and dimensions of the affected rooms.

3. The application does not address the heritage consequences of the loss of the PH use nor the impact and harm on the conservation area from the loss of the use. Quite separately from the planning consent regime, as the many corroborating appeal decisions supplied amply demonstrate, it would be perfectly proper for the planning authority, either under delegated powers or at committee, to refuse listed building consent on the grounds that the harm to the listed building and/or the conservation from the loss of the use is unacceptable under S66 of the Listed Buildings Act. This is an area in which I have very particular knowledge; but in any case I have also secured planning Counsel's Advice to the same effect.

4. The 2 page 'Heritage Statement' (author's reference 16/001/A) does not meet the requirements of either the LPA's own validation requirement or P128 & P129 of the Framework, despite our previous objection to the now-refused planning application and still undetermined LBC application (16/02129/1LB) having helpfully-laid out the correct means of doing so and providing almost all of the historic background and significance elements. The statement contains no details of authorship so there is no means of knowing who compiled it, their qualifications or the methodology adopted.

It is noted that a previous director of Architecture & Design Services Ltd which produced the document was Tina Clarke, currently company secretary of Newman Property (Group) Ltd, appointed 2003.

Consequently the Heritage Statement does not describe the significance of the site or its building(s), assess the impact of the proposals on that significance, and where that impact is judged to be harmful, justify the works on the grounds of being wholly necessary for the protection or conservation of the heritage asset.

8.2 Viability and its applicability to Listed Buildings consent.

8.2.1 The application is for works to the building to facilitate a change of use from A4 public house to C3 residential dwelling for a single household. The works detailed relate only to plasterboard finishes. Since the works do not relate to a consented change of use to residential dwelling and we submit would not have been justified in any case – they are not ‘wholly necessary’ to the proposed use, the application should be refused.

8.2.2 It was accepted by Members at Committee on July 20th 2017 that the Cabinet may indeed have a viable future in use as a public house, either in a commercial ownership and operation or by some form of community or charitable ownership. Consequently the test in NPPF P133 has not been met and therefore the alteration applied for in this application cannot be considered necessary.

8.3 Applicable policy: Community facilities- Emerging local plan ETC7, Framework P28, P69 and P70. Sustainable development P14. Related statute and non-statutory guidance: the Localism Act 2011 and Right to Bid Regulations; Non-statutory Advice Note to Local Authorities: Community Right to Bid 2012.

8.3.1 The planning officer report for the proposed change of use (now refused) makes clear that the principal concern on which (in their view) the application turns is viability (para 4.3.4).

8.3.2 The Emerging Local Plan has completed its final consultation and is expected to be submitted for Examination later this year, with a target date for adoption in May 2018. It does not at present hold considerable weight but it does indicate the LPA's direction of travel with regard to the protection of heritage assets (HE1, SP13) and community services and facilities (ETC7) and is therefore relevant to this application.

8.3.3 The relevant policy is *ETC7 Scattered local shops and services in towns and villages* which seeks to protect 'shops, services or facilities'. The text of the policy does not specifically mention pubs, but the related explanatory paras 5.33 – 5.36 includes a reference to pubs. Para 5.36 reads “*where it can be shown that such*

facilities are no longer needed and not viable, then permission may be granted for a change of use.” This is important because the applicant is relying on the exception to the policy which requires that evidence be provided of marketing 'for similar uses' during a period of closure AND documentary and viability evidence has been provided.

8.3.4 The supporting documents claim that Mr Newman bought the property with the clear intention of reopening the Cabinet as a public house. Para 4.5 of the Culverhouse “Change of Use Appraisal” April 2017 refers. There is some doubt about this and we have secured a statement from Malcolm Chapman, the local CAMRA branch Pubs Officer (APP 13), who claims that Mr Newman told him at the auction in 2015 that he was intending to live in it as his home.

8.3.5 No verifiable evidence has been provided that at any time in during his ownership has Mr Newman attempted to let or sell the Cabinet as a pub. Consequently the marketing requirement of the policy is not met. To allow an applicant to supply marketing evidence which is not less than 2 years old and up to 9 years (Fleuret's sales particulars) in the past cannot be regarded as meeting the policy.

8.3.6 Moreover, explanatory para 5.36 states that “where it can be shown that such facilities are not needed and not viable.” There are no easily accessible alternatives available to the Reed community using the Manual for Streets metric (800m) and the Cabinet has been listed by NHDC as an ACV. It is most definitely needed and the community strongly rebuts Mr Culverhouse's unevicenced assertion in the Change of Use Assessment (1.4 p2) that the community 'has already adjusted'. If they had, there would be no objection to the applications. We supply evidence (Mr Miller's report) that it is also viable. The policy test is that both the 'needed' and 'viable' arms need to be met. They are not. This, in combination with the harm to designated heritage assets and relevant policy in the Framework, is sufficient to secure a refusal of consent on the grounds of unsustainability.

8.3.7 With about 1200 pubs every year closing their doors, many of them permanently, with only about 200 the subject of any concerted effort by the community to defend them¹⁸, it is clear that not all pubs are 'valued' in the P70 sense. Not all pubs will be viable but many pubs which could be viable are being converted to other uses, and this problem is particularly pernicious in areas with high property values. The irony that areas with high property values are also areas where the community enjoy higher

¹⁸ An estimate based on my own caseload and knowledge of the issues.

than average disposable income and therefore the ability to sustain a pub use is obvious.

8.3.8 In December and January my clients (in the persons of Edwin Kilby and Michael Howes) attempted to secure copies of the 'viability assessment' dated 22.11.16 submitted by the applicant which seeks to justify the change of use on the basis of non-viability. I will refer to this as the 'Culverhouse Viability Report'. They also sought the corroborating assessment commissioned by the council from Trinity Solutions (the 'Trinity Solutions Report') dated 12.12.16. **Both reports were made available in time for us to comment on their content in connection with the previous application.**

8.3.9 The Save the Cabinet campaign group have retained the services of Anthony Miller FRICS, a specialist licensed leisure surveyor of some 50 years experience, to evaluate the reports.

8.3.10 Many village pubs are similarly situated in quiet streets and flourish, as indeed the Cabinet did for at least 200 years. As noted elsewhere, the village has historically had at least three pubs to service resident and worker trade in different parts of Reed. The Cabinet is the last surviving of these. Its location is sufficiently central to have secured its survival after the loss of the Woolpack and the Red Lion.

8.3.11 *There are few pavements and no street lights.. the lack of lit footpaths is likely to deter both locals and visitors from attending the Cabinet on foot.*

With respect, this is nonsense. A lack of street lighting and footpaths has been no impediment to the successful operation of a pub use at the site for 200+ years and is an immaterial consideration. Reed's residents routinely carry torches for going about at night, for example to visit each other and to go to the church, the cricket club and village hall. The community might well be reluctant to travel far on foot on unlit roads with no pavement, and this militates against them frequently using the nearest alternative, the Tally Ho, about 2.4 miles away. This point merely enhances the local attractiveness, for accessibility, of the Cabinet. ETC7 requires that *'the loss of a facility in a village will only be permitted if there is another facility of similar use available.. within convenient walking distance.'* No one can suggest that the two closest alternatives, the Tally Ho or the Fox and Duck at Therfield (both about 2.5 miles) are convenient walking distance.

8.3.12 ETC7 does not specify what such a distance is, but the Manual For Streets indicates that 800m (about half a mile) is an acceptable distance for people to travel

conveniently, and in that one might also infer 'safely', on foot to access local services. The Manual for Streets assessment of distance makes no allowance for the provision of footpaths or lighting, but it seems reasonable that where none is provided, the distance which might be considered 'convenient' (and safe) would be rather less than this, especially for the less mobile. It is noted that Reed's population is of above-average age for the county (ONS Statistics).

8.3.13 The Cabinet is located on a narrow lane where there is going to be little passing trade.

This has always been the case and has been no impediment to its successful operation in the past, as above. Rural pubs on main roads may benefit to a certain extent from passing trade, but in my knowledge and experience, most pubs (rural or urban) rely on regular trade from the community and from larger conurbations nearby supplying 'destination trade'.

8.3.14 The car park can only accommodate 20 cars safely and is unlikely to be sufficient to allow the Cabinet to trade at peak times... on street parking is limited.

There is no suggestion in the officer report or in any evidence given to me or ascertainable independently that the car parking provision has been reduced in the period that the Cabinet has been closed. No parking restrictions have been imposed in the local area to limit on-street parking. If it was sufficient when the pub was trading successfully before, it will be sufficient now. In any case many of the other local pubs in the area (Appendix 1) have car parks of equivalent size and this seems to be no impediment their successful operation. The photographs provided were taken on the weekend of 4/5th March 2017 at various times during both trading and non-trading hours which accounts for the free spaces visible.

8.3.15 The capacity of the dining room is 52 covers. this is at the lower end of capacity for a food led operation to be viable and limits the ability to optimise trade at peak times.. compounded by parking limitations.

8.3.16 If this were true, there might be a germ of truth in it, although personally I know of a number of successful pubs operating perfectly well with a limited dining capacity. But it is not true. The sales particulars provided at Appendix 8:

The David Coffer Lyons document (page 2) says, in addition to the 52 covers in the

restaurant area, another 14 are available in the snug bar. That makes 66. It also talks about a further 36 covers in a “marquee area”, which I take to be the external terrace. The Cabinet was notable at one time for its wedding receptions, which presumably took place in a marquee for the purpose.

The Mullucks Wells document points out that in addition to 66 covers inside, there are approximately 62 outdoor covers. Obviously weather dependent – but even so the west-facing pub garden would be a significant attraction in its own right.

8.3.17 Viability is a regular and much-vaunted issue which is used to justify the loss of pub uses. At the Phene Arms in Chelsea in 2012, the appellant at the inquiry argued that its turnover of about £2m was 'unviable', a submission which the Inspector rightly questioned.

8.3.18 Whether or not a pub use is viable is dependent on a number of variables, not least the skill and attitude of the proprietor, or “Reasonably Efficient Operator” in the RICS guidance on the valuation of public houses. It is true that many pubs have been operating at the margins of commercial viability, principally those operated under the pubco or brewery 'tied' system which has been the subject of much government criticism and now new legislation to curb its worst effects. The Cabinet was at one time brewery owned and almost certainly operated under a tie but this has not been the case for many years.

8.3.19 The officer report does not contain any evidence, as opposed to opinion, adduced by the applicant that the Cabinet was floundering commercially. By all accounts it was a thriving enterprise until 2011 when other circumstances intervened leading to the closure of the business (see Angus Martin's Statement APP 16). A clue to its success is given in the Valuation Office Agency¹⁹ (VOA) assessment for Non Domestic Rates. NDR are calculated based on the open market rental achievable for a particular premises. Rental value is calculated on an assessment of three years trading accounts provided to HMRC (and thence to VOA) by the operator, i.e. on turnover and profit. Other variables are also taken into account which may affect, but not dramatically, the rating assessment. These would include for example the number and style of competitors. It necessarily follows that the RV is indicative, if not ultimately entirely determinative, of turnover and profit as they are directly related.

¹⁹ VOA Website 0603 2017: “The VOA sets the rateable values of all business properties. This is known as a revaluation. Rateable values are used by local councils to calculate business rates. The new rateable values, released on 30 September 2016, are based on the rental value of properties on 1 April 2015. “

8.3.20 At present the VOA RV assessment for the Cabinet is from 2010 £22 750 (Unknown 2005)²⁰. It is noted that the applicant applied in 2016 to the VOA for the Cabinet to be delisted for NDR and it is now assessed as a domestic premises on which presumably the applicant is now paying council tax. How material this is as an assessment of viability requires comparison with other public houses in the vicinity.

8.3.20.1 The RV of the nearest competition the Fox & Duck at Therfield (which is 2.5m by road²¹) in 2010 was £20 750 (2005 £12 250). It is a testament to the present operator Ivan Titmuss (although he may not see it that way) that the revaluation figure published for 2017 is £40 500. And the Tally Ho at Barkway (2.4m²²) in the opposite direction was valued in 2010 at £5600 and for 2017 just £11000. It is clear that the trend is for these pubs is upwards, and there is no reason to believe that the same would not be achieved at the Cabinet.

8.3.20.2 By way of comparison, I also attach a copy of a 2017 viability assessment for the White Hart at Hamstead Marshall by the VOA District Valuer Service²³ (DVS). This concludes that the premises *is viable* with a RV of £13500. The situation of the White Hart is in many respects directly comparable with the Cabinet in that it is in a rural village with no other services nearby except for a church and a primary school; there is no traditional 'village centre' as such; its resident population is about 375 souls; it is not on a main road; there is no street lighting or pavement. Notably there is another pub 0.9 miles away but this must be accessed along a narrow rural road with no footpath or lighting. While the alternative is popular and accessible during the long summer days where at least the first journey for a night time visit can be made safely and reasonably conveniently on foot, this has not caused the DVS surveyor to conclude that the White Hart is thereby made unviable.

8.3.20.3 A variety of business models including a private commercial owner/operator or community not-for-profit enterprise ought properly to be assessed before concluding that a pub is not viable. No evidence that such an assessment has been made is hinted at in the officer report. Because we have not seen the

20 NHDC Non Domestic Rates spreadsheet, one page extract provided as APP16.

Full record here: www.north-herts.gov.uk/sites/northherts-cms/files/0002015_full_list.xls

21 Not 1.9m given in the Culverhouse Change of Use Assessment p28

22 Not 1.4m given in the Culverhouse Change of Use Assessment p28

23 DVS only works for local authorities and consequently has no potential for there to be any perception of bias as one might – rightly or wrongly- infer from the business operations of commercial practitioners who are dependent for a large part of their income from those who stand to benefit from the uplift in property valuation from domestic conversion or redevelopment.

assessments we cannot benchmark the approach taken by Mr Culverhouse (who is not a chartered surveyor) against that of the DVS Chartered Surveyor Mr A.D.S. Frank B.A. (Hons) MRICS RICS Registered Valuer. Nor can we check that the approach taken by Trinity Solutions is compliant with the published RICS Guidance on the valuation of commercial premises applied by Mr Frank.

8.3.21 Other interest in the pub.

It has been argued that there was no interest from commercial operators in acquiring and running the Cabinet as a pub. Both I personally and other members of the campaign have received oral evidence from Ivan Titmuss who is now running the Fox & Duck at Therfield to great acclaim that he spent a considerable period of time and £9k preparing a bid for and negotiating a long lease on the Cabinet as far back as 2012. The negotiations failed when the landlord seemed to be unable to agree terms for a suitable lease with Mr Titmuss.

8.3.22 It was partly because the Parish Council were aware of serious commercial interest in the Cabinet by local people that no attempt at a bid was made by them or any other qualifying community body for the freehold when it came up for sale. They didn't think they needed to.

8.3.23 Consequently we argue that the officer is wrong to conclude at 4.3.7 that the pub is not viable.

9 Sustainability has three equal and interdependent dimensions, the economic, social and environmental. Development which fails to meet the requirements of one or more sustainability objectives is, by definition, unsustainable.

9.1 Economic: Pubs as businesses which buy and sell goods and services and provide employment opportunities are economic units. The loss of the pub use (i.e. the business) is therefore harmful to the economic dimension of sustainability. There is a small economic benefit in the creation of short term employment in construction and in the acquisition and deployment of building materials, but we contend that this does not balance the long term beneficial employment and commercial use of the site.

9.2 Social: a public house, like the Ronseal ad, “does exactly what it says on the tin”. It is a nexus for community interaction and social contact as well as a source of food and drink and other types of hospitality, such as overnight accommodation. The protection of community social infrastructure is embodied in the Framework at paragraphs 28, 69 and 70 and in North Herts' Local Plan. The loss of a site which has been formally recognised as social infrastructure by registration as an Asset of Community Value fails the second limb of sustainability.

9.3 Environmental: the loss of the public house use and the unauthorised interventions to the historic fabric of the Cabinet fail to meet the objective of the third dimension of sustainability in that they cause harm to designated heritage assets and thereby fail either to preserve or enhance their character and appearance. Secondly, the natural environment has not been adequately safeguarded by the applicant, as evidenced by his failure to carry out the necessary wildlife surveys and the felling of one or more trees, in his single-minded determination to 'beat the system'.

9.4 NHDC's own 2009 *Site Allocations – Additional Suggested Sites: Reed* records in every instance that a strength of proposed housing development at each site could 'support local services' and conversely that two key weaknesses are that “there are no local shops within Reed and likely to increase commuting and private car use.” The Site Allocations document was of course compiled in 2009 when the Cabinet was still trading.

9.5 Development which is under-served by local facilities and public transport leads to over reliance on private cars and is therefore harmful in sustainability terms. Cases which support this view include:

9.5.1 In the 2012 appeal decision (2166833) Jacksons Lane, Reed, Royston SG8 8AB the Inspector supported the council's opinion that the development of new housing in Reed was unsustainable because of a lack of sufficient local services leading to over-dependence on motor transport to meet residents' day-to-day living requirements.

9.5.2 In 2015 an application was refused for the building of two houses on an unused piece of land to the rear of the Marston Inn in Northants on the basis of unsustainability. In the PINS decision 2015 (2214584) the Inspector remarks at para 7: *“the Council’s [S Northants DC] stance [is] that the village ranks poorly in terms of its sustainability, based on the exercise carried out when preparing the Interim Rural Housing Planning Policy (2009). Indeed, the closure of the PH [since the publication of the policy], with no guarantee of its reopening, would probably have reduced the village’s ranking in the sustainability hierarchy were that exercise undertaken now.”* He continues: *“As I saw, the village is relatively remote, has a paucity of services and facilities, and poor accessibility, especially to public transport. Access to virtually all services and facilities in other settlements would need the extensive use of the car”*. In dismissing the appeal he concludes at para 10 that *“the proposal represents an unsustainable form of development in the terms of the Framework”*. The parallels in the Cabinet case are compelling.

9.5.3 Conclusion: The application in its various impacts significantly fails the three sustainability tests and consequently should be refused.

10 Conclusion

10.1 *The application does not comprise sustainable development.*

10.2 *The harm to the listed building by the works which have already been carried out and which therefore comprise Intentional Unauthorised Development has not been justified and further doubt is placed on the necessity for the works in the light of the refusal of planning consent for the change of use. In any case the intervention in and of itself is harmful to the special character of the listed building in that it has been carried out in modern materials.*

10.3 *The loss of the use and the physical works which have been undertaken constitute substantial harm to both the listed building and the conservation area (the environmental dimension) contrary to LP and Framework policies on the conservation of heritage assets. P128, 129, 130, 131-135.*

10.4 *No assessment of significance, impact, harm or justification has been carried out, contrary to the LPA's own validation process and Local Plan HE1 and Framework policies on the conservation of heritage assets P128, 129, 131-135. This alone is sufficient grounds to refuse the applications.*

10.5 *The application for listed building consent for the alterations undertaken neither preserves nor enhances the Cabinet, as a designated heritage asset, as required by S66 of the PLBCA 1990.*

10.6 *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 using 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.*

10.7 *The application for change of 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.*

10.8 *the loss of the PH use which is of sufficient value to the community to be proposed and recognised 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 P28, 69 and 70.*

10.9 *The loss of a commercial and employment use constitutes harm to the economic dimension. This is contrary to the requirement in ETC7 that the premises must be marketed during the period of closure 'for similar uses'. Notably, not the same use, but a similar use, which might include any number of community uses. NHDC's own planning framework identifies that Reed is an unsustainable location for new development because 'it has no shop'. At the very least the applicant should have tested whether the Cabinet might have more utility to the community in a mixed use as a shop/public house, with extensions as necessary to make the use sustainable.*

10.10 *The applicant has provided no evidence that the Cabinet has been offered for sale during his tenure (i.e. not in the past 2 years), contrary to the exception in ETC7 that the premises be marketed during its closure period and the requirement in P133 of the Framework which requires evidence that charitable or other ownership is demonstrably not possible. No consultation on this point has been undertaken with the local community or the Parish Council in pursuit of this element of NPPF P133.*

10.11 *The evidence proffered in the two Culverhouse reports that we have seen that the use is unviable is absolutely unconvincing and our own expert opinion and evidence has roundly rebutted this. **Unviability has not been proven, contrary to the policy in ETC7 and Framework policy 134. Since unviability has not been proven, the case that the works undertaken are necessary to secure an optimum viable use for the premises falls away.***

10.12 *The applicant has failed to follow the local authority's guidance on biodiversity and the Habitats Regulations. That it cannot be demonstrated that there is no harm to wildlife or protected species, or that where there is harm, that it can be suitably mitigated is of itself sufficient grounds to refuse consent. We note that NHDC has previously refused consent on another scheme in Reed on the basis of a failure to assess biodiversity impacts.*

10.13 ***The continuing use of the premises as a dwelling is unlawful and the retention of the works undertaken is both harmful and unlawful, and we invite the local authority to refuse Listed Buildings consent,***