

**ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

**Examination of the partial review of the Core Strategy: Policies relating to the protection of public houses and other uses**

**Schedule of Matters and Issues for Examination**

**Response of the Royal Borough of Kensington and Chelsea**

**Inspector: Simon Berkeley BA MA MRTPI**

**Programme Officer: Chris Banks**

## **Matter 1 – Legal and procedural matters**

### **1.1 Overall, have the proposed revisions to the Core Strategy (CS) been prepared in accordance with the legal requirements? Have they been prepared in accordance with the plan – making advice in the National Planning Policy Framework?**

The Council consider that the revisions have been prepared in accordance with the legal requirements set out in the Planning and Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Planning) (England) Regulations 2012. To aid the Inspector the Planning Advisory Service (PAS) Checklist has previously been submitted (Submission document 25).

Whilst the Checklist is based on the previous Regulations, excludes the implications of the Localism Act and does not deal with matters that are no longer a statutory requirement, it does provide a useful template and it demonstrates that the Council has prepared revisions in accordance with the legal requirements. The necessary consultations have been undertaken under Regulation 18 and both relevant specific consultation bodies and general consultation bodies have been consulted at each stage and their views taken into account.

With regard to the plan-making advice of the National Planning Policy Framework (NPPF) is laid out at paragraphs 150 to 185 of the NPPF.

With regard to paragraph 151 and being consistent with the principles and policies set out in the Framework, including the presumption in favour of sustainable development, the Council will be amending the Core strategy to ensure that this is taken into account. The presumption of sustainable development is proposed to be included at paragraph 1.1.6 of the revised Core Strategy which can be found as part of the 'Miscellaneous Matters' planning document which was the subject of public consultation between the 6 December and the 31 January 2013 (Council document RBKC-PR- 001-APP9).

The policies have been drafted to provide a clear indication of how the decision maker should react to a development proposal as required by paragraph 154. They are clear and concise.

As the Core Strategy has already been adopted early and meaningful collaboration took place and a collective vision was adopted with a set of agreed strategic priorities. The provision of community and cultural infrastructure and other local facilities mentioned at paragraph 156 was part of this. It is now proposed for local facilities to be extended to include drinking establishments (Class A4), Restaurants and Cafes (Class A3) and Financial and Professional Services (Class A2).

Paragraph 157 refers to the need to identify areas where it may be necessary to limit freedom to change the uses of buildings, and support such restrictions with clear explanation. The Council consider that they have made a local case as to why restrictions are required in the Royal Borough and the reasons for doing so are clear.

Paragraph 158 refers to using a proportional evidence base. The policies in question are considered to be based on proportional and adequate evidence which is up to date about the economic, social and environmental characteristics of the area. The Council consider that they have taken into account the relevant market and economic signals in the Borough which are very different from elsewhere in the United Kingdom.

Paragraph 173 refers to ensuring viability and deliverability. The viability of keeping an existing business is clearly a material consideration and will be taken into account when justified. However, no evidence has come to light that public houses or other uses which make life local cannot operate successfully given a level playing field of assessment with other A Class uses. Clearly compared with a residential use they may not be viable, but that is because Kensington and Chelsea is at the extreme end of the residential property market.

Planning strategically across local boundaries mentioned at paragraphs 178 to 181 is not relevant with regard to the protection of local uses.

## **1.2 Do the revisions have regard to national policy and if there are any divergences how are these justified?**

The revisions are considered to be in accordance with the National Planning Policy Framework and indeed without them the existing Core Strategy is not considered to be in conformity on this issue. Paragraph 69 of the NPPF states that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. It states that planning policies should aim to achieve places which promote opportunities between members of the community who might not otherwise come into contact with each other including active street frontages. It is considered that the uses that the Council wishes to protect provide active street frontages and retain vitality.

Paragraph 70 of the NPPF states, that to deliver the social, recreational and cultural facilities and services the community needs, planning policies 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.

At paragraph 16 of the Inspector's decision to dismiss the appeal for the Cross Key's public house (ref APP/K5600/A/12/2172342) he commented that the Core Strategy was in conflict with the NPPF in relation to the protection of public houses (Document 33 of the Submission documents).

With regard to the specific issue of viability and the NPPF this is addressed at paragraph 173. Paragraph 173 specifically deals with addressing the costs of any requirements likely to be applied to development to provide competitive returns to a willing land owner and will developer to enable development to be deliverable. The specific issue of viability and setting out local standards has been undertaken with the adoption of a Planning Obligations SPD and ensuring that Community Infrastructure levies are being worked up and tested alongside the partial review of the Core Strategy. The advice is not considered to require the specific issue of viability to be included with in individual policies.

### **1.3 Have the revisions been prepared in accordance with the Council's Statement of Community Involvement and met the minimum consultation requirements in the Regulations?**

The relevant Statement of Community Involvement is dated December 2007 (Submission Document 24) although a new document is in the process of being produced. A step by step guide to Development Plan Documents is included at paragraphs 4.13 to 4.14. However, in view of the changes in Regulations since this time the document is somewhat out of date and hence why it is being revised this year to reflect the approach of the Council and with reference to the current regulations.

The Council consulted at Stage 1 which was referred to as 'Issues and Options' laying out what the issue was (principally the loss of public houses) and a suggested approach to options.

Draft policies were consulted on at stage 2 known as 'Preferred Options' which was accompanied by a sustainability appraisal report (Submission Document 3) and an individual response to the responses to the Issues and Options consultation (Submission Document 5) . The consultation document itself (Submission Document 8) also gave reasons why the preferred option was selected.

Stage 3 (Submission to Government) is referred to as taking place at the same time as submission to the Secretary of State which in reality occurs after this and is now known as 'Pre-Submission' stage. However, a consultation as to the soundness of the document was undertaken for six weeks as set out in the Statement of Community Involvement. This was undertaken prior to formal submission.

Feedback has been given in so far as each response to the consultations has been given a reference number and was acknowledged. A report given a Council response to each consultation stage was prepared and is within the public domain. An electronic database is now used where those on the Local Plan database are now informed via the weekly Planning Bulletin of website details for consultations and submission where they can find relevant evidence and information.

With regard to publicity, the relevant requirements have now changed with regard to local newspapers, with there no longer being a statutory requirement to advertise. However, a newspaper advert was put in the Kensington and Chelsea Chronicle giving 6 weeks' notice of the Independent Public examination (copy sent to the Programme Officer). All details are included on the Council's website and weekly updates are given in the Planning Bulletin.

The revisions have met the minimum requirements set out in the Town and Country Planning (Local Planning) (England) Regulations 2012. This is referred to in the PAS Legal requirement check list (Submission Document 25). Specifically the requirements of Regulation 18 have been followed where the Council has at each stage notified each of the bodies or persons specified on the Local Development Framework database including specific consultation bodies and general consultation bodies The Local Planning Authority have also taken into account the

representations made. The regulations have also been followed in relation to Publication (Reg 19); Representations relating to a local plan (Reg 20); Conformity with the London Plan (Reg 21); Submission of documents and information to the Secretary of State (Reg 22) and Independent examination (Reg 24).

#### **1.4 Are the proposed revisions based on a sound process of sustainability appraisal and testing of reasonable alternatives?**

At the time of the Initial Issues and Options consultation under Regulation 18 a scoping report was published which was sent to each of the statutory bodies who have to be consulted (English Heritage, Natural England and the Environment Agency) requesting whether they had any comments (Submission Document 2). This included reference to the Habitats Directive. No comments were received in relation to the document. This laid out the 16 SA objectives that would be used and the likely documents that would be referred to together with initial evidence.

The sustainability appraisal report was issued at the draft policy stage (Submission Document 3) when the four initial options had been appraised using the 16 SA objectives. It was part of the appraisal to split into two draft policies – one resisting the loss of public houses and other facilities which make life local and a generic policy resisting changes of use where the use is considered to contribute to the character of an area and its sense of place.

The reasonable alternatives were examined as the other options and the report showed that the draft policy for protecting other A Class uses in addition to Drinking Establishments (Class A4) offered the most sustainable approach together with a policy protecting uses which contributed to the character of an area.

#### **1.5 Have the main modifications put forward by the Council to the submission version of the proposed revisions been subject to sustainability appraisal?**

The modifications involved the draft policy relating to character and use being recommended to be applicable in conservation areas only rather than applying to the whole borough. There is a statutory duty to consider whether a proposal will preserve or enhance the character or appearance of a conservation area and the issue of the use of a property has been established as part of the consideration of the character of such an area. A further sustainability appraisal was not undertaken but this is because the Council consider that there has been no material change in terms of the sustainability appraisal.

The sustainability appraisal that was undertaken covered the whole of the Borough. The modification now proposed is to reduce the area covered to conservation areas only (about 70% of the Borough). In terms of the 16 SA objectives there may be of four which have any relevance to the proposed modification. With regard to SA Objective 3 which supports a diverse and vibrant local economy to foster economic growth it is contended there is no material change. In fact it could be argued that having a policy that is less restrictive regarding changes of use which is limited to conservation areas only might support economic growth, but it could be considered either way.

Objective 4 encourages social inclusion, equity, the promotion of equality and respect for diversity. Given the other draft policy protecting uses which make life local it is considered that the proposed modification has no material effect. Objective 12 deals specifically with ensuring that social and community uses which serve a local need are preserved or enhanced. A use which might contribute to the character of an area or its sense of place is not necessarily a social and community facility and the proposed modification is considered to have no material effect on the assessment.

Objective 16 relates to reinforcing local distinctiveness, local quality and amenity through the conservation and enhancement of cultural heritage. By applying the policy to conservation areas only which cover over 70% of the Borough it is considered that there is no material change to this objective.

### **1.6 Is an Appropriate Assessment necessary to satisfy the Habitats Regulations?**

English Nature has confirmed that an Appropriate Assessment is not required under the Habitats Regulations (Council document RBKC PR-001-APP 8). The policies in question are not site specific but are generic policies and generally do not involve redevelopment, but rather change of use.

The Council also refers to the Assessment carried out as part of the Core Strategy policies which can be found at appendix one. The draft policies will become specific criteria in two existing adopted policies (Policy CK2 and Policy CL3) where it was concluded that no measures needed to be undertaken which might affect sites protected under the Habitats Regulations. The additional criteria to these policies are considered to result in no change to the conclusion of the original assessment.

### **1.7 Are the revisions consistent with the remainder of the adopted Core Strategy, and would they support its delivery?**

The proposed revisions are entirely consistent with the remainder of the Core Strategy and will support its delivery. With regard to the draft policy which resists the loss of public houses throughout the Borough and Financial and Professional uses (Class A2) and Restaurants and Cafes (Class A3) outside of Higher Order Town Centres this is consistent with the Strategic Objective C01 which is for 'Keeping Life Local.' The strategic objective is for social and community facilities to be widely available and for neighbourhood functions, including local shopping facilities, to be inclusive for all so residential communities can flourish. By protecting such uses the Core Strategy Vision (CV1) to further develop the strong and varied sense of place of the Borough is delivered as is the Strategic Objective.

With regard to the draft policy for resisting a change of use which would be detrimental to the character of an area or its sense of place this is supported by Strategic Objective C05 for 'Renewing the Legacy.' This is to pass to the next generation a Borough that is better than today, of the highest quality and inclusive for all. Policy CL3 states 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. Adding a criterion to this

policy to resist a change of use where it contributes to the character or appearance of an area including its sense of place is entirely consistent with the policy and the Core Strategy as a whole.

**1.8 Is a sustainable communities strategy in place? How do the revisions relate to this, and to other plans and strategies which might influence their delivery?**

A Sustainable Community Strategy is in place for the period 2008 to 2018 (see appendix two). The revisions relate to the 'Community, Equality and Inclusivity' - Chapter 6 (page 58). The goal is a borough where all local people feel acceptance by the wider community, and where everyone can access the services that they need. To achieve this goal the Council will improve the relevance and accessibility of local services to residents and other service users; and support and develop community life and leadership in the borough. Aim 3 (page 65) is to provide support to empower communities and individuals to learn more about the borough and get more involved in community life and leadership by (i) supporting the provision of community facilities, organisations and events, particularly those that promote interaction between different communities.

Explicit reference is made on page 66 to proposed LDF policies that will support this aim which include:

- Protecting and improving local social and community facilities
- Ensuring that all residents have easy access to local shops and services, such as (amongst other uses) a public house and strengthening local shopping centres that meet the day- to -day needs of local communities.

The draft policy to protect Class A2 Financial and Professional Services; A3 Restaurants and Cafes; and A4 Drinking Establishments is considered to be in line with this aim.

There are no other plans or strategies which are in place which might influence delivery. Clearly Government proposals for further deregulation of the planning system will be dealt with at the appropriate time when the details are clear.

**Matter 2 – whether the proposed revisions to the Core Strategy have been positively prepared and are justified?**

The Council consider that the proposed revisions have been positively prepared and are justified. Advice contained at paragraph 182 of the NPPF refers to policies being prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development. The three dimensions to sustainable development are set out at paragraph 7 of the NPPF and these require the planning system to perform three roles – an economic role, a social role and an environmental role.

With regard to objectively assessed development requirements the issues under consideration are purely local issues requiring local consideration so there is no need or justification for cross border cooperation. With regard to the need to protect such facilities this has been set out elsewhere, but the main thrust of concern are the spiralling residential property prices in the borough and the fact that the Council considers that non –residential uses in particular are under pressure for change of use to residential.

In terms of the need for the policies to achieve sustainable development and the three roles of the planning system the economic role requires the planning system to contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right place and the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure.

A view sometimes expressed is that allowing the change of use to residential contributes to achieving the Borough's housing target and indeed part of the economic role of the planning system is to ensure that housing units are delivered in the right place at the right time. The 2011 and 2012 Annual Monitoring Reports (AMRs) published since the adoption of the Core strategy in 2010 provide some initial information about the implementation and delivery of housing in the Borough. Over the five year period from 2006-2011 the net gains permitted exceeded the target set out in the former London plan of 350 units for 2009/10 and the higher target of 585 units of the new London plan (adopted July 2011). The net gain for approvals was 540 for 2009/10 and 783 for 2011. The Council wishes to ensure that delivery rates continue to exceed the target and will continue to monitor closely approval rates. However, the bulk of this housing delivery comes from the Borough's strategic sites and there is no justification that that permitting public houses and other facilities which make life local to change to residential use to achieve or exceed the housing target. Being an inner London borough there is an element of windfall development which contributes towards the housing target. However, retaining community facilities and services is also an important component of sustainable development and would outweigh the small number of additional units that might be created.

The planning system also has a social role, supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well being. The Council consider that both the draft planning policies contribute to this objective, especially in providing accessible local services and retaining facilitates which contribute towards the borough's cultural and social well being.

In terms of the environmental role that the planning system plays which involves contributing to protecting and enhancing the natural, built and historic environment the Council consider that both draft planning policies contribute towards this aim assisting in retaining the historic environment by retaining public houses and also protecting uses in conservation areas which contribute towards the character of the area and its sense of place.

## **2.2 What alternatives to the proposed revisions have been considered? Are the revisions chosen the most appropriate in the circumstances?**

The alternatives to the proposed revisions were considered at the initial issues and options stage including the question as to whether a policy should be introduced to protect public houses. The vast majority of those that responded to this consultation supported a policy (32 responses - 63%); 10% disagreed (5 responses) and 6% (3 responses) chose another route.

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.

Four alternatives were put forward at issues and options stage to how best to protect public houses in the borough. The opportunity was taken at the issues and options stage to give the pros and cons of each option. This was not meant to guide consultees to a particular option, but enabled an informed choice to be made. The Council considered the options that were put forward were realistic. The alternatives included resisting the loss of public houses throughout the Borough where they acted as a community facility and/or contributed to the character or appearance of the area. Resisting the loss of drinking establishments (Class A4) and restaurants and cafes (Class A3) was also offered as an option as was drawing up a list of protected public houses and resisting the loss of all A Class uses where they acted as a community facility and /or contributed to the character or appearance of the area.

The response to the consultation was that the majority of respondents (48% - 25 responses) wished for all Class A uses to be protected. In view of the fact that shops outside of designated town centres are already protected the evolving policy took on these views as a material consideration.

The British Pub and Beer Association offered the alternative of protecting public houses by their inclusion on a list of Community Assets which would enable residents or interested parties the first option to buy if the property was being sold on the open market. However, the Council did not consider this to be a realistic option as it would offer little protection for the number of public houses in the Borough and given residential property prices this option could not realistically be exercised. The other approach supported by some was the use of Article 4 directions to prevent public houses changing to other uses. Given the fact that compensation is still payable on changes of use, even with 12 months notice of such a direction being brought into force, it was also considered this was also an unrealistic option to pursue.

As for whether the most appropriate option was selected the options were subject to a sustainability appraisal report and the selected policy developed from the option of generally protecting all A Class uses scored the highest. The option had the advantage of protecting both cafe and restaurant functions which contribute to community cohesiveness as a place to meet and also valued service uses such as

banks and building societies. Ironically, one of the factors which makes Kensington and Chelsea such a desirable place to live is the fine grain mix of uses in predominantly residential areas which residents find appealing. The option allowed the best protection for these uses against a background of the highest residential property prices in the United Kingdom where it is these uses in residential areas that are considered to be most at risk of conversion.

2.3 The Council has proposed main modifications to the submission version of the revisions. Taken together, those listed as MM4, MM5 and MM6 in the table attached to the Council's letter of 20 February effectively alter the approach to resisting the change of use of buildings where the current use contributes to the character of the area and its sense of place. As originally submitted, this resistance was proposed to apply across the Royal Borough. As proposed to be modified, it appears only to apply to Conservation Areas.

**a) For the avoidance of doubt, is this correct?**

Yes, this is correct. It is proposed to move the policy into existing Policy CL3 'Heritage Assets – Conservation Areas and Historic Spaces' which applies within conservation areas, but not the whole of the borough.

**b) If so, what is the justification for this modification? Is it necessary for soundness?**

The modification was considered appropriate so as to strike a reasonable balance between the need to protect commercial uses and their unnecessary loss to residential purposes to assist in preserving the character of an area, and to avoid unnecessary uncertainty as to which users might be protected. In view of the flexibility of the permitted changes of the Use Classes Order which permits many uses to change to other uses without the need for planning permission it is not considered to be overly restrictive, but it could potentially be open to too wide interpretation unless a clear justification was given as to why a change of use had been resisted. There is no reason as to why this could not be undertaken, but the criteria for the decision would have to be clear. The suggested modification is not considered to be necessary for soundness as clear justification could be given and clearly a decision can be challenged in any case.

Notwithstanding the fact that the submission policy is considered to be sound, it is considered to be more appropriate to apply in conservation areas where there is a statutory duty to consider the effect of any proposal on the character or appearance of the area. It is already accepted in law that the use of a building within a conservation area, can, in certain circumstances, contribute towards the character of that area so the policy is not breaking new ground in this regard. However, the policy would enable the use of a property to be considered in a more consistent and robust manner.

**2.4 What is the justification for the proposed policy stance? In particular:**

**a) Why is it desirable to prevent public houses and each of the other uses involved changing to alternative uses?**

It is desirable to retain public houses and other uses which make life local for three principal reasons. The first is that public houses and cafes and restaurants can play an important role in facilitating social interaction and creating healthy inclusive communities. They offer places to meet and can often be at the centre of community action. They offer opportunities for meetings between members of the community who might not otherwise come into contact with each other. They also offer vitality and active frontages attracting footfall and breathing life into an area. The Council is strongly opposed to becoming a borough which is sterile and acts as a dormitory suburb for the wealthy. To remain sustainable a balance of uses should be available which creates employment and vitality in an area. Both public houses and cafes and restaurants can fulfil such a role.

Secondly, the protection of Financial and Professional services, such as banks and building societies is important because they provide an important service to the community. Clearly there is a mix of uses in Class A2, some of which might be deemed more worthy to retain than others. However, they all provide a service of one kind or another which is valued by particular members of the community. They also create vitality in an area increasing footfall and social interaction.

The Council is of course aware, that through permitted development relating to the Use Classes Order some of these uses can change to others without the need for planning permission. However, in view of ever spiralling residential property prices the current trend is for change to residential use. The Council would prefer that uses remain within the A Class of the Use Classes Order such as shops, financial and professional service uses and restaurants and cafes not only bring vitality to an area, but also are part of the mix of uses which help to bring character to an area and give it a sense of place.

The third reason for protecting such uses is that they often contribute to the historic character of an area and add to its sense of place. There is no doubt that communities have been weakened when local facilities such as public houses have been lost and a historical link has been broken. However, other uses which are not public houses can also play their part and clearly a local cafe or a coffee shop may also contribute to the character of an area and define it as a specific place which has some vitality.

#### **b) What problems do the proposed revisions aim to address?**

The principal concern of the Council is that without protection for non residential uses the uplift in value that can be obtained by conversion to residential use is so large that all such uses will come under severe pressure to be changed. This may not happen overnight but the cumulative impact will be significant over time. Given that Kensington and Chelsea has the highest residential property prices in the United Kingdom and prices show no sign of levelling off over the longer term with the global recession still a dominant feature, investment in bricks and mortar is a very attractive proposition. The proposed revisions aim to keep Kensington and Chelsea from becoming a sterile residential enclave where properties are bought for investment purposes on the world market.

**c) What evidence is there to indicate that, in the absence of the proposed policy intervention, the public houses and other uses involved would be likely to come under pressure for residential redevelopment?**

The cost of residential property in the borough and the potential uplifts that can be gained have already been quoted in three documents submitted by the Council – ‘Information on latest house prices in the Royal Borough’ (Submission document 31) - Savill’s ‘Spotlight on London Housing supply summer 2012’ and the work done by Frost Meadowcroft surveyors (RBKC – PR-001- APP4 and RBKC – PR-001- APP6). However, there is further evidence that residential property prices are continuing to rise. According to a report on the Property website ‘Rightmove’ in March 2013 sterling has fallen about 7 percent since the start of the year, making London property prices far more affordable to wealthy foreign buyers who have dollars, euros or Chinese yuan. Accordingly to the report dated 18 March Kensington and Chelsea is seeing a 6.25 percent monthly rise in residential property asking prices moving to an average of £2.32 million, up 15.8 percent on the same time last year. There has also been an increase in planning applications relating to the change of use of public houses to residential use with nine applications since August 2010 (Submission Document 32). This gives an indication that such uses are coming under pressure.

The publication of the National Planning Policy Framework (NPPF) in March 2012 gave some welcome policy protection for public houses in particular and as a result recent planning appeals have been dismissed. It is probable that these decisions are now acting as a disincentive for further applications to be submitted. However, the Council still requires a robust policy to assist in preventing the further loss of public houses and also protecting other uses which help make life local in the borough.

**2.5 Why do the proposed revisions to Policy CK2 resist the loss of public houses and other drinking establishments throughout the borough, but only resist the loss of restaurants and cafes, and financial and professional services outside of Higher Order Town Centres? Why is this distinction made?**

The policy has been drafted to complement existing policies within the adopted Core Strategy. Individual shops outside of designated town centres are already protected by Policy CK2 with the Council wishing to ensure that opportunities exist for convenience shopping throughout the Borough.

In relation to public houses a number of valued facilities, such as the Churchill Arms on Kensington Church Street are within designated town centres and the Council wish to avoid their conversion to other town centre uses where control exists.

In relation to town centre uses generally, Policy CF3 ‘Diversity of uses within Town Centres’ already protects all shops and shop floorspace at ground floor level in the primary retail frontages of the Higher Order Town Centres and prevents change to another town centre use unless the change is to another town centre use and where 80% of the ground floor units in the relevant street frontage will remain an A1 (shop) use and the non shop use is not adjacent to another non – A1 use. This gives an opportunity for restaurants and cafes and financial and professional service uses to exist, but to remain a subservient use the principal retailing activity of a town centre.

In view of the fact that they are already protected by change to residential use by Policy CF2 which states that the Council will promote vital and viable town centres and ensure that the character and diversity of the Borough's town centres is maintained, and Policy CF3 which protects the vitality of town centres by promoting a diverse range of shops and ensuring that these uses will be supported, but not dominated, by a range of complimentary town centre uses, sufficient protection exists.

The second policy criterion also protects shopping floorspace but allows more flexibility for complimentary town centre uses with 66% of the ground floor frontage to remain in retail use. The overarching strategic policies of CF2 and CF3 provide protection from conversion to residential use.

Policy CF3 (d) protects all shops within neighbourhood centres, unless the proposal is to change to a social and community use, and where 66% of the relevant street frontage remains in A1 use (shop). A neighbourhood centre is not classified as a Higher Order Town centre so at the moment there is no protection for public houses, Class A3 (cafes and restaurants) and A2 (financial and professional services apart from contending that viability might be impaired). Clearly without the policy applying to neighbourhood centres there would not only be a potential loophole to permit a public house being converted to residential use, but other uses which make life local could also be at risk. The policy has therefore been drafted to complement existing policies and to address the strategic objective of 'Keeping life local' (C01).

## **2.6 Taken overall, are public houses and other uses involved financially viable uses in this part of London? Is there any evidence on this one way or the other?**

The Council considers that both public houses and other uses which make life local are financially viable uses in the Borough with the proviso that there is a level playing field and the highly skewed residential property market is discounted. The purpose of the draft policy to prevent the loss of public houses and other uses precisely because it would be far more financially advantageous to change them to residential use. If they were not financially viable there would be high vacancy rates in the Borough, but these are low. The Annual Monitoring Report (AMR) (Submission document 29) shows that in 2012 the vacancy rate was 5.2% in Higher Order Town Centres and 7.2% in Neighbourhood Centres. This is about half the national average and reflects the fact that there needs to be some churn.

The financial evidence that has been put forward in the last four appeal decisions has not been accepted by the inspectors as sufficient to demonstrate that a public house use is not a viable one and there is some evidence to suggest that businesses were bought at unviable prices to reflect their potential change for residential purposes.

A good example that demonstrates that public houses can be viable is the Phene Arms in Chelsea which was dismissed on appeal last November from being converted into a luxury house. The appellants had stated that the public house was running at a loss, but the Inspector felt that their viability case was not overwhelming. (Submission document 33). The public house has just been sold to the City Pub

Company East, for a rumoured £4 million pounds according to an article in the Evening Standard. The City Pub Company East is a small independent company which runs a number of pubs across London and the south east including the Ladbroke Arms in Notting Hill.

### **Matter 3 – whether the proposed revisions to the Core strategy are effective and consistent with national policy**

#### **3.1 Public houses and other uses concerned sometimes cease trading, leaving their host buildings vacant.**

a) **In such an event, is there is a risk that the proposed policy revisions could lead to the building involved remaining vacant and unused?**

Whilst there is always a risk that this could happen, it is considered to be a very low risk in the Royal Borough. Clearly the policies that have been drafted reflect local circumstances and may not be appropriate in another part of the country where vacancy rates are much higher. The flexibility with permitted development within the Use Classes Order permits a variety of options to be explored. A number of public houses have changed into gastro- pubs or have specialised in appealing to certain groups or individuals, much comes down to good management. There are virtually no examples of buildings remaining vacant and unused over a long period in the borough and where this might have occurred there is no evidence that it was the result of inflexible planning policies.

Clearly how long a building is vacant would be a material planning consideration that would have to be taken into account. However, the reason for its vacancy would be the subject of close scrutiny. If an applicant could demonstrate that a building has remained vacant for a longer period, for example a period of 18 months despite attempts to market it for an A Class use at a rent or a price that reflects the market price in the locality, then this would be a material consideration that should be taken into account. However, once lost to residential use it will never revert back to its former use so longer term fluctuations in the market need to be taken into account.

b) **How does the development plan deal with a situation of this sort?**

In view of the fact that the above scenario is rare in the Royal Borough the development plan does not deal with a scenario of this sort and it cannot cater for every eventuality. Clearly if there were high vacancy rates caused by inflexible planning policies then it might be appropriate to word planning policies in a different way, or provide advice in the development plan, but Kensington and Chelsea is in the fortunate position that this is not a common occurrence. Where vacancy occurs it can be sensibly dealt with as a material consideration.

**3.2 The Council's letter of 20 February effectively indicates how the Council would, in practice, approach applications to change the use of a public house to a different use. I understand this to include proposed changes to a residential use. It suggests that evidence showing the public house use to be unviable, and any evidence of it having been marketed for other uses permitted without the need for planning permission, would be taken into account as material factors weighing against the proposed policy revisions.**

**a) Should this explanation be included in the proposed revisions?**

The Council does not consider that the proposed explanation should be included in the proposed revisions and it is not required to make the draft policy sound. The Council further consider that including references to viability and marketing within the policy itself would only serve to undermine its effectiveness and that these factors can quite reasonably continue to be considered as material considerations which can be judged on their own merits.

**b) If not, why not?**

If such an approach was felt to be justified then the Council would wish to set it out as part of a generic policy which related to all changes of use rather than restricting to those uses mentioned in the Core Strategy. Viability is clearly always a material consideration and the Council can see no merit in its specific inclusion within a planning policy. With regard to marketing the council are considering producing some guidance on how long a property should be marketed for and what factors should be taken into account so that there is consistency of approach. However, this would be generic advice and would not specifically relate to the uses protected by the draft policy.

A reference to such marketing advice might be best included in a review of the 'Fostering Vitality' chapter of the Core Strategy. The review of this chapter of the Core strategy has been delayed in view of the Government's proposals to allow the change of B1a (offices) to residential to be permitted development. However, it will follow on from other chapter reviews. The Council certainly does not accept that references to viability or marketing are required to make the draft policy effective, and therefore sound. There is no advice or policy in the NPPF which states that this route needs to be followed.

**c) If so, should the revisions set out the circumstances in which viability and marketing evidence would overcome the policy's resistance to other uses being acceptable?**

As stated, the revisions do not need to set out circumstances in which viability and marketing evidence would overcome the policy. This would clearly only serve to weaken and undermine the policy to the extent that it was unlikely to be effective. These are legitimate material considerations and can be sensibly treated as such.

**d) Should the development plan clearly indicate how a decision maker should react in these circumstances? If not, why not?**

There is no need or justification for a development plan to indicate how a decision maker should react in the circumstances of a planning application being resisted. The grounds of refusal are clear and the department encourages pre and post application advice and discussion. It would not be appropriate to include an

indication of how a decision maker will react and the development plan cannot account for every scenario. Advice on marketing is given when requested and as stated the council is considering a guidance note on the subject.

### **3.3 Is the evidence underpinning the proposed revisions robust enough to justify not including a caveat in relation to viability in the development plan?**

Advice in the NPPF regarding viability and deliverability can be found at paragraphs 173 to 177. However, this advice relates to general plan making and infrastructure requirements ensuring that sites and the scale of development identified in the plan not being subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to the development should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. This does not indicate that references to viability need to be included in specific planning policies to ensure soundness.

The Council consider the evidence submitted to be robust enough without a specific reference to viability being required. Vacancy rates in the borough are significantly below the national average and there is no evidence of buildings remaining vacant because of overly restrictive planning policies in the development plan. There is no reason to indicate that a policy preventing the loss of public houses or other facilities which make life local would result in any different scenario than is currently the case. In those appeals for public houses where viability was raised as a material consideration none have been successful with the exception of the 'Prince of Wales' in Princesdale Road which was the first public house appeal (submission document 33). The Council did not contest the viability figures in this case, although with the benefit of hindsight this would have been wise as there was some evidence to indicate that the applicant had paid more for the business than it was worth with a hope value for residential purposes.

Ample evidence, proportional to the issue, with regard to house prices in the borough has been submitted which underlines the Council's principal concern.

### **3.4 Paragraph 70 of the NPPF says that planning policies 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'.**

#### **a) Does paragraph 70 of the NPPF suggest that some losses of valued facilities and services maybe necessary?**

The Council agrees that the advice could be interpreted in this way. However, the NPPF was drafted as national guidance and it must be written in a manner that is broad enough to account for a variety of scenarios and to take into account the norm. It is the responsibility of councils to interpret the guidance and decide how best it should be applied locally. It would clearly not be appropriate to apply the same planning policies that might be suitable in Kensington and Chelsea to other parts of the country, especially those parts of the United Kingdom where land costs are low and development may not be viable. Kensington and Chelsea is at the extreme end

of the residential property market and there is no evidence to suggest that some losses of valued facilities and services may be necessary.

It begs the question, losses to what? If to housing then the Council are on track to meet its housing target. Indeed if valued services and facilities were not protected in the Borough then there is a distinct possibility that they would be converted for residential purposes, but not at a price than would be affordable to the average London family.

**b) If so, are viability factors among those which may cause a loss to be necessary?**

The Council agrees that that the matter of viability is a material consideration (this has never been disputed) and it is a factor that could justify the loss of a facility.

**c) If a public house or one of the other uses concerned is shown not to be viable, would allowing its loss conflict with paragraph 70 of the NPPF in this regard? If the concept of unnecessary loss, and hence loss, is not incorporated, do the revisions impose a stricter regime than national policy? If so, is the evidence sufficiently robust to justify this?**

The Council agrees that if a use is demonstrated not to be viable, then its loss would not necessary conflict with paragraph 70 of the NPPF. In terms of whether the policy imposes a stricter regime than the NPPF, as stated it is drafted to take into account the national situation, but clearly there will be local circumstances that also need to be taken into account. The local circumstances in Kensington and Chelsea indicate that with the very large disparity between residential property prices and those for other uses the Council make no apology for providing a robust policy which is suitable to take these circumstances into account and protect valued facilities and services. The need for this robust protection forms the first strategic objective of the Core Strategy to keep life local. The first paragraph of Chapter 30 'Keeping Life Local' neatly sums this up. It states, "In spite of the 2008-9 recession, residential land values will continue to out compete those 'local' borough functions which are essential for a successful residential neighbourhood, the local shops and community facilities. Therefore strategically, we need to promote functions that otherwise might be lost to residential use and ensure that necessary infrastructure is provided to support the scale, location and timing of development planned for an area. "

In any case the flexibility that might be required in a particular circumstance is provided by the test as set out in section 38 of the Planning and Compulsory Purchase Act 2004 where decisions on planning applications "must be made in accordance with the (development) plan unless material considerations indicate otherwise."

The Council consider that the evidence is sufficiently robust to justify the approach that has been taken. Whilst clearly evidence of the harm that might result if such a policy is not in place might be a consideration the Council reiterate that this should not form the basis of whether such a policy is sound. Arguments about how many public houses have to be lost before a policy can be justified are fundamentally flawed and miss the point. The Council have submitted evidence to show the unique

circumstances of the Borough in relation to house prices and pressure from overseas investment and have demonstrated how the policies are in accordance with the vision and strategic objectives of the Core Strategy. The evidence is sufficiently robust to justify the proposed policy.

### **3.5 Businesses of the sort mentioned in the proposed revisions to Policy CK2 move premises from time to time, for example to larger, higher quality or better located premises.**

#### **a) Would such relocation amount to a 'loss' under the terms of the proposed revisions to Policy CK2?**

When considering a planning policy clearly the objective behind the policy must be considered. If the decision maker is blindly following a planning policy without justifying it in relation to the objective then the end decision is likely to be flawed. This is not the fault of the policy, but the decision maker. This is important because it explains how the revisions to Policy CK2 should be applied. In short, relocation may not necessarily amount to a loss under the proposed revisions to CK2 but it depends on the use and the particular merits of a proposal. In view of the fact that part of the purpose of the policy is to protect Class A2 and A3 uses outside of town centres a swap may be more difficult to justify if it is a valued facility or providing a service to a particular neighbourhood. In a similar manner relocating a neighbourhood public house (Class A4) to another location may not only be detrimental to the character of the area, but would result in the loss of a local facility. However, there will be other occasions where relocation could be justified and it would not be interpreted as a loss. It really is a case of each on its own merits.

#### **b) Should the Council's approach, as explained in the letter dated 20 February, be set out in the revisions, to ensure the policy's effectiveness?**

The Council can see no justification for including the approach to relocation to ensure the policy's effectiveness. It would be difficult to account for every relocation scenario and it is not required if the decision maker applies the policy in the correct manner taking into account the objective behind the policy. The relocation issue has been raised by Cadogan Estates. However, in practice the Council has always operated a sensible approach to property swaps and has supported them where they can be justified. A narrow interpretation of a policy to state that a use is lost if it is relocated has never been taken, but there is no justification for including this approach in the development plan. Again, each case would be treated on its own merits.

### **3.6 Should the proposed revisions to the Core strategy include revisions to Chapter 38: Monitoring? How will success or otherwise of the proposed revisions be measured and monitored? What are the contingency plans in the event that the proposed revisions are considered to be unsuccessful, and when would the contingency plans be triggered?**

The Council agree that the monitoring criterion for Policy CK2 in Chapter 38 needs to be updated in view of the additional uses which are proposed to be protected. The

target would probably be a target of no overall loss of Class A4 drinking establishments in the Borough or cafes and restaurants or Financial and Professional Services outside of Higher Order Town Centres. This would be a simple revision.

Success would be monitored on the number of appeal decisions that were allowed against the policy and longer term vacancy rates for the uses in question.

A trigger point for review would be a meaningful rise in the number of appeal decisions for change of use that were allowed and if the properties remained vacant for a period exceeding 18 months, especially if they had been the subject of appropriate marketing. The contingency plan in the short term would be to carefully consider whether viability needed to be given further weight because of a significant change in the market and give added weight to this aspect as a material consideration. In the longer term the policy might have to be reworded. However, the council are confident that this scenario is unlikely to arise.