

**ROYAL BOROUGH OF KENSINGTON AND CHELSEA  
REPORT BY EXECUTIVE DIRECTOR,  
**PLANNING AND BOROUGH DEVELOPMENT****

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**APP NO. PP/11/03352/Q20  
 PLANNING APPLICATIONS COMMITTEE 06/03/2012  
 AGENDA ITEM NO. S21**

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**SITE ADDRESS**

**The Phene Arms  
 9 Phene Street  
 LONDON  
 SW3 5NY**

**APPLICATION DATED 05/10/2011  
APPLICATION COMPLETE 06/10/2011  
APPLICATION REVISED 24/01/2012**

**APPLICANT/AGENT ADDRESS**

**Ms K Walton  
 Trevor Lahiff Architects  
 99 Knatchbull Rd  
 LONDON  
 SE5 9QU**

<b><u>LISTED BUILDING</u></b>	No	<b><u>CONS. AREA</u></b>	Cheyne	<b>WARD</b>	Royal Hospital
<b><u>CAPS</u></b>	Yes	<b><u>ENGLISH HERITAGE</u></b>	N/A	<b>ART '4'</b>	No

<b><u>CONSULTED</u></b>	<b><u>OBJECTIONS</u></b>	<b><u>SUPPORT</u></b>	<b><u>PETITION</u></b>	<b><u>COMMENTS</u></b>
41	24	10	0	0

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**Applicant RAB Pension Trust**

**PROPOSAL: Change of use to single family dwelling.**

**RBK&C Drawing No(s):PP/11/03352 and PP/11/03352/A**

**Applicant's Drawing No(s): (00) 001, (02) 001, (02) 002, (02) 003, (02) 005, (02) 006, (02) 008, (02) 009, (02) 011, (02) 012, (20) 001, (20) 002, (20) 003, (20) 005, (20) 006, (20) 008, (20) 009, (20) 011, (20) 012 all version P5 and all received 24/01/2012**

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**RECOMMENDED DECISION: Refuse planning permission**

## **REASONS FOR REFUSAL**

- 1. The loss of this historic public house to residential use would be damaging to the value and significance of this heritage asset, and would cause harm to the character, identity and distinctiveness of the conservation area. Therefore, the proposal would fail to meet the requirements of Planning Policy Statement 5, Core Strategy policies C05, CK1, CL1 and CL3 and 'Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment' published by English Heritage (2008).**
- 2. In the absence of a satisfactory s106 agreement to secure necessary planning obligations, the proposal would result in unacceptable pressure on local infrastructure (including education, health and community facilities) and would therefore be contrary to policy C1 of the Core Strategy and the Planning Obligations Supplementary Planning Document.**
- 3. In the absence of a satisfactory s106 agreement to secure ineligibility from obtaining car parking permits, the proposed development would put undue pressure on on-street car parking and would therefore be contrary to policy CT1 (c) of the Core Strategy and the Transport Supplementary Planning Document.**

## **INFORMATIVES**

- 1 You are advised that this application was determined by the Local Planning authority with regard to Development Plan policies including relevant policies contained within the London Plan Spatial Development Strategy for Greater London adopted July 2011; the Core Strategy adopted 8 December 2010 and the 'Saved' policies of the Unitary Development Plan adopted 25 May 2002. The relevant policies of the Core Strategy were C1, CK1, CT1, CL1, CL2, CL3, CL5, CE2, CE3, CH1, CH2. The relevant policies of the UDP were CD63. Weight was also given to relevant local Supplementary Planning Guidance/Documents and Statements, including: Cheyne adopted 2 June 1983, Transport adopted 10 December 2008, Planning Obligations adopted 17 August 2010. These documents were prepared in line with Government guidance and adopted following public consultation.
- 2 The applicant is advised that completion of a satisfactory s106 agreement would overcome the second and third reasons for refusal listed above.

## **1.0 SITE**

- 1.1 The application property is a four storey (including basement) end of terrace building located on the corner of Phene Street and Margareta Terrace. The building is currently in use as a public house and restaurant within Class A4 (Drinking establishments) at basement, ground and part of first floor level, with ancillary residential accommodation occupying the remaining floor space at first floor level and above.
- 1.2 The property is within the Cheyne Conservation Area and is partially within flood zone 2. A Tree Preservation Order (TPO) applies to the front garden area of the site. The residential houses north of the application site on Margareta Terrace are grade II listed.
- 1.3 The Phene Arms is identified in the Cheyne Conservation Area Proposals Statement (CAPS) as built between 1850- 51 and forms a "typical example of a Victorian pub, surviving in good order commemorating the eccentric who was responsible for much of the development of the Area [Dr Phene]".

## **2.0 PROPOSAL**

- 2.1 The application seeks permission for a change of use from a public house (A4 use) to a single family dwelling (C3 use). One off street car parking space would be provided, accessed via an existing crossover on Margareta Terrace.
- 2.2 No external alterations are proposed.

## **3.0 RELEVANT PLANNING HISTORY**

- 3.1 In April 2001, under Council reference PP/01/0781 and PP/01/0780, applications were received for a change of use of the building from a public house into two residential units, the erection of an additional mansard storey and enlargement of the rear extension with roof terrace above. These applications were subsequently withdrawn.
- 3.2 In June 2007, under Council reference PP/07/1662 and PP/07/1662, applications were received for a change of use from vacant public house to single dwelling house, excavation works and construction of extensions to existing basement and ground floor and minor fenestration alterations. These applications were subsequently withdrawn.
- 3.3 In August 2009, under Council reference CA/09/1194 advertisement consent was approved for replacement advertisements and the installation of two awnings to the Phene Street elevation.

- 3.4 In November 2009, under Council reference PP/09/0746, planning permission was approved for the enclosure of the open courtyard area to the rear ground floor level.
- 3.5 There is a current application requesting retrospective permission for the retention of parasols in the pub garden (ref. PP/10/3955).
- 3.6 There is also a current application (being considered under Council reference PP/11/2421) for a change of use of the application property from a public house to residential use including various internal and external alterations. This application is also included on the Planning Committee agenda.
- 3.7 It is also noted that an application for a change of use of the nearby Cross Keys public house to residential was recently refused permission by the Planning Committee for the following reason:

“The loss of this historic public house to residential use would be damaging to the value and significance of this heritage asset, and would cause harm to the character, identity and distinctiveness of the conservation area. Therefore, the proposal would fail to meet the requirements of Planning Policy Statement 5; Policies 3.1, 3.16, 4.8 & 7.1 of the London Plan (2011); Core Strategy Policies C05 & CL1; and 'Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment' published by English Heritage (2008)”.

- 3.8 Although the refused application and the current application raise a number of similar issues, it must also be recognised that there are differences between the properties and proposals.

#### **4.0 PLANNING CONSIDERATIONS**

- 4.1 The main considerations in this case include the principle of the change of use, the impact of the change of use on the character of the conservation area, the impacts on residential amenity, the impacts on local transport infrastructure, flooding and necessary planning contributions.

- 4.2 The most relevant policies include the following:

Core Strategy 2010

C1 (Infrastructure Delivery and Planning Obligations)

CK1 (Social and Community Uses)

CT1 (Improving alternatives to car use)

CL1 (Context and Character)

CL2 (New buildings, extensions and modifications to existing buildings)

CL3 (Heritage Assets – Conservation Areas and Historic Spaces)

CL5 (Amenity)  
CE2 (Flooding)  
CE3 (Waste)  
CH1 (Housing Targets)  
CH2 (Housing Diversity)

'Saved' Unitary Development Plan 2002 (amended 2007)

CD63 (Development in conservation areas)

4.3 Also relevant is the Cheyne Conservation Area Proposals Statement (CAPS), and the Transport, Access Design Guide and Planning Obligations Supplementary Planning Documents.

#### 4.4 **Principle of the change of use**

4.4.1 PPS1 and the National Planning Policy Framework both seek to create strong, vibrant and healthy communities and aim to deliver the facilities and services that the community needs.

4.4.2 Public houses are recognised as community facilities in the draft National Planning Policy Framework, which requires decisions to "safeguard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs" and "ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community" (paragraph 126). This document, although afforded limited at the present time, is a material consideration.

4.4.3 The vision and strategic objectives within the Core Strategy reflect these objectives and seek, amongst other things, to 'build on success' (policy CV1) and 'keep life local' (policy CO1).

4.4.4 Core Strategy policy CK1 seeks to protect and enhance social and community uses and supports the provision of new facilities throughout the Borough. Public houses, although not included in the definition, are recognised within the supporting text to this policy as social and community facilities and the recent concern over their loss is noted. The text goes on to note however, that at present time there is too little evidence to resist their loss.

4.4.5 It is noted however, since the adoption of the Core Strategy in 2010, there has been growing concern about the loss of public houses and the detrimental impact such changes of use have on communities and the character of conservation areas. The growing concern amongst Members culminated in a full Council meeting on the 7<sup>th</sup> December 2011 where the following motion was unanimously agreed:

"That this Council is greatly concerned at the loss of community

Public Houses which afford great amenity to local residents. We urge this Council to carry out a review of LDF policy to protect community Public Houses, especially historic pubs in conservation areas”.

4.4.6 Whilst the review of the Core Strategy is too early in the process to be given any weight, it does reflect the Councils direction of travel. These concerns are also consistent with the concerns raised by the Planning Committee on the 6<sup>th</sup> December 2011 when considered a change of use of the Cross Keys public house to residential.

4.4.7 Concerns over the loss of community public houses, particularly within conservation areas, add weight to the concerns identified below.

#### 4.5 **Impact of the change of use on the character of the conservation area**

4.5.1 The Planning (Listed Buildings and Conservation Areas) Act 1990 defines Conservation Areas as being of ‘special architectural and historic interest, the character or appearance of which it is desirable to preserve or enhance’.

4.5.2 Planning Policy Statement 5 (Planning for the Historic Environment) seeks to conserve England’s heritage assets in a manner appropriate to their significance, by ensuring:

- decisions are based on the nature, extent and level of that significance, investigated to a degree proportionate to the importance of the heritage asset
- wherever possible, heritage assets are put to an appropriate and viable use that is consistent with their conservation
- the positive contribution of such heritage assets to local character and sense of place is recognised and valued; and
- consideration of the historic environment is integrated into planning policies, promoting place-shaping.

4.5.3 Core Strategy policy CL1 requires all development to respect the existing context, character, and appearance, taking opportunities available to improve the quality and character of buildings and the area and the way it functions, including being inclusive for all.

4.5.4 English Heritage’s publication ‘Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment’ (EH, 2008) states it is necessary to understand and articulate the values and significance of a place in order to inform decisions about its future (para. 3.4). This document makes clear that heritage values go beyond the physical appearance of an asset, and include evidential, historical,

aesthetic and communal values, all of which should be taken into account when making sound decisions about its future (para. 23).

4.5.5 The use of the application property as a public house is considered historically significant and is a use which is considered to contribute to the identity and distinctiveness of 'Old Chelsea' and the Cheyne Conservation Area. The property's significance as a heritage asset relates not only to the fabric of the building, but also the historic and communal value of the long standing public house use in this location. The Phene Arms is a purpose built public house which has been in existence for over 150 years. The use of the building as a public house is intrinsically linked with the development of Phene Street and the wider area and this history contributes to the character of the conservation area. The conversion of the building to a residential use would bring to an end over a century of public house use at the site and would result in the loss of part of the familiar and cherished history of the site and conservation area. Similarly, the patterns of behaviour associated with the use which differentiate this building from its residential neighbours will be lost, diluting the vibrant residential character of the conservation area.

4.5.6 It is noted that a recent appeal against the refusal of an application to convert a public house to residential was allowed (Prince of Wales public house ref. PP/10/02734, appeal ref. APP/K5600/A/11/2152776). The points raised by the Inspector in determining the appeal are a material consideration and have been taken into consideration in reaching a decision on this application. However, in addition to every application having to be considered on its own merits, it is considered that there are significant differences between the nature of the public houses, the areas and the proposals, which warrant a different approach here.

4.5.7 On this basis, the loss of this historic public house to residential use would be damaging to the value and significance of this heritage asset, and would cause harm to the character, identity and distinctiveness of the conservation area. On this basis, the proposal is considered contrary to the aims and objectives of Planning Policy Statement 5, policies 3.1, 3.16, 4.8 & 7.1 of the London Plan (2011), Core Strategy policies C05 & CL1, and 'Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment' published by English Heritage (2008).

#### 4.6 **Impacts on residential amenity**

4.6.1 Unlike other public houses nearby (namely the Cross Keys public house), the Phene Arms appears to have generated a long history of complaints from neighbouring residents, evidenced by lengthy Environmental Health records and a significant level of

support from local residents for this application and application reference PP/11/3352.

4.6.2 That said, the public house use has been within the locality significantly longer than the current residents and often, the impacts of noise and disturbance can be effectively controlled through robust private management and through licensing control and the Environmental Health Act. As such, although the impact of the existing use is a material consideration, it is considered that only limited weight should be given to such when determining this application.

4.6.3 However, putting the impact of the existing use aside, conversion of the building to a residential use would be unlikely to result in an adverse impact on neighbouring properties.

#### 4.7 **Transportation**

4.7.1 In accordance with Core Strategy policy CT1 (c) and the Transport SPD all new residential units are required to be permit free. The applicant has agreed to enter into a legal agreement to secure such. However, in the absence of a satisfactory s106 agreement to secure such, the proposal is contrary to policy CT1 (b) and (c) and the Transport SPD.

4.7.2 One off street car parking space has been provided to meet, but not exceed, the Councils parking standards in accordance with Core Strategy policy CT1 (d). There is sufficient space within the confines of the site for cycle parking facilities. Subject to conditions, the Director of Transportation and Highways raises no objection to the proposal.

#### 4.8 **Refuse**

4.8.1 Although a specific area for refuse storage has not been identified on the drawings, there is sufficient space within the confines of the site to accommodate this requirement. As such, subject to conditions requiring the submission of additional detail in this regard, the proposal is capable of meeting the requirements of Core Strategy policy CE3 in relation to waste.

#### 4.9 **Flooding**

4.9.1 The application site is partially located within flood zone 2. In accordance with Core Strategy policy CE2 a Flood Risk Assessment has been provided in support of the application. This has been reviewed by Policy Officers and is considered acceptable.

#### 4.10 **Planning contributions**



4.10.1 The Planning Obligations Supplementary Planning Document requires all new development resulting in a net increase in residential units to make a financial contribution. Should the scheme have been found acceptable, a contribution of £3998.88 (excluding legal fees) would have been required, broken down as follows:

- An Education Contribution of £2618.88
- A Health Contribution of £800
- A Community Facilities Revenue Contribution of £80
- A Monitoring Fee of £500

4.10.2 The applicant has agreed to the payment of the above contributions. However, in the absence of a satisfactory s106 agreement to secure such, the proposal is contrary to policy C1 and the Planning Obligations SPD.

## **5.0 PUBLIC CONSULTATION**

5.1 Forty one neighbouring properties were consulted, a site notice was displayed outside the building and an advertisement was placed in a local newspaper. 24 representations in objection to the proposal have been received, including representations from the following:

- Cllr Will
- Oakley St Residents Association
- Campaign for Real Ale (CAMRA) West London branch
- Chair of The Kings Road Trade Association
- Radnor Walk Residents Association
- Kings Road Association of Chelsea Residents
- Astell Street et al Residents Association
- Christchurch Residents Association
- The Chelsea Society

10 representations in support of the proposal have also been received from residents of Phene Street, Margaretta Terrace and Oakley Street.

The main points raised are summarised and responded to below.

### **5.2 Loss of a public house detrimental to character of area, amenity of residents and visitors**

As outlined above, Officers agree that the loss of the public house would have a detrimental impact on the character of the area.

### **5.3 Loss of community meeting and mixing place**

As outlined above, Officers agree that the loss of the public house would have a detrimental impact on the character of the area.

5.4 **Loss of too many public houses in Borough**

Concerns over the loss of public houses are noted in the Core Strategy and have resulted in a decision to review the Core Strategy.

5.5 **Loss of a historically significant use**

The importance of the use historically is recognised in paragraphs 4.5.1 – 4.5.7 above. Officers agree that the change of use will result in harm to the value of this particular heritage asset.

5.6 **Loss of a use that will never be replaced**

Officers agree that the public house use is unlikely to be reinstated once lost, and for the reasons outlined above recommend refusal of the application.

5.7 **Change of use contrary to London Plan policies**

The proposal has been assessed against relevant London Plan policies as outlined in the relevant sections above.

5.8 **Existing beer garden provides valuable amenity space for people without gardens**

The garden is not designated public open space, at its use by the public is at the discretion of its owners and therefore cannot be protected under planning policy.

5.9 **Concerns/complaints made by local residents about the existing use are false**

As discussed above, it is recommended that only limited weight is given to the impact of the existing use on the amenity of the area when assessing the proposed development.

5.10 **Existing use is having a detrimental impact on local residents in terms of noise, disturbance, traffic and parking problems and anti social behaviour**

As discussed above, it is recommended that only limited weight is given to the impact of the existing use on the amenity of the area when assessing the proposed development. Such concerns can generally be resolved through robust private management and the controls afforded under licensing controls and the Environmental Health Act

5.11 **Existing use is no longer a traditional pub and is therefore**

**out of character with quiet residential street and conservation area**

The particular style of public house use is not something the Council can control. However, it should be noted that the public house was in situ when the conservation area was designated and therefore is considered part of its character.

**JONATHAN BORE  
EXECUTIVE DIRECTOR, PLANNING AND BOROUGH DEVELOPMENT**

**List of Background Papers:**

**The contents of file PP/11/03352 save for exempt or confidential information in accordance with the Local Government (Access to Information) Act 1985.**

**Report Prepared By: SAJO  
Report Approved By: EL/DT/JB  
Date Report Approved: 22/02/2012**

**PSC03/12/SAJO.REP**

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