

Statement of Case

1 Pakenham Street, Camden, WC1

December 2017

Turley

Contents

1.	Introduction	3
2.	Proposed Development	4
3.	Site and surroundings	5
4.	Planning policy	8
5.	Grounds of appeal	9
6.	Policy assessment	10
7.	Planning Assessment	14
8.	Case law review	21
9.	Conclusions	23

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Client
Turley

Our reference
ARGL3001

December 2017

1. Introduction

- 1.1 Turley is instructed by Pakenham Investments Limited to submit an appeal against the decision of the London Borough of Camden (LBC) to refuse planning application 2016/6930/P on 3rd October 2017 for the change of use of the former Pakenham Arms from A4 to B1(a) at ground floor and basement.
- 1.2 The subject premises currently lies vacant following unsuccessful attempts to run a viable public house in recent years and an unsuccessful marketing campaign.
- 1.3 The applicant wishes to find a sustainable commercial use for the vacant ground floor and basement floorspace in order to secure the future of this grade II listed building. Upper floors are in residential use.
- 1.4 LBC granted planning permission on 4th October 2017 for a concurrent application for the change of use of the premises to A1 retail at ground and basement (ref. 2016/6931/P).
- 1.5 An alternative commercial use for the premises represents the optimum solution in land use planning and heritage terms. The recently granted A1 permission confirms that LBC supports this in principle.
- 1.6 The only point of contention between the appellant and the Local Planning Authority is whether the future use of the premises should provide some form of community facility and whether it is reasonable for planning permission to be refused on the basis that B1(a) office would not provide a community facility.
- 1.7 This Statement of Case sets out the appellant's grounds of appeal and reviews the planning policy and wider material considerations relevant to the determination of the appeal. This report should be read in conjunction with the material submitted with the planning application and this subsequent appeal

2. Proposed Development

2.1 Two planning applications were submitted, for the following proposed development:

- Change of use from Use Class A4 to Use Class A1 (planning permission granted 4th October 2017 ref. 2016/6931/P).
- Change of use from Use Class A4 to Use Class B1(a) (planning permission refused 3rd October 2017 ref. 2016/6930/P).

2.2 No physical changes requiring planning permission or listed building consent form part of the proposals.

2.3 The change of use relates to the ground floor and basement of the property, excluding the ground floor entrance to the residential units which are located on the upper floors of the property.

3. Site and surroundings

- 3.1 The site is located on the edge of a predominantly residential area within the Bloomsbury Conservation Area.
- 3.2 The site is located on the corner of Pakenham Street and Calthorpe Street, on the west side of Calthorpe Street. To the east and south there are a mix of land uses. To the west the immediate vicinity has a largely residential character.
- 3.3 The subject property comprises three storeys, including ground (plus basement), although this application relates to the ground and basement floors only. It is a late 19th Century grade II listed former public house in red brick with rusticated stucco dressings. It was built to match the appearance of earlier terraced buildings along Calthorpe Street.
- 3.4 The upper floors of the subject premises have been converted to residential use (refer to the site planning history, summarised below).

Recent planning history

- 3.5 Application ref. 2016/6930/P for change of use from A4 to B1(a) was refused on 3rd October 2017 under delegated powers but following review by the Chair of the Planning Committee on the following grounds:

The proposed development, by virtue of the office use, would fail to provide a suitable alternative community use which reflects this building's community, heritage and townscape value and the contribution it makes to the Bloomsbury Conservation Area, contrary to policies C4 and D2 of the Camden Local Plan 2017.

- 3.6 Application ref. 2016/6931/P for change of use from A4 to A1 was granted on 4th October 2017 subject to conditions.

Prior planning history

- 3.7 The most relevant planning history of the site prior to the October 2017 decisions is in relation to the change of use of the first floor and above to residential and the associated changes to the ground floor and basement levels of the retained A4 use (references below). Internal changes to the ground floor and basement permitted by this application comprised:
- relocation of kitchen to ground floor from first floor;
 - relocation of WCs to basement, with wheelchair accessible WC at ground floor;
 - removal of basement office space, and
 - insertion of corridor at ground floor within A4 space to provide access to residential units on upper floors.

- 3.8 The site is also subject to an Article 4(1) direction pursuant to the Town and Country Planning (General Permitted Development) Order 1995 (as amended), which removes Permitted Development rights for change of use to A1, A2, A3 or B1 either permanently or for a temporary period. (appended to the Planning Statement).
- 3.9 Turley submitted representations in relation to the immediate direction made in October 2015 (appended to the Planning Statement). We set out our view that the continued operation of Permitted Development rights would not be prejudicial to the proper planning or the area, did not constitute a threat to the amenities of the area and that the direction did not have a clear basis of support within the Development Plan. We submitted representations to the Secretary of State (Department for Communities and Local Government). The DCLG responded that it did not consider there to be a clear reason for intervention in this case and therefore LBC proceeded to issue Direction.

Table 3.1: Relevant planning history

Reference	Description	Decision	Date	Notes
2016/6931/P	Change of use from pub/drinking establishment (Use Class A4) to retail (Use Class A1) at basement and ground floor levels.	Approved	04/10/2017	
2016/6930/P	Change of use from pub/drinking establishment (Use Class A4) to office (Use Class B1a) at basement and ground floor levels.	Refused	03/10/2017	Subject of this appeal
2014/5369/P	Amendment to planning permission (2013/6910/P) dated 10/03/2014 (for the change of use from ancillary residential above pub to create 1 x 2 bed, 2 x 1 bed, 1 x studio flat & associated alterations to include alterations to rear elevation and installation of glass balustrade at roof level), namely to raise part ground floor level, widen shower rooms (flats 2 & 4), relocate kitchen (flat 3), and associated alterations.	Approved	05/03/2015	

2014/2125/P	Change of use from ancillary residential above pub to create 1 x 2bed, 2 x 1bed and 1 x studio flats and associated alterations to include alterations to rear elevation and installation of glass balustrade at roof level.	Refused, Appeal dismissed	23/10/2014	And associated LBC 2013/2284/L
2013/6910/P	Change of use from ancillary residential above pub to create 1 x 2bed, 2 x 1bed and 1 x studio flats and associated alterations to include alterations to rear elevation and installation of glass balustrade at roof level.	Granted	06/11/2013	
PS9905143	Relocation of PH WCs to basement, general refurbishment to pub and basement cellar, relocation of existing kitchen to ground floor, formation of 2 flats at first floor & 2 flats at second floor and construction of roof level conservatory, involving minor demolition.	Withdrawn	06/04/2000	

4. Planning policy

Development Plan

4.1 Relevant Development Plan Documents within LBC comprise:

- London Plan (2016)
- Local Plan (2017)
- Policies Map (2016)

4.2 Additional relevant material considerations include:

- National Planning Policy Framework
- National Planning Practice Guidance
- Public consultation draft of the new London Plan (December 2017) (limited weight)

Policy designations

4.3 The subject site is within the Central Activities Zone and the Bloomsbury Conservation Area.

4.4 There is a nearby site allocation on Pakenham Street (site 26), which is allocated for either a new secondary school, a mixed-use scheme including residential and employment, or an employment led mixed-use scheme including residential.

4.5 The subject property is a Grade II listed building.

5. Grounds of appeal

5.1 The appellant is appealing to the Planning Inspectorate against the decision of LBC to refuse an application for full planning permission under LBC reference 2016/6930/P.

5.2 The grounds of appeal are as follows:

- The proposed use will provide a viable use for the listed building and this will have heritage benefits for the listed building and the Bloomsbury Conservation Area.
- The existing premises did not provide a community use and there is no demonstrable need for a community use at the premises; there are alternative public houses in the area (providing alternative facilities to those which the subject premises provided i.e. a public house) and there are alternative premises in the area that offer public meeting space (notwithstanding that the subject premises did not and cannot offer meeting space).
- The extant permission for change of use to A1 retail does not provide a community use and there is no basis therefore to resist B1(a) use as a result of the A1 planning permission.
- The planning benefits of the proposal are such that the application should be approved.
- The proposals comply with the Development Plan and relevant material considerations.

6. Policy assessment

Policy protection of Public Houses

National Planning Policy Framework

- 6.1 Paragraph 70 sets out that planning 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*' and '*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*'.
- 6.2 In this policy guidance the wording refers specifically to *unnecessary* loss and to facilities and services which are *valued* and necessary for the *day-to-day needs* of the community. The NPPF does not therefore require the blanket protection of all public houses and it would be reasonable to consider both the degree to which the public house, when in operation, did have a valued function and the degree to which this is necessary given the availability of other similar premises in the surrounding area.
- 6.3 With regards to 'local shops' not all businesses operating with the A1 use class can be considered to be local shops nor can they be considered to provide a social, recreational or cultural facility, which is the over-arching purpose of paragraph 70. There is no definition within the NPPF as to what constitutes a local shop or a community facility. This paragraph is also focused upon the purpose of ensuring that communities are sustainable and can meet their day-to-day needs – arguably this consideration is less relevant within a central London location with a vast range of facilities within the vicinity of the subject premises.

Asset of Community Value

- 6.4 The subject site is not listed as an Asset of Community Value (ACV). Whilst the ACV regime does not constitute part of the Development Plan it may be instructive to consider how ACV's are defined by DCLG.
- 6.5 ACV's should have a current use that furthers the social wellbeing of the local community or a use that in the recent past has done so and has a reasonable prospect of coming back into that use within 5 years.
- 6.6 LBC has not designated this public house as an ACV against the aforementioned criteria.

Development Plan

London Plan

- 6.7 Policy 4.8 B c protects 'valued local community assets, including public houses, justified by robust evidence'. Supporting text paragraph 4.48A states that '*...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*'.

- 6.8 The London Plan therefore protects community assets, including public houses, where these are demonstrated through robust evidence to be needed, to have community asset value and to be viable - and subject to local Development Plan policy.
- 6.9 Policy 4.8 B c also protects existing shopping facilities which provide local goods and services including essential convenience and specialist shopping functions, where justified by robust evidence. Policy 4.8 B c is therefore in place to protect existing shops - not to require the provision of A1 (in preference to other uses) when the loss of a public house has been permitted.
- 6.10 London Plan policies 3.16 and 7.1 do not specifically identify public houses as social infrastructure (or indeed A1 retail) nor therefore protect such uses. It should be noted that the LBC officer report refers to policy 3.16 of the London Plan without making this distinction.

Revised London Plan

- 6.11 The December 2017 draft replacement London Plan is at an early stage of consultation and should be given limited weight in decision making, with increasing weight as progress is made towards examination and adoption.
- 6.12 Proposed policy HC7 would afford protection to public houses where they have heritage, economic, social or cultural value and where they contribute to wider policy objectives in relation to town centres and night time economies. The policy will require marketing evidence that the pub is not viable.
- 6.13 The proposed policy does not therefore introduce any relevant additional tests than those already required under adopted Development Plan policy within LBC and is clear that not all public houses are protected, just those that meet the criteria of part A (1) of the policy.

Local Development Plan Documents

- 6.14 LBC's reason for refusing planning permission 2016/6930/P refers to Local Plan policies C4 (Public Houses) and D2 (Heritage).

Local Plan Policy C4 Public Houses

- 6.15 Within policy C4 it is noted that LBC seeks to protect public houses *which are of community, heritage or townscape value*. This wording confirms that not all public houses are, by default, of community, heritage or townscape value and that the policy only protects public houses where this value does exist.
- 6.16 The supporting text notes that (para. 4.76) *'The Council will determine whether a proposal would result in the loss of a pub with community, cultural or heritage value' and this confirms the above interpretation of the policy*.
- 6.17 The policy requires demonstration that the loss of a pub would not relate to a premises that is valued by the community or which makes a valuable contribution to the historic environment or character of the local area.

- 6.18 LBC has accepted the change of use of the public house (to A1 retail), the point of policy contention and the reason for refusal relates to the following wording from policy C4:

Where it has been demonstrated to the Council's satisfaction that a public house can no longer be retained, the suitability of the premises for alternative community uses for which there is a defined need in the locality should be assessed before other uses are considered. If the pub is a heritage asset, it should be conserved in a manner appropriate to its heritage significance.

- 6.19 The above policy text somewhat contradicts the overall policy wording and the supporting text, referred to above. Not all public houses provide a community use for which there was/is a defined need and therefore the requirement for an alternative community use should only apply where there was in the first place a community use for which an alternative can be found.

Policy D2 Heritage

- 6.20 Local Plan policy D2 Heritage reflects in essence the requirements of the Planning (Listed Buildings and Conservation Areas) Act i.e. it sets out that heritage assets should be preserved and enhanced.

- 6.21 With respect to policy D2 it is acknowledged that the subject premises is a listed building within a conservation area; however, given the public house use is no longer viable, an alternative commercial use is the best means to find a sustainable long-term use for the listed building.

- 6.22 Policy D2 includes a test regarding whether or not there is a viable use for the heritage asset that would enable its conservation.

Policy C2 Community facilities

- 6.23 Policy C2 Community facilities allows for the development and modernisation of existing community facilities to meet the changing needs of the community. C2 g. protects existing community facilities unless a replacement facility of a similar nature is provided and where the existing premises are no longer required or viable and there is no alternative community use. On the loss of a community facility policy C2 directs that the preferred alternative use will be affordable housing.

- 6.24 Supporting text paragraph 4.21 states that community facilities refers to a wide range of social infrastructure. The paragraph refers to childcare, education, adult learning and training, healthcare, police stations, youth provision, libraries, public houses, community halls, places of worship and public toilets. The reference to public houses is somewhat anomalous to the other uses which are almost entirely within the D1 Use Class. Public houses are not referred to within the policy wording nor elsewhere within the supporting text, which is focused on D1 uses. The Community Investment Programme, which is targeted at community facilities, does not include any funding for public houses, nor does LBI's Community Infrastructure Levy Regulation 123 list.

- 6.25 Policy C2 g ii. refers to alternative community uses but it would be unreasonable for the policy to require uses outside of the use class of the premises (i.e. outside of A4 use) because this would be of a fundamentally different character to the existing use and the

appropriateness of any alternative use would need to be tested through a planning application.

- 6.26 It is important to note that Policy C2 and its supporting text does not list local shops or other uses within the A1 Use Class as comprising a community facility. Therefore, via the extant A1 retail permission, LBC has allowed A4 use and the provision in its place of a use which is not a community use. This is a material consideration in this appeal.

7. Planning Assessment

7.1 Based on the reason for refusal and the policy assessment set out within section 6, we consider that the following key questions should be assessed in order to determine whether planning permission should be granted for B1(a) use of the building (also within the context that change of use has already been permitted to A1):

- Did the public house provide a community use, for which there is a defined need in the locality? [Local Plan policy C4 para. 1] Is it reasonable to require a new community use if one does not currently exist and if one did not previously exist? Policy C4 refers to 'alternative community use' and this can only logically apply where there was an existing/previous community use for which an alternative can be found.
- Is there a defined need for community uses within the area? Is the subject premises suitable for a community use? [Policy C4 para. 5]
- Are there nearby 'equivalent premises' that perform a similar function to the premises i.e. as a public house and/or that can perform a community use, for which there is an identified need? [Policy C4 a.]
- What are the heritage merits of the proposed use? [Policy D2]
- What are the planning benefits of the proposed use and what should be the planning considerations with regards to the overall planning balance?

Community use

Pakenham Arms

7.2 The Pakenham Arms does not and did not perform any particular community facility function, neither is the Pakenham Arms an Asset of Community Value.

7.3 The supporting text within the public houses section of the Local Plan sets out some of the ways in which, according to the Local Plan, public houses can perform some form of community function. The range of potential activities that are set out as being commensurate with a community facility are as follows:

- Important community meeting space to host local meetings.
- Hosting local events.
- Entertainment.
- Valuable support function for minority groups.

7.4 The supporting text also refers somewhat generically that '*In some areas, the community pub continues to provide the main public space for socialising with friends, making new contacts, exchanging ideas, celebrating important occasions and staging large gatherings including live music, theatre and comedy nights*'.

- 7.5 It is acknowledged that the pub, when in operation, and as any pub, provided space for socialising; it is not considered that the pub can be reasonably classed as a community facility on this basis alone and, as discussed below, there are a large number of pubs in the area that perform these functions and indeed many which provide more extensive facilities than the subject premises did or could, given its limited size.
- 7.6 We are not aware of any community facility activities that were carried out at the premises. The public house operated as a small public house. Furthermore, the premises is not of a scale or layout that could offer any community / function room.
- 7.7 Note, in response to paragraph 4.12 of the officers report, that the public house did not have a games room or dining room at first floor level prior to the residential conversion of the upper floors.
- 7.8 It is noted from the Article 4 Direction report (appended to the Planning Statement) that LBC considers the premises, when in operation, to have served '*a valuable community function as evidenced by the petition submitted to the Council by local residents*'.
- 7.9 In actual fact there is no evidence within the submitted petition to suggest that the premises did operate as a community facility. Whilst it is not disputed that the signatories of the petition felt that the public house was valued by those signatories, this is not evidence of community facilities at the premises. All that the petition stated was:
- 'The Pakenham Arms is due to close on the 11th July; it has been there, on the corner of Calthorpe and Pakenham Street for over 150 years. It is a much loved part of the local community, with locals, regulars, tourists and new comers loving its relaxed atmosphere and its friendly staff!'*
- 7.10 No evidence is cited regarding the provision of community facilities at the premises, such as space for evening classes, clubs, meetings or performances. All the available evidence suggests that the subject premises operated as a small public house only.
- 7.11 The Development Plan does not set out that all pubs are automatically considered to be community facilities and therefore any justification that the premises did operate as a community facility should go beyond the typical characteristics of a public house. A site specific assessment and justification needs to be provided to justify the resistance to a change of use and this must have a clear basis within the Development Plan – this case has not been presented by the Local Planning Authority and no such case exists; change of use to A1 has been granted.

Defined need for community use and suitability of the premises for a community use

- 7.12 There is no evidence that there is a need for a community facility within this location. Policy C4 only requires alternative community uses where there is a defined need. In this case there is no evidence that this is the case and so there is no defined need.
- 7.13 It should be noted that the Infrastructure Table, Appendix 1 of the Local Plan, which is based upon the Camden Infrastructure Study (2015), does not set out the need for need community infrastructure within the vicinity of the application site.

7.14 The Members Briefing report in relation to the approved A1 application refers to a purported (but not evidenced) deficiency of retail units in the area. It should be noted that on King's Cross Road (140m distance) there is a parade of shops that includes an A1 convenience shop, a café, an hair dressers, an off-license, a public house (The Union Tavern), two hotels and a health and fitness club.

7.15

Suitability of the premises for a community use

7.16 Firstly, it should be noted that the submitted viability report, subsequent submitted information and the third party review on behalf of LBC all confirm that the public house is not a viable business proposition. This was largely due to the relatively peripheral location of the premises with regards to viability for the operation of a public house. There is no evidence to suggest that a community use would be appropriate in this location; Local Plan policy C2 refers to the concentration of community facilities in defined centres and to the benefits of co-location of different services and facilities within one premises.

7.17 Consideration of the suitability of the premises to offer a community use instead of the vacant commercial public house use comes back to the question as to whether or not there is a need for a community facility in this location – without that need no premises in the area can be suitable for a community use.

7.18 A further and important consideration is whether a community use could operate on a viable and sustainable basis and whether this would secure the long-term preservation of the listed building. A community use would in all likelihood not generate a significant income to pay for building maintenance.

7.19 At 232 sq m across two floors the premises could conceivably only be used for a limited range of community facilities and this would essentially relate to the provision of meeting space which could accommodate groups of people undertaking a specific community-related activity. As demonstrated below, there are a range of meeting spaces available within the local area that can accommodate this requirement. This comes back to the lack of any evidence for the need for a community facility in this area and at the subject premises.

Availability of equivalent premises

Nearby public houses

7.20 Policy C4 requires, where a pub is lost, the provision of equivalent premises capable of meeting the community's needs served by the public house; given that the needs met by the public house were simply related to its operation as a public house, this equivalent need is met elsewhere by the many pubs in the area.

7.21 There is a wide choice of drinking establishments, including traditional public houses, within the surrounding area, including the following premises (at least three of which offer a function room):

- The Calthorpe Arms (150 metres)

- The Union Tavern (150 metres)
- The Blue Lion (170 metres)
- The Easton (220 metres)
- The Apple Tree (240 metres)
- The Exmouth Arms (310 metres)
- The Wilmington (300 metres)
- The Duke (930 metres)

7.22 Paragraph 4.16 of the Members Briefing report (in relation to the permission for A1 use) states that '*...it is considered that were the public house use to be lost at the Pakenham Arms, there would still be an adequate provision of other public houses in the area which would be capable of meeting the same provision for the local community's needs*'. Therefore, in relation to the requirement of policy C4 for 'alternative community uses' LBC acknowledges that suitable alternative uses exist in the local area which meet the community's needs.

Nearby public meeting spaces

7.23 Notwithstanding that the subject premises did not and could not accommodate a public meeting space (and given the policy requirement only for equivalent premises), there are also within the area a large number of publically accessible meeting spaces which would allow for many of the public meetings that some larger public houses may cater for, and which may be considered to contribute to the community function of such public houses:

- The Calthorpe Arms advertises availability for business meetings and parties on its website <http://www.rampubcompany.co.uk/visit-pubs/calthorpe-arms>
- Both the Holiday Inn and Travelodge provide rooms and conference facilities for hire (730 m and 170 m respectively)
- Coram's Fields has a variety of spaces available for meetings, classes, conferences and parties. (400 m)
- Goodenough College has space available for meetings and conferences (280 m)

7.24 The following locations also offer meeting room hire.

- 11 Guilford St, WC1N (zip cube.com)
- 2 John Street, WC1N
- 3-11 Pine Street, EC1R
- Sidmouth Street, WC1H (vrumi)

- Heathcote Street, WC1X
- Numerous available on Theobalds Road, John Street, Cockpit Yard, Great James Street WC1X

Extent to which A1 retail is a community use

- 7.25 LBC Local Plan policy C4 refers the provision of 'alternative community use' in cases where those public houses found to have offered a community facility are lost. However, the Local Plan does not define A1 retail as a community use. Policy C4 does not do so and neither do any other policies in the Local Plan.
- 7.26 Policy C2 Community facilities and its supporting text does not list local shops or other uses within the A1 Use Class as comprising a community facility. Therefore, via the extant A1 retail permission, LBC has allowed the provision of a non-community use in place of the former A4 use. This is a material consideration in this appeal.
- 7.27 The A1 use class relates to commercial retail premises, such as shops, travel agents and sandwich bars. Use class D1 is primarily the classification within which community facilities sit.
- 7.28 Local Plan supporting text paragraph 4.21 states that community facilities refers to a wide range of social infrastructure. The paragraph refers to childcare, education, adult learning and training, healthcare, police stations, youth provision, libraries, public houses, community halls, places of worship and public toilets. The majority of these uses are D1 uses.
- 7.29 The Local Plan does not direct A1 use where A4 use has been lost.
- 7.30 Ordinarily, under the General Permitted Development Order, there are national Permitted Development rights allowing change of use from A1 to a range of other uses; this underlines the lack of national importance given to the protection of A1 use as distinct from other commercial uses. The extant planning permission does contain a restrictive condition to remove these Permitted Development rights but the basis for this condition is unfounded.
- 7.31 The London Plan does not define A1 retail as 'social infrastructure' within policy 3.16, policy 4.8 or paragraph 3.86, Neither A1 retail nor public houses are defined as social infrastructure.
- 7.32 The London Plan does not direct that, where a public house is lost, A1 retail should be the alternative use.
- 7.33 The NPPF requires LPAs to plan positively for the provision and use of shared space, community facilities and other local services, and this includes local shops, with the purpose of enhancing the sustainability of communities and residential environments. There is nothing to suggest that all A1 use is a community use nor that shops are the only acceptable alternative use to public houses - nor indeed that within an urban area with alternative premises within the vicinity this is even necessary in order to support sustainable communities.

- 7.34 The premises is not located in an isolated community, whose continued sustainability is dependent upon the preservation of essential local services. On King's Cross Road (140m distance) there is a parade of shops that includes an A1 convenience shop, a café, an hair dressers, an off-license, a public house (The Union Tavern), two hotels and a health and fitness club.
- 7.35 The Members Briefing report in relation to the approved A1 application refers to the potential levels of public accessibility to the premises from different A1 uses, such as a café for example; however, the degree of public accessibility to the premises as an A1 use (compared to a B1(a) use) is not an adopted policy test with regards to whether or not a particular use class can be considered to be a community use nor whether or not a particular use class is supported in place of A4 use.
- 7.36 The Members Briefing report also references policies TC1 and TC5 of the Local Plan, which both include support for smaller shops; however, neither policy defines shops as a community facility nor requires the provision of small shops in cases where planning permission is granted for the loss of public house use.
- 7.37 Should the appellant implement the A1 use permitted, this will be for a commercial operator at commercial terms. The permitted A1 use will not be operated as a community facility.

Heritage

- 7.38 The subject premises is grade II listed and the site is within the Bloomsbury Conservation Area.
- 7.39 It is noted that the Public House use, when in operation, made a contribution to the significance of the building as a heritage asset. The proposed retention of a commercial use for this floorspace will ensure that the ground floor continues to operate with an active use. This is the best means to secure the long-term future of the listed building. The ability of the applicant to implement either an A1 or B1 use depending on market conditions would help to ensure that a viable commercial operator can be secured.
- 7.40 With regards to the listing, the proposals do not propose any physical changes. Any material changes to the appearance of the building would require listed building consent and will therefore be within the Local Planning Authority's control.
- 7.41 Turley has produced a Heritage Statement, which concludes that securing an alternative viable use for the ground and basement floors of the premises is an appropriate means to ensure the long term conservation of the building and its significance in heritage terms. The statement is clear that it would not be appropriate to mothball the premises for the foreseeable future. It is acknowledged that continued public house use would be preferable in heritage terms but given the conclusions of the viability report an alternative use is supported. The report notes that:
- The uses proposed within the building could be achieved in a manner that sustains the significance of the building. This includes both the approved A1 use and the proposed B1 use, which is the subject of this appeal.

- The proposed uses would introduce commercial activity to the ground floor and this would be reminiscent of, if not entirely consistent with, the former public house use.
- There is no impediment in heritage terms that would preclude these alternative uses in the absence of a viable pub use for the majority of the ground floor and basement. In that regard, these two alternative uses can be regarded as optimum viable uses.
- Such commercial uses would be consistent with the varied character of this part of the conservation area, where there are a range of commercial uses at lower ground floors, particularly at street corners where such locations were traditionally sited.

Planning merits of the proposal

Policy support for proposed office use

- 7.42 Policy E1 Economic development sets out support for businesses of all sizes, in particular start-ups, small and medium-sized enterprises. New office space is directed to growth areas, Central London (within which the site sits), and town centres.
- 7.43 Policy E2 Employment premises and sites sets out that the council encourages the provision of employment premises in the borough, particularly for small business and for businesses that support the functioning of the CAZ.
- 7.44 Given the limited size of the premises, with 232 sq m split over two floors, the premises would offer opportunities for start-up, small and medium-sized enterprises to occupy office space within central London.

Other planning considerations

- 7.45 The proposals will enable a continued commercial use of the vacant Public House, which will secure the long-term future of this listed building. The ability to implement either an A1 or B1 use will maximise the ability of the appellant to attract a suitable long-term occupier with a sustainable business model and this will support the long term sustainability of the use.
- 7.46 The public house does not and did not form a specific community role and could not do so in the future given its limited floorspace. In any case, there are other public house premises in the vicinity and also other premises which offer publically available meeting space (which the subject premises did not).
- 7.47 The public house is demonstrably unviable in its current use and marketing efforts have failed. LBC has accepted this position, which has been subject to independent review by a third party expert.
- 7.48 A small commercial use provides the opportunity for an SME / start-up business to locate within this part of the central London area within LBC.
- 7.49 B1(a) use is appropriate within the context of nearby residential properties, including those within the upper floors of the subject premises.

8. Case law review

8.1 We have reviewed appeal cases to determine how the change of use from A4 has been addressed by the Planning Inspectorate in recent years.

8.2 The significance of this is that Local Plan policy C2 only protects those public houses which have community value and the supporting text paragraph 4.76 notes that LBC *'...will determine whether a proposal would result in the loss of a pub with community, cultural or heritage value'*.

Whether pub a community facility

8.3 A number of recent appeal decisions have found that the pubs in question did not form community facilities (this therefore underlines the importance of a site-specific approach):

8.3.1 The Alexandra, 98 Fortis Green (400-008-256): it was noted that the pub in question was not considered to comprise a community facility per se and that the fact that the venue offered a place for members of the community to meet was insufficient evidence of community facility status.

8.3.2 The Inspector noted that:

'...whilst a significant section of the community clearly lament the closing of the pub, as it provided an opportunity to meet and socialise, it has not been clearly demonstrated that it provided a uniquely important facet of local distinctiveness or that it was universally valued by a wide cross-section of the community'.

8.3.3 Furthermore, there was no evidence (despite an Asset of Community Value in place) that:

'The pub furthered the social wellbeing or social interests of the local community.'

8.3.4 The Royal Albion, Hounslow (DCS 100-079-082): the Inspector reasoned that the lack of community facilities, such as garden area, meeting room or performance space and the lack of evidence of the premises hosting local groups, clubs or organisations meant that the pub had *'...little value as a meeting place or focal point for the local community'*.

8.3.5 The Eagle, Greenwich (DCS 400-003-241): the Inspector concluded that there was no evidence that the pub was a community facility, particularly given the presence of alternative pubs in the area that would serve a similar function and which were better located in terms of passing trade and in terms of accessibility to the community.

8.3.6 The Earl Derby, Kensington & Chelsea (DCS 200-000-422): the pub could not be considered a community facility because there was no evidence of use by community groups to any significant extent and the Inspector concluded that:

‘Overall, on the information before me, it does not appear that the appeal proposal would have any significant bearing on the ability of the community to meet its day to day needs or that it is a valued facility of the type referred to in Paragraph 70 of the Framework.’

- 8.3.7 Even in cases where there are available function rooms, communal gardens and significant public interest in the case, this is not considered to be of significant weight in all cases and particularly not when there were alternative premises available within the wider area. For example, refer to the Morden Tavern, DCS 100-079-167).
- 8.3.8 In a number of cases in which pubs were considered to be community facilities, it was clear that the definition of what constitutes a community facility should be defined with reference to policy. In some cases policy was clear that pubs in general are defined as community facilities within policy, and in those cases that proved sufficient to support the LPA’s position. For example, The Swan, Hounslow (DCS 200-000-456), The Woodhouse Tavern, Waltham Forest.
- 8.3.9 However, where (as in this case) the adopted policy only protects those pubs which are demonstrably providing a community facility the deliberations on what constitutes a community facility are critical to the determination of the case.
- 8.3.10 A number of Inspectorate decisions have given weight to the existence of an Asset of Community Value designation, which has generally been considered to provide evidence of community significance. This was the case, for example, with the appeal relating to The Red Lion in Camden (PINS ref. 2218740). Whilst we do not consider that this is a sufficient basis without further evidence of community facilities operating from a premises, it should in any case be noted that there is no ACV in place for the subject premises.

Conclusions on how to define community facilities:

Within the case law on changes of use from A4 public house premises, it is apparent that the following are factors to be weighed in the balance with regards to whether a particular public house should be considered a community facility:

- The definition of community facility within the Development Plan and within the NPPF.
- The presence of an ACV designation.
- The extent of facilities to enable community interaction, such as meeting/function rooms, performance spaces, garden areas etc. coupled with evidence of local groups meeting within the venue.
- Comparable alternative facilities within the area.

9. Conclusions

- 9.1 The public house did not and could not (given its size and notwithstanding that public house use is not in any case viable) provide a community use and therefore no 'alternative' is required in relation to this non-existent community use.
- 9.2 There is no defined need for a community use at the premises or in the surrounding area.
- 9.3 There are nearby premises that perform a similar function to the public house, when it was in operation i.e. as a public house. Many nearby public houses also have more extensive facilities than the subject premises could offer given its limited size.
- 9.4 There are also nearby facilities for public meetings, which the subject premises did not provide a facility for in any case.
- 9.5 LBC has accepted (in paragraph 4.16 of the Members Briefing report in relation to the permission for A1 use) that '*...there would still be an adequate provision of other public houses in the area which would be capable of meeting the same provision for the local community's needs*'. Therefore, in relation to the requirement of policy C4 for 'alternative community uses' LBC acknowledges that suitable alternative uses exist in the local area which meet the community's needs.
- 9.6 The vacant public house is demonstrably unviable. Alternative commercial use of the subject premises will secure the long-term sustainability of the listed building within the conservation area. There is no impediment in heritage terms that would preclude B1(a) as an alternative use in the absence of a viable pub use. In that regard, B1(a) use and the permitted A1 use can be regarded as optimum viable uses.
- 9.7 The proposed office space will support the local economy and provide space for start-up, small and medium-sized enterprises within this part of central London.
- 9.8 The ability to implement the (permitted) A1 use or the proposed B1(a) use would allow the building owner to respond to the local market and to find the most suitable occupier; this would further support the long-term sustainable use of the listed building.
- 9.9 The extant permission for A1 use would not introduce a community use into the premises; there is no basis for classifying A1 use as a community use in LBC's Local Plan and the London Plan does not define A1 retail as 'social infrastructure', nor does it direct that, where a public house is lost, A1 retail should be the alternative use. B1(a) is acceptable and particularly considering that A1 use is not a community use, which invalidates LBC's reason for refusal.
- 9.10 Given the lack of viability to continue in the present A4 use, an alternative commercial use should be supported by the Planning Inspectorate and the appeal should be upheld accordingly. LBC has already permitted a change of use to A1 retail and it is considered that change of use to B1(a) office follows the same principles and delivers similar benefits.

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