

**PART CHANGE OF USE OF APPROVED BED AND BREAKFAST ACCOMMODATION (P1505/09 COU) TO RESIDENTIAL USE (NO INTERNAL OR EXTERNAL ALTERATIONS), ANCILLARY TO HORSESHOE INN HOUSE, AT BROOMS GREEN, DYMOCK, GLOS. GL18 2DP FOR MR. AND MRS. J.C. TWEEDALE.**

**PLANNING STATEMENT (Design and Access)**

**BACKGROUND.**

1 This full submission for change of use of that part of the premises known as Horseshoe Inn House at Brooms Green, from B&B accommodation to ancillary residential use, stems from and follows advice received by way of a letter from the LPA dated 24.08.23. in response to a pre-Application request.

2 Consent had been granted in November 2009 (P1505/09/COU Appendix 1) for an extension to this property, to change its use from an existing Public House to a dwelling and to erect a single storey addition comprising three bed and breakfast rooms. These rooms had and an overall floorspace of 91sq.m. and ridge height of 4.7m. All external facing materials were to match. A Condition (No.02) was imposed upon the permission which stated as follows:

*The bed and breakfast use hereby permitted shall be implemented in accordance with Drawings TWE/200/60, TWE/200/61 and TWE/200/63. These commercial promises shall be retained thereafter and shall not be used for residential accommodation for the approved dwelling or as independent residential use.*

*Reason: To ensure that the commercial use of the building is retained to ensure compliance with Policies (R) FBE 1 and (R) FNE 1 of the District Local Plan Review.*

3. Whilst the building works were being carried out during late 2011 and 2012 a modest conservatory of 10sq.m. was also incorporated into the scheme. This addition was in breach of the requirements of the first sentence of Condition 02. A Certificate of Lawfulness was issued in May 2023 (P01432/23/LD1 Appendix 2) confirming that the Conservatory is lawful, having been in situ and use for a period of more than ten years.

4. It is the second part of Condition 02 from which the applicants and owners now seek relief, but by way of this fresh application, as advised. Mr. and Mrs. Tweedale are now at retirement age. They have operated the bed and breakfast enterprise continuously for more than ten years. They wish to step down and to utilise the accommodation for normal residential purposes ancillary to the primary residential use of Horseshoe Inn House.

5. Their case has three distinct elements:

(a) That the second part of the Condition is unnecessarily harsh and places undue restriction on the property. It fails to meet several of the six tests for conditions. It was imposed (as the evidence shows) to address the concerns of objectors at the time. Further, the policies cited (from the previous District Local Plan Review) as reasons for its imposition were of little (if any) relevance to retention of the commercial use.

(b) Material Considerations - Personal and Family Circumstances

(c) That the B&B accommodation does not and has not served either any community use or local need. Analysis of lettings over the whole of what is now almost 11 years shows a minimal amount of usage by persons having any connection to the 'locality'. Evidence of bookings demonstrates that it cannot reasonably be described as a community facility and that its loss would have no material effect upon the local economy. The proposal complies with current policy, is sustainable development and would have no adverse effect upon residential or visual amenity, biodiversity or highway safety.

**(a) CONDITION. 02 AND THE 6 TESTS.**

6. As it is no longer possible to make use of S73 of the Act to vary (or remove) a condition which would effectively alter the description of and operative part of the development; (Finney Judgment in the Court of Appeal EWCA 1868 Civ 2019) the advice received made clear that: *"In this instance Full Planning Permission would be required to change the use of the B&B accommodation to residential accommodation ancillary to the existing dwelling....."*

7. That cue has been followed. Nevertheless, the presence of the second part of Condition 02 of the existing 2009 permission, so far as the B&B accommodation is concerned, remains of fundamental importance to the applicant's case and is the starting point. (But for its presence, this application would not be needed). It requires (see paragraph 2 above) *retention of these commercial areas thereafter* (ie: in perpetuity) and forbids its use either as ordinary residential accommodation for Horseshoe Inn House or independent residential use. Paragraph 56 of the latest September 2023 version of The Framework makes clear that:

*"Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects".*

8. Condition 02 has negative effect on the way the 2009 permission and property can be used and is extremely restrictive. It means that other than for some commercial, yet non-residential ancillary use, those areas cannot be used for any other obvious purpose.

9. This raises the question as to whether the condition is realistically **Enforceable**. Leaving aside whether it has already been breached, since it is an integral part of a single condition, the first part of which already has the benefit of an LDC confirming its breach, enforcement would, in practice, be difficult. *'Retention of the commercial areas thereafter'*, implies the continuous operation of a B&B business into the future with no end date whatsoever.

10. Businesses can and do fail for many differing reasons beyond the direct control of an applicant or operator. These might be financial, personal, competition, location, recession, management etc. Some sectors, including hospitality are particularly vulnerable to reduced spending. In such circumstances it is doubtful whether enforcement would be either practicable or in compliance with the test of enforceability.

11. Planning permissions are generally, by definition, permissive. They allow rather than require. It is unusual for a permission which involves a use (B&B) to be required by condition to be *'retained thereafter'*, as here. It questions whether such a requirement was **Reasonable** and if there was a

sound planning purpose behind its imposition. Looking through the Officer Report prepared for the 2009 application, the only reference of any relevance to conditions is found under Evaluation, Section 6 'Other Matters' (Appendix 3). It is plainly evident from this paragraph that the sole reason for applying Condition 02 was in the interests of and as a response to concerns expressed by objectors. It was seen as a method of addressing these.

12. Under the section of Planning Practice Guidance on the Use of Planning Conditions entitled: 'Are there any circumstances where planning conditions should not be used?' it is stated that any condition that fails to meet one of the six tests should not be used. It goes on to say that "This applies even if the applicant suggests or agrees to it, or if it is suggested by the members of a planning committee or a third party". (as here).

13. The reason given at the time for applying Condition 02 was: "To ensure that the commercial use is retained to ensure compliance with Policies (R) FBE. 1 and (R) FNE.1 of the District Local Plan Review". Neither of these two former policies focusses on any need to control commercial use into the future or to prevent residential use. The first is a policy about 'Design of Development' and the second deals with 'The Protection of the Countryside'.

14. Any condition that remains in force after a development has been carried out needs to have been considered carefully as it can and does (as in this case) place onerous and permanent restrictions on what can be done with the affected premises. As such, in view of the facts and the content of the PPG and The Framework it is the applicants view that they are constrained to maintain the commercial B&B use because of a Condition 02 which was not either **Reasonable or Necessary**. On the contrary, it was harsh and unnecessary, particularly as the permission was clearly granted in line with, rather than as an exception to policy.

15. Hence, this application is made to allow the applicants to make use of the three rooms and conservatory for residential use in connection with and for the benefit of Horseshoe Inn House. The submitted drawings show two of the three bedrooms and their en-suites to remain as they presently exist and the other to be a sitting room with small kitchenette. No physical alterations are involved.

## **(b) MATERIAL CONSIDERATIONS.**

16. Mr. and Mrs. Tweedale have reached state retirement age. They have operated the B&B enterprise for ten continuous years apart from during the Covid lockdowns. They wish to give up this work, to step down from what can be a seven day, 24-hour commitment and to retire. At present they cannot do so.

17. They have lived at Horseshoe Inn House at Brooms Green for more than 20 years, where they brought up their children and have played their part in the local community and in local affairs. Mrs. Tweedale sat on a working party for the Parish Council. They make and will continue to make full use of parish facilities including the shop, garage and The Beauchamp Arms.

18. The two bedrooms, living space and conservatory will either (as ancillary accommodation) be used as additional living and sleeping accommodation for family, friends and grandchildren or as an integral annex. The existing dwelling only has three bedrooms. Mr. Tweedale's elderly mother presently lives independently in Ledbury. At any time, she may need close care and to be looked

after. The three rooms together with the lawful conservatory would make ideal accommodation for her with no need for alteration, whereby she could receive whatever level of assistance proves to be required. The rooms are directly and internally linked to the house.

19. Nearly 18 years ago, Mr. Tweedale gave evidence under Oath at a Public Inquiry that it was his intention to extend their property and establish a B&B business. Mrs. Tweedale had already attended a food hygiene course. It is to their credit that they have carried this through, made the investment and operated the commercial areas for almost 11 years.

### **(c) POLICY AND REASONING**

20. The advice letter made clear that any application would need to give justification to account for the loss of the business and to evaluate the impact it would have on the local economy. It is noted that no mention was made in the letter of Adopted Core Strategy Policy CSP 8 'Retention of Community Facilities'. The policy does not allow the loss of such facilities unless alternatives are or can be made available. The applicants agree that CSP 8 is not applicable for the following reasons:

(a) Examples of Community Facilities are given in the body of the CSP 8. These include schools, public houses, halls, places of worship and health services. Whilst the list is not exhaustive, it does not include B&Bs, air B&Bs, or Hotels. All the examples are places primarily used by and provided for a resident population, whereas Horseshoe Inn House caters almost exclusively for the needs of patrons living elsewhere and mainly on vacation.

(b) Horseshoe Inn House is essentially a tourism establishment. It does not appear in the Council's Register of Community Assets under the Localism Act 2011. (Interestingly, hotels are excluded from Registration.)

(c) It is the case that, as is demonstrated by the Tweedale's record of bookings (some 250) throughout nearly 11 years, that Horseshoe Inn House B&B simply does not serve a local community need to any perceptible degree.

21. So far as any effect on the local economy is concerned, alternatives exist nearby. There are 3 others in the immediate rural area, all within a 1km. radius of Horseshoe Inn House. These are the letting barn at White's Farm and Airbnb's at Donnington Farm and The Burtons.

22. Mr. Tweedale's Witness Statement accompanying this application explains how he has interrogated his record of all reservations made over the period October 2012 – mid -September 2023. His evidence shows that bookings either from or for persons with any 'local' connection (within a radius of 5km from Horseshoe Inn House) were just 6 out of a total of 250 bookings which is the equivalent of 2.4%. All of these were sourced in Dymock village. They have been inconsequential to the main business which has provided for visitors, often 'en- route' to another destination. Mr Tweedale is of the view that the proximity of Horseshoe House to Junction 2 of the M50 has increased the volume of lettings, but that these patrons tend to move on rather than exploring the local area.

23. The local economy in this particularly rural part of the North Forest is limited. Apart from the village shop, a PO at the Beauchamp Arms public house on a Friday and a garage (no longer selling fuel) in Dymock, a small village shop (with PO on Tuesday and Thursday) in Bromsberrow and garden

centres on the B4215 towards Newent, there are few, if any retail or service businesses that provide for visitors. The loss of one B&B will not have any material effect. It is also entirely possible that other B&Bs or Airbnbs may start up, bearing in mind that planning permission may not be required if no material change of use from residential is involved.

24. This application will be considered against relevant policies of the Core Strategy and Allocation Plans relating to issues such as amenity, design and layout parking and highway safety as stated in the letter of 24.08.23.

25. Policy CSP 2 of the adopted Core Strategy covers Design and Environmental Protection. It sets out some 10 factors of which account is to be taken in all new development. The design, scale, external appearance and facing materials, all of which are sensitive to the original building have already been approved. Since the submission does not involve any further built development there will be no measurable effect on these other factors as set out below:

(a) No physical alterations are needed to implement a change of use to ancillary residential use either externally or internally thus the immediate and local landscape will be unchanged. Brooms Green is not in an AONB.

(b) There are no protected natural, historic or heritage sites either within the application site area or in the immediate surroundings.

(c) Brooms Green is not covered by an AONB Management Plan.

(d) No additional infrastructure is needed to carry out the part change of use.

(e) There is no risk from flooding. The site falls within Flood Zone 1. No additional impermeable surfaces are involved.

(f) Neither contamination nor ground instability is an issue. There has not been any evidence of such problems since the B&B extension was erected.

(g) Again, the application poses no risk of pollution.

(h) The site and the extension have mains water supply.

(i) Existing and any future mineral resources are unaffected by the proposal.

(j) Household waste is and would continue to be recycled in accordance with the Council's protocols and requirements. It is likely that less waste would be produced than is the case as present.

24. The vast majority of the policies in the Allocations Plan are site specific. Of those that are not, AP 1 relates to sustainability, AP 4 (again) to design and AP 7 to biodiversity. (The LPA's Biodiversity Checklist is submitted as part of the application). The response to the Pre-application request makes clear that as no external works would be undertaken there will be no impact on visual amenity or highway safety. In terms of sustainability, use for ancillary residential purposes is likely to reduce vehicle movements, deliveries, consumption of energy and resources. It is agreed (as suggested in the letter) that a neutral, if not positive impact would accrue to the residential amenity enjoyed by neighbours and to the highway safety of the surrounding area by dint of fewer journeys. Horseshoe Inn House has double glazing, rainwater capture and an electric car charging point. Electricity is presently purchased from a supplier making use of renewable energy.

25. The Dymock Neighbourhood Plan is at a relatively early stage and little, if any weight can be attributed to it at this point. A pre-Regulation 14 draft was published in July 2023. It contains a list of 8 Community Facility Buildings. Horseshoe Inn House is not included.

26. There would be no conflict with Development Plan policy by permitting the B&B accommodation to be used for ancillary residential purposes.

## **CONCLUSION.**

27. Reasoned and objective argument has been presented to establish that the proposed part change of use would cause no amenity, highway or other issues, nor any inconsistency with the yardsticks set out in CSP 2. The applicants have operated the B&B business for more almost 11 years. They wish to continue to live in Dymock parish and contribute to their community. It is clear that the B&B business is not a Community Asset/Facility and does not support the local economy, as is shown by the figures, evidence and reasoning above.

28. In all the circumstances the LPA is invited to grant consent.

