

## **PLANNING SERVICES**

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

### **PROOF OF EVIDENCE OF RAMESH DEPALA FOR PUBLIC INQUIRY COMMENCING ON 1 OCTOBER 2019**

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#### **APPEAL SITE**

**101 Brecknock Road, London N7 0DA**

#### **APPELLANT**

**Bryanston Investments Limited**

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#### **SUBJECT OF APPEAL**

**Appeal under section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 (as amended) against an enforcement notice issued by the London Borough of Camden on 18 June 2018. The Enforcement notice alleged a breach of planning control comprising the alterations to the shopfront and the change of use of the public house to form a retail convenience store without a planning permission**

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**LPA REF: EN17/0004**

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

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## **1. INTRODUCTION**

- 1.1. I am a Senior Planning Enforcement Officer having worked in London Borough of Camden's Planning Service since May 2017. I have been responsible for investigating and remedying breaches in planning control involving residential, commercial and Listed Buildings. I have a Bachelor of Arts degree in Architecture from Greenwich University, and a Master of Architecture degree from Edinburgh University. I am currently pursuing MRTPI status and am also currently enrolled at the London Metropolitan University to complete my training as an Architect and register myself with the Architects Registration Board (ARB).
- 1.2. Prior to my employment with the London Borough of Camden I worked for Dacorum Borough Council, London Borough of Barnet and ARP Associates LLP as detailed below:

### Dacorum Borough Council

- Planning Enforcement Officer from 02/2017 to 05/2017

### RE Ltd – (London Borough of Barnet / Capita) 11/2012 –12/2016

- Senior Planning Enforcement Officer from 11/2012 to 12/2014
- Principal Planning and Design Consultant from 12/2014 to 11/2016

### ARP Associates LLP

- Planning and Design Consultant 11/2006 - 11/2012

- 1.3. This proof of evidence addresses the unauthorised development comprised in the alleged breach of planning control recorded in paragraph 3 of the Enforcement Notice the subject of this appeal, issued by the Council on 15 June 2018 ("the Enforcement Notice"). Specifically, the unauthorised material change in the use of the former public house at 101 Brecknock Road, London ("the Building").
- 1.4. I am familiar with the appeal site and its context. This inquiry will consider the Appellant's appeal to the Secretary of State against the Enforcement Notice

under section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").

- 1.5. The alleged breach of planning control was first brought to Council's attention by way of a complaint from a member of the public in early 2017. I have been the lead investigating planning enforcement officer in this matter since that time.
- 1.6. The evidence which I have prepared and provide for this appeal reference APP/X5210/C/18/3207640 in this proof of evidence is true and I confirm that the opinions expressed are my true and professional opinions.

## **2. STRUCTURE OF THIS PROOF**

2.1. In my evidence, I provide a summary of the enforcement case, which is the subject of this appeal.

2.2. My evidence will be divided into 10 sections:

- In Section 3 I shall summarise the enforcement investigation history
- In Section 4 I shall provide a summary of the planning history relevant to the appeal scheme
- In Section 5 I shall highlight the relevant legislation, national, regional and local planning policies and guidance pertinent to the issues raised in my assessment
- In Section 6 I will describe the appeal site and surrounding area
- In Section 7 I will summarise the appeal case
- In Section 8 I will address the Appellant's statement of case and set out the Council's case under Ground C
- In Section 9 I will address the Appellant's statement of case and set out the Council's case under Ground A
- In Section 10 I will address the Appellant's statement of case and set out the Council's case under Ground G
- In Section 11 I will summarise the arguments made in this Proof of Evidence and will consider what, if any, conditions should be required, without prejudice to the Council's case, should the appeal be allowed
- Section 12 summarises the Appendices

2.3. In addition to myself, the Council will rely upon one other witness, namely, my colleague Anna Foreshow, Conservation Officer, whose proof of evidence addresses heritage and design issues arising as a result of the external alterations to the building.

### **3. PLANNING ENFORCEMENT HISTORY**

- 3.1. In early 2017, the Council became aware by way of complaints from the local residents that the ground floor of the Building was undergoing a possible conversion from its longstanding lawful use as a public house. At that time, it was noted that the building operations, which mainly included boarding up and stripping out works, had been commenced. However, it was not clear as to what was the purpose of the works at the time as the site remained a building site and no fitting out works had been observed. .
- 3.2. In early 2018, upon further investigation of the works and activities taking place at the appeal site, it became apparent that the ground floor of the Building was undergoing a conversion to form a retail convenience store that included alterations to the ground floor frontages and fitting out works. At this time, I had asked the developer, Mr Martin Cramer (one of the Directors of the Appellant Company) to clarify the justification for the works in planning terms and to regularise the development, either through an application for planning permission or by restoring the property back to its former lawful state.
- 3.3. Mr Cramer claimed that the change in the use of the premises to a retail convenience store use constituted permitted development, which at that time would be Class A of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GDPO"), and that the conditions within paragraph A.2 of Part 3 had been complied with prior to the withdrawal of permitted development rights for a change of use from Class A4 (drinking establishments) to Class A1 (shops) on 23 May 2017. Nothing further in this respect was discussed except that I informed Mr Cramer that I would look further into the site's planning history and see if there was any merit to his claim.
- 3.4. Despite requests for a retrospective planning application over several months, the Appellant had not taken any steps to remedy the breach. Consequently, after considering the merits of the case, the Council decided that an enforcement action would be the best course of action to seek to remedy the breach of planning control.

- 3.5. Factual matters relevant to Enforcement Notice are recorded within paragraphs 3.1 to 3.4 of the Statement of Common Ground agreed by the Appellant and the Council dated 6 September 2019 ("the SoCG").

#### **4. RELEVANT PLANNING HISTORY**

##### **The Appeal Site**

- 4.1. On 25 March 2015, the Council refused an application for planning permission (Ref: 2014/4554/P) for 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 for the following three reasons:
- (a) the proposed rear extensions would be excessively to large;
  - (b) 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
  - (c) 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 pub 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.
- 4.2. By way of a decision letter dated 11 December 2015, the Secretary of State's planning inspector allowed an appeal against the Council's refusal to grant planning permission (APP/X5210/W/15/3095242).
- 4.3. Application 2014/5401/P for the erection of two four storey houses (Class C3) was refused on 25 March 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.

- 4.4. The Council's decision was appealed and the appeal (ref. APP/X5210/W/15/3095453) was dismissed on 11 December 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 Torriano Avenue.
- 4.5. Application 2016/0372/P, for the erection of two four storey houses (Class C3) was 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 1st, 2nd and 3 floors.
- 4.6. Application 2017/4345/P, submission of 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 was granted on 12 January 2018.

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

- 5.1. Section 4 of the SoCG identifies the planning policy and guidance relevant to the determination of the appeal.

### **Statutory Development Plan**

- 5.2. For the purposes of section 38 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), the statutory Development Plan for the area comprises the London Plan (consolidated with alterations since 2011) and the Camden Local Plan 2017.

#### The London Plan (consolidated with alterations since 2011)

- 5.3. The current version of the London Plan published in March 2016 ("the London Plan") has been consolidated with all the alterations to the London Plan since 2011. It is the policies in this document that form part of the development plan for Greater London, and which should be taken into account in taking relevant planning decisions, such as determining planning applications.
- 5.4. The following London Plan policies are relevant for the purposes of the appeal under Ground A:
- Policy 3.1 – Ensuring Equal Life Changes for all;
  - Policy 7.1 – Lifetime Neighbourhoods;
  - Policy 8.2 – Planning Obligations.

#### Camden Local Plan 2017

- 5.5. The Camden Local Plan is the key strategic document in Camden's development plan. It sets out the vision for shaping the future of the Borough and contains policies for guiding planning decisions. It was adopted by the Council on 3 July 2017.
- 5.6. The following Camden Local Plan policies are relevant to the determination of the Ground A appeal:
- A1 Managing the impact of development
  - C2 Community facilities

- C4 Public Houses
- D1 Design
- D2 Heritage
- D3 Shopfronts
- CC5 Waste
- DM1 Delivery and monitoring

5.7. Copies of all the Camden Local Plan policies that formed part of the original reasons for issuing the Enforcement Notice were submitted with the Appeal Questionnaire. When issuing the Enforcement Notice, the Council had regard to relevant legislation, national planning policy and practice guidance, development plan policies, supplementary planning guidance and the particular circumstances of the case.

#### **Emerging New London Plan (Submission Draft 2019)**

- 5.8. A Draft New London Plan was published by the Mayor for consultation in December 2017, with the consultation period ending on Friday 2 March 2017. The Draft New London Plan was subsequently considered at a formal Examination in Public ("EiP") held between 15 January and Wednesday 22 May 2019. Further amendments to the Draft New London Plan were published in July 2019. A Panel Report is currently being produced that will set out its findings in relation to the EiP matters and may include recommendations relating to the content of the draft London Plan published in December 2017 or associated matters. The Mayor may not publish the New London Plan until after he has received the Panel report. As such, formal adoption is not expected until late 2019 / early 2020. T
- 5.9. The London Plan (March 2016) will continue to form part of statutory development until it replaced by the New London Plan when it is published. However, the Draft New London Plan is a material consideration in planning decisions, including the determination of the Ground A appeal in the present case. The significance given is attributed more weight as it moves through the

process to adoption. Given that the panel report is yet to be published, limited weight is afforded to the emerging Plan at this stage.

5.10. The following draft New London Plan policies are relevant:

- Chapter 3 – Design. Policies D1, D1B, D2,
- Chapter 7 – Heritage and Culture Policies HC1, HC3, HC5, HC6, HC7
- Chapter 11 - Delivery of the Plan and Planning Obligations Policy DF1

### **Camden's Planning Guidance**

5.11. Camden Planning Guidance (CPGs) provide advice and information on how we will apply our planning policies. The Council has reviewed its Camden Planning Guidance documents to support the delivery of the Camden Local Plan following its adoption in 2017. The update was carried out in two phases to manage the amount of material to be consulted on at any one time and ensure that relevant revised CPG documents take into account changes to the London Plan and to national planning policy. The CPG documents are 'material considerations' in planning decisions, although they have less weight than the Local Plan or other development plan documents.

5.12. The previous CPG 1, 3, 4, 5, 6, 7 and 8 documents have now been fully superseded. The CPG documents as Phase 1 of the review were adopted by Council on 26 March 2018 following consultation. This included the Amenity CPG. The CPG documents as Phase 2 were adopted on 15 March 2019 following consultation. This included the Air quality, Design, Developer contributions, Employment sites and business premises, Town centres and Transport CPGs.

5.13. The following CPG is relevant to the Ground A appeal:

- Design CPG March 2019
- Amenity CPG March 2019
- Community uses, leisure facilities and pubs CPG 2018

## **6. SITE AND SURROUNDINGS**

- 6.1. Section 1 of the SoCG includes a description of the appeal site and its surroundings which is addressed in further detail within section 4 of the proof of evidence provided by my colleague, Anna Foresheew.

## **7. THE ENFORCEMENT NOTICE APPEAL**

7.1. The Appellant has appealed against the Enforcement Notice on the following grounds:

- Ground A, that that planning permission should be given for what is alleged in the notice;
- Ground C, that there has not been a breach of planning control.
- Ground G, that the time given to comply with the Notice is too short.

7.2. I will deal with each ground of appeal in turn below, commencing with the Ground C appeal.

## **8. GROUND C APPEAL**

- 8.1. The Appellant contends that the unauthorised change of use alleged in the Enforcement Notice constituted permitted development under Class A, Part 3, of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").
- 8.2. In support of that contention, the Appellant relies upon two alternative grounds, depending upon the proper classification of the former use of the premises under the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the Use Classes Order" or "the UCO"),
- 8.3. The Appellant contends that the character of the former use the premises should properly be described as the sale of food and drink falling within Class A3 (restaurants and cafes) of the Schedule to the UCO. As such, pursuant to Class A of Part 3 of Schedule 2 to the GPDO, at all material times, the change of use from Class A3 to Class A1 (shops) constitutes permitted development.
- 8.4. Alternatively, and without prejudice to that contention, if the former use of the premises should properly be described as a drinking establishment under Class A4 of the UCO, the Appellant contends that the current retail use of the premises as a convenience store under Class A1 (shops) constituted permitted development under the original version of Class A of Part 3 of Schedule 2 to the GPDO. In support of that contention, the Appellant asserts that it complied with all relevant limitations and conditions applicable to Class A permitted development that remained in force prior to 23 May 2017,
- 8.5. It is common ground that, for present purposes, the effect of the Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2017 ("the 2017 Order") was to remove the permitted development rights for changes of use from Class A4 (drinking establishments) to Class A1 (shops) of the UCO, subject to the transitional arrangements within Article 5 of the 2017 Order.
- 8.6. In response, the Council contends that material change of use to a retail convenience store does not benefit from a grant of planning permission under Article 3 of the GPDO 2015 because, prior to the alleged breach of planning control, the premises were in use as a drinking establishment (Class A4), not

as a restaurant (Use Class A3) as the Appellant asserts; and, in any event, the Appellant has not complied with the limitations and conditions applicable to Class A of Part 3, before the material change in the use of the premises took place.

#### **Change of use from Class A4 to Class A1**

8.7. Prior to 23 May 2017, the permitted development granted by Article 3 and Class A of Part 3 of Schedule 2 to the GPDO was granted subject to the following conditions within paragraph A.2, which provided:

- "(1) In the case of a building which is not a community asset, which is used for a purpose falling within Class A4 (drinking establishments) of the Schedule to the Use Classes Order(a), development is permitted by Class A subject to 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.*
- (3) If the building is nominated, whether at the date of request under paragraph A.2(2) or on a later date, the local planning authority must notify the developer as soon as is reasonably practicable after it is aware of the nomination, and on notification development is not permitted for the specified period.*
- (4) The development must not begin before the expiry of a period of 56 days following the date of request under paragraph A.2(2) and must be completed within a period of 1 year of the date of that request."*

8.8. In order to demonstrate that the ground floor of the Building benefitted from the claimed permitted development rights, the Appellant has submitted a Statutory Declaration and several items of documentary evidence to support its ground (c) appeal. That evidence is addressed in the following paragraphs.

8.9. First, the Appellant relies upon a digital scan of a letter from Kevin McMeel of Boyes Sutton and Perry, the Appellant's former legal representatives, dated 9



August 2016, together with a postal receipt. Those documents were sent via email to the investigating planning officer on 15 June 2018 — see Appendix 4 of the Appellant's Rule 6 Statement of Case dated 21 March 2019 ("the Appellant's Statement of Case", or "ASoC"). Those documents are supported by an Statutory Declaration sworn by Mr Kevin McMeel dated 17 December 2018 stating that he had prepared and sent the ACV (Asset of Community Value) request to the Council on 9 August 2106 — see Appendix 5 of the Appellant's Statement of Case.

- 8.10. The Council maintains that it has no record of that letter being received and it had no prior knowledge of the existence of this letter before 22 February 2018, when the developer provided the digital scan copy of the letter in the course of the enforcement investigation. The letter relied on by the Appellant provides no context and was not addressed to the appropriate department within the London Borough of Camden and if the letter was delivered to the main reception there was no sufficient detail to enable the reception staff to identify the intended recipient (i.e., the local planning authority). Accordingly, the Council disputes that the Appellant complied with paragraph A.2(2) of Class A of Part 3.
- 8.11. Without prejudice to that contention, should the Inspector find that the Appellant complied with that requirement, the Council contends that the Appellant failed to comply with paragraph A.2.(4) of the conditions within Class A of Part 3 because the works necessary to facilitate the permitted development were not completed before 10 of August 2017 (i.e., within a period of 1 year of the date of the ACV request), which the Appellant asserts was sent on 10 August 2016.
- 8.12. The Appellant contends (at paragraphs 2.19 to 2.21 of its Statement of Case) that, due to the delays associated with securing variation to the premises licence they were forced to open a retail store temporarily between 1 and 22 August 2017. As a matter of fact, the Council disputes that retail use commenced on 1 August 2017, as alleged, and puts the Appellant to proof on this issue.
- 8.13. The evidence available (detailed below at paragraphs 8.15 to 8.41), including eyewitness accounts, photographs and the contradictory evidence provided by

the Appellant, demonstrates that it is highly unlikely that retail store opened as alleged by Appellant.

- 8.14. The Appellant asserts that the fit out works to facilitate the convenience store retail use were not completed until 29 June 2018, some six months after the Tenant completed the lease on 24 January 2018, and the store “re-opened” on 30 June 2018. (paragraph 2.21 of its Statement of Case) In the circumstances, on the evidence, it is not credible for the Appellant to assert that the works necessary to facilitate the material change of use to a retail convenience store had been completed prior to 29 June 2018.
- 8.15. In support of its case the Appellant relies upon a letter from a firm of accountants (ASoC, Appendix 13) to establish that the Class A1 (shops) use had commenced by 9 August 2017 (“the Relevant Date”). However, the Council contends the information included within the letter does not amount to sufficient evidence to support that assertion. It should also be noted that the accountants’ letter refers to F.A.B. Retail Limited, but the lease for the premises is in the name of LA Food (UK) Limited. The Appellant makes no attempt to explain the relationship between these two companies has and it is wholly unclear if the accountant is aware of the company that the Appellant claims to have occupied the property.
- 8.16. The Appellant also provides a letter from Umbrella Insurance Service addressed to F.A.B. Retail Limited (ASoC, Appendix 14), stating that its employees would be covered for trading under Employers’ Liability Insurance. This letter does not prove that the retail use actually commenced on 1 August 2017 and plainly, is inconsistent with the Accountant’s letter.
- 8.17. The context in which the insurance cover has been provided is unclear. In any event, it is not suggested that the insurance cover could not have been provided unless the insurers had independently confirmed the retail use had commenced.
- 8.18. The Appellant has chosen not to produce documentary evidence of the insurance policy and has not explained its reasons for failing to do so. The Council contends that the policy document should be in the Appellant’s possession, and would provide essential details regarding the nature and scope

of the insurance cover. The Council has approached the insurers who have not been able to confirm or deny the contents of the letter.

- 8.19. The Appellant also relies upon a VAT return dated 27 November 2017 for the quarterly period between 1 August and 31 October 2017, which relates to "BRANCH(ES): 13-Brecknock Road, N7" (ASoC, Appendix 19). The document does not specifically refer to the premises at number 101 Brecknock Road and the Council cannot be sure if it relates to the Appeal site.
- 8.20. As the photographs that the Council has in its possession (provided at Figures 1-5 below) demonstrate that the property was a building site between July 2016 and May 2018, the Council does not believe that the products listed in the VAT return would have been sent to the property to be sold, accordingly the evidence is considered contradictory.
- 8.21. If the sole purpose of the alleged temporary operation of the retail use was so as to benefit from planning permission granted by the GPDO, it is unclear why photographs evidencing the use were not taken at the time and why this evidence was not produced during the pre-enforcement investigation by the Council and why the opportunity to submit an application was refused (as set out in the Appendix RD1 to this evidence).
- 8.22. The Appellant also relies upon three wage slips (Appendix 15 of the Appellant's Statement of Case) of employees who, it asserts, worked at the premises at the relevant time (from 1 August 2017 onward). As stated in paragraph 8.20 (above), the VAT returns refer to branch no.13 Brecknock Road, however the wage slips refer to Department 5-Caledonian Road and Department 3 – Kentish Town. This is not considered sufficient evidence of the operation of the retail premises at 101 Brecknock Road as it does not prove a retail operation at the subject appeal site.
- 8.23. The Appellant claims that the Tenant does not operate another shop in the vicinity (paragraph 4.38 of the Appellant's Statement of Case); however, the wage slips detail gross payments up to 25 August 2017 of £10,417.15, £6,499.90 and £6499.90, which demonstrates that either these employees were earning approximately 3.2k to 5k per week or that they were employed elsewhere over a prolonged period, as the subject property was not claimed to

be in operation before the Relevant Date. The latter would be a more realistic assertion.

- 8.24. It should be noted that the wage slips, invoices and the Statutory Declarations sworn by Mr Olhaye and Mr Tarrant (Appendices 40 and 46 of the Appellant's Statement of Case, respectively) do not include any specific dates and the wage slips do not specify the periods of employment.
- 8.25. Neither do the invoices or the statements provide any specific dates showing if the goods were sold by 9 August 2017.
- 8.26. It should also be noted that there are in fact two 'Nisa Locals' on Caledonian Road and one in Kentish Town, on Queens Crescent, both are operated by Mr Ansar Hussain, the current tenant at 101 Brecknock Road. It is understood that the tenants operate a chain of "Nisa Local" Stores within the Camden area.
- 8.27. Accordingly, the Appellant's claim that there was no other suitable site in the vicinity to which the wage slips and VAT returns could relate is untenable.
- 8.28. The Appellant provides an Invoice dated 1 August 2017 from K & M Foods Ltd, (Appendix 16 of the Appellant's Statement of Case) however a search on Companies House website revealed that the company had dissolved on 2 May 2017. Again, this contradictory evidence undermines the Appellant's case in support of its ground (c) appeal. It also calls into question the credibility of the Appellant's case, evidence and witnesses. A screenshot of the listing is has been provided as Appendix RD2 to this evidence).
- 8.29. In support of its case, the Appellant provided a Statutory Declaration made by Mr Satwick (Appendix 45 of the Appellant's Statement of Case). Whilst the Council understands that a site handover may have taken place, which is what Mr Satwick claims, this does not prove that a retail operation had commenced, or the that the works completed by the asserted handover on 7 November 2016 were capable of facilitating a Class A1 (shops) use. What Mr Satwick's evidence does explain is that the premises were still a building site, with extensive building work still outstanding in late October / early November 2016.
- 8.30. To further demonstrate its case in respect of the handover of the property, the Appellant provided 'photographs of works' (see Appendix 18 of the Appellant's

Statement of Case), which allegedly show the internal arrangement of the property prior to the handover to F. A. B. Retail Limited in November 2016.<sup>1</sup>

- 8.31. The Council relies upon the photographs shown as Figures 1 to 4 (below) which have been sourced from Google Street View and are freely available online. Each photograph is dated and shows the state of the Building when Appellant asserts the Class A1 (shops) use had commenced. These photographs show that at the time they were taken, April 2018, the frontages and windows had not been altered or installed respectively.
- 8.32. Figure 5 below is a photograph taken by one of my colleagues in the enforcement team, Mr Raymond Yeung, on 30 May 2018. Mr Yeung was carrying out a visit based following a complaint from a member of the public who had reported that advertising was being applied to the windows of the property that week. Figure 5 shows that the alterations to frontages were underway and the windows had been installed.
- 8.33. When comparing the sets of photographic evidence in Figure 5 and in the photographs provided in Appendix 18 of the Appellant's Statement of Case, it can be seen that the windows had not been installed by 7 November 2018. Accordingly, having regard to the totality of evidence available, on the balance of probabilities it is reasonable to conclude that the handover of the property to the tenant could not have taken place prior to April 2018.
- 8.34. It also is clear that at the material time (between April 2018 and May 2018), the interior of the premises are empty, that no fit out works have been carried out to facilitate any kind of any retail operation, and that there is no evidence whatsoever of a retail use ever having taken place. The Appellant's photographs (including the image at Figure 6 below), leads the Council to believe that no retail operation had existed prior to the Relevant Date, or that work had even commenced to convert the property to form a retail store by 1 August 2017.

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<sup>1</sup> By way of a letter dated 5 September 2019, the Appellant's solicitor belatedly informed the Council that the photographs included within Appendix 18 of its Statement of Case were taken after the asserted handover date on 7 November 2016. That letter is addressed in further detail below.

- 8.35. It is further noted that, by way of a letter from its solicitors dated 5 September 2019, the Appellant has belatedly conceded that the contention within paragraph 4.67 of its Statement of Case that the photographs included within it Appendix 18 demonstrate that, *"By November 2016 (when the Premises were handed over to the Tenant), the interior of the Premises had been stripped to a complete shell"*, was made in error and that the photographs were taken at a later date.
- 8.36. The Council has managed to ascertain that the photograph appearing at Figure 6 (below) was taken between April and May 2018 and, as such, the Council contends that the handover must have taken place after the Relevant Date. On any view, the tenants would not have been able to commence the use of the temporary shop as the Appellant has claimed on 1 August 2017, prior to the Relevant Date.
- 8.37. The first photograph (Figure 1) shows the Building boarded up in July 2016.



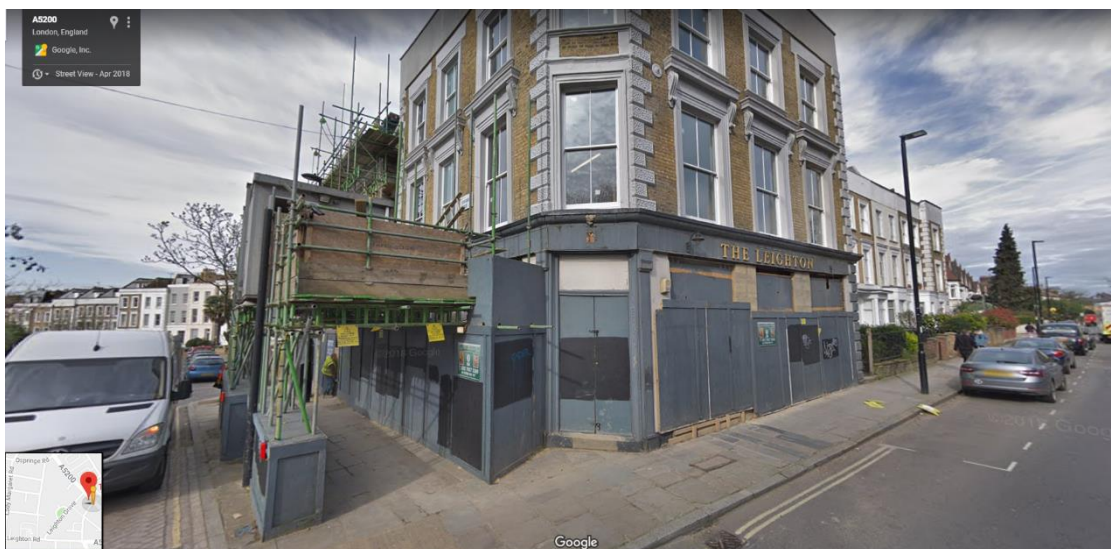
**Figure 1 – July 2016**

- 8.38. The second photograph (Figure 2), dated May 2017, shows the building fully boarded with scaffolding erected around it.



**Figure 2 – May 2017**

- 8.39. The photographs at Figures 3 and 4 below show the property in April 2018 – the Building is shown boarded up with scaffolding erected partially around it. Figure 4 shows evidence of the arrangements of the frontages and lack of window frames in April 2018.



**Figure 3 - April 2018**





**Figure 4 – April 2018**

8.40. The photograph at Figure 5 (below) shows the property on 30 May 2018.



**Figure 5 – 30 May 2018**



8.41. Figure 6 (below) is a photograph of the internal arrangement of the property prior to handover to F.A.B. Retail Ltd, as asserted in paragraph 4.67 and Appendix 18 of the Appellant's Statement of Case. The photograph shows the Boarding behind the elevator shaft and windows



**Figure 6 –photograph from Appellant's Appendix 18**

8.42. It can be easily ascertained that the windows and associated surrounds had not been installed by April 2018, yet prior to the handover, evidenced in the Appellant's photographs, the windows and shutters are clearly visible and the

property still appears to be a construction site, contradicting the Appellant's statement that a shop had opened prior to the Relevant Date. The Appellant claims that a retail store operated by the current tenants was opened to the public on 1 August 2017. However, as detailed above (at paragraphs 8.32 to 8.40), the photographs at Figures 1 to 5 demonstrate that the premises were clearly a building site between July 2016 and end of May 2018, and that no retail store had opened, or was operating at prior to that time.

- 8.43. To further support its case that a change of use from Class A4 to A1 had occurred prior to the Relevant Date, the Appellant provided to the Council with a letter from AS Associates, a firm of chartered accountants (ASoC, Appendix 13). The letter states that AS Associates represented their clients F.A.B. Retail Ltd and that the company operated "*from shop*" and that they had submitted trading figures for the appeal site. The Council contends that the contents of this letter are too vague to support the Appellant's case as F.A.B. Retail operated from multiple sites (as set out in paragraph 8.27 above), and the reference to a "*shop*" could mean any one or more of those retail premises. No details of the trading figures, or other details have been provided in the letter to be able to ascertain whether a retail use had commenced at the site by the Relevant Date.
- 8.44. The Council's case is supported by the email message from a business rates property officer employed by the Council, Mr David Drennan dated 7 June 2018, (Appendix RD3 to this evidence). Mr Drennan confirms that he checked the Council's records and advised that at no point had the Council's business rates team been advised that the property was in use as a retail business. He further explained that a Mr Martin Cramer would regularly contact the department for an assessment to have the property removed from the ratings list whilst structural work was in progress. This evidence supports the contention that no retail use had existed at the property before the Relevant Date.
- 8.45. The Council contends that, when considered as whole, the available evidence demonstrates on a balance of probabilities that the claimed material change in the use of the premises as a retail convenience store, under Class A1 (shops) of the UCO, was not instituted on or before 9 August 2017.

- 8.46. The Council invites the Inspector to reject the Appellant's claims to the contrary, which are not credible and are highly self-serving. If the Appellant, or its former solicitors, were genuinely aware of the need to commence trading as a retail store before 9 August 2017, they would have protected their interests by taking steps to ensure a contemporaneous documentary and/or photograph record was made to evidence this crucially important event.
- 8.47. Moreover, the Appellant could have provided the Council with such evidence when the Council was carrying out its enforcement investigations and/or relied upon such evidence in support of an application for a Certificate of Lawful Existing Use or Development when presented with the opportunity to do so. The Council relies upon the correspondence passing between the Appellant and the Council addressing this issue (Appendix RD1 to this evidence).

#### **Change of use from Class A3 to Class A1**

- 8.48. The Appellant contends that the former use of the premises was in fact a restaurant within Class A3 of the UCO.
- 8.49. In paragraphs 4.7 – 4.16 of its Statement of Case, the Appellant sets out its interpretation of the Classes A3 and A4 of the UCO and refers to the past use of the premises to demonstrate its case. The Appellant relies upon the evidence in Ms Brosnan's Statutory Declaration (ASoC, Appendix 2), VAT Returns (ASoC, Appendix 19), detailing purchases from a cash and carry named Booker, and a Food Standards Agency hygiene rating (ASoC, Appendix 12).
- 8.50. The Council does not dispute that there may have been a traditional pub food offering; however, the evidence upon which the Appellant relies does not prove, on the balance of probabilities, that the food offering was such as to displace the lawful use of the premises as a public house (Class A4).
- 8.51. Ms Brosnan states (at paragraph 4.1), that 45% of her regular sales would be from a food offering and occasionally would peak at 60%, which demonstrates in the Council's opinion that the drinking establishment had not given way to a restaurant use.
- 8.52. In respect of the food hygiene rating (paragraph 4.14.8 of the Appellant's Statement of Case), as mentioned above in Para 8.54 the Council does not

dispute that there was a food offering at the appeal site and so in any event, whether the property existed as a pub or a restaurant it would have been necessary to comply with the Food Standards Agency's regulations to ensure food hygiene was maintained regardless of the amount of food provision. As such, the hygiene rating does not prove that a material change of use to A3 had occurred.

- 8.53. In respect of the purchases from Booker (paragraph 4.14.5 of the Appellant's Statement of Case), it is not clear what was being purchased and what percentage of those items related to a food provision. Booker are a 'cash and carry' business and when perusing through their website it is clear that they sell a wide range of items including beer, cider, ales, spirits etc as well as a range of food items. As such, the VAT returns have no probative value and do not support the contention that a change of use from Class A4 (drinking establishments) to Class A3 (restaurants and cafes) had occurred.
- 8.54. Ms Brosnan in her Statutory Declaration (ASoC, Appendix 2) describes the use of the property as a "gastropub" which the Council would contend appropriately describes the use of the property as a drinking establishment where one could enjoy a meal. Gastro is a term often used to describe a food provision and when coupled with the word pub, one would assume that the premises would be a pub that offers a food provision.
- 8.55. In her Statutory Declaration, Ms Brosnan avoids using the terms like "public house" or "restaurant" and simply refers to the property as the "premises" or "establishment", although on occasion as mentioned above she does describe the business as a "gastropub" as advertised on their Facebook listing. Ms Brosnan also refers to the beer garden as "the garden", for no apparent reason, omitting the word "beer" from the references.
- 8.56. The Council contends that the evidence provided by Ms Brosnan is contrived and lacks credibility. It is not a comprehensive and complete description of the character of the use and conveniently omits any reference to the property existing as a public house, or matters of detail that would be inconvenient to the case now relied upon by the Appellant. Ms Brosnan does not explain the circumstances in which she was asked to provide evidence, who prepared her

Statutory Declaration, or confirm that she is aware of the purpose of making a sworn Statutory Declaration in respect of the grounds of this appeal, or whether she is content for the Appellant to rely upon the evidence in support of its Enforcement Notice Appeal.

- 8.57. In respect of the written Advice of David Forsdick QC of Landmark Chambers (paragraph 4.16 and Appendix 17 of the Appellant's Statement of Case), it is clear that Leading Counsel's opinion assumes that that evidence before him is factually correct (see paragraph 3). The Council does not consider that assumption to be sound for the reasons stated above.
- 8.58. It should be noted that in a previous appeal relating to Building, the (APP/X5210/W/15/3095242), the Inspector appointed to determine the appeal, who carried out a site visit, described the property as a drinking establishment. The Council provides the relevant appeal decision in Appendix RD4 (Relevant appeal decisions) to this evidence. In the circumstances, the Council contends that it is most unlikely that Inspector would reach such a conclusion unless the use of premises was consistent with that of a public house, having regard to the internal arrangements, fixtures and fittings (such as the bar, the draft handles, stools etc) and the food and drink offered for sale. It would take more than just the percentage of food sales or "the installation of an oven" (ASoC Appendix 2) to bring about a material change in the use of the premises to a restaurant under Class A3.
- 8.59. In any event, the history of complaints regarding the operation of the premises in 2014 and 2015 (attached at Appendix RD5 to this evidence) demonstrates that the Leighton Arms was operated as a public house under Class A4.
- 8.60. For the reasons stated, the Council contends that the evidence submitted by the Appellant in this appeal does not support the Appellant's contention that the former use of the premises was anything other than a Use Class A4 drinking establishment.
- 8.61. The Council's case is also supported by the letters and statements submitted by local residents (see Appendix RD6 (Third Party Comments)), which provide

a contemporaneous account of their own use of the premises as patrons of the drinking establishment. Some of the relevant statements are outlined below:

- (a) Patricia Pank, a local resident details in her letter dated 17 November 2018 how she had frequented the pub to meet up with friends and neighbours until closed having lived in the area since 1964;
- (b) Dr Neil L Morgan, a local resident details in his letter of 25 September 2018 that “the pub did serve food but was not a restaurant”;
- (c) Roy Lockett, a local resident in his letter of 27 November 2018 states that he was a fairly regular user of the Leighton Arms where he use to watch football, eat a sandwich and drink beer and that in the 25 years he had used the pub he saw no evidence to consider the property to be a restaurant. He further goes on to state that he passes the shop every day and saw no evidence of a shop in operation prior to the Relevant Date.

8.62. Should the Inspector be inclined to consider that the property may actually have been a restaurant, the Council would then contend that it would have operated unlawfully at that time when either the conditions of the respective Order (paragraphs A.2(2) to (4)) would have been required to be met or a direct grant of planning permission would have been required from the Council.

8.63. There is no planning history detailing any consent for such an operation, nor has any evidence been provided that such an operation had existed for over 10 years making it immune from enforcement action in respect under section 171B of the 1990 Act.

8.64. Accordingly the property would benefit from no such right to change its use from A4 to A3.

### **Ground (c) Appeal – Conclusion**

8.65. For the reasons set out above, the Council respectfully invites the Inspector to dismiss Appellant's ground © appeal.

## 9. GROUND A APPEAL

9.1. The Appellant's ground (a) appeal involves two issues:

- The change of use of the premises from public house (Class A4) to a retail convenience store (Class A1);
- The alteration of the ground floor frontages which include the overall appearance, the relocation and increase in the size of the windows and loss of a door to the front elevation.

### **Main Considerations**

#### Character and appearance

9.2. Please refer to the proof of evidence of my colleague, Anna Foreshow, Conservation Officer, whose proof of evidence addresses heritage and design issues arising as a result of the unauthorised external alterations to the building.

#### Loss of a public house/community facility:

9.3. Policy C2 of the Camden Local Plan (2017) 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:

- (a) A replacement facility of a similar nature is provided that meets the needs of the local population or its current, or intended, users;
- (b) 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.

9.4. The Planning Inspectorate have already established the importance of the appeal property for the community need, in the appeal decision referenced APP/X5210/W/15/3095242 – at paragraphs 27 and 28 , the Inspector states:

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

9.5. Camden Local Plan 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:*

- a. 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*
- b. 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 pub 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 pub is a heritage asset, it should be conserved in a manner appropriate to its heritage significance."*

- 9.6. Local Plan Policy A1 (Managing the Impact of Development on Occupiers and Neighbours) 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.
- 9.7. The Council's case is that 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 is unable to ensure that the additional demand the development including the housing scheme has placed on existing community infrastructure and services is met. As such, the Council considers that the public house's loss would have a detrimental impact on the needs of the local community.

### **Similar appeals**

- 9.8. The Council would also like to refer to recent appeal decisions (full decisions are provided in Appendix RD4 this evidence) that have been allowed which are comparable to the appeal site demonstrating the value placed on public houses and their ability to continue to function. The Council sets out a short summary of each decision below:

105 Kings Cross Road (APP/X5210/C/18/3193274 and 3153219)

- 9.9. By way of a decision letter dated 17 September 2018, the Inspector upheld the Council's decisions in respect of the planning application and enforcement notice respectively. The development subject to the appeals was for a change of use of the first and second floors of the public house to C3. The Inspector considered the partial loss of the Public House, a local community facility against the need for housing and sought to protect the Public House from development.

Golden Lion PH, 88 Royal College Street (APP/X5210/A/14/2218740)

- 9.10. On 2 October 2014 the Planning Inspectorate upheld the Council's decision to refuse application referenced 2013/4793/P which proposed change of use from public house (Class A4) at part ground and first, second and third floor levels to provide residential units (Class C3), and extension and alteration works, on the basis that development would harmfully compromise and undermine the use of the existing public house as a community asset and that the alterations would be detrimental to the character and appearance of the non-designated heritage asset.

Sir Richard Steele PH, 97 Haverstock Hill, London, NW3 4RL

- 9.11. On 2 July 2015 the Inspectorate dismissed the appeal referenced APP/X5210/W/15/3003396 for the change of use of the first and second floors from public house (Class A4) to create flats (Class C3) and other works (Council ref. 2014/1367/P). In this decision the Inspector at paragraph 22 explains the importance of the retention of community facilities for the social wellbeing of local communities. In my opinion, the former Leighton Arms public house was comparable to the public houses to which the above appeal decisions relate and the retention of the Leighton Arms was just as important for its community.

### **Response Appellant's Statement of Case (ground (a) appeal)**

- 9.12. My colleague Anna Foreshew addresses the Council's concerns in respect of the alterations to the frontages of the building subject to this appeal.
- 9.13. During the course of the enforcement investigation, early 2018 the Appellant was requested to submit a planning application (Appendix RD1 to this evidence) so that their case could have been tested however, that opportunity was not availed and no other evidence such as marketing information or viability studies had been provided. Two pieces of evidence have since been submitted as part of this appeal to demonstrate the viability and marketing efforts for the public house; Mrs J Brosnan's Statutory Declaration (SD) (ASOC Appendix 2) and a letter from David Astburys Estate Agency (ASOC Appendix 37).

#### Viability

- 9.14. To support its ground (a) appeal at para 7.14 – 7.17 of ASOC, the Appellant infers that the use of the pub was not financially viable and depends on the SD provided MS J Brosnan (ASOC Appendix 2) supported by accounts of the business premises and insolvency details (ASOC Appendix 37).
- 9.15. The Council contends that sufficient documentary evidence has not been provided to be able to draw any significant conclusions to determine the viability of the public house or otherwise. And that the evidence that has been provided only serves to prove that the business was not run efficiently well enough resulting in its failure to function. Specific comments on Ms Brosnan's evidence are set out below:
- (a) In Paragraph 4 MS Brosnan explains the details of her fixed overheads, however no details of the costs of these overheads were provided. For example a business could have been paying high wages over the odds and therefore in an instance that, it would have made the respective business unviable, one would need to know if these fixed overheads are reasonable.
  - (b) In Paragraphs 10 & 12 the table which sets out the expenditure from Bookers, which the Council assumes is the Cash and Carry where consumable goods are purchased, this could include business items

for the day to day running of the public house, food stuff or drinks. No details have been provided as to what was actually being purchased and for what purpose. Further it is claimed that 45% of total sales resulted from food sales however when looking at the expenditure detailed in the table, it appears that it has doubled in 2 years, from 9% to 22% but give no explanation as to why other than the increase in food supplied.

- (c) In Paragraph 18 Ms Brosnan talks of maintenance costs however no evidence has been supplied to support this claim nor any details as to what sort of work this included.
- (d) In Paragraph 19 the table of credit and debits, which the Council believes refers to the bank statements, provides no details to be able to conclude what the outstanding debt was, what the day-to-day operations of the business would have been or what the expenditures would have been. It is noted that allegedly the business only made 95p in September 2014, whereas in April it was £2,282 but nothing is detailed for the in-between period. No explanation has been provided to demonstrate why the profits or turnover would fall so drastically.
- (e) In paragraph 20, Ms Brosnan discusses the impact the complaints had on the use of the beer garden but no evidence has been provided to demonstrate how this would cause the premises to become unattractive to potential visitors. Many public houses successfully exist in residential areas and are able to manage any potential impacts on residential amenity. that thrive while experiencing similar issues. The Council does not consider that the use of beer garden was so pivotal to have an impact on the viability of the public house. The same opinion is also drawn by the Inspectorate as detailed in the appeal decision referenced APP/X5210/W/15/3095453 (Appendix RD4). The Inspector did not consider that the loss of the external space associated with the public house 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.

- 9.16. It was brought to my attention on 4 September 2019, after speaking to my colleagues in the Council's Licensing Department, that complaints about noise and nuisance due to the loud music from Leighton Arms were referred to the Licencing team in 2014-2015, however there is no evidence of the officers being able to establish that the property was the source of the noise and nuisance, apart from on one occasion, in early November 2015 (the relevant record of the site visit is provided in Appendix RD7 to this evidence). Every other visit made by the officers showed no noise / nuisance at the property.
- 9.17. In any event, even if the evidence established that there were noise issues caused by the operation of the public house, this does not mean that the pub was not viable in its existing state as it would be normal for pubs to have at least some level of noise, as noted by the Inspector on a previous appeal (APP/X5210/W/15/3095242, attached at Appendix RD4 to this evidence), at paragraph 22, where the Inspector said: "... to my mind, this is a situation evident outside many public houses in urban locations and is certainly not unique to the Leighton."

#### Marketing

- 9.18. In respect of the Appellant's marketing efforts to market the property as a public house, the Appellant has submitted into evidence letters from a firm of estate agents and property management specialists, David Astburys, outlining how the property was discreetly marketed.
- 9.19. The letter from David Astbury's does not demonstrate the extent of the marketing employed, and does not provide enough grounds to justify the loss of the public house.
- 9.20. It should be noted that the company registered under the name "David Astburys Ltd" (Company Number: 10474483) did not come into existence until late 2016; on 10th November 2016 to be exact. It is unclear how the company was able to market the property and offer advice if it did not exist at the time. Details of the company's incorporation have been provided (Appendix RD8 to this evidence) and are publicly available to view on the Companies House website.

- 9.21. Mr Cox, the director of the letting agency, seeking to clarify his position after the discrepancy was highlighted in the Council's written representations, has provided a further letter explaining that the respective marketing was carried out by a former company where he had worked previously however whatever the case may be the Council still does not consider the efforts highlighted justifies the loss of the public house (Appendix 47 of the Appellant's Statement of Case).
- 9.22. The Council considers that the information provided in respect of the Appellant's marketing efforts and viability studies is not sufficient enough to meet the tests detailed in "Camden's Planning Guidance, Community uses, leisure facilities and pubs" to demonstrate that the existing premises is no longer required or viable in its "existing" use as a public house (prior to the development).

#### Alternative Community Facilities

- 9.23. In response to Reason 2 for issuing the Enforcement Notice, the Appellant has further contended that "there are sufficient alternative uses within walking distance to adequately serve the community's needs" and a list of "assets" (Appendix 35 of the Appellant's Statement of Case) has been provided.
- 9.24. The Council contends that it has not been sufficiently demonstrated that there is a site or establishment in the area, which could offer a comparable community service that, would be suitable or have enough capacity to accommodate the residents that were served by the appeal site in addition to those members it would have already served. The Council would argue that, simply providing a list of properties without suitable justification does not demonstrate that the issues caused by the loss of the community facility have been mitigated.
- 9.25. The Council is aware that previously the Appellants had attempted to demonstrate that there was an alternative public house, the Rose and Crown on Torriano Avenue, albeit only in respect of its beer garden in a previous appeal (APP/X5210/W/15/3095453). The claim was duly dismissed by the Planning Inspectorate as being too small to be considered comparable. There was no other site put forward as a comparable alternative.

9.26. An extract from the decision letter is detailed below:

*"19. An example of a pub operating in the area with a successful beer garden was provided at the Hearing. This was the Rose and Crown on Torriano Avenue. I was able to visit these premises on the day of the site visit. This is a much smaller establishment, with clear glazing from the bar area to a very small terraced courtyard area, accessed via steps. It is not comparable in scale, size or positioning to the existing beer garden at the Leighton Public House. The similarities I can find between this operation and the appeal site are therefore very limited. In my view, even though the garden area may have at one time provided an attractive element to the appeal premises, this is no longer the case."*

9.27. The Appellant argues (at paragraph 7.9 (ASOC)) that under the definition of the NPPF, the shop is considered to be a community facility that provides a local service and therefore concludes that the change of the premises as a public house to A1 use would not have a detrimental impact upon the needs of the local community.

9.28. The Council would argue that while a retail shop may provide a local service, it does not provide a community use but if it did, it would not be comparable to the public house, which it replaced. The Council's Local Plan (para. 4.21) clearly explains as to what a community facility would be and there is no mention of a retail unit:

*4.21 The term "community facilities" in this section refers to a wide range of social infrastructure that provides a service to the community. This includes childcare, education, adult learning and training, healthcare, police stations, youth provision, libraries, public houses, community halls, places of worship and public toilets. These facilities form a vital part of town centres and neighbourhoods and address the local community's needs. However, it is acknowledged that some facilities offer large-scale or specialist provision, in some cases for a specific community and serve a wider catchment. Camden is home to health, education, scientific and research facilities with global reach and impact, which in many cases enjoy links with the local community, including in the provision of services.*

9.29. It should be noted that the Council is not opposed to the development of a local shop in the area (should a suitable site be found) but to the loss of the public house, which cannot be considered comparable.

- 9.30. Policy C2 (Community facilities) clearly outlines the functions one would expect from a community facility and as such it is argued that the development does not provide any or sufficient community use:

*"The Council will work with its partners to ensure that community facilities and services are developed and modernised to meet the changing needs of our community and reflect new approaches to the delivery of services.*

*The Council will:*

*[...]*

*f. seek the inclusion of measures which address the needs of community groups and foster community integration;*

*g. 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;*

*h. take into account listing or nomination of 'Assets of Community Value' as a material planning consideration and encourage communities to nominate Assets of Community Value."*

- 9.31. The Council would further add, in support of the enforcement action taken, the residents have provided statements to the Inspectorate (referred to in paragraph 8.61 above) that detail how they frequented the public house and how important it was to them as a community facility, inferring that it had community-wide support ensuring its success as a viable business
- 9.32. The Council would contend that a retail use is not a use that would facilitate the needs of the community and no sufficient details have been provided to demonstrate how the development in accord with policy CS2 as outlined above.

#### Waste Management

- 9.33. The Appellant has provided details (at para 7.21 and at Appendix 36 of its Statement of Case) of a waste management strategy. The Council does not disagree that an acceptable waste management strategy based on what has



been provided can be agreed. Should the inspector be minded to allow the appeal the Council would request that the following condition relating to waste management be imposed:

*At no time should waste material be stored out on the street except when being collected in secured containers once a week.*

*Reason: To ensure that sufficient provision for the storage and collection of waste has been made in accordance with policy CC5 of the Camden Local Plan 2017.*

### **Ground (a) Appeal – Conclusion**

- 9.34. Based on the reasons outlined above, The Council considers that the loss of the public house without the provision of a suitable viability study or marketing exercise nor the provision of an alternative replacement community facility to meet the needs of the local community is considered to have a detrimental impact upon 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)

## **10. GROUND G APPEAL**

- 10.1. The Appellant contends that the time given to comply with the requirements of the enforcement notice is too short.
- 10.2. The Council contends that three months is 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. No evidence of discussions of time estimates or agreements with contractors have been provided to suggest the required alterations would take any longer than the stipulated 3 Months.
- 10.3. The Appellant contends that, due to the considerable time and financial resources spent on the premises, and for the time it would take for the tenant to find alternative premises the compliance period should be extended to 24 Months.
- 10.4. This is a very long period of compliance to request without any justifiable merits. All that is required within the Notice is for the use of the shop to cease, reinstate the frontages and make good any damage. No evidence has been provided that demonstrates that three Months would be insufficient to meet these terms, and so the request is considered wholly unreasonable.
- 10.5. The appellant had plenty of opportunities to seek consent or secure a certificate of lawful development before any works had commenced and prior to the change of use of the property. The Council had demonstrated that as late as April 2018 the building remained empty, over a whole year since the matter was brought to the Appellant's attention. The Appellant had decided to risk carrying out the development knowing full well that the development could be refused. All the time and financial resources spent on the premises could have been saved had they exercised their rights and sought out the respective consents beforehand.
- 10.6. I also point out that the tenant has in his control a chain of convenience stores within the London Borough of Camden and so it cannot be said that they would be deprived from running a convenience store.
- 10.7. Further, if the Inspector is minded to allow the appeal, such a request, the Council would argue would gravely compromise the integrity of the decision

making progress as highlighted in the Planning Practice Guidance(Paragraph 005) which seeks to ensure effective enforcement action against unacceptable impact on the amenity of the area.

- 10.8. It should also be noted that the Appellant's will had at least 19 months from when they would be required to comply with the notice (not accounting for the time the Inspectorate may take in issuing the decision) to prepare for a worst-case scenario in the eventuality the appeal is dismissed.

#### **Ground (g) Appeal - Conclusion**

- 10.9. Evidence has not been provided as to ascertain the reasons why the use of the retail store cannot cease, tenants evicted and alterations carried out within three months to ensure compliance.
- 10.10. For all these reasons the Council respectfully invites the Inspector to dismiss the Appellant's Ground (g) Appeal.

## **11. SUMMARY AND CONCLUSIONS**

- 11.1. In conclusion, the key issue for this appeal is to establish whether the current use of the site as a retail store is lawful, based on whether the Leighton Arms was in Class A3 or A4 use prior to the material change of use to A1 and compliance with the general permitted development order 2015 (as amended). The site, prior to the material change of use was in use as a public house Class A4, as accepted by an appeal inspector in the appeal decisions APP/X5210/W/15/3095453 and This therefore required any change of use of the premises to retail to adhere to conditions A.2, Class A, Part 3.
- 11.2. The evidence that I have provided demonstrates that the material change of use to retail did not commence before the 9 August 2017. Accordingly this material change of use would constitute development requiring planning permission.
- 11.3. I have demonstrated that the appeal proposal fails to accord with the development plan policies identified in the reasons for taking enforcement action. Each of the reasons for taking enforcement action are considered to be sufficient to justify the refusal of the appeal proposal in their own right, and together represent an appeal scheme that would be contrary to planning policy. Sufficient evidence to demonstrate that the use as public house is no longer required or viable or that there exists an alternative capable of meeting the needs of the local area has not been provided. I have provided appeal decisions which support the Council's position that the Public House should be protected. The importance of protecting this pub was shared by the Inspector in the appeal decisions appeal decision APP/X5210/W/15/3095242 who states that "the existing premises....serve a local community need". The developer has not offered a provision for a section 106 planning obligation for a replacement community facility. Therefore the loss of the public house is considered to have a detrimental impact on the needs of the local community.
- 11.4. Furthermore the external changes required to facilitate the retail provision are considered to have materially affected the character and appearance of the historic pub, shopfront and street scene contrary to the relevant policies.

- 11.5. I have demonstrated that evidence has not been provided as to ascertain the reasons why the use of the retail store cannot cease, tenants evicted and alterations carried out within three months to ensure compliance with the notice.
- 11.6. For the reasons set out above and in the Council's evidence taken as a whole, the Inspector is respectfully invited to dismiss this appeal.

## 12. LIST OF APPENDICES

REFERENCE	DOCUMENT	DATE
Appendix RD1	Email from Ramesh Depala to Martin Cramer	18 May 2018
Appendix RD2	Companies House listing For K&M FOODS LTD	
Appendix RD3	Email from David Drennan	7 June 2018
Appendix RD4	Relevant appeal decisions: APP/X5210/W/15/3095242 APP/X5210/C/18/3193274 and 3153219 APP/X5210/W/15/3095453 APP/X5210/A/14/2218740 APP/X5210/W/15/3003396	
Appendix RD5	Record of complaints and actions taken	2014-2015
Appendix RD6	Correspondence from the local residents	September – November 2018
Appendix RD7	Record of site visit relating to a noise complaint	1-3 November 2015
Appendix RD8	Companies House listing For DAVID ASTBURY LTD	