

Protecting London's pub heritage – a planning policy failure

1. Local councils exercise their influence over the future of their pubs in the decisions they take in determining planning applications. When people apply to convert pubs to housing, or to demolish them for a housing development or industrial use of the site, a council must first consult publicly and then decide, on the basis of published planning criteria, whether to approve the application and, if so, subject to what conditions.
2. Government has talked about the big society and local democracy. Individually and collectively, local councillors are careful to take the views of their constituents fully into account in planning decisions, while professional officers ensure that decisions taken are equally in accordance with planning legislation. However, developers can and increasingly do appeal against local planning decisions and, when appeals are upheld, thrifty councils may not only lose the pubs they had sought to protect for their communities but also have to bear the appellants' substantial legal costs. In this regard, the process of determining planning applications is unacceptably biased in favour of property developers and against local democracy. Losing one or two appeals may tend to deter a council from defending other community pubs when their sites are targeted for housing.
3. Moreover, except when residential or industrial use is in view, pubs require no planning approval for change of use (see note below). So no planning application need be submitted, nor any public consultation required, for a pub (outside a conservation area) to be simply demolished, or converted, for example, to an estate agents' office, a betting shop or another supermarket convenience store. The last of these then undermines the viability of any remaining pubs nearby by selling alcohol for longer hours and at much lower prices for home and outdoor consumption. In this regard, the General Permitted Development Order, as currently amended, is unacceptably biased against local democracy, the viability of pubs and responsible drinking.
4. Over the last year or so, local government and community pubs ministers within the coalition government have encouraged councils to issue Article 4 Directions in order to extinguish permitted development rights for otherwise threatened pubs, so that their demolition or any change of use should require planning permission following public consultation. Most councils have rejected this option, largely on the advice of their lawyers that they could then be open to claims for financial compensation from thwarted developers, a sufficient deterrent that ministers, repeatedly pressed on the matter, have done nothing to dispel.
5. Communities have also been encouraged to form local interest groups to ask their councils to register their pubs as Assets of Community Value (ACVs), so that they would be given a chance to bid for them, should their freeholds or leaseholds come up for sale (except as going concerns!). Unfortunately and quite inexplicably, the registration of an ACV does nothing at all to safeguard the current use for which a community may value its local pub as an asset. Permitted development rights are trumps. The Castle in Battersea, registered as an ACV by Wandsworth, is now a building site; the George IV on Brixton Hill, registered as an ACV by Lambeth, is a Tesco Express.
6. The Greater London Region of the Campaign for Real Ale (CAMRA) recently submitted a report to London Mayor Boris Johnson highlighting the shocking rate of pub closures in the capital and calling for greater protection through the planning system. Permitted development rights allowing pubs to be demolished or to change into supermarkets, betting shops or cafes, without the need for planning consent, contributed to a national weekly net closure of 28 pubs between April and September 2013. London loses around 90 pubs every year.
7. The CAMRA report formed part of a public consultation on the draft further alterations to the London Plan (FALP). In addition to some rewording of the proposed draft section 4.48A and strengthening of the associated Policy 4.8, CAMRA asked the Mayor to consider three important measures:
 1. removal of permitted development rights on all London pubs. This would result in any future change of use being subject to planning consent and therefore allowing Londoners a voice in the process;
 2. the option for London Boroughs to refuse change of use on any pub that is registered as an Asset of Community Value. Such examples include the Antwerp Arms in Tottenham and the Chesham Arms in Hackney;
 3. protection of pub use by planning condition on mixed use developments or partial residential conversions.

8. The London Regional Director of CAMRA is on record as saying, in summary, 'While we welcome the added recognition of pubs within the draft further alterations to the London Plan, London property prices make pubs especially vulnerable to speculative purchase for alternative site uses. Given the vital and unique role that pubs play within our communities, the demolition or change of use of any pub should now be subject to planning controls.'

9. CAMRA continues to campaign nationally to abolish permitted development rights for pubs. In particular, local councils have been urged to submit proposals under the Sustainable Communities Act, a law that allows people to demand action from Government to help their community. Government cannot just say 'no' to ideas that are put forward; they must negotiate and reach agreement with an independent panel. The proposal is '*That the Government help protect community pubs in England by ensuring that planning permission and community consultation are required before community pubs are allowed to be converted to betting shops, supermarkets and pay-day loan stores or other uses, or are allowed to be demolished.*'

The London Boroughs of Ealing, Newham and Richmond upon Thames are among councils that have adopted such a resolution.

Use Classes and the General Permitted Development Order (Town and Country Planning Act)

In 1987 there was a major deregulatory move by conflating use classes and giving additional freedoms to change between uses. This created A3 which included both premises selling alcohol and takeaways. This resulted in a seamless move for cafes and restaurants to turn into bars. By 2000 this was becoming a 'problem' in town centres and became associated with binge drinking.

The review of the Use Classes Order (UCO) which started in 2002 did not initially include proposals to change A3 but, as the problems of 'clusters' of drinking establishments emerged quite late in the process, the splitting up of A3 was introduced requiring planning consent for creating A4 (drinking establishment) and A5 (hot food takeaway) uses, but with a freedom to move to A3 (restaurant or café), A2 (financial or professional office) and A1 (shop). This was introduced in the 2005 changes to the UCO.

Since 2005 there have been no real changes to the UCO, except the creation of small Houses in Multiple Occupation, although there have been the well publicised increased freedoms to change use (eg offices to housing etc).

The main features of the process of changing Use Classes are that:

- changes take a long time and tend to require demonstration of the severity and widespread nature of the problem – there almost has to be a crisis; and
- change has in the main been in a deregulatory direction, especially with a Conservative government, although the main push behind the 2002 initiative was also deregulatory.

However, we are now told that as part of the Government's broader planning reform, a smaller planning use class containing betting shops will mean that in future where it is proposed to convert a bank, building society or estate agent into a betting shop, a planning application will be required. (Opposition to increasing numbers of new betting shops had resulted in council resolutions under the Sustainable Communities Act.) In addition, the Government will remove the ability for other premises such as restaurants and pubs to change use to a betting shop without planning permission. All changes of use to a betting shop will therefore require planning permission in future. The Department for Communities and Local Government will consult on the detail of these proposals as part of a wider consultation on change of use in summer 2014

In response, we would now argue that if indeed, deregulation doctrine notwithstanding, the Use Classes can be changed to bring under planning controls – i.e. 'Local communities and councils will get the chance to raise objections' – the conversion to betting shops of buildings in other Use Classes, then the Use Classes should equally be changed to bring under planning controls the conversion of Class A4 drinking establishments to any other Use Classes.

Tackling the permitted development rights on demolition will need a different approach but it would be inconsistent for the Government to agree to bring the change of use of any pub under planning controls but not its demolition.