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## Appeal Decision

Hearing held on 24 November 2015

Site visit made on 25 November 2015

**by Christa Masters MA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 December 2015**

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**Appeal Ref: APP/X5210/W/15/3095242**

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Bryanston Investments against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/4554/P, dated 10 July 2014, was refused by notice dated 25 March 2015.
  - The development proposed is the conversion and extension of the existing pub and residential unit at 101 Brecknock Road. Pub to remain at ground floor with 5 new residential units to be provided in the upper floors of the existing building as well as a single storey roof extension.
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### Decision

1. The appeal is allowed and planning permission is granted for the conversion and extension of the existing pub and residential unit at 101 Brecknock Road. Pub to remain at ground floor with 5 new residential units to be provided in the upper floors of the existing building as well as a single storey roof extension at The Leighton, 101 Brecknock Road, London N7 0DA in accordance with the terms of the application, Ref 2014/4554/P, dated 10 July 2014, subject to the conditions set out on the schedule at the end of this decision.

### Procedural Matters

2. The description of development as noted on the application form refers to 6 flats. However, the plans before me and the Statement of Common Ground refer to 5 flats. Accordingly, I have amended the description of development in line with this description.
  3. A revised plan reference BRE-PL-GA-22 was submitted at the Hearing. This amendment sought to address the second reason for refusal regarding commercial waste storage provision. In addition, drawings BRE-PL-GA-17, BRE-PL-GA-18 and BRE-PL-GA-19 provided coloured elevation of the existing elevations already submitted. I do not consider that the scheme would be so changed by this modification such that any interests would be prejudiced by having regard to these drawings as part of this appeal. I have proceeded to determine the appeal on this basis.
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4. A number of other appeal decisions<sup>1</sup> have been drawn to my attention by both the Council and the appellant. I have had regard to these decisions in reaching my conclusions below.
5. A separate Hearing took place on 25 November 2015 to consider appeal reference APP/X5210/W/15/3095453. This appeal is subject to a separate decision.

### **Main Issues**

6. From the evidence presented and from what I heard at the Hearing, this appeal has 3 main issues. Firstly, the effect of the rear extension on the character and appearance of the area. Secondly, the effect of the proposal on the living conditions of:
  - (a) the occupiers of the proposed residential units with particular reference to noise and disturbance;
  - (b) other residents in terms of noise and disturbance associated with the loss of the access to the beer garden and its effect on on street activity.
7. Finally, the effect of the proposal on the long term retention of the public house, recognised by development plan policies as a community facility.

### **Reasons**

#### *Character and appearance*

8. The appeal property is a substantial building occupying a prominent corner plot on Brecknock Road at its junction with Torriano Avenue. It is visible from a number of vantage points including more distant views in both directions along Brecknock Road. The surrounding area is primarily residential. Torriano Avenue has a varied character including a number of more modern buildings as well as a mixture of Victorian terraced properties, painted stucco and a number of properties with brick frontages.
9. The Torriano Avenue frontage is an important elevation to the property, however it is clearly secondary. The existing rear of the building where the extension is proposed has a number of extensions which have been introduced over time, a disused fire exit door, existing chimney stacks and windows placed in a unremarkable fashion. In my view, the rear elevation as existing delivers no benefits to the local townscape.
10. The existing public house operates from the ground floor with a large central bar, open kitchen area, toilets and seating. The basement provides a storage and cellar area. I agree with the appellants submissions that the public house is very dated venue and has lacked any modernisation for a significant number of years. The exit to the former beer garden is through a small door at the rear of the property. On the upper floors, there is ancillary accommodation which although no longer in use, has been used for residential purposes associated with the public house use. The only means of access to the upper floors is through the public house so it cannot operate as self contained residential accommodation.

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<sup>1</sup> APP/X5210/W/15/3003396, APP/X5210/A/14/2218740, APP/X5210/A/12/2184317, APP/C3240/A/13/2194804, APP/G2815/A/03/1128215

11. The appeal proposal would see the refurbishment of the ground floor bar and kitchen area. A rear extension is proposed which would span the entire width of the rear of the property. A new ground floor entrance would be created from Torriano Avenue to provide access to the residential accommodation on the upper floors. A total of 5 flats would be created and a roof terraced added to provide private amenity space.
12. The relevant development plan policies under which the proposal should be assessed are policy CS14 of the Core Strategy (CS) 2010 and policy DP24 of Camden's Development Policies (DP) 2010. Policy CS14 is a five part policy concerning, amongst other things, creating high quality spaces. Part (a) advises that the Council will require development to be of the highest standard of design that respects local context and character. Policy DP24 also relates to securing high quality design. It advises, amongst other things, that the Council will require all developments to be of the highest standard of design. Where extensions are proposed, the Council expects development to consider the character, setting form and scale of neighbouring buildings, as well as the character and proportions of existing buildings, as is the case here. In addition, other important aspects for consideration include, amongst other things, the quality of the materials to be used and accessibility.
13. The Council contend the proposed rear extension would be excessive in bulk, scale and massing. In my view, the proposal would be subordinate to the host property, being a full floor lower than the parapet of the host building. It would also be set back from the flank elevation of the public house, allowing the existing quoins to be retained and remain the dominate feature to this elevation. In light of these considerations and taking into account the scale, massing and height, the proposal cannot be described as an excessively bulky addition to the property. The host property would continue to be seen as a prominent building in the overall street scene and the extension would not detract from this. Similarly, I cannot agree that the splayed footprint of the building would cause material harm as the site runs perpendicular to Torriano Avenue. One of the Council officers stated at the Hearing in her professional opinion the property could be worthy of local listing. However, this was not the view of the Council and accordingly has had no bearing on my decision.
14. There was great debate concerning whether the proposal should be assessed as a rear or side extension. To my mind, the proposal is clearly a rear extension. However, it will be accessed from Torriano Avenue, the side elevation of the property. Reference was made to the Camden Supplementary Planning Document and CPG1 Design (SPD) 2013. However, this document is in my view more applicable to residential house extensions than the appeal proposal and accordingly, I have attached limited weight to it. In any event, as I have set out above, the extension would be proportionate to the host property so its description as either a side or rear extension has little bearing on my deliberations.
15. Turning to consider the roof extension, this would be set well in from the edge of the building. I appreciate that the extension will be visible, primarily in longer range view of the public house along Brecknock Road. However, it is an important consideration that visibility does not in itself amount to material harm. It would be subordinate in scale and as such would be acceptable in design and scale. In terms of the materials to be used, the Council expressed concerns that the contemporary approach would not respect the architectural

style of the host property. The development plan policies do not prohibit contemporary design or materials, providing the resulting development is of a high quality and respects the local context. Indeed, paragraph 24.6 of the supporting text to policy DP24 advises that high quality contemporary design will be welcomed. In my opinion, the material proposed would complement the existing host property, and reflect the contemporary design of the extension. Furthermore, the use of render on the rear elevation would be in keeping with other rendered properties in the vicinity.

16. Additional concerns were raised regarding the effect of the extension on the existing gap within the street scene. However, given the scale and width of the proposed extension, I cannot agree that the proposal would result in any material difference to the existing gap in the street scene. Given its height, scale and set back, it would not, as suggested by the Council, create a sense of enclosure. Similarly, although glimpsed views through to rear gardens are possible, these would continue to be possible with the appeal proposal in place. Moreover, this is not a clear defining feature of either Torriano Avenue or Brecknock Road.
17. I therefore conclude the proposal would not result in any material harm to the character and appearance of the area. It would, as a result, accord with policy CS14 of the CS as well as policy DP24 of the DP outlined above.

#### *Living conditions*

18. Policy DP12 of the DP advises that in order to manage potential harm to amenity from food, drink and entertainment uses, the Council will use planning conditions to address a number of issues which include, amongst other things (i) noise and vibration. The Council accepted at the Hearing that the suggested conditions which they had put forward would adequately protect the living conditions of the future occupiers although expressed concerns that these conditions may prove too onerous for future occupiers of the pub.
19. The appellant confirmed the leaseholder, had worked at the premises for 15 years and had been the leaseholder for the last 2 years. The existing lease was in place for 9 years. The appellant confirmed that the pub could operate within the parameters of the suggested conditions. Given the leaseholders significant long term involvement with the premises, I see no reason to disagree with this view. As such, the conditions suggested would support the objectives of policy DP12 outlined above.
20. To my mind, any future occupiers of the upper floors would be well aware of the existing commercial activity taking place at ground floor level. I have no evidence before me to suggest that the conditions to address sound insulation would be materially harmful to the running of the commercial business on the ground floor. Furthermore, the Framework is clear at paragraph 123 that planning decision should mitigate and reduce to a minimum adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions. Therefore, I can attach little weight to the Councils arguments in relation to this issue.
21. Additionally, concerns were raised regarding residents opening windows on the upper floors and being disturbed by patrons standing outside the pub. As stated above, any future occupiers of the residential accommodation would be well aware that opening windows may increase noise disturbance. However, it

is important to note that Brecknock Road is a relatively busy road with buses and other vehicles passing on a regular basis. I cannot therefore agree that patrons of the pub standing outside would have a materially harmful effect in this regard.

22. Concerns were expressed that the proposal would result in additional noise and disturbance to existing residents as patrons stand and drink on the public footpath. However, it is important to note that this activity is already taking place. To my mind, this is a situation evident outside many public houses in urban locations and is certainly not unique to the Leighton. Whilst there is currently no license in place for tables and chairs on the public highway, the merits or otherwise of this is not a matter for my deliberations. On the other hand, as noted by the officer's report to committee, there have been a number of complaints made by residents regarding noise and disturbance associated with the use of the beer garden. The issue is therefore finely balanced.
23. I acknowledge that the proposal would result in the loss of the direct access from the existing pub to the beer garden. However, the beer garden closed in August 2014 and has not been in use since this time. It was explained to me at the Hearing that the beer garden had become difficult to manage with antisocial activity taking place on a regular basis. The appellant highlighted that the lack of visibility from the bar itself had exacerbated this issue. Although the premises are licensed until 1am, I was advised at the Hearing that the license restricts the use of the beer garden to 9pm only. The appellant explained that this restriction creates additional problems in terms of removing customers from the beer garden at this time, particular in the summer months. I can fully appreciate the difficulties that this situation may deliver.
24. Taking the above factors into account, I am not convinced that the appeal proposal would result in additional noise and disturbance to residents by preventing a direct access from the rear of the pub to the beer garden. Moreover, I have no evidence before me to suggest that refusing the appeal on this basis would alter the existing pattern of activity already taking place in terms of patrons drinking and smoking outside of the Leighton.
25. On balance, I therefore conclude the proposal would have an acceptable impact on the existing residents, as well as future occupiers of the upper floor flats. Accordingly, the proposal would accord with policies DP12 and DP26 of the DP. Policy DP26 advises that the Council will protect the quality of life of occupiers and neighbours by only granting planning permission for development that does not cause harm to amenity. For the same reasons, the proposal would also accord with policy CS5 of the CS which advises, amongst other things, that the Council will protect the amenity of residents and those working in the borough by making sure the impact of developments on their occupiers and neighbours is fully considered.
26. For the same reasons, it would also accord with paragraph 17 of the Framework, which advises that developments should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

*The effect on the long term retention of the public house, recognised by development plan policies as a community facility*

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.
29. I therefore conclude the proposal would not effect the long term retention of the public house. It would therefore accord with the provisions of policies DP15 and CS10 outlined above.

*Other matters*

30. Prior to the Hearing, the appellant prepared a revised layout of the refuse storage area on the ground floor. The Council accepted the revisions adequately addressed the policy requirements and therefore the Councils objections in this regard. I am also satisfied that appropriate refuse storage provision can be provided on site. However, concerns were expressed that the alterations made had resulted in the cycle parking area now being inadequate. This matter remained unresolved at the Hearing. I am satisfied that subject to an appropriately worded condition, the number and design of the cycle parking area could be adequately addressed.
31. A number of interested parties raised concerns regarding the proposal. These concerns include the effect of the proposal on on street parking provision, privacy and overlooking and effect on daylight and sunlight. In relation to car parking, I am satisfied that in accordance with the conclusions drawn by the Council, the appellants commitment to provide a car free development would adequately address this issue. Turning to consider the issue of privacy and overlooking, taking into account the separation distances involved, I am not convinced that the proposal would result in any material harm in terms of overlooking to other properties in the vicinity.
32. In terms of daylight and sunlight, detailed evidence was provided in relation to this issue by the appellants. The Vertical Sky Component Test (VSC) which accompanied the application confirms that none of the nearest windows with an outlook facing the site will result in a VSC of less than 27%. I have no technical evidence before me which would suggest that this is inaccurate. Accordingly, I conclude that the proposal would maintain an adequate amount of daylight and sunlight to adjoining properties.

33. I have also had regard to the other appeal decisions before me presented by both of the main parties. Although the full details of each scheme are not before me, the circumstances and particulars of the developments are also different and accordingly this limits the weight I can attach to them. In any event, each appeal must be determined on the basis of the evidence presented.
34. A signed Section 106 Agreement has been provided. I have considered this document in light of the statutory tests contained in Regulations 122 and 123 (3) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). In relation to both of the items, the Council confirmed at the Hearing that there are currently no other contributions in place for the items specified, therefore I am satisfied that there are no issues concerning the issue of pooled contributions in relation to this appeal. The details of the contributions sought are set out below.
35. Firstly, an environmental improvement contribution of £4000. Clause 2.8 of the Agreement specifies that the environmental improvements contribution would be used towards the provision of pedestrian cycling and environmental improvements in the vicinity of the development. No details have been provided regarding where current deficiencies lie in relation to these matters. Furthermore, although the Council referred to general policies from the development plan, no detailed evidence was provided as to how this figure had been arrived at. Accordingly, I am not persuaded that it is necessary to make the development acceptable in planning terms. Neither am I persuaded that it is fairly related in scale and kind to the development. Hence the obligation would fail to meet the test in the Regulations.
36. Secondly, a highways contribution of £26,800. The Council referred to policies DP29 of the DP as well as CPG8 of the SPG to support this requirement at the Hearing. Policy DP29 is a general policy concerning, amongst other things, improving access to facilities and opportunities. CPG8 of the SPG covers a number of matters which may be addressed by a planning obligation. Repairs to the highway network are not listed.
37. The Council's appeal statement refers to policy DP21 of the DP. Part J of this policy advises that the Council will expect development connected to the highway network to repair any construction damage to transport infrastructure or landscaping. I therefore agree there is a policy basis to support the Council's request in relation to this matter.
38. However, the appeal proposal is for a rear extension. The façade and floors of the existing building would be retained. Whilst a breakdown of materials required was provided by the Council, I am not convinced that the amount is fairly sought or fairly and reasonably related in scale and kind to the development proposed. I am also not convinced it is necessary to make the development acceptable in planning terms. I am therefore unable to conclude with any confidence that this aspect of the obligation would pass all the tests of CIL Regulation 122.
39. The document also contains obligations to ensure the development is car free. The appeal site is located within an area with good transport accessibility (PTAL rating of 4). Policy DP18 advises that the Council expect all development within the Central London Area to be car free. The Council have identified that the appeal site is located within an existing Controlled Parking Zone (CPZ) which already suffers from high levels of parking stress. Having regard to the above

factors, I am satisfied that the restriction would be appropriate and necessary. It therefore passes the statutory tests.

40. Finally, the obligation also includes for a construction management plan to be entered into. This would accord with the requirements of policy DP26 of the DP which relates to managing the impact of development on occupiers and neighbours. Policy DP20 of the DP has also been referred to however this policy is applicable to development which would generate significant movement of goods which is not the case in relation to this appeal. The Council have explained that this matter has been addressed via the agreement as a number of the provisions would relate to off-site requirements such as loading and unloading of vehicles. Taking into account the evidence presented, I am satisfied that this element of the obligation is directly related to the development and is fairly and reasonably related in scale and kind to the development. It therefore passes the statutory tests.

### **Conditions**

41. I have considered the conditions as suggested by the Council in light of the discussions which took place at the Hearing, the advice contained within paragraph 206 of the Framework as well as the Planning Practice Guidance. Where necessary, I have reworded the suggested conditions in the interests of enforceability and precision.
42. A standard condition limiting the life of the permission is necessary. I also agree it is necessary to specify the approved plans for the avoidance of doubt and in the interests of proper planning. A condition requiring the materials to be used as part of the development to be submitted is necessary to ensure the appearance of the development is satisfactory. However, I have replaced the condition suggested by the Council with a more general condition as I do not consider the level of detail requested by the Councils suggested condition is either necessary or reasonable.
43. A condition requiring the details of the cycle parking to be agreed is necessary in order to ensure cycle parking can be adequately accommodated within the site. Conditions have also been attached to address noise mitigation measures within the building. These are necessary to protect the living conditions of the future occupiers of the proposed flats. However, as the pub is an existing use on the site, the wording of the conditions has been amended to reflect this. An additional condition has been suggested by the Council to cover lifetime home standards. This condition is no longer necessary as a new system of housing standards commenced in March 2015, covered by Building Regulations. An additional condition to cover the use of the external terraces is necessary in order to protect the living conditions of neighbouring occupiers. A condition requiring details of protection to trees on the site during the construction process is also reasonable and necessary.
44. In terms of water consumption, the Planning Practice Guidance states that the mandatory national standards set out in building regulations are 125 litres /person/day. However, where appropriate the Council may consider a tighter water efficiency requirement. The condition suggested by the Council refers to 105 litres/person/day. Policy DP22 of the DMP notes the Council will require development to be resilient to climate change and include appropriate measures such as reducing water consumption. Taking into account the Guidance on this issue, I am satisfied that the condition is both reasonable and



necessary. The final condition covers compliance with the submitted energy statement which is considered reasonable and necessary in the interests of sustainable design and construction.

**Conclusion**

45. I am satisfied that the development proposed would not materially harm the character and appearance of the area. It would also provide satisfactory living conditions for existing and proposed occupiers as well as existing neighbouring occupiers. I am also satisfied that the proposal would not conflict with the Framework or Camden policies which seek to support community facilities. For the reasons set out above and taking into account all other matters raised, I conclude that the appeal should be allowed.

*Christa Masters*

INSPECTOR

**APPEARANCES**

**FOR THE APPELLANT:**

Mr M Cramer	Appellant
Ms J Brosnan	Leaseholder of the Leighton PH
Mr S Satwick	Appellant
Mr M Evans	Martin Evans Architects
Mr D Norris	Planning Consultant

**FOR THE LOCAL PLANNING AUTHORITY:**

Mr R Tullock	London Borough of Camden
Ms C Bond BA (Hons) B Arch Hons MTP Grad Dip Cons AA IHBC	London Borough of Camden

**INTERESTED PARTIES**

Mr A Paterson	Local Resident
Mr R Fairley	Local Resident
Ms A Fairley	Local Resident
Ms J Herald	Local Resident
Cllr J Headlam-Wells	Ward Councillor
Cllr Meric Apak	Ward Councillor

**DOCUMENTS SUBMITTED AT THE HEARING**

1. Signed Section 106 Agreement dated 23 November 2015
2. 4 photographs from google earth showing the appeal site
3. Notification of Hearing letter
4. Statement prepared by Mr Paterson on behalf of the local residents
5. Statement of Common Ground
6. Schedule of highways works

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; BRE-EX-GA-01, BRE-EX-GA-02; BRE-EX-GA-03; BRE-EX-GA-04; BRE-EX-GA- 05; BRE-EX-GA-06; BRE-EX-GA-07; BRE-EX-GA-08; BRE-EX-GA- 09; BRE-EX-GA-10; BRE-EX-GA-11; BRE-EX-GA-12; BRE-EX-GA-13, BRE-EX-GA-14, BRE-PL-GA-02 A; BRE-PL-GA- 03; BRE-PL-GA-04 B; BRE-PL-GA-05 B; BRE-PL-GA-06 C; BRE-PL-GA-07 C; BRE-PL-GA-08 C; BRE-PL-GA-09 C; BRE-PL-GA-10 E; BRE-PL-GA-11 C; BRE-PLGA- 12 C; BRE-PL-GA-13 C; BRE-PL-GA-14 A; BRE-PL-GA-15 C; BRE-PL-GA-16 C; BRE-PL-GA-17; BRE-PL-GA-18; BRE-PL-GA-19; BRE-PL-GA-22; BRE-DEM-GA-01; BRE-DEM-GA-02; BRE-DEM-GA-03; BRE-DEM-GA-04; BRE-DEM-GA-05; BRE-DEM-GA-06; BRE-DEM-GA-07; BRE-DEM-GA-08; BRE-DEM-GA-09.
- 4) Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of an enhanced sound insulation value  $D_{nT,w}$  and  $C_{tr}$  dB of at least 20dB above the Building Regulations value, for the wall and floors separating the residential units from the ground and basement floors. Approved details shall be implemented prior to the first occupation of the residential units and thereafter be permanently retained and maintained.
- 5) Prior to the occupation of the new residential units, all sound system speaker equipment and any amplified sound equipment at basement and ground floor shall be fitted with an appropriate anti-vibration system. In addition, prior to the first occupation of the new residential units, an appropriate automatic noise control device must be fitted to all amplified sound equipment at basement and ground floor level. The device must be:
  - a) Set so that the volume of any amplified sound emanating from the premises is inaudible in any residential part of the development.
  - b) The limiting device must be capable of controlling the frequency element of entertainment music.
- 6) Prior to the occupation of the residential units hereby approved, a post completion noise and vibration assessment shall be carried out from within the approved residential units and external amenity areas to confirm compliance with the noise and vibration criteria submitted for conditions 4 and 5. Any additional steps that may be required to mitigate noise shall be taken, as necessary. Approved details shall be implemented prior to occupation of the residential units and thereafter be permanently retained.
- 7) Only the areas specifically shown on the plans hereby approved as external terraces shall be used for such purposes and no other flat roofed areas shall be used as a roof terrace.

- 8) Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the Council in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.
- 9) Prior to first occupation of the development hereby approved, details of the cycle storage shall be submitted to and approved by the local planning authority. The approved facility shall be provided in its entirety prior to the first occupation of any of the new residential units, and permanently retained thereafter.
- 10) The residential units hereby approved shall achieve a maximum internal water use of 105 litres/person/day, allowing 5 litres/person/day for external water use. Prior to occupation of the residential units, evidence demonstrating that this has been achieved shall be submitted to and approved by the Local Planning Authority.
- 11) The development hereby approved shall be constructed in accordance with the approved energy statement by Syntegra Consulting dated 10th July 2014 to achieve a 20% reduction in carbon dioxide emissions beyond Part L 2013 Building Regulations in line with the energy hierarchy, and a 20% reduction in carbon dioxide emissions through renewable technologies. Prior to occupation of the residential units hereby permitted, evidence demonstrating that the approved measures have been implemented shall be submitted to and approved in writing by the Local Planning Authority and shall be retained and maintained thereafter.



## Appeal Decisions

Hearing Held on 31 July 2018

Site visit made on 31 July 2018

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 September 2018**

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### **Appeal A: APP/X5210/C/18/3193274 105 King's Cross Road, London WC1X 9LR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mendoza Limited against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice was issued on 12 December 2017.
  - The breach of planning control as alleged in the notice is change of use of the first and second floors from ancillary accommodation for public house use (A4) to three self-contained flats (Class C3).
  - The requirements of the notice are 1. Permanently cease the use of the first and second floors as self-contained flats and 2. Reinstate the original shopfront removing the new door that gives separate access to the upper floors.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B: APP/X5210/W/16/3153219 105 King's Cross Road, London WC1X 9LR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mendoza Limited against the decision of the Council of the London Borough of Camden.
  - The application Ref 2016/0759/P, dated 10 February 2016, was refused by notice dated 18 April 2016.
  - The development proposed is change of use of the first and second floors from public house (Class C4) to create 1 x 2 bedroom and 1 x 3 bedroom flat (Class C3); erection of a mansard roof extension to create 1 x 3 bedroom flat (Class C3) and associated works.
  - This decision supersedes that issued on 4 April 2017. That decision on the appeal was quashed by order of the High Court.
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### **Procedural Matters**

1. It was agreed at the hearing that the scheme for the enforcement appeal and planning appeal are similar with similar considerations. The main difference is that currently for the enforcement appeal there are two flats at first floor level. The kitchen area is also different between the two appeals.
2. While the Council had other concerns about the developments, it was agreed that an acoustic report and Section 106 obligation provided by the appellant

overcomes those concerns and so these matters are not a main issue for these appeals.

3. The site is within the Bloomsbury Conservation Area whose special interest and significance is set out in the Area Appraisal. It is also common ground that the developments would preserve its significance and special interest and I concur with this. The proposed mansard roof and alterations to the shop front are in keeping with the scale, proportion and arrangements of the appeal building and nearby buildings and the use for residential accommodation at upper floor levels is acceptable in the area.
4. The Section 78 appeal was quashed by order of the High Court because the lease for the current A4 use for the ground and basement floors had not been fully considered.

## **Decisions**

### *Appeal A*

5. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### *Appeal B*

6. The appeal is dismissed.

## **Main Issue**

7. The main issue is the effect of the proposal on the use of the public house as a valued local community asset. (The public house has been designated as an Asset of Community Value (ACV))

## **Reasons**

8. The development plan includes the London Plan [LP] and the Camden Local Plan [CLP], which has been adopted recently. LP Policy 4.48 relates to supporting a successful and diverse retail sector and related facilities and services. It indicates that the Local Development Frameworks should take a proactive approach to planning for retailing and related facilities and services providing a policy framework for maintaining, managing and enhancing local and neighbourhood shopping and facilities which provide local goods and services, and develop policies to prevent the loss of retail and related facilities that provide essential convenience and specialist shopping or valued local community assets, including public houses, justified by robust evidence.
9. Supporting paragraph 4.48A indicates that The Mayor recognises the important role that London's public houses can play in the social fabric of communities (see also Policy 3.1B) and recent research highlights the rapid rate of closures over the past decade and the factors behind these. To address these concerns, where there is sufficient evidence of need, community asset value and viability in pub use, boroughs are encouraged to bring forward policies to retain, manage and enhance public houses.
10. CLP Policy C4 relates to public houses and notes that the Council will not grant planning permission for proposals for the change of use of a public house unless it can be demonstrated it would not be a loss of a pub valued by the

local community unless there are equivalent premises available or there is no interest in the continued use of the public house or reasonable prospect of being able to trade over the medium term. It also notes that applications involving the loss of floor space, including facilities ancillary to the operation of the public house, will be resisted where this would adversely affect the operation of the public house.

11. The appeal building is a designated ACV furthering the social interests of the local community, particularly sporting interests as a darts venue. There was also regular live music and charitable activities that took place at the public house. It had a reasonable customer base with locals supplemented by nearby workers as well as some tourists. Representations clearly indicate that it played an important social role in the community.
12. The provisions for assets of community value give communities a right to identify a building or other land that they believe to be of importance to their community's social well-being. The aim is that, if the asset comes up for sale, then the community will be given a fair chance to make a bid to buy it on the open market.
13. These provisions do not restrict in any way who the owner of a listed asset can sell or lease their property to. They do not confer a right of first refusal to community interest groups. Permitted development rights have been modified to take into consideration assets of community value, removing or modifying the right in respect of them.
14. The provisions do not place any restriction on what an owner can do with their property, once listed, if it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is designated may affect planning decisions – it is open to the Local Planning Authority to decide that designating an asset of community value is a material consideration if an application for any change of use is submitted, considering all the circumstances of the case. The nomination as an asset of community value indicates there is value to the community and this value is a significant material consideration in both appeals, but it is the development plan that remains the major consideration.
15. There are effectively three aspects to the loss identified by the Council: the manager's accommodation on the second floor, the first floor kitchen and the first floor function room.
16. Traditionally, landlords have lived on site, which suits the long and late working hours and having the accommodation makes managing and running a public house easier and likely to be a more attractive proposition. A viability report by Lambert Smith Hampton indicates that many pubs function successfully with only ground and basement accommodation (lock-up premises), but the report also acknowledges that lack of accommodation would make the premises less attractive to potential operators or tenants and may have a negative effect on marketability.
17. The previous inspector noted how the lack of on-site accommodation may make it more difficult to attract prospective managers and staff. However, while I accept that without the manager's accommodation it would be less attractive that does not mean that it is essential or of major importance in terms of the benefits provided by the ACV. The appellant has not had difficulty

in letting the premises for an A4 use and there is currently a 15 year lease in place. So while I acknowledge the concerns of the Council and the previous inspector, the negative effect on marketability is likely to be small and to my mind not sufficient to impact on the use of the building as an ACV.

18. It was also indicated that the presence of the landlord living on site contributed to the public house being considered as a safe environment for people in the community. However, there was no reasonable explanation as to how that would be any different if the landlord lived off the premises. I acknowledge that living there he would be part of the community, but to my mind, so would the operator of the business and living on or off site would have little effect on this.
19. I therefore consider that the loss of the accommodation on the second floor would not affect the premises as an ACV or materially affect its community function or compromise the operation or viability of the use.
20. The first floor appears to have had a combined use in the past with it being used by the manager, including for some office and staff use. It was acknowledged that the function room has not been used publicly since the mid 1990s. The kitchen was used to cater for darts matches on weekdays and regular parties and other events, including for weddings, engagements and birthdays. Food for these events was prepared in the kitchen and taken down stairs to the bar areas. The kitchen clearly is an important facility providing the ability to serve the community in a flexible and varied way providing, considerable value to the community.
21. The function room has not been used for a considerable time and not at the time of the ACV designation and the weight I attach to it is therefore less.
22. The appellant argued at the hearing that it is not for planning to control the day to day running or internal arrangement of buildings, including ACVs or who the operator is. Even if the developments are not permitted the current use can and will continue as there is a 15 year lease that can only be broken by the agreement of the parties. I do not agree with the Council that the lease does not indicate an intention to continue the current use and it seems to me to be the normal arrangement that would be made. It is also noted that internal alterations, as have already occurred, such as moving the ground floor toilets to the basement, or relocating the kitchen in the lower areas, releases space for direct use by patrons.
23. I acknowledge that planning control is not for the minutiae of the use of the building and that the owner should be allowed to manage the building as necessary and generally in response to the needs of the business. However, a very important aspect of planning is to control where different types of development can occur and to ensure that less valuable uses, such as public houses, are able to survive by protecting space for their use. The fact that parts of the building are not used does not mean that it should not be protected for the future giving the ability for the use to return.
24. I also note the offset in floor areas that has and could occur within the building with the different developments, but to my mind the basement area is not the same quality of space as the first floor, not least as there are no reasonable windows, and in any case, although not previously a publicly accessible area, it had a role in providing storage for the use.



25. The London Plan identifies the rapid rate of loss of public houses and, as set out in Policy 4.48, promotes authorities taking a proactive approach in relation to this type of facility and for them to develop policies to prevent the loss of valued local assets. This has been done, the building has been identified as an ACV, and CLP LP Policy C4, which aims to protect loss of floor space, adopted in the recent local plan.
26. To my mind, while I conclude that the loss of the second floor would not adversely affect the operation of the public house, I conclude that the loss of the first floor accommodation and its potential to contribute to the ACV would adversely affect the public house. The current use, while providing a high class A4 establishment, does not provide the same community service, and this may continue as long as the owner and landlord want, but it remains important to ensure that the building can function as an ACV in the future in accordance with the development plan policies to protect such uses and loss of their floor space.
27. Either development would provide three additional flats that could be used for family use. The Council has planned for housing in the Borough that meets its targets and this is common ground, but targets are not maximum limits and clearly there remains a considerable need for housing in London. I therefore consider that some weight should be attached to the benefit of providing residential accommodation, but to my mind this is not overriding and does not outweigh the need to protect community assets as identified by CLP Policy C4 as promoted by London Plan Policy 4.48.
28. I have also taken into consideration the S106 obligation, which while making the residential aspects acceptable, does not provide such benefits as to outweigh the harm of the development.

*Graham Dudley*

**Inspector**

## **APPEARANCES**

### **FOR THE APPELLANT:**

Luke Raistrick  
Konrad Romanick

Planning Consultant, MRPP  
Architect

### **FOR THE LOCAL PLANNING AUTHORITY:**

Charlotte Meynell  
John Sheely

London Borough of Camden  
London Borough of Camden

### **INTERESTED PARTIES:**

Michael Clapson  
Jack Foxcroft

### **DOCUMENTS SUBMITTED AT THE HEARING**

Document	1	Notification
	2	Suggested conditions
	3	Appeal reference APP/X5210/W/16/3147284
	4	PL/834/200 & 201

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## Appeal Decision

Hearing held on 25 November 2015

Site visit made on 25 November 2015

**by Christa Masters MA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 December 2015**

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**Appeal Ref: APP/X5210/W/15/3095453**

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Maximillian Cramer against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/5401/P, dated 20 August 2014, was refused by notice dated 25 March 2015.
  - The development proposed is two new build, 4 bedroom houses on a vacant site between 153 Torriano Avenue and 101 Brecknock Road.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing, an application for costs was made by Mr Maximillian Cramer against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

### Procedural matters

3. A separate Hearing took place on 24 November 2015 to consider appeal reference APP/X5210/W/15/3095242. This proposal relates to the public house only. This appeal is subject to a separate decision.
4. A number of other appeal decisions<sup>1</sup> have been drawn to my attention by both the Council and the appellant. I have had regard to these decisions in reaching my conclusions below.
5. A revised plan reference BRE-PL-GA-18 was submitted with the appeal statement. This amendment sought to address the second reason for refusal regarding the effect of the proposal on living conditions of No 135 Torriano Avenue. The plan indicated the addition of louvers to the rear elevation of the two houses. To my mind, this is a significant alteration to the appearance of the rear of the building. In the interests of fairness, I have determined the appeal on the basis of the drawings considered by the Council, as to do otherwise would deprive those who should be consulted on the

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<sup>1</sup> APP/X5210/W/15/3003396, APP/X5210/A/14/2218740, APP/X5210/A/12/2184317, APP/C3240/A/13/2194804, APP/G2815/A/03/1128215

change, the opportunity of such consultation.

6. The Council confirmed at the Hearing that they would withdraw the third reason for refusal relating to the effect of the proposal on daylight and sunlight at No 135 Torriano Avenue. I shall return to this matter below.

### **Main Issues**

7. From the evidence presented and what I heard at the Hearing, this appeal has three main issues. Firstly, the effect of the proposal on the living conditions of:
  - (a) the existing and future occupiers of 135 Torriano Avenue with reference to overlooking and loss of privacy ;
  - (b) other residents in terms of noise and disturbance associated with the loss of the beer garden and the effect on on street activity;
8. Secondly, the effect of the proposal on the long term retention of the public house, recognised by development plan policies as a community facility. Finally, the effect of the proposal on the character and appearance of the area.

### **Reasons**

#### *Living conditions – effect on 135 Torriano Avenue*

9. The proposal would replace the existing beer garden with two 4 bedroomed houses. These properties would be flush to the existing flank elevation of 135 Torriano Avenue and would therefore give the appearance of continuing the terrace of properties.
10. 135 Torriano Avenue is a distinctive property and has a somewhat unusual ground floor extension at the rear. The extension has significant fenestration detailing. This includes 6 glazed windows which face directly onto appeal site with two pairs of full height glazed French doors either side of this creating a small but functional courtyard area. Although the rear elevation of the property has full height glazed doors facing onto the garden, the above arrangement provides an important outlook for both the kitchen and dining areas of the property.
11. In terms of amenity space, the property benefits from three outdoor amenity areas. The courtyard area which runs parallel to the appeal site is used for planting, storage and has a spiral staircase in the corner. This provides the only access to a roof garden which the occupier advised is well used, particularly in the summer months and is a generous size. The roof garden, which I was able to access during my site visit has a pleasant open feel, primarily because of its positioning at the end of the terrace. The property also has a rear garden. However, this is modest in size. In my view, all three areas of outdoor amenity space provide different functions and I am in no doubt that they are all valuable sources of private amenity space in this relatively dense urban location.
12. The two new dwellings would have traditional fenestration detailing to the front elevation. However, the rear of the properties would have a much more contemporary feel with extensive glazing. From the rear elevation of the nearest proposed dwelling, there would be a distance of only 6.5 metres between the fenestration detailing of this property and No 135. Taking into account this distance as well as the size and scale of the rear elevation glazing,

this would result in significant issues of overlooking and loss of privacy to the existing and future occupiers of No 135. This would be particularly acute from the first and second floor windows of the new dwelling which due to their positioning, would be afforded direct views into the kitchen and dining area of No 135, as well as the courtyard area. I note there is an existing trellis in place however this would provide a very limited degree of screening and would be insufficient to address the harm which would arise.

13. My attention was drawn to the Camden Supplementary Planning Guidance (SPG) 2013 which identifies at CPG6 that there should normally be a distance of 18m between the facing windows of habitable rooms that directly face each other. In this instance, the windows would not directly face each other. Therefore the extent to which this element of the SPG is applicable is in my view limited. However, the SPG does note at paragraph 7.4 that new buildings should be designed to avoid overlooking, and that the degree of overlooking will be dependent upon the distance and vertical angle of view. The guidance goes on to note that the most sensitive areas are kitchens and garden areas nearest to the house.
14. I am also concerned regarding the degree of mutual overlooking which would occur between the existing roof terrace and the new dwellings. Whilst I note that there are other roof terraces in the vicinity which have a close relationship with neighbouring windows, none of the windows are of the size and scale proposed at the appeal site.
15. The appellants included as part of their appeal statement, details of proposed louvre treatment to the rear elevation windows of the proposed houses to address this point, though the appellants were clear at the Hearing that they did not consider that they were necessary to address this issue. In my view, the addition of louvres could have a significant harmful effect on the appearance of the building, particularly as this rear elevation is readily visible from Leighton Grove. However, the louvres do not form part of this appeal and as such, my consideration of them has had no bearing on my decision.
16. I therefore conclude the proposal would have an unacceptable impact on the existing and future occupiers of No 135 in terms of overlooking and loss of privacy. Such is the degree of harm in relation to this matter, I am dismissing the appeal on this issue alone. Accordingly, the proposal would fail to accord with policy CS5 of the Core Strategy (CS) 2010 and in particular part (d) which seeks to, amongst other things, protect the amenity and quality of life of local communities.
17. Furthermore, the proposal would also conflict with policy DP26 of the Development Policies (DP) 2010. This policy advises that the Council will only grant planning permission for development that does not cause harm to amenity. Factors for consideration include, amongst other things, (a) visual privacy and overlooking. For the same reasons, the proposal would fail to accord with paragraph 17 of the Framework, which advises that developments should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

*Living conditions – effect on existing residents*

18. The proposal would result in the loss of the existing pub beer garden. The beer garden closed in August 2014 and has not been in use since this time. It was explained to me at the Hearing that the beer garden had become difficult to manage, with no direct visibility from the bar itself. The leaseholder advised at the Hearing that antisocial activity was taking place on a regular basis although a number of local residents disputed these claims. Although the premises are licensed until 1am, I was advised at the Hearing that the license restricts the use of the beer garden to 9pm only. The appellant explained that this restriction creates additional problems in terms of removing customers from the beer garden at this time, particular in the summer months. I can fully appreciate the difficulties that this situation may cause.
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.
20. Concerns were expressed that the proposal would result in additional noise and disturbance as patrons stand and drink on the public highway. However, it is important to note that this activity is already taking place. To my mind, this is a situation evident outside many public houses in urban locations and is certainly not unique to the Leighton. Whilst there is currently no license in place for tables and chairs on the public highway, the merits or otherwise of this is not a matter for my deliberations. On the other hand, as noted by the officer's report to committee, there have been a number of complaints made by residents regarding noise and disturbance associated with the use of the beer garden. The issue is therefore finely balanced.
21. To my mind, I am not convinced that the appeal proposal would result in additional noise and disturbance to residents through the permanent removal of the beer garden. Moreover, I have no evidence before me to suggest that refusing the appeal on this basis would alter the existing pattern of activity already taking place in terms of patrons drinking and smoking outside of the Leighton. I also have evidence before me which suggest the beer garden itself has caused noise and disturbance to local residents.
22. For these reasons, the proposal would not result in material harm to existing residents in terms of increased noise and disturbance associated with the removal of the beer garden. The proposal would therefore comply with policy CS5 of the CS as well as DP26 of the DP in this regard.

*The effect of the proposal on the long term retention of the public house, recognised by development plan policies as a community facility.*

23. The proposal would result in the permanent loss of the beer garden which is currently not in use. The Council contend that the loss of the beer garden

- would effect the long term viability of the pub, recognised as making a valuable contribution to the local community.
24. Policy DP15 of the DP relates to protecting community and leisure uses within the borough. There is no specific reference to beer gardens within this policy or the supporting text. Reference was also made to the emerging Local Plan (LP) and in particular, policy C3 which is a specific policy to protect public houses within the borough. Within the supporting text to this policy, the importance of outdoor amenity space associated with pubs is recognised. However, this policy is at an early stage of preparation and as such, this limits the weight to which I can attach to it.
25. My attention has been drawn to a recent appeal decision at 97 Haverstock Hill. Here, in the same borough, the Inspector concluded that the loss of the beer garden would result in the loss of a valued community facility. However, in that particular case, the Inspector notes the area was a popular attraction used for regular BBQ's. Importantly there also does not appear to have been any inherent conflict between the use of the beer garden resulting in noise and disturbance to adjoining residents as is the case in relation to this appeal. Furthermore, this decision also included a number of other aspects including the removal of the first floor function rooms. The similarities I can draw between the two cases are therefore limited.
26. Turning to consider the Framework, paragraph 70 makes it clear that planning decisions should plan positively for facilities, such as public houses, ensuring that facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community. The public house would not be effected by the appeal proposal. The community use, afforded protection through the development plan, would therefore be retained. I therefore conclude the proposal would not effect on the long term retention of the public house. It would accord with the provisions of policy DP15 of the DP outlined above. The other policy references provided by the Council on this matter are not directly related to this issue.

#### *Character and appearance*

27. The Council contend that the proposal would lead to the loss of an important townscape gap which defines the historic urban grain of the area. The terraced nature of properties in the immediate vicinity of the appeal site mean that where gaps do occur, they are small scale and not of a comparable size to the appeal site. The roads provided as examples of open corners within the Council's appeal statement are entirely different in density and form and to my mind are not directly comparable to the pattern of the urban grain along Torriano Avenue.
28. I accept that there is a small gap behind the appeal site on Leighton Grove. However, this is covered to a large extent by extensions to the host property so that in any event, only a small rear garden remains. It is not comparable in size or scale to the appeal site. I also accept that the existing beer garden provides an element of breathing space between the pub and the terrace of residential properties. However, this is not a distinguishing feature of the area and does not reflect the historic grain of the area as the Council suggest. From what I saw on the site visit, the pattern of development is characterised by closed corners, as shown by the buildings directly opposite the appeal site along Torriano Avenue.

29. A number of additional concerns were raised by interested parties regarding the design of the two dwellings. These concerns relate to the height, bulk and overall form of the dwellings as well as detailing such as the boundary treatment, size of fenestration and positioning of doors. The statement of common ground makes it clear that the Council consider that the design and materials proposed are in keeping with the area and are considered an appropriate addition to the road.
30. The design of these properties has been influenced to a significant degree by the existing residential dwellings along Torriano Avenue. In my view, the dwellings proposed would reflect the existing architectural style of the area. The size, scale and proportions of the dwellings have been influenced by No 135, which in my view is an entirely logical approach. The dwellings would be proportionate in scale and form to the dwellings within the vicinity of the appeal site. Whilst the boundary treatment and detailing maybe different, there is a clear mixture of detailing along the road itself. Some dwellings have steps up to the front door and separate front gardens, others do not. In my view, it is important that the frontage of the proposed dwellings follow the street pattern established by No 135 and in townscape terms, the proposal would achieve this objective.
31. I therefore conclude the proposal would not result in material harm to the character and appearance of the area. It would, as a result, accord with policy CS14 of the CS as well as policy DP24 of the DP. Policy CS14 emphasises the importance of promoting high quality places. Policy DP24 is a general policy which seeks to ensure development secures high quality design. It requires development, amongst other things, to consider the character, setting, context, form and scale of neighbouring buildings.

*Other matters*

32. Third parties have raised concerns regarding overlooking to other properties close to the appeal site. However, taking into account the separation distances involved, I am not convinced that the proposal would result in any material harm in terms of overlooking to other properties along Brecknock Road.
33. Additional concerns raised by third parties include the effect of the proposal on street parking provision, as well as daylight and sunlight concerns. I deal with each of these matters in turn.
34. In relation to car parking, I am satisfied that in accordance with the conclusions drawn by the Council, the appellants commitment to provide a car free development would adequate address this issue.
35. In terms of daylight and sunlight, detailed evidence was presented in relation to this issue by the appellants. This assessment included the Vertical Sky Component Assessment of the impact of the development on neighbouring properties. The conclusions reached are that whilst there would be some effect on adjacent properties, these would be entirely in accordance with the BRE Second Edition 2011 guidelines. I am satisfied that on the basis of this evidence, the effect on the proposal in relation to this matter would be acceptable. Similarly, the appellants daylight and sunlight report dated October 2014 addressed the impact of the proposal on 103 Brecknock Road. This report concluded that as a consequence of the existing terrace of properties in place, there would be no discernable difference in daylight and



sunlight to this property. As No 105 Brecknock Road is situated further way from the appeal site, I see no reason why the same conclusions should not apply to this property.

36. A signed and dated planning obligation was submitted at the Hearing. This document addressed a number of matters including contributions towards environmental improvements and a highways contribution. It also provided a commitment to a construction management plan and car free housing. However, the obligation before me does not overcome the harm identified above in terms of the impact of the proposal on the living conditions of No 135 Torriano Avenue. Accordingly, it is not necessary for me to assess the content of the obligation against the relevant tests set out in the Community Infrastructure Levy 2010.
37. I accept that the proposal would deliver two houses to the supply of housing within the area. I have accordingly apportioned a modest portion of weight in favour of the proposal. However, this would not outweigh the harm I have identified above in relation to the main issues before me.

**Conclusion**

38. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

*Christa Masters*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr M Cramer	Appellant
Ms J Brosnan	Leaseholder of the Leighton PH
Mr S Satwick	Appellant
Mr M Evans	Martin Evans Architects
Mr D Norris	Planning Consultant
Mr R Staig	Dixon Payne

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr R Tullock	London Borough of Camden
Ms C Bond BA (Hons) B Arch Hons MTP Grad Dip Cons AA IHBC	London Borough of Camden

### **INTERESTED PARTIES**

Mr & Mrs A Paterson	Local Resident
Mr & Mrs R Fairley	Local Resident
Mr C McWatters	Local Resident
Cllr J Headlam-Wells	Ward Councillor

### **DOCUMENTS SUBMITTED AT THE HEARING**

1. Signed Section 106 Agreement dated 23 November 2015
2. Email correspondence between the Council and appellant regarding daylight and sunlight issues
3. Notification of Hearing letter
4. Statement prepared by Mr Paterson on behalf of the local residents
5. Statement of Common Ground
6. Schedule of highways works contributions

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## Appeal Decision

Hearing held on 3 September 2014

Site visit made on 3 September 2014

**by Peter Rose BA MRTPI DMS MCMl**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 2 October 2014**

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**Appeal Ref: APP/X5210/A/14/2218740**

**Golden Lion, 88 Royal College Street, London NW1 0TH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Norreys Barn Ltd against the Council of the London Borough of Camden.
  - The application Ref 2013/4793/P is dated 4 September 2013.
  - The development proposed is change of use from public house (Class A4) with ancillary accommodation to public house and function area at ground and lower ground floors respectively and 4 flats (3 x 2 bedroom/3 person and 1 x 3 bedroom/5 person)(Class C3); erection of a 3 storey extension (at 1st and 2nd floors and within the roofspace) on the Pratt Street frontage; lowering of existing basement by 600mm.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for a partial award of costs has been made by Norreys Barn Ltd against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

### Procedural Matters

3. The Council has stated that, had it still been in a position to do so, it would have refused planning permission for the reasons formally set out in its notice titled 'Notification of decision when an appeal has been made' and dated 25 June 2014.
4. A copy of an agreement made pursuant to section 106 of the Town and Country Planning Act 1990 and dated 1 September 2014 was submitted to the Hearing. This seeks to address the Council's concerns in relation to local parking conditions and pedestrian safety. I am satisfied that no interests would be prejudiced by having regard to the agreement in this appeal.
5. The appellant submitted revised drawings to the Hearing by email dated 21 July 2014. The drawings indicate a replacement of the previously proposed roller shutters within the Pratt Street frontage by security folding/collapsible doors. I do not consider that the scheme would be so changed by this modification such that any interests would be prejudiced by having regard to these drawings as part of this appeal.

## **Main Issues**

6. The main issues are the effect of the proposed development upon:
  - a) the availability of community facilities in the local area;
  - b) the character and appearance of the host site and surrounding area, with particular regard to the design of the proposed roller shutters/folding doors;
  - c) local parking conditions;
  - d) pedestrian safety.

## **Reasons**

### *Community facilities*

7. The appeal site comprises a late nineteenth century four-storey public house with basement located at the junction of Pratt Street and Royal College Street. The building is of attractive traditional design and is a prominent and imposing feature within the local townscape. The surrounding area is of mixed use and contains buildings of varying forms and quality. The Council identifies the site as a non-designated heritage asset and it is proposed for inclusion within the Council's emerging list of buildings of local interest.
8. The premises comprise a main A4 trading area at ground floor, a function room at first floor, and other ancillary facilities within the basement and at second and third floor levels, including ancillary storage facilities and kitchen, a disused dumbwaiter between floors, and residential accommodation. The building is a purpose-designed, traditional public house and its predominant character arises from that physical form and heritage.
9. The Golden Lion was also designated as an Asset of Community Value (ACV) in December 2013 under the Localism Act, 2011. I note that decision was reviewed and reaffirmed in March 2014. The Localism Act defines an ACV to be an actual current use of a building or other land that is not an ancillary use and which furthers the social wellbeing or social interests of the local community. The definition also requires that it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community. The government's *Community Right to Bid: Non-statutory advice note for local authorities* October 2012 advises that it is open to the local planning authority to decide whether listing as an ACV is a material planning consideration, taking into account all the circumstances of the case. I find the designation to be relevant to the particular circumstances of this appeal and I apportion it a reasonable degree of weight as an indication of the significance of the current use to the local community.
10. The National Planning Policy Framework (the Framework) advises that planning decisions should promote opportunities for meetings between members of the community who might not otherwise come into contact with each other. It further states that decisions should plan positively for the provision and use of community facilities such as public houses in order to enhance the sustainability of communities and residential environments.

11. London Plan Policy 3.1 states that proposals involving the loss of facilities that meet the needs of particular groups and communities without adequate justification or provision for replacement should be resisted. Policy 3.16 further states that proposals which would result in a loss of social infrastructure in areas of defined need without realistic proposals for re-provision should be resisted. The supporting text to Policy 4.8 of the recent Draft Further Alterations to the London Plan January 2014, whilst of only limited weight, advises that where there is sufficient evidence of need, community asset value and viability in pub use, boroughs are encouraged to bring forward policies to maintain, manage and enhance public houses.
12. Policy CS10 of the London Borough of Camden Core Strategy 2010-2025 Local Development Framework, 2010 (the Core Strategy) seeks to support the retention and enhancement of existing community, leisure and cultural activities. Policy DP15 of the London Borough of Camden Development Policies 2010-2025 Local Development Framework, 2010 (the Development Policies) states that the Council will protect existing community facilities by resisting their loss unless a replacement facility that meets the needs of the local population is provided. The supporting text to DP15 further advises that the Council will resist the loss of local pubs that serve a community role, for example, by providing space for clubs, meetings etc., unless alternative provision is available nearby or it can be demonstrated to the Council's satisfaction that the premises are no longer economically viable for pub use.
13. The appellant maintains that the proposal is compliant with these policies by seeking to retain an A4 use, and I accept there would, in principle, be no loss of a public house as such. Further, the scheme both acknowledges and responds to a previous appeal decision Ref APP/X5210/A/13/2199667 dated 12 December 2013. This decision related to an application which included conversion of the appeal site into 8 self-contained flats but with no retention of A4 use. The relevant Hearing pre-dated formal designation as an ACV but the decision concluded that The Golden Lion was a local pub that served a local community role and that its somewhat old-fashioned charm appealed to those who go there. The evidence suggested that the premises were popular with and cherished by a good many people as offering something different. I am in no doubt from the strength and depth of support expressed at this further appeal that the public house remains highly valued as an important local community asset, not just in terms of its licensed trade but also as a broader community meeting facility.
14. Nevertheless, all businesses must progress and evolve in order to survive, and the issue is whether the proposals before me take forward the premises without compromising its undoubted value as a community asset. The proposal seeks to retain an A4 use as part of a mixed development of the site involving four self-contained flats and I appreciate that the scheme is packaged to buck the wider trend of public house closures. The scheme would offer significant benefits in terms of A4 use, including improved toilet and kitchen facilities and better access. The appellant also refers to the premises as being dated and in need of renovation and has provided significant expert commercial justification for the detailed form of the A4 accommodation proposed. I have noted that some improvements have been made to the premises in recent years but accept that further upgrading is required.

15. Mere retention of an A4 use, however, would not, in my opinion, be sufficient to satisfy the general expectations of policies broadly seeking to safeguard the community benefits of existing public houses. The extent, configuration and overall quality of the replacement facility are all relevant considerations and, in these regards, I find that the scheme has a number of significant shortcomings.
16. In particular, in order to accommodate a first floor flat, the existing function room at first floor level would be replaced by a facility at basement level. The existing room is of attractive character and provides a relatively open, light space with windows affording outlook across the local area. The replacement facility would be confined to the basement, would have no windows or outlook, and would lose the relative charm of the existing facility. Whilst noting the operational benefits identified, I am not satisfied that the replacement facility would be of comparable quality in terms of community benefit. The previous appeal decision also noted that the existing function room is an important part of the community value of the premises.
17. I am also concerned that, in order to accommodate self-contained access to the upper floor flats and basement and to accommodate incidental storage, part of the main ground floor public trading area, which would form the focus of the commercial operation, would be lost. Whilst facilities such as darts, a piano and a pool table could still theoretically be accommodated, this area is already fairly limited in size and shape and would be further constrained in those regards. Further, the entire premises currently comprise one single A4 planning unit. The proposed scheme would compress the overall extent of the A4 use and would compartmentalise the remaining trading area and function room components into separate, physically confined spaces, thereby losing the wider flexibility and character offered by the existing form and layout.
18. I consider that the sum total of these shortcomings would be to compromise the overall value of the site as a community asset which, in terms of extent, would become a secondary element to the predominant and unrelated use of the site as separate residential accommodation. From the evidence before me, there is a distinction to be drawn between the likely community benefits of the replacement A4 use and the community benefits undoubtedly already conferred by the existing public house. I am not satisfied that the physical composition of the proposed A4 accommodation would be adequate to provide a sustained level of community benefit comparable to the existing facility. In turn, the scheme would carry significant risk in terms of the possible future failure of the site as a community facility and potential loss of the existing community benefits.
19. I have also had regard to the availability of a number of other public houses in the surrounding area. Each public house has a different character and function and I have little basis to conclude that they would offset the particular ambience and community benefits of The Golden Lion.
20. I therefore conclude that the proposed development would compromise and undermine the value of the existing A4 use as a local community facility. Accordingly, the development would be contrary to the underlying aims of Policy CS10 of the Core Strategy, of Policy DP15 of the Development Policies, and to the aims of the London Plan and of the Framework which generally seek to safeguard the community benefits arising from public houses where appropriate.

### *Character and appearance*

21. The Pratt Street elevation is an important feature of the building and of the local townscape. Whilst the building is not statutorily listed, the ground floor element is relatively ornate and comprises a mixture of glazing, timber, tiling and stone with vertical pilasters. The detailed ground floor design forms an integral part of the overall traditional public house elevation and is an important contribution to the distinctiveness of the setting.
22. The scheme would involve points of access within the Pratt Street elevation to be enclosed by either roller shutter doors or by other folding doors. These would appear as relatively random features with contrasting detailed forms and appearance. In either form, this aspect of the scheme would introduce visually discordant elements into an otherwise attractive decorative public house frontage and would fail to respect the wider integrity of the elevation.
23. The Framework advises that, in weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment is required having regard to the scale of any harm or loss and the significance of the heritage asset. I find that less than substantial harm would be caused to the non-designated heritage asset but that would not be out-weighed by overall public benefits otherwise arising from the proposal.
24. I therefore conclude that the proposed development would be harmful to the character and appearance of both the host building and the surrounding area. Accordingly, the scheme would be contrary to Policy CS14 of the Core Strategy and to Policies DP24 and DP25 of the Development Policies. These seek, amongst other matters, to promote high quality design, to conserve the Borough's heritage, and to ensure that development has regard to the character of the existing building and its setting. The Framework also places great importance upon high quality design and upon local distinctiveness.

### *Local parking conditions and pedestrian safety*

25. The planning agreement does not overcome the harm identified in terms of the role of the appeal site as a community facility, or the harm arising from the proposed works in terms of character and appearance. Accordingly, it is not necessary to assess the content of the agreement against the relevant tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, 2010 or with regard to accompanying guidance.

### **Other Matters**

26. Whilst there are questions about the general economic plight of public houses, and this was not a matter for detailed consideration as part of the appeal, I note that the existing publican described the public house as a successful operation and it remains a continuing use.
27. Although questions were raised at the Hearing regarding the viability of the proposed A4 arrangement, I noted the responses given and this has not been a determining factor in my decision.
28. General reference was also made at the Hearing to the appellant's own research of local opinion but full and appropriate details were not formally submitted for consideration in accordance with the relevant appeal procedures and timescales and I attach little weight.

29. I have also noted the presence of development sites in the vicinity of the appeal site as indicated in the Council's Site Allocations Development Plan Document, and the possible implications for the scale of change in the local area.
30. Regard has been given to various references to other appeal and planning decisions. Whilst full details of each of those schemes are not before me, the circumstances of each site and of each development will be different, and I am considering the specific planning merits of this particular appeal proposal.
31. The Council raises no objection to the four flats proposed, or to other associated works contained within the application, and has confirmed that the development is otherwise acceptable. The scheme would also make a contribution towards additional local housing and I apportion limited weight as a benefit in favour of the proposals.
32. I have also had regard to the Mayor of London's Revised Early Minor Alterations to the London Plan published on 11 October 2013.
33. A note was passed to me at the end of the Hearing on behalf of an interested third party, Jessica Francis. The note explained her perceived need to leave the Hearing but I do not consider this matter had any bearing upon the evidence presented or upon the planning merits to be considered.
34. None of the other matters raised are of such significance, either individually or collectively, that they would outweigh the considerations that have led to my conclusions on the main issues.

### **Conclusion**

35. For the above reasons, and with regard to all other matters raised, I conclude the appeal should be dismissed.

*Peter Rose*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Paul Stinchcombe QC

Carolyn Apcar

Alan Sherman

Phil Briscoe

Peter Lerner

Graeme Bunn

Leo Murphy

Mark Sanderson

Apcar Smith Planning

BuildTech Building Surveyors

Bellenden Community Research

Peter Lerner Consultancy

Fleurets Leisure Property Specialists

The Arizona Group

Heritage Advisory Consultancy

### FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Markwell

Alan Wito

Principal Planning Officer

Senior Planner, Conservation and Design

### INTERESTED PERSONS:

Councillor Roger Robinson

Tom Copley

Will Blair

Local Councillor

London Assembly Member

Parliamentary Candidate for

Holborn and St Pancras 2015

Planning For Pubs Ltd

Publican, The Golden Lion

Chairman, Save The Golden Lion Committee

Camden Pub Watch

Dale Ingram

Dave Murphy

Shaun Pollard

Pat Logue

James Cantwell

Henry Conlon

Jim Clack

Phillip Stein

Supporter of The Golden Lion

Supporter of The Golden Lion

Supporter of The Golden Lion

Supporter of The Golden Lion

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Copies of Hearing notifications
2. Copy of an agreement made under section 106 of the Town and Country Planning Act 1990 dated 1 September 2014
3. Appeal decision APP/X5990/A/14/2215985 dated 8 July 2014 relating to 43 Linhope Street, London NW1 6HL
4. Indicative menu
5. Indicative layouts
6. Floorspace figures
7. Legal Submission by Paul Stinchcombe QC relating to Westminster City Council v SSCLG and Mrs Marilyn Acons [2013] EWHC 690 (Admin)

8. Response of the London Borough of Camden to the appellant's application for costs

9. Undated note from Jessica Francis



## Appeal Decision

Hearing held on 1 July 2015

Site visit made on 1 July 2015

**by S Stevens BSc (Hons) MSc DipTP DMS MCMi MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 22 July 2015**

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**Appeal Ref: APP/X5210/W/15/3003396**

**97 Haverstock Hill, LONDON, NW3 4RL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Faucet Inn Ltd against the decision of the Council of the London Borough of Camden.
  - The application Ref 2014/1367/P, dated 19 February 2013, was refused by notice dated 26 November 2014.
  - The development proposed is a change of use of the first and second floors from public house (Class A4) to create 2 x 1 bedroom and 2 x 2 bedroom flats (Class C3); extension and relocation of existing kitchen extract flue and associated works.
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### Decision

1. The appeal is dismissed

### Procedural matters

2. A signed and dated S106 Obligation was submitted before the Hearing to provide a contribution towards highway works and to ensure the development would be car free. I consider the Obligation further below.
3. Prior to the Hearing the appeal premises was included in the list of Assets of Community Value (ACV) under Part 5 Chapter 3 of the Localism Act 2011. However, the appellants have requested a review of the decision to list the property as an ACV. Therefore at the time the appeal was determined the inclusion of the public house in the list of ACVs has not been confirmed. I will consider this further below.

### Main Issues

4. The main issues are:
  - whether the proposal would, or would not result in the loss of a community facility;
  - whether the proposal would, or would not provide satisfactory living conditions for the occupants of the proposed residential units; and
  - whether mechanisms are necessary to a) secure car-free housing and b) contributions towards highway works.

## Reasons

### *Community facilities*

5. The appeal property comprises a 3 storey end of terrace building with basement and adjoining garden area. It is located on a busy road and is sited at the edge of a retail and commercial parade within a predominantly residential area.
6. The premises are in use as a public house (Use Class A4) which is known as the Sir Richard Steele Public House. The ground floor contains the main bar and seating areas, kitchen and toilets and has a number of interesting features including wooden panelling and a painted ceiling. On the first floor is a function room with a bar plus an office and storage and the second floor is used to provide accommodation for staff with its own bedrooms, kitchen, living room and bathroom. The basement is used as a cellar, cold store and storage. Access to all floors is via internal staircases and there is also an additional separate external staircase and delivery hatch to the cellar. Adjacent to the building is a beer garden accessed from the ground floor bar area.
7. The proposal is to convert the first and second floors to 4 residential units. The proposal would retain the ground floor and basement as a public house. The garden area would be turned into amenity space for the proposed residential units with a smoking shelter for customers of the public house located in the north western corner of the site.
8. The parties disagree whether a public house constitutes a community facility. In early 2015 the public house was listed as an Asset of Community Value (ACV) under the Localism Act 2011. However, the appellant is currently challenging the listing and at the time this appeal was determined its status as an ACV has not been confirmed. The Localism Act defines an ACV to be an actual current use of a building or other land that is not an ancillary use and which furthers the social wellbeing or social interests of the local community.
9. The government's *Community Right to Bid: Non-statutory advice note for local authorities* October 2012 advises that it is open to the local planning authority to decide whether listing as an ACV is a material consideration, taking into account all the circumstances of the case. I regard the request for such as listing to be an indicator of the local support for premises which further the social wellbeing or social interests of the local community. Although the ACV listing has not been confirmed, I attach some weight to it.
10. The appellant relies on Policy CS10 of the Camden Core Strategy 2010 (CS) which it argues does not contain any reference to public houses amongst the community facilities mentioned. This is correct but there may be many types of facilities that are not mentioned that perform a community function and I do not view the omission of a specific reference to public houses in the policy to mean that they can not be a community facility. A community facility provides an opportunity for people, amongst other things, to meet and socialise which is an important function of a public house.
11. Furthermore, the supporting text to CS10 refers to Policy DP15 in the Camden Development Policies (DP) where paragraph 15.6 of the supporting text includes reference to local pubs that serve a community role for example by providing space for evening classes, clubs, meetings or performances. From the written

submissions and evidence given at the Hearing it is clear the ground and first floor of the appeal premises have performed this function until recently when they were stopped by the appellant.

12. In any event the CS predates the National Planning Policy Framework (the Framework) which advises that planning decisions should promote opportunities for meeting between members of the community who might not otherwise come into contact with each other. It also states that decisions should plan positively for the provision and use of community facilities such as public houses in order to enhance the sustainability of communities and residential environments.
13. My attention was also drawn to the emerging Local Plan (LP) which provides additional protection to public houses. However, the LP is in the early stages of preparation and I shall give it very limited weight. Nevertheless, given the Framework, CS10 and DP15 I conclude that a public house is a community use. Consequently, the Framework and these policies are relevant and seek to protect and enhance community, leisure and cultural activities and to resist their loss unless alternative provision is available nearby or it can be demonstrated that that the premises are no longer economically viable for pub use.
14. The appellant's submissions state the upper floors of the premises do not provide a community use and in any event the public house on the ground floor would remain. Therefore, if the public house is a community use such a use would not be lost. The second floor is used for accommodation for staff of the public house and in that respect this floor does not itself provide a community use albeit it serves to support one. However, the first floor comprises a substantial, high ceiling room that is accessed via two separate staircases, one being the fire escape. At the time of my visit the room contained a number of small tables, a raised area that could act as a small stage, an unstocked bar and various pieces of equipment including a projector, screen and loud speakers. The room and the rest of the floor appeared quite dated and shabby in appearance but nevertheless could still be used for meetings, social events and performances.
15. The public house has a web site which includes a section on bookings and includes reference to parties and private functions in one of the function rooms. It also includes photographs of the first floor function room. Submissions by interested parties at the Hearing indicated the first floor function room had been regularly used for events up until the end of 2014 when the public house stopped any further events. Uses included a weekly comedy club and a language club that would have entailed some organisation prior to the event and could not be regarded as very informal uses. I consider such events to be community uses providing local residents and others with social and educational activities and, from the submissions, such events ceased due to the decision of the appellant rather than due to lack of demand.
16. The appellant suggested that these uses could relocate to either the existing ground floor or basement. I am not persuaded that this would be practical as this would interfere with the bar area and cellar/storage area below and the configuration of ground floor and basement would not be suitable for larger gatherings and events. Very limited information is available on alternative local accommodation and this means I am unable to conclude whether any is available.
17. It was emphasised that the proposal retains the public house on the ground floor but the Council and interested parties expressed concerns regarding the impact

of the development on the remaining public house and consequently its long term survival. As the CS and Framework seek to retain community facilities I consider this to be a material consideration. Furthermore, the mere retention of an A4 use would not, in my opinion, be sufficient to satisfy the general expectations of policies broadly seeking to safeguard the community benefits of public houses. The effect of the proposed development on the remaining public house is a relevant consideration.

18. The proposal would result in the loss of the beer garden would be turned in to amenity space for the proposed residential units. This area is a popular attraction and used for regular BBQs which were being advertised. In my opinion the loss of the beer garden, especially in an inner city area, would result in the loss of a valued community facility.
19. The operational management plan submitted by the appellant sets out the current licensing restrictions for alcohol sales, recorded and live music and dancing. These conditions would remain in effect if the appeal were to be allowed but the management plan notes that there would be the opportunity for the Council to further restrict activities to protect the amenities of the future residents. Indeed the plan indicates that in order to protect the amenities of residents above live music and dancing would be prohibited. This could alter the attraction of, and number of customers to the premises.
20. No submissions were made regarding the impact of the proposed development might have on the remaining public house on the ground floor. When questioned, the appellant said some analysis had been done but was unable to provide any details. In the absence of any documentation regarding the effect of the proposal on the public house I can not conclude with any certainty what the impact might be. Nevertheless, I share the concerns regarding the consequential impact of the loss of the function room, beer garden and possible licensing restrictions on the future viability of the public house.
21. My attention has been drawn to a number of recent appeal decisions relating to the conversion of public houses to other uses and the matter of what constitutes a community facility<sup>1</sup>. I do not have the full details of all of these cases and the nature of the developments do not all replicate this appeal proposal. However, they do indicate a public house and their function rooms can be considered to be a community facility. In any event I have had regard to the submissions made and the specific circumstances relating to this appeal.
22. In support of the proposal the appellant also argued that the London Plan and the recently adopted Further Alterations to the London Plan indicated a substantial increase in the capital's population and consequently an acute requirement to make the best possible use of available land to create new homes. The Council stated it could meet its housing targets without the conversion of this site. Whilst the proposal would result in 4 additional residential units which would make a small contribution towards the supply of housing I also consider the retention of community facilities to be important for the social wellbeing local communities. I do not consider the provision of additional housing outweighs the harm that would result to the provision of community facilities in the locality.

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<sup>1</sup> APP/X5210/A/14/2218740, dated 2 October 2014, APP/X5210/A/13/2199667, dated 12 December 2013, APP/K5600/A/13/2199870, dated 10 December 2013, APP/K5600/A/12/2180954, DATED 10 January 2013 and APP/K5600/A/12/2172342, dated 17 September 2012.

23. Having considered all the submissions I consider the proposal would result in the loss of part of a premises that provides community facilities and that development would compromise and undermine the value of the existing A4 use as a community facility. Consequently, the proposal would be contrary to the underlying aims of CS Policy CS10, DP Policy DP15 and the Framework which seek to safeguard the community benefits that may arise from public houses.

*Living conditions*

24. The appellant argues that the existing use of the second floor as staff accommodation demonstrates the upper floors can co-exist harmoniously with the public house. This accommodation is ancillary to the public house and it is reasonable to assume that the occupants would be involved with the operation of the public house during opening times. Occupants of the proposed units may be expected to be within their accommodation during opening hours and I therefore do not consider the present ancillary accommodation demonstrates that satisfactory living conditions would automatically result from the proposal.
25. It was agreed by the parties that the proposed residential units would meet the Council's housing space and amenity area standards and I have no reason to take a different view.
26. The residential use would be above the public house and such arrangements exist elsewhere. A noise assessment submitted with the application indicates that internal sound insulation would be required that would exceed building regulation requirements in order to safeguard the amenity of the proposed occupants. This could be dealt with by way of a condition. The licence forbids customers to drink outside the premises on the pavement and even if the windows of the upper floors are opened the noise from the public house would be limited, especially when compared against the noise from traffic on the nearby road.
27. The existing beer garden would be converted to provide private amenity space for the occupants of the proposed flats. However, the access to the cellar is within the proposed garden area and beer deliveries would have to be brought into the amenity space. In addition, the waste storage for the public house is located to the rear of the site and would need to be brought to the front of the site, via the amenity space, in order that it could be collected.
28. Furthermore, the public house has a number of large windows and doors that face the amenity space. Although the public house doors would be closed and only used for emergencies the customers of the public house would be able to look out over the amenity space. A smoking shed for customers of the public house would also be located in the corner which would be accessed from the street. Although it would be separated from the amenity space users of the garden would be aware of people using it which would add to the lack of privacy.
29. Consequently, whilst the external space may satisfy the area standards I consider it would be overlooked and its users disturbed by deliveries and waste disposal. In the circumstances I consider it would provide a poor standard of outdoor amenity for the proposed occupants of the flats.
30. However, having considered the matters raised I conclude on balance the proposal would not cause a degree of harm to the living conditions of the proposed occupants that would justify the dismissal of the appeal. The proposal

would therefore comply with CS Policy CS5 and DP Policy DP26 but this does not outweigh the harm identified regarding the loss of a community use.

*S106 Obligation*

31. A signed and dated planning Obligation was submitted prior to the Hearing and the Council agreed that the third and fourth reason for refusal had been satisfactorily addressed. However, the Obligation does not overcome the harm identified in terms of the loss of a community facility. Accordingly, it is not necessary to assess the content of the Obligation against the relevant tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 or the accompanying guidance.

*Other matters*

32. The site lies within the Eton Conservation Area and I have had special regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The building is not listed but is identified in the Conservation Area Statement as making a positive contribution to the character and appearance of the conservation area.

33. The external elevations of the building would remain unaltered and the only change would be to the extract flue. The existing flue is a substantial and unsightly metal structure fixed to the rear of the building. The proposed flue, although taller, would be encased in matching brickwork and would be visually less obtrusive. Consequently, I consider the proposal would preserve or enhance the character or appearance of the conservation area in accordance with the Act.

**Conclusion**

34. For the reasons given above I conclude that the appeal should be dismissed.

*Sarah Stevens*

INSPECTOR



## **APPEARANCES**

### **For the appellant:**

Mr Stephen Cox	Faucet Inn Ltd
Mr Stuart Walburn BA Hons MTP MRTPI	Iceni Projects
Mr Kieron Hodgson BA (Hons) MTP MRTPI	Iceni Projects

### **For the Local Planning Authority:**

Mr Alex McDougall BAsc (Hons) MURP	Senior Planner, London Borough of Camden
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### **Interested persons:**

Cllr Jonny Bucknell	Elected member, London Borough of Camden
Mr Martin Besserman	
Ms Dale Ingram MSc CHE	Planning for Pubs Ltd

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. A list of application plans agreed by appellant and Council (Document 1)