

# Pubs and Planning Information for Councils

Paul Ainsworth



January 2019

## **Introduction**

CAMRA is committed to protecting pubs worthy of protection and the planning system is often crucial to our pub-saving efforts. The legislation had, until recently, serious weaknesses, especially around permitted development (PD) rights and demolition, but sustained campaigning efforts have now closed those loopholes. This means that there is more opportunity than ever to make effective use of the planning system to ensure that proposals to close or ruin a pub are properly scrutinised.

In the course of fighting many campaigns, we have developed a body of expertise in this area. We also have a Planning Advisory Group whose membership includes several qualified Town Planners. We would never have the temerity to try to tell local authority planners how to do their job. However, we hope that what follows is helpful to practitioners who find themselves dealing with pub-related applications and who want to make sure they are fully aware of all the relevant issues and procedures.

This advice covers the position in England only. We intend producing versions for the other parts of the country which reflect the different legislation and procedures which apply in each of them.

## **Planning Applications and Pubs**

**Change of Use and Demolition** – Since May 2017, planning permission has been needed for all changes of use away from A4 and for any demolition of a pub. Before that date, permitted development rights existed to demolish most pubs or to change their use to shops, restaurants and some kinds of office.

Most change of use applications concerning pubs will be for residential; sadly for them, pubs often make attractive and reasonably priced houses.

The 2017 changes introduced a new AA class which has caused some confusion. The background here is that many pubs have served food for many years but that service is generally understood to be ancillary to the operation of a drinking establishment. The AA class was created to support those pubs wishing to expand their food offer beyond what might be considered an ancillary level but without the need for planning permission. A move from A4 to AA is permitted development. Importantly, however, such pubs remain pubs and do not become restaurants.

The A4 use class dates back to 2005 changes in the Use Classes Order, before which restaurants, cafes and drinking establishments all fell within class A3. It has been claimed that the recent changes mean that pubs which existed before 2005 now automatically revert to A3. The Department of Communities and Local Government has confirmed that this is incorrect; the

class which a particular use fell into from April 2005 depends on its primary use, which is a matter of fact and degree. Where the primary use was/is the purchase and consumption of alcohol on the premises, the use class will normally be A4, irrespective of the square footage that might be given over to dining or the revenue derived from that function.

It has also been suggested that pubs serving food granted planning permission since 2005 will fall into the A3 class because this covers the sale of food and drink. Again, DCLG say this is quite wrong; there is a clear difference in scale between a pub which serves food and an A3 restaurant. To their knowledge, no argument has been made by pubs/developers that pubs serving food are in fact A3 use.

**Other Permissions** – Permission is needed for:

- extensions, such as new restaurant areas or conservatories
- alterations (inside or out) to Listed Buildings
- most new signs and adverts

**Partial Loss** – Some applications seek changes which would reduce the size of a pub or its plot, often involving the loss of upper storey's (living accommodation, meeting rooms, kitchens). Such changes may well threaten the viability of the business and the longer-term aim of the applicant may be to secure redevelopment of the entire property – hence these sometimes being called 'Trojan Horse' applications. These issues have been considered in several planning appeals, some examples of which are:

- APP/W1850/A/12/2183572
- APP/D3125/W/14/2226134
- APP/X5210/W/16/3147248

The appeals were dismissed, reasons including the reduced viability of the pub business which would result from loss of car parking or garden space or loss of kitchen facilities.

**Assets of Community Value** – Under the Localism Act 2011, applications can be made to register a pub (or other community facility) as an ACV. If the pub is later put up for sale, community groups are entitled to submit bids and a six-month moratorium comes into force to enable them to raise funds.

Registration of a pub as an ACV has been held to be a material consideration in planning applications. ACV status is recognised as clear evidence that the pub is valued by its local community and helps meet its day-to-day needs. Planning appeals where this issue has been rehearsed include:

# Pubs and Planning – Information for Councils

- APP/D1780/W/14/2222726
- APP/R2520/W/16/3150763
- APP/U5360/C/13/2209018

It should be stressed, however, that the absence of ACV status should in no way be regarded as meaning that the pub lacks community value. Very many community-focused pubs have not been nominated as ACVs simply because there is no reason to do so e.g. they are in secure and beneficial ownership and/or a community buy-out would be unlikely or unnecessary.

## **National Planning Policy**

The key policy here of course is the [National Planning Policy Framework](#), first published in 2012 and revised in 2018.

Paragraph 92 contains the most explicit and wide-ranging policies supporting the retention of community pubs. It is worth stressing that the policy applies to all pubs, not just those in rural areas.

Paragraph 83 provides explicit support for rural pubs which help support tourism and leisure facilities by offering local facilities.

Paragraphs 8, 197 and especially 192 seek to conserve heritage assets in a manner appropriate to their significance.

These policies can be used as a reason to refuse relevant applications even if local planning policy is insufficiently strong or specific.

## **Local Plans**

Many Local Plans contain policies which support the retention of most or some pubs and other community facilities. There are, though, Plans which are largely silent on these issues – in which case paragraphs 212-213 of the NPPF state that national policy takes precedence.

Some LPAs are currently reviewing their Local Plans, providing the opportunity to bring policies into line with the NPPF. CAMRA has developed a model planning policy on community facilities ([link](#)) which we commend to LPAs seeking to insert or update such a policy.

Supplementary Planning Documents (SPDs) normally build on Local Plan policies and help guide planners in detail on proposals involving the redevelopment of pubs, thus providing stronger grounds to refuse applications if need be. SPDs can also be put in place where there is a policy shortfall – for example, if the Local Plan was submitted prior to the NPPF emerging or the Plan has not yet been prepared.

Wandsworth LBC and Rushmoor BC both have excellent examples of pub-related SPDs.

An alternative approach is a Planning Guidance Document, setting out how applicants should justify their proposals for change of use, conversion or redevelopment of pub sites. They can also contain the criteria to be used in assessing development proposals which would lead to the loss of a pub. Cambridge CC has excellent Planning Guidance on pubs.

## **Planning Applications on Pubs – Issues to Consider**

**The Pub as a Community Facility** – As mentioned, both national policy (NPPF paras 83 & 92) and many Local Plans support the retention of pubs which provide valued local facilities and services.

Pubs are (or should be) by their very nature a community asset. They are where people from all walks of life come together in a social setting and, in some communities, are the only place where this can happen. They can provide meeting places for clubs and societies, a base for sports clubs, quiz nights and other entertainments, charity fund raising – the list goes on. And, of course, many of them offer a range of quality drinks and good food. A visit to the pub should reveal the extent to which it currently meets the needs of local people. Pub websites are often a useful indicator of levels of community activity.

The community angle does not just apply in rural areas. Urban pubs can be equally important community venues, both for particular areas of a town or city and for “communities within a community”. A recent study, Friends on Tap ([link](#)) shows that people with a local have more close friends, are more satisfied with their lives and feel more embedded in the local community.

In some cases, a pub may not appear to be well linked to community life. Clearly that will be the case if the pub is presently closed but it can also happen if the pub has been run in such a way as to put off or even alienate people from using it. This could result from an over-emphasis on gastro-style dining, or erratic opening hours, or poor quality drinks, food and service or because the relationship between licensee and local people has broken down. Cases have arisen of pub owners deliberately running down pubs with a view to making change of use easier to obtain. Enquiries of local people as to how the pub has fared in the past will often be revealing.

## Relevant Planning Appeals

- APP/X5210/A/13/2199667
- APP/E2530/W/16/3153467
- APP/W3250/W/16/3143123

**Viability** – Applicants will often claim that the business is no longer commercially viable and has no hope of ever again becoming a profitable concern. Quite often, the claim will be influenced by the development value of the site, especially if the pub occupies a large site or an attractive building. The challenge for planners is to assess whether the business, because of its location or other factors, is indeed in terminal decline or whether, in the right hands, it could thrive once again.

To assist decision makers on this point, CAMRA has produced the [Public House Viability Test](#). This asks a series of factual questions aimed at teasing out the answer to the bigger question: “What could this business achieve if it was run efficiently by management committed to maximising its success?”

### Relevant Planning Appeals

- APP/D2510/W/15/3139947
- APP/L3245/A/13/2192177
- APP/W3520/W/16/3143228

It is also worth noting that a pub company may well take a different view on what represents viability than a tenant or a free holder. The former may not regard a business as viable unless it delivers a certain level of return on investment whereas the latter may be satisfied with making a decent living.

**Alternative Facilities** – Applicants sometimes point out that there are, in the vicinity, other pubs or equivalents like clubs and hotels which local people could use. Strong arguments often exist, though, as to why these facilities are no real replacement for the pub in question. They might, for example, be very food-oriented or aimed mainly at particular groups of people. Distance is also a major factor, especially if a drive rather than a walk is needed.

### Relevant Planning Appeals

- APP/X5990/W/14/2215985
- APP/K2610/A/13/2196244

**Heritage Issues** – Paragraph 192 of the NPPF requires LPAs to take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable use consistent with their conservation
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality.

In many cases (we would argue) the use “consistent with their conservation” of these buildings is continued operation as a pub.

## Pubs and Planning – Information for Councils

Para 197 of the NPPF requires a balancing exercise between the degree of harm and the perceived benefit of any proposal and its effect on a heritage asset.

Clearly if a building is listed then the heritage aspect is immediately a major consideration and listed building consent must be sought. The NPPF policies do though also apply to non-designated buildings identified by the LPA. This would include pubs featured on any local list but does not exclude buildings which do not appear on any list. Non-designated heritage asset status carries less weight than statutory listing but the NPPF does encourage minimising the harm to such buildings and preserving or enhancing their character.

CAMRA maintains inventories of pubs identified as having interiors of national or regional importance. These can be searched for easily on the heritage pubs website – [www.heritagepubs.org.uk](http://www.heritagepubs.org.uk). Only 270 or so pubs are on the national inventory – these really are the crème de la crème of unspoiled historic pub interiors. Sadly, not all are statutorily listed, mostly because they lack, in the eyes of Historic England, architectural distinction. However, they are no less precious for that. Around 2500 pubs are in the next tier of regional inventories. These will have interiors more altered than those at national level but nonetheless retaining either much of the original layout or sporting fixtures and fittings of special interest. We would urge LPAs to check if pubs subject to applications are on an inventory and to consult CAMRA if they are. Relevant planning appeals include:

- APP/M2325/A/12/2168726
- APP/K5600/A/12/2172342

**Local Plan Policies** – It goes without saying that any application will be considered in conjunction with locally adopted policies and, as previously mentioned, this will be done alongside consideration of the relevant national policies.

**Non-Pub Use** – in a number of cases, applicants have claimed that pub-oriented policies do not apply because the business is in fact a hotel or restaurant. It is usually easy to determine, through 'fact and degree', whether this is correct. Relevant planning appeals include:

- APP/W0530/A/11/2167619
- APP/Q0505/A/12/2174210

**Assets of Community Value** – As mentioned earlier, should the pub have been nominated as an ACV then this will be a material consideration in some planning applications, notably where value to the local community is an issue.

## **Consultation and Comment**

CAMRA is always eager for the opportunity to comment on applications concerning pubs.

Our ideal way forward on this is for our local CAMRA Branches to be told of any such applications so they can decide whether to submit views. An alternative is to send the Branches the weekly list of planning applications. Contact details can be found at [www.camra.org.uk/camra-near-you](http://www.camra.org.uk/camra-near-you).

CAMRA centrally is also always pleased to comment on applications, especially those where particularly sensitive or complex issues have arisen. Please contact our national Planning Policy Advisor, Paul Ainsworth – [paul.ainsworth@camra.org.uk](mailto:paul.ainsworth@camra.org.uk) – who is also happy to comment on planning issues of a more general nature.