



The Planning Inspectorate

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# **Report to the Council of the Royal Borough of Kensington and Chelsea**

**by Simon Berkeley BA MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date 11 July 2013**

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PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

**REPORT ON THE EXAMINATION INTO THE PARTIAL REVIEW OF THE CORE STRATEGY FOR THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA WITH A FOCUS ON NORTH KENSINGTON:**

**POLICIES RELATING TO THE PROTECTION OF PUBLIC HOUSES AND OTHER USES**

Document submitted for examination on 1 February 2013

Examination hearing held on 1 May 2013

File Ref: PINS/K5600/429/5



## **Abbreviations Used in this Report**

AA	Appropriate Assessment
CS	Core Strategy
LDS	Local Development Scheme
MM	Main Modification
NPPF	National Planning Policy Framework
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy

## **Non-Technical Summary**

This report concludes that the Partial Review of the Core Strategy provides an appropriate basis for considering proposals relating to public houses and other uses over the remaining 15 years of the Plan providing that three modifications are made to the Review. The Council has specifically requested that I recommend any modifications necessary to enable them to adopt the Review.

The modifications, which have all been put forward by the Council, can be summarised as:

- limiting the geographical scope of the policy to resist changes of use of buildings where the current use contributes to the character of the area to Conservation Areas;
- clarifying the policy position in relation to changes of use within use Classes A2, A3 and A4; and
- adding monitoring criteria in relation to the Review's policy revisions.

## Introduction

1. This report contains my assessment of the Partial Review of the Core Strategy which relates to policies seeking to protect public houses and other uses (hereafter referred to as 'the Review') in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers whether the Review is sound and whether it is compliant with the legal requirements. Paragraph 182 of the National Planning Policy Framework (NPPF) makes clear that to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The duty to cooperate imposed by Section 33A of the 2004 Act is confined to development plan documents insofar as they relate to 'strategic matters' as defined within the Act. This Review does not relate to a strategic matter and consequently the duty to cooperate does not apply to it.
3. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound Review document. The basis for my examination is the submitted draft Review, dated September 2012. This was published for consultation in September 2012. A document entitled 'Recommended Changes', dated January 2013, was submitted with the Review. The Council confirms that this was also subject to public consultation from 6 December 2012 to 31 January 2013. Its content, along with other changes advanced by the Council during the examination, are considered below.
4. My report deals with the main modifications that are needed to make the Review sound and legally compliant and they are identified in bold in the report (**MM**). In accordance with section 20(7C) of the 2004 Act the Council has requested that I should make any modifications needed to rectify matters that make the Review unsound or not legally compliant and thus incapable of being adopted. These main modifications are set out in the Appendix.
5. Main modification MM1 has been subject to public consultation and Sustainability Appraisal (SA) and I have taken the consultation responses into account in writing this report. Main modifications MM2 and MM3 have not been consulted on or subject to SA. However, given the nature of these modifications, I am satisfied that this has not caused prejudice and does not undermine the adequacy of the SA.

## Assessment of Soundness

### Background and main issues

6. The Core Strategy (CS) was adopted in December 2010. This Review of it is very restricted in nature. It proposes to add text to Policy CK2 to resist the loss of public houses and other drinking establishments (Class A4)<sup>1</sup>, restaurants and cafés (Class A3), and financial and professional services (Class A2). The Review also seeks to introduce measures to resist the change of use of any building

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<sup>1</sup> All references to Classes in this report are references to the classes of use set out in the Town and Country Planning (Use Classes) Order 1987 (as amended).

where its current use contributes to the character of the surrounding area and sense of place. As originally submitted, this is by way of a revision to Policy CL1. Other text revisions and additions are proposed to support and explain the policy revisions.

7. Taking account of all the representations, written evidence and the discussions that took place at the examination hearing I have identified two main issues upon which the soundness of the Review depends.

**Issue 1 – whether the proposed revisions to the Core Strategy have been positively prepared, are justified and consistent with national policy**

*Engagement and options*

8. The Council confirms that the Review has been prepared in accordance with its Statement of Community Involvement (December 2007). Although under review, for the time being it remains the Council's commitment to community engagement. It is clear that the views of the community and other interested parties have been sought from the early stages of the policy formulation process. Indeed, the Review reflects the policy option found through the engagement exercises to be the most popular.
9. Involvement has largely been through written consultation methods. However, the Statement of Consultation says that two workshops have also been held. While more could perhaps have been done, the approach to involving the community and others has been proportionate to the limited scope of the Review.
10. In drawing up the revisions to Policy CK2, a 'no policy/do nothing' option has been assessed by the SA along with four proactive policy options. The former is shown to have negative effects against three of the sustainability criteria. It compares particularly unfavourably to the option selected in respect of two criteria, one relating to supporting a diverse and vibrant local economy and another concerning reinforcing local distinctiveness. These are important issues, and I concur with the overall SA outcome in relation to the 'no policy' option. In my view, it is reasonable to conclude that the presence of uses in Classes A2, A3 and A4 helps to create more sustainable neighbourhoods. In general terms, resisting their loss is beneficial in this regard. Moreover, given my views about the CS properly reflecting national policy and the likely effect of the residential property market on these A Class uses, all set out below, policy intervention is more appropriate than none.
11. I note the slightly tentative stance of the SA to the performance of the 'no policy' option on the criteria concerning meeting the housing needs of the Royal Borough's residents. My view in relation to delivering the housing sought by the CS is set out below.
12. With regard to the four policy options appraised, the option chosen performs as well as the alternatives in respect of the SA criteria and, in the case of two criteria, it performs better. One of these is that mentioned above about supporting a diverse and vibrant local economy to foster sustainable economic growth. The other concerns ensuring that social and community uses and

facilities which serve a local need are enhanced and protected. For both, it seems to me that the favourable outcome is a consequence of the selected option's inclusion of resisting the loss of A2 uses.

13. It has been suggested that adding public houses and other premises to the Council's 'list of assets of community value' would be an appropriate approach. As an isolated measure, I disagree. The change of use of a premises need not necessarily coincide with its 'relevant disposal' as defined in the Localism Act 2011. Consequently, the very function of the building which gives it community value could be lost well before community groups have the opportunity to bid for it. In any case, considering my opinion below about residential 'hope values', the success of bids from community interest groups alone should not be relied on to secure the retention of community facilities.
14. In addition, I am not persuaded that specifically identifying the most valued premises and limiting protection to them is an appropriate option. The value of a public house or other facility can depend heavily on how it is operated and can vary substantially over time. This alternative would overlook this factor and the potential of the premises. In short, I consider that this would be a fundamentally flawed approach.
15. Given all this, I consider that the Review has been prepared in a sufficiently engaging, positive way. The SA supports the chosen approach and no others put forward are more appropriate.

#### *National policy*

16. The NPPF clearly intends Local Plans such as this Review to play their part in facilitating social interaction and creating healthy, inclusive communities. It says that planning policies should aim to achieve places which promote opportunities for meetings between members of the community who might not otherwise come into contact with each other. To achieve this, the NPPF expects Local Plans to plan positively for the provision of community facilities such as public houses and 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.
17. At present, the CS reflects much of this. Strategic Objective CO1 is to 'keep life local'. The aim is for strong, effective local centres and for social and community facilities to be widely available and easily accessible. In short, it seeks to build local neighbourhoods which satisfy many community needs. This wholly reflects the principles set out in the NPPF.
18. The resistance to the loss of uses in Classes A2, A3 and A4 proposed by the Review strikes a harmonious chord with both the NPPF and the CS. In terms of broad policy principle, it is consistent with both. Indeed, it seems to me that in this respect the Review remedies a current omission in the CS. It will align the CS more closely with the expectations of the NPPF. While the Council does not rely on this factor alone to justify the Review, it is nevertheless one which lends significant weight to the justification for it.
19. On this point, I note that paragraph 70 of the NPPF refers to *valued* facilities.

The Review protects *all* the A Class uses concerned. While many may be valued by the community at present, others may not be. I have no compelling or comprehensive evidence on this.

20. Nevertheless, among the neighbourhoods which make up this Royal Borough, it is probable that a significant proportion of the public houses and other A Class premises have the potential to be of value to those living around them. As I have already mentioned, much depends on their management. Given the contribution that they can make in terms of creating sustainable communities, presuming in favour of their protection in the way proposed is a valid response. The pressure to redevelop them for residential purposes, discussed below, is a strong local justification in this regard. Overall, this factor does not give rise to any material inconsistency with the NPPF.

#### *Loss of A4 uses and the residential property market*

21. The Review seeks to address a concern essentially about premises in Classes A2, A3 and A4 being developed for residential purposes and the effect of this on the CS objective of keeping life local. Evidence has been produced illustrating the reduction in public houses and A4 uses. Although I note that there has been some inconsistency in the figures supplied, the Council says that since 1980, the number of public houses and bars has decreased from 181 premises in 1980 to 110 in 2012. Even if this is not a drastic diminishment, and does not relate to the range of A Class uses involved, it is a factor of some significance.
22. That being said, it appears that a considerable proportion of public houses have changed their use through permitted development rights rather than residential redevelopment. As the Review does not and cannot tackle this issue, the degree to which this evidence justifies it is limited.
23. A more crucial aspect, though, is the issue of residential values and the effect of these going forward through the CS plan period. Several sources of evidence have been drawn on in this respect. With regard to the present situation, the Land Registry House Price Index for October 2012 indicates an average house price in the Royal Borough of £1,094,203. A report from the Right Move website in July 2012 puts this figure at £2,031,000. Whichever most accurately reflects the values achieved, as average prices, I find these figures quite astonishing.
24. Moreover, in terms of future projections of residential value, the Council refers to Savills' *Spotlight: London's Housing Supply* (Summer 2012). This says that high demand from equity rich buyers and scarce supply has driven a V-shaped recovery in London, in contrast to the UK average, and that this divergence is expected to continue. It forecasts a 19% house price growth in London over five years, including 23% in prime central London. The Council considers the Royal Borough to sit within the latter category. I have no reason to suppose otherwise.
25. Furthermore, Savills' *Spotlight* anticipates housing demand to outstrip supply, driven by employment growth, above average income generation, expansion of world class higher education and London's global city status. On this point, the Council indicates that while there has been a net gain in homes of around 2,500 in the Royal Borough since 2002/3, Census data reveals a reduction in the



overall number of households in that period. The Council says that sales to international investors could be a contributing factor in this. Whatever the underlying causes, the central point here is that the relationship between demand and supply is likely to continue applying upward pressure on house prices.

26. Taking all this into account, I consider it highly probable that residential values in the Royal Borough will continue to be at significant levels for some time to come. The considerable financial value differential, or uplift, between the A Class uses concerned and housing is also likely to persist, along with consequent 'hope value' and pressure for residential redevelopment. There is a strong probability that the market will continue to pull in a different direction to the NPPF and established CS objective. This factor lends significant support to the justification for the Review's approach.

#### *Financial viability*

27. The proposed revisions to Policy CK2 do not include a clause in respect of the financial viability of the premises affected. In the context of the Royal Borough's residential market, I am of the firm view that this is a justified stance. As it is, the Review will send clear, strong and specific signals introducing greater certainty into the market than the CS presently does. Embedding viability considerations into Policy CK2 would muddy the waters and confuse matters. This in turn would encourage raised expectations and 'hope values'. Even if the Review's effectiveness in determining planning applications remained unaltered, its function as a signal to the market would be eroded and undermined.
28. In any event, where evidence is produced, it will remain incumbent on the Council to take the financial viability of premises into account when considering change of use applications. Whether this factor should lead to a decision contrary to the Review will rightly be decided on the merits of each individual case. As such, where they are genuinely not a viable prospect, the Review need not lead to public houses and other premises standing empty. In this context, and considering the changes that can occur without the need for planning permission, I see no reason why the Review should prevent businesses adapting to changing economic circumstances.

#### *Change of use and character*

29. Policy CL1 of the CS applies across the whole Royal Borough. By adding to this policy, the submission version of the Review would effectively resist the change of use of any building in Kensington and Chelsea where its current use contributes to the character of the surrounding area and sense of place. However, the aforementioned Recommended Changes document includes a modification (**MM1**) to relocate the proposed text to CS Policy CL3 which relates only to Conservation Areas and historic spaces. Given that around three quarters of the Royal Borough is designated as Conservation Area, the geographical scope of the change is limited. Nonetheless, it is the Council's clear wish that the Review should be considered on this basis. Given this and my overall conclusion that revising Policy CL3 as proposed is sound, I regard this modification to be necessary.

30. Decision makers have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. It is well established that use is among the factors which can influence the character of Conservation Areas. As the Council proposes to modify it, the Review is entirely consistent with this. Moreover, it reflects CS Strategic Objective CO5: Renewing the Legacy, which aims to maintain, conserve and enhance the Royal Borough's built heritage. It is justified in this respect.
31. The London Fire and Emergency Planning Authority is concerned that the proposed addition to Policy CL3 could cause problems if fire stations need to relocate. But the Council is already required by legislation to consider the degree to which a fire station, or any other use for that matter, contributes to the character of a Conservation Area. Put simply, the Review does not significantly change the present situation, if at all. The operational necessity of relocating emergency service facilities is clearly a consideration to be taken into account through the planning application process. There is no reason to suppose that the Council, as a responsible public authority, will not give such matters appropriate weight. Indeed, at the Hearing, the Council confirmed that factors such as this are likely to outweigh the CS policies. This issue does not undermine the justification for the Review.
32. Taking account of the above and all the evidence produced, I conclude that with the modification recommended, the proposed revisions to the CS are justified, consistent with national policy and have been positively prepared.

## **Issue 2 – whether the proposed revisions to the Core Strategy are effective**

33. The proposed revisions to both CS policies and the supporting text have been concisely drafted and written in a straightforward style. As a result, the intent of the policies is clear. Consequently, there is no reason why they should not be applied effectively to deliver the intended outcomes.
34. Notwithstanding this clarity, there can be no guarantee that the CS alterations proposed will prevent pressure for residential redevelopment being applied through the submission of planning applications. But, as I see it, the Review goes as far as it realistically should to signal the policy position to the residential property market and others.
35. Certain prescribed changes of use within the A Class can occur without the need for planning permission. However, this cannot be controlled through development plan policy. As such, I regard the revisions to Policy CK2 to be as effective as could reasonably be expected. I note that the Council has given consideration to introducing Article 4 Directions and does not intend to pursue such a course. That is for the Council to decide, and is not a matter for this examination.
36. The Review does not address the issue of changes of use within the A Class which do require planning permission. It strikes me that such proposals are a reasonably common occurrence. The Council has advanced a modification (**MM2**) in this regard. It clarifies that 'swaps' within use Classes A2, A3 and A4 will be treated on their own merits, depending on the role of the premises in question and the impacts of the proposed change. It also effectively confirms

that the Council does not seek to impose any hierarchy or sequential preferences within these A Class uses. I agree that this clarification, particularly on the latter point, is necessary to ensure the effective and consistent operation of Policy CK2.

37. Although the Review also does not explain the Council's approach to A Class uses relocating within the Royal Borough, this is a slightly different matter. In essence, the question here is whether this would amount to a 'loss' in the terms of the proposed revisions to Policy CK2. Much will rest on the circumstances in each individual case, including factors such as the nature of the use to be relocated, and the presence or otherwise of other similar uses nearby. Consequently, an absence of prescription on this point is not essential. Indeed, it allows necessary flexibility, and for the Council to consider any relocation proposals on their merits. This is an appropriate approach.
38. I note the criticisms about the absence of specific criteria in relation to the revision proposed to Policy CL3, and the argument that this renders it ineffective. I disagree. This is a policy which sets out a broad principle which closely reflects the statutory provisions in relation to Conservation Areas. The lack of prescription lends it flexibility. Given the range of buildings and uses to which it applies and the spectrum of factors which influence the character of Conservation Areas, this is wholly appropriate. That English Heritage has not raised any objections adds to my view on this.
39. No monitoring criteria are included in the submitted Review. Following the Hearing, the Council has put forward an addition to the CS monitoring framework (**MM3**). On the whole, it provides a suitable basis for judging the Review's success or otherwise and managing shortcomings in this respect. As the effectiveness of the Review's policies cannot be ensured unless relevant outcomes are monitored, this is necessary for soundness.
40. Taking account of the above and all the evidence produced, I conclude that with the modifications recommended, the proposed revisions to the CS are effective.

### **Other matters**

41. The Council has suggested a number of other alterations to the Review. However, these are either consequential changes or other additions intended to provide helpful explanation. While in general terms these changes are to be encouraged and welcomed, they are not necessary to make the Review sound.
42. I note that paragraph 30.3.7 of the CS says that the whole of the Royal Borough is within a ten minute walk of a public house or bar, and as such "*there is too little evidence to resist their loss at the present time*". That was the Council's opinion at that time. Some argue that very little or nothing has changed since then. Even if that is so, it does not alter my overall conclusion about the soundness of this Review.
43. I recognise that the residential redevelopment of premises in A Class uses will make a contribution to the delivery of housing sought by the CS. But, notwithstanding the element of windfall development anticipated, the CS does not rely on such sources to meet its housing requirements. Moreover, the

Council confirms that its housing targets are being exceeded. All things considered, this argument does not provide a strong reason to reject or dilute the Review's policy stance.

44. I note the points made and legal opinion provided about the possibility of the Council seeking to control changes within the A Class which are allowed under permitted development rights through applications to alter the shop front. The Council says that it has no such intention and that determining proposals to alter shop fronts on this basis would amount to unreasonable behaviour. The Review proposes no such approach. Indeed, it does not encompass the question of altering shop fronts. What may or may not constitute unreasonable behaviour in determining planning applications is not for me to decide here. Overall this is a matter beyond the scope of this examination.

## Assessment of Legal Compliance

45. My examination of the compliance of the proposed revisions to the Core Strategy with the legal requirements is summarised in the table below. I conclude that the proposed revisions meet them all.

<b>LEGAL REQUIREMENTS</b>	
Local Development Scheme (LDS)	The Review is identified within the approved LDS of November 2012 which sets out an expected adoption date of April 2013. Although the Review's content is compliant with the LDS, some delays in its progress have occurred. I am satisfied that there is no fundamental conflict with the LDS.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in December 2007 and consultation has been compliant with the requirements therein. Although proposed 'main modifications' MM2 and MM3 have not been the subject of consultation, given their nature, I am satisfied that this has not caused prejudice.
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	A Habitats Regulation Assessment screening exercise has not been undertaken. However, Natural England has confirmed that an AA is not required.
National Policy	The Review complies with national policy.
The London Plan	The Greater London Authority has confirmed that the Review is in general conformity with the London Plan.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS.
2004 Act (as amended) and 2012 Regulations (as amended)	The Review complies with the Act and the Regulations.

## **Overall Conclusion and Recommendation**

46. The Review has three deficiencies in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the Act. These deficiencies have been explored in the main issues set out above.
47. The Council has requested that I recommend main modifications to make the Review sound and/or legally compliant and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the proposed revisions to the Core Strategy for the Royal Borough of Kensington and Chelsea satisfy the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*Simon Berkeley*

Inspector

This report is accompanied by the Appendix containing the Main Modifications, along with an Addendum to the Appendix.

## Appendix – Main Modifications

The modifications below are expressed either in the conventional form of ~~strikethrough~~ for deletions and underlining for additions of text, or by specifying the modification in words in *italics*.

Ref	Main Modification
MM1	<p><i>Delete the following sentence from Policy CL1 as drafted in the submission version of the Review document, dated September 2012:</i></p> <p><del>a. ii) resist the change of use of any building where the current use contributes to the character of the surrounding area and to its sense of place.</del></p> <p><i>Add the following to Policy CL3 of the Core Strategy as a new criterion after criterion a:</i></p> <p><u>b. resist the change of use of any building where the current use contributes positively to the character of the surrounding area and to its sense of place.</u></p>
MM2	<p><i>After paragraph 30.3.14C in the submission version of the Review document, dated September 2012, add a new paragraph as follows:</i></p> <p><u>In applying this policy individual shops will be protected, but the swap of other uses within the A Use class (Classes A2 – A4) will be treated on their own merits depending on their role within the locality they serve and their impact on neighbours. The Council recognise no hierarchy of uses in this regard.</u></p>
MM3	<p><i>Add the monitoring criteria shown in the Addendum to this Appendix to Chapter 38 of the Core Strategy.</i></p>

## Addendum to Appendix Main Modification MM3

Add the monitoring criteria shown in the table below to Chapter 38 of the Core Strategy.

<b>CK2: Local Shopping Facilities</b>						
<b>Policy</b>	<b>Target</b>	<b>Monitoring Indicator(s) and Trigger for Review</b>	<b>Trigger for Review</b>	<b>When</b>	<b>Source</b>	<b>Contingency</b>
<b>CK2 (b)</b>	Protect all Public Houses and other Drinking Establishments (Class A4) throughout the Borough	Has the Drinking Establishment been vacant for 2 years or more?  40% of appeals allowed for change of use from Class A4.	Investigate cause of vacancy and establish if viability is an issue. If Class A4 vacancy rates increase over 30% in 2 years policy review triggered.  Investigate allowed appeals and establish whether allowed on viability grounds. If allowed on viability grounds in 40% or more of cases then policy review triggered.	Annual	Information extracted from Borough wide A Class survey	Policy review with examination of viability issues

<p><b>CK2 (c)</b></p>	<p>Protect all Restaurants and Cafes (Class A3) and Financial and Professional Services (Class A2) outside of Higher Order Town Centres</p>	<p>Has the Class A2 or A3 Establishment been vacant for 2 years or more?</p> <p>40% of appeals allowed for change of use from Class A2 or A3 establishments</p>	<p>Investigate cause of vacancy and establish if viability is an issue. If Class A2 or A3 vacancy rates increase over 30% in 2 years policy review triggered.</p> <p>Investigate allowed appeals and establish whether allowed on viability grounds. If allowed on viability grounds in 40% or more of A2 or A3 cases then policy review triggered.</p>	<p>Annual</p>	<p>Information extracted from Borough wide A Class survey</p>	<p>Policy review with examination of viability issues</p>
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