

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

22 DECEMBER 2014

DELEGATED DECISION REPORT

THE MAKING OF AN IMMEDIATE ARTICLE 4 DIRECTION

DATED 22 DECEMBER 2014

THE KENSINGTON PARK HOTEL PUBLIC HOUSE

139 Ladbrooke Grove, W10 6JN

1. EXECUTIVE SUMMARY

- 1.1 The authorised use of 139 Ladbrooke Grove is a public house, a Class A4 use. Planning permission is not normally required for changes of use from an A4 use (Drinking establishment) to an A1 use (Shops), A2 use (Financial and Professional Services) or A3 (Restaurants & Cafes).
- 1.2 The purpose of this report is to request the Executive Director for Planning and Borough Development to authorise the making of an Immediate Article 4 Direction to remove permitted development rights for the change of use of the Kensington Park Hotel Public House from an A4 use (Drinking establishment) to another A class use or to a flexible B1 class use.
- 1.3 Given the timescale involved, and that a change of use would be imminent, the Council could consider making an "immediate direction". This is, as the name would suggest, an Article 4 direction that bites on the day it is made. The Immediate Article 4 direction should be dated 22nd December 2014

2. RECOMMENDATIONS

- 2.1 I recommend that the Executive Director for Planning and Borough Development authorises the making of an Immediate Article 4 Direction dated 22nd December 2014, to come into force immediately (Option 8a).
- 2.2 The article 4 direction should control development consisting of a change of use:
 - to a use falling within Class A1 (shops) from a use falling within Class A4 (drinking establishments) being development within Class A of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended);
 - to a use falling within Class A2 (financial and professional services) of the Schedule from a use falling within Class A4 (drinking establishments) being development comprised within Class C of Part 3 of Schedule 2 of the Order.

- to a use falling within Class A3 (restaurants and cafes) of the Schedule from a use falling within Class A4 (drinking establishments) being development comprised within Class A of Part 3 of Schedule 2 of the Order;
- to a flexible use falling within either Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes) or B1(Business) of the Schedule to the use Class Order, from a use falling within Class A4 (drinking establishments of that Schedule, for a single continuous period of up to two years beginning on the date the building and any land within its curtilage begins to be used for one of the flexible uses, as allowed by part 4, Class D of the order.

3. REASONS FOR DECISION

- 3.1 Planning permission is not normally required for changes of use from an A4 use (Drinking establishment) to an A1, A2 or A3 use. Changes of use to flexible A1/A2/A3/B1 uses are also not normally required. (TCP (GPDO) 1995 as amended). The proposed Immediate Article 4 Direction would remove certain permitted changes of use within the A/B1 use classes. As the name would suggest an immediate direction will bite immediately.
- 3.2 The making of the Article 4 direction would not in itself ensure that the existing pub will be protected. However, it would mean that planning permission would be required and as such a planning application would be determined in the light of the Council's planning policies.
- 3.3 To justify the making of an Article 4 Direction, the Council must be satisfied that a particular permitted development would be "prejudicial to the proper planning of their area or constitute a threat to the amenities of their area." This is discussed in more detail in section 4 below.
- 3.4 The Council considers that making an immediate direction is necessary as it has come to our attention that a change of use may be likely in the future. Without the article 4 direction the Council would be unable to require a planning application, and as such be unable to consider the "proper planning of the area".

4. BACKGROUND

- 4.1 The subject property is a four storey property located on the corner of Ladbroke Grove and Lancaster Road. The entire property is in use as a public house (Class A4), be this trading area or ancillary space.
- 4.2 The property is not listed but is situated within the Ladbroke Conservation Area. It lies within the Ladbroke Grove Station Neighbourhood Shopping Centre.

- 4.3 The property is currently in the process of being registered as an asset of community value. This designation recognises the wider role that the public house has in the community. As well as providing the service one would expect from a public house, a place to meet and to refuel, it forms a hub for community activity. It is a local music venue, it offers rooms to hire and puts on a range of events and entertainments. The public house's value is reflected by the recent campaign and petition seeking to protect the public house from changing to a residential use.

5. PROPOSAL AND ISSUES

- 5.1 The protection of a public house, where shown to be a valued social and community use, is central to the Royal Borough's ambitions to "Keep Life Local" as articulated within its Core Strategy. This approach is supported by both the London Plan and the National Planning Policy Framework.

Relevant policies

Local policies

- 5.2 Central to Chapter 30 of the Core Strategy, Keeping Life Local, is the ambition for the Borough to contain a variety of uses. The Council does not wish to merely preside over the gradual erosion of the lower value use to the high.
- 5.3 Whilst the ambition is a golden thread which runs throughout the Core Strategy, there is a specific policy, Policy CK2, which does relate to the protection of public houses. This states that;

The Council will ensure opportunities exist for convenience shopping and other facilities which make life local throughout the Borough. To deliver this the Council will (a) protect individual shops (Class A1) outside of designated town centres. (b) resist the loss of Public Houses and other Drinking Establishments (Class A4) throughout the Borough (c) resist the loss of Restaurants and Cafes (Class A3) and Financial and Professional Services (Class A2) outside of Higher Order Town Centres."

- 5.4 The policy recognises that public houses can make a valuable contribution to the community and cultural life of the Borough. In addition, at the neighbourhood level, public houses can offer a source of identity and distinctiveness, can provide opportunities for social interaction and provide places to meet which support community cohesion – in short the essential ingredients of a sense of community and place. They are part of that fine grain mix of uses, which provide not only historical continuity, but contribute economically and to the vitality of our residential communities and the character of an area. They are an essential ingredient for promoting healthy communities and maintaining diverse, strong, secure and accessible neighbourhoods.
- 5.4 The Council notes that the continued loss of the Borough's stock of public houses over the past 30 years has eroded an easily accessible social focus for the community. From 181 premises in 1980 to 110 in 2012, well over one third have

been lost and with escalating residential property prices, this trend is set to continue. The Borough has experienced a number of traditional public houses changing into other drinking establishments which do not provide the same community function to residents. This history of decline makes the further loss more problematical.

- 5.6 Para 30.2.14D of the supporting text does note that, “the swap of other uses within the A Use class will be treated on their own merits depending on their role within the locality they serve.” As such a change of use of a public house to, say a shop, will not always be unacceptable. However, the policy does allow the Council to have grounds to refuse the change of use if it can be demonstrated that the pub plays a particularly valuable role.
- 5.7 Policy CF2 is also relevant. This considers the nature of the Borough’s town centre and the need to maintain their “character and their diversity”. The Kensington Park Hotel does contribute to the character and the diversity of the Ladbrooke Grove Station Neighbourhood Shopping Centre.

London Plan policies

- 5.8 The London Plan (2011) makes reference to the role that public houses can play in meeting local needs and securing lifetime neighbourhoods. This is built upon in the *Further Alterations to the London Plan (FALP)* (para 4.48A) (2014) which states that “the Mayor recognises the important role that London’s public houses can play in the social fabric of communities....To address these concerns [rate of closure] where there is sufficient evidence of need, community asset value and viability in pub use, boroughs are encouraged to bring forward policies to maintain, manage and enhance public houses.” We would expect the FALP to be adopted at the beginning of 2015.

The NPPF

- 5.9 The NPPF itself offers some support for the protection of a pub, with para 70 stating that planning decisions should, “plan positively for the provision and use of community facilities (such as public houses)”.

Conclusion

- 5.10 It is considered that this public house is an important part of the urban fabric and the local community. It makes a significant contribution to the character of the Conservation Area and its loss would have a harmful impact, both to this and its role as a community focus. Its loss would have a detrimental effect on the overall quality of life, which brings vitality to the Borough. This would be the case were the change of use to be to an A1/A2/A3 or B1 class use. Which all these uses have their merits none will, in this particular case, be as beneficial as the Kensington Park Hotel.
- 5.11 Given the value that the Council (through the Core Strategy) places on our remaining public houses as it is considered that the creation of an Immediate Article 4 direction to protect the current use would be justified. This approach is necessary to ensure the proper planning of the area.

Precipitation of a change of use.

- 5.12 There is a risk that once a developer become aware that the Council is beginning to use Article 4 Directions to preclude change of use from A4 uses, there would be a rash of changes of use before the Article 4s are made.

Cancellation of the Article 4 direction by the Secretary of State

- 5.13 Whilst the Council would need to notify the Secretary of State that we are making an Article 4 direction, we will not need approval from the SoS. It is for the LPA to confirm the Article 4 at a later date. The guidance published by the CLG on the matter states that “the Secretary of State will only exercise their powers ...if there are very clear reasons why intervention at this level is necessary.”

6. PROCEDURE and CONSULTATION

- 6.1 Immediate directions can only be used to withdraw a small number of permitted development rights. Once the immediate direction has been made by the Local Planning Authority, it shall give notice of the immediate Article 4 direction:
- by local advertisement in at least one newspaper in the local area (as defined in article 1(2) of the GPDO)
 - by site display at no fewer than two locations on the site of the property for a period not less than six weeks
 - individually on every owner and occupier of the site to which the direction relates
 - on the same day that the notice of an Article 4 direction is first published or displayed locally, the local planning authority shall notify the Secretary of State.
- 6.2 Any representations received during consultation will be taken into account by the local planning authority in determining whether to confirm a direction. Material changes to the direction resulting from consultation would require re-consultation.
- 6.3 The local planning authority must decide whether to confirm the order within six months of it being made, this direction would expire six months after coming into force, unless confirmed. The local planning authority cannot confirm the direction until after the expiration of either a period of at least 28 days following the latest date on which any notice relating to the direction was served or published, or such longer period as may be specified by the Secretary of State (after having been notified by the local planning authority of making a direction).

7. FINANCIAL, LEGAL AND RESOURCE IMPLICATIONS

- 7.1 The Article 4 direction will require that an application for planning permission be submitted for all development specified in the Article 4 Direction. Planning

applications that are required for any development as specified within the Article 4 Direction will not require a planning fee. The implications of this on the resourcing of the Planning Department need to be taken into account. The Council has received only a handful of applications relating to Article 4 Directions over the last 20 years. It is not, therefore, expected that there will be many applications, and thus, any applications can be dealt with within existing resources.

Compensation

- 7.2 In making an immediate Article 4 direction, the Council may be liable to pay compensation if (i) an application which was only required by the Article 4 Direction is subsequently refused or (ii) grant planning permission subject to conditions more limiting than the General Permitted Development Order would normally allow.
- 7.3 The compensation payable will be for the, “damage directly attributable to the withdrawal of permitted development rights”. In the case of the Kensington Park Hotel Public House, the compensation will relate to the differential in value between the existing A4 use and the (refused or diminished) A1/A2/A3/B1 use. A discussion with local agents confirms that the differential in value between a pub and a shop/financial service/restaurant is dependent on location. I would not like to estimate the difference (or if there is one) for this case, but given the fact that the ‘Kensington Park Hotel’ appears to be operating as a successful public house with good patronage it does not necessarily follow that an alternative A class use in this location is going to represent a higher value use.
- 7.4 If the Article 4 direction is made immediately, the Council may be liable for compensation for a 12 month period as a result of any refusal of permission or granting of permission subject to more onerous conditions.
- 7.5 The Council has not assessed compensation as a high risk, and therefore considers that the benefit of making the Immediate Direction to outweigh the risk of potential compensation.

8. OPTIONS

- a. **Recommended:** Make the Immediate Article 4 Direction, to come into force immediately on the Kensington Park Hotel public house, location plan of which is shown at Appendix one; or
- b. Decide not to make the Immediate Article 4 Direction.

Jonathan Wade

Head of Forward Planning

I agree with the recommendation.

Jonathan Bore
Signed:

Jonathan Bore, Executive Director for Planning and Borough Development

Date: 22 December 2014

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