

PROOF OF EVIDENCE
BY WAY OF EXPERT REPORT

BY:

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MORGAN & CLARKE CHARTERED SURVEYORS

IN RESPECT OF:

THE PHENE PUBLIC HOUSE

9 PHENE STREET

LONDON

SW3 5NY

Upon the Instructions of:

THE ROYAL BOROUGH OF KENSINGTON & CHELSEA
PLANNING AND BOROUGH DEVELOPMENT DEPARTMENT
GROUND FLOOR, KENSINGTON TOWN HALL
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SUMMARY STATEMENT

- i. My name is David Morgan, I am a Professional Fellow of the Royal Institution of Chartered Surveyors (R.I.C.S.). In addition to being a Member of the Restaurant and Property Advisory Group, I am a Member, and former Chairman, of the Academy of Experts, a registered Expert Witness, under the R.I.C.S. Expert Witness Registration Scheme, and a Member of the Expert Witness Institute specialising in licensed / leisure property. I have over 37 years experience in the licensed property sector acting as a professional chartered surveyor and operating my own public houses. My co-director Simon Clarke has assisted in the preparation of this report, Simon's current background is unique as he has a pub in London and has been a Professional Associate Member of the R.I.C.S. for 24 years. Since qualification, Simon has always worked in central London, his earlier experience specialising in properties in the West End, Mayfair, Knightsbridge and Chelsea. Around 6 years ago Simon expanded his area to include pub valuations in the Home Counties. My Proof of Evidence deals specifically with the issue of viability.
- ii. Detailed accountancy information has not been made available, however the current level of sales is known. Given the level of sales of The Phene the reasonable assumption is made that The Phene is quite capable of trading at a significant profit.
- iii. The use of the premises with its strong emphasis on quality food, is in line with the shift in trading profile of other previous wet-led public houses in the general area that occupy similar back street locations. As will be observed from the remarks concerning competition, all of the other pubs noted offer a wide ranging and eclectic hot plated food offering which may be described as a gastro style public house image.
- iv. It is considered that The Phene sits comfortably in the general demographics of the On licensed trading operations in the immediate area which are so self-evidently viable and attractive in that a number of the properties concerned are traded by multiple operators (Geronimo, Front Page Pubs Limited and Youngs & Co) with no indication that the continuing success story of these outlets will not continue.
- v. Few, if any, of the other public houses in the area have the benefit of the 'beer garden' trading area enjoyed by The Phene. Whilst the outdoor area is no doubt useful trading space, contributing to the level of sales, I do not consider that this alone determines the viability of the pub as a successful venue.
- vi. For the reasons and observations as set out above, it is not considered that a solid case can be made for the closure of the Phene on either terms of economic viability or of non conformity with the already strict licensing conditions that apply to the premises.

MY DUTY TO THE INQUIRY

I hereby declare that:

- 1 In so far as the facts of my Report are within my own knowledge, I have made clear which they are and I believe them to be true and that the opinions I have expressed represent my true and complete opinion;
- 2 My duty to the inquiry as an expert witness overrides any duty to those instructing or paying me. I have understood this duty and complied with it in giving my evidence impartially and objectively and I will continue to comply with that duty as required. I am aware of the requirements of the Civil Procedure Rules (50th update), part 35, PD35 and the PD on-pre-action conduct.
- 3 I am not instructed under any conditional fee agreement.
- 4 I have no conflicts of interest of any kind.
- 5 My Report complies with the requirements of the Royal Institution of Chartered Surveyors (RICS) as set down in *Surveyors acting as expert witnesses: RICS practice statement and guidance note* (3rd Edition) effective 1st January 2009.
- 6 I am acting in the capacity of an Expert and not as an Advocate.

1.0 INSTRUCTIONS

1.1 We confirm that instructions were issued on 13th August 2012 in respect of the following specific points to be included in a detailed Proof of Evidence.

- Market commentary and details of any relevant policy / RICS guidance.**
- Professional assessment of the current financial performance of the Phene.**
- Professional assessment of whether public house use (in general) is viable based on location, size and current operational status.**
- Assessment of any nearby competition and the impact of this competition on likely viability.**
- Assessment of viability of alternative uses that could be carried out without the need for planning permission (under Permitted Development Changes, i.e. A1, A2 and A3 uses).**
- The provision of a detailed summary / conclusion.**

1.2 The Proof of Evidence should be prepared in accordance with Part 36 of the Civil Procedure Rules.

2.0 QUALIFICATIONS

2.1 This Proof of Evidence has been undertaken by David C Morgan, FRICS, with direct assistance from co-director Simon Clarke, MRICS which was necessitated as a result of the time constraints between confirmation of instructions and the issuance of this Proof of Evidence. The CV's of both David Morgan and Simon Clarke are included in [Appendix A](#).

3.0 INSPECTION AND BACKGROUND INFORMATION

3.1 Inspection

The property was inspected on a customer-only basis on the lunch time of Thursday 16th August, the evening of Saturday 18th August and the lunch time of Monday 20th August. All areas of customer occupation and use were capable of inspection. A detailed inspection of the private accommodation and the catering kitchen / cellarage was not undertaken although a reasonable assumption is made that the facilities contained therein are commensurate with the use of the premises and have sufficient fixed equipment to enable the property to operate efficiently.

3.2 Background Information

We have been supplied with a comprehensive bundle of background information by our instructing source. Where this background data has been utilised within the body of this Proof of Evidence, detailed cross-referral has applied to the documents used.

4.0 THE PROPERTY

4.1 As more specifically illustrated on the attached site plan included in [Appendix B](#), the Phene comprises a three storey, end-of-terrace property located at the corner of Phene Street and Margareta Terrace and has the benefit of a basement cellar. The property is currently used as a public house and restaurant within Class A4 at basement, ground floor and part first floor levels. Floor plans of the current use and occupation are included, also in [Appendix B](#).

4.2 The property is within the Cheyne Conservation Area and a Tree Preservation Order applies to the front garden area of the site. It is understood that the property was constructed in 1851 and in the Cheyne Conservation Area Proposals Statement, is described as *“a typical example of a Victorian pub surviving in good order commemorating the eccentric gentleman who was responsible for much of the development of the area (Dr. Phene).”*

4.3 Upon inspection it was self-evident that the property is in an excellent state of decorative and structural repair throughout, apart from normal wear and tear.

5.0 MARKET COMMENTARY

5.1 It is accepted that in a general national sense, the On licensed trade has suffered substantially since the onset of the smoking ban (July 2007) and the recessive economic influences that are generally agreed to have commenced in the autumn of 2008. Whilst the smoking ban has now become an accepted feature of the On licensed trade, there is still the genuine and continuing effect of the economic recession as it affects the discretionary leisure spend. However, Central London has proved remarkably resilient in this respect and has out-paced the generality of the UK On licensed market.

5.2 We are assisted in this view by articles that have appeared in the most authoritative monthly journal in the On licensed trade, namely the M & C Report. Enclosed in [Appendix C](#) are extracts from the M & C Report May, June and July 2012. The overview is that public houses with a very substantial hot plated food content are performing on a positive rather than a negative basis with one of considered optimism for the future.

5.3 It is self-evident from the preponderance of multi outlet operators such as Geronimo Inns, Front Page Pubs Limited and Youngs & Co. Brewery trading in the immediate vicinity, that the general area which is between King's Road and the South Bank of the River Thames, is highly successful in terms of both trade retention and trade usage looking forwards.

6.0 **RICS GUIDANCE NOTES**

6.1 David Morgan and Simon Clarke both served on the inner Committee of the RICS that formulated Guidance Notes 67/2010 **The Capital and Rental Valuation of Public Houses, Bars, Restaurants and Nightclubs in England and Wales**. These Guidance Notes are considered best practice for the assessment of fair maintainable operating profit (FMOP) and its subsequent capitalisation to establish market value. Pages numbers 2 and 3 of GN 67/2010 are enclosed in [Appendix D](#) with specific reference to paragraphs 2.4 and 2.9 which for the sake of clarity are set out hereunder.

2.4 *(Fair Maintainable Operating Profit)*

*The level of profits **stated prior to depreciation and finance costs** relating to the asset itself (and rent if leasehold) that a Reasonably Efficient Operator would expect to derive from the Fair Maintainable Trade based on an assessment of the market's perception of the potential earnings of the property. It should reflect all of the costs and outgoings of the Reasonably Efficient Operator and an appropriate annual allowance for periodic expenditure such as decoration, refurbishment and the renewal of the trade inventory. (Emphasis added).*

6.2 The realistic assessment of FMOP is at the heart of both issues of general viability and of the capital value of the premises.

6.3 The issue of associated finance costs regarding the purchase of the premises and also depreciation issues, is also dealt with in paragraph 2.9 'Personal Goodwill of the Current Operator'.

2.9 *The value of profit generated over and above market expectations that would be extinguished upon sale of the trade related property together with financial factors **related specifically to the current operator of the business such as taxation, depreciation policy, borrowing costs and the capital invested in the business.** (Emphasis added).*

6.4 It is thus evident that it is considered best practice not to assess the viability issues surrounding the continuing trading operations of the Phene by any form of reference to depreciation and associated finance costs.

7.0 PROFESSIONAL ASSESSMENT OF THE CURRENT FINANCIAL PERFORMANCE OF THE PHENE

7.1 We have not been supplied with the Trading & Profit & Loss Accounts for the Phene. However, by way of general guidance we have been supplied with the Expert Evidence Report undertaken by Davis Coffey Lyons in respect of the Prince of Wales, 14 Princedale Road, London W11 4NJ, dated 29th June 2011 and a Report in respect of the Cross Keys, Lawrence Street, London SW3 5NB, also prepared by Davis Coffey Lyons dated 17th May 2012.

7.2 In respect of the Prince of Wales, the detail of trade accounts has been made available which confirms that the total sales estimated by David Coffey Lyons for the purposes of that Report, were at or about £560,000 p.a. The Rateable Value for the premises in the 2010 Valuation List is £67,500 (not appealed) which gives a relationship between sales and Rateable Value of 12%.

7.3 In respect of the Cross Keys the recorded sales are £858,046 to December 2011 set against the Rateable Value for the premises in the 2010 Valuation List of £92,000 (not appealed), which gives a relationship between sales and Rateable Value of 10.7%.

7.4 In respect of the Phene, the Rateable Value (RV) for the premises in the 2010. Valuation List is £110,000 following appeal (the original RV was £130,000). If the RV of £110,000 is cross-related to an appropriate average percentage of RVs as applied to the Prince of Wales and the Cross Keys (11.3%), this would give a general perception of total sales at around £973,451. However, as the original RV was appealed at the Phene, the assumption may be made that the Rates Officer was probably using a similar relationship between RV and sales, thus if the original RV of £130,000 is 11.3% of sales, then sales before appeal were perceived at £1,150,000.

7.4.1 Enclosed in [Appendix E](#) are the accounts dated 31st December 2010 for the Phene filed in Companies House. The total ex VAT sales are shown as £1,125,079. In view of the latter, I take some comfort in the relationship between RV and estimated sales and that, in this instance, the Rates Officer has adjusted the RV to reflect a level of sales that is marginally lower than that actually being achieved. The revised RV reflects an estimated level of sales of around £973,451 which, following appeal, reflects, the Rating Officers estimated level of sales excluding any over performance of the existing operator.

7.5 Current Trading Profile

7.5.1 Enclosed in [Appendix F](#) are extracts from the current website of the Phene, together with its comprehensive and attractive menu. This menu should also be compared with the other limited range of public houses in the immediate vicinity – see ‘Trade Competition’ hereunder.

7.5.2 The Phene has a unique and attractive trade feature which is that of the external trading area, or trade garden. Use of this trading area is, however, heavily constrained as per current licensing regulations (see under).

7.6 Licensing

7.6.1 Enclosed in [Appendix G](#) is the decision of the Licensing Sub Committee dated 9th July 2009 which is quite specific in respect of the constraints that shall apply to the property. However, it is noted that the terminal hour is a half hour later than most of its competitors, with the exception of the Builders Arms at 23.00 hours Sunday – Thursday and 23.30 hours Friday – Saturday.

7.6.2 The Phene Arms was, up until its closure, a back street traditional public house. The lessee for many years, Wesley Davis, died and his wife sought to continue the trade.

7.6.3 Property specific restrictions include ;

Outside

Patrons are not to be permitted to congregate on the pavement on Phene Street and are ushered into the walled garden area.

The front walled garden area shall be kept clear of all customers consuming drink and / or food from 22.00 Sunday to Thursday and 22:30 hours Friday and Saturday until 10:00 hours the following morning.

There shall be no consumption of alcohol or food on the Phene Street side forecourt area.

No food or drinks shall be consumed by customers in the front walled garden area between 21:00 hours to 22:30 hours unless they are seated at tables.

The external doors and windows of the premises shall be kept closed, except for immediate access and egress, from 21:30 hours until the premises closes to the public.

All tables and chairs in the front walled garden area shall be removed or stacked up and rendered unusable by patrons between 22:00 hours on Sunday to Thursday and 22:30 hours Friday and Saturday until 10:00 hours the following morning.

From 21:00 hours until 15 minutes after the premises closes to the public the duty manager or a member of staff shall be responsible for ensuring that patrons leave the premises quickly and quietly.

Inside

The first floor roof area shall be closed to customers and staff and shall not be used for the consumption of food or alcohol at any time.

Speakers shall not be attached to the party wall of 8 Phene Street.

The premises will maintain a comprehensive CCTV system that ensures all areas of the licensed premises are monitored. All cameras shall continually record whilst the premises are open to the public and the recordings shall be kept available for a minimum of 31 days with time and date stamping. CCTV recordings shall be made available to an authorised officer or a police officer together with facilities for viewing upon request.

Other terms are applicable but are common in many premises licences for public houses in residential areas; for example:

Clearly legible notices shall be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.

No music or amplified sound shall be generated within the premises so as to give rise to nuisance within neighbouring dwellings.

No independent sound system shall be brought on to the premises and used for entertainment within the premises, so as to give rise to nuisance within neighbouring dwelling.

No noise or vibration associated with the operation of plant at the premises shall give rise to a nuisance to the occupiers of neighbouring properties.

The premises shall close no later than 30 minutes after the end of permitted hours for the sale by retail of alcohol.

7.6.4 The majority of property specific restrictions apply to the outside areas. Whilst this area is an obvious opportunity to utilise as a trading space, most other pubs in the area lack outdoor space of any consequence, relying in the main on internal trading and pavement areas which in some cases permit some seating. In such instances these other public houses, with outdoor areas, are usually subjected to additional licence restrictions in order to alleviate resident complaints and promote a balance of amenity for patrons and residents.

- The Cross Keys, 1 Lawrence Street – no garden (retractable roof in rear addition)
- The Sporting Page, 6 Camera Place – no garden, pavement seating
- The Pigs Ear, 35 Old Church Street– no garden
- The Coopers Arms, 87 Flood Street – partially enclosed beer patio - the external drinking area shall be cleared of all customers after 23:00 Monday to Saturday and from 22:30 Sunday. Half an hours difference to the Phene.
- The Surprise, 6 Christchurch Terrace – no garden, pavement bench
- The Builders Arms, 13 Britten Street – Pavement terrace area

7.6.5 We are aware of some other operators' policies with regard to noise abatement. Many operators seek to over-deliver on the restrictions of the licence by strict private management. Geronimo Inns, (**the Surprise and Builders Arms**) seek to close all windows and doors after a certain time and do not sweep the pavement after closing or in the early morning in an effort to respect the residents' amenity interests – these were not licence requirements at the time of writing.

7.6.6 **The Phene** is unique as a back street public house having a forecourt garden area. The other trading operations in a similar position within a residential neighbourhood have little if any outdoor facility which has not proved detrimental to their popularity

as either venues or as investments to pub operators. Geronimo Inns is a useful example, having three pubs in residential streets in the general vicinity to the Phene Arms (including the **Phoenix**, Smith Street – again with pavement seating). Geronimo Inns was acquired by Youngs & Company Brewery in December 2010 at that time comprising 26 pubs.

7.6.7 Given that all the other pubs trade with extremely limited outdoor areas the additional restrictions imposed on the Phene whilst not perhaps permitting maximum trading potential still put them in a position to have a unique outdoor feature over and above any of their immediate competitors for the day time and evening trade. This is of great assistance to future viability and operational desirability.

7.6.8 The Licensing Committee acknowledged that in the past, under previous tenants of The Phene Arms, the immediately local residents complained that they were adversely affected by the operation of the premises which failed to seek to meet the licensing objectives. The Committee took into account that the premises were to be run by new management. The new conditions attached to the licence were deemed sufficient to resolve the material complaints. In attaching the conditions largely in respect to the use of the outdoor areas, we consider the Committee has sought to strike a balance in addressing the concerns raised by residents, but at the same time imposing reasonable and proportional conditions that allow enforcement should the new management fail to effectively implement the terms of the licence. It should be noted that since the licence conditions have been imposed on the outside area the level of complaints seems to have diminished considerably and we foresee that firm management and control of the operation

7.7 General Trade Usage

7.7.1 It is my opinion that a large element of the trade success of the Phene is as a result of a walk-to trade rather than a drive-to trade. It was noted that in the immediate vicinity, the side streets are almost all designated for resident permit parking. Indeed, there are only four parking bays in Phene Street that are allocated for Pay & Display parking. It is noted, however, that a 10 minute walking distance from the Phene encompasses an extremely large and densely packed residential population.

8.0 GASTRO PUB STATUS

8.1 Amongst the documents supplied by our instructing source, was the Grounds for Appeal in respect of Application PP/11/02421/Q13 which was refused permission on 6th March 2012. Item number 10 in the case for the Appellant stated:

“It will be argued that the existing use of the public house as a ‘gastro pub’ is far removed from the character of the former traditional Victorian public house use of the premises both in terms of the regular use of cars by patrons coming and going to the ‘gastro pub/restaurant’ today and the use of the garden area for drinking and eating at all times and in all weathers. The retention of the ‘gastro pub/restaurant’ use does not therefore preserve or enhance the historic character of the Conservation Area – its use is not that of a traditional corner public house which originally served a very local pedestrian community behind closed doors. It is a ‘gastro pub/restaurant’ destination attracting custom from outside the area not in keeping with the predominantly domestic character of this quiet residential enclave; and a use that has in recent years proved erosive of that character by virtue of the liberalisation of licensing hours by its encouragement of the use of the car and by the smoking ban within public buildings making smoking an outdoor / street activity.”

8.2 The words ‘gastro pub’ were first coined by the renowned food critic Paul Campion in respect of the Eagle, Farringdon Road, Clerkenwell in the early 1990’s. The Oxford English Dictionary definition states that a gastro pub is: **“a public house which specialises in high quality food”**. Our understanding of the situation is that a gastro pub is not a restaurant per se. As will be demonstrated hereunder, all of the other public houses in the immediate area can all be classed as ‘gastro pubs’.

8.3 As a result of the change in drinking culture since the smoking ban, every pub in the general area offers to a greater or lesser degree, an extensive and eclectic hot plated food menu. The era of the wet-led Victorian style drinking establishment has long since disappeared in the On licensed trade in this general area.

9.0 VIABILITY

9.1 As emphasised above, we have not yet been supplied with a detailed Trading & Profit & Loss Account. However, it is considered that the general trading success in terms of sales is highly successful. The property operates as a free house with no supply tie, has a high level of wine sales and as is self-evident from the website

menu (see [Appendix F](#)) has a hot plated food pricing structure that underpins substantial gross profit margins.

9.2 It is thought likely that the overall gross profit margin should be in the order of 68% minimum which should ensure a healthy profitability on the basis of adjusted net profit or FMOP in accordance with RICS Guidelines as evidenced above.

9.3 The assumption is also reasonably made that the premises would be operated efficiently with appropriate staffing costs which should not exceed 30% maximum.

9.4 The analysis of on site accountancy information cannot be made until and if those accounts are made available in the open market. However, in summary it is considered that the premises should be highly profitable.

10.0 COMPETITION AND THE IMPACT ON VIABILITY

10.1 Set out hereunder is a brief schedule of 7 On licensed premises that are effectively more 'residential backwater' than public houses fronting onto King's Road. For the purposes of the exercise of comparison, it is considered that the multiplicity of On licensed premises in King's Road would in general attract a different style of clientele set against the quiet neighbourhood feel of the Phene.

1. Cheyne Walk Brasserie, Cheyne Walk
2. Pig's Ear, 35 Old Church Street
3. Coopers Arms, 87 Flood Street
4. Sporting Page, 6 Cameron Place
5. Builders Arms, 13 Britten Street
6. Surprise at Chelsea, 6 Christchurch Terrace
7. Cross Keys (closed), 1 Lawrence Street.

10.2 Enclosed in [Appendix H](#) are the 7 separate website references with specific emphasis on the associated menus which illustrate how effectively all seven outlets have, to a greater or lesser extent, a gastro style trading operation.

10.3 It is considered that all seven properties, with the exception of the now closed Cross Keys, have their own loyal clientele, although it is understood and accepted that there is some cross fertilisation between all seven properties in the general matrix of locally based, predominantly pedestrian, trade.

10.4 Competition Summary

Cheyne Walk Brasserie, Cheyne Walk SW3

Restaurant conversion from what was originally the Kings Head and Eight Bells public house with river views from the first floor. High end eating experience with a very extensive wine list.

Pig 's Ear, 35 Old Church Street SW 3

An award-winning gastro pub and restaurant serving British/French brasserie food and an oak panelled dining room on the first floor which is open during busier evenings and for weekend lunches.

Coopers Arms, 87 Flood Street

Top class home cooked simple food with excellent reputation for steaks and fresh fish.

Sporting Page, 8 Cameron Place

Unique selling point of a substantial licensed outside pavement terrace offering a quality "straight forward pub classics" menu whose website champions "food at reasonable prices; we really dislike overpriced, overdone dishes". Owned by multiple operator Food & Fuel.

Builders Arms, 13 Britten Street

A large, quality pub and restaurant with an extensive menu of high quality food. Operated by Geronimo Inns.

Surprise at Chelsea

Similar in style to the Builders Arms, again offering a very wide range of excellent quality food. Again operated by Geronimo Inns.

Cross Keys, 1 Lawrence Street (now closed)

Until the sudden and surprise closure of the premises on 13th May 2012, the property operated at a significant profit. We have been supplied with the

Report & Valuation dated 17th May 2012 undertaken by Davis Coffey Lyons which confirmed that the premises achieved total net sales for the financial year ending December 2011 in the sum of £858,046. Davis Coffey Lyons (page 9 of their Report) estimate that *“if the business were operated on conventional margins for a business of this nature and achieving current actual net sales, the EBITDA profit would be in the order of £115,000 - £120,000 (approximately 14%).”*

10.5 Competition Conclusion

10.5.1 It is not considered appropriate to align or compare the Phene with the large number of On licensed premises located in King's Road, albeit within approximately 10 minutes walking distance. The limited range of other On licensed premises as outlined above, were all in their origins Victorian drinking establishments. That was the prevalent style of the late Victorian era.

10.5.2 The present very limited range of iconic ex Victorian boozers have now moved on and reflect the current market requirements that have been successfully capitalised upon in the existing styles of trading in the outlets concerned. The area, which has only a limited range of such establishments, is justly famous for the current variety of such premises which predominantly attract a locally based trade.

11.0 VIABILITY OF ALTERNATIVE USES

11.1 Use Class A1 – Retail

11.1.1 The property is located in a residential backwater with no immediate surrounding retail or quasi retail uses. There is no passing pedestrian traffic and no passing vehicular traffic as Phene Street is a cul-de-sac.

11.1.2 On street car parking is almost exclusively restricted to residents only permit parking. There are, however, only four Pay & Display parking bays at the entrance to Phene Street.

11.1.3 It is not considered that there would be sufficient demand for retail use to justify the conversion of the current structure into that use.

11.2 Use Class A2 – Financial and Professional Offices

11.2.1 Whilst in theory the building could be converted for financial and professional office use, the limitations on car parking, both in Phene Street and the surrounding roads, would not assist this user. In terms of access to public transport, there is a bus route linking Oakley Street with King's Road. The nearest Underground Stations are South Kensington (15 minutes walk) and Sloane Square (16 minutes walk). There is a wide ranging current availability of office space over the linear ground floor retail establishments in King's Road.

11.2.2 It is accepted that A2 planning use covers professional services with a "shop front" such as estate agents, banks, travel agents, etc. The same observations concerning backwater location and on street car parking are as outlined in the A1 use as above and are as equally relevant. Given the latter, as with A1 uses, I do not consider an A2 use would be likely to be viable given the location and environment of the subject premises.

11.3 Use Class A3 – Restaurant

11.3.1 It is quite possible that the Phene would find an enthusiastic take-up as a niche restaurant. A close example of this type of movement away from public house use to purely restaurant use is evidenced in the Cheyne Walk Brasserie in nearby Cheyne Walk which is now a highly successful upper market restaurant. Indeed it could be advanced that the secluded location of the Phene would be a positive attraction to such upper market use.

11.3.2 As existing the layout of the premises would suit ground floor restaurant use at front and rear with the opportunity of utilising the external trade garden for further restaurant use as indeed is specially emphasised in the current licensing conditions. The first floor accommodation would again be ideal for restaurant user. The assumption is reasonably made that the existing catering kitchen would be quite capable of facilitating purely restaurant use.

12.0 GENERAL CONCLUSION

12.1 Although detailed accountancy information has not been made available, the reasonable assumption is made that the Phene is quite capable of trading at a significant profit. The use of the premises with its strong emphasis on quality food, is in line with the general shift in trading profile of other previous wet-led public houses in the general area that occupy effectively backwater locations, aside from the On licensed premises up and down the length of King's Road.

- 12.2** As will be observed from the remarks concerning competition, all of the other pubs noted offer a wide ranging and eclectic hot plated food offering which may be described as a gastro style public house image.
- 12.3** The era of the Victorian style, drinkers only public house, has long since disappeared and that disappearance was heightened by the smoking ban in July 2007.
- 12.4** It is considered that the Phene sits comfortably in the general demographics of the On licensed trading operations in the immediate area which are so self-evidently viable and attractive in that three of the properties concerned are traded by multiple operators (Geronimo, Front Page Pubs Limited and Youngs & Co) with no indication that the continuing success story of these outlets will not continue.
- 12.5** For the reasons and observations as set out above, it is not considered that a solid case can be made for the closure of the Phene on either terms of economic viability or of non conformity with the already strict licensing conditions that apply to the premises.

D.C.H. MORGAN, FRICS, MEWI, MRPAS

DATED: