

**GOLDEN LION PUBLIC HOUSE
88 ROYAL COLLEGE STREET
LONDON
NW1 0TH**

**PLANNING STATEMENT
RELATING TO PROPOSED LOSS OF PUB USE**

December 2012

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1.0 INTRODUCTION

- 1.1 We write further in respect of the recent application by Norreys Barn Ltd, to apply for planning permission for the following:

“Conversion of existing public house (Class A4 use) to 8 self-contained flats (Class C3 use) comprising 1 x 3-bedroom unit, 4 x 2-bedroom units and 3 x 1-bedroom units and associated alterations to the existing third floor dormer extension and creation of new lightwell comprising glazed blocks plus metal grille enclosure at ground floor level at Pratt Street frontage.”

- 1.2 We include the following information as part of this submission:

- a) Affidavit of David Kemp of DRK Planning Ltd;
- b) Affidavit of Sandra Austin of County Estate Pubs Ltd;
- c) Newspaper articles from Camden New Journal of 17th November 2011, 12th April 2012, 14th June 2012 and 21st June 2012;
- d) Internet blogs relating to the Golden Lion Public House from Beer in the Evening, Spoonfed, The Session, Qype, and Fancy a Pint;
- e) Trading accounts for years 2009, 2010, 2011 and 2012;
- f) Interim Schedule of Dilapidations and Wants of Repair; and
- g) Letter from Paramount Properties Ltd of 21st March 2012 and trading history analysis.

- 1.3 This report addresses specifically the principle of the change of use proposed in this case from Class A4 pub to Class C3 flats.

2.0 PRE-APPLICATION DISCUSSIONS

- 2.1 The Council had previously been presented with photographs of the property showing the use of the premises as a pub, with ancillary rooms above for staff and the publican and his family. These photographs also indicated that the use of the first floor room was occupied at the time of our initial inspection by a wholesale clothes retailer, seemingly unrelated to the use of the premises as a pub, in breach of the terms of the alienation provisions contained in the tenant's lease of the premises and possibly in breach of planning control.

- 2.2 In the Council's very thorough pre-application report of 13th June 2012, it noted the following in respect of the proposed change of use from pub to Class C3 residential:

"It is considered that a case could be made to support the proposals but this would need to be robust as it may be that significant levels of views to the contrary may occur as a result of the public consultation... Thus in conclusion it is considered that a robust case would need to be presented to persuade officers that the loss of the current Class A4 use would be appropriate. Officers would also consider any comments received as part of the formal consultation process prior to coming to a definitive view on this key issue."

- 2.3 In summary, officers highlighted the following points in their advice:

- a) The planning policy background comprised of the Local Plan, the London Plan and the NPPF, in particular Policy DP15 of the Development Policies DPD and its supporting text in paragraph 15.7.
- b) The applicant has been encouraged to undertake further investigations as to the extent of any 'community role' supposedly played by the pub.
- c) This application should specifically address the issues raised by Section 8 and paragraph 70 in particular of the NPPF.
- d) An assessment should be made of 'alternative provision' of any community facilities with regard to the facts of the case and in the context of policy.
- e) As much information should be provided as possible with regard to the financial viability of the pub.
- f) Comments made by officers were subject to the outcome of English Heritage's investigations into whether the pub should be nationally listed.

3.0 PLANNING POLICY

The National Planning Policy Framework (NPPF)

- 3.1 Section 8 of the NPPF seeks to promote strong, healthy and vibrant local communities, which also provide opportunities for people to meet and mix with other members of their local community.

- 3.2 Paragraph 69 indicates that this should be provided through “*strong neighbourhood centres*”.
- 3.3 Paragraph 70 develops this theme further with specific reference to public houses, seeking in particular the following:
- Community facilities which enhance the sustainability of communities and residential environments;
 - To resist the unnecessary loss of “*valued facilities and services*”;
 - To ensure that established facilities are allowed to develop and modernise in a way that is sustainable and retained for the benefit of the community; and
 - To ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.
- 3.4 Therefore, the inference of the NPPF is that public houses are capable of performing a community role, but their loss in specific cases might be acceptable where for example they are not economically viable, they occupy heritage assets and cannot afford to maintain the condition of the heritage asset, or do not provide shared space for public meetings and local groups.

The London Plan 2011

- 3.5 Policy 3.16 of the London Plan seeks to promote mixed and balanced communities through resisting the loss of community facilities, but also through ensuring that such facilities are of value to the wider community, including disabled and older visitors. Space should be accessible to all, well-laid out and flexible, safe and user-friendly.

Camden Local Plan Policies

- 3.6 In respect of any community role played by the pub, Policies CS10 of the Core Strategy and Policy DP15 of the Council's Development Policies DPD are particularly relevant.
- 3.7 Policy CS10 seeks the “*retention and enhancement of existing community, leisure and cultural facilities*”.
- 3.8 In particular, under Policy DP15, the Council will seek to protect existing community facilities unless:

- Either a replacement facility meeting local need is provided; or
- There is no continuing need for the specific facility.

3.9 This is translated into the context of applications proposing the loss of pubs in Camden through paragraph 15.7 of the Development Policies DPD, which states as follows:

"We will also resist the loss of local pubs that serve a community role (for example by providing space for evening classes, clubs, meetings or performances) unless alternative provision is available nearby or it can be demonstrated to the Council's satisfaction that the premises are no longer economically viable for pub use".

3.10 There are therefore two stages to this process:

- a) Consider whether the pub serves a "community role", and if so
- b) Consider EITHER whether:
 - i. It is economically unviable as a pub, OR
 - ii. There is suitable alternative provision in the area

3.11 Given how this policy is framed it is therefore not necessary to establish that there is alternative provision in the area if it can at least be established that the pub is making economically unviable; and neither are necessary if the pub does not serve a 'community role' in the first place.

3.12 Other Camden Policies are relevant to this aspect of the proposal.

3.13 Policy CS14 of the Core Strategy seeks to encourage the *"highest standards of access in all buildings and places"* and seeks to preserve and enhance Camden's rich and diverse heritage assets.

3.14 Policy DP24 also seeks to promote accessibility for all, which is also flexible, safe, comfortable and also meets Policy DP29 in terms of accessibility principles.

4.0 EVIDENCE OF 'COMMUNITY ROLE'

4.1 Paragraph 15.7 of the Camden Development Policies DPD does not define this term but gives examples as to the sort of activities that might typically be carried out at a

pub which would indicate that the pub helps to provide a focal point for people to meet, mix and mingle and serve a purpose for local groups; for example “*by providing space for evening classes, clubs, meetings or performances*”.

4.2 We have undertaken the following extensive investigations to determine the nature of the activities carried out by the pub:

- Numerous physical inspections of the premises (conducted on 19th August 2011, 23rd March 2012, 12th June 2012, and 24th July 2012 by DRK Planning);
- Interviewing the publican;
- Reviewing newspaper articles;
- Reviewing internet blogs and forums commenting on the premises and advertising activities; and
- Reviewing the Lease documentation under which the tenant occupier holds an interest in the premises.

4.3 Further, we have provided two sworn affidavits to support our case, including one produced by the managing agent for the landlord of the premises.

4.4 By way of general background, it should be noted that the tenant publican claims that the pub performs a ‘community role’. In doing so, he claims that the availability of the large first floor room is critical to this role. However strong evidence and information undermining this unsupported claim is provided by Sandra Austin, Operations Director of the management company, County Estate Pubs Limited (see **Appendix 1**).

4.5 In our submission there are two principal aspects to analysing the tenant publican’s claims: firstly, the current and future actual ability of the premises to provide suitable facilities of value to the community, and secondly whether there is actually any credible evidence of a ‘community role’ played by the pub.

Poor facilities for the community

4.6 For the following reasons, and with regard to London Plan Policy 3.16, as well as Core Strategy Policy CS14 and Development Management Policies DP24 and DP29, we consider it clear beyond doubt that the pub is not capable either now or in the future of providing suitable space for the wider community:

- a) Access from the street is narrow and stepped, unsuitable and inconvenient for wheelchair users and the elderly or others requiring aid (such as walking frames).
- b) The evidence from some bloggers is that the available facilities for sporting activity are limited, in particular some bloggers complain about the pool table being too small, perhaps explaining its popularity with 10-year olds who one blogger claims made more use of the table than the adults. See further comments on Qype (Kamasalashi) and Beer in the Evening (Rob372) at **Appendix 2**.
- c) There is very little evidence of musical performances; nothing was advertised around the pub to patrons or to passers-by on any of the dates we inspected (over the course of a year) and the facilities for such are restricted mostly to an upstairs first floor room.
- d) The first floor room on which the publican claims to rely for his role in the community is served by poor access, the stairs are steep and poorly lit, there is no bar and seating capacity is poor.
- e) The premises are poorly laid-out and use of the function room would provide the risk of access to the publican's private rooms through the remainder of the pub, which could be a serious privacy and security risk for the publican and any members of staff using, occupying or with possessions stored in these rooms.
- f) It is clear that the pub does not provide an extensive food menu and is therefore likely to either already be or to come under acute pressure from other nearby pubs in Camden which provide this as well as a good range of local ales. See further various blogs in Appendix 2. It should be noted that the tenant publican is permitted in the lease to use the premises as both a restaurant and for the letting of bedrooms as an ancillary activity to the use of the premises as a pub (Clause 3(10) of the lease; see exhibit SA1 to Sandra Austin's affidavit). However the tenant publican's failure to offer these further uses has limited the pub's value to the wider community.
- g) The lease expressly prohibits the use of the pub for "public meetings" (Clause 3(13) of the lease) and this prohibition prevents the use of any part of the pub for "evening classes, clubs and meetings", as referred to in paragraph 15.7 of the Development Policies DPD.

4.7 Therefore, the physical constraints of the pub and lease clauses together make the use of the premises for community use unlawful, inflexible, inaccessible, unsafe, insecure, inconvenient, and generally unsustainable. The physical and legal constraints affecting the premises are at firm variance with any value being placed upon the premises as any sort of community facility. In addition, although the lease permits this, the limited food selection offered by the pub and its focus on a limited drinks selection do not give it any wide appeal as a pub, which probably goes some way to account for the poor financial performance of the business (as to which, see 5.0 below).

Lack of evidence of 'Community Role'

4.8 It is quite clear, as will be explained further below, that this pub is financially struggling. In fact, it appears that once its rent review and current dilapidations liabilities are taken into account, then it will be in a virtually unrecoverable loss-making situation.

4.9 In this context, the decision of the tenant publican to allow a third party to have unlawful commercial use of a first floor room that he claims to be 'critical' to the community role of the pub, at a time when he is already under threat of termination of his lease from a new landlord in the wake of proposed development, seems irrational unless the unlawful step was taken with the specific step of supporting his failing business.

4.10 To be clear, the unlawful use of this space for a year by the clothes wholesaler is a particular risk for the publican as it is evidence of a breach of his lease rendering his lease liable to forfeiture. In particular the following clauses of his lease were probably breached by the unlawful use (see Sandra Austin's affidavit, paragraphs 15 to 18):

- The alienation clause (i.e. unlawful sharing of occupation) – clause 3(20)(e);
- The user clause (i.e. unpermitted use of the premises) – clause 3(10); and
- Compliance with Planning legislation – clause 3(18)(e).

4.11 In respect of the last point relating to the potential breach of planning control, it is noteworthy that access to this room was available on 3 out of the 4 occasions on which we visited the premises and on all of the three occasions that representatives

from County Estate Pubs visited the premises. In fact the only time that access was not available was when the Planning officers undertook a visit during the pre-application process. We would submit that this is because Mr Murphy was concerned that this might lead to a planning enforcement investigation, which could lead to forfeiture of his lease.

- 4.12 It is not clear why he would rather take the risk of being accused of a breach of the lease and risk forfeiture of this lease as a "*favour for a friend*" (as Mr Murphy put it), when this space is not only critical, so he says, to the community role of the pub but also could provide an opportunity for him to lay on functions for performances and private parties on the first floor. This is particularly difficult to understand where he is already under pressure and scrutiny from a new landlord to improve the pub's financial performance and where he is trying to remain in occupation.
- 4.13 We would submit that the only rational explanation is because Mr Murphy may have been benefitting financially from loaning this space out, which may have been worth more to him than keeping it available instead for less frequent pub-related events.
- 4.14 The sworn evidence of David Kemp of DRK Planning Limited (**Appendix 3**), supported by photographs and an email from English Heritage, is that this space was occupied for at least a year by the clothes wholesaler. This is therefore very strong evidence that the first floor was never recently used for community functions or events.
- 4.15 In particular, given the publican's brazen willingness to risk forfeiture of his lease or planning enforcement action in the circumstances, this also infers that he placed little value on the use of this space for community benefit; in effect, taking it out of use for such events for at least a year.
- 4.16 As for other events, such as musical events or sporting competitions, there is no recent reference on blogging sites, such as Qype, The Session or Spoonfed. No upcoming events or reviews of recent events have been posted on Spoonfed, with only postings on The Session at least 3 years ago. Overall, several of the entries refer to the lack of custom of the pub and how quiet it seemed to be.
- 4.17 Clearly from its Facebook page, the pub is popular with regular locals and might be missed by a few regular patrons as a drinking establishment. However, this must be weighed against its contribution (if any) to the wider as well as a small number of

- 5.9 Although some of the Wants of Repair might be argued to err on the 'cosmetic' side, there are a number of potentially dangerous non-compliances relating to the electrical systems which present a fire hazard, the presence of dry rot to the basement, which could cause widespread damage to the timbers and weaken the structure of the building and water ingress from the roof. Some of these breaches are contrary to Building Regulations, the Equality Act and Electricity at Work Regulations. In any event, all of the Wants of Repair listed are caught by the tenant publican's repairing obligations and must be taken into account in order to obtain a comprehensive appreciation of the complete lack of economic viability of the business.
- 5.10 Therefore, the following points are evident regarding the economic viability of the pub business:
- It made a small profit in 2007/08 and 2009/10, albeit a declining one, but its performance over this period was turbulent given the loss made in 2008/09.
 - In three out of the past five years the business has made a loss (taking into account compliance with its repairing obligations in the lease and the need to undertake repairs).
 - The losses experienced by the business this year and in the last financial year would have been worse had the previous landlord not already agreed to offer a rental concession towards the end of 2010.
 - The publican has gone on record saying that it does not intend to alter the model of its business, by for instance offering a more varied food menu, thus indicating that he is unlikely to change the businesses' position relative to its competitors.
 - Whilst the business continues to suffer, so does the fabric of the building, which is to be regarded as a non-designated heritage asset and capable of local-listing.
- 5.11 It should also be noted that the accounts presented to us by the publican are unaudited accounts. Therefore, if the publican was earning any other revenue from the premises (such as from the clothes wholesaler) then this would not necessarily be evident from these accounts, which are entirely reliant on the publican's book-keeping. Given the vulnerability of his position, it would be fair to assume that it would be in the publican's interests to present as healthy a picture of his business as he can. Therefore, even with the best in the will in the world, these accounts present

a depressing picture of a loss-making venture, unwilling to adapt to changing tastes and unable to meet its present legal obligations to its landlord.

- 5.12 We would also add that this picture is starkly in contrast to the one presented by the publican of a thriving, vibrant and vital community pub. Quite simply, the facts do not bear this out and the premises therefore have little value as a community asset.
- 5.13 In the meantime, the fabric and appearance of the building is exposed to further deterioration over the winter with little prospect of the publican being able to afford to maintain and repair it. In the long term, this will undermine the contribution that this building might make as a non-designated heritage asset to the character and appearance of this part of Camden and the proposed conversion of this property to residential use is thus in the best long term interests of the building and Camden's built heritage.
- 5.14 With regard to the wording of the Council's policies as explained above and the lack of economic viability of this pub, it is not strictly necessary for us to review the case for 'alternative provision'. However, given the limited community role provided by this pub (if any at all), there are several pubs a short distance away that still provide a more vibrant atmosphere.

6.0 CONCLUSION

- 6.1 We have undertaken an extensive and thorough investigation of the present use of the pub over the course of a year and assembled evidence from discussions with the publican, evidence sworn on oath, accounts of the business and the internet.
- 6.2 The premises do not provide proper, safe, accessible or convenient facilities for community use and are and will continue to be a poor value facility in Camden.
- 6.3 There is little, if any, evidence of recent community-related events hosted by the pub and the landlord is entitled to prevent, under the lease, any public meetings from being held at the pub.
- 6.4 The publican's own use of a room for non-community use for at least a year instead of for a community-related use indicates that the publican also does not place much value on this space, despite his convenient claims otherwise.

- 6.5 The pub faces considerable pressure from more modern pubs or those that serve a good food menu but, in spite of this, the pub refuses to change so as to improve its prospects of survival. It would not be surprising if the recent unauthorised use of the first floor was in order to provide some extra revenue.
- 6.6 The accounts and evidence from the previous landlord's agent clearly indicate that the pub is not economically viable, especially after current liabilities under its repairing obligations are taken into account along with the rental concessions previously agreed with the publican to assist the survival of the business.
- 6.7 The character and appearance of the building will suffer in the medium and long term if it is at the mercy of a declining, loss-making business that cannot afford to keep the building in good repair.
- 6.8 Overall, there is compelling evidence to undermine the publican's claims of the pub as playing a 'community role' and very strong evidence of the lack of economic viability of the pub and we therefore request that this report is taken into account and planning permission granted.