

## The Planning Inspectorate

### QUESTIONNAIRE SECTION 195 AND SECTION 26K LAWFUL DEVELOPMENT CERTIFICATE APPEAL (Online Version)

You must ensure that a copy of the completed questionnaire, together with any enclosures, is sent to the appellant/agent. **You must include details of the statutory development plan, even if you intend to rely more heavily on some other emerging plan.**

This and any documents which you have indicated as 'To follow' should also be sent to the case officer by the date given in the start letter.

If notification or consultation under an Act, Order or Departmental Circular would have been necessary before granting permission and has not yet taken place, please inform the appropriate bodies of the appeal now and ask for any comments to be sent direct to us by the date your statement is due.

Appeal Reference

APP/X5210/X/19/3241042

Appeal By

GOLDEN BRICK PUBS

Site Address

171 Camden High Street  
London  
NW1 7JY

#### PART 1

1.a. Do you agree to the written representations procedure? Yes  No

*Note: If the written procedure is agreed, the Inspector will visit the site **unaccompanied** by either party unless the relevant part of the site cannot be seen from a road or other public land, or it is essential for the Inspector to enter the site to check measurements or other relevant facts.*

1.b. Do you wish to be heard by an Inspector at; Inquiry  Hearing

1.c. How long do you expect an inquiry would last? 3 day(s)

1.d. How many witnesses do you intend to call? 6

2a. If the written procedure is agreed, can the relevant part of the appeal site be seen from a road, public footpath, bridleway or other public land? Yes  No

2.b. Is it essential for the Inspector to enter the site to check measurements or other relevant facts? Yes  No

Please explain

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.

2.c. Are there any known health and safety issues that would affect the conduct of the site inspection? Yes  No

2.d. Would the Inspector have to go onto any privately owned adjoining land as well as the appeal site itself? Yes  No

3.a. Are there any other matters (for example appeals, applications or orders) relating to this land, which are now before the Secretary of State? Yes  No

Please give our reference number(s) and if necessary attach details

3240682

3.b. Do you consider that it would be preferable to decide all the matters together? Yes  No

Please provide details

Email sent to Roger Thomas on 23rd March 2020 at 9:25am

Dear Roger Thomas,

PLANNING INSPECTORATE 3240682 AND 3241042: 171 CAMDEN HIGH STREET NW1

Appeal 1 - 3240682: Appeal against enforcement notice ground a): 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) and

Appeal 2 - 3241042: Appeal against non- determination of application for Certificate of Lawful Use: 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.

We refer to the two start letters dated 12th March 2020 in relation to the above appeals which PINS has allocated to the informal hearing track.

The Council understands that the appeals have been submitted by different appellants and relate to different matters, however there are underlying material considerations pertaining to both appeals that would warrant them being examined by an Inspector at a single public inquiry.

Alternatively, we would request that the Inspector takes the view that Appeal 2 be upgraded to an inquiry and Appeal 1 be considered by written representation – but they would need to be dealt with sequentially. In all, the Council considers that it would be in the public interest that Appeal 2 warrants examination at public inquiry, even if Appeal 1 were to proceed by written representation or informal hearing at a later date.

The Councils' reasoning is in accordance with Annex K of the latest procedural guidance (2019) which states as follows:

Inquiry - an inquiry would be appropriate if:

- a) there is a clearly explained need for the evidence to be tested through formal questioning by an advocate; or
- b) the issues are complex; or
- c) the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing;
- d) in an enforcement appeal, evidence needs to be given on oath; or in an enforcement appeal, the

alleged breach, or the requirements of the notice, are unusual and particularly contentious. (my emphasis and numbering)

The Council considers that each of the aforementioned criteria have been met:

a) there is a clearly explained need for the evidence to be tested through formal questioning by an advocate

- The appellant has argued that the existing lawful use at the Property is not clear, this in spite of the Council granting a CLEUD for a mixed use (as set out in the description of development) Sui Generis on the 3rd July 2019, thereafter the appellant submitted this appeal. If the same facts are being reviewed at this appeal as were considered under the granted CLEUD at this site, then the Council requests that this be heard at an Inquiry where the evidence can be tested.
- The Council is of the opinion that the Appellant's submitted evidence and the information collated by the Council which will form its substantive evidence will need to be reviewed and tested at inquiry against the relevant legal test i.e. on the balance of probabilities – against which certificate of lawfulness certificates can be assessed.
- In the opinion of the appellant, the historic use of the Property across the different floors over the years of operation has not been clearly established and further examination needs to be made. The Council suggest that given the assessment that has already been undertaken by the Council under the first CLEUD application, that any further review needs to be through the submission of witness evidence and / or under oath if the Inspector considered it necessary.
- It should be noted that the Council in its consultation on the first CLEUD application was approached by historic patrons, employees and performers who would be willing to offer further information at an appeal and be formally examined.
- Furthermore, there are several interested parties including the Black Cap Foundation, the Drama Queen's Drag Theatre Company and Camden LGBT Forum identified during the consultation who at the time expressed interest in raising their concerns and questions at an inquiry under rule 6 status.
- The Council is of the opinion that being able to formally cross-examine witnesses will become necessary during the course of the appeal and for this reason this appeal needs to be allocated to a public inquiry track.

b) the issues are complex

- Given that there are questions and gaps in the information about the historical use of the Property there will likely be a need for the Inspector to piece together the submitted evidence and the oral evidence from witnesses tested under cross examination.
- The appellant has raised issue about the uses in the Property, however the Council has already undertaken a careful assessment of the uses and planning unit in the Property in the previous CLEUD application. If it was the case that this legal issue needed to be explored further in relation to this application, then the parties' legal representatives should be allowed to test and make representations to the Inspector in accordance with prevailing case law.
- Finally, the appellants have suggested at several points in their appeal statement that there were political motivations behind the Council's decision making. Such assertions are of concern to Council and it would be necessary for the parties to examine the specific issues further, should the appellants continue to maintain this line of argument and it becomes material to the appeal. Such review would not necessarily be possible at a hearing.

c) the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing

- This is a high profile, historical site of great cultural significance to the LGBTQ+ community in Camden, London and the UK. This has been acknowledged by the appellants in their appeal statement (para 2.8), by local and London-wide community groups (who have gone on to nominate the Property as an ACV) and by Historic England. The history, on-going and proposed use has also been the topic of debate in local and national news media (press and TV) as well as social media circles, and warrants further discussion at an inquiry.

d) in an enforcement appeal, evidence needs to be given on oath; or in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious

- There is an associated enforcement appeal where the material considerations from Appeal 2 will crossover and affect the determination of Appeal 1. The Council's email of the 11th February raises concern that should the Inspector resolve to grant temporary permission for residential use for Appeal 1 (relating to the enforcement appeal), as the appellants has requested, then the property would be required to subsequently revert to its permanent lawful use. However, this is not possible given the lawful use is currently undetermined and still requires careful determination pursuant to Appeal 2.

In conclusion, there is no prejudice to the parties if Appeal 2 were to be upgraded to public inquiry, given that the latest inquiry procedure guidance allows the Inspector to 'split' the inquiry between roundtable discussion and formal cross examination by legal advocates should it be required.

The guidance clearly states that Annex K is not meant to be prescriptive or entirely determinative in nature but used with common sense. The Council agrees with this position and suggests that an inquiry will offer the Inspector the flexibility to determine key issues which would not be possible at an informal hearing.

Furthermore, if the Inspector so required, then we suggest that Appeal 1 could be heard by written representations and changed at a later time if the Inspector considered it necessary under the provisions of S319A of the Act allowing a change procedure at any time until a decision is issued. This would save time and costs for all parties and the Inspectorate.

We again request that an Inspector reviews this matter as a whole and notably the choice of procedure being proposed. The Council remains strongly of the opinion that an inquiry is required for appeal 2.

We look forward to hearing from you as a matter of urgency.

## PART 2

- |  |     |                                     |    |                                     |
|--|-----|-------------------------------------|----|-------------------------------------|
| 4. Was a valid application and any fee required, received and accepted for the development appealed against?   | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| 5. Does the appeal relate to a planning condition?   | Yes | <input type="checkbox"/>            | No | <input checked="" type="checkbox"/> |
| 6. Is there a planning officer's report to committee or delegated report and any other relevant document/minutes?  | Yes | <input type="checkbox"/>            | No | <input checked="" type="checkbox"/> |
| 7. Was there an enforcement notice in force at the date of the application?  | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| Please send a copy to the Inspectorate.  |     |                                     |    |                                     |
| <input checked="" type="checkbox"/> see 'Questionnaire Documents' section  |     |                                     |    |                                     |
| 8. Are there any related reasons you may have for questioning the validity of the appeal?  | Yes | <input type="checkbox"/>            | No | <input checked="" type="checkbox"/> |
| 9. Are there any related applications now before the local planning authority (LPA)?   | Yes | <input type="checkbox"/>            | No | <input checked="" type="checkbox"/> |
| 10.a. if any Development Plan Document (DPD) or Neighbourhood Plan relevant to this appeal has been examined and found sound/met the basic conditions and passed a referendum, the date the DPD or Neighbourhood Plan is likely to be adopted and, if you consider this date will be before the Inspector's decision on this appeal is issued, an explanation of the Council's policy position in respect of this appeal upon its adoption. You should also include an explanation of the status of existing policies and plans, as they relate to this appeal, upon adoption and which (if any) will be superseded; | Yes | <input type="checkbox"/>            | No | <input type="checkbox"/>            |

Date the DPD/Neighbourhood Plan is likely to be adopted:

10.b. if any DPD or Neighbourhood Plan relevant to this appeal has been submitted for examination, or in the case of a Neighbourhood Plan has been examined and is awaiting a referendum, an explanation of any substantive changes in the progress of the emerging plan, and their relevance to this appeal if it is considered that the plan will not be adopted before the Inspector's decision on this appeal is issued;

Yes  No

10.c. your Authority's CIL charging schedule is being/has been examined;

10.d. your Authority's CIL charging schedule has been/is likely to be adopted.

10.e. are there any other matters relevant to determining the appeal which you think we should know about at this stage?

Yes  No

11. Do you wish to attach your statement of case?

Yes  No

12. This appeal is made under section:

Section 191

Section 192

Section 26H

### LPA Details

I certify that a copy of this appeal questionnaire and any enclosures will be sent to the appellant or agent today.

LPA's reference

2019/2271/P

Completed by

Geri Gohin

On behalf of

London Borough of Camden

Please provide the details of the officer we can contact for this appeal, if different from the Planning Inspectorate's usual contact for this type of appeal.

Name

Geri Gohin

Phone no (including dialling code)

0207 974 2047

Email

planningappeals@camden.gov.uk

**Please advise the case officer of any changes in circumstances occurring after the return of the questionnaire.**

## QUESTIONNAIRE DOCUMENTS

Appeal Reference APP/X5210/X/19/3241042

Appeal By GOLDEN BRICK PUBS

Site Address  
171 Camden High Street  
London  
NW1 7JY

### The documents listed below were uploaded with this form:

**Relates to Section:** PART 2

**Document Description:** 7. A copy of the Enforcement Notice.

**File name:** Enforcement Notice with addresses of schedule(2).pdf

**Completed by** Not Set

**Date** 30/04/2020 17:38:40

**LPA** London Borough of Camden