

**RE: 101 BRECKNOCK ROAD,  
LONDON N7 0DA**

**PINS REF: APP/X5210/C/18/3207640**

**STATEMENT OF COMMON GROUND**

**BETWEEN THE APPELLANT AND  
THE LOCAL PLANNING AUTHORITY**

**DATED 6 SEPTEMBER 2019**

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## **1 THE APPEAL SITE AND SURROUNDING AREA**

- 1.1 The appeal property comprises the ground floor of a four storey Victorian building that is located on the corner of Brecknock Road and Torriano Avenue. The upper three floors of the front façade are constructed from London stock bricks, with plastered architraves. The ground floor is finished in stucco, which is painted grey/blue, with pilasters marking corners on the doorways. As a result of the works to the building exterior (the works which are the subject of this appeal) the large shopfront type windows and door have timber boarding surrounding them, both below and between.
- 1.2 The ground floor and basement of the building was previously in use as The Leighton Arms. It is now in use as a convenience store (A1), with the cellar used partly for refuse/recycling storage. A planning permission granted on appeal App/X5210/W/15/3095453 allows a conversion of three upper floors of the building to residential flats.
- 1.3 The character of the immediate area is predominantly residential. Brecknock Road forms the boundary between the historic low rise development and the generally 1950s blocks of flats to the east. These flats are typically set within gardens and set back from the pavement edge. Development in Torriano Avenue, and surrounding streets, comprises largely of four storey buildings in height and although built as single - family dwellings have subsequently been converted to flats. This includes the building on the opposite corner, which has an additional floor within the roof space built behind the parapet wall. In addition, many have mansard roofs,. On the opposite side of Brecknock Road there is a five - storey block of flats. Neither the existing building, nor the surrounding area has been classed as comprising Heritage Assets (conservation area/listed building).

## **2 PLANNING HISTORY OF THE APPLICATION SITE**

- 2.1 By way of a decision letter dated 11 December 2015, planning permission was granted on appeal for the conversion and extension of the existing pub and residential unit at 101 Brecknock Road (PINS Ref: APP/X5210/W/15/3095242; LPA Ref: 2014/4554/P)). The pub was to remain at ground floor, with new residential flats to be provided in the upper floors of the existing building, as well as a single storey roof extension..
- 2.2 Planning permission was refused under LPA Ref: 2014/5401/P for the erection of two four storey houses. An appeal (PINS Ref: APP/X5210/W/15/3095453) was subsequently dismissed. The application resulted in the removal of the beer garden. A revised application for two four storey houses was subsequently approved by the LPA under Reference 2016/0372/P.

### 3 THE ENFORCEMENT NOTICE

3.1 The Enforcement Notice the subject of the appeal (LPA Ref: EN17/004), records the alleged breach of planning control as:

*"Without planning permission: alterations to the shop front and the change of use of the public house to form a retail convenience store."*

3.2 The reasons for issuing the Notice are stated as follows:

- "1) 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 pub, shopfront and streetscene contrary to policies D1, D2, D3 and C4 of the London Borough of Camden Local Plan 2017 and CPG 1 (Design 2015 updated 2018);*
- 2) The developer has not demonstrated that the use as a 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);*
- 3) 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."*

3.3 The Enforcement Notice is dated 15 June 2018, it was served by the Council on 18 June 2018 and, but for the present appeal, would have come into effect on 27 July 2018.

- 3.4 Paragraph 5 of the Enforcement Notice requires the following steps to be taken within three months of the Notice 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 (of the Enforcement Notice).
  - make good any damage and remove from the property all constituent materials resulting from the above works.
- 3.5 On 20 July 2018, the Appellant submitted an appeal to the Secretary of State against the Enforcement Notice under section 174(2) of the Town and Country Planning Act 1990 (as amended), relying upon grounds (a), (c) and (g).
- 3.6 The Planning Inspectorate ("PINS") issued a start letter dated 3 October 2018 indicating that the appeal would be determined according to the Written Representations procedure.
- 3.7 In accordance with the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (as amended) ("the 2002 Regulations"), the parties submitted their Appeal Statements on 28 November 2018 and their respective final comments on 21 December 2018.
- 3.8 Subsequently, PINS decided that the enforcement notice appeal should be changed to the Inquiries Procedure and a new start letter dated 18 January 2019 was issued.
- 3.9 The Council's and the Appellant's respective Rule 6 Statements of Case were submitted on 21 March 2019.

## 4 RELEVANT PLANNING POLICY

### National Planning Policy Framework (NPPF) (2019)

- 4.1 Within Chapter 2, paragraph 7 of the of the NPPF states: *"The purpose of the planning system is to contribute to the achievement of sustainable development. ... "* To achieve this objective of sustainable development, the NPPF identifies (at paragraph 8) three overarching objectives, namely: an economic objective; a social objective; and an environmental objective.
- 4.2 Chapter 8 of the NPPF, entitled 'Promoting Healthy and Safe Communities', includes paragraph 92, which states (so far as relevant):

*"92. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:*

*(a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.*

*....*

*(c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs."*

### London Plan (2016)

- 4.3 The following policies are considered to be relevant to the appeal:
- Policy 3.1, Ensuring Equal Life Changes for all
  - Policy 7.1, LIFETIME NEIGHBOURHOODS
  - Policy 8.2, PLANNING OBLIGATIONS

### Draft New London Plan 2017

- 4.4 The following draft development plan policies are relevant:
- Chapter 3 Design - Policies D1, D1B, D2

- Chapter 7 Heritage and Culture - Policies HC1, HC3, HC5, HC6, HC7
- Policy DF1 - Chapter 11 - Delivery of the Plan and Planning Obligations

#### **Camden Local Plan 2017**

4.5 The following policies are considered to be relevant to the appeal:

- A1 (Managing the Impact of Development);
- C2 (Community Facilities);
- C4 (Public Houses);
- D1 (Design);
- D2 (Heritage);
- D3 (Shopfronts);
- CC5 (Waste);
- DM1 (Delivering and Monitoring);
- TC5 (Small and Independent Shops).

#### **Camden Planning Guidance**

4.6 The following Supplementary Planning Documents are considered relevant to the appeal.

- CPG 1 (Design); 2015 updated March 2018;
- CPG6 (Amenity) 2011 updated March 2018.
- CPG (Community uses, leisure facilities and pubs)

## **5 PLANNING ISSUES**

5.1 The appeal centres on three fundamental points of dispute:

- (a) Whether the use of The Leighton Arms prior to its closure fell within Class A3 or A4 of the Town and Country Planning (Use Classes Order) 1987 (as amended);
- (b) Notwithstanding the prior use, whether a change of use to a use falling within Class A1 was completed prior to 9 August 2017; and
- (c) Whether planning permission should be granted retrospectively for a change of use to use of the premises as a retail store and the external alterations.



## 6 AGREED MATTERS

### Factual background

- 6.1 The building was in use as The Leighton Arms until March 2016, when it closed.
- 6.2 The Leighton Arms was also the subject of a number of complaints from nearby residents regarding noise and anti-social behaviour.
- 6.3 The Appellant contends that the premises were marketed from early 2016 and that no offers were made for a lease of the premises for use as a public house. The extent of this marketing operation is a matter of dispute between the parties.
- 6.4 The Appellant has provided a copy of an agreement for the lease of the premises, which was entered into by LA Foods on 12 October 2016 purporting to commit LA Foods to take a lease of the premises for twenty years.
- 6.5 A variation to the Premises Licence associated with the building was granted by the Council in March 2017 subject to conditions. The Appellant contends that the conditions were unacceptable to the tenant who appealed the decision and a further variation was granted in October 2017.
- 6.6 The current operation of the premises falls within Class A1 of the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the UCO").
- 6.7 Development comprising a change of use from Class A3 to Class A1 is permitted development under Class A, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO").
- 6.8 At all material times prior to the 23 May 2017, Class A of Part 3 of Schedule 2 to the GPDO also permitted the following development:

*"Development consisting of a change of use of a building from a use falling within Class A3 (restaurants and cafes), A4 (drinking establishments) or A5 (hot food takeaways) of the Schedule to the Use Classes Order, to a use falling within Class A1 (shops) or Class A2 (financial and professional services) of that Schedule."*

6.9 The GPDO also stated that where the change of use was from a use falling within Class A4, development was only permitted subject to compliance with the following conditions:

*"(2) Before beginning the development the developer must send a written request to the local planning authority as to whether the building has been nominated, which must include –*

*(a) the address of the building;*

*(b) the developer's contact address; and*

*(c) the developer's email address if the developer is content to receive communications electronically."*

6.10 The GPDO was amended by the Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2017 ("the Amending Order"), which from 23 May 2017 removed the permitted development rights relating to A4 drinking establishments. However, paragraph 5 of the Amending Order set out transitional provisions. Under these provisions, where the 56 day period referred to in paragraph A.2(4) expired before 23 May 2017, the planning permission granted under the GPDO would continue to have effect as if the amendments made by the Amending Order had not been made.

6.11 The public house has not been listed by the Council/Heritage England as a Heritage Asset nor is it located within a Conservation Area. The Council considers the building to be a non-designated heritage asset. The building has also undergone changes to its exterior over the years prior to the unauthorised works.

6.12 Paragraph 83 d) of the NPPF (February 2019) states Planning policies and decisions should enable the retention and development of accessible local services and community facility, such as local shops, meeting places, sport venues, open space, cultural buildings, public houses and places of worship.

6.13 There have been complaints made by residents regarding noise and disturbance associated with the use of the beer garden at the Leighton Arms. This was acknowledged by the Inspector when determining the previous appeal for the site (APP/X5210/W/15/3095453 paragraphs 18-26). This issue was raised during the assessment of whether the loss of the beer garden would effect the long term

viability of the public house. The Inspector found that the loss of the beer garden would not impact the public house however the appeal was dismissed.

- 6.14 The appellant has provided a list of 14 public houses and 8 community facilities they consider are within walking distance of the site.

**7. MATTERS IN DISPUTE**

- 7.1 The proper classification for the use of the premises prior to the closure of the Leighton Arms in March 2016.
- 7.2 The extent to which the works necessary for the conversion of the premises had been completed by 9 August 2017.
- 7.3 Whether the actual use of the premises as a shop under Class A1 of the UCO commenced prior to 9 August 2017.
- 7.4 Whether the change of use of the premises to a retail convenience store under Class A1 of the UCO was completed before 9 August 2017.
- 7.5 Whether unauthorised operations included within the breach of planning control alleged in the Enforcement Notice involve development; specifically, whether they constitute alteration works that do not materially affect the external appearance of the building under section 55(2)(ii) of the 1990 Act.
- 7.6 Whether the current 'Nisalocal' store is a local shop for the purposes of paragraph 92 a) of the NPPF and provides a replacement community facility for the loss of the public house.
- 7.7 Whether the Appellant has demonstrated that the use of the premises as a public house was no longer viable and whether there was no realistic chance of the public house use being retained on the site.
- 7.8 Whether the letter from Kevin McMeel of Boyes Sutton & Perry (the appellant's former legal advisers) dated 9 August 2016 addressed to the Council fulfilled the requirements of the condition within paragraph A.2(2) of Part 3 of Schedule 2 to the GPDO then in force.
- 7.9 Whether planning permission should be granted retrospectively for a change of use to use the premises as a retail store and for the external alterations.

**SIGNATURES**

**Local Planning Authority:**



Signed:

Elizabeth Beaumont, Appeals and Enforcement Team Manager

on behalf of the London Borough of Camden

Dated: 6 September 2019

**Appellant:**

Signed:

Trowess + Hartings LLP  
acting as agents

on behalf of Bryanston Investments Limited

Dated: 6 September 2019