

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)  
APPEAL UNDER SECTION 78**

**SITE:** Sir Richard Steele Public House  
97 Haverstock Hill  
London  
NW3 4RL

**APPELLANT:** Faucett Inn Ltd

**SUBJECT OF APPEAL:** Refusal of planning application for change of use of the first and second floors from public house (Class A4) to create 2x1 bedroom and 2x2 bedroom flats (Class C3); extension and relocation of existing kitchen extract flue and associated works.

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London Borough of Camden  
Reference : 2014/1367/P

Planning Inspectorate  
Reference : APP/X5210/W/15/3003396

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**Local Planning Authority Appeal Statement**

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## **1. Executive Summary**

- 1.1. This appeal is made in response to Council's refusal of planning permission for change of use of the first floor (seating area and offices), second floor (manager's ancillary accommodation) and the majority of the ground floor garden of a public house to residential flats.
- 1.2. The application was refused by Council's Development Control Committee due to the loss of community facilities, impact of the pub on the proposed residential units, and lack of a legal agreement to secure the proposed flats as car-free and a contribution towards highways repaving works.
- 1.3. Since the application was refused an application has been received to designate the public house as an Asset of Community Value as defined by the Localism Act 2011. This application has not yet been determined.
- 1.4. Since the application was refused the revised London Plan has been adopted which provides additional protection for assets of community value. In addition the new Camden Local Plan put out for consultation provides additional protection for public houses.
- 1.5. With regard to the first reason for refusal, the proposal would result in the loss of a valuable community facility used for local group/club meetings, there are considered to be no comparable meeting facilities in the vicinity of the site, the changes would negatively affect the future viability of the pub, and the applicant has not provided any marketing evidence to demonstrate that the pub is not viable in its current form. There are several examples of similar applications, including those in Camden, that have been dismissed on appeal for the reasons referred to above.
- 1.6. With regard to the second reason for refusal, it is considered that flats at the upper levels would have an unacceptable standard of accommodation due to noise from the public house and overlooking from the pub into the residential garden, invariably putting further pressure on loss of the entire pub.
- 1.7. With regard to the third and fourth reasons for refusal, the applicant has agreed to enter into a legal agreement which would overcome these concerns.
- 1.8. Should the Inspector be minded to grant permission, draft conditions have been provided on a without prejudice basis (see Appendix 1).

## 2. Introduction

- 2.1. This appeal is made in response to Council's refusal of planning permission for change of use of the first and second floors from public house (Class A4) to create 2x1 bedroom and 2x2 bedroom flats (Class C3); extension and relocation of existing kitchen extract flue and associated works at Sir Richard Steele Public House, 97 Haverstock Hill, London.
- 2.2. The application was originally recommended for approval by Council Officers. The Camden Development Control Committee resolved to refuse the application on 06/11/2014 giving the following reasons:
- 1) *The proposed development would harmfully compromise and undermine the services and facilities that the existing public house and its garden provide in supporting the needs of the local community and its ability to contribute to Camden's cultural heritage, contrary to policy CS10 (Supporting community facilities and services) of the London Borough of Camden Local Development Framework Core Strategy, policies DP15 (Community and leisure uses) and paragraph 70 of the National Planning Policy Framework 2012 and policy 4.8 of the Draft Further Alterations to the London Plan January 2014.*
  - 2) *The applicant has failed to demonstrate that the proposed co-location of residential units and the public house would not cause harm to the residential amenity of the future occupants of the upper floor flats, contrary to policy CS5 (Managing the impact of development ) of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.*
  - 3) *The proposed development, in the absence of a legal agreement to secure car-free housing for the residential units would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP18 (Parking standards and the availability of car parking) of the London Borough of Camden Local Development Framework Development Policies.*
  - 4) *The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.*

- 2.3. The first reason for refusal relates to the existing local public house, in its current form, being considered to serve the needs of the local community. There is currently an application before Council for the pub to be designated as an Asset of Community Value (ACV) in accordance with the requirements of the Localism Act 2011. Loss of the first floor would result in the loss of an area for community events, loss of the second floor would result in the loss of the pub manager accommodation, and loss of the garden would reduce the attractiveness of attending the pub in summer months, which would compromise the ability of the pub to operate in the future.
- 2.4. The second reason related to the impact of the pub on future occupants of the building, specifically, noise generated by the pub and overlooking from the pub into the proposed residential garden. This conflict would put further pressure on the loss of the pub.
- 2.5. These are considered to be the two primary reasons why the appeal should be dismissed. Planning permission would also have been refused on the basis of being in the absence of two planning obligations, relating to car-free housing and highways works. A legal agreement was drafted and agreed as part of the process. It would simply be a matter of signing said document to overcome reasons for refusal 3 and 4.

### 3. **Site and Surroundings**

- 3.1. The application site is the Sir Richard Steele Public House. It is a 3 storey end of terrace property with basement level. A fence and walled outdoor seating area is located to the side of the building and is used as the pub garden. The ground floor has the main bar and seating area as well as the kitchen and the toilets. There is an internal staircase which rises to first floor and this is a further bar area similar to a function room. There are rooms currently used for storage and an office. The second floor is occupied as accommodation for staff with its own kitchen, bathroom, living room and bedrooms. The basement was not inspected at the time of the site visit although a delivery occurred at this time and produce went to the basement.
- 3.2. The site is located in the Eton Conservation Area and, while not listed, the building on the site is identified in the Conservation Area Statement as making a positive contribution to the character and appearance of the Conservation Area.

### 4. **History**

#### Planning application

- 4.1. 2013/4719/P - Conversion of first and second floors to 10 accommodation rooms ancillary to public house (Class A4). **Refused lawful development certificate 19/09/2013**. Reason for refusal: The proposed development would result in a material change of use of the upper floors for which planning permission would be required.

- 4.2. 2013/4719/P - Conversion of the first and second floors to provide 10 ancillary rooms for the Public House. **Refused lawful development certificate 19/09/2013** on grounds that the change was considered to be material and required planning permission. It was unclear what the use of the rooms would be for and who will benefit from them. The 2<sup>nd</sup> floor currently is considered to be a flat which is ancillary to the pub use, this is used by the Pub Manager and has no separate entrance and can only be accessed via the pub at first floor level. The submission suggested that the use of the land would change and the accommodation/ space would not be solely used by the pub. This would lead to a mixed use and the proposal was considered to be “sui generis”. This change of use did not fall within the permitted changes allowed by the legislation.
- 4.3. 2013/4715/P -Change of use of the first and second floors from public house (Class A4) to create 2 x 1 bedroom and 2 x 2 bedroom flats (Class C3). **Withdrawn 20/11/2013.**

#### Similar Applications

- 4.4. Appeal decisions which support the Council’s case are set out in Section 8 below. The most recent Council decision is outlined below.

#### *Golden Lion Public House, 88 Royal College Street*

- 4.5. 2013/4793/P - Retention of public house at basement and part ground floor level (Class A4) and change of use from public house (Class A4) at part ground and first, second and third floor levels to provide 4 (3x2, 1x3 bed) residential units (Class C3), erection of three storey (including roof level dormer) extension on north (Pratt Street) elevation, extension at basement level, alterations to provide ground floor entrances on Pratt Street elevation, and associated alterations. **Refused 25/06/2014. Appeal APP/X5210/A/14/2218740 Dismissed 02/10/2014.** The Council’s reasons for refusal were:

- 1) The existing local public house, in its current form, is considered to serve the needs of the local community and is registered as an asset of community value in accordance with the requirements of the Localism Act 2011. Its proposed reconfiguration and modification would harmfully compromise and undermine the use of the existing public house. Therefore the public house would fail to be developed and modernised in a way that is sustainable, and retained for the benefit of the community, which in turn would fail to enhance the sustainability of communities, contrary to policy CS10 (Supporting community facilities and services) of the London Borough of Camden Local Development Framework Core Strategy, policies DP15 (Community and leisure uses) and DP29 (Improving access) of the London Borough of Camden Local Development Framework Development Policies, paragraphs 69 and 70 of the National Planning Policy Framework 2012 and policy 4.8 of the Draft Further Alterations to the London Plan January 2014.

- 2) The proposed roller shutters, by reason of their location, materials, method of opening and lack of detailed drawings indicating inappropriate design, would be detrimental to the character and appearance of a building which is considered to be a non-designated heritage asset, contrary to policy CS14 (Promoting high quality places and conserving heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.
- 3) The proposed development, in the absence of a legal agreement to secure car-free housing for the four residential units proposed, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP18 (Parking standards and the availability of car parking) of the London Borough of Camden Local Development Framework Development Policies.
- 4) The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

#### 4.6. Asset of Community Value

- 4.7. An application was received by Council on 05/04/2015 nominating the building as an Asset of Community Value (ACV) under the Localism Act 2011. The application has not yet been determined.

### 5. **Application Details**

- 5.1. Change of use of the first and second floors from public house (Class A4) to create 2x1 bedroom and 2x2 bedroom flats (Class C3); extension and relocation of existing kitchen extract flue and associated works. The pub would remain at the ground/basement floors. The wooden sash windows would remain with the addition of white aluminium internal secondary glazing framing. The change would see the change of use of two floors which are used as ancillary pub space and the pub garden which would be used as amenity space for the proposed flats. The first floor is currently used as an additional bar level and the second floor is used by the pub manager as living space.

5.2. Public consultation on the application was carried out on 31/03/2014, by means of 5 letters to neighbouring/nearby occupiers. A site notice was erected on 03/04/2014, expiring on 24/04/2014. A press notice was published on 03/04/2014, expiring on 24/04/2014.

5.3. A total of 12 objections were received on the following grounds:

- Known use at time of purchase was a pub and the applicant has tried to convert into any other use
- Although there are other pubs in Belsize Park area this is of huge importance.
- Loss of valuable public amenity
- Loss of the pub would see the destruction of yet another piece of British Heritage
- Loss of community spirit
- Loss of the upstairs room would lead to a loss of future comedians  
Operation Management indicates users of the pub would be happy with the pub being downstairs, but it is unclear whether these people would be happy to live over a pub.
- The proposal would not facilitate how disabled patrons would use the pub.  
The proposal would prevent disabled patrons using the pub.
- Prohibiting music would lead to the premises licence needing to be changed and loss of music would impact on the number of pub goers.
- Nowhere for smokers to go unless on the street.
- Unreasonable for pub manager to be on site 11 hours a day.
- A loss of venues for community groups to go. Such as Transition Belsize and a local French language learning group.
- The reduction in pub space would diminish the value of the public house.
- Permitted development rights should be removed if the council is looking to approve the proposal.
- Act of cultural vandalism. Negative impact on the businesses and shops nearby.
- If the proposal goes ahead there may be complaints from future residents about noise from the pub below leading to closure of the pub
- It would be difficult to see how noise from the pub garden would not affect hotel guests.

5.4. An objection was received from the Eton Conservation Area Advisory Committee on the following grounds:

- The business of a hotel and the traffic parking it would bring in addition to the existing pub is of concern
- No mention of parking provision.
- The scheme for four flats is a marginally better proposal. However there is strong public opinion to retain some of the upper rooms as a venue for entertainment and we strongly support this.
- One pub nearby has already become a hotel/restaurant.

## 6. Development Plan Policies

### *Local Development Framework*

6.1. The Statutory Development Plan is the Council's Local Development Framework (LDF), which was formally adopted on 8<sup>th</sup> November 2010. The primary documents within the LDF relevant to this appeal are the Camden Core Strategy 2010-2025 and Camden Development Policies documents, both formally adopted on 8<sup>th</sup> November 2010 after due public consultation and examination. The Inspector is therefore invited to give substantive weight to the LDF policies and supporting text.

6.2. The relevant LDF policies to this appeal are as follows:

CS5 Managing the impact of growth and development  
CS6 Providing quality homes  
CS10 Supporting community facilities and services  
CS11 Promoting sustainable and efficient travel  
CS14 Promoting high quality places and conserving our heritage  
CS17 Making Camden a safer place  
CS18 Dealing with our waste and encouraging recycling

DP1 Mixed use development  
DP2 Making full use of Camden's capacity for housing  
DP3 Contributions to the supply of affordable housing  
DP5 Homes of different sizes  
DP6 Lifetime homes and wheelchair homes  
DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses  
DP15 Community and Leisure uses  
DP16 The transport implications of development  
DP17 Walking, cycling and public transport  
DP18 Parking standards and limiting the availability of car parking  
DP21 Development connecting to the highway network  
DP22 Promoting sustainable design and construction  
DP24 Securing high quality design  
DP25 Conserving Camden's heritage  
DP26 Managing the impact of development on occupiers and neighbours  
DP28 Noise and vibration  
DP29 Improving access

6.3. There are a number of specific parts of these policies which are considered to be particularly pertinent in respect of the appeal proposal.

6.4. CS10 details that a key part of the strategy for managing Camden's future growth is ensuring services, facilities and infrastructure to support the local community and visitors is provided in suitable locations. This is to meet increasing demand caused by a growing population in the borough. Part f of CS10 states that the Council will "*support the retention and enhancement of existing community, leisure and cultural facilities*".



- 6.5. CS19 specifies at part b) that appropriate planning obligations will be used to support sustainable development, secure necessary and related infrastructure and mitigate the impact of development.
- 6.6. DP15 compliments policy CS10 by providing a detailed approach to the protection of existing community facilities (amongst other matters). The policy is explicit in stating:

*The Council will protect existing community facilities by resisting their loss unless:*

- a) a replacement facility that meets the needs of the local population is provided; or,*
  - b) the specific community facility is no longer required in its current use. Where this is the case, evidence will be required to show that the loss would not create, or add to, a shortfall in provision for the specific community use and demonstrate that there is no demand for any other*
  - c) suitable community use on the site. Where this is successfully demonstrated, the Council's preferred new use will be affordable housing.*
- 6.7. In the supporting text, under the heading 'protecting community uses', paragraphs 15.6 to 15.8 provide more detailed commentary in relation to policies DP15c & d. At paragraph 15.7 specific reference is made to public houses, with the paragraphs in full stating:

*"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 available nearby or it can be demonstrated to the Council's satisfaction that the premises are no longer economically viable for pub use".*

*Camden Planning Guidance 2011/2013*

- 6.8. The LDF is also supported by supplementary planning documents (SPDs).
- 6.9. Camden Planning Guidance (CPG) was adopted in 2011/2013. CPG1-5 was adopted on 4 September 2013 following full public consultation, which took place in November and December 2012 (in respect of CPG2) and May and June 2013 (in respect of CPG1&3-5). CPG6, CPG7 and CPG8 were adopted on 07/09/2011 following full consultation between 26/05/2011 and 07/07/2011. The Inspector is therefore invited to give substantive weight to CPG.

*London Plan 2015*

- 6.10. The Council's LDF policies align with the policies of The London Plan 2015, which provides the overall strategic plan for London, setting out an integrated economic, environmental, transport and social framework for the development of London over the next 20-25 years.

6.11. Policy 3.1 (Ensuring equal life chances for all) is considered to be of relevance, with planning decisions directed to “*protect and enhance facilities and services that meet the needs of particular groups and communities*”. The policy continues by stating that “*proposals involving loss of these facilities without adequate justification or provision for replacement should be resisted*”. There are considered to be parallels with LDF policy DP15.

6.12. The 2015 revisions to the London Plan include alterations to policy 4.8. This policy has been widened from the retail sector to also include related facilities and services. In particular, paragraph 4.48A states:

*“The Mayor recognises the important role that London’s public houses can play in the social fabric of communities (see also Policy 3.1B) and recent research highlights the rapid rate of closures over the past decade and the factors behind these. To address these concerns, where there is sufficient evidence of need, community asset value and viability in pub use, boroughs are encouraged to bring forward policies to retain, manage and enhance public houses”.*

#### *National Planning Policy Framework*

6.13. The National Planning Policy Framework (NPPF) was published on 27/03/2012 and is therefore a material consideration in the determination of this appeal. Furthermore, it is more recent than the London Borough of Camden LDF. Hence, where applicable, it is considered that the NPPF could and should outweigh the local policy context.

6.14. The NPPF sets out the Government’s planning policies and how these are expected to be applied. It denotes at paragraphs 6 and 7 that the planning system should contribute to the achievement of sustainable development, which has three mutually dependent dimensions: economic, social and environmental. Within the social role identified, this is partly created by “*a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being*”.

6.15. Although there is a presumption in favour of sustainable development (paragraph 14) the NPPF clearly states at paragraph 12 that the starting point for decision making is the development plan. Both LB Camden’s LDF and the London Plan are considered to be sufficiently up to date in this respect.

6.16. Paragraph 17 sets out 12 core planning principles that should underpin decision taking. Within these principles, the following are particularly pertinent in this instance:

- *be genuinely plan-led, empowering local people to shape their surroundings;*
- *always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;*
- *conserve heritage assets in a manner appropriate to their significance.*

6.17. Thirteen sections are then provided as to the means for delivering sustainable development. The following paragraphs outline the elements which are considered to be particularly pertinent in relation to the matters under consideration in this appeal.

6.18. Section 8 concerns promoting healthy communities. Paragraphs 69 and 70 are considered to be of particular relevance to this appeal, with these paragraphs in full stating:

*“69. The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Local planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see. To support this, local planning authorities should aim to involve all sections of the community in the development of Local Plans and in planning decisions, and should facilitate neighbourhood planning. Planning policies and decisions, in turn, should aim to achieve places which promote:*

- *opportunities for meetings between members of the community who might not otherwise come into contact with each other, including through mixed-use developments, strong neighbourhood centres and active street frontages which bring together those who work, live and play in the vicinity;*
- *safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and*
- *safe and accessible developments, containing clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas”.*

*70. To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:*

- *plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;*
- *guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs;*
- *ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community; and*
- *ensure an integrated approach to considering the location of housing, economic uses and community facilities and services”.*

6.19. In particular, it is noted that public houses are included within the list of community facilities within paragraph 70, with bullet points 1 and 3 of particular relevance.

## 7. Planning Considerations

7.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for development are determined in accordance with the development plan unless material considerations indicate otherwise.

7.2. The main issues in determining this appeal are considered to be:

- Whether the scheme is appropriate in terms of its proposed reconfiguration and modification of a public house use (reason for refusal 1);
- Whether occupants of the upper floor flats would be unacceptably impacted by the remaining ground floor pub (reason for refusal 2);
- Whether the scheme would be acceptable without a legal agreement / unilateral undertaking in terms of its impact on on-street car-parking stress and congestion (reason for refusal 3) and damage to the public footpath (reason for refusal 4).

7.3. Each of the main issues will be considered in turn.

### ***Reason for refusal 1 - Reconfiguration and modification of the public house***

7.4. Additional appeal decisions are available and have come to light which discuss matters relating to the interpretation of relevant parts of the NPPF, including discussions on assets of community value. For more details please see appeals analysis in Section 8 below.

7.5. Whilst it is acknowledged that a public house use would be retained at the site, public responses have been received raising concern over the implications for the current public house. The concerns of the public consultation responses are summarised above. With this in mind, given the additional contextual factors mentioned above, consideration needs to be given as to how the reconfigured public house use compares in qualitative terms with the existing public house.

7.6. Prior to considering various factors, it is worthwhile reiterating that the public house is the subject of an application seeking its designation as an asset of community value. The potential asset of community value designation is considered to be material in the consideration of this application. It has been recognised by a number of local planning authorities and planning inspectors across the country that ACV status is a material consideration.

### ***Loss of First Floor Trading Space (function room)***

7.7. The first floor of the pub has a small bar area and a large seating area which holds between 60-80 people. The consultation responses indicate that the first

floor is used for a wide range of local community functions and meetings including, but not limited to, the following:

- Comedy club
- Wakes
- Halloween parties
- Transition Belsize meetings
- French language learning group
- Choir

7.8. While the Applicant has argued that there is no formal booking system for the space, the website advertises the space for meetings/events and provides contact details to make bookings (see screenshot in Appendix 2).

7.9. The Applicant has stated that the events and meeting described above could take place on the ground floor in the future. It is clear that the layout of the ground floor is less conducive to meetings due to the larger bar area and the lack of separation from regular pub customers and the noisy environment that is characteristic of such areas.

7.10. It is therefore considered that the reduction of the tradable floorspace at first floor level would harmfully compromise and undermine the use of the existing public house, to the detriment of the potential asset of community value. Under the NPPF at paragraph 70 (bullet points 1 and 3) it is specified that planning decisions should plan positively for the provision and use of community facilities (public houses identified) to enhance the sustainability of communities, and ensure that established facilities are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community.

7.11. Camden also has a draft Local Plan, the latest version of which was published for public consultation 16/02/15, which seeks to provide more protection for pubs. It is considered that the draft plan is a material consideration as it has been publicised for consultation. Specifically, policy C3 states that, "*The Council will seek to protect public houses of social, economic, cultural and historic value to the local community and the borough*". The supporting text states that, "*The intention of this policy is to sustain a balanced, vibrant and diverse evening economy in Camden of which public houses form a vital part, giving particular attention to the retention of 'community pubs'. A 'community pub' predominantly serves a local residential community and is a unique community amenity providing space for social interaction*". It is clear from the list of uses above that the proposal achieves such a function. A copy of the relevant pages of the Local Plan are contained in Appendix 3 below.

7.12. The draft policy will also consider whether alternative facilities are available in the area. In assessing a reasonable level of accessibility for alternative provision, the Council proposed to use a benchmark of 800 metres or a 10 minute walking distance. The following is a list of other public houses in the area and a summary of their facilities:

Public House	Address	Distance (m)	Separate Function Space	Garden	On site manager lodging
The Hill	94 Haverstock Hill	100	No	Yes	No
The Washington	50 England's Lane	400	No	No	No
The Enterprise	2 Haverstock Hill	550	No	No	Yes
The Fiddler's Elbow	1 Malden Road	700	No	No	No
The Pembroke	150 Gloucester Ave	700	No	Yes	No
The Westport Inn	166 Malden Road	750	No	No	No

7.13. In this case there are no other public houses within 800m of the subject site that provide separate function spaces and limited facilities have outdoor space or on-site accommodation for management. Furthermore, it is clear that the function space is specific to the area, evidenced by the attendance of the Transition Belsize group.

7.14. It is considered that paragraph 15.7 of the LDF does not entirely embrace the inherently proactive approach of the NPPF, and that within this context the NPPF can be afforded greater weight than the LDF at this point. This is also backed up by the Further Alterations to the London Plan 2014, whereby 4.48a states that Council's should bring forward policies to maintain, manage and enhance public houses. With this in mind therefore, the existing pending asset of community value would not be enhanced by the loss of floorspace at first floor level.

7.15. Appeal decision APP/K5600/A/13/2199870 dated 10/12/13 is also relevant insofar as it demonstrates that the reconfiguration and reduction of floorspace within a building (in this case a restaurant and admittedly not a public house) can be harmful to a community facility. As such, there are considered to be parallels with the appeal site.

7.16. There are also concerns that the loss of the first floor would negatively impact the viability of the pub, leading to a future application to convert the ground floor to residential use.

7.17. Appeal decision APP/X5210/A/14/2218740 dated 02/10/14 is considered to be particularly relevant to the proposal as it was for a very similar application within Camden (Golden Lion Pub). The inspector found that pubs can be considered community facilities, retention of the use is not enough to ensure the community facility is retained, and replacement/alternative facilities need to be of equal value.

#### *Loss of Garden*

7.18. The loss of the pub garden is also considered to be to the detriment to the community as loss of outdoor amenity space. Draft Local Plan p4.66 states that, "*outdoor amenity spaces, gardens and parking areas attached to pubs can also be subject to similar pressures for residential development. Proposals may also involve the part conversion of a pub leading to the loss of function rooms or trading space. The loss or change of use of these areas will*

*not be permitted where it is considered that this may prejudice the economic viability or future operation of the public house. The Council may seek appropriate independent advice on this matter which would need to be funded at the applicant's expense".*

#### *Loss of Second Floor (Managers Accommodation)*

- 7.19. The application would also result in the loss of the second floor managers flat. Pubs traditionally offer managers on-site accommodation due to the long and late working hours of such establishments, and the need to be on hand in the case of emergencies. The loss of the manager's accommodation will make employment at the pub less attractive to prospective future managers and thus negatively affect the viability of the pub.

#### *Concluding Comments*

- 7.20. When these factors are taken into account and considered against the benefits which the applicant has detailed, a judgment using planning balance needs to be applied. It is considered in this instance that the factors detailed above which compromise and undermine the existing public house use outweigh those put forward by the applicant. Therefore the proposal, as a recognised community asset, would harmfully compromise and undermine the use of the existing public house. Therefore the public house would fail to be developed and modernised in a way that is sustainable, and retained for the benefit of the community, which in turn would fail to enhance the sustainability of communities in line with the proactive emphasis of the NPPF in particular.

#### ***Reason for Refusal 2 - Amenity of future occupants***

- 7.21. One of the most common complaints Council's receive related to public houses are from the occupiers of dwellings in the vicinity of the pubs reporting excessive noise and anti-social behaviour from people outside of pubs. The proposal would result in additional units directly above the pub. As such the proposal would result in additional conflict between two incompatible uses, likely to result in future complaints. While it is noted that additional soundproofing could be included between the ground and first floor level, it is much more difficult to control the external environment.
- 7.22. The ground floor pub would look out into the private residential garden, severely compromising privacy and use of the space.
- 7.23. A smoking area would be located in the far side of the garden, accessed from the street, which would also produce a noise conflict with the proposed residential garden.

#### ***Reasons for Refusal 3 & 4 - Legal Agreement issues***

- 7.24. Reasons 3-4 of the refusal of the application relate to the unacceptability of the scheme in the absence of a S106 legal agreement covering car-free housing and highways works.

- 7.25. During the course of assessment of the application a legal agreement was drafted by Council and agreed in principle by the Applicant. Subject to signing of this agreement reasons for refusal 3 and 4 would be overcome. Notwithstanding, below is justification for the restriction of private car parking and requirement for a highways contribution related to the proposal.
- 7.26. Policy DP18 states that the Council expects all development to be car free in the Central London Area. The reason is to facilitate sustainability and to help promote alternative, more sustainable methods of transport. The appeal site is located in an area with good public transport accessibility (PTAL score of 4). This site is also located within a Controlled Parking Zone (CPZ) which suffers from high levels of parking stress. As such it is considered that the proposal should be secured as car free by the means of a legal agreement should the appeal be allowed.
- 7.27. The requirement is in accordance with key principle 4 of the National Planning Policy Framework, Promoting sustainable transport, and policies CS11 (Promoting sustainable and sufficient travel); CS19 (Delivering and monitoring the Core Strategy); DP18 (Parking standards and availability of car parking); and DP19 (Managing the impact of parking) of the LDF.
- 7.28. A planning obligation is considered the most appropriate mechanism for securing the development as car free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, a legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”. The Council’s control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council’s control is derived from Traffic Management Orders (“TMO”), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where the additional dwelling (or dwellings) ought properly to be designated as car free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a “Car Free” Section 106 Obligation. The TMO sets out that it is the Council’s policy not to give parking permits to people who live in premises designated as “Car Free”, and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”.
- 7.29. Further, use of a Section 106 Agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal



agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

- 7.30. There is an existing crossover to the front of the site and this is no longer in use, this will be removed as part of the legal agreement. Such works would require a financial contribution secured via a Section 106. The figure for the associated works would be £5,292.83.

### ***Other matters***

- 7.31. In respect of all other matters in relation to the determination of this appeal, no issues are raised subject to suitably worded conditions (see section 10 below for details).

### ***Comments on Appellant's Grounds of Appeal***

- 7.32. The issues raised in the appellant's Grounds of Appeal are largely covered in sections 6 & 7 of this appeal statement.

## **8. Relevant Appeals**

- 8.1. See Appendix 4 for full text of decisions outlined below. All of the non-Camden appeal decisions listed are from Kensington & Chelsea, which is considered to be comparable to Camden in that it is an inner London borough with similar pressures on non-residential buildings.

### **8.2. APP/X5210/A/14/2218740**

Decision Date: 02/10/2014

Address: Golden Lion, 88 Royal College Street, London NW1 0TH

Description: Change of use from public house (Class A4) with ancillary accommodation to public house and function area at ground and lower ground floors respectively and 4 flats (3 x 2 bedroom/3 person and 1 x 3 bedroom/5 person)(Class C3); erection of a 3 storey extension (at 1st and 2nd floors and within the roofspace) on the Pratt Street frontage; lowering of existing basement by 600mm

Important Inspector Quote: *The government's Community Right to Bid: Non-statutory advice note for local authorities October 2012 advises that it is open to the local planning authority to decide whether listing as an ACV is a material planning consideration, taking into account all the circumstances of the case. I find the designation to be relevant to the particular circumstances of this appeal and I apportion it a reasonable degree of weight as an indication of the significance of the current use to the local community.*

Officer Comment: The subject appeal site is currently being assessed as an Asset of Community Value. The Council consider that this is a material planning consideration. As such, weight should be given to its potential status.

Important Inspector Quote: *Mere retention of an A4 use, however, would not, in my opinion, be sufficient to satisfy the general expectations of policies broadly seeking to safeguard the community benefits of existing public houses. The extent, configuration and overall quality of the replacement facility are all relevant considerations and, in these regards, I find that the scheme has a number of significant shortcomings.*

Officer Comment: The proposal would result in the loss of a meeting space for local community groups, adequate re-provision would not be made, and as such would fail to safeguard community benefits.

Important Inspector Quote: *In particular, in order to accommodate a first floor flat, the existing function room at first floor level would be replaced by a facility at basement level. The existing room is of attractive character and provides a relatively open, light space with windows affording outlook across the local area. The replacement facility would be confined to the basement, would have no windows or outlook, and would lose the relative charm of the existing facility. Whilst noting the operational benefits identified, I am not satisfied that the replacement facility would be of comparable quality in terms of community benefit. The previous appeal decision also noted that the existing function room is an important part of the community value of the premises.*

Officer Comment: The appeal failed even though the Applicant was providing replacement facilities on the site. In this case, no replacement facilities are being provided.

### 8.3. **APP/X5210/A/13/2199667**

Decision Date: 12/12/2013

Address: Golden Lion, 88 Royal College Street, London NW1 0TH

Description: 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 extension of part of existing cellar to create new lightwell comprising glazed blocks plus metal grille enclosure at ground floor level at Pratt Street frontage.

Important Inspector Quote: *Public meetings are precluded by the terms of the lease but the first floor function room offers space for classes, clubs or meetings as specifically highlighted in the DP. The stairs to it are quite long and steep so it would not be suitable for some but nevertheless it has recently served as a useful meeting place for the pool league, residents association and War Memorial association. Even if this area has been used for other purposes in the past it offers an ancillary community function and the private upper accommodation can be shut off. Irrespective of the application to register The Golden Lion as an Asset of Community Value it is a local pub that serves a community role.*

Officer Comment: It is clear that it is not necessary to be formally listed as an asset of community value to serve a community role and that public houses can be community uses.

**8.4. APP/K5600/A/13/2199870**

Decision Date: 10/12/2013

Address: Le Colombier, 145 Dovehouse Street, London SW3 6LB

Description: Change of use of upper floors of restaurant to residential.

Important Inspector Quote: *The loss of a considerable part of the operational space would significantly reduce the scale of the restaurant facility, which is a community facility. This would reduce the availability of services to meet the community needs. Therefore, I consider this loss would be to the detriment of the character of the surrounding Conservation Area and to its sense of place.*

Officer Comment: While in this case the proposal related to loss of restaurant space, as opposed to public house space, the precedent set is that loss of part of a community facility reduces the ability of such assets to meet community needs.

**8.5. APP/K5600/A/12/2180954**

Decision Date: 10/01/2013

Address: Britannia Tap, 150 Warwick Road, London W14 8PS

Description: Change of use from public house (Use Class A4) to 4 No. self contained flats (Use Class C3) also erection of rear extensions at basement, ground, 1st and 2nd floors and alterations to front elevation at ground floor level

Important Inspector Quote: *The change of use would remove a community facility that contributes to the social, recreational and cultural facilities of the area...The Borough has completed consultation on a draft planning policy for the protection of public houses... The emerging policy, which according to the Council has reached examination stage, seeks to resist the loss of public houses and other drinking establishments (Class A4) throughout the Borough; and other uses which provide a wider social role. The supporting text builds on the CS. It notes that well over a third of public houses in the Borough have been lost since 1980 and that the trend is set to continue because of the higher land value that attaches to residential use.*

*Whilst the weight that can be attached to this emerging policy must be less than that which would apply to an adopted policy because of the stage it has reached, it clearly follows on from a concern expressed in the CS. Moreover, paragraph 70 of the National Planning Policy Framework (NPPF) of March*

*2012 is also a material consideration; it advises that planning policies and decisions should plan positively for the provision and use of various community facilities including public houses, to enhance the sustainability of communities and residential environments. Accordingly I consider that in policy, the change of use of pubs to residential is resisted in principle.*

Officer Comment: The Inspector gives sufficient weight in a draft local plan policy to refuse the loss of a pub in order to protect a community facility.

#### **8.6. APP/K5600/A/12/2172342**

Decision Date: 17/09/2012

Address: The Cross Keys, 1 Lawrence Street, London SW3 5NB

Description: Change of use of existing building from Class A4 (drinking establishment) to Class C3 (single family dwelling). Addition of new basement, erection of a roof extension, demolition of existing rear extensions at ground-floor level, erection of new ground-floor rear extension, and reinstatement of garden to the rear.

Important Inspector Quote: *It is clear that, before it closed, the Cross Keys contributed to meeting the needs of the local community through provision of facilities and as a place of social interaction, for example. There is no dispute that there are other premises to eat and drink in particular lying within 10 minutes' walk of the site – less in the case of the Pig's Ear in Old Church Street, for example. However, even if they were considered, on this basis, to have the potential to contribute to the community's ability to meet its day-to-day needs in place of the Cross Keys, this does not mean that they are equivalent to the Cross Keys in terms of community value. It is evident from the substantial volume of representations in this case that the public house is much valued by the local community as a neighbourhood resource and meeting place and for its contribution to the vibrancy of the local streets, described by one local resident as "eerily quiet" since the Cross Keys closed. It is also clear that it is valued by local people for its heritage associations, not simply as a structure but in relation to its use.*

Officer Comment: This judgment demonstrates that if other facilities nearby do not provide the same community facilities they cannot be considered an alternative.

### **9. Conclusion**

- 9.1. The Council's policies are consistent with Government advice and indicate that the appeal should be dismissed. For these reasons the Inspector is respectfully requested to dismiss the appeal.

## Appendix 1 - Without Prejudice Conditions

Should the Inspector be minded to allow the appeal, the Council would suggest the conditions listed below:

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 if in CA of the London Borough of Camden Local Development Framework Development Policies.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans 20220-PL-012 Rev 04, 20220-PL-013, 20220-PL-014 Rev 04, 20220-PL-015, 20220-PL-016, 20220-PL-017, 20220-PL-018 Rev 02, 20220-PL-040, External Building Fabric Assessment Report 10741.EBF.01, Sound Insulation Investigation Report 10741.S1.01, Plant Units Report 10741.PCR.01, Operational Management Plan, 20220-PL-050, 20220-PL-001.

Reason: For the avoidance of doubt and in the interest of proper planning.

- 4 Prior to the occupation of the residential (Class C3) units, details of secure and covered cycle storage area for 4 cycles shall be submitted to and approved by the local planning authority in writing. The approved facility shall thereafter be provided in its entirety prior to the first occupation of any of the new units, and thereafter permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

- 5 Prior to the occupation of the residential (Class C3) units, details of the internal sound insulation shall be provided for the building in accordance with a scheme to be first approved by the local planning authority in writing. The use shall thereafter not be carried out other

than in accordance with the approved scheme.

Reason: To safeguard the amenities of the upper residential floors and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 6 Noise levels at a point 1 metre external to sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 7 Details, including technical specifications of all externally located mechanical plant and ventilation equipment, together with an accompanying acoustic report, shall be submitted to and approved by the local planning authority prior to first installation of this plant. The plant shall not be operated other than in complete accordance with such measures as may be approved.

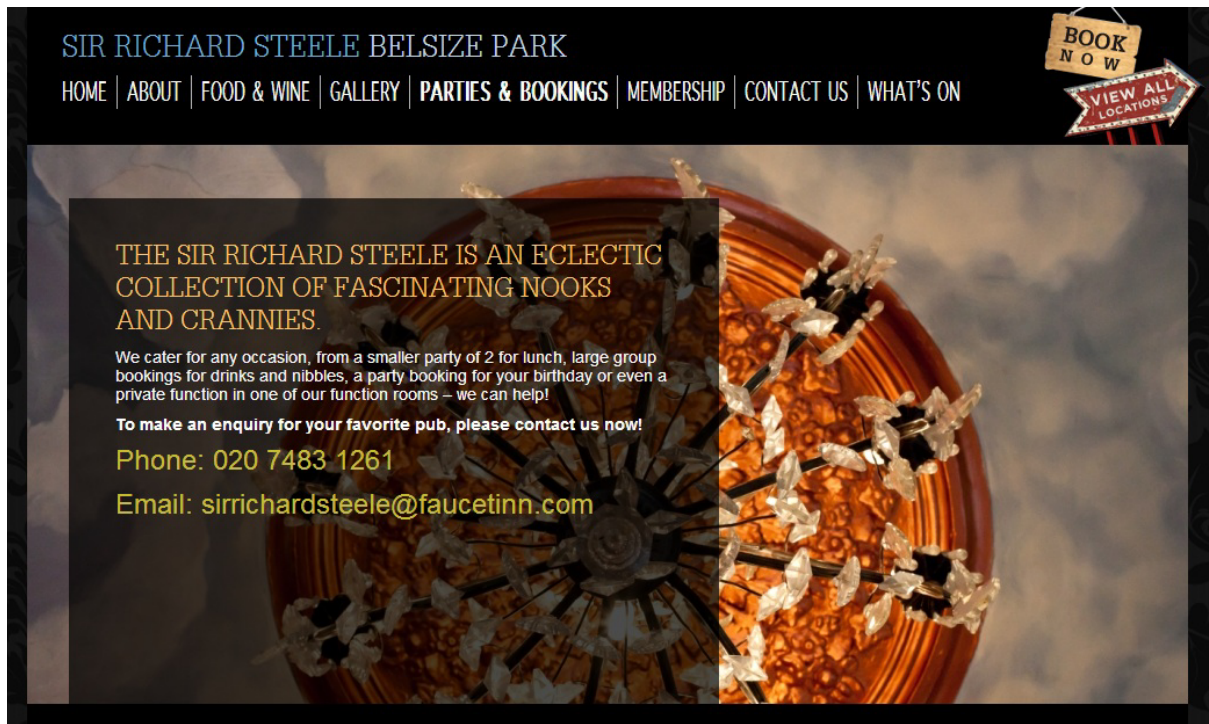
Reason: To safeguard the amenities of occupiers of the proposed use, adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 8 The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.

## Appendix 2 – Public House Booking Page

Screenshot from Sir Richard Steele website, taken 16/03/15, demonstrating that bookings for groups are available.



**SIR RICHARD STEELE BELSIZE PARK**

HOME | ABOUT | FOOD & WINE | GALLERY | **PARTIES & BOOKINGS** | MEMBERSHIP | CONTACT US | WHAT'S ON

**BOOK NOW**

**VIEW ALL LOCATIONS**

**THE SIR RICHARD STEELE IS AN ECLECTIC COLLECTION OF FASCINATING NOOKS AND CRANNIES.**

We cater for any occasion, from a smaller party of 2 for lunch, large group bookings for drinks and nibbles, a party booking for your birthday or even a private function in one of our function rooms – we can help!

**To make an enquiry for your favorite pub, please contact us now!**

**Phone: 020 7483 1261**

**Email: [sirrichardsteele@faucetinn.com](mailto:sirrichardsteele@faucetinn.com)**

### **Appendix 3 – Camden Draft Local Plan**

The Local Plan is a large document. Below is the relevant pages relating to the new public house policy. For the full document please visit our website on the following address: [http://www.camden.gov.uk/ccm/cms-service/stream/asset?asset\\_id=3286995&](http://www.camden.gov.uk/ccm/cms-service/stream/asset?asset_id=3286995&)



of pubs. There are far fewer pubs in the majority of wards north of Euston Road and some of these pubs are the last remaining in the local community.

4.56 National planning policy recognises that public houses, along with other community facilities, enhance the sustainability of local communities and should be safeguarded and retained for the benefit of the community while allowing them to develop and modernise in a sustainable way.

4.57 This policy is intended to give the Council greater control over the demolition and conversion of pubs where a planning application is required. This will help prevent the loss of pubs to uses which offer little or no community value. We are also reviewing our approach to permitted development rights affecting pubs. These allow the change of use of a pub (Use Class A4) to certain other uses, including restaurants and shops.

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## Policy C3 Public houses

The Council will seek to protect public houses of social, economic, cultural and historic value to the local community and the borough.

Applications for the change of use, redevelopment and/or demolition of a public house must demonstrate to the Council's satisfaction that:

- a. the proposal does not result in a deficit of provision in the local area;
- b. the facility is no longer economically viable;
- c. a marketing exercise has been undertaken in order to confirm that there is no interest in the continued use of the property or site as a public house.

We may not seek to apply these tests in areas with a recognised over concentration of pubs, including Special Policy Areas for licensing.

Where a public house is converted to an alternative use, the historic fabric and features should be retained wherever possible.

Applications for the change of use of the facilities ancillary to the operation of the public house will be permitted where the loss of the ancillary use will not adversely affect the operation of the public house.

Where change of use is justified the Council's preferred alternative use will be housing (C3).

We will support the provision of new public houses in appropriate sites in growth areas, other highly accessible locations and town centres, subject to other policies in the Plan.

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4.58 Policy C3 seeks to provide protection to public houses that are important for their social, economic, cultural and historic value while ensuring that redevelopment or change of use is possible where this is not the case. This reflects paragraph 70 of the NPPF which urges Local Planning authorities to plan positively for the provision and use of public houses and guard against the unnecessary loss of valued facilities. The policy allows flexibility by supporting development where it would not be contrary to the interests of the economy or community. The overall aim is to ensure that the Council is able to protect all of its public houses which provide a significant benefit or value to the local community, including access to a

range of facilities; that public houses of historic and cultural value are conserved and enhanced according to their significance and that the vibrancy and vitality of our centres and local economies are sustained.

- 4.59 In recognition of the important role public houses play, the Council will expect the criteria in the policy to be met in order to justify a change of use or redevelopment.
- 4.60 Pubs embody many generations of local culture and history. As already stated, the provision of pubs varies significantly across Camden. There are parts of the borough where there is a negative cumulative impact from a particularly high concentration of licensed premises leading the Council to designate 'Special Policy Areas' using its licensing controls (Camden Town and Seven Dials). The designation of these areas is intended to avoid further negative impact. The Council will take into account evidence of where there is an overconcentration of pubs in determining whether to request a marketing and viability assessment.
- 4.61 The intention of this policy is to sustain a balanced, vibrant and diverse evening economy in Camden of which public houses form a vital part, giving particular attention to the retention of 'community pubs'. A 'community pub' predominantly serves a local residential community and is a unique community amenity providing space for social interaction. Outside the Central Activities Zone, there is far less opportunity to access a pub within walking distance. Ultimately, the particular role and value of a public house has to be determined on a case by case basis.
- 4.62 It is important that the local community have a say in whether these facilities should be maintained. We may require the applicant to fund a survey of local residents and businesses to establish the community's views on the loss of the public house prior to the submission of a planning application. The methodology and content of the survey would need to be agreed in writing by the Council and be funded by the applicant. This should be supported by evidence setting out the alternative public house provision in the local area/community including the location, size, range and quality of facilities and taking account of any unimplemented planning permissions relating to the addition and/or loss of public houses. In assessing a reasonable level of accessibility for alternative provision, the Council will use a benchmark of 800 metres or a 10 minute walking distance.



- 4.63 Applicants should demonstrate that it would not be economically viable to retain the public house in its existing use. We will require at least three trading years of audited accounts and evidence of the efforts made to preserve the public house, improve its profitability and attract new customers, including the introduction of complementary functions and diversification options. This should include consideration of whether a different business model and/or a different owner/operator might result in the public house becoming economically viable. Any changes to the pub that may have affected its trading performance should also be identified (e.g. refurbishments, changes to opening hours). Written statements by staff and customers and provision of invoices must be supplied as evidence of any physical or operational changes.
- 4.64 A marketing exercise should be undertaken to show that all reasonable attempts have been made to retain the public house in its existing use. This must be undertaken for a period of not less than 12 months at a realistic price which should be pre-agreed in writing by the Council following independent valuation (by a professional RICS valuer with expertise in the licensed leisure sector) at the applicant's expense. Both freehold and leasehold options should be made available without a 'tie' requiring the purchase of drinks through the vendor and without restrictive covenants preventing other pub operators, breweries, local businesses or community groups from taking over the pub. The range of marketing methods should be agreed in advance with the Council.
- 4.65 Many pubs are valued for their historic fabric and contribution to the character of the area including their distinctive windows, signage and fittings. Many pubs include historic fabric and features which are important to the character of the local area. Where the conversion of a public house is considered acceptable, we wish to see these historic features maintained. Some of Camden's pubs are listed buildings and are therefore afforded protection under the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 4.66 Outdoor amenity spaces, gardens and parking areas attached to pubs can also be subject to similar pressures for residential development. Proposals may also involve the part conversion of a pub leading to the loss of function rooms or trading space. The loss or change of use of these areas will not be permitted where it is considered that this may prejudice the economic viability or future operation of the public house. The Council may seek appropriate independent advice on this matter which would need to be funded at the applicant's expense.
- 4.67 Subject to the impact of the development on nearby residential uses and amenity and policies in the Plan seeking to protect the function and character of centres, the Council will support the provision of new public houses where this positively enhances the range of community facilities serving growth areas, highly accessible locations and town centres identified by this Plan and on other major sites where appropriate. Pubs can potentially play a crucial social role in promoting community interaction and activities in these areas, helping to build and maintain sustainable neighbourhoods.
- 4.68 As stated in paragraph 4.51 above, community groups can nominate buildings and land, including pubs, as "Assets of Community Value". If and when the owner decides to sell an asset of community value, a local group can trigger a six month moratorium on the sale giving them time to raise the funds to purchase it. The Council, when determining planning applications involving the loss of pubs, will have regard to any Assets of Community Value designation.

## **Appendix 4 – Relevant Appeal Decisions**



## Appeal Decision

Hearing held on 3 September 2014

Site visit made on 3 September 2014

**by Peter Rose BA MRTPI DMS MCMi**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 2 October 2014**

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**Appeal Ref: APP/X5210/A/14/2218740**

**Golden Lion, 88 Royal College Street, London NW1 0TH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Norreys Barn Ltd against the Council of the London Borough of Camden.
  - The application Ref 2013/4793/P is dated 4 September 2013.
  - The development proposed is change of use from public house (Class A4) with ancillary accommodation to public house and function area at ground and lower ground floors respectively and 4 flats (3 x 2 bedroom/3 person and 1 x 3 bedroom/5 person)(Class C3); erection of a 3 storey extension (at 1st and 2nd floors and within the roofspace) on the Pratt Street frontage; lowering of existing basement by 600mm.
- 

### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for a partial award of costs has been made by Norreys Barn Ltd against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

### Procedural Matters

3. The Council has stated that, had it still been in a position to do so, it would have refused planning permission for the reasons formally set out in its notice titled 'Notification of decision when an appeal has been made' and dated 25 June 2014.
4. A copy of an agreement made pursuant to section 106 of the Town and Country Planning Act 1990 and dated 1 September 2014 was submitted to the Hearing. This seeks to address the Council's concerns in relation to local parking conditions and pedestrian safety. I am satisfied that no interests would be prejudiced by having regard to the agreement in this appeal.
5. The appellant submitted revised drawings to the Hearing by email dated 21 July 2014. The drawings indicate a replacement of the previously proposed roller shutters within the Pratt Street frontage by security folding/collapsible doors. I do not consider that the scheme would be so changed by this modification such that any interests would be prejudiced by having regard to these drawings as part of this appeal.

## **Main Issues**

6. The main issues are the effect of the proposed development upon:
  - a) the availability of community facilities in the local area;
  - b) the character and appearance of the host site and surrounding area, with particular regard to the design of the proposed roller shutters/folding doors;
  - c) local parking conditions;
  - d) pedestrian safety.

## **Reasons**

### *Community facilities*

7. The appeal site comprises a late nineteenth century four-storey public house with basement located at the junction of Pratt Street and Royal College Street. The building is of attractive traditional design and is a prominent and imposing feature within the local townscape. The surrounding area is of mixed use and contains buildings of varying forms and quality. The Council identifies the site as a non-designated heritage asset and it is proposed for inclusion within the Council's emerging list of buildings of local interest.
8. The premises comprise a main A4 trading area at ground floor, a function room at first floor, and other ancillary facilities within the basement and at second and third floor levels, including ancillary storage facilities and kitchen, a disused dumbwaiter between floors, and residential accommodation. The building is a purpose-designed, traditional public house and its predominant character arises from that physical form and heritage.
9. The Golden Lion was also designated as an Asset of Community Value (ACV) in December 2013 under the Localism Act, 2011. I note that decision was reviewed and reaffirmed in March 2014. The Localism Act defines an ACV to be an actual current use of a building or other land that is not an ancillary use and which furthers the social wellbeing or social interests of the local community. The definition also requires that it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community. The government's *Community Right to Bid: Non-statutory advice note for local authorities* October 2012 advises that it is open to the local planning authority to decide whether listing as an ACV is a material planning consideration, taking into account all the circumstances of the case. I find the designation to be relevant to the particular circumstances of this appeal and I apportion it a reasonable degree of weight as an indication of the significance of the current use to the local community.
10. The National Planning Policy Framework (the Framework) advises that planning decisions should promote opportunities for meetings between members of the community who might not otherwise come into contact with each other. It further states that decisions should plan positively for the provision and use of community facilities such as public houses in order to enhance the sustainability of communities and residential environments.



11. London Plan Policy 3.1 states that proposals involving the loss of facilities that meet the needs of particular groups and communities without adequate justification or provision for replacement should be resisted. Policy 3.16 further states that proposals which would result in a loss of social infrastructure in areas of defined need without realistic proposals for reprovision should be resisted. The supporting text to Policy 4.8 of the recent Draft Further Alterations to the London Plan January 2014, whilst of only limited weight, advises that where there is sufficient evidence of need, community asset value and viability in pub use, boroughs are encouraged to bring forward policies to maintain, manage and enhance public houses.
12. Policy CS10 of the London Borough of Camden Core Strategy 2010-2025 Local Development Framework, 2010 (the Core Strategy) seeks to support the retention and enhancement of existing community, leisure and cultural activities. Policy DP15 of the London Borough of Camden Development Policies 2010-2025 Local Development Framework, 2010 (the Development Policies) states that the Council will protect existing community facilities by resisting their loss unless a replacement facility that meets the needs of the local population is provided. The supporting text to DP15 further advises that the Council will resist the loss of local pubs that serve a community role, for example, by providing space for clubs, meetings etc., 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.
13. The appellant maintains that the proposal is compliant with these policies by seeking to retain an A4 use, and I accept there would, in principle, be no loss of a public house as such. Further, the scheme both acknowledges and responds to a previous appeal decision Ref APP/X5210/A/13/2199667 dated 12 December 2013. This decision related to an application which included conversion of the appeal site into 8 self-contained flats but with no retention of A4 use. The relevant Hearing pre-dated formal designation as an ACV but the decision concluded that The Golden Lion was a local pub that served a local community role and that its somewhat old-fashioned charm appealed to those who go there. The evidence suggested that the premises were popular with and cherished by a good many people as offering something different. I am in no doubt from the strength and depth of support expressed at this further appeal that the public house remains highly valued as an important local community asset, not just in terms of its licensed trade but also as a broader community meeting facility.
14. Nevertheless, all businesses must progress and evolve in order to survive, and the issue is whether the proposals before me take forward the premises without compromising its undoubted value as a community asset. The proposal seeks to retain an A4 use as part of a mixed development of the site involving four self-contained flats and I appreciate that the scheme is packaged to buck the wider trend of public house closures. The scheme would offer significant benefits in terms of A4 use, including improved toilet and kitchen facilities and better access. The appellant also refers to the premises as being dated and in need of renovation and has provided significant expert commercial justification for the detailed form of the A4 accommodation proposed. I have noted that some improvements have been made to the premises in recent years but accept that further upgrading is required.



15. Mere retention of an A4 use, however, would not, in my opinion, be sufficient to satisfy the general expectations of policies broadly seeking to safeguard the community benefits of existing public houses. The extent, configuration and overall quality of the replacement facility are all relevant considerations and, in these regards, I find that the scheme has a number of significant shortcomings.
16. In particular, in order to accommodate a first floor flat, the existing function room at first floor level would be replaced by a facility at basement level. The existing room is of attractive character and provides a relatively open, light space with windows affording outlook across the local area. The replacement facility would be confined to the basement, would have no windows or outlook, and would lose the relative charm of the existing facility. Whilst noting the operational benefits identified, I am not satisfied that the replacement facility would be of comparable quality in terms of community benefit. The previous appeal decision also noted that the existing function room is an important part of the community value of the premises.
17. I am also concerned that, in order to accommodate self-contained access to the upper floor flats and basement and to accommodate incidental storage, part of the main ground floor public trading area, which would form the focus of the commercial operation, would be lost. Whilst facilities such as darts, a piano and a pool table could still theoretically be accommodated, this area is already fairly limited in size and shape and would be further constrained in those regards. Further, the entire premises currently comprise one single A4 planning unit. The proposed scheme would compress the overall extent of the A4 use and would compartmentalise the remaining trading area and function room components into separate, physically confined spaces, thereby losing the wider flexibility and character offered by the existing form and layout.
18. I consider that the sum total of these shortcomings would be to compromise the overall value of the site as a community asset which, in terms of extent, would become a secondary element to the predominant and unrelated use of the site as separate residential accommodation. From the evidence before me, there is a distinction to be drawn between the likely community benefits of the replacement A4 use and the community benefits undoubtedly already conferred by the existing public house. I am not satisfied that the physical composition of the proposed A4 accommodation would be adequate to provide a sustained level of community benefit comparable to the existing facility. In turn, the scheme would carry significant risk in terms of the possible future failure of the site as a community facility and potential loss of the existing community benefits.
19. I have also had regard to the availability of a number of other public houses in the surrounding area. Each public house has a different character and function and I have little basis to conclude that they would offset the particular ambience and community benefits of The Golden Lion.
20. I therefore conclude that the proposed development would compromise and undermine the value of the existing A4 use as a local community facility. Accordingly, the development would be contrary to the underlying aims of Policy CS10 of the Core Strategy, of Policy DP15 of the Development Policies, and to the aims of the London Plan and of the Framework which generally seek to safeguard the community benefits arising from public houses where appropriate.

### *Character and appearance*

21. The Pratt Street elevation is an important feature of the building and of the local townscape. Whilst the building is not statutorily listed, the ground floor element is relatively ornate and comprises a mixture of glazing, timber, tiling and stone with vertical pilasters. The detailed ground floor design forms an integral part of the overall traditional public house elevation and is an important contribution to the distinctiveness of the setting.
22. The scheme would involve points of access within the Pratt Street elevation to be enclosed by either roller shutter doors or by other folding doors. These would appear as relatively random features with contrasting detailed forms and appearance. In either form, this aspect of the scheme would introduce visually discordant elements into an otherwise attractive decorative public house frontage and would fail to respect the wider integrity of the elevation.
23. The Framework advises that, in weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment is required having regard to the scale of any harm or loss and the significance of the heritage asset. I find that less than substantial harm would be caused to the non-designated heritage asset but that would not be out-weighed by overall public benefits otherwise arising from the proposal.
24. I therefore conclude that the proposed development would be harmful to the character and appearance of both the host building and the surrounding area. Accordingly, the scheme would be contrary to Policy CS14 of the Core Strategy and to Policies DP24 and DP25 of the Development Policies. These seek, amongst other matters, to promote high quality design, to conserve the Borough's heritage, and to ensure that development has regard to the character of the existing building and its setting. The Framework also places great importance upon high quality design and upon local distinctiveness.

### *Local parking conditions and pedestrian safety*

25. The planning agreement does not overcome the harm identified in terms of the role of the appeal site as a community facility, or the harm arising from the proposed works in terms of character and appearance. Accordingly, it is not necessary to assess the content of the agreement against the relevant tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, 2010 or with regard to accompanying guidance.

### **Other Matters**

26. Whilst there are questions about the general economic plight of public houses, and this was not a matter for detailed consideration as part of the appeal, I note that the existing publican described the public house as a successful operation and it remains a continuing use.
27. Although questions were raised at the Hearing regarding the viability of the proposed A4 arrangement, I noted the responses given and this has not been a determining factor in my decision.
28. General reference was also made at the Hearing to the appellant's own research of local opinion but full and appropriate details were not formally submitted for consideration in accordance with the relevant appeal procedures and timescales and I attach little weight.

29. I have also noted the presence of development sites in the vicinity of the appeal site as indicated in the Council's Site Allocations Development Plan Document, and the possible implications for the scale of change in the local area.
30. Regard has been given to various references to other appeal and planning decisions. Whilst full details of each of those schemes are not before me, the circumstances of each site and of each development will be different, and I am considering the specific planning merits of this particular appeal proposal.
31. The Council raises no objection to the four flats proposed, or to other associated works contained within the application, and has confirmed that the development is otherwise acceptable. The scheme would also make a contribution towards additional local housing and I apportion limited weight as a benefit in favour of the proposals.
32. I have also had regard to the Mayor of London's Revised Early Minor Alterations to the London Plan published on 11 October 2013.
33. A note was passed to me at the end of the Hearing on behalf of an interested third party, Jessica Francis. The note explained her perceived need to leave the Hearing but I do not consider this matter had any bearing upon the evidence presented or upon the planning merits to be considered.
34. None of the other matters raised are of such significance, either individually or collectively, that they would outweigh the considerations that have led to my conclusions on the main issues.

### **Conclusion**

35. For the above reasons, and with regard to all other matters raised, I conclude the appeal should be dismissed.

*Peter Rose*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Paul Stinchcombe QC

Carolyn Apcar

Alan Sherman

Phil Briscoe

Peter Lerner

Graeme Bunn

Leo Murphy

Mark Sanderson

Apcar Smith Planning

BuildTech Building Surveyors

Bellenden Community Research

Peter Lerner Consultancy

Fleurets Leisure Property Specialists

The Arizona Group

Heritage Advisory Consultancy

### FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Markwell

Alan Wito

Principal Planning Officer

Senior Planner, Conservation and Design

### INTERESTED PERSONS:

Councillor Roger Robinson

Tom Copley

Will Blair

Local Councillor

London Assembly Member

Parliamentary Candidate for

Holborn and St Pancras 2015

Planning For Pubs Ltd

Publican, The Golden Lion

Chairman, Save The Golden Lion Committee

Camden Pub Watch

Dale Ingram

Dave Murphy

Shaun Pollard

Pat Logue

James Cantwell

Henry Conlon

Jim Clack

Phillip Stein

Supporter of The Golden Lion

Supporter of The Golden Lion

Supporter of The Golden Lion

Supporter of The Golden Lion

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Copies of Hearing notifications
2. Copy of an agreement made under section 106 of the Town and Country Planning Act 1990 dated 1 September 2014
3. Appeal decision APP/X5990/A/14/2215985 dated 8 July 2014 relating to 43 Linhope Street, London NW1 6HL
4. Indicative menu
5. Indicative layouts
6. Floorspace figures
7. Legal Submission by Paul Stinchcombe QC relating to Westminster City Council v SSCLG and Mrs Marilyn Acons [2013] EWHC 690 (Admin)

8. Response of the London Borough of Camden to the appellant's application for costs

9. Undated note from Jessica Francis



## Appeal Decision

Hearing held on 12 November 2013

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 December 2013

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**Appeal Ref: APP/X5210/A/13/2199667**

**Golden Lion, 88 Royal College Street, London, NW1 0TH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Norreys Barn Limited against the decision of the Council of the London Borough of Camden.
  - The application Ref 2012/6655/P, dated 13 December 2012, was refused by notice dated 12 March 2013.
  - The development proposed is 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 extension of part of existing cellar to create new lightwell comprising glazed blocks plus metal grille enclosure at ground floor level at Pratt Street frontage.
- 

### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - Whether the proposal would lead to the loss of a community facility;
  - The effect 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; and
  - The effect of the proposed lightwell on the street scene, highway safety and pedestrian movement.

### Preliminary Matters

3. A planning obligation signed by both parties was submitted before the hearing. This agreement contains provisions regarding car free housing, an energy efficiency and renewable energy plan, a sustainability plan and contributions towards education, highways and public open space. As a consequence and taking account of updated information on energy and sustainability, the Council confirmed that reasons for refusal 5-10 have been overcome.
4. The development plan includes the Core Strategy (CS) of 2010 and the Development Policies (DP). These prefixes are used in the relevant policies and

are relied upon to identify which document they are taken from. Furthermore, revised Camden Planning Guidance (CPG) was adopted in September 2013.

## **Reasons**

### ***Whether the proposal would lead to the loss of a community facility***

5. Paragraph 10.6 of the DP refers to the important social role of traditional pubs but Policy DP10 and Policy CS7 are concerned with shops and are therefore not relevant. Policy CS10 nevertheless seeks to support community facilities and services generally and Policy DP15 establishes that their loss will be resisted unless a replacement facility is provided or the facility is no longer required in its current use. However, there is no specific reference to public houses and the policy follows a list in paragraph 15.2 which does not mention them.
6. Paragraph 15.7 of the DP nonetheless confirms that the loss of local pubs that serve a community role will be resisted unless alternative provision is available nearby or it can be demonstrated that the premises are no longer economically viable. This text follows on from further justification in support of community facilities that reflects the wording of Policy DP15 more closely. Consequently my reading of the DP is that pubs are in a category of their own and that the tests in paragraph 15.7 should be applied to determine whether there is compliance with the development plan or not. This means, for instance, that there is no expectation to provide a replacement facility in cases of this kind.
7. The provisions of paragraph 15.7 therefore give rise to 3 separate questions to be addressed in turn.

### *Is The Golden Lion a local pub that serves a community role?*

8. In short, the answer to this question is 'yes'. Paragraph 70 of the National Planning Policy Framework refers to public houses as a community facility so that in principle they can fulfil this role. At The Golden Lion particular activities undertaken are the regular musical performances (including Irish folk nights); 2 pool and darts teams (both men and women) and meetings held by various private organisations. In addition, there are the less tangible aspects of pub life which allow people to meet and interact in a convivial and, by all accounts, safe atmosphere. In so doing, there is an opportunity for meetings between members of the community who might not otherwise come into contact with each other.
9. The importance of The Golden Lion was emphasised in the representations made both orally and in writing. It was described by the Ward Councillor as "vital" and others referred to its role in assisting charities and other social projects and their long-standing affinity with the establishment. The appellant questioned whether the status of the pub had been exaggerated as part of the campaign to save it but that is not the impression I gained. Moreover, it is apparent that it primarily serves a 'local' function as opposed to other premises nearby which cater for tourists and visitors. Although there is no disabled access the pub attracts a wide age range.
10. Public meetings are precluded by the terms of the lease but the first floor function room offers space for classes, clubs or meetings as specifically highlighted in the DP. The stairs to it are quite long and steep so it would not be suitable for some but nevertheless it has recently served as a useful meeting place for the pool league, residents association and War Memorial

association. Even if this area has been used for other purposes in the past it offers an ancillary community function and the private upper accommodation can be shut off. Irrespective of the application to register The Golden Lion as an Asset of Community Value it is a local pub that serves a community role.

*Is alternative provision available nearby?*

11. There are existing community centres in the wider locality and the London Irish Centre and the Saint Pancras Community Centre are around 800m away from the appeal site. There is limited information about the nature of the facilities available but, in theory, they could host the community events that take place at The Golden Lion. However, there is a world of difference between centres such as this and public houses. In particular, it was highlighted that they have no bars and no regular staff at night. Moreover, the ambience is likely to be completely different. Therefore these centres do not provide alternative provision to compensate for the loss of a local pub.
12. In general, it is reasonable to expect the number of public houses serving a community role to be greater in a densely populated part of London such as this. Public houses tend to have their own identity and the somewhat old-fashioned charm of The Golden Lion presumably appeals to those that go there. The evidence suggests that the premises are popular with and cherished by a good many people as offering something different. Of course, the way that the pub is run and the clientele it attracts could change and it is suggested that this is inevitable in order for The Golden Lion to be viable. However, in this respect, I have to deal with the current situation.
13. Although some have closed there are still a good many pubs remaining in Camden. However, those along the High Street are geared towards a different market. The Grand Union, for example, is said to cater for a younger crowd with loud music and a resident DJ. The Prince Albert is very close by along Royal College Street but has a restaurant on the first floor. Within a short distance to the east is The Constitution. This has many of the hallmarks of a 'local' with ales and beers, pool table, dartboard, jukebox, fruit and quiz machines. Food is served and it also has the benefit of a beer garden next to the canal. The lease has recently been renewed.
14. On the face of it, Golden Lion customers could patronise The Constitution if the former were to close as it is within easy walking distance. However, there is nothing to indicate that this alternative has a function room which is an important part of the community value of the existing premises. In other words, it would not replace the facilities currently found at the appeal site. The Prince Albert appears to be a more 'up-market' establishment. The Framework indicates that decisions should guard against the unnecessary loss of valued facilities and services but this is what would occur if the proposal went ahead.

*Are the premises no longer economically viable for pub use?*

15. A profit of over £9,000 was made in 2007/2008 and the publican observed that the situation was rosier before then. However, the business only made £55 in 2011/2012 and there was a loss the previous year. There are also dilapidation liabilities to attend to. Furthermore, the latest set of accounts show that only a small salary was taken and rents have not been formally reviewed since 2002. It was said that the rising cost of living and the smoking ban had made things more difficult.



16. At the hearing I was given evidence that The Golden Lion is not fit for purpose in a commercial sense. Relevant factors include the small trading area, the outdated WCs with no disabled facilities and the absence of a trade kitchen. Moreover, it is in a weak, secondary location and requires investment. The tenant complained that since 2011 the finances of the business have been hampered in various ways. However, whilst there is conflicting evidence about rent levels the barrellage sold between 2008 and 2011 fell by nearly a quarter. Judged by this measure the pub has been in decline since before 2011.
17. The landlord is keen to try other initiatives to boost trade but is inhibited by the current planning position. A large student development is under construction in St Pancras Way and the recently adopted Site Allocations Development Plan Document includes 3 other residential and related development sites nearby. These may come forward in the medium term but it is not clear whether they would positively affect the fortunes of The Golden Lion. On the other hand, the scale of change in the area gives added importance to the community of familiar and long-standing facilities.
18. Public houses are businesses and from a purely economic standpoint the prospects for The Golden Lion do not look particularly good. There was limited interest from the leisure industry prior to its sale in 2011. However, the fact is that the pub is still running and over £40,000 has been invested this year in improvements and renovations. In these circumstances it would seem strange to declare that the use is not viable. Furthermore, it was acknowledged that there is continual structural change in the industry and there may also be other ways of running the business that have not yet been explored.
19. At some point the view may be taken that The Golden Lion has no future. Based on past trends the portents are not good but from a 'glass half full' perspective this could change. Certainly the level of support received and articulated at the hearing makes me reluctant to say at this stage that the on-going venture is bound to fail. Hence I cannot conclude that the premises are no longer economically viable for pub use.

#### *Other considerations*

20. There are 'permitted development' rights to change from Use Class A4 (drinking establishments) to Use Classes A1 (shops), A2 (financial and professional services) and A3 (restaurants and cafes). However, there is no evidence that this would be likely to occur in the event that the appeal failed. Moreover, all of these uses would, to a degree, meet the day-to-day needs of the community albeit in a different way to The Golden Lion.
21. Planning permission was given for the conversion of a public house in Plender Street to 5 flats in November 2011. Although the decision pre-dated the Framework many of the considerations were similar to those in the appeal. In that case the first floor function room was said to be used only intermittently and local support was limited. In any event, that outcome does not have to be followed here. Indeed, given its physical proximity, the loss of that pub could reasonably be said to have increased the significance of The Golden Lion.
22. Both parties referred to appeal decisions that have dealt with the loss of public houses and I have taken them all into account. Those cited by the appellant preceded the Framework apart from the one at Eastbourne which was concerned with a change to Class A1 retail. Of the others, the premises in

Wolverhampton and Stroud were found to not be viable with other accessible facilities nearby whilst there were no policies supporting the retention of public houses in Southwark. They can therefore be differentiated from the proposal.

*Conclusion on this issue*

23. The Golden Lion is a local pub that serves a community role. If it were to be supplanted by the 8 proposed flats there would be no suitable alternative provision available nearby. Moreover, it has not been satisfactorily demonstrated that the premises are no longer economically viable for pub use. As a result there would be a loss of a community facility and there would be a conflict with the broad intentions of Policy CS10 and with the specific provisions of Policy DP15. These findings are not outweighed by any other considerations.

***The effect of the proposed solar panels on the character and appearance of the building***

24. The Golden Lion was largely rebuilt in the 1890s and has a striking and characterful exterior with an eclectic mix of architectural styles. It stands as a focal point on the corner of Royal College Street and Pratt Street. The building is included in a recent public consultation on Camden's Local List but, in any event, is agreed to be a non-designated heritage asset. Although the sustainability benefits expected by the Council could be achieved without the proposed panels they nevertheless form part of the proposal as submitted.
25. The principle ornate facades of the building are on the northern and western sides. In contrast the southern and eastern elevations where the panels would be located are much plainer. So whilst they would evidently be modern additions the panels would not detract from the intrinsic qualities of the public house. They would be ephemeral and inconsequential against the bold design of the building. Long views of the panels would be possible from the south but owing to the existing parapet they would be from some distance. They would be more apparent from the east but well contained within the roof slope in a position where they would not compete with the main attributes of the asset.
26. There are no objections in relation to the wider street scene owing to the mixed nature of the locality and the panels would not affect the setting of the Regents Canal Conservation Area. The Council seeks to find inconspicuous locations for renewable energy installations which would be achieved in this case. Indeed, the proposal would not have a detrimental effect on the significance of the heritage asset or harm the character and appearance of the building. Moreover, there would be no conflict with Policies CS14, DP24 and DP25 which together seek to promote high quality places and conserve heritage.

***Whether the proposed flats would be adequate for future occupiers having regard to the needs of the less mobile, outlook, internal space and aspect***

27. Policy DP6 is unequivocal in that all housing development should meet lifetime homes standards. However, paragraph 6.5 acknowledges that in some cases it will not be possible to meet every element. This is particularly likely to be the case in conversion schemes such as this. Indeed the Council has accepted that the criteria relating to stairs and window handle heights cannot be met. Nevertheless, I endorse the principle that the standards that can be achieved should be achieved especially where the internal works are all new.

28. Of the matters raised there is no scope to provide a shallow ramp within the site but the use of a step is accepted. There is insufficient clear space to the leading edge of some doors but the shortfall is minor and could be increased. The entry doors for Units 7 and 8 could be recessed slightly to provide an adequate landing. With changes to the internal layout the necessary WC facilities could be provided in Units 1 and 2 and the bathrooms should be dimensioned to ensure compliance. These changes could all be secured by a condition requiring a revised detailed layout and sections. In that scenario although it would not wholly comply with the strict wording of Policy D6 the development would meet the needs of the less mobile as far as it can. Providing adaptable accommodation in this way outweighs the policy conflict.
29. Unit 8 would have a floor area of 55 sq m which would be below the standard for a 2 bedroom unit of 61 sq m in The London Plan and CPG2. Although referred to as a minimum paragraph 4.14 of the CPG indicates that this should *normally* [my emphasis] be met or exceeded. In this case, the rooms are of good shape and proportion and there would be adequate circulation space. The flat would be useable without any practical drawbacks notwithstanding its slightly small size. Furthermore, it would contribute to the supply of 2-bedroom market units which are a priority according to Policy DP5.
30. The basement level bedrooms for Units 1 and 2 would have a very limited outlook towards the vertical wall of the lightwell. Outward views would also be restricted by the glazed blocks and metal grille. However, notwithstanding the recent changes to CPG2, outlook is not listed as one of the 4 key considerations for basement rooms. In particular, it has been established that daylight would be adequate having regard to recognised standards. Indeed, this type of arrangement is illustrated at Figure 4 of CPG4 and is similar to that permitted at Plender Street.
31. That said, the internal environment would not be ideal. However, the flats in question would be split over 2 floors so that the living rooms would be lit by windows at ground floor level. Bedrooms also generally need less of an outlook because of their primary use for sleeping. Whether the 3-bedroom unit would actually be occupied by a family is a matter of conjecture. On the other hand, the basement area forms a significant proportion of the overall floorspace of both flats. Nevertheless, my misgivings about this part of the proposal are assuaged by the fact that it does not transgress the detailed guidance in the CPG or recent decisions by the Council.
32. Four of the proposed units would be single aspect only and their windows north facing. Paragraph 4.23 of CPG2 expects that each dwelling should have at least one habitable room with a window facing within 30 degrees of south in order to make the most of solar gain through passive solar energy. This is clearly desirable but will be easier to achieve for new developments than for conversions when the orientation of the building is fixed. In any case, this minimum requirement is concerned with avoiding the unacceptable loss of daylight and/or sunlight and there is no criticism of the scheme on that score.
33. The Housing Supplementary Planning Guidance of The London Plan refers to the home as a place of retreat and emphasises the inherent benefits of openings on more than one side. The provision of dual aspect dwellings should be maximised where possible and north facing single aspect dwellings should be avoided. Although there is no definitive evidence both the Party Wall Act

and stringent Building Regulations are likely to limit the scope for windows on the southern and eastern sides because the building is or would be tight to those boundaries. It may, however, be feasible to have a third floor window in the east elevation if the solar panels were removed.

34. The Council's position is that a combination of the drawbacks referred to above would compromise the overall quality of the accommodation for future occupiers. However, I have found that the outstanding lifetime homes criteria could be addressed by condition; that Unit 8 would provide satisfactory living space; that the limited outlook from the basement bedrooms is not a compelling objection and that dual aspect units have been maximised with one exception. The Framework indicates that a good standard of amenity for future occupants should always be sought and, at the end of the day, the overall standard of the flats for future occupiers would be adequate.
35. As a result the proposal would not be contrary to Policy DP26 which is concerned with the impact of development on occupiers and specifically with criteria b) and h) which refer to outlook and providing an acceptable standard of accommodation. In turn, there would be no conflict with the wider provisions of Policies CS5 and CS6 regarding managing the impact of development and quality homes.

***The effect of the proposed lightwell on the street scene, highway safety and pedestrian movement.***

36. CPG4 anticipates the use of lightwells and of grilles above them provided that they sit flush with natural ground level and there is nothing in the development plan that precludes them. They have also recently been approved as part of the scheme in Plender Street. There can therefore be no objection in principle on the grounds that such installations would create potential difficulties in terms of long-term maintenance and the accumulation of rubbish. It can also be assumed that there is nothing inherently dangerous about walking across a suitably designed grille irrespective of the numbers that might do so.
37. The plans contain some discrepancies in terms of dimensions but it is intended that the proposed glass blocks and metal grille would be on private land. They would replace the existing tables and benches along Pratt Street and would improve the area available for pedestrians. The footway here is of reasonable width and so movement would not be hindered. Street clutter would be reduced and there is no evidence that highway safety would be affected. The precise finish and apertures of the grille (and confirmation that the lightwell would not project into the public highway) could be secured by condition.
38. As the lightwell would cause no harm the proposal would accord with the criteria for development connecting to the highway network in Policy DP21 and with the aim in Policy CS11 of promoting sustainable and efficient travel.

**Other Matters**

39. The planning obligation does not overcome the objection relating to the loss of a community facility. In view of this it is not necessary to assess it against the tests in the Community Infrastructure Levy Regulations and the Framework.
40. In the appeal at The Cross Keys in Kensington and Chelsea the Inspector found that continued use as a public house was an important part of its value and significance as a heritage asset (Ref: APP/K5600/A/12/2172342). The Golden

Lion has been used in this way for well over 100 years but, as indicated in the entry for consultation on the Local List, its significance mainly relates to its architectural and townscape value. If the building were to be used for other purposes its past history would not be eradicated. Therefore the proposed use would conserve the non-designated heritage asset in a manner appropriate to its significance. The other appeal decisions referred to by the Council, including The Cross Keys, also all involve sites within Conservation Areas.

### **Conclusions**

41. There are no objections to the physical components of the conversion scheme including the solar panels and lightwells and living conditions for future occupiers would be adequate. More fundamentally there would be the loss of a community facility contrary to the development plan and this is the overriding consideration. Therefore, for the reasons given, the appeal should fail.

*David Smith*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Ms C Aparcar	Apcar Smith Planning
Mr G Bunn	Fleurets
Mr A Sherman	Buildtech Building Surveyors
Mr S Knight	Code Consultancy
Mr S Kelly	Metropolis Green

### FOR THE LONDON BOROUGH OF CAMDEN:

Mr J Markwell	Principal Planning Officer
Mr A Wito	Senior Planner - Conservation
Ms M Horn	Access Officer
Ms Z Trower	Transport Planner

### INTERESTED PERSONS:

Mr D Murphy	
Ms D Ingram	Conservation Works UK Ltd
Cllr R Robinson	Ward Councillor
Mr S Pollard	Chair, Save The Golden Lion
Mr McDonald	
Mr S Grange	
Mr J Cantwell	
Mr H Conlon	
Dr Griffin	
Mr G Gauci	
Ms Hester	

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# Appeal Decision

Site visit made on 18 November 2013

by **J L Cheesley BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 December 2013

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**Appeal Ref: APP/K5600/A/13/2199870**

**Le Colombier, 145 Dovehouse Street, London SW3 6LB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Morad Arefin for DOW Properties Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
  - The application Ref /PP/12/03220, dated 29 August 2012, was refused by notice dated 11 January 2013.
  - The development proposed is the erection of an additional storey and creation of three No. one bedroom residential units including internal and external alterations.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. The appellant has submitted a signed and dated Unilateral Undertaking with regard to on-street parking and local infrastructure. The Council has confirmed that this undertaking addresses the third and fourth reasons for refusal. As I have dismissed the proposal on other matters, it is not necessary for me to consider this matter further.

## Main Issues

3. I consider the remaining main issues to be

the effect of the proposal on the character and appearance of the host building and the Chelsea Park Carlyle Conservation Area; and

the effect of the proposal on the availability of services to meet the community needs.

## Reasons

4. The *Planning (Listed Buildings and Conservation Areas) Act 1990* imposes duties requiring special regard to be had to the desirability: at Section 72(1), of preserving or enhancing the character or appearance of a Conservation Area.
-

5. The National Planning Policy Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
6. The appeal site lies within the Chelsea Park Carlyle Conservation Area, a designated heritage asset. The Conservation Area comprises a mix of development including the large Royal Brompton Hospital premises adjacent to the appeal property and characteristic terraces of residential properties.
7. The appeal property is an inter-war former public house at the corner of Dovehouse Street and South Parade. The Chelsea Park Carlyle Conservation Area Proposals Statement refers to the building as sitting *oddly though effectively between two older gables*. This statement and Policies CD44 and CD45 in the in the Kensington and Chelsea Unitary Development Plan (UDP) 2002 (revised 2007) resist additional storeys and roof level alterations, particularly on buildings that already have a mansard.
8. In this particular instance, I consider that these policies are broadly in accordance with the Framework as far as they meet the Framework's core principles; particularly that planning should be seeking to ensure high quality design.
9. The appeal property is significantly lower in height than the adjacent buildings. The proposal includes the removal of the existing roof and replacement with a vertical rise at second floor level, with a mansard roof above. The resultant building would not reach the height of adjacent buildings or the retained gable end of the former building on the site. It would have the same number of floors above ground level as the adjoining terrace in Dovehouse Street, but the fenestration and roof height would not accord with, or align with, this adjoining terrace.
10. The proposed extension would appear as an incongruous addition and the distinct contrast between the larger buildings either side and the appeal property would be lost. In addition, the resultant increase in bulk would overwhelm the scale of the existing building and would be an unacceptably prominent addition in this corner location. This would be to the detriment of the character and appearance of the building and would not preserve the character or appearance of the Conservation Area, but this would be less than substantial harm as set out in the Framework.
11. Revised Core Strategy Policy CK2 resists the loss of restaurants outside Higher Order Town Centres as part of the Council's policy to 'make life local' throughout the Borough. Revised Policy CL3 seeks to resist the change of use of any building where the current use contributes positively to the character of the surrounding area and to its sense of place in a Conservation Area. These policies were part of a partial review of the Royal Borough of Kensington and Chelsea Core Strategy (2010) and have been found sound at a recent Examination in May 2013. Therefore, I have attributed considerable weight to these policies in my determination of this appeal.
12. At my site visit, I viewed each floor of the property and it was clearly apparent that all available space was being used as part of the restaurant business. The proposal would confine a restaurant to the ground floor and basement, with part of the ground floor providing access to the proposed flats above. Whilst



there would be similar dining space and the basement would be excavated to a greater depth, the preparatory space and storage areas would be severely curtailed. It may be possible for a restaurant to function in such limited preparatory space, but a business on the scale of the existing restaurant would be severely restricted.

13. The size of a restaurant business cannot only be determined by the number of covers. Due to the reduced scale in the floor area for the restaurant business, the proposal would constitute the loss of a restaurant and its replacement with a smaller restaurant and residential accommodation. This would be a material change of use of the building, which would not accord with revised Policy CK2.
14. The quality of a restaurant depends to a large extent on the operator rather than the size of the establishment. There have been a number of representations objecting to the possible loss of the existing Le Colombier restaurant business, if this appeal were to be allowed. That is a commercial matter outside of my jurisdiction. However, it is clear that a similar restaurant facility would require the use of the whole building.
15. The loss of a considerable part of the operational space would significantly reduce the scale of the restaurant facility, which is a community facility. This would reduce the availability of services to meet the community needs. Therefore, I consider this loss would be to the detriment of the character of the surrounding Conservation Area and to its sense of place. As such, the proposal would be contrary to revised Policy CL3.
16. The proposal would provide a restaurant and residential accommodation and therefore would provide a small level of public benefit. Having regard to the Framework, I find that the harm I have identified above would not be outweighed by any public benefit.
17. In reaching my conclusion, I have had regard to all other matters raised upon which I have not specifically commented. I conclude that the proposal would be to the detriment of the character and appearance of the building and would not preserve the character or appearance of the Conservation Area and would reduce the availability of services to meet the community needs.
18. For the above reasons, the proposal would be contrary to guidance and policies already referred to above and contrary to Core Strategy Policies CL1, CL2, and C05 where these latter policies refer to a requirement for development to take opportunities to improve the quality and character of buildings and the area. In this particular instance, I consider that these policies are broadly in accordance with the Framework as far as they meet the Framework's core principles; particularly that planning should be taking account of the different roles and character of an area and should be seeking to ensure high quality design.

*J L Cheesley*

INSPECTOR



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# Appeal Decision

Site visit made on 19 December 2012

**by Paul Jackson B Arch (Hons) RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 10 January 2013**

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**Appeal Ref: APP/K5600/A/12/2180954**

**Britannia Tap, 150 Warwick Road, London W14 8PS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr John Ripley against the decision of Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref PP/12/01775, dated 14 May 2012, was refused by notice dated 11 July 2012.
  - The development proposed is change of use from public house (Use Class A4) to 4 No. self contained flats (Use Class C3) also erection of rear extensions at basement, ground, 1<sup>st</sup> and 2<sup>nd</sup> floors and alterations to front elevation at ground floor level.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is whether the proposed change of use and alterations and extensions would preserve or enhance the character or appearance of the Edwardes Square, Scarsdale and Abingdon Conservation Area.

## Reasons

3. The Britannia Tap is a public house on Warwick Road at the western edge of the conservation area. It forms part of a short terrace of buildings including a restaurant and another larger pub, the Warwick Arms. The terrace faces a busy road and is surrounded by more recent development, in particular the adjacent Council waste and recycling depot, which is not in the conservation area and has a negative impact. With regard to pubs, the Conservation Area Proposals Statement (CAPS) for the Edwardes Square, Scarsdale and Abingdon Conservation Area advises that the area is fortunate in the visual standards of its pubs all of which have colour and vitality without garishness. The appeal premises is not visually prominent on a corner but terminates a terrace alongside a bland utilitarian building. Nevertheless, its hanging sign (now removed) and different elevational treatment punctuates the terrace, enhances the character of the conservation area and contributes to its significance as a heritage asset.
4. At ground floor, the scheme would replicate the proportions of the upper floor fenestration and would be sympathetic to the appearance of adjacent similar buildings, but would not generate a similar level of visual interest. The rear alterations would not detract from the appearance of the area. The loss of the pub would detract from the character of the conservation area, but that if there

are other compelling reasons for allowing the change of use, whilst the loss of visual interest would be a negative factor, I consider that there could be circumstances in which the alterations would not, on balance, harm the appearance of the conservation area.

5. The change of use would remove a community facility that contributes to the social, recreational and cultural facilities of the area. The 2010 Royal Borough of Kensington and Chelsea's Core Strategy (CS) recognises at paragraph 30.3.7 that pubs are a form of social and community use. Such uses are protected under policy CK 1. The explanatory text goes on to say that out of 113 traditional public houses, only 6 have been lost to residential use; because of this, at the time of adoption, there was 'too little evidence to resist their loss at the present time' but that the situation would be kept under review. However, since then, the position has changed. The Borough has completed consultation on a draft planning policy for the protection of public houses and this is referred to in the reason for refusal. The emerging policy, which according to the Council has reached examination stage, seeks to resist the loss of public houses and other drinking establishments (Class A4) throughout the Borough; and other uses which provide a wider social role. The supporting text builds on the CS. It notes that well over a third of public houses in the Borough have been lost since 1980 and that the trend is set to continue because of the higher land value that attaches to residential use.
6. Whilst the weight that can be attached to this emerging policy must be less than that which would apply to an adopted policy because of the stage it has reached, it clearly follows on from a concern expressed in the CS. Moreover, paragraph 70 of the National Planning Policy Framework (NPPF) of March 2012 is also a material consideration; it advises that planning policies and decisions should plan positively for the provision and use of various community facilities including public houses, to enhance the sustainability of communities and residential environments. Accordingly I consider that in policy, the change of use of pubs to residential is resisted in principle.
7. Importantly, I have no evidence of any marketing of the premises as a public house which might ensure its continuing use. Only very basic financial information for the 2 years up to March 2011 has been provided; notwithstanding the general perception that pubs are in decline, this is insufficient to indicate a firm trend as far as the appeal property is concerned. Even between 2010 and 2011, on declining turnover, gross profit rose (albeit acknowledged to be insufficient to survive on comfortably). No snacks or food are indicated as being sold in 2009-10, which in itself raises some doubts, because food is generally recognised to be important in attracting customers. I am advised that the tenants tried Thai food and Pie and Mash but it is unclear to what extent these activities took place or when.
8. There can be many reasons why an enterprise fails to provide a good return. It has not been shown that in the current situation, given a fresh start, the premises would attract no interest. Whilst undoubtedly small and close to another pub, that situation has remained the same for many years. Without further information and testing in the market, these matters are of sufficient concern to weigh against change of use, which would be permanent.

### **Other matters**

9. Prior to the site visit, a signed and dated Section 106 (S106) Unilateral Undertaking was submitted that makes provision for contributions to community facilities, education and health and restricts the availability of residential parking permits to future residents of the proposed development. The Council has confirmed by email dated 16 October 2012 that this overcomes the second and third reasons for refusal.
10. I have given consideration to the proposed financial contributions having regard to policies of the CS, extracts from the Council's Supplementary Planning Document (SPD) *Planning Obligations* of 2010 and the Planning Obligations Statement. The relevant Annexes advising the level of contributions have not been provided and I am unable to assess whether the figures for community facilities, education and health are correct for this development of single bedroom flats, 2 of which would only accommodate 1 person. The provisions of the Undertaking related to not permitting car parking permits with respect to the occupants of 3 of the dwellings conform to the advice in the 2008 SPD *Transport* and are directly related to the proposed development, fairly and reasonably related in scale and kind, and if I was otherwise minded to allow the appeal, would be necessary to make the development acceptable. However, overall, only limited weight can be given to the Undertaking.
11. I have taken account of all the other matters raised including the benefits of 3 new small dwellings, the consultation undertaken with the Council; and the advice in June 2012 that a new policy was being consulted upon that would play a part in the Council's refusal. However I have to make a decision based on the policy position and the evidence presented at the current time.

### **Conclusion**

12. It has not been shown that the proposed change of use has been adequately justified. The loss of the Britannia Tap would detract from the character of the building, the terrace of which it is part and the conservation area as a whole. As such it would conflict with the aims of CS policies CO 5, CK 1, CL 1 and CL 3; emerging policy and national policy objectives. For these reasons, the appeal must be dismissed.

*Paul Jackson*

INSPECTOR



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# Appeal Decision

Hearing held on 24 July 2012

Site visit made on 24 July 2012

**by Christopher Bowden MA (Oxon)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 September 2012**

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**Appeal Ref: APP/K5600/A/12/2172342**

**The Cross Keys, 1 Lawrence Street, London SW3 5NB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by CKPH Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
  - The application Ref. PP/11/01917, dated 13 June 2011, was refused by notice dated 9 December 2011.
  - The development proposed is: *change of use of existing building from Class A4 (drinking establishment) to Class C3 (single family dwelling). Addition of new basement, erection of a roof extension, demolition of existing rear extensions at ground-floor level, erection of new ground-floor rear extension, and reinstatement of garden to the rear.*
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## Decision

1. The appeal is dismissed.

## Procedural matters

2. As discussed at the Hearing, the description of the development proposed is taken from the decision notice. I consider that it describes the proposal more accurately than the one given in the application form.
3. At the Hearing, the Council confirmed that the decision notice had omitted in error reference to Core Strategy (CS)<sup>1</sup> Policy CL 3 (*Heritage Assets – Conservation Areas and Historic Spaces*). The inclusion of this policy would not prejudice any interests in this appeal and I have proceeded accordingly.
4. The decision notice mentions Planning Policy Statement 5 *Planning for the Historic Environment* (PPS 5). This has since been replaced by the National Planning Policy Framework (the Framework), published in March 2012. The PPS and the development plan policies cited in the notice (including CS Policy CL 3) are consistent with the thrust of the Framework. Comments made on the Framework by the Council and the appellant and by third parties have been taken into account in determining the appeal.
5. The appellant submitted a signed unilateral undertaking dated 16 July 2012 relating to parking permits and contributions towards community facilities, education and health amounting to £3999 (including monitoring fee). This is considered further below.

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<sup>1</sup> Local Development Framework (LDF) Core Strategy for the Royal Borough of Kensington and Chelsea with a Focus on North Kensington Development Plan Document, adopted in 2010

6. My attention has been drawn to a number of decisions allowing or dismissing appeals relating to conversion of public houses for residential purposes. While I have taken these into account I have determined this appeal on its own merits.

### **Main issue**

7. This is the effect of the proposed change of use on the value and significance of the Cross Keys public house as a heritage asset and on the character and appearance of the Cheyne Conservation Area.

### **Reasons**

8. The Cross Keys is a four-storey (including basement) mid-terrace building that operated until May 2012 as a public house and restaurant within Use Class A4 (drinking establishments). It has now ceased trading and the premises are vacant. The surrounding area is predominantly residential. The site lies within the Cheyne Conservation Area (CA).
9. The appeal scheme seeks to change the use of the property to a five-bedroom single-family dwelling (Use Class C3). This involves a number of alterations and additions to the building but the Council does not object to these, subject to suitable conditions.

### *Policy and principle*

10. There is no dispute that public houses constitute a social and community use. The Council seeks to protect such uses in general by way of Policy CK 1 in support of a broader strategic objective (Policy CO 1) for "Keeping Life Local". However, while noting concern about the loss of public houses to residential use, the related text indicates that the Council considers that there is too little evidence to resist their loss "at the present time" (the CS was adopted in December 2010) but that this will be kept under review. In the decision notice, the Council did not rely on this policy but on policies in the London Plan 2011 dealing with such matters as protection of community facilities and social infrastructure and access to services and facilities at neighbourhood level. These form part of the development plan and are more recent than policies in the CS.
11. As regards the CS itself, the Council has cited Policies CL 1 and CL 3 (both supporting the strategic objective (Policy CO 5) for "Renewing the Legacy"). While the focus of these policies and the identified delivery mechanisms is on the built environment, including design aspects, I accept that the character of buildings and their contribution to the wider area, including a conservation area, may include their historic and current use as well as matters of physical form. I therefore agree that these policies are relevant to consideration of the main issue in this appeal.
12. As noted above, the Framework was published after the decision was issued. It is not part of the development plan but it is a material consideration in planning decisions. The Framework includes guidance on "promoting healthy communities". It says (paragraph 70) that to deliver the social, recreational and cultural facilities the community needs, planning policies and decisions should (among other things) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. The paragraph makes clear that community facilities include public houses.

13. At the Hearing, the Council tabled two draft CS policies on which a period of public consultation had just concluded. They sought to resist the loss of public houses (and certain other Class A uses) providing a wider social role and the change of use of any building where the current use contributes to the character and significance of the surrounding area, and to its sense of place. Their development followed a unanimous Council resolution expressing concern about the loss of community public houses, especially historic ones in conservation areas, and consultation on an "issues and options" paper on protection of public houses in the Borough. It was reported that some 75% of respondents to the recent consultation supported a policy protecting public houses (with 84% support in the earlier consultation).
14. The Council said at the Hearing that these draft policies were already being used for development control purposes. The basic thrust of the public house protection policy in particular appears broadly consistent with paragraph 70 of the Framework but there have been a number of comments on the draft, including some significant objections which it may be premature to consider resolved, even though the Council has prepared responses to them. At this stage of the process, and having regard to paragraph 216 of the Framework, I give the draft policies themselves no more than limited weight in the context of this appeal.
15. It appears that, since the CS was adopted, three more public houses have been lost in the Borough. The Council said at the Hearing that there have been three planning applications involving the loss of public houses since March 2012, with pre-application inquiries for another four. This provides some evidence that the pressure on public houses is increasing. Moreover, while it remains the case that there are public houses within 10 minutes walk in the Borough, I accept that a simple spatial distribution is not of itself a reliable guide to the value placed on public houses by local communities.
16. Overall, therefore, while the draft CS policies carry limited weight at this stage, I consider that the Framework carries significant weight as the adopted CS is in conflict with it in relation to protection of public houses and the Framework is more recent.

*Value of the Cross Keys to the local community*

17. It is clear that, before it closed, the Cross Keys contributed to meeting the needs of the local community through provision of facilities and as a place of social interaction, for example. There is no dispute that there are other premises to eat and drink in particular lying within 10 minutes' walk of the site – less in the case of the Pig's Ear in Old Church Street, for example. However, even if they were considered, on this basis, to have the potential to contribute to the community's ability to meet its day-to-day needs in place of the Cross Keys, this does not mean that they are equivalent to the Cross Keys in terms of community value. It is evident from the substantial volume of representations in this case that the public house is much valued by the local community as a neighbourhood resource and meeting place and for its contribution to the vibrancy of the local streets, described by one local resident as "eerily quiet" since the Cross Keys closed. It is also clear that it is valued by local people for its heritage associations, not simply as a structure but in relation to its use. This is considered further below.

### *Viability*

18. The appellant represents that the use of the premises as a public house is unviable and would remain so if it were still open, as elaborated in the detailed viability assessment carried out by a registered valuer. The report says that, despite improvements made since the current owner acquired the Cross Keys in 2009, losses have continued. Reference is made to competition with other establishments, lack of passing trade in the premises' non-corner position and the demographics of the area, against a background of general trends in the public house sector. A separate feasibility appraisal was commissioned by third parties, also carried out by a registered valuer, which concludes that the public house is viable on the basis discussed below.
19. The appellant's assessment focuses on accounts for 2010 and 2011, supplemented by the first few months of 2012. This seems a relatively brief period on the basis of which to judge the Cross Keys viable or otherwise as a public house after many years of trading. I note that the application for change of use to residential was submitted less than half way through 2011 and nearly a year before the public house closed. The minutes of the Council's Planning Applications Committee meeting<sup>2</sup> record the applicant as saying that the public house was breaking even when he took it over in 2009.
20. Be that as it may, there is no dispute that the public house would indeed be profitable<sup>3</sup> if operating with conventional gross profit and labour margins. There is, however, disagreement as to handling of bank charges, interest and depreciation, the inclusion or exclusion of which appears to be a key factor in determining whether, on the figures presented, the operation is viable assuming a "reasonably efficient operator". There is concern that the picture is skewed by the purchase price for the property of £3m in 2009 (or a current estimate of it), that such a figure is too high for the property as a public house, and that it is therefore of limited assistance in assessing whether the Cross Keys is fundamentally viable or not as a public house.
21. Either way, it is clear that the Cross Keys has not been marketed by the appellant as a public house. At the Hearing, it was suggested that this was because the demand for it in such use was not there and there was no underlying viability. However, I share the view that this would be best tested by letting the market itself decide so that the outcome of such an exercise could inform a judgement as to whether, in terms of Framework policy, the loss of a facility valued by the community is "necessary". It also seems that a number of other establishments cited as competitors, which I saw during my visit to the area, are located on relatively quiet streets with limited passing trade yet apparently trading successfully.
22. In the light of the above, I am not persuaded that it has been demonstrated conclusively that the Cross Keys is unviable in public house use.

### *Heritage assets: significance and contribution*

23. There appears to have been public house use of the site for some 300 years, although the present building is probably late nineteenth century. The building is not listed. An application for listing was recently rejected by English Heritage

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<sup>2</sup> On 6 December 2011 (at which the scheme was refused)

<sup>3</sup> On the basis of Earnings Before Interest Tax Depreciation and Amortisation (EBITDA)



(EH) as not meeting the relevant criteria but its assessment noted that the Cross Keys is "of clear local significance and high townscape interest."

24. The decision notice refers to the Cross Keys as a heritage asset. The Framework definition of such assets does not preclude those which are not designated or otherwise previously identified by way of local listing, for example. At the Hearing, it was confirmed that the Council does not maintain a local list, although the 1983 CA Proposals Statement mentions it as a "building of note". While the definition of a heritage asset concerns building rather than use, it is in terms of the building having a degree of significance meriting consideration in planning decisions because of its historic interest. 'Significance' itself is defined as "[t]he value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic..."
25. The appellant does not dispute that the physical fabric of the building has (local) architectural and historic interest. That interest in itself gives the building a degree of significance as a non-designated heritage asset. However, its heritage value to the local community goes beyond matters of physical form. EH guidance on conservation principles<sup>4</sup> identifies a range of heritage values, including historic and communal ones, which should be taken into account in decisions on heritage assets. In the case of the Cross Keys, use of the building for its original purpose (ie continued use as a public house) contributes to the community's view of the historic value of the asset as well as to its social value. This includes its value as a building in communal use and its contribution to a sense of identity in a part of "Old Chelsea" in which the Cross Keys is something of a landmark. These factors, together with the building's acknowledged aesthetic value and lesser evidential value (related to archaeological potential), underline that the overall heritage value of the Cross Keys is substantial, deriving from its use as well as its appearance.
26. As noted previously, the property lies in the Cheyne Conservation Area, a designated heritage asset. Focused around the old centre of Chelsea village the CA has a range of building ages, styles and materials, and a pattern of streets, reflecting the area's historical development from which its significance derives. It is predominantly residential. There are some other uses, including public houses and other Class A uses, that add vibrancy to the CA. However, these are concentrated along the King's Road, with some groups of small shops in Old Church Street, thereby enhancing the contribution of the remaining scattered uses.
27. The Cross Keys itself contributes positively to the character and appearance of the CA not only because of the building itself but also because of its use. The exterior and its original architectural detailing add variety and visual interest to this part of the CA. The building also illustrates the historical development of the site and the wider area. The use of the building as a public house (until its recent closure) also contributes significantly to the character of a part of the CA in which domestic use predominates by bringing activity and vitality to the neighbourhood.

#### *Effect of proposal on heritage assets*

28. As regards the Cross Keys as a non-designated heritage asset, the proposal would maintain and to some extent enhance its architectural and historical

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<sup>4</sup> *Conservation Principles* Policies and Guidance for the Sustainable Management of the Historic Environment 2008

significance insofar as it relates to the physical form of the building. This would, however, be outweighed by the substantial harm to the significance of the asset that is derived from continuing use of the building as a public house, as discussed above. Retention of former public house use through retention of features such as "The Cross Keys" sign at parapet level would not overcome this. Although the building is currently vacant, I am not persuaded that its use as a public house is not viable, on the basis considered previously. I do not therefore consider that this proposal would enable the building to remain in active and viable use, or ensure long-term conservation of the heritage asset, in comparison with public house use.

29. Similarly, as regards the Conservation Area as a designated heritage asset, the proposal would maintain and to some extent enhance the architectural and historic contribution of the Cross Keys to its significance in terms of the building's physical form. Residential use of the building would accord with the residential character of this part of the CA. However, loss of the public house use would seriously damage what vibrancy and diversity it has and this would harm the character of the CA as a whole. The fact that there are some other drinking and/or eating establishments, and a few other uses, in the CA would not alter this.
30. I recognise that the property has the benefit of permitted development rights to change to Class A1 (retail), A2 (financial and professional services) and A3 (restaurant and café) use. However, each would have the potential to serve the local community to a greater or lesser extent and to contribute more to the vibrancy of the area than residential use of the building.

### *Conclusions*

31. The proposed change of use was not refused, in terms, on the basis of the loss of the Cross Keys as a community facility but that role – specifically, its continued use as a public house – is clearly an important part of its value and significance as a heritage asset and of its contribution to the CA. On the basis discussed above, the proposal would be detrimental to the character of this part of the CA and would thus fail to preserve or enhance the character or appearance of the CA as a whole.
32. I conclude that the proposed change of use would have a materially harmful effect on the value and significance of the Cross Keys as a heritage asset and on the character and appearance of the Cheyne Conservation Area. As such, and on the basis considered previously, it would conflict with the objectives of the Framework and of development plan policies including LP Policies 3.1, 3.16 and 4.8 and CS Policies CL 1 and CL 3.

### **Other matters**

33. The proposal would add one family-sized home to the Borough's housing stock in a sustainable urban location. While the Council acknowledges that it is behind target in provision of housing, I do not consider that this benefit would outweigh the harm identified above. Although there have apparently been some recent complaints about noise nuisance, the building is in long-standing public house use and there is support for retaining it from people living close to the premises. In principle, the proposal could reduce pressure on on-street parking but it seems likely that many public house customers would not be reliant on the car and, at the Hearing, it was said that closure of the Cross Keys had made no difference to parking problems nearby.

34. As noted above, the appellant submitted a unilateral undertaking relating to financial contributions towards education and other matters. As I propose to dismiss the appeal for other reasons, and the undertaking does not address those objections, I do not consider that a further assessment of it would be justified.

**Conclusion**

35. For the reasons given above and having regard to all other matters raised, including third party representations, I conclude that the appeal should be dismissed.

*Christopher Bowden*

INSPECTOR