

**DOV/15/00292 - Change of use and conversion to two dwellings (1 x 5 bed and 1 x 4 bed), works to create car parking and erection of boundary treatment, including the demolition of existing lean-to, toilet block and outbuilding – The Red Lion, Canterbury Road, Wingham (Planning Application)**

**DOV/15/00293 - Internal and external alterations to facilitate conversion into 2 dwellings including the erection of party wall, blocking of existing doorway and insertion of new window to ground floor south elevation, demolition of existing lean-to, toilet block and curtilage listed outbuilding – The Red Lion, Canterbury Road, Wingham (Listed Building Application)**

Reason for Report:

1. A report on these applications was on the agenda to be considered by the Committee at its meeting on 26 May 2016 but was withdrawn in response to a large set of public submissions that were received on the evening of 25 May. The submissions, which included a speaking note and a legal opinion, raised many material considerations that could not be addressed in the short amount of time before the meeting. This report is supplemental to the one prepared for the 26 May meeting (which is attached at Appendix 1) and addresses matters raised in the submissions and takes into account further information that has been supplied by the applicant in response to the submissions. This report summarises the matters raised in the Speaking Note and legal opinion and, although the full submission was sent to all District Councillors, they are attached at Appendix 2 to this report for ease of reference. In addition, Committee is advised that three further letters of objection have been received in relation to the planning application that do not raise any new issues and one letter of support that requests that hours of work should be controlled if the application was to be permitted. KCC Archaeology has requested a condition to secure an archaeological watching brief should permission be granted. Two further letters of objection have been received in relation to the listed building consent application that do not raise any new issues and one letter of support raising the same point regarding hours of work.
2. It should also be clarified that the heritage elements of the report have been prepared by the Council's Principal Heritage Officer.

#### **Planning Policies and Guidance**

3. The submissions refer to various policies that were not referenced in the May report but, for the reasons set out in the following section, it is not considered that they are relevant.
4. Policy DM24 is central to consideration of these proposals and the submitted legal opinion is critical of the approach taken towards the policy in the May report. For ease of reference the policy and its supporting text are set out in full below:

#### **“Retention of Rural Shops and Pubs**

**1.76** Rural shops and pubs are of great importance to the economic and social well-being of rural communities and are factors in determining the position of a settlement in the Settlement

Hierarchy. The loss of these facilities can be a severe blow to the local community.

**1.77** When applications are submitted for the change of use of a rural shop or pub account will be taken of its importance to the community that it serves and the range

of other facilities and services that would remain. Permission for alternative uses will not be given if the community would be left without any local shops or facilities, or the range would be seriously diminished, unless the applicant has established that a shop or pub use is no longer commercially viable.

**1.78** The Council will have regard to the way in which the shop or pub has been managed. The Council's study into rural shops found that viability issues were often closely related to management techniques and a failure to keep up with competitors. The Council will also wish to see that adequate and genuine attempts have been made to market the premises for shop or pub use, as appropriate, but have failed to produce a viable offer. Marketing should be through an appropriate agent and for a period of time that fully tests demand having regard to the buoyancy of prevailing market conditions.

## **Policy DM 24**

### **Retention of Rural Shops and Pubs**

Planning permission will only be granted for the change of use of a rural shop or pub if its loss would not harm the economic and social viability of the community that it serves or, if such harm would occur, it has been adequately demonstrated that the use is no longer commercially viable and genuine and adequate attempts to market the premises for retail purposes or as a pub (as appropriate) have failed.”

## **5. Response to Matters Raised in the Submissions**

### **Effect of the loss of the Red Lion as a Pub**

6. Paragraph 3 in the Speaking Note states that the Red Lion complements rather than competes with the other two pubs in Wingham, that they have long co-existed serving different needs and elements of the community. Paragraph 38 furthers this argument by claiming that the term “range” in policy DM24 embraces variety and that the loss of variety represented by the change of use of the Red Lion would therefore cause harm under DM24.
7. In response the applicant has provided the following additional information:

“Indeed, with reference to DM24, your report could strengthen the case for the existing economic and social viability of Wingham (with the Red Lion closed) being evidenced by the role of the Anchor as a village pub. A visit reveals:

- Its attractiveness as a venue (listed building, old beams and panelling, stone and timber floors, eclectic collection of chairs and tables, hops and hanging tankards);
- An attractive and traditional ground floor layout with separate drinking and eating areas, a lounge area and a separate small area for darts etc;
- Its obvious good use by local people for meeting, drinking, eating and socialising generally;
- Its popularity as a place to dine (approximately 30 covers);
- A wide-ranging menu throughout the week, including meal offers for children and senior citizens, the menu stating *“we don’t pretend to be a gastropub but a traditional pub restaurant serving traditional pub food”*;
- Three real ales on tap;
- A bar billiards table in excellent condition (increasingly rare in pubs);
- A darts board;
- Well-maintained bat and trap and petanque pitches;

- An extensive garden with tables and chairs;
  - Regular quiz evenings;
  - Live music on occasions.
8. There are evidently darts and bar billiards league teams. This is the sort of characterful pub which tourists seek out.
  9. The Dog has aimed at a slightly different market. The range of functions provided by the two pubs is quite exceptional for a village of Wingham's size.
  10. Between them, the pubs provide such a range of functions that it is particularly difficult to identify what additional features a re-opened Red Lion could bring to the village. In other words, the social and economic benefits which the two pubs provide are substantial and no harm would arise with the permanent loss of the Red Lion. Furthermore, it should be noted that the Politician's Daughter, referred to in your report, is located very close to the Red Lion, has opened since the latter's closure, and provides teas, coffees and lunches."

Officer Response:

11. The applicant's additional information provides more expansive information on the facilities/services offered by the remaining two pubs and the Politician's Daughter. On this basis the applicant's conclusion "that it is particularly difficult to identify what additional features a re-opened Red Lion could bring to the village" appears to be reasonable and the contention in the Speaking Note that loss of variety would occur is not substantiated.
12. Paragraph 2.15 in the 26 May report deals with the matter of whether DM24 should be construed as meaning variety when it refers to range. It is concluded that that if it had been intended to include loss of variety as a test it would have had to be made clear in the Core Strategy, and it was not.

**Conflict with Heritage Considerations**

13. Paragraphs 6(1) and 26 in the Speaking Note claim that the proposed change of use represents a debasing of the intrinsic quality of Wingham's historic environment and brings it into conflict with Objective 10 in the Core Strategy. Paragraphs 6(5) and 66-68 states that by emptying the building of communal value the application will effect substantial harm to the significance of the heritage asset and given the absence of any countervailing public benefits would be contrary to the NPPF and legal requirements. Paragraph 8 puts forward that the proposals will replace a publicly accessible use with a private use that will preclude any public enjoyment of its listed features. Paragraph 24 states that paragraphs 2.33 and 2.34 in the May report do not faithfully reflect the legal requirements for assessing the effect of the proposals on the conservation area.

Officer Response:

14. English Heritage's Conservation Principles- policies and guidance for the sustainable management of the historic environment (2008), which are reflected in the District Heritage Strategy, identified that the value of a heritage asset can be defined as more than its historic or architectural character, and that its significance can include less tangible attributes such as the 'meaning' that the building has for local communities: the communal value. This can simply be that it is a building with which they have grown up, a building which is a familiar part of their personal landscape. The Red Lion has great historic and architectural significance, as evidenced by its

listing at grade II\*. In addition, in contributing positively to the street scene and the wider conservation area in respect of its noted architectural character and appearance the Red Lion has significant communal value.

15. Paragraph 129 of the NPPF (2012) states that a local authority should identify and assess the 'particular significance' of a heritage asset and take this into account to avoid any conflict between the conservation of the asset and the development proposals. The communal value of the Red Lion as a public house is only one aspect of its interest. The May report details other aspects, such as the Eighteenth Century staircase and the Sessions Room; features of significance which are protected in the proposal from any changes that could have potential to cause harm. Officer view is that the change of use from public house to private residence will not diminish the communal value of the building to an extent that its significance will be substantially harmed. The loss of the communal value of the use of the listed building as a public house as a result of the proposal is limited. Many listed buildings are in residential use with no public access but this does not prevent our enjoyment of them in our historic villages and towns. The communal value of the Red Lion is not dependent on it being publically accessible; it will continue to be able to be appreciated by the public as it will continue to be an imposing and important building in the street scene. For this reason, and in addition to the minor harm to the historic planform which is detailed in the May report, it is considered that the works do not constitute substantial harm to the significance of the listed building. It is therefore considered that the minor loss of communal value, through loss of public internal access, constitutes less than substantial harm. The NPPF requires the local planning authority to consider whether the public benefits outweigh the harm caused by the proposed works; these have been outlined in the conclusion of the May report. There are significant benefits to bringing the grade II\* listed building back into a viable use that is consistent with its conservation, and the minor loss of public internal access does not preclude the enjoyment of the building, therefore it is considered that the requirements of the NPPF have been fully assessed and met.
16. The May report has noted that the proposed external works, including the demolition of the outbuilding, would cause no harm to the conservation area. For the avoidance of any doubt, it is also considered that the proposals would preserve the special architectural or historic character or appearance of the conservation area and thereby meet the legal requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

#### **Conflict with Policy CP1**

17. Paragraphs 6(2) and 27 in the Speaking Note claim that the proposal would diminish the role of Wingham as a provider of services and bring it into conflict with policy CP1.

Officer Response:

18. Paragraph 2.10 in the 26 May report concludes that this would not be the case. This conclusion is strengthened by the findings under the "Effect of the Loss of the Red Lion as a Pub" section above.

#### **Conflict with Policy DM2**

19. Paragraphs 6(3), 6(7), 34 and 49 in the Speaking Note claim that the proposal would destroy employment land and buildings contrary to policy DM2 and also conflict with saved paragraphs 3.13, 3.14 and 3.69 of the 2002 Local Plan.

Officer Response:

20. Paragraph 1.9 of the supporting text to the policy and the Glossary to the Core Strategy make it clear that the policy only relates to B class uses, whereas a pub use falls within the A class of uses. The policy is not therefore relevant to this case.
21. Paragraph 3.02 of the 2002 Plan makes it clear that the term employment is only concerned with B class uses. The conversion of the pub to residential would not therefore result in the loss of an employment site. Paragraph 3.69 is no longer saved.

### **The Proposals Would Degrade the Area as a Tourism Asset**

22. Paragraphs 6(8) and 51 of the Speaking Note state that the proposed conversion to residential would conflict with Saved 2002 Local Plan paragraphs 3.100 and 3.69.

#### Officer Response:

23. The effect of the proposals on tourism is considered in paragraph 2.18 of the 26 May report. This did not refer to the above 2002 Local Plan paragraphs as they are no longer saved.

### **Housing Issues**

24. Paragraph 6(9) of the Speaking Note contends that there is no housing need in the area that justifies the proposed change of use. In support of this paragraph 62 refers to the 2009 Strategic Housing Land Availability Assessment (SHLAA) which had identified land with potential for 19,244 units against a Regional Spatial Strategy target of 10,100 units. Paragraphs 28 to 33 state that the 26 May report misrepresents the Council's housing policies and fails to set them all out in the report.

#### Officer Response:

25. The SHLAA is a background study to the Core Strategy and its purpose was to assess in broad terms whether there was likely to be land with sufficient capacity for housing development to meet the emerging Strategy targets. The SHLAA does not allocate land for development; this has been done through the Core Strategy and the Land Allocation Local Plan (LALP). In the event, and after much closer scrutiny, the Council was not able to allocate sufficient suitable sites to meet the target. This is set out in Table 3.1 of the LALP. The Table identifies a shortfall of land for 130 dwellings in the rural area of the District. This was addressed through an evidenced assumption about the likely contribution of windfall sites of 135 over the plan period. Applications such as the one the subject of this report would, if permitted, be counted towards the windfall contribution. In this sense there is a continuing need to permit a flow of windfall permissions. In addition to this there is an NPPF requirement to maintain a five year supply of housing land. This is addressed in paragraph 2.24 of the 26 May report. Currently the District cannot demonstrate a five year supply and there is a need to address this by permitting proposals that comply with the presumption in favour of sustainable development, as set out in the NPPF, in order to help achieve the Government's objective of boosting the supply of housing.
26. The Speaking Note criticises the May report for not referring to housing policies DM5 to DM10 or the LALP allocation policy LA33. These were not referred to because they are not relevant. They relate, respectively to affordable housing, rural exception affordable housing, provision for gypsies and travellers, replacement dwellings in the countryside, accommodation for dependent relatives, and self-contained accommodation for dependent relatives. None of the matters dealt with in these policies arises in relation to the proposed change of use. Policy LA33 allocated three

sites for residential development at Wingham, none of which relates to the application site. It is therefore not relevant to this application.

27. The Core Strategy does, however, include policy DM4 in order to provide policy guidance for the determination of applications for hitherto unforeseen changes of use to buildings in the rural area. That is directly relevant to the application and has been identified and considered in the May report, for example, paragraphs 2.21 and 2.22 where it is concluded that the proposed change of use would accord with the policy.
28. The Speaking Note, at paragraph 32, refers to paragraph 3.348 in the LALP. This states, amongst other things, that Wingham's heritage assets limit development opportunities in the village. The Speaking Note concludes that this means the conservation area and listed buildings in Wingham are contradistinguished from the additional housing that may be formed in the village – presumably meaning that they should not be a source of any further housing. This paragraph is, however, written in the context of the Plan's search for new sites to allocate for housing and, indeed, the following paragraph says that the constraints have led to only three small-scale development sites being identified. None of this implies anything about applications for changes of use of existing buildings which would fall to be considered on their merits under policy DM4 and relevant heritage policy and law.

#### **Source of Employment**

29. Paragraph 6(10) of the Speaking Note states that the Red Lion is an economically viable employment source.

#### Officer Response:

30. This matter is considered in paragraph 2.17 of the May report. It certainly has to be accepted that if it re-opened as a pub it would create employment. While it is contended that it is an economically viable employment source the marketing exercise has indicated that those who viewed the property thought that, for various reasons, it was not a viable proposition for them to pursue.

#### **Social, Cultural, Economic and Environmental Benefits**

31. Paragraphs 6(11), 74, 76, 77 and 78 of the Speaking Note relate to the wider social, cultural, economic benefits and environmental benefits associated with a pub use as opposed to a residential use. These paragraphs refer to studies that have been undertaken into the role of pubs in rural areas which have identified many benefits of pubs, such as, villages with a thriving pub are 40 to 50 per cent more likely to also have community social events, pubs provide a meeting place where social networks are strengthened, pubs add more value to local economies than beer sold through shops and supermarkets simply because they generate more jobs.

#### Officer Response:

32. While there is no submitted information to cause doubt about the findings of these studies the issue for the Committee is how they apply to the specifics of this particular application in a situation where two other pubs are operating together with other facilities and services within the village and where, bearing in mind the Red Lion has not been trading for around two years, the impacts of its closure would have manifested themselves. In the absence of such specific information it is considered that this submission is of little weight.

#### **Consideration under Policy DM24**

33. Paragraphs 6(4) and 35 to 42 of the Speaking Note put forward arguments that the loss of the Red Lion as a pub would cause harm under DM24 and that the application does not adequately demonstrate that the use is no longer commercially viable and that genuine and adequate attempts to market the premises as a pub have failed. It is said that the marketing efforts have been desultory, that an attractive offer to purchase the building was not followed through and that the May report is founded on a misunderstanding of DM24 and a selective examination of the material. The legal opinion is directed at two issues, a failure to deal properly with DM24 in the May report and a failure to advise the Committee of an offer to purchase the pub and concludes that a decision made in reliance on the report would be exposed to legal challenge.

Officer Response:

34. The legal opinion (paragraph 8) criticises the May report (paragraph 2.7) for effectively re-writing DM24 in that it advises that the issue is whether the proposal would seriously diminish the range of facilities in Wingham and thereby harm the economic and social viability of the community, whereas the policy refers to whether the loss of a pub would harm the economic and social viability of the community. The report was however, as is explained in paragraphs 2.4 and 2.7, drawing on supporting paragraph 1.77 to the policy where there is an explanation of the tests to be applied to decide if harm would be caused. Notwithstanding this, having considered the submissions above and the further information supplied by the applicant, this supplemental report has not identified any specific economic or social harm that would arise from the proposal that is sufficient to justify a recommendation of refusal. It is therefore considered that the first part of DM24 has been satisfied as well as the text in the supporting paragraphs.
35. Paragraphs 11 and 12 criticise the May report for advising that on the basis of the officer view that the first part of DM24 had been met that there was no need to consider the second part. Whilst this approach may be correct if the decision was an officer delegated one it does not, as the legal opinion points out, cover the eventuality that the Committee does not agree with the officer view and concludes that harm would be caused to the economic and social viability of the community. The May report does actually give some consideration to the second part of the policy but not for the reason set out in the legal opinion and this needs to be addressed. In addition, the second issue raised in the legal opinion is that the May report fails to advise the Committee that an offer to purchase was made. In response to this the applicant has submitted additional information and clearly, for all these reasons, further assessment of the proposals against the second part of DM24 is needed.

**Viability**

36. The first consideration in the second part of DM24 is whether it has been adequately demonstrated that the use is no longer commercially viable.
37. The applicant has stated (letter dated 25 May) that the Red Lion was purchased as a de-licensed non-trading freehold in April 2014 after failing for many years. The previous owners, Punch Taverns, had tried to make the pub a success but due to its size, fire regulation restrictions that restricted lettable bedrooms to three and divided the bar and restaurant areas into sections with overbearing partitions, restrictions imposed by its grade 2\* listing, and competition it was no longer viable to continue. The applicant also states "the myth of major pub companies bankrupting tenants is entirely untrue as if this were the case their business plan would be fatally floored (sic). They need pubs to generate income, this is their business and only future - a pub is only sold as a last resort when all other avenues have been pursued."

38. The May report (paragraph 2.8) sets out the reasons for not making an offer given by the four individual people who viewed the property during the marketing period. These include not enough space for sufficient covers, the cost of work required to get the business back up and running and of meeting regulatory requirements, and too much competition in the local area. The May report (paragraph 2.9) considered the fire regulation restrictions which result in only three bedrooms being capable of commercial letting and the consequent implication for potential revenue. It is understood that a further three bedrooms cannot be used for letting due to the fire regulation restrictions.
39. Against this, the Speaking Note (paragraphs 80 to 93) provides a description of the three basic operating models for pubs, as a freehouse, a tenanted/leased pub and as a managed pub. With a freehouse the individual licensee owns the pub, controls the business, makes the buying decisions and takes the profits. With a leased/tenanted pub a licensee pays rent to the owner and is often required to buy at least some categories of products through the landlord – known as being tied. The managed pub is owned by a company that specifies what is sold in it and hires a salaried manager to run it. The Note then sets out findings from a House of Commons Select Committee report from 2009 relating to pub companies or "pubcos" regarding the tied model of operating and in particular the findings that lessees considered a main cause of their financial difficulties was the rent charged by the pubco and the price they had to pay for their beer from their pubco. This was in contrast to evidence provided by pubcos, including Punch Taverns, that argued the general trading environment was the primary issue rather than the tied lease model. The Speaking Note argues in paragraph 89 that "an economic viability assessment of a tied pub is thus a distorted representation of the viability of a pub in the open market." and in paragraph 90 that, "The developer has not put forward statistics or appraisals to demonstrate that The Red Lion Inn would be unviable if it were operated other than as a tied pub.
40. Paragraph 90 of the Speaking Note also refers to national Planning Practice Guidance (PPG) advice on viable uses for heritage assets. This is set out in more detail in paragraphs 71 and 72 of the Note. Paragraph 71 refers to parts of paragraph 015 in the PPG's section on Decision Taking: Historic Environment and, in summary, the advice that the optimum viable use is the one likely to cause least harm to the significance of the asset over a period of time, it may not be the most profitable one, it could be the original use but that may no longer be economically viable or even the most compatible with the long-term conservation of the asset, if from a conservation point of view there is no real difference between viable uses then the choice of use is a decision for the owner, and, harmful development may sometimes be justified in the interests of realising the optimum use of an asset. Paragraph 72 of the Note refers to PPG paragraph 016 which advises appropriate marketing is required to demonstrate the redundancy of a heritage asset with the aim of reaching all potential buyers who may be willing to find a use for the site that still provides for its conservation to some degree. If such a purchaser comes forward there is no obligation to sell to them, but redundancy will not have been demonstrated. The Speaking Note contends that the applicant has failed to put forward convincing evidence to address these matters.

Officer Response:

41. It is considered that the applicant has, as set out above, put forward information to show that the pub use is no longer viable. DM24 requires this to be an adequate demonstration and supporting paragraph 1.78 states that the Council will have regard to the way in which a pub has been managed when determining this. The argument in the Speaking Note is that the pub's failure was influenced by its tied pub operating



model and that no information or appraisal to show it would be unviable if it were operated other than as a tied pub has been submitted.

42. The submitted marketing material makes it clear that the property was offered for sale on a freehold basis. This would enable anyone to make an offer based on any of the three operating models, yet none of the parties recorded as viewing the property proceeded to an offer (but see following section). It should also be noted that the marketing material confirms that all four of those who viewed were experienced public house and restaurant operators. The application falls, on this matter, to be determined on this basis. The issue of the influence of the operating model remains a rather generalised one as no specific information is available other than the results of the marketing process. It is a matter of judgement as to whether or not the applicant's information amounts to an adequate demonstration that the use is no longer commercially viable. The officer conclusion is that, taking into account the marketing material, there has been an adequate demonstration.
43. With regard to the PPG advice on viability relating to heritage assets, which provides advice on applying paragraph 134 in the NPPF, it should be noted that paragraph 015 also advises that "putting heritage assets to a viable use is likely to lead to the investment in their maintenance necessary for their long-term conservation." and that "It is important that any use is viable, not just for the owner, but also for the future conservation of the asset. It is obviously desirable to avoid successive harmful changes carried out in the interests of repeated speculative and failed uses." There has been no argument against the likelihood that residential use provides a good prospect for a settled future of the listed building with attendant maintenance and, as assessed elsewhere in this and the May report, with only very limited aspects of less than substantial harm arising. Continued use as a pub, were that possible, is likely to offer a less certain future. From the heritage perspective the proposed residential use appears to be a viable one. The only other alternative put forward is the possibility of re-introducing the pub use but the conclusion from this report is that it has not been shown to be commercially viable. This would indicate that the proposed residential use is the optimum viable use and accords with NPPF paragraph 134.
44. With regard to paragraph 016 of the PPG which is referenced in the Speaking Note, this is only applicable to cases where substantial harm would be caused to the heritage asset. The officer assessment, elsewhere in this report, is that the proposals would not cause substantial harm, in which case this paragraph would not be applicable. Furthermore, this paragraph is headed "What evidence is needed to demonstrate that there is no viable use?" This is clearly not the situation here as the applicant's case is that residential is viable and objectors consider that a continuing pub use would be viable. The contention, however, in the Speaking Note is that the harm would be substantial due to the loss of communal value and, despite the officer view, it is possible for the Committee to agree with this. The Committee should, however, bear in mind that the PPG (paragraph 016) says that substantial harm is a high test and may not arise in many cases and that an important test would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. Should the Committee identify such a serious impact it would then need to consider the applications against PPG paragraph 016 and NPPF paragraph 133 which states:
45. "133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local 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:

- 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.”
46. Committee members will, however, have noted the clear advice of the Council's Principal Heritage Officer that the loss of communal value would be minor and constitutes less than substantial harm – see paragraph 15 of this report.

### **Marketing**

47. The Speaking Note considers the marketing undertaken by the applicant to be desultory and not the genuine and adequate attempts required by DM24. It is said that an offer was expressly made by someone "willing to invest the money in the building and purchase it in order to run it as a pub again" but that the offer was not followed through by the owner. The legal opinion adds to this and states at paragraphs 17 to 19:
48. "17.Startlingly, however, Members are not told of the offer made by a member of our Client Group to purchase the pub on 24 October 2014 for £240,000 to which no reply was received. Members are also not told that our Client chased the Applicant on 8 September 2015 via an email to their solicitors, Pocock's. They received an acknowledgment from Pocock's and an undertaking to pass the offer along to the applicant. No further response was received.
49. We are unable to think of a legitimate reason why this information should have been concealed from Members. It is obviously highly relevant to policy DM24.
50. The result of the failure to inform Members of this highly material consideration is the analysis at paragraphs 2.7-2.8. Those paragraphs suggest there were no offers made to purchase the pub, and that the reasons for no offers having been made are summarised at paragraph 2.8. That is a deeply misleading representation of the true facts on a highly material question before the Committee. Absent satisfactory explanation, it undermines the credibility of the report and its author."

### Officer Response:

51. The May report to Committee was based upon the marketing material compiled on behalf of the applicant by a company called Sidney Phillips and, specifically an initial report from October 2015 and a final report dated 5 January 2016. As set out in the May report to committee the marketing reports stated that none the four viewings that took place produced offers on the property. The submission of the Speaking Note was the first time that officers had been made aware of a claim that an offer had been made.
52. Since that time an email dated 31 May was received from the applicant's agent which states:
- "It is the case that my client's solicitor received an unsubstantiated offer from Mr Lister in October 2014. There was no reference to such important matters as funding or a business plan. The property, at that time, was not being marketed.

- The offer was effectively discounted by Dave Randall when allowing the appeal against the ACV (see para 49 of the attached decision). This is surely material. So too is his conclusion to the effect that the pub could not be run by the community (para 48). These are objective statements and nothing material has been produced to change his conclusions.
  - The follow-up offer of September 2015 was a reiteration of the earlier one with no additional information. It was not made through the selling agents. Given, inter alia, Dave Randall's comments, the applicant was quite justified in not taking any action.
  - The property was marketed May 2015 – February 2016, with offers invited.
  - It is known that Mr Lister visited the property to view in July 2015. He was accompanied by a publican who determined that re-opening was not viable. This key point is not mentioned in the opinion you have received. Please see attached letter dated 31 May 2016 in confirmation."
53. Paragraph 49 of the letter from David Randall, the Council's Director of Governance and Monitoring Officer, states:
54. "Both Mr. Walton and I have evidence of an offer by an undisclosed purchaser to purchase the Red Lion for £240,000. This was provided in an email from Alex Lister to Andrew Lawrie (the owner's marketing agent) on 27 October 2014. Mr Towns didn't respond to this offer, because he felt that it lacked substance and was made to thwart the planning process. I have given very little weight to this offer, as it is from an undisclosed source and doesn't articulate how the property could be run as a viable exercise."
55. The letter referred to dated 31 May 2016 is from Sidney Phillips which states:
- "I can confirm that Mr Alex Lister of the "Save the Red Lion" campaign group attended a viewing with Mrs D Playford on 29 July 2015. I was also in attendance at this viewing. Feedback provided was that the property and scheme to open The Red Lion as a public house again would require too much investment in order to get the business up and running again. Subsequently, no offer has been forthcoming from Mr Lister nor the campaign group, despite the property remaining on the market for a further 6 months. Mr Lister and the campaign group have had ample opportunity to bid for the property, however have not produced anything realistic supported by a proof of funds and are acting in an obstructive manner.
56. As a member of the Association for Valuers of Licensed Property, BII and RICS, whom specialises in valuation and sale of licensed premises in the South East, I should comment, as stated in the previous correspondence, that the Existing Use Value of The Red Lion stands in the region of £425,000 to £450,000, and holds a required CAPEX investment in the region of £150,000 to £200,000 in order to bring the property into a safe and workable condition for reopening as a public house."
57. Further information in David Randall's letter indicates that the current owner bought the property for £282,500 ex. VAT (paragraph 24(g)). VAT was not payable as the property was no longer in use as a pub but were that use to be resumed VAT would become payable which would take the current owner's investment (with fees) to around £360,000.
58. From this the indications are that the offer of £240,000 is below the price paid by the current owner, was not made through the selling agent, was by an undisclosed purchaser and means of funding was unsubstantiated. For these reasons the applicant did not further it. Paragraph 1.78 supporting DM24 refers to marketing having "failed to produce a viable offer" while the policy itself states "genuine and

adequate attempts to market the premises for retail purposes or as a pub (as appropriate) have failed."

59. While it would have been preferable for the offer to have been made and assessed through the selling agent, it was not, and a conclusion has to be reached on the basis of the available information. The officer view is that an offer that is below the price paid for the property and some £200,000 below the professionally assessed Existing Use Value is not likely to induce a sale. Aside from that, the strength of the offer is unknown. It is considered that these factors could reasonably be taken to indicate that the offer was not viable and that, overall, the marketing process has failed. The May report has already concluded that the marketing exercise represented a genuine and adequate attempt and that view remains.

### **Conclusion**

60. The assessment of the additional material that has been received since the publication of the May report has not identified any reasons for officers to change the recommendation to approve both applications. In response to comments received from KCC Archaeology after the May report was published it is recommended that approval of the planning application is also subject to condition to secure an archaeological watching brief.
61. For ease of reference the recommendation from the May report is reproduced below but with the additional recommended condition mentioned in the preceding paragraph.

### Recommendation

- I In respect of DOV/15/00292 PLANNING PERMISSION BE GRANTED, subject to conditions set out to include, in summary: i) commencement within 3 years, ii) carried out in accordance with the approved drawings, iii) materials to be submitted, iv) Details of cycle and refuse storage areas shall be submitted to and approved in writing by the local planning authority and put in place before the first occupation of the dwellings commences and maintained for such purposes thereafter, v) sample panel of brickwork to show bonding, type and style of pointing, for the proposed boundary wall, vi) any conditions requested by KCC Highways, vii) archaeological watching brief
- II In respect of DOV/15/00293 LISTED BUILDING CONSENT BE GRANTED, subject to the following conditions set out to include, in summary: i) commencement within 3 years, ii) carried out in accordance with the approved drawings, iii) The works shall not be carried out otherwise than in accordance with detailed drawings; iv) such drawings to be submitted to and approved by the Local Planning Authority in writing to show details of any mechanical ventilation, flues, soil vent or other pipes and joinery details for new window; v) no cleaning of internal or external timbers, vi) the Sessions Book will remain *in situ* and shall not be removed or relocated without formal approval from the local planning authority.
- III Powers to be delegated to the Head of Regeneration and Development to settle any necessary planning permission/listed building consent conditions in line with the issues set out in the recommendation and as resolved by Planning Committee.

Case Officer

Andrew Wallace