

LONDON BOROUGH OF CAMDEN	WARD: Camden Town with Primrose Hill
REPORT TITLE: 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: Deputy Chief Executive	
FOR SUBMISSION TO: Borough Solicitor ('the Reviewing Officer')	HEARING DATE: 7 July 2015
SUMMARY OF REPORT Kicking Horse Ltd, the owner of the Black Cap public house has requested a review of the decision to list it as an asset of community value. The review will be carried out by the Borough Solicitor as an oral hearing. This report explains how the decision came to be made and how the review will be carried out.	
LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION 1) The Localism Act 2011 2) The Assets of Community Value (England) Regulations 2012 3) Community Right to Bid: Non-statutory advice note for local authorities , Department for Communities and Local Government, October 2012	
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1 Introduction

- 1.1 Kicking Horse Ltd, the Owner of the Black Cap public house, has requested a review of the decision made on 8 April 2015 to list it as an asset of community value under Section 92 of the Localism Act 2011.
- 1.2 The purpose of the review is to determine whether the original decision to list the pub as an asset of community value should be upheld.
- 1.3 This report sets out the background to the decision, the reasons for the decision, the request for the review, legal considerations and details of how the review will be carried out.

2 Background to the decision

- 2.1 The Black Cap public house 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) (see Figure 1). It is located at 171 Camden High Street, London NW1 7JY (see Figure 2).



Figure 1: The Black Cap public house, 171 Camden High Street

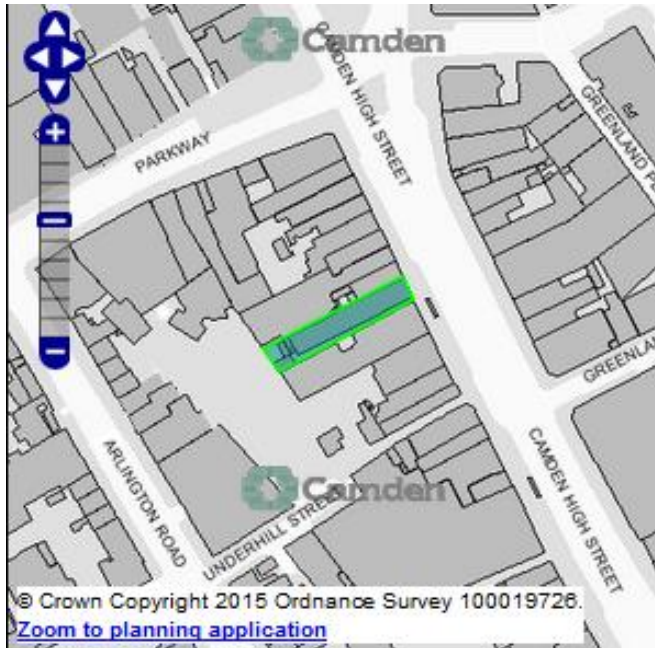


Figure 2: Location of the Black Cap

- 2.2 The pub is operated by Faucet Inn Ltd and owned by Kicking Horse Ltd. A contract of sale was made on 4 December 2014 between Kicking Horse Ltd and Camden Securities LLP. However as of 12 June 2015 Kicking Horse Ltd remain the owner of the property. This information is taken from the Land Registry title register attached at Appendix 1.
- 2.3 A planning application (2014/2176/P) for change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential was refused by the Council's Development Control Committee on 3 March 2015. The decision notice is attached at Appendix 2.
- 2.4 The pub closed on 12 April 2015. This does not affect its status as an asset of community value.

3 The decision

- 3.1 The nomination to list the Black Cap as an asset of community value was made on 10 February 2015 by the Camden LGBT Forum. The nomination form and supporting evidence are attached at Appendix 3.
- 3.2 In order for a property to be listed as an asset of community value, it must be nominated by an eligible body (under s88 of the Localism Act 2011 and regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012) and the Council must be satisfied that it is an asset of community value as defined in the legislation (in s89 of the Localism Act 2011).
- 3.3 In considering the nomination the Council concluded that the Black Cap met both of these conditions for the following reasons.

- 3.4 The body which nominated the Black Cap, the Camden LGBT Forum, is a registered charity (no 1107855) whose activities are concerned with Camden. This makes it eligible to nominate assets of community value under Regulations 4 and 5 of The Assets of Community Value (England) Regulations 2012.
- 3.5 The following extract from the council decision letter (included at Appendix 4) gives the council's reasons why the pub meets the definition of an asset of community value.

The local authority believes that the Black Cap furthers social, cultural and recreational interests which cannot be met elsewhere.

The Black Cap has had iconic status for Camden's gay community since the 1960s as a place to meet and socialise. However it is no ordinary gay pub as it also plays an important cultural role as a renowned venue for drag and cabaret performances. The pub's heritage contributes to its continued central role in Camden and London's gay scene and means that the community value would not be easily replicable elsewhere.

The community value of the pub is not solely recreational and cultural. The Black Cap plays the role of a community centre for the local LGBT community in the absence of such a dedicated facility. The council has received evidence of its important social role as a meeting point for various support groups (particularly for older LGBT people and those from ethnic minorities), for hate crime outreach work and as a venue for events, consultations and forums. While it could be argued that the recreational and cultural value of the pub is London-wide, even national and international, these groups very much serve Camden's large LGBT community specifically.

- 3.6 The extent of the listing is the entire property as shown in Appendix 5.
- 3.7 In order for an asset of community value listing to be valid, the council must also have followed the correct procedure. The Act at s90 to s91 and the Regulations 7 to 9 set out the procedure to be followed when a community nomination is received.
- 3.8 The Council wrote to Kicking Horse Ltd at its registered address to notify them that it was considering listing the pub on 11 February 2015. Iceni Projects, who act on behalf of Kicking Horse Ltd, informed the Council that this was not its business address. The Council then wrote to Kicking Horse Ltd at its business address in Jersey on 5 March 2015. The Council then wrote to Kicking Horse notifying them of its decision to list the property on 8 April 2015.
- 3.9 The Council is therefore satisfied that it followed the correct procedure.

4 Request for a review

- 4.1 Iceni Projects acting on behalf of Kicking Horse Ltd requested a review of the decision to list the Black Cap as an asset of community value in an e-mail dated 2 June 2015 (attached as Appendix 6). This was within the eight week period which the legislation allows the owner to request a review from the date of the decision. An oral hearing was requested and the date has been set as 7 July 2015.

5 Timeline

- 5.1 The following table summarises the events and correspondence mentioned in this report:

4 December 2014	A contract of sale for the Black Cap made between Kicking Horse Ltd and Camden Securities LLP
10 February 2015	Nomination of Black Cap as ACV received
11 February 2015	Council writes to Kicking Horse at registered address notifying them that they are considering listing the pub
3 March 2015	Planning application 2014/2176/P rejected
5 March 2015	Council writes to Kicking Horse at Jersey address notifying them that they are considering listing the pub
8 April 2015	Decision to list Black Cap as ACV made
12 April 2015	Black Cap closes
2 June 2015	Iceni Projects requests a review of the decision on behalf of Kicking Horse
7 July 2015	Hearing date

6 Review procedure

- 6.1 The Review shall be carried out in accordance with Camden Council's Assets of Community Value Listing Review Hearing Procedure which is attached as Appendix 7.

7 Legal considerations

- 7.1 This section sets out sections of the Localism Act 2011 and other legislation which is relevant to the review.

7.2 **s92 Review of decision to include land in list**

(1)The owner of land included in a local authority's list of assets of community value may ask the authority to review the authority's decision to include the land in the list.

(2)If a request is made—

(a) under subsection (1), and

(b) in accordance with the time limits (if any) provided for in regulations under subsection (5),

the authority concerned must review its decision.

(3) Where under subsection (2) an authority reviews a decision, the authority must notify the person who asked for the review—

(a)of the decision on the review, and

(b)of the reasons for the decision.

(4) If the decision on a review under subsection (2) is that the land concerned should not have been included in the authority's list of assets of community value—

(a) the authority must remove the entry for the land from the list, and

(b) where the land was included in the list in response to a community nomination—

(i) the nomination becomes unsuccessful, and

(ii) the authority must give a written copy of the reasons mentioned in subsection (3)(b) to the person who made the nomination.

(5) The appropriate authority may by regulations make provision as to the procedure to be followed in connection with a review under this section.

(6) Regulations under subsection (5) may (in particular) include—

(a) provision as to time limits;

(b) provision requiring the decision on the review to be made by a person of appropriate seniority who was not involved in the original decision;

(c) provision as to the circumstances in which the person asking for the review is entitled to an oral hearing, and whether and by whom that person may be represented at the hearing;

(d) provision for appeals against the decision on the review.

7.3 The Assets of Community Value (England) Regulations 2012 Schedule 2 - Procedure for listing review and compensation review

Time for requesting a listing review

1.—(1) Except as specified in sub-paragraph (2), a request for a listing review must be made in writing before the end of a period of eight weeks beginning with the day on which written notice of inclusion of the land in the list was given by the responsible authority under section 91(2) of the Act, or such longer period as the authority may in writing allow.

(2) Where the authority takes reasonable alternative steps to bring the notice to the attention of the owner in accordance with section 91(2), a request for a listing review must be made before the end of a period of eight weeks beginning with the day on which the authority completes the taking of those steps.

Time for requesting a compensation review

2. A request for a compensation review must be made in writing before the end of a period of eight weeks beginning with the date on which the responsible authority provides the owner with written notification of its reasons in accordance with regulation 14(6), or such longer period as the authority may in writing allow.

Procedure for reviews

3. *In the following provisions of this Schedule, “the review” means a listing review or a compensation review.*

4. *An officer of the authority of appropriate seniority who did not take any part in making the decision to be reviewed (“the reviewer”) shall carry out the review and make the review decision.*

5.—(1) *The owner may appoint any representative (whether legally qualified or not) to act on his or her behalf in connection with the review.*

(2) *The local authority must provide to the representative any document which is required to be sent to the owner, and need not provide that document separately to the owner.*

6. *As soon as is practicable following the written request for the review, the authority shall notify the owner of the procedure to be followed in connection with the review.*

7.—(1) *An oral hearing must be held at the owner’s written request.*

(2) *Where no written request for an oral hearing is made by the owner, the authority may decide whether or not to include an oral hearing in the review process.*

8. *Both the owner and the owner’s representative may make representations to the reviewer orally or in writing or both orally and in writing.*

9. *The authority must complete the review by the end of the period of eight weeks beginning with the date the authority receives the written request for the review, or such longer period as is agreed with the owner in writing.*

7.4 The Assets of Community Value (England) Regulations 2012 Regulation 11 - Appeal against listing review decision

11.—(1) *An owner of listed land may appeal to the First-Tier Tribunal against the local authority’s decision on a listing review in respect of the land.*

(2) *The owner referred to in paragraph (1) may be either the owner who requested the review, or a subsequent owner of part or the whole of the land.*

7.5 Human Rights Act 1998

One of the cornerstones of the HRA 1998 is section 6(1), which makes it unlawful for a public authority to act in a way which is incompatible with the ECHR. It is also unlawful for a public authority to breach the ECHR by omission (section 6(6), HRA 1998).

Article 6: Right to a fair trial

In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time and by an independent and impartial tribunal established by law

Article 1 of the First protocol: Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions including a licence. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law.