

When Pubs Stay Shut: A Campaigning Guide

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**CAMPAIGN
FOR
REAL ALE**

1. INTRODUCTION

1.1 This guidance is concerned specifically with those unfortunate situations where it has become clear that an intransigent 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. Residential use of the former licensee accommodation is still allowed as, in the eyes of the law, the building remains a pub. However, owners cannot use any other part of the building for any new purpose 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 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 residential 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.

2.3 Something to look out for is any attempt to establish a case for a 'Lawful Development Certificate.' This will 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 uses it for that purpose, and nobody objects, they can later apply for this illegal use to be authorised. Regular checking is therefore needed that no such unauthorised use of the pub part of the building for residential is taking place; any evidence that this might be happening must be reported to the Council who then ought to take enforcement action.

2.4 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. He/she 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 October 2015 (DCLG Compulsory Purchase Process and the Crichel Down Rules : Guidance). The key parts of the guidance are:

215. 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.

216 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.

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 Holywell Green (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 <https://pubs.camra.org.uk/pubsuccessstories>)

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 HOLYWELL INN

Background

The Holywell Inn is the only pub in the West Yorkshire village of Holywell Green. It was bought in June 2011 from a pub company (Admiral Taverns) for £120k. The new owner closed it in January 2012 and applied for planning permission to convert it into six dwellings. The Holywell Inn Action Group was quickly formed by local residents to fight the application. The Group also successfully applied, in March 2012, to have the pub registered as an ACV. Subsequently, the Group was incorporated as the Holywell Community Pub Ltd., an industrial and provident society to be used as a vehicle for raising funds to buy the pub.

The Planning Applications

The owner first applied for change of use planning permission in early 2012, the main justification being that the business was not viable. This is, of course, a common scenario, given that the freehold price of a pub is usually much lower than houses in the same area. The buyer's intention is to secure change of use to residential thereby significantly increasing the value of the property. It is in their interests therefore to run the business down so that non-viability can be argued as was the case here.

The planning application was refused by Calderdale Council as were two further ones in 2013 and 2015, all basically on the grounds that the proposals conflicted with the local and national planning policies on protecting valued community facilities.

The Appeal

The owner then went to appeal, which was dismissed. The Inspector concluded that "it cannot be said that there is no reasonable prospect of the Holywell Inn becoming a viable business in the future" and that community ownership, in particular, "does hold out a reasonable prospect of viability..." He was "firmly of the view that, in this particular instance, the adverse impacts of allowing the appeal would, in social, economic and environmental terms, significantly and demonstrably outweigh the benefits of the proposed conversion to housing..."

Compulsory Purchase

However, the owner stubbornly refused to negotiate a sale to the community group so the stalemate continued. The group therefore entered into talks with the Council about their making a Compulsory Purchase Order on the property. The Council noted the governmental advice that CPO powers should only be used where it was expedient to do so and only where there was a compelling case in the public interest. Officers were, though, sympathetic to the request and took a report to the Council's Cabinet. They agreed to pursue compulsory purchase on the grounds that the property in its present state detracted from the vitality of the area.

And Then..

In the event, the serious threat of the CPO did the trick, the owner throwing in the towel and beginning sale negotiations with the group; at the time of writing, purchase was nearly complete. Moreover, the Council lent the group the £80k needed to make the purchase.

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