

# Policy Formulation Report





**Policy Development Statement for a policy for the protection of public houses and other facilities which make life local and a policy relating to the use of a building and how this can contribute to the character of an area and its sense of place**

The Core Strategy for the Royal Borough of Kensington and Chelsea with a Focus on North Kensington Development Plan Document was adopted in December 2010. As part of the Plan there was an acknowledgment that despite the 2008-9 recession, residential land values would continue to out compete those 'local' borough functions which are essential for a successful residential neighbourhood, the local shops and community facilities. (see paragraph 30.1.1 of the Core Strategy).

With the continued global recession Kensington and Chelsea has continued to remain a safe haven in which to invest and the latest evidence shows that since the adoption of the Core Strategy in 2010 average house prices have continued to rise to an average of over a million pounds (£1,063,596 – November 2012). This is nearly double the average house prices in 2005. The latest Savills residential property report shows a levelling off in 2013, but prices going up again in 2014.

As paragraph 30.1.1 of the adopted Core Strategy acknowledges, it is strategically important to protect and promote functions that otherwise might be lost to residential use. It is acknowledged that these functions that enrich the quality of life of residents are not only 'local' functions, but can be borough wide and indeed international facilities and certainly part of the appeal of some of the public houses in the Borough is that they appeal to residents and visitors alike.

It was acknowledged that due to very high property prices, a trend that has only continued since the adoption of the Core Strategy, that *Keeping Life Local* became an integral part of the Core Strategy's central vision of *Building on Success*. On this basis the first strategic objective in the Core Strategy is for *Keeping Life Local*.

The Core Strategy Strategic Objective (C01) for Keeping Life Local is:

*Our strategic to **keep life local** is for strong effective neighbourhood centres and for social and community facilities to be widely available and for neighbourhood functions, including local shopping facilities, to be inclusive for all so that residential communities can flourish.*

It was against this background that a policy (Policy CK1) was developed. The strategic component is for the Council to ensure that social and community uses are protected or enhanced throughout the Borough and to support the provision of new facilities. For the purposes of the Core Strategy a definition of what comprised social and community uses was developed (paragraph 30.3.4). However, public houses were not included within the definition. It was acknowledged that they were a social and community use and the concern over their loss to residential use was noted. However, it was reported that in view of the fact that only 6 public houses had been lost to residential use in the decade leading up to the adoption of the Core Strategy there was too little evidence to resist their loss at the present time. However, it was stated that the situation would be kept under review.

As mentioned the ever deepening global recession has made Kensington and Chelsea a popular place for property investment and house prices have continued to rise since the Core Strategy was adopted in December 2010. It is against this background that the situation has been reviewed. There were also some key triggers for a policy to be developed in so far as more evidence was collected regarding the loss of public houses over a longer time period and it is acknowledged that whilst the figure quoted in the Core Strategy was not necessarily inaccurate, it did not reflect the whole picture. Remaining public houses came under more pressure to be changed to residential use and this resulted in an application for the 'Prince of Wales' public house in Princedale Road to two self contained flats being refused in April 2011 on grounds that it would result in harm to the character of the surrounding area, contrary to policy expressed in the Core Strategy, in particular Policies CV1 and C01.

The subsequent appeal decision dated 1 September 2011 is considered to be of relevance (ref: APP/K5600/A/11/2152776) and is submitted as part of the evidence. The Inspector noted that two recent applications relating to the Cowshed on Ladbrooke Grove and 57 Ossington Street had been permitted and the policy position in the Core Strategy was accepted by the Council. On this basis it was concluded by the Inspector (paragraph 8) that the proposal was not in conflict with CS Policies CK1 and CK3 that 'seek to keep life local'.

It was noted by the Inspector that the *National Planning Policy Framework* was only in an early stage of development and therefore it only attracted limited weight. The Council contended that the proposal was not in line with the overall vision on the Core Strategy (CV1) which includes upholding the residential quality of life and includes maintaining and updating social infrastructure. The Council also argued that the loss of the public house was also contrary to the strategic objective of '*Keeping Life Local*'. The Inspector did not accept this approach stating that the proposal would not conflict with detailed development management policies CK1 and CK3 that support strategic objective C01 and in turn vision policy CV1 and it would be illogical to claim that the proposal would do anything other than comply with the Objective or the Vision.

The Council also progressed the argument that it was not only the physical appearance of the public house that contributed to the character and appearance of the conservation area, but its use and quoted another appeal decision from Torbay where the use of a property was acknowledged to contribute to the character of the conservation area. The Inspector acknowledged that the appearance of the pub made a contribution to the Conservation Area, but considered that there were other elements that contribute to the Victorian character and in view of the fact that there were other drinking establishments in the area which provided highlights of activity, the loss in itself would not have a significant impact on the character of the conservation area. Whilst the Inspector's approach was accepted it became clear to the Council that the use of a property, such as a public house, should be given more weight as part of its contribution to the character of an area.

Despite the large number of residents opposing the loss of the public house it was clear from the decision that the Council was not in a policy position to resist the loss of public houses which were held in high regard by the community and fulfilled a

community function. Coupled with this it is fair to say that the Council has reviewed its approach to public houses and has realised that the need for a policy should not be based on the number that have been lost or remain or the number in an area and the walking distance between them. This rather misses the point of how they function and their value to the community. Therefore to rely on an approach of the numbers lost as if there needs to be some critical tipping point before a policy should be developed is a flawed one and one that the Council considers should be given little weight. Notwithstanding this, the number of applications which involve public houses being changed to residential use has shown a significant increase in the last two years and to date there has been four planning appeals involving the loss of public houses to residential use this year. Two of the appeals have been dismissed and the third is awaited. The appeal decisions are submitted as part of the evidence base as is a table showing public house applications since the Core Strategy was adopted.

At the full Council meeting on the 7 December 2011 a motion for the Council to carry out a review of LDF policy to protect public houses of importance to the community, especially historic pubs in conservation areas, was carried and on this basis it was proposed that the policy approach to public houses should be reviewed. This also forms part of the evidence base as to why a review was necessary.

Whilst the issue involving the loss of public houses was clear, options were developed in the spring of 2012 about how best this could be achieved including asking the question as to whether there should be a policy resisting the loss of public houses in the Borough. Four options were developed to resist the loss of public houses and all were considered realistic to be developed as options. It was proposed that the options would be appraised against the Council's 16 SA objectives. It was stressed that the options were not necessarily exhaustive and that the Council would be keen to hear about other possibilities.

Pros and cons were developed for each option as an aid to making an informed decision, but again it was stressed that no inference should be made with regard to any favoured option.

### **Option one**

The first option stated that the Council should resist the loss of A4 uses (drinking establishments including public houses) across the Borough where a public house acts as a community facility and/or contributes to the character or appearance of the area.

The development of the option would have allowed the Council to protect those public houses that are considered to make a positive contribution to an area, but release those that are not, to other suitable uses outside of the A Use Class. It was noted that the public houses could still change to other A Class uses and this could only be protected by the use of Article 4 directions. Whilst the lack of protection to change to other A Class uses was noted as a possible disadvantage, it was the enforcement aspects that were considered to be problematic. It is extremely difficult to provide criteria for judging when a public house acts as a community facility and when it does not and it really – facilities such as function rooms and community activities may give an indication – but it is not really the role of the planning system

to make these finely balanced judgments and they often come down to how a particular pub is managed in any case.

In addition it raises the issue of the primary use as a drinking establishment and the primary use as an establishment serving food – a number of gastro pubs fall within this category and a facility could easily switch between the two to avoid the policy. It would also make nonsense of why enforcement action was being taken and whether this was in the public interest.

### **Option Two**

Option two resisted the loss of A4 uses (drinking establishments including public houses) and Class A3 uses (restaurants and cafes) across the Borough where the facility acts as a community facility and/or contributes to the character or appearance of the area.

It was acknowledged that the option would have protected most A Class uses which can be considered as community facilities and would avoid trying to differentiate between drinking and eating establishments. However, on the minus side it would not have protected Financial and Professional Service uses (Class A2) which often provide a useful service to the community, especially services such as banks and building societies and would also have provided a loophole for conversion to A2 use, for a short time before conversion to residential (Class C3).

### **Option Three**

Option three was to draw up a list of public houses that interested stakeholders would like to see protected – the loss of a public house on this list would be resisted.

The option would have removed the uncertainty of whether a public house would be recognised as a social and community use and/or contributed to the character and appearance of the area. However, it might have had some blighting effect on the public houses in question and would not have been able to prevent pubs changing to other A Class uses without the use of an Article 4 direction.

The other concern is that a list tends to be entirely subjective and relies somewhat on the responses received from stakeholders. It is likely to benefit areas where there are articulate and motivated members of the community whereas those areas which do not benefit from this may lose out. It often depends on how a particular public house is managed which will vary over time depending on the brewery and the particular licensee.

### **Option Four**

Option four was to resist the loss of all A Class uses where the facility acts as a community facility and/or contributes to the character or appearance of the area.

It was acknowledged that some A Class uses may not be considered as desirable as drinking establishments and that a policy to protect these would not normally be considered necessary. However, it was acknowledged that by protecting all A Class

uses this would make it harder to lose public houses by changing to another A Class use, before changing to residential use. It was considered that Financial and Professional uses (Class A2) could not necessarily be included as they did not normally contribute to the character and appearance of the area or act as a community facility.

### **Formulation of draft policies**

The results of the consultation were taken into account in formulating a draft policy as was the publication of the National Planning Policy Framework at the end of March 2012.

With regard to the question as to whether the Council should amend policies within the Core Strategy to try to resist the loss of public houses in the Borough, 63% (32) of the respondents agreed; 27% (14) did not respond or chose another option and only 10% (5) disagreed. Clearly there was an overwhelming response to formulate a policy.

In terms of the options themselves, 20% (10) of the respondents chose Option One; 6% (3) chose Option Two; 12% (6) chose Option Three and 48% (25) chose Option Four. Clearly there was an overwhelming desire to pursue Option Four which involved safeguarding other A Class uses in addition to Drinking Establishments.

Support for drafting a policy protecting other A Class uses also came from the Sustainability Appraisal report which was developed from the SA/SEA scoping report. The proposed draft policy of protecting A4 uses throughout the Borough and A2 and A3 uses outside of Higher Order Town Centres (they are already subject to policy requirements within Town Centres) fared better than other options with regard to two of the criteria – supporting a diverse and vibrant local economy to foster sustainable economic growth; and encouraging social inclusion, equality the promotion of equality and a respect for diversity. There was also support from the criteria which was to reinforce local distinctiveness, local environmental quality and amenity through the conservation and enhancement of cultural heritage.

The only SA criteria where there could possibly be any negative impact was the aim that the housing needs of the Royal Borough's residents are met. However, specific housing policies are in place to ensure that the need is met including the Borough being on course with deliverability reflected through the housing trajectory and converted pubs or other A Class uses are not required to meet the minimum housing target.

The Equality Impact Appraisals also demonstrate that a policy approach that retains as many facilities as possible that can either provide a community meeting point or a service to the local community score the highest and this is reflected for both draft policies.

Whilst the policy option selected (Option Four) reflected the direction of travel it needed refining before being translated into a sound policy. It was recognised that relying on whether a use fulfilled the criteria of being a community facility was actually problematic and involved a large element of subjectivity – it was also too

reliant on how well a public house was managed at a particular moment in time. It was decided to drop this criterion as it was not effective.

In terms of the second criterion that the change of use would be opposed where the use contributed to the character or appearance of the area this was further refined into a separate generic policy. It was considered that insufficient weight had been given to how uses, such as public houses, contributed to the character of an area and its sense of place. It was also acknowledged that there may be other non drinking uses that might contribute and that to single out public houses was being unduly restrictive. Whilst there has been some criticism of this policy at publication stage as being too wide ranging, in view of the changes permitted within the Use Classes Order it would in effect only be used, where a use was either being lost to an A5 use or a non A Class use. In Kensington and Chelsea, with the highest residential house prices in the United Kingdom it is invariably to a residential use so the policy does not involve testing, for example, as to whether a particular retail use such as a specialised bakers, is more attractive than another retail use.

Support for this approach also comes from the National Planning Policy Framework (NPPF), particularly section 7 on 'Requiring Good Design.' Paragraph 58 states that planning policies should aim to ensure that developments (this will include changes of use) establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit.

Paragraph 58 also refers to responding to local character and history, and reflecting the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation.

Paragraph 61 states that although visual appearance and the architecture of individual buildings are very important factors, securing high quality design and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

This approach has also been taken by an Inspector in a recent appeal decision for the loss of the Phene Arms in Chelsea (APP/K5600/A/12/2172028 and APP/K5600/A/12/2175522). At paragraph 24 the Inspector points out that adopted Policy CL1 states, "The Council will require all development to respect the existing context, character and appearance, taking opportunities available to improve the quality and character of buildings and the area and the way it functions, including being inclusive to all. " He also points out the wording of Policy C3 says that, "The Council will require development to preserve and to take opportunities

The third element to be considered was the protection of all A Class uses as Option Four had suggested. Given the context of the Borough with the highest house prices in the United Kingdom and continuing increase in residential property prices, a local approach has been taken – in view of the fact there is a continuing and heightened pressure on non residential uses in the Borough since the Core Strategy was adopted in December 2010. An additional factor material factor is the publication of the NPPF, particularly section 8 on promoting healthy communities.

Paragraph 69 of the NPPF notes that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Whilst the thrust of the paragraph is to involve all sections of the community in the development of Local Plans it is clear that local planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see.

Residents have always maintained that part of the appeal of the Borough is the uses interspersed within residential areas that add to character and can provide a service. This is also referred to in the adopted Core Strategy as part of the local case for two of the Plan's Strategic Objectives. Paragraph 3.39 notes that in spite of the recession which started in 2008/9, residential land values continue to out-compete those 'local' borough functions which are essential for a residential neighbourhood - the local shops and community facilities, and the Borough facilities. One of the strategic priorities therefore is to protect and promote functions that otherwise might be lost to residential use. **C01 states: Keeping Life Local**

"Our strategic objective to keep life local is for strong, effective local centres and for social and community facilities to be widely available and for neighbourhood functions, including neighbourhood shopping facilities, to be easily accessible so that residential communities can flourish."

Paragraph 3.3.10 of the Core Strategy acknowledges that RBKC has a finely grained mix of uses such as shops, businesses, arts and cultural facilities, some of which are world class. The uses have benefited from the Borough's high residential density and from visitors to the Borough. It is acknowledged that the uses have been under pressure from residential development, and there is a risk that they could decline to such an extent that it will be detrimental to the collective quality of life of the Borough.

The second strategic objective is therefore also relevant to the protection of other A Class uses outside of town centres. **C02 states: Fostering Vitality**

Our strategic objective to foster vitality is that the quality of life of our predominantly residential Borough is enhanced by a wide variety of cultural, creative and commercial uses which can significantly contribute to the well being of residents and to the capital's role as a world city.

In terms of protecting isolated shops outside of town centres there has been a long standing policy on this which was carried forward into the adopted Core Strategy. Policy CK2 states:

The Council will ensure opportunities exist for convenience shopping throughout the Borough. To deliver this the Council will protect individual shops outside of designated town centres.

The Council now considers that this protection needs to be extended to those A Class uses which exist outside of Higher Order Town Centres and are currently not protected by existing policies, not least because of the spiralling property prices in the Borough which have continued to climb since the Core Strategy was adopted

and over the longer timescale show no sign of slowing. It is important to emphasise that the protection of Class A2 and A3 uses outside of Higher Order Town Centres is not based on a number crunching exercise about how many have been lost in the last couple of years. The simple fact is with the highest residential property prices in the United Kingdom all non residential uses in residential areas have come under renewed pressure for change. This together with guidance contained within the NPPF gives justification for the draft policy that was developed. As stated, paragraph 69 of the NPPF notes that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Whilst the thrust of the paragraph is to involve all sections of the community in the development of Local Plans it is clear that local planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see and clearly the majority of those who responded to the Issues and Options consultation wished to protect these facilities as well.

Paragraph 70 of the NPPF states that to deliver the social, recreational and cultural facilities and services 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 above guidance would apply, not only to protecting public houses, but to other facilities and services which fall within Class A3 (Restaurants and Cafes) and Class A2 (Financial and Professional Services). The 2002 Unitary Development Plan (UDP) had a policy (Policy S12) which was superseded with the adoption of the Core Strategy in December 2010 which resisted the loss of banks and building societies in North Kensington and South West Chelsea. In the reasoned justification (paragraph 8.3.23) it was noted that bank and building societies are still lacking in North Kensington and South West Chelsea. This is still the case and provides additional justification for the current draft policy.

### **The draft policies**

The draft planning policies were issued for a six week public consultation in June 2012. The wording of the reasoned justification and accompanying draft policies can be found in the June 2012 document. However, the wording of the draft policies is included here for completeness:

### **Public Houses and other uses which provide a wider social role**

The Council will resist the loss of Public Houses and other Drinking Establishments (Class A4) throughout the Borough; and Restaurants and Cafes (Class A3) and Financial and Professional Services (Class A2) outside of Higher Order Town Centres.

### **Character and Use**

**The Council will resist 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.**

## **Publication policies and reasoned justification**

The final draft policies were consulted on for soundness for six weeks between 4 September 2012 and the 16 October.

### Character and use

The policy relating to character and use was included within existing Policy CL1 which relates to context and character. The strategic part of the policy states,

“The Council will require all development to respect the existing context, character, and appearance, taking opportunities available to improve the quality and character of buildings and the area and the way it functions, including being inclusive to all.”

In order to deliver this policy the Council will resist the change of use of any building where the current use contributes to the character of the surrounding area and to its sense of place. This policy applies to the whole of the Borough.

### Public Houses and other facilities which Keep Life Local

The policy for resisting the loss of public houses and other Drinking Establishments (Class A4) throughout the Borough and other facilities which keep life local was included as part of adopted Policy CK2 which is within the ‘Keeping Life Local’ chapter of the Core Strategy. The current policy protects individual shops (Class A1) outside of designated town centres. The strategic part of the policy states,

“The Council will ensure opportunities exist for convenience shopping throughout the Borough.” The revised policy should have read the same as the title of the policy so that it is, “The Council will ensure opportunities exist for convenience shopping throughout the Borough and other facilities which keep life local.” The Council recommend this to be amended by the examination Inspector.

## **Recommended changes from the publication version**

Whilst the Council are satisfied that the publication policies are sound as they stand, representations were received at publication stage that the policy relating to use and how this contributes to character and a sense of place is too wide ranging and not precise enough in terms of criteria that will be taken into account when changes of use are being considered. In response, there is clearly considerable latitude offered by the Use Classes Order so in practice the policy would be likely to apply when A Class uses are being changed to a residential use (Class C3). Notwithstanding this the Council would recommend that the application of the policy is limited to Conservation Areas which cover approximately 75% of the Borough. This is also in response to the representations received.

In view of the statutory obligation to consider the effect of any proposal on the character or appearance of a conservation area the draft policy merely clarifies that the use of a property can contribute to the character on an area. This stance is supported by *Archer and Thomson v Secretary of State* 1991. However, the Council is concerned that in the past insufficient weight has been given to this aspect.

In view of this the Council would like to recommend that the policy relating to character and use is moved from Policy CL1 which relates to context and character, to Policy CL3 which relates to heritage assets – conservation areas and historic spaces. By including within conservation areas the policy is considered to be more effective and thereby is strengthened. With regard to public houses outside of conservation areas the proposed reasoned justification (30.3.14B) makes reference to them at neighbourhood level being a source of identity and distinctiveness and that they are part of a fine grain mix of uses, which provide not only historical continuity, but contribute economically and add to the vitality of residential communities and to the character of an area.

On this basis and as part of a wider review of the ‘Renewing the Legacy’ chapter of the Core Strategy which incorporates saved policies from the Unitary Development Plan has been incorporated into a consultation document entitled, ‘Conservation and Design Draft Policy for Public Consultation’ dated December 2012. This document proposes (amongst other changes) moving the policy into Policy CL3 together with the reasoned justification at 34.3.27 (repeated at 34.3.29 but this is an error). The original publication text at paragraph 34.3.3 is now proposed to be deleted. This document is out for public consultation between the 4 December 2012 and the 31 January 2013 for an eight week period.

The recommended changes have been grouped into one document which is No.21 on the Submission Document list.