

1. We are grateful for the opportunity to submit a representation to the tribunal in respect of this case.
2. We endorse the submission made by Brighton and Hove City Council in response to the appeal by the owners, and in particular we endorse the reasoning in the Council's response to the first appeal to the Council by the owners. It is our view that nothing in the appeal submission undermines the Council's position in any way.
3. The appeal would seem to pivot on the notion of whether the pub site has both provided such social wellbeing in the recent past to be of community value, and whether it is 'realistic to think' that it might have the ability to do so again in the next five years.
4. The Council's submission covers the former aspect well, and we believe that the legal local authority for any area should be considered a better and impartial judge than either an asset owner with an interest in the case (and who, as described in their own submission<sup>1</sup>, would appear to be so unfamiliar with the pub as to need to visit it when they became interested in purchasing it) or a consultant based some 100 miles away.
5. The key question, then, is whether it is reasonable to think that this site can support activity that could provide social wellbeing in the coming 5 years. This is a crucial phrasing, as it places the burden of proof on the appellant to prove that it would be unreasonable.
6. We will set out areas which, we believe, will show both that they fail to meet this test, and we also provide additional information which we believe strengthens the case that this site could be the basis of a facility that provides social wellbeing to make it impossible to believe this to be an unreasonable assumption.
7. The Council's submissions and responses set out the case well in terms of their being no planning impediments that might impact on other socially useful services that might be possible to run from the site. Furthermore, the growth of 'meanwhile' usage of retail facilities demonstrates how quickly and easily a facility can be re-purposed into a socially useful one<sup>2</sup>. There are clearly no architectural or planning constraints that would mitigate against any such alternative usage, and we find it impossible how any reasonable person could take such a dim view of the capacity of the community to utilise the space in some useful way; the main impediment preventing it being done is a lack of control due to the ownership of the site by the appellant.
8. We consider that the above alone provides sufficient grounds for rejecting the appeal, as it is eminently reasonable to think that the facility could meet the test required in section 88(2) of the Localism Act 2012.
9. We want to take this further and directly address the claim regarding pub viability. This is the central element of the appeal case: that the pub has closed because it was not viable, and that this means that any future use which could provide social wellbeing in theory will be impossible in practice to the extent that to imagine any such future social wellbeing is unreasonable.

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<sup>1</sup> Statement on page 1 of their statement for the Council's oral hearing, appended as page 63 in their appeal submission

<sup>2</sup> <https://www.gov.uk/government/news/pop-up-shops-and-entrepreneurs-to-prosper-from-high-street-changes>

10. In order to make that case, the appellant needs to demonstrate that the pub's weaknesses were wholly and solely attributed to factors which no agency could counteract, which is to say that the pub's poor performance must be shown to be a function of changing patterns of leisure, consumption and demographics.
11. It is important to take a moment to consider the notion of viability. It is not, as the appellant would have it, an objective term that compels a reasonable person to recognise that an enterprise must cease to operate. Rather, it is a *subjective* decision, a privilege reserved for owners as it is a matter as to whether they have the motivation and resources to operate the enterprise sustainably.
12. Such judgments cannot preclude the possibility that others with different resources or different motivations might consider an enterprise more viable. That might be because other owners have the necessary capital to run enterprises at a loss and consider that an acceptable price to pay for the greater value from running the enterprise.
13. To give a practical example, most English professional football clubs make year-on-year losses and are clearly not viable on a commercial profit and loss basis, and yet the football industry displays astonishing levels of resilience and sustainability, with the football landscape of 2014 being very similar to that of 1914. This is because the owners of such clubs consider them viable despite those commercial losses (sometimes because of the social utility their ownership enables them to enjoy, or because of some hoped-for future capital gain).
14. As a result, the only thing that can be said for certain is that the previous owners – Enterprise Inns – considered the pub to not meet their standard for viability.
15. It is here that we must note the growing awareness of the role of how large pub owning companies that are not breweries (PubCos) like Enterprise Inns can be considered part of the problem facing the pub trade<sup>3</sup>, leading to parliamentary action last year to give every tenant the option of paying a market rent to the pub company who own the pub.
16. Tenants will in future be able to purchase beer and other victuals on the open wholesale market, instead of at rates determined by the PubCo that are viewed by a great many current and former publicans to be incompatible with competitive retail price levels.
17. It is critical to note that whilst a publican who owns a pub themselves and has made it their vocation might fight and fight to keep a pub open to the extent that when they decide to close the business, one can place reliance on their judgement, one can do no such thing where PubCos are concerned.
18. They are not interested in the survival of this or that pub in the way a local publican might be because their business is geared entirely around servicing corporate debts and providing shareholder returns. Whilst that goal can be achieved by a estate of successful pubs, paying rent and buying drink at the mandated prices, it can also be achieved – and often to greater financial return in the short term - by sale of the pub with a view to the more lucrative residential market.

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<sup>3</sup> <http://www.fairdealforyourlocal.com/the-campaign/>  
<http://protzonbeer.co.uk/comments/2014/12/27/tied-hand-and-foot-the-sad-and-sorry-saga-of-the-rise-of-britain-s-giant-pubcos>  
<http://petebrown.blogspot.co.uk/2014/11/some-reflections-on-pubco-reform.html>  
<http://www.newstatesman.com/politics/2014/01/its-time-protect-pubs-exploitative-pubcos>

19. That is not to say that the pub trade is not undergoing significant challenges, but pubs would be much better served if it the majority of their owners acted as stewards for an important part of our national culture and of community life rather than by over-leveraged property companies with significant cash-flow issues.
20. Of course, some pubs are in markets that are over-saturated, or in communities that have different habits and preferences to those that existed when a pub was first opened, and no pub has an alienable right to exist. We believe that the Rose Hill Tavern is not one of these pubs, as a result of three key developments that make it simply impossible to say that it would not be reasonable to think the pub could operate as a socially useful facility in the coming five years.
21. Firstly, existing housing density in the area is increasing. The St Peter's and North Laine ward increased in population from just over 13,804 in the 2001 census to just over 18,309 in 2011, and increase of around 32%. This will have increased even more since the census was enumerated, as there is constant pressure on housing in the city given its location sandwiched between the sea and a national park. New student development in the old Co-operative department store is emblematic of the student-led dimension of this trend.
22. That feeds into the second development, which is the regeneration of the wider London Road Area of which the Rose Hill Tavern and environs are part. There are, as the appellant notes, other pubs and social facilities nearby but these are all of a certain character, often explicitly catering to a particular niche across the city, given the area's location on one of the two main roads north out of the city<sup>4</sup>. For example, the Worlds End makes a virtue of its American BBQ food, whilst the nearby Hare and Hounds specialises in the craft beer scene which is noted for being a much higher price-per-pint than the traditional pub.
23. In short, the pub has never had more potential customers on its doorstep, and the wider area has a greater need for an 'ordinary' pub in the face of the upwardly-mobile character of much of the regeneration. We find this then an off-moment in the pub's life to declare it surplus to the community's requirements.
24. What, then can have prompted this? The clue might be found in the appellant's submission itself, where they note that the previous owners failed to maintain the pub adequately, and note that in the last lease, the beer was provided at the lower rate provided to free houses rather than the standard rate charged to tenants of PubCos.
25. In other words, Enterprise Inns failed to maintain the facility, and, until the last year of opening, charged a higher wholesale rate that made the pub less profitable for its tenants, leaving less revenue for marketing and other engagement activity at the heart of a successful pub.
26. We don't seek to labour this point, but this is entirely in keeping with the standard practice of PubCos: a cycle of under investment in the bricks and mortar, overly aggressive charging of tenants

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<sup>4</sup> It is worth stating here that the claim made in the appellant's submission that the Asset of Community Value designation is designed to save 'the last pub in the village' is wholly untrue and without foundation; whilst opponents of its usage continue to make this argument, the Act itself places discretion solely in the hands of the Local Authority, and the existence of similar facilities close by is nowhere in either the Act, its supporting regulations, the guidance published by DCLG.

leading to high turnover of personnel. The resulting nexus - management instability, declining quality of facilities and higher standard prices – is something of a perfect storm for a pub.

27. Even so, we must also address the future, since this is a key concern of the appeal. Even if one accepts that the objective reality of the pub's decline was more complicated than the appellant would have it, we must face the reality that the pub was declining, and that this has a bearing on the future. So, the question is whether there circumstances under which one can envisage this situation changing, to the extent that the pub would become newly viable? The answer is a resounding yes, due to the third development that points towards a potentially brighter future for the pub.
28. Since 2002, over 30 community-owned pubs have opened, all on the sites of former pubs deemed in some or other capacity to be unviable<sup>5</sup>. All are still operating – a viability rate of 100%.
29. They use the same operating model as the community shops movement, which runs shops in rural communities in places previously deemed too remote or too sparsely populated to support a retail outlet. Of those shops, 313 are still operating, and 1 has closed. In other words, previous owners in 214 cases determined that the outlets were unviable, and in 99.68% of cases, this turned out to be not the case<sup>6</sup>.
30. This happens for two reasons – costs are reduced due to volunteer commitment, and an revenues rise due to both a greater loyalty to the new community-owned and operated venture than the previous private enterprise, and a greater degree of innovation displayed by community owners, who see the facility as a blank canvas for providing community need, rather than a means to achieve a financial return.
31. Of course, one might say that such enterprises are predominantly in rural areas, where community needs can be more acute, but that is to overlook the growth of such ventures in urban areas. The first urban pub opened in 2011, at the Star Inn in Salford, quickly followed The Ivy House in London and the Jazz Co-op in Newcastle earlier this year<sup>7</sup>.
32. Most relevantly, the Bevendean Co-operative Pub opened just 2 miles away on the Moulsecoomb and Bevendean Estates – the second poorest part of the city – as the first community-owned pub on an estate. The community raised £55,000 in share capital, and the remaining £165,000 in grants, loans and donations, and opened the pub to national fanfare in December 2014<sup>8</sup>.
33. Indeed, Brighton is a hotspot for 'positive investing'; in a survey by the social investment exchange Ethex<sup>9</sup>, the greater Brighton area moved up from 8<sup>th</sup> nationally to 4<sup>th</sup> in the last 12 months in terms of community-based investment. This was in things like the Bevendean Pub, or nearby Exeter Street Hall where £150,000 was raised from a community of 200 residences to buy a hall from their local Church to prevent it being turned into residences, or more widely in Brighton itself where £400,000 to develop community-owned solar energy. That does not even begin to take into

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<sup>5</sup> <http://www.pubs.coop>

<sup>6</sup> <http://www.plunkett.co.uk/whatwedo/rcs/ruralcommunityshops.cfm>

<sup>7</sup> The Big Lottery are funding an exploratory programme with the Plunkett Foundation to promote community-owned retail in urban areas, and the Lottery is soon to endow the Power To Change Fund with £150m to support communities develop enterprises, including funds to support the purchase of assets. See <http://www.biglotteryfund.org.uk/powertochange>

<sup>8</sup> <http://thebevy.co.uk>

<sup>9</sup> <https://www.ethex.org.uk/positiveinvesting>

account the growing and competitive market for social investment lending<sup>10</sup>, from underwriting share issues through to long-term secured debt-finance.

34. So, putting this altogether, is it reasonable to think that the community could raise the capital needed to buy the pub and refurbish it to modern standards, and in so doing, reconnect it to the community with a new and compelling commercial proposition based on community ownership and the loyalty and commitment that generates? We believe that of all the places in the UK where one might say such an approach had superb potential, Brighton is in the first rank.

### **Motivations**

35. We also note that the statement from the owners includes an accusation that our group is motivated by the desire to stop the sale of the pub. This is a statement for which no evidence is provided, and so it is unfortunate that the appeal submission from the owners begins with such unfounded and confused calumny.
36. For the record, we can clearly state that this is incorrect. The group is motivated by the desire to *preserve* the pub as a local social facility.
37. As the respondents made clear in their own statement, the owners bought the property in order to facilitate its conversion to housing. It follows then that we should oppose the sale, as that was the tactic required to achieve our strategic goal. That same overarching goal requires we also seek to prevent the change of use that the owners have applied for to change the use of the pub to residences.
38. We have no animus towards the owners on a personal level, and seek only to ensure that the community continues to enjoy the amenity of the pub as a social space with a particular history and character. Indeed, we hope that in the event of the owner's intentions being rejected by both this tribunal and the council's planning process, we would be in a position to discuss with the owners how we might work together to realise our goals in such a way as to ensure no financial loss to the owners.

### **Conclusion**

39. We can see lots of reasons why the pub's apparent unviability was nothing of the sort, and we can see equally compelling reasons why it could have a bright future under community ownership.
40. More importantly, we believe that our case is more than enough to enable it is reasonable to see how the facility could have a future in the next 5 years. And if it has this potential, then it is an Asset of Community Value, and one that has been validly nominated under the 2012 Act.

**Richard James**

***For the Rose Hill Tavern Action Group***

2<sup>nd</sup> January 2015

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<sup>10</sup> <https://www.gov.uk/government/publications/growing-the-social-investment-market-a-vision-and-strategy>