

Asset of Community Value: Review of Listing

On behalf of Kicking Horse Limited and Faucet Inn Limited

In regard to the Black Cap Public House, 171 Camden High Street, London, NW1 7JY

1. Introduction

Kicking Horse Limited and Faucet Inn Limited seek a review of the decision of the London Borough of Camden Council ('the Council') dated 8 April 2015 ('the Decision') to list the Black Cap Public House, 171 Camden High Street, London, NW1 7JY ('the Premises') as an Asset of Community Value ('ACV') under Part 5 Chapter 3 of the Localism Act 2011 ('the 2011 Act'). Icen Projects acts on behalf of Kicking Horse Limited and Faucet Inn Limited.

The Decision to list the Premises followed a nomination under the 2011 Act by the Camden LGBT Forum ('the Nominator') which is a registered charity (1107855). It is referenced in the Nomination that the Camden LGBT Forum is 'mainly funded by Camden Council', a point which is returned to below.

Kicking Horse Limited is the freehold owner of the Premises. Faucet Inn is the public house operator of the Premises.

All floors and areas of the Premises have been listed as ACV. For the avoidance of doubt this includes all accommodation (including ancillary uses) located at basement, ground, first, second and third floors of the Premises.

2. Background

The Nomination includes the following main points, which are returned to in Section 5 of this report;

1. The asset consists of the upstairs bar (Shufflewick bar) with staff and admin amenities, the downstairs bar, ancillary accommodation, terrace garden and all relevant venue essentials (cloakroom, dressing rooms, reception, barrel rooms, storage space, corridors).
2. I append a picture of the Black Cap, a location map and link to planning application with site evaluations.

3. There are approximately 25,000 lesbian, gay, bisexual and transgender residents living in Camden. Incorporating boroughs directly bordering Camden this number can easily be quadrupled.
4. Due to the temptation to sell buildings to property developers there are no longer any public LGBT venues in Camden (there is a small private members club and a bookshop in Bloomsbury, but these are conceptually very different).
5. The history of the Black Cap is well documented. It was London's first hub for LGBT rights campaigners meeting to support brave people to abolish the criminalisation of homosexuality. It led the way in encouraging the expression of different gender identities. It created a space that was both commercially viable and beneficial to the wider community. Groups used the space to create support networks and lead on campaigns. Its relevance to the UK's drag scene has been the subject of numerous films and documentaries. It hosted funeral commemorations where no others would (during the height of the AIDS crisis). It created many of our superstars we take for granted (Lilly Savage, Regina Fong).
6. The Black Cap is the UK's oldest LGBT venue. Important considering that London is the only major city in the world that has no LGBT community centre.
7. But the past is not why we are submitting this application. It is very much about today.
8. Camden LGBT Forum is regarded as one of the UK's leading local LGBT groups. Our locally funded project 'The Moving Community Centre' saw us turn many community and private spaces 'queer' for short periods of time. It allowed over 15 new campaigns and groups to form as we do not as a charity have a public space. Now that this project has come to a close we are back to the status quo of having no queer space to use for our charitable aims except the Black Cap.
9. The social isolation and stigma many of our members face (particularly older and those from ethnic and religious minorities) is extreme. Thousands are unable to be themselves in their home, on their estate or in their community without the fear of hate or isolation. Holding events and support groups in an LGBT venue is a must for these members of our community. Our weekly older men and women's groups with Opening Doors meets there as do our volunteers and outreach workers who set up shop to offer our valuable services to locals in need. It gives us the chance to fundraise.
10. To reiterate, Camden has done so much to protect and energise its LGBT communities. The Black Cap is fundamental to this. It hosts our hate crime outreach, social groups and allows us to put on events, consultations and forums throughout the year. We launched our CLASP

(safe havens initiative) there. It has been a main recruitment ground for our volunteers. It has given us the chance to expand as a local charity. There is only so much we can do in a non-LGBT space.

11. Our members over the age of 65 still remember the days of landing themselves in jail for being gay. This venue was, and still is, the place where so many of our locals go to be themselves. Without the Black Cap there is no safe haven or space for many of our residents.

3. Legal Framework

Part 5 Chapter 3 of the Localism Act 2011 establishes the scheme for the identification of ACVs.

The relevant legislation in the situation of a premises no longer being open is at s.88(2):

“For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority’s area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

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

Nominations for ACVs can be made by parish councils or by “a voluntary or community body with a local connection” (s.89(1)).

By section 90(3) the Council must accept the nomination if the land is in their area and the land is “of community value”.

Under s.92 there is a right for the owner of the land to request a review of the inclusion of the ACV on the list (Schedule 2 of The Assets of Community Value (England) Regulations 2012 (SI 2012/2421) made under the 2011 Act (‘the 2012 Regulations’)), with a right of appeal to the First Tier Tribunal (Regulation 11 of the 2012 Regulations).

If the nomination is accepted, the applicant will be given 6 months (s.95(6)) to assemble a bid for the asset when it is sold (defined by s.95 as the 'moratorium period'). During that time the ACV cannot be disposed of¹. However even if a bid is made within that time there is no compulsion upon an owner to accept such a bid. Further, the statutory scheme does not operate on the basis of 'first refusal' (s.98). Owners of property placed on the register may appeal against its listing and can claim compensation if they can demonstrate its value has been reduced (s.99).

4. Review

The Council must determine the nomination on the basis of the information before it. The test is "in the opinion of the local authority", which must be reasonable.

We note the Nominator is funded by Camden Council. Local authorities cannot list land on their own initiative as confirmed in the CLG guidance note 'Community Right to Bid' at paragraph 4.1.

The situation at the Black Cap could be perceived as nomination by-proxy so the authority could be acting outside of its scope or it is at the least inequitable. It is considered that the Council should obtain the view of Counsel on this point ahead of the Review.

No mention has been made in the Council's decision to list why the entire premises has been listed as ACV. The upper floors of the site, especially those in ancillary use, do not further the social wellbeing of the community.

Further, and this point is returned to below, it has already been stated in public (by the Planning Inspectorate and in a Council planning committee report) that the site could further the social wellbeing of the community if public house activity was focused at basement and ground floor levels only.

The points raised in the Nomination, and set out in Section 2 of this report, are commented upon in turn:

1. The extent of nomination is strongly disputed. This point is returned to at Section 5.
2. This information contained in the paragraph is not disputed, these are factual points and have no bearing on the tests at s.88(2) (a) and (b). It should be noted that the March 2015 planning decision (refusal) was taken by the Development Control committee and the application was recommended for approval by Officers. Officers considered the scheme

¹ The moratorium under s.95 only applies to a "relevant disposal" which is defined under s.96.

conformed to adopted planning policies, and reflected points contained in a previous appeal decision.

- 3 This statement is not disputed. It should have no bearing on the tests at s.88(2) (a) and (b).
- 4 The statement is not substantiated and should have no bearing on the tests at s.88(2) (a) and (b).
- 5 The statements at (5) and (6) relate to the historic use of the site, as noted at (7).
- 6 As above.
- 7 As above.
- 8 The statement at 8 is indicative of how the Nominator has successfully used other spaces in Camden. It is noted that Camden Council funds the Nominator. Camden Council is a large urban public authority which has suitable alternative sites in the Borough which could also be used for Camden LGBT's purposes.
- 9 As above.
- 10 As above.
- 11 As above.

5. Extent of Listing Review

As commented above, Kicking Horse Limited and Faucet Inn Limited strongly dispute the extent of ACV listing at the Premises.

The Council's planning decision of 3 March 2015 (2014/2176/P) is referenced in the 'Review of decision to include the Black Cap public house in the list of assets of community value under Section 92 of the Localism Act 2011' Report of the Deputy Chief Executive.

A review of the Council planning decision has been undertaken in light of the above. The following paragraphs are taken from the Committee report of 2014/2176/P.

The report sets out the Council's consideration of the scheme noting in particular how the change of use of the upper floors would not impede community use of the Premises at lower level:

(Para 1.2) There is an existing cabaret/nightclub at ground floor level with a bar and restaurant at first floor, ancillary accommodation and office space is located at second and third floor levels. There is also a beer garden at first floor level.

(Para 6.3) Planning permission was refused 16/05/2012 for the 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 the side and rear and creation of refuse and cycle stores for flats at ground floor level (planning ref: 2012/1444/P). The reasons of refusal related to: loss of a community use; poor living conditions; and the use of sustainable transport modes (noted in planning history above). The applicant appealed the Council's decision and **the Planning Inspectorate dismissed the appeal on the grounds that the proposed development would be harmful to the amenities of occupiers in terms of noise and disturbance and through failure to ensure sustainable means of travel. The reason for refusal relating to the loss of a community use was not upheld by the Inspectorate.**

(Para 6.4) The application was resubmitted (prior to the determination of the planning appeal) with a revised layout which retained the front half of the first floor pub/restaurant (planning ref: 2013/0262/P). By the time the application was determined, the appeal had been dismissed for the reasons set out above. The Council duly refused planning permission on 20/03/2013 for the following reasons: failure to demonstrate that the residential flats would experience an acceptable level of internal noise; and failure to ensure sustainable means of travel. The officer's report stated the noise assessment was insufficient to determine noise impact upon future occupiers.

(Para 6.8) The applicant has proposed the **change of use of the first floor pub and restaurant and upper floors (providing ancillary living accommodation / office and not available for public use) into a 2-bed flat at first floor, a 2 bed maisonette at 2nd and 3rd floor levels and a 1-bed flat at 2nd floor level.**

(Para 6.10) **Whilst the appeal related to previous planning application (ref: 2012/1444/P) was dismissed, the reason for refusal relating to the loss of a community use was not upheld by the Inspectorate. The Inspector noted that whilst the bar floorspace would be lost at first floor level, the improvements proposed at ground floor level would increase the proportion of daylighting to the front of the ground floor area; there would be improved facilities for disabled patrons; and that there would be improvements to emergency access. The Inspector did not agree that the pub would be lost to the Lesbian,**

Gay, Bisexual and Transgender (LGBT) community as the informal meeting space could take place in the altered downstairs bar. Furthermore, “in any event, changes to the premises target market, which could result in the loss of a meeting place for the LGBT community, could be made at any time without the need for planning permission”.

(Para 6.11) **The inspector’s appeal decision establishes the acceptability of the loss of the upstairs bar and terrace.** It is noted that The Black Cap is not included on Camden's ‘assets of community value’ list (whilst a nomination was received, this did not meet the specific criteria required to be a valid nomination).

(Para 6.12) There would also be alterations to the downstairs cabaret and bar area. **The ability to serve food would continue with the kitchen being moved from the second floor to the basement.** Eighty-four square metres of bar floorspace would be lost at the first floor level, and due to the internal staircase the ground floor area would be decreased by 8sqm. The total loss of floorspace for public house use would therefore be approximately 92sqm. The remaining 314sqm of floorspace at ground and basement level would still be of sufficient size to remain viable as a cabaret dance bar and the loss of 92sqm of floorspace would not undermine the ability of the business to continue.

(Para 6.13) Camden Core Strategy (2010) (CS) policy CS3 promotes appropriate development in Camden town centres, including homes, food, drink, entertainment and community facilities, policy CS7 seeks to promote successful centres and policy CS10 seeks to protect community uses. Camden Development Policy (DP) DP12 supports strong centres through the management of town centre uses and protecting community and leisure uses. In addition, both the National Planning Policy Framework (the Framework) and policy DP2 seek to boost housing and make best use of the Borough’s capacity for housing.

(Para 6.14) **Whilst policy DP15 resists the loss of local pubs that serve a community role, in this case the pub is not being lost and the informal meeting space could take place in the altered downstairs bar. Function rooms and the roof terrace are advertised as available for parties and private functions; however, this is not unusual and is not necessarily indicative of the venue’s community role. It is noted that a significant number of the objections are concerned with the loss of a bar serving the LGBT community. However, this application does not involve the loss of the ‘cabaret dance bar’ but rather a reduction in the venue’s size.** It is also evident from the consultation responses that the venue has played an important role in LGBT history. **The loss of the first floor bar and consequent reduction in floor area would still allow the venue to perform an important function for the LGBT community. Overall, the proposed development would strike a balance between**

maintaining sufficient space within a venue important to the LGBT community and meeting the need for new housing.

(6.15) Therefore the proposed development would not result in the loss of a community space and would be in accordance with CS policies CS3, CS7 and CS10 and DP policies DP12 and DP15.

With the above points in mind, Kicking Horse Limited and Faucet Inn Limited would support the reduction in extent of ACV listing at the site to include basement and ground floors only.

6. Summary

In summary the two key points are:

1. The legitimacy of the nomination due to Camden Council funding the Nominator (Camden LGBT Forum) and the fact that a local authority cannot list land on its own initiative; and
2. If 1 fails to have the Black Cap removed from the ACV list, the listing should be revised to include only the basement and the ground floor. ACV listing should be accurate and specific to those element of a buildings which are noted to further social wellbeing, as per the tests at s.88(2) (a) and (b). In this regard, it has been noted above that Camden Council and the Planning Inspectorate (on behalf of the Secretary of State) consider that they do not.

**Iceni Projects
For Kicking Horse Limited and Faucet Inn Limited
25 June 2015**