

# ROYAL BOROUGH OF KENSINGTON AND CHELSEA

## Examination of the Partial Review of the Core Strategy: Policies relating to the protection of public houses & other uses

### Background

This submission is made on behalf of the Kensington Society, a civic society with some 700 members that covers the former Royal Borough of Kensington – the whole of the Borough north of Fulham Road – roughly two-thirds of the Royal Borough of Kensington and Chelsea.

The Kensington Society works closely with the Chelsea Society on planning issues, especially pubs.

The Society **supports strongly** the Council's proposal to provide greater protection for A Use Class uses, particularly public houses, which although they are, and will still be, able to be converted to A1 (shops), A2 (professional and financial services, including banks, building societies, betting shops and employment and state agents), and A3 (restaurants and cafes), will no longer be overshadowed by the "hope value" of conversion to housing.

### Existing Local Plan

The Society objected to the absence of a policy in the Core Strategy and to the approach taken to justify the lack of a policy to protect pubs, namely:

- using the term "drinking establishment" rather than pubs;
- disregarding losses of pubs other than those that had changed to housing;
- failing to recognise the emerging "gaps" due to losses; and
- choosing a walking distance which, in the context of a very high-density residential area, misunderstood the concept of "local".

Since there was limited time at the Examination in Public in July 2010, more important issues to debate and much to support in the "Keeping Life Local" chapter, we did not press the case. As a result this policy was not amended. Thus, although pubs were classified as "social and community uses" they quite explicitly did not benefit from Policy CK1, although the Borough accepted that this issue would be kept under review (Core Strategy Para 30.3.7). This has generated applications for change of use to housing.

The effect of the Core Strategy/Local Plan exempting pubs from the protection afforded to other "social and community uses" by Policy CK1, was to bring forward a significant number of applications for change of use to housing within

two years there were more applications for change of use to housing than in the previous 30 years.

### **Prince of Wales**

One of the first cases was The Prince of Wales, where strong community support for its retention as a pub resulted in refusal for an application for conversion to a house, because of its role in the local community over the previous 160 years, its contribution to the vitality of the area and the importance of the building and the use to the character of the Norland Conservation Area which had been built as an integral part of the estate development in 1846, and the large-scale losses of pubs in the surrounding area. This should have been sufficient to retain the pub, but the case was lost almost entirely due to the clear decision not to have a policy. The decision to allow the appeal in September 2011 came as a major shock both to the Council but particularly to the local community.

### **Demand for a policy**

As a result of this decision a number of other applications came forward in autumn 2011. The two major civic societies along with local residents pressed for a policy change and, following a motion to the Council in December 2011 (less than a year after adoption of the Core Strategy) which received unanimous all-party support, the Council embarked on a change of policy, of which this Examination represents the final stage.

From early December 2011 almost every application for change of use of a pub has been refused, with the support of the Kensington Society or Chelsea Society as appropriate. The Societies have played an active role on appeals. Whereas there have been two hearings and one public inquiry on Chelsea pubs all dismissed, the only appeal to date in Kensington has been by written representations (which was dismissed), although a further appeal is being dealt with by a hearing on 1 May.

The need for a change in policy has huge support, as evidenced by the public turnout at the Planning Applications Committee and at appeal hearings. The Prince of Wales appeal hearing had a gallery of some 80 people, many of whom asked and were allowed to speak. The Cross Keys public hearing had a similar number and the contribution of local residents demonstrated their commitment and the value they placed on this community facility. The Queen's Head produced a similar response, whereas a 6-day public inquiry on The Phene Arms did strain the community's staying power, but nevertheless generated strong support.

## **Development of a policy**

The Society has been involved in all stages of the development of the current draft policy and **strongly supports** the policy, even though we acknowledge that pubs will still be able to change to most other A Use Class uses without consent. The main aim however is to resist the change of use of A Use Class uses to housing, so as to reduce the “hope value” which the prospect of successful change of use brings and so attenuate the losses to housing. This would not be a ban on change of use, but a presumption in favour of their retention.

## **Evolving National Policy**

Since May 2010 the Coalition Government has made a point of providing increased protection for pubs through:

- Localism Act – Community Right to Buy
- Creating a Minister for Community Pubs
- NPPF – especially paragraphs 69 and 70

The Government’s support for pubs as a focus and meeting place for the community – the pub as the hub - has emerged as a key theme. This point has been made forcefully at the three appeals in Chelsea last year.

The Society **strongly supports** the NPPF policy for community facilities and wishes to contribute to any discussion on the interpretation of the para 69 and 70.

## **The proposed policy**

The proposed policy would have the effect of removing the “hope value” that currently exists that consent will be given for change of use from A Use Class uses to housing. The huge differential in values between housing and such uses and the uncertainty created by the lack of a policy to protect pubs brought about a surge of applications. This has triggered the need for a new policy.

We recognise that with existing freedoms to change within the A Use Class there will still be changes as the markets change for different uses, but what it does do is to remove the pressure from speculative proposals and closures that aim to change viable local facilities to housing.

This Borough, with its extreme housing values, is in danger of losing most of its local facilities unless there is a policy to enable the local planning authority

## **The objections**

The Society strongly disagrees with the representations made by the objectors and will challenge these at the EiP hearing.

## Impact of Change of Use of Pubs

There has been a major loss of pubs to other uses over the last 30 years, but it has not been evenly spread over time and, particularly by area. (See map attached)

In simple terms the biggest losses have been:

- to restaurants throughout the Borough, but especially Chelsea, and mainly since 2000;
- to housing predominantly in the north and mostly prior to 2000;
- to A1 (shops) and A2 (estate agents) in smaller numbers but evenly spread.

In **North Kensington** – north of Holland Park Avenue/Notting Hill Gate – there are areas where pubs have been systematically stripped out for housing, especially north of Westway, Colville ward and, particularly, Norland ward. This has left large gaps in the distribution. In total 12 pubs have been lost to housing, 8 to restaurants and 3 to retail.

In **Central and South Kensington** – between Holland Park Avenue and Fulham Road – the losses have been concentrated in Notting Hill Gate, in Fulham Road West and Fulham Road East. The main losses were to restaurants (8) and housing (3).

In **Chelsea** – south of Fulham Road – the main losses have been in south-west Chelsea and south-east Chelsea, with the main changes being to restaurants (13).

There are few **vacant pubs**, which are either:

- awaiting development (Cowshed, Bromptons and the Tournament) ; or
- have been speculatively vacated to improve their bargaining position (eg The Prince of Wales, The Cross Keys, The Kensington, Warwick Arms)

## Summary

The Society **strongly supports** the Council's proposed policy to provide additional protection to A Use Class Uses from pressures to change use to housing which, if allowed to continue would remove many of these uses over the next decade, albeit that shops are currently protected. The Society considers that it is essential not only to see pubs as social and community uses, which the Local Plan does (para 30.3.7), but, based on past losses and the pressures that have developed since it became clear that pubs would not be protected, there is now a need to have a policy that will resist the pressure from the housing market.

Both the Kensington and Chelsea Societies have held the fort during the gestation of this policy, which involved considerable effort. We look forward to regaining greater clarity and certainty where pubs are clearly recognised and

protected as community assets through a policy that will relieve them from the pressures of the housing market.

## **Schedule of matters and issues for Examination**

Note: It is implicit that in answering the following questions, if respondents identify a deficiency in the submitted document they should make clear how it should be changed.

### **Matter 1 – Legal and procedural matters**

#### **Issues**

1.1 Overall, have the proposed revisions to the Core Strategy (CS) been prepared in accordance with the legal requirements? Have they been prepared in accordance with the plan-making advice in the National Planning Policy Framework (NPPF)?

1.2 Do the revisions have regard to national policy and if there are any divergences how are these justified?

1.3 Have the revisions been prepared in accordance with the Council's Statement of Community Involvement and met the minimum consultation requirements in the Regulations?

1.4 Are the proposed revisions based on a sound process of sustainability appraisal and testing of reasonable alternatives?

1.5 Have the main modifications put forward by the Council to the submission version of the proposed revisions been subject to sustainability appraisal?

1.6 Is an Appropriate Assessment necessary to satisfy the Habitats Regulations?

1.7 Are the revisions consistent with the remainder of the adopted Core Strategy, and would they support its delivery?

1.8 Is a sustainable communities strategy in place? How do the revisions relate to this, and to any other plans and strategies which might influence their delivery?

## **Matter 2 – whether the proposed revisions to the Core Strategy have been positively prepared and are justified**

### **Issues**

#### **2.1 Have the revisions been ‘positively prepared’ in the terms set out in the NPPF?**

**Yes** – the policies propose an approach which positively seeks to **promote opportunities for meetings between members of the community who might not otherwise come into contact with one another** (NPPF Para 69) and, in para 70, by:

- **planning positively for the provision and use of shared space, community facilities (such as public houses)** and other local services to enhance the sustainability of communities and residential environments; and
- **guarding against the unnecessary loss of valued facilities and services**, particularly where this would reduce the community’s abilities to meet its day-to-day needs.

Given the huge market pressures which, unchecked, would strip out such facilities, a policy is needed which can positively ensure that pubs can continue to support the needs of their local community.

#### **2.2 What alternatives to the proposed revisions have been considered? Are the revisions chosen the most appropriate in the circumstances?**

**2.3 The Council has proposed main modifications to the submission version of the revisions. Taken together, those listed as MM4, MM5 and MM6 in the table attached to the Council’s letter of 20 February effectively alter the approach to resisting the change of use of buildings where the current use contributes to the character of the area and its sense of place. As originally submitted, this resistance was proposed to apply across the Royal Borough.**

**As proposed to be modified, it appears to only apply to Conservation Areas.**

- a) For the avoidance of doubt, is that correct?**
- b) If so, what is the justification for this modification? Is it necessary for soundness?**

## **2.4 What is the justification for the proposed policy stance? In particular:**

**a) Why is it desirable to prevent public houses and each of the other uses involved from changing to alternative uses?**

**b) What problems do the proposed revisions aim to address?**

**c) What evidence is there to indicate that, in the absence of the proposed policy intervention, the public houses and other uses involved would be likely to come under pressure for residential redevelopment?**

So far there have not been cases where pubs or other A Use Class uses have sought to make a two-step change to housing. However, our concern is that with any hardening of resistance to pubs changing to housing and the increasing differential between pubs and housing developers may choose a two-stage process to secure a change from a pub to housing.

Without the proposed policy we will be back to the position after the 2010 Core Strategy was published without protection for pubs. Between early 2010 and late 2011 there was a major surge in applications for change of use to housing. It has been successfully resisted since December 2011. Without the emerging policy we would have lost four appeals which were dismissed and the number of applications for change of use to housing would have escalated.

## **2.5 Why do the proposed revisions to Policy CK2 resist the loss of public houses and other drinking establishments throughout the Borough, but only resist the loss of restaurants and cafés, and financial and professional services outside of Higher Order Town Centres? Why is this distinction made?**

Cafes and restaurants have become the new anchors of many neighbourhood centres, such as Gloucester Road North Neighbourhood Centre, as well as the secondary frontages of higher-order town centres, with a growing café culture with tables and chairs on the pavement becoming an increasing part of the new vitality of these centres. They bring life to the streetscene of these centres.

## **2.6 Taken overall, are public houses and the other uses involved financially viable uses in this part of London? Is there any evidence on this one way or the other?**

The issue of viability has been debated at successive appeal hearings. The evidence presented has been inconclusive, despite the fact that a number of them have not been well managed. The pubs have often been bought with the intention of securing a change of use, notably:



- **The Prince of Wales, 16 Princes Road, London W11:** This pub was bought by a businessman with a record of running pubs and restaurants although previously a property developer, with the intention of converting it to housing. When sold by the pub company they were surprised by price offered, which was considerably above the company's expectations. The price reflected an assurance given to the buyer by the Local Planning Authority that permission for change of use would be forthcoming. The pub was not well managed and an application made for change of use. The application was refused and at the appeal the appellant submitted unconvincing evidence on the issue of viability. However the decision did not turn on this issue but the fact that the Council had no policy to resist change of use. [Over 80 residents attended the one-day hearing and made clear to the Inspector the value of the pub to their community.]
- **The Cross Keys, 1 Lawrence Street, London SW3:** This pub was also bought with the intention of seeking a change of use to housing. On change of ownership the owner gave the management to a family member – it was not actively managed. An application for change of use to a house was refused and a month before the appeal hearing, despite the huge trade that could have achieved during the Diamond Jubilee. Viability was debated at the appeal hearing and was largely dismissed.
- **The Queen's Head, 25-27 Tryon Street, London SW3:** This pub is owned by a company owning a large number of pubs. After refusal for change of use to 3 housing units, the appeal heard evidence about viability. As before, little weight was given to it by the Inspector in her decision.
- **The Phene Arms, 9 Phene Street, London SW3:** This pub was bought with the clear intention of conversion to housing. Following refusal, the appeal was heard through a 6-day public inquiry, where a good deal of time was taken in examining the appellant's viability assessment. What emerged was that the pub had one of the highest turnovers of any pub in Chelsea, yet it managed to make a small loss. The accounts were scrutinised at length during the inquiry. The conclusion was that with a different management it could be very profitable. The potential for improving the management and profitability has been reflected in the recent purchase price. The appellant had suggested that the pub was only worth £3 million – his expert witness suggested that this was highly optimistic. On 1 April the sale of the pub for £4 million to The City Pub Company was announced.

Whereas outside London, as well as certain other parts of London, pubs may be closing due to poor viability, pubs in Kensington and Chelsea appear to be highly profitable. It is all a question of who runs them and how they are run. The evidence for this is contained in a number of articles on the phenomenon of pubs

being bought up by specialist pub companies such as:

Geronimo:       The Builder's Arms, 13 Britten Street, SW3  
                  The Chelsea Ram, 32 Burnaby Street, SW10  
                  The Duke of Clarence, 148 Old Brompton Road, SW5  
                  The Elgin, 96 Ladbroke Grove, W11  
                  The King's Arms, 190 Fulham Road, SW10  
                  The Phoenix, 23 Smith Street, SW3  
                  The Surprise, 6 Christchurch Street, SW3

ETM Group       Cadogan Arms, 298 King's Road  
                  The Botanist, Sloane Square

I attach two articles from the Financial Times from September 2012:

- John Stimpfig, Pubs for People, FT 1 September 2012
- Christopher Thompson, Brewers toast the return of real ale, FT 4 September 2012

### **Matter 3 – whether the proposed revisions to the Core Strategy are effective and consistent with national policy**

#### **Issues**

#### **3.1 Public houses and the other uses concerned sometimes cease trading, leaving their host buildings vacant.**

- a) In such an event, is there a risk that the proposed policy revisions could lead to the building involved remaining vacant and unused?**
- b) How does the development plan deal with a situation of this sort?**

There are very few examples of this in Kensington and where it does happen it is because the owner is seeking permission for a change of use, such as to housing, and seeks to present the premises as vacant. Several pubs have been deliberately vacated ahead of an appeal, such as The Prince of Wales in 2011 but also the Britannia Tap in Warwick Road and, most recently, the Cross Keys in Chelsea. This tactic of deliberately vacating the pub has not proved to be convincing on appeal. The tactic was motivated by the "hope value" of permission for residential use.

Because of the value of property in Kensington and Chelsea it is very rare for premises to close and remain empty as they could move to another A Use Class use. Where this does happen it is usually in advance of demolition (eg Radnor Arms, Warwick Road), where development is imminent or as a spoiling tactic (eg The Prince of Wales,

**3.2 The Council's letter of 20 February effectively indicates how the Council would, in practice, approach applications to change the use of a public house to a different use. I understand this to include proposed changes to a residential use. It suggests that evidence showing the public house use to be unviable, and any evidence of it having been marketed for other uses permitted without the need for planning permission, would be taken into account as material factors weighing against the proposed policy revisions.**

- a) Should this explanation be included in the proposed revisions?**
- b) If not, why not?**
- c) If so, should the revisions set out the circumstances in which viability and marketing evidence would overcome the policy's resistance to other uses being acceptable?**
- d) Should the development plan clearly indicate how a decision maker should react in these circumstances? If not, why not?**

**a/b. No** – viability is a generic issue which will be applied to a wide range of applications where viability may become an issue for assessment

**c. No** -

**3.3 Is the evidence underpinning the proposed revisions robust enough to justify not including a caveat in relation to viability in the development plan?**

None of the appeals in Kensington and Chelsea to date have produced convincing evidence that the pubs concerned were not viable. Indeed what was presented tended to show:

- the pub was often bought by a developer at an inflated price in the hope of getting permission for a change of use to housing;
- the pub was then managed in a manner that did not seek to boost income;
- the pub showed, despite a reasonable income a low profit or small loss.

With the exception of the Prince of Wales, which appealed successfully, and the Cross Keys which was deliberately vacated, other pubs are still trading or, in the case of the Phene Arms, has been bought for a significantly higher price by a company that will revitalise it.

The concept of criteria-based policies, itemising the potential “let out clauses”, such as proposed by the Cadogan Estate, is an old-fashioned approach to policy

writing and is unnecessary, particularly in the light of the stress in the NPPF on viability as a material consideration in assessing planning applications. Since it is in effect a universal material consideration it would be otiose to itemise it for every form of development.

If viability were a significant issue, the applicant would undoubtedly raise this as an issue in their application.

**3.4 Paragraph 70 of the NPPF says that planning policies should ‘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’.**

- a) Does paragraph 70 of the NPPF suggest that some losses of valued facilities and services may be necessary?**
- b) If so, are viability factors among those which may cause such a loss to be necessary?**
- c) If a public house or one of the other uses concerned is shown to not be viable, would allowing its loss conflict with paragraph 70 of the NPPF?**
- d) How do the proposed revisions to the Core Strategy reflect paragraph 70 of the NPPF in this regard? If the concept of unnecessary loss, and hence necessary loss, is not incorporated, do the revisions impose a stricter regime than national policy? If so, is the evidence sufficiently robust to justify this?**

**No** – the NPPF is written to cover all circumstances. Kensington and Chelsea is very different from elsewhere in London, let alone the rest of the country. Whilst we have lost a lot of pubs to other uses, especially A Use Class uses, there is still a strong market for pubs. This is demonstrated by the purchase of pubs by new pub companies who renovate the pubs and create a more upmarket experience.

Having lost so many pubs to other uses, we are getting to the position that nearly every pub needs to be defended because they are valued **and** are viable. The concept of unnecessary loss means not losing a pub unnecessarily – it does not necessarily have a flip-side of “necessary loss”. Under what circumstances would losses be “necessary”?

The proposed revisions to the Local Plan would enable the Council to safeguard against the loss of valued facilities and service – not just pubs. There is growing evidence of the value being placed by residents to both cafes and restaurants.

**3.5 Businesses of the sort mentioned in the proposed revisions to Policy CK2 move premises from time to time, for example to larger, higher quality or better located premises.**

**a) Would such relocation amount to a 'loss' under the terms of the proposed revisions to Policy CK2?**

**b) Should the Council's approach, as explained in the letter dated 20 February, be set out in the revisions, to ensure the policy's effectiveness?**

Relocation has seldom happened as pubs tend to be purpose-built premises and each pub has its own identity, role and clientele. There has been the occasional new pub or the transfer of the pub name, but in practice swaps are non-existent.

However, if a proposal were made to relocate a pub through swapping a pub with another use elsewhere, it would need to be considered on its merits, but in particular whether the replacement would be equivalent in size, attraction, accessibility and, in terms of location, be able to serve the same or equivalent clientele and catchment. These would all be material considerations but do not warrant creating an additional policy.

Just as we think criteria-based policies dilute the clear intent of a policy, the need for an additional policy to cover the possibility of swaps is unnecessary.

**3.6 Should the proposed revisions to the Core Strategy include revisions to Chapter 38: Monitoring? How will the success or otherwise of the proposed revisions be measured and monitored? What are the contingency plans in the event that the proposed revisions are considered to be unsuccessful, and when would the contingency plans be triggered?**

**Yes** – however, since success would be a pub continuing to trade well from the same premises, the only thing that can be measured is change of use and closure.