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## Appeal Decision

Site visit made on 4 August 2020

**by Chris Hoult BA(Hons) BPhil MRTPI**

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

**Decision date: 27 August 2020**

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**Appeal Ref: APP/X5210/C/19/3240682**

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

- 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 1990 Act").
  - The appeal is made by Kicking Horse 3 Limited against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice, numbered EN18/0284, was issued on 26 September 2019.
  - The breach of planning control as alleged in the notice is the material change of use of the building as a cabaret/dance venue, club, bar/community space and use as a public house (sui generis) to House in Multiple Occupation (HMO).
  - The requirements of the notice are to cease use of the House in Multiple Occupation (HMO).
  - The period for compliance with the requirements is 12 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the 1990 Act.
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### Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act for the development already carried out, namely, the material change of use of the building from use as a cabaret/dance venue, club, bar/community space and use as a public house (sui generis) to a House in Multiple Occupation (HMO), on land at The Black Cap, 171 Camden High Street, London NW1 7JY as shown on the plan attached to the notice, subject to the following condition:
  - 1) The use hereby permitted shall be for a limited period being the period of 12 months from the date of this decision. The use hereby permitted shall thereafter be discontinued and the building restored to its former condition on or before 19 March 2018 in accordance with a scheme of works that shall firstly have been submitted to and approved in writing by the local planning authority.

### Matters Concerning The Notice

2. The time limit referred to in section 4(a) of the notice is 4 years which may be premised on the material change of use having been to a dwellinghouse which could, for example, take the form of a self-contained flat. There is no evidence to support a view that the building is occupied in this way and a material change of use to a HMO typically entails a 10-year time limit for enforcement action. Furthermore, the single requirement of the notice is somewhat vaguely worded. It should be to cease the use of the building as a HMO. Normally, I would have corrected the notice accordingly. However, since I quash the notice, correction is not necessary in this case.

## Background

3. The Black Cap is a former cabaret/dance venue and public house which closed in 2015. The appeal before me is linked with a Lawful Development Certificate (LDC) appeal<sup>1</sup> which is currently proceeding as either a Local Inquiry or an informal hearing. An event has yet to be arranged. That case concerns a dispute regarding the lawful use of the premises. Without prejudice to its subsequent consideration by another Inspector, my reading of the key matter in dispute between the parties can be briefly summarised as follows.
4. The appellants view the premises' lawful use as use as a public house (Use Class A4) and as a cabaret/dance venue incorporating a range of ancillary uses. The Council has not determined an application framed in these terms but is of the view that the premises' lawful use is as a mixed (*sui generis*) use as a cabaret/dance venue, club, bar/community space and public house. It issued a LDC for an existing use to that effect in 2019, having modified the wording of an application on the basis of its evidence as to the premises' use. The premises have been listed by the Council as an Asset of Community Value (ACV), on account of its cultural value by reason of its role as a community centre and venue for the local LGBT community in Camden. In April 2020, an application to re-list them as an ACV was granted but has been appealed.
5. The appellants explain in the appeal before me that, in the light of this, a degree of uncertainty in how the premises can be marketed to prospective buyers has arisen which has been compounded by the current coronavirus pandemic and associated economic downturn. Around the time of its closure, a sale was agreed but that fell through and further attempts to market the premises have thus far not met with success. Following its closure, the building was occupied by squatters who caused damage and, following their eviction, the appellants considered that the best means to maintain the security and safety of the building was to have it occupied by live-in property guardians. This is managed by an organisation known as Live-In Guardians, who have obtained a HMO licence from the Council for up to 8 persons.
6. This is the HMO use that the Council now enforces against. In setting out its reasons for issuing the notice, the Council refers to a number of policy considerations relating to: the loss of a community facility; a failure to provide an adequate mix of house types and sizes; the loss of an active ground-floor use in a town centre; the absence of an agreement under s106 of the 1990 Act providing for affordable housing; the absence of a similar agreement to secure car-free housing leading to increased parking stress; and an absence of secure cycle storage. The appellants maintain (and I summarise) that such policy considerations are of little relevance to what is sought – a short-term temporary planning permission pending the sale of the premises.

## Ground (a) Appeal

### Main Issues

7. Given this background, I therefore consider the main issues to be whether the use of the building as a HMO is acceptable on the basis sought having regard to: (a) the policy considerations advanced as reasons for issuing the notice; and (b) alternative options for safeguarding the building.

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<sup>1</sup> Appeal Ref. APP/X5210/X/19/3241042

*Policy considerations*

8. The building stands prominently on Camden High Street within a busy and vibrant town centre area and focus for tourism. Although occupying a narrow plot, it is a tall, imposing 4-storey building with a distinctive decorative frontage. Its ground-floor frontage was, at the time of my visit, boarded up, with the only visible means of access via a locked gate to what appeared to be a narrow alley running along the building's side. Both parties appear to be agreed that the building needs to be secured and kept safe from damage and I have no reason to depart from that view.
9. I note the detailed case made by the Council in its statement which sets out the relevant policies of the Camden Local Plan 2017 and their requirements, in relation to the issues summarised in paragraph 6 above. There is no need to refer to the policies in detail. I acknowledge that the building appears to be being underused as a HMO given the available space, notably on the ground floor. I also acknowledge the evidence submitted which demonstrates the on-street parking stress around Camden High Street. Ordinarily, these and the other considerations raised would be key in gauging the acceptability of a proposed permanent HMO use.
10. The case made for granting planning permission for the use is, however, made on a more limited basis – that it is required for as long as the building's future remains uncertain and pending its sale and that it should not extend beyond the 12-month temporary period applied for (although that cannot be ruled out). In the light of this, I can swiftly dismiss as of marginal relevance some of the policy considerations advanced as reasons for issuing the notice. There is no intention on the part of the appellants, through the application before me under s177(5) of the 1990 Act, to replace an existing community facility with housing in the longer term. Nor are policies relating to achieving a suitable mix of housing types and sizes and an appropriate contribution towards the provision of affordable housing in the Borough relevant bearing in mind that the primary purpose of what is sought is safeguarding the building.
11. The loss of an active ground-floor frontage in such a vibrant locality would normally be a matter for concern but that happened in any event when the venue closed in 2015. Wider circumstances indicate that it is unlikely that the building will re-open any time soon but the appellants' aim from the evidence in relation to this and the linked appeal appears to be to secure a lawful primary use under Use Class A4 and market the premises on that basis. There is no intention therefore in the proposal before me to bring about the loss of an active ground-floor frontage.
12. The continued occupation of the building could possibly lead to increased parking stress in the absence of provision for car-free housing should any of the 6 current occupiers (from the Council's evidence) own and use a car. The appellants say that people exercising a role as live-in guardians typically will not be car owners, and that there is capacity within the building (for example, on the roof terrace at the rear) to accommodate cycle storage should it be considered necessary. Given a lack of any real evidence pointing to material harm arising from these factors, neither seem to me likely to be decisive in determining the acceptability of the HMO use on the short-term temporary basis applied for.

13. I accept that, the longer the building is occupied as a HMO, the greater will be the Council's justification for requiring that it satisfies the relevant policy requirements. However, that is dependent on the determination of the LDC appeal and subsequent efforts to sell it. While it is not possible to give a timeline for that, it remains the case that, under the proposal before me, the use would continue on an interim basis pending these other developments. While some adjustments to the internal layout have been made (described by the appellants as "minimal"), these are considered temporary and readily capable of being reversed once the building's future is secured.
14. Given this, and having had regard to the policy considerations advanced as reasons for issuing the notice, I see no compelling reason in the evidence as to why planning permission should not be granted on the basis sought for the proposed HMO use and I conclude accordingly.

*Alternative options*

15. The Council, it seems to me, only half-heartedly suggests that security could be provided by means of guards, guard dogs and CCTV. This alternative is readily dismissed by the appellants as both more expensive and less effective, particularly given the Council's admission elsewhere in its statement that there would be no immediate harm to amenity from short-term occupation as a HMO. I concur that, if occupation by live-in guardians represents an effective short-term measure for safeguard the building at little cost to wider amenity considerations, it makes little sense to require such a use to cease in favour of alternative measures. To that extent, both parties appear to be broadly agreed that, in the short-term, occupation of the building in this way probably represents the most effective means of achieving that objective.
16. The question then arises as to how it can be achieved. Both parties are agreed on the desirability of "stopping the clock" on any continuing unauthorised use as a HMO. The Council says that this can be achieved by upholding the notice and allowing a period for compliance commensurate with that required for securing the building's long-term future. It has set a generous initial compliance period of 12 months and says that that could be extended under s173A of the 1990 Act. The appellants say that they cannot rely on the Council to do that and express concern that the Council's opposition to a temporary planning permission indicates that it would also oppose an extension of time. I see no reason why that should be so, the more so if the Council is promoting such an extension as an alternative to a temporary permission.
17. However, more importantly, the requirements of the notice do not extend to reinstating the internal layout of the building following the cessation of the use. This is a failure of the notice since the Courts have held that a notice can require the removal of fixtures and fittings etc. that support a material change of use enforced against. Nor it is open to me under s176(1)(b) of the 1990 Act to extend the notice's requirements to incorporate this further requirement since that would make them more onerous and cause injustice to the appellants. By contrast, the appellants indicated that they would be willing to abide by a condition attached to any grant of a temporary planning permission requiring the use to cease and the building to be reinstated to its condition before it commenced. A possible wording for such a condition is canvassed.
18. That seems to me to be the decisive consideration in deciding which of the available options would best safeguard the building. Both granting a temporary

planning permission and upholding the notice with a compliance period capable of being extended would serve to “regularise” the continuing HMO use and stop the clock. However, only the granting of planning permission with a suitably worded condition would achieve the reinstatement of the building which I consider to be an essential requirement of any action which allows the use to continue on a short-term temporary basis. It will then be open to the Council to issue a further enforcement notice should the temporary period be exceeded or a scheme of reinstatement not be forthcoming. Accordingly, I conclude that it is to be preferred as an alternative option for safeguarding the building.

### **Conclusion**

19. For the reasons given above I therefore conclude that the appeal should succeed on ground (a) and planning permission will be granted, subject to the condition as set out in my decision on the appeal in paragraph 1 above.

### **Conditions**

20. I impose a single condition, necessary to give effect to the temporary nature of the planning permission I grant and to require reinstatement of the building following cessation of the use. I use wording in line with that suggested by the appellants, including the 19 March 2018 date which, they submit, is the date the use commenced, although I delete the word “largely”, as that would to my mind undermine the requirement for conditions to be precise. However, I note the appellants’ comment regarding the minimal changes made to an existing kitchen and the desirability in safety terms of retaining the fire doors and fire detection equipment installed. Those are matters which will be for the Council to consider in agreeing a scheme of works.

*C M Hoult*

INSPECTOR