

TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)

STATEMENT
ACV

St Pauls Mews
Camden

Kowloon Pacific

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1 History of the Application Site

- 1.1 St Pauls Mews from the 1930's until the 1960's was used for the industrial manufacturer of tiles and was primarily a yard with individual buildings, which housed amongst others a tile pressing shop, sanding shop and pump room.
- 1.2 In the 1960's until the late 1980's St Pauls Mews was used as a yard with ancillary buildings for the storage of plant and materials and for the operation of heavy goods vehicles. It was during this time that the application site was acquired to enable vehicles to turn around in order to enter and egress the site safely. This area was previously part of a garden of a property located to the north of the site
- 1.3 Minor planning applications were approved during this time for additional / replacement buildings. For the whole period this land was gated at either end and was for private use only.
- 1.4 On the 23 July 1987 planning permission was granted for the provision of gated development, which consisted of 28 No. 3 bed & 2 bed houses with integral garages and six external parking spaces. A subsequent application to increase this to eight spaces was refused planning permission by LB Camden in 1989. Clearly planning policies related to car parking in urban areas have moved on and for at least the last twenty years planning policy has sought to reduce car parking rather than encourage it.
- 1.5 The freehold of St Pauls Mews and application site have remained in private ownership and access to St Pauls Mews is controlled by gates at either end of the development therefore access to this area by the local community is at best challenging.
- 1.6 In terms of parking, local transport and servicing of the site, as well as the provision of integral garages for off street parking, St Pauls Mews is located only 12 minutes walking distance from National Rail and LU underground stations and only 8 minutes walking distance from 5 bus routes. Access for servicing is controlled at either end of the Mews. Given the proximity of the site and existing parking arrangements, planning policy would suggest that it should be decreased rather than increased.
- 1.7 The site has previously been used as a car park without the owner's knowledge or approval and our client had put in appropriate measures to stop the use of his land for that purpose prior to the nomination as an ACV. (Please see photographs in the D & A Statement). We can therefore confirm that the proposal site has nil use. As the application site has not been in use for several years the proposed impact on the community is therefore considered to be negligible.
- 1.8 The planning history suggests that the 'community value' of the site is rather tenuous and it should be noted has only recently been promoted as a result of

the residential development of the St Pauls Mews.

2 ACV Listing for St Pauls Mews

- 2.1 Following an application the site was nominated on the 11th November 2013 and approved by the Camden Council on the 3rd January 2014.
- 2.2 When assessing the nomination as an ACV the Council is required to consider two pertinent issues. Firstly is the site ancillary to the main use of the ACV and secondly is the category of land excluded from the operation of the listing regime in accordance with Schedule 1 to the Assets of Community Value (England) Regulations 2012 (“the 2012 Regulations”).
- 2.3 In terms of the first matter it can be argued that the application site is clearly ancillary to the main use of the ACV. The inclusion is even more tenuous as it has cordoned off for several years and is not used by the community.
- 2.4 In accordance with Schedule 1 to the Assets of Community Value (England) Regulations 2012, the principal exclusion relates to residences. The other two exclusions are caravan sites and land held by a statutory undertaking for its operations. The latter covers transport complexes such as airports and railway stations.
- 2.5 The exclusion of a residence extends to the land connected with it but probably not other buildings, save for those, ancillary to the residence.
- 2.6 It appears that the ACV is ancillary to the main use of St Pauls Mews and given that the primary use is residential, it remains unclear as to whether these important factors were taken into account when the listing was originally submitted and approved.

3 Planning Policy

- 3.1 We understand that local planning authorities can determine whether or not ACV status is a material consideration in terms of a planning application. However this stance contrasts with the Government’s response to a Select Committee Inquiry into community rights (March 2015), in which it refused a recommendation to make ACV status a material consideration in planning applications, except for minor works. This proposal is clearly a development, which is not regarded as minor works in terms of definition within planning legislation.
- 3.2 When assessing the material weight of ACV’s in planning decisions, Para 70 of the NPPF is the most relevant as this seeks to deliver social, recreational and cultural facilities and services for the community needs. However it advises that planning decisions should:

“...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; “

- 3.3 Given that this part of the ACV has not been in use by the community prior to the nomination being accepted, it is nebulous to suggest that the application site has the ability to meet the community’s day-to-day needs.
- 3.4 The central tenant of the NPPF is the presumption in favour of sustainable development (Para 14), thus any proposed development, which is sustainable, should be approved without delay (Para 15). Amongst its core planning principles (Para 17) the NPPF encourages the effective use of land by reusing brown field land that has previously been developed, provided that it is not of high environmental value. Clearly although attractive this brownfield site is an urban hard landscaped area which is not considered of high environmental value.
- 3.5 Finally the NPPF requires that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development (Para 197).
- 3.6 This application has demonstrated that the proposed development fully complies with the overall objectives of national, regional and local policy guidance, and in so doing, delivers a sustainable development of the site that will contribute to the supply of homes in Camden and London.
- 3.7 The development will give rise to the following key planning benefits by:
 - Optimising the use of a previously developed brownfield site which would otherwise fall vacant and be under-used;
 - Replacing an underused site with a development of the highest quality design that responds to the constraints of the site and its surrounding townscape;
 - Delivering the benefits arising from the proposed development without causing harm or detriment to the character of the surrounding area and the amenity of those who live in close proximity to the development, as demonstrated through the detailed assessments accompanying the planning application; and
 - Contributes to national, regional and local housing targets through the provision of a new, high quality home.
- 3.8 Overall, the built form of the application is considered to be acceptable (which is confirmed by planning officers at LB Camden) as it provides a high quality development that is of an exemplary design and appearance with regard to its surrounding environment and townscape context.
- 3.9 In accordance with Government planning advice, it is considered that the overall planning merits of the proposal as set out above far outweigh the material considerations of the ACV and therefore the matter of the ACV should not be considered a planning risk in this instance.

4 Camden Council's view on ACV

- 4.1 The Borough Solicitor and Assistant Chief Executive's Report to Cabinet 13th June 2012 – Localism Act - Implementation Information stated that:

'The assets of community value provision (also known as the community right to bid) aims is to give local voluntary and community bodies and parish councils the opportunity to buy buildings or land such as pubs, post offices and libraries when current owner wants to sell. These groups may nominate assets of community value to go on a list held by the Council.

If the owner of the listed asset wants to sell it, they would be required to notify the Council, who would in turn notify the interested parties. If a group then want to buy the asset, they must inform the Council, triggering a six month moratorium on the sale, to give them a chance to prepare a bid to buy. However at the end of the six months, the landowner is under no obligation to accept their offer.

The regulations which bring this provision into force are expected during the summer. Officers are preparing for implementation as far as is possible before publication of the regulations. Nominations to the list will be submitted through a page on the Council's website. The government has indicated that the process is purely administrative so no Councillor involvement in decision-making is required.'

- 4.2 Clearly this report advised that there was a strong emphasis on the central tenant of the Localism Act 2011 that local communities should be given the opportunity to buy buildings or land when the current owner wishes to sell.
- 4.3 Moreover as it was purely administrative, 'no Councillor involvement in decision making would be required' - this is rather at odds with the assessment of planning applications if the ACV issue is to be material consideration, both in LB Camden and every other LPA within the country.

5 Planning Considerations ACV

- 5.1 It is accepted that in some areas the listing of an ACV maybe treated as a material consideration for planning purposes. There is little official guidance as to the consequence of listing in the context of planning. DCLG guidance states that it is for the authority to decide whether ACV listing is a material consideration for planning purposes.
- 5.2 However listing should not automatically cause the listing of the ACV to be treated as a material consideration when considering planning applications relating to the listed ACV. In the Government Policy Statement (September 2011) it states that “...it is open to the Local Planning Authority to decide that listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances.” It may be taken into account by the planning authority but does not have to be.
- 5.3 “Furthering social wellbeing or social interest of the local community” – to qualify as an ACV the asset must either currently be being used or in the recent past have been used to further the local community’s social wellbeing or social interests. There is no comprehensive statutory definition but it is expressly provided that it includes recreational, cultural and sporting interests. Clearly as the application site is not used, by the community, it does not accord with the criteria set out above.
- 5.4 Listing brings in controls relating to the disposal of the ACV but not as to the use of the listed ACV. The owner retains the unfettered ability to change the use of the listed ACV. Moreover listing does not impose any restrictions on the use to which a listed ACV can be put. This is a only matter for planning law.
- 5.5 The only current restrictions are those imposed by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015/659 which removes from the Permitted Development Rights regime listed or nominated public houses and requires that before commencing a development of any public house a request be made of the relevant authority as to whether it has been listed and a period of 58 days from the making of the request must first expire.
- 5.6 There is no direct case law on what weight may be attached to the ACV listing and the weight to be given to a material consideration is a matter for the decision-maker subject to this decision being reasonable and rational in all the circumstances.
- 5.7 The significance of an ACV listing in the context of planning has recently been raised in *R (oao Loader) v Rother DC* [2015] EWHC 1877 (Admin) which involved judicial review proceedings over a planning permission to carry out a residential development at the listed Gullivers Bowling Club. The allegation was that the planning committee had been misled as to the effect of the listing. In rejecting this contention Mrs. Justice Paterson without any criticism set out (at para. 87) in full the minutes of the advice given by the

authority's planning lawyer. This set out the workings of the ACV regime and then went on to say:-

“With regard to this, planning applications have to be determined in the normal way in accordance with the development plan unless material considerations indicate otherwise. At present there is no direct case law on what weight is attached to ACV listing. The weight to be given to any material consideration is a matter for the decision-maker, subject to his decision being reasonable and rational in all the circumstances. Each case depends on its merits.... In making your decision here you will be doing the usual balancing act to see what weight you attach to material considerations in question.”

5.7 When considering what weight should be attached to listing, this varies from case to case.

- It may be a reason for refusing permission as with the refusal of the planning application to change the use. The Friendship pub in Plymouth was the first ACV to be listed in 2013 by the authority. It was sold to a developer and an application for planning permission made for a flat to be constructed on each of the three floors. Permission was granted for the first and second floors but not for the ground floor. On appeal the Inspector overturned the refusal and allowed the conversion of the pub on the ground floor to a flat because there was nothing to show that future use as a pub was viable;
- In other cases the proposals have included provision for replacement alternative community facilities and this has been sufficient to overcome the weight attached to the listing (as in the decision of Brendan Lyons in relation to the Queensbury public house in Brent on 23rd March 2015 – APP/T5150/A/14/2219081); and
- The listing has been accorded negligible weight, which results in the grant of planning permission even if the proposed development does not include replacement community facilities.

5.8 An example of the latter class is the decision of the Planning Inspector (APP/Y5450/W/14/3001921 - 12th May 2015) in respect of a planning application for permission to convert the Alexandra in Haringey into two three bedroomed dwellings. It had loose associations with the Davies brothers of Kinks fame and had been listed as an ACV. The refusal by the council was overturned by Mr. N Taylor who stated at para. 22 that the

“...relevant ACV legislation sets out specific tests which are narrower than the planning considerations before me. The primary purpose of ACV listing is to afford the community an opportunity to purchase the property, not to prevent otherwise acceptable development. Accordingly, whilst I afford it some weight in this case it is not determinative.”

6 CONCLUSIONS

- 6.1 This Statement has been prepared in support an application submitted for the redevelopment of the site located at St Pauls Mews, Camden in light of the ACV listing. The proposals are considered in the context of relevant national, regional and local planning policy, and other best practice guidance.
- 6.2 It is clear from recent ACV case law that in terms of material considerations when assessing an application, the ACV needs to be balanced against the planning merits of the application.
- 6.2 The site was previously part of neighbouring garden and has used since the 1960's as a logistics yard, a car parking area and most recently has 'nil' use. In accordance with local, regional and National Planning Policy an opportunity exists to redevelop the site for residential use.
- 6.3 This Statement has demonstrated that the proposed development fully complies with the overall objectives of national, regional and local policy guidance, and in so doing, delivers a sustainable development of the site that will contribute to the supply of homes in Camden and London.
- 6.4 The proposals have been the subject of extensive pre-application consultation. The development will give rise to the following key planning benefits by:
- Optimising the use of a previously developed brownfield site, which would otherwise fall vacant and be under-used;
 - Provision of a development of the highest quality design that responds to the constraints of the site and its surrounding townscape;
 - Delivering the benefits arising from the proposed development without causing harm or detriment to the character of the surrounding area and the amenity of those who live in close proximity to the development, as demonstrated through the detailed assessments accompanying the planning application;
 - Contributing to national, regional and local housing targets through the provision of a range of new high quality homes;
 - Delivering a new home that will also be of an exemplary standard and will comply with the standards set out locally by the borough and by the Mayor in his Housing SPG;
 - Making provision for appropriate level so for-site car parking to meet the needs of the development without creating further pressure on existing on-street parking availability;
- 6.5 Overall, the application is considered to provide a high quality development that is of an exemplary design and appearance with regard to its surrounding environment and townscape context.

- 6.6 The proposals will optimise the use of the site and deliver an appropriate form of development without harming the amenity of existing residents in the area.
- 6.7 In terms of the ACV, the application site is a small part of the overall nominated site, in its current state provides negligible value to the community and there is little prospect of this changing in the near or distant future.
- 6.8 Whilst it may be argued that the ACV should afford some weight in this instance it should not be determinative and the planning merits of the application are significantly greater. Moreover the primary purpose of ACV listing is to afford the community an opportunity to purchase the property, not to prevent otherwise acceptable development.
- 6.9 It is therefore considered that the overall planning merits of the proposal as set out above signify that the council should apply the presumption in favour of sustainable development in this instance and grant planning permission.