

LONDON BOROUGH OF LEWISHAM

TOWN AND COUNTRY PLANNING ACT 1990

Proof of Evidence of Alfie Williams

Appeal by Wellington Pub Company

Site Address: 184 New Cross Road, London, SE14 5AA

PINS Reference:

APP/C5690/W/19/3241119

Council reference:

DC/18/106613

Date of Public Inquiry:

17 – 19 March 2020

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1. QUALIFICATIONS AND EXPERIENCE

- 1.1. I am Alfie Williams, and I am a Planning Officer within the Planning Service of the London Borough of Lewisham. I have an MA in Cities, Culture and Social Change (King's College London, 2010) and a BA in Geography (King's College London, 2008).
- 1.2. I have four years' experience within the planning profession, including experience of development management in the public sector. I have experience of a wide range of scheme including similar conversions of the upper floors of a public house located within the London Borough of Lewisham.
- 1.3. I confirm that I am familiar with the site and surrounding area.

2. INTRODUCTION AND BACKGROUND

- 2.1. The application was submitted on 4 April 2018 for development described as “Planning permission for alterations in connection with the conversion of the upper floors of No 184 New Cross Road, SE14, into 2 one bedroom, self-contained flats, a two bedroomed self-contained flat and a one bedroom self-contained maisonette with study, together with the reconfiguration and retention of the existing public house at ground and basement level and the provision of two lantern lights to the flat roof at the rear of the existing public house”
- 2.2. The original case officer retired on 31 December 2018. I took over as case officer in January 2019 and prepared the report recommending refusal of the application that went before members of Planning Committee C at the meeting held on 1 August 2019. I can therefore confirm that I am very familiar with the site, surroundings and the application details.
- 2.3. The reasons for refusal are set out in Section 6 below.
- 2.4. I give evidence on behalf of LBL in its role as Local Planning Authority having regard to the planning policy framework and key planning considerations. My Proof of Evidence deals with the reason for refusal and more specifically the living conditions of future occupants of the proposed development, the Agent of Change principle, the effect on the character and viability of the existing public house operation and the effect of the proposed development on the vitality and viability of the night-time economy of New Cross.
- 2.5. My evidence responds to the case put by the appellants in their Statement of Case dated 13th November 2019. Since then the appellants in their agent’s letter dated 30th January 2019 have indicated they intend to substantially change the case they are seeking to present to the Inquiry. The Council were provided with further details of the changes on 12th February in the form of a Technical Note (KP Acoustics) relating to the sound insulation and draft of a Heritage Proof of Evidence. I comment on this information at section 13 of this proof, below. It may be that I will need to respond further by way of rebuttal proof following exchange of proofs. The appellants’ changed stance has very likely necessitated noise and heritage evidence from the Council, although at the time of writing and notwithstanding the information sent on 12th February the Council has not been able to prepare heritage and noise proofs by the 18th February deadline agreed at the CMC meeting. The Council therefore intend to respond to the appellants’ new case, if it emerges in their proofs, by way of

rebuttal statements by 3rd March 2020.

3. APPEAL SITE DESCRIPTION

Site Description and Current Use

- 3.1. The property is a three-storey listed public house, circa 1870, situated on the west side of the triangular shaped traffic 'island' at the junction with New Cross Road (A2) and Queen's Road (A202), almost opposite Pepys Road. The pub is on the site of the original toll gate that gave New Cross Gate its name. The building is in use as a Public House, The White Hart, at ground floor level. Historically the building housed living accommodation on the upper floors. At present, the upper floors are in use, as a Hotel comprised of 11 rooms. The public house has a late licence for alcohol and regulated entertainment until 3am every day of the week and currently operates until 3am on Fridays and Saturdays. The building's freehold is owned by the Wellington Pub Company, the appellants at this Inquiry, but this entity does not operate the public house. Officers understand the existing public house and hotel businesses are operated independently of each other.

Character of the Area

- 3.2. The building is highly prominent and visible within the streetscene and townscape, due to the building's dominant setting on a key corner within the Hatcham Conservation Area. The property and terrace with its high quality architectural features and treatments significantly contribute to the historic character of the local area, and streetscene.

Heritage/Archaeology

- 3.3. The building is nationally listed by English Heritage at Grade II (LEN: 1346214) with the following description:

"Public house. Circa 1870, shown on the 1873 Ordnance Survey Map. Polychrome brickwork with stuccoed dressings, slate roof concealed by parapet and brick chimneystacks. Corner building of three storeys; five windows to New Cross Road elevation and two to Queens Road, including a tripartite window. Elaborate parapet with curved panel to Queens Road, pedimented panel with brackets to New Cross Road and modillion cornice. Corner full-height pilasters and bands between floors. All windows are sashes with vertical glazing bars and horns. Second floor windows are cambered with keystones and two windows have cast iron flower guards. First floor windows have round-headed arches filled with stuccoed decoration with keystones above, roundels between the windows and cast iron flower guards. Bar front has fascia, end pilasters with double brackets and windows with ventilation

grilles above divided by pilasters. Interior retains a bar partition and both bars have original panelled wooden counter.”

- 3.4. The special architectural interest of The White Hart is primarily derived from the historic and architectural character of its principal street elevations. Taken together, the tiled street frontage, generous windows, substantial fascia and signage and decorative pilasters mean that this building is easily distinguishable as a public house. As well as the detailing of the principal elevations, the scale and decorative roof form of The White Hart help this building to stand out visually in the street scene, thereby reinforcing its role as a landmark within the street and local society.
- 3.5. The plan form has been significantly altered at both first and second floor levels however, much historic fabric remains at first floor level including historic party walls, room and ceiling decorations, fireplaces and windows. The second floor is less significant due to its more functional appearance and loss of historic fabric.
- 3.6. The property is also within Hatcham Conservation Area and is subject to an Article 4 Direction restricting certain permitted development rights for dwellinghouses.

Local Environment

- 3.7. The building is located within a busy town centre (New Cross/New Cross Gate District Centre) at the junction of the A2 and A202 producing high background noise levels. New Cross Road is designated as an Air Quality Management Area and also falls within an Air Quality Focus Area, where exposure is predicted to be high.

Transport

- 3.8. The site has a PTAL of 6a and is served by 24 hour transport including several night-bus routes and New Cross Gate Station. The road junction has been substantially remodelled as part of a Transport for London (TfL) highway improvement scheme.

4. PLANNING HISTORY

Planning history of the Site

- 4.1. The following is account of the applications for planning permission and Listed Building Consent at the property.
- 4.2. DC/18/107982: Listed Building Consent for maintenance work to the front elevation of 184 New Cross Road SE14, consisting of repair of window joinery and replacement of cracked panes of glass, pointing of brickwork areas and general redecoration of stonework and joinery – Granted.
- 4.3. DC/16/095391: Listed Building Consent for alterations to the front elevation and the bar, the laying of new floorboards, the re-location of a fireplace, the restoration of original internal features including columns, panelling and lime plaster to internal walls, and the retrospective removal of non-original features at ground floor level of 184 New Cross Road, SE14 - Granted.
- 4.4. EN/15/00322: Unauthorised works to a Grade II Listed Building - Case closed following grant of DC/16/095391.
- 4.5. DC/04/58029/: Listed Building Consent in respect of internal alterations to the upper floors of the White Hart Public House, 184 New Cross Road SE14, in connection with the change of use to a hotel, including the construction of a stud partition to create an additional bedroom at first floor level, a new doorway, replacement of all doors and the installation of 2 fire places at second floor level - Granted.
- 4.6. DC/04/58030: The change of use of the upper floors of the White Hart Public House, 184 New Cross Road SE14 to a hotel - Granted.
- 4.7. DC/03/53350: The retention of the new front door openings at 184 New Cross Road SE14, together with internal alterations to the bar area - Granted.
- 4.8. DC/01/49623: The alteration and conversion and change of use of the upper floors of the White Hart Public House, 184 New Cross Road SE14 to a hostel incorporating a three bedroom, self-contained manager's flat - Refused as the proposed hostel would provide a poor standard of amenity for residents, in terms of space provision and communal facilities.
- 4.9. DC/01/49879/: Internal alterations and conversion of the upper floors of the White Hart Public House, 184 New Cross Road SE14 in connection with the use as a hostel incorporating a three bedroom, self-contained manager's flat - Refused as the proposal does not preserve the special architecture or

appearance of the Grade II Listed Building.

- 4.10. DC/99/44091: The alteration of the front elevation of the White Hart P.H 184 New Cross Road SE14 door openings - Granted.

History of the current application

- 4.11. A concurrent application for Listed Building Consent (Reference DC/18/106611) was granted in August 2018 subject to the condition that planning permission is granted prior to the implementation of the works. The Listed Building Consent allowed the following works:

- alterations and restoration works to the upper floors including the removal of latter partitions.
- reinstatement of traditional sash windows to the rear elevation and the removal of ventilation stacks, timber roof terrace, and kitchen extension.
- relocation of the kitchen to the basement.
- addition of secondary glazing to the front elevation windows
- the relocation of the toilets and restoration of period features (fireplace & chimney breast) within the public house.

5. PROPOSED DEVELOPMENT

- 5.1. Planning permission is sought for the alteration and conversion of the upper floors of the building to provide two one-bedroom/two-person flats, one one-bedroom/two-person maisonette and one two-bedroom/three-person flat. The conversion would require a number of external alterations to the building including the repositioning of the residential entrance in the front elevation and the installation of timber sash windows in the rear elevation.
- 5.2. The alterations required to facilitate the change of use of the upper floors to residential use and the changes to the layout of the public house on the ground floor and basement were assessed as part of the LBC application and were considered acceptable subject to conditions. Additionally, the impacts of the appeal proposal to neighbouring amenity and the local highways network were considered acceptable.
- 5.3. A second Noise Impact Assessment (Rev C) (KP Acoustics Ltd, January 2019) (NIA) was submitted in February 2019, as requested by the Council, which included an assessment of both external noise break-in and internal noise transference. The NIA is clear that the level of internal noise attenuation possible is limited by the building's status as Grade II Listed, which prevents significant changes to the existing floor structure. The second NIA nonetheless makes the following recommendations:
 - Installation of sound insulation beneath the floor boards between the first floor and ground floor, to enable the retention of the existing floorboards.
 - The installation of secondary glazing to be installed a minimum of 80mm away from the existing windows to achieve a maximum internal noise level of 45dB(A).
- 5.4. In light of the limited noise attenuation it is possible to achieve, the NIA shows that from 6pm to 11pm, during which time live music had been measured, the levels are such that the music would be well over 10dBA above background within the habitable rooms above. This level would amount to a nuisance and would inevitably lead to complaints from future residents of the residential units on the upper floors were any amplified or live music played in the "proposed" pub.
- 5.5. The Council's Environment Health Officer accepted the conclusions of both

NIA's and therefore recommended that conditions would be necessary prohibiting live and amplified music from the proposed pub use at any time, and restricting the opening hours until 23:00. The appellant accepted both of the proposed conditions.

6. REASON FOR REFUSAL

6.1. The appeal application was refused at the Planning Committee C meeting held on 1 August 2019, for the following reason:

The proposed conversion of the upper floors to residential use, by virtue of the restrictions imposed by the building's statutory listing which limit the maximum noise attenuation that can be achieved, would result in unacceptable living conditions for future residents, in terms of noise and vibration, that cannot be mitigated by conditions as any such conditions would amount to unreasonable restrictions on the use of the pub which is of a unique and intrinsic character that caters to a diverse clientele and contributes materially to the economic, social and cultural lives of local residents and the late night economy and culture of New Cross, contrary to the NPPF (2019), NPPG, Policies 3.1, 4.6, 4.8 and 7.15 of the London Plan (2016), Policies GG1, HC5, HC6, HC7, D1, D12 and D13 of the draft London Plan (2019), Objective 5 and Policy 19 of the Core Strategy (2011), Policies 20, 26 and 43 of the Development Management Local Plan (2014) and the provisions of the Culture & the Night-Time Economy SPG (2017).

7. THE DEVELOPMENT PLAN – RELEVANT POLICY AND GUIDANCE

- 7.1. Section 38(6) of the 2004 Act requires that an application/appeal scheme be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The adopted development plan comprises the London Plan (2016), the LBL Core Strategy (2011), Site Allocation DPD (June 2013) and Development Management DPD (2014).
- 7.2. The policies relevant to this appeal scheme are listed in the Statement of Common Ground and core documents.

Core Strategy (2011)

- 7.3. The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The overarching spatial strategy to guide development in LBL to 2026 is outlined in Spatial Strategy 1 which identifies that *“all new development will need to contribute positively to the delivery of the vision for Lewisham...and ensure the principles of good design are addressed”* (Spatial Policy 1). The supporting text to the policy notes that new large scale development should provide and contribute towards physical and socio-economic benefits for all in the community.
- 7.4. The most relevant Core Strategy Policies (CSP) for the determination of this Appeal are Spatial Policy 2, Policy 16 Conservation area, heritage assets and the historic environment and Policy 19 Provision and maintenance of community and recreational facilities.
- 7.5. Spatial Policy 2 identifies the key regeneration and growth areas for the Borough. New Cross/New Cross Gate is designated as a District Town Centre with the stated aim of supporting major new retail and leisure development including the night-time economy.
- 7.6. CSP 16 ensures the value and significance of the borough’s heritage assets, including listed buildings and conservation area, are among things enhanced and conserved in line with national and regional policy.
- 7.7. CSP 19 seeks to retain and improve existing community facilities and ensure that there is choice and no net loss of community facilities.

Development Management Local Plan (2014)

- 7.8. The Development Management Local Plan was adopted by the Council at its meeting on 26 November 2014.

- 7.9. The Development Management Local Plan sets out the Council's policies for managing development in the Borough and is used to guide, assess and determine planning applications. The Council takes a positive approach that reflects the presumption in favour of sustainable development as set out in the NPPF and seeks to "*work proactively with applicants to find solutions which mean that proposals secure development that improves the economic, social and environmental conditions in the borough*" (DMP 1).
- 7.10. The most relevant Development Management Local Plan Policies (DMP) for the determination of this Appeal are Policy 20 Public houses, Policy 26 Noise and Vibration, 36 New development, changes of use and alterations affecting designated heritage assets and their setting: conservation areas, listed buildings, schedule of ancient monuments and registered parks and gardens, and Policy 43 Art, culture and entertainment facilities.
- 7.11. DMP 20 aims to prevent the loss of public houses unless it can be proven they are no longer financially viable and emphasises that pubs enhance the vitality of an area and act as hubs of community and social interaction.
- 7.12. DMP 26 seeks to reduce excessive noise and vibration due to the harm that can arise to health, quality of life and the natural environment. Para 1.c states that the Council will require a Noise and Vibration Assessment for noise and/or vibration generating development or equipment and new noise sensitive development, where appropriate, to identify issues and attenuation measures, prepared by a qualified acoustician.
- 7.13. DMP 36 echoes national and regional policy and summarises the steps the borough will take to manage changes to Conservation Areas, Listed Buildings, Scheduled Ancient Monuments and Registered Parks and Gardens so that their value and significance as designated heritage assets is maintained and enhanced.
- 7.14. DMP 43 aims to promote art, culture and entertainment uses and protect existing uses effected by redevelopment.

The London Plan (March 2016)

- 7.15. The London Plan (consolidated with alterations since 2011) was adopted in March 2016. The most relevant London Plan Policies (LPP) for the determination of this Appeal are Policy 3.1 Ensuring equal chances for all, Policy 4.6 Support for and enhancement of arts, culture, sport and entertainment, Policy 4.8 Supporting a successful and diverse retail sector,

Policy 7.8 Heritage assets and archaeology and Policy 7.15 Reducing noise and enhancing soundscapes.

- 7.16. LPP 3.1 aims to protect facilities and services that meet the needs of particular groups and communities.
- 7.17. LPP 4.6 states that cultural and creative sectors are central to the city's economic and social success and seeks to enhance and protect creative work and performance spaces and related facilities.
- 7.18. LPP 4.8 encourages boroughs to manage clusters of uses that can contribute to an area's sense of place or local identity.
- 7.19. LPP 7.8 states that development should among other things conserve and incorporate heritage assets where appropriate. Where it would affect heritage assets, development should be sympathetic to their form, scale, materials and architectural details.
- 7.20. LPP 7.15 seeks to manage adverse impacts of noise to avoid adding unduly to the costs and administrative burdens on existing businesses.

London Plan Supplementary Planning Guidance (SPG)

- 7.21. The London Plan SPGs relevant to this Appeal are outlined in the Statement of Common Ground. Of particular relevance are the Town Centres SPG (July 2014) and Culture and Night-Time Economy SPG.
- 7.22. The Town Centres SPG sets out a vision and strategy for London's town centres and provides guidance on the implementation of the London Plan and the determination of planning applications.
- 7.23. The Culture and Night-Time Economy SPG provides guidance on how to apply current London Plan policies to sustain and improve the culture and night-time economy of London. The SPG also sets out that the new London Plan will go even further in protecting and improving London's culture and night-time economy and states that the SPG shows the direction of travel in this regard.

8. NATIONAL PLANNING POLICY FRAMEWORK (FEBRUARY 2019) AND OTHER GUIDANCE

- 8.1. The revised NPPF was published on 19th February 2019 and is a material consideration in the determination of planning applications. It contains at paragraph 11, a 'presumption in favour of sustainable development'. Annex 1 of the NPPF provides guidance on its implementation. In summary, this states in paragraph 213, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF and in regard to existing local policies, that '...due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)'.
- 8.2. LBL have reviewed the Core Strategy and Development Management Local Plan for consistency with the NPPF 2019 and consider there are no issues of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraph 213 of the NPPF.
- 8.3. Section 2 of the NPPF establishes three overarching objectives for achieving sustainable development within the planning system: an economic objective, a social objective and environmental objective. I consider the economic objective and social objective to be relevant to this appeal.
- 8.4. At paragraph 8(a) the NPPF states the Economic Objective: *"to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure"*
- 8.5. The Social Objective is stated at paragraph 8(b): *"to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being;"*
- 8.6. Section 7 of the NPPF relates to town centres and at paragraph 85(a) sets out that planning policies and decisions should *"define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow*

and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters”

8.7. At paragraph 92 the NPPF states that policies and decisions should provide the social, recreational and cultural facilities and services the community needs.

8.8. The ‘agent of change’ principle is defined in paragraph 182: “Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.

Other National Guidance

8.9. The National Planning Policy Guidance for Noise (July 2019) advises on how planning can manage potential noise impacts in new development. It states that local planning authorities’ plan-making and decision taking should take account of the acoustic environment and in doing so consider whether or not:

- a significant adverse effect is occurring or likely to occur;
- an adverse effect is occurring or likely to occur; and
- a good standard of amenity can be achieved.

8.10. I also consider the National Planning Policy Guidance for the Historic Environment (July 2019) and Town Centres and Retail are also considered to be relevant.

Intend to Publish London Plan (December 2019)

8.11. The Mayor of London published a draft London Plan on 29 November 2017 and minor modifications were published on 13 August. The Examination in Public was held between 15th January and 22nd May 2019. The Inspector’s report and recommendations were published on 8 October 2019. The Mayor issued to the Secretary of State the Intend to Publish London Plan on 9th December 2019. This document now has considerable weight as a material consideration when determining planning applications.

- 8.12. The 'Intend to Publish' London Plan was issued with a statement of reasons, also published on the 9th December 2019, providing an explanation for any of the Inspectors' recommendations that the Mayor does not wish to accept. The recommendations include an additional policy within Chapter 3 Design, resulting in amendments to some policy numbering. For the avoidance of doubt, the affected policies are stated below and hereafter are referred to by their current numbering, notwithstanding the numbering in the Reason for Refusal.
- Policy D13 Agent of Change (formerly D12)
 - Policy D14 Noise (formerly D13)
- 8.13. The most relevant policies for the determination of this Appeal are D13 Agent of Change, D14 Noise, HC1 Heritage conservation and growth, HC5 Supporting London's culture and creative industries, HC6 Supporting the night-time economy and HC7 Protecting Public Houses
- 8.14. Intend to Publish LPP D13 states that *"The Agent of Change Principle places the responsibility for mitigating impacts from existing noise-generating activities or uses on the new development. Through the application of this principle existing land uses should not be unduly impacted by the introduction of new noise-sensitive uses"*
- 8.15. Intend to Publish LPP D14 is clear that residential development should avoid significant adverse impacts to quality of life.
- 8.16. Intend to Publish LPP HC1 states that *"development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings"*.
- 8.17. Intend to Publish LPP HC5 aims to protect existing cultural venues, facilities and uses (especially in town centres and places with good transport connectivity); and seeks to enhance existing, locally-distinct clusters of cultural facilities, venues and related uses.
- 8.18. Intend to Publish LPP HC6 recognises the night-time economy as being increasingly important to London's economy and emphasises the importance of promoting London as a 24-hour city. HC6 also sets out different areas of night-time activity function at different scales that have different catchments. The policy classifies three distinct categories:
- N1 Areas of international or national significance
 - N2 Areas of regional or sub-regional significance

- N3 Areas with more than local significance.

8.19. New Cross is identified as an N3 Area.

8.20. Intend to Publish LPP HC7 seeks to protect pubs where they have a heritage, economic, social or cultural value to local communities and encourages LPAs to resist development within the curtilage of the building that would compromise the operation or viability of the public house.

9. GROUNDS OF APPEAL AND MAIN ISSUES

- 9.1. This section of my Proof sets out the LBL's case in relation to the reason for refusal.
- 9.2. The main issues for this appeal identified by the Inspector and discussed at the CMC were set out in the Inspector's Case Management Conference (CMC) note. The three main issues are (1) whether satisfactory living conditions would be provided for future occupiers of the proposed development with regard to noise and disturbance (2) the impact of the proposed development on the character and viability of the existing public house operation and (3) the impact on the proposed development on the vitality and viability of the surrounding area with particular regard to the late night economy of New Cross.
- 9.3. I consider that Main Issue 1 is closely linked to the Agent of Change principle as articulated in the Council's Statement of Case and therefore my evidence will also address the Agent of Change within Main Issue 1.

10. MAIN ISSUE 1: LIVING CONDITIONS OF FUTURE OCCUPANTS OF THE PROPOSED DEVELOPMENT AND AGENT OF CHANGE

- 10.1. As detailed in paragraphs 5.3-5.5 of my Proof, above, the NIA dated January 2019 recommended mitigation measures that would require two conditions in order to ensure satisfactory living conditions for the proposed residential accommodation: a condition prohibiting live and amplified music from the proposed pub use at any time, and a condition restricting the opening hours until 11pm.
- 10.2. The conditions preventing live music and requiring that the pub would shut at 11pm, were designed to ensure that the future occupants of the proposed development would benefit from acceptable living conditions in terms of noise and disturbance. This was accepted by the appellant at application stage however it now appears that the appellants are proposing that it would be possible to provide noise attenuation that would allow the pub to open after 11 with amplified music. I have not seen full details of the proposed noise attenuation at this stage so it is not possible for me to comment on the living conditions of future occupants. However, it is clear from the Technical Note (KP Acoustics, January 2020) that in broad terms the retention of amplified and live music, as proposed by Option 1, is more likely to have an adverse impact on the living conditions of future residents.
- 10.3. The Council intend to respond to the appellants' new case, if it emerges in their proofs, by way of rebuttal statements by 3rd March 2020
- 10.4. The necessity for conditions to prevent adverse noise and disturbance to future residents means that the Agent of Change principle is relevant.
- 10.5. The Agent of Change principle, articulated in paragraph 182 of the NPPF, is the maxim that the party responsible for a change is responsible for mitigating the impacts of the change. This principle is supported by Intend to Publish LLP D13, the NPPG for Noise and the Culture and Night-Time Economy SPG. In this case the change relates to the alteration and conversion of the first and second floors of the building to provide residential accommodation.
- 10.6. The Appellant's SoC does not engage with the Agent of Change principle; however, the subsequent letter from Daniel Taylor (Boyer, 30 January 2020), at Section 3, states that the Agent of Change principle is not relevant. This conclusion is based on the appellant's assertion that the existing pub operation

is incompatible with the current hotel use on the upper floors because of an existing noise nuisance. The Appellant asserts that it is not the provision of new residential accommodation that would be the Agent of Change in this situation because there exists a use of the upper floors which is already incompatible with the operation of the pub.

- 10.7. The Appellant has provided no evidence to support their assessment that the hotel is incompatible with the existing pub operation. Furthermore, the evidence that they have provided was initially based on online reviews which I do not consider to be a reliable source of evidence. I also note that those online reviews provided at Appendix 2 of Mr Taylor's letter reference proximity to a racecourse and the National Stud, as well as a car park. None of which are consistent with the appeal site. A review of the TripAdvisor website (https://www.tripadvisor.co.uk/Hotel_Review-g186386-d670476-Reviews-White_Hart_Hotel-Newmarket_Suffolk_East_Anglia_England.html) found that all of the reviews relate to a White Hart Hotel in Newmarket and not the appeal site.
- 10.8. The Appellant was informed of this error on 10 February and the Trip Advisor evidence was formally withdrawn by Mr Taylor (Boyer, 12 February). The Appellant maintains that the pub causes a noise nuisance based on complaints received by the Appellant. However, the Council are yet to receive evidence to substantiate this.
- 10.9. I also note that the Council's Environmental Health and Licencing teams have only received two complaints relating to appeal site, neither concerning noise from the operation of the pub. A complaint was received in June 2019 from a residential property concerning a noise disturbance caused by a noisy crowd on the pavement outside the pub. A second complaint was received in November 2019 relating to building works within the building. Neither of the complaints were from guests using the hotel.
- 10.10. Notwithstanding the absence of evidence of noise complaints, I reject the assertion that the Agent of Change principle would not apply if it were established that there was an existing nuisance. The change of use of the upper floors to residential is new development requiring planning permission. Furthermore, the NPPF at paragraph 182 states that "*Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the*

development has been completed”.

- 10.11. There is therefore no ambiguity about whether changes of use constitute new development subject to the Agent of Change principle. Furthermore, the Culture and Night-Time Economy SPG, at paragraph 2.11, highlights that occupants of independent residential accommodation have a higher expectation of amenity than other residential uses such as an ancillary accommodation. This is also a key difference with a hotel given that it is temporary accommodation, It is also clear that guests are likely to be aware that they are booking hotel accommodation above a pub within a town centre location renowned for its nightlife.
- 10.12. The second aspect of the Agent of Change principle is whether the necessary mitigation would amount to an unreasonable restriction of the existing land use, as outlined in paragraph 182 of the NPPF *“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established”*
- 10.13. The existing pub operation has a licence for alcohol and regulated entertainment until 3am on every day of the week. The proposed conditions would amount to a severe restriction on the future operations of the pub and would result in the loss of the existing pub operation. While I acknowledge that the existing pub operation could cease regardless of the outcome of this appeal, allowing this appeal would effectively guarantee that a similar late night live music orientated operation would never be able to operate from the pub in the future. It is recognised in national, regional and local planning policy that public houses are valuable and require additional protection from the development market. The NPPF, at para 182, specifically identifies pubs and music venues as examples for consideration in applying the Agent of Change.
- 10.14. In applying the additional protection afforded by the agent of change principle, it is necessary to consider the long term feasibility of a public house. Restrictions that permit only a limited pub operation may be feasible under current market conditions but this would leave limited scope for alternatives if market conditions alter. Intend to Publish LPP D13 (B) states *“Development should be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue or grow without unreasonable restrictions being placed on*

them". In this case, should the appeal be allowed, the use would neither be able to continue nor grow in the future.

- 10.15. The supporting text to D13, at para 3.13.5, states "*Noise-generating cultural venues such as theatres, concert halls, pubs, night-clubs and other venues that host live or electronic music should be protected (see Policy HC5 Supporting London's culture and creative industries). This requires a sensitive approach to managing change in the surrounding area. Adjacent development and land uses should be brought forward and designed in ways which ensure established cultural venues remain viable and can continue in their present form without the prospect of licensing restrictions or the threat of closure due to noise complaints from neighbours*". In this case, should the appeal be allowed, the use would not be able to continue in its present form.

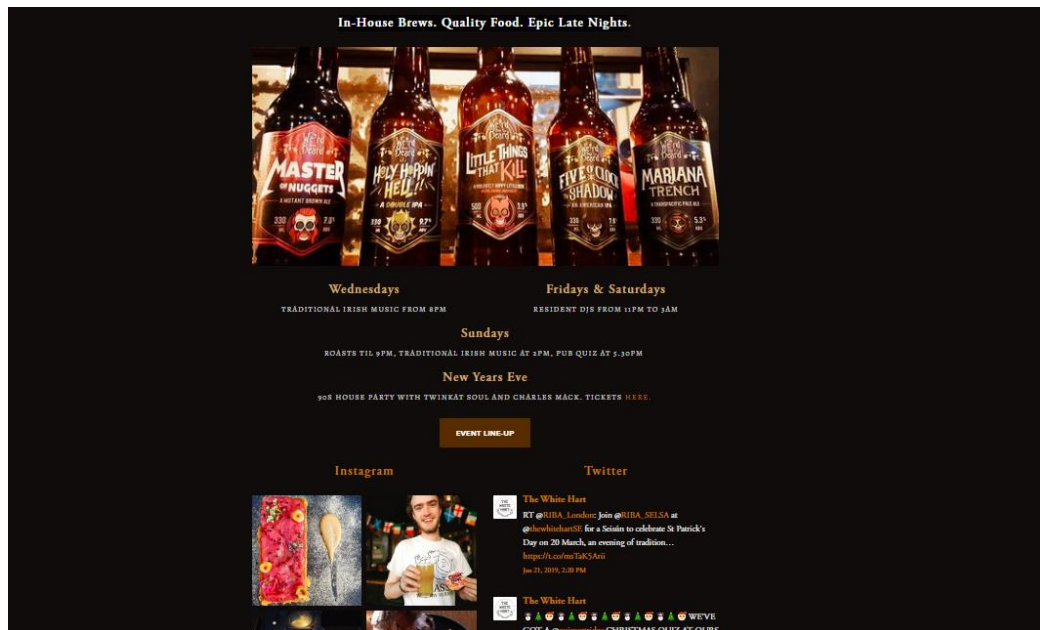
Summary

- 10.16. The proposed conditions restricting the opening hours to 11pm and preventing amplified live music would ensure that the living conditions of future occupiers would be acceptable. However, I consider the inability of the pub to operate a late night, live music orientated pub model to be an unreasonable restriction which is not compatible with the Agent of Change principle as defined in the NPPF and supported by the Intend to Publish LPP. The appeal proposal is therefore contrary to paragraph 182 of the NPPF, the NPPG for Noise, Intend to Publish LPP D13 and the Culture and Night-Time Economy SPD

11. MAIN ISSUE 2: THE EFFECT ON THE CHARACTER AND VIABILITY OF THE EXISTING PUBLIC HOUSE OPERATION

- 11.1. The Appellant's SoC characterises the appeal premises as a standard 'lock-up' pub, which I understand means that the upper floors are not used for ancillary accommodation. At paragraph 5.34 the SoC states that *"The site is, in reality, a typical pub operation with little to distinguish itself as unique. This is clearly evident from the fact the Pub serves traditional pub food and has a limited music offering. There is no specialised music equipment or installation which you would expect to find in a 'unique and intrinsic' music venue"*
- 11.2. This characterisation is not at all consistent with the licence for the pub which permits the sale of alcohol and the provision of regulated entertainment, including live music, recorded music and performance of dance until 3am on every day of the week. The website and social media confirm that the existing pub operation utilises the licence to provide regular entertainment and live music until 3am on Fridays and Saturdays. The 319 responses received to the consultation support the Council's characterisation that this is a live music orientated operation.
- 11.3. The pub operator has provided substantial evidence of the pub's live music and entertainment offer at Appendix 5 of the Council's SoC. The pub features DJs sets every Friday and Saturday night until 3am, showcasing local DJs and record labels, and live Irish Music every Wednesday and Sunday, as seen at Figure 1. The regular live music is supplemented by entertainment events including art shows, comedy nights, dating nights and nights catered to a variety of music genres. None of these live music events would be possible should the appeal be allowed.

Figure 1: Screenshot of the home page of the pub's website



- 11.4. The Culture and Night-Time Economy SPG at paragraph 2.12 and 2.13 highlights that pubs can have an intrinsic character which can be derived from their longstanding use and community value. The SPG supports this with the case study of the Antwerp Arms (Case Study 01), and asserts that the community value of a pub can be derived from its use as a venue for live music or comedy.
- 11.5. The evidence from the pub operator, website and consultation responses are consistent with the licence and support the conclusion that the pub operation is orientated towards live music. The SPG and Intend to Publish LPP HC7 paragraph 7.7.3 are clear that cultural and entertainment activities can form a valuable part of a pub's intrinsic character, thus supporting the Council's characterisation within the reason for refusal.
- 11.6. I consider that the variety of other nearby pub operations in terms of operating hours, provision of live music, entertainment, and drink and food lend further support to the assertion that the White Hart has an intrinsic character. The following paragraphs will provide an overview of the character of the other pubs within the New Cross District Centre.

Amersham Arms (388 New Cross Road)

- 11.7. The Amersham Arms has a late licence until 3am Thursday to Saturday and meets the criteria for a live music venue as an accompanying activity to the core business. The website provides a listings page for all upcoming events including live bands, karaoke nights, comedy and poetry nights. The homepage also

carries listings from Timeout and the NME listing famous bands, musicians and comedians who have performed at the pub.

The Walpole (403-403 New Cross Road)

- 11.8. The Walpole emphasises its fusion food and craft beer offer, including a pide oven and seasonable menus. The pub is open until 12am Thursday to Saturdays. The pub does not have a live music offer.

Marquis of Granby (322 New Cross Road)

- 11.9. A traditional wood panelled pub which is open until 12am Sunday to Thursday and 1am Friday and Saturdays. The pub does not regularly feature live music.

The Venue (2a Clifton Rise)

- 11.10. The only nightclub in New Cross and is arranged over six floors, playing contemporary and classic music and tribute acts. The Venue is one of London's oldest nightclubs, which first opened in 1989. It is open until 4am on Fridays and 5am on Saturdays. The Venue is a nightclub not a pub but it does stage live music.

The New Cross House (316 New Cross Road)

- 11.11. Provides a full lunch and dinner menu including a pizza oven. The New Cross House also has a private function room for hire. The pub is open until 12am on Thursdays and 1am Fridays and Saturdays. The New Cross House does not stage live music.

The New Cross Inn (323 New Cross Road)

- 11.12. The New Cross Inn is a live music venue with events seven nights a week. The live music is orientated towards rock, punk and metal with an open mike night on Tuesdays. The upper floors are in use as a hostel which operates as a separate business. The New Cross Inn is open until 3am Monday to Saturday and 12:30am Sunday.

The Rose (272 New Cross Road)

- 11.13. The pub's food offer includes a seasonal menu and pizza menu. There is private hire facilities, a monthly comedy night and weekly quiz. The Rose is open until 12am Wednesdays and Thursdays and 1am Friday and Saturdays. The Rose does not feature regular live music.

11.14. *The Five Bells (155 New Cross Road)*

- 11.15. The Five Bells has a varied cultural offer which includes live music, film showings, poetry nights and a private exhibition space for hire. The pub serves

food and also shows live sport seven days a week. The Five Bells is open until 12:30am on Thursdays and 1:30am on Fridays and Saturdays.

- 11.16. As stated above there is variety in the pub operations within New Cross. The Amersham Arms is the most similar in terms of the combination of the live music offer and similar opening hours. However, the genres of music and support for local artists helps to distinguish the White Hart. The Amersham Arms has a wider reach as emphasised by the NME and Timeout listings.
- 11.17. Despite the differences in operating models it should be noted that there are some commonalities. Principally all of the public houses and music venues utilise their licence and stay open after 11pm Thursday, Fridays and Saturdays as a minimum. This option would not be open to the White Hart due to the conditions imposed by the appeal proposal. Furthermore, the restrictions placed on live and amplified music would reduce the cultural contribution to New Cross.
- 11.18. There is an emphasis within the London Plan towards protecting cultural venues. LPP4.6 supports and seeks to enhance arts, culture and entertainment. LPP4.8 encourages boroughs to manage clusters of uses that can contribute to an area's sense of place or local identity.
- 11.19. The Culture and Night-Time Economy SPG provides an overview of the challenges to London's night-time economy and note that London has 103 fewer nightclubs than in 2007. Evidence from the GLA document *London at night: An evidence base for a 24-hour city* show that in 2016 there were 94 grassroots music venues in London down from 144 in 2007.
- 11.20. In response, the emphasis towards protecting cultural venues has increased within both the SPG and Draft London Plan, with the cultural uses more clearly defined. Intend to Publish LPP HC5 *Supporting London's Culture and Creative Industries* seeks to protect and enhance existing cultural venues, facilities and uses. Paragraph 7.5.3 of the supporting text specifically references pubs and live music venues stating that "*London's competitive land market means that the industry is struggling to find sufficient venues to grow and thrive, and is losing essential spaces and venues for cultural production and consumption, including pubs, night-clubs and venues that host live or electronic music and rehearsal facilities. Boroughs are encouraged to develop an understanding of the existing cultural offer in their areas and evaluate what is unique or important to residents, workers and visitors.*"
- 11.21. Turning to the issue of financial viability, the Appellants SoC at paragraph 5.23

states that an Economic Proof of Evidence will be submitted confirming that “*the pub would be a financially sustainable business model if the Pub (i) does not play amplified or live music; and (ii) were to close at 11pm*”. I do not dispute that this would be the case short to medium term. However, this is to misunderstand the requirements of the relevant planning policies. As I have demonstrated in paragraphs 11.2-11.5 the pub has an intrinsic character derived from its late night opening hours and function as a live music venue. As such, the existing pub operation benefits from the policy protection afforded to cultural facilities by Intend to Publish LPP HC5.

11.22. Furthermore, the Intend to Publish LPP for protecting public houses (HC7) does not merely require that pubs are retained and are financially viable. Intend to Publish LPP HC7 states that Councils should resist redevelopment within the curtilage of a public house that would compromise the operation of the public house. The appeal proposals would severely restrict how any future pub is run, resulting in an alternative pub operation. In the medium to long term, I consider that this would significantly narrow the range of possible future business models, increasing the risk to the long-term future viability of the pub.

11.23. At paragraph 5.9 of the Appellant’s SoC it is stated that the appeal proposals would ensure the long-term viability of the property by introducing a viable use to the upper floors. This point is related to paragraph 5.29 where it is claimed that the hotel business is operationally unviable. I am yet to see any evidence relating to the financial viability of the hotel business. However, I would reiterate the point raised in paragraph 57 of the Council’s SoC that in order to be comprehensive any viability assessment would be required to consider alternative uses for the upper floors, given that they may require less restrictive conditions.

Summary

11.24. Turning back to the Appellant’s characterisation of the pub, at paragraph 5.34 of their SoC, as a “...*typical pub operation with little to distinguish itself as unique*”. I have set out above how the facts do not support this characterisation.

11.25. I consider that the appeal proposal would fail to protect the existing live music orientated pub operation, which would adversely affect the character and viability of the current pub operation and severely restrict the future operations of the pub. As such the proposal development would conflict with the requirements and principles of the Culture and Night-Time Economy

SPG and Intend to Publish LPPs HC5 and HC7.

12. MAIN ISSUE 3: THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE VITALITY AND VIABILITY OF THE NIGHT-TIME ECONOMY OF NEW CROSS

- 12.1. New Cross is an important centre in Lewisham's night-time economy.
- 12.2. Paragraph 7.61 of the Intend to Publish LPP defines the night-time as *“all economic activity taking place between the hours of 6pm and 6am. Night-time economic activities include eating, drinking, entertainment, shopping and spectator sports, as well as hospitality, cleaning, wholesale and distribution, transport and medical services, which employ a large number of night-time workers.”*
- 12.3. CS Spatial Policy 2 designates New Cross/New Cross Gate as a District Centre and identifies New Cross as a location for major new retail and leisure development, including contributions towards the local night-time economy. Intend to Publish LPP HC6 Supporting the night-time economy recognises that town centres operate at different scales and have different catchments. New Cross is designated as NT3, an area with more than local significance. At B.1 policy HC6 states that LPAs should promote the night-time economy in appropriate locations such as town centres.
- 12.4. Supporting this cluster are excellent transport connections. These include night buses along New Cross Road and London Overground services from New Cross Gate station, integrating New Cross into the wider London night-time economy.
- 12.5. I consider that the New Cross Area Framework (May 2019) is a relevant document in establishing the character of New Cross. It provides an evidence base that allows insight into culture, economy and built environment of New Cross and informs a future vision for the area. On page 34, the document outlines the cultural offer within New Cross and highlights the number of public houses and live music venues within the town centre. This is supported on page 72 as part of the “Lively Place Strategy” where noise complaints, economic changes and development pressures are identified as a threat to the live music venues.
- 12.6. The analysis of the Evening Economy (p92) states that *“There is a significant number of pubs in New Cross compared with neighbouring areas such as Old Kent Road, and towards the rail tangle in the north. The pubs in New Cross have long been established within the local music scene and continue to provide for a continuously evolving local culture. In the context of new residential communities moving into New Cross, the pubs are vital in containing*

and preserving the fine grains of diverse culture within the area". The section on the night-time economy (p172) highlights that in contrast to surrounding areas New Cross benefits from a large number of independent music venues which contribute to the local identity.

- 12.7. The New Cross Area Framework demonstrates that the cluster of pubs and live music venues form an intrinsic part of the character of New Cross and are central to the vitality and viability of the night-time economy. These support a diversity of uses including a high proportion of restaurants, takeaways and cafes which make up 30% of the eastern side of New Cross Road and 18% of the western side of New Cross Road.
- 12.8. The value of this clustering of night-time and evening uses is emphasised at paragraph 2.2 of the Culture and Night-Time Economy SPG which states that pubs *"can provide a local meeting place, venue for entertainment and a focus for social gatherings. Pubs can also be amongst the special ingredients that make a cluster of cultural activities successful"* I also consider the NPPG for Town Centres and Retail to be relevant to this point *"evening and night time activities have the potential to increase economic activity within town centres and provide additional employment opportunities. They can allow town centres to diversify and help develop their unique brand and offer services beyond retail"*.
- 12.9. A review of the licences for night-time economy uses in the New Cross/New Cross Gate District Centre found that there were 57 licenced premises. Of these 41 premises are open beyond 11pm, comprising 12 restaurants, 11 takeaways, eight pubs, seven off-licences, one bar, one cafe, and a night club. Drawing from this data, it is clear the night-time economy is not solely made up of late night drinking establishments and music venues. Instead, the evidence shows an integrated eco-system of late night activity that complement and support one another.
- 12.10. The New Cross District Centre is divided into two sections, an eastern section and western section divided by a residential section of New Cross Road. The White Hart is located within the western section and is one of only three A3 uses only with the Five Bells public house and No.136 New Cross Road, which currently operates as a bar. I consider that the spatial distribution of public houses in New Cross, which are mainly concentrated on the eastern section of New Cross Road in the area around the train stations, increases the importance of the White Hart to the night-time economy on the western section of New Cross Road.

12.11. The site is ideally located for a noise-generating activity. It is situated in a well-connected urban centre; those connections include 24 hour bus and train access. It is not constrained by nearby residential activity and it is part of a complex urban sound environment.

Summary

12.12. A reduction to the operating hours of the pub would therefore result in a reduction in night-time economic activity causing harm to the night-time economy of New Cross, contrary to the principles of LLP4.6, Intend to Publish HC6 and the New Cross Area Framework, which emphasise the importance of supporting and enhancing the vitality of the night-time economy of town centres. This harm is likely to be enhanced within the context of New Cross, given that the district centre is divided geographically, which increases the importance of the White Hart to the cluster of night-time uses within the western part of the district centre within which it sits.

13. NEW HERITAGE AND NOISE EVIDENCE

13.1. On the 30 January the Council received a letter from Daniel Taylor (Boyer, 30 January 2020) which introduced new acoustic evidence in the form of a Technical Note (KP Acoustics, January 2020). The Technical Note proposes three potential options for increased noise attenuation between the ground and first floors, so as to allow for the pub to remain open after 11 and with music, amplified and non-amplified.

13.2. On 12 February the Council were sent a draft version of a heritage Proof of Evidence which assess the heritage impact of the proposed noise attenuation.

13.3. The three options detailed in the Technical Note (KP Acoustics, January 2020) are summarised below.

- Option 1 would allow the pub to operate with amplified music provided that an appropriate noise limiter is fitted.
- Option 2 would allow the pub to operate after 11pm with non-amplified music.
- Option 3 would allow the pub to operate after 11pm with no or low level music.

13.4. I consider that Option 3 is the most similar to the approved LBC for the White Hart. However, further details of the JCW Acoustic Deck 37 and the 18mm cementitious board would be required in addition to details of the method of installation. This is likely to require an additional application for Listed Building Consent

13.5. Option 1 and 2 propose the removal of historic fabric (namely the floorboards at 1st floor and the ceiling on ground floor), which would also require Listed Building Consent. It is highly unlikely that the removal of historic fabric such as this would be permitted without significant justification. Specifically, the ceiling on the GF of the pub is of special interest, and helps one to understand the historic use and plan form of the LB. For instance, the cornicing helps to reveal the public and private bars, and entrance ways.

13.6. In terms of the removal of the historic floorboards, it is also unlikely that a loss of historic fabric would be supported given that a conditions were attached to the LBC securing this fabric, and ensuring that a Method Statement was in place to see it catalogued and put back in place so as not to lose this special surviving

historic fabric (of which there is very little at upper levels making it more important).

Summary

- 13.7. I consider that all three options would require an additional application for Listed Building Consent which would fall outside the remit of this inquiry. It is not possible to make a full assessment of the heritage impact as I have seen limited details at this stage. Therefore, it is likely that a rebuttal heritage Proof of Evidence will be required following exchange of proofs, on the understanding that full details of what is proposed under the three options will be articulated in the appellant's heritage proof.
- 13.8. The submission of the new noise evidence changes the appellant's case and is a clear indication that the appellant is moving towards the Council's position on the effect of the proposed development on the character and viability of the existing pub operation and on the impact to the vitality and viability of the night-time economy of New Cross.
- 13.9. I am yet to receive the appellant's noise Proof of Evidence so it is not yet possible to fully assess whether the proposed noise attenuation would be effective in ensuring that living conditions of future occupants would be acceptable. However, it is clear that none of the proposed options would allow the current pub operation to continue. Therefore, I maintain the view that the proposed development would be contrary to the Agent of Change principle and would be harmful to the vitality and viability of the night-time economy of New Cross.

14. CONCLUSION AND SUMMARY

- 14.1. The proposed development would require conditions to ensure that the living conditions of future occupants of the upper floors would be acceptable in terms of noise and disturbance. Therefore, the Agent of Change principle is clearly relevant with the change in this case being the change of use of the upper floors to residential. The existing pub operation has a licence for alcohol and regulated entertainment until 3am on every day of the week. I have demonstrated that the current pub operation is live music orientated and utilises the 3am licence. The proposed development would effectively guarantee that the current pub operation would cease and would impose restrictions that would severely limited any future pub operation, resulting in a harmful impact to the character and viability of the pub. I therefore consider that the conditions would amount to an unreasonable restriction on the operations of the pub contrary to the Agent of Change principle.
- 14.2. I have demonstrated that the pub forms part of cluster of pubs, music venues and other night time uses which make a valuable contribution to the vitality and viability of the night-time economy of New Cross and the district centre more generally. The restrictions on the operations of the pub would impose a significant limitation on this contribution. Therefore, I consider that the proposed development would be harmful to the vitality and viability of the night-time economy of New Cross.
- 14.3. The proposed development is therefore contrary to the NPPF (2019), NPPG, Policies 3.1, 4.6, 4.8 and 7.15 of the London Plan (2016), Policies GG1, HC5, HC6, HC7, D1, D13 and D14 of the Intend to Publish London Plan (2019), Policy 19 of the Core Strategy (2011), Policies 20, 26 and 43 of the Development Management Local Plan (2014) and the provisions of the Culture & the Night-Time Economy SPG (2017).
- 14.4. I also consider the New Cross Area Framework (May 2019) to be a material consideration in the determination of this appeal. The proposed development would be contrary to the Lively Place Strategy which seeks to expand the night-time economy by supporting local and new businesses.
- 14.5. I am not aware of any other material considerations which would be capable of outweighing the conflict with the Development Plan and NPPF. Therefore, I respectfully request that the Inspector dismiss the appeal.

