The Planning Inspectorate

# Appeal Decision

Inquiry held on 24 – 25 June 2014 and 10 September 2014
Site visit made on 25 June 2014

**by J A Murray LLB (Hons), Dip.Plan.Env, DMS, Solicitor**

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

**Decision date: 2 October 2014**

**Appeal Ref: APP/U5360/C/13/2209018**
**Land at The Chesham Arms, 15 Mehetabel Road, London, E9 6DU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr M Patel against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 24 October 2013.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of first floor from A4 use to C3 self contained residential flat together with operational development to facilitate the self containment.
- The requirements of the notice are:
  (i) Cease the use of the first floor as a self contained residential unit;
  (ii) Remove all partitioning and means of enclosure which facilitates the use of the first floor as a self contained unit;
  (iii) Make good any damage resulting from compliance with the requirements of this Notice; and
  (iv) Remove all materials, debris, waste and equipment resulting from compliance with other requirements of this Notice from the Property and its premises.
- The period for compliance with the requirements is 2 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.**

## Preliminary matters

1. The allegation in the notice includes reference to "operational development to facilitate the self containment". However, the works undertaken only affected the interior of the building and, by virtue of section 55(2)(a)(i) of the 1990 Act, they did not constitute development. Leaving aside the question of whether the notice could still include requirement (ii)[1] above, the parties agreed that the allegation should be corrected to delete the reference to operational development and that such correction would not result in any injustice. I will correct the notice accordingly. That being the case, grounds (b) and (c) need only address the use of the first floor.

[1] Having regard to the judgements in *Murfitt v Secretary of State for the Environment [1980] JPL 598* and *Somak Travel v Secretary of State for the Environment [1987] JPL 630*.

2. The parties also agreed that the allegation should strictly refer to a "material change of use" and I am satisfied that I can also make that correction without causing injustice.

## Main Issues

3. The main issues are:

*Re ground (b)*
- Whether the appellant has proved, on the balance of probability, that there has not been a change of use of the first floor of the premises from Class A4 (public house) to self contained residential flat (Class C3 (dwellinghouse)).

*Re ground (c)*
- Whether the appellant has proved, on the balance of probability, that the change of use to Class C3, if it occurred, did not constitute a breach of planning control.

*Re ground (d)*
- Whether the appellant has proved, on the balance of probability, that: (a) there was a material change of use of the first floor of the premises to a Class C3 self contained residential flat on or before 24 October 2009; and (b), if there was, that use continued for a period of 4 years after that change.

*Re ground (a)/the deemed application*
- The acceptability of the change of use of the first floor of the premises to a Class C3 self contained residential flat, having regard to:
  - the extend to which it would be likely, following the expiry of temporary permitted development rights, to lead to the loss of the Class A4 public house, which is registered as an Asset of Community Value;
  - the availability of alternative facilities to meet community need;
  - whether it would at least preserve the character and appearance of the Clapton Square Conservation Area; and
  - any harm to the Chesham Arms as a non-designated heritage asset (a locally listed building).

*Re ground (f)*
- Whether the steps required by the notice exceed what is necessary to remedy the breach of planning control.

*Re ground (g)*
- Whether the period of 2 months specified for compliance with the notice is reasonable.

## Reasons

Ground (b)

4. The Statement of Common Ground (SOCG)[2] records agreement between the parties that the first floor of the Chesham Arms has historically been used as a residential flat, ancillary to the primary Class A4 public house (pub) use. Evidence to support this goes back many years and indeed there is nothing to suggest that the first floor has ever been used in any other way, or occupied by

[2] Inquiry document 8.

anyone other than persons running the pub. There was no separate access to the first floor accommodation, which could only be entered via a staircase located behind the bar.

5. The SOCG and Mr Allen's proof[3] also record that the pub ceased trading in October 2012, when the appellant purchased the property. In the summer/autumn of 2013, the appellant undertook works at ground floor level, removing the bar and creating 2 separate office suites, with access via the existing doorway and a corridor. The creation of office accommodation was pursuant to flexible use, temporary permitted development (PD) rights[4] but, as well as subdividing the ground floor, those internal works resulted in the self containment of the first floor accommodation. In fact, the occupation of the first floor as a self contained residential flat commenced immediately upon completion of the internal works, as an Assured Shorthold Tenancy was granted for 12 months commencing 10 October 2013. At that point, there clearly was a change of use from a primary A4 pub to primary C3, self contained dwellinghouse and any ancillary link was severed.

6. In closing for the appellant, Mr Turney accepted that there was now a residential flat, but contended that the change was not material. That contention is relevant to ground (c), rather than ground (b), which concerns the essential facts in the allegation. I conclude that the appellant has failed to prove, on the balance of probability, that there has not been a change of use of the first floor of the premises from Class A4 (pub) to self contained residential flat (Class C3 (dwellinghouse)). The appeal must therefore fail on ground (b).

Ground (c)

7. In opening[5], counsel for the local planning authority, Mr Lewis, cited pertinent passages from Sweet and Maxwell's Encyclopedia of Planning Law and Practice (the Encyclopedia), including:

*"The protection of ancillary uses remains only so long as the ancillary link is maintained. Thus a residential caravan parked in the curtilage of a dwelling house may be regarded as devoted to an ancillary use so long as it is not used as a separate dwelling."* (Paragraph P55.40)

8. In closing[6] for the appellant, Mr Turney submitted that, in so far as it is found that severance of a tie between the pub and residential flat has occurred (and I find that it plainly has), it has occurred by virtue of the change of use of the ground floor, pursuant to temporary, flexible PD rights. He developed this point to conclude that the severance from the primary use of a use which formerly was authorised only by reason of that ancillary link must be lawful, because it has occurred through a lawful change of use.

9. Though skilfully put, with respect, I do not accept that proposition. Whilst the flexible use PD rights in this case authorise the change of use of the ground floor[7] for up to 2 years, a condition set out at D.2(d) of Class D provides that, for the purposes of the GPDO and the Use Classes Order, the site retains the use class it had before changing to any of the flexible uses. In this case that

[3] Paragraph 1.10 and 1.11.
[4] Class D of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO).
[5] See inquiry document 3.
[6] See inquiry document 27.
[7] Only the ground floor comes within the size restrictions in the condition in D.1(a) of Class D.

means Class A4 (pub). The exercise of PD rights in relation to the ground floor cannot, as a side effect, authorise a change of use of the first floor from Class A4 pub to Class C3 self contained residential flat. Furthermore, in addition to the works of subdivision, the grant of an Assured Shorthold Tenancy to residents not engaged in the operation of the pub use has severed the functional link with that primary pub use.

10. In so far as the above is insufficient to establish that the change which has taken place is a material one, regard must also be had to the fact that the single planning unit, constituted by the Chesham Arms, including its ancillary first floor residential accommodation, has been subdivided. On this point, Mr Lewis cited, in opening and closing, a further extract from the Encyclopedia:

*"A material change in use does not occur automatically upon the subdivision of a planning unit. The primary use of the new units may remain the same as the former primary use of the whole. But the subdivision may have the effect of changing the character of the use and may have planning consequences which indicate that a material change has occurred (see, e.g. Wakelin v Secretary of State for the Environment [1978] JPL 769; Winton v Secretary of State for the Environment [1984] JPL 188). For example, it may form part of a process of intensification of the former use, or result in the severance from the primary use of a link which formerly was authorised only by reason of that ancillary link."* (Paragraph P55.49)

11. So, the planning unit has been subdivided, the primary use of the new units differs from that of the former and the ancillary residential use has been severed from the primary pub use. The appellant nevertheless maintains that this has no planning consequences, because residential use of the first floor has continued for many years. However, the lawful use of the site remains as an A4 pub and the GPDO provides that the site shall revert to that lawful use, after the period of flexible use[8]. Bearing these points in mind, ancillary residential accommodation above a pub, in which the operators of that pub reside, is different in character from a self contained residential flat above a pub, which is not operated by the residents of that flat. Whilst I acknowledge that there have always been separate dwellings either side of the pub, the new arrangement could well have implications in terms of residential amenity. Those implications might be addressed through the imposition of conditions but, in the context of ground (c), that is not the point. It is not for me to consider here whether the change of use is acceptable, such that planning permission should be granted; I must merely determine whether it is material.

12. The Council and the Churchwell Residents Group (CRG) cite the potential loss of the pub as a further planning consequence, but I will consider that point under ground (a). For the purposes of ground (c), I am satisfied that, together with the severance of the ancillary link and subdivision of the planning unit, the potential impact on residential amenity is sufficient to show, as a matter of fact and degree, and of law, that there has been a material change of use. I therefore conclude that the appellant has failed to prove, on the balance of probability, that the change of use to Class C3 did not constitute a breach of planning control. Ground (c) therefore fails.

[8] Class D, condition D.2(e).

Ground (d)

13. The appellant contends that there has been residential use of the property for many years and probably since its construction some 150 years ago. However, as I have concluded that there has been a material change of use, in order to succeed on ground (d), the appellant would have to show that this change took place at least 4 years prior to the issue of the notice, namely on or before 24 October 2009. The appellant does not seek to show that. The evidence is that occupation of the first floor flat, as a self contained unit, commenced on 10 October 2013, after the works of self containment were carried out. Following a somewhat confusing debate during closing submissions, Mr Turney ultimately conceded that, if ground (c) fails, "it is inevitable that ground (d) falls away."

14. I therefore conclude that the appellant has failed to prove on the balance of probability, that there was a material change of use of the first floor of the premises to a Class C3 self contained residential flat on or before 24 October 2009 and ground (d) must fail.

Ground (a)/the deemed application

*Policy*

15. The development plan currently comprises the London Plan (LP), the London Borough of Hackney Local Development Framework Core Strategy (CS), adopted November 2010 and the saved policies of the Hackney Unitary Development Plan (UDP). No relevant UDP policies have been brought to my attention but, among other things, LP Policy 7.1 indicates that people should have the best possible access to services. Furthermore, development should, among other things, maximise the opportunity for community inclusion and cohesion and should contribute to people's sense of place.

16. LP Policy 3.16 states that London requires additional and enhanced social infrastructure provision to meet the needs of its growing and diverse population. The supporting text acknowledges that "social infrastructure" covers a wide range of facilities and does not seek to define them. Whilst the list of examples given does not explicitly include pubs, it ends with "many other uses and activities which contribute to making an area more than just a place to live." Mr Johnson maintained that this was capable of including pubs, but not necessarily every pub, and that must be correct. Nevertheless, LP Policy 3.16 only guards against the loss of social infrastructure "in areas of defined need for that type of social infrastructure." Notwithstanding the thrust of support in LP Policies 3.16 and 7.1 for uses which contribute to making an area more than just a place to live, the appeal site is not in an area of defined need and therefore this development cannot strictly breach Policy 3.16.

17. CS Policy 8 provides that the Council will seek to deliver new social infrastructure where the evidence demonstrates it is most needed and in growth areas, such as Hackney Central. The appellant points out that there is no mention of pubs in the Council's Social Infrastructure programme, or other social infrastructure policies. CS Policy 13 seeks to promote community, leisure, entertainment and recreation uses, within major and district centres. CS Policy 15 also encourages the managed expansion of the evening and night-time economy in town centres and the supporting text refers to pubs as part of that. However, this policy says nothing relating to their retention and, for the

Council, Mr Johnson accepted that development plan policy generally favours town centre locations for pubs. The appeal site is close to, but not within the town centre.

18. I shall return to whether the appeal scheme could be said to conflict with LP Policy 7.1, but leaving that aside, the adopted development plan contains no policies which specifically safeguard the continuing existence of pubs. However, Policy DM5 of the draft Hackney Development Management Local Plan (HDMLP), Submission Version (December 2013) provides that the Council will protect existing social and community facilities, including pubs. This is so unless replacement facilities are provided, or the facility is no longer required in its current use and it has been demonstrated that it is no longer suitable for any other community use, for which there is a defined need in the locality.

19. The HDMLP is at a relatively advanced stage and there have been no objections to Policy DM5. In particular, neither the appellant himself, nor the Mayor of London has objected to it. This is notwithstanding the appellant's contention that DM5 is inconsistent with LP Policy 3.16, because it provides protection for any form of social infrastructure, even where it is not in an area of defined need for that type of infrastructure. Nevertheless, I am not convinced that this makes the approach in Policy DM5 inconsistent with the thrust of LP policies. I also note Mrs Ingram's evidence, on behalf of the CRG, that about 8 or 9 London Councils are advancing pub protection policies and none of these require the PH to be in an area of "defined need".

20. Furthermore, as currently drafted, Policy DM5 does not provide blanket protection to all pubs; it only safeguards those which are still required in their current use. At paragraph 3.6.2, the supporting text also draws a distinction between community pubs, that serve predominantly their local residential community, and (i) town centre bars which serve mainly after-work or weekend drinkers; and (ii) food-led pubs, which people visit predominantly too have a meal, rather than to socialise and drink. The text indicates that a key function of community pubs is to serve as a place of social interaction. As Policy DM5 only seeks to protect social and community facilities, only community pubs are safeguarded by it.

21. Pubs are explicitly included in an indicative list of "community facilities" in paragraph 70 of the National Planning Policy Framework (the Framework). Furthermore, that paragraph says that policies and decisions should "guard against the unnecessary loss of valued facilities and services, *particularly* (my emphasis) where this would reduce the community's ability to meet its day-to-day needs." HDMLP Policy DM5 is consistent with this approach. Though it does not use the word "valued", the proviso that the facility must still be required in its current use has much the same effect.

22. Given its relatively advanced state, its consistency with the Framework and the broad thrust of the LP, HDMLP Policy DM5 must carry significant weight in the determination of this appeal. In any event, paragraph 70 of the Framework is clearly an important material consideration in its own right.

*The loss of the pub*

23. Of course these policies are only relevant if the appeal development would be likely to lead to the loss of the pub but, as is generally the case, I need only decide that question on the balance of probability. I note that the pub closed

about a year before the use of the first floor as a self contained residential flat began. On that basis, the appellant contends that this use of the first floor did not cause the loss of the pub. However, Mr Allen indicated that the appellant's original intention had been to convert the entire building to residential use as flats[9]. It is clear that this is why the pub was closed on the sale to the appellant and Mr Allen said it was no part of the appellant's case to suggest that a pub is no longer viable on this site. In any event, A4 pub use remains the lawful use and, as already indicated, the current temporary office use of the ground floor, pursuant to flexible PD rights, does not affect that. The question is whether allowing the self contained residential use to remain permanently at first floor level would result in the pub use ceasing altogether in the building as a whole.

24. The appellant says the pub use has only ever been carried on at ground floor level and there is no reason why that use could not resume on the ground floor, without ancillary residential accommodation, when the flexible PD rights come to an end. He contends that the site could accommodate what was described as a "lock-up" pub. Although Mr Allen acknowledged that neither he nor his client had any experience in running a pub, he said that there were numerous examples of pubs without ancillary living accommodation, and indeed pubs with separately occupied flats above.

25. For the CRG, Mrs Ingram acknowledged that there was "an element of advocacy" to her evidence. As an activist for the Campaign for Real Ale between 2010 and 2013, alongside her professional work, she contributed to about 60 'save the pub' campaigns as a heritage and planning adviser. She has also specialised in the conservation of pubs and breweries for more than 5 years. Under cross examination, she readily admitted that she does not take on proposals for pub closures, partly because she is busy, but also because it is against her inclination. However, she also said that she only gives support for pubs which she believes have a reasonable chance of success and that many pubs go without people mourning their loss. In any event, Mrs Ingram clearly has considerable knowledge of the pub sector and her evidence was given in a straightforward manner.

26. Mrs Ingram was clear that the likelihood of the pub use resuming is "much reduced, if not entirely erased", if the self contained residential flat use of the first floor is made permanent. There are a number of reasons for this, but she said that the viability of most small pubs relies on containing overheads. Living on the premises avoids the publican having to pay for accommodation elsewhere, at more than nominal rent. For licensing purposes, if the publican lives on site, they can fulfil the role of "designated premises supervisor" (DPS), even when they are off duty. If they do not, another member of staff will need to have a DPS license and this can place an extra burden on the economics of the business. The existence of a separately occupied flat upstairs increases the burden of supervision, including of the outside space, to avoid complaints. Living on site also offers opportunities for diversification, for example offering dry cleaning or parcel delivery and drop-off services.

27. Mrs Ingram cited examples of pubs which do manage without ancillary residential accommodation, the upper floors having been converted to separate

[9] Indeed this is recorded in the decision notice refusing the appellant's appeal against the registration of the Chesham Arms as an Asset of Community Value. See CRG's Statement of Case (inquiry document 1), page 13 of 136 in the appended bundle.

residential use. However, she explained that these were destination, specialist real ale pubs, forming part of the management's portfolio of premises. They are not local community, neighbourhood pubs, serving families in back street locations, providing social facilities and gardens. Creating a destination pub at the Chesham Arms is not an option, as it takes time to build a reputation. In any event, such examples are exceptional. Mrs Ingram was not aware of a significant number where separation has been achieved with any long-term success, rather the opposite.

28. There was no substantial challenge to this element of Mrs Ingram's evidence through any detailed alternative analysis. The most Mr Allen could say was that other pubs operate without ancillary accommodation and that a pub use could resume on the ground floor of the Chesham Arms and might be even more viable on that basis. He nevertheless confirmed that any offers he had seen for purchase of the Chesham Arms as a pub were on the basis that the whole building would be available for that use, including the ancillary residential accommodation at first floor level.

29. Even if it is accepted that planning conditions might address noise and amenity issues, I am satisfied on the evidence before me that, if I were to grant planning permission for permanent use of the first floor as a self contained residential flat, that would probably result in the pub use not resuming in the building as a whole[10]. That probability would arise immediately on the grant of planning permission, notwithstanding that a pub use could not actually resume until cessation of the current ground floor use, pursuant to temporary PD rights.

30. The closure of the Chesham Arms has resulted in a sustained and well supported campaign to "save" it and this alone is evidence of its value as a community facility. However, its registration on 11 March 2013 as an Asset of Community Value (ACV) under the Localism Act 2011 formally recognises that the resumed use of the building as a pub would further the social well being or social interests of the local community[11]. This is a material consideration of significant weight in this appeal and, in any event, the appellant concedes that the community in general valued this pub[12], while Mrs Ingram said the Chesham Arms was "par excellence, a neighbourhood community pub."

31. I acknowledge that refusal of planning permission on this appeal would not automatically mean that the Chesham Arms would come back into use as a community pub. The appellant cannot be forced to operate it as a pub at all and, even if it were so used, there would be no control over the type of A4 use. However, in answer to my questions, Mr Allen acknowledged that, if the Chesham Arms reopened as a pub, it would be unlikely to do so as a town centre type pub, because of its location. He said it might be attractive as a food-led pub, but it was "hard to say." Mrs Ingram acknowledged that a food-led pub would not be a community facility, but said it is necessary to look at the reality of someone taking on this pub, knowing what the community wants; "they would be foolish to do different."

32. Mr Watson, of the CRG, also argued that, because of its layout, including its garden, and what it meant culturally and historically in the setting of the Conservation Area, the Chesham Arms lends itself to being a community pub.

[10] This reinforces my conclusion on ground (c). See paragraph 12 above.
[11] See inquiry document 1, page 14 of 136 in the appended bundle, at paragraph 4.
[12] Mr Allen's proof, paragraph 9.16.

It is on a back street and is physically at the heart of the local residential community, indeed it appears that it was built as such. On the evidence before me, if it is to be actively used as a pub, the Chesham Arms is likely to be a community pub.

*Alternative facilities*

33. Mr Allen provided a useful survey[13] of pubs within a 10 minute walking distance of the appeal site and I looked at all of them, during my unaccompanied, pre-inquiry site visit. Whilst the existence of those other pubs means that local residents would be within reasonable walking distance of a drinking opportunity, those alternatives are not at the heart of the local community. They differ in character and none has a garden, though Baxter's has a roof area and the Globe on Morning Lane has an outside seating area at front. In giving evidence for the Council, Mr Johnson said that those other pubs are not well placed to meet the community's needs in terms of social cohesion and such community considerations "go beyond the need for bread and water." The evidence of local residents indicates that there is a need for a neighbourhood family pub in this locality and that the Chesham Arms makes a key contribution to their "sense of place."

34. In terms of HDMLP Policy DM5, the pub use at the Chesham Arms is a social and community facility and the evidence is that this use is still required. It is clearly a valued facility in terms of the Framework, whether or not its loss could be said to reduce the community's ability to meet its "day-to-day needs" and regardless of the existence of other pubs within walking distance. Furthermore, there is no evidence to suggest that the loss of the pub is necessary. In these circumstances, the appeal scheme is contrary to draft HDMLP Policy DM5 and the Framework. In addition, this development diminishes local residents' access to a service and their opportunities for community inclusion and cohesion, whilst eroding their sense of place. It therefore conflicts with LP Policy 7.1.

*The Conservation Area*

35. The impact on the Clapton Square Conservation Area (CA) is not part of the Council's case, but it is a concern of the CRG. At paragraph 4.4, the CA Appraisal[14] lists the Chesham Arms as one of a number of "focal buildings". On the face of things, this assessment is based primarily on the actual appearance of the building and I accept that the change of use of the first floor to a self contained residential flat need have no material impact on that.

36. However, paragraph 1.1 of the Appraisal also notes that the "special character of CAs "does not come from the quality of their buildings alone." A range of factors can make up the familiar local scene, including "a particular 'mix' of building uses." Mr Perry, as Chair of the Clapton Square Conservation Area Advisory Committee and Trustee of the Hackney Society, described the Chesham Arms as "socially focal, not just physically focal". Furthermore, section 7 of the CA Appraisal also includes a "SWOT" analysis. A number of threats are identified at paragraph 7.4, including "change of use and loss of historic public houses (such as the former Duke of Clarence PH which is now closed and converted to residential)."

[13] His appendix F.
[14] Inquiry document 13.

37. Mr Allen argued, with some support from paragraph 4.6 of the Appraisal, that the character of this part of the CA is mainly residential and the appeal scheme would preserve that character. However, especially given that the Chesham Arms was incorporated into the Victorian residential development of Mehetabel Road, its contribution to the character of the area should not be overlooked. Mrs Ingram says in her proof[15]:

*"Public houses have a singular role to play both as landmarks and wayfinders in the built environment and in their particular value in use to the communities that they serve. After dark, they provide a reassuring presence through their lights and the arrival and departure of their patrons…they form a locus of community without which the residential streets become no more than dormitories."*

38. The impact on CAs of changes of use, as opposed to solely physical changes, has been recognised in a number of previous appeals referred to at section 9 of Mrs Ingram's proof, in particular that concerning The Phene Arms, Phene Street, London[16]. In a very recent appeal concerning The Feathers, 43 Linhope Street, London[17], the Inspector also made some pertinent comments. In that case, some physical changes were proposed to the building, but the change of use was also a factor. At paragraph 19 of his decision, the Inspector found that:

*"The existing site contributes positively to the character and appearance of the Conservation Area not only through the physical presence and features of the building but through its long-established use as a traditional back-street public house. Both aspects reflect the historical development of the site and of the wider Conservation Area and both contribute to the visual and functional distinctiveness of the setting. Although the use contrasts with the predominant residential character of this part of the Conservation Area, it brings activity and vitality to the neighbourhood consistent with its charm and heritage and provides a particular sense of local historic focus."*

39. In so far as it concerns the *use* of the pub, that statement is equally applicable to the use of the Chesham Arms. I recognise that existing PD rights, relied on by the appellant, allow for temporary changes of use of pubs, even in CAs. Nevertheless, I am satisfied that the permanent cessation of the use of the Chesham Arms as a pub would be detrimental to the character of the CA. I have already concluded that this development would probably lead to that cessation and it would therefore be contrary to CS Policy 25 and LP Policy 7.8.

40. In terms of the Framework, notwithstanding the recognised threat posed to the CA by the loss of pubs, given the modest scale of the proposal and the lack of significant physical changes to the exterior of the building, the resultant harm to the significance of the CA as a whole would be less than substantial. Nevertheless, against that less than substantial harm, the only public benefit the appellant advances is the provision of an excellent unit of residential accommodation in a sustainable location, in a city which is desperately short of housing. The provision of additional housing is usually a significant benefit but, even in use as a pub, the Chesham Arms is capable of providing ancillary residential accommodation, so this is a largely neutral factor. In any event, it

[15] Paragraph 5.2.1.
[16] Appeal Ref APP/25600/A/12/2172028 & 2175522.
[17] Appeal Ref APP/X5990/A/14/2215985 (inquiry document 17).

does not outweigh the less than substantial harm to the CA and I have a statutory duty[18] to pay special attention to the desirability of at least preserving the character and appearance of the CA.

*The locally listed building*

41. As a locally listed building, The Chesham Arms is a non-designated heritage asset in its own right. Mrs Ingram pointed out that the English Heritage 'Good Practice Guide for Local Heritage Listing' 2012 refers to the significance of the use of a building. Furthermore, the Local Heritage Listing Assessment Report[19], dated February 2013, refers to the concern about the loss of pubs, highlighted in the CA Appraisal.

42. I am content that the use of a building could be at least part of the reason for it being locally listed. Nevertheless, in this appeal, the CA Appraisal indicates that the borough's locally listed buildings are of local significance "due to their age, architectural detailing or because of some unusual feature." In addition, the justification for the local listing in the specific Assessment Report focuses on historical, architectural, environmental, aesthetic and artistic considerations. It is also of some significance that, even though the lawful A4 planning use was still extant, that local listing process commenced after the pub had ceased operating as such[20]. In all these circumstances, I conclude that there would not be additional harm associated with the impact on the Chesham Arms as a locally listed building.

*Overall conclusion on ground (a)/the deemed application*

43. Nevertheless, I conclude on the main issue, that the permanent change of use of the first floor of the premises to a Class C3 self contained residential flat is unacceptable. This is because, notwithstanding the existence of other pubs within walking distance, it would probably result in the loss of the Class A4 public house, which is registered as an Asset of Community Value. Furthermore, as a consequence of that loss, the change of use would not preserve the character of the Clapton Square Conservation Area. The development therefore conflicts with LP Policies 7.1 and 7.8, CS Policy 25, as well as draft HDMLP Policy DM5 and the Framework.

44. However, I must consider the implications of the office use of the ground floor, pursuant to temporary PD rights. On the basis of my own inspection and Mr Watson's evidence as a local resident, I would say that the office use is, at most, low key. That is perhaps reflected in the peppercorn rent under the lease[21]. Nevertheless, I must accept that the office use has commenced and I acknowledge the existence of the lease, for the period 24 March 2014 to 23 March 2016. The start date of that lease conflicts with the date notified by the appellant as the date for commencement of the PD use, namely 1 August 2013. However, whatever the intention behind the notification condition in Class D, D.2(a) of Part 4 of Schedule 2 of the GPDO[22], Class D.(b) simply provides that the use will be permitted for a single continuous period of 2 years from the date the use begins. On this basis, Mr Lewis accepted in

[18] Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
[19] Inquiry document 6.
[20] Whilst the same can be said of the ACV registration process, that statutory regime specifically requires consideration of the use of the building in the recent past and the realistic prospects for its use in the next 5 years.
[21] Mr Allen's appendix D.
[22] In this regard, I note the CRG's full written submissions (inquiry document 20).

closing for the Council that the temporary PD rights would subsist until March 2016 and that seems to me to be correct.

45. Under cross examination, Mr Johnson indicated that it would not be unreasonable to grant temporary planning permission for use of the first floor as a self contained residential flat, as the harm would not arise during the temporary period of PD use on the ground floor. Mr Lewis nevertheless submitted in closing that a period of 18 months or so, up to March 2016, would be too short to justify a temporary permission and he urged me to simply extend the period for compliance with the notice.

46. In my experience, temporary permissions for a year or so are not uncommon. However, as also stressed by Mr Lewis, on expiry of a temporary planning permission, the Council would have to start enforcement action again from scratch. I note Mr Turney's submission that the Council would have the option of seeking an injunction, without issuing another enforcement notice, but that might not be straightforward, especially if the property were still occupied by tenants.

47. The only reason for even considering a temporary permission is the existence of the PD rights, which will end on 23 March 2016 and the unauthorised use should not continue beyond then. The immediate liability to prosecution is likely to be a more effective incentive to ensure that the flat is vacated by that date than the prospect of injunction proceedings and/or another enforcement notice, which could also be appealed. In all the circumstances, I am satisfied that a temporary permission would not be justified and no other conditions can make the development acceptable. For all the reasons given, and having regard to all other matters raised, the appeal must therefore fail on ground (a). I will return to the period for compliance when addressing ground (g).

Ground (f)

48. I have already indicated that the reference to "operational development to facilitate the self containment" should be deleted from the allegation. As drafted, requirement (ii) of the notice nevertheless requires removal of all partitioning and means of enclosure which facilitate the use of the first floor as a self contained unit and requirements (iii) and (iv) flow from that. Having regard to *Murfitt v Secretary of State for the Environment [1980] JPL 598* and *Somak Travel v Secretary of State for the Environment [1987] JPL 630*, the Council argued that the internal works were integral to or part and parcel of the alleged breach of planning control. However, they were also undertaken to facilitate the lawful exercise of temporary permitted development rights in relation to the ground floor. In these circumstances, the notice cannot properly require the removal of those works. Ground (f) therefore succeeds and I will vary the notice by deleting requirements (ii) – (iv).

49. As an aside, Mr Lewis submitted that, having regard to case law[23], the requirement under the PD regime to revert the land to its lawful pub use at the end of the temporary PD period would necessitate removal of the internal works of subdivision anyway. However, it is not for me to determine that point in this appeal.

[23] See inquiry document 5.

Ground (g)

50. As indicated, there is no good reason to require the cessation of the use of the first floor as a self contained residential flat while the exercise of temporary PD rights on the ground floor effectively prevent the use of the building as a pub anyway. The appeal therefore succeeds on ground (g) and I will vary the time for compliance to coincide with the cessation of those PD rights.

**Decision**

**Appeal Ref: APP/U5360/C/13/2209018**

51. The enforcement notice is (a) corrected by deleting the original words in section 3 and substituting "Without planning permission, the material change of use of the first floor of the Property from A4 use to C3 self contained residential flat" and (b) varied by: deleting requirements (ii) to (iv) from section 5; and deleting from section 6 the words "2 months after this notice takes effect" and substituting "By 23 March 2016."

52. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*J A Murray*

INSPECTOR

## APPEARANCES

FOR THE APPELLANT:

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| Richard Turney of counsel | Instructed by Allen Planning Ltd |
| He called | |
| Anthony Allen MRTPI | Allen Planning Ltd |

FOR THE LOCAL PLANNING AUTHORITY:

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| Meyric Lewis of counsel | Instructed by the Corporate Director of Law, Human Resources and Regulatory Services for the London Borough of Hackney |
| He called | |
| Michael Johnson BSc MPhil | Planning Enforcement Manager for the London Borough of Hackney |

FOR THE CHURCHWELL RESIDENTS GROUP (THE RULE 6 PARTY):

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| Martyn Williams | Local resident |
| He called | |
| James Watson | Local resident |
| Mrs Dale Ingram MSc CHE FRSA | Planning For Pubs Limited |

INTERESTED PERSONS:

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|---|---|
| Nick Perry | Chair of the Clapton Square Conservation Area Advisory Committee and Trustee of the Hackney Society |
| Michael Lewis | Local resident |

## DOCUMENTS SUBMITED AT THE INQUIRY

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| 1 | Churchwell Residents' Group (CRG) Statement of Case (missing from file) |
| 2 | Appendix 4 of the London Borough of Hackney Development Management Local Plan (Submission Version December 2013) |
| 3 | Council's opening statement |
| 4 | CRG's opening statement |
| 5 | *R oao Hall Hunter Partnership v (1) First Secretary of State (2) Waverley Borough Council and (3) Tuesley Farm Campaign/Residents Group [2006] EWHC 3482* |
| 6 | Local Heritage Listing Assessment Report re the Chesham Arms |
| 7 | Email correspondence between Martyn Williams and Tony Allen 25 June 2013 |
| 8 | Signed Statement of Common Ground |
| 9 | Email correspondence between Tony Allen and Robert Thomas of Remarkable Restaurants Ltd 24 March 2014 |
| 10 | Council's notice of the inquiry |
| 11 | Email from Tony Allen to Martyn Williams dated 28 March 2014, referred to in paragraph 5.21 of Mr Watson's proof |
| 12 | Clapton Square Conservation Area Map |
| 13 | Clapton Square Conservation Area Appraisal |

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| 14 | Appendix 6 of the London Borough of Hackney Local Development Framework Core Strategy |
| 15 | Correspondence from Remarkable Restaurants Ltd |
| 16 | Undated letter from the occupier of 18 Edwards Rd, E17 (Katy), handed to the Council at the Inquiry |
| 17 | Appeal decision Ref APP/X5990/A/14/2215985 re The Feathers, 43 Linhope Street, London |
| 18 | Planning permission Ref 14/00715/FUL re The Beehive, 6 Crossford Street, London |
| 19 | Planning permission Ref 13/AP/3279 re Huntsman and Hounds, 70 Elsted Street, London |
| 20 | CRG's submission on commencement of temporary flexible B1 use and proposed conditions |
| 21 | Appellant's proposed conditions |
| 22 | Drawing No jw564-111 Rev A Existing plans and elevations |
| 23 | Drawing No jw564-110 Rev B Proposed plans and elevations |
| 24 | The Council's list of suggested conditions |
| 25 | Council's closing submissions |
| 26 | CRG's closing submissions |
| 27 | Appellant's closing submissions |