

When Pubs Stay Shut: A Campaigning Guide

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1. INTRODUCTION

1.1 This guidance is concerned specifically with those unfortunate situations where it has become clear that an owner is prepared to play the 'long game' and sit on a closed pub in the hope of eventually getting what they want – invariably, planning permission for change of use. The owner is not prepared to enter into meaningful dialogue with campaigners and has effectively shut up shop. Even if the local community is willing to put its money where its collective mouth is and purchase the pub, the owner either refuses to engage at all or is only prepared to sell for a ludicrously high price.

2. THE LEGAL POSITION

2.1 Nobody is obliged to keep a pub open so owners are perfectly within their rights to close them down if they wish. However, continued residential use of any part of the pub, including the former licensee accommodation is not allowed without first obtaining planning permission. Any apparent unauthorised use should be brought to the attention of the Council who should take enforcement action if appropriate – see section 5.

2.2 There is a widely held belief that if a pub closes then the licensees are permitted to continue living on the premises, provided they confine their occupation to the former licensee accommodation areas. That is not the case. Any residential use is ancillary to the pub use so, if the pub closes, so does the entitlement to live there. It will be reasonable for Councils to allow the licensees a period of grace (say six months) to find themselves new accommodation but after that, enforcement action should be taken to stop the unauthorised use.

2.3 If the building is unlisted, nothing can be done about removal of fixtures and fittings, though the pub use remains even without the fittings - but if the pub part begins to be used for any other purposes, even if all the pub fittings survive, then an unauthorised change of use has taken place. In other words, it's the use that counts, not the fixtures and fittings. Should the building be listed, though, then any material alterations to the interior need listed building consent and the Council should be asked to take enforcement action concerning any unauthorised changes.

2.4 Something to look out for is any attempt to establish a case for a 'Lawful Development Certificate.' This has to be granted by the Council if certain things can be proved, including where the use of a building has been changed (without planning permission) to use as a single dwelling house and that use has gone unchallenged for at least four years. So, even if permission for residential use of a pub was refused, if someone just goes ahead and carries on living there, and nobody objects, they can later apply for this unauthorised use to be legitimised. Regular checking is therefore needed to ensure that no use of the building for residential purposes is taking place; any evidence that this might be happening must be reported to the Council who then ought to take enforcement action.

2.5 Please note that Lawful Development Certificates are not relevant to situations where breaches of Listed Building or Conservation Area controls may be alleged.

3. WHAT CAN BE DONE?

3.1 At this stage in the proceedings, it's very likely that the owner will have applied for planning permission for change of use or demolition and been turned down. They may also have gone to appeal and had that dismissed. Rather than accept defeat, some owners will keep the pub closed in the hope that the planners will eventually give way. They might go so far as to strip out the interior so as to reinforce their claims that reopening is not a realistic prospect.

3.2 It's vital that the Council stand their ground in this situation and campaigners will need to encourage them to do so. The message has to be conveyed to the owner that their tactics will not succeed – so the Council should be asked to spell out to the owner in no uncertain terms that, so long as the prospect of a purchase by the community or another party is considered to be realistic, the only acceptable use for the land is its existing use as a pub and that no alternative use will be considered acceptable in the meantime.

3.3 The desired outcome, of course, is that the owner will realise that delay is not going to work and, given that the value of their asset is likely to be declining, they may as well cut their losses. Sadly, some people are quite prepared to cut off their nose to spite their face and refuse to budge. So, what next?

4. ASSET OF COMMUNITY VALUE (ACV)

4.1 It may well be that, by now, campaigners have already applied for, and hopefully been granted, ACV designation for the pub – but if not, this should now be done. ACV status has several advantages. Firstly, if the owner puts the pub on the market, the nominator (or indeed any community group) can register an interest in purchasing the property. A six-month moratorium then kicks in during which (subject to certain caveats) the owner cannot sell the property to anyone else. They aren't obliged to sell and can just wait out the six months but time is often valuable in situations like this, especially for campaign planning. ACV status also helps if and when planning applications are submitted because it is open to Councils to regard it as a 'material consideration'. Many Councils have planning policies protective of valued community facilities and having an ACV in place is prima facie evidence that the community does indeed value the facility and wants to see it protected. The fact that a pub is closed should not be a barrier to ACV registration because one of the tests is whether there is a reasonable prospect of the asset furthering the social well-being or interests of local people in the future – not just at present.

5. ENFORCEMENT ACTION

5.1 Should you consider that something is happening at the property which doesn't have the necessary permission, the first person to contact is the Enforcement Officer in the Council's Planning Department – their details should be on the Council website, or you can phone the Council offices and ask to be put through. The Officer should then check whether what has happened is or isn't above board. Officers have the right of entry to properties to check if there has been any breach of planning control and, if so, whether enforcement action should be taken. That action could include a demand that any unauthorised works be removed and the building restored to its former state. On the other hand, the Council might decide to grant retrospective permission for the work.

6. COMPULSORY PURCHASE

6.1 Councils have powers to make Compulsory Purchase Orders (CPOs) where there is 'a compelling case in the public interest' to do so – which might well apply, for example, if a valued community facility like a pub is being left to rot. In June 2011, the Government issued guidance to Councils on the use of CPO powers to save community assets. Councils are now obliged to take seriously all viable requests put to them by voluntary and community groups for the compulsory purchase of a threatened community asset. Councils must respond formally to such requests, outlining the reasons behind their decision on whether or not to use CPO powers. This guidance has since been updated, most recently in July 2019 (DLUHC Guidance on Compulsory Purchase Process and the Crichel Down Rules). The key parts of the guidance are:

225. What requests can be made to a local authority?

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

226. What considerations need to be made when receiving a request?

Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, and commercial groupings like Business Improvement District bodies, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

Local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the compulsory purchase order process, either from their own resources, or with a partial or full contribution from those making the request.

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Local authorities should, for example, ascertain the value of the asset to the community, or the effect of bringing it back into use; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed.

(note; in the phrase ‘which may have been designated as ACVs’, the word ‘may’ is important. Non-ACV properties are not excluded though there is a clear implication that ACV status is meaningful in this context)

6.2 Historically, Councils have been reluctant to use CPO powers because of the cost implications. However, if local people are committed to a community purchase then an arrangement ought to be achievable whereby the impact on the Council is largely cost-neutral. A community group could, for instance, enter into a formal agreement to purchase the property from the Council at the price paid plus cover all or some of the costs incurred by the Council on the CPO process itself (but a word of warning – the latter might be significant).

6.3 Having said that, the threat of a CPO, if made sufficiently seriously, may well be sufficient to unblock the stalemate – this is what happened at Woodcroft (see case study). Fighting a CPO is a costly business for an owner and it may well be that this is the point at which they throw in the towel and enter into proper negotiations with would-be purchasers.

7. OTHER WAYS FORWARD

7.1 Should the Council decline, at least initially, to run with the CPO process then you should ramp up your media publicity along the lines of ‘Council refuses to help save pub’; Councils dislike negative stories and might be shamed into taking action. You should continue to publicly berate the owner; a good line to take is that if you buy a pub, you become custodian of a community asset not just a simple business and responsibilities are attached – hence why the planning system is generally protective of pubs. You should also rebut the likely claims by the owner that the pub isn’t viable by pointing to the many instances of pubs written off by their owners as economic basket-cases which, in the right hands, are now thriving (see [here](#))

7.2 If the Council holds its nerve on the planning side, and campaigners refuse to give up, the chances are that at some point the owner will say enough is enough and victory will be yours.

CASE STUDY – THE RISING SUN, WOODCROFT

Woodcroft is a small village in the Forest of Dean. The Rising Sun had served the community since at least 1858 and survived the closure of the other village facilities – post office, butchers, bakery. In 2005, it was bought by Pubfolio Ltd but they went bust in 2012, after which it was acquired by new owners, Worthy Developments, who closed the pub with the aim of

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developing the land for housing. A few months later, SOS (Save Our Sun) was formed by a group of local people who successfully nominated the building as an Asset of Community Value.

In 2013, Worthy applied to Forest of Dean Council for permission to convert the pub into two houses. This was refused, as was the subsequent appeal. The grounds both times were that it had not been proven that a community pub was unviable or that suitable and convenient alternative facilities existed.

The premises then stood empty for years, the state of the building becoming an increasing subject of local concern. SOS therefore pressed for compulsory purchase of the pub and in November 2019 the Council served notice on Worthy of their intention to make a Compulsory Purchase Order. This sufficed to unblock the stalemate and Worthy agreed to sell the premises to the Rising Sun Community Pub Ltd which had been founded as a community benefit society in 2021 once it became clear that a sale was in prospect. 240 local shareholders had raised £350k and the group also successfully applied to the Community Ownership fund, raising a further £175k. The sale was completed in early 2022 and, after volunteers had worked hard to bring the building back to a usable state, the pub reopened in October 2022.

It is now a superb establishment and a fantastic example of how a group of determined people can, against heavy odds, pull together to save their local pub.