



Permitted Development – Killing our Pubs!

By James Watson and Gareth Epps, Campaign for Real Ale

'Permitted development rights are set nationally, and seek to strike a balance between allowing individual freedom to carry out development while protecting the interests of neighbours and the wider environment' said Communities Minister Stephen Williams in a recent letter to CAMRA after we pointed out that there is a disconnect between the aims of the government's localism agenda and the weak planning system that allows pubs to easily be converted into a host of other uses, often without the community and pub users having a say.

Pro-Pub Government?

This government claims to be 'the most pro-pub administration in history', yet weekly pub closures on their watch have increased from 18 per week, to 26 per week, then up to 28 per week and now stand at a depressing 31 net closures per week. Can we blame the Coalition for the demise of the Great British Pub? Not directly, but after four years in power, with the plight of pubs regularly highlighted to them by CAMRA and other vocal bodies such as the *Fair Deal for your Local Coalition*, and *Pub is the Hub*, they have failed to make even the simplest changes to the planning system which would give pubs the much needed protection against damaging changes to their land and buildings. Moreover, the coalition has further weakened the planning system, perpetuating the destruction of pubs through the euphemism known as 'permitted development'. Meanwhile, their much anticipated Small Business, Enterprise and Employment Bill currently going through parliament does not go far enough in bringing about the desperately-overdue reform to the business practices of the pubcos, whose colossal debts encourage them to sell off perfectly profitable pubs to become luxury homes, betting shops, fast food outlets, or yet another supermarket!

The Myths

Ask a pub full of people why so many pubs close and you will get a dozen different answers. Ask those who rarely use pubs and you will get a different dozen. The oft-peddled myths about changing cultures, the smoking ban, supermarket booze, drink-driving law, lack of family-friendly facilities, food offer, religious influences and many other factors all play a part, but a very minor part when taken in the round. The British pub is an institution; a global icon; the embodiment of over 400 years of social and cultural evolution. Well-managed, welcoming pubs are as popular as ever. Some commentators quip that 'only the bad pubs close' and 'if people used pubs more, they would survive'. Since the rise and fall of the pubcos, the inexorable rise of their debt and the insatiable demand for residential land in the South, neither of these assertions is true. Thriving, popular pubs close, along with the under-used pubs. It is all a question of economics and greed. Whilst pubs fulfil a vital community social function, they will never compete with an alternative use for the land. Incidentally, the same can be said about many things; places of worship, green spaces, leisure centres. That is why we need a robust planning system to protect the facilities we hold dear against the negative impacts of the free market. Just because the freehold of a typical pub will sell for dozens of times its annual fair rent when assigned a development 'hope' value, it does not follow that the destruction of the pub or the loss of the community facility can be morally justified. If the market were left to decide everything purely on development land values, we would live in soulless, wall-to-wall residential dormitories with no facilities for communities to interact or for people to meet their neighbours.

Pub Economics

Most established pub buildings are worth more in the short-medium term as a supermarket, block of flats, casino, betting shop or pawnbrokers. That is because pub freeholds are valued typically at 8-15 times the annual rent payable. The rent is calculated based on the concept of fair maintainable trade (FMT), mostly based upon pubco sales and profit expectations but also taking into account footfall, transport connections, facilities, size of the cellar, size of the kitchen, licensed hours and a whole host of other factors. British pub businesses pay some of the highest taxes in Europe, unfair business rates, full VAT and high utility costs. Tied publicans are also obliged to buy wet produce from their pubco which typically sees them paying 50%-100% more than the free-of-tie price. This all eats into profit margins and these factors have contributed to the shocking situation where over half of tied publicans earn less than £10,000 per year, typically working a 90-hour week.¹ Running a pub in the present regulatory system is not a route to riches in retirement! It is a true labour of love, providing a community service in the finest traditions of innkeeping and hospitality; a calling rather than a career but rewarding nonetheless.

The Planning System

The very high demand for housing in Great Britain and the ease with which pubs can be converted to retail, legal / professional, and most recently office use, combined with the pressure facing the pubcos to service their colossal debts by any available means, has resulted in our pubs being threatened like never before. The primacy of free market economics would see all pubs in alternative use since, without exception; this would represent the most profit over short-medium term business cycles. It naturally follows that only the planning system can guarantee the long-term protection of pub use on established sites. We should acknowledge that some freeholders fully recognise their moral and civic obligations in owning a public house. They realise they are merely temporary custodians of a tradition and culture which will transcend their own time alive. There are many admirable pub owners and operators who are carrying on a fine tradition and passing public houses down the generations, for the future enjoyment of those who will come after us. Can such civic fortitude be relied upon in the future to safeguard what society holds dear? The planning system can provide much better protection by restricting the use of valued pubs to just that – public houses!

Planning Control



The Cross Keys, Chelsea sold for £3.9m in 2012 after planning consent was refused!

¹ <https://www.gov.uk/government/news/publicans-to-get-a-fairer-deal>

Change of use to residential currently requires planning consent. This at least gives local planning authorities the opportunity to apply policy in line with the National Planning Policy Framework and their local (and, where applicable, regional) plans. Planning decision-making is a balancing exercise. The rights of developers and property owners must be balanced against the needs and aspirations of the wider community. The Cross Keys in Chelsea closed in 2012 and the owner planned to convert the building into a six bedroom luxury home, which, if completed, would have sold for around £10m. The local planning authority refused change of use as they were concerned at the dwindling number of pubs in that area. Their decision was supported by the planning inspector at appeal, who judged that the use of a pub makes a positive contribution to the character of a conservation area. The freehold subsequently sold for £3.9m, with the upper floors converted to flats as a compromise. Such planning decisions which seek to protect pub use are rare, although increasing.

A planning 'loophole' allows freestanding pubs which are not in conservation areas to be demolished with just six weeks notice. The City Pride pub on the Isle of Dogs in East London sold for £35m in 2012, a UK record for a pub freehold. The new owners proposed to demolish and replace with a residential skyscraper which, when built, stands to be the largest residential building in Britain. The pub was popular and well-used and entirely viable. However since it was freestanding, there is nothing the local planning authority could do to stop the demolition, if that is what the owner wanted to do. When such huge sums of money come into play, it is very difficult to resist on the grounds of saving the pub, and indeed the best that can be hoped for is the provision of alternative facilities. Recently the Packhorse & Talbot in Chiswick, also freestanding, has been sold for a sum far exceeding its current use valuation and there are plans to demolish it to replace with a housing development. It remains to be seen whether the local planning authority will extend the conservation area in order to bring demolition under planning control. Such a move was used by the London Borough of Hackney to save the much-loved Wenlock Arms in Hoxton from a similar fate in 2012.



The Wenlock Arms, Hoxton was saved by Hackney Council after the Regents Canal Conservation Area was extended in order to remove the right of demolition

Innovative local planning authorities have proved that they will go to some lengths in order to give pubs a fighting chance of survival. Unfortunately the whole planning system is stacked in favour of developers and against ordinary pub users. Pub campaigners need to win at every stage in the convoluted planning process whereas a developer need only win once in order to get their own way and destroy the pub. If a developer does not like a planning decision, they can always appeal. There is no such right of appeal for the local community.

Planning Loopholes

Planning loopholes mean that in most cases the local community, some of whom may have used a particular pub for their entire lives, have no say if the owner decides to sell the pub for a completely different use. The demolition loophole is one such example. Permitted development rights also allow change of use of a pub (planning use class A4) to a café or restaurant (A3), a betting shop or estate agents' practice (A2) or a supermarket or convenience store (A1). This system has existed for some time but it is only the last decade or so that pubs have been deliberately targeted by supermarkets and other big businesses in order to exploit these planning weaknesses to achieve their own aims, aided by the indebted pubcos who are often only too keen to off-load a pub that they regard to be 'non core' to their business operations. The process of disposal of the most lucrative sites for redevelopment is euphemistically known as 'asset conversion' by the pubcos and Punch Taverns has identified 1000 pubs as 'non-core' and earmarked them for asset conversion over the next three years. It is perfectly possible for a treasured community pub to be closed on a Friday night for good, only to reopen six weeks later as a Tesco Express or Sainsburys Local, using a slight variation on the premises licence. The only consent required would be for any external alterations or illuminated signage, which, by the time the change of use is ratified, the local planners have thin grounds on which to object. Such conversions continue to happen nationally at a rate of two pubs per week. In the Greater London Area, in the period 2010-2014, Tesco converted no less than 37 popular and viable pubs into small supermarkets.

The Perfect Storm

The high price of land and the weak planning system have conspired with the flawed and unsustainable business model of the tied pub system to create a perfect storm of insecurity for the nation's pubs. The pub companies were formed after the Beer Orders of 1989 which aimed to restrict the monopolistic practices of the big six brewers at that time and increase the choice of beer for pub-goers. Over 25 years later, it is clear to industry experts that those measures were a disaster. Even the name 'pub company' is misleading. These estate-owning firms are no better than reckless property speculators. They bought pubs from the brewers who were obliged to dispose of them; they overvalued their estate and borrowed money to purchase more pubs. Within a few years, the two largest pubcos; Enterprise Inns and Punch Taverns had almost 20,000 pubs between them. This is equivalent to almost half the total pub stock in the UK. Their estates had grown to a level that they could not possibly hope to manage sensibly or invest in adequately. Market rents could not reasonably keep pace with the cost of servicing their debts and their only alternative was to raise rents well above inflation and also increase their tied beer prices to their tenants. Their aim is to leverage every last drop of income from their tenants, until such time as they can dispose of the real estate for alternative use. Although leaseholders have certain legal rights, under the Landlord & Tenant Act 1954, an unscrupulous pub owner can effectively evict a tenant within weeks, simply by restricting the choice of beer, wine and spirits, or by raising the prices of wet produce to an unviable level under the one-sided terms of their tied agreements. This leaves tenants with no alternative but to quit or, when they fall behind in rent payments, to face eviction and bankruptcy. The pubco can then churn another tenant through the premises, install a temporary holding management company, or just sell the pub off for alternative use, invariably at a freehold value far in excess of its current use valuation.

What is a Pub Really Worth?

Those opposed to reform of the pubco tied business model say the arrangement provides low-cost entry into the pub industry for tenants. This would be partially true if the arrangement really was a partnership. In practice, it operates purely to service pubco debts and to create an income stream to keep the hedge fund financiers satisfied whilst the pubcos asset strip and destroy the nation's cultural and social heritage. Tied tenants are merely used as pawns in this corporate scandal. Those who defend this legalised exploitation also claim that the market should determine price, both of liquor and of real estate. The adage that a property is only worth what someone is prepared to pay for it is oft-quoted yet never justified. There is a market price for apples, which would be substantially higher if the apples were made of gold. Pubs are traded freely as 'development opportunities'. The advertising hoardings proudly boast 'SUITABLE FOR DEVELOPMENT (STP)', the 'STP' referring to *subject to planning*. In other words, consent should be (and usually will be) a doddle! The only reason this overvaluation is perpetuated and is proliferating is that developers routinely get away with it. The attitude of communities and local authorities is behind the curve and only just beginning to realise the true extent of this attrition. Pubs close at a rate of 4.42 every day. When pubcos identify a pub for asset conversion, they seek to demonstrate that the pub is not viable, using a profit test calculation showing costs outweigh gross profits. To achieve their desired result, they load costs and underestimate profits by including outgoings that would ordinarily be disregarded. It is easy to engineer the rent calculation in favour of a desired outcome and planning officers are not in a position to adequately scrutinise these reports.



The UK's two largest pubcos, who raced each other towards 10,000 pubs in the early noughties

The planning system exists to protect society from the negative impacts of the free market. Permitted development loopholes mean change of use is a certainty, if that is what the owner wants. Likewise, although some authorities are now refusing change of use to residential, many developers win on appeal, and there is no undoing the harm that has been caused by half of the London pub losses over the last 30 years ending up as housing. That horse has already bolted and the stable door is far from closed, despite certain welcome improvements to planning policy and public attitude. Unless and until the loopholes are closed, and the planning system is able to provide robust protection against change of use, historic pub buildings will continue to be traded as if they were built from gold rather than bricks. This puts communities at a huge disadvantage as even those 500 or so pubs to date which find themselves registered as Assets of Community Value do not stand a chance against a determined developer who is willing to pay many times the market rate. The true market value of a public house is that which is determined by its lawful planning use. The planning system is therefore crucial. The true social value cannot be measured in pounds sterling. It is priceless!

Planning Reform

At the Great British Beer Festival 2014 held at London's Olympia, the Campaign for Real Ale launched a new planning reform campaign – *Pubs Matter – So Why Can't We have a Say?* (see www.pubsmatter.org.uk) The call for these planning loopholes on demolition and change of use to be closed is not a new one. Indeed CAMRA has been asking government to address this unfairness for at least the last decade with successive pubs ministers but to no avail. It is significant that Bob Neil MP, having failed to deliver planning reform whilst he was the Community Pubs Minister, had a dramatic change of heart when his own local, the Porcupine in Nottingham, was bought by Lidl who intend to demolish the pub to replace it with a discount supermarket!

CAMRA has consistently been told by ministers that there are no plans to make changes to permitted development rights as they feel they have the balance right. They further advise that the best way to save a pub is to list it as an Asset of Community Value (ACV) under the Localism Act. In practical terms, this is patently not the solution. Only one pub out of thirty listed as ACVs in London has been saved through the community buyout route, a success rate of 3%. Half of the ACV pubs in London are closed. One is a Tesco Express, another is a building site, about to become flats and a third is in temporary use as an office thanks to the government's further relaxation of permitted development rights that took place in 2013. The encouragement by Ministers to list local pubs as ACV fails to recognise that registration as an ACV does not remove or restrict permitted development rights. This can only be achieved currently by the complex and unwieldy process of making Article 4 Directions, something which hardly any local authorities have taken up due to the legal pitfalls and the risk of compensation. Out of a stock of some 46000 pubs in Britain, CAMRA estimates that less than 30 have been the subject of Article 4 Directions.



Campaigners outside the Porcupine, Mottingham, Bromley in 2012

Historically there has been no appetite amongst Ministers to reform permitted development rights. If anything, movement has been in the *opposite* direction i.e. making it even easier to change the use of pubs into different use classes without the community having a say. In July 2014, the Department for Communities and Local Government (DCLG) launched a technical consultation on proposed planning changes. This package of reforms aims to 'put communities in the driving seat' yet counter-intuitively seeks to remove red tape and streamline the planning process in an effort to encourage development and take various changes of use out of planning control altogether. There is nothing positive being proposed to protect pubs, in spite of the government's self-styled 'pro-pub' image. Indeed they wish to shift the risk and responsibility further onto local planning authorities to make Article 4 Directions where they recognise a need to achieve a local planning aim. Local authorities should not be forced to use a risky, costly and slow imperfect solution to a problem entirely created by central government.

Betting Shops and Pay Day Loan Shops

The technical consultation does contain an interesting change of policy on betting shops. The government is proposing to move all other uses out of class A2, making this use class exclusively for betting shops and pay day loan shops. They then propose to bring any change of use *into* use class A2 under planning control. Essentially this means that any new betting shop or pay day loan shop will require planning permission, allowing the local planning authority the opportunity to refuse a new application and the local community, who will be impacted by the proliferation of such facilities, to have a say in the matter. The reclassification of use class A2 within the use class order is an enabling measure which then allows the government to remove permitted development rights. They are responding to an identified problem, namely the widespread proliferation of such shops in our communities, and have taken action to give people in those neighbourhoods the opportunity to influence what goes on around them. Why not give the same courtesy to local communities when it comes to pubs?

Pubs Matter – So Why Can't We Have a Say?

The UK has lost around 25% of its pubs over the past 30 years. These have been demolished or converted into other uses. In the last few years, we have seen hundreds of pubs turn into supermarkets and the like without the users of those pubs having a say. Since June 2013, it has also been possible to operate a pub as an office (use class B1) for a period of two years in order to 'kick start' the economy. Whilst this intention might have been well-meaning, it is totally misguided. An office is an entirely different proposition to a pub and offers no community value. Furthermore, this additional relaxation in planning control has already been abused and exploited by at least two developers, who have used the flexible office permitted development right as a stepping stone towards total residential conversion and as a means to circumvent local planning authorities' pub protection policies.



The Chesham Arms, Hackney was closed by a speculative property developer. It is the only ACV in Hackney

The Chesham Arms in Hackney had served its neighbourhood for 147 years when it was sold to a developer in 2012. The developer intended to convert the building into flats, but the local community applied to have it registered as an ACV. The pub became the first ACV in Hackney and the developer decided to put his flat conversion plans on hold, instead choosing to exploit new permitted development rights allowing the temporary flexible use as a B1 office. The pub was therefore reclassified as an office, although in actual fact no proper office function is carried out at the site. The permitted development has allowed the owner to rip out the bar and destroy the pub interior, under the guise of creating two 'office units'. This conversion has acted as a smoke screen to let out the ancillary flat above and the pub then became the subject of an expensive planning enforcement appeal. Meanwhile, the community have suffered for over two years without the availability of their local, its status as an ACV having no bearing at all on the ability of a determined developer to slowly erase the memory of pub use from this historic site.

In another example of permitted development rights being exploited to the detriment of the community, The Maiden Over in Earley near Reading was leased by Enterprise Inns to supermarket giant Tesco. The freehold remains with Enterprise, in order to circumvent the provisions of the ACV Regulations. Tesco plans to convert the pub into an express store. An application was made to the council to have it registered as an ACV. Whilst this can be a material planning consideration, such theoretical weight remains largely untested. Furthermore, the change of use to a supermarket is permitted development and the local planning authority has no say in the matter. Following a community campaign, Wokingham Council agreed to progress the making of an Article 4 Direction, which would bring the change of use under planning control, allowing those former users of the pub to lodge objections and the authority to apply local and national policy to retain pub use at the site. This would effectively force the freeholder's hand to rent or lease the pub to a pub operator or to sell the site on as a public house. Any prospective purchaser would be aware of the Article 4 Direction and hence the market would determine a fair freehold value as a pub rather than the so-called development 'hope' value attached to many former pub sites.



The Maiden Over, Earley. To become a Tesco Express thanks to the Pubco Scam and Permitted Development

The Council members showed strong leadership in making the Article 4 Direction and implemented the will of the community. However, following the threat of legal action by Tesco Stores Ltd and the risk of a compensation claim, legal advisers to the Council insisted that the Article 4 Direction should not be ratified. Officers supported this view and, regrettably, Council members acquiesced. Not only was the Article 4 Direction then rescinded, to add insult to injury the Council officers refused registration as an ACV. The advice of Ministers to communities trying to save their pub is to a) List it as an ACV and b) Ask the Council to make an Article 4 Direction. The good people of Earley, backed by CAMRA, did precisely this. Their pub, the Maiden Over, is about to become a Tesco. There is something very wrong here.



Coalition Pubs Ministers Brandon Lewis (Far Left) and Kris Hopkins (Middle Right) have advised communities to register their pubs as ACVs. They need to understand, it doesn't work!

This case demonstrates the imperfections in the system where inappropriate change of use is allowed by default; a permitted development right set by central government, and it is for locally elected planning authorities to effectively jump through legal hoops in order to safeguard the status quo! The system is perverse and is failing our pubs. The Chesham Arms in London and the Maiden Over in Earley are not isolated cases. Pubs are threatened on a daily basis by those who would destroy them and replace them with a land use completely different, whether that is a block of flats, a supermarket or an office.

The government have ignored calls from CAMRA and other bodies to address this situation, even though their localism agenda claims to 'put communities in the driving seat' and the coalition likes to present itself as a 'pro-pub' government. Saving pubs is about much more than scrapping the beer duty escalator. The unfair practices of the pubcos must end. The government should introduce a market rent only deal and guest beer option for hardworking publicans and the outdated planning system, stacked in favour of developers and against our communities, is in need of desperate reform. The destruction of our community pubs continues apace at 31 net losses per week. We are sleepwalking through the erasure of our culture and heritage which is the envy of the world, in the name of greed and short-term profit. What use is a planning system if it does not offer protection of treasured facilities for the communities that depend upon them?

If planning reform can be proposed to give neighbourhoods a say on new betting shops, then it is a straightforward task to give those same neighbourhoods a say when their local pub is threatened with demolition or change of use. With the 2015 election barely six months away, the message to the parties from CAMRA is very clear – *Pubs Matter, So Why Can't We Have A Say?*

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The views expressed in this article are those of the authors and do not necessarily represent CAMRA official policy