

171 Camden High Street - 2023/5228/P



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.

Site Photos



1. View towards front elevation of 'The Black Cap', 171 Camden High Street.

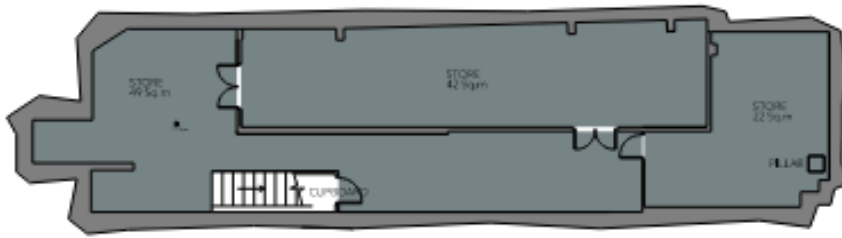


2. Kitchen on second floor

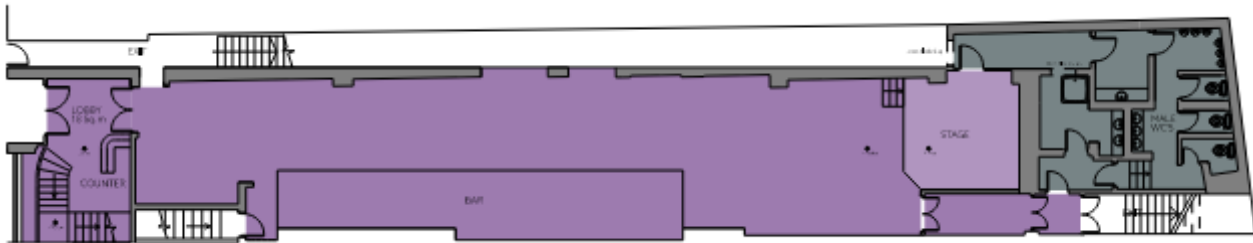


3. Ancillary residential accommodation on 3rd floor

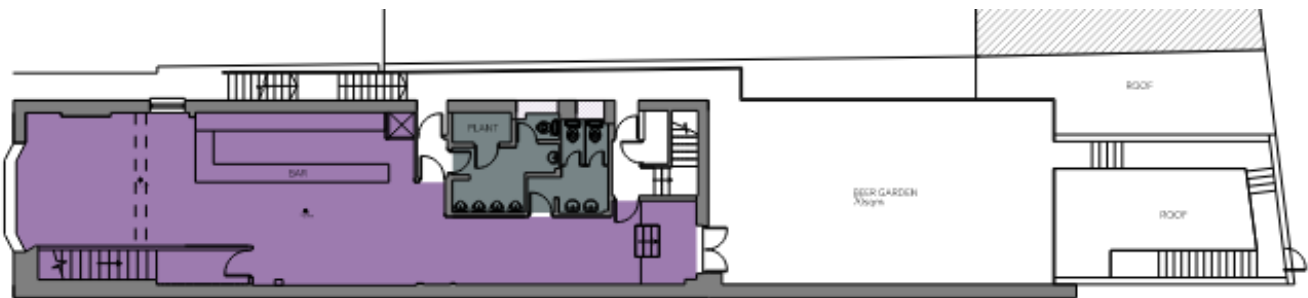
Existing Drawings



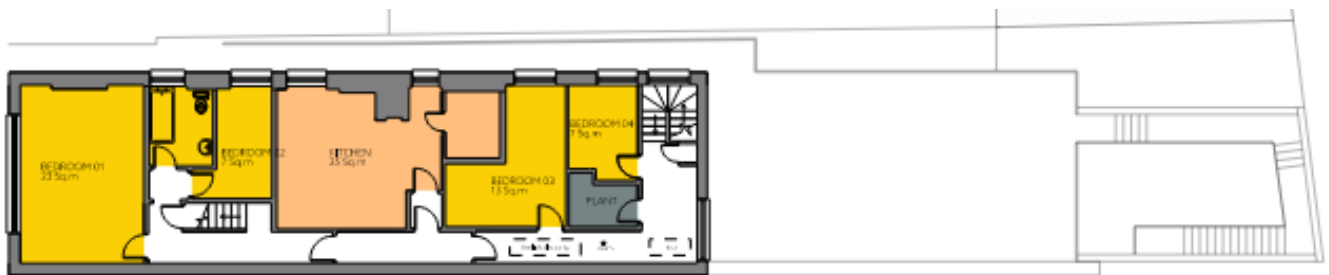
Existing basement plan (above)



Existing ground floor plan (above)



Existing first floor plan (above)

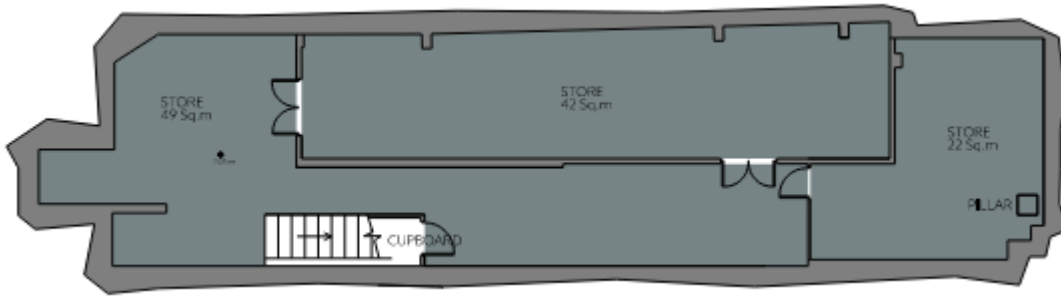


Existing second floor plan (above)

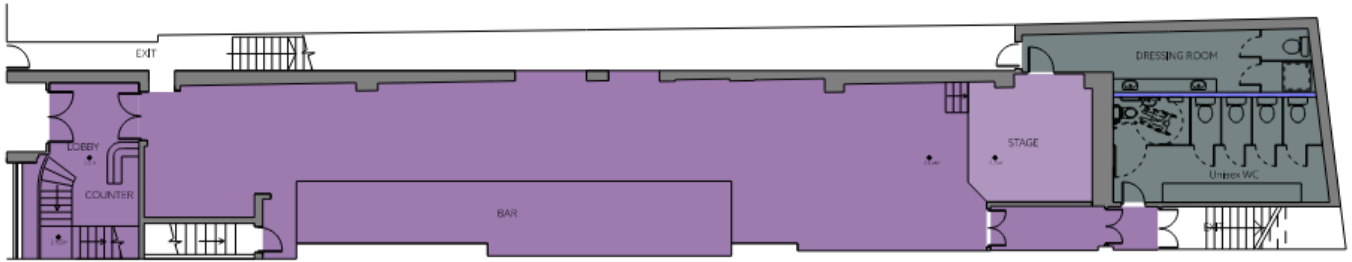


Existing third floor plan (above)

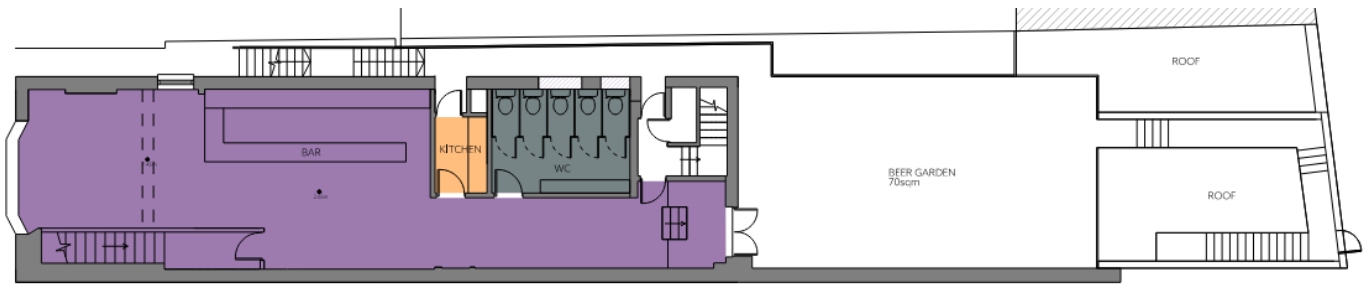
Proposed Drawings



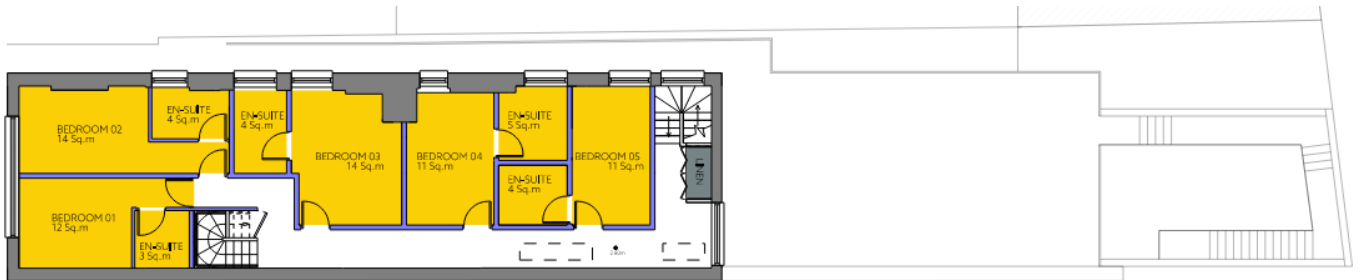
Proposed basement plan (above)



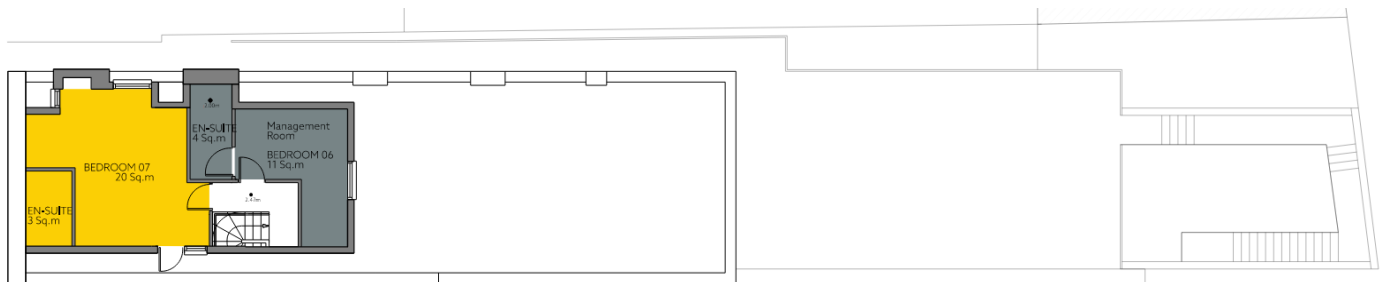
Proposed ground floor plan (above)



Proposed first floor plan (above)



Proposed second floor plan (above)



Proposed third floor plan (above)

LDC (Proposed) Report		Application number	2023/5228/P			
Officer		Expiry date				
David Peres Da Costa		04/03/2024				
Application Address			Authorised Officer Signature			
171 Camden High Street London NW1 7JY						
Conservation Area			Article 4			
Camden Town Conservation Area			n/a			
Proposal						
Proposed mixed use of the premises as a cabaret/dance venue, club, bar/community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community use with toilets at the rear and use of the first floor as a bar and community space (including kitchen and toilets) and use of the first floor external terrace as a drinking/smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as five rooms of accommodation with bathrooms and the third floor as one management room (office and accommodation) and one room of accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar/community space and public house (Sui Generis).						
Recommendation:		Grant lawful development certificate				
Application Type:		Certificate of Lawful Development for a Proposed Use				
Consultations						
Adjoining Occupiers:		No. notified	00	No. of responses	78	No. of objections No. of support
						29 49
Summary of consultation responses:		<p>While there is no statutory requirement to consult on certificates of lawfulness, given the significant community interest in this site, the application was publicised by site notice and newspaper advertisement.</p> <p>A site notice was displayed from 10/01/24 to 03/02/24 and the application was advertised in the local paper on 18/01/24 (expiring 11/02/24).</p> <p>Objections were received from the occupiers of 100-102, 133, 134, 142 (5), 156 (7), 160 (2) and 166 Arlington Road, 159-165 (3) and 159-161 (6) Camden High Street, 23 Parkway and The Broadway N8. Their concerns, which generally related to amenity and transport impacts, are set out below.</p> <p>Support was received from those living in Camden Town, but most of those who responded were located in the wider London area or further afield (reflecting the wider catchment of the pre-existing use).</p>				

In total 49 messages of support were received by occupiers of the following addresses: Grove End Road NW8, Darlaston Road SW19, Fenner Close SE16, Hilldrop Crescent N7, Mornington Crescent, Milton Keynes, Park Village East, West End Lane NW6, Beresford Road N2, Holmes Road NW5, Doughty Street WC1N, Copper Grove N16, Hope Wharf SE16, Cavendish Road NW6, Worlds End NW10, Plender St, Whitton TW2, Eton College Rd NW3, Cressington Close N16, Redhill St, Grafton Road NW5, USA, Farnham, Andover Road N7 (2), Royal College St, Blakeney Close, Eastbourne BN22, Foundling Court WC1N, Polesteeple Hill TN16, Brighton, Arlington Road, Credenhill St SW16, School Road TW12, Romsey SO51, Chalcot Square, Bourne Avenue N15, Gosterwood St SE8, Omega Works E3, County Durham DH8, Crouch Hill N8, Cressington Close N16, Healey Street, Albert Terrace, Erith DA8, Endell St WC2H, Offord Rd N1, 8-10 Arlington Road and Fellows Rd NW3.

The letters of support welcomed the reopening of the Black Cap. Where planning concerns were raised these are set out below.

LAND USE

- Change of use of accommodation ostensibly for visiting musicians and staff, but which will inevitable just be used as Airbnb type short stay accommodation for tourists.
- Concern about potential mission creep of the accommodation. If this can be protected as a space for visiting performers etc that would be best.
- Accommodation on upper floors may be a foot in the door re flats on the top floors of the building in the future.
- Information should be provided on subsidised accommodation rates for staff as this should be affordable for staff
- No issue in renting them out to the public providing staff and entertainers are given priority at all times.
- Late night venue security in regards guest accommodation
- Not shown on the plans entry and exit to the rented accommodation to ensure safety and security for a SAFE space which The Cap always was.
- No mission statement was forthcoming from Kicking Horse 3 in regards their intent for the future of The Black Cap, which is concerning.
- The ("CLOPUD") claims that the property has not been occupied, however this is incorrect. During the lockdowns starting March 2020, there were 'guardians' frequently 3 or more people residing in the property as they would access the roof area on a regular basis - with advertising of rooms on spareroom website.
- Conditions should be explored regarding the use of accommodation on the upper floors. Every effort should be made to ensure that there is no possibility of them being used for anything other than very short lets or for staff or visiting performers. It would be very undesirable if, after all the effort put in to prevent residential flats becoming part of the building that should transpire.
- Would there still be day time meal options, or not? What are

the expected effects of the smaller kitchen?'

- Decent-sized staff accommodation (for the manager at the very least) must be retained. Any planning permission should tie any guest rooms to the venue's primary role as an LGBT+ live club and bar.

Officer's response:

Given the physical and functional connections between the proposed short stay accommodation and the established lawful use (as set out in the applicant's submission and subsequent clarifications), it is considered that the proposed short stay accommodation would be ancillary to the existing use. In addition, a legal agreement would ensure that the ancillary accommodation would only be used by performers or by paying customers as bed and breakfast accommodation in accordance with the various commitments made by the applicant. This would ensure that any planning impacts are within the scope of the existing lawful use and so would not constitute a material change of use.

Only one room of accommodation would be used as staff accommodation: the managers room on the third floor. The submission states that the costs of the room would form part of their overall salary package. The affordability of the room is a matter for the business and provided that the room is only occupied by employees as ancillary accommodation this would not contravene the lawful use. The size of the managers room is considered to be sufficient for this ancillary use.

One of these rooms would be prioritised for those booked to perform at the venue. The other rooms would be available to paying customers, but if not already booked, would also be offered to performers at a discount. These commitments would be secured by legal agreement.

Entry and exit for guests would be primarily through the premises as this ensures the use as bed and breakfast remains ancillary to the primary uses.

Planning permission was granted on appeal in 2020 for a temporary change of use of the building to a House in Multiple Occupation to allow for the occupation by guardians.

The proposed removal of the kitchen from the second floor and the creation of a small galley kitchen at first floor is considered to be an internal change to an ancillary use which does not materially change the nature of the primary uses.

AMENITY

- Our flat overlooks the proposed first floor outdoor terrace (as do many other residential flats on Parkway and Arlington Road). I am supportive of the Black Cap re-opening. However, the use of this outdoor area as a "drinking/smoking area" would directly impact >50 flats through noise pollution, air quality (due to smoking) and visual intrusion (the area has views into flats, some of which were not there when the venue was last licensed in 2015). Please can the application confirm that the outdoor area will not be used in the evenings or night

time.

- Another late night license in the area. Camden is bursting at the seams.
- Excessive late night noise and disturbance from rear exterior patio/beer garden impacting surrounding residents. Will regulated closure times of 23.00 be enforced.
- The Black Cap will almost certainly add to concerns that Underhill Passage is already used as the local urinal.
- During the short period between us moving at this address and the Black Cap closing down, we experienced serious nuisances that should be addressed. Noise from terrace. Access hours to the terrace should be enforced. Noise emanating from poor isolation of the sound system, until closing time. Proper sound dumping and isolation must be implemented. The sound leakage was amplified by the fact that the emergency door (to the M&S car park) was being left open most of the time (for ventilation? / smokers?).
- Since the Black Cap closure in 2015 there has been significant residential development in very close proximity to the property. The occupancy of the Black Cap in any sui generis capacity will have significant detrimental impact to not only our health, wellbeing but the property as well.
- We have experienced extreme noise levels first hand in our home when there were only several occupants on the terrace and internally in the past few years which stopped all our ability to sleep and therefore work.
- The vibration emanating from this property from music internally and externally will impact all flats in the area.
- A late night venue would pose a security threat and overlooking issue due to the proximity of the terrace to residential properties.
- Concerns over first floor kitchenette with odour pollution from the kitchen extract to the residential building adjacent.
- There should be condition/s on the use of the outdoor terrace to protect nearby residents.
- There should be a plan for the management of anti-social behaviour and potential associated crime in the immediate area directly related to the operation of the venue.
- Sound proofing re cabaret bar and 1st floor bar re residential accommodation to the left of the building and to the rear of the building and also to the rented rooms upstairs.
- Steps have to be taken to control opening hours, to install acoustics, prevent the exit door to open into M&S carpark where music could blare uncontrollably. Public toilet facilities outside must be provided near the venue to discourage anti-social behaviour.
- Sound from the terrace would travel straight into our apartments and so we ask for terrace soundproofing (higher back wall?) and terrace curfew of 11pm.
- We request the management commission appropriate soundproofing from professionals.
- There should be Street toilet facilities and security patrol of Underhill Passage

- The use of the premises should be limited to interior areas with adequate soundproofing to minimise the negative impact on local residents.
- I'm very concerned that the new venue will exacerbate the issues, it's often impossible to sleep with the current noise issues.
- I strongly disagree with allowing the Black Cap to open again unless there are huge mitigations so that the noise does not disturb this residential area and our right to peace and quiet through the night.
- There are numerous other cabaret venues in Camden including All About Eve that operate without nuisance up until midnight.
- The popular outdoor beer garden was never overly noisy and should be allowed to be open in the evenings.
- The retention and use of the roof terrace at the rear of the premises is vital to the success of the space both economically and for safety reasons. Some commentators have suggested that customers who wish to spend some time outside should be accommodated on the High Street outside the venue. This would completely negate the concept of an entirely safe space. There are sadly still elements of society who think it is acceptable to harass people simply for attending a venue such as The Black Cap so every measure to prevent anybody from feeling exposed to potential risk should be pursued. I understand that residents in close proximity to the space have concerns about noise and I would suggest that the new operators actively seek engagement with them so that a satisfactory and reasonable arrangement can be agreed that is as acceptable as possible to both parties.
- I'm finding many of the comments posted so intimidating, eg the assumption of antisocial behaviour. Since The Black Cap has not yet re-opened, do the complaints of ASB have any fair evidence basis.

Officer's response:

This application seeks formal confirmation that the proposed internal alterations and the use of 6 rooms of accommodation as short stay accommodation by paying customers or performers is lawful (and so does not require planning permission). As such, the determination of such an application is a matter of fact and degree and the assessment can only consider the impact from the use of 6 rooms of accommodation as short stay accommodation, and whether any such impact is within the scope of the existing lawful use. The existing use of the property as a cabaret/dance venue, club, bar/community space and as a public house including the use of the first floor external terrace as a drinking/smoking area is lawful because it has existed for a period of 10 or more years (see planning history and application references 2018/4031/P & 2019/2271/P). The site has been mostly unoccupied since the previous occupier ceased trading in April 2015. While there has been an interruption in the use, this falls short of abandonment of the use and does not prevent the lawful use still

being regarded as a cabaret/dance venue, club, bar/community space and as a public house (Sui Generis). As such the previous dormant use can be resumed without planning permission being obtained. The relocation of the kitchen is an internal alteration and does not involve any alteration or insertion of extract flues. As such, it does not require planning permission and is considered lawful. The above comments have been passed on to the applicant to ensure they are aware of the concerns raised.

TRANSPORT

- Use of parking on the north section of Arlington Road, excessive movement of people through Underhill Street and Underhill Passage to access the Black Cap. The northern portion of Arlington Road closest to Parkway is currently free parking and not requiring a residential permit after 18.30 M-F, and 17.30 on Saturday. This is used almost exclusively by late night patrons attending various venues in the area. Cars regularly park illegally on double yellow areas and there is no monitoring or ticketing to be seen.
- Concerns over request for change of use to M&S carpark to accommodate Black Cap patrons. We have only just got the drug dealing and usage issues under control. It seems obvious that the Black Cap will request the car park to stay open to accommodate its patrons. This would be an absolute disaster for noise, drug dealing, and anti-social behaviour.
- Bars and cabaret spaces often attract large crowds, and the potential for increased foot traffic and vehicular activity in the area raises valid safety concerns, given how busy this area already is.

Officer's response:

The determination of this application is a matter of fact and degree, and the assessment can only consider the impact from the use of 6 rooms of accommodation as short stay accommodation, and whether any such impact is within the scope of the existing lawful use. The short-term accommodation would be easily accessible by public transport and, given the small number of potential guests, would be unlikely to have a significant impact on local traffic conditions.

OTHER

- As a former barman there, I can assure you that just 4 downstairs unisex toilets will not be enough capacity. The original separate WCs were more useful.
- Need to ensure a decent sized Disabled toilet for people like myself in wheelchairs with sufficient room to turn our chairs around in.

Officer's Response:

The suitability of the toilet arrangements is not a relevant consideration for this application which only seeks formal confirmation that the proposed internal alterations and the use of 6 rooms of accommodation as short stay accommodation by paying customers or performers is lawful (and so does not require planning permission).

	<p><i>Nevertheless, the concerns raised have been passed on to the applicant.</i></p>
<p>Local group</p>	<p>Tenants Residents Associations Camden Town (TRACT)</p> <p>TRACT are generally supportive of the reopening of the Black Cap but there must be some clear conditions. The rear 'beer garden' will cause significant disturbance to residential amenity and should therefore not be allowed to be used by customers or staff late in the evenings.</p> <p>If a smoking area is required it should be agreed to be at the front and controlled by staff.</p> <p>We hope you will consider conditions regarding the external areas and noise and vibration nuisance from the premises when reviewing this application.</p> <p>A further response was submitted by TRACT 22/1/24</p> <p>The external terrace has historically caused disturbance to residential premises on Parkway and Arlington Road. Since its closure there has been an increase in residential premises in the block. If the first floor external terrace is to be utilised it must close by 22:00hrs and not be used as a smoking area beyond this time.</p> <p>It would be entirely unfair to impact the amenity of residents late at night with this terrace.</p> <p>The capacity of the terrace should be capped at 20 and there should be no music or speakers at anytime in the external area.</p> <p>Staff should check regularly to ensure noise from customers is kept to a reasonable level. An acoustic survey of baseline noise levels at sensitive premises would be sensible.</p> <p><u>Officer's Response:</u></p> <p><i>This application seeks formal confirmation that the proposed internal alterations and the use of 6 rooms of accommodation as short stay accommodation by paying customers or performers is lawful (and so does not require planning permission). As such, the determination of such an application is a matter of fact and degree and the assessment can only consider the impact from the use of 6 rooms of accommodation as short stay accommodation, and whether any such impact is within the scope of the existing lawful use.</i></p>

Black Cap Community – letter of support (edited summary of letter set out below)

We warmly welcome the decision of the owners, Kicking Horse 3 (KH3), to bring forward plans to re-open the Black Cap and their collaborative approach in working with us and other community groups. We broadly support the plans they have outlined in this application and we look forward to working with them further to refine and develop their plans so that the Black Cap can re-open in a sustainable way that will be true to its spirit and history and will best serve all our LGBTQ+ and Camden communities.

In our view their proposals are consistent with the Black Cap's existing *sui generis* use as certified by the Council on 3 July 2019. In many important ways the proposals keep the Black Cap just as it was before it closed: the cabaret stage, the long ground floor bar, the cosy first floor bar and the roof terrace, all well-loved features of the Cap, will be unchanged.

There are some points where we would welcome further detail and discussion as set out below and we look forward to continuing to work with KH3, Camden Council, the Greater London Authority, and members and supporters of our campaign to explore and resolve these points.

Local group

Second and third floor accommodation

Any proposal to use the second and third floors of the Black Cap for accommodation needs careful scrutiny and we know a number of campaign supporters are concerned about this.

James Strachan KC in his opinion submitted by KH3 says that the accommodation would only be offered to the general public '*when not in use by performers and/or staff*'. in principle it is a sensible and acceptable extension of the Black Cap business, so long as it can be done without departing from the *sui generis* use or paving the way for full-blown residential redevelopment. Our conversations with KH3 and their proposed operator have given us reassurance about this and we believe the operator would not want the upper floors to become dominated by paying guests who have little or no connection to the Black Cap.

We feel it will be important to make it very clear to paying guests, both for their own sake and for the comfort and safety of customers, staff, and performers, that the building they are staying in is emphatically an LGBTQ+ environment and a working nightlife venue and that they, like anyone who comes to the Cap, are here on those terms.

We would like to hear more from KH3 about how, in practice, they propose to make sure that performers (and staff) always get priority for use of the accommodation and don't find that they can't stay at the Cap because rooms are occupied by bed-and-breakfast guests.

Facilities

We very much welcome the proposal to enlarge the performers' dressing room and provide it with a dedicated toilet and shower. This is certainly consistent with the Black Cap's central role as one of London's leading cabaret venues and will help encourage artists to want to perform at the Cap. 13. The option of having a substantial meal at the Cap is a feature that sets it apart from many London LGBTQ+ venues and was always valued by many customers and performers. In our 2022 survey we found that about half of potential customers wanted to see substantial meals available. In this context we would be interested to hear more about KH3's plans for food at the Cap in light of the reduced size of the proposed kitchen.

Accessibility

Wheelchair-users can be cabaret performers too, and we would like to discuss with KH3 how the stage and dressing room can be made accessible as well.

One of the most obvious physical barriers to access is the fact that the basement and first, second, and third floors can only be reached by stairs. This means that customers who use wheelchairs can't use the first floor bar or roof terrace, that performers who use wheelchairs can't benefit from the performers' accommodation, and very much limits the possibilities for wheelchair-users to work as staff at the Cap. We appreciate that installing a lift is a costly and disruptive undertaking but if it can't be done for re-opening we would like to help KH3 develop a plan to work towards doing so in due course.

We have raised the wider issue with KH3 and look forward to working with them to try to make the Black Cap as accessible as possible for neurodiverse, disabled, and deaf customers, staff, and performers.

Community uses

We're very pleased that the plans submitted by KH3 don't seem to involve any alterations that would make such community uses more difficult. The application materials make clear that no change to the community uses as set out in the 2019 decision is intended, which we welcome.

Conclusion

This application is a great step forward and we warmly welcome and applaud many aspects of it, especially KH3's commitment to keeping as close as possible to the history and spirit of the Black Cap with appropriate improvements for the 2020s and beyond, their efforts to stay true to the *sui generis* use of the building, and the proposed modest changes that will support staff and performers. In our view the proposals are consistent with the existing use of the building, especially if the points made above are taken into consideration as

	<p>plans move ahead. We look forward to working further with KH3, Camden Council, and other organizations and the wider community to make the re-opened Black Cap the best LGBTQ+ pub, club, cabaret, and community space that it can be.</p> <p><u>Officer's Response:</u></p> <p><i>While it is considered that the proposed short stay accommodation would be ancillary to the existing use, a legal agreement would ensure that the ancillary accommodation would only be used by performers or by paying customers as bed and breakfast accommodation in accordance with the various commitments made by the applicant which include prioritising one of the rooms of short term accommodation for performers (at a discount). The other rooms would be available to paying customers, but if not already booked, would also be offered to performers at a discount. The third floor bedroom would be used as a management room and would be used both as an office for the management of the premises and as sleeping accommodation for the manager. The concerns regarding the reduced size of the kitchen and accessibility issues are noted.</i></p>
<p>Local group</p>	<p>Campaign for Real Ale (CAMRA) North London branch - Support</p> <p>I am writing, as the Pub Protection Officer for Campaign for Real Ale (CAMRA) North London branch to support the application for the Certificate of Lawfulness to reopen The Black Cap in Camden. This iconic LGBTQ+ pub, music and cabaret venue closed after 40 years in 2015 and has not reopened since. We support the campaigners, We are The Black Cap, behind the campaign to reopen the pub and the plans they have put forward to reopen The Black Cap, including a community space for LGBTQ+ people. The beer garden and first floor roof terrace are part of the assets of the pub and should be protected. The residents living in new developments nearby, should be mindful of the 'Agent of Change' policy, which protects live music venues from noise complaints. There aren't many pubs on Camden High Street with outdoor space, so this will be an important asset for the pub, which will generate additional revenue. The pub and venue has an active ACV, which is a material planning consideration. We would request that the council grant the Certificate of Lawfulness, so the Black Cap can reopen.</p> <p><u>Officers Response:</u></p> <p><i>Support noted.</i></p>
<p>Local group</p>	<p>Forum+ - Statement in Support</p> <p>forum+ is an independent charity working to promote equality for LGBT people in Camden and Islington.</p> <p>forum+ fully support the planning application to re-open The Black Cap. forum+ (previously as Camden LGBT Forum) is proud to have secured two ACV designations for the venue, in recognition of the special place this iconic venue holds in Camden culture and heritage.</p>

The proposals by the owners Kicking Horse 3 (KH3) would bring the site back into positive use and provide huge benefit to the LGBT+ and wider community in Camden.

History and Future of The Black Cap

The history of The Black Cap is well documented. Dubbed 'the Palladium of Drag', the Black Cap had been an LGBT community and cabaret space for more than 60 years. Prior to closure LGBT+ individuals and community groups used the venue to create support networks. The Black Cap has been missed terribly since its closure and a great many people have given such generous donation of time and effort towards its reopening. This is testament to the special place the iconic venue holds in Camden culture and heritage.

Our small independent charity forum+ (formerly Camden LGBT Forum) utilised The Black Cap on many occasions. We work to reduce social isolation and loneliness in our local LGBT community and The Black Cap was always a warm, welcoming and safe space for our social support and community groups. Outreach session that we conducted at The Black Cap allowed us to reach local LGBT people and raise awareness of the support services that we provide LGBT+ victims of hate crime and work to improve community safety. forum+ would most certainly seek to host community outreach, activities and events at a reopened Black Cap.

Conclusion

The Black Cap has a very special history and we believe the plans proposed secure a bright future for the venue. The planning application carefully takes into consideration local residents living most immediately near the building. The plans update, modernise and enhance the whole building, while retaining most of the original layout and features of the venue before closure. The application honours the ACV designation and the venues existing sui generis use as certified by Camden Council in 2019.

The owners Kicking Horse 3 and project team working to reopen the venue have taken a very collaborative and transparent approach to their plans. Their planning application and proposals reflect their experience, expertise and depth of knowledge in eventing, hospitality and most crucially in successfully running LGBT venues. They have reached out to the LGBT community through key stakeholders, such as forum+, and we believe they are the very best people placed to own and professionally operate The Black Cap. We wish success for their planning application which would bring The Black Cap building back into positive use and provide huge benefit to the LGBT and wider community in Camden.

Officers Response:

Support noted.

GLA Culture at Risk (Amy Lane – Night Czar) – Support

I am writing in support of the application for a Certificate of Lawfulness for The Black Cap. The Certificate of Lawfulness application is an important step in reopening this iconic LGBTQ+ venue.

London's LGBTQ+ spaces are a vital resource for the community. They are the heart of London's open, welcoming and inclusive culture, offering safe havens where people are free to express themselves without fear. After losing 62% of venues in a decade, the Mayor committed to supporting these spaces by launching his LGBTQ+ Venues Charter, to protect existing infrastructure, and encourage the opening of new venues.

The pandemic had a severe impact on our LGBTQ+ venues, with a rollercoaster of restrictions bringing many of these venues to the edge of bankruptcy. It's vital that we do all we can to help them get back on their feet and open new spaces that thrive.

The Black Cap is one of Camden's oldest pubs, having been a landmark for over 250 years, and a LGBTQ+ hub since the 1960s. Since its closure in 2015, there have been campaigns to save and reopen the venue, given both its historical value, and its cultural and social importance to the LGBTQ+ community.

GLA Culture at Risk

I am pleased that the campaign to reopen The Black Cap has led to the owners of the building submitting an application for a Certificate of Lawfulness in preparation for a future reopening. Having worked together to reach this milestone, I would encourage Camden Council to approve the application, subject to conditions that ensure the long-term viability and usability of the night-time venue part of the building.

The applicant is proposing to include bed and breakfast accommodation on the upper floors. The use of the upper floors is understood to be ancillary to the entertainment venue and primarily aimed at those working in or using the venue. I would request that appropriate conditions and planning contributions are secured to retain this connection between uses as visitor accommodation aimed at a broader audience may be challenging to accommodate alongside a late-night venue.

This letter is a representation from the Mayor of London's 24-hour London team and it should not be considered GLA planning advice or GLA planning observations.

Officer's Response:

While it is considered that the proposed short stay accommodation would be ancillary to the existing use, a legal agreement would ensure that the ancillary accommodation would only be used by performers or by paying customers as bed and breakfast accommodation in accordance with the various commitments made by the applicant.

1. Site description

- 1.1. The application site is located on the west side of Camden High Street.
- 1.2. The application relates to a 4 storey building plus basement known as 'The Black Cap'. The building is oblong in its configuration, with the ground floor level extending the full length of the site. The building has been unoccupied since the previous use ceased in April 2015. Site visits to the property have been undertaken on the 4th April 2016 and 31st May 2017. The ground floor is laid out with an entrance lobby at the front (providing access to the first floor) separated from the bar, stage and dressing room in the main part of the ground floor with toilets at the rear. There are stairs from the rear of the ground floor leading to fire escape doors at the rear of the site. A staircase connects the ground floor bar area with the basement. The first floor is laid out with a bar and toilets and includes a covered roof terrace with a fire escape staircase leading to doors in the rear boundary wall of the site. The second floor has a kitchen (connected by a dumb waiter to the first floor), a bathroom and a number of other rooms. There are 2 further rooms on the third floor.
- 1.3. The building is not listed and is located in the Camden Town Conservation Area. The site is listed as an Asset of Community Value, nominated 10th February 2015.

2. Planning History

- 2.1. **8903652**: The change of use of part of the first floor from ancillary residential and office use to restaurant together with the erection of a single storey ground floor extension to provide additional toilet accommodation for the existing public house. Granted 22/03/1990
- 2.2. **9500223**: Formation of a roof garden ancillary to the Class A3 use of the remainder of the building and associated works. Granted 26/05/1995
- 2.3. **9501984**: Proposed new entrance doors to front elevation, fire escape from first floor roof garden to rear fire exit and installation of air conditioning plant to flat roof of rear ground floor toilets. Granted 29/03/1996
- 2.4. **PE9700816**: Installation of hard awning over existing roof garden at rear first floor level and erection of planter. Granted 08/12/1997
- 2.5. **PE9900364**: The installation of a glazed canopy over the existing roof terrace at rear first floor level. Granted 26/07/1999
- 2.6. **2012/1444/P**: Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 16/05/2012 Appeal dismissed 04/03/2013
- 2.7. **2013/0262/P**: Change of use of part first floor, second and third floors from bar/restaurant and ancillary accommodation to residential to provide 2 x 1 bedroom flats and 1x 2 bedroom maisonette with rear roof terraces at first and

third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 20/03/2013

- 2.8. **2014/2176/P:** Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 03/03/2015
- 2.9. **2018/4031/P: Lawful development certificate** granted for “A mixed use of the premises as a cabaret/dance venue, club, bar/ community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community uses with toilets at the rear and use of the first floor as a bar and community space (including toilets) and use of the first floor external terrace as a drinking / smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as kitchen, two offices, and two rooms of staff accommodation plus bathroom and the third floor as two rooms of staff accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar / community space and public house (Sui Generis)”. Granted 03/07/2019. The certificate was granted with a modified description based on the available evidence.
- 2.10. **2019/2271/P: Lawful development certificate** granted for “A mixed use of the premises as a cabaret/dance venue, club, bar/ community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community uses with toilets at the rear and use of the first floor as a bar and community space (including toilets) and use of the first floor external terrace as a drinking / smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as kitchen, two offices, and two rooms of staff accommodation plus bathroom and the third floor as two rooms of staff accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar / community space and public house (Sui Generis)”. Granted 13/05/2020. The certificate was granted with a modified description based on the available evidence. The decision to do so was appealed, but the appeal was later withdrawn so the certificate remains as granted.
- 2.11. **2021/5075/P:** Variation of condition 1 (time limit for temporary use) of planning permission granted on appeal (ref: APP/X5210/C/19/3240682) dated 27/08/2020 (for change of use of the building from use as a cabaret/dance venue, club, bar/community space and use as a public house (sui generis) to a House in Multiple Occupation (HMO)), namely to allow the temporary period to be extended from 12 months to 24 months. Granted 18/01/2022
- 2.12. **2022/3613/P:** Variation of condition 1 of appeal APP/X5210/C/19/3240682 allowed 27/08/2020, itself varied by 2021/5075/P which under condition 1 allowed the change of use to an HMO for a period of 24 months from the date that the appeal was allowed, i.e. 27/08/2020. This application proposes the use as an HMO for a period of 36 months from the date that the appeal was allowed, i.e. until 27/08/2023. This application is pending determination.

2.13. Enforcement history

2.14. EN18/0283: Enforcement notice issued 26 September 2019 alleging the following breach of planning control: The material change of use of the building as a cabaret/dance venue, club, bar/community space and use as a public house (sui generis) to House in Multiple Occupation (HMO). Appeal allowed and the enforcement notice was quashed (APP/X5210/C/19/3240682) and planning permission was granted for the development already carried out, namely, the material change of use of the building from use as a cabaret/dance venue, club, bar/community space and use as a public house (sui generis) to a House in Multiple Occupation (HMO), subject to the following condition:

1) The use hereby permitted shall be for a limited period being the period of 12 months from the date of this decision. The use hereby permitted shall thereafter be discontinued and the building restored to its former condition on or before 19 March 2018 in accordance with a scheme of works that shall firstly have been submitted to and approved in writing by the local planning authority.

3. Lawful development certificate application

3.1. Section 192 of the Town and Country Planning Act 1990 provides for an application to determine whether any proposed use or operations would be lawful for planning purposes. This application seeks to determine if the following operations and use would be lawful:

3.2. At ground floor, the dressing room and toilets at the rear would be reconfigured to allow for the provision of a disabled WC.

3.3. At first floor level the existing toilets and plant room would be reconfigured to allow for the creation of a small galley kitchen.

3.4. The second floor which currently provides a kitchen and 4 bedrooms would be reconfigured as five bedrooms with en suite bathrooms.

3.5. The two bedrooms on the third floor would be reconfigured so that they both have en suite bathrooms. The reconfigured rear third floor bedroom would be used as a management room and would be used both as an office for the management of the premises and as sleeping accommodation for the manager.

3.6. The other room of accommodation on the third floor and the five rooms of accommodation on the second floor would be used as bed and breakfast (B&B) type accommodation i.e. short term visitor accommodation for paying customers. One of these rooms would be prioritised for those booked to perform at the venue and would be let at a discount.

4. Background

4.1. An application for a certificate of lawful development for an existing use or development (CLEUD) for the application site was determined 3rd July 2019 (planning ref: 2018/4031/P). Prior to the determination of this application, a further CLEUD application was submitted with additional evidence (planning ref: 2019/2271/P). The Council's assessment of the lawful use for both applications is set out below.

4.2. "A mixed use of the premises as a cabaret/dance venue, club, bar/ community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community uses with toilets at the rear and use of the first floor as a bar and community space (including toilets) and use of the first floor external terrace as a drinking / smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as kitchen, two offices, and two rooms of staff accommodation plus bathroom and the third floor as two rooms of staff accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar / community space and public house (Sui Generis)."

4.3. The current application seeks a certificate for a proposed use with largely the same description but with some amendments as set out below (additional words are underlined and deleted words are struck through):

Proposed A mixed use of the premises as a cabaret/dance venue, club, bar/community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community use with toilets at the rear and use of the first floor as a bar and community space (including kitchen and toilets) and use of the first floor external terrace as a drinking/smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as ~~kitchen, two offices, and two~~ five rooms of ~~staff accommodation plus~~ with bathrooms and the third floor as ~~two~~ one management rooms of staff (office and accommodation) and one room of accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar/community space and public house (Sui Generis).

4.4. The changes sought to the description of the lawful use are explained in the preceding section (paragraphs 3.2 to 3.6).

5. Assessment

5.1. Section 55(2) of the Town and Country Planning Act set out that the improvement or alteration of any building which affects only the interior of the building or does not materially affect the external appearance of the building is not development. The proposed works comprise the refurbishment of the existing building with some internal reconfiguration and no works are proposed to the exterior of the building, nor the basement level or external areas to the rear.

5.2. The submission includes proposed plans and seeks confirmation that the proposed internal works are lawful and that the reconfigured rooms of accommodation on the second and third floor which are proposed to be used as predominantly short term accommodation for paying customers can be considered as lawfully ancillary to the existing use of the premises as a cabaret/dance venue, club, bar/community space and public house (Sui Generis).

5.3. The proposed reconfiguration to provide rooms of accommodation involves the loss of the large kitchen and two offices on the second floor. These existing uses are ancillary to the primary uses. It is noted that historically there was a large kitchen on the first floor which was connected by a hoist to the ground floor servery. Later, this kitchen provided food to the first floor restaurant approved in 1990 (ref: 8903652). In 1995, the large first floor kitchen was replaced by new toilets and the kitchen was relocated to a smaller preparation area adjacent to the

first floor bar counter. The proposed plans submitted for a 1999 application for a glazed canopy to the roof terrace (ref: PE9900364) show the removal of the food preparation area at first floor and a larger kitchen at second floor level with a hoist to the first floor servery. The planning history shows that the location of the kitchen and its size has changed over time and planning permission was not required for these changes as they were internal and did not materially change the use of the property. Likewise, the proposed removal of the kitchen from the second floor and the creation of a small galley kitchen at first floor is considered to be an internal change to an ancillary use which does not materially change the nature of the primary uses.

- 5.4. The floorspace of the ground floor cabaret/dance venue and first floor pub is approximately 346sqm (GIA). The floorspace of the basement (which would continue to be used as ancillary space for storage for beer and stock) is approximately 120sqm (GIA). The floorspace of the 5 rooms of accommodation (comprising bedrooms with en suite bathrooms) at second and third floors would be approximately 105sqm. The floorspace of the management bedroom and office would be 15sqm. The proposed use of the rooms of accommodation as short term bed and breakfast accommodation would result in approximately 18% of the total floorspace at the property being in this use.
- 5.5. While the floorspace to be used as short term B&B accommodation is subservient to the primary uses, size is not determinative as to whether a use is ancillary to another. This judgement is one of fact and degree. It depends on whether the use is "mainly connected" with the operation of the primary use and not on the proportion or size of that use taking place within the planning unit. A use which is unrelated to another use in the planning unit is not ancillary or incidental to that use. It would therefore be erroneous to treat a use as ancillary to a primary use merely because that use is relatively small (*Main v Secretary of State for the Environment* (1999) 77 P. & C.R. 300).
- 5.6. The primary uses of land often embrace one or more ancillary activities. The concept of ancillary uses not being development is court led but remains an accepted fundamental of development management practice.
- 5.7. Any test for whether a use is ancillary to another, or not, is a matter of fact and degree and each case has to be determined on its particular merits. However, in practice two principal criteria have emerged. First, a severability test, and second, an environmental impact test. Applying the first test, one would ask whether the alleged ancillary use could practically and viably operate on its own were the primary use of the premises to cease. If it could, then the use is very unlikely to be ancillary as there is clearly no linkage or dependency. The second test would look to any outward effects of the use, in terms of the appearance of the premises, the amenity of the surrounding area or neighbourhood traffic conditions. If it could be shown that there would be a significantly greater impact following from the introduction of the alleged ancillary activity than one could reasonably expect from the existing use, then it is unlikely that the use could be so described.
- 5.8. The established mixed use of the application site includes a public house at first floor level. It is noted that it is not usual or extraordinary for a public house to provide accommodation. Indeed, an inn can be defined as a pub providing food and accommodation.

5.9. Severability

- 5.10. The floor plans show that the six rooms of accommodation located at second and third floor level would not be physically separated from the remainder of the property. The submissions state that the accommodation would be accessed internally via the main entrance. That is to say customers staying in the rooms of accommodation would enter via the ground floor front lobby, take the stairs to the first floor bar, and would then need to pass through the bar to the rear of the first floor to access the stairs to the second and third floor. The applicant has also confirmed that guests would need to check-in via a facility located in the ground floor lobby. It is also noted that the proposed managers bedroom and office is on the third floor. This reinforces the lack of physical separation between the short-term accommodation use and the use of the remainder of the property.
- 5.11. However, it is also noted that there is an existing separate side access which could be used by customers staying in the rooms of accommodation. In this case, customers could enter the property from Camden High Street via an existing gate which leads to an external fire escape stair providing access to a first floor lobby. This lobby provides separation from the first floor bar, so customers would not need to enter the bar to access the stairs to the second and third floor. Given the separate side access, which is physically separate from the primary uses, the proposed rooms of accommodation could be operated independently without reliance on the continued operation of the primary uses of the property. If the rooms of accommodation were solely accessed from the separate side access, this would raise concerns that their use as short term accommodation was no longer ancillary to the primary uses of the application site and that a material change of use had occurred.
- 5.12. The submission states that there was a reasonable prospect of B&B customers (staying in the rooms of accommodation) also being “patrons of the bar (on the ground floor) and/or the pub (on the first floor)”. It is considered that access via the main entrance and ground floor lobby would increase the likelihood of such customers patronising the ground floor cabaret/dance venue and the first floor pub.
- 5.13. The submission states that the rooms of accommodation on the second and third floor would be made available for use by those booked to perform at the property on a subsidised paying basis. Since the application was submitted, the applicant has clarified that one of the rooms of accommodation would be prioritised for performers. The ‘performer’s room’ would be offered to a performer for the nights they were booked to perform. The other rooms would be available to paying customers, but if not already booked, would also be offered to performers at a discount. It is envisaged that performers would be booked 3 months before the date when they are scheduled to perform. The applicant has advised that if more of the rooms were prioritised for performers, this would restrict the ability of the venue to take some advance bookings i.e. those made more than 3 months in advance.
- 5.14. The use of the reconfigured accommodation as performers accommodation establishes a functional link with the primary uses. As such, the rooms of accommodation would have an ancillary function similar to the existing rooms of staff accommodation.

5.15. The submission states that the rooms of accommodation on the second and third floors would be made available for use by staff on a paying basis (including as part of their overall salary package). Since the application was submitted, the applicant has clarified that the room of accommodation to be used by staff is as shown on the proposed third floor plan which is annotated 'management room' and 'bedroom 06'. This room would be used as a management room and would be used both as an office for the management of the premises and as sleeping accommodation for the manager. The proposed use of this room would have a clear functional link to the primary uses and would have an ancillary function similar to the existing rooms of staff accommodation.

5.16. Environmental Impact

5.17. The proposed alterations and reconfigurations would not impact on the external appearance of the building. Given that there would only be six rooms of short term accommodation, this use would have minimal impact on neighbouring amenity in this town centre location and the noise from B&B customers arriving and leaving would not be so great as to create a material change of use. The short term accommodation would be easily accessible by public transport and given the small number of potential guests would be unlikely to have a significant impact on local traffic conditions. Overall, the environmental impact is considered to be minimal and consistent with there being no material change of use.

5.18. Assessment Summary

5.19. The submission seeks confirmation that the proposed internal works at second and third floor to create rooms of accommodation consisting of bedrooms and en suite bathrooms which are proposed to be used as predominantly short term accommodation for paying customers can be considered as lawfully ancillary to the use of the premises as a cabaret/dance venue, club, bar/community space and public house (*Sui Generis*).

5.20. Linkage between the proposed short term accommodation and the use of the premises as a cabaret/dance venue, club, bar/community space and public house would be provided by a number of physical and functional connections between the proposed use and the lawful primary uses as set out below:

- Access to the property would be via the ground floor lobby of the existing use and visitor accommodation guests would need to check-in via a facility in the lobby.
- One of the rooms of short term accommodation would be prioritised for performers and made available for use by those booked to perform at the property (at a discount).
- The rear room on the third floor would be the manager's accommodation and office.
- The other rooms would be available to paying customers, but if not already booked, would also be offered to performers at a discount.
- The visitor accommodation and the manager's room would share the same access and so neither of these uses would be completely physically

separated. Likewise, when a performer was staying in one of the rooms of accommodation, the access would be shared with guests of the visitor accommodation and staff using the management room without physical separation.

- Rather than being a separate business, the income from the 'bed and breakfast' accommodation would be used to support the primary uses in much the same way as pubs supplement their income by providing such accommodation.

5.21. Given the physical and functional connections between the proposed use and the established lawful use (as set out in the applicant's submission and subsequent clarifications), it is considered that the proposed use would be ancillary to the existing use.

5.22. Consultation comments

5.23. Due to the significant community interest in this site and in the interests of transparency, the application was publicised and 78 responses were received which included 49 in support, from both those living in Camden Town and those from the wider London area as well as further afield, and 29 objections from neighbouring residents. The objectors were mostly concerned about the amenity impacts from the use of the property. In addition, five responses were received from various organisations. Four of these were letters of support and one raised significant amenity concerns in relation to the use of the terrace.

5.24. While the contents of the consultation responses have been noted, it is important to recognise that this is not a planning application. An application under Section 192 of the 1990 Act has to be made solely as a matter of fact and law.

5.25. For the proposed visitor accommodation to operate as ancillary to the primary uses, it is important for the functional and physical connection to be maintained. A number of the letters of support raised concerns that the accommodation may not be used in the way set out in the applicant's submission and that over time it could become either permanent residential accommodation or that insufficient priority would be given for the use of the accommodation by performers or staff.

5.26. Legal Agreement

5.27. A summary of the obligations that the legal agreement would secure is set out below:

- Use of ancillary accommodation only by performers (at a discount of 20%) or by paying customers on a short term 'bed and breakfast' basis (maximum stay of 14 nights).
- Performers to be offered the Performer Accommodation at the time they are booked to perform at the Venues for the nights they are booked to perform.
- The Performer Accommodation to be made available for booking by the general paying public 3 months before any performance date if it has not been booked by Performer(s).

- If the Performer requests accommodation for their Performance Dates but the Performer Accommodation is already fully booked, to offer the use (at a discount of 20%) of any other Ancillary Accommodation that has not at that time been booked.
- Guests to use the check in facility (to be located in the ground floor lobby) and to ensure that access to the rooms of accommodation would be via the existing use so that the external access would only be used in limited circumstances.
- To submit an Annual Report to the Council (on request) which includes
 - a) details of the take-up of the Performer Accommodation and the Ancillary Accommodation (as the case may be) by Performers; and
 - b) details of the take-up of the Ancillary Accommodation by paying customers as 'bed and breakfast' accommodation on a month-by-month basis.

5.28. The onus to demonstrate lawfulness of the proposal rests with the applicant. The legal agreement provides reassurance to the Council, and to individuals and groups who have written in support of the current application, that the operation of the proposed use can operate within the scope of the existing lawful use rights and that there is a mechanism to ensure that the use will operate in the way set out by the applicant.

5.29. **Recommendation**

5.30. Grant lawful development certificate

DISCLAIMER

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 13th May 2024, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Application ref: 2023/5228/P
Contact: David Peres Da Costa
Tel: 020 7974 5262
Email: David.PeresDaCosta@camden.gov.uk
Date: 8 May 2024

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE
Phone: 020 7974 4444
planning@camden.gov.uk
www.camden.gov.uk

Montagu Evans LLP
70 St Mary Axe
London
EC3A 8BE

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Proposed mixed use of the premises as a cabaret/dance venue, club, bar/community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community use with toilets at the rear and use of the first floor as a bar and community space (including kitchen and toilets) and use of the first floor external terrace as a drinking/smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as five rooms of accommodation with bathrooms and the third floor as one management room (office and accommodation) and one room of accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar/community space and public house (Sui Generis).

Drawing Nos: Cover letter prepared by Montagu Evans dated 8 November 2023; Legal opinion prepared by James Strachan KC dated 3 November 2023; GHA-XX-XX-DR-A-: 0001 P01; 0200 Rev P01; 0201 Rev P01; 0202 Rev P01; 2000 P01; 2001 P01; 2002 P01

Second Schedule:

171 Camden High Street
London
NW1 7JY

Reason for the Decision:

- 1 The internal works including the reconfiguration of toilet facilities at ground and first floor, the relocation of the kitchen from second to first floor, the reconfiguration of bedrooms on second and third floor so that all bedrooms have en suite bathrooms and the creation of an additional bedroom at second floor, are not considered to fall within the "meaning of development" requiring planning permission as defined by the Town and Country Planning Act 1990.
- 2 The proposed use of five rooms of accommodation on the second floor and one room of accommodation on the third floor as short term visitor accommodation for paying customers and by those booked to perform at the venue and the proposed use of one room on the third floor as a management room, are considered to be ancillary to the existing mixed use of the premises as a cabaret/dance venue, club, bar/community space and as a public house (Sui Generis) and as such the proposed uses do not fall within the "meaning of development" requiring planning permission as defined by Section 55 of the Town and Country Planning Act 1990.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2023.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Chief Planning Officer

DECISION

Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

DRAFT

DECISION