



Appeal Decision

Inquiry Held on 1 to 4 and 14 October 2019

Site visit made on 4 October 2019

by Diane Lewis BA(Hons) MCD MA LL.M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2019

Appeal Ref: APP/X5210/C/18/3207640

Land at 101 Brecknock Road, London N7 ODA

- 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 Bryanston Investments Limited against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice, numbered EN17/0004, was issued on 15 June 2018.
- The breach of planning control as alleged in the notice is:
Without planning permission: Alterations to the shopfront and the change of use of the public house to form a retail convenience store.
- The requirements of the notice are:
 1. Permanently cease use of the property as a retail convenience store.
 2. Re-instate the frontages to the property as depicted in the photographs attached at Appendix A and B.
 3. Make good any damage and remove from the property all constituent materials resulting from the above works.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
- The application for costs made by the appellant against the Council was withdrawn at the inquiry on 2 October 2019.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, otherwise the appeal fails and the enforcement notice, as corrected and varied, is upheld as set out below in the Formal Decision.

Appeal site

1. Until recent years 101 Brecknock Road was a public house with ancillary residential accommodation above and a beer garden at the rear. It has been referred to as The Leighton Arms or The Leighton.
2. On 11 December 2015 planning permission was granted on appeal¹ 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" (the 2015 permission). Condition 3 required the development to be carried out in accordance with the specified set of approved

¹ Appeal ref APP/X5210/W/15/3095242

plans. The approved plans of the ground floor, basement and elevations are of a public house with basement stores. There are no conditions requiring the pub to be refurbished and available for use before occupation of the flats. The pub closed on 28 March 2016 and the appellant confirmed at the inquiry that the development pursuant to the 2015 permission commenced in April 2016.

3. In December 2015 an appeal also was dismissed in respect of residential development of the beer garden². Subsequently the Council granted planning permission for the erection of two four storey houses (ref 2016/0372/P). The land is now developed.

Enforcement Notice

4. The plan attached to the notice shows that the Land comprises the building on the corner of Brecknock Road (number 101) and the land behind. In view of the residential conversion of the upper floors of number 101 and the development of the beer garden, the main parties agreed that the description of the property should be qualified to state ground floor and basement. An amended plan was submitted to omit the land at the rear. On the site visit it became clear that the extent of the ground floor is not exactly the same as the basement and hence on the amended plan the black line of the back of the property is approximate.
5. The notice is directed at a material change of use and operational development. That being the case, the reasons for issuing the notice should refer not only to development occurring within a period of ten years for the use but also a period of four years in respect of the alterations.
6. The notice is directed at the external alterations to the ground floor only. Therefore step 2 of the requirements should be corrected to state 'ground floor frontages' in order to be precise and to avoid going beyond what is required to remedy the alleged breach.
7. These corrections were agreed with the Council and the appellant and I am satisfied that they would cause no injustice to either main party.

Reasons

Appeal on ground (c)

8. The main issues are:
 - Whether the material change of use to a retail convenience store was granted planning permission by provisions within a development order,
 - Whether the alterations to the shopfront materially affected the external appearance of the building.
9. The witnesses of the appellant and the Council gave their oral evidence in relation to the material change of use under solemn affirmation.

Material change of use

10. In general, a change in the use of a building or other land is not to be regarded as involving development where the new use is in the same class specified within the Schedule to The Town and Country Planning (Use Classes) Order

² Appeal ref APP/X5210/W/15/3095453

1987 (the UCO). In 2005 the UCO was amended whereby Class A3 (food and drink) was split into three classes: Class A3 (restaurants and cafes), Class A4 (drinking establishments) and Class A5 (hot food takeaways). The scope of Class A1 shops was also widened but for the purposes of this appeal there is no dispute that a retail convenience store falls within Class A1.

11. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) in article 3 grants planning permission for the classes of development described as permitted development in Schedule 2 (subject to certain provisos). Part 3 of Schedule 2 concerns changes of use. In 2016 Class A of Part 3 permitted development consisting of the change of use of a building from a use falling within Class A4 to Class A1 provided that the specified conditions were met.
12. As a result of an amendment to Class A Part 3 of Schedule 2 to the GPDO, a change of use from Class A4 to Class A1 is no longer permitted development. The Amending Order³ took effect on 23 May 2017 and included transitional provisions to allow for completion of the process set out in the previous specified conditions.
13. The appellant's statement of case (March 2019) set out two lines of argument. The first was that The Leighton Arms was a Class A3 (food and drink) use. A change of use from Class A3 to Class A1 is permitted development under Class A Part 3 Schedule 2 of the GPDO. Consequently, the change of use of the premises to an A1 convenience store was permitted development and did not constitute a breach of planning control. On day 2 of the inquiry the appellant confirmed that this element of the case was no longer to be pursued. Accordingly, I will not consider it further.
14. The second line of argument is that permitted development rights available under the transitional provisions in 2016 were exercised fully in accordance with the specified conditions / transitional provisions. As a result the change of use from an A4 use to an A1 use was development permitted under Schedule 2 Part 3 Class A and was not a breach of planning control.
15. At the end of 2015 and into the early part of 2016 the building at number 101 was not a community asset⁴. That being so, there are two main matters for consideration:
 - i. whether a written request was sent to the local planning authority, in accordance with the requirements, to ascertain if the building was nominated as an asset of community value⁵, and
 - ii. whether the material change of use took place within the required timescale⁶.

Written request

16. In my consideration I have referred to the relevant legal principles submitted on behalf of the appellant, which were accepted to be accurate by the Council.

³ The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2017 (SI 2017/619)

⁴ For the purposes of Class A, a community asset means a building that has been entered onto a list of assets of community value.

⁵ Condition set out in paragraph A.2(2) of Class A Part 3

⁶ Condition set out in paragraph A.2(4) of Class A Part 3

These principles are derived from the 1990 Act, the Interpretation Act 1978 and the Local Government Act 1972.

17. The solicitor acting on behalf of the appellant in 2016 produced a copy of the written request dated 9 August 2016 that was sent to the Council, together with a copy of a delivery receipt. The Council says that it 'cannot dispute' that the letter was delivered to the stated address on 10 August 2016 but following investigations maintains that the letter was not received by the Council's planning department and did not come to the attention of the intended recipient. The signature on the proof of delivery was not recognised. In summary, the appellant's case is that the notice and method of service complied with all the statutory requirements, the presumption of service applies and given the Council's acceptance that the notice was received at its offices, the notice was correctly served as a matter of law.
18. The written request contained all the necessary information in terms of the address of the building in question and contact details. The method of service by pre-paid signed for post complied with statutory requirements. However, the written request was addressed ambiguously in respect of the address of the principal office of the Council and incorrectly in that the wrong post code was used. The proof of delivery shows that the letter was 'delivered to your address or a neighbour'. There is no confirmation that the person who signed the receipt was an employee of the Council. Nevertheless, bearing in mind the stated position of the Council, the probability is that the written request was received at the Council's offices. The onus was on the Council to ensure that it reached the appropriate department and the local planning authority. The condition in paragraph A.2(2) of Class A was met.

Compliance with Timescale

19. The timescales set out in Condition A.2(4) are:
 - i. The development must not begin before the expiry of a period of 56 days following the date of the written request (4 October 2016);
 - ii. The development must be completed within a period of 1 year of the date of that request (9 August 2017).

56 day period

20. As a matter of fact no response to the written request was received from the Council within the 56 day period. The appellant's case is that nothing was done to begin the development during the 56 day period (the ACV period). Particular attention was drawn to the fact that the agreement for lease was signed on 12 October 2016, sixty four days after the date of the request. The appellant's solicitor at the time had specifically advised this course of action.
21. The appellant's statement of case also reported that by the date the agreement for lease was entered into the appellant had completed a substantial programme of works to convert the premises into a unit suitable for use as a convenience store. With reference to the subsequent evidence on behalf of the appellant on the chronology of events and works to the property as a whole, it appears that a revised schedule of works to enable operation as a retail store was drawn up post June 2016. Provision was made for the removal of the new toilets and internal partitioning that had already been installed. On 7 November 2016 the ground floor and lower ground floor were formally handed over to LA

Foods. By that date all remnants of the pub had been removed and the premises was in shell form. The evidence of Mr Satwick indicates that works in the ACV period were not confined to structural works to remedy the defects in the building to enable the conversion of the upper floors.

22. Commencement of the internal works was one of the steps taken towards bringing about the conversion to a shop. They are able to be distinguished from the act of development, which is the material change of use. The development did not begin within the ACV period for the purposes of the timescale in Condition A.2(4). The Council reached a similar conclusion.

Completion of development

23. To comply with the second provision, a material change of use from Class A4 to Class A1 at the appeal property must have taken place by the relevant date of 9 August 2017.
24. 'The making of any material change in the use of any building or other land' is one of the two forms of development set out in section 55(1) of the 1990 Act. As stated in Planning Practice Guidance there is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.
25. The appellant emphasised that the carrying out of development comprising a material change of use is a one-off event, so that once the change is made the permission is spent⁷. My attention was also drawn to principles from case law regarding the indicators as to when the event of a change of use will have occurred⁸. Relevant factors to be considered and looked at in the round include the physical state of the premises, the actual use, intended use or attempted use. In *Doonin*, consideration of when a use is instituted requires a focus on factual matters as to whether something more than preparation has been done to change the use of the premises. It was held that it must be a matter of judgement on the facts to decide if and when the change of use took place. *Impey* found that a change of use can take place before the premises are used in the ordinary sense of the word but again it is a matter of fact and degree.
26. In this case I will bear in mind that in the enforcement notice a distinction is made between a material change of use and the alterations to the shopfront. The Council's photographic evidence indicates that the premises was still identifiable and recognisable from the outside as The Leighton Arms public house in April 2018 with the fascia sign still in place. In addition, the permission to change from Use Class A4 to Class A1 granted by means of a development order is subject only to the compliance with the timescale conditions, as opposed to potentially other planning conditions imposed through a permission granted as a result of a planning application (the circumstances in *Doonin*).

⁷ *Cynon Valley Borough Council v Secretary of State for Wales and Oi Me Lam* [1986] WL 406863

⁸ *Doonin Plant Ltd v Scottish Ministers* [2011] WL 1648; *Impey v Secretary of State for the Environment* [1984] P&CR 157; *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government and Beesley* [2011] UKSC 15

27. In addition to the factors already identified the off-site effects may also be relevant. A change of use has to be material to amount to development. A change is not material if it is de minimis.
28. The concept of the planning unit has been developed as the appropriate physical area to assess the materiality of change. In this case, where the issue throughout has been the GPDO permitted development right, the focus of the main parties has been on the space occupied by the primary public house use comprising the ground floor and basement. It seems to me that the effect of the 2015 permission was to create a new planning unit comprising the public house that was functionally and physically separate from the flats on the upper floors.
29. The evidence indicates that before the public house closed at the end of March 2016 the trading area was fitted out with a bar, tables, seating, televisions and pool table. The kitchen and toilets were towards the back. Externally the treatment of the frontages, the signage, the advertising boards for food/meals on offer and so on clearly identified the premises as public house. Customers visited the premises to drink, watch sport on television, have meals and to go to a variety of themed events and music performances.
30. The appellant submitted that the retail use was instituted and the GPDO Class A development was completed in advance of August 2017 on the grounds that works and expenditure amounted to 'something more than preparation'. The actual use commenced when the shop opened for business on 1 August 2017, clear evidence that the change of use did complete within the required timescale. The Council submitted that taken together the appellant's evidence was implausible and should be treated with caution. The Council highlighted the fact that despite the importance of commencing the use before 10 August 2017 no photographs were taken and a planning officer was not invited to verify a retail use had commenced.
31. I accept that the documentary evidence and the oral evidence of the appellant's witnesses, given under solemn affirmation, demonstrate that FAB Retail was seeking to ensure completion of the development and hence compliance with the A.2 condition in the GPDO. In summary the various steps taken included the signing of an agreement for lease for Class A1 permitted use only, works to the building, application for a licence for Class A1 use, the grant of a licence in March 2017 (albeit not acceptable to the operator), obtaining quotations for shelving, joinery works, flooring works, refrigeration units and a cargo lift, securing insurance cover, electrical works to the premises, installation of shop fittings and buying in of stock. These steps were preparing for a change of use and are not sufficient to demonstrate that a retail use had commenced.
32. The appellant's chronology of events and works to the property demonstrates that when the ground floor and lower ground floor were formally handed over to LA Foods on 7 November 2016 all internal physical remnants of the pub had been removed and the premises was in shell form. Even though the variation of the licence and the internal works would have made reopening of a public house improbable at that time, there was nothing in place to facilitate the actual use as a shop. The essential requirement of the GPDO was completion of a material change to a Class A1 use.

33. I consider that on the balance of probability the sale of goods to the public started on 1 August 2017 and that trade continued until 22 August 2017. The stated trading hours were from around 0800 to 1600 hours. Three people were employed to work from the premises, who were already employed by the operating company/tenant. By all available accounts the premises contained a fridge, shelving units, a counter and a till system. The range of stock, the majority of which was transferred from the nearby Agar Grove Nisa store, was limited and included chilled food products. However, the description of Mr Georgiou (KM Foods) was that, although open for trading, the premises was boarded up, with scaffolding outside and was very dull and not very bright inside. The shelves were old, there was bare wooden flooring and a single door fridge. He did not really notice any products. Mr A Hussain acknowledged that the windows were still boarded and there was no signage outside.
34. Two residents, who submitted statutory declarations in support of the appellant's case, noticed that a shop was open. One of these residents went in on several occasions, the second resident once, and both bought basic supplies. Mr T Hussain acknowledged trade was low and that the regular customers were builders working on the conversion of the upper floors and the residential development of the beer garden. A statement from one of the labourers on the construction site affirmed that he, along with builders working on the site, would buy basic food items.
35. A VAT/sales report for the three week trading period shows total takings of £685, largely made up of sales of soft drinks but also confectionary, crisps, snacks and bread. Sales did not justify a second delivery of chilled foods. The revenue generated was not enough to justify continuing trading and Mr A Hussain decided to close the store on 22 August.
36. Written representations from other residents dispute a shop opened in August 2017. Given the controversy and local concern about the future of the pub, as indicated in the 2015 appeal decisions, I find it significant that the opening of a shop in August 2017 was not brought to the attention to the local planning authority by residents at the time.
37. The Council reported that in early 2017 it became aware through residents of a possible conversion. Investigations found the premises were boarded up, stripping out works had commenced and the property remained a building site and the purpose of the works was not clear. It was much later on, early in 2018, that on further investigation it became apparent to the Council that the ground floor was being converted into a retail convenience store and the matter was taken up with the developer.
38. In conclusion, the retail sale of goods to visiting members of the public took place from the ground floor of Number 101. Balanced against this factor, by August 2017 the physical alterations towards creating a retail unit were very limited. The unit did not have the typical basics associated with a shop, such as a window display and areas for advertisement material and as such it had no identity as a shop. The greater part of the local community did not notice a shop had opened for trade despite its prominent corner position. Customers were largely confined to workmen carrying out the renovations on the floors above and the development next door. The descriptive material indicates that not all the ground floor space was available and utilised. There is nothing to indicate that the basement was in use as ancillary space. The sale of goods

probably was limited in extent to only part of the unit and the premises was open to trade only for a very short period of time.

39. No significant off-site effects were apparent, such the parking of delivery vehicles, waste awaiting collection outside the premises or effects on patterns of trade nearby.
40. It was some 10 months later that the shop opened to trade on 30 June 2018. During that period the premises licence was resolved in October 2017 and the lease was completed on 24 January 2018. A comprehensive fit out of the premises were undertaken and after April 2018 the substantial alterations to the shop front were carried out. This chronology indicates the considerable amount of work that remained to be done before the Nisa store opened to the public in June 2018, completing the material change of use.

Conclusion

41. Having considered all the various factors in the round I conclude that in August 2017 the impact of the shop use was not significant, the retail use was minimal and should be disregarded. As a matter of fact and degree a material change of use did not take place. Development was not completed in accordance with the timescale set out in Condition A.2(4). The material change of use to a retail convenience store occurred in June 2018, it was not development permitted by the GPDO and no planning permission was granted by the local planning authority. The change to a retail convenience store was a breach of planning control. The appeal on ground (c) fails in respect of the material change of use.

Alterations to the shop front

42. Section 55(2)(a)(ii) provides that the carrying out of works for the maintenance, improvement or other alteration of any building does not involve development if the works do not materially affect the external appearance of the building. Based on the *Burroughs Day* judgement, factors identified for consideration are the change to the external appearance of the building as a whole and not a part in isolation, the degree of visibility by an observer outside the building, the nature of the building and the nature of the alterations/works⁹.
43. The appellant submitted that materiality should only be judged in respect of the matters alleged, namely the enlargement of the historical windows and the removal of the traditional door as set out in the reasons for issuing the notice. The Council's case was based on the effect of the alterations to the shop front as a whole and was not confined to the elements highlighted in the reasons.
44. The building dates from the mid 19th century and is sited on a highly visible corner plot fronting onto Brecknock Road and Torriano Avenue. The substantial building¹⁰ stands slightly taller than its neighbours, is sited forward of the adjoining terrace to the north and is on slightly elevated ground. All these factors increase its prominence and visibility within the street scene.
45. A historic photograph indicates that in 1912 The Leighton was an impressive public house building in its local context, classical in architectural style with

⁹ *Burroughs Day v Bristol City Council* [1996] 1 PLR 78

¹⁰ Originally three storeys and a basement the residential conversion scheme has provided a fourth floor set back from the parapet.

stucco detailing and decoration, enhancing in particular the two principal elevations. The ground floor facades were distinguished by traditional features of 19th century public house design. These included regular spaced pilasters, panelled stall risers and well proportioned windows, recessed entrance doors and a strong cornice. The ground floor treatment complemented the upper floors of the principal facades. The northern face of the building was attached to number 103, apart from a short return and hence made little contribution to the appearance of the building. The evidence that is available indicates the western elevation also was very secondary. The building was part of the Victorian development of this part of Kentish Town and the probability is that the public house had an important community and cultural role.

46. Photographs of the building around 2008 to 2015 indicate that its impressive grandeur had been lost in the appearance of the ground floor frontages, in part through the boarding up of two of the entrance doors and latterly the plain boarding to the stall risers and more generally through the run down state. Even so, the historic architectural frame was largely intact, stall risers and the areas of glazing above retained the traditional proportions and the entrance door on the splay was of a traditional style together with a recess and steps. The distinctive style and decoration to the upper floors remained, although eroded somewhat at parapet/roof level.
47. The building is not listed, either on a statutory or local list, nor is it within a conservation area. Nevertheless because of its local townscape, architectural and historical significance, I agree with the Council that it merits being considered as a non-designated heritage asset.
48. The appellant stated that the windows were not enlarged, rather the modern boarding was partly removed to expose the original opening and disputed the description of the windows as 'historical'. The photographic evidence demonstrates to me that the alterations to the shopfront have resulted in a significant increase in the length of 'glazing' within all the retained window openings. Comparing the before and after images, the loss of any sense of the characteristic stall riser, with ledges, is readily apparent. This is particularly so on the Brecknock Road frontage where the perceived windows now extend almost to the pavement level and a low plinth defines the base. The timber of the window frames or the panelling may not have been the original but the windows in 2015/2016 maintained very similar proportions to the historic public house in terms of the size of openings, areas of glass and the height of stall riser.
49. The doorway into the building on the street corner had a definite visible recess, lobby and step. The door, even if it was of a standard off-the shelf door of modern manufacture, was of a traditional style and pattern, with a timber panelled appearance and insets of glazing. The new door appears to be almost flush with the face of the building and has a metal frame, infilled entirely with glazing. The entrance into the store has little resemblance to that into the former public house.
50. The windows and main entrance door were very important elements of the ground floor frontage to the public house and to the overall appearance of the building, having regard to its proportions, rhythm and character. Being at street level on a prominent corner these features were highly visible, even to the casual observer. The alterations have resulted in a very different treatment

to the windows and door which has materially affected the external appearance of the building as a whole. Development occurred for which planning permission was required.

51. The plans approved through the 2015 permission show a different frontage treatment for the retained public house in comparison to the new shopfront and the appellant did not attempt to argue that the works were authorised by that permission. Accordingly, no permission was granted for the alterations and it follows there has been a breach of planning control. The appeal on ground (c) fails in respect of the operational development.
52. I have come to this conclusion based on the appellant's focus on the wording in the reasons for issuing the notice. However, I have had particular regard to the wording of sections 173(1) and 174(2) of the 1990 Act on the content of a notice and the grounds of appeal. In my view the breach of planning control which is constituted by the matters stated in the notice is 'alterations to shopfront'. The ground (c) appeal is in relation to those matters. The reasons for issuing a notice are additional matters prescribed by Regulation 4(a)¹¹.
53. The alterations were more extensive than enlargement of window and the removal of a door. They also included the rearrangement of pilasters and the addition of a pilaster, plus the removal of a door fanlight and recess on the Brecknock Road elevation. The alterations to the Torriano Avenue elevation resulted in the loss of a door, fanlight, door opening, step and recess. Undoubtedly the alterations to the shopfront materially affected the external appearance of the building as a whole and development occurred. This assessment reinforces my initial conclusion on the failure of the ground (c) appeal.
54. A very recent judgment, *Muir*, indicates that the effect on part of the building may be considered¹². This approach does not assist the appellant and in my assessment I have not departed from the stated position at the inquiry.

Ground (a) appeal/deemed planning application

55. The main issues are:

- The effect of the loss of the public house on community facilities in the area, taking account of the value of the use to the local community, the stock of premises available to meet similar community needs and the reasonable prospects of the use being able to trade over the medium term.
 - The effect of the external alterations to the shopfront on the character and appearance of the building and the surrounding area.
56. The development plan includes Camden Local Plan adopted in 2017 (the CLP) and the London Plan 2016. Other material considerations include the National Planning Policy Framework (the Framework), Planning Practice Guidance (PPG) and the relevant Camden Planning Guidance supplementary planning documents.

¹¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

¹² *London Borough of Haringey v Secretary of State for Housing Communities and Local Government, Paul Muir* [2019] EWHC 3000 (Admin)

57. A consolidated version of the draft London Plan was produced in July 2019. The Panel's report has been published by the Mayor of London. The statement of common ground identifies relevant emerging policies in relation to design, heritage and culture and delivery. In general the policies reaffirm the relevant policies in the development plan.

Material change of use

Value of the public house to the local community

58. In 2015 the Inspector found that the premises were clearly dated but nevertheless served a local community need. The proposed 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 it a much more desirable place to visit. The proposed redevelopment of the beer garden was found not to affect the long term retention of the public house and that the community use afforded protection through the development plan would be retained.
59. Current development plan policy expressed in the CLP through Policy C2 Community Facilities and more specifically Policy C4 Public Houses seeks to protect public houses which are valued by the community, including protected groups. It appears that the policy wording and tests are not exactly the same as in 2015 where the reasoning of the decisions placed the emphasis on the public house as a community facility, rather than exploring its existing value to the local community. Also, the proposal under consideration then was not the loss of the pub but its retention within the refurbishment scheme for the entire building.
60. For the purposes of the CLP the term 'community facilities' refers to a wide range of social infrastructure that provides a service to the community. Public houses are specifically listed as a community facility but a retail convenience store is not. Policy C2 has two main objectives. The first is to ensure provision of community facilities to meet the needs of a growing population but it is the second that is of relevance to this appeal, to safeguard against the loss of viable community facilities. Criterion (g) of Policy C2 is applied to public houses through Policy C4. An initial consideration is whether The Leighton Arms was a public house that is valued by the community.
61. The Leighton Arms was not an Asset of Community Value, nor was it ever nominated by community groups as an ACV. The appellant primarily assessed and equated value to that of value to community groups.
62. The evidence of Ms Brosnan was that the pub was not a regular meeting place for any type of local group. There were no darts matches held and interest in pool dried up. During the week there was a hard core of some 4 or 5 regular customers but the pub was empty several nights a week. Customers were attracted when football was on the television, particularly when Arsenal was playing. Sunday roasts were popular (50 to 60 customers), there was monthly karaoke, local performers and occasional birthday events. Themed events were held such as on St Patrick's day, St George's day, Burns night and other promotion initiatives were tried such as a pie and a pint. Even so trade was difficult and there was not the daily custom to generate a living. Rather than being valued by the community, residents complained about noise and anti-social behaviour.

63. The opposition to the loss of the pub/change of use was strongly expressed through such channels as protest demonstrations, a petition, contact with the local MP, press publicity and written objections to the appeal. There was support for the cause from the Ward Councillor. A number of people attended the inquiry to voice their objections.
64. The objections to the change of use were based not solely on the loss of a values community facility but covered a variety of reasons. In summary these included: the pub should be retained for the community, the loss of another pub in the area, the expectation the pub would form part of the renovation scheme granted planning permission, the flouting of planning regulations, a lack of need for another local supermarket, adverse effect on the trade of existing local shops, traffic problems caused by delivery lorries. The appellant's claim that the pub was a restaurant were disputed.
65. Objection based on the community value of The Leighton Arms was relatively small and there was little specific evidence describing how the pub contributed to and was valued by the local community. This was borne out at the inquiry because when questioned there was little evidence of regular use of the pub by the interested parties present. It also should be noted that there was a good deal of support for the new retail store, with particular mention of the range of goods stocked and its convenient location.
66. The Council did not present detailed evidence of the community value of The Leighton Arms and largely relied on the 2015 appeal decision to demonstrate community need. Reference was also made to three other appeal decisions dismissing proposals that would result in the loss or partial loss of a public house. In all cases the circumstances are not directly comparable to the current appeal, whether because designated ACVs were involved, the appeals predated the CLP (The Golden Lion and 97 Haverstock Hill) or the loss of a first floor function room was decisive (105 King's Cross Road). The appellant drew attention to two appeal decisions, neither of which I find particularly helpful in applying the CLP policy test to The Leighton Arms, not least because the decisions were for premises in different boroughs.
67. An underlying broader aim of Policy C4 is to protect community uses that enhance quality of life and improve well-being by strengthening social networks and a sense of belonging. The supporting text to Policy C4 states that a 'community pub' predominantly serves a local residential community or a protected group which may have a catchment wider than the local area. There may exceptionally be a justification for protecting a pub which does not meet this criterion if it is the last facility capable of meeting the local community's needs and could conceivably do so in the medium term. Camden Planning Guidance sets out in more detail how pubs support strong communities and the evidence required, including a community survey unless the pub is already included on the Council's register of Assets of Community Value.
68. A reason Ms Brosnan took on the pub was that she was from Kentish Town and therefore she had strong local connections. The Leighton Arms did not support a wide range of leisure activities and meetings but it did host activities such as live music, local performers, parties and celebrations. The evidence was not entirely consistent on whether or not customers at those events were mainly local residents. Friends and acquaintances of the promoter and of her partner were said to have supported events but reference was also made to residents

being customers. The appellant described the food offer as a substantial attraction to customers. The customer base for Sunday roasts and football probably would be weighted more towards the local area. The appellant made much of the fact that objectors did not frequent the pub but produced little evidence as to where customers were from. That would be the purpose of the community survey. Much of Ms Brosnan's evidence was directed towards illustrating the difficulty of making a living from the pub, a separate matter to whether the pub was valued by the local residential community. There was nothing to indicate that the pub was popular with a protected group.

69. In conclusion, applying local policy and guidance, in the period leading up to closure of the pub, The Leighton Arms was of value to the community through its role in serving the local area. On that basis, Policy C4 requires further policy tests to be applied, which are:
- a. Whether there are equivalent premises available capable of meeting the community's needs served by the public house, or
 - b. Whether there is interest in the continued use of the property or site as a public house and no reasonable prospect of a public house being able to trade from the premises over the medium term.
70. The policy is worded such that the loss of a public house is able to be justified on one aspect alone. The situation in this case is that the pub had closed with the expectation that it would re-open after refurbishment and modernisation. In these circumstances it seems sensible to consider not only the value of the pub before closure but also the facilities and space that would be available now, after the completion of the residential developments on the upper floors on number 101 and on the beer garden site.

Equivalent premises

71. Before closure the public house was mainly used as a social venue at weekends, especially for Sunday lunch and organised entertainments (karaoke, performers) and for watching televised sport especially football matches involving the local team. The use of the beer garden, for barbeques and such like, had ceased around 2014 because of difficulties with management supervision and complaints of disturbance to nearby residents. The approved layout provided for a bar area on the ground floor only, with the basement used for stores. There would be no separate meeting rooms or outside space. A more detailed plan prepared in November 2015 indicated a central bar, with 120 m² for the pub/bar and the remainder of the ground floor space towards the rear used for a kitchen and customer toilets¹³. The appellant has also maintained that the approved scheme did not allow for a trade kitchen on the ground floor or in the basement, which would limit the food offer¹⁴.
72. There are some 14 public houses within reasonable walking distance of the site. When taken together they provide a variety of premises in terms of size, location, pub environment and facilities. They offer a wide range of food, drink and entertainments¹⁵. I am satisfied that they are more than capable of meeting the community's needs served by The Leighton Arms, in terms of facilities, amenities and opportunities for socialising within the local

¹³ Proof of evidence of Mr Satwick Exhibit 1

¹⁴ Proof of evidence of Mr Watson pages 2, 3

¹⁵ Proof of evidence of Mr Watson pages 3, 4 and 5

community. In addition, there are various community facilities, such as community centres and church halls, that would provide venues for meetings and community events. No substantive evidence was presented that questioned the ability of all these facilities to fill the gap created by the loss of the public house.

73. In conclusion the public house premises at 101 Brecknock Road is no longer required. There are equivalent premises available capable of meeting the community's needs served by the public house. Referring back to Policy C2, it follows that criterion (g)(i) is met, the available equivalent premises representing 'a replacement facility of similar nature'. Having satisfied these tests there is no necessity to conclude on the interest of continuing the public house use and the viability of the use over the medium term. The material change of use is acceptable when tested against CLP Policies C2 and C4.

Other matters

74. The Council's objection was based on the loss of the pub, not that the development of a shop in the area conflicts with policy requirements. There is no conflict with CLP Policy TC5 that promotes the provision of small shop premises suitable for small and independent businesses. Representations confirmed that the retail convenience store serves the local community, albeit in a different way to the public house. The appellant's evidence is that there are around 4,500 customers a week. The Framework regards local shops to fall within the meaning of community facilities that contribute to enhancing the sustainability of communities and residential environments. These considerations support the change of use.
75. Residents' concerns over highway safety and local congestion as a result of deliveries to the shop are able to be addressed by restrictions on times when loading and unloading of goods may take place. Similarly a planning condition is able to require facilities be provided in the premises for the storage of waste, recycling and refuse in order to protect amenity and therefore secure compliance with criterion (d) of CLP Policy CC5.
76. The appellant proposed a condition that would require the premises to be used for a Class A1 shop, removing the rights to change the use to a use permitted in Part 3 Schedule 2 of the GPDO. The main reason why the A1 use is acceptable is that there are not grounds or policy support for requiring retention of the public house, rather than the community need for a new retail store. Furthermore, the retention as a Class A1 use would not prevent the store changing to another type of retail use that may be of less benefit to those who have said that they value the convenience store. The proposed condition does not meet the tests of reasonableness or necessity.

Conclusion on material change of use

77. For the reasons given above the balance of the development plan and other considerations demonstrate that the development is acceptable and should be approved. The appeal succeeds on ground (a) in so far as the material change of use is concerned and planning permission will be granted for this development.

The shopfront

78. The deemed planning application is derived directly from the wording of the breach of planning control, namely 'alterations to the shopfront'. The local townscape, architectural and historical significance of the building has been identified in considering the ground (c) appeal and therefore is not repeated. I have decided to grant planning permission for a shop and the alterations to the shopfront are assessed within that context.
79. The CLP through Policy D1 Design seeks to secure high quality design in development. Development is required to respect local context and character, comprise details and materials that are of high quality and complement the local character, and to contribute positively to the street frontage. In addition, development must be inclusive and accessible to all, of sustainable and durable construction and protect the significance of heritage assets.
80. Policy D3 Shopfronts has the same aim and identifies a similar range of matters for consideration. Policy C4 seeks the retention of significant features of historic or character value when a public house is converted to an alternative use. Policy D2 protects non-designated heritage assets (including those on and off the local list), weighing the effect on significance against the public benefits of the proposal.
81. These policies are consistent with the design policies of the Framework. Planning Practice Guidance affirms the need for careful consideration of detail in order to ensure design quality. The Camden Planning Guidance Design (a supplementary planning document) refers to the contribution of non-designated heritage assets, encourages the use of like for like replacements where appropriate and retention or restoration of decorative features.
82. Number 101 is a period building and the conversion of the upper floors has largely respected and worked with the scale, architectural style and traditional elements and materials of the front facades. The contemporary additions and materials complement and are subordinate to the principal host property. The significant features of historic or character value of the former shopfront were the pattern of fenestration, including the rhythm of the pilasters, the proportions of the windows, the stall risers, ledges and other associated features; the doorways and recesses; the strong cornice; the signage and displays; and the use of materials, particularly timber for the window frames and doors.
83. The neighbouring terraced housing is primarily of an architectural style typical of Victorian development, having a regular formal appearance and symmetrical facades and decoration above the windows and at parapet level.
84. The appellant outlined the structural repairs that were necessary to the refurbishment of the entire building and the consequent effects on the appearance of the building at street level. On the Brecknock Road elevation, wider brick pillars were built in line with the brickwork columns above. On the Torriano Avenue elevation less work was required to widen and strengthen the columns. The installation of structural steel portal frame goal posts required the tops of the windows to be lowered and the insertion of 'panels' above the windows to conceal the structural frames.

85. Even allowing for such structural alterations and their implications for the external appearance, the new shopfront fails to adequately respond to policy requirements and design guidance. In particular the development has resulted in the loss of the stall risers and window ledges, with the consequent enlargement of window openings and the loss of any expression of the two secondary doorways. The design of the shop entrance, including the type of doors installed and the goods delivery point are out of keeping with the traditional character. The materials are unsympathetic, notably the use of colour coated flat profile metal frames and the use of visually dominant vinyl graphics. A contemporary shopfront design is not an appropriate design solution in this instance¹⁶. The replacement of the step by a ramp at the corner entrance was to allow for disabled access and to that extent is acceptable.
86. In conclusion, I recognise that the external treatment of the ground floor elevations needs to reflect and signal the new use of the premises and to accommodate a different internal layout. However, significant features of historic and character value have not been incorporated into the new design. The evidence does not justify the failure to achieve this objective. In this respect the harm to the non-designated asset is not outweighed by the public benefit of a shop. The alterations to the shopfront have not achieved high quality design to complement the period building and the local context. The development is contrary to CLP Policies D1, D2, D3 and C4 and it fails to comply policies in the Framework to uphold design quality. Application of Planning Practice Guidance and local design guidance leads to the same conclusion. The balance of the development plan and other considerations demonstrate that the development is unacceptable and should not be approved.

Conclusion on ground (a)

87. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and refuse to grant planning permission on the other part. By virtue of section 180 of the Act the requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant.

Appeal on ground (g)

88. The Framework states that effective enforcement is important to maintain public confidence in the planning system.
89. The issue is whether the compliance period of three months is reasonable in respect of the shopfront.
90. The appellant's statement of case sought a compliance period of twenty four months to allow time to secure alternative premises that are appropriately fitted out and properly licensed. No specific period was identified for the works to reinstate the ground floor frontages.
91. The ground (a) appeal has been successful and a change of use to a shop will be granted planning permission. No time needs to be allowed to find alternative retail premises for the business. On the other hand, during the course of the inquiry new information was submitted on the structural changes to the

¹⁶ Paragraph 7.75 of the CLP.

property and how these works affected the ground floor external works. On both sides there was indication of a willingness to discuss revised proposals for the frontages, with a view to securing planning permission.

92. In light of these considerations I conclude that the compliance period should be extended to six months and the enforcement notice will be varied accordingly.

DECISION

93. It is directed that the enforcement notice be corrected by:

- The deletion of the description of the Land in paragraph 2 and the substitution of the words: Land at: ground floor and basement, 101 Brecknock Road, London, N7 0DA as approximately shown outlined in black on the attached plan ("the Property").
- The substitution of the plan attached to this decision for the plan attached to the enforcement notice.
- In paragraph 4 the deletion of the first sentence in bold and the substitution of the words: "It appears to the Council that the above breaches of planning control have occurred (a) within the last ten years in respect of the material change of use, and (b) within the last four years in relation to the alterations to the shopfront."
- In paragraph 5 step 2 the deletion of the word "frontages" and the substitution of the words "ground floor frontages".

94. The appeal is allowed insofar as it relates to the material change of use of the land shown edged in black on the plan annexed to this decision and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the change of use of the public house to a retail convenience store at ground floor and basement, 101 Brecknock Road, London, N7 0DA subject to the following conditions:

1. Loading and unloading of goods at the property shall take place only between the hours of 0930 and 1630 Monday to Saturday and not at any time on Sundays or on Bank or Public Holidays.
2. Provision shall be made at all times within the property to store refuse, recycling and waste materials. There shall be no external storage of refuse, recycling and waste materials except on the day of collection when the storage awaiting collection shall be in secure containers.

95. It is directed that the enforcement notice be varied in paragraph 5 by the substitution of 6 months as the period for compliance.

96. The appeal is dismissed and the enforcement notice is upheld, as corrected and varied, in relation to the operational development and planning permission is refused in respect of alterations to the shopfront, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

David Forsdick QC	Instructed by Sam Woodhead of Trowers & Hamblins
He called	
Andreas Georgiou	Director of KM Foods (London) Limited
Jeanette Brosnan	Operator of The Leighton Arms
Ansar Hussain	Area Manager of L A Foods (UK) Ltd and Director of F.A.B Retail Limited
Tabrez Hussain	Area Manager, F.A.B Retail Limited
Stephen Satwick	Manager Director of Planet Construction Company Limited, Director of Bryanston Investments Limited
David Norris BA(Hons) BTP MRTPI	Manager Director of ADN Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mark Beard, barrister	Instructed by the Solicitor to the Council
He called	
Anna Foreshew BA, MSc	Conservation Officer, London Borough of Camden
Ramesh Depala BA MA	Senior Planning Enforcement Officer, London Borough of Camden

INTERESTED PERSONS:

Alan Drummond	Resident
Councillor Jenny Headlam-Wells	Kentish Town Ward Councillor
Steve Caplin	Resident
Eddie Farrell	Resident
Patricia Pank	On behalf of the Torriano Cottages Association
Roy Lockett	Resident
Lindsay Shapero	Resident
Daniel Coleman	Resident
Josephine Siedlecka	Resident
R Fairley	Resident
E London	Resident
Md Sofiul Alam	Shopkeeper
Robert McGiven	Resident
John Mann	Resident
Adrian Paterson	Resident

DOCUMENTS submitted at the inquiry

- 1 Inquiry Bundle Folders 1 and 2
- 2 Bundle of Interested Parties Representations and Statements
- 3 Opening comments on behalf of the Appellant
- 4 Core and detailed chronologies
- 5 Response by Mr McMeel to Inspector's questions
- 6 Statement by A Paterson
- 7 Statement by R Lockett

- 8 Email correspondence re licensing
- 9 Extract from insurance policy
- 10 Insurance information (quote, proposal form)
- 11 Statement on viability by Andrew Jones BSc Hons MRICS
- 12 Response by T Watson to statement by A Jones
- 13 Note on structural works
- 14 Corrected plan to be attached to the enforcement notice
- 15 Proposed planning conditions
- 16 Plans for 2015 planning permission
- 17 Plans of boundaries to Tufnell Park Conservation Area and Kentish Town Conservation Area
- 18 Plans for 2015 planning permission
- 19 Representation by D Clancy
- 20 Representation by S Bland
- 21 Planning conditions submitted by the appellant
- 22 Closing submissions on behalf of the Local Planning Authority
- 23 Closing on behalf of the Appellant

