

Regulation 22c Consultation Report setting out Principal Responses



Regulation 22 Consultation Report

1.0 INTRODUCTION

- 1.1 The documents relating to the preparation of a policy for the protection of public houses and other facilities which keep life local and a policy relating to use and character have been prepared in accordance with the Council's Statement of Community Involvement and the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 1.2 This consultation statement meets the requirements of Regulation 22 (c) of the Town and Country Planning (Local Planning) (England) Regulations 2012 by setting out:
- Which bodies and persons the local planning authority invited to make representations under regulation 18;
 - How those bodies and persons were invited to make representations under regulation 18;
 - A summary of the main issues raised by representations pursuant to regulation 18;
 - How many representations pursuant to regulation 18 have been taken into account
 - The number of representations made under regulation 20 and a summary of the representations

2.0 The Consultations under Regulation 18 – Issues and Options and proposed draft policies

- 2.1 The Local Planning Authority invited 806 bodies and persons to make representations which was all the bodies included in the Local Plan database which has been compiled since 2005. This includes both general consultation bodies and specific consultation bodies. The specific consultation bodies consulted included the Environment Agency; English Nature, English Heritage and the Mayor of London (GLA).
- 2.2 The bodies were invited to make representations either by letter (479) or e mail (379). All the representations received have been taken into account.

The number of representations made

- 2.2 A total of 55 representations were received.
- 2.3 All the representations referred to in this statement were made in accordance with Regulation 18).

SUMMARY OF THE MAIN ISSUES RAISED

- 2.4 Do you agree that the Council should amend policies within the Core Strategy to try to resist the loss of public houses within the Borough?

- 2.5 In terms of the response to the above question 63% of the respondents agreed (32 responses); 10% disagreed (5 responses); 6% chose other (3 responses) and 21% did not respond to this question (11 responses).
- 2.6 There is the general view that the high prices of residential properties in the Borough represent a risk to pubs, and other uses valuable for the community, being gradually lost. (*Brompton Association*)(*Edd de Burgh Codrington*)(*John Cooper*).
- 2.7 Pubs are generally accepted as positively contributing to the character of the area and to the community (*Brompton Association*) (*CAMRA*)(*CrystalNet*) (*The Royal College of Art*), and there is the view that there are not enough pubs in Kensington and Chelsea (*Barry Winkleman*), and that there are not many genuine traditional pubs left in London (*Geoff Allan*). Together with bars, cafés and restaurants, they are viewed as contributors to the vibrancy and vitality of the high street (*Golborne Forum*). Pubs represent an inexpensive social focus (*Barry Winkleman*) and they are essential for shoppers (*Barry Winkleman*).
- 2.8 The Use Classes Order 1987 (as amended) is perceived as inadequate in allowing no opportunity for consultation when owners decide to convert a pub into another A Class use (*CAMRA*). There is a concern that family pubs are becoming expensive restaurants (*Frank Busby*), which cannot be controlled through the Planning mechanisms. To reiterate on the insufficiency of the legislation, only methods devised to protect the change of use when planning permission is not required would be seen as effective (*John Fitzgerald*).
- 2.9 There is a request for a clear definition of what it is considered to be a predominantly drinking establishment. *CAMRA* suggests the following: 'The licensed premises must sell at least one draught beer, not require food to be consumed in order to drink, have an area set aside for drinkers which does not rely on table service, and have no entry charge (except on limited occasions when entertainment is provided).'
- 2.10 The loss of pubs is not in line with NPPF: Section 70 states that LPAs should 'guard against unnecessary loss of valued facilities where they would reduce the community's ability to meet its day-to-day needs'. Section 200 of the NPPF confirms that Article 4 Directions, as explained at 4.5 in the consultation document, may be used to protect local amenities or the well-being of the area and states specifically (if the threatened building is covered by a local planning policy (e.g. a pub is classified as an important community facility), then serving Article 4 Directions should not give rise to compensation claims) (*CAMRA*)
- 2.11 On the other hand, there is a concern that pubs rarely meet the need or interests of the local community but more those of the modern clientele, which are not local to the area, and display little respect for the area and its neighbours. (*Belinda Bekhiet*). Additionally, the decline in the number of pubs

seems to be something that happened in the past and not a current issue (*Christine Morrissey*).

Preferred options

Option One

The Council should resist the loss of Class 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.

Option Two

The Council should resist the loss of loss of Class 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.

Option Three

In consultation with residents groups, land owners and other interested stakeholders, the Council will draw up a list of public houses which it would like to see protected. The loss of any public houses on this list will be resisted.

Option Four

The Council should 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.

20% (10) of the respondents chose option one, 6% (3) chose option two, 12% (6) option three and 48% (25) option four. 14% (7) of the respondents chose another alternative which was not specified as an option.

- 2.12 A principal concern for responses in this section is the lack of a clear mechanism to identify when pubs would be considered as a community facility and/or contribute to the character or appearance of the area (*RAB pension trust*) (*Joanna Gardner*) (*RAB Pension Trust*); or the process in which a public house will be added to a list of public houses to be protected (*Cadogan Estates Ltd.*) This list could create uncertainty for landowners and discourage investment in this land use, and also lead to substantially different standards in different parts of the Borough, particularly in areas not represented by local amenity groups (*ESSA*). Although selecting a list is supported by some (*John Fitzgerald*).
- 2.13 It is suggested that pubs that are considered a community facility and/or contributors to the character or appearance of the area are added to the 'Assets of Community Value' list through the Localism Bill (*Cadogan Estates Ltd.*).
- 2.14 There is a concern that the document has failed to recognize the potential for pubs to harm the area (*RAB Pension Trust*), and the fact that unlike other

community uses, the pattern of activities of pubs does not resemble those of when they were first established. (*RAB Pension Trust*).

- 2.15 As an alternative to having a policy that protects pubs, each application should be considered on its merits (*Belinda Bekhiet*) (*Cadogan Estates Ltd.*). A more relaxed approach to isolated pubs is requested, as these can lead to amenity or viability issues (*Joanna Gardner*).
- 2.16 There is little or no evidence that cafes and other eating establishments are declining (*Brompton Association*) (*CAMRA*), so need to protect them. It is considered inappropriate to protect hot food/takeaway establishments (*Cadogan Estates Ltd*).
- 2.17 The loss of pubs since publication of the Core Strategy, which is what is being reviewed, is not considered significant and it is dominated by factors outside the Planning control (*Christine Morrissey*) " (*Cadogan Estates Ltd*) (*RAB Pension Trust*) (*Savills*).
- 2.18 The proposed policies restrict the flexibility of the land further and might discourage investment and limit the ability of the town centres to evolve (*Cadogan Estates Ltd*).
- 2.19 The loss of pubs does not necessarily mean the loss of a community facility or its historic character (*Savills*). It is the building and not the use what can contribute to the character of the area and therefore, what should be protected (*RAB Pension Trust*) (*Cadogan Estates Ltd*).
- 2.20 Although outside of the Planning controls, there is a concern about pubs converted into gastropubs and becoming practically restaurants (*Edwardes Square, Scarsdale and Abingdon Residents Association - ESSA*); about the take-over of local pubs, bars, cafés and restaurants by large chains (*Golborne Forum*); and about pubs being turned into other retail uses (*Jeremy Stone*).
- 2.21 The review of the policy is perceived as contrary to NPPF, as there is no strong evidence of significant changes since the policy was adopted to justify the need for update (samples used for statistics too small to be significant, actual trends lower than before the Core Strategy, and the entire Borough within 10 minutes walking distance to a pub) (*RAB Pension Trust*) (*Savills*). It is also viewed as contradictory to the existing policies that protect retail over restaurants and cafes (*Cadogan Estates Ltd*).
- 2.22 The use of Article 4 directions is suggested to avoid the change of pub to another drinking/eating establishment (*RAB Pension Trust*) (*Paul Lever*). The financial risk that article 4 would mean for the Council is not welcomed by some (*Christine Morrissey*).

Please let us have other suggestions as to how we can best protect public houses

- 2.23 Use of the term community amenity as opposed to community facility (*ESSA*).
- 2.24 Reduce business rates for pubs (*Andrew Reeves*) (*Bernier*) (*Christine Morrisey*)
- 2.25 Allow residential only for pub staff or paying guests (*Anthony Paul*)
- 2.26 Create a new class use only for pubs (*Barry Winkleman*)
- 2.27 No need to protect pubs per se, only if the loss is resisted by local residents. (*Belinda Bekhiet*)
- 2.28 Allow pubs that have closed to be used as interim community use to protect the safety and vibrancy of the area. (*Bernier*)
- 2.29 Encourage other social events in pubs to make them more economic (*John Fitzgerald*)
- 2.30 Make a list of pubs in the Borough for the residents to be aware of what is in their area (*Brompton Association*).
- 2.31 Request a viability test (at least last two years of trading) (*CAMRA*), and consider viability as a key issue (*Savills*).
- 2.32 Unfair to protect only pubs and not cafes and restaurants (*Christine Morrisey*)
- 2.33 Consideration that a destroyed asset is lost forever (*Edd de Burgh Codrington*)
- 2.34 To include specific baseline data for the historic environment, like designations or contribution of specific pubs, and also how many of the lost pubs have heritage significance. Also to develop a strategy for the heritage assets within a local authority's jurisdiction (*English Heritage*)
- 2.35 Not to allow pub companies putting on restrictive covenants preventing the new owners from operating the premises as a public house (*Frank Busby*).
- 2.36 To alert residents that have shown interest in pubs before (by for example, objecting to previous application for change of use from pubs to something else) the consultation (*John Cooper*). To consult with local residents and CAMRA (*Geoff Allan*)
- 2.37 To protect pubs where community value, including income, is apparent, and to list these pubs with high value in its current use to inform prospective purchasers (*Marshall Land & Property Associates LLP*)
- 2.38 Any person purchasing a property within 500 yards of a public house cannot then object to it later (*Nigel Gwilliams*)
- 2.39 Council to be prepared to buy the premises and rent them out (*Paul Lever*)

- 2.40 Make clear that community function includes establishments that have historically attracted tourists (*Radnor Walk Residents Association*)
- 2.41 If feasible, ensure that all buildings of historic and/or architectural interest are listed (*Susan Walker Architects*).
- 2.42 The age of the public house and whether or not serves diverse economic groups in relation to its location, should be taken into consideration. (*Tonya Hoffman*)

3.0 Draft policy stage for policy relating to the protection of public houses and other facilities which keep life local and a policy relating to use and character – Regulation 18

- 3.1 The Local Planning Authority invited 1135 bodies and persons to make representations which was all the bodies included in the Local Plan database which has been compiled since 2005. This includes both general consultation bodies and specific consultation bodies. The specific consultation bodies consulted included the Environment Agency; English Nature, English Heritage and the Mayor of London (GLA).
- 3.2 The bodies were invited to make representations either by letter (578) or e mail (557). All the representations received have been taken into account.

The number of representations made

- 3.2 A total of 20 representations were received.
- 3.3 All the representations referred to in this statement were made in accordance with Regulation 18.

SUMMARY OF THE MAIN ISSUES RAISED

- 3.4 Gerald Eve, acting on behalf of Cadogan Estates commented on the implications of the draft policy – they noted that the draft policy seeks to resist the loss of Class A4 uses throughout the Borough. The Estate seeks to retain public houses where they contribute and add to the vitality and vibrancy of the area; are well used; and provide a valued community facility. However there may be instances where they are not well used, become unviable or to meet modern day requirements, they require configuration. In some instances, the site may be better utilised for other land uses and therefore flexibility needs to remain. They consider that the blanket restriction on the loss of public houses will only exacerbate the situation. There is also the concern that this onerous and prescriptive restriction will ultimately discourage investment in this land use.
- 3.5 Gerald Eve, acting on behalf of Cadogan Estates noted that paragraph 3.3 of the Issues and Options (March 2012) document highlighted in relation to the loss of public houses that "the rate of loss has not accelerated over

the longer timescale". Paragraph 3.2 states that the last five years has seen a slight increase in the loss of public houses compared with the period 2002 to 2007 – however, the table below this highlights that the increase related to the loss of only 1 public house over this 5 year period. It was therefore considered wholly unnecessary to have a blanket protection on public houses on the basis of the evidence.

- 3.6 Savills, acting on behalf of an unknown client made a similar point. They considered that there was absolutely no evidence to suggest that a change in policy was justified. The document provided no further evidence beyond the data previously set out in the March 2012 consultation document. Savills considered that the trend was one of a slowing in the rate of the loss of pubs. This is based on the data provided in the Council's own issues and options policy document. The average loss between 2002 and 2012 was 1.3 pubs per year. This compares to an average of 2 pubs per year from 1980 to 2002. Savills considered that there was no evidence presented which supports the Council's view that the number of pubs being lost has increased since the adoption of the *Core Strategy* in December 2010. Indeed, the statistics presented (though limited in their value) in fact show the opposite position, with the loss of pubs having slowed in contrast to previous decades. The Bell Cornwell Partnership made a similar point regarding the lack of evidence and the reference to the public houses lost since 1980 was considered to be a too longer time frame.
- 3.7 Savills considered that since the entire Borough is well-served by public houses -every resident living within a 10-minute walk of such a "facility"- the ability for Borough residents to meet their day to day needs, having regards to the identity, distinctiveness, social interaction and cohesiveness of a community- will not be adversely affected.
- 3.8 Gerald Eve, acting on behalf of Cadogan Estates considered that there were no criteria for exceptional circumstances to the policy where the loss of a Public House may be acceptable. For example, if the permitted change from Use Class A4 (Public House) to Use Class A1 (retail) was prohibited in a town centre where retail uses are encouraged, this is considered to conflict with the aims and objectives of the Core Strategy and is therefore wholly inappropriate.
- 3.9 Gerald Eve, acting on behalf of Cadogan Estates opposed the principle of a policy. However, if a policy went ahead then they suggested a number of criteria should be introduced to the policy to allow for circumstances where the loss of a Public House will be acceptable. They suggested the following wording:

"The Council will resist the loss of Public Houses and other Drinking Establishments (Class A4) throughout the Borough unless the proposal meets one or more of the following criteria:

- The existing use has an unacceptable impact on surrounding amenity;
- The existing use is no longer commercially viable;
- The reuse of the site for an alternative use/s would bring about greater planning benefits to the Borough outweighing its loss;
- The existing use is relocated or replaced elsewhere."

3.10 In relation to the protection of Class A3 (Restaurants and Cafes) outside of Higher Order Town Centres, Gerald Eve, acting on behalf of Cadogan Estates agreed that any restriction on the loss of restaurants and cafes should not include those within higher order centres. Notwithstanding this, the restriction on the loss of restaurants/cafes outside of higher order town centres was considered to result in very limited flexibility on land uses within the Estate which has implications on the ability to continue to rationalise land uses and improve the Estate. In some cases, it may be appropriate to allow for the loss of a restaurant/cafe where it has a negative impact on amenity in terms of noise or smells. Importantly, this restriction will stifle flexibility for these areas outside of higher order centres to evolve and develop to meet community needs and objectives and is likely to result in unviable restaurants/cafes becoming, and remaining, vacant. It is in these areas outside of higher order town centres which need greater flexibility to ensure they remain vibrant thriving areas which can attract new investment. The existing Policy CF3 (d) within the Core Strategy recognises the need for greater flexibility outside of higher order centres and therefore it is wholly inappropriate to introduce restrictions which reduce this essential flexibility. This policy should therefore be deleted.

3.11 In terms of the protection of financial and professional services outside of Higher Order Centres, Gerald Eve considered this to be at odds with the current objectives of the Core Strategy which do not protect financial and professional services in any location. It appears unnecessary to introduce restrictions and there may be circumstances where it is appropriate to lose an A2 use to another use (for example through permitted development rights from Use Class A2 to Use Class A1) in order to stimulate new investment or meet demand. The draft policy would not allow for this and would create substantial uncertainty for investors. On this basis they requested that this policy be deleted. Savills considered that it was not clear how Financial and Professional services (Class A2) played a wider social role.

3.12 Savills considered that there are already existing Core Strategy policies (adopted in December 2010) which cover the protection of Class A1, A2 and A3 uses- throughout the Borough, or in identified neighbourhood centres respectively- and it is therefore unnecessary to create further policy. A blanket ban on a form of development is also unreasonable. Flowing from this, no form of means testing or case-by-case assessment is identified (as is the case with other forms of protected use). For example, if a property has been vacant for the medium or long-term, viability assessments or marketing reports are a

suitable means of demonstrating where a change of use is appropriate. Savills considered that no data or information is provided on why it is necessary to protect Class A3 and Class A2 Uses outside of Higher Order Town Centres, beyond mere assertion that such uses "are valued for both the service they provide and their wider social role." Other policies already concern these use classes in any event.

- 3.13 The Bell Cornwall Partnership acting on behalf of the RAB Pension Fund considered that the draft policy and its reasoned justification should make it clear that a public house can change to a A1, A2 or A3 use by reason of the Town and Country Planning (Use Classes) Order as amended and therefore the draft policy is not sound because it is not effective.
- 3.14 The British Beer and Pub Association considered were concerned that the restrictions that the Council were seeking to place on change of use would in fact cut across the 'Community Right to Bid' provisions in the Localism Act which are due to come in later in 2012. This will give community groups the ability to list a pub on an 'assets of community value' register meaning they will have the opportunity to raise the funds to buy and run the pub if it is closed or sold with a changed use. It is the view of the Association that the Council would do better to wait until the Localism Act provisions come in as these should be the mechanism if any to protect local pubs that genuinely have local support. The Association also considered that when demand is no longer there and a pub ceases to be viable it is equally important for companies to be able to either re-position the pub business or dispose of it so they can reinvest to ensure the continued success of other sites in the area.
- 3.15 The British Beer and Pub Association considered that further planning restrictions on change of use will be counterproductive and will go against the spirit of the National Planning Policy Framework (NPPF) which has sought to reduce red tape and delays around planning to allow business to more easily adapt to changing markets. It is the view of the Association that to 'resist the loss of Public Houses and other Drinking Establishments' is the opposite of this, as pubs are having to adapt to a landscape of changing consumer habits away from pub going and planning restrictions will not help them to remain viable and successful in this situation.
- 3.16 The British Beer and Pub Association consider that the Council could do more to protect public houses by:
- Looking at offering additional discretionary business rates relief to small businesses and those offering additional community services and value to the community.
 - Taking a more positive approach to regulatory enforcement, particularly with regard to licensing as this can be one of the biggest burdens on business.
 - Taking a positive and flexible attitude to planning and licensing to allow new pub businesses to start up and succeed if and where there is demand.

- 3.17 It is considered that public houses are a public amenity and their loss diminishes overall public realm amenity. Their continued existence should be encouraged – if not viable then a wine bar or restaurant would be preferable to yet another residential property.
- 3.18 The Norland Conservation Society consider that public houses are an integral part of the neighbourhood in conservation areas and they strongly support the move to resist the loss of A Class uses, including public houses being lost to housing and other uses outside of the A Use Class. They query whether hot food takeaways (Class A5) are included.
- 3.19 The Brompton Association does not support a policy to protect public houses throughout the Borough or Restaurants and Cafes (Class A3) and Financial and Professional Services (Class A2) outside of Higher Order Town Centres. Instead they would support a policy which protects their loss where they have an important role to play in the community. However, there are others which are detrimental to residential amenity and damage local community life. Moreover, there are areas where there are an excessive number of premises. The draft policy should be amended to reflect these concerns.
- 3.20 The Chelsea Society support a policy protecting the loss of public houses and with regard to character and use it could usefully be added where such uses add to the social and economic variety of residential neighbourhoods. Also back street commercial uses, by attracting people, add to the footfall and surveillance and so contribute to public safety. Also with falling household sizes public houses offer a special valuable social service where residents working from home, or retired can go and mingle with others and escape the isolation of their homes.
- 3.21 The Kensington Society supports both policies and suggests some additional text to both policies to strengthen them and reflect the wording on the National Planning Policy Framework (NPPF).
- 3.22 The Edwards Square, Scarsdale and Abingdon Association (ESSA) welcomed the strengthening of the policy for providing further protection for public houses. They request that more information is provided regarding viability to be submitted and this is undertaken at validation stage. With regard to the character and use policy they welcome its introduction. They query whether a 'Statement of Significance' will be required outside of a conservation area.
- 3.23 The view is expressed by one resident that pubs are being rapidly turned into private houses and the catastrophic loss of licensed premises is a disaster for all communities. The same is true for protecting other A Class uses – if something is not done Kensington and Chelsea will consist of nothing but the empty homes of absent oligarchs and professional dog walkers – that live elsewhere.
- 3.24 CAMRA supports a policy resisting the loss of public houses but considers that the proposed policy is weakened by the inclusion of other A Class uses. The representative considers that the loss of A2 and A3 uses is generally relatively

uncontroversial. They are disappointed that Article 4 directions are not put forward as a way of controlling the use – they understand that if 12 months notice is given then no compensation would be payable.

- 3.25 Another CAMRA respondent considers that the draft policy could contain a number of stipulations such as marketing, viability, and the availability of alternative and equivalent provision.
- 3.26 The Knightsbridge Association supports a policy for the protection of public houses and also restaurants. However, they feel that this needs to be matched with guidance as to where new restaurants can be satisfactorily located.

Comments regarding draft policy for protecting use where it contributes to the character of an area and its sense of place

- 3.27 Savills and the Bell Cornwall Partnership consider that the content of this proposed policy- both the supporting text at paragraphs 5.1 to 5.3 and the policy text itself- is poorly worded and is too vague, and does not define the key characteristics or criteria against which an assessment must be made. Savills state that it is not sufficient to claim that *"the distinctive character of many buildings may come from their use as much as their physical appearance"* without first defining a framework against which 'distinctive character' can be qualified. The Bell Cornwall Partnership considers that the wording of this draft policy is vague and open therefore to wide variation and a lack of clarity.
- 3.28 Savills consider that no framework or means of assessment as to how the Council propose to judge whether *"the current use [of a property] contributes to the character and significance of the surrounding area and to its sense of place"* has been proposed. Qualifiers such as "surrounding area" and "sense of place" have not been defined, and it is not clear how the Council proposes to consider such proposals and against what policy background. An assessment of significance of a designated or non-designated heritage asset (as defined by the NPPF) is an example of one such means of assessment, but this means of assessment and subsequent demonstration of policy compliance is already in place. A new policy as proposed is therefore superfluous.
- 3.29 Savills consider that there are already policies within the development plan or the NPPF - specifically town centre and neighbourhood centre policies- where character as defined by a specific land use is addressed i.e. protecting a shop within a town centre seeks to protect the character of the centre through promoting town centre activities. Again, the proposed policy is unnecessary and superfluous. In any event, defining changing patterns of use is part of the history of the Borough, or a conservation area. The Borough will continue to evolve as it has always done in response to shifting economic, social and environmental pressures. It is common to find physical evidence of past uses which have changed over time in the appearance of buildings, and given that the appearance of a building is of greater importance than its use (in the context of *"the character and significance*

of the surrounding area'? There is already policy framework in place at both the local and national level to ensure the heritage, character and significance of buildings and localities are not diminished.

- 3.30 Savills consider that it is not the role of the planning system to protect unviable, unused, and vacant premises for which there is no future prospect of reuse by a similar activity. Vacant buildings are blight, and adversely affect the character and significance of the surrounding area.
- 3.31 The London Fire and Emergency Planning Authority (LFEPA) state that it is not clear to us whether this policy is aimed at function or character, or both. In any event, they consider that the character of a property should be considered separately from the actual use, as it is possible to retain a property's character, without maintaining the original use. Reference to LFEPA's Asset Management Plan (2011) shows that the borough contains some of the least suitable for purpose stations, two of which (Knightsbridge and Chelsea) are categorised as requiring redevelopment within a short timescale. In the future, LFEPA may have to consider alternative locations for such stations. The location of stations is determined by response times, fire cover and other operational matters. In such a scenario, it would be detrimental to the local community to insist on retaining the use on site, in addition to protecting the building.

4.0 Representations made pursuant to regulation 20 and a summary of the main issues raised – Publication consultation

- 4.1 The consultation on the Proposed Submission policies including the Sustainability Appraisal ran for 6 weeks from the 29 October to 10 December 2012 in accordance with Regulations 27 and 28 of the Town and Country Planning (Local Development) (England) Regulations 2004.
- 4.2 A total of 1145 persons or bodies were invited to make representations as to soundness which was all those included on the Local Plan database. These included both general consultation bodies and specific consultation bodies.
- The number of representations made**
- 4.3 A total of 52 representations were received.
- 4.4 All the representations referred to in this statement were made in accordance with Regulation 20 and were taken into account.

SUMMARY OF THE MAIN ISSUES RAISED

- 4.5 Gerald Eve, acting on behalf of Cadogan Estates commented on the implications of the draft policy – they noted that the draft policy seeks to resist the loss of Class A4 uses throughout the Borough. The Estate seeks to retain public houses where they contribute and add to the vitality and vibrancy of the area; are well used; and provide a valued community facility. However there may be instances where they are not well used, become unviable or to meet modern day requirements, they require configuration. In some instances, the site may be better utilised for other land uses and therefore flexibility needs to

remain. They consider that the blanket restriction on the loss of public houses will only exacerbate the situation. There is also the concern that this onerous and prescriptive restriction will ultimately discourage investment in this land use.

4.6 Gerald Eve, acting on behalf of Cadogan Estates noted that paragraph 3.3 of the Issues and Options (March 2012) document highlighted in relation to the loss of public houses that "the rate of loss has not accelerated over the longer timescale". Paragraph 3.2 states that the last five years has seen a slight increase in the loss of public houses compared with the period 2002 to 2007 – however, the table highlights that the increase related to the loss of only 1 public house over this 5 year period. It was therefore considered wholly unnecessary to have a blanket protection on public houses on the basis of the evidence. Shire Consulting acting on behalf of Barclay's Bank make a similar point in so far as they state that where public houses have been lost they have gone to other A Class uses and those lost as a result of planning decisions are very low (about 0.5 a year) so a policy is not justified. The Bell Cornwall Partnership state that there is no up-to-date evidence of increased public house loss to other uses since the Core Strategy Policy was adopted, since which time only 3 pubs across the whole Royal Borough range of 113 pubs have changed their use. That is the up-to-date evidence for assessing the effectiveness of the currently adopted Core Strategy policy. To seek to rely on data from 1980 is unsound.

4.7 Savills make a similar point stating that the rate at which pubs are being lost is lower today than in the period from 1980-2002. There has been no significant change in the rate at which pubs are being lost during the past 10 years. There is no evidence that the loss of a limited number of pubs has resulted in parts of the Borough being deprived of a community function within easy reach and there is no evidence that alternative uses such as restaurants and cafes are not also contributing a community function, either instead of or in addition to pubs within the Borough. Furthermore, there has been no significant change in the rate of loss in the 15 month period between the adoption of the Core Strategy in December 2010 and the publication of the Issues and Options document in March 2012.

There is an adequate number of pubs across the Borough to meet the needs of residents, whereby the entire Borough is located within a 10 minute walk of one of the 110 drinking establishments.

4.8 Gerald Eve, acting on behalf of Cadogan Estates opposed the principle of a policy. However, if a policy went ahead then they suggested a number of criteria should be introduced to the policy to allow for circumstances where the loss of a Public House will be acceptable. They suggested the following wording:

"The Council will resist the loss of Public Houses and other Drinking Establishments (Class A4) throughout the Borough unless the proposal meets one or more of the following criteria:

- The existing use has an unacceptable impact on surrounding amenity;
- The existing use is no longer commercially viable;
- The reuse of the site for an alternative use/s would bring about greater planning benefits to the Borough outweighing its loss;
- The existing use is relocated or replaced elsewhere."

- 4.9 Gerald Eve, acting on behalf of Cadogan Estates does not consider the policy to retain Class A2 and A3 uses outside of Higher Order Town Centres as effective as it will result in very limited flexibility on land uses within the Estate which has implications on the ability to rationalise land uses and will discourage investment in such land uses.
- 4.10 Gerald Eve, on behalf of Cadogan Estates considers that there is no flexibility in the wording of the policy. In some cases, it may be appropriate to allow for the loss of a restaurant or cafe where it has a negative impact on amenity in terms of noise or smells. Importantly, this restriction will stifle flexibility for those areas outside of higher order centres to evolve and develop to meet community needs and objectives is likely to result in unviable restaurants/cafes becoming, and remaining, vacant. It should be noted that the existing policy CF3 (D) within the Core Strategy recognises the need for greater flexibility outside higher order centres and therefore it is inappropriate to introduce further restrictions which reduce this essential flexibility. This policy should therefore be deleted.
- 4.11 In terms of the protection of financial and professional services, this again appears to be at odds with the current objectives of the Core Strategy which do not protect financial and professional services in any location. Again it appears unnecessary to introduce restrictions and there may be circumstances where it is appropriate to lose an A2 use to another use in order to stimulate new investment or meet demands. The draft policy will not allow for this and would create substantial uncertainty for investors and could discourage investment in this land use. We therefore request that this policy is deleted.
- 4.12 Shire consulting acting on behalf of Barclay's Bank expressed the view that 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 change under the Town and Country Planning (Use Classes) Order 1987 and cannot be controlled by the Council. It is unclear who is to make the assessment as to what constitutes a pub which is worth protecting, as opposed to one that is not and what objective criteria might be available. The Council has already rightly admitted that it has no control over the nature of the Class A4 use and it is unclear how the proposed policy amendment can be objectively and sensibly administered.
- 4.13 Shire consulting state that the question also has to be asked as to whether the Council's 'support' for 'community pubs' will stretch to those operators needing to alter their business model in order to improve their viability, say, by extending their opening hours. There may be many cases where the objectives of strengthening viability of existing pubs and protecting the amenity of residents are incompatible. In this scenario the plan does not make

clear which objective will take precedence. The approach is unsound on this basis.

- 4.14 In relation to protecting the loss of Class A2 (Financial and Professional Service) uses and Class A3 (restaurants and Cafes) Shire consulting and the Bell Cornwall Partnership consider that the proposed resistance to the loss of uses within Classes A1-4 “outside of Higher Order Town Centres” will not be ‘effective’ or ‘deliverable’, as it does not consider the operation of permitted development rights. The embargo upon loss of existing non-residential uses does not take into account matters of viability. An isolated property may not be viable in its current use and a change to another activity (whether residential or non-residential) may be the best means of preventing long-term harmful vacancy.
- 4.15 The British Beer and Pub Association believe that the policy to protect public houses has not been positively prepared and will not allow for sustainable development as outlined in the NPPF. This allows businesses to adapt to changing circumstances. The policy is also not justified in so far as it is not the most appropriate policy and the ‘Community Right to Bid’ is more appropriate. It is not accepted that such a policy would be effective as businesses will not be able to sell unviable pubs and reinvest. It is not consistent with national policy and this stems from a misinterpretation of the NPPF which does not encourage local planning authorities to be prescriptive and restrict development and growth.
- 4.16 The Kensington Society strongly support the new policy to provide additional protection for pubs and other A Class uses but consider that the policy could be strengthened by reaffirming the status as a social and community use; identifying the surge of applications for change of use to housing since 2009 as support for the need for a change of policy and using key words in the NPPF and the Mayor’s London Plan to provide evidence of support for local policy. ESSA also support the comments as does the St. Helen’s Residents Association.
- 4.17 The Chelsea Society states that the major threat to public houses is the conversion to residential properties for investment purposes where the Borough is a safe and predictable haven. The Society notes that residents, visitors and tourists alike all welcome the warm, open character of Chelsea’s public houses. They also consider that the importance of social and community uses needs to be more explicitly stated.
- 4.18 A number of local residents express strong support for the policy and express concern regarding the recent rapid loss in the Borough. Two residents express the view that there is a much more socially and culturally mixed community than the recent stereotype of the area as a banker’s ghetto would suggest. They are concerned that due to the rise in real estate for investment purposes public houses are being deliberately run down. A number of respondents express concern about how rising property prices for investment. The Dovehouse Street Residents Association strongly support the policy and

express the view that the loss of pubs has been increasing in Chelsea since developers have been able to change the use to highly profitable large houses and to a lesser extent the same has happened to restaurants and shops..

- 4.19 A number of residents expressed the view that the draft policies were sound and that public houses are vital to the contribution to the community and help to preserve the area's unique character. Others also singled out restaurants of quality and small businesses which do so much to enrich the life of the local community.

Comments regarding draft policy for protecting use where it contributes to the character of an area and its sense of place

- 4.20 Gerald Eve acting on behalf of Cadogan Estates considered that the policy is neither justified (ie the most appropriate strategy has not been selected) or effective. If it is considered that a particular use should be protected then it is more appropriate to add it to the assets of Community Value List through the Localism Bill. It is considered that the policy is too broad to be effective. It is unclear what the Royal Borough is seeking to achieve as the control of uses is covered adequately covered by the Core Strategy. The policy is highly subjective in terms of whether a use contributes to the character or appearance of an area and its sense of place. The 'value' of a use will not be determined until a planning application has been submitted and consulted upon, incurring substantial costs for the landowner and creating significant uncertainty which will ultimately discourage investment in the Borough.
- 4.21 The Bell Cornwall Partnership make a similar point stating that the draft policy is vague and open therefore to wide variation and a lack of clarity. The 'character and significance of the surrounding area and to its sense of place' is not defined and it is not clear what criteria or evidence base would be applied. No account has also been taken of prevailing permitted development rights.
- 4.22 The London Fire and Emergency Planning Authority (LFEPA) consider that the policy is not effective as it is not deliverable over its period. LFEPA determine the location of their fire stations based on response times. It would be detrimental to the safety of the local community to insist on retaining a fire station use on site in order to preserve local character. The character of a building should not be held of greater importance than the provision of a fast and effective fire service. It is requested that the policy is amended so that the character of a fire station is considered separately from the actual use and it is possible to retain the character without retaining the use.

