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| Delegated Report | | Analysis sheet | Expiry Date: | 26/05/2015 |
| | | N/A / attached | Consultation Expiry Date: | 11/06/2015 |
| Officer | | | Application Number(s) | |
| Jonathan McClue | | | 2015/1814/P | |
| Application Address | | | Drawing Numbers | |
| Admiral Mann, 9-9a Hargrave Place, London, Camden, N7 0BP | | | Refer to Decision Notice | |
| PO 3/4 | Area Team Signature | C&UD | Authorised Officer Signature | |
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| Proposal(s) | | | | |
| Use of the ground floor and basement as a retail shop (Use Class A1). | | | | |
| Recommendation(s): | | Refuse | | |
| Application Type: | | Certificate of Lawfulness (Existing) | | |

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|------------------------------------|--|------------|------------------|-----------|-------------------|-----------|
| Conditions or Reasons for Refusal: | Refer to Decision Notice | | | | | |
| Informatives: | | | | | | |
| Consultations | | | | | | |
| Adjoining Occupiers: | No. notified | 108 | No. of responses | 38 | No. of objections | 38 |
| Summary of consultation responses: | <p>A bespoke consultation letter was sent to 108 of the surrounding residents and businesses on 21/05/2015. The letter explained that the Certificate of Lawfulness (Existing) application was seeking to determine whether the premises changed from a public house (A4) to a retail shop (A1) on 26/03/2015. It invited evidence or comments to help the Council come to a decision as to whether the development took place and explained that the assessment would be based on factual evidence and not planning considerations (i.e. value of the community asset).</p> <p>38 responses were received from local residents, businesses and a local councillor. Some of the evidence was sent to the Council confidentially due to the sensitive nature of the comments and observations. Many of those involved have indicated that they would give evidence under oath should the application be appealed and go to Public Inquiry. The evidence includes written comments, photographs and 'secret shopper' reports (attempts were made to buy stock and return for a refund). The comments and evidence submitted includes:</p> <ul style="list-style-type: none"> • The Admiral Mann is a valuable and irreplaceable asset to the communities of Kentish Town and Holloway • "Bargains r Us" (the proposed retail unit) is a 'fake/sham' shop that is being used as a front • The opening of "Bargains r Us" was done purely to convert the use of the pub before the changes to planning legislation (which prevents changes of use to Assets of Community Value), with no intention of running a shop • The applicant has attempted to change the use within close proximity of the changes in legislation, despite submitting a planning application to retain the public house and with full knowledge that it is an Asset of Community Value • The stock displays have not changed since the opening of "Bargains R Us2 • "Bargains r Us" is not open on the weekends including Saturdays which is a prime shopping day, there is no intention for any real business • "Bargains r Us" does not appear to do any business, few of any customers visit • "Bargains r Us" is very rarely open and does little trading. It is often closed with a "back in 5 minutes" sign on display. • No staff members appear to work within "Bargains r Us". At times the door, stock and till are left unattended • The location of "Bargains r Us", with very little footfall and located off the main retail parade down a dead end street, makes it a very impractical place for a retail shop further providing evidence that it can only be a scam shop as it is inconceivable that it can be a credible business | | | | | |

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| | <ul style="list-style-type: none"> • “Bargains r Us” has no specialist staff, it is looked after by a resident who lives on the upper floors of the building (i.e. a guardian of the property) • If this a genuine shop, it would advertise itself with signage at right angles to the frontage as it is at the end of a cul-de-sac with limited footfall. It is clear that they are not trying to seek customers • Displays and mannequins are left unchanged for extended periods, again indicating no intention to sell or run as a shop • The Director of the company “Bargains r Us” is linked directly to property development companies which create and dissolve companies related to construction and development • The applicant and agent has a history of closing pubs and redeveloping them as residential units, which shows their intention here • Before notification by the Council, a number of local shop owners and residents had no knowledge of “Bargains r Us” operating despite being within close proximity and walking past the premises • On visits to “Bargains r Us” the server (guardian) did not have knowledge of stock content or the prices of items, had difficulties in opening and operating the till (including issuing a receipt), had no knowledge of VAT receipt/number and there was no VAT number present on the receipt, no notes were present in the till nor were there £2, £1 or £0.50 coins • No stock control labels were visible on any items and few items contain price labels • Card payments were not available • The applicant should be able to produce the following relevant evidence if the shop is a genuine retail unit: full invoices for stock and details of suppliers; receipts for sales; invoices for any rent being paid and contract; bank statements; employment wages and records for staff (including PAYE records); Commercial Business Rates payments; invoices (and details of arrangements) for commercial refuse collection; utility bills/payments; credit-card machine rental agreement or purchase receipt, and invoices for credit card processing; copies of their public liability insurance certificate showing date of commencement; copies of employee liability insurance; contents insurance (showing stock value) |
| <p>CAAC/Local groups* comments: *Please Specify</p> | <p>None received</p> |

Site Description

This application relates to the Admiral Mann Public House located at 9 and 9a Hargrave Place. The host building includes a 3 storey (plus basement) element with a flat roof, single storey rear extensions and a 2 storey red brick element to the rear with a hipped roof. The application site is limited to the ground floor and basement of 9 and 9a Hargrave Place which has an existing use of a public house (A4). The lawful use of the upper floors is unknown but they were historically used in connection with the pub as function/dining/cooking areas. These floors do not form part of the application.

The site is located on Hargrave Place which is a small cul-de-sac leading from Brecknock Road. Hargrave Place finishes at a gated entrance to Brecon Mews which houses a small housing estate. A number of residential properties surround the application site and local businesses are located within a retail parade along Brecknock Road.

The ground floor and basement of the Admiral Mann, located within 9 and 9a Hargrave Place, was listed as an Asset of Community Value (ACV) on 30/10/2014. It was nominated by the Save the Admiral Mann Committee. The Admiral Mann closed in August 2014 and met the two criteria for an ACV:

- there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and
- it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

The pub was used by long term local residents of all social classes who are not well served by other public houses in the area which tend to serve a younger, more transient population. There have been closures of similar pubs in the local area in recent years and the Admiral Mann was the only pub of its kind left in the local area. Over 750 people (at the time of the designation) signed an online petition to save the pub and the testimonies of regulars submitted to the Council and in media articles show how important this pub is socially to the local people that use it.

It is noted that the owner did not appeal against the decision to list the asset within eight weeks of the designation.

Relevant History

3210: Planning permission was granted for refurbishment works and a single storey rear extension on 12/06/1981.

2015/0906/P: A planning application was withdrawn for the partial demolition and redevelopment of the building to retain the ground floor and basement public house and create 6 residential flats on 02/07/2015. The Council had informed the applicant that the proposal would be refused in its current form due to a number of issues.

EN15/0332: An enforcement case was opened regarding the use of the public house. Enforcement Officers have visited the premises and decided not to take enforcement action at present, as a change of use from public house has not occurred.

Relevant policies

Schedule 2, Part 3, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)

Schedule 2, Part 3, Class A the Town and Country Planning (General Permitted Development) (England) Order 2015

Section 191 of the Town and Country Planning Act 1990 (as amended)

Assessment

1.0 Proposal

1.1 A Certificate of Lawfulness (Existing) application has been made to establish whether the ground floor and basement public house (A4) undertook a material change of use to a retail shop (A1) on the 26th of March 2015. The application has been submitted under Section 191 of the Town and Country Planning Act 1990 (as amended).

1.2 The application is submitted on the basis of it being 'permitted development' on this date to change the use of the building (or part thereof) from Class A4 to Class A1 under Schedule 2, Part 3, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

1.3 It is noted that on the 6th of April 2015, 11 days after the application was submitted, that the Town and Country Planning (General Permitted Development) (England) Order 2015 amended Schedule 2, Part 3, Class A to remove 'permitted development rights' for public houses listed as an ACV, including the ability to change their use to a permanent A1/A2/A3 or temporary A1/A2/A3/B1 use.

1.4 The submitted drawings show a small area (34sq.m) in the location of the front bar to be used for commercial shop use and a larger area to the rear for shop storage (where the existing lounge bar currently sits). The ground floor toilets and storage and basement cellar remain with no annotations or description of the proposed use.

1.5 Section 191 of the Town and Country Planning Act 1990 (as amended) places the onus on the applicant to supply the necessary evidence to substantiate the claim that the existing use is lawful and therefore discharge the burden of proof. Therefore, the applicant needs to prove that the use on the date of the application was lawful on the balance of probability.

2.0 Applicant's Evidence

2.1 The applicant has submitted the following information in support of the application:

- Cover letter (Re: Former 'Admiral Mann' Public House, 9-9a Hargrave Place, London N7 0BP Planning Portal Reference: PP-04078495) dated 26/03/2015
- Letter (Re: Former 'Admiral Mann' Public House, 9-9a Hargrave Place, London N7 0BP Reference: 2015/1814/NEW) dated 08/05/2015
- Letter (Admiral Mann Public House – Certificate of Lawfulness (Ref: 2015/1814/P) dated 05/06/2015
- Previous layout as public house basement and ground floor plans (drawing no. GAL 220 (PC) 003)
- Existing plans site plans (drawing no. GAL 220 (PC) 003)
- Roland Construction Ltd Invoice no. rc/0228 dated 19/03/2015

- Email from Josh Moore to Pauline Cole (Council Business Rates Inspector) dated 23/03/2015
- Email from Josh Moore to ratinglondon@voa.gsi.gov.uk dated 23/03/2015
- Shop, Pub and Restaurant insurance policy schedule from Maltings Insurance dated 20/03/2015
- Photographic Schedule
- Email from Josh Moore to Robert Winkley (showing email trail with Pauline Cole) dated 08/05/2015
- Business Rates Bill dated 19/05/2015
- Statutory Declaration of Mr Yakov Yosef Cohen dated 15/06/2015
- Statutory Declaration of Mr Mark Anthony Edward Richmond

2.1 The applicant was given opportunities to submit further evidence as was told on 6th of May 2015 that the application would be refused based on the information that was originally submitted. They were informed that further information would be required to prove that the material change of use occurred and given a list of things that the Council would require such as till receipts, stock inventory lists and staff contracts.

3.0 Assessment of Applicant's Evidence

Roland Construction invoice

3.1 The submitted invoice relates to internal works to remove the bar area, replace carpet, remove wall fixtures and fittings, remove hoarding from windows and to erect a sign above the shop entrance.

3.2 These changes do not require planning permission and do not represent a material change of use to the premises. While refurbishment works to the building took place internally and externally, these would not prevent the existing use as a public house to continue or result in a material change to the use of the property.

3.3 Officers who have visited the site consider that the rear bar area is largely intact and has the appearance of a public house. The level of refurbishment undertaken has not made the premises look like a shop. Notwithstanding this, it is the use and function of the property which needs to be demonstrated to prove that a material change of use has occurred.

Email correspondence with Council Business Rates Inspector

3.4 The applicant has submitted an email to a Business Rates Inspector stating that the application property has been leased to Bargains R Us Ltd. Further emails seek to confirm whether Bargains R Us was open and trading on 23/03/2015.

3.5 Following the emails submitted by the applicant the Council's Business Rates Inspector was asked to provide further clarification of what they saw when they visited the premises. This forms part of the Council's own evidence and contradicts the applicant's evidence.

3.6 The email from the Business Rates Officer to the case officer (dated 04/06/2015) details the extent of their role and what they saw on the application site. Within the email it is made clear there was no internal or external changes to make the premises look like a shop and that it maintained the appearance of a public house. Rather than a material change of use, the Officer considered that it was a 'pop-up' venture rather than a shop. Following the site visit, the Officer did not send a report to the Valuation Office to change the description as they did not consider that a change of use had

occurred.

3.7 Notwithstanding the above, the description that the Valuation Office uses to describe a property is not satisfactory justification to establish a material change of use. The descriptions can be changed regardless of a properties function. Furthermore, such changes can be made retrospectively and a planning justification is not a requirement of the Valuation Office when considering the change to the description of a property.

Email correspondence with Valuation Office Agency (VOA)

3.8 The email to the VOA from the applicant is simply to notify them that the property is being used as a retail premises. No evidence has been submitted to the VOA to indicate that the use has commenced and no reply is included from the VOA. It does not demonstrate that the A4 use has ceased or that the A1 use has commenced, as it is the applicant's consideration only.

Business Rates bills

3.9 Business Rates bills have been submitted for the periods of 23/03/2015 to 31/03/2015 and 01/04/2015 to 31/03/2016 with the property description listed as 'Shop and Premises'. It is noted that the applicant applied for the change to the description and these were accepted by the Council's Tax Department in good faith, without the need to demonstrate that a material change of use had occurred. The description of the properties for tax purposes is not sufficient justification to prove that a material change of use occurred. As discussed above, changes to descriptions and rates can be made retrospectively from the period that the applicant specifies.

Insurance policy schedule

3.10 The insurance policy is for 'Shop, Pub and Restaurant' insurance and is issued on 20/03/2015. It is clearly specified near the beginning of the document that the cover is based only on the information that has been submitted to the insurance company. The insured details state under experience that "I've not started yet" and the cover is only on the basis of public liability insurance, with no cover for employers' liability, stock or contents.

3.11 The purchasing of insurance is not sufficient evidence to suggest that the operation and function of a shop had commenced. The policy itself is for shops, pubs and restaurants and is based on the information that has been submitted by the applicant. The document makes it quite clear that the use has not commenced under the experience section. As the policy wording is based on the information given by the applicant and is only for public liability insurance, it is not clearly demonstrated that the applicant intends to use the insurance for a retail use. Furthermore, the document makes it clear that the policy can be amended or cancelled.

Statutory declarations

3.12 Two statutory declarations have been submitted by the applicant. Mr Yakov Yosef Cohen confirms he worked for a now dissolved company (You N Yours Limited) that specialised in the retail sale of discount clothing. He states that he provided Bargains R Us with shop fitting, furniture and clothing and that a stock take was undertaken on the 24th of March 2015.

3.13 According to UK Companies House, the company was dissolved on 29/07/2014, nearly 8 months before Mr Cohen states that he provided Bargains R Us with the mentioned goods following the dissolution of You N Yours Limited. The supply of these goods is not enough evidence to suggest that a material change of use to retail occurred. The applicant purchased discount clothing and other materials (such as clothing racks), however, it does not mean that the premises operated as a retail unit. No details have been provided as to what materials were provided nor has any evidence of the suggested stock take been provided. Furthermore, purchase receipts of the mentioned goods have not been included with the application which would be expected if this transaction had occurred.

3.14 Another statutory declaration has been signed by Mr Mark Anthony Edward Richmond. Mr

Richmond states that he is the Director of Pubwatchers Security Limited who specialise in providing security to vacant or untenanted pubs. The declaration makes ambiguous references to the opening of the shop without any specific references to him considering that it functioned as a retail unit. It confirms that his company were not required during Monday to Friday between the hours of 10:00am and 4:00pm when the alleged change of use is claimed to have occurred since the 23rd of March 2015. There is nothing within the statement to suggest that Mr Richmond viewed the proposed use being undertaken.

Photographs

3.15 A schedule of photographs has been submitted to show a 'Bargains R Us' sign to the front of the building (a flush temporary sign on the ground floor front elevation); a till, cash register and clothes on racks and mannequins.

3.16 The photographs do not provide conclusive evidence in their own right that the application site undertook a material change of use from a public house to a retail unit. It is noted that the photographs are limited to the front the site externally and the front bar area.

Inadequacy of information

3.17 The above information is considered to be insufficient to justify that a material change of use has occurred from public house (A4) to a retail shop (A1). The applicant has been made aware of the inadequacy of information before the application was registered and throughout the application process. Further information has been requested but not forthcoming. If a material change of use had occurred and the premises was operating as a retail unit, some of the following details would be expected:

- full invoices for stock (stock inventory list)
- receipts for sales (till receipts)
- invoices for any rent being paid
- bank statements
- employment/staff contracts
- employment wages and records for staff (including PAYE records)
- invoices (and details of arrangements) for commercial refuse collection
- utility bills/payments
- credit-card machine rental agreement or purchase receipt, and invoices for credit card processing
- copies of employee liability insurance
- contents insurance (showing stock value)

3.18 Based on the lack of the above information being provided, the Council does not consider that the necessary evidence has been submitted to substantiate the claim that the proposed retail use is lawful as a material change of use has not occurred. It has not been demonstrated that the use was lawful on the date of application on the balance of probability.

4.0 Third Party Evidence

4.1 Local residents and business operators were consulted regarding the Certificate of Lawfulness application to help the Council assess whether the material change of use had occurred. A number of responses were received providing evidence and opinion which contradicts the applicants claim that the proposed use is lawful.

4.2 A number of the written submissions consider that the proposed retail use is a 'scam' or 'front', submitted to benefit from changing legislation regarding Assets of Community Value (ACV) and permitted development rights. Many local residents and business operators consider that the applicant had no intention of establishing or running a retail shop and that the submitted details and works undertaken have been done to exploit the planning system. The application was submitted

within 2 weeks of the changes to the General Permitted Development Order which third parties found suspicious. Reasons why **objectors consider** the proposed use to be fraudulent include:

- The location of the premises is not a suitable location for a retail unit. It experiences very little footfall and is located off the main retail parade down a dead end street. Objectors do not consider that it would be a practical place to locate such a business
- Very little effort has been made to advertise the business. There is no signage displayed at right angles. Objectors consider that it is obvious that they are not trying to seek customers
- Other factors point to the premises providing no effort to operate as a retail unit. The stock displays have not changed since the opening of the store and display mannequins are left unchanged for extended periods, again indicating no intention to sell or run as a shop
- “Bargains r Us” is looked after by a resident who lives on the upper floors of the building (i.e. a ‘guardian’ of the property). There are no staff members employed, the guardian only monitors people coming in and out of the property
- The Director of the company “Bargains r Us” is linked directly to property development companies which create and dissolve companies related to construction and development. Objectors claim Bargains r Us are another company created simply to be dissolved with its only purpose being to manipulate the planning system, not setup a genuine retail shop
- The applicant and agent both have a history of closing pubs and redeveloping them as residential units, which shows their intention here

4.3 In addition to the above considerations by third parties, observations have been noted which contradict the applicant’s evidence. Bargains R Us is not open on weekends including Saturdays, which is unusual as Saturday in particular is prime shopping time. Local residents have observed that the premises is very rarely open and appears to do little trading, if any. The property often displays a “back in 5 minutes” sign with the application site remaining unattended. Before the notification of the Certificate of Lawfulness application, a number of local shop owners and residents had no knowledge of “Bargains r Us” operating despite being within close proximity and walking past the premises. If a material change of use occurred, locals within the area would have been likely to have taken note of an additional retail store commencing its use.

4.4 Local shop owners within the retail industry have undertaken ‘secret shopper’ visits. They found that the server had little knowledge of stock content or prices of items and difficulties with basic retail responsibilities such as opening the till, issuing a receipt and producing a VAT receipt/number. Stock controls labels were not visible on any of the items and only a few of the items contained price labels. It was also noted that card payments were not available and that there was very little change within the cash register. Some of the observations from third parties and the ‘secret shopper’ visit are from individuals who work within the retail industry. In their opinion they do not consider that a material change of use occurred to A1 at the time of their visit.

5.0 The Council’s Evidence

5.1 Planning and Enforcement Officers have visited the premises along with the Council’s Business Rates Inspector. An enforcement case has been opened regarding the use of the public house under EN15/0332.

Observations and actions from Planning Enforcement

5.2 The Planning Enforcement Officer visited the site on 28/05/2015 and considered that a material change of use to a retail unit had not occurred. This is due to an improper window display, most of the clothes did not display price tags, the server in the shop admitted to residing in the unit upstairs and

the rear bar area was intact meaning the premises did not have the appearance of a retail shop. Details of the Officer's observations are found in an email dated 16/06/2015. No enforcement action is being pursued at present and based on what has occurred at the premises, formal enforcement procedures would not be considered if the alleged change of use occurred after the 6th of April 2015, as it is not considered that there has been a material change of use to the premises that would warrant such action.

Observations from Business Rates Inspector

5.3 As detailed in paragraphs 3.5 and 3.6, the Council's Business Rates Inspector did not consider that a material change of use had occurred when she visited on 23/03/2015. Furthermore, she did not consider it necessary to send a report to the Valuation Office to change the description of the premises.

Extent of application

5.4 The ACV covers the entire ground floor and basement of the premises, including the front bar area, the lounge bar area to the rear and the toilets and store to the back of the property at ground floor as well as the storage area at lower ground level. The submitted floor plans (of the proposed shop use) annotate the front bar area as commercial A1 shop use, the rear lounge bar as shop storage and there is no indication that any other part of the public house is included within the proposed use. Within the submitted details, including the photograph schedule, only the small front bar area is shown as having a till and clothes on racks and mannequins. No evidence has been submitted to demonstrate that any other part of the application site, including the remainder of the ground floor and basement which form part of the ACV designation and lawful public house (A4) use, has been altered or occupied by the proposed use. Whilst the Council does not consider that a material change of use has occurred in any event, the submitted evidence appears to be in relation to a small section of the overall planning unit which is ancillary to the application site as a whole.

6.0 Conclusion

6.1 In conclusion and in light of the circumstances referred to above, the Council does not consider that the necessary evidence has been submitted to substantiate the claim that the proposed retail use is lawful as a material change of use had not occurred at the time of the application. Furthermore, the Council's own evidence and evidence from third parties contradict or undermine the applicant's version of events. The application for a Certificate of Lawfulness for an Existing Use must therefore be refused. No enforcement action is considered necessary at this stage as the lawful use of the application site has not changed and there has been no breach of planning control.

7.0 Recommendation: Refuse