

Planning Enforcement Appeal

101 Brecknock Road, London N7 ODA

Appeal against the Enforcement Notice referenced EN17/0004 dated 15/06/2018.

Breach: Without planning permission: Alterations to the shopfront and the change of use of the public house to form a retail convenience store".

Written Representations

Appeal by Mr Stephen Satwick

PINS REF: APP/X5210/C/18/3207640

LPA REF: EN17/0004

Appeal Grounds

(a), (c) and (g)

27/09/2018



1. Overall Summary

- 1.1. The site comprises ground floor and three floors above. It is a prominent Victorian building. There was a pub at ground floor level and this has recently unlawfully been converted to a shop. In addition, unlawful alterations have been made to the frontage. This loss of the pub and the works are unacceptable and are harmful to local amenity in both land use and design terms.
- 1.2. The council's policies seek to protect public houses as valuable community facilities. The value of public houses has been recognised for a considerable time and their protection has been strengthened further in our new local plan adopted last year. The council has won several appeals over the past five years regarding loss of pub/ community facilities or loss of ancillary accommodation affecting the functioning of pubs. Strong concerns have been raised too by local residents to the loss of this pub, associated nuisance from the shop and unsympathetic alterations to this preserved and prominent Victorian building.
- 1.3. The appellants argue that planning permission should be granted, that planning permission is not required in any regards and that the compliance period is too short. The Council disputes all 3 grounds of appeal.

2. Enforcement Notice Summary

- 2.1. On the 18th of June 2018 the Council issued an Enforcement Notice referenced EN17/004, it alleges without planning permission alterations to the shopfront and the change of use of the public house to form a retail convenience.
- 2.2. The council had sought to remedy the harm for 3 reasons detailed below;
 - 2.2.1. The insensitive enlargement of the historical windows and removal of the traditional door is considered to have caused a visual harm, which has materially affected the character and appearance of the historic pub, shopfront and street scene contrary to policies D1, D2, D3 and C4 of the London Borough of Camden Local Plan 2017 and CPG 1 (Design 2015 updated March 2018).
 - 2.2.2. The developer has not demonstrated that the use as public house is no longer required or viable in its existing use or that there exists an alternative capable of meeting the needs of the local area and without the provision of a section 106 planning obligation or replacement community facility, and therefore the loss of the public house is considered to have a detrimental impact on the needs of the local community contrary to policies A1 (Managing the Impact of Development on Occupiers and Neighbours), C2 (Community Facilities) and C4 (Public Houses) of the London Borough of Camden Local Plan 2017, policy 3.16, 7.1 and 8.2 of the London Plan 2016 and CPG (Community uses, leisure facilities and pubs) and CPG 6 (Amenity).
 - 2.2.3. To the detriment of the amenities of the neighbouring residents and the environment, the developer has not demonstrated that the proposal has integrated appropriate waste management, collection and recycling measures at the site, contrary to policy A1 (Managing the Impact of Development on Occupiers and Neighbours) and CC5 (Waste) of the London Borough of Camden Local Plan 2017
- 2.3. The notices required from 3 months of the effective date that;
 - 2.3.1. *permanently cease use of the property as a retail convenience store;*
 - 2.3.2. *re-instate the frontages to the property as depicted in the photographs attached at Appendix A and B and*

2.3.3. *make good any damage and remove from the property all constituent materials resulting from the above works.*

2.4. An appeal is made by Mr Stephen Satwick on grounds (a), (c) and (g)

3. Ground (a)

That planning permission should be granted for what is alleged in the notice.

3.1. Relevant Policies

3.2. Policies are up to date in compliance with the NPPF in respect of this appeal.

National Planning Policy Framework (2012)
Draft National Planning Policy Framework (2018)
London Plan 2016
Draft New London Plan 2017

3.3. Camden Local Plan 2017A1 Managing the impact of development

C2 Community facilities
C4 Public Houses
D1 Design
D2 Heritage
D3 Shopfronts
CC5 Waste
DM1 Delivery and monitoring

3.4. Camden Planning Guidance (CPG)

CPG 1 Design 2015 updated March 2018
CPG 3 Sustainability 2015 updated March 2018
CPG 6 Amenity 2011 updated March 2018
CPG 7 Transport 2011
CPG 8 Planning obligations 2015 updated March 2018

3.5. Site Appraisal

3.6. The site relates to a public house formally known as The Leighton Arms, which is located on the corner of Brecknock Road and Torriano Avenue. The site originally comprised both the pub, a three storey building forming the end of a larger terrace fronting Brecknock Road, and a pub garden fronting Torriano Avenue.

3.7. The pub garden has been split from its curtilage and was granted permission for a pair of semi-detached house, which appears to be nearing completion.

3.8. The host site also has permission to convert the upper floors into flats, which also appears to be nearing completion.

3.9. The surrounding area is predominantly residential, comprising Victorian buildings of stock brick and painted stucco.

3.10. The site is neither located within any designated conservation area, nor is the building statutorily or locally listed.

3.11. The building has previously been identified by a planning inspectors as being a prominent building and the importance of the property for community need was established.

3.12. Planning history:

Relevant Applications for the appeal site

- 3.13. 2014/4554/P, the conversion of the building to create six self-contained residential flats on the upper floors, comprising a single storey roof extension and three storey rear extension, Refused 25/03/2015 on the grounds that;
- 3.13.1. the proposed rear extensions would be excessively to large,
 - 3.13.2. would result in a smaller public house space at ground floor without access to private external space which would preclude provision for a commercial refuse space and
 - 3.13.3. that the general disposition of the proposed residential flats in relation to the retained public house floorspace would reduce its available trading space, remove access to private external space (the pub garden), and introduce noise sensitive and noise generating uses in close proximity that would result in additional activity, disturbance and obstruction in the street, require excessive noise limiting measures and prejudice the long term retention of the public house which is an important local community facility
- 3.14. APPEAL ALLOWED (APP/X5210/W/15/3095242) on 11/12/2015
- 3.15. **Other Applications for the appeal site**
- 3.16. 2014/5401/P Erection of two four storey houses (Class C3) Refused on 25/03/2015 for the reasons outlined below
- 3.16.1. The proposed development of the site would result in the loss of an important townscape gap
 - 3.16.2. The rear windows on the proposed new houses would result in direct overlooking to a private habitable room to the rear of 135 Torriano Avenue and cause loss of privacy to the occupiers
 - 3.16.3. Inadequate information has been submitted to adequately demonstrate that the proposed new houses would not cause a material loss of daylight and sunlight to the windows on the extension of 135 Torriano Avenue,
 - 3.16.4. The proposed new houses would result in the loss of external space associated with the existing public house which would cause additional activity, disturbance and obstruction in the street and prejudice the long term retention of the public house which is an important local community facility
- 3.17. APPEAL DISMISSED (ref. APP/X5210/W/15/3095453) 11/12/2015 on the basis that there would be significant issues of overlooking and loss of privacy to the existing and future occupiers of No 135.
- 3.18. 2016/0372/P, Erection of two four storey houses (Class C3) - Granted Subject to a Section 106 Legal Agreement requiring a car free development, a construction management plan, a highways contribution and obscured, fixed glazing on windows at 1st, 2nd and 3 floors.
- 3.19. 2017/4345/P – Details pursuant to conditions 3a (windows, doors and ventilation grilles), 3b (details of fascia, cornices and quoins) and 3c (manufacturer specification of all facing materials), condition 6 (drainage strategy) and condition 10 (impact piling), of planning permission 2016/0372/P granted on 16/01/2017, for the 'Erection of two four storey houses (Class C3)'. Granted

3.20. Two issues are raised:

- 3.21. The change of use of the property from public house (Class A4) to Retail (A1).
- 3.22. The alteration of the ground floor shopfront elevations which include the relocation and increase in the size of the windows and loss of a door to the front elevation.

3.23. Main Considerations

3.24. Character and appearance

- 3.25. The property is a good example of a Victorian building occupying a prominent corner plot on Brecknock Road at its junction with Torriano Avenue. It is visible from a number of vantage points including more distant views in both directions along Brecknock Road. The surrounding area is primarily residential. The former public house operated from the property with a large central bar, open kitchen area, toilets and seating. The basement provided a storage and cellar area.
- 3.26. Although the building is not listed, locally listed or set within a conservation area, the property is considered to be a good example of an attractive, historic, locally significant Victorian building and includes features which contribute to the distinctiveness of the local area.
- 3.27. Policy D1 advises that the Council will seek to secure high quality design in development which respects local context and character;
- 3.28. Policy D2 states that the Council will seek to protect other heritage assets including non-designated heritage assets (including those on and off the local list), Registered Parks and Gardens and London Squares. The effect of a proposal on the significance of a non-designated heritage will be weighed against the public benefits of the proposal, balancing the scale of any harm or loss and the significance of the heritage asset.
- 3.29. Policy D3 States that the Council will expect a high standard of design in new and altered shopfronts, canopies, blinds, security measures and other features. And where an original shopfront of architectural or historic value survives, in whole or in substantial part, there will be a presumption in favour of its retention. Where a new shopfront forms part of a group where original shop fronts survive, its design should complement their quality and character.
- 3.30. Policy C4 states that where a public house is converted to an alternative use, the Council will seek the retention of significant features of historic or character value.
- 3.31. The inspectorate in the appeal decision APP/X5210/W/15/3095242 describes the property as a “prominent building in the overall street scene.” The historical Victorian features of the building is considered by the council to be integral to the character and appearance of the “prominent building” and thus the enlargement of the windows and loss of the distinctive front door is considered to have had a detrimental impact to character and appearance of the historic pub, shopfront and street scene.

3.32. Loss of a public house/community facility:

- 3.33. Policy C2 states that the council will ensure existing community facilities are retained recognising their benefit to the community, including protected groups, unless one of the following tests is met:
 - i. A replacement facility of a similar nature is provided that meets the needs of the local population or its current, or intended, users;

- ii. The existing premises are no longer required or viable in their existing use and there is no alternative community use capable of meeting the needs of the local area. Where it has been demonstrated to the Council's satisfaction there is no reasonable prospect of a community use, then our preferred alternative will be the maximum viable amount of affordable housing;

3.34. The inspectorate have already established the importance of the property for the community need, in the appeal decision referenced **APP/X5210/W/15/3095242** – para 27 and 28 , the Inspector states:

- *27. As I have stated above, the existing premises are clearly dated abut nevertheless **serve a local community need**. Policy DP15 of the DP relates to protecting community and leisure uses within the Borough. It advises, amongst other things, that the Council will protect existing community facilities by resisting their loss. In addition, policy CS10 of the CS advises at part (f) that the Council will support the retention and enhancement of existing community, leisure and cultural facilities.*
- *28. The proposal would not result in the loss of the public house. The premises would be refurbished and modernised on the ground floor. There would be a small loss of floorspace which was agreed between the parties at the Hearing to be 13sqm. However, the refurbishment and much needed modernisation of the ground floor could deliver many positive benefits to the premises and ensure its longevity for the local community, making the premises a much more desirable place to visit. To my mind, there is therefore no conflict with the objectives of either policy DP15 or CS10.*

3.35. Policy C4 (Public Houses) states that:

The Council will seek to protect public houses, which are of community, heritage or townscape value.

The Council will not grant planning permission for proposals for the change of use, redevelopment and/or demolition of a public house unless it is demonstrated to the Council's satisfaction that:

- i. the proposal would not result in the loss of pubs which are valued by the community (including protected groups) unless there are equivalent premises available capable of meeting the community's needs served by the public house; or
- ii. there is no interest in the continued use of the property or site as a public house and no reasonable prospect of a public house being able to trade from the premises over the medium term; Where a public house is converted to an alternative use, the Council will seek the retention of significant features of historic or character value. Applications involving the loss of pub floorspace, including facilities ancillary to the operation of the public house, will be resisted where this will adversely affect the operation of the public house.

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.

- 3.36. Policy A1 states that the Council will seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities;
- 3.37. No replacement community facility has been provided nor has it been demonstrated that the existing premises are no longer required or viable in their existing use or there exists an alternative capable of meeting the needs of the local area and without the provision of a section 106 planning obligation, the council are unable to ensure that that the additional demand the development including the housing scheme has placed on existing community infrastructure and services is met. As such the council consider that the pub's loss would have a detrimental impact on the needs of the local community.

Operation of retail use: further issues regarding waste

- 3.38. It should also be noted that no details have been provided for the provision of waste collection or what measures would be in place to ensure that waste is adequately managed or recycled and therefore it is considered that due to the large amount of waste a retail store generates the development would have a detrimental impact on the environment and amenities of the local area.
- 3.39. Policy CC5 states that the council will seek to make Camden a low waste borough and will make sure that developments include facilities for the storage and collection of waste and recycling.

3.40. Similar Appeals

- 3.41. The council would also like to draw the inspector to recent appeal decisions that have been allowed which are comparable to the appeal site demonstrating the value upon the public house and it being able to continue to function;

**A. 105 Kings Cross Road : dismissed 2018 APP/X5210/C/18/3193274;
APP/X5210/C/18/3153219.**

- The inspector upheld the council's decision. A planning application was refused by the Council for change of use of the first and second floors of the public house, which is also an Asset of Community Value (ACV), to create 3 flats. The first reason for refusal related to the loss of ancillary space to the public house which would prejudice the long term retention of the pub being an important local community facility. The loss of space would include loss of a commercial kitchen, loss of staff accommodation and loss of a function room. The second reason for refusal was that the applicant failed to demonstrate the pub would not cause harm to the residential units and vice versa (and absence of a legal agreement).
- The Inspectorate upheld the Council's first reason refusal and dismissed the appeal. Subsequently, the appellant made a s288 appeal to the High Court (similar to a judicial review) of the Inspector's decision on the grounds that one of the reasons the Inspector gave when dismissing the appeal was that the appellant produced no evidence that a business would take on a long term lease of the Public House with the reduced facilities. A signed lease however had been produced at the Hearing.
- Following proceedings at the High Court in October and November 2017, the appeal decision was quashed and the appeal was required to be re-determined by PINS at a new hearing and to take into account the signed lease. This original hearing was based on the Councils now superseded policies.

- Following the Court's decision, the Council issued a Planning Enforcement Notice against the breach of planning control in December 2017. This required the use of the upper floors as self-contained residential units to cease and shopfront door to the staircase linking the upper floors to the street to be removed. An appeal was submitted against the Enforcement Notice; this was been linked to the appeal which was re-determined. The appeal was reheard and based on the new updated policies in the 2017 local plan. It was subsequently dismissed on the same grounds with updated policies.

B. Golden Lion Public House, 88 Royal College Street appeal dismissed October 2014 (Ref. APP/X5210/A/14/2218740)

- June 2014 Planning permission refused for retention of public house at basement and part ground floor level (Class A4) and change of use from public house (Class A4) at part ground and first, second and third floor levels to provide 4 (3x2, 1x3 bed) residential units (Class C3), erection of three storey (including roof level dormer) extension on north (Pratt Street) elevation, extension at basement level, alterations to provide ground floor entrances on Pratt Street elevation, and associated alterations. Ref. 2013/4793/P. The inspector upheld the council's decision.

Reasons for refusal:

Substantive Reasons

- The existing local public house, in its current form, is considered to serve the needs of the local community and is registered as an asset of community value in accordance with the requirements of the Localism Act 2011. Its proposed reconfiguration and modification would harmfully compromise and undermine the use of the existing public house. Therefore the public house would fail to be developed and modernised in a way that is sustainable, and retained for the benefit of the community, which in turn would fail to enhance the sustainability of communities, contrary to policy CS10 (Supporting community facilities and services) of the London Borough of Camden Local Development Framework Core Strategy, policies DP15 (Community and leisure uses) and DP29 (Improving access) of the London Borough of Camden Local Development Framework Development Policies, paragraphs 69 and 70 of the National Planning Policy Framework 2012 and policy 4.8 of the Draft Further Alterations to the London Plan January 2014.
- The proposed roller shutters, by reason of their location, materials, method of opening and lack of detailed drawings indicating inappropriate design, would be detrimental to the character and appearance of a building, which is considered to be a non-designated heritage asset, contrary to policy CS14 (Promoting high quality places and conserving heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.

C. The Black Cap, 171 Camden High Street, ref. APP/X5210/A/12/2184317)

- May 2012 Planning permission refused for change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. ref. 2012/1444/P;

Reasons for refusal:

- The pub and restaurant use at first floor level is considered to serve the needs of a specific and local community, therefore its loss without a replacement facility or evidence provided to demonstrate that the facility is no longer required, is contrary to policies CS3

(Other highly accessible areas), CS7 (Promoting Camden's centres and shops), CS10 (Supporting community facilities and services), DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) and DP15 (Community and leisure uses) of Camden's Local Development Framework.

- the absence of a legal agreement for car-free housing,
- The application fails to adequately demonstrate whether the residential flats would experience an acceptable level of internal noise contrary to policies CS5 (Managing the impact of growth and development), DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise & vibration) of Camden's Local Development Framework.

D. Sir Richard Steele, 97 Haverstock Hill, London, NW3 4RL

- November 2014 Planning permission refused for change of use of the first and second floors from public house (Class A4) to create 2x1 bedroom and 2x2 bedroom flats (Class C3); extension and relocation of existing kitchen extract flue and associated works ref. 2014/1367/P.

Reasons for refusal:

Substantive Reasons

- The proposed development would harmfully compromise and undermine the services and facilities that the existing public house and its garden provide in supporting the needs of the local community and its ability to contribute to Camden's cultural heritage, contrary to policy CS10 (Supporting community facilities and services) of the London Borough of Camden Local Development Framework Core Strategy, policies DP15 (Community and leisure uses) and paragraph 70 of the National Planning Policy Framework 2012 and policy 4.8 of the Draft Further Alterations to the London Plan January 2014.
- The applicant has failed to demonstrate that the proposed co-location of residential units and the public house would not cause harm to the residential amenity of the future occupants of the upper floor flats, contrary to policy CS5 (Managing the impact of development) of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

Other Reasons

- Absence of a legal agreement to secure car-free housing for the residential units.
- Absence of a legal agreement securing highways contribution.
- July 2015 Appeal against refusal dismissed APP/X5210/W/15/3003396
- November 2017 Planning permission granted subject to a Section 106 Legal Agreement for change of use of the first and second floors from public house (Class A4) to residential (Class C3) to provide 4 self-contained flats (Class C3) (2x1 bedroom and 2x2 bedroom flats), demolition of existing toilets and kitchen and erection of new single storey ground floor rear extension to provide new function and community room, relocation of existing kitchen extraction flue and associated external works ref. 2016/1189/P.

- 3.42. **Appellants Statement of Case is summarised in bold and addressed beneath as follows.**
- 3.43. **The Appellant contends that “the alterations to the shop front have been undertaken in a sympathetic manner.”**
- 3.44. Whilst the appellant has not provided any details the council's assessment was based on a site visit to the property and for the reasons set out above and that detailed in the enforcement notice the council consider that alterations are unsympathetic.
- 3.45. *Reason for issuing enforcement notice.*
- 3.46. *The insensitive enlargement of the historical windows and removal of the traditional door is considered to have caused a visual harm, which has materially affected the character and appearance of the historic pub, shopfront and street scene contrary to policies D1, D2, D3 and C4 of the London Borough of Camden Local Plan 2017 and CPG 1 (Design 2015 updated March 2018).*
- 3.47. **It is contended by the appellant “the use of the pub was not financially viable.”**
- 3.48. The appellant was requested to submit a planning application (Appendix A) so that their case could have been tested however, that opportunity was not availed and no other evidence such as marketing information or viability studies have been provided. Without such information, the council can only conclude that the use as pub was fully viable and was able to operate accordingly.
- 3.49. Many of the residents have been in touch with the council who have also submitted their representations to the inspectorate (appendix H);
- 3.49.1. Dr Joanna Macrae explains how she was a frequent customer to the pub
 - 3.49.2. Vanora Bennett who lives next door explains in her statement from evidence collected from Face book that the reasons for closing the pub was on the basis that the owners preferred to run a retail store.
 - 3.49.3. Sandhya Choudhury explains in her representations the pub was an important meeting place for the members of the local community, no doubt a regular customer eager to see the return of “her” local pub.
 - 3.49.4. Sofiul Alam, another regular customer and local resident would also like to see the return of the local pub and provides a very detailed case for its retention and provides a petition of over 600 signatures from local residents demonstrating how important the pub as a community centre was with a strong client base.
 - 3.49.5. Mr Richard Lloyd Owens has also been very concerned about the loss of his local community pub and has too provided a very detailed case claiming that the loss of the pub would have a very detriment impact upon his local community.
 - 3.49.6. Mr Colin Rennie has too been very concerned for the loss of the pub and describes how great and bustling it was after a refurbishment in 2005.

- 3.50. And it is further contended that “there are sufficient alternative uses within walking distance to adequately serve the community’s needs.”**
- 3.51. The council are not aware of any other site or establishment, which could offer a comparable community service that, would be suitable or have enough capacity to accommodate the residents that were served by the appeal site in addition to those members it would have already served, no evidence has been provided to demonstrate otherwise.
- 3.52. *The council are aware that previously the appellants had attempted to demonstrate that there was an alternative pub; the Rose and Crown on Torriano Avenue, albeit only in respect of its beer garden in a previous appeal (APP/X5210/W/15/3095453) which was dismissed by the inspectorate as being too small to be considered comparable. There was no other site put forward as a comparable alternative.*
- 3.53. *An extract from the decision is detailed below;*
- 3.53.1. *19. An example of a pub operating in the area with a successful beer garden was provided at the Hearing. This was the Rose and Crown on Torriano Avenue. I was able to visit these premises on the day of the site visit. This is a much smaller establishment, with clear glazing from the bar area to a very small terraced courtyard area, accessed via steps. It is not comparable in scale, size or positioning to the existing beer garden at the Leighton Public House. The similarities I can find between this operation and the appeal site are therefore very limited. In my view, even though the garden area may have at one time provided an attractive element to the appeal premises, this is no longer the case. (APP/X5210/W/15/3095453)*
- 3.54. The appellant contends that the limited floor space and location makes the building unsuitable for uses other than as a shop (under class A1 of the Use Classes Order).**
- 3.55. Again we would like to refer the inspector to a former appeal decision referenced APP/X5210/W/15/3095453 where the inspector thought it necessary to mention, that the community use afforded by the appeal site would be retained to address the concerns of the residents raised at the hearing. There was no concern that the size of the property would be too small for its continued use as a pub.
- 3.56. The appellant argues that the shop would provide a "community" use and therefore that A1 use does not have a detrimental impact upon the needs of the local community.**
- 3.57. The council would argue that a retail shop does not provide a community use but if it did, we would fail to see how it would be comparable to the pub which it replaced. The council’s Local Plan (para. 4.21) clearly explains as to what a community facility would be and there is no mention of a retail unit.
- 3.58. *4.21 The term “community facilities” in this section refers to a wide range of social infrastructure that provides a service to the community. This includes childcare, education, adult learning and training, healthcare, police stations, youth provision, libraries, public houses, community halls, places of worship and public toilets. These facilities form a vital part of town centres and neighbourhoods and address the local community’s needs. However, it is acknowledged that some facilities offer large-scale or specialist provision, in some cases for a specific community and serve a wider catchment. Camden is home to health, education, scientific and research facilities with global reach and impact, which in many cases enjoy links with the local community, including in the provision of services.*
- 3.59. The council would contend that a retail use is not a use that would facilitate the needs of the community; Policy C2 clearly outlines the functions one would expect from a community

facility and as such it is argued that the development does not provide any or sufficient community use.

Policy C2 Community facilities

The Council will work with its partners to ensure that community facilities and services are developed and modernised to meet the changing needs of our community and reflect new approaches to the delivery of services.

The Council will:

- a. seek planning obligations to secure new and improved community facilities and services to mitigate the impact of developments. The Council may also fund improvements to community facilities using receipts from the Community Infrastructure Levy where this is identified on the Council's CIL funding list;
- b. expect a developer proposing additional floorspace in community use, or a new community facility, to reach agreement with the Council on its continuing maintenance and other future funding requirements;
- c. ensure that facilities provide access to a service on foot and by sustainable modes of travel;
- d. facilitate multi-purpose community facilities and the secure sharing or extended use of facilities that can be accessed by the wider community, except for facilities occupied by the emergency services due to their distinct operating needs;
- e. support the investment plans of educational, health, scientific and research bodies to expand and enhance their operations, taking into account the social and economic benefits they generate for Camden, London and the UK. In assessing proposals, the Council will also balance the impact proposals may have on residential amenity and transport infrastructure;
- f. seek the inclusion of measures which address the needs of community groups and foster community integration;
- g. ensure existing community facilities are retained recognising their benefit to the community, including protected groups, unless one of the following tests is met:
 - i. a replacement facility of a similar nature is provided that meets the needs of the local population or its current, or intended, users;
 - ii. the existing premises are no longer required or viable in their existing use and there is no alternative community use capable of meeting the needs of the local area. Where it has been demonstrated to the Council's satisfaction there is no reasonable prospect of a community use, then our preferred alternative will be the maximum viable amount of affordable housing;
- h. take into account listing or nomination of 'Assets of Community Value' as a material planning consideration and encourage communities to nominate Assets of Community Value.

Policy C2 – Camden's Local Plan

- 3.60. The council shall wait for the details of their waste management measures before offering any further comments than to that what was made above in our main considerations.
- 3.61. Should the inspector find that the development is acceptable in planning terms we would respectfully ask that any consent be conditioned accordingly, however in the absence of any detailed information in respect of any proposed community use or its waste management strategy the council are not able to offer any appropriate model conditions at this time.

- 3.62. Based on the reasons outlined above the inspectorate is respectfully requested to dismiss the appeal under ground (a)

4. **Ground (c)**
That there has not been a breach of planning control

4.1. **Change of use**

- 4.2. The appellant states that It will be shown that the change of use constituted permitted development under Class A Part 3 Schedule 2 of the *Town and Country Planning (General Permitted Development) Order 2015* (the **Order**).

- 4.3. The order states;

- 4.4. A.2—(1) In the case of a building which is not a community asset, which is used for a purpose falling within Class A4 (drinking establishments) of the Schedule to the Use Classes Order(a), development is permitted by Class A subject to the following conditions.

- 4.5. (2) Before beginning the development the developer must send a written request to the **local planning authority** as to whether the building has been nominated, which must include—

- i. the address of the building;
- ii. the developer's contact address; and
- iii. the developer's email address if the developer is content to receive communications electronically.

(3) If the building is nominated, whether at the date of request under paragraph A.2(2) or on a later date, the local planning authority must notify the developer as soon as is reasonably practicable after it is aware of the nomination, and on notification development is not permitted for the specified period.

(4) The development must not begin before the expiry of a period of 56 days following the date of request under paragraph A.2(2) and must be **completed** within a period of **1 year** of the date of that request.

- 4.6 Therefore, in this case, to comply with permitted development, the appellants would need to demonstrate that the opening of a shop would have started implementation with 56 days of 9th August 2016, that is 4th October 2016, and completed by 9th August 2017.

- 4.6. The appellants have previously submitted 3 items of documentary evidence to demonstrate their case, which is outlined below.

- 4.7. The first of the two documents are a digital scan of a letter and a postal receipt sent via email to the investigating planning officer on 15/06/2018 by the appellant's agents Kevin McMeel of Boyes Sutton and Perry dated 09/08/2016 (Appendix C and D)

- 4.8. The council has no record what so ever of that letter being received.

- 4.9. The council make several observations in this respect. There is no record in the Council's generic post postal system and further there is no record in the planning department or the Strategy and Change section of the Chief Executive's department, where the letter would have been forwarded to.

- 4.10. While a delivery company's own receipt may exist and could be considered authentic, as the council are unable to conclude otherwise, it does not mean that the envelope or package contained the letter detailed above.

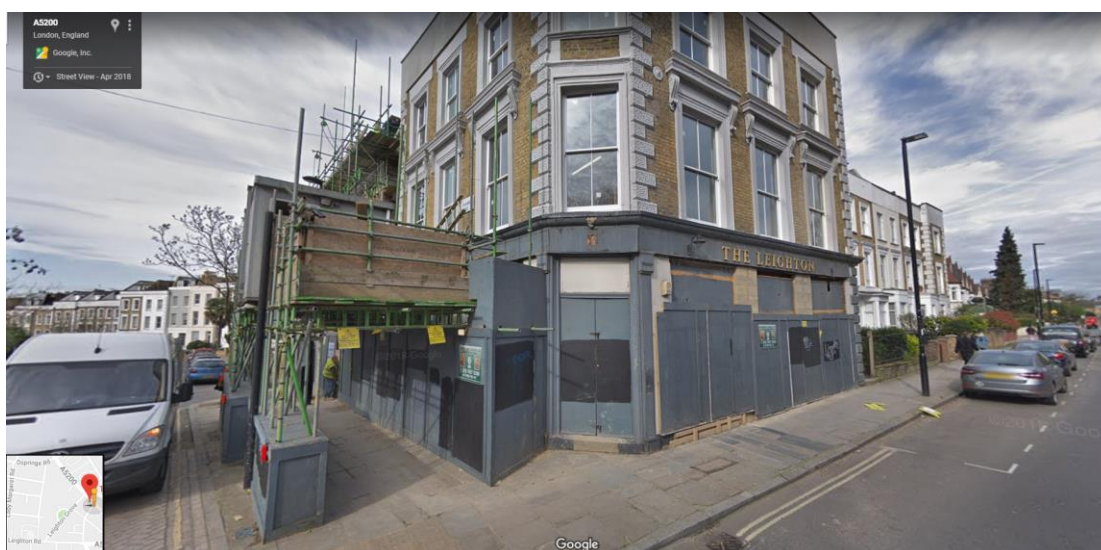
- 4.11. Should the inspector decide to offer the benefit of doubt to the appellant, the council would contend that the developer had not sent a request to the “**local planning authority**” and thus failing to comply with the terms and limitations of the order.
- 4.12. Should the inspector decide that the letter referenced above was sent and the LPA were in receipt, the council would contend that the development had not been implemented within one calendar year from the date of that letter.
- 4.13. The council put forward three photos (appendix E, F, and G) taken from google street view. Each photo is dated and shows the state of the building at the time an A1 use should have commenced in order to benefit from Part 3 of the order.
- 4.14. The appellant claims that a Nisa Local store was opened to the public on the 1st of August 2017. We would refer to the inspector to the google street view photographs shown below at appendix E, F and G that clearly demonstrate that no such store had opened at the time.
- 4.15. The first photo (appendix E) shows the building in July 2016 as boarded up.
- 4.16. The second photo (appendix F) dated May 2017 shows the building fully boarded with scaffolding erected around it.
- 4.17. The third Photo (Appendix G) dated April 2018 shows the building boarded up with scaffolding partially around it.



Appendix E – July 2016



Appendix F – May 2017



Appendix G – April 2018

4.18. It should be noted that the appellant had presented to the council a letter from AS associates, a firm of chartered accountants (Appendix B) in order to demonstrate that there was in fact an A1 use within the stipulated time period detailed in the order.

4.19. The letter states that they represented their clients F.A.B retail Ltd. They detail the appeal site but do not state its relationship or any context in respect of their statement.

4.20. It simply states that the company operated from a shop and that they had submitted trading figures for the appeal site. It would be the council's opinion that this document lacked a very basic degree of coherence and was not able to be taken into consideration, to be able to ascertain if a retail use had commenced at the site between 09 August 2016 and 09 August 2017.

4.21. **Business Rates**

4.22. The LPA had consulted its business rates department who had confirmed that at no point had they been informed that the property was in use as a retail

business which further strengthens the councils case in that no retail use had existed at the property before the summer of 2018.

- 4.23. The council would contend and based on the testimony of the local residents (sent to the inspectorate directly, Appendix H (attached separately)) the photos above and lack of any satisfactory evidence, on the balance of probability that the property had never existed as an A1 retail unit between 09 August 2016 and 09 August 2017 or any time before or after this date until a few months ago when the Nisa Local opened for trading.

4.24. A3 Use

- 4.25. The appellants suggest that the property may not in fact have been a pub but a restaurant instead and that it would then conveniently benefit from permitted development rights to be able undergo a conversion to form a retail unit.
- 4.26. It should be noted that to date no evidence has been submitted to the council to demonstrate this. To the contrary in respect of its entire planning history, the appellants, the LPA and even the inspectorate extensively describe the property as a Pub, reference is made to the appeal referenced **APP/X5210/W/15/3095242** where the testimony of the appellant is detailed in respect of the beer garden and where the inspector describes the important community value of the public house.
- 4.27. Should the inspector be inclined to consider that the property may actually have been a restaurant the council would contend that it would have operated unlawfully
- 4.28. There is no planning history suggesting that permission may have been granted for such an operation nor has any evidence been provided that such an operation had existed for over 10 years granting it immunity from any enforcement action in respect of Section 171B of the Town and Country Planning act 1990.

Town and Country Planning Act 1990 (as amended)
S171B Time limits.

- 4.28.1. (1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- 4.28.2. (2)Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- 4.28.3. (3)In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- 4.28.4. (4)The preceding subsections do not prevent—

4.28.5. (a)the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

4.28.6. (b)taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.】

4.29. Based on the reasons outlined above the inspectorate is respectfully requested to dismiss the appeal under ground (c)

5. Ground (g)

The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

- 5.1. The appellants contend that due to the considerable time and financial resources spent on the property and for the time it would take for the tenant to find alternative premises the compliance period should be extended to 24 Months.
- 5.2. The notice only requires that the use as a retail convenience store ceases and the shop frontages restored and the council would therefore argue that whatever occurs or had occurred beyond the remit of the notice is not a matter for this appeal. The tenants are free to seek alternative premises at their own leisurely time.
- 5.3. The council would further argue that contracts, lease agreements or further evidence have not been provided as to ascertain the reasons why the tenant cannot be evicted within a reasonable period of time to ensure compliance. The council would argue that 3 Months is sufficient time for the tenants to vacate the property, cease the use as a retail convenience store and carry out the necessary alterations to the frontages and the inspector is respectfully requested to dismiss the appeal under ground (g)

5.4. Appendix A,

Sat 19/05/2018 10:53



Martin Cramer <martin.cramer@btinternet.com>

Re: 101 Brecknock Road, 135 & 137 Torriano Avenue Kentish Town

Depala, Ramesh

Bakall, Gary

etention Policy London Borough of Camden email retention policy (7 years)

Expires 17/05/2025

You replied to this message on 21/05/2018 08:02.

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

On 18 May 2018, at 12:07, Depala, Ramesh <Ramesh.Depala@camden.gov.uk> wrote:

Martin,

There are several areas of concern in respect of both developments if you could assist please.

1. As discussed on the phone are you able to demonstrate that you had implemented the A1 use within 1 calendar year of the notice? If so please do provide us with the documentary evidence. Otherwise you are invited to make an planning application to retain the supermarket. Please be advised that making an application does not mean that the scheme would be approved or be allowed to be retained.
2. The extension to the house could be supported if 1, it has had no impact on amenity, e.g. enough private amenity has been retained and then (if the development of the supermarket is found to be unlawful) can it be considered that is has had no impact on the beer gardens of the public house?

I would appreciate if I could have a response by the end of next week when I take this case to various sections of the planning department for consultation so that I may put forward any arguments you make.

Many thanks

Ramesh Depala M.Arch BA(Hons)
Senior Planner
Regeneration and Planning
Supporting Communities
London Borough of Camden

Telephone: 02079741048
Web: camden.gov.uk
Floor 2
5 Pancras Square
5 Pancras Square



Chartered Certified Accountants

11a Empire Parade, Empire Way, Wembley, Middlesex HA9 0RQ
switch board: 020 8432 2072 fax: 020 8903 4978
e: info@as-associates.co.uk



Our Ref: 07652556

Date: 12 June 2018

To Whom It May Concern,

F.A.B Retail Ltd

We confirm that we are the accountants of the above mentioned.
F.A.B Retail Ltd is operating from shop as of 1st August 2017.

**101 Brecknock,
London,
N7 0DA**

We can confirm that we have submitted the trading figures for the above shop and Gross turnover for the VAT quarter ending 31.10.2017 is £684.63

If you need further information don't hesitate to contact us

Yours sincerely,


AS Associates

KM 51292
9th August 2016

London Borough of Camden.
5 Pancras Square
c/o Camden Town Hall
Judd Street
London
WC1H 8NG

RECORDED DELIVERY

Dear Sirs

Re: The Leighton Arms, 101 Brecknock Road London N7 0DA

On behalf of and on the instructions Bryanston Investments Limited, the developer of the above property, we hereby request that you advise whether or not the above building has been nominated to be included in a list of assets of community value.

Our clients contact address is 1st Floor Offices, 109 a Queensway, London W2 4BS and they may be contacted by email at martin.cramer@btinternet.com

We would be obliged if you would kindly acknowledge receipt of this letter. An email to the address below will be fine.

Yours Faithfully

Kevin McMeel
Boyes Sutton & Perry
km@bsplaw.co.uk



Track your item

Proof of delivery

Item: BZ671579315GB

via Royal Mail Signed For™

Latest Update: Delivered to your address or a neighbour

Your item with reference BZ671579315GB was delivered from our WEST CENTRAL LONDON Delivery Office on 10/08/16.

Thank you for using our Royal Mail Signed For™ service

Proof of delivery

Printed name: DJAMAL

Date: 10 August 2016, 08:16am

Post Office Ltd.
Your Receipt63/65 High Street
Barnet
Hertfordshire
EN5 5UU

Date and Time:	09/08/2016 16:12
Session ID:	11-706715
Dest:	UK (EU)
Quantity:	1
Weight:	0.030 kg
Signed For 1st Letter	£1.63

PrePaidAmount	-£1.63
Total Cost of Services	£0.00
Posted after Last Collection?	No

Barcode: BZ671579315GB

DESTINATION ADDRESS	
Building Name or Number	Postcode
5	UC188NG
Address Validated?	N

IT IS IMPORTANT THAT YOU RETAIN THIS RECEIPT AS IT IS YOUR PROOF OF POSTING

PLEASE REFER TO SEPARATE TERMS AND CONDITIONS

Royal Mail Signed For 1st Class aims to deliver your Letter the next working day. This is not a tracked service. You can check proof of receipt and proof of delivery at www.royalmail.com or call 03459 272 100 quoting your reference numberThis is not a VAT Receipt
Thank You[/track-your-item/print-proof-of-delivery/BZ671579315GB](#) 06/10/2016

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Change Settings

Select Folders

Bluebeam

Thu 07/06/2018 12:33

Drennan, David

RE: Business rates

Depaulis, Ramesh

You replied to this message on 08/06/2018 09:40.

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Hi Ramesh,

I have checked our records in respect of the above property in question.

At no point have we been advised that the property is now in use as a retail business.

Looking back at the business rates account there was contact on a regular basis from a Mr Martin Cramer chasing up the assessment being taken out of the rating list whilst some structural work was in progress.

A rating inspector last inspected the property on 20/07/17 and found it to have renovation works ongoing with hoarding up around the site. We have had no further information since then.

Mr Cramer is the director of the company liable (BRYANSTON INVESTMENTS LIMITED), his contact details are 07770 914 784 & martin.cramer@btinternet.com

I have requested a rating inspector carry out a further inspection to clarify the situation.

Regards,

David Drennan
Business Rates Property Officer
Telephone: 0207 974 4525

Appendix J