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Appeal Statement

The Black Cap Public House, 171 Camden High Street, London NW1 7JY

Iceni Projects Limited on behalf of
Golden Brick Pubs Ltd

October 2019

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ON BEHALF OF GOLDEN
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1. INTRODUCTION

- 1.1 This appeal is submitted on behalf of Golden Brick Pubs Ltd ('the Appellant') against the non-determination, by the London Borough of Camden ('the Council') of an application for the Certificate of Lawful Existing Use or Development (CLEUD) at their premises known as The Black Cap Public House, 171 Camden High Street, London NW1 7JY ('the site').
- 1.2 This Appeal Statement (and associated evidence within the application) sets out the Appellant's case in support of confirming the lawful land use of the site comprising the use of the basement, first, second and third floor levels as public house (Class A4) with cabaret entertainment space at ground floor level.
- 1.3 The CLEUD application was submitted to the London Borough of Camden on 29 April 2019. The application was given the reference number 2019/2271/P. The determination date was provided as 19 July 2019.
- 1.4 At the time of writing this Appeal Statement, the application has been with the London Borough of Camden for 28 weeks.

2. OWNERS OBJECTIVE

- 2.1 The Black Cap Public House is a public house in Camden Town in London.
- 2.2 The Black Cap closed in April 2015. It was closed because of a contractual obligation between the previous owners and the new owners which required to the Black Cap to be made vacant on new possession.
- 2.3 The objective of the owners of the building has been to re-open the Black Cap. The owners want the Black Cap public house to be re-opened as a public house (Class A4) and since the closure of the building in April 2015, the premises have been marketed for lease, the objective being to find a new commercial tenant to reopen and operate the Black Cap as a public house.
- 2.4 Despite extensive marketing of the premises over a period of almost 5 years, the owners of the building have not been able to secure a tenant.
- 2.5 The principle concern expressed by potential tenants / interested parties has been a reluctance to commit to a commercial lease, owing to the uncertainty regarding the existing lawful land use of the premises.
- 2.6 In summary, the existing lawful land use of the premises is not clear. In particular, it is not clear whether or not the premises can be described as a public house (Class A4). As such, potential tenants are not prepared to commit to a lease if they do not know what the existing lawful land use is and therefore what type of business operation they may (or may not) be able to operate in the premises. Could they serve beer / alcoholic drinks? Are they able to serve food? All of these matters are unclear to potential tenants.
- 2.7 The purpose therefore of the CLEUD application was to clarify the existing lawful use of the building based on facts and the submission of evidence. The factual evidence collected by the Appellant suggests the Black Cap is predominantly a public house (Class A4) with an area of cabaret entertainment space at ground floor level and the description of development for the CLEUD application the subject of this appeal was articulated accordingly.
- 2.8 The Black Cap is a high-profile establishment and is an infamous venue. Anything to do with the Black Cap attracts a high degree of local interest and contention. Because of this, the local planning authority (LPA) have been reluctant to issue a decision on the submitted CLEUD. This is because the facts and evidence submitted by the Appellant describe the use of the building as a public house (Class A4) with Cabernet Space, which is different to the way the LPA may want to describe the use of the building for political expediency.

2.9 The LPA's failure to determine the CLEUD is preventing the Black Cap reopening. The Appellant requires certainty as to the lawful land use position and is therefore submitting an appeal.

3. CULTURAL SIGNIFICANCE OF BLACK CAP

3.1 The Black Cap is located at 171 Camden High Street, London NW1 7JY.

3.2 The site is a narrow rectangular plot located on the eastern side of Camden High Street, approximately 100m south of Camden Town underground station and the junction of High Street and Kentish Town Road (see **figure 3.1**).

Figure 3.1 – Site location plan



3.3 The Black Cap Public House as it is known today opened in 1952. Previously, the pub was formed of a much smaller footprint but a public house use (Class A4) has been in operation on the subject site since 1781. Throughout its lifespan and operation, the ownership had changed several times, and the pub attracted a variety of clientele over its lifetime. The Black Cap was originally likely to be an inn, but also served as a distillery, pub, and later in its life, as an LGBTQ+ (Lesbian, Gay, Bisexual, Transgender, Queer and others) space.

3.4 As a result of the association of the Black Cap with the LGBTQ+ community, in May 2013, the Black Cap was nominated by The Drama Queen's Drag Theatre Company to be listed as an Asset of

Community Value (ACV). The nomination failed and Camden Council cited that they had not received a valid nomination.

- 3.5 In February 2015, a second nomination to list the Black Cap as an ACV was made by Camden LGBT Forum. In correspondence relating to a review of the listing, Camden Council's response included a description of the significance of the Black Cap to the LGBTQ+ community and refers to the premises as a public house.
- 3.6 In April 2015, Camden Council designated the Black Cap as an ACV.
- 3.7 Subsequent to this, Historic England requested to visit the Black Cap to assess the historic significance of the building. This was as a result of Historic England's 'Pride of Place' thematic study which sought to identify and review buildings of significance to the LGBTQ+ community and determine their suitability for listing in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 3.8 In 2017, Icen Projects on behalf of Faucet Inn Limited submitted a request to Historic England for an Enhanced Advisory Service to issue a Certificate of Immunity from listing for The Black Cap. It was considered that the building did not demonstrate cultural, historic and architectural significance to be considered for national listing.
- 3.9 In August 2017, Historic England made a recommendation to the Department for Culture, Media and Sport (DCMS) that the Black Cap not be listed. The Secretary of State for the DCMS agreed with this recommendation.

4. CHRONOLOGY AND TIMELINE

- 4.1 The Black Cap Public House operated as a successful business for many years until its closure in April 2015.
- 4.2 In 2016, four planning applications (listed in **table 4.1** below) were submitted by Ruth and Robinson Limited, a commercial pub company. One application sought planning permission for the change of use of the building from 'Class A4 Drinking Establishment, Sui Generis' to a 'Class A4 Drinking Establishment'. The additional applications sought minor external and internal alterations to the building. At the time of preparing this Appeal submission, all four planning applications remain undetermined.

Table 4.1 Undetermined Planning Applications

LPA ref.	Application Type	Proposal
2016/1307/P	Full Planning Permission	Installation of extract duct and 8x condensers on 3rd floor roof and 2x condensers at rear ground floor level.
2016/0350/P	Full Planning Permission – Commercial Minor Alterations	Installation of timber doors to shopfront, erection of lantern roof light and replacement pergola to first floor terrace and erection of fire escape stair from rear of terrace following removal of existing side access stairs.
2016/0347/P	Full Planning Permission	Change of use of building to drinking establishment (Class A4).
2016/0528/A	Advertisement Consent	Display of 1x internally illuminated sign above entrance door, 1x internally illuminated projecting sign at first floor level and uplighters behind fascia illuminating upper floor.

- 4.3 The existing land use of the Black Cap for each of these applications is recorded on Camden Council's planning applications page as 'A4 Drinking Establishments, sui generis'. Numerous requests were made to the Council to determine the applications; however, Camden Council stated their priority was to determine the submitted CLEUD application (ref: 2018/4031/P) and confirm the lawful land use of the building.

5. CERTIFICATE OF LAWFULNESS APPLICATIONS

CLEUD 1

5.1 On 17 August 2018 an application was made by Icen Projects Limited to demonstrate the use of the basement, first, second and third floor level as a public house (Class A4) with a cabaret entertainment space at ground floor level (Sui Generis) has existed for 10 years or more such that the continued use would not require planning permission.

5.2 The Certificate of Lawfulness application was made valid and given reference number 2018/4031/P and the determination date was expected on 12 October 2018. The description of development upon submission of this application was:

'Use of the building at basement, first, second and third floor level as public house (Class A4) with a cabaret entertainment space at ground floor level (Class Sui Generis)'.

5.3 An extensive suite of evidence was submitted in support of the application to demonstrate the uses declared. The evidence provided clearly supported the description of the uses set out as a matter of fact, while providing sufficient clarity to enable the council to easily identify and enforce against any breaches of planning control.

5.4 In October 2018, Camden Council requested a meeting with the pub owners, Icen Projects and Councillor Danny Beales (Ward Councillor for Cantelowes) to discuss the application and seek to agree a description of use which was to be first prepared by Camden Council.

5.5 On 29 November 2018, Camden Council responded with the following amended proposed description of use:

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

5.6 In order to ensure the public house (Class A4) use was reflected in the description of use the following amended version was proposed in response:

'Use of the premises as a public house (Class A4), and cabaret/dance venue, bar with ancillary floorspace consisting of: use of the basement as storage for beer and stock, use of the ground floor as a cabaret bar with live performances (Sui Generis) and public house (Class A4) including toilets at the rear; use of the first floor as a public house (Class A4) bar area including toilets and use of the first floor external terrace as a drinking / smoking area; use of the second floor as a kitchen, two offices, and two rooms of staff accommodation plus bathroom and use of the third floor as two rooms of staff accommodation, all ancillary to the public house (Class A4) use'.

- 5.7 On 21 January 2019 it was confirmed that Camden Council proposed to carry out a 21-day re-consultation of the CLEUD application targeted towards the Black Cap Foundation (BCF). The objective of this being Camden Council better understanding how the space was used by engaging with the LGBTQ+ community.
- 5.8 13 responses were received from the BCF and a further 42 responses were received via the LGBT Forum. The responses reflected the use as a public house (Class A4) along with cabaret and entertainment space.
- 5.9 Following internal review of the responses received Camden Council subsequently sought to unilaterally change the description of use, without an agreement with the owner to describe the Black Cap as a cabaret/dance venue, bar, and community space (Sui Generis). The CLEUD, was granted on 3 July 2019.
- 5.10 It is important to be clear that the CLEUD granted by the Council on 3rd July 2019 (Ref 2018/4031/P) is not the subject of this appeal. This CLEUD was granted but in granting the CLEUD the council unilaterally changed the description of development as applied for and as set out by the applicant and for an alternative description of use which is not supported by the facts or the evidence submitted with the CLEUD.
- 5.11 It is the Appellants contention that the description of development as applied for originally was changed unilaterally by the council for the purposes of political expediency. i.e. owing to the local controversy, the council could not be seen to be determining the application on the basis of the evidence submitted and instead made up an alternative description of some other use.
- 5.12 The use (as ultimately amended by the council and as set out on the granted CLEUD) does not help the Applicant whatsoever. This is because it does not provide any further certainty with regard to the uses and business activities which may be able to take place at the Black Cap. All potentially interested tenants remain put off by this description and cannot commit to the signing of a commercial lease and re-investing in the building to enable it to be re-open if they cannot be clear as to what type of business they can operate and what type of business activities they are able to execute.

CLEUD 2

- 5.13 On 29 April 2019, a further CLEUD application was submitted to Camden Council to determine the use of the basement, first, second and third floor levels as public house (Class A4) with cabaret entertainment space at ground floor level (Sui Generis).
- 5.14 The description of use referred to is:
- ‘Use of the premises as a public house (Class A4), and cabaret/dance venue, bar with ancillary floorspace consisting of: use of the basement as storage for beer and stock, use of the ground floor as a cabaret bar with live performances (Sui Generis) and public house (Class A4) including toilets to the rear, use of the first floor as a public house (Class A4) bar area including toilets and use of the first floor external terrace as a drinking / smoking area; use of the second floor as a kitchen, two offices, and two rooms of staff accommodation plus bathroom and use of the third floor as two rooms of staff accommodation, all ancillary to the public house (Class A4) use’.
- 5.15 The CLEUD application was confirmed as valid and given reference number 2019/2271/P. The determination was due on 19 July 2019.
- 5.16 Given the planning history, significant local and political interest in the Black Cap and previous disagreement with the description of use, it is for these reasons that it is understood Camden Council have not sought to determine the application within the prescribed timescales.
- 5.17 It is in the context of this undetermined CLEUD application that we submit this appeal.

6. CLEUD 2 AND EVIDENCE SUBMITTED

- 6.1 The CLEUD (ref: 2019/2271/P) has been prepared and submitted to Camden Council in accordance with Section 191 of the Town and Country Planning Act (1990). In determining the CLEUD, the Council have a duty to consider the facts of the case and relevant planning law on the basis of the evidence provided.
- 6.2 The evidence provided clearly supports the description of the uses we have set out as a matter of fact, while providing sufficient clarity to enable the council to easily identify and enforce against any breaches of planning control. We set this out to be as specific and detailed as possible with regard describing the land uses. We accept that the land use is not solely a public house (Class A4) and we have stipulated our assessment of the parts of the building which fall under cabaret and entertainment use (Sui Generis).
- 6.3 Given the continued failure of potential public house leaseholders agreeing a lease for the operation of the Black Cap owing to uncertainty around the land use and unease as to whether a public house operation would be enforced against, the Council's failure to determine the CLEUD is effectively preventing this important building from re-opening.

7. CONCLUSION

- 7.1 The Black Cap is and has always been a public house (Class A4) on this site since 1781.
- 7.2 In the later half of the 20th century, it became a safe space and focus for the LGBTQI and wider community in Camden Town. None of this changed the primary role and function of the premises as a public house (Class A4).
- 7.3 The building has been closed now for nearly 5 years. It is falling into disrepair. With each passing month the capital outlay and commercial investment required to bring the building back into a normal habitable standard increases.
- 7.4 The owners of the premises and appellant are desperate to bring the building back to life.
- 7.5 They have tried to find a suitable commercial tenant for the building to re-open the building. The building has been extensively marketed in seeking to find a commercial tenant. The marketing has provided unsuccessful in finding a tenant.
- 7.6 The principal barrier to re-opening the building is the uncertainty regarding the existing lawful land use position. Put simply, potential tenants are not prepared to sign a commercial lease when they do not know what type of business / business activities they would be allowed to undertaken on site without the risk of enforcement action. Would they be able to sell beer and alcoholic drinks? Would they be able to serve food? None of these basic matters are clear.
- 7.7 The applicant has submitted a CLEUD application in seeking to establish the lawful commercial use in seeking to provide certainty to get the building re-opened. This CLEUD has a clear and factual description of the building and its use. This CLEUD was supported by extensive evidence. The evidence describes and support the building for the use described.
- 7.8 Owing to the political controversy associated with the Black Cap, the LPA have not felt able to determine the application or comment on the evidence submitted. 4 x other applications for housekeeping matters similarly remain undetermined for circa 4 years. A similar CLEUD application was recently granted unilaterally amended by the council prior to the issuing of a decision.
- 7.9 As such, the Appellant feels there is no other option but to appeal. The Appellant contends that the evidence submitted supports the lawful use of the building as an public house (Class A4) with ancillary Cabaret space in accordance with the description of the use set out in the CLEUD application and we look forward to the Inspectors formal confirmation of the same.