

**TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS)  
(INQUIRIES PROCEDURE) (ENGLAND) RULES 2002**

**RULE 6 STATEMENT OF CASE**  
of the London Borough of Camden

---

**APPEAL SITE**

101 Brecknock Road, London N7 ODA

**APPELLANT**

Bryanston Investments Limited

---

**SUBJECT OF APPEAL**

- Enforcement notice issued for: Without planning permission the alterations to the shopfront and the change of use of the public house to form a retail convenience store

---

**PINS REF: APP/X5210/C/18/3207640**  
**LPA REF: EN17/0004**

## CONTENTS

<b>Section</b>	<b>Page</b>
1. Introduction	<b>3</b>
2. Relevant Legislation	<b>3</b>
3. Relevant Planning Policy and Guidance	<b>4</b>
4. Site and Surroundings	<b>6</b>
5. Enforcement Notice	<b>8</b>
6. Planning History	<b>10</b>
7. The Council's Case	<b>12</b>
8. Appropriate Conditions	<b>19</b>
9. Documents	<b>20</b>

## **1. INTRODUCTION**

- 1.1. This is the Statement of Case submitted on behalf of the London Borough of Camden ("the Council") in relation to the Appeal APP/X5210/C/18/3207640.
- 1.2. This appeal is made by Bryanston Investments Limited against of an Enforcement Notice issued by the Council on 15 June 2018 ("the Enforcement Notice"). The breach of planning control alleged in the Enforcement Notice is, without planning permission, the alterations to the shopfront and the change of use of the public house to form a retail convenience store.
- 1.3. The Appellant has appealed on grounds (a), (c) and (g) of s.174(2) of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act"). The Council sets out the relevant background and its case below.

## **2. RELEVANT LEGISLATION**

- 2.1. Town and Country Planning Act 1990 (as amended).
- 2.2. Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002
- 2.3. Town and Country Planning (General Permitted Development) Order 2015 (as amended), Schedule 2, Part 3, Class A

### **3. RELEVANT PLANNING POLICY AND GUIDANCE**

#### National Planning Policy Framework (2019)

3.1. The following parts of the 2019 Framework are relevant:

- Section 4, Decision Making
- Section 6, Building a strong, competitive economy
- Section 8, Promoting healthy and safe communities
- Section 12, Achieving well-designed places

Section 16, Conserving and Enhancing Historic Environment. London Plan 2016

3.2. In particular, the following development plan policies are relevant:

- Policy 3.1, Ensuring Equal Life Changes for all
- Policy 7.1, LIFETIME NEIGHBOURHOODS
- Policy 8.2, PLANNING OBLIGATIONS

#### Draft New London Plan 2017

3.3. In particular, the following draft development plan policies (and any other relevant policies):

- Chapter 3 Design
- Chapter 7 Heritage and Culture
- Policy DF1 Delivery of the Plan and Planning Obligations
- Policy HC5 Supporting London's culture and creative industries
- Policy GG1 Building strong and inclusive communities

#### Camden Local Plan 2017

3.4. The following development plan policies are relevant:

- A1 Managing the impact of development
- C2 Community facilities
- C4 Public Houses
- D1 Design

- D2 Heritage
- D3 Shopfronts
- CC5 Waste
- DM1 Delivery and monitoring

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

### Camden Planning Guidance (CPG)

3.5. The following guidance is relevant:

- 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

#### **4. SITE AND SURROUNDINGS**

- 4.1. The site relates to a public house formerly known as 'The Leighton Arms', which is located on the corner of Brecknock Road and Torriano Avenue. The site originally comprised both the public house, a three-storey building forming the end of a larger terrace fronting Brecknock Road, and a public house garden fronting Torriano Avenue.
- 4.2. The beer garden at the back of the public house is subject to a development comprising of two semi-detached houses pursuant to the planning permission 2016/0372/P..
- 4.3. The appeal site also has a permission to convert the upper floors into residential flats. This development is still subject to further investigations.
- 4.4. The surrounding area is predominantly residential, comprising a mix of Victorian building stock and 20<sup>th</sup> Century development.
- 4.5. The appeal site is not located within a designated conservation area; nor is the building statutorily or locally listed.
- 4.6. The building has previously been identified by a planning Inspector as being a prominent building and the importance of the property for community need was established (PINS reference: APP/X5210/W/15/3095242)
- 4.7. The building at the appeal site comprises ground floor and three floors above. It is a prominent Victorian building, which until recently, incorporated a public house use on the ground floor that was converted to a shop. In addition, unlawful alterations have been made to the frontage. This loss of the public house and the works are unacceptable and are harmful to local amenity in both land use and design terms.
- 4.8. 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 public

house/ 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 public house, associated nuisance from the shop and unsympathetic alterations to this preserved and prominent Victorian building.

## 5. **ENFORCEMENT NOTICE**

5.1. On 18 June 2018, the Council issued an Enforcement Notice (ref EN17/004) alleging a breach of planning control: without planning permission alterations to the shopfront and the change of use of the public house to form a retail convenience shop.

5.2. The Council had sought to remedy the harm for 3 reasons detailed below:

- 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 public house, 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).
- 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).
- 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

5.3. The notice required the following steps within 3 months of it taking effect:

- *permanently cease use of the property as a retail convenience store*
- *re-instate the frontages to the property as depicted in the photographs attached at Appendix A and B and*
- *make good any damage and remove from the property all constituent materials resulting from the above works*

## 6. PLANNING HISTORY

### Relevant Applications for the appeal site

6.1. Application 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:

- the proposed rear extensions would be excessively too large;
- 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
- 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 public house 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.

APPEAL ALLOWED (APP/X5210/W/15/3095242) - 11/12/2015

6.2. Application 2014/5401/P: Erection of two four storey houses (Class C3) Refused on 25/03/2015 for the reasons outlined below:

- The proposed development of the site would result in the loss of an important townscape gap

- 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
- 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
- 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

APPEAL DISMISSED (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.

- 6.3. Application 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 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors.
- 6.4. Application 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

## **7. THE COUNCIL'S CASE**

- 7.1. It is the Council's case that it was expedient to issue the Enforcement Notice. A failure to act in respect of the unauthorised use and external alterations to form a retail shop would have resulted in the loss of a valued community public house as well as important historical features of the building that played a key role in defining the local character.

### **Grounds of Appeal**

- 7.2. The Appellant appeals the Enforcement Notice on grounds (a), (c) and (g) of s.174(2) of the Town and Country Planning Act 1990 (as amended). The Council disputes all 3 grounds of appeal.

### **Ground (a)**

#### ***Main considerations***

#### **Effect on character and appearance**

- 7.3. 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.
- 7.4. 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 and has been referred for inclusion in Camden's Local List.
- 7.5. The development that has been carried out to the public house frontage breaches polices D1, D2, D3 and C4 of the London Borough of Camden Local Plan 2017 and

CPG1 (Design 2015, updated 2018). In addition to these policies, the building is considered to be of non-designated heritage interest, and therefore the works contravene the National Planning Policy Framework (2019).

7.6. Two issues are raised:

- The change of use of the property from public house (Class A4) to Retail (A1).
- 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.

7.7. The Council will demonstrate that the building was prominent and historically significant dating back from the late 19<sup>th</sup> Century (1870s) with classical features that defined the character of the local area and that the said unauthorised alterations were not considerate enough to warrant such changes that would materially affect the character and appearance of the building 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).

7.8. The Council will also demonstrate that the loss of the public house has had a detrimental impact on the needs of the local community in that a replacement community facility has not been provided or it was not demonstrated that that the existing premises were no longer required or viable in their 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, the Council are unable to ensure that the additional demand the development (including the housing scheme) has placed on existing community infrastructure and services is met 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).

7.9. Local Plan Policy D1 advises that the Council will seek to secure high quality design in development which respects local context and character.

- 7.10. Local Plan 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.
- 7.11. Local Plan 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.
- 7.12. Local Plan 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.
- 7.13. In the appeal decision dated 11 December 2015 (APP/X5210/W/15/3095242), the Inspector described 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 public house, shopfront and street scene.

*Loss of a public house/community facility*

- 7.14. 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.

7.15. The importance of the former public house as a community use was recognised in the appeal decision dated 11 December 2015 (APP/X5210/W/15/3095242) where the Planning Inspector observed (at paragraphs 27 and 28):

*"27. As I have stated above, the existing premises are clearly dated but 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."*

7.16. 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 public house 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 public house is a heritage asset, it should be conserved in a manner appropriate to its heritage significance."

7.17. Local Plan 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.

7.18. 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 public house's loss would have a detrimental impact on the needs of the local community.

### Similar Appeals

- 7.19. The Council would also like to draw the Inspector's attention to recent appeal decisions that have been allowed which are comparable to the appeal site demonstrating the value of the public house and it being able to continue to function.
- 7.20. The relevant recent appeal decisions referred to below have been discussed in detail in the Council's original Statement of Case submitted on 28 November 2018 and will be referred to in the Council's evidence:
- A. 105 Kings Cross Road: dismissed 2018 APP/X5210/C/18/3193274; APP/X5210/C/18/3153219.
  - B. Golden Lion Public House, 88 Royal College Street appeal dismissed October 2014 (Ref. APP/X5210/A/14/2218740)
  - C. The Black Cap, 171 Camden High Street, ref. APP/X5210/A/12/2184317)
  - D. Sir Richard Steele, 97 Haverstock Hill, London, NW3 4RL

### Ground (c)

- 7.21. The Council will demonstrate that former use of the basement and the ground floor of the appeal premises was, in fact, as a drinking establishment (Use Class A4) and, therefore, the material change of use to a retail shop did not constitute permitted development under Class A of Part 3 in Schedule 2 of the GPDO, as the development did not comply with relevant provisions within Class A (in force at the time) in that:
- 1. No ACV request notification was received as detailed to be required in Class A.2(1), Part 3 Schedule 2 of the order which is claimed to have been sent; and
  - 2. In any event the development was out of time as detailed in Class A.2(4), Part 3 Schedule 2 of the order where the development was not completed from 1 year of the above-mentioned notice.

7.22. The Council will rely upon Council Tax records, photographic evidence taken by its own staff, historical images available in the public domain, previously submitted evidence and photographs from the Appellant and the testimony of the local residents to demonstrate that the development was not completed in time in respect of the contended ACV notification.

7.23. The Council will also refer to the site's former planning history, business rates and the testimony of the local residents to demonstrate that the property was not a restaurant (A3) as defined by the use class order nor that it had operated for over 10 years granting it immunity from any enforcement action in respect of Section 171B of the Town and Country Planning act 1990.

**Ground (g)**

7.24. The Council will demonstrate that the notice would be enforceable against the leaseholders and the freeholders of the premises and that three months would be sufficient time for the tenants/leaseholders to cease the use of the premises as a retail convenience store, vacate the property and carry out the necessary alterations to the frontages.

**8. APPROPRIATE CONDITIONS**

- 8.1. In accordance with Government advice and without prejudice to the Council's case, it is anticipated that appropriate planning conditions will be agreed and included in a Statement of Common Ground concluded by the Council and the Appellant. In the event that the conditions cannot be agreed, a list of conditions proposed by the Council will be provided prior to the Inquiry.

## **9. DOCUMENTS**

9.1. The Council may refer to all or part of the following list of legislation, national planning guidance, and documents and any other it considers relevant, having regard to the Appellant 's case to be identified in its Statement of Case or any other change of circumstances:

- Acts of Parliament and Statutory Instruments.
- Government advice, especially the National Planning Policy Framework 2019
- The London Plan 2016
- Draft New London Plan 2017
- London Borough of Camden Local Plan (2017)
- London Borough of Camden Supplementary Planning Guidance
- Correspondence and notes in connection with the investigation (from
- London Borough of Camden files, the Appellant, and third parties)
- Previous planning applications, accompanying documents
- Photographs
- Correspondence and notes (from London Borough of Camden files, the Appellant, external bodies and third parties).

9.2. Documents will be made available for inspection at Council Offices, 5 St Pancras Square, London N1C 4AG.

9.3. If an appointment is made at least 24 hours in advance, officers will ensure that documents are ready for inspection. The Council Offices are open 0900-1700 Monday to Friday.