

AI Enforcement Delegated Report

Receipt date:

18th April 2018

Officer

Raymond Yeung

Enforcement Case

EN18/0283

Breach Address

The Black Cap, 171 Camden High Street

Photos & Other material

Authorised Officer Signature



22/08/2019

Alleged Breach

Without planning permission: The material change of use of the building from a cabaret/dance venue, club, bar/ community space and as a public house (Sui Generis), to House in Multiple Occupation (HMO).

Recommendation(s):

That the Borough Solicitor issue an Enforcement Notice under section 172 of the Town & Country Planning Act 1990 as amended, and officers be authorised in the event of non-compliance to prosecute under section 179 or appropriate power and/or take direct action under section 178 in order to secure cessation of the breach of planning control.

Site Description

The site is a four storey (with basement) terraced building located on Camden High Street. The property is within Camden Town Centre designation and is in close proximity to Britannia junction. The building is also within Camden Town Conservation Area and noted for its positive contribution in the locality.

It is known as the 'Black Cap' and dates from 1889, and boasts elaborate stone decoration including a bust of a capped figure. It is a protected cultural venue and is designated as an Asset of Community Value (ACV).

The property has been licensed as a House in Multiple Occupation ("HMO") (as per Housing Act 2004 definition). It is providing accommodation for unrelated individuals who share kitchens and bathrooms currently for 6 residents with the potential for 8 residents. On this basis it is considered to be a House in Multiple Occupation (HMO).

At ground floor level, previously there was a lobby entrance which divided the cabaret dance bar (sui generis) from the first floor pub & restaurant. A private staircase at first floor provides access to ancillary accommodation and rooms above to the former pub. There is also a rear outdoor amenity (former beer garden) at first floor level.

Currently it has been converted to residential accommodation with some minor internal alterations such as retro-fitted showers and lockable doors to the bedrooms.

6 people currently live in this property, with the entire ground floor being solely used for 1 person.

Investigation History

- Site visit was made 20th February 2019, photographs taken, residential accommodation on all floors (including this time at ground floor) met Priya Patel (Property Manager) from 'Live-In Guardians'

- Site visit was made 30th April 2018, photographs taken, residential accommodation on upper floors Met Mark Kennedy (Director of Business Development) from 'Live-In Guardians'
- In March 2018, Camden Council licensed the property as an HMO (as per the Housing Act 2004 definition).

Relevant policies / GPDO Category

National Planning Policy Framework (2019)

London Plan 2016

Draft London Plan 2017

Camden Local Plan 2017

DM1 – Delivery and monitoring

A1 Managing the impact of development

A3 Biodiversity

A4 Noise and vibration

C2 Community facilities

C3 Cultural and leisure facilities

C4 Public Houses

C5 Safety and security

C6 Access for all

D1 Design

H6 Housing Choice and Mix

H1 Maximising housing supply

H4 Maximising the supply of affordable housing

H6 Housing Choice and Mix

H7 Large and small homes

H10 Policy H10 Housing with shared facilities ('houses in multiple occupation')

T1 Prioritising walking, cycling and public transport

T2 Parking and car-free development

T3 Transport infrastructure

T4 Sustainable movement of goods and materials

CC1 Climate change mitigation

CC2 Adapting to climate change

CC3 Water

CC5 Waste

DM1 Delivery and monitoring

TC2 Camden's centres and shopping centres

TC4 Town centre uses

Camden Planning Guidance (CPG)

CPG2 Housing

CPG Interim Housing

CPG Design

CPG Energy efficiency and adaptation

CPG Amenity

CPG Transport

CPG Developer Contributions

Assessment

Planning history:

2012/1444/P: Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 16/05/2012

Reasons for refusal:

- 1) The pub and restaurant at first floor level serve the needs of a specific and local community, therefore its loss without a replacement facility or evidence provided to demonstrate that the facility is no longer required, is contrary to policy.
- 2) The proposed development, in the absence of a legal agreement for car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area.
- 3) The application fails to adequately demonstrate whether the residential flats would experience an acceptable level of internal noise.

Appeal dismissed ref: APP/X5210/A/12/2184317 Dated:04/03/2013 The Planning Inspectorate dismissed the appeal on the grounds that the proposed development would be harmful to the amenities of occupiers in terms of noise and disturbance and through failure to ensure sustainable means of travel. The reason for refusal relating to the loss of a community use was not upheld by the Inspectorate.

2013/0262/P: Change of use of part first floor, second and third floors from bar/restaurant and ancillary accommodation to residential to provide 2 x 1 bedroom flats and 1x 2 bedroom maisonette with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 20/03/2013

Reason for refusal:

- 1) The application fails to adequately demonstrate whether the residential flats would experience an acceptable level of internal noise ;
- 2) The proposed development, in the absence of a legal agreement for car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area.

2013/2301/P: Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Withdrawn 17/09/2013

This application was withdrawn so that further discussion could take place with the Council's environmental health team and so that they could comment on an updated draft acoustic report.

The most recent application was refused by Planning Committee in 2015:

2014/2176/P: Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level. Refused 3/3/15

There were four reasons for refusal:

1. The change of use of the upper floor areas, which serve essential functions in the role of the premises as a community facility, would result in the loss, without replacement, of a facility which serves both a local and wider social and cultural community, contrary to policies CS7 (Promoting Camden's centres and shops) and CS10 (Supporting community facilities and services) of the London Borough of Camden Local Development Framework Core Strategy and policy DP15 (Community and leisure uses) of the London Borough of Camden

Local Development Framework Development Policies.

2. The applicant has failed to adequately demonstrate that the continued operation of the lower floor venue with its consequent community benefits could be practically achieved while maintaining an acceptable quality of amenity for future occupiers of the upper floor flats, contrary to policies CS5 (Managing the impact of growth and development), DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise & vibration) of Camden's Local Development Framework.

3. The applicant has failed to adequately demonstrate that the ground floor design of the development would not result in increased risk and fear of crime and incorporates design principles which contribute to community safety and security for patrons and in Camden Town Centre, contrary to policies CS7 (Promoting Camden's centres and shops) and CS17 (Making Camden a safer place) and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) of Camden's Local Development Framework.

4. The proposed development, in the absence of a legal agreement to secure car-free housing for the proposed residential units, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP18 (Parking standards and the availability of car parking) of the London Borough of Camden Local Development Framework Development Policies.

2019/2271/P - 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 – **Certificate of lawfulness –pending**

2018/4031/P – LDC 'existing' which on the basis of the information submitted granted an LDC for A mixed use of the premises as a cabaret/dance venue, club, bar/ community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community uses with toilets at the rear and 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; with ancillary uses of the basement as storage for beer and stock, the second floor as kitchen, two offices, and two rooms of staff accommodation plus bathroom and the third floor as two rooms of staff accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar / community space and public house (Sui Generis) - Certificate of lawfulness –Granted 03/07/2019

Issues:

- a) Land use –Loss of community facility and change to a HMO
- b) Camden Town centre location
- c) Quality of residential accommodation
- d) Amenity
- e) Transport and refuse

Change of use

A material change of use has occurred from a cabaret/dance venue, club, bar/ community space and as a public house (Sui Generis) to residential accommodation for 'live-in Guardians' in the form of a HMO.

'Live-in Guardians' Residential accommodation amenity

It is laid out as follows;

- f) Internal floor area for living = 480 m²
- g) Outdoor rear first floor terrace = 50m²
- h) 4 Floors –(Basement space), Ground, first, second and third

- i) 6 Bedrooms
- j) 2 Bathrooms
- k) 1 communal living room area

6 people currently live in this property, with the entire ground floor being solely used for 1 person. There is scope to provide accommodation for 8 people within the building.

The 'live-in guardians' model is intended to be 'temporary' however temporary changes of use and permanent changes of use can both constitute a material change.. Unlike the previous applications mentioned in the history section above, the use of the 'live-in guardians' residential accommodation is of the entire property including the ground floor. There is no prospective end date to the residential occupation of the building and the sole use of the building as residential is clearly materially different to the lawful use of the site in terms of planning impact.

Loss of a public house/community facility

The existing use of the site is a cabaret-dance bar / pub which is of value to the LGBT community as demonstrated by the site's ACV listing. Policy C4 seeks to protect public houses which are of community, heritage or townscape value. Applications involving the loss of pub floorspace, including facilities ancillary to the operation of the public house, will be resisted where this will adversely affect the operation of the public house.

Camden Planning Guidance 'Community uses, leisure and pubs' states that any proposals involving the loss of a cultural or leisure use must be accompanied by a marketing exercise and viability assessment that considers the ability of the premises or site to accommodate alternative cultural or leisure uses unless the Council confirms in writing that this is not required. The Council resist proposals that would harm the Borough's diversity of provision or weaken its cultural or leisure offer. In particular, we will seek the retention of spaces that support protected groups, such as ethnic minorities and lesbian, gay, bisexual and transgender (LGBT) communities.

Policy C2 state that the Council will look to ensure existing community facilities are retained recognising their benefit to the community, including protected groups, unless one of the following tests is met:

- l) a replacement facility of a similar nature is provided that meets the needs of the local population or its current, or intended, users;
- m) the existing premises are no longer required or viable in their existing use and there is no alternative community use capable of meeting the needs of the local area. Where it has been demonstrated to the Council's satisfaction there is no reasonable prospect of a community use, then our preferred alternative will be the maximum viable amount of affordable housing;

Policy C4 states that the Council will not grant planning permission for proposals for the change of use, redevelopment and/or demolition of a public house unless it is demonstrated to the Council's satisfaction that:

- a. the proposal would not result in the loss of pubs which are valued by the community (including protected groups) unless there are equivalent premises available capable of meeting the community's needs served by the public house; or
- b. there is no interest in the continued use of the property or site as a public house and no reasonable prospect of a public house being able to trade from the premises over the medium term;

Policy C4 states that the Council will seek to protect public houses which are of community, heritage

or townscape value, it will generally resist proposals for the change of use, redevelopment and/or demolition of a public house. Where it has been demonstrated to the Council's satisfaction that a public house can no longer be retained, the suitability of the premises for alternative community uses for which there is a defined need in the locality should be assessed before other uses are considered.

The aforementioned guidance also states that a significant concern for the Council is the vulnerability of live music venues to redevelopment or a change of use. These facilities are often located in highly accessible locations and based in landmark buildings. There is a pressure for venues of all sizes to be converted or demolished to provide other uses, particularly housing. The Council will seek to protect music venues taking into account their social, economic and cultural contribution. Some venues have been instrumental in shaping Camden and London's cultural character and social history over many years and their loss is likely to be detrimental to the borough and city's identity and atmosphere.

The complete loss of the public house is contrary to the above policies and guidance.

Alternative facility

Policy C4 protecting public houses and ancillary space, which states that if we accept a public house use can't be retained, suitability for community use should be assessed before an alternative uses is considered. If neither pub use nor community use is not possible, the site is in the primary frontage of the Camden Town Centre, and this should inform other options.

No replacement community facility has been provided nor has it been demonstrated that the existing premises are no longer required or viable in their existing use or there exists an alternative capable of meeting the needs of the local area and without the provision of a section 106 planning obligation, the council are unable to ensure that that the additional demand the development including the housing scheme has placed on existing community infrastructure and services is met. As such the council consider that the pub's loss would have a detrimental impact on the needs of the local community.

Town centre

Policy TC2 and TC4 gives objectives of uses in the primary frontages. Amongst other provisions, Policy TC2(f) indicates primary frontages should have a high proportion of shops. The final paragraph deals with housing in protected frontages (ie primary or secondary). It states:

"In order to protect the retail and town centre function of our centres the Council will only permit conversion of retail and other town centre uses to residential use on the protected frontages where it does not harm the role and character of the centre, including maintaining the supply of shop premises in centres across the borough."

Policy TC4 'Town centre uses states; The Council will ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours.

We will consider the effect of development on shopping provision and the character of the centre in which it is located.

It is considered that the introduction of housing on the ground floor in this primary frontage close to the main bus stops and underground station would be harmful to town centres character and function, clearly undermining the character, function, vitality and viability of the centre, contrary to Policies TC2 and TC4.

Use as HMO

Policy H10 Housing with shared facilities ('houses in multiple occupation') 'the Council will aim to ensure that there is continued provision of housing with shared facilities to meet the needs of small households with limited incomes and modest space requirements. We will support development of

housing with shared facilities (houses in multiple occupation) provided that the development:

- c. complies with any relevant standards for houses in multiple occupation;
- d. contributes to creating a mixed, inclusive and sustainable community;
- e. does not create a harmful concentration of such a use in the local area or cause harm to nearby residential amenity; and
- f. is secured as a long-term addition to the supply of low cost housing, or otherwise provides an appropriate amount of affordable housing, having regard to Policy H4 Maximising the supply of affordable housing.

Underused site

Policy H1 'Maximising housing supply' states that; We will seek to exceed the target for additional homes, particularly self-contained homes where underused or vacant, expecting the maximum reasonable provision of housing that is compatible with any other uses needed on the site.

Policy H6 'Housing choice and mix' states we will seek to secure high quality accessible homes in all developments that include housing. We will:

- a. encourage design of all housing to provide functional, adaptable and accessible spaces;
- e. seek a diverse range of housing products in the market and affordable sectors to meet the needs across the spectrum of household incomes;
- g. support the development of private rented homes where this will assist the creation of mixed, inclusive and sustainable communities;
- h. seek provision suitable for families with children, older people, people with disabilities, service families, people wishing to build their own homes and Camden's traveller community; and
- i. require a range of dwelling sizes in accordance with Policy H7 Large and small homes

Policy H7 'Large and small homes', The Council will seek to ensure that all housing development, including conversion of existing homes and non-residential properties:

- a. contributes to meeting the priorities set out in the Dwelling Size Priorities Table; and
- b. includes a mix of large and small homes

We will take a flexible approach to assessing the mix of dwelling sizes proposed in each development having regard to:

- c. the different dwelling size priorities for social-affordable rented, intermediate and market homes

The site measures 480 m² (Internal) and an additional 50m² (External), the Camden HMO license team granted a license and considered a provision of 8 occupiers can be on site. The developers 'live-in guardians' have only created provision for 6 individual occupiers, with 6no x 1 bedrooms and 2 bathrooms. As such, the deficit of two is considered to be under-utilising the site contrary to policies H1, H6 and H7 mentioned above.

Affordable housing

Policy H4 'Maximising the supply of affordable housing' states that we will expect a contribution to affordable housing from all developments that include housing and provide one or more additional homes.

Policy H10 'Housing with shared facilities ('houses in multiple occupation')' states the council will support such development meeting a number of criteria including the need to secure it as a long-term addition to the supply of low cost housing, or otherwise provides an appropriate amount of affordable housing, having regard to Policy H4 Maximising the supply of affordable housing as mentioned above.

In the absence of a legal agreement to secure the provision of suitable affordable housing or control of rents to comply with policies H4, H6 and H10 the use is unacceptable.

Refuse and waste

Policy CC5 states that the council will seek to make Camden a low waste borough and will make sure that developments include facilities for the storage and collection of waste and recycling. If the use was considered acceptable conditions would be required in order to ensure provision of waste collection.

Amenity Impact

The HMO use is not considered to result in any harm to the amenity of neighbouring residents due to its commercial town centre location and distance from residential properties, and so would be in accordance with Local Plan Policies A1 and A4.

Transport

Car Free

The site is located within a PTAL rating of 6 (high) which means it has excellent access to public transport.

In accordance with Policy T2 the Council, will limit the availability of parking and will require all new developments and change of use in the borough to be car-free. The Council will not issue on-street parking permits in connection with new developments/change of use and will use a s.106 legal agreement to ensure that future occupants are aware that they are not entitled to on-street parking permits. In the absence of a legal agreement securing car-free housing, the change of use is considered likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more sustainable and efficient forms of transport, contrary to Policy T2 (Parking and car-free development) of the Camden Local Plan 2017.

Cycle Parking

Policy T1 of the Camden Local Plan requires development to provide cycle parking facilities in accordance with the minimum requirements of the London Plan and the design requirements outlined in CPG7. Two cycle parking spaces would be required for each of the 2-bed units and 1 space for the 1-bed unit.

The property does not demonstrate that it can provide sufficient cycle storage space. It also does not comply with CPG transport guidance as it does not provide step free access and safe area for the storage of bikes.

Recommendation: That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended requiring the cessation of the unauthorised C4 use and all fixtures and fittings relating to the residential use including bathroom and kitchen fittings to be removed, and to pursue any legal action necessary to secure compliance and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

The notice shall allege the following breaches of planning control:

Without planning permission: the material change of use of the building from cabaret/dance bar / pub (Sui-Generis) to a House in Multiple Occupation (HMO).

WHAT ARE YOU REQUIRED TO DO:

Cease the use of the House in Multiple Occupation (HMO).

PERIOD OF COMPLIANCE: 12 (Twelve) Months

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:

- a) It appears that the breach of planning control has occurred within the last 4 years.
- b) The unauthorised use results in the loss, without replacement, of a facility which serves both a local and wider social and cultural community, the development is contrary to policies A1 (Managing the Impact of Development on Occupiers and Neighbours), C2 (Community Facilities), C4 (Public Houses) and TC2 Camden's centres and other shopping areas, of the Camden Local Plan 2017 and Draft London Plan 2017.
- c) The unauthorised change of use fails to provide the maximum reasonable provision of housing, an adequate mix of housing sizes and types, the development is contrary to policies H1 (Maximising Housing Supply), H4 (Maximising the supply of affordable housing, H10 (Housing with shared facilities ('houses with shared facilities in multiple occupation) and DM1 (Delivery and monitoring) of the Camden Local Plan 2017 and Draft London Plan 2017.
- d) The unauthorised change of use offers no active ground floor use, the development is contrary to TC2 (Camden's centres and shopping centres) and TC4 (Town centre uses), CPG Town Centres and Retail and Draft London Plan 2017.
- e) In the absence of a S106 Agreement to secure the long-term addition to the supply of low cost housing, or provide an appropriate amount of affordable housing, the development is contrary to policies H4 (Maximising the supply of affordable housing, H10 (Housing with shared facilities ('houses with shared facilities in multiple occupation) and DM1 (Delivery and monitoring) Camden Local Plan 2017 and CPG (Developer Contribution).
- f) In the absence of a S106 to secure the use as car-free, the development creates additional parking stress in the surrounding area contrary to policies T2 (Parking and car-free development) of the Camden Local Plan 2017 and CPG (Developer Contribution).
- g) In the absence of sufficient and secure cycle storage, is contrary to policies T1 of the Camden Local Plan 2017, CPG Transport and Draft London Plan 2017.