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22th June 2015

Mr J McClue
The Borough Planning Officer
Camden Borough Council
5 Pancras Square
London
N1C 4AG

Dear Sir

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

Application under Section 192 for Certificate of Lawfulness for proposed Ancillary Use

The White Bear Public House, 1 Well Road, Hampstead London NW3 1LJ

I write with regard to the above property and enclose an application for a Certificate of Lawfulness for the proposed ancillary use of accommodation on the upper floors at the above property. The upper floors comprise 2/3 rooms at first floor and a single large room at second floor. No physical alterations are proposed. Existing plans are attached as a matter of information.

Confirmation is sought from the Council that the proposed use of the existing function rooms upper floors for general hire by the local community as a means of increasing general pub patronage and creating additional income comprises an ancillary use to the established use of the premises as a Class A4 'drinking establishment' and is therefore lawful.

In addition to this covering letter, the application submission comprises the following:

1. Application form duly completed and signed;
2. Site location plan and existing floor plans;
3. Application fee cheque;

Background

The Old White Bear has a long history as an established public house in the Hampstead area. The Old White Bear has been trading as a public house since around 1704 and following an earlier demolition/rebuild has been subject to a number of extensions, alterations and refurbishments over its lifetime.

The current owners have been approached by the New End Theatre Company, who are seeking to use the rooms on the upper floors. The extract below outlines their request:

"Since the New End Theatre was forced to close some three years ago, we have been seeking performance space in Hampstead to continue our 35 year tradition of producing new and original plays to London. We have created our company New End Theatre Beyond in order to continue this tradition.

I have had an informal meeting with the new operators who have suggested that the underutilised function rooms on the upper floors at the White Bear would be a perfect space for us and may be available for rental. Performances would take place in the evenings. This is of definite interest.

We would want to open the new space with an important new play 'Don't Leave Now' which explores the impact of dementia on two very different family units. There are numerous other theatrical options available.

In order for us to look sensibly at this option I would welcome you urgently contacting the Council to ensure that the ancillary community use would not require any sort of planning approval - which is unlikely given the historic ancillary hire/use that have occurred both at the WB and at similar nearby pubs such as the Duke of Hamilton (Theatre, comedy and Jazz)."

Following the above request we contacted Mr Jonathan McClue in the Planning Department at Camden Council, to enquire and seek confirmation that such normal ancillary use as outlined above, would be permitted and not require any formal planning consent. Mr McClue helpfully responded via email on the 19th May 2105 saying:

"Without knowing the details of the frequency, number, timings and scale of the proposed use it is difficult to comment but it is possible that what your client is proposing would fall into the above category.

My advice would be to either submit more detail in the form of a Certificate of Lawfulness or for your client to write to us and keep us informed of the performances as and when they occur."

This application for a Certificate of Lawfulness in respect of the proposed use follows Mr McClue's suggestion that we apply for the Certificate of Lawfulness with more detail relating to the proposed ancillary use.

The Proposed Use

By way of further detail in respect of the proposed ancillary use of the upper floors of The White Bear, we understand that the pub owners are looking to make the upper function rooms available for more general hire and have already had discussions with a few local groups including the New End Theatre, so that they might accommodate any required minor internal alterations,, to meet future hire/use as part of the current refurbishment works, prior to planned re-opening later in the year.

The New End Theatre used to run their practice sessions and performances at the Synagogue building on New End, before having to vacate and find new premises. Whilst the hire varied, this typically required 2/3 evenings a week for practice, meetings and performances. In addition to this we understand that the pub owners have also secured expressions of interest from other local chess, music and yoga clubs and school hire use, during the daytime, early evening and weekends.

With regard to the likely timing and frequency of use the New End Theatre use would utilise the space during weekend evenings and possibly one night in the week. The other uses would clearly vary depending upon the particular type of community activity and be on the basis of hourly hire during the day or evening – corresponding to normal pub opening times (10.00am - 11.00pm weekdays and weekends).

The Theatre performances are quite small as it is essentially an amateur theatre company, with no more than 30 people in attendance, including performers.

By way of example of similar local community use, the Duke of Hamilton on New End Road has successfully combined uses such as comedy, music and theatre.

Precedent Cases

In terms of the definition of ancillary use the following may be helpful in your consideration of this application:

As from 21 April 2005 pubs are included in a new Use Class A4 Drinking Establishments by virtue of The Town and Country Planning (Use Classes)(Amendment) Order 2005.

Ancillary uses in pubs

We have undertaken some research in respect of the nature of ancillary uses associated with Class A4 drinking establishments. As already noted, ancillary uses normally associated with a pub may vary at will within the planning unit, but query as to whether a material change of use has occurred may be raised when one of these becomes dominant. Any test for whether a use is ancillary to another, or not, is a matter of fact and degree and each case has to be determined on its particular merits. However, in practice two principal criteria have emerged - first, a severability test, and second, an environmental impact test.

In relation to the first test, it should be noted that the primary access to the upper floors is secured through the main pub area. Whilst there is a secure secondary rear access (for deliveries and refuse collection) this once again goes through the pub demise and cannot be secured independently. The various historic and proposed assembly room uses cannot therefore practically and viably operate on their own if the primary use of the premises were to cease.

The second test would look to any outward effects of the ancillary use, in terms of the appearance of the premises, the amenity of the surrounding area or neighbourhood traffic conditions.

Given the physically small scale nature of the space in question, patronage and types of proposed uses (no loud music or lighting) there will be no significantly greater impact following from the introduction of the ancillary activities than one could reasonably expect from the existing use. It is therefore suggested that the theatre and other community hire uses are capable of being considered as ancillary and complimentary uses to the public house.

Legal Precedent for Ancillary Uses

It is generally accepted that the function of a public house includes a number of ancillary uses or activities. This issue was tackled in a notable appeal case, Nottingham 5/10/1983 DCS No 100-001-940 where enforcement action had been taken against an alleged change of use from a pub to a place of entertainment. The use was described as a "fun pub". The Inspector thought that effect on the neighbourhood was only one criterion for determining whether a material change of use had occurred, reasoning that otherwise any improvement to the facilities of a public house would require permission.

The Inspector continued to identify that:

"There was no definition of a public house for the purposes of the planning acts. In general terms however it was more than just a venue for the consumption of drink. It had a wider role as a social centre and place of entertainment. Any public house could be expected to attract a large number of people. Entertainment has always been a feature of public houses, although the type of entertainment has changed in recent years..."(Para 17 Nottingham 5/10/1983)

Just as with the above Nottingham case, we see locally that pubs vary in greatly ancillary offer, with the local Duke of Hamilton/The Rabbit Hole in New End providing nightly comedy, music and theatre



productions, with the function space available for independent hire all under the existing established A4 use/consent.

There are also many examples where pubs provide more than just a place of refreshment and entertainment, and operate more as a local community hub with many including post office functions. With the recent designation of the White Bear as a Community Asset, such wider ancillary community use would clearly be supported by the community – who wish to see a vibrant and viable local pub.

Summary

Based on the evidence presented above, it is considered that the proposed use of the existing the function rooms by the New End Theatre Group and other local community groups, clubs on a daily/evening hire comprise activities ancillary to the main use of the property as a Class A4 drinking establishment.

We therefore respectfully request that a certificate of lawfulness be granted accordingly.

Yours sincerely

Carl Thomas
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