

**Review of the listing as an asset of community value ("ACV") of the Black Cap public house, 171 Camden High Street London, NW1 7JY**

**Hearing Date 7<sup>th</sup> July 2015**

**Present:**

Reviewing Officer and Chair: Andrew Maughan (Borough Solicitor)

For the council:

- Michael Webb (Principal Officer)
- Sandra Ballentine (Legal Officer)

For the owners:

- Steve Cox, Faucet Inn Limited
- Kieron Hodgson, Iceni Projects – for Kicking Horse Limited and Faucet Inn Limited
- David O'Dwyer, Memery Crystal – for Kicking Horse Limited and Faucet Inn Limited

For the Camden Lesbian, Gay, Bisexual and Transgender (LGBT) Forum, the nominating community group:

- Nigel Harris, Director
- Ben Giddins
- Joe Parslow

**The review**

I am delegated by the London Borough of Camden to determine reviews of the listing by the Council of ACVs.

On the 7<sup>th</sup> July 2015 following a request made by the owners of the Black Cap, 171 Camden High Street, London NW1 7JY for an oral hearing, I considered the review against the listing of these premises as an ACV. The review took place in the presence of the parties above and at the start of the meeting an informal procedure was agreed which would allow all the parties the opportunity to address the meeting.

**The issues**

At the start of the meeting the Owners confirmed that they were not taking any issue with the council's decision to list the Black Cap as regards compliance with the statutory requirement of "furthering the social well-being or social interests of the local community". Further they did not seek to challenge any technical aspects of the application process.

The main objections as set out in the representations for the review dated 25 June 2015 were:

1. Whether the nominating group who receive funding from the Council had truly requested the listing under their own initiative or whether in effect this was actually by

proxy on behalf of the Council. Reference was made to the fact that the Council is not entitled to nominate properties themselves.

2. The extent of the listing, there was no dispute to the listing of the basement and ground floor only in respect of the first, second and third floors.

The relevant legislation in the situation of a premises no longer being open (the Black Cap was still operating at the time of the nomination and when listed, it closed on 12<sup>th</sup> April 2015) is 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***

There was no dispute over the bulk of the evidence put forward demonstrating how the Black Cap had furthered the social well-being of the local community but it is worth – as it is material to the two key questions in particular – repeating some of this evidence as submitted in the application to nominate the Black Cap and as was put to me during the review hearing:

- The premises (which appear from internet research at least) to have been a public house for hundreds of years has for many decades been at the center of the LGBT community in London.
- The premises has been a venue for drag and other related performances which attract and include members of the LGBT community albeit not exclusively.
- It is the meeting place of a number of LGBT related organisations including the nominators.
- Less specifically but importantly I heard from the nominators how significant the premises were in terms of being a safe place for the community to congregate and indeed how it was the first venue one of the nominators had gone when he had “come out”.
- It was explained to me how the venue appeals to all age ranges with the bar on the first floor being a quieter area and used when the ground floor was being used for rehearsals. It does appear to me that the venue with its terrace and two main floors did offer flexible and diverse areas which would potentially appeal to the whole LGBT community. The nominators contrasted the appeal of this venue to others that attract a LGBT following in London which tended to be age specific or targeted at a specific segment of the LGBT community.
- There has been considerable public outcry at the closure of the premises primarily from the LGBT community but also from others including local politicians and celebrities.

The test to be applied under s 88 of the Act is “in the opinion of the local authority”. That is a wide test. As with all public law matters the opinion must be reasonable i.e. based on the sort of evidence that a reasonable person would say is sufficient to found a view. The

conclusion of the authority must be rational. The test is contextual and will depend on all the circumstances and the evidence.

In determining this review I have considered the following;

***1. Has there been 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?***

On the first test as to furthering the social well-being etc. the legislation assists by telling us:

***social interests<sup>n</sup> includes (in particular) each of the following—***

***(a) cultural interests;***

***(b) recreational interests;***

***(c) sporting interests***

I consider that there is considerable evidence of this for the Council to have formed a reasonable opinion, the nomination application in some detail lists these and these were helpfully expanded upon during the hearing.

I have no hesitation in confirming that this building has 'in the recent past' – prior to its closing contributed to the social wellbeing or social interests of the local community. The public outcry when the premises closed confirms this contribution.

***2. Is it 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.***

On the second limb the test is whether in council's opinion it is realistic to think that in the next five years these activities will recommence. There will be circumstances where such as finding would be unrealistic for example if the premises had been demolished with no prospect of them being rebuilt for clear financial reasons.

These are premises that have been in use as a public house for hundreds of years. I was also told of the planning restrictions in using the premises as anything other than a public house. In fact no evidence was put forward by the Owners that would have thrown in doubt on the original decision. While there have been planning applications to change the use of the upper floors there is currently no permission to change the use it must therefore be realistic to have concluded as the Council have that future community use is realistic in the next five years for the whole building.

***3. Which part of the building contributed and therefore should be registered?***

Currently the Council has registered the whole building. This has been disputed in terms of the first, second and third floors, it is submitted by the Owners that those parts of the building have not contributed to the social well-being nor were they used by the LGBT community. I

deliberately took evidence about the use of the floors and have gathered the following from both parties:

- Basement – used for storage of the usual beer barrels and stock as well as the performance related equipment, amps etc.
- Ground floor – this is where the stage is located and there is the main bar. This area therefore has been used for drinking and socialising and for meetings of various groups but also is where live performances take place.
- First floor – there is a bar area here and the garden/terrace. I heard and find that this area is a quieter area used for conversation and as such complements the noisier ground floor. It is also used for meetings and social events. I accept that this diverse accommodation offer is part of the role the premises have played in advancing the social well-being of the area.
- Second floor – this includes the kitchen area, office and some accommodation. I will comment later about the accommodation but it strikes me that the provision of food makes a contribution to the social value of the pub and was also said to me to be a “safe haven”. In addition I also don’t see how a venue which runs shows and the like can do so without an office.
- Third floor – accommodation. While I accept as the owners said that the model for public houses now often does not include accommodation and there may be some advantage in “not living over the shop” I also (having had the advantage of hearing from someone who worked in the premises) see how a venue like this would benefit from the perhaps more old fashioned live in manager. The picture that was painted of these premises as a hub for the LGBT community includes the flexibility that was clearly provided by having managers live in. I can see how a manager who arrives opens up and then closes may work for say a city centre venue but can equally see how a live in presence contributed to the particular ambience and value that these premises added. This building was far more than a “gay pub” but played an important part in the lives of the LGBT community in Camden and in their social well-being. It is worth noting that residential land (if that is what parts of the second and third floor are) is not excluded from the ACV regime if the residence is a building that is only partly used as a residence and, but for the residence, the land would be eligible: see para. 1(5) of Schedule 1 to the 2012 Regs.

#### **4. The legitimacy of the nomination**

It was suggested that because of the fact that the nominators received funding from the Council that this meant in effect that the application was a proxy application upon behalf of the Council.

The Nominators in evidence said that they had put the application in to the Council on their own initiative and not as a result of any influence or suggestion from the Council. On being asked the Owners confirmed they had no contrary evidence. Given the lack of any evidence (other than perhaps the public support for the premises offered by numerous Councillors) I am left with whether the fact that the LBGT receives funding from the Council in any way negates the legitimacy of the application. I do not think it does. I say this because the legislation does not in fact allow such investigation and secondly if funding somehow did prevent an organisation from making an application then the legislation and/or regulations would have clearly said so in respect of local community groups they do not. Parliament would have needed to have deliberately included such a provision, which would significantly reduce the number of qualifying organisations and hence utility of the Act.

#### **5. Status of the Planning decisions**

I have read the relevant planning decisions. In particular the owners referred me to the appeal decision of the 4<sup>th</sup> February 2013. I have to say such decisions are of limited assistance for while planning decisions do touch upon issues similar to those before me there are significant differences. Further when the Inspector decided the application would, by improving one floor make up for the loss of another, this emphasized the different questions that need to be asked. I am not judging what might become of the building in terms of changes prompted by a planning application

### **Conclusion**

I therefore uphold the original decision to list the whole of the Black Cap as an ACV.

In summary and dealing with the two points of appeal;

1. I have received no evidence that would suggest that the nomination for the Black Cap was done as a proxy for the Council. In addition for the reasons given I do not see that the Council's funding which is given to a variety of organisations including this one in any way impacts upon their ability to make a request for listing.
2. I have no doubt that in addition to the basement and ground floor that the first floor was used for the benefit of the LGBT community. As noted above, the legislation allows for the listing of residential land if it is only partly used as a residence and the rest of the land is of community value. The authorities, which are not binding in any event, provide limited guidance, save for indicating that each case will turn on its own facts. The second floor however includes a kitchen which in providing food does as explained in my view contribute to the overall services and facilities offered to the LGBT community. As I said the Black Cap is more than simply a pub for this community.

What of the office space and accommodation? In my view this live in accommodation for a landlord or employees was important as part of the offer provided to the community as it helped define the sort of premises it was. The office space used I heard for bookkeeping and marketing activities would also have contributed to the performance aspect of the premises in its contribution to this community.

It would be artificial to separate out different parts of the building as it is all part of its business of being a pub/venue and meeting space for this community. Of course, in considering the above, I had in mind to apply the test in section 88(2)(b) of the Localism Act 2011, which is what it is realistic to think might happen to the space within the next 5 years. While there are planning applications to convert the upper floors I do not think that fact alone would render it unrealistic to consider that there will be a time in the next five years when this use will recommence.

Signed:

A large black rectangular box redacting the signature of the official.

Date: 10<sup>th</sup> July 2015

**Right of appeal**

If the owner is not satisfied with the outcome of the internal review they have the right to appeal to the First-Tier Tribunal against the local authority's review decision.

An owner's appeal against a local authority listing review must be made to the General Regulatory Chamber of the First-Tier Tribunal. The deadline for appealing is specified in the procedural rules of that Chamber as 28 days from the date on which notice of the decision appealed against was sent to the owner. Appeals may be both on points of law and on findings of fact. The property will remain listed during the appeal process.

Owners should send the appeal in writing to the First-Tier Tribunal at:

Tribunal Clerk,  
Community Right to Bid Appeals  
HM Courts & Tribunals  
First-tier Tribunal (General Regulatory Chamber)  
P.O. Box 9300  
Leicester, LE1 8DJ  
Tel: 0300 123 4504

Or by e-mail to [GRC.CommunityRights@hmcts.gsi.gov.uk](mailto:GRC.CommunityRights@hmcts.gsi.gov.uk)