

Copies of recent appeal decisions in the Borough relating to public houses





Appeal Decision

Site visit made on 19 December 2012

by Paul Jackson B Arch (Hons) RIBA

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

Decision date: 10 January 2013

Appeal Ref: APP/K5600/A/12/2180954

Britannia Tap, 150 Warwick Road, London W14 8PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr John Ripley against the decision of Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/12/01775, dated 14 May 2012, was refused by notice dated 11 July 2012.
 - The development proposed is change of use from public house (Use Class A4) to 4 No. self contained flats (Use Class C3) also erection of rear extensions at basement, ground, 1st and 2nd floors and alterations to front elevation at ground floor level.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed change of use and alterations and extensions would preserve or enhance the character or appearance of the Edwardes Square, Scarsdale and Abingdon Conservation Area.

Reasons

3. The Britannia Tap is a public house on Warwick Road at the western edge of the conservation area. It forms part of a short terrace of buildings including a restaurant and another larger pub, the Warwick Arms. The terrace faces a busy road and is surrounded by more recent development, in particular the adjacent Council waste and recycling depot, which is not in the conservation area and has a negative impact. With regard to pubs, the Conservation Area Proposals Statement (CAPS) for the Edwardes Square, Scarsdale and Abingdon Conservation Area advises that the area is fortunate in the visual standards of its pubs all of which have colour and vitality without garishness. The appeal premises is not visually prominent on a corner but terminates a terrace alongside a bland utilitarian building. Nevertheless, its hanging sign (now removed) and different elevational treatment punctuates the terrace, enhances the character of the conservation area and contributes to its significance as a heritage asset.
4. At ground floor, the scheme would replicate the proportions of the upper floor fenestration and would be sympathetic to the appearance of adjacent similar buildings, but would not generate a similar level of visual interest. The rear alterations would not detract from the appearance of the area. The loss of the pub would detract from the character of the conservation area, but that if there

are other compelling reasons for allowing the change of use, whilst the loss of visual interest would be a negative factor, I consider that there could be circumstances in which the alterations would not, on balance, harm the appearance of the conservation area.

5. The change of use would remove a community facility that contributes to the social, recreational and cultural facilities of the area. The 2010 Royal Borough of Kensington and Chelsea's Core Strategy (CS) recognises at paragraph 30.3.7 that pubs are a form of social and community use. Such uses are protected under policy CK 1. The explanatory text goes on to say that out of 113 traditional public houses, only 6 have been lost to residential use; because of this, at the time of adoption, there was 'too little evidence to resist their loss at the present time' but that the situation would be kept under review. However, since then, the position has changed. The Borough has completed consultation on a draft planning policy for the protection of public houses and this is referred to in the reason for refusal. The emerging policy, which according to the Council has reached examination stage, seeks to resist the loss of public houses and other drinking establishments (Class A4) throughout the Borough; and other uses which provide a wider social role. The supporting text builds on the CS. It notes that well over a third of public houses in the Borough have been lost since 1980 and that the trend is set to continue because of the higher land value that attaches to residential use.
6. Whilst the weight that can be attached to this emerging policy must be less than that which would apply to an adopted policy because of the stage it has reached, it clearly follows on from a concern expressed in the CS. Moreover, paragraph 70 of the National Planning Policy Framework (NPPF) of March 2012 is also a material consideration; it advises that planning policies and decisions should plan positively for the provision and use of various community facilities including public houses, to enhance the sustainability of communities and residential environments. Accordingly I consider that in policy, the change of use of pubs to residential is resisted in principle.
7. Importantly, I have no evidence of any marketing of the premises as a public house which might ensure its continuing use. Only very basic financial information for the 2 years up to March 2011 has been provided; notwithstanding the general perception that pubs are in decline, this is insufficient to indicate a firm trend as far as the appeal property is concerned. Even between 2010 and 2011, on declining turnover, gross profit rose (albeit acknowledged to be insufficient to survive on comfortably). No snacks or food are indicated as being sold in 2009-10, which in itself raises some doubts, because food is generally recognised to be important in attracting customers. I am advised that the tenants tried Thai food and Pie and Mash but it is unclear to what extent these activities took place or when.
8. There can be many reasons why an enterprise fails to provide a good return. It has not been shown that in the current situation, given a fresh start, the premises would attract no interest. Whilst undoubtedly small and close to another pub, that situation has remained the same for many years. Without further information and testing in the market, these matters are of sufficient concern to weigh against change of use, which would be permanent.

Other matters

9. Prior to the site visit, a signed and dated Section 106 (S106) Unilateral Undertaking was submitted that makes provision for contributions to community facilities, education and health and restricts the availability of residential parking permits to future residents of the proposed development. The Council has confirmed by email dated 16 October 2012 that this overcomes the second and third reasons for refusal.
10. I have given consideration to the proposed financial contributions having regard to policies of the CS, extracts from the Council's Supplementary Planning Document (SPD) *Planning Obligations* of 2010 and the Planning Obligations Statement. The relevant Annexes advising the level of contributions have not been provided and I am unable to assess whether the figures for community facilities, education and health are correct for this development of single bedroom flats, 2 of which would only accommodate 1 person. The provisions of the Undertaking related to not permitting car parking permits with respect to the occupants of 3 of the dwellings conform to the advice in the 2008 SPD *Transport* and are directly related to the proposed development, fairly and reasonably related in scale and kind, and if I was otherwise minded to allow the appeal, would be necessary to make the development acceptable. However, overall, only limited weight can be given to the Undertaking.
11. I have taken account of all the other matters raised including the benefits of 3 new small dwellings, the consultation undertaken with the Council; and the advice in June 2012 that a new policy was being consulted upon that would play a part in the Council's refusal. However I have to make a decision based on the policy position and the evidence presented at the current time.

Conclusion

12. It has not been shown that the proposed change of use has been adequately justified. The loss of the Britannia Tap would detract from the character of the building, the terrace of which it is part and the conservation area as a whole. As such it would conflict with the aims of CS policies CO 5, CK 1, CL 1 and CL 3; emerging policy and national policy objectives. For these reasons, the appeal must be dismissed.

Paul Jackson

INSPECTOR



Appeal Decision

Hearing held on 9 August 2011

Site visit made on 9 August 2011

by K D Barton BA(Hons) Dip Arch DipArb RIBA FCI Arb

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

Decision date: 1 September 2011

Appeal Ref: APP/K5600/A/11/2152776

Prince of Wales Public House, Princesdale Road, London W11 4NJ

- The appeal is made under section 78 of the *Town and Country Planning Act 1990* against a refusal to grant planning permission.
 - The appeal is made by Prince of Wales Inn Limited against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/10/02734, dated 24 August 2010, was refused by notice dated 7 April 2011.
 - The development proposed is "change of use from Class A4 Public House to two self contained residential dwellings, including the erection of a side extension, provision of a new basement level under the rear garden area, extend the depth of the existing basement level under the building, provision of a roof terrace and elevational alterations to both the front and rear elevations".
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Class A4 Public House to two self contained residential dwellings, including the erection of a side extension, provision of a new basement level under the rear garden area, extend the depth of the existing basement level under the building, provision of a roof terrace and elevational alterations to both the front and rear elevations at the Prince of Wales Public House, Princesdale Road, London W11 4NJ in accordance with the terms of the application, Ref PP/10/02734, dated 24 August 2010, subject to the conditions set out in the attached schedule.

Effect on the Character of the Surrounding Area

2. The public house was purpose built around 1845 and is a three storey plus basement mid-terrace building which has its principal frontage onto Princesdale Road. At the rear is a secondary frontage to Pottery Lane and Portland Road with an open 'beer garden'. The building is not listed but lies within the Norland Conservation Area and is identified in the *Norland Conservation Area Policy Statement* as a feature building as it forms an endstop to the long vista along Queensdale Road. Etched glass windows and interior screens are also mentioned.
3. The appearance of the pub makes a contribution to the Conservation Area. As part of the proposals non-original windows above ground floor level would be replaced and conditions could ensure that details of new doors and windows, all new boundary treatments, and rooflights to the subterranean extension, were submitted for approval, that conservation rooflights were used in the roof, and that the roof slopes be clad in natural slate. Conditions could also ensure that

- any new railings were painted black and retained as such, that windows were timber framed, single glazed, double hung, sliding sashes, and that all works and making good matched the original work. These safeguards would ensure that the appearance of the building, and the Conservation Area, were not just preserved but enhanced.
4. The interior screens were removed some time ago and whilst both the Council, and the Kensington Society, would prefer the etched glass windows in the ground floor of the pub to be retained, most of the larger panes have already been replaced with clear glass. It would be unreasonable to require the etched glazing to be replaced or the remaining glazing to be retained but a condition attached to any planning permission requiring recording of the building, including glazing, would be appropriate.
 5. Turning to character, the Conservation Area is predominantly residential but there are other elements that contribute to a Victorian character. These include formal open spaces, places of worship, mews, shopping parades, and public houses that are not always part of the shopping centres. The pub has existed since the area was developed and has a social value as identified in paragraph 56 of *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment*.
 6. Although the proposal would mean the loss of a pub, there are other establishments in the area. Whilst these may not all be traditional pubs, and at least one has been described as expensive, they do provide highlights of activity that help to distinguish this vibrant residential area from a dormitory suburb. The loss of the public house use would not, therefore, have any significant impact on the character of the Conservation Area and the proposal would comply with the aims of the Council's *Core Strategy* (CS) Policies CL 1 and CL 3.
 7. There is strong local support for retaining the pub. *Planning Policy Statement 1: Delivering Sustainable Development* (PPS1) sets out the Government's commitment to developing strong, vibrant and sustainable communities. The draft *National Planning Policy Framework* (NPPF) is at an early stage and so attracts limited weight but it also seeks to create strong, vibrant and healthy communities and aims to deliver the facilities and services that the community needs. However, the NPPF, and PPS1, endorse a plan led system. There are no policies in the *London Plan*, or saved Unitary Development Plan that seek to protect pubs and the most up-to date policy is set out in the CS, which reflects the NPPF direction of travel in policy despite predating it.
 8. The CS defines social and community uses to be retained, but does not include pubs in that definition. Paragraph 30.3.7 of the CS accepts that public houses are a social and community use but indicates that, whilst there is concern about their demise, only 6 have been lost to residential use in the last decade. Paragraph 30.3.7 goes on to note that whilst this is regrettable the Borough has 173 bars, 113 of which are traditional pubs, and the entire Borough is served by one or more establishments within a 10 minute walk. It concludes by stating that "there is too little evidence to resist their loss at the present time" although noting that this will be kept under review. As the CS was only adopted in December 2010 there has been no review to date. Moreover, this policy position has been accepted by the Council in two recent applications relating to the Cowshed on Ladbrooke Grove and 57 Ossington Street. The

proposal would not, therefore, conflict with CS Policies CK 1 and CK 3 that seek to 'keep life local'.

9. The Kensington Society maintains that the policy stance was fixed in 2007 and that more pubs have been lost to uses other than housing, including three in the Norland Ward leaving only two in the Ward that will serve drinks without food. It advocates the adoption of a 5 minute walk or a 300 metres distance to reach a pub, on which basis it believes that there is a local gap in provision. However, there is no policy basis for this approach. The CS, under the heading of Walkable Neighbourhoods and Neighbourhood Facilities, adopts a 10 minute walk as appropriate but in any event there are other establishments within 300 metres of the Prince of Wales. These may not all be traditional pubs but paragraph 30.3.7 of the CS notes that changes from traditional pubs to other drinking establishments that do not provide the same community function do not need planning permission and so cannot be controlled.
10. Reference has been made to Policy EC13.1 of *Planning Policy Statement 4: Planning for Sustainable Economic Growth* but this relates to shops and services in local centres and so is not applicable in this case. The decision notice refers to CS Policy CV 1, which sets out the overall vision for the Borough, and CS Policy CO 1, which is a strategic objective relating in part to 'keeping life local'. However, the CS indicates that Section 2B of the Strategy "contains the policies that will be used in determining planning applications". The policies in that section have been formulated in the light of the Vision and Objectives. As the proposal would not conflict with the detailed CS Policies CK 1 and CK 3 that support Policy CO 1 and in turn Policy CV 1 it would be illogical to claim that the proposal would do anything other than comply with the Objective or Vision. The proposal would accord with the aims of the recently adopted CS.

Other Matters

11. The Prince of Wales is within a quiet residential area. Noise and disturbance from people using the rear beer garden has led to 60 complaints in the period 2002 to 2011 with the majority in 2003 and 2006-7. Restrictions negotiated with neighbours have prevented any review of the licence or noise abatement notice but if the restrictions were removed such measures would be likely to further impact detrimentally on the operation of the pub. Whilst the pub has existing for very many years and people moving into the area would have done so in full knowledge of its existence, the Council's Area Senior Environmental Health Officer accepts that there is a negative impact on the amenity of local residents and for that reason would prefer to see the application approved but appreciates that noise nuisance is only one consideration.
12. Some residents are concerned that the pub might have been run down on purpose, but others accept that there was an improvement of late. The owner is an experienced operator of licensed premises and runs 5 restaurants and 2 pubs elsewhere in London. Whilst the Council had informally indicated that a change of use to residential could be acceptable, the owner has promoted the pub and introduced offers such as 50% off food but without success. An expert report, albeit based on a short period of operation by the current owners, indicates that the pub is not viable and that any operator would be running at an annual loss of at least £117,000 before the payment of any shareholder dividends or directors remuneration.

13. Factors contributing to this are the lack of prominence and passing trade and the competition in the area. In addition, the floor area of the pub is relatively small and the outside 'beer garden' is necessary to boost trade. This has caused problems due to noise and disturbance leading to reduced hours of operation for the garden. The pub might be busy in the summer months but the use of the garden is seasonal and weather dependant whereas trade needs to be busy all year round. Whilst local residents are concerned that the lack of viability might be due to too high a price having been paid for the pub, the expert viability evidence has used the market rate rather than the purchase price. The Council has some concerns about the viability evidence in terms of catchment and the nature of the competition but has not contested it or produced its own evidence.
14. Expert evidence indicates that a restaurant use would not generate an adequate return on investment but there is interest from an A1 retailer for which planning permission would not be required. However, neither of these uses would provide the same community facility as a public house.
15. Housing targets are based on an assessment of larger sites and do not include 'windfall' sites such as this. Because of the high land values in the area there is pressure for all development to gravitate towards housing and so the provision of a windfall site has to be balanced against other considerations. Notwithstanding that, the Officer's report to committee accepts that the proposed dwellings are considered acceptable in terms of size and facilities and are supported by CS Policy CH 2 and Policy 3A.1 of the *London Plan*.
16. Some local residents are concerned about excavation in close proximity to neighbouring properties. Such engineering operations are not uncommon and the Council has developed *Supplementary Planning Documents* to address such situations. Whilst excavations are development they do not contribute to the visual mass above ground and, even here where the volume of the building would be increased by around 45%, would not constitute overdevelopment of the site. A Construction Methodology and Method Statements prepared by Engineers were submitted with the application and conditions requiring a qualified engineer to supervise the works and the contractor to be a member of the Considerate Constructors Scheme would ensure the works were carried out appropriately and safely even though the properties either side at the rear are effectively end of terrace rather than mid terrace properties.
17. Party wall matters are a legal rather than a planning matter but the Method Statements would address the concerns of a neighbour next door but one to the site who has a basement whilst the intervening property does not. Reference has been made to restrictive covenants and a possible right of way through the pub but these are also legal rather than planning matters.
18. The area is not in a flood zone and there have been no objections from any statutory consultees on flooding grounds but the Kensington Society maintains that the area is prone to surface water flooding and that basement bedrooms would therefore give rise to concern. A condition requiring a Sustainable Urban Drainage Scheme to be submitted would ensure that surface water drainage would be appropriately addressed.
19. Reference has been made to a previous decision relating to The Avenue in Minehead (APP/H3320/A/07/2044037) and to a case relating to the demolition of a pub in East London. Little detail of the latter has been submitted but each

case should be considered on its own merits. Both cases differ from this appeal as they were determined against a different policy background. In the former case there was no viability evidence, it involved an A5 use that raises different matters, and servicing was a problem whilst the latter involved demolition of the pub unlike this case where the building would be retained and enhanced. Those cases would not justify dismissing this appeal.

20. Some local residents have complained that they were not notified of the hearing but the Council's letters of notification and list of those notified appears to include those who say they have not been notified. In any event, they have made representations and I do not consider that anyone has been disadvantaged by determining this appeal.
21. The concerns of local residents, including an on-line petition, have been taken into account in determining this appeal. With a number of safeguards that could be ensured by conditions the proposal would maintain the character and appearance of the Conservation Area.

Conditions

22. In addition to the normal time condition and those mentioned above, a condition setting out the approved plans should be attached for the avoidance of doubt and in the interests of good planning. Suggested conditions 7 and 8 duplicate suggested conditions 1 and 2 and so are unnecessary.
23. As the site is within a close knit residential area suggested condition 5 requiring a Construction Traffic Management Plan to be approved would meet the tests in Circular 11/95. The Kensington Society considers that because of the narrowness of the streets at the rear all works should be contained within the site. Whilst this is a sensible aim it is not possible at this stage to be sure that such a restriction would be possible and so details should be required to be submitted for the Council's approval. Suggested condition 5 seeks, amongst other matters, to control the routing of construction traffic but paragraph 71 of Circular 11/95 states that conditions are not an appropriate means of controlling the right of passage over public highways and this part of the condition should be deleted.
24. The recently adopted CS requires new residential development to be parking permit free and this should be required as in suggested condition 6. On-site parking is proposed and suggested conditions 14 and 15 could be amalgamated precluding more than one space per residential unit and requiring them to be provided before occupation and retained as such thereafter in accordance with adopted parking requirements and in the interests of highway safety.
25. As the building is within a Conservation Area it was accepted that suggested condition 18 precluding the provision of roof structures without approval was unnecessary. Air conditioning units are shown on the roof terrace and rather than suggested condition 16 three alternative conditions were suggested by the Council requiring details of external mechanical equipment to be submitted together with details of any associated screening or housing, setting limits for noise emissions and requiring anti-vibration mounts. These safeguards are necessary in this residential area to protect the living conditions of neighbours.
26. The recently adopted CS requires dwellings to achieve an EcoHomes rating of Very Good with 40% of the credits achieved under the Energy, Water and Materials sections. This, and a post construction review certificate confirming

the Very Good rating, should be required by condition in the interests of sustainability.

27. The space that was the rear 'beer garden' contributes to the appearance of the area by providing some relief from the densely developed surroundings. To ensure its continued contribution a hard and soft landscaping plan and details of boundary treatments should be required.
28. The proposal is for flats within the existing building and these would not have permitted development rights. Whilst the Council seeks to retain control should the two residential units be combined at some time in the future, the building is in a Conservation Area and there are already some limits on permitted development. In practice little could be done that would have any significant impact on the appearance of the Conservation Area and suggested condition 20 would therefore be unnecessary.

K D Barton

INSPECTOR

Appeal Ref: APP/K5600/A/11/2152776
Prince of Wales Public House, Princedale Road, London W11 4NJ
Schedule of conditions attached to planning permission

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 10036/PP/010C, 10036/PP/011C, 10036/PP/012C, 10036/PP/013C, 10036/PP/014C, 10036/PP/018C, 10036/PP/019C, 10036/PP/020C, 10036/PP/021C, 10036/PP/022C, 10036/PP/023C, 10036/EX/010B, 10036/EX/011B, 10036/EX/012B, 10036/EX/013B, 10036/EX/014B, 10036/EX/018C, 10036/EX/019C, 10036/EX/020C.
- 3) The developer shall give the local planning authority 28 days advance notice of the start of any works and, for a period of 14 days before any work begins, reasonable access to the building shall be given to a person/body nominated by the local planning authority for the purpose of recording the building by making measured drawings or taking photographs.
- 4) No development shall take place until a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) has been appointed to supervise the construction works throughout their duration and their appointment has been confirmed in writing to the local planning authority. In the event that the appointed engineer ceases to perform that role for whatever reason before the construction works are completed those works will cease until a replacement chartered engineer of the afore-described qualification has been appointed to supervise their completion and their appointment confirmed in writing to the local planning authority. No construction work shall take place unless an engineer is at that time currently appointed and their appointment has been notified to the local planning authority in accordance with this condition.
- 5) No development shall be carried out until such time as the contractor carrying out the work is a member of the Considerate Constructors Scheme and its Code of Practice, and the membership and contact details are clearly displayed on the site so that they can be easily read by members of the public.
- 6) No development shall take place until a Construction Traffic Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan should include:
 - i) access arrangements to the site;
 - ii) the estimated number of vehicles per day/week; details of any vehicle holding area;
 - iii) details of the vehicle call up procedure;
 - iv) estimates for the number and type of parking suspensions that would be required;

- v) details of any diversion, disruption or other abnormal use of the public highway during demolition, excavation and construction works;
- vi) a strategy for co-ordinating the connection of services on site with any programmed work to utilities on adjacent land;
- vii) a work programme and/or timescale for each phase of the demolition, excavation and construction works: and
- viii) where the works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes, parking bay suspensions and remaining road width for vehicular movements.

The development shall not be carried out except in accordance with the approved Construction Traffic Management Plan.

- 7) No development shall take place until a scheme has been submitted to, and approved in writing by, the local planning authority to ensure that the residents of the two additional units provided by the development, other than those residents with disabilities who are Purple Badge Holders, have no entitlement to a residents parking permit.
- 8) No development shall take place until full particulars of the following have been submitted to, and approved in writing by, the local planning authority:
 - i) Section and elevation details of all new windows and doors located at basement floor level (at 1:20) showing the design and external appearance. All new windows at ground, first, and second floor levels hereby approved shall be timber framed, single glazed, double hung, sliding sashes.
 - ii) Section, elevation and plan details of all new boundaries to the front and rear (at 1:50) showing the design and external appearance.
 - iii) Section and plan details of all new rooflights to the subterranean extension (at 1:50) showing the upstand from garden level.
- 9) The development shall be carried out in accordance with the approved details and retained as such.
- 10) No development shall take place until full particulars of the following have been submitted to, and approved in writing by, the local planning authority:
 - i) Sustainable Urban Drainage (SUDS) measures on the site;
 - ii) External mechanical equipment and associated screening/housing.The development shall be carried out in accordance with the approved details.
- 11) Noise emitted by any external mechanical equipment hereby permitted shall not increase the existing lowest LA90(10min) background noise level at any time when the plant is operating. The noise emitted shall be measured or predicted at 1.0m from the facade of the nearest residential premises or at 1.2m above any adjacent residential garden, terrace, balcony or patio. The plant shall be serviced in accordance with

manufacturers' instructions and as necessary to ensure that the requirements of the condition are maintained. If at any time the plant is unable to comply with this condition, it shall be switched off and not used again until it is able to comply.

- 12) External mechanical equipment shall be supported on adequate proprietary anti-vibration mounts as necessary to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.
- 13) All works and work of making good shall be finished to match the existing original work in respect of material, colour, texture, and profile and, in the case of brickwork, facebond and pointing.
- 14) All new railings hereby permitted shall be painted black, and so maintained.
- 15) The subterranean development hereby approved shall not be used or occupied until the entire dwelling has achieved an EcoHomes rating of Very Good with 40% of the credits achieved under the Energy, Water and Materials sections and a post construction review Certificate for the dwelling has been issued certifying that a Very Good rating has been achieved.
- 16) The whole of the car parking accommodation shown on the drawings hereby approved shall be provided before the occupation of the development, and shall be permanently retained for the parking of vehicles ancillary to the use of the dwellings and for no other purpose. The space to be provided for the parking of cars in connection with the use of the building shall not be used for the parking of more than two cars.
- 17) The roof slopes of the building shall be clad in natural slates, and so maintained.
- 18) All new rooflights hereby permitted shall be of a traditional conservation type being flush with the roof slope and so maintained.
- 19) No development shall take place until full details of the following have been submitted to, and approved in writing by, the local planning authority:
 - i) a landscaping and tree/shrub planting scheme;
 - ii) a hard landscaping scheme including any paths and the surfacing materials to be used;
 - iii) any walls, fences, railings, gates or other boundaries or enclosures.

The development shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Nick De Lotbiniere	London Planning Practice
Trevor Watson	Davis Coffey Lyons
Will Ricker	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jon Wade	Royal Borough of Kensington and Chelsea
Gideon Whittingham	Royal Borough of Kensington and Chelsea
Elen Richards	Royal Borough of Kensington and Chelsea
David McDonald	Royal Borough of Kensington and Chelsea

INTERESTED PERSONS:

Michael Bach	Kensington Society
Peter Barnes	Local Resident
Cora Barnes	Local Resident
Harry Blundun	Local Resident
Mr Brett	Local Resident
Anna Brett	Local Resident
Timothy Broke-Smith	Local Resident
Jean Broke-Smith	Local Resident
Robert Erskine	Local Resident
Edward Eyerman	Local Resident
Amanda Frame	Kensington Society and Local Resident
Tim Hardy	Local Resident
Anne Jack	Local Resident
Richard Jameson	Local Resident
J B Kinsman	Local Resident
Mr Lieberman	Local Resident
David Lindsay	Local Resident
Hugh Nicholson	Local Resident
Cathie O'Dea	Local Resident
Ian Rakoff	Local Resident
Ms Rose	Local Resident
Olwyn Silvester	Local Resident
Mr Silvester	Local Resident
Richard Towner	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Council's letters of notification and list of those notified
- 2 Map submitted by Michael Bach
- 3 Petition submitted by Amanda Frame
- 4 Conservation Principles Policies and Guidance for the Sustainable Management of the Historic Environment submitted by David McDonald
- 5 Appeal Decision APP/H3320/A/07/2044037 submitted by David McDonald
- 6 Additional suggested conditions submitted by Elen Richards



Appeal Decisions

Inquiry opened on 9 October 2012

Site visits made on 10 October 2012 and 5 November 2012

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 16 January 2013

Appeal A: APP/K5600/A/12/2172028

9, Phene Street, London, SW3 5NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr T Flanagan (RAB Pension Trust) against The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/11/03352/Q2, is dated 5 October 2011.
 - The development proposed is Change of Use to single family dwelling and provision for waste storage.
 - The inquiry sat for 6 days on 9/10/11/12/25 October 2012 and 5 November 2012.
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Appeal B: APP/K5600/A/12/2175522

9, Phene Street, London, SW3 5NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr T Flanagan (RAB Pension Trust) against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/11/02421/C, dated 22 July 2011, was refused by notice dated 7 March 2012.
 - The development proposed is Change of use to single family dwelling, basement extensions and external alterations.
 - The inquiry sat for 6 days on 9/10/11/12/25 October and 5 November 2012.
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Decision

1. The appeals are dismissed.

Background and procedural matters

2. The appeal premises is The Phene Arms public house. The scheme in appeal A is for its change of use with no external alterations. The scheme in appeal B is for a change of use, some minor external alterations and the construction of substantial basement accommodation. The Council's concern on both proposals is solely on the change of use and does not differ in regard to the 2 schemes. I shall therefore deal below with both applications together.
3. Amongst other things the Council was initially concerned that there would be unacceptable pressure on local infrastructure, including education, health and community facilities, and upon on-street parking. These concerns have been overcome by Section 106 Agreements to make relevant contributions and to prevent owners and occupiers of the site obtaining parking permits.

Main Issues

4. The main issues on both appeals are:

first, the effect of the proposed development on the value of the appeal premises as a non-designated heritage asset and more widely upon the character and appearance of the surrounding area which includes the Cheyne Conservation Area; and

second, whether having regard to the development plan, Government policy and emerging local policy there is sufficient justification to resist the proposed development on the grounds of an unacceptable loss of a community facility.

Reasons

The significance of the appeal premises as a heritage asset and the impact of the proposed development on the character and appearance of the surrounding area including the Cheyne Conservation Area

5. The Phene Arms was built in the mid-19th century as part of the Victorian development of this part of Chelsea. It is named after a local eccentric, Dr Phene, who was the developer of some of the surrounding residential area. It is an attractive and well proportioned building with features on the ground floor elevations that clearly distinguish it as a public house.
6. Although The Phene Arms is not listed it is common ground between the parties that it should be regarded as a non-designated heritage asset. *The National Planning Policy Framework (the Framework)* says that the effect of an application on the significance of such assets should be taken into account in determining planning applications.
7. In determining the value of a non-designated heritage asset and the impact of the proposal on it consideration must be given to those matters that give significance to the asset. There is no disagreement between the parties that aesthetic and historical considerations are relevant to the significance of such assets. However, there is a dispute as to whether or not community and social considerations should be taken into account. In my view they should be for although not referred to the *PPS5 Practice Guide* they are referred to in to English Heritage documents, *Conservation Principles Policies and Guidance 2008* and the *Good Practice Guide for Local Heritage Listing (2012)*.
8. The Council considers that The Phene Arms is of sufficient community and social value for this to be of considerable significance to it as a non-designated heritage asset. The loss of the premises to housing would, therefore, says the Council, be of substantial harm to the value of the building as such an asset. The Phene Arms is a public house which local people say they like to go to and hold occasional meetings in. Undoubtedly The Phene Arms is warmly regarded by some and holds pleasant memories and associations. It has occasionally been used to hold meetings of local associations. However, the same could be said of many such premises. From all the evidence before me I do not consider that The Phene Arms has a sufficiently strong community and social value for these factors to be of any substantial significance to it as a non-designated heritage asset.
9. The Phene Arms although an attractive building has no outstanding aesthetic value and neither proposal would result in changes to the fabric of the building

sufficient to harm its appearance architecturally. The appeal property is of only modest historical value in its own right as a long standing public house and being named after Dr Phene. Thus I do not consider that the appeal building has an inherent attribute in aesthetic and historic terms to warrant it having substantial significance as a non-designated heritage asset. Nor would the significance it does have in this regard be unduly harmed by the proposed developments.

10. However, that is not to say that the current use of the premises cannot still perform an important role in the character and appearance of the area in which it is located. I go on to consider this below.
11. The appeal site lies in that part of Chelsea covered by the Cheyne Conservation Area. The Conservation Area Policy Statement, in that part copied for the inquiry, details street by street the architecture of the area but does little to convey a broader impression of the area. For this I have relied upon all the evidence before me and what I saw. The Conservation Area extends from the Kings Road to the north and Cheyne Walk and the Chelsea Embankment to the south. Both these roads are major thoroughfares. Kings Road is a bustling shopping area and the Chelsea Embankment contains substantial residential buildings.
12. The area between these two roads comprises, in the northern part, terraces and squares developed during the early to mid 19th century. The appeal site lies on the eastern edge of this area. Much of the remainder of the Conservation Area to the south, often known as Old Chelsea, forms part of what was the mediaeval village of Chelsea. This area contains narrower roads and a slightly more intimate feel than the residential areas to the north. However, despite these differences, that part of the Conservation Area lying between the two main thoroughfares is strongly characterised by predominantly residential properties with a scattering of commercial uses including shops, offices and public houses.
13. Four public houses remain in the Conservation Area. One of these premises comprises one of the pubs along the Kings Road. The others are The Phene, the Cross Keys (albeit currently closed) and the Pigs Ear. They are the historical remnant of what had been a much larger number of public houses in this part of Chelsea prior to the construction of the Chelsea embankment in the 1870s.
14. One of the delights of walking through this area off the main thoroughfares is that it is not solely residential in character. The public houses in particular, with their vitality and vibrancy, create a pleasant contrast with the more subdued residential streets. This is all the more so because they do not stand out assertively but are seen from relatively limited viewpoints so that their presence comes as rather a surprise when moving through the area.
15. There, are moreover, in the adjoining Conservation Area south of the Kings Road and not far removed from the appeal site, 2 other public houses. They are the Coopers Arms and the rather aptly named The Surprise. Although in a different Conservation Area these public houses similarly create a pleasant contrast to their residential surroundings. The areas bordering these 2 Conservation Areas are sufficiently similar that you appear to move seamlessly between them. Thus all 5 public houses south of the Kings Road assist in

providing a pleasant contrast to the predominantly residential character of this part of Chelsea.

16. The public houses referred to above are scattered quite widely through the residential area. The loss of The Phene Arms would not only result in a fairly substantial loss of public houses in this area in percentage terms but would also leave in its vicinity a significant area of largely unrelieved residential development. This would seriously detract from the character of the Conservation Area.
17. In arriving at this view I appreciate that the fabric of the appeal building would not change at all in one proposal and would be changed to only a small degree in the other. However, it is the use of the appeal building as a public house with the attendant comings and goings, the activity associated with it, the view in through the windows of the bar and those within and the internal and external lighting that makes the presence of the pub most noticed. Remove that by the proposed changes of use and, even with the fabric of the building retained, its contribution to the character and appearance of the area would be greatly reduced.
18. The appellant says that the proposed developments provide an opportunity to reinstate railings around the side garden of the Phene and remove the large umbrellas currently in the garden and which partly screen the ground floor side elevation. However, the degree of improvement would be modest and would not outweigh the harm that would arise from losing the use of the premises as a public house.
19. It is also contended by the appellant that as the Phene Arms is now a gastro-pub with a greater emphasis of food, and has an external garden, it has a different character and appearance to that which it had before and to that which other pubs in the area have. Some even allege it is now more a restaurant than a public house. However, the character and appearance of pubs change over time and can differ according to the operator. In any event all that I saw indicated that seen from the outside The Phene Arms strongly retains the character and appearance of a public house.
20. Some local residents strongly assert that the character of The Phene Arms has also changed in that it now predominantly draws in people from outside. It is said that given this, and the use of the garden and the clientele attracted by it, the level of noise and disturbance now created is greater than in the past to the detriment of the character of the Conservation Area. Others dispute this including some who live locally. The public house has stringent licence controls devised to prevent undue harm to local residents from the on-site use of the premises. Moreover, given the extent of on-street parking controls traffic to and from the premises is likely to be less than some suggest. With the licence appropriately enforced I consider The Phene Arms should not create a level of noise and disturbance that would be out of keeping in the Conservation Area given the current scattering of non-residential uses amongst the housing areas. A balance has to be drawn and whilst some residents would clearly prefer that the appeal premises was no longer a public house its loss to housing would be seriously detrimental to the character of the Cheyne Conservation Area for the reasons given.
21. In a recent appeal decision on a site elsewhere in the Borough, APP/K5660/A/11/215276, it was held that the change of a public house to

- residential would not be detrimental to the character and appearance of a Conservation Area. However, all applications stand to be considered on their own merits and it is the specific location of the current appeal site and the characteristics of the Cheyne Conservation Area that are paramount in my decision.
22. It is concluded on the first issue that whilst the appeal building has insufficient inherent attributes in aesthetic and historic terms to warrant it having substantial significance as a non-designated heritage asset the proposed development would detract from the character of the surrounding area and fail to preserve or enhance the character or appearance of the Cheyne Conservation Area.
 23. I consider this harm be a highly material consideration in the determination of this appeal notwithstanding the appellant's observations on Policies CO 5, CL 1 and CL 3 of the *Core Strategy for the Royal Borough of Kensington and Chelsea (2009)* on which the Council has relied upon on this issue.
 24. The Council has conceded that Policy C O5 relates to built fabric rather than changes of use. However, Policy CL 1 says that " The Council will require all development to respect the existing context, character, and appearance, taking the opportunities available to improve the quality and character of buildings and the area and the way it functions, including being inclusive to all". Policy CL 3 says that "The Council will require development to preserve and to take opportunities to enhance the character or appearance of conservation areas, historic places, spaces and townscapes, and their settings."
 25. Contrary to the views of the appellant I consider that references in these Policies to character, and the way areas function, means that the impact of changes of use cannot be ignored even though change of use is not referred in the explanatory text or in the delivery mechanisms later referred to in the Policies. I consider therefore that the proposed development would conflict with CS Policies CL 1 and CL 3.
 26. I am of this view even though the Council is seeking to revise Policy CL 1 to make specific reference to the consideration of change of use in the delivery mechanism. It seems to me that this can be considered as a strengthening or clarification of Policy rather than a change of direction.
 27. In any event even if I am wrong in the above I am still required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. It seems to me self evident that in applying this test regard should be had where appropriate to the impact a change of use, as opposed to solely physical changes, would have on Conservation Areas. This stance is supported by *Archer and Thomson v Secretary of State 1991*. Moreover, *the Framework* says that proposed development that would lead to substantial harm to designated heritage assets should, subject to caveats, be refused. There is no indication whatsoever that matters to be taken into account should disregard change of use.
 28. I consider that the statutory protection of Conservation Areas, and the protection afforded in the Framework to designated heritage assets, is sufficient in itself for the harm I have identified on the proposed developments to be highly material in the determination of these appeals.

Loss of a community facility

29. Policy CK 1 of the *Core Strategy* seeks to ensure that social and community uses are protected. Such facilities are identified as those enabling the community to function and which stimulate a sense of community. The Council regards public houses as such facilities. However, the explanatory text to Policy CK 1 notes that the loss of public houses to residential use in the past decade has been very limited and that within the Borough a significant number of pubs exist in easy walking distance of most people. It says that there is little evidence to resist their loss at the present time, though the position will be kept under review.
30. However, the Council now contends that Policy CK 1 has become outdated on two grounds. First, as a result of the introduction of *the Framework*. This says that planning policies and decisions should plan positively for the provision and use of community facilities such as public houses to enhance the sustainability of communities and residential environments. It also seeks to guard 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.
31. The Council is concerned that there have recently been an increased number of applications for change of use from public house to residential. This has caused it to look again at the value of public houses to local communities and in the Council's view this highlights the fact that the spatial distribution/numerical approach set out in the *Core Strategy* did not adequately recognize this inherent value. The Council considers public houses to be an essential ingredient for promoting healthy communities and maintaining strong, secure and accessible neighbourhoods.
32. As a result the Council is seeking to revise the *Core Strategy* by introducing Policy CK 2. This emerging Policy says that the Council will resist the loss of public houses and other drinking establishments throughout the Borough.
33. The Council has consulted on the above Policy and intended to submit it for examination towards the end of 2012. However, whilst there is significant support for the Policy, including from the Rule 6 Party, there are also some substantial unresolved objections based on matters such as the adequacy of the existing provision, the evidence base and the flexibility of its wording. Given the objections raised, and the need for them to be examined, I currently give the emerging Policy limited weight.
34. In arriving at this view I have noted the Council's contention that the existing Policy is not in conformity with *the Framework* because it does not seek to retain public houses. However, I do not read *the Framework* as meaning that in all cases it is necessary to retain public houses and the explanatory text to Policy CK 1 makes it clear that the Council has had regard to the value of such facilities as social and community uses but found at that time there was no evidence to resist their loss. I appreciate that in the Cross Keys decision the Inspector took a different view on the conformity of Policy CK 1 with the *Framework*. However, my conclusion is based upon the substantial evidence provided to this Inquiry.
35. It is concluded on the second issue that having regard to the development plan, Government policy and emerging local policy, there is insufficient

justification to resist the proposed development on the grounds of an unacceptable loss of a community facility.

Other matters

Viability

36. The Phene Arms is currently occupied on a 15 year lease dating from January 2010. The property was let out on shell basis and the lessee paid for all the fittings and works. The appellant claims that the use of the premises as a public house, even in its present guise, is currently unviable and would remain so under a different occupier.
37. Two sets of accounts have been disclosed for The Phene Arms. The only full-year account is for the year ending December 2011. This shows the Phene Arms having a turnover of £1,404,500. However, with the costs of sales, overheads, depreciation and other charges taken into account the premises is made a loss of £221,741.
38. The appellant has provided a second set of figures, based on the above accounts, to show how a different operator could potentially run the premises. This makes some reduction in costs with a particularly significant reduction in the figure charged to depreciation. This second set of figures show that there would be a loss of £26,698. Moreover, on cross-examination the appellant said that interest charges of approximately £10,000 should be added to this loss.
39. The Council disagrees with the appellant's second set of figures on 2 counts. First, that depreciation and interest should not be taken into account at all. Second, that some of the costs referred to are substantially too high. The Council contends that taking this into account a profit of £217,755 could potentially be made.
40. The Council says that depreciation and interest should not be taken into account given guidance in RICS Practice Standards on the valuation of such properties. One of the key aspects of assessing valuation is to establish the Fair Maintainable Operating Profit (FMOP). The RICS guidance says that this is the level of profit stated prior to depreciation and financial costs relating to the asset itself. The merit of such an approach is that it removes charges that may be unique to a particular operator. In this case removing depreciation and interest charges would make the premises viable even on the appellant's other costings. However, the appellant contends that whilst the RICS approach is the correct one for assessing valuation it is not a good guide on viability as it fails to take into account all the potential costs.
41. In the absence of a clearer indication from the Council in support of its approach I see some merit in the appellant's stance. However, it remains necessary to consider the differences in potential costs between the 2 parties. First, the Council claims that even if depreciation should be taken into account in principle the £66,000 proposed by the appellant is excessive. This figure is to cover expenditure of £1 million that it is said a new occupier would incur on fixtures and fittings depreciated over a 15 year period. However, given that the premises have only recently been extensively refitted I consider that there are reasonable grounds to suppose, as does the Council, that a new occupier may incur either no such costs or a substantially reduced cost.

42. Other key differences in costs between the parties relate to rent, wages and associated social security payments, repair and maintenance and computer expenses. The appellant has adopted a rental figure of £120,000 and in part justifies this by reference to comparable rental figures of premises locally. However, this figure is higher than the current rental of the appeal premises of £90,000 and the reason for this has not been fully explained. Moreover, it seems to me that the rental figure must be based in large part upon what an operator would be willing to pay. Given the appellant's views on profitability it seems inconsistent to suggest a rental figure over and above that currently paid.
43. Turning to wages and associated social security costs there is a difference of approximately £54,000 between the 2 parties, even before taking into account the additional staff costs on security and cleaning. Taking all staff costs into account the figures provided by the appellant shows staff costs at 36% of turnover. The Council says that its figure based on 28% of turnover is more realistic based on guidance from the Association of Licensed Multiple Retailers (ALMA) that the average payroll cost of running a public house is 25% of turnover. The appellant contends that the higher figure, based on current costs, is reasonable having regard to the characteristics of the building, the need to police the garden and the fact that the premises is a gastro pub. However, the premises could operate with food sales without being a gastro pub and I see some merit in the Council's argument that bar staff could control the use of the premises including the garden area.
44. Regarding the other costs of repairs and maintenance and computer costs it is difficult to judge between the parties on their differences. However, the appellant did concede that his figure for computer costs was probably too high.
45. Given the above I do not consider that the appellant's estimate of potential losses conclusively shows that the appeal premises are not viable as a public house.
46. The appellant has in addition referred to the loss of public houses to other uses nationwide and the problems for pub operators caused by the smoking ban and the supermarket sale of alcohol. Reference has also been made to the competition of other public houses locally, the location of the site off a main thoroughfare and allegedly where people would not pass on foot and the stringency of the licensing conditions. However, the appellant concedes that the premises has made a good turnover at £1.4 million which suggests that the national and local circumstances referred to should not be detrimental to its viability. Suggestions that the premises might have been overtrading were not supported by substantial evidence.
47. The appellant also supplied figures on the likely profit of operating The Phene Arms without the garden. However, there is no substantial evidence that the use of the garden would be lost and I thus attach little weight to these figures.
48. Given the parties disagreement on viability a way in which the matter could have been tested was through marketing the property. This was not done. Whilst I appreciate the caveats to such exercises they do give a useful indication on viability in cases such as this. The fact that no such exercise has been undertaken is a further indication that the appellant has not made out his case on viability.

Noise and Disturbance

49. I have touched on this matter in the first issue. The appellant says that the evidence of submitted by witnesses on a continuing adverse impact of The Phene Arms on residential amenity of neighbours is a matter of substantial weight and supports the proposed change of use to residential.
50. It is clear that at times those living locally have found the use of The Phene Arms to be detrimental to their residential amenity. It is also evident that this Council and others have occasionally found the loss of a public house to have a significant positive impact on residential amenity. However, this needs to be considered in the broad context that many public houses fit acceptably within residential areas.
51. The Council's complaints register shows relatively few complaints leading up to the period of The Phene Arms re-opening. There was a significant increase in complaints thereafter in 2010 and the early part of 2011. However, from August 2011 there is a substantial drop in complaints. I consider it unlikely that this can solely be attributed to the concerns of some residents about the means of contacting the Council on complaints, especially as there have been no requests for a review of the licence and its conditions.
52. Stringent licensing conditions have been imposed on The Phene Arms, covering, for example, the playing of music, the use of the garden, times when deliveries may take place and the control of those leaving the premises. The Licensing Committee was satisfied that sufficient controls were provided. It noted that The Phene Arms has been in existence for 158 years and that many of the interested parties were not against the existence of the public house but considered that the new licence should ensure that limitations and controls were in place to protect residents. Unlike the appellant I do not consider the licensing conditions to be excessive and indicative that the appeal premises is wrongly located for a public house.
53. The Council confirmed that most of the objections registered with it have related to a failure to comply with the conditions imposed on the licence. It has recently prosecuted for breaches of the licence and since that time there has been a dramatic fall in complaints as noted above.
54. The residential environment in the vicinity of a public house, especially for those closest to it, is never going to be as quiet and tranquil as in a solely residential area. Moreover, a licence cannot control all matters, for example, some people may well go outside beyond the premises to smoke or make mobile telephone calls. However, this would be a characteristic of most public houses.
55. Given the above, I do not consider that the concerns expressed by some locally on the existing use of the premises offer substantial support for the proposed developments.

Additional housing

56. The proposed developments would provide a large family dwelling. In so doing they would make a contribution towards the provision of new housing and comply with the objectives of Policies in the *Core Strategy* and *London Plan* with this aim. However, the Council is not reliant on windfall sites to meet its housing targets. It is well on course to deliver the target number of residential

units through the lifetime of the *Core Strategy*. Given the foregoing little weight should be given to the contribution of the proposed development towards housing needs.

Other matters generally

57. There are permitted development rights for changes of use within Class A of the Use Classes Order so that changes of the appeal premises to A1 (retail), A2 (financial and professional services) and A3 (restaurant and café use) could occur without the need for planning permission. However, there is no substantial evidence that such changes are likely. In any event even if it occurred it would at least help maintain the existing character of the Conservation Area as one where the area between the 2 main thoroughfares is not solely residential.
58. There are concerns by some locally that the proposed developments would lead to the loss of employment. However, there is no development plan Policy support to protect employment in this area. Concern on the impact of the proposed construction works could have been overcome by condition had I been minded to allow the appeal. Local concerns on these matters should not, therefore, stand against the proposals.
59. The appellant is concerned that some third parties make allegations on the motives of the developer and those supporting the scheme that are not material on planning grounds. I have discounted such 3rd party objections in arriving at my decision, but do not consider that this should reflect adversely on the legitimate concerns raised.
60. As I am minded to dismiss the appeal Regulation 122 of the Community Infrastructure Regulations (CIL), on the limitation on the use of planning obligations does not apply. It is thus unnecessary in the determination of this appeal to assess the submitted obligation against its tests.

Conclusion

61. I have found no harm would arise in relation to The Phene Arms as a non-designated heritage asset. Nor, having regard to the development plan, Government policy and emerging local policy is there sufficient justification to resist the proposed development on the grounds of an unacceptable loss of a community facility. However, the harm to the character of the surrounding area which includes the Cheyne Conservation Area is sufficient in itself to warrant dismissing the appeals.
62. For the reasons given above it is concluded that the appeals should be dismissed.

RJ Marshall

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Cannon	Of Counsel (instructed Borough Director of Law)
He called	
Mr D McDonald BSc	Heritage Consultant
DipTP DipCons(AA) IHBC	
Mr D Morgan FRICS	Of Morgan and Clarke Chartered Surveyors
MEWI MRPAS	
S Jones	Senor Planning Officer

FOR THE APPELLANT:

Mr T Comyn	Of Counsel (instructed by appellant)
He called	
Mr T Watson BSc MBA	Of Davis Coffey Lyons
FRICS	
Mr N Bridges Chartered	Of Ettwein Bridges Architects
Architect RIBA	
Mr S Avery BA (Hons)	Of Bell Cornwell LLP
B.Phil Dip.UrbanDesign	
MRTPI	

FOR THE RULE 6 PARTY:

Mr T Bendixon	Hon Sec Planning (The Chelsea Society)
He called	
Mr T Bendixon	
Dr Susan-Horsewood-	Local resident
Lea	
Mr J Cooper	Local resident
Mr J Redmayne	
H Smith	King's Road Traders Association
D Ingram MA FRSA	Of ConservationWorks
Mr M Johnson	Manager of the Duke of Wellington
Mr M Bach	Chelsea Society

INTERESTED PERSONS:

Mr Peter Brooks	Local resident
K Buckle	Local resident
Mr E Bekheit	Local resident
Cllr. I Donaldson	Borough Councillor
Cllr E Will	Borough Councillor
Cllr E Campbell	Borough Councillor
H Kebell	Local Resident
Cllr T Ahern	Borough Councillor
Mr T Nodder	Local resident
Mr R Burgess	
Mr G Quarme	Local resident
Mr B White	

DOCUMENTS

- 1 Letter of notification of inquiry and those notified.
- 2 LPA opening statement.
- 3 Council appearances.
- 4 Appellant's opening statement.
- 5 Rule 6 Party – opening statement.
- 6 Order of appearances of Rule 6 parties and 3rd parties.
- 7 Signed and dated Unilateral Undertakings.
- 8 Application Stage 3rd party responses submitted by appellant.
- 9 Appeals Stage 3rd party responses submitted by appellant.
- 10 Agreed list of application plans – appeal B.
- 11 Agreed list of application plans – appeal A.
- 12 Copy of appellant's statement of case – appeal B.
- 13 Copy of appellant's statement of case – appeal A.
- 14 Statement of Mr J Cooper.
- 15 Statement of Mr R Burgess.
- 16 Cllr I Donaldson.
- 17 Extract from draft NPPF July 2011.
- 18 Summary of Magistrate Court decisions.
- 19 Extract from partial review of Core Strategy.
- 20 Suggested revised plans.
- 21 Statement of Mr G Quarme.
- 22 Statement of D Ingram.
- 23 Appeal decision APP/C5690/A/12/2171328.
- 24 Petition submitted by Rule 6 party.
- 25 Supplementary material submitted by Mr Bach.
- 26 Old Metropolitan Borough Boundary of Chelsea.
- 27 Appeal decision APP/K5600/A/12/2172342.
- 28 Statement of Mr J Redmayne.
- 29 agreed conditions appeal B.
- 30 First set of agreed conditions appeal A.
- 31 The Phene Arms management accounts and surveyors adjustments.
- 32 RICS Practice Standards on capital and rental valuations.
- 33 English Heritage Good Practice Guide For Local Heritage Listing.
- 34 Rule 6 party evidence.
- 35 Extract from chapter 35 of the Core Strategy.
- 36 Applications resulting in the loss of public houses since adoption of Core Strategy.
- 37 Applications resulting in the loss of public houses since adoption of Core Strategy -update.
- 38 Extract from Core Strategy.
- 39 Core Strategy Policy CL4.
- 40 Breakdown of responses on partial review of Core Strategy.
- 41 List of objections to partial review of Core Strategy.
- 42 Copy of all representations received on partial review of Core Strategy.
- 43 Extract from The London Plan.
- 44 E mail from Mr Myers to the Council.
- 45 Statement of third party.
- 46 Council supporting information on Planning Obligations.
- 47 Council's final suggested conditions on application PP/12/03352.

- 48 Council's final suggested conditions on application PP/12/02421.
- 49 Council's justifications for suggested conditions.
- 50 Closing submissions of Rule 6 party.
- 51 Closing submissions of Council.
- 52 Closing submissions of Appellant.



Appeal Decision

Hearing held on 24 October 2012

Site visit made on 24 October 2012

by Lesley Coffey BA (Hons) BTP MRTPI

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

Decision date: 13 December 2012

Appeal Ref: APP/K5600/A/12/2177513

Queens Head Public House, 25-27 Tryon Street, London SW3 3LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by JPP One LLP against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/12/00798, dated 9 March 2012, was refused by notice dated 16 May 2012.
 - The development proposed is the change of use of public house to form three self-contained residential units.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant submitted a signed and dated Unilateral Undertaking at the Hearing. This covenants to make a financial contribution towards education, health and community facilities, as well as a parking permit free agreement. The Council confirmed that this would overcome its fourth and fifth reasons for refusal.
3. The Council submitted evidence in its statement and at the Hearing to demonstrate that the requested contribution would comply with the tests within Regulation 122 of the Communities Infrastructure Levy Regulations 2010. I have therefore taken it into account in reaching my decision.

Main Issues

4. I consider the main issues to be:
 - The effect of the proposal on the character and appearance of the Chelsea Conservation Area; and
 - The effect of the loss of the public house on the surrounding community.

Reasons

5. The Queens Head Public House is situated at the junction of Tryon Street and Elystan Place and comes within the Chelsea Conservation Area. The proposal would provide two 3 bedroom flats and one 2 bedroom flat. There would be an integral garage with access from Tryon Street which would provide parking for the ground and lower ground floor dwelling.

6. Policy CL3 of the Local Development Framework Core Strategy, adopted December 2010, requires proposals to preserve, and where possible enhance the character and appearance of conservation areas. This approach is consistent with that within the recently published National Planning Policy Framework (The Framework), which requires heritage assets to be conserved in a manner appropriate to their significance. It provides that when considering the impact of a development on the significance of a designated heritage asset, such as a conservation area, great weight should be given to the conservation of the asset. It also states that when determining planning applications local planning authorities should take account of the positive contribution that the conservation of heritage assets can make to sustainable communities.
7. The Chelsea Conservation Area is typified by a variety of architectural styles and building scales, reflecting its origins as an amalgamation of three different conservation areas. It is predominantly residential in character although it includes part of Kings Road which is a main thoroughfare and much more vibrant in character due to the numerous shops and services. There are a number of commercial uses scattered throughout the conservation area, including small shops, public houses and estate agents. These generally occupy prominent corner locations at the end of residential terraces. The Chelsea Conservation Area Proposals Statement acknowledges the contribution that these small scale commercial uses make to the character of the conservation area. It states that their prominent locations and variety in style and finish provide welcome interest within a predominantly residential area. It also notes that they provide a setting for residents to meet socially and contribute to the village character of this part of the conservation area.
8. The appeal property occupies a corner location at the junction of Tryon Street and Elystan Place, but is also visible from Sloane Avenue, Bray Place and Anderson Street. The Council describe it as a landmark building and consider it to be an undesignated heritage asset, due to its significant historic interest derived from both its use and appearance. It is a three storey double fronted building with stucco details and a modillion cornice and is adjoined by a two storey extension fronting Tryon Street.
9. The appeal property is not listed, nor is it on the Council's list of architecturally significant buildings. Although the appellant suggests that the existing building dates from the late nineteenth century, there would appear to have been a public house on the appeal site since at least 1867. Evidence was submitted to indicate that it has a history of use by a number of well known characters, including Oscar Wilde, Quentin Crisp and Francis Bacon. Due to its visual prominence within the street scene and its long established use, the existing public house has significant historic significance within the conservation area.
10. Although the Council has some concerns with regard to the proposed alterations to the fenestration facing Elystan Place and the design of the replacement doors, it is satisfied that subject to an appropriate condition these could be resolved.
11. The proposal would also involve the replacement of the door and window openings within the two storey part of the building facing Tryon Street with a garage door comprising painted wooden slats. This element of the property is an extension to the original public house built in the first half of the 20TH century and adjoins a terrace of residential properties. Whilst it lacks some of

- the architectural refinement of the neighbouring dwellings, it maintains established building line and the line of the parapet. Overall, it maintains the architectural rhythm of the terrace, and makes a neutral contribution to the character of the conservation area. The proposed garage doors would occupy a prominent position within Tryon Street and would be unrelated in scale, appearance or materials to the adjoining terrace or the appeal property.
12. The existing public house adds to the level of activity within the public realm, and also provides a place for people to meet. The use illustrates the relationship between the design and appearance of the building and its original function. As recognised by the Chelsea Conservation Area Proposals Statement the significance of this building and other commercial properties within the conservation area is derived not only from its appearance, but also from its historic use providing a valued service for the local community.
 13. Although it is proposed to retain the building, it would no longer be a publicly accessible building. The loss of activity associated with the existing use would fundamentally alter a significant aspect of the character of the building. The *Historic Environment Practice Guide* states that the optimum use of a building is one that causes the least harm to the significance of the asset, not just through initial changes but also through likely future changes. Although the extent of the proposed alterations to the physical fabric of the building are limited, the residential use of the building would be likely to lead to pressure for further domestication of its appearance in the future.
 14. The existing public house makes a significant contribution to the character and appearance of the conservation area and the loss of this historic use would harm the character of the existing building. I accept that there are other non-residential uses, including public houses, within the conservation area and these also contribute to its character. However, the existence of these other uses does not justify the harm to the conservation area that would arise from the appeal proposal.
 15. I have taken account of the permitted development rights that would allow the building to be used for certain alternative uses such as an estate agency or restaurant without the need for the submission of a planning application. However, whilst these changes would also impact on the character of the conservation area and the significance of the property, they would have the potential to serve the local community and unlike the appeal proposal, would ensure that there would continue to be a level of activity associated with the building.
 16. Overall I conclude that the proposal would harm the character of the Chelsea Conservation Area, and would fail to comply with policy CL3 of the Core Strategy and the policies within the Framework.

Effect On The Surrounding Community

17. Amongst other matters the Core Strategy has a strategic objective (policy CO1) to 'keep life local'. It aims to protect and promote uses that are of high value to the local community and might otherwise be lost to residential use, due to the high residential land values within the borough. Policy CK1 seeks to safeguard social and community uses. However it is clear from the accompanying text that this policy does not apply to public houses. It acknowledges that public houses are a social and community use, and that

there is concern about their demise, but concludes that there was too little evidence to resist their loss. It does however state that this was a matter to be kept under review.

18. Policy 3.1 of the London Plan requires development to protect and enhance facilities and services that meet the needs of particular groups and communities. This is consistent with paragraphs 69 and 70 of the Framework which state that in order to deliver the social, recreational and cultural facilities the community needs, planning policies and decisions should guard 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. The Framework makes it clear that community facilities include public houses. It also encourages planning decisions and policies to promote opportunities for members of the community who would not normally come into contact with each other to meet.
19. Subsequent to the adoption of the Core Strategy the Council noted a growing pressure for the conversion of public houses (which are not protected by policy CK1) to residential use. During the decade prior to the adoption of the Core Strategy there had been a loss of six public houses to residential use. In a twelve month period after the adoption of the Core Strategy the Council received four planning applications and three pre-application requests for similar proposals. As a consequence it resolved to review the Core Strategy to protect community public houses, particularly historic pubs within conservation areas.
20. The Partial Review of the Core Strategy was published in September 2012, and the period for making representations expired shortly before the Hearing. The proposed changes include a revision to policy CK2 to resist the loss of public houses and other drinking establishments, and an addition to policy CL1 to resist the change of use of any building where the current use contributes to the character of the surrounding area and its sense of place. Evidence submitted by the Council suggests that there is strong local support for the proposed revisions. Notwithstanding this, there are a number of unresolved objections to the proposed review. The Council intends to submit the policy review to the Planning Inspectorate towards the end of the year and anticipates that the policy will be adopted in early 2013. Whilst the aims of the emerging policy are broadly consistent with those within the Framework, it has not been subject to examination, and in view of the outstanding objections I attribute it limited weight.
21. The existing public house consists of three bars each with a slightly different function, with one of the bars being used for entertainment purposes. The upper floors are used as staff accommodation and also provide kitchen facilities for the pub. There is no function room, garden or dedicated smoking area.
22. It is evident from the considerable number and varied nature of representations that the Queens Head is highly valued by the local community, both as a meeting place, and also for the contribution it makes to the vitality of the area. It regularly hosts entertainment evenings and actively raises money for charity. At the time of my visit, during an early weekday evening, it was busy and lively with customers within all three bars, as well as outside. It also has a long established tradition as a gay pub, and attracts broad range of customers from the surrounding area. It is also used by patrons of the former Cross Keys Public House that closed earlier this year. It clearly provides

- opportunities for members of the community who would not normally come into contact with each other to meet. In this respect its continued use as a public house accords with the policies within the Framework and the strategic objective of the Core Strategy to 'keep life local'.
23. The appellant provided details of several other public houses within the local area. A number of these are within reasonable walking distance of the Queens Head, although the extent to which they would be convenient to all existing patrons would vary. Local residents and The Chelsea Society suggested that these pubs are very different in character from the Queens Head, and that many have an emphasis on food and therefore are not comparable.
24. It would seem that within the wider area there are other public houses that have similarities to the Queens Head. However, Chelsea is a very densely populated area, with some parts such as Kings Road attractive to tourists and others that do not reside within the locality. For this reason the sense of community provided by a local public house serves an important social and community function. It is evident that the Queens Head fulfils this function and is a well supported and popular community facility that brings together a diverse population from the local neighbourhood as well as the gay community from the wider area.
25. I therefore conclude that the change of use of the existing public house would result in the loss of a valued social and community resource and would significantly harm the surrounding community. Therefore the proposal would be contrary to policy CO1 of the Core Strategy, policy 3.1 of the London Plan and the policies within the Framework.
26. I have taken account of the appeal decision in respect of the Prince of Wales. Public House (APP/K5600/A/11/2152776). I agree that Core Strategy policy CK1 does not include public houses in the definition of social and community uses, it does however strive to protect and promote uses that are of high value to the local community and might otherwise be lost to residential use. This aim is consistent with the relevant policies within the London Plan (2011) and the Framework both of which were adopted subsequent to the Core Strategy.

Other Matters

27. The appellant provided details of complaints from local residents in relation to noise and disturbance from patrons of the Queens Head. These are few in number and there do not appear to have been any complaints since late 2010. On the basis of this evidence I am not persuaded that the existing use gives rise to a significant level of nuisance to local residents.
28. The appellant submitted evidence to suggest that the current tenant, TCG wishes to selectively market some of their assets, and there had been little interest. Mr Lee, a chartered surveyor who has acted for TGC in the past, stated that it is not their intention to sell the appeal property either as an individual public house or part of a larger group of properties. He accepted that the rent was high as a percentage of turnover, nevertheless, profits and sales have increased year on year since 2009. The manager also confirmed that the business is profitable and that it employs five full-time and three part-time staff. Therefore there is no convincing evidence to suggest that the existing business is not economically viable. TCG confirms that they intend to operate the public house for the remaining period of the lease. Therefore

whilst it possible that an alternative use, such as an estate agency, may be more profitable, there is no persuasive evidence to suggest that the existing use would be likely to cease in the foreseeable future.

29. The property currently provides a manager's flat as well as accommodation for two other members of staff. Whilst the provision of three dwellings within a sustainable location would be a benefit of the proposal, it does not outweigh the harm that would arise from the loss of the existing accommodation and other harm identified above.
30. Although the Unilateral Undertaking would comply with Regulation 122 and would overcome the Council's fourth and fifth reason for refusal it does not outweigh the harm identified above.

Conclusion

31. For the reasons given above I conclude that the appeal should be dismissed.

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nick De Lotbiniere	Planning Consultant Savills
Thomas Edmunds	Savills
Roger Mascall	Turley Associates
Richard Thomas	Shelley Sandzer

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Jones BA,BSc,MSc	Senior Planning Officer
Andrew Lee Bsc Hons MRICS	Chartered Surveyor, James Baker

INTERESTED PERSONS:

Councillor T Coleridge	Ward Councillor
Michael Cartwright	Affinity Sutton Housing Association Residents
Richard Burgess	Kings Road Association of Residents
Michael Bach	Chelsea Society
Terence Bendixson	Chelsea Society
Michael Howarth	Queens Head PH
Freddy Sipson	Manager, Queens Head PH
Jack Deary	Local Resident
Eric Von Smit	Local Resident
John Bodenham	Local Resident
Dee Brown	Local Resident
Tim Jamieson	Local Resident
Julian Littman	Local Resident
Raul Dolores	Local Resident

DOCUMENTS

- 1 Notification letter notifying interested parties of the arrangements of the Hearing
- 2 Chelsea Society Pub Loss Survey submitted by the Michael Bach
- 3 Appeal decision in respect of Cross Keys PH (APP/K5600/12/2172342) submitted by the Council
- 4 Update on Review of Core Strategy submitted by the Council
- 5 Letter from Andrew Lee MRICS
- 6 Council Letter from Councillor Tim Coleridge
- 7 Signed Unilateral Undertaking submitted by the Appellant
- 8 Summary of Consultation responses to Core Strategy submitted by the
- 9 Revised plan of non-residential uses within the Chelsea Conservation Area submitted by the Appellant
- 10 Petition against the proposal submitted by the Michael Howarth
- 11 Letter from Lady Felicity Davis submitted by Mr Burgess
- 12 London Plan policy 7.1 submitted by the Council
- 13 Core Strategy policies CK1 & CK3 submitted by the Council
- 14 Letter from Michael Howarth
- 15 Local Development Framework Planning Obligations SPD submitted by the Council



Appeal Decision

Hearing held on 24 July 2012

Site visit made on 24 July 2012

by Christopher Bowden MA (Oxon)

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

Decision date: 17 September 2012

Appeal Ref: APP/K5600/A/12/2172342

The Cross Keys, 1 Lawrence Street, London SW3 5NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by CKPH Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref. PP/11/01917, dated 13 June 2011, was refused by notice dated 9 December 2011.
 - The development proposed is: *change of use of existing building from Class A4 (drinking establishment) to Class C3 (single family dwelling). Addition of new basement, erection of a roof extension, demolition of existing rear extensions at ground-floor level, erection of new ground-floor rear extension, and reinstatement of garden to the rear.*
-

Decision

1. The appeal is dismissed.

Procedural matters

2. As discussed at the Hearing, the description of the development proposed is taken from the decision notice. I consider that it describes the proposal more accurately than the one given in the application form.
3. At the Hearing, the Council confirmed that the decision notice had omitted in error reference to Core Strategy (CS)¹ Policy CL 3 (*Heritage Assets – Conservation Areas and Historic Spaces*). The inclusion of this policy would not prejudice any interests in this appeal and I have proceeded accordingly.
4. The decision notice mentions Planning Policy Statement 5 *Planning for the Historic Environment* (PPS 5). This has since been replaced by the National Planning Policy Framework (the Framework), published in March 2012. The PPS and the development plan policies cited in the notice (including CS Policy CL 3) are consistent with the thrust of the Framework. Comments made on the Framework by the Council and the appellant and by third parties have been taken into account in determining the appeal.
5. The appellant submitted a signed unilateral undertaking dated 16 July 2012 relating to parking permits and contributions towards community facilities, education and health amounting to £3999 (including monitoring fee). This is considered further below.

¹ Local Development Framework (LDF) Core Strategy for the Royal Borough of Kensington and Chelsea with a Focus on North Kensington Development Plan Document, adopted in 2010

6. My attention has been drawn to a number of decisions allowing or dismissing appeals relating to conversion of public houses for residential purposes. While I have taken these into account I have determined this appeal on its own merits.

Main issue

7. This is the effect of the proposed change of use on the value and significance of the Cross Keys public house as a heritage asset and on the character and appearance of the Cheyne Conservation Area.

Reasons

8. The Cross Keys is a four-storey (including basement) mid-terrace building that operated until May 2012 as a public house and restaurant within Use Class A4 (drinking establishments). It has now ceased trading and the premises are vacant. The surrounding area is predominantly residential. The site lies within the Cheyne Conservation Area (CA).
9. The appeal scheme seeks to change the use of the property to a five-bedroom single-family dwelling (Use Class C3). This involves a number of alterations and additions to the building but the Council does not object to these, subject to suitable conditions.

Policy and principle

10. There is no dispute that public houses constitute a social and community use. The Council seeks to protect such uses in general by way of Policy CK 1 in support of a broader strategic objective (Policy CO 1) for "Keeping Life Local". However, while noting concern about the loss of public houses to residential use, the related text indicates that the Council considers that there is too little evidence to resist their loss "at the present time" (the CS was adopted in December 2010) but that this will be kept under review. In the decision notice, the Council did not rely on this policy but on policies in the London Plan 2011 dealing with such matters as protection of community facilities and social infrastructure and access to services and facilities at neighbourhood level. These form part of the development plan and are more recent than policies in the CS.
11. As regards the CS itself, the Council has cited Policies CL 1 and CL 3 (both supporting the strategic objective (Policy CO 5) for "Renewing the Legacy"). While the focus of these policies and the identified delivery mechanisms is on the built environment, including design aspects, I accept that the character of buildings and their contribution to the wider area, including a conservation area, may include their historic and current use as well as matters of physical form. I therefore agree that these policies are relevant to consideration of the main issue in this appeal.
12. As noted above, the Framework was published after the decision was issued. It is not part of the development plan but it is a material consideration in planning decisions. The Framework includes guidance on "promoting healthy communities". It says (paragraph 70) that to deliver the social, recreational and cultural facilities the community needs, planning policies and decisions should (among other things) guard 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. The paragraph makes clear that community facilities include public houses.

13. At the Hearing, the Council tabled two draft CS policies on which a period of public consultation had just concluded. They sought to resist the loss of public houses (and certain other Class A uses) providing a wider social role and the change of use of any building where the current use contributes to the character and significance of the surrounding area, and to its sense of place. Their development followed a unanimous Council resolution expressing concern about the loss of community public houses, especially historic ones in conservation areas, and consultation on an "issues and options" paper on protection of public houses in the Borough. It was reported that some 75% of respondents to the recent consultation supported a policy protecting public houses (with 84% support in the earlier consultation).
14. The Council said at the Hearing that these draft policies were already being used for development control purposes. The basic thrust of the public house protection policy in particular appears broadly consistent with paragraph 70 of the Framework but there have been a number of comments on the draft, including some significant objections which it may be premature to consider resolved, even though the Council has prepared responses to them. At this stage of the process, and having regard to paragraph 216 of the Framework, I give the draft policies themselves no more than limited weight in the context of this appeal.
15. It appears that, since the CS was adopted, three more public houses have been lost in the Borough. The Council said at the Hearing that there have been three planning applications involving the loss of public houses since March 2012, with pre-application inquiries for another four. This provides some evidence that the pressure on public houses is increasing. Moreover, while it remains the case that there are public houses within 10 minutes walk in the Borough, I accept that a simple spatial distribution is not of itself a reliable guide to the value placed on public houses by local communities.
16. Overall, therefore, while the draft CS policies carry limited weight at this stage, I consider that the Framework carries significant weight as the adopted CS is in conflict with it in relation to protection of public houses and the Framework is more recent.

Value of the Cross Keys to the local community

17. It is clear that, before it closed, the Cross Keys contributed to meeting the needs of the local community through provision of facilities and as a place of social interaction, for example. There is no dispute that there are other premises to eat and drink in particular lying within 10 minutes' walk of the site – less in the case of the Pig's Ear in Old Church Street, for example. However, even if they were considered, on this basis, to have the potential to contribute to the community's ability to meet its day-to-day needs in place of the Cross Keys, this does not mean that they are equivalent to the Cross Keys in terms of community value. It is evident from the substantial volume of representations in this case that the public house is much valued by the local community as a neighbourhood resource and meeting place and for its contribution to the vibrancy of the local streets, described by one local resident as "eerily quiet" since the Cross Keys closed. It is also clear that it is valued by local people for its heritage associations, not simply as a structure but in relation to its use. This is considered further below.

Viability

18. The appellant represents that the use of the premises as a public house is unviable and would remain so if it were still open, as elaborated in the detailed viability assessment carried out by a registered valuer. The report says that, despite improvements made since the current owner acquired the Cross Keys in 2009, losses have continued. Reference is made to competition with other establishments, lack of passing trade in the premises' non-corner position and the demographics of the area, against a background of general trends in the public house sector. A separate feasibility appraisal was commissioned by third parties, also carried out by a registered valuer, which concludes that the public house is viable on the basis discussed below.
19. The appellant's assessment focuses on accounts for 2010 and 2011, supplemented by the first few months of 2012. This seems a relatively brief period on the basis of which to judge the Cross Keys viable or otherwise as a public house after many years of trading. I note that the application for change of use to residential was submitted less than half way through 2011 and nearly a year before the public house closed. The minutes of the Council's Planning Applications Committee meeting² record the applicant as saying that the public house was breaking even when he took it over in 2009.
20. Be that as it may, there is no dispute that the public house would indeed be profitable³ if operating with conventional gross profit and labour margins. There is, however, disagreement as to handling of bank charges, interest and depreciation, the inclusion or exclusion of which appears to be a key factor in determining whether, on the figures presented, the operation is viable assuming a "reasonably efficient operator". There is concern that the picture is skewed by the purchase price for the property of £3m in 2009 (or a current estimate of it), that such a figure is too high for the property as a public house, and that it is therefore of limited assistance in assessing whether the Cross Keys is fundamentally viable or not as a public house.
21. Either way, it is clear that the Cross Keys has not been marketed by the appellant as a public house. At the Hearing, it was suggested that this was because the demand for it in such use was not there and there was no underlying viability. However, I share the view that this would be best tested by letting the market itself decide so that the outcome of such an exercise could inform a judgement as to whether, in terms of Framework policy, the loss of a facility valued by the community is "necessary". It also seems that a number of other establishments cited as competitors, which I saw during my visit to the area, are located on relatively quiet streets with limited passing trade yet apparently trading successfully.
22. In the light of the above, I am not persuaded that it has been demonstrated conclusively that the Cross Keys is unviable in public house use.

Heritage assets: significance and contribution

23. There appears to have been public house use of the site for some 300 years, although the present building is probably late nineteenth century. The building is not listed. An application for listing was recently rejected by English Heritage

² On 6 December 2011 (at which the scheme was refused)

³ On the basis of Earnings Before Interest Tax Depreciation and Amortisation (EBITDA)

(EH) as not meeting the relevant criteria but its assessment noted that the Cross Keys is "of clear local significance and high townscape interest."

24. The decision notice refers to the Cross Keys as a heritage asset. The Framework definition of such assets does not preclude those which are not designated or otherwise previously identified by way of local listing, for example. At the Hearing, it was confirmed that the Council does not maintain a local list, although the 1983 CA Proposals Statement mentions it as a "building of note". While the definition of a heritage asset concerns building rather than use, it is in terms of the building having a degree of significance meriting consideration in planning decisions because of its historic interest. 'Significance' itself is defined as "[t]he value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic..."
25. The appellant does not dispute that the physical fabric of the building has (local) architectural and historic interest. That interest in itself gives the building a degree of significance as a non-designated heritage asset. However, its heritage value to the local community goes beyond matters of physical form. EH guidance on conservation principles⁴ identifies a range of heritage values, including historic and communal ones, which should be taken into account in decisions on heritage assets. In the case of the Cross Keys, use of the building for its original purpose (ie continued use as a public house) contributes to the community's view of the historic value of the asset as well as to its social value. This includes its value as a building in communal use and its contribution to a sense of identity in a part of "Old Chelsea" in which the Cross Keys is something of a landmark. These factors, together with the building's acknowledged aesthetic value and lesser evidential value (related to archaeological potential), underline that the overall heritage value of the Cross Keys is substantial, deriving from its use as well as its appearance.
26. As noted previously, the property lies in the Cheyne Conservation Area, a designated heritage asset. Focused around the old centre of Chelsea village the CA has a range of building ages, styles and materials, and a pattern of streets, reflecting the area's historical development from which its significance derives. It is predominantly residential. There are some other uses, including public houses and other Class A uses, that add vibrancy to the CA. However, these are concentrated along the King's Road, with some groups of small shops in Old Church Street, thereby enhancing the contribution of the remaining scattered uses.
27. The Cross Keys itself contributes positively to the character and appearance of the CA not only because of the building itself but also because of its use. The exterior and its original architectural detailing add variety and visual interest to this part of the CA. The building also illustrates the historical development of the site and the wider area. The use of the building as a public house (until its recent closure) also contributes significantly to the character of a part of the CA in which domestic use predominates by bringing activity and vitality to the neighbourhood.

Effect of proposal on heritage assets

28. As regards the Cross Keys as a non-designated heritage asset, the proposal would maintain and to some extent enhance its architectural and historical

⁴ *Conservation Principles* Policies and Guidance for the Sustainable Management of the Historic Environment 2008

significance insofar as it relates to the physical form of the building. This would, however, be outweighed by the substantial harm to the significance of the asset that is derived from continuing use of the building as a public house, as discussed above. Retention of former public house use through retention of features such as "The Cross Keys" sign at parapet level would not overcome this. Although the building is currently vacant, I am not persuaded that its use as a public house is not viable, on the basis considered previously. I do not therefore consider that this proposal would enable the building to remain in active and viable use, or ensure long-term conservation of the heritage asset, in comparison with public house use.

29. Similarly, as regards the Conservation Area as a designated heritage asset, the proposal would maintain and to some extent enhance the architectural and historic contribution of the Cross Keys to its significance in terms of the building's physical form. Residential use of the building would accord with the residential character of this part of the CA. However, loss of the public house use would seriously damage what vibrancy and diversity it has and this would harm the character of the CA as a whole. The fact that there are some other drinking and/or eating establishments, and a few other uses, in the CA would not alter this.
30. I recognise that the property has the benefit of permitted development rights to change to Class A1 (retail), A2 (financial and professional services) and A3 (restaurant and café) use. However, each would have the potential to serve the local community to a greater or lesser extent and to contribute more to the vibrancy of the area than residential use of the building.

Conclusions

31. The proposed change of use was not refused, in terms, on the basis of the loss of the Cross Keys as a community facility but that role – specifically, its continued use as a public house – is clearly an important part of its value and significance as a heritage asset and of its contribution to the CA. On the basis discussed above, the proposal would be detrimental to the character of this part of the CA and would thus fail to preserve or enhance the character or appearance of the CA as a whole.
32. I conclude that the proposed change of use would have a materially harmful effect on the value and significance of the Cross Keys as a heritage asset and on the character and appearance of the Cheyne Conservation Area. As such, and on the basis considered previously, it would conflict with the objectives of the Framework and of development plan policies including LP Policies 3.1, 3.16 and 4.8 and CS Policies CL 1 and CL 3.

Other matters

33. The proposal would add one family-sized home to the Borough's housing stock in a sustainable urban location. While the Council acknowledges that it is behind target in provision of housing, I do not consider that this benefit would outweigh the harm identified above. Although there have apparently been some recent complaints about noise nuisance, the building is in long-standing public house use and there is support for retaining it from people living close to the premises. In principle, the proposal could reduce pressure on on-street parking but it seems likely that many public house customers would not be reliant on the car and, at the Hearing, it was said that closure of the Cross Keys had made no difference to parking problems nearby.

34. As noted above, the appellant submitted a unilateral undertaking relating to financial contributions towards education and other matters. As I propose to dismiss the appeal for other reasons, and the undertaking does not address those objections, I do not consider that a further assessment of it would be justified.

Conclusion

35. For the reasons given above and having regard to all other matters raised, including third party representations, I conclude that the appeal should be dismissed.

Christopher Bowden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nick de Lotbiniere	Savills/The London Planning Practice
Richard Brookes	Turley Associates
Trevor Watson	Davis Coffey Lyons
Amin Taha	Amin Taha Architects
Andrew Bourne	CKPH Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Jones	Senior Planning Officer
Sophia Bix	Conservation and Design Officer
Jonathan Wade	Planning Policy Team Leader
Cllr Tim Aherne	

INTERESTED PERSONS:

Michael Bach	Chelsea Society
Penny Pocock	Local resident
Paul Miller	Local resident
Tanya Hoffman	Local resident
Oscar Charles	Local resident
Dale Ingram	CAMRA
Michael Johnson	The Duke of Wellington Public House
Cllr Gerard Hargreaves	Ward Councillor

DOCUMENTS

- 1 Core Strategy Policy CK 3
- 2 Three representations from local residents
- 3 English Heritage Listing Assessment
- 4 Draft planning policy for the protection of public houses and a draft planning policy relating to use and character (June 2012)
- 5 Summaries of consultation responses to doc 4 and Council comments on/responses to them
- 6 Appeal Decision (Carpenters Arms Public House, Cambridge) (Ref. APP/Q0505/A/12/2168512)
- 7 Chelsea Society document on public house closures etc
- 8 Petition against change of use of Cross Keys Public House
- 9 Cross Keys Feasibility Appraisal (Simon Clarke)
- 10 Map showing Class A and other uses in Cheyne Conservation Area
- 11 Copy of signed and dated unilateral undertaking