

Planning and Borough Development

Kensington Town Hall, Hornton Street, London, W8 7NX

Executive Director for Planning and Borough Development

Jonathan Bore

Head of Policy and Design

Penelope Tollitt

Mr. S. Berkeley
c/o Chris Banks Programme Officer
21 Glendale Close
Horsham
West Sussex
RH12 4GR

20 February 2013

My reference: PBD/CSR/E/1/JW

Your reference: BS -2127

Please ask for: Jonathan Wade

Dear Mr Berkeley

Re: Kensington and Chelsea Core Strategy: Policies relating to the protection of public houses and other uses

Thank you for your letter dated 12 February. I will address your questions and comments in the order that they appear in your letter.

With regard to the precise scope of the examination the Council wishes to put forward Policy CK2 and the reasoned justification as it appears in the Submission document dated September 2012, but with the recommendation that an additional sentence is added to the overarching strategic policy "and other facilities which make life local." This is shown in blue and underlined on the 'Recommended Changes' document dated January 2013 (Document 21). It should have been included in the draft policy in a similar manner to the title of the policy. It makes the policy more effective as without this change the draft policy would only be referring to convenience shopping facilities. There are no recommended changes proposed apart from this sentence.

In relation to Policies CL1 and CL3 and the draft policy in relation to character and use I can confirm that the Submission document showed the draft character and use policy and its reasoned justification as part of adopted Policy CL1 which relates to context and character. However, the 'Recommended Changes' document (Document 21) shows it as being part of adopted Policy CL3 which is entitled, 'Heritage Assets – Conservation Areas and Historic Spaces.'

The Council's position is that whilst inclusion in Policy CL1 is not considered to be unsound the policy would actually be more effective it was limited to conservation areas only where there is a statutory duty to consider the character of an area. The justification

Direct Line: 020 7361 2127

Fax:

Email: jonathan.wade@rbkc.gov.uk

Web: www.rbkc.gov.uk

for this is included in the 'Policy Formulation Report' (Document 9) and it also responds to some of the concerns raised at the Regulation 20 stage.

The Council can confirm that the recommended changes with regard to the draft policy for character and use have been the subject of public consultation (from the 6 December to the 31 January 2013) as part of wider changes to the 'Renewing the Legacy' chapter of the Core Strategy (Chapter 34). The Council confirms that for the purposes of the examination only the changes shown in blue and underlined which relate to a draft policy for character and use in the 'Recommended Changes' document (Document 21) should be considered together with the original Submission document (Document 11).

As requested a schedule of main modifications (to the submission version of the document) which are considered to make the policies more effective in the format of a table is enclosed at Appendix One. A 'tracked changes' version of the document limited to the changes proposed through examination and omitting changes that the Council intends to bring forward in relation to the Conservation and Design Partial Review is also enclosed at Appendix Two. The Council confirms that the wider changes proposed to Conservation and Design policies were included for the sake of completeness, but they do not relate to this examination (Document 22).

The evidence base

In relation to the figures given for the loss of public houses a spreadsheet is enclosed at Appendix Three which shows the premises that existed in 1980, 2002, 2007 and 2012 and when changes occurred if these are known together with the number at each snapshot in time. This has not been tracked on a yearly basis, partly because it would make the database unduly complex and where changes have occurred under permitted development the precise year of change is not always known. The evidence base as submitted is considered to be proportionate and indicates what the use class change has been to.

In relation to whether the evidence base relates solely to public houses this is a difficult question to answer given the nature of such uses. When a public house might be construed as a bar is an entirely subjective judgment and the Council would question whether a clear distinction can be drawn between the two. The Council is satisfied that on examination of the evidence in nearly every case the premises could be classified as a matter of fact and degree as a public house as opposed to another type of drinking establishment, but clearly some might be closer to what might be construed as traditional public houses than others. The overwhelming majority were certainly built for that purpose.

The proposed policy stance taken by the Council does not rely on the loss of public houses alone for justification. The Council has more evidence and a better understanding of the property market in the Borough since paragraph 30.3.7 in the adopted Core Strategy was written in 2009. This relied solely on the number of premises to justify why a policy was not appropriate. Whilst it can be a component of a suitable evidence base the Council considers the loss of premises is an inappropriate test in itself to decide whether a policy for resisting the loss of certain uses is sound. Certainly the increasing number of planning applications relating to the change of use of public houses to residential use together with the ever higher residential property prices in the Borough which have increased significantly since the Core Strategy was adopted in 2010 has raised concern and added to the pressure for all commercial properties to go over to residential use, especially those situated in residential areas.

The Council would strongly contend that the soundness of a policy should not be tested simply on the degree of harm that has resulted prior to its implementation. A simple analogy can be drawn with a policy on roof extensions. This would surely not be tested for soundness on the amount of harm that had to be demonstrated before the Council were entitled to develop such a policy. In any case what would the tipping point for harm have to be before a policy was considered sound? The Council can see no difference why anticipating the loss of facilities should not be sufficient justification for taking a local approach given the context of the Borough which has the highest residential property prices in the United Kingdom. Indeed anticipating problems before they actually occur rather than responding afterwards would seem to be sound proactive planning.

The single component which has not been referred to by the Inspector as part of the evidence is the average cost of residential properties in the Borough (submitted as Document 31). This showed that the average Kensington and Chelsea property cost £2,031,000 on the 'Right Move' site in July 2012 which was the highest in London and the United Kingdom. Taking the Land Registry House Price Index for October 2012 gives an average of £1,094,203. No other London Borough came close to breaking through the million pound mark. It should also be noted that the Borough had the highest annual price movement of 15.9 percent upwards. These are material factors that cannot be ignored.

In terms of forecasting for the future reference is made to the spotlight on 'London's Housing Supply – summer 2012' (Appendix Four). With regard to outlook (Page 3) Savills refer to the high demand from equity rich buyers and scarce supply driving a V shaped recovery in London, in contrast to the UK average. Savills expect the divergence to continue, although the overall market capacity remained constrained by the availability of mortgages and development finance. There is certainly no evidence to demonstrate that the availability of mortgages is a constraining factor in the Royal Borough.

Savills also made reference to the continued housing scarcity in London which supported their forecast for a 19% house price growth in London over the following five years with a 23% growth in prices in prime central London which would include the Royal Borough. Savills expect housing demand to outstrip supply, driven by economic growth, above average income generation, expansion of World class education and London's global city status. The latter is particularly pertinent to the Royal Borough with a very high degree of overseas investment with Kensington and Chelsea seen as a safe haven for property investment.

Indeed, records of new build properties held by Planning and Borough Development show there has been over a net gain in residential properties since the financial year 2002/3 of 2,499 new properties. Whilst it would be expected that a new property would lead to an additional new household forming, the Census data shows that this is not the case, with a reduction in the overall number of households over the last 10 years. Crudely applying Savills findings to sales volumes in the Royal Borough since 2009 shows that the increase in sales to overseas investors could be a contributing factor to the reduction in the number of households in the Royal Borough – part of the global city phenomenon.

The very high cost of land and buildings in the Royal Borough means that there is a constant and likely growing pressure to change non –residential uses, particularly those situated in residential areas, to residential accommodation. Whilst this is demonstrable in the case of public houses, it is less so for Class A2 (Financial and Professional Services) and Class A3 (Restaurants and Cafes) where there are a smaller number of

premises outside of town centres. A database of out of centre A Class and sui generis uses (excluding A4 uses) is included at Appendix Five to indicate the number of properties, apart from drinking establishments, which are at potential risk of conversion, but the Council would contend that given the spiralling property prices in the Borough this risk is high and if anything will become more acute.

There have been three instances since the Core Strategy was adopted in December 2010 of commercial units in Class A2 or Class A3 use being lost to residential use outside of town centres. These are 12-13 St. Alban's Grove where a restaurant was lost to provide additional residential floorspace for an existing maisonette (ref PP/11/03519) in October 2011; 97 Flood Street where a licensed betting office (Class A2) was replaced by a maisonette (ref PP/11/03489) and the Lonsdale restaurant at 48 Lonsdale Road which was granted permission to change to a single family dwelling this month (February 2013), but the Council are unclear as to what tipping point needs to be demonstrated if soundness is to be tested solely in this manner.

Notwithstanding the approach to harm already outlined, the Council also consider that the adopted approach of protecting non-residential properties in the Borough against conversion to residential purposes is a material factor which needs to be taken into account as part of the evidence. As stated as part of the Policy Formulation document, (Document 21) the Council's Core Strategy vision for 'Building on Success' (CV1) is to uphold our residential quality of life and this includes maintaining and updating social infrastructure.

As part of their evidence the Council would refer to paragraph 3.3.9 of the adopted Core Strategy which puts the local case for the need to keep life local in the borough and the two strategic objectives already referred to in the Policy Formulation Report – for 'Keeping Life Local' and 'Fostering Vitality' so that the Borough is enhanced by a wide variety of cultural, creative and commercial uses. The Council consider that they are entitled to take a local approach to the issue of retaining such uses in the light of the pressure of conversion to residential accommodation.

Viability

With reference to viability and the 'apparent inflexible approach' of the draft policy the Council would contend that the issue of viability can sensibly be dealt with as a material consideration, rather than having to be specifically referred to in the policy in order to make it sound. They refer to the test as set out in section 38 of the Planning and Compulsory Purchase Act 2004 where decisions on planning applications 'must be made in accordance with the (development) plan unless material considerations indicate otherwise.' This in itself would seem to give the flexibility that is required.

Notwithstanding this, the Council intends to have a generic reference to viability and the marketing of premises that covers all the policies in the adopted Plan as part of the Enterprise Review. This concerns policies specifically contained within the 'Fostering Vitality' chapter of the Core Strategy, the timetable for which is set out in the Local Development Scheme (Document Six). The timetable will have to be amended in view of the Government's approach of permitting office accommodation to change to residential use. The Council will be seeking exemptions for part of the Borough, but will not be in a position to progress the policies until after the Government announce the results of the consultation in the spring. However, the Council intend to make haste after the decision with a view to submission sometime towards the latter end of 2013.

With regard to the issue of viability and the relevant test of soundness the Council would refer to the policy guidance set out in the National Planning Policy Framework (NPPF) at paragraphs 173 to 177. The viability tests refer to plan making in general rather than incorporating a viability test for each planning application that is considered against a particular policy. The Council can see no requirement as to why viability has to be specifically mentioned to make a planning policy sound although it is of course agreed that it is a material consideration. Talking this line of argument to its logical conclusion would mean that every single policy in a Development Plan would have to make specific reference to viability and this is clearly not what the Government intended when it set out its guidance in the NPPF.

If a building used as a public house was demonstrated to be unviable and it had been marketed for other uses which would be a permitted change via the Use Classes Order then these would clearly be material factors which would be weighed against the policy. This is exactly the approach that has been followed, without any policy issue, in appeals involving public houses in the Borough since the adoption of the Core Strategy in December 2010. Indeed it reflects extant advice contained within 'PPS5: Planning for the Historic Environment Practice Guide' with Revision Note dated June 2012. Paragraph 96 of this document which would be relevant for listed buildings and buildings within conservation areas states that the purpose of marketing (as required by Policy HE9.3) is to demonstrate that no viable use for an asset can be found. The aim is to reach all potential buyers who will be willing to find a use for the site that still provides for its conservation to some degree. If such a purchaser comes forward there is no need to sell to them, but redundancy will not have been demonstrated.

The Council intend to produce a specific guidance note on marketing, but they certainly do not consider that in the absence of such a note, a policy that does not specifically refer to viability as being unsound. The five tests for marketing as set out at paragraph 96 in the Practice Guide can sensibly be followed and are material considerations.

The fact is, that due to the very high cost of land in the Borough, very few premises remain vacant. This is in stark contrast to other locations in the UK where clearly the degree of vacant and derelict premises is a matter of concern and a material consideration that is likely to carry more weight. Conversely, the available evidence points to developers purchasing non –residential premises such as public houses because of the high degree of potential uplift that can be gained from changing to a residential use, especially those in residential areas outside of a town centre. This can be demonstrated for any non residential uses – indeed consultants work recently undertaken regarding the potential benefit of converting an office to residential use in the Borough shows the gains that can result. An extract from the consultant's report has been included at Appendix Six. This shows the uplift values for residential conversion on properties in various locations in the Borough, including the north (W10) which varies between 93% and 185% uplift. Whilst this is for office conversions the principle and substantial uplift figures would apply to A2, A3 and A4 uses, especially those situated in prime residential areas.

The Council has some evidence to suggest that the same is happening with the public houses that have been the subject of recent planning appeals. Indeed paragraph 20 of the Inspector's appeal decision for the Cross Keys public house refers to concern that the viability issue was being skewed by the purchase price of £3 million for the property in 2009 and that interest payments on this figure, which was too high for a public house, were affecting the viability (Document 33). A similar discussion took place at the Price of Wales public house hearing although the Inspector does not refer to it in his appeal decision. In the case of the Phene Arms the Council refer to an Evening Standard article

from October 2012 which reports that the property was bought for £2 million, but conversion to a luxury residential property could net as much as £20 million (Appendix seven). Whilst such articles need to be treated with due caution there is no doubt that the financial benefits for conversion to residential of Class A2, A3 and A4 properties are significant and there is therefore a distinct risk of conversion to residential accommodation without a suitable safeguarding policy being in place. The Community Right to buy scheme as laid down in the Localism Act is an unrealistic proposition in Kensington and Chelsea for this very reason, as is the use of Article 4 Directions because of the compensation claims that may result.

The point is that little evidence has been submitted that proves that public houses in the Borough cannot be run as viable businesses and they are not in themselves unviable. The same would appear to be true for Financial and Professional Services (Class A2) and Restaurants and Cafes (Class A3) where there is no evidence that these businesses cannot be run in a viable manner providing that the hope value to change to residential accommodation is not taken into account. A suitable planning policy preventing the loss of such businesses would depress this hope value

The unnecessary loss of valued facilities

With regard to paragraph 70 of the NPPF and the reference to planning policies guarding against the unnecessary loss of valued facilities the Council will deal with the stress placed by the Inspector on these two words which will be considered in turn.

The obvious question to ask with regard to the loss of facilities, is necessary to be lost for what? It seems to imply there a certain loss can be tolerated before it becomes necessary and if this is the case, it must be a subjective judgment as to what that loss might be and what could be tolerated before it would cause harm to the community.

In relation to the loss to residential accommodation which is normally cited as a material factor the Council would refer to the evidence in the latest Monitoring Report (December 2012). Paragraph 10.7 of the report refers to the figures over the entire study period show that net gains permitted have increased year on year and have exceeded the target set out in the London Plan of 350 units for 2009/10 and the higher target of 600 units since the new London Plan was adopted in July 2011. The net gains for approvals in the Borough were 783 for 2010/11 and 860 for 2011/12 until the end of March which is a very healthy supply when considered against the target. The completions target has been lower, but clearly planning policy has little influence on this figure. The Council therefore does not have to rely on the loss of community facilities, of whatever form, to reach its housing target and would strongly contend that any loss is unnecessary given the context of the Borough. In any case such uses and facilities, whether they be drinking establishments, financial and professional services or restaurants and cafes add to the vitality of an area and any loss could be considered detrimental on this basis.

Value

With regard to whether a particular establishment is valued by the community, whether it is a drinking establishment, a financial and professional use or a cafe or restaurant clearly they would not be used if they were not valued. The logical step would then be to submit evidence that they were not used (and therefore viable) and this would be a material consideration when weighing up whether a particular facility could be lost to another use requiring permission. However, it must be wrong and inappropriate for the planning system to try and put an entirely subjective judgment on the value of a

particular facility - that would be up to the users of the facility and is likely to vary over time. What is clear is that once lost to residential use this will not be reversed.

Clearly facilities are valued by different members of the community in different ways and this can be dependent on a variety of circumstances including age, the family unit and lifestyle – a traditional public house whatever this might be valued by a particular section of the community but younger members may prefer more of a bar atmosphere. A building society or bank may be valued by some more than estate agents providing that they are not searching for a house, but how would you value their individual contribution? It can also depend on how they are managed – a badly run public house will quickly lose business, but a well run facility will have a greater value. It is the Council's view that the evidence that needs to be provided should be proportionate to the policy and to provide evidence of the value of each facility in the Borough would not only be disproportionate, but it would demonstrate very little.

Relocation

The issue of relocation was raised by Cadogan Estates who are the freeholder to a considerable number of properties in the south of the borough. Again the Council would question that the issue of relocation of facilities needs to be addressed as part of the soundness of a planning policy. If for example, an estate agent wished to vacate and take up premises in another part of the Borough then this would be treated on its own merits and if the swap was considered equitable one then this would be a material consideration and permission may well be forthcoming. Cadogan Estates are constantly swapping the uses of properties as part of their property portfolio and the Council have always treated these swaps on their own merits. Certainly there is no record of Cadogan Estates being thwarted in any way in their desire to maintain the best possible property portfolio.

There are issues with swapping, but again they can sensibly be addressed. If a public house for example, moves to another location it may undermine its value as a local community asset and on the character of the area, but this would be treated on a fact and degree basis and on its own merits. The Council consider that there is no need to clarify their policy regarding relocation.

Habitats Regulation Assessment

A response is included at Appendix Eight from English Nature confirming that an appropriate assessment is not necessary in this case.

Presumption in favour of sustainable development

The Council can confirm that they fully intend to include the model policy on sustainable development as part of their partial review of the Core Strategy. To this end it has been included at a new paragraph 1.1.6 in the 'Miscellaneous Matters' document (Appendix Nine) which shows proposed changes to the Core Strategy in the light of the NPPF and other matters. This document was the subject of an eight week period of public consultation from the 6 December to the 31 January 2013 as part of wider changes and is due to be submitted to the Secretary of State in September for examination. The Local Development Scheme 2012 (Document six) outlines the timetable for submission.

I hope that the contents of this letter have addressed the concerns and queries that you had. However, if there are outstanding matters that you wish to discuss the Council would be pleased to assist as part of a public examination.

Yours sincerely,

A handwritten signature in black ink that reads "Jonathan Bore". The signature is written in a cursive, flowing style.

Jonathan Bore
Executive Director, Planning and Borough Development

Appendices

1. Table of changes from Submission Document
2. Track changes document showing red and underlined for what is proposed
3. Figures for the loss of public houses spreadsheet
4. Savills London Housing supply report – summer 2012
5. Database of A Class out of centre uses (excluding A4 uses)
6. Extract from the Frost Meadowcroft report regarding the risk of offices (Class B1) changing to residential in the Borough
7. Evening Standard Article on the Phene Arms
8. Response from English Nature
9. Miscellaneous Matters consultation document