

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

5th FEBRUARY 2015

DELEGATED DECISION REPORT

**CONFIRMATION OF THE IMMEDIATE ARTICLE 4 DIRECTION MADE ON 22ND
DECEMBER 2014**

**THE KENSINGTON PARK HOTEL PUBLIC HOUSE
139 Ladbroke Grove, W10 6JN**

1. EXECUTIVE SUMMARY

- 1.1 On 22nd December 2014 the Council “made” an Immediate Article 4 direction on the Kensington Park Hotel Public House. The intention of the Article 4 was to remove the permitted development rights normally available, and to require planning permission for the change of use of the existing public house (a Class A4 use) to either an A1 (retail), A2 (financial and professional service), A3 (restaurant), or to a flexible A1/A2/A3/B1 use.
- 1.2 Whilst this Article 4 direction came into effect on 22nd December 2014 it must be “confirmed” by the Council within six months (by 21st June 2015) if it is to become permanent.
- 1.3 The purpose of this report is to seek approval for this confirmation.

2. RECOMMENDATIONS

- 2.1 I recommend that the Executive Director for Planning and Borough Development authorises the confirmation of the Immediate Article 4 Direction dated 22nd December 2014, (Option 8a).
- 2.2 The Article 4 direction should control 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 A2 (financial and professional services) of the Schedule from a use falling within Class A4 (drinking establishments) being development comprised within Class C of Part 3 of Schedule 2 of the Order.
 - 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 A of Part 3 of Schedule 2 of the Order;

- to a flexible use falling within either Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes) or B1(Business) of the Schedule to the use Class Order, from a use falling within Class A4 (drinking establishments) of that Schedule, for a single continuous period of up to two years beginning on the date the building and any land within its curtilage begins to be used for one of the flexible uses, as allowed by part 4, Class D of the order.

3.0 BACKGROUND

3.1 The Article 4 direction relates to the Kensington Park Hotel, a public house which is situated on the corner of Ladbroke Grove and Lancaster Road. The entire property is in use as a public house (Class A4), be this trading area or ancillary space. This includes ancillary accommodation of the top floor.

3.2 In December 2014 it came to the Council's attention that a change of use was likely to take place in the near future – a change of use that would ordinarily be "permitted development", under the provisions of the General (Permitted Development) Order.

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

3.4 The reasons for the decision are set out within the original report, recommending the making of the Article 4. It was summarised as follows:

"It is considered that this 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. Its loss would have a detrimental effect on the overall quality of life, which brings vitality to the Borough. This would be the case were the change of use be to an A1/A2/A3 or B1 class use. Whilst all these uses have their merits none will, in this particular case, be as beneficial as the Kensington Park Hotel."

3.5 Policies/ guidance of particular relevance include:

- *CS Policy CK1:* This resists the loss of Public Houses and other Drinking Establishments (Class A4) throughout the Borough. The policy recognises that public houses can make a valuable contribution to the community and cultural life of the Borough. In addition, at the neighbourhood level, public houses can offer a source of identity and distinctiveness, can provide

opportunities for social interaction and provide places to meet which support community cohesion.

The Council notes that the continued loss of the Borough's stock of public houses over the past 30 years has eroded an easily accessible social focus for the community. From 181 premises in 1980 to 110 in 2012, well over one third have been lost and with escalating residential property prices, this trend is set to continue. The Borough has experienced a number of traditional public houses changing into other drinking establishments which do not provide the same community function to residents. This history of decline makes the further loss more problematical.

- *CS Policy CF2*: This considers the nature of the Borough's town centres and the need to maintain their "character and their diversity". The Kensington Park Hotel does contribute to the character and the diversity of the Ladbroke Grove Station Neighbourhood Shopping Centre.
- *CS Policy CL3(b)*: This policy notes the contribution that the use of a building (rather than merely its appearance) can have upon the character of an area and to its sense of place. This is of particular significance within a Conservation Area.
- *Para 4.48A of the Further Alterations of the London Plan*: 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." The FALP has been found sound at examination and will be adopted in the near future.
- *Para 70 of the NPPF*: states that planning decisions should, "plan positively for the provision and use of community facilities (such as public houses)".

3.6 Whilst this Article 4 direction came into effect immediately it must be "confirmed" by the Council within six months if it is to become permanent. The six month period ends on 21st June 2015.

4.0 CONSULTATION

4.1 Under the requirements of the regulations, the Council was required to notify the owners and the occupiers of the property, the Secretary of State, and members of the public of the making of the original Immediate Article 4 direction. The consultation period ended on 31st January 2015. The Council must take account of the representations received before choosing to confirm the direction.

- 4.2 No representations were received from the public or from the owners/occupiers of the property.
- 4.3 The Secretary of State did respond, in a letter of 13th January 2015, reminding the Council of its obligation to notify him if and when the Council confirms the direction. No comments were made as to the appropriateness of the making of the Article 4.

5.0 CONFIRMATION OF THE ARTICLE 4 DIRECTION

- 5.1 Officers remain of the view that an Article 4 direction is necessary to ensure the proper planning of the area.
- 5.2 The Kensington Park Hotel public house retains its dual function. As well as providing the service one would expect from a public house, a place to meet and to refuel, it forms a hub for community activity. It is a local music venue, it offers rooms to hire and puts on a range of events and entertainments.
- 5.3 Its place in the community has been further confirmed by its designation as an "Asset of Community Value" on 29th January 2015. The stated reason for inclusion as an ACV is that "*the current use furthers the recreational and cultural interests of the local community and it is realistic to believe that the asset can continue to further the social interests of the local community.*"
- 5.4 As such this report proposes the confirmation of the Immediate Article 4 direction that has the effect of removing the permitted development rights granted by Parts 3 and 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 with regard to changes of use.

6 FINANCIAL, LEGAL AND RESOURCE IMPLICATIONS

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

Planning fees

- 6.2 The Article 4 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

- 6.3 In making an Immediate Article 4 direction, the Council may be liable to pay compensation if (i) an application which was only required by the Article 4 Direction is subsequently refused or (ii) granted planning permission subject to conditions more limiting than the General Permitted Development Order would normally allow.
- 6.4 The compensation payable will be for the, “damage directly attributable to the withdrawal of permitted development rights”. In the case of the Kensington Park Hotel Public House, the compensation will relate to the differential in value between the existing A4 use and the (refused or diminished) A1/A2/A3/B1 use. A discussion with local agents confirms that the differential in value between a pub and a shop/financial service/restaurant is dependent on location. Given the fact that the ‘Kensington Park Hotel’ appears to be operating as a successful public house with good patronage it does not necessarily follow that an alternative A class use in this location is going to represent a higher value use.
- 6.5 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.
- 6.6 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.

7 PROCEDURE and CONSULTATION

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

8 OPTIONS

- 8.1 **Recommended:** Confirm the Immediate Article 4 direction, to come into force on or before 21st June 2015, on the Kensington Park Hotel public house, location plan of which is shown at Appendix one; or
- 8.2 Decide not to make the Immediate Article 4 direction.

Jonathan Wade

Head of Forward Planning

I agree with the recommendation.

Signed: 

Jonathan Bore, Executive Director for Planning and Borough Development

Date: 5 February 2015

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

Appendix one: Location Plan

The Kensington Park Hotel Public House, 139 Ladbroke Grove, W10 6JN

