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# The Black Cap Public House, 171 Camden High Street, London, NW1

Section 191 Application for a Lawful Development  
Certificate (LDC) for an existing use

Iceni Projects Limited on behalf of  
Golden Brick Pubs Limited

April 2019

ICENI PROJECTS LIMITED  
ON BEHALF OF GOLDEN  
BRICK PUBS LIMITED

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The Black Cap Public House, 171  
Camden High Street, London, NW1

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## APPENDICES

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# 1. INTRODUCTION

- 1.1 This report has been prepared by IcenI Projects on behalf of Golden Brick Pubs Limited as part of the submission of an application for a Lawful Development Certificate (LDC) for Existing Uses for The Black Cap Public House at 171 Camden High Street, London, NW1 7JY.
- 1.2 Section 191 of the Town and Country Planning Act 1990 (as amended) enables an applicant to apply to the local planning authority for a Certificate of Lawful Development to certify formally that an existing development or land use(s) is lawful.
- 1.3 In seeking to demonstrate that an existing land use is lawful, the burden of proof is on the applicant to demonstrate that the existing land use is lawful through the submission of evidence. The evidence must demonstrate that the existing land use is lawful on the balance of probability.
- 1.4 The purpose of this LDC application is to demonstrate through the submission of evidence on the balance of probability that:
- a) The lower ground floor / basement level of the Black Cap public house is used as a public house within Class A4.
  - b) The ground floor of the Black Cap public house is used as a mixed public house (Class A4) and cabaret (sui-generis) use. As a result of this mixed use at ground floor, the entire ground floor is demonstrated to be a sui-generis use.
  - c) The first floor of the Black Cap public house is used as a public house within Class A4.
  - d) The second floor of the Black Cap public house is used as a public house within Class A4.
  - e) The third floor of the Black Cap public house is used as a public house within Class A4.
- 1.5 The land uses within each floor level defined above were the existing lawful uses for a period in excess of 10 years prior to the date of this application and are therefore the lawful uses in accordance with Section 191 of the Act.

1.6 The evidence prepared and submitted in support of this LDC is set out in the remainder of this report and can be summarised as follows:

- f) Photographic records;
- g) Asset of community value records;
- h) Heritage records;
- i) Planning application and appeal history;
- j) Floor plans;
- k) Business records (rates, bills and licences);
- l) Premises inspection and assessment reports; and
- m) Press and media evidence.

1.7 Photographic records showing the front façade of The Black Cap from the early 20<sup>th</sup> Century and from 2014 confirm the well-established presence of alcohol uses at the Site, including a public house use. Photographs of the internal spaces of The Black Cap show public house uses at the premises, particularly at the basement, ground, first, second and third floor levels.

1.8 Historic mapping and records relating to the assessment of The Black Cap's heritage value (e.g. Asset of Community Value listing records) demonstrate that the Site has been in use as a Public House since it was rebuilt in 1889. The performance space at the ground floor level is noted to have been built in the 1950's. It is likely that the use of the Black Cap public house by members of the LGBTQ+ community established around this time.

1.9 Further evidence also demonstrates that The Black Cap is viewed as a long established public house by the Council in their assessment of various development proposals at the site, an independent planning inspector in her review and assessment of development proposals, various members of the public including journalists, bloggers and local community members who frequented The Black Cap, independent qualified technical inspectors and the Valuation Office Agency.

## 2. SITE DESCRIPTION AND DESCRIPTION OF DEVELOPMENT

### Background and vacancy

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2.1 The Black Cap closed in April 2015.

Since its closure, the building has been marketed for lease, the objective being to find a new commercial tenant for the public house.

The marketing has not been successful. Interested parties were not prepared to commit to a new lease owing to uncertainty regarding the existing lawful land use of the building and as a consequence were not clear as to whether or not a normal public house (Class A4) business could be run from the premises.

2.2 The purpose of this application is to clarify the existing lawful use of the building which as factual evidence suggests is predominantly a public house (Class A4) with a cabaret entertainment space at ground floor level (*sui generis*).

### Site Location

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2.3 The Black Cap (the Site) is located at 171 Camden High Street, London, NW1 7JY within the London Borough of Camden (the Council).

2.4 The Site is a narrow rectangular plot located the eastern side of Camden High Street, approximately 100m south of Camden Town underground station and the junction of High Street and Kentish Town Road (see **Figure 1**).

2.5 The High Street comprises a mix of commercial and residential developments and is heavy with both pedestrian and vehicular traffic.

2.6 The site is located within the Camden Town Conservation Area and is listed as an Asset of Community Value, awarded by the Council in 2015.



**Figure 1:** Site Location Plan

### Description of development

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- 2.7 The existing development at the Site is a five storey terraced building comprising a basement level, ground, first, second and third floor levels. The development is rectangular in its configuration, with the ground floor level extending the full length of the Site.
- 2.8 The front façade is primarily constructed from red brick and comprises decorative stone work and a traditional shop front at ground level which is likely built in 1889. Though there are likely elements within the core of the building that date from its original construction in the late 18th century, the majority of the Site has been heavily altered and extended and is considered to primarily contain fabric from the late 19th and mid-20th centuries.
- 2.9 The extended period of vacancy (approximately 3 years) has led to significant deterioration of the physical fabric of the existing building, as evident in **Figures 2 and 3** below. Further deterioration was a result of squatters illegally residing in the vacant building. The building is now occupied by Guardians. The building is in vital need of



investment to enable repairs and refurbishment to bring it back up to an appropriate physical standard.



**Figures 2 and 3:** Water damage to interior wall of the hallway at the second floor level (Source: Icen Projects Ltd, Site visit conducted on 8 March 2017)

2.10 A description of the internal layout of the basement, ground, first, second and third floors is provided below.

a) **Basement level** – on the balance of probability the existing basement level comprises the following uses; a cellar for the storage of barrels and ancillary storage space for supplies. These uses are deduced from the existing basement floor plan prepared by qualified architects Hillman Design Ltd, dated April 2013 (Ref: BLK/P3/100 Rev A) (see Appendix A).

b) **Ground floor level** – on the balance of probability the ground floor level comprises the following uses; separate male and female toilet facilities, a stage, a dance floor space, a bar, fixed seating areas and tables and a front lobby and counter. These uses are deduced from the existing ground floor plan prepared by qualified architects Hillman Design Ltd, dated April 2013 (Ref: BLK/P3/100 Rev A) (see Appendix A).

c) **First floor level** – on the balance of probability the first floor level comprises the following uses; a bar, separate male and female toilet facilities, fixed seating areas and an external terrace. These uses are deduced from the existing ground floor plan prepared by qualified architects Hillman Design Ltd, dated April 2013 (Ref: BLK/P3/100 Rev A) (see Appendix A).

d) **Second floor level** – on the balance of probability the second floor level comprises the following uses; a separate bathroom, kitchen area and ancillary office space and residential accommodation. These uses are deduced from the existing ground floor plan

prepared by qualified architects Hillman Design Ltd, dated April 2013 (Ref: BLK/P3/100 Rev A) (see Appendix A).

e) **Third floor level** – on the balance of probability the third floor level comprises the following uses; ancillary residential accommodation with two internal a fire places. These uses are deduced from the existing ground floor plan prepared by qualified architects Hillman Design Ltd, dated April 2013 (Ref: BLK/P3/100 Rev A) (see Appendix A).

2.11 As such, the following is the description of development for this LDC application:

*“Use of the premises as a public house (Class A4), and cabaret/dance venue, bar with ancillary floorspace consisting of: use of the basement as storage for beer and stock, use of the ground floor as a cabaret bar with live performances (Sui Generis) and public house (Class A4) including toilets at the rear; use of the first floor as a public house (Class A4) bar area including toilets and use of the first floor external terrace as a drinking / smoking area; use of the second floor as a kitchen, two offices, and two rooms of staff accommodation plus bathroom and use of the third floor as two rooms of staff accommodation, all ancillary to the public house (Class A4) use.”*

### 3. PHOTOGRAPHIC RECORD

#### Historic photos of the front façade

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- 3.1 Photographs taken of the front façade of The Black Cap confirms the well established presence of alcohol uses at the Site, including a public house use.
- 3.2 A historic black and white photograph of the Site (see **Figure 2**) taken in the early 20<sup>th</sup> Century (which precedes 2008) shows that the site was in use as a distillery, confirming the historic production of alcohol at the site. On the balance of probability, given the sites location on the High Street and the multi-storey nature of the development it is likely that the production of alcohol was activity that occurred at the site and that the sale and consumption of alcohol also occurred at the premises.
- 3.3 A photograph taken in 2014, provides a more recent visual representation of the front façade of the Site (see **Figure 3**). As evident in this photo, there is a large advertisement above the front entrance of the building. The advertisement includes the following wording '*The Black Cap, Great British Pub Food, Served All Day Every Day*'. This further suggests the use of the site as a public house.



**Figure 2:** The Black Cap in the early 20<sup>th</sup> century

**Figure 3:** The Black Cap in 2014

## Photographs of the internal areas and external terrace

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- 3.4 Photographs of the interior confirm the uses described in the 'Description of development' section above.



**Figure 4:** Ground floor bar



**Figure 5:** Outdoor terrace (ground floor)



**Figure 6:** First floor bar



**Figure 7:** Fixed seating at first floor level



**Figure 8:** Kitchen at second floor



**Figure 9:** Ancillary residential accommodation (third floor)

## 4. ASSET OF COMMUNITY VALUE

### Background

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- 4.1 The Black Cap was listed as an Asset of Community Value (ACV) on 8<sup>th</sup> April 2015 under the Localism Act 2011. This listing applies to all parts of the building (basement, ground, first, second and third floors), despite some areas agreed upon as ancillary office and residential accommodation.
- 4.2 Council's formal ACV list which is publicly viewable on Council's website, categorises The Black Cap as a public house (see Appendix B).

### Correspondence relating to the ACV listing nomination in 2013

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- 4.3 In May 2013, The Black Cap was nominated by The Drama Queen's Drag Theatre Company to be listed as an ACV.
- 4.4 A Freedom of Information Request to obtain the information submitted for the ACV nomination application was made by Iceni Projects in June 2013 on behalf of the pub operator at the time, Faucet Inn Limited and awarded by Council in July 2013.
- 4.5 Following a review of the ACV nomination documents, a formal request to review the ACV listing was made by Iceni Projects in September 2013 on behalf of Faucet Inn Limited. A number of reasons were made to justify this review request. In October 2013, Council concluded that The Black Cap could not be listed as an ACV as Council had not received a valid nomination and had not followed the correct procedure having received the nomination.
- 4.6 The following correspondence which relates to this nomination to list The Black Cap as an ACV is provided at Appendix B. All correspondence prepared by Council and Iceni Projects explicitly refer to The Black Cap as a 'public house'.
- a) Letter dated 23 May 2013 (ref: 130523) – from Council to Faucet Inn advising of Black Cap ACV nomination;
  - b) Letter dated 27 June 2013 (ref: 130627) – from Iceni to Council requesting information pursuant to a Freedom of Information (FOI) request;

- c) Letter dated 19 July 2013 (ref: 130719) – from Council to IcenI regarding FOI request;
- d) Letter dated 13 Sep 2013 (ref: 130913) – from IcenI to Council regarding a request for a review of the ACV listing; and
- e) Letter dated 23 Oct 2013 (ref: 131023) – from Council advising an invalid ACV nomination and confirming unsuccessful ACV listing of The Black Cap.

#### **Correspondence and reports relating to the ACV listing nomination in 2015**

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- 4.7 In February 2015, a second nomination to list The Black Cap as an ACV was made by the Camden LGBT Forum.
- 4.8 In February 2015, IcenI Projects wrote to Council on behalf of the owner at the time, Kicking Horse Limited to request the letter be addressed to the correct ownership entity, notify that the site was subject to sale at the time, request the information submitted for the ACV nomination application and request clarification on the nominating entity's eligibility (Appendix B). This correspondence explicitly refers to the premises as 'The Black Cap Public House'.
- 4.9 In April 2015, Council responded to the above requests. This response includes a description of the significance of The Black Cap to the local LGBTQ+ community and explicitly refers to the premises as a pub (Appendix B).
- 4.10 In June 2015, IcenI Projects on behalf of Kicking Horse Limited and Faucet Inn Limited requested a hearing to review Council's decision to list The Black Cap as an ACV (Appendix B).
- 4.11 The request for a hearing to review the 'decision' was accepted by Council. The hearing was undertaken on the 7<sup>th</sup> of July 2015.
- 4.12 A report was prepared by Council's Deputy Chief Executive for submission to the Borough Solicitor (the reviewer) and a summary of the case and the events at the hearing was prepared by the Borough Solicitor (Appendix B).
- 4.13 In his review note, Council's Deputy Chief Executive explicitly refers to the premises as 'The Black Cap Public House' and consistently makes reference to the Site as a 'public house' or 'pub' throughout the report (Appendix B). When describing the Site the Deputy Chief Executive makes note to the following uses within the premises; 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) (Appendix B). The Shufflewick bar, located at the first floor is named after an iconic drag performer which symbolises the owners respect and recognition of the historic activities that have occurred at the site.

4.14 The Borough Solicitor in his review note also explicitly refers to the premises as 'The Black Cap Public House'. In his review of the site he states that "the premises (which appear from internet research at least) to have been a public house for hundreds of years..." and that "the premise has been a venue for drag and other related performances which attract and include members of the LGBT community, albeit not exclusively" (Appendix B). The long-established use of the Site primarily as a public house, with additional cabaret use, is both clarified and confirmed by the Borough Solicitor.

4.15 The Borough Solicitor describes the various uses at each level of the building on p.4 of his review note, as based on the evidence provided by Council and the owners (Appendix B).

- a) Basement level – storage space for beer barrels and stock as well as performance related equipment;
- b) Ground floor – stage and main bar;
- c) First floor – bar area and garden terrace;
- d) Second floor – kitchen area, office and some residential accommodation; and
- e) Third floor – residential accommodation.

4.16 Whilst storage of performance related equipment at the basement level is noted, the primary use of this storage area and the majority of the basement floor space was utilised for the storage of barrels and stock. The storage area for performance related equipment would therefore form an ancillary use at this level.

4.17 In his review, the Borough Solicitor explicitly states that the provision of food "makes a contribution to the social value of the pub". He also notes that the basement, ground and first floor were used for the benefit of the LGBT community. Due to their differing layouts, it is likely that each floor provided space for different functions (e.g. meeting

place at the first floor level, cabaret activities at the ground floor level and storage space at the basemen level) for this community group.



## 5. HERITAGE

### Background

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- 5.1 The pub was initially called the Mother Black Cap after a local legend concerning a witch, and had that name, according to licensing records, as early as 1751.
- 5.2 Sometimes called the Halfway or New Halfway House by locals, as it was halfway to Hampstead from central London, the original pub stood on the site of the current Camden Town underground station. It was used as a workhouse for the parish of St. Pancras from 1778-1809.
- 5.3 The existing pub was built to the south of the original, on the west side of Camden High Street, and licensing records show it in operation from 1781, which lines with the transition of the original location to a workhouse.
- 5.4 Evidence of the pubs early development is scarce, though in 1841 it is listed as 91 Camden High Street, and in later records as 171 Camden High Street, though the streets were renumbered around 1864. Mapping indicates that 91 and 171 are the same premises between these dates.
- 5.5 Early OS mapping indicates the pub originally occupied a much smaller footprint, with a series of small cottages to the rear. Four cottages are visible until 1879, and in 1896, the footprint of the pub has extended west to occupy the space created from the removal of two of the cottages.
- 5.6 By 1952, this ancillary building had been removed, and the pub had taken on its current form, with the ground floor occupying the majority of the Site.
- 5.7 Though the pub had been in operation since 1781, its ownership had been passed along several times, and attracted a variety of clientele over its lifetime. The Black Cap was originally likely to be an inn, but also served as distillery, pub, and later in its life, as an LGBTQ+ space.

### Historic Maps

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- 5.8 Historic OS maps shown at Appendix C label the Site as a 'PH' which stands for Public House.

## Historic England proposal to List The Black Cap

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- 5.9 In April 2015, Council designated The Black Cap as an ACV.
- 5.10 Subsequent to this, Historic England requested a site visit to The Black Cap to assess the historic significance of the development. It is understood that the development was being assessed as part of Historic England's 'Pride of Place' thematic study which sought to identify and review buildings of significance to the LGBTQ+ community and determine their suitability for listing in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 5.11 In 2017, Icen Projects on behalf of Faucet Inn Limited submitted a request to Historic England for an Enhanced Advisory Service to issue a Certificate of Immunity from listing for The Black Cap. It was considered that the building did not demonstrate cultural, historic and architectural significance to be considered for national listing.
- 5.12 In August 2017, Historic England made a recommendation to the Department for Culture, Media and Sport (DCMS) that The Black Cap not be listed. The Secretary of State for the DCMS agreed with this recommendation. Icen Projects were notified of this decision on the 21<sup>st</sup> of September 2017, and the Certificate of Immunity came into effect on this date.
- 5.13 Historic England explicitly refers to The Black Cap as a public house in various pieces of formal correspondence.

## Summary of correspondence

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- 5.14 It is evident that Historic England had an interest in listing the Site for its perceived historic architectural and community significance.
- 5.15 A Consultation Report dated 4<sup>th</sup> of July 2018 and Advice Reports dated 11<sup>th</sup> of August 2017 and 21<sup>st</sup> of August 2017 (see Appendix D) prepared by Historic England explicitly state that The Black Cap was rebuilt as a public house in 1889 on the site of an earlier inn of the same name. The reports note that after the 1830 Beer Act, a high point of pub building occurred within the decades either side of 1990, which coincides with the rebuilding of The Black Cap in 1889.
- 5.16 Historic England recognises the significance of the public house as a meeting place and bar for the LGBTQ+ community and artists. The main performance space is noted to have been built in the 1950s and the naming of the second floor bar as the 'Shufflewick Bar' was noted to have occurred in 1983 after the death of the performer Rex Jamieson

who performed under the persona of Mrs Shufflewick. It is likely that performances took place at the stage area located at the ground floor.

5.17 Internal spaces within the premises are described as follows;

- a) Ground floor bar extended to the rear of the site as a stage;
- b) Second bar at the first floor;
- c) Subdivided space at the second floor; and
- d) Small domestic fire place at the upper (third) floor; and
- e) Kitchen on the upper (second and third) floors.

5.18 In addition to the above, The Certificate of Immunity Report (Appendix D) prepared and submitted by qualified heritage experts from Icen Projects, based on their findings from historic evidence also explicitly demonstrates the continued use of the site as a public house with the inclusion of cabaret activities.

5.19 It is clear from this evidence that the site was historically and predominantly a public house which accommodated the LGBTQ+ community, providing space at the ground floor level for various LGBTQ+ activities.

## 6. PLANNING APPLICATION HISTORY

- 6.1 A full review of Council's planning history records has been undertaken and it has been identified that there are a number of planning applications made for development at the Site.

### **Applications since 2008 to present**

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- 6.2 Since 2008, nine planning applications have been submitted to Council for the subject site.
- 6.3 These planning records have been reviewed with the intention of clarifying the co-existent uses at the site being predominantly a public house (Class A4) use with the ground floor area providing space for cabaret activities (sui generis).
- 6.4 LPA ref: 2012/1444/P – Refusal issued for application to change the use of the first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) use with associated amenities. Notwithstanding the outcome of the application, the decision notice refers to the Site as a 'PH' (public house).
- 6.5 The officer's report for the above application also refers to the site as a 'PH' or public house. The report summarises the background, site/context, and officers' assessment of the application. When describing the development officers refer to the ground floor as a cabaret (Class D2) use, the first floor as a public house and restaurant (Class A3/A4) uses and the second and third floors as ancillary accommodation and office. The Site is consistently referred to as a public house both in the 'Summary of comments' section which summarises comments received from the local community, councillors and other interested parties and in the assessment section which is based on officers' view.
- 6.6 Of particular note is officers' reference to former local policy 15 and subtext section 15.7 of the Camden Development Policies document 2010-2025 (superseded). This policy talks about Councils resistance to the loss of local pubs which serve a community role (e.g. evening classes, clubs, meetings or performances) unless there was alternative provision nearby or it could be demonstrated that the pub use was no longer economically viable (see Appendix F). Reference to this policy reinforces Council's consideration of The Black Cap as a public house.
- 6.7 LPA ref: 2013/2301/P – Application withdrawn. Application was for a change of use of the first, second and third floors from bar/restaurant and ancillary accommodation to

residential (Class C3) and associated amenities. The existing use of the Site is listed as an A4 drinking establishment and the proposed use is listed as an A4 drinking establishment, C3 dwelling house on Council's planning applications search webpage (Appendix E).

- 6.8 LPA ref: 2014/2176/P – Refusal issued for application to change the use of the first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) use with associated amenities. Officer's in their assessment of proposals (as per officer's report) explicitly refers to the site as a public house or pub. The report describes the cabaret/dance bar to be at ground floor level, bar and restaurant to be at first floor, a basement level and ancillary accommodation at the upper floors (Appendix E).
- 6.9 In 2016, four planning applications were made by Ruth and Robinson Ltd, a commercial pub company, in 2016. One application sought planning permission to change the use of the building from 'Class A4 Drinking Establishment, Sui Generis' solely to a Class A4 Drinking Establishment whilst the subsequent applications sought minor external and internal alterations to the building.
- 6.10 For each of the Ruth and Robinson Ltd applications, the existing land use of The Black Cap is listed as an 'A4 Drinking Establishments, sui generis' on Council's planning applications search webpage. The delineation of where these sui generis uses take place within the building are not formally defined. On the balance of probability, based on the plans submitted as part of the applications packages and on the other evidence provided within this report the 'sui generis' uses are limited to the ground floor level. No decisions were made by Council on these applications.

### **Applications prior to 2008**

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- 6.11 Planning history records are also available for the site in excess of the 10 year time period applicable to this CLEUD application. The most relevant applications (e.g. applications which explicitly confirm the public house use) are listed below.
- 6.12 LPA ref: PL/8903652 dated April 1990 – Approval for a change of use of part of the first floor from ancillary residential and office use to restaurant together with the erection of a single storey ground floor to provide additional toilet accommodation for the existing public house. The decision notice explicitly refers to the site as a public house. The application is for the establishment of a restaurant which is a typical use found within a public house.

- 6.13 LPA ref: PL/9003221 dated September 1990 – Approval vary a condition for the aforementioned application to extend the operating hours of the use to 9am and 1am.
- 6.14 LPA ref: 9501984 dated February 1996 – Approval for new entrance doors, fire escape and air condition plant. The decision notice explicitly refers to the Site as Black Cap Public House.
- 6.15 LPA ref: PE9700816 dated December 1997 – Approval for the installation of hard awning over the existing roof garden at rear first floor and erection of planter. The decision notice explicitly refers to the Site as The Black Cap P.H. (Public House).
- 6.16 LPA ref: 2005/2817/P dated October 2005 – Approval to vary the opening hours for the bar and restaurant uses. The decision notice explicitly refers to the Site as The Black Cap P.H. (Public House).
- 6.17 LPA ref: 2006/4571/P dated December 2006 – Subsequent approval to vary the opening hours for the bar and restaurant uses. The decision notice explicitly refers to the Site as The Black Cap P.H. (Public House).

## 7. PLANNING APPEAL HISTORY

- 7.1 In 2012, the applicant and owner Faucet Inn Limited lodged appeal against Council, to the Planning Inspectorate (appeal ref: APP-X5210-A-2184317) for the application that was refused by Council in 2012. The application ref: 2012/1444/P sought to change the use of the first, second and third floors of the building from bar/restaurant and ancillary accommodation to a residential use (Appendix G).
- 7.2 The independent planning inspector dismissed the appeal. In her appeal statement the inspector concluded that “whilst the proposed development would preserve space to serve the needs of a specific and local community, this would be outweighed by the harm to the living conditions of future occupiers of the proposed residential accommodation, in terms of noise and disturbance, and through the failure to ensure sustainable patterns of travel”.
- 7.3 In spite of the above outcome, the appeal statement provides an assessment of the site and proposals which are relevant to this CLEUD application. The inspector refers to the site as a public house noting that the “ground and first floors are different in nature with the first floor being a more traditional bar” (p.2).
- 7.4 The Inspector also makes reference to ‘Council’s view’ of the ground floor area being a cabaret/dance bar (sui generis) use however she states that “there have been no formal determinations on the current use of the ground floor” (p.2).
- 7.5 Whilst no formal determinations have been made on the use of the ground floor, there is agreement that this space and this space only has been used for cabaret activities whilst the remaining spaces which include the basement, first, second and third floors are used differently, thus falling within the A4 public house use classification.

## 8. FLOOR PLANS AND USES

- 8.1 Various sets of floor plans show the established internal uses within the building. As per the plans, the uses are public house uses at the basement, first, second and third floor levels. Plans show the stage area at the ground floor level.
- 8.2 A description of the uses shown on each set of plans is provided below. Floor plans are provided at Appendix A.
- 8.3 Plans dated April 1995 show the following internal uses:
- a) Part ground floor level – internal staircase;
  - b) First floor level – internal staircases, bar, separate male and female toilets; servery and lobby; and
  - c) Second floor level – internal staircases, living room, bedroom and associated bathroom and kitchen, store, office.
- 8.4 Plans dated August 1997 show the following internal uses:
- a) Ground floor level – lobby, cloak room, internal staircase, bar, stage, separate male and female toilets and dressing room;
  - b) First floor level – bar, servery, separate male and female toilets, internal staircases and roof garden;
  - c) Second floor level – 2x bedrooms, bathroom and kitchen, office, store and internal staircases; and
  - d) Third floor level – 2x bedrooms and internal staircase.
- 8.5 Plans dated January 2013 show the following internal uses:
- a) Basement floor level – store areas;
  - b) Ground floor level (front) – counter, lobby and bar; and
  - c) Ground floor level (rear) – stage, separate male and female toilets.



8.6 Plans dated April 2013 show the following internal uses:

- a) Basement floor level – store;
- b) Ground floor level – counter, lobby, bar, stage and separate male and female toilets;
- c) First floor level – bar area, toilets, beer garden;
- d) Second floor level – bathroom, ancillary office and residential floor space; and
- e) Third floor level – ancillary residential space.

## **9. BUSINESS RATES**

- 9.1 The Black Cap is recognised predominantly as a public house establishment on various formal business rate notices.
- 9.2 Valuation Office Agency records and Business Rates Bills issued by Council show that business rates were set on the property on the basis of 'Public house and premises' on April 2010 and from April 2015 to March 2017 (see Appendix H).

## 10. PREMISES LICENCES

- 10.1 Premises licences and formal correspondence relating to premises licences issued by Council demonstrate licensable activities that are typical for a public house use.
- 10.2 Premises licenses' granted by Camden Council under the Licensing Act 2003 (ref: PREM-LIC\2622) (see Appendix I) for the premises and for individual supervisors who were responsible for the management of licensable activities allow the sale of alcohol and late night refreshments at the premises since November 2005 confirming that the site has been in lawful use as a drinking establishment since this date. Other licensable activities include live and recorded music, dance performances, films and indoor sporting events.
- 10.3 It is reasonable to conclude from these licences that the sale of alcohol (typical for a public house use) has been the predominant and most consistent activity at the premises for the past 10 years, since 2008 to present. Other licensable activities such as live and recorded music and indoor sporting events are also activities that are characteristic uses of a public house.
- 10.4 Films and dance are activities which could be accommodated for within a public house which is a congregation space members of the public. It is likely however that these activities took place at the ground floor level stage area.
- 10.5 The Premises licences' documents lists employees who are employed under commercial public house business operators including the 'Whitewater Pub Company Ltd' and the 'Bluewater Pub Co. Ltd.' This further reinforces the probable public house nature of the use.

## **11. UTILITY BILLS**

- 11.1 Thames Water Bills dated 2012, 2014, 2015 and a Southern Electric Bill dated 2013 (Appendix J) were issued for The Black Cap.
  
- 11.2 Whilst these bills do not explicitly state what the premises was being used for, they demonstrate that the development was in use from 2012 to 2013.

## 12. FIRE RISK ASSESSMENT REPORT

- 12.1 A fire safety risk assessment of the premises was undertaken by an independent inspector in 2013 on behalf of the employer, Faucet Inn Limited in accordance with requirements under The Regulatory Reform (Fire Safety) Order 2005 and the Fire (Scotland) Act 2005, as applicable.
- 12.2 The independent inspector prepared a report (dated 2013) summarising his findings from the inspection (see Appendix K).
- 12.3 In his report, the inspector provides a description of the building (p.6). The building is explicitly referred to as a public house. The inspector notes the following uses within the building:
- a) Staff accommodation and kitchen at the second floor;
  - b) Beer cellars at the basement level;
  - c) A bar area at the first floor with an open beer garden to the rear of the building and three exits; and
  - d) A cabaret bar on the ground floor, including a small stage and a dressing room.
- 12.4 The independent inspector describes the site as a public house and particularly notes the public house uses at the basement, first and second floors as well as the cabaret use at the ground floor level.

## **13. ELECTRICAL INSPECTION REPORTS**

- 13.1 An inspection of the condition of electrical circuits at the premises was undertaken by an independent qualified electrician in January 2010 upon the owner's request.
- 13.2 A summary report was prepared by the independent electrician (see Appendix L).
- 13.3 In the summary report, the inspector refers to The Black Cap as a public house. The report provides technical details of electrical circuits in the cellar, kitchen (including kitchen equipment), reception, bar, WC's and general lighting within the premises.
- 13.4 The uses listed by the inspector correspond with the public house uses described within the 'Description of development' section of this report.

## **14. FOOD PREMISES INSPECTION REPORT**

- 14.1 On the 25<sup>th</sup> of February 2013, a Food Premises Inspection was undertaken by a Food Safety Officer from Council.
- 14.2 In his Inspection Report (Appendix M), the officer identified the type of food business at the Site to be 'Public House/food'.

## **15. INSURANCE RECORDS**

- 15.1 An Employers Liability Insurance Certificate dated September 2010 and a Commercial Loss Recovery Insurance Certificate dated June 2012 (Appendix N) were issued to cover the owner, Faucet Inn Ltd for The Black Cap.
  
- 15.2 Whilst these certificates do not explicitly state what the premises was being used for, they demonstrate that the development was in use from 2010 to 2013.



## 16. PRESS AND MEDIA EVIDENCE

16.1 Press and media evidence clarify the uses at the Site from 2010 to 2018.

### Media articles

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16.2 Articles published on news websites as well as on Council's website between 2010 and 2018 all consistently refer to The Black Cap as a "pub".

16.3 These articles describe the types of activities that occurred at the venue (e.g. cabaret performances), advertise various performances and describe the importance of the local drinking establishment as a congregational space for the local community.

16.4 Of particular note is a web article dated 2015, published on Council's website which states Council's disappointment about the closure of The Black Cap, provides a brief summary of planning and historic background of the site including the Asset of Community Value listing, awarded by Council in 2015. The article explicitly refers to the Site as a 'pub' which provides space for drag and cabaret activities. The occurrence of these activities at the site is no debate, however it is clear from other supporting evidence provided in this report that it is probable that the activities occurred and were limited to the designated stage and bar area the ground floor.

16.5 A number of articles published in various media sources in 2015 describe the local public's grievance over the closure of The Black Cap. These articles make explicit reference to the Site as an iconic, historic 'pub' and report on the protests held by local community members within the local area to re-establish of this use at the Site.

### Internet blog articles

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16.6 The experiences of the local community at the public house which refer to the services of food, alcohol, bar areas, public seating and a cabaret stage on the ground floor are noted in internet blog articles published in 2010 (Appendix O).

16.7 These first hand experiences recorded by bloggers confirm the typical experiences of a public house establishment which serves alcohol, food and provides a space for congregation and activities open to the community. This space is distinctly described as a space for pub activities (e.g. pub quiz's and meeting spaces) and enjoyment during the day and in the evening.

## **YouTube Videos**

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- 16.8 YouTube videos (see Appendix O) from 1992 (published in 2008), 2007, 2011, 2014 and 2015 show recordings of cabaret performances a stage. It is likely that these performances occurred at the ground floor level which includes a stage.

## **Web articles listing 'pubs to visit'**

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- 16.9 The Black Cap also features as a "pub to visit" on several lists of recommended pubs in London.
- 16.10 Articles have been published in popular press sources including The Londonist, Out magazine, and London Drum (see Appendix O).
- 16.11 Out magazine and London Drum both also list opening times varying between 11am and noon daily, typical opening times of a public house, and note the provision of evening entertainment at the premises.

## 17. CONCLUSION

- 17.1 On the balance of probability, based on factual evidence provided in this submission, it is concluded that The Black Cap comprises Public House (Class A4) uses at the basement, first, second and third floors with only the ground floor level accommodating space for cabaret uses (sui-generis), from 2008 until the present date and in excess of this period. Therefore the entire building is immune from enforcement action and now lawful.

## **A1. SITE PLANS**

## **A2. ASSET OF COMMUNITY VALUE**

### **A3. HISTORIC MAPS**

## **A4. HERITAGE**

## A5. PLANNING HISTORY



## **A6. PLANNING POLICY**

## **A7. PLANNING APPEAL HISTORY**

## **A8. BUSINESS RATES**

## **A9. PREMISES LICENCES**

**A10. UTILITY BILLS**

## **A11. FIRE RISK ASSESSMENT**

## **A12. ELECTRICAL INSPECTION REPORT**

**A13. FOOD PREMISES INSPECTION REPORT**



**A14. INSURANCE CERTIFICATES**

**A15. MEDIA AND PRESS ARTICLES**