

**THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

**5 NOVEMBER 2014**

**DELEGATED DECISION REPORT**

**THE MAKING OF AN IMMEDIATE ARTICLE 4 DIRECTION**

**DATED 5 NOVEMBER 2014**

**THE ACADEMY PUBLIC HOUSE**

57 Princedale Rd, London W11 4NP

**1. EXECUTIVE SUMMARY**

- 1.1 This report is to request that the Executive Director for Planning and Borough Development authorises the making of an Immediate Article 4 Direction dated 5 November 2014 to remove permitted development rights for the change of use of the Academy Public House from an A4 use (Drinking establishment) to another A class use.
- 1.2 The authorised use of the property is a public house. Planning permission is not normally required for changes of use from an A4 use (Drinking establishment) to an A1 use (Shops), A2 use (Financial and Professional Services) or A3 (Restaurants & Cafes).
- 1.3 For the Council to remove these permitted development rights, it will have to “make an Article 4 direction”. Given the timescale involved, and that a change of use would be imminent, the Council could consider making an “immediate direction”. This is, as the name would suggest, an Article 4 direction that bites on the day it is made.

**2. RECOMMENDATIONS**

- 2.1 I recommend that the Executive Director for Planning and Borough Development authorises the making of an Immediate Article 4 Direction dated 5 November 2014, to come into force immediately (Option 8.1). It would include development consisting of a change of use:
  - to a use falling within Class A1 (shops) from a use falling within Class A4 (drinking establishments) being development within Class A of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended);
  - to a use falling within Class A3 (restaurants and cafes) of the Schedule from a use falling within Class A4 (drinking establishments) being development comprised within Class AA of Part 3 of Schedule 2 of the Order;

- to a use to a use falling within Class A2 (financial and professional services) of the Schedule being development comprised within Class C of Part 3 of Schedule 2 of the Order.

### **3. REASONS FOR DECISION**

- 3.1 The reason for seeking an Immediate Article 4 Direction is that it has come to the Council's attention that such a change of use within the A use class could be imminent. An application for a certificate of lawful proposed use for such a development has been submitted (CL/14/06511). Given the timescale involved, the Council could consider making an "immediate direction". This is, as the name would suggest, an Article 4 direction that is effective on the day it is made.

### **4. BACKGROUND**

- 4.1 The subject property is a three storey property located on the corner of Princedale Road and Penzance Road. The property is in use at basement and ground floor level as a public house within Class A4 (Drinking establishments) use, with basement storage and the ground floor level used for trading. The first and second floor level is in residential use within Class C3 (Dwellinghouses), accessed via an external entrance to the rear. The rear yard of the property backs onto a vehicular access road and parking area.
- 4.2 The property is not listed but is situated within the Norland Conservation Area. As referenced above there is a current application for a certificate of lawful proposed use to convert the current public house into an A1 unit. This would not constitute development under the Town and Country Planning (General Permitted Development) Order 1995 (as amended). The certificate is the formal process of confirming that the proposed change of use is lawful under the Order.

### **5. PROPOSAL AND ISSUES**

- 5.1 Planning permission is not normally required for changes of use from an A4 use (Drinking establishment) to an A1, A2 or A3 use. (TCP (GPDO) 1995 as amended). The suggested Immediate Article 4 Direction would remove certain permitted changes of use within the A use class.
- 5.2 The Immediate Article 4 Direction would require that certain types of development would be assessed against Core Strategy Policy CK2 and other relevant Core Strategy policies to help support the objective of "keeping life local."
- 5.3 To justify the making of an Article 4 Direction, the Council must be satisfied that a particular permitted development would be "prejudicial to the proper planning of their area or constitute a threat to the amenities of their area."
- 5.4 One of the main obstacles, to the Borough achieving its 'Vision' of building on success is the value of land and property, which is amongst the highest in the country and is stimulated by the insatiable demand for residential

accommodation of all types. Whilst increases in house prices can have a positive impact by facilitating the regeneration of typically deprived parts of the Borough, the potential exists to diminish the number and variety of local uses, such as community and commercial facilities which are integral to the vitality of the Borough, to the higher land values commanded by residential uses. Therefore, protecting the rich mix of land uses within residential areas from the housing market is a vital issue to be addressed by the Council's Core Strategy.

- 5.5 Keeping Life Local is an integral part of the Core Strategy's central vision of "Building on Success." Recognising that some facilities within the Borough offer significant benefits or value to residents is key, indeed a service or facility underscores part of the fabric of the community or local life. These services or facilities are therefore regarded as social and community facilities.
- 5.6 To strengthen the Borough's continued success in light of the housing market and other factors, five strategic issues were identified, one of which is:
  - a. *'Protecting local uses and those that are important to the vitality of the Borough from potential loss to the higher values commanded by residential land uses.'*
- 5.7 To this end, the Core Strategy revised Policy CK2: Local Shopping and other Facilities which Keep Life Local states *"The Council will ensure opportunities exist for convenience shopping throughout the Borough. To deliver this the Council will (a) protect individual shops (Class A1) outside of designated town centres. (b) resist the loss of Public Houses and other Drinking Establishments (Class A4) throughout the Borough (c) resist the loss of Restaurants and Cafes (Class A3) and Financial and Professional Services (Class A2) outside of Higher Order Town Centres."*
- 5.8 The continued loss of the Borough's stock of public houses over the past 30 years has eroded an easily accessible social focus for the community. From 181 premises in 1980 to 110 in 2012, well over one third have been lost and with escalating residential property prices, this trend is set to continue. The Borough has experienced a number of traditional public houses changing into other drinking establishments which do not provide the same community function to residents. However, these changes do not represent a material change under the Town and Country Planning (Use Classes) Order 1987 (as amended) and cannot be controlled by the Council.
- 5.9 Public houses not only make a valuable contribution to the community and cultural life of the Borough, but at neighbourhood level they offer a source of identity and distinctiveness, provide opportunities for social interaction and provide places to meet which support community cohesion – in short the essential ingredients of a sense of community and place. They are part of that fine grain mix of uses, which provide not only historical continuity, but contribute economically and to the vitality of our residential communities and the character of an area. They are an essential ingredient for promoting healthy communities and maintaining diverse, strong, secure and accessible neighbourhoods.

- 5.10 It is considered that this relatively isolated Public House is an important part of the urban fabric and the local community. It makes a significant contribution to the character of the Conservation Area and its loss would have a harmful impact, both to this and its role as a community focus. Whilst it is recognised that services within district centres (shopping centres) provide an extensive range of shops, including other public houses, which are easily accessible for most people who work and live in the area, it is not considered this necessarily undermines the need for more isolated services, particular in a densely populated area. It is considered therefore, the loss of the Public House in this location would have a detrimental effect on the overall quality of life, which brings vitality to the Borough. Given the value placed on our remaining public houses as reflected by the Core Strategy, of which this is one, it is considered that the creation of an Immediate Article 4 direction to protect the current use would be justified.

### **Effectiveness of Article 4 and wider Policy Context**

- 5.11 The making of the Article 4 direction would not in itself ensure that the existing pub will be protected. However, it would mean that planning permission would be required and as such a planning application would be determined in the light of the Council's planning policies.
- 5.12 The Council's own "pub protection policy" (Policy CK2) will be the starting point. This states that the Council will, "resist the loss of public houses and other drinking establishments throughout the Borough." Para 30.2.14D of the supporting text notes that, "the swap of other uses within the A Use class will be treated on their own merits depending on their role within the locality they serve." This allows the Council to have grounds to refuse the change of use if it can be demonstrated that the pub plays a particularly valuable role as part of the character of the conservation area and as a community focus.
- 5.13 Policy CL3 of the Core Strategy is also relevant as the public house is in a conservation area and the use is considered to contribute to the character of that area. Policy CL3 resists the change of use of any building where the current use contributes positively to the character of the surrounding area and its sense of place.
- 5.14 The Norland Neighbourhood Plan (NP) could also assist in justifying a refusal. Policy NP: Maintaining a Mixed Neighbourhood, states that the NP "requires the retention of commercial uses within the Neighbourhood Area, to ensure that a walkable neighbourhood exists and contains a mix of uses that serve local people." However, it is not entirely clear as to whether the policy was intended to protect changes of use of pubs to other commercial uses, rather than to residential. The loss of the pub may reduce the mix of uses, but will not result in the loss of any commercial uses per se.
- 5.15 The London Plan (2011) makes reference to the role that public houses can play in meeting local needs and securing lifetime neighbourhoods. This is built upon in the *Further Alterations to the London Plan (FALP)* (para 4.48A) (2014) which states that "the Mayor recognises the important role that London's public houses

can play in the social fabric of communities....To address these concerns [rate of closure] where there is sufficient evidence of need, community asset value and viability in pub use, borough's are encouraged to bring forward policies to maintain, manage and enhance public houses." We would expect the FALP to be adopted at the beginning of 2015.

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

#### **Precipitation of a change of use.**

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

#### **Cancellation of the Article 4 direction by the Secretary of State**

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

### **6. PROCEDURE and CONSULTATION**

- 6.1 Immediate directions can only be used to withdraw a small number of permitted development rights. Once the immediate direction has been made by the Local Planning Authority, it shall give notice of the immediate Article 4 direction:

- by local advertisement in at least one newspaper in the local area (as defined in article 1(2) of the GPDO)
- by site display at no fewer than two locations on the site of the property for a period not less than six weeks
- individually on every owner and occupier of the site to which the direction relates
- on the same day that the notice of an Article 4 direction is first published or displayed locally, the local planning authority shall notify the Secretary of State.

Any representations received during consultation will be taken into account by the local planning authority in determining whether to confirm a direction. Material changes to the direction resulting from consultation would require re-consultation.

- 6.2 The local planning authority must decide whether to confirm the order within six months of it being made, this direction would expire six months after coming into

force, unless confirmed. The local planning authority cannot confirm the direction until after the expiration of either a period of at least 28 days following the latest date on which any notice relating to the direction was served or published, or such longer period as may be specified by the Secretary of State (after having been notified by the local planning authority of making a direction).

## **7. FINANCIAL, LEGAL AND RESOURCE IMPLICATIONS**

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

### **Compensation**

- 7.2 In making an immediate Article 4 direction, the Council may be liable to pay compensation if (i) an application which was only required by the Article 4 Direction is subsequently refused or (ii) grant planning permission subject to conditions more limiting than the General Permitted Development Order would normally allow.
- 7.3 The compensation payable will be for the, “damage directly attributable to the withdrawal of permitted development rights”. In the case of the Academy Public House, the compensation will relate to the differential in value between the existing A4 use and the (refused or diminished) A1/2/3 use. A discussion with local agents confirms that the differential in value between a pub and a shop/financial service/restaurant is dependent on location. I would not like to estimate the difference (or if there is one) for this case, but given the fact that the ‘Academy’ appears to be operating as a successful public house with good patronage it does not necessarily follow that a retail art gallery in this location is going to represent a higher value use.
- 7.4 If the Article 4 direction is made immediately, the Council may be liable for compensation for a 12 month period as a result of any refusal of permission or granting of permission subject to more onerous conditions.
- 7.5 The Council has not assessed compensation as a high risk, and therefore considers that the benefit of making the Immediate Direction to outweigh the risk of potential compensation.

## **8. OPTIONS**

- a. **Recommended:** Make the Immediate Article 4 Direction, to come into force immediately on the Academy public house, location plan of which is shown at Appendix one; or

- b. Decide not to make the Immediate Article 4 Direction.

*Jonathan Wade*

*Head of Forward Planning*

*I agree with the recommendation.*

*Jonathan Bore*  
Signed:

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

*Date: 5 November 2014*

**Contact officer(s): Gillian Kavanagh Tel: 02073612106**