

<b>LDC (Existing) Report</b>	<b>Application number</b>	2018/4031/P
<b>Officer</b>	<b>Expiry date</b>	
David Peres Da Costa	15/10/2018	
<b>Application Address</b>	<b>Authorised Officer Signature</b>	
171 Camden High Street London NW1 7JY		
<b>Conservation Area</b>	<b>Article 4</b>	
Camden Town Conservation Area	Yes	
<b>Proposal</b>		
Use of the building at basement, first, second and third floor level as a public house (Class A4) with a cabaret entertainment space at ground floor level (Class Sui Generis).		
<b>Recommendation:</b>		

## 1. Site description

- 1.1. The application site is located on the west side of Camden High Street.
- 1.2. The application relates to a 4 storey building plus basement known as 'The Black Cap'. The building is rectangular in its configuration, with the ground floor level extending the full length of the Site. The building has been unoccupied since the previous use ceased in April 2015. Site visits to the property have been undertaken on the 4<sup>th</sup> April 2016 and 31<sup>st</sup> May 2017. The ground floor is laid out with a foyer at the front (providing access to the first floor) separated from the bar, stage and dressing room in the main part of the ground floor with toilets at the rear. There are stairs from the rear of the ground floor leading to fire escape doors at the rear of the site. A staircase connects the ground floor bar area with the basement. The first floor is laid out with a bar and toilets and includes a covered roof terrace with a fire escape staircase leading to doors in the rear boundary wall of the site. The second floor has a kitchen (connected by a dumb waiter to the first floor), a bathroom and a number of other rooms. There are 2 further rooms on the third floor.
- 1.3. The building is not listed and is located in the Camden Town Conservation Area. The site is listed as an Asset of Community Value, nominated 10<sup>th</sup> February 2015.

## 2. Application

- 2.1. The application seeks to demonstrate that the use of the basement, first, second and third floor level as a public house (Class A4) with a cabaret entertainment space at ground floor level (Sui Generis) has existed for 10 years or more such that the continued use would not require planning permission.

- 2.2. The applicant is required to demonstrate, on balance of probability that the use of the basement, first, second and third floor level as a public house with a cabaret entertainment space at ground floor level (Class Sui Generis) has existed for a period of 10 or more years.
- 2.3. The evidence will be assessed to confirm whether for the 10 year period before the date of the application (20/08/2018), the use was as set out above. Evidence that pertains to the period 2008 to 2018 is therefore relevant.

### **3. Applicant's Evidence**

- 3.1. The applicant has submitted the following information in support of the application:

- Photographic records;
- Asset of community value records;
- Heritage records;
- Planning application and appeal history;
- Floor plans;
- Business records (rates, bills and licences);
- Premises inspection and assessment reports; and
- Press and media evidence.

- 3.2. Asset of community value records

- 3.3. The asset of community value listing categorises 'The Black Cap' as a public house. All correspondence prepared by the Council and Iceni Projects explicitly refer to The Black Cap as a 'public house' between 23 May 2013 and July 2015. This includes the Council's decision letter dated 8 April 2015 providing the council's reasons for why the definition of an asset of community value had been met.

*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.*

- 3.4. This also includes the report of Deputy Chief Executive entitled “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” prepared for the hearing on 7<sup>th</sup> July 2015 which repeatedly refers to the “Black Cap public house” and “the pub”.

#### Heritage records

- 3.5. Historic England refers to The Black Cap as a public house in various pieces of formal correspondence as part of its assessment to determine its suitability for listing.

#### Planning application history

- 3.6. The officer’s report and decision notice for planning application ref: 2012/1444/P refers to the site as a ‘PH’ or public house. Reference to Policy DP15 of LDF and supporting text regarding the loss of local pubs which serve a community role reinforces the Council’s consideration of The Black Cap as a public house. Likewise, the officer’s report for planning application ref: 2012/1444/P 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.

#### Planning appeal history

- 3.7. In the appeal APP-X5210-A-2184317 (regarding the refusal 2012/1444/P), the inspector notes that the “current ground and first floors are different in nature with the first floor being a more traditional bar. The Council’s view is that the ground floor should be viewed as a sui generis use (cabaret/dance bar) but the difference between this and an A4 use with live music are matters of fact and degree and there have been no formal Council determinations on the current use of the ground floor.”

#### Floor plans

- 3.8. Various sets of floor plans show the internal uses within the building.

#### **Plans dated April 1995 show the following internal uses:**

- a) Part ground floor level – cloaks, internal staircase to first floor bar;
- b) First floor level – internal staircases, bar, servery, prep, separate male and female toilets; and lobby; and
- c) Second floor level – internal staircases, living room, bedroom and associated bathroom, kitchen, bathroom, store and office.

#### **Plans dated August 1997 show the following internal uses:**

- a) Ground floor level – lobby, cloak room, internal staircase, raised area, bar, servery, stage, separate male and female toilets and dressing room;
- b) First floor level – bar, servery, food prep, separate male and female toilets, internal staircases roof garden and plant;
- c) Second floor level – 2x bedrooms, 2 x bathrooms, kitchen, office, store and internal staircases; and
- d) Third floor level – 2x bedrooms and internal staircase.

**Plans dated January 2013 show the following internal uses:**

- a) Basement floor level – store areas;
- b) Ground floor level (front) – counter and lobby; and
- c) Ground floor level (rear) – stage, separate male and female toilets.

**Plans dated April 2013 show the following internal uses:**

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

Business rates

- 3.9. The property is described as ‘public house and premises’

Premises licences

- 3.10. The premises licence (granted 18/7/05) provides details of licensable activities authorised by the licence: Sale by retail of alcohol; late night refreshment; live and recorded music, performances of dance, provision of facilities for making music; provision of facilities for dancing; films; and indoor sporting events. It also includes the name of the holder of the premises licence: ‘Whitewater Pub Company Ltd’ and ‘Bluewater Pub Co. Ltd.’

Utility Bills

- 3.11. Thames Water Bills dated 2012, 2014, 2015 and a Southern Electric Bill dated 2013 were issued for The Black Cap and demonstrate that the development was in use from 2012 to 2013.

Fire Risk Assessment Report

- 3.12. The fire risk assessment report (dated 15/4/13) provides a description of how the building is laid out. The College Arms (*sic*) is a licenced public house occupying a 3 storey traditionally built mid terrace structure with basement. Staff accommodation and the kitchen are provided on the 2nd floor of the building. Beer cellars are located within the basement. A bar area is provided on the 1st floor with an open beer garden to the rear of the building this area is provided with 3 exits. A cabaret bar is situated on the ground floor, within which a small stage and dressing room is provided.

Electrical Inspection Reports

- 3.13. The inspector’s report (dated January 2010) refers to the occupier as public house (The Black Cap)

Food Premises Inspection Report

- 3.14. The Food Premises Inspection Report (dated 25/2/13) identifies the type of food business at the Site to be ‘Public House/food’.

## Insurance Records

- 3.15. Employers Liability Insurance Certificate (dated 27/9/10) and a Commercial Loss Recovery Insurance Certificate (dated 21/6/12) demonstrate that the development was in use from 2010 to 2013.

## Press and Media Evidence

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

### *Media Articles*

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

The Guardian "LGBT London: what venue closures mean for the capital's future" published 21/4/17

Polari Magazine "Reflections on the Black Cap" published 1/5/12

Ham and High "Packed programme of Camden events to celebrate Amy Winehouse's 30th birthday" published 7/9/13

Camden New Journal "Police investigate how police officer and musician - devoted soulmates - fell to death at building site" published 24/10/13

Islington Tribune "FEATURE: The Savage truth of how Paul O'Grady's drag act started out at the Black Cap" published 3/1/13

This is cabaret "Review: The Meth Lab presents: Shangela" published 1/9/14

Article on Camden Council website "The Black Cap" published 17/4/15

*"This shows the council's belief in the significance of this venue as no ordinary gay pub, but one that 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."*

Camden New Journal "'Re-open the Black Cap' call as Breakfast Club diner deal falls through" published 27/8/15

Evening Standard "The Black Cap Camden: Iconic gay and drag pub closed despite 'community asset' listing" published 13/4/15

The Guardian "Closing time for gay pubs – a new victim of London's soaring property prices" published 4/2/15

The Independent "London's historic gay pub The Black Cap in Camden closed by owners a week after being awarded 'asset of community value' status" published 14/4/15

ITV.com "Drag queens take to the streets to protest against closure of gay pub" published 18/4/15

Time Out "Iconic Camden pub The Black Cap has suddenly closed down" published 13/4/15

Davis Coffey Lyons "Sale of Iconic Black Cap in Camden to Imbiba Partnership's Ruth & Robinson" published 15/3/16

Ham and High "Calls to reopen iconic Black Cap pub as links to Russian billionaires' offshore cash revealed"

Time Out "There are plans to re-open iconic LGBT pub The Black Cap" published 19/1/17

Camden New Journal "Protest to mark three year anniversary of Black Cap pub closure" published 12/4/18

*Web articles listing 'pubs to visit'*

Outmag.co.uk listing for Bars and Clubs: North London

Londondrum.com listing for The Black Cap Pub

*YouTube Videos*

YouTube videos from 1992 (published in 2008), 2007, 2011, 2014 and 2015 show recordings of cabaret performances on the stage.

#### **4. Council's Evidence**

- 4.1. There is no enforcement action on the subject site however the following planning history is relevant.
- 4.2. **8903652**: The 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 extension to provide additional toilet accommodation for the existing public house. Granted 22/03/1990
- 4.3. **9003221**: The modification of additional Condition 01 on the planning permission dated 5th April 1990 for use of part of the first floor as a restaurant to permit the use between the hours of 9 a.m. and 1 a.m. the following day. Granted 23/08/1990
- 4.4. **9500223**: Formation of a roof garden ancillary to the Class A3 use of the remainder of the building and associated works. Granted 26/05/1995
- 4.5. **9501984**: Proposed new entrance doors to front elevation, fire escape from first floor roof garden to rear fire exit and installation of air conditioning plant to flat roof of rear ground floor toilets. Granted 29/03/1996
- 4.6. **PE9700816**: Installation of hard awning over existing roof garden at rear first floor level and erection of planter. Granted 08/12/1997
- 4.7. **PE9900364**: The installation of a glazed canopy over the existing roof terrace at rear first floor level. Granted 26/07/1999
- 4.8. **2005/2817/P**: Section 73A application to vary condition 1 (opening hours) of planning permission dated 5th April 1990 (ref: 8903652) for use as a restaurant / bar allowing opening between 10.00 - 03.30 Mon - Thurs, 10.00 - 04.30 Fri - Sat and 10.00am - 02.30 Sunday. Granted 03/10/2005
- 4.9. **2006/4571/P**: Variation of condition 1 of planning permission ref: 8903652 dated 05/04/90 (hours of operation) to allow opening between 10.00-02.30 Mondays to Thursdays, 10.00-03.30 Fridays and Saturdays and 10.00-01.30 on Sundays. Granted 04/12/2006
- 4.10. **2012/1444/P**: Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at

first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 16/05/2012 Appeal dismissed 04/03/2013

- 4.11. **2013/0262/P**: Change of use of part first floor, second and third floors from bar/restaurant and ancillary accommodation to residential to provide 2 x 1 bedroom flats and 1x 2 bedroom maisonette with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 20/03/2013
- 4.12. **2014/2176/P**: Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 03/03/2015

## 5. Statutory provisions

- 5.1. Section 149 of the Equality Act 2010, sets out the Public Sector Equality Duty (PSED). A public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.2. While the statutory duty is noted, the decision on a lawful development certificate is a determination of fact.

## 6. Assessment

- 6.1. The NPPG makes it clear that while an applicant is responsible for providing sufficient information to support an application, a local planning authority is entitled to canvass evidence if it so wishes before determining an application.
- 6.2. Officers have canvassed evidence via a questionnaire. The questions included in the questionnaire can be found in appendix 1. The questionnaire was disseminated by The Black Cap Foundation (BCF) and the Camden LGBT Forum. Camden LGBT Forum used an online questionnaire tool (Survey Monkey) to gather the information. In a number of cases, The Black Cap Foundation transcribed the answers provided by respondents who were asked the questions over the telephone. Thirteen responses were received via the questionnaire distributed by the BCF and a further 42 responses were received via the LGBT Forum. The questionnaire responses are set out in appendix 2 and 3. One of the respondents to the LGBT Forum questionnaire (respondent 32) was the same respondent who provided an answer to the questions distributed by the BCF (respondent L).

- 6.3. The names of the respondents have been redacted for reasons of confidentiality. Their names have been replaced by an identifying letter or number in this report. The evidence from the questionnaires has been shared with the applicant's agent to give them the opportunity to comment on it.
- 6.4. The BCF included a 2 page introduction to the Council's questions. This introduction was not agreed with the Council and the sentiment expressed was partial and could have affected the responses given. Nevertheless, the introduction did emphasize the importance of answering the questions fully and honestly. The level of detail in the responses received and the general conformity between the responses, gives officer's confidence in the quality of the information provided.
- 6.5. The BCF subdivided some of the Council's questions into two parts. This is likely to have been done in order to help the respondent answer the question more fully. The BCF also added three additional questions relating to the rest of the building and its character: question 8 asked about how the other (non-public) parts of the building were used; question 9 asked about it as an LGBTQ+ venue (How, if at all, was the use of the building different to a non-LGBTQ+ pub, bar, club, or performance venue?); and question 10 asked for anything else (Thinking about your experience of the Black Cap over the years, is there anything else you remember about how the building was used that might help someone understand whether it was used as two separate things (a performance venue and a pub) or a single integrated business?)
- 6.6. The evidence gathered via the BCF was more detailed and is accorded more weight as the people who responded were generally more closely connected with the use of the subject property. The responses received came from a range of informants including those who were regular visitors, these include a professional critic of live performance (respondent 'I'), outreach worker (respondent '13') and those who worked at the Black Cap as a barmaid / supervisor / night office (respondent 'G'), performers (respondents 'E', 'G' and 'H'), a producer (respondent 'M') and a DJ (respondent 'K'). Respondents covered a time period from early 1980s until the time The Black Cap closed (April 2015).
- 6.7. It is noted the questionnaire disseminated by the Camden LGBT Forum inadvertently missed out one of the questions: How was the first floor (bar / terrace) used during the evening / night? While this omission is unfortunate it is not considered otherwise to undermine the usefulness of the 42 responses provided via the LGBT Forum.
- 6.8. Council's comment on the applicant's evidence
- 6.9. The applicant's submission does not provide evidence of how the property was used. Rather, the applicant relies on the fact that various official bodies have referred to the Black Cap as a public house in formal communications and records. This includes the following:
  - Historic England,
  - Asset of Community Value (ACV) records,
  - Planning application history
  - Planning appeal history



- Business rates
- Premises licence
- Utility bills
- Fire Risk Assessment Report
- Electrical Inspection Reports
- Food Premises Inspection Report

- 6.10. With the exception of the planning submissions, none of the organizations who issued these documents were making an assessment of the lawful use of the building. The fact that the property was known as a Public House on official records is likely to reflect the fact that a pub has existing on this site since at least 1873 (it is shown on the first edition 60 inch ordnance survey). According to the Camden Town Conservation Area Appraisal and Management Strategy (adopted 4<sup>th</sup> October 2007), the current building dates from 1889.
- 6.11. Several of the submissions provide evidence for the building's role as a venue for drag and cabaret performances. For example the ACV states: "*it is no ordinary gay pub as it also plays an important cultural role as a renowned venue for drag and cabaret performances*".
- 6.12. Likewise the officer's report for planning application ref: 2012/1444/P describes the site as follows: *There is an existing cabaret/nightclub at ground floor level with the public house and restaurant at first floor, ancillary accommodation and office space is located at second and third floor levels.*
- 6.13. The asset of community value correspondence and report are of limited assistance for while they do touch upon issues similar to those that are part of this assessment, there are significant differences. When the ACV nomination was discussed and reported different statutory questions were considered and the focus was on use benefitting the local community rather than establishing the precise lawful use of the building. The assessment of this application involves not judging whether the building is an asset of community value but what its lawful use is and whether it falls within a certain planning Use Class.
- 6.14. The officer's report for planning application ref: 2012/1444/P includes the following in the assessment section:
- The site as existing operates as a cabaret and nightclub (use class D2) on the ground floor with restaurant and pub on the first floor (use class A3/A4) with ancillary accommodation on second and third floors. The planning history for the site does not indicate when the ground floor pub use altered to a nightclub. Planning permission granted in 1989 (reference 8903652) for the change of use of the first floor residential/office into a restaurant and subsequent applications for the extension of opening hours identify that the first floor has been operating as a pub/restaurant for over ten years and is therefore the lawful use.*
- 6.15. Given the above assessment, it is entirely appropriate that the officer referred to Policy DP15 (Community and leisure uses) of Local Development Framework 2010 as the application was seeking a change of use of first, second and third floor from bar/ restaurant use and ancillary accommodation to residential. In this context, the loss of the pub use and community space at

first floor needed to be assessed against Policy DP15 which refers to loss of pubs in the supporting text: *We will also resist the loss of local pubs that serve a community role (for example by providing space for evening classes, clubs, meetings or performances)* (Paragraph 15.7). The application was subsequently refused as ‘the pub and restaurant use at first floor level is considered to serve the needs of a specific and local community’. This decision reflects the proposed development and the officer’s description in the assessment section of the report: *The site as existing operates as a cabaret and nightclub (use class D2) on the ground floor with restaurant and pub on the first floor (use class A3/A4) with ancillary accommodation on second and third floors.*

- 6.16. In the appeal APP-X5210-A-2184317 (regarding the refusal 2012/1444/P), the inspector notes that the “*current ground and first floors are different in nature with the first floor being a more traditional bar. The Council’s view is that the ground floor should be viewed as a sui generis use (cabaret/dance bar) but the difference between this and an A4 use with live music are matters of fact and degree and there have been no formal Council determinations on the current use of the ground floor*” (emphasis added).
- 6.17. The premises licence refers to the music and dance licence and the Fire Risk Assessment refers to a cabaret bar on the ground floor. None of the submitted evidence substantiates the cabaret dance bar as ancillary to the public house use or that there are two separate planning units (the bar at first floor and cabaret dance bar at ground floor). While it is clear that the site was often referred to as a Public House or The Black Cap Public House, this may be a form of shorthand and in any event these descriptions do not amount to an assessment of what the lawful use of the property was and what Use Class this falls within, which is a decision for the local planning authority and must be a question of fact and degree.
- 6.18. It is noted that the ‘Planning, Design and Access Statement’ prepared by Faucet Inn dated March 2014 submitted for planning application ref: 2014/2176/P provides the most up-to-date record of how the building was used. This did not form part of the applicant’s evidence but is publicly available on the Council’s website. This statement includes the following:
- Entering in off the street there is a lobby. The ground floor beyond the lobby is laid out as a bar/club and extends the full depth of the plot. Also accessed off the lobby is an internal staircase leading to the first floor bar area.*
- 6.19. The ‘Planning, Design and Access Statement’ identifies areas (by way of annotated plans) which appear on the ‘Plans dated April 2013’ (submitted by the applicant as evidence for this application but which lacked annotation to identify some of the areas). These documents therefore provide further information on the use of the upper floors. At second floor level there is a kitchen and office in their most recent location (the dumb waiter whilst not annotated can nevertheless be distinguished from its context); at third floor level that are 2 bedrooms shown which open onto a roof terrace. The ‘Planning, Design and Access Statement’ dated March 2014 is included as appendix 4.

- 6.20. Over the course of the application the applicant has been in discussion with officers and following officer's comments has put forward an expanded description:
- 6.21. ***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.***
- 6.22. While it not entirely clear from the description what lawful use the applicant is trying to establish, the general thrust of the submitted report and the submitted evidence is that lawful use of the property is as a Public House (Use Class A4) with cabaret uses at ground floor.
- 6.23. The Planning Practice Guidance advises local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant. The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.
- 6.24. Site visits to the property were undertaken on the 4<sup>th</sup> April 2016 and 31<sup>st</sup> May 2017.

#### The Town and Country Planning (Use Classes) Order

- 6.25. The Town and Country Planning (Use Classes) Order 1987 specifies classes for the purposes of section 55(2)(f) of the Town and Country Planning Act 1990. The 1987 Use Classes Order included Class A3 'Food and drink Use' for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises. This principal Order was amended by the 2005 Amendment Order splitting the former A3 use class (food and drink), into three new classes; Class A3 use as a restaurant or café, Class A4, use as a public house, wine-bar or other drinking establishment; and Class A5, use as a hot food takeaway. It is noted that the 1987 Order included part 3(6) setting out uses which did not fall within any specified class to which the 2005 Amendment Order added 'use as a night-club'.

#### Definition of the planning unit

- 6.26. The judgment *Burdle & Williams v SOS and New Forest RDC* 1972 provides the seminal guidance on the identification of the correct planning unit for the purposes of assessing whether the use made of land is lawful. As a general guide the 'unit of occupation' should be considered the appropriate planning

unit unless some smaller unit can be distinguished both physically and functionally. The judgement includes the following:

*What, then, are the appropriate criteria to determine the planning unit which should be considered in deciding whether there has been a material change of use? Without presuming to propound exhaustive tests apt to cover every situation, it may be helpful to sketch out some broad categories of distinction.*

*First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from G. Percy Trentham Ltd. v. Gloucestershire County Council [1966] 1 W.L.R. 506, where Diplock L.J. said, at p. 513:*

*“What is the unit which the local authority are entitled to look at and deal with in an enforcement notice for the purpose of determining whether or not there has been a ‘material change in the use of any buildings or other land’? As I suggested in the course of the argument, I think for that purpose what the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose.”*

*But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.*

*Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.*

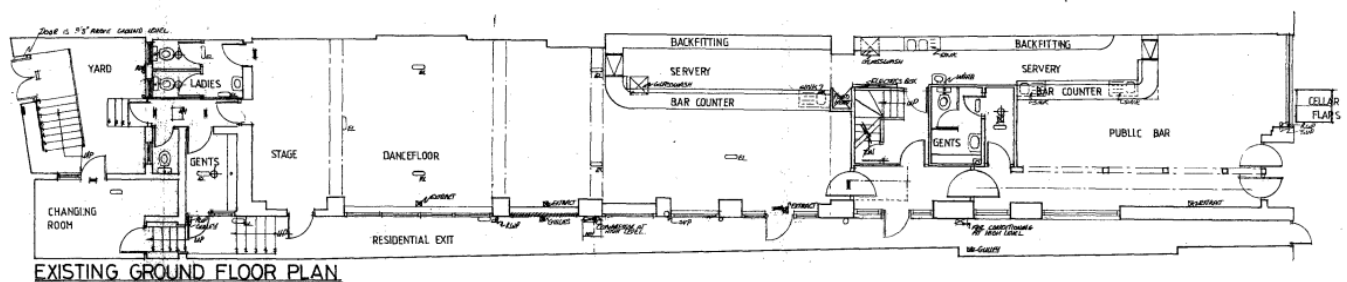
*To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree. There may indeed be an almost imperceptible change from one category to another. Thus, for example, activities initially incidental to the main use of an area of land may grow in scale to a point where they convert the single use to a composite use and produce a material change of use of the whole. Again, activities once properly regarded as incidental to another use or as part of a composite use may be so intensified in scale and physically concentrated in a recognisably separate area that they produce a new planning unit the use of which is materially changed. It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.*

6.27. Taking the categories outlined by the ‘Burdle & Williams’ judgement in turn.

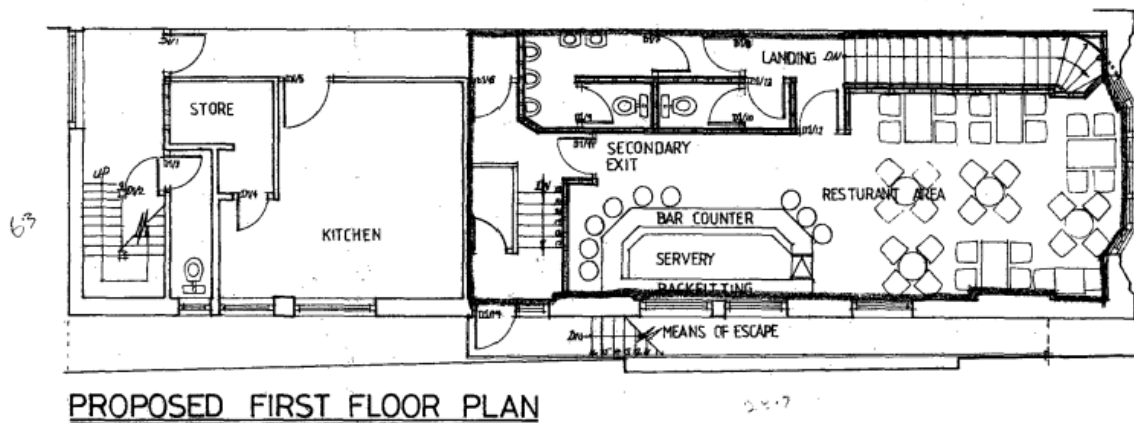
- 6.28. **Is there a single main purpose of the occupier's use of 171 Camden High Street to which secondary activities are incidental or ancillary?**
- 6.29. The primary uses of land often embrace one or more ancillary activities. The focus of planning control is on the primary uses of the planning unit rather than ancillary uses. The concept of the planning unit is judge made but correct identification of the planning unit is an essential step in determining the lawfulness of a given use.
- 6.30. The judgment as whether a use is ancillary to another, or not, is one of fact and degree and thus fact sensitive.
- 6.31. The applicant asserts that the ground floor was used as a cabaret dance bar and the first floor was used as a public house.

The floorspace of cabaret dance bar (ground floor) / public house (first floor)

- 6.32. The planning permission (ref 8903652) granted on 22/03/1990 shows how the building was laid out prior to the change of use of the first floor (from ancillary residential and office use to restaurant). The existing ground floor plan submitted with this application (drawing number 2015/9 dated October 1989) shows a public bar at the front of the site and a separate bar with dancefloor and stage (with changing room) at the rear of the site (all these elements are annotated on the 'existing plan').



- 6.33. Following the creation of the restaurant on the first floor, the size of the ground floor element providing bar and stage was significantly increased. The applicant asserts that the ground floor was used as a cabaret dance bar. This is not a point of contention and is supported by evidence from the questionnaires.



- 6.34. While permission was granted 22/03/1990 for a restaurant at first floor level and this is how it was laid out, as shown in the proposed plans set out above (planning ref 8903652), it is nevertheless noted that the A3 Use Class (before it was split by the 2005 Amendment Order) was for 'food and drink use'. This is evidenced by the planning permission granted on 26/05/1995 for 'formation of a roof garden ancillary to the Class A3 use of the remainder of the building' (planning ref: 9500223). It is clear from the questionnaire evidence that while food was an important part of the first floor business, nevertheless the use of the first floor would more clearly fall, following the 2005 Use Class Order amendment, within the A4 Use Class 'use as a public house'. The first floor was known as the 'Shuffelwick Bar' and was named after a well know drag performer, Mrs Shuffelwick (the roof terrace granted permission in May 1995 (planning ref: 9500223) was known as the 'Fong Terrace' (and was named after another well know drag performer, Regina Fong).
- 6.35. The floorspace of the cabaret dance bar is significantly greater than that of the upstairs bar. On the plans dated April 2013, submitted as evidence for the current application, the floorspace of the ground floor is annotated as being 154sqm and the floorspace of the first floor bar is shown as 84sqm. However taking into account the covered terrace area (annotated 'beer garden' on the plans dated April 2013), the floor area of the ground floor is not appreciably greater than the area of first floor bar and covered beer garden. On the basis of floorspace it does not appear that the cabaret dance bar was subordinate to the first floor bar.
- 6.36. Use of ground floor and first floor
- 6.37. In terms of how the ground and first floor were used the evidence from the questionnaires is helpful. Until the property was sold by Mitchell and Butlers, cabaret performances were scheduled for Tuesdays, Thursdays and Fridays with some cabaret on Sundays. There would be DJ sets after the performances and dancing. It is clear from the questionnaires that there was an entry charge for the ground floor after a certain hour. The majority of the respondents refer to the ground floor as a cabaret / club area and as a club space. Some of the relevant responses are provided below.

*Under Mitchell & Butler, the schedule was: (provided by respondent 'G')*

- *Monday: Massive Mondays, a student night, all drinks £1.50 until midnight*
- *Tuesday: one of the resident cabaret artists would perform*
- *Wednesday: karaoke*
- *Thursday: one of the resident cabaret artists would perform, any spirit + mixer £2 until midnight*
- *Friday: a big name cabaret act would perform*
- *Sunday: there would be some cabaret, nothing special because most of the cabaret audience would be at Halfway 2 Heaven and then come to the Cap after the performances there were over*

*A range of different alcoholic and soft drinks were served though no food was available on the ground floor. (respondent 'L')*

*Every night there would be DJ sets after the performances. (respondent 'G')*

*After the drag shows the DJ started and everyone danced. (respondent 'A')*

*The cabaret/club area would open as the main bar around 8pm was free until around 10pm when a small fee was levied. (respondent 'K')*

*The ground floor space hosted big fundraising events and one off parties for different events such as Eurovision. (respondent 'L')*

*I attended club nights, comedy performances and many, many cabaret and drag performances on the ground floor of The Black Cap. (respondent 'L')*

*The ground floor was used for live DJ, cabaret and drag performances. Typically a DJ would open the evening and then introduce on stage a drag act or series of performers who would then entertain the audience. After the act/acts had completed their performance the live dj would then continue their set. (respondent 'L')*

*The ground floor, being the main event consisted of the long bar, dance floor and stage. In my days we drank, smoked danced and enjoyed the many acts and DJ's. (respondent 'H')*

*Well, it was open until 3 a.m. downstairs, so it there usually was something. If not cabaret specifically, there were karaoke nights on Wednesdays. The cabaret was always followed by a dancing until the end of the world. (respondent 'D')*

*The cabaret bar was used from 9pm initially then from 10pm for DJ entertainment followed by cabaret, the area provided a good size dance floor and a quality sound system which would compete well with a west end venue. Theme nights and charity fundraisers were common throughout the year. (respondent 'J')*

*As a customer I used the upstairs bar space for meetings during the day, as well as socialising and relaxing and meeting members of my community during the evening, and used the downstairs club space for socialising and dancing. (respondent 'M')*

*Long bar, perch on stool watch people coming and going. Gay magazines left-hand shelf. At end of bar there's a dance floor, behind that a stage, toilets on right. The dance floor was in use for dancing when stage not in use. People would stand on dance floor and watch drag artist. (respondent 'C')*

*The club space was usually used much more for dancing and drinking, as well as the space to head to when you wanted to see a show. (respondent 'M')*

- 6.38. The Land Registry shows that the site was sold in 27<sup>th</sup> September 2010 by Mitchells and Butlers Retail Ltd to Kicking Horse Ltd. Faucet Inn are understood to be the company employed by Kicking Horse to manage the property. After Faucet Inn took over the management of the property, according to 'G' who was employed there at the time the performance schedule was reduced. Karaoke was increased to two nights a week and for a time there was no cabaret on Thursdays. They also added an open mic night. From 2011 there were sometimes live bands as well. According to 'M' (who was both a customer and the producer of Meth Lab), the upstairs bar was the only part of the venue open on Sundays, Monday, Tuesdays, Wednesdays and some Thursdays. However the same respondent stated the ground floor was used on some weeknights for performance events and that the ground floor was used on Thursdays for club events and for performance events (Meth Lab). The ground floor opened on Fridays and Saturdays for regular club nights. The responses from 'M' are provided below.

*The club space would also open for specific events on a Sunday (one event called GiveltAGo used to run downstairs on a Sunday, a night for new performers). It would also open on a Thursday night for club events (usually at 10pm-3am) again, and for specific performance events such as The Meth Lab it would open at 8pm and close around 2am. (respondent 'M')*

*The ground floor was used on some weeknights (Sunday, Monday, Tuesday, Wednesday) from earlier (around 8pm) for performance events that usually finished earlier (around 11pm/midnight). These were sometimes one-off or pop-up events or for specific performances (such as The Meth Lab, Drag Idol, or Halloween). If there wasn't a specific night running here, however, the space would not be open to the public, and the Shuffelwick Bar would be the only space open. (respondent 'M')*

*It would often open on a Thursday night for performance events such as The Meth Lab that would be earlier shows working on a similar timeframe as weeknight events (8pm-midnight). It would also sometimes open for later club events that fit more into a weekend schedule, opening from 10pm and running later into the events until around 2am or 3am (depending on the event or the popularity. (respondent 'M')*

*Fridays and Saturdays had regular club nights and the space would open from 10pm – 3am. This would involve performances, DJs and other events and usually ran on a rolling monthly set of events (e.g. same event on the first Saturday of every month, second Saturday of every month etc.). (respondent 'M')*

- 6.39. Hours of use



- 6.40. The hours of use of the ground floor was late evening starting at 9 or 10 pm and finishing between 1am and 3am depending on the night of the week. The hours of the first floor were from 12 noon until 10-11pm depending on the night of the week and how busy it was. In terms of opening hours, the first floor bar had longer opening hours. However, it is reasonable to assume that the majority of the customers did not make use of the daytime opening and visited after normal working hours.
- 6.41. Is the single main primary use of the property a public house to which the ground floor cabaret dance bar is ancillary?
- 6.42. The evidence shows that throughout the relevant period, there was a single unit of occupation. There is no suggestion that any part of the building was occupied separately from the remainder, with the staff accommodation being ancillary to and accessed through the building.
- 6.43. The use of the basement and first to third floors were as follows. The basement had cold stores and was as storage for beer and stock, the second floor was used as a kitchen, two offices, and two rooms of staff accommodation plus bathroom and the third floor use was used as two rooms of staff accommodation. It is accepted that these uses were ancillary to the primary activities carried on in the planning unit.
- 6.44. It is agreed by the applicant and the Council that the ground floor was used as cabaret dance bar. A cabaret dance bar does not fall within any specified class. To determine whether the ground floor cabaret dance bar is ancillary to the first floor pub, it is necessary to have regard to the nature and scale of the cabaret dance bar activity and its relationship to the public house use. Whilst an element of live entertainment would be regarded as ancillary to most A4 uses and this might include use of some of its floorspace as a dance floor or stage, the nature and scale of the cabaret dance bar use of the building is such that on the facts here it cannot be said to be ancillary to the A4 public house use. The ground floor was in effect a well-used dedicated cabaret dance bar of comparable size to the first floor public house use. This is particularly the case before Faucet Inn took over the management of the property (September 2010) when the ground floor was open for cabaret or club nights every night of the week. Following the management by Faucet Inn, it has been reported that the ground floor was not always open Sunday to Thursday. But that it was always open on Friday and Saturdays. Taking into account that the use of the ground fluctuated more after the change in management, it is nevertheless concluded that even at its reduced level of 2-3 nights a week the cabaret / club use of the ground floor operated in a way which was not ancillary to the use as a public house. As a matter of fact and degree, the cabaret use and club space use with music and dance was not ancillary to the use as a public house.
- 6.45. Is the single main primary use of the property a cabaret dance bar to which the first floor bar is ancillary?
- 6.46. It is also relevant to consider whether the single main primary use of 171 Camden High Street is as a cabaret dance bar to which the first floor bar is ancillary. The longer opening hours of the first floor (12 noon until 10-11pm)

and the significant floorspace of the first floor bar and 'beer garden' would not support this conclusion. The evidence provided by the questionnaire also underlines the nature and importance of the first floor bar.

*The Shufflewick bar in 1994 was 11am till 11pm Monday till Saturday and 11am till 10.30pm on a Sunday. After the opening of the terrace and the expansion of the first floor bar the opening times in the upstairs bar were 12noon till 12 am, on Sundays till 11pm. (respondent 'J')*

*Food was served in the first floor bar and terrace from 12 or 1 pm until about 8 or 9 pm and drinks were served there all the time the bar was open. (respondent 'G')*

*Music and music videos were played; I would press a button in the cabaret bar DJ box and the show would be live streamed up to the upstairs bar area. (respondent 'K')*

*In the summer - barbecues on the terrace (respondent 'G')*

*Terrace popular with smokers when the smoking ban was introduced (respondent 'J')*

*Used by community groups: The Left Footers gay football team used the bar like it was their base. There was also a gay Christian group that used to meet there a lot. (respondent 'G')*

*The upstairs wasn't really laid out as a performance space but towards the end of my time we did sometimes use it for little performances, like Mrs Shufflewick used to do in the 1970s. (respondent 'G')*

*The roof terrace and bar were also available for special event hire. It was also used as a meeting space formally and informally for members of the LGBTQ+ for meetings – I used it personally as a Central meeting space for various performance and research-based projects, as did many others. (respondent 'M')*

- 6.47. It is also clear from the evidence the first floor bar operated without the use of the cabaret dance bar during the daytimes and early evenings and may have been the only part of the venue open on certain days.

*This was often the only part of the venue open Sunday, Monday, Tuesday, Wednesday and some Thursdays. (respondent 'M')*

- 6.48. It is therefore not possible to recognise a single main purpose of 171 Camden High Street to which secondary activities are incidental or ancillary. From the questionnaire evidence it is not concluded that the cabaret dance bar was ancillary to the public house or that the public house element was ancillary to the cabaret dance bar.

**Is there a mixed or composite use of the planning unit?**

- 6.49. The second broad category provided by the ‘Burdle & Williams’ judgement is a composite use. For clarity, the text from the judgement in relation to this category is provided again below.

*“it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land”.*

- 6.50. There is here a single unit of occupation and the facts support a conclusion that the second Burdle category applies. The analysis above indicates that the entire unit of occupation should be considered as it is not possible to say that the use of the ground floor as a cabaret dance bar is incidental to the use of the remainder of the building as a public house. Conversely it is not possible to say the use of the first floor (and basement and upper floors) as a public house is incidental to the use of the ground floor as a cabaret dance bar.

- 6.51. While the ground floors primary use was as a cabaret dance bar (operating between the hours 9 or 10 pm and finishing between 1am and 3am), it is clear from the questionnaire evidence that this space was also used during the daytime for rehearsals or meetings and occasionally for private events as well as by customers moving freely between ground floor and first floor when both floors were operational.

*The cabaret/club area was often used in the day for show and act rehearsal. Local groups used it when not booked for rehearsals. (respondent ‘K’)*

*The ground floor was usually closed to the public during the daytime for cleaning and to set up for the various Club nights. It was also used for rehearsals. The Drama Queens rehearsed there on Tuesdays and Saturdays regularly. There were occasionally, private events during the day eg. wakes for members of the local lgbt community. Camden Crawl hired the venue annually for a live music festival. (respondent ‘G’)*

*The ground floor would often be used as an informal or more formalised rehearsal or meeting space at the discretion of the manager/deputy manager. For example during the pantomime in 2014 the performers would rehearse using that space. I had also known other groups of people rehearse here during the day that I know weren’t necessarily linked to shows in the space but at other theatre venues. (respondent ‘M’)*

*The cabaret/club area was often used in the day by local groups such a Camden LGBT Forum, and local LGBT church groups for meetings or as a rehearsal space for performers such as the Gay Men’s Chorus. (respondent ‘B’)*

- 6.52. In addition, while the ground floor was primarily used as cabaret dance bar, there were times when there was no cabaret or drag performance and there were times when rather than DJs, music was provided from a playlist instead. As stated above, the ground floor was frequently referred to as a club space. It was also used on a regular basis for karaoke nights. The questionnaire

included the following question: 'Was the ground floor ever used without live entertainment (performers / DJs)'. Some of the answers to this question are provided below. Some of the respondents stated that it was used without live entertainment.

*Yes. People used it equally as a regular pub/venue and a gay social space/venue. (respondent 'I')*

*Yes. On one night a week there was karaoke (not sure if that counts)  
Karaoke nights on Wednesdays (respondent 'C')*

*Loverboy magazine had its premiere there. They opened at 6 and it was invitation only but then they opened the doors for everyone from 10 p.m. As usual. (respondent 'D')*

*If there was a club event on downstairs, there was usually some form of event and live entertainment. It was open once or twice as a bar space with football showing at times, but for more relaxed drinking you would use the upstairs space. (respondent 'M')*

*From when I first visited The Black Cap in 2006 until about 2012 live performances took place nightly. One night was set aside for karaoke/open mic performance and on the other nights there were live cabaret and drag performances. From 2012 until 2015 there were sometimes one or two nights a week where a live DJ would play without there being a live cabaret or drag performance on stage. (respondent 'L')*

*Under Faucet Inn there were also some nights when it was just DJs, no live performance. There was never a night when there was no entertainment at all, even if it was just one of us pressing 'play' on a playlist in the DJ booth. We had a sign outside saying 'London's premier cabaret establishment' – we weren't in the business of not doing live entertainment! ((respondent 'G')*

### **Were there two planning units within 171 Camden High Street?**

- 6.53. The third broad category referred to in the 'Burdle & Williams' judgement is two or more planning units within a single unit of occupation. For clarity, the text from the judgement in relation to this category is provided again below.

*Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.*

- 6.54. While the ground floor and first floor use of 171 Camden High Street were used for different purposes these uses were clearly not unrelated rather they were mutually supportive. The first floor served food and drink and was open from noon. It therefore provided a daytime space for socialising as well as a quieter space in the evenings. While there was no entry charge for the upstairs bar, there was an entry charge for some events on the ground floor and it is evident that the ground floor cabaret performances and club nights providing music and dance were a big draw for customers and contributed to

the venue's distinctive character. It is unclear whether the ground floor always levied a door charge but at least one respondent stated door charges did not apply during the week.

*Customers would frequently use both floors on the same visit. Typically they'd come to the first floor to eat and drink and socialise and then they'd go downstairs to watch cabaret and party and dance. When we closed the upstairs bar people would either go downstairs or go out onto the terrace. (respondent 'G')*

*You could always move between the two floors. Upstairs was never exclusive. There was no exclusivity about the Black Cap! It there was a ticketed event downstairs like Camden Crawl then you'd have to pay at the door but then you could still go upstairs too. They'd sometimes have security people to make sure customers didn't go down from the terrace and into the ground floor via the fire escape without paying. But that was rare, having ticketed events. (respondent 'G')*

*The only difference in the two floors I can remember is that there was no charge to go upstairs to the Shufflewick bar but we paid £3 or £4 for entry downstairs. (respondent 'H')*

*On the occasions that I visited The Black Cap I liked to visit both the first floor and the ground floor. I would first visit the first floor and especially liked to sit on the famous Fong Terrace. Usually during the week there were no restrictions on moving downstairs as door charges didn't apply. The weekend evenings tended to differ as door charges applied to enter the ground floor space. Sometimes from 2013 the ground floor space couldn't be entered on Saturday night as tickets had been sold out in advance. On nights when tickets for the ground floor space were no longer available it was possible to go upstairs to the first floor bar. (respondent 'L')*

*The upstairs bar was usually open for everyone and therefore if you went downstairs you could usually use the upstairs space whilst it remained open as a quieter breakout space (although it would usually close around 11pm). (respondent 'M')*

*Usually events in the downstairs space would be ticketed or would charge entry and therefore if you did not have a ticket or did not want to pay entry you would be restricted to the upstairs space. However, usually if you had been using the upstairs space you could get a reduced entry price into the downstairs space. (respondent 'M')*

*On rare occasions the entire venue was booked for an event and therefore payment or tickets were required for a general entry. (respondent 'M')*

*If you wished to use both bars you could whilst within their opening times, a customer would need to pay however to enter the cabaret bar when the DJs began their set or when cabaret began. (respondent 'J')*

*A customer could leave the cabaret bar and go back upstairs if they wished, whilst the bar was still open. Customers could move between the two bars. (respondent 'J')*

*Usually the upstairs space was a quieter space in the evenings that would allow people who didn't want to full experience of a club a softer place to socialise beyond the noise and heat of a full club event. Many people would use this upstairs space for those purposes, with the roof terrace space being well used on any evening with a club night as a quieter, cooler, break out space for conversation and socialisation. (respondent 'M')*

*The club space was usually used much more for dancing and drinking, as well as the space to head to when you wanted to see a show. (respondent 'M')*

*During the week this would mean often only using the upstairs space, with less chance of events on a Monday, Tuesday or Wednesday. However it was possible to guarantee some form of show usually every Thursday, Friday and Saturday at the downstairs space and I know people who just went to the Black Cap without looking up what was on since a show would be guaranteed. Its identity as a performance space was key to its success and the reason people went back again and again. (respondent 'M')*

6.55. From the above questionnaire responses it is evident that the purposes of the ground and first floor were not unrelated, on the contrary they were mutually supportive and mixed together to provide an overall experience. There was not sufficient physical or functional separation to support a finding that there were two planning units. While the first floor bar can be independently accessed from the entrance foyer, the bar and the uses on the upper floors and basement are physically related to the use on the ground floor. That is to say, the basement beer store can only be accessed from a staircase from within the ground floor cabaret dance bar and therefore the first floor is functionally and physically dependent on access to the ground floor 'cabaret dance' space. Likewise, the ground floor is functionally linked to the second and third floors which provide ancillary office and staff accommodation. The second and third floors can only be accessed from within the first floor. On the basis of how the ground floor and first floor were used and how they are accessed, both uses are within the same planning unit which is the unit of occupation.

6.56. LGBTQ+

6.57. The Black Cap Foundation have made representations that an accurate description of the property's use must include its use as an LGBTQ+ venue. The use of the premises for LGBTQ+ related activities is beyond the scope of the Lawful development certificate classification. In land use planning terms, the focus is on the character of the land use and the particular users of premises is a material consideration in the assessment of the lawful use or otherwise of the premises only if that affects the character of the use of the land itself. There is no evidence that the LGBTQ+ association with the building affects its land use character, and as such it would not be appropriate for there to be reference to it in the description of development.

## **7. Conclusion**

7.1. While some of the applicant's evidence refers to the Black Cap as a pub or public house, these references were without detailed descriptions of the

nature or the use. This evidence was submitted to support the use of the land in planning terms but none of the organizations who issued these documents were making an assessment of the nature or the use. Therefore only limited weight can be attached to such evidence (which names the use rather than providing a detailed description of the use).

- 7.2. Assessing the application in the light of the guidance in 'Burdle & Williams' judgement, it is concluded that there is not a single main purpose carried out at the subject property. Rather 171 Camden High Street is used for a mixed or composite use as a cabaret dance bar club use at ground floor and public house use at first floor. The two use are interrelated and mutually supportive, but their relationship scale and character of these uses is such that neither of them could be correctly viewed as ancillary to the other. The evidence demonstrates that the mixed or composite use began more than ten years before the date of this application and has continued throughout the relevant 10 year period.
- 7.3. A mixed use or composite is a sui generis use. Thus although one or both uses looked at individually may fall within a Use Class, their joint operation is held to mean that the combined use does not.
- 7.4. Section 191 (4) of the Town and Country Planning Act 1990 allows the Local Planning Authority to substitute or modify the description put forward by the applicant. In this case the following description is considered to be the lawful use. This description is based on the evidence and describes how the property has been used for a period of 10 years or more.

**A mixed use of the premises as a cabaret/dance venue, club, bar/ community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community uses with toilets at the rear and use of the first floor as a bar and community space (including toilets) and use of the first floor external terrace as a drinking / smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as kitchen, two offices, and two rooms of staff accommodation plus bathroom and the third floor as two rooms of staff accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar / community space and public house (Sui Generis).**

8. **Recommendation:** Grant lawful development certificate with modified description as set out above.