



## Report to East Area Planning Committee

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<b>Application Number:</b>	PL/20/3086/FA
<b>Proposal:</b>	Change of Use to a single dwelling (C3) to include provision of on-site parking
<b>Site Location:</b>	The Swan Public House, Blackwell Hall Lane, Ley Hill, Buckinghamshire, HP5 1UT
<b>Applicant:</b>	Mr and Mrs N and C Byatt
<b>Case Officer:</b>	Mike Shires
<b>Ward(s) affected:</b>	Chess Valley
<b>Parish-Town Council:</b>	Latimer & Ley Hill
<b>Date valid application received:</b>	17 September 2020
<b>Statutory determination date:</b>	12 March 2021
<b>Recommendation</b>	Refuse permission

### 1.0 Summary & Recommendation/ Reason for Planning Committee Consideration

- 1.1 This application proposes the change of use of this Public House to residential use and its conversion into one dwelling with no internal or external alterations. This application also identified the front portion of the existing curtilage of the Public House as falling within the application site area, separating off land in the rear western 'half' of the existing curtilage so that it falls outside of the application site, the continued lawful use of which would be as land ancillary to a Public House use. Consequently, that land directly adjacent to the building is proposed to be land associated with the proposed dwelling as a garden for the proposed dwelling and accommodating 2 parking spaces.
- 1.2 In summary, the proposal would result in the loss of an asset of community value. However, the Council's expert Surveyor considered the application submissions under application ref. no. PL/20/0335/FA seeking to set out those exceptional circumstances as to why the loss of this Community facility should be allowed, in the context of Core Policy CS29 and concluded that although the property was advertised at an unrealistically high price, the only genuine interest has been for the use of the building as a Day Nursery, which was refused. Given the particular circumstances pertaining to this Public House, the Council's Surveyor concluded that it would be difficult to defend the retention of this Public House.

- 1.3 A viability report has also been submitted on behalf of a local group 'Save Our Swan' which concludes that the continued use of the Public House is viable. However, the Council's Surveyor has also considered the findings of that report but maintains his initial position that the continued use of the Public House is unviable other than as a Community owned and run venture or by a well-funded operator with significant cash reserves, where profit is not a major requirement.
- 1.4 No 3-year business plan with full trading projections has been submitted and there is no legal requirement for an owner to sell to a community group or any other buyer making an offer. However, it is noted that when considering an appeal
- 1.5 Furthermore, the Council's Historic Buildings Officer has a fundamental objection to the proposed change of use of this property, which would preclude general access to members of the public. The Historic Buildings Officer has concluded that there would be less than substantial harm to the significance of this Grade II Listed Building and it is therefore necessary to weigh this harm against the public benefits of the proposal.
- 1.6 The proposal would provide some economic benefit from the refurbishment of the building and the subsequent occupancy of the dwelling by occupants who would contribute to the local economy. The scheme would also deliver one dwelling to the local economy, thereby adding to the Chiltern Area's housing supply, however, the former Public House comprised residential accommodation at 1st floor level and its occupants and use contributed to the local economy. Therefore, technically, there would be no net gain in dwelling numbers.
- 1.7 Given the foregoing, it is considered that the limited proposed public benefits would not outweigh the harm to the listed building and/or the loss of a community facility. It is therefore concluded that the proposal does not accord with the development plan policies that seek to protect listed buildings and public houses, which are in accordance with those policies in the NPPF.
- 1.8 Councillor Garth has requested that this application be determined by the Planning Committee regardless of the officers' recommendation.
- 1.9 Given the above, this application is recommended for refusal.

## **2.0 Description of Proposed Development**

- 2.1 This application relates to The Swan Public House located in Blackwell Hall Lane, Ley Hill. The site lies within the open Green Belt and is Grade II listed (listed in 1984) dating from the 16th and 17th century.
- 2.2 The application site comprises the 2 storey building, which has been in use as a Public House since at least 1843 and prior to this was originally three cottages, with two built in approx. 1520 and the third in 1680. The application site comprises the front part of the existing Public House curtilage with the rear part being excluded from the application site, but shown as being in the ownership of the applicant. The site is surrounded by mainly residential development but is sited directly next to an existing pub (The Crown Public House).

- 2.3 The first floor of the pub has been used for ancillary residential accommodation.
- 2.4 The Swan Public House was designated as an Asset of Community Value (on the 26th November 2018). Permitted development rights for this building are therefore removed.
- 2.5 This application proposes a change of use of the pub (including the ancillary accommodation above) to a single family dwelling (C3). No internal or external alterations are proposed to the building.
- 2.6 The proposed layout plan shows the provision of 2 on-site parking spaces for the proposed single family dwelling, to be accessed via the existing access that runs along the northern side of the building.
- 2.7 The application is accompanied by:
  - a) A Planning Statement
  - b) Heritage Assessment
  - c) Viability Report by Chartered Surveyor
  - d) Report and Information submitted by Oxley Conservation Historic Buildings Consultancy
  - e) Additional Correspondence submitted by the agents, Barker Parry Town Planning Ltd.
  - f) Building Regulation documentation

### **3.0 Relevant Planning History**

- 3.1 There are various historical applications for extensions and adverts, but the most recent, of relevance, are:
- 3.2 PL/20/0335/FA - Withdrawn - Change of use and conversion to two dwellings (C3) to include external and internal alterations and rear extension. Demolition of porch and a shed. Changes to windows and doors and addition of side rooflights and provision of on site parking.
- 3.3 PL/20/0336/HB - Withdrawn - Change of use and conversion to two dwellings (C3) to include external and internal alterations and rear extension. Demolition of porch and a shed. Changes to windows and doors and addition of side rooflights and provision of on site parking.
- 3.4 CH/2018/0231/HB - Conditional Consent - Internal alterations to facilitate change of use of The Swan Public House to use class D1 (Non-residential institutions - nursery)
- 3.5 CH/2017/2353/FA - Refused - Change of use of The Swan Pub to use Class D1 (Non-residential institutions - nursery)

### **4.0 Summary of Representations**

- 4.1 Letters of objection have been received from 96 different addresses as well as the organisation 'Save Our Swan' and Ley Hill Community Pub, and they are summarised as follows:
  - The Swan is a popular community facility;

- Local people would be willing to purchase The Swan as a community PH and the owner has indicated that he will consider a reasonable offer if this application is refused;
  - A business plan has been prepared by the Save Our Swan group;
  - The Save the Swan group should be given the opportunity to purchase and maintain this community asset;
  - Erroneous comparison in viability statement to The Pig in the Pantry, which is part of a chain selling cheap convenience food, reference should be made to The Bell in Bovingdon and the Bricklayers Arms in Flaunden;
  - The PH is viable;
  - Previously 2 prospective investors were interested in purchasing the PH but their interest was not pursued;
  - The premises were not marketed until after the nursery application was withdrawn on 18 April 2019 i.e. less than a year before the withdrawn application was submitted;
  - The Swan was marketed at an unrealistically high price;
  - Unwelcoming management has contributed to the decline of the PH;
  - The Swan is no longer welcoming, closing at 21.30 hours and after lunch on a Sunday, or earlier than advertised, dog walkers and hikers are not welcomed and half of the pub garden has been closed off;
  - The Council's expert surveyor has only used the information in the flawed report submitted by the agent.
  - The Swan as a Public House is a significant and historic feature, it is 500 years old and the oldest PH in the County, which should be protected;
  - Popular Music and Beer Festival, Classic Car Festival, The Beacon, and other events take place in the village;
  - The Swan has provided important employment opportunities, particularly for young people and those needing to work shifts;
  - Detrimental to Listed Building;
  - The Parish Council would like to use the PH for community purposes and have stated a list of intentions and initiatives;
  - Proposed extensions would cause loss of privacy;
  - Planning Statement submitted is flawed e.g. competition from Cricket Club and Golf Club which are both private member's clubs.
- 4.2 One neutral letter has been received stating that if the Public House is to be lost, the attractive external appearance of this listed building should be maintained.
- 4.3 Two letters of support have been received stating that given the national trend and the decrease in patronage at this Public House, it will never be viable again and so sensible to return the Historic building to its original function as a dwelling, especially given adjacent community facility Public House.

## 5.0 Policy Considerations and Evaluation

- National Planning Policy Framework (NPPF), February 2019.
- National Design Guidance, October 2019
- Core Strategy for Chiltern District - Adopted November 2011:
- Chiltern District Local Plan adopted 1 September 1997 (including alterations adopted 29 May 2001), consolidated September 2007 and November 2011.
- Chiltern and South Bucks Community Infrastructure Levy (CIL) Charging Schedule

### Principle of Development / Loss of Community Facility

Core Strategy Policies:

CS1 (The spatial strategy)

CS2 (Amount and distribution of residential development 2006-2026)

CS3 (Amount and distribution of non-residential development 2006-2026)

CS29 (Community)

Local Plan Saved Policies:

GB2 (Development in general in the Green Belt)

GB5 (Residential Development in the Green Belt in Settlements As Defined on the Proposals Map)

GB11 (Re-use of existing Non-Residential Buildings in the Green Belt for Residential Use (Class C3)

GB24 (Redevelopment or Change of Use of Buildings used for the provision of Local Community Facilities in the Green Belt)

LB4 (Change of Use of Listed Buildings Throughout the District)

- 5.1 This report will identify if any policies are not consistent with the NPPF and the weight to be afforded, if not full weight.
- 5.2 This application proposes the change of use of this Public House to residential use by way of its conversion into one dwelling. In this connection, no internal and external alterations are proposed. However, this application proposes the loss of the existing Community Facility which is available to the general public.
- 5.3 Adopted Local Plan policy GB24 states that the change of use of such local community facilities will not be allowed unless a convenient replacement is proposed, which is not applicable to this proposal, or it can be demonstrated that the facility is no longer required for any other community use in the village and adjoining area.
- 5.4 Core Policy CS29: Community states that the loss of community facilities will only be permitted in exceptional circumstances.
- 5.5 Local Plan policy GB24 and Core Policy 29 are in accordance with paragraphs 83 and 92 of the National Planning Policy Framework (NPPF) which state, inter alia, that in the context of building a strong, competitive economy, planning policies and decisions should enable the retention of accessible community facilities such as public houses, and that with regard to promoting healthy and safe communities, they should guard against the unnecessary loss of valued facilities and services, such as public houses,

particularly where this would reduce the community's ability to meet its day-to-day needs.

- 5.6 In response to this policy advice, a report was submitted with this application from a Fellow of the Royal Institution of Chartered Surveyors setting out the marketing of the application property by two agencies as a Public House. The key points raised by this report include the conclusion that the initial asking price was 'optimistic', but that in any event no offers were made, other than one from an individual who wished to use the premises as an office and from an individual who wished to use the property as a day nursery, and a planning application was submitted for the proposed change of use to a day nursery in 2017 but was refused.
- 5.7 The applicant's Surveyor's report concludes that the apparent lack of interest to purchase the Public House for the continuation of that use is due to a number of factors including competition from the adjacent Public House 'The Crown' and also the sale of alcoholic liquor and food at the Cricket Club opposite. Other factors highlighted in that report include macro-economic effects such as Brexit, changes in legislation such as an increase in the minimum wage, and increased business costs. This submitted report concludes that in the market and trading conditions at the time of the submission of the application, The Swan is no longer capable of operating profitably and is no longer saleable as a Public House.
- 5.8 To scrutinise the submitted Surveyor's report, the Council attained its own independent expert advice. The Council's Consultant Surveyor similarly concluded that the asking price was unrealistic but, nevertheless, acknowledged that there appeared to have been no genuine interest or lower offers, other than as an office or as a Day Nursery, as stated above.
- 5.9 However, a number of the objections received refer to an apparent failure of the marketing agents to respond to those enquiring about purchasing, including an objection from one first hand enquirer. In this regard, the Council's Consultant Surveyor has advised that sensitive financial information would only be disclosed to those showing a genuine interest in purchasing, who had already visited the premises, and that it would have been in the interest of the marketing agents to encourage purchasers in order to secure a relatively quick sale as a Public House. Also, it is a fact that following interest for a Day Nursery, a planning application was received, indicating that the applicant for that Day Nursery did receive the relevant marketing information.
- 5.10 Consequently, the Council's Consultant Surveyor has concluded that this Public House was marketed appropriately, albeit that the asking price was too high, although it is alleged that is often the case and does not preclude lower offers. Be that as it may, the high asking price is a concern and raises doubt on the marketing exercise. It cannot be said with any certainty that nobody would be put off by an inflated asking price.
- 5.11 The Council's viability expert has also given particular consideration to the viability of The Swan as a trading entity, having regard to the current condition and layout of the

property, the likely level of business and profit it may potentially generate, and has then determined whether the profit level would be considered sufficient by a potential operator. The Council's expert has concluded that the pub would currently have to be sold within the trade as a 'life-style' business, where a price is determined by reference to the building value with an adjustment for trade. Apparently, such a deal would have to be financed from cash resources as the majority of lenders would expect a loan to be covered by a secure trading position. The Council's expert has concluded that this would be likely to have a detrimental impact on the achievable price and is probably the principal reason that a trade sale has not been achieved.

- 5.12 With regard to viability, the Council's viability expert has concluded that the limiting factors highlighted make any major investment for business purposes a notably higher-than-average financial risk. Coupled with the costs of potential refurbishment and working capital, the Council's viability expert has concluded that the viability of the Property as a public house would be entirely dependent upon the price for which it can be acquired and a consistent minimum level of business. The Council's Surveyor has also concluded that the location of this Public House is such that an operator would have to run a business strongly biased towards food sales, promoted regionally rather than just locally, and he concludes that the entire site does not appear to have sufficient land to provide sufficient parking facilities.
- 5.13 Furthermore, the Council's Surveyor considers that the social distancing protocols as a result of Covid 19 will result in the permanent closure of a significant number of public houses, restaurants and similar venues and businesses, and that smaller public houses with significant competition, such as The Swan, will experience the greatest pressure and face the highest risk of closure. However, it should be noted this should, at present, be regarded as a temporary situation and as noted by similar appeals, the pandemic should not be used as justification for a loss of a community asset.
- 5.14 In response to these conclusions the local interest group 'Save Our Swan' commissioned its own viability assessment by MJD Hughes, which concluded as follows:
- The closure of the pub was the choice of the owner following the relaxation of the lockdown due to the covid-19 pandemic.
  - The neighbouring public house, The Crown, has benefited from this closure.
  - Prior to lockdown the trade at The Swan was declining due to either mismanagement and/or very erratic and reduced opening hours.
  - The Swan has always provided the village with an alternative offering for the inhabitants of the village and those visiting the village.
  - Ley Hill has a very strong community spirit and The Swan has previously benefitted from events.
  - The viability of a public house should be looked at as an operating entity.
  - The question of viability should be answered by the most efficient method of operation.

- The Swan is a privately owned and operated freehold, and would not be operated by a tied tenant, and so can reasonably be expected to operate at a gross profit of 65%.
- Ensuring a reasonable level of turnover and a commercial gross profit will allow an achievable operating net profit of about £60,000, considered sufficient to allow other commercially owned and community owned public houses to operate a viable business with a tenant on a sustainable rent.
- The most recent trading history has been at a restricted level due to a life-style choice of the owners.
- The market will dictate the value of The Swan and so failure to achieve the unrealistically high property value does not prove its lack of viability as a pub.
- Marketing at an unreasonably high price should not be taken into consideration when assessing any periods of marketing for sale.
- Continuation of The Swan as a public house is the best commercial use of the property.'

5.15 The Council re-consulted its Consultant Viability Expert on the viability assessment from MJD Hughes, to ascertain whether or not the Surveyor stands by his initial position, or whether the findings of the MJD Hughes viability assessment are valid and, as such, there is evidence that a continued Public House use is feasible.

5.16 The Council's Surveyor has concluded that his initial position is correct and that a continued Public House use is untenable. The Council's Consultant Surveyor considers that the viability of The Swan cannot be authoritatively demonstrated in general terms and would require a full business plan describing growth from start-up to maturity, showing a profit level which justifies a trading market value and asset value commensurate with the tone of value in the area. The MJD Hughes assessment does not allow for higher extraordinary holding costs of a Grade II listed building or for any loan servicing. Automated valuation models based on Zoopla and Rightmove are inaccurate and should not be relied upon for specific valuation purposes. The full effects of the COVID-19 pandemic cannot be disregarded in respect of any viability assessment for any public house. The current national lockdown will exacerbate the pressures on all pubs and result in higher than anticipated re-opening costs, especially on new start ups.

5.17 However, the Council's Consultant has concluded that 'A well-funded operator with significant cash reserves would be able to provide a reasonable offering at and from The Swan, if profit is not a major requirement and there are examples of community owned and run public houses trading on such a basis but not sufficiently profitable on a stand-alone basis to be viable as an independent business. In this regard, the Consultant states that a fully reasoned, 3-year business plan and full trading projections would be needed to support the MJD report's assertions of viability.

5.18 The Council's Valuation expert has also highlighted that the MJD report suggests that the price/value of the Property is the principal block to viability, but ignores the fact

that no property owner can be 'forced' to sell at a price they deem to be too low, and there is no legal requirement for an owner to sell to a community group (or any other buyer) making an offer.

- 5.19 A similar planning application has also now been brought to the Council's attention pertaining to The Green Dragon, Haddenham. That application was refused and the subsequent appeal decision sets out one of the two main issues being whether or not the proposed change of use from a public house to a dwelling would be acceptable, with particular regard to the acceptability of the loss of a pub in this location, the viability of the continued use of the property as a pub, and the adequacy of the marketing of the property.
- 5.20 With regard to The Green Dragon, there were two existing and operating pubs in the village, one of which offered food in the evening and the Inspector considered the appeal site as being an important location for the provision of a pub, to serve the surrounding part of the village. The Inspector noted that although the Asset of Community Value listing on the property was lifted in 2019, a pub in this location, particularly one serving food, provides an important community facility that reduces the need to travel, both within and without the village. As such the Inspector concluded that there was a demonstrable local need.
- 5.21 It is also pertinent to note that both the applicant for the Green Dragon application and the Council had commissioned viability reports which had concluded that the use of the appeal building as a pub was not viable. Both reports discussed the negative factors, such as changing consumer behaviour. However, neither report addressed the importance of specific business models tailored to the local market to the potential success of a pub.
- 5.22 The Green Dragon was noted as being an attractive building, in a good state of repair, in a setting of high quality, traditional properties arranged around a village green and pond, but it was noted that it may not benefit from high footfall. However, that Inspector concluded that it had not been demonstrated that the pub could not operate as a destination for village residents, particularly if it were to provide evening food for which there were very limited alternatives in the village.
- 5.23 Of relevance to this current planning application regarding The Swan, neither viability report provided sensitivity testing to assess what the effect on viability would be from a reasonable alternative business model, such as high-quality evening food.
- 5.24 The Inspector noted that the existing internal arrangement of The Green Dragon limited the number of covers that could be offered, and the grade II listing of the pub and the cost of significantly re-arranging the internal layout could prove prohibitive, but he concluded that there had been a limited assessment of the effect of potential changes in either viability assessment. As such, the Inspector concluded that it had not been conclusively demonstrated that a food-based pub offer could not be viable.

- 5.25 In reaching his conclusions, the Inspector did also note that the emerging LP allocated Haddenham as a 'Strategic Settlement', where a large amount of growth is to be focussed, with 1,051 new homes to be constructed during the plan period. The Inspector also noted a nearby large housing estate partially occupied and partially under-construction, and so Haddenham was undergoing a significant increase in population within easy walking distance of the Green Dragon. Although both reports acknowledged the growth of the village, neither report showed that the potential increase in custom and turnover likely to result had been factored in, and sensitivity testing had not been provided to account for the ongoing increase in population.
- 5.26 With regard to the Covid-19 pandemic likely worsening the forecast for the viability of pubs, the Inspector concluded that the pandemic is a temporary situation, and should not be used to govern the assessment of the long-term viability of a pub, or to influence decision making on important matters such as the retention of community facilities that would serve and support communities for decades.
- 5.27 Finally, the Inspector also noted that there was ambiguity in the evidence regarding purchase offers made for the pub, and also that it had been marketed about £40,000 higher than its recent purchase and that may have played a part of why no successful bids had been made to purchase the property. That Inspector concluded that it had not, therefore, been demonstrated that all reasonable steps had been taken to secure a successful sale or lease of the property and to retain the pub in its present use as a viable concern, contrary to paragraphs 83 and 92 of the Framework which seek to guard against the unnecessary loss of valued community facilities.
- 5.28 This current planning application for The Swan similarly proposes the loss of a public house; The Swan having been identified as an Asset of Community Value and the proposed loss of which has generated a significant number of objections, indicative of a demonstrable local need. Similar to The Green Dragon circumstances, the viability assessments commissioned by the applicant and Council, conclude that the continued use as a pub is not viable and that the impact of Covid will be significant. However, that Inspector's conclusions are a material consideration and concluded that the pandemic is a temporary situation and should not govern the assessment of the long term viability of the pub or influence decision making on the retention of a community facility that would serve the community for decades.
- 5.29 Similarly, a specific business model tailored to the local market to the potential success of The Swan has not been explored, and the Inspector considering the Green Dragon considered that a serious omission.
- 5.30 Although The Swan similarly may not benefit from a high footfall, it is also an attractive building, in a good state of repair, in a setting of high quality, traditional properties opposite a village green and it has not been demonstrated that the pub could not operate as a destination providing high-quality evening food. In this connection, the Council's Valuation Consultant concluded that, despite objections to the contrary, The Swan had not been deliberately run down because it had long established owners, but

that conclusion ignores the possibility that the owners might have run down the Public House use because they wanted to dispose of the property and so maximise its profitability as a residential dwelling.

- 5.31 When dismissing the appeal pertaining to The Green Dragon, the Inspector acknowledged the limitations of that listed building, but concluded that there had been a limited assessment of the effect of potential changes in either viability assessment and thus concluded that it had not been conclusively demonstrated that a food-based pub could not be viable.
- 5.32 The Swan location differs slightly from that of The Green Dragon in that there is unlikely to be any significant increase in the local population, but it is close to the settlements of Chesham and Bovington, as well as numerous other villages. There are identified housing sites in Bovington, indicating an increase in local population and the Parish Council has highlighted this point. Similarly, development is ongoing in Chesham, with new housing schemes and conversions creating a steady increase in population. It has not been conclusively demonstrated that a food-based pub offering high quality food could not be viable and, as accepted by the Council's Viability Consultant, a well-funded operator with significant cash reserves would be able to provide a reasonable offering at and from The Swan, if profit is not a major requirement or a community owned and run public house trading on such a basis.
- 5.33 The Save Our Swan group has submitted a number of objections to the application, maintaining the premises are viable as a community led pub. The latest objection includes a prospectus inviting members of the community to purchase shares for the future sale and running of the pub. It is stated that a significant proportion of the required amount has already been sourced. They set out an operating model involving a tenant working under a Lease Agreement for the Landlord, which would be the Ley Hill Community Pub Limited. Furthermore, the prospectus includes an outline five-year business plan, with the pub operating at a modest profit in Year 2.
- 5.34 A further material consideration, although it does not have any formal planning status, is the CAMRA Viability Test. It provides a helpful, if informal, methodology on assessing viability. On the information put forward, Officers are not satisfied that the following aspects have been meaningfully explored: activities undertaken to increase customer potential at the pub; the promotion of multiple use; and utilising the flexibility of the site. It is therefore doubtful whether the proposal meets the detailed suggestions set out in the CAMRA test.
- 5.35 As noted above, there is clearly much local support to retain the public house. Although local enthusiasm does not equate to viability, equally an assessment of viability, in this case undertaken by various experts, will involve a degree of subjective input. No one outcome is assured and it is necessary to look at all operating models, including that proposed by the Save Our Swan group, as many community-led pubs exist that have been successfully saved in this way. Whilst bringing the property back into active use as a public house would undoubtedly be challenging, the evidence does

not demonstrate on the balance of probability, and in a climate of renewed confidence once the pandemic restrictions are lifted, that the property could not, with forethought and planning, realistically be purchased and operated viably for its lawful use as a public house. This is especially so given the unprecedented support shown by the local community.

- 5.36 Finally, the Inspector considering The Green Dragon appeal noted that there was ambiguity in the evidence regarding purchase offers made for the pub, and that it had been marketed about £40,000 higher than its recent purchase, which may have played a part of why no successful bids had been made to purchase the property; circumstances that apply equally to the marketing of The Swan.
- 5.37 The Inspector considering The Green Dragon appeal concluded that it had not, therefore, been demonstrated that all reasonable steps had been taken to secure a successful sale or lease of the property and to retain the pub in its present use as a viable concern, contrary to paragraphs 83 and 92 of the Framework which seek to guard against the unnecessary loss of valued community facilities. Given that Inspector's conclusions, despite the Council's independent viability advice regarding The Swan, Members may conclude that with regard to The Swan, it has not been demonstrated that all reasonable steps have been taken to secure a successful sale, in accordance with the requirements of Local Plan policies GB24 and Core Policy CS29, and therefore contrary to the policy advice of paragraphs 83 and 92 of the NPPF.
- 5.38 Furthermore, Local Plan policy GB11 allows, in principle, for the re-use of existing non-residential buildings in the Green Belt for residential use subject to there being no conflict with policy GB24 and when the building is a statutory listed building and the conversion to residential use would not harm its special interest, which is not the conclusion of the Council's Heritage Officer.
- 5.39 Consequently, in principle, this application is contrary to Local Plan policies GB11 and GB24, and Core Policy CS29 and paragraphs 83 and 92 of the NPPF.

### **Green Belt**

Core Strategy Policies:

CS1 (The spatial strategy)

CS29 (Community)

Local Plan Saved Policies:

GB1 (Extent of the Green Belt in Chiltern District)

GB2 (Development in general in the Green Belt)

GB5 (Residential Development in the Green Belt in Settlements As Defined on the Proposals Map)

GB11 (Re-use of existing Non-Residential Buildings in the Green Belt for Residential Use (Class C3))

GB24 (Redevelopment or Change of Use of Buildings used for the provision of Local Community Facilities in the Green Belt)

- 5.40 With regard to the principle of the proposed change of use from a Public House to a Class C3 residential use in the Green Belt, the NPPF states that in principle the re-use of existing permanent and substantially constructed buildings may be appropriate development providing they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. This building is of permanent and substantial construction and the proposed change of use would be likely to result in less vehicular activity, fewer parked cars within the site and as such would not harm the openness of the Green Belt and its purposes.
- 5.41 No alterations are proposed under this application in order to convert the existing Public House with ancillary first floor residential accommodation into one dwelling and so the proposal would not adversely affect the character and appearance of the Green Belt.
- 5.42 However, as set out in Local Plan policy GB24, the Council will not allow the change of use of a building in the Green Belt that was last used for local community purposes, such as a Public House, unless a suitable replacement building is to be provided or it can be demonstrated that the facility is no longer required for any other community use in the village and adjoining area where the facility is located. As set out above, given the Inspector's arguments in respect of The Green Dragon appeal, Members may conclude that it has not been demonstrated that all reasonable steps had been taken to secure a successful sale or lease of the property as a Public House or to demonstrate that a Public House is not a viable concern, contrary to the advice of paragraphs 83 and 92 of the Framework which seek to guard against the unnecessary loss of valued community facilities.
- 5.43 Furthermore, Local Plan policy GB11 only allows, in principle, for the re-use of existing non-residential buildings in the Green Belt for residential use subject to there being no conflict with policy GB24 and when the building is a statutory listed building and the conversion to residential use would not harm its special interest, which is not the conclusion of the Council's Heritage Officer.
- 5.44 Given the foregoing, the proposal is contrary to Local Plan policies GB11 and GB24, which are in accordance with the policy advice of paragraphs 83 and 92 of the NPPF.

### **Raising the quality of place making and design**

#### Core Strategy Policies:

CS4 (Ensuring that the development is sustainable)

CS20 (Design and environmental quality)

CS29 (Community)

#### Local Plan Saved Policies:

GC1 (Design of development throughout the district)

LB1 (Protection of Special Architectural or Historic Interest of Listed Buildings Throughout the District)

LB2 (Protection of Setting of Listed Buildings Throughout the District)

LB4 (Change of Use of Listed Buildings Throughout the District)

- 5.45 As mentioned above, the proposed change of use would not involve any external alterations to the building. Any material alterations which may be proposed in the future would need to be the subject of a separate planning application and/or listed building application.
- 5.46 However, the application site area is less than that of the original curtilage of this listed building, as the rear part of the curtilage is not within this application site. Given that this is a listed building, the erection of a fence, wall or other means of enclosure does not constitute permitted development and requires express planning permission.
- 5.47 Consequently, the only external alterations proposed are the proposed subdivision of the site, albeit without the erection of any means of enclosure, resulting in the proposed use of the land adjacent to the building as Class C3 residential garden with the siting of 2 parking spaces to the rear of the existing building. Consequently, that land outside of the application site but within the ownership of the applicants that lies to the rear of the application site would continue to have a lawful use in connection with the public house.
- 5.48 The proposed change of use and the proposed operational development comprising the laying out of 2 parking spaces per se would not detrimentally harm the external appearance of the building, nor the wider locality, however, the resultant differing uses of the application site and the land to the rear that is within the ownership of the applicant, subdividing the curtilage of the listed building, would harm the setting of this listed building and the spacious character of its historic curtilage.

### **Historic environment**

Core Strategy Policies:

CS4 (Ensuring that development is sustainable)

Local Plan Saved Policies:

LB1 (Protection of special architectural or historic interest of Listed Buildings throughout the district)

LB2 (Protection of setting of Listed Buildings throughout the district)

LB4 (Change of use of Listed Buildings throughout the district)

- 5.49 The Council's Conservation and Design Officer has considered these proposals and, despite additional information being submitted pertaining to likely Building Regulation requirements, continues to object to the proposals.
- 5.50 The Council's Heritage Officer states that even if the conversion of this public house could be undertaken without physical harm to the significance of the designated heritage asset, the change of use of this historic public house to a non-public use is a concern. The best use for any heritage asset is the one which it was designed for or has had for most of its existence, and this building has been used as a public house for about 200 years. The proposal would result in the loss of its historical use and the public access to view the building, which also provides social and community links with the area.

5.51 In summary, the Council's Heritage Officer concludes that the proposal would cause less than substantial harm to the significance of the designated heritage asset and would not preserve the architectural and historic of this listed building contrary to sections 16/66 of the Planning (Listed Building and Conservation Areas) Act, 1990, section 16 of the NPPF, policies LB1, LB2 and LB4 of the Local Plan and contrary to Historic England guidance as set out in 'Managing Significance in Decision-Taking in the Historic Environment- 2015', and 'Making Changes to Heritage Assets- 2016'.

### **Amenity of existing and future residents**

Local Plan Saved Policies:

GC3 (Protection of amenities throughout the district)

H12 (Private residential garden areas throughout the district)

5.52 The application does not propose any external alterations or extensions apart from the proposed subdivision of the original curtilage of this listed building, reducing the size of the former Public House curtilage to form an unenclosed garden and the proposed formation of two parking spaces. It is not considered that the proposed change of use of the application site from a Public House garden to a private residential garden would adversely affect the amenities of neighbouring properties, nor would the traversing of 2 vehicles to the proposed parking spaces along the existing access way.

5.53 Accordingly, the proposals would not adversely affect the amenities of the existing adjoining properties and would not be detrimental to the amenities of proposed residential occupiers, except for the afore-mentioned loss of a community facility, as set out above.

### **Transport Matters and Parking**

Core Strategy Policies:

CS25 (Dealing with the impact of new development on the transport network)

CS26 (Requirements of new development)

Local Plan Saved Policies:

TR2 (Highway aspects of planning applications throughout the district)

TR3 (Access and road layout throughout the district)

TR11 (Provision of off-street parking for developments throughout the district)

TR12 (Relaxation of parking standards throughout the district)

TR14 (Retention of existing areas of off-street vehicle parking throughout the district)

TR15 (Design of parking areas throughout the district)

TR16 (Parking and manoeuvring standards throughout the district)

5.54 With regard to parking provision, the Council's parking guidance for a dwelling of this size and in this locality would necessitate the on-site provision of 3 parking spaces. Only 2 spaces have been shown on the submitted plans but there is sufficient space within the application site to lay out an additional space in compliance with the Council's requirements. In any event, the parking standard for a single dwelling is notably less than that for a public house.

5.55 The Highway Authority has advised that the trip generation would be less than a functioning pub and so there are no highways objections raised.

### **Infrastructure and Developer Contributions**

Core Strategy Policies:  
CS31 (Infrastructure)

5.56 The development is a type of development where CIL would be chargeable.

## **6.0 Weighing and balancing of issues / Overall Assessment**

6.1 In determining the planning application, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In addition, Section 143 of the Localism Act amends Section 70 of the Town and Country Planning Act relating to the determination of planning applications and states that in dealing with planning applications, the authority shall have regard to:

- a. Provision of the development plan insofar as they are material,
- b. Any local finance considerations, so far as they are material to the application (such as CIL if applicable), and,
- c. Any other material considerations.

6.2 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development which for decision taking means approving development proposals that accord with up to date development plan policies without delay, or granting permission unless the application of policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

6.3 As set out above it is considered that the proposed development would not accord with adopted Local Plan policies LB1, LB2, and LB4 and these policies are wholly consistent with the NPPF. There would be less than significant harm to the listed building, to which great weight is given.

6.4 Furthermore, the proposed development would not accord with adopted Local Plan policies GB11 and GB24, and Core Policy CS29 and these policies are wholly consistent with the NPPF, in particular paragraphs 83 and 92.

6.5 It is therefore necessary to consider whether the public benefits of the scheme would outweigh the great weight given to the harm to the listed building, the harm to the Green Belt and the harm to the local community.

6.6 There would be short term economic benefits from the refurbishment but there would be no overall increase in a residential unit, although the proposed residential unit would be larger than the existing, ancillary unit. The new dwelling would contribute to the Council's housing land supply.

- 6.7 There would, however, be a significant loss to the local economy from the proposed loss of a Public House, which reduces the need to travel, and where it has not been demonstrated that the building could not continue to viably operate as a pub or as a Community run pub.
- 6.8 Also, less than substantial harm would result to this listed building.
- 6.9 Paragraph 193 of the NPPF states that great weight should be given to an asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 6.10 Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 6.11 As stated above, this proposal would not secure the optimum use of the building, and would be detrimental to the community, and in the absence of it being demonstrated that the building could not continue to operate viably as a pub or community run pub, the proposed benefits would not outweigh the limited public benefits identified.
- 6.12 In the terms of applying paragraph 11 (c) of the NPPF it is concluded that the proposal does not accord with policies LB1, LB2 and LB4 and chapter 16 of the NPPF and policies GB11, GB24 and CS29 and paragraphs 83 and 92 of the NPPF.
- 6.13 The following recommendation is made having regard to the above and also to the content of the Human Rights Act 1998.

## **7.0 Working with the applicant / agent**

- 7.1 In accordance with paragraph 38 of the NPPF (2019) the Council approach decision-taking in a positive and creative way taking a proactive approach to development proposals focused on solutions and work proactively with applicants to secure developments. As such, the opportunity was given for amended proposals and additional information to be submitted but those received are still unacceptable to the Council as set out above.
- 7.2 In this instance:
- The applicant/agent chose not to seek any pre-application advice, and the applicant/agent was updated of issues after the initial site visit.
  - The applicant was provided the opportunity to submit amendments to the scheme/address issues.
  - The application was determined without delay.
  - The applicant was informed/ advised how the proposal did not accord with the development plan, that no material considerations are apparent to outweigh these matters and provided the opportunity to amend the application or provide further justification in support of it.

## **8.0 Conclusions**

8.1 To conclude, the proposed scheme is considered unacceptable and is recommended for REFUSAL.

## **9.0 Recommendation: Refuse permission**

For the following reasons:-

1. The proposed change of use of a Public House to a dwellinghouse would result in the loss of a local service and community facility that fulfils a local function and reduces the need to travel, and for which there is a demonstrable need. The loss of this local amenity would have adverse impacts to the local economy and social wellbeing of residents within the settlement of Ley Hill and would not be outweighed by the benefits of the scheme. Furthermore, it has not been demonstrated that all reasonable steps, including marketing, or alternative business models, have been explored to retain its present use and community value as a viable concern. The proposal therefore conflicts with policies GB11 and GB24 of the Chiltern Local Plan, adopted 1 September 1997 (including alterations adopted 29 May 2011), consolidated September 2007 and November 2011; Policy CS29 of the Core Strategy for Chiltern District (Adopted November 2011); and the National Planning Policy Framework (2019), particularly paragraphs 83 and 92.
2. The change of use of the Public House would result in the loss of its historical use and the public access to view the building, which also provides social and community links with the area. Furthermore, the proposed subdivision of the historic curtilage would cause harm to the setting of the listed building. Paragraph 196 of the NPPF therefore applies, but in applying this policy/ guidance it is considered that no public benefits outweigh that harm. Consequently, the proposal conflicts with Section 16 of the National Planning Policy Framework (2019), the Planning (Listed Building and Conservation Areas) Act 1990 and policies LB1, LB2 and LB4 of the Chiltern District Local Plan adopted 1 September 1997 (including alterations adopted 29 May 2011), consolidated September 2007 and November 2011, and 'Managing Significance in Decision-Taking in the Historic Environment - 2015, and Making Changes to Heritage Assets - 2016.

## **APPENDIX A: Consultation Responses and Representations**

### **PARISH COUNCIL**

Latimer and Ley Hill Parish Council: Objection as follows:

‘Latimer and Ley Hill Parish Council urges the planning committee to reject this application for change of use from a public house to single dwelling. The Swan Public House was made an Asset of Community Value in November 2018 because the Parish Council strongly believes that this beautiful 500-year-old pub must remain an intrinsic part of the local community.

Core Strategy Policy CS29 states The Council will ‘only permit the loss of community facilities in exceptional circumstances.’. however, no rationale has been put forward to demonstrate the exceptional circumstances of this case.

The Swan has been a public house for the entirety of the village’s current living memory (i.e. well over 140+ years at least) therefore the supposed ‘beneficiaries’ of this change of use have never known it as a dwelling and there is no demand or appetite for it, quite the opposite.

The Swan has served all sections of the local community for so many years as:

1. a restaurant where many families, friends, groups and local organisations celebrate their big occasions
2. a place where young families can meet up to relax with their children in the attractive rear garden
3. a business, offering work experience and employment opportunities for many local people of all ages
4. a meeting space for local organisations like the Cricket Club and the Rotary Club
5. a host venue for darts, cribbage, quiz and domino competitions
6. an important historic building, where local school children can visit to learn about village history
7. a popular destination for walkers, cyclists, horse riders to enjoy refreshments
8. an attraction for lovers of real ale like members of CAMRA
9. the joint venue of a nationally renowned Music and Beer Festival every August 10.but most of all simply a pub where people can pop in for a relaxing drink and a chat with friends

The National Planning Policy Framework states in Para 92. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

And Supporting a prosperous rural economy Para 83. Planning policies and decisions should enable the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

However, not only the local community but visitors from further afield, have been denied these opportunities over the last five years as the pub's potential has not been maximised:

- Opening hours have become irregular and greatly reduced
- Entry rules have become more stringent
- And most significantly, customers have sensed an unfriendly welcome and atmosphere

The Parish Council has been actively encouraging measures to tackle social isolation and to promote the health and well-being of parishioners and would use the Swan as a venue for small groups to meet and learn new skills. We have just installed seating around the Beacon and an activity trail in the wooded area close by, to attract both locals and visitors, who will undoubtedly seek refreshments at the pub.

The level of encouragement received by the Parish Council, from parish surveys, to nominate the Swan as an Asset of Community Value and the multitude of objections from local people posted on the planning website are overwhelming evidence that our parishioners believe that to lose the Swan Public House would be a significant loss of a highly valued community asset.

Such is the strength of feeling that The Save Our Swan group, working with the Plunkett Foundation, have received amazing support from over 100 local people, pledging a significant amount of money towards the community purchase of the pub.

Don't write the Swan off as being unviable! With significant housing developments happening just over the Parish Boundary in Bovingdon in the coming years, the demand for places where people can socialise is only going to increase thus allowing the Swan to have an even greater potential! Please allow the community the chance to install new management and bring this wonderful pub back to life preserving it and its legacy for future generations to come!

Additional Comments:

'Yet again I feel I must respond to Mr Steven Parry's (Applicant's agent) wholly inaccurate and disparaging response to the multitude of objections made on this site to the Change of Use Application of the Swan Public House, Ley Hill. He states that "the third-party submissions are similar to those received previously ..... and are entirely concerned with the loss of the use of the public house." Why is he surprised at this? Right from the first application of September 2018, to the second application for change of use to two properties and then to this present application in 2020, the whole community has remained consistently steadfast in its bid to save the Swan as a public house! These numerous submissions continue to reaffirm the wish of the local community to re-energise this beautiful building back to the hub of the community as it has been for so much of its life!

This enthusiasm was relayed to Latimer and Ley Hill Parish Council not only via a parish survey for improvements to the parish but also via a wider survey conducted by the Save Our Swan action group. Consequently, the Parish Council nominated the Swan as an Asset of Community Value, which was successfully granted in November 2018. Surely these actions only go to prove how vital the Swan as a public house, is to the community! Mr Parry goes on to address the question of viability. Has he not read the MJD Hughes report, commissioned by the SOS group and ratified by the Plunkett Foundation, which has been posted? MJD Hughes states: The viability of the pub presented in both the Underwoods LLP and Bruton Knowles reports are not balanced opinions. Both

reports, in their own way only look at the viability for the current owner rather than the viability of the site as a pub. The viability of a public house should be looked at as an operating entity rather than the method of operation. The requirements of an owner who is looking to operate the site is different from an owner who is not wishing to utilise the property for its designated use as this will impose on their life-style choices. Whilst we agree with many of the calculations in the other viability reports submitted as to the fair maintainable trade, we cannot agree with the methodology that has been used to prove viability. The question of viability should be answered by the most efficient method of operation for the site rather than restrictions on turnover, gross profit, or operation methods that are unique to only a certain owner. The method of operation during the last 3-4 years and prior to the business closing meant that the operator didn't maximise the pub's potential. In addition, with lower turnover, poor control of costs and gross profit, and reduced opening hours this meant there was little excess that could be re-invested back into the business. The result is an artificially controlled downward spiral of turnover and profitability. From our investigations and illustrations outlined in this report and using over 30 years' experience in the licensed trade as both an operator and providing professional property services, our conclusion is that The Swan provides the opportunity for a viable public house. In conclusion, The Swan is a viable public house that has been repeatedly marketed at well above its market value. Continuation of The Swan as a public house is the best commercial use of the property."

This same report also addresses the marketing question: "The asking price that the property has been repeatedly marketed at is well above its market value. An assessment on inflated asking price for the property does not provide a true reflection of viability. Marketing at such a high price should not be taken into consideration when assessing any periods of marketing for sale at an unachievable price. In conclusion, The Swan is a viable public house that has been repeatedly marketed at well above its market value. Continuation of The Swan as a public house is the best commercial use of the property" Nigel Byatt, the owner, states that: "after the sale of the pub fell through, all those who had previously enquired during the period it was under offer, were recontacted by the agent to advise that the property had become available again. However, none of these enquirers showed further interest." Why was he surprised? Potential buyers are not prepared to wait for so long and people's circumstances change! I would also dispute the fact that the Swan had been "continuously, aggressively and professionally marketed" Nigel Byatt also stated that "If anybody enquired during the time The Swan was under offer (to the buyers who were seeking conversion to a Nursery only), their details were taken but they would have been advised that progress could not be made with their enquiry while the property was under offer and contracts were being negotiated. In these instances, a viewing would have been inappropriate and unethical....".

The duration The Swan was under offer was more than 17 months (December 2017 - April 2019) - therefore for more than 17 months when it was 'apparently' on the market, it was certainly not being marketed "continuously, aggressively and professionally". And there was never a For Sale sign erected outside the pub bringing it to the attention of everyone! Surely this is standard practice if someone genuinely wants the pub to remain open!

When addressing the hostility to customers objection, Mr Parry states that anecdotal remarks have been recycled and have been made by people with no personal experience. I vehemently reject this assumption! I am regularly told by past customers of the Swan that if a friendly landlord were to take over the Swan then they would certainly return to the pub! Local people are desperate to revisit this wonderful building, but they expect to experience a welcoming atmosphere. I personally

experienced a cold welcome on several occasions and notably in a group of 8 people wanting to have several drinks one evening but was told to drink up as he was closing early. Consequently, this group did not visit again! It would seem fair to assume that the owners were deliberately running down the business when customers stop visiting the pub due to the unfriendly atmosphere and decreasing opening hours. Does Mr Parry have evidence that the stated opening hours were adhered to? There are many local people including myself, who live very close to the Swan and who walk and drive past daily, that have witnessed the closure of the pub during these published hours. No wonder people do not return to the pub when they arrive to closed doors! And how can a pub remain closed and the landlord give up the opportunity of income as occurred on November 11th 2018 when nearly 500 people attended the celebration of the centenary of the end of WW1 around the Beacon only 50m from the pub! Is this really the action of a landlord who desperately wants to keep the pub open? Mr Parry also mentions Trip Advisor reviews- Although they are few, the positive comments surely demonstrate that the Swan is actually viable if run correctly? And isn't it common knowledge that locals tend not to review their local pubs? I think he may be clutching at straws when using this as a defence. When stating that other community uses of the Swan have failed, he is referring to the previous application for change of use to a nursery. Although a nursery qualifies as a community use in this area, a nursery is NOT a venue where all sections of the community, young and old can socialise! He comments that because the Crown is open the community can still benefit from a public house. The Swan and the Crown pubs have run alongside each other very successfully for many years with both providing a different offering. The SOS action group have been working very hard over the last 6 months, receiving over a 100 pledges, to be in the financial position to make a bid for the purchase of the Swan with the intention of making it a real community hub to tackle the problems of loneliness and social isolation in the local area. I would strongly argue that National and local policy statements have not been met. 1. Core Strategy Policy - CS29 - The Council will only permit the loss of community facilities in exceptional circumstances. Is changing the Swan into a residential property when the community can buy it and keep it running REALLY an exceptional circumstance? 2. National Planning Policy Framework Paragraph 92 to provide the social, recreational and cultural facilities and services the community needs, planning policies should plan positively for the provision and use of ..... public houses ..... to enhance the sustainability of communities ..... 3. NPPF Paragraph 83 Support a prosperous rural economy - Planning policies and decisions should enable the retention and development of accessible local services and community facilities such as ..... public houses. This is exactly what the Parish Council and the Save Our Swan group plan to do with the purchase of the Swan. 4. Policy GB24, the Council will not allow .... change of use of a building ..... which was last used for local community purposes ..... unless .... it can be demonstrated to the Council that the facility is no longer required for any other community use in the village and adjoining area where the facility is located. I think the SOS team have more than demonstrated that this facility (the Swan) is STILL required for community use! In conclusion it is evident that Mr Parry has little understanding of the determination of the community to save the Swan and return it to being the vibrant hub of the village and local area. Obviously, myself as Chairman of Latimer & Ley Hill Parish Council, Councillor Andrew Garth of Chiltern Council and Gareth Williams, Cabinet Member for Communities and Public Health, Buckinghamshire Council would not be objecting to this planning application if they did not wholeheartedly support the retention of the Swan as a public house.'

## REPRESENTATIONS

Objection letters have been received from 96 different addresses as well as the organisation 'Save Our Swan' and Ley Hill Community Pub, and they are summarised as follows:

- The Swan is a popular community facility;
- Local people would be willing to purchase The Swan as a community PH and the owner has indicated that he will consider a reasonable offer if this application is refused;
- A business plan has been prepared by the Save Our Swan group;
- The Save the Swan group should be given the opportunity to purchase and maintain this community asset;
- Erroneous comparison in viability statement to The Pig in the Pantry, which is part of a chain selling cheap convenience food, reference should be made to The Bell in Bovingdon and the Bricklayers Arms in Flaunden;
- The PH is viable;
- Previously 2 prospective investors were interested in purchasing the PH but their interest was not pursued;
- The premises were not marketed until after the nursery application was withdrawn on 18 April 2019 i.e. less than a year before the withdrawn application was submitted;
- The Swan was marketed at an unrealistically high price;
- Unwelcoming management has contributed to the decline of the PH;
- The Swan is no longer welcoming, closing at 21.30 hours and after lunch on a Sunday, or earlier than advertised, dog walkers and hikers are not welcomed and half of the pub garden has been closed off;
- The Council's expert surveyor has only used the information in the flawed report submitted by the agent.
- The Swan as a Public House is a significant and historic feature, it is 500 years old and the oldest PH in the County, which should be protected;
- Popular Music and Beer Festival, Classic Car Festival, The Beacon, and other events take place in the village;
- The Swan has provided important employment opportunities, particularly for young people and those needing to work shifts;
- Detrimental to Listed Building;
- The Parish Council would like to use the PH for community purposes and have stated a list of intentions and initiatives;
- Proposed extensions would cause loss of privacy;
- Planning Statement submitted is flawed e.g. competition from Cricket Club and Golf Club which are both private members' clubs.

One neutral letter has been received stating that if the Public House is to be lost, the attractive external appearance of this listed building should be maintained.

Two letters of support have been received stating that given the national trend and the decrease in patronage at this Public House, it will never be viable again and so sensible to return the Historic building to its original function as a dwelling, especially given adjacent community facility Public House.

A viability report has also been received from MJD Hughes on behalf of 'Save Our Swan' a community benefit society comprising the community local to the application property. The report may be read in full on the Council's Public Access and includes the following comments.

- Prior to lockdown the trade at The Swan was declining due to mismanagement and/or erratic and reduced opening hours;
- Ley Hill has a strong community spirit in which The Swan played an important part;
- The Swan is a privately owned and operated freehold and can reasonably operate at a gross profit of 65%;
- Concludes that The Swan is a viable public house and has closed and been run down due to a life style choice of the owners.
- Unrealistically high marketing price.

## **CONSULTATIONS**

**Highways:** No objection subject to the imposition of a condition and 2 informatives

**Archaeology:** No objection and no conditions required.

**Conservation and Listed Buildings Officer:** Objection as follows:

### Summary

It is considered that the proposed change of use of this building from a public house to a single residential unit would cause 'less than substantial harm' to the social and community significance of the heritage asset and potentially to the setting and historic fabric of the designated heritage asset. Paragraph 196 therefore applies; in applying this policy/ guidance it is considered that no public benefits outweigh that harm. Paragraphs 184/189/190/192/193/194/195 have all also been considered in this advice. The proposals are also contrary to Chiltern Local Plan policies LB 1 and LB 2 and LB4

### Heritage Assets

This is a grade II listed building on the edge of Leyhill Common. There are other listed buildings nearby, including Orchard Cottage a few properties to the north and Cherry Tree and Crab Tree Farms on the east side of the road, also there are a group of listed buildings around the southern end of the common. The southern end of the common is the boundary of the Chiltern Area of Outstanding Natural Beauty.

### Relevant planning history

Three recent applications for a change of use to public house to a day nursery and to two semi-detached houses were refused. Prior to that there were a number of historical applications for the alteration and extension of the public house.

### Discussion

The heritage assessment is the impact on the significance the special historic and architectural interest of the listed building. This advice was updated from the advice provided on 21.1.2021, following the submission of further information from the agent.

### Significance

The Swan PH dates from the 16th century. The northern two timber framed bays were constructed in 1520, with the southern brick wing added in 1680. Part of the building was used as a PH from at least 1843, and by 1881, the entire building was used as a pub. The building sits on the edge of the common; an area of public open space on the edge of the village, and views across the green to the building and its open rural setting are part of its significance.

This attractive composition of historic buildings is prominently located facing onto the common. The earlier timber framed building has a timber fronted gable to the right with a thin brick 17th century stack behind, with the main entrance in the central bay. To the left/ south is the later brick wing, the gable end of which faces the road. Although the building has been altered over the years, the building retains many original features including the exposed timber frame, a narrow winding staircase, original plan form and many old doors etc. This building has been in use a public house for around 200 years, allowing the 'public' an opportunity to enter and enjoy its history and character, and this is an important part of the significance of the building.

### Evidential Value

With any building of this age, especially one with such a long public history, there will be considerable evidential and archaeological evidence in the structure, including of how the use of the building as a public house has evolved over time, and the ability of the public to access and appreciate the evidence of the buildings evolution, which it is important to protect.

### Historical Value

Again, due to the prolonged use of this building as a public house, there is an extensive local community history in this building. Paragraph 45 of Conservation Principles states that;

'The use and appropriate management of a place for its original purpose, for example as a place of recreation or worship, or, like a watermill, as a machine, illustrates the relationship between design and function, and so may make a major contribution to its historical values. If so, cessation of that activity will diminish those values and, in the case of some specialised landscapes and buildings, may essentially destroy them.'

### Aesthetic Value

Aesthetic value derives from the ways in which people draw sensory and intellectual stimulation from a place. The ability for the public to use the building as a public house and to enjoy this historic building with its historic architecture which has evolved over the centuries of its use and patina of age, would be lost by the proposed conversion.

### Communal Value

The use of this building as a public house for around two centuries has given this building a high communal value. The building is an important part of the history of the village, so many people have important connections to events that occurred in the building and historical records such as photographs illustrate that emotional connection to the building.

The building has been designated as 'an asset of community value.'

### Description of proposed works

This building has been in use as a public house since at least 1843, but probably much longer. Following the refusal of the previous applications for the change of use to a children's nursery, and later to divide the property in half to provide two semi-detached houses, with extensions, it is now proposed to use the building as a single detached house. The application also proposes to add a fence close to the rear elevation of the building to subdivide the rear garden.

No listed building consent application has been submitted with this application as the agents advise that no physical alterations to the listed building will be necessary.

### Assessment

Following the refusal of the applications to use the existing public house as a nursery, and later to two semi-detached houses, it is now proposed to convert the building to a single detached house. There are only two staircases in the building at present; one is an ancient narrow winding stair alongside the main stack a second in the northern part of the building is an external fire escape.

The ancient winding staircase around the stack is very steep and dangerous but is a very important part of the history and significance of the building and must be retained. An unsightly external fire escape staircase is located close by and both are a long way from the furthest bedroom. It would be very surprising if Building Control agree to the conversion to a single dwelling without a shorter and safer means of escape, and if the building is converted to a single house the retention of the external fire escape would be incongruous.

As the building is listed there are likely to be relaxations under the building regulations on the thermal insulation of the building, which would otherwise be required for such a change of use.

No listed building consent application has been submitted with this application as the agents have stated that there will be no physical alterations to the building. However, some physical alterations are likely to be necessary; to provide safer more convenient access to the first floor, to remove the external stairs, it is also likely that, to facilitate the residential use, the bar area will be required to be sub-divided, new bathrooms added insulation improved etc. It is unclear at this stage what the implications will be on the significance of the heritage asset.

A fence has been constructed recently to subdivide the rear garden of the public house; it is assumed as a separate building plot, but planning permission does not appear to have been applied for, and is required as it is a means of enclosure surrounding a listed building. Just two cramped parking spaces have been identified on the submitted plans; for what would be a substantial detached house, and the reduction of the rear garden leaves little room for turning or a garage, particularly if the drive provides access to other new housing on the plot at the rear. The division of the public house garden to form a separate plot at the rear- included within the blue line on the application, but not proposed for the change of use, is also a concern in terms of the open setting of the listed building, which could be harmed if this site is proposed for development.

Even if the conversion of this public house and 'asset of community value' to a single residential unit could be undertaken without physical harm to the significance of the designated heritage asset, the change of use of this historic public house to a non-public use is a concern. It is considered that the proposed change of use would impact the evidential, historical, aesthetic and communal values of

this building, all have important parts of the significance of the building, the loss of which would cause harm to the significance of the designated heritage asset. The best use for any heritage asset is the one which it was designed for or has had for most of its existence; in this case its use as a public house for around 200 years. The loss of its historical use and the public access to view the interior of the building, which also provides social and community links with the area, is therefore considered to cause harm to the 'less than substantial harm to the significance of the designated heritage asset.

The Heritage Statement submitted by the applicant states that; 'Parts of the Swan have been a pub since at least the 1840's and probably a lot earlier. Although the Swan started out life as three conjoined cottages, it has had a longstanding historic function as a pub, serving as a social space for the community to meet. The conversion back to a residential building would change the function as a public house would be lost, but it would return the building to its original function. The loss of its current use would mean that the communal and social connection the Swan has with the Leyhill area would be lost, and so would result in less than substantial harm. However, this harm would be outweighed by the benefits of (a) converting the building back to its original use as cottages and (b) securing the long term future of the building'

It is helpful that the applicant acknowledges the 'less than substantial harm' to the significance of the heritage asset. However, it is considered that in view of the established use of the cottages for around two centuries as a public house, and the extent of the buildings significance which is derived from that use, the reinstatement of the use of use to cottages residential is considered to cause more harm than benefit. The risk to the 'long term future of the building' is unclear, so this benefit again cannot be balanced against the harm. It is understood that this building has continued to operate as a public house, when permissible in view of the current pandemic, and although the viability reports are gloomy, the building has operated successfully in the past and we do not know what possibilities may present themselves after this pandemic.

When I last visited the building it was in reasonable state of repair and no evidence has been provided of disrepair by the agents that this is a 'building at risk'. It is not considered that the public benefits to the change of use which have been put forward by the agents, outweigh the 'less than substantial harm' which has been identified by all parties.

It is considered that the proposed change of use of this building from a public house to a single residential unit would cause 'less than substantial harm' to the social and community significance of the heritage asset and potentially to the setting and historic fabric of the designated heritage asset. Paragraph 196 of the NPPF therefore applies; in applying this policy/ guidance it is considered that no public benefits outweigh that harm. Paragraphs 184/189/190/192/193/194/196 have all also been considered in this advice. The Chiltern Local Plan policies LB 1 and LB 2 also apply and Policy LB4 states that; New uses for Listed Buildings will be permitted if all (my emphasis) of the following criteria are met:

- (i) It has been demonstrated to the Council's satisfaction that the existing use cannot reasonably be continued.
- (ii) The Special Architectural or Historic Interest of the Listed Building would not be adversely affected. When assessing the impact of the change of use of the Listed Building, particular attention

will be paid to the implications of possible alterations and additions on the structure of the building, its appearance, its setting and on any other features of Special Architectural or Historic Interest which it may possess.

It may be argued that; (i) the viability of the use as a public house is in doubt, but it is considered that (ii) The Special Architectural or Historic Interest of the Listed Building will be adversely affected, therefore the proposals are contrary to LB4.

#### Heritage Policy Assessment

The Planning (Listed Building and Conservation Areas) Act 1990

The proposals would not preserve the architectural and historic interest of the listed building and therefore does not comply with sections 16/66 of the Act.

#### NPPF

Paragraphs 184/189/190/192/193/194/196 have all also been considered in this advice

#### Local Plan

Policies LB 1, LB 2

Policy LB4 states that; New uses for Listed Buildings will be permitted if all of the following criteria are met:

(i) It has been demonstrated to the Council's satisfaction that the existing use cannot reasonably be continued.

(ii) The Special Architectural or Historic Interest of the Listed Building would not be adversely affected. When assessing the impact of the change of use of the Listed Building, particular attention will be paid to the implications of possible alterations and additions on the structure of the building, its appearance, its setting and on any other features of Special Architectural or Historic Interest which it may possess.

(iii) The environmental impact of the change of use upon the special interest of the Listed Building would be acceptable. The amount and type of pedestrian and vehicular traffic likely to be generated and the off-street parking requirements should not harm the special interest of the building.

(iv) Other policies in this Local Plan should also be complied with. This Policy applies throughout the District.

13.21 Generally the best use for a Listed Building is the use for which it was originally designed. However, in some cases new uses for Listed Buildings may be permitted in order to secure their continued preservation. This policy seeks to ensure that a change from the original use is clearly justified and that the new use does not harm the special interest of the Listed Building. In this way where changes of use are proposed Listed Buildings should be preserved. This is consistent with Government advice. The third clause in the policy broadens the assessment of the effects on the special interest of Listed Buildings by taking a range of other aspects of environment into account as appropriate to the type of use proposed'.

### Historic England Guidance

Managing Significance in Decision-Taking in the Historic Environment- 2015, and Making Changes to Heritage Assets- 2016

### Conclusion

For the reasons given above it is felt that in heritage terms:

That the application does not comply with the relevant heritage policy and guidance, and therefore it should be refused for this reason.

