

# APCAR SMITH PLANNING

Chartered Town Planning Consultants

**PLANNING APPEAL BY NORREYS BARN LIMITED**

**AGAINST THE FAILURE OF THE**

**LONDON BOROUGH OF CAMDEN**

**TO DETERMINE A PLANNING APPLICATION**

**IN RESPECT OF GOLDEN LION PUBLIC HOUSE**

**88 ROYAL COLLEGE STREET**

**LONDON NW1 0TH**

## **STATEMENT OF CASE**

LPA Ref: 2013/4793/P

Our Ref: CA/2741

MAY 2014

*Principal: Carolyn Apcar BA Hons. MRTPI*

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### **Appendices**

- A.** Appeal Decision re PA Ref: 2012/6655/P.
- B.** PA Ref 2012/6655/P submitted plans.
- C.** Article 4 Direction.

## **1.00 Introduction**

- 1.01 This Statement is submitted in support of an appeal by Norreys Barn Limited, owners of the appeal premises, against the failure of the London Borough of Camden to determine their planning application (originally submitted on 23 July 2013 and validated following the submission of amended/additional documents on 20 September 2013. The LPA's validation letter refers to the 8 week statutory time period expiring on 14 November 2013.
- 1.02 The application has remained with the Local Authority for their determination for as long as possible prior to it being too late to submit a non-determination appeal. From the time of validation to the date of the appeal being lodged discussions have continued with the Local Authority with the submission of further supporting background documentation, comments on objections raised by third parties and amended plans. We have provided, with the appeal papers, a full set of correspondence with the LPA together with all documents submitted throughout the application process to date. So as to try and ensure no confusion with regard to the submission documents we have provided these with the appeal papers in separate files according to the date of submission. The documents contained within the individual files are listed in the covering letter with the appeal. There are 8 files in total. File 1 contains the original application documentation. Files 3, 4, 5, 6 and 7 are subsequent submission documents with covering letters. File 2 contains all correspondence including e-mail chains with the LPA from the date of submission to the date of lodging this non-determination appeal. File 8 contains a draft Section 106 Unilateral Undertaking together with correspondence from the LPA and the draft Section 106 Agreement which they provided and on which basis the Unilateral Undertaking is submitted.
- 1.03 The application seeks planning permission for change of use from public house (Class A4) with ancillary accommodation to public house with function area at ground and lower ground floors respectively and four flats (3 x 2 bedroom/3 person and 1 x 3 bedroom/5 person) (Class C3) on the upper floors, together with the erection of a three storey extension (as first and second floors and within the roof space) on the Pratt Street frontage, together with the lowering of the basement by 600mm. We would draw attention to the fact that subsequent to the original application submission on 23 July 2013 the scheme was

amended involving the loss of one of the proposed flats hence the original application form refers to five flats (that dated 23 July 2013) whereas the amended application form (dated 4 September 2013) refers to four flats at the mix specified above.

- 1.04 The subsequent amendments (as shown on the plans in Files 3, 4, 5 and 6) do not result in any change to the description of development.
- 1.05 The Planning, Design and Access Statement (Rev 1) (as submitted to the LPA on 21 August 2013) describes the amended proposals on which basis the application was validated with a mix of 3 x 2 bedroom/3 person units and 1 x 3 bedroom/5 person unit. Section 7 of the Statement provides a full description of the proposals. Subsequent minor amendments to deal with Lifetime Homes matters has slightly amended the floor areas of the proposed flats – a Schedule of Floor Areas is contained on the most up to date floor plans (Drwg No's. W09 Rev B and W10 Rev C as contained within File 7). The 3 x 2 bedroom flats have floor areas between 61.8sqm and 71.56sq,, the 3 bedroom flat has a floor area of 93.33sqm.
- 1.06 There have also been some minor amendments to the arrangements at ground and lower ground floor levels to respond to comments received from the LPA and third parties. These include the inclusion of a cold room and dry store for the public house and its associated function area at ground and lower ground floor levels.
- 1.07 As correspondence with the LPA has confirmed, it has been made clear that the Applicant (now Appellant) would be willing to accept a condition on any planning permission granted to ensure that the basement function area is ancillary to the public house and does not form a separate planning unit. This question arose from the LPA given the separate entrance to the basement. However, as the LPA were advised, this was considered a benefit of the proposals since it enabled the function area in the basement to be used when the public house may otherwise be closed.
- 1.08 Supporting documentation submitted with the application and with the appeal papers include a full Basement Impact Assessment (despite the fact that the premises already have a basement and the proposals only seek to lower the level of this by 600mm), an Energy Strategy, a Sustainability Statement and, included with the last submission documents, a Lifetime Homes Checklist. An independent review of the

Basement Impact Assessment has been undertaken. The revised Basement Impact Assessment (as submitted to the LPA on 1 May 2014 and included within our File 7) has responded in full to that independent review.

- 1.09 The Planning, Design and Access Statement (see File 3) includes a full description of the site and surroundings. It refers to a 2012 planning application (Ref: 2012/6655/P) which is of particular relevance. That application involved the conversion of the entire building into 8 flats, resulting in the loss of the public house and its associated facilities. Planning permission was refused by the LPA in March 2013 with that decision being upheld on appeal. That appeal decision post-dates the submission of the Planning, Design and Access Statement with the application the subject of this appeal and we therefore set out a consideration of the previous Inspector's comments in the following section. For ease of reference the appeal decision is contained at Appendix A and the plans on which basis that appeal was determined are contained at Appendix B.
- 1.10 As the Planning, Design and Access Statement included a full consideration and analysis of relevant planning policies. This included the National Planning Policy Framework at Section 3; The London Plan at Section 4 and the Local Development Framework (encompassing the Core Strategy, Development Policies and relevant Supplementary Planning Guidance) it is not considered necessary to include any further consideration of the policy background in this Statement.
- 1.11 Thus the following sections of this Statement include a review of the above mentioned appeal decision at Section 2 followed by an Appraisal of the planning issues to which the appeal gives rise in Section 3.

## **2.00 Planning History**

2.01 Planning application Ref: 2012/6655/P was refused permission by the LPA on 12 March 2013 for 10 reasons. The issues to which those reasons gave rise are summarised at Para 1.02 of the Planning, Design and Access Statement.

2.02 The appeal decision (see Appendix A) summarised the main issues at Para 2 as:

- Whether the proposal would lead to the loss of the community facility.
- The effects of the proposed solar panels on the character and appearance of the building.
- Whether the proposed flats would be adequate for future occupiers having regard to the needs of the less mobile, outlook, internal space and aspect.
- The effects of the proposed lightwell on the street scene, highway safety and pedestrian movement.

2.03 The application the subject of this appeal is an amended form of the previous proposals responding as appropriate to the Inspector's comments. The essential differences (as can be seen from a comparison of the previous appeal plans as contained at Appendix B with the plans the subject of this current appeal) are as follows:

- The public house is retained on the ground floor.
- An ancillary function area is proposed at lower ground floor level.
- The layout of the upper floors is amended.
- The number of residential units is reduced from 8 to 4 as a result of these changes.
- The photovoltaic panels are removed.
- The lightwell is omitted from the proposals.

2.04 We summarise below the Inspector's comments regarding his four identified main issues.

### **Loss of a Community Facility**

2.05 In summary the Inspector felt that the existing public house served a community role. He acknowledged that, on the basis of barrelage sold,

the public house has been in decline since before 2011. He commented, at Para 19, that based on past trends the portents are not good, but was reluctant to say that the ongoing venture is bound to fail and thus did not conclude that the premises were no longer economically viable for public house use.

#### **Visual Impact of Solar Panels**

- 2.06 On this matter the Inspector concluded, at Para 26, that the proposals were wholly acceptable. However, and in any event, the current proposals do not incorporate the previously proposed solar panels. As is made clear in the submitted Sustainability Statement and Energy Statement (the final and most up to date versions of which are contained within File 3) such panels are not necessary to comply with the BREEAM Domestic Refurbishment environmental assessment scheme in line with relevant policy. Given that these photovoltaic panels had previously concerned the LPA (despite the fact that this concern was not shared by the Inspector) as they are not needed to comply with relevant renewable energy and sustainability requirements, it is considered best that they not be reintroduced into the scheme.

#### **Amenities of Future Occupiers of the Proposed Flats**

- 2.07 In their refusal of planning permission of application ref: 2012/6655/P the LPA had raised concerns about compliance with Lifetime Homes Standards; inadequate outlook from the proposed basement level accommodation; the floor area of one unit being insufficient; four of the proposed units being single aspect and only north facing; and failure to comply with Lifetime Homes Standards/provide accommodation suitable for people with mobility difficulties.
- 2.08 Despite dismissing the appeal it is clear from the Inspector's comments at Paras 27 to 35 of the appeal decision that he was satisfied with all aspects of the proposals insofar as amenities of future occupiers are concerned. This is of fundamental relevance to the four residential units to which the current appeal relates.

#### **Proposed Lightwell**

- 2.09 As is clear from the Inspector's comments at Paras 36 to 38 he was satisfied with the proposed lightwell in terms of the street scene, highway safety and pedestrian movement. However as a result of the proposals the subject of this appeal no longer incorporating any residential accommodation at basement level no lightwells are included with this scheme.

### **3.00 Planning Appraisal**

3.01 Having regard to the clear comments in the previous appeal decision and comments received from the LPA during their consideration of the application the subject of this fresh appeal (in particular their e-mail dated 3 April 2014 - this being the last item of correspondence in the most recent of the e-mail chains within File 2) that the main issues to which this appeal gives rise are as follows:

- The acceptability of the retained A4 facility (the public house and ancillary function space).
- Acceptability of proposed residential accommodation.
- Acceptability of Basement Impact Assessment.
- Crime and highway safety comments.
- Matters for inclusion in Section 106 Undertaking.

3.02 Should the Local Authority, in their Appeal Statement, raise any additional and unexpected concerns with the proposals, then these will be addressed in our response to their Statement in due course.

#### **Acceptability of Retained A4 Facility**

3.03 Two floors of the building will remain devoted to the A4 use (apart from the ground floor entrance to the residential accommodation above). The main public house use will remain at ground floor level. The function space will move from the existing first floor facility to the basement.

3.04 The previous appeal decision acknowledged that the existing function facility would not be useful for some given the long and steep staircase providing the only means of access (this is referred to at Para 10 of the appeal decision). It is considered that the proposed function facility is a significant enhancement on that currently existing.

3.05 It will be more accessible – the stairs will be constructed to ambulant disabled standards as is a Building Regulations requirement. This will improve upon ease of access for those with mobility difficulties.

3.06 There will be a trade kitchen within the basement which will increase the usability and range of uses that the function area could be put to. This kitchen could also provide food for within the public house if so required (there is an internal staircase link between the ground and basement floors). As existing the public house has no trade kitchen.



The only kitchen facility is that which forms part of the ancillary residential accommodation. As is referred to in the letter dated 4 February 2014 from Fleurets (this forming one of the documents within File 5 as submitted to the LPA on 12 February 2014) the availability of food within a public house is now critical to its trading success.

- 3.07 The independent external access from Pratt Street to the basement function area enables it to be utilised outside normal public house opening hours. This will allow for greater flexibility for the benefit of the local community.
- 3.08 In terms of floor area the function area will be significantly larger than the small existing first floor function area.
- 3.09 The existing public house provides inadequate WC facilities with just a single ladies and a single mens WC situated on the ground floor to cater for the public house and the ancillary first floor function space. This is inadequate for customer demand. The proposals incorporate facilities at both ground floor and basement levels.
- 3.10 The amended floor plans (included within File 5 and referred to in the Fleurets letter) incorporate space for chilled beer storage and a dry goods store. They confirm that such facilities would adequately support the public house and provide for a successful operation. They comment that the existing beer store is excessive in size and not required. Indeed this was confirmed visually when the previous appeal site inspection was carried out when it was noticeable that the chilled beer store was largely empty.
- 3.11 Fleurets comment that the removal of the domestic accommodation will not impact on the commercial viability of the public house. They refer to numerous examples of “lock up” public houses which do not have the benefit of domestic accommodation which trade successfully within Inner and Central London. They also comment that many public houses which do have domestic accommodation are often not occupied by the tenants and in many cases left vacant.
- 3.12 With regard to floor areas the proposals provide a net internal area of the ground floor and basement of 149sqm; this excludes the proposed kitchen and toilet facilities. In comparison the net internal area of the existing ground and first floor trading areas totals 137.9sqm.

- 3.13 In view of the above it is clear that the proposals provide both increased floor area (additional accommodation for the public house and associated function area) as well as significantly enhanced facilities. Given this it is considered that the retained A4 facility is wholly acceptable in all respects.
- 3.14 With regard to access into the public house the existing arrangement has two external steps to the two doors on the Pratt Street frontage and one external step to the entrance door on the corner of Pratt Street and Royal College Street. Thus whilst the proposals add an additional step internally to cater for the increase in the height of the ground floor slab, these changes do not worsen the existing access since there is, as existing, no level access and the proposals will continue to provide good access for ambulant disabled.
- 3.15 We are aware that a third party has raised concerns about the proposals being a “Trojan Horse” – a reference to the fact that the third party considers the Appellant would subsequently utilise permitted development rights to change the use of the retained A4 space to uses falling within Classes A1, A2 or A3. However the Local Authority served an Article 4 Direction on 10 April 2014 removing such permitted development rights. A copy of this Article 4 Direction is contained at Appendix C. As a result of this both the ground floor and basement accommodation would have to remain in Class A4 use unless a specific planning permission was granted for an alternative use. Thus there can be no “Trojan Horse” concern.

#### **Acceptability of Proposed Residential Accommodation**

- 3.16 All four residential units comply with minimum space standards as set out in The London Plan. It is acknowledged that there is no external amenity space. However this has not previously been raised by the LPA as a concern and, despite the fact that there was no such amenity space in the previous proposals, was not raised as a concern by the Appeal Inspector as part of his consideration as to whether or not the proposed flats would be adequate for future occupiers.
- 3.17 As can be seen from the previously proposed plans (application Ref: 2012/6655/P) at Appendix B, and as is referred to at Para 32 of the previous appeal decision letter (Appendix A), four of the proposed units at that time would have been single aspect only with their windows facing north. Despite this the Inspector was satisfied in terms of future residential occupiers amenities in all respects.

- 3.18 The current appeal scheme does, regardless, reduce the number of units with solely a northern aspect from the four previously proposed to just one (the split level 2 bedroom unit that is entered on the first floor where the living room and kitchen are contained and with its 2 bedrooms at second floor level). The remaining three units (the first floor 2 bedroom unit, the second floor 2 bedroom unit and the third floor 3 bedroom unit) are all dual aspect with windows on both the northern and western elevations.
- 3.19 Clearly, unlike the previous appeal scheme, there is no basement accommodation – given the use of the ground floor and basement for the public house and its associated function space. Thus the LPA's previous concerns (despite not being shared by the previous Appeal Inspector) regarding light and outlook to the basement accommodation is not of relevance on this occasion.
- 3.20 The revised plans submitted on 1 May 2014 (included within File 7) in response to the LPA's e-mail of 3 April 2014 (included within File 2) respond to the concerns raised in that e-mail in respect of accessibility and Lifetime Homes Standards.
- 3.22 The Lifetime Homes Checklist comments on all 16 Lifetime Homes criteria, their applicability and, where possible, how they are complied with.
- 3.23 It is acknowledged that not all Lifetime Homes Standards are achieved and indeed they cannot be achieved when a building of this nature is being converted. It is generally acknowledged that with a conversion scheme as it is not possible to achieve all Lifetime Homes Standards. The aim should be to get as close to as many standards as possible. We would draw attention to Para 6.5 of the Local Authority's Development Policies Document which states:
- The Council acknowledges that the design or nature of some existing properties means that it will not be possible to meet every element of the Lifetime Homes Standards... each scheme should achieve as many features as possible.
- 3.24 It is clear from the previous appeal decision that the Inspector, in that case, was entirely satisfied with the proposals on this basis.

### **Acceptability of Basement Impact Assessment**

- 3.25 The submitted Basement Impact Assessment follows the requirements of the Local Authority's policies and Supplementary Planning Guidance (which are discussed in the Planning, Design and Access Statement (file 3)).
- 3.26 As their Supplementary Planning Guidance requires the Local Authority obtained (at the Appellants expense) an independent review of the submitted BIA. This commented that the original BIA submission did not demonstrate sufficient details in respect of the following:
- Maintaining the structural stability of the building and any neighbouring properties.
  - Avoiding adverse impact on drainage and run-off or causing other damage to the water environment.
  - Avoiding cumulative impact on structural stability or the water environment.
- 3.27 As a result the Independent Review sought further information on the following matters:
- The location and form of the foundations to the existing and neighbouring properties and any neighbouring buried street services that may require to be protected.
  - Information, including additional ground water monitoring, regarding the relationship between the site level and the River Fleet and presence or absence of any ground water likely to be affected by the works or affect the works.
- 3.28 The requirement was that with this further information the BIA should then be revised accordingly. The Independent Review also raised concerns in respect of the qualifications/credentials of the author(s) of the submitted BIA.
- 3.29 Following from this further professionals were employed and additional ground water monitoring undertaken. The revised third issue BIA (as submitted on 1 May 2014) includes at Section 5 a summary of the additional work undertaken and comments on the relevant qualifications of the author(s).

- 3.30 For the reasons explained in the BIA in detail it is considered that all relevant policy and supplementary planning guidance requirements in respect of the extended depth of the basement are thoroughly and adequately addressed.
- 3.31 Furthermore we would point out that when the Local Authority considered the previous application no concern was raised with regard to the BIA at that time. Significant additional work has now been undertaken. Whilst at the time of submission of application Ref: 2012/6655/P Supplementary Planning Document CPG4 had not been adopted, it had been adopted prior to the previous appeal being determined (and indeed was adopted a few weeks prior to the Informal Hearing) and thus the circumstances in that respect have not changed.

#### **Crime/Highway Safety Comments**

- 3.32 In their e-mail of 3 April 2014 the LPA refer briefly to detailed comments in respect of crime and highway safety. As a result the proposed plans have been amended.
- 3.33 As requested the doors to the refuse and recycling area have been amended to be inward opening. The concerns in respect of crime and anti-social behaviour have been addressed by the slight amendment to the entrances to the basement function area and residential accommodation.

#### **Section 106 Matters**

- 3.34 The LPA's e-mail of 3 April 2014 (included within File 2) makes it clear as to the matters that need to be included with this. The Planning Officer confirms a financial contribution in respect of highways matters to be required and quoted a contribution for this of £9,853. This is stated as being the only financial contribution required. The only other additional matter that he refers to being required to be covered by a Section 106 Obligation is for the development to be "car free" – ie; future residents not to be eligible for car parking permits.
- 3.35 The Appellant's solicitors subsequently liaised with the Borough Solicitor who provided a draft Section 106 Bi-Lateral Agreement that would have been signed by the LPA as well as the Appellant had the non-determination appeal not been submitted. Given the Planning Inspectorate's specific requirements in respect of deadlines for submission of a completed Section 106 Obligation the decision was

made to amend the document into the form of a Unilateral Undertaking but with exactly the same requirements and obligations on the Appellant.

- 3.36 In view of the above it is considered that the draft Section 106 Undertaking, included within File 8, is entirely appropriate and addresses all relevant matters satisfactorily.

#### **4.00 Conclusions**

- 4.01 It is considered that the amended form of development, retaining a public house at ground floor level with ancillary function space at basement level, overcomes the principle that led to the previous appeal being dismissed. As has been demonstrated the proposed public house and function space will be an enhancement to the existing facilities and also provide for an increase in floor area.
- 4.02 It is considered that the proposed residential accommodation is entirely satisfactory in all respects. Indeed the previous Appeal Inspector was satisfied with the earlier proposals in this respect and the current proposals are an improvement on that previous scheme.
- 4.03 The submitted Basement Impact Assessment properly addresses all required matters and complies with relevant policy and supplementary guidance.
- 4.04 The Section 106 Undertaking will, when completed, provide properly for the financial obligation and will also remove the rights of future residents to obtain parking permits.
- 4.05 The detailed amendments to the proposed plans, since the submission of the planning application, respond to all comments raised by the LPA and third parties.
- 4.06 It is considered that the proposed scheme is entirely acceptable in all respects, overcoming the one concern that led to the dismissal of the appeal (ie; the loss of the community facility) and complying with all relevant policies and guidance.