

**THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

**23rd APRIL 2015**

**DELEGATED DECISION REPORT**

**CONFIRMATION OF THE IMMEDIATE ARTICLE 4 DIRECTIONS MADE ON 5<sup>th</sup> AND 7<sup>th</sup> NOVEMBER  
2014**

**THE ACADEMY PUBLIC HOUSE  
57 Princedale Road, London W11 4NP**

**1. EXECUTIVE SUMMARY**

- 1.1 On 5th November 2014 the Council “made” an Immediate Article 4 direction on the Academy Public House. The intention of the Article 4 direction was to remove the permitted development rights normally available and to require planning permission for the change of use of the existing public house (a Class A4 use) to an A1 (retail), A2 (financial and professional service), or A3 (restaurant) use. A further Article 4 direction was made on the 7<sup>th</sup> November 2014 to resist changes of use of the same property from an A4 use to a temporary flexible A1/A2/A3/B1 use.
- 1.2 Whilst these Article 4 directions came into effect on the 5<sup>th</sup> and 7<sup>th</sup> November 2014 respectively, they must be “confirmed” by the Council within six months (before 5<sup>th</sup> and 7<sup>th</sup> May 2015) if they are to become permanent.
- 1.3 The purpose of this report is to seek the approval for the confirmation of the Article 4s.

**2. RECOMMENDATIONS**

- 2.1 I recommend that the Executive Director for Planning and Borough Development authorises the confirmation of the Immediate Article 4 Directions dated 5<sup>th</sup> and 7<sup>th</sup> November 2014.
- 2.2 The Article 4 directions should control development consisting of a change of use:
- to a use falling within Class A1 (shops), Class A2 (financial and professional services) or Class A3 (restaurants and cafes) from a use falling within Class A4 (drinking establishments) of the Town and Country Planning (General Permitted Development) Order (GPDO).
  - to a flexible use falling within either Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes) or B1 (Business) from a use falling within Class A4 (drinking establishments) of the GPDO 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.

2.3 The process has been somewhat complicated by the recent consolidation of the GPDO which came into force on 15<sup>th</sup> April 2015. As such some relevant clauses/ sections may differ slightly between the original GPDO 1995 and the GPDO 2015.

### **3.0 BACKGROUND**

3.1 The Article 4 directions relate to the Academy, a public house which is situated on the corner of Princedale Road and Penzance Road. The previous description included in the reports of 5<sup>th</sup> and 7<sup>th</sup> November suggesting that the upper floors were in a C3 use (residential) was incorrect. On further investigation, a further site visit and a meeting with the licensee, it has been established that the entire property is in use as a public house (Class A4), be this the trading area or the ancillary accommodation of the upper floors.

3.2 In November 2014, it came to the Council's attention that a change of use was likely to take place in the near future – a change of use that would ordinarily be “permitted development”, under the provisions of the GPDO.

3.3 The Council was of the opinion that such a change of use would be contrary to the provisions of its newly revised Core Strategy (CS) and be “prejudicial to the proper planning of their area”. This is the test that is set out in paragraph 045 of the NPPG for the use of Immediate Article 4 directions. (ref ID 13-045-201403016)

3.4 The reasons for the decision recommending the making of the Article 4s can be summarised as follows:

- The public house is an important part of the urban fabric and the local community. Following nomination by the Norland Conservation Society, it was added to the Council's Register of Assets of Community Value on 30<sup>th</sup> December 2014. The reason for its addition is that “the current use of the building furthers the social wellbeing or social interests of the local community and it is realistic to believe that the assets can continue to further the social interests of the local community.”
- It makes a significant contribution to the character of the Conservation Area and its loss is likely to have a harmful impact.
- The impact is likely to be harmful were the change of use be to an A1/A2/A3 or B1 class use. Whilst all these uses may have their merits none are likely, in this particular case, to be as beneficial as the existing Academy public house.
- The Council considers that the loss of the public house on a “temporary” two year basis is likely to have a permanently detrimental effect on the building's

community function. Once the pub is lost, any relationship that it had with the local community could be gone forever.

- The Academy public house lies in a relatively isolated location. This adds to the importance of the Academy's role in contributing to social cohesion.

3.5 The loss of the public house is likely to have a detrimental effect on the character of the area, the vitality of the Borough and its overall quality of life of its residents. As such the making, and confirmation, of the Article 4 directions are considered necessary to ensure the proper planning of the area.

3.6 Ordinarily, a single Article 4 direction would be made and confirmed for a single property. In this case two Article 4s were necessary as the first, in error, omitted the restrictions to changes of use of the temporary flexible uses.

3.7 Policies/ guidance of particular relevance include:

- *CS Policy CK2*: This resists the loss of Public Houses and other Drinking Establishments (Class A4) throughout the Borough. 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 can provide places to meet which support community cohesion. The supporting text to the policy recognises that applications which include changes of use to other A class uses should be assessed on their own merits having regard to "their role within the locality they serve."

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.

- *CS Policy CL3(b)*: This policy notes the contribution that the use of a building (rather than merely its appearance) can have upon the character of an area and to its sense of place. This is of particular significance within a Conservation Area.
- *Para 4.48A of the Further Alterations to the London Plan (as published 2015)*: 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."

- *Para 70 of the NPPF*: states that planning decisions should, “plan positively for the provision and use of community facilities (such as public houses)”.
- *Norland Neighbourhood Plan*: Policy N9, Maintaining a Mixed Neighbourhood: requires the retention of commercial uses within the neighbourhood Area, to ensure that a walkable neighbourhood exists and contains a mix of uses that serves local people. The supporting text, para 1.2.47 recognises the role that local pubs can have in fostering community cohesion and a sense of belonging.

3.8 Whilst these Article 4 directions came into effect immediately, they must be “confirmed” by the Council within six months if they are to become permanent. The six month period ends on the 5<sup>th</sup> and 7<sup>th</sup> May 2015 respectively.

#### **4.0 CONSULTATION**

4.1 Under the requirements of the GPDO, the Council was required to notify the owners and the occupiers of the property, the Secretary of State and members of the public of the making of the original Immediate Article 4 directions. The consultation period ended on 28<sup>th</sup> November 2014. The Council must take account of the representations received before choosing to confirm the directions.

4.2 The Secretary of State commented on both Article 4s in letters dated 20<sup>th</sup> April 2015. These were written to Turley Associates, the planning consultants acting on behalf of the property owners, the Wellington Pub Company. The Council was copied in. These stated that “after carefully considering the issues raised, the Department [of Communities and Local Government] does not consider that the clear reasons for intervention at Government level are presented by this case.” The DCLG further notes that “it is now for the Royal Borough of Kensington and Chelsea to proceed with this matter as it sees fit.” Copies of the letters received are included within Appendix B.

4.3 Two letters were received by the Council from Turley Associates. These were dated 25<sup>th</sup> and 27<sup>th</sup> November 2014. A copy of the letters has been included in Appendix C. A table summarising the comments made, with a brief response is included in Appendix D. Turley Associates are of the view that:

- The delegated report making the initial Article 4s does not explain how the Article 4 direction will ensure the proper planning of the area.
- The report appears to be concerned about the protecting of a public house from residential uses – and not from other A class uses.
- Policy CK2 and the reasoned justification are inconsistent. Alternative A class uses may be as “valuable” as public houses, and as such it is inappropriate to make the Article 4 direction.

- The Council has not made it clear how the Academy will contribute to the character of the conservation area.
- The public house cannot be described as being in a relatively isolated location – and as such its value is diminished.
- The Council has not explained why a change of use to a B class use will be harmful.
- The Council has not explained why the temporary loss, for a two year period, will be harmful.
- In setting out the reasons why an Article 4 direction is appropriate, the Council are pre-determining a future planning application.

4.4 These comments have been addressed, in summary form, in the table included in Appendix D. The Council is satisfied that the Academy public house serves a valuable community function and contributes to the character of the conservation area. In addition, this is not the place to question the appropriateness of the newly adopted policy CK2. This policy offers the necessary flexibility. It recognises that applications which include changes of use of public houses to other A class uses should be assessed on their own merits having regard to “their role within the locality they serve.” Without Article 4 directions planning permission will not be required and the Council cannot make this assessment through the planning process.

4.5 The same can be said for changes of use to B class uses. A business (B class) use will not necessarily in itself be harmful. This will depend on the nature of the use and the nature of the A4 use being lost. The Article 4 direction allows the Council to make this assessment as and when a planning application is made.

4.6 The Council considers that the confirmation of an Article 4 direction to stop a temporary change of use is also essential. The value of the existing public house may exist in the way it operates and the way it serves its wider customer base as well as merely the fact that it does operate. Once lost this value is likely to be lost altogether.

## **5.0 CONFIRMATION OF THE ARTICLE 4 DIRECTIONS**

5.1 Officers remain of the view that the Article 4 directions are necessary to ensure the proper planning of the area.

5.2 The Academy public house retains its dual function. 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.

5.3 Its place in the community has been further confirmed by its designation as an “Asset of Community Value” on 30<sup>th</sup> December 2014. The stated reason for inclusion as an ACV is that *“the current use furthers the recreational and cultural interests of the local community and it is realistic to believe that the asset can continue to further the social interests of the local community.”*

- 5.4 As such this report proposes the confirmation of the Immediate Article 4 directions that has the effect of removing the permitted development rights granted by Parts 3 and 4 of Schedule 2 of the relevant GPDO.

## **6 FINANCIAL, LEGAL AND RESOURCE IMPLICATIONS**

- 6.1 The financial, legal and resource implications were considered as part of the decision making process for the making of the Immediate Article 4. These are repeated below.

### *Planning fees*

- 6.2 The Article 4 directions will require that an application for planning permission be submitted for all development specified in the Article 4 directions. Planning applications that are required for any development as specified within the Article 4 directions 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*

- 6.3 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) granted planning permission subject to conditions more limiting than the GPDO would normally allow.
- 6.4 The compensation payable will be for the “damage directly attributable to the withdrawal of permitted development rights”. In the case of the Academy 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. Given the fact that the ‘Academy’ appears to be operating as a successful public house with good patronage it does not necessarily follow that a retail art gallery (the subject of the certificate) in this location is going to represent a higher value use.
- 6.5 If the Article 4 directions are 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.
- 6.6 The Council has not assessed compensation as a high risk, and therefore considers that the benefit of making the Immediate Directions outweigh the risk of potential compensation.

## 7 PROCEDURE and CONSULTATION

- 7.1 Once the Immediate directions have been confirmed by the Local Planning Authority, it shall give notice of its confirmation and send a copy of the directions to the Secretary of State. This differs from the notification carried out when the Article 4 directions were made in that it is not a consultation. Further views of stakeholders are not sought.

## 8 OPTIONS

- 8.1 **Recommended:** Confirm the Immediate Article 4 directions, to come into force before 5<sup>th</sup> May, on the Academy Public House, location plan of which is shown at Appendix A; or
- 8.2 Decide not to make the Immediate Article 4 directions.

*Jonathan Wade*

*Head of Forward Planning*

*I agree with the recommendation.*

*Jonathan Bore*  
Signed:

*Jonathan Bore, Executive Director for Planning and Borough Development*

*Date: 23rd April 2015*

**Contact officer(s):** *Chris Turner Tel: 020 7361 3236*

# Appendix A: Location Plan

The Academy Public House, 57 Princedale Road, London W11 4NP



*Appendix B: Letter from CLG to Turley Associates*

*Appendix C: Letters from Turley Associates*

*Appendix D: Council's response to Turley Associates*

**57 Princedale Road: Article 4 direction**

**Comments on representations received from Turley Associates.**

<b>Comment (Brief summary)</b>	<b>Response</b>
<p>Council's report focuses on need to protect public houses from "insatiable demand" from residential uses. This aspect should not be relevant as the purpose of the Article 4 is to stop changes to other A class uses, and not to residential.</p>	<p>The Core Strategy and the delegated report reflect the reality within the Borough, that the principal pressure on existing public houses, and indeed a number of other valued but "lower value" uses, is for changes of use to residential. This is a market reality as residential values can be many times that of other uses. This is not to say that protection of A4 uses from other uses may not be necessary. Policy CK2 is explicit in seeking to protect public houses throughout the Borough, with the reasoned justification (para 30.3.14D) noting that changes of use from a public house to another A class use will be treated on its own merits. Regard will be had on the role that the use will have to the locality. The Council is satisfied that the Academy Public House provides an important social role. This reflects the range of functions that the public house is used for. This has been highlighted by its designation as an ACV. This may be further tested as and when an application is submitted.</p>
<p>The report does not explain how direction could protect "proper planning of the area" – as the article 4 relates to a single property.</p>	<p>The Council is satisfied that the existing public house is likely to serve a wider community function, and as such the article 4 is appropriate to give the Council the ability to determine the appropriateness of the change of use through the planning process. The recently adopted CS policies CK2 and CL3 consider this very change of use. It is perhaps useful to remember that these were found sound by the Planning Inspectorate at the EIP in 2013.</p> <p>The public house does appear to have an important role in its own right – and as such its protection may be necessary to ensure the "proper</p>

	<p>planning of the area.” Furthermore, the argument which appears to have been put forward that any Article 4 on a single property cannot be of a scale that effects the proper planning of an area is a little spurious. Having regard to the cumulative impact of a number of individual applications is a central principle of the planning system.</p>
<p>Objections to policy CK2 – as is out of step with the NPPF and the rest of the planning regime. Seeks to protect all A class uses – but at same time has no hierarchy in this regard. No proper consideration in the policy – of resisting changes of use from one “beneficial A use” to another.</p>	<p>The Council is satisfied that Policy CK2 remains appropriate. It was found sound in 2013. It was, and remains, relevant. There is no conflict within the policy and the associated reasoned justification. The policy is explicit that the Council will resist the loss of a range of A class uses – and at the same time that swaps within classes A2, A3 and A4 “will be treated on their own merits.” (para 30.3.14D.) In this the Council will have regard to, “their role within the locality they serve.” Where a public house has a particular role – as the Academy clearly does, it will be protected. This will not always be the case. There may be circumstances where a public house could be changed to an A1, A2, A3 or B1 use without a detrimental impact. In such a case an article 4 direction would not be appropriate.</p>
<p>The article 4 direction is not consistent with the adopted policy in that the adopted policy seeks to protect A1, A2, A3 and A4 uses – as all are uses which are valued for the service they provide and for their wider social role.</p>	<p>The Article 4 is consistent with the adopted policy in that it recognises the particular role that the Academy public house plays to the wider community. The loss is being assessed, in accordance with para 30.3.14D, on its “own merits.” This will be further assessed as and when an application is made. This will be an opportunity for the applicant to explain why the pub is of little value/that replacement with an alternative A class use may be suitable.</p> <p>The Council does recognise that A1, A2 and A3 uses may be of value. The function of the Article 4 to allow the Council to consider the merits of the differing uses through the planning process.</p>
<p>Not clear how the public house will contribute to the character of the conservation area or how a “beneficial A class use” will play any less of a contribution.</p>	<p>The Council is satisfied that the Academy public house appears to be an important part of the urban fabric and of the local community. As such, its use makes a significant contribution to the character of the conservation area. At the EIP into the pubs policy, and in particular to the amended</p>

	<p>CL3, the Inspector was satisfied that a building’s use, as well as its appearance, can contribute to the character of the conservation area and to its sense of place. The contribution that a public house is likely to differ from that of, for example a restaurant.</p>
<p>The suggestion that the public house has value due to its isolation is not credible.</p>	<p>The Council is of the view that the Academy PH is located in a relatively isolated location – and as such has particular value. It does not lie within one of the many local centres across the Borough. Similarly it does not lie within a larger or “higher order” centre. Public Houses in “back street” locations such as this do contribute to the character and the function of an area, adding to community cohesion. They are not town centre entertainment venues, or “vertical drinking establishments.”</p> <p>It is important to stress that the value of the pub is not dependent on the relatively isolated location. In this case, the Council is satisfied that it does appear to have a community value in its own right. This reflects its designation as an ACV.</p>
<p>The Council is pre-determining a future planning application, by noting that the loss of the pub will have a harmful impact. This is an inappropriate use of the article 4 direction</p>	<p>The Council is not pre-judging any forthcoming application. In consideration of an application the Council will have regard to, for example, the designation of the public house as an ACV and any evidence which the applicant chooses to provide.</p> <p>Clearly, a view of the value of the existing use is inherent within the Article 4 process. If a use is of little value an article 4 direction would not be needed. The Council has not used Article 4s for all public houses, just those which have been shown to be under immediate threat or likely to be of particular value.</p>
<p>The council should consider why a temporary change of use would be considered harmful – given that the property will revert to its original use after two years</p>	<p>The value of the existing public house exists in the way it operates and the way it serves its wider customer base as well as merely the fact that it does operate. Once lost this value is likely to be lost altogether.</p>

The council has not considered why a change of use to a B1 uses would be harmful – given that CF5 generally permits small offices across the Borough.

Whist there is a value in a small office, this must be weighed against the dis-benefits associated with the loss of a public house which serves a wider function. A public house assists in creating a sense of place and maintaining strong links with the local community.