

Barnet Local Plan EIP – Note on Policy CHW04 Protecting Public Houses

Reason for producing this note

At the hearing session on Thursday 3rd November which considered Matter 9: Parks and Open Spaces, Community Uses, Health and Wellbeing Inspector Philpott requested a note covering a number of issues relating to Policy CHW04 – Protecting Public Houses. This note, to include any resultant proposed modifications, should encompass the following matters:

- Consider consistency with London Plan HC7 and explain differences and make these clear in the plan.
- Explain intentions behind locations where pubs supported, with reference to night-time economy locations (which are supported by the London Plan) and Growth Areas. Consider approach to mixed use development, in particular whether further flexibility is required.
- Loss of public houses - clarification on justification and approach to 12 month vacancy period, including consideration of introducing reference to marketing to policy and supporting text (para 7.7.7 in London Plan), and reference to “at least” 24 months marketing, marketing as a pub and not any other use.
- CHW04(c) - consider how to ensure CHW04 allows for compliance if a community use does not come forward, currently appears to direct immediately to CHW01.
- Explanation of which elements of CHW01 apply to CHW04.
- Carry through modification to be provided similar to MM210 for Assets of Community Value.

Background

Policies in the Local Plan seek the retention of community facilities including public houses which afford economic, social, cultural and heritage value to a community. Concerns about the significant trend of public house closures led to the Council undertaking a review of public houses in Barnet (EB_S_14) in 2018. This research, revealing that within Barnet since 2000 there had been 68 pub closures, supports the inclusion of Policy CHW04 in the draft plan seeking to protect existing public houses, as well as providing support for new public houses. The published London Plan (Core_Gen_16) also includes a policy that seeks to protect public houses and which sets out the policy approach boroughs should adopt on this matter.

Following submission of the Barnet Local Plan in June 2021 the Council produced a table of proposed modifications (EXAM 4). This document was produced after consideration of the Reg 19 soundness representations received and does not include any proposed modifications relating to either Policy CHW04 or the supporting justification text in section 8.21 of the submitted Draft Local Plan (Core_01). However, in the light of the discussion of the policy at the hearing session and the requests made by Inspector Philpott for further clarification, explanation and justification of the matters detailed in this note, the Council now wishes to propose a number of further modifications as set out below.

The following format has been used in this paper to denote further proposed modifications to the submission version of plan as revised by the proposed modifications listed in EXAM 4.

~~Strikethrough text~~ to indicate text proposed for removal.

Underlined text to indicate additional text.

Consideration

1) Consider consistency with London Plan HC7 and explain differences and make these clear in the plan

The Council acknowledges that there is a need for greater consistency in this particular respect with London Plan Policy HC7 – Protecting Public Houses. The Council's intention of including Policy CHW04 in the Local Plan is to provide additional detail, suitably tailored to the Barnet local context as an outer London borough with a large number of town centres predominantly servicing the needs of their immediate local catchment areas.

Consistency with part A of London Plan Policy HC7 is considered under matter 2 in this note whilst consistency with parts B and C of HC7 are considered under matter 3 below.

2) Explain intentions behind locations where pubs are supported, with reference to night-time economy locations (which are supported by the London Plan) and Growth Areas. Consider approach to mixed use development, in particular whether further flexibility is required.

Policy HC7(A) in the Mayor's London Plan states that boroughs should:

- 1) protect public houses where they have a heritage, economic, social or cultural value to local communities, or where they contribute to wider policy objectives for town centres, night-time economy areas, Cultural Quarters and Creative Enterprise Zones, and
- 2) support proposals for new public houses where they would stimulate town centres, Cultural Quarters, the night-time economy and mixed-use development, taking into account potential negative impacts.

Part a) of Policy CHW04, protecting existing and supporting proposals for new public houses, broadly follows the London Plan policy approach, and is suitably localised in recognition of Barnet's context. This makes reference to town centres and Growth Areas as within Barnet there are no designated cultural quarters nor creative enterprise zones.

The majority of Barnet's town centres have a night-time offer to varying degrees. The London Plan classifies Chipping Barnet, Cricklewood and North Finchley town centres as having night time economies of more than local significance. The Council through Policy TOW04 supports proposals for night-time economy uses in Barnet's Town Centres in particular Chipping Barnet, Cricklewood, North Finchley and Whetstone as well as Brent Cross, Edgware and Golders Green. Although these are the Council's preferred locations for the Night Time Economy it does not mean that any proposals for new public houses will be restricted to these areas. This reflects that pubs across Barnet play an important role in the daytime and evening economy of Barnet's town centres.

The Council accepts that as currently drafted, part a) 2 of the policy outlining where new public houses will be supported, could be interpreted as this support being conditional upon pubs coming forward as part of a mixed-use development. Whilst in practice a new pub included as part of a mixed-use development is often likely to often to be the case, the Council would not wish the support given in the policy to be unduly restrictive. Therefore, proposals for standalone pubs, particularly within town centre and Growth Area locations where there is likely to be the necessary critical mass of people in terms of footfall/ passing trade to make it viable to open a new public house, would also be afforded support.

Consequently the Council proposes a modification to part a) 2 of the policy to read:

2. ~~support proposals for new public houses within Growth Areas and town centres as part of mixed-use development.~~

- 3) **Loss of public houses - clarification on justification and approach to 12 month vacancy period, including consideration of introducing reference to marketing to policy and supporting text (para 7.7.7 in London Plan), and reference to “at least” 24 months marketing, marketing as a pub and not any other use.**

The Council's policy requires the provision of marketing evidence details sought to satisfactorily demonstrate that there is no realistic prospect in the foreseeable future of a building's continued use as a public house.

In drafting section b) of Policy CHW04 the Council's intention was to reflect part B of London Plan Policy HC7, relating to the requirement to provide authoritative marketing evidence in support of any application that proposes the loss of a public house. Para 7.7.7 of the London Plan states that “boroughs should require proof that all reasonable measures have been taken to market the pub to other potential operators.” Therefore, in an attempt meaningfully to quantify that there is no viable demand, part b) of CHW04 seeks to also make reference to an at least 12 month period vacancy test. Whilst the London Plan policy does not make specific reference to a vacancy period, the Council would wish to retain this reference by way of providing evidence to assist in the consideration of proposals against parts b and c of Policy CHW04. However, the Council recognises that sections b and c of CHW04 would benefit from limited redrafting to set out more clearly the Council's intentions as well as cross referencing to the relevant section of Policy HC7 and accompanying supporting text in London Policy. Therefore, the Council proposes the following further modifications to CHW04:

- b. ~~*In accordance with London Plan Policy HC7B, p Proposals that involve the loss of public houses with heritage, cultural, economic or social value will be refused unless there is no viable demand for its continued use and the property has been long term vacant for a authoritative evidence of continued marketing over at least a 24 month period, this should include a period of at least 6 ~~12~~ months vacancy. Evidence of continued marketing over a 24 hour period will be required.*~~

Part C of London Plan policy HC7 sets out the circumstances where redevelopment proposals within the curtilage of a public houses should be resisted. This policy wording is effectively replicated in part d) of policy CHW04. As such, the Council recognises that this is unnecessary repetition and therefore proposes to delete part d) from the policy in its entirety, and instead add a cross reference in the supporting text to reliance upon part C of London Plan policy HC7. Accordingly, the Council proposes the following modifications deleting part d) of the policy:

~~d. Development proposals for redevelopment of associated accommodation, facilities or development within the curtilage of the public house that would compromise the operation or viability of the public house will be resisted.~~

and adding a new sentence at the start of paragraph 8.21.6 as follows:

Redevelopment proposals within the curtilage of an existing public house will be considered having regard to part C of London Plan Policy HC7.

The Council having reviewed marketing requirements for public houses in other recently adopted / submitted London borough local plans notes that:

- i) Barking & Dagenham (Policy DMS3) refers to “continuously marketed for at least 24 months as a public house at a reasonable market rent and free of tie and restrictive covenant.”

- ii) Brent (Policy BHC5 para 6.5.39) “the public house has been marketed for 24 months as a public house.”
- iii) Islington (Policy R11 B) (i) “the Public House has been vacant for a continuous period of at least two years. Continuous marketing evidence to cover this period must be provided, to demonstrate that there is no realistic prospect of the unit being used as a Public House in the foreseeable future;”
- iv) Lambeth (Policy ED9 A) “i. the public house use is no longer economically viable; a viability report must be submitted and this must include evidence of active and appropriate marketing over a continuous period of at least 24 months and evidence that all reasonable efforts have been made to preserve the facility;”
- v) Southwark (Policy P42) “1. Pubs must be protected from development resulting in a change of use or loss of the pub. In exceptional circumstances, development proposals resulting in the loss of a pub will only be permitted where there is no market demand for the pub use. This needs to be demonstrated by a marketing exercise for two years, immediately prior to any planning application, for both its existing condition and as an opportunity for improved pub use at market rates.”

Whilst, in accordance with the London Plan reference at para 7.7.7, imposition of a minimum 24 month marketing period appears to be consistently used, we are not aware of any other London plans that also seek to impose a vacancy period. However, balanced against the desire not to leave premises vacant any longer than is necessary, as per the proposed revised wording above incorporating this additional test – albeit for a more limited shorter 6 month period - within the 24 month period marketing period is considered reasonable to impose as tangible demonstration of active marketing and there being no viable demand.

4) CHW04(c) - consider how to ensure CHW04 allows for compliance if a community use does not come forward, currently appears to direct immediately to CHW01

The Council’s intention with regards to the inclusion of part c of Policy CHW04 is that in the circumstances where that it has been satisfactorily demonstrated, (i.e. required periods of vacancy and continued marketing met), that there is no demand for continued use as a public house then an alternative community use would be supported. The policy references Policy CHW01 since this is the umbrella policy in the Local Plan that relates to community infrastructure. However, as currently worded the use of the term “in accordance with“ might present some difficulties for both developers / promoters and also officers / inspectors determining applications in understanding which parts of CHW04 are relevant and need to be complied with. Therefore, to provide clarity on this point, the Council proposes the following further modifications:

i) More closely reflect the wording used in part B) of London Plan Policy HC7 and remove the reference in the cross reference to Policy CHW01 so as to read:

c. *Where it is demonstrated that there is no viable demand or realistic prospect of the building being used as a for the public house in the foreseeable future, the Council will, as appropriate, support proposals for other community uses. ~~In accordance with Policy CHW01~~*

ii) add a sentence at the end of para 8.21.6 signposting the need as relevant to also have regard to what is said in policy CHW01 and the supporting text.

As relevant, dependent upon the alternative community use envisaged, regard should be given to Policy CHW01.

5) Explanation of which elements of CHW01 apply to CHW04

Policy CHW01 is a 'broad umbrella policy' at the start of Chapter 8 detailing how the Council will work with relevant partners to ensure that a wide range of community facilities are provided for Barnet's communities. Please also see the separate note (EXAM 54) prepared addressing matters raised at the hearing session held to consider this policy. The parts of this policy of particular relevance to public houses are the section of Policy CHW01 relating to development that involves the loss or replacement of an existing community facility and also the circumstances where the Council supports proposals for new community infrastructure.

However, the Council considers that a bespoke policy covering the protection of public houses is required to adequately articulate the specific policy approach being afforded to protecting existing and supporting new public houses.

6) Carry through modification to be provided similar to MM210 for Assets of Community Value

As detailed in paragraph 7.7.5 of the London Plan, when nominated by a community group boroughs are encouraged to take a positive approach to designating public houses as Assets of Community Value (ACV). The listing a pub as an ACV affords local groups the opportunity to bid for the premises if it is put up for sale. Whilst not obliged to accept any bid, owners of an ACV have to consider bids from community groups and thereby the listing of a pub as an ACV is a material consideration when considering applications for change of use and / or compulsory purchase. However, the Council considers that it would generally be premature to attach weight as a material planning consideration to a nomination of a community facility such as a public house as an ACV prior to the Council's assessment of the merits of any such application.

The consideration given to an ACV, and the extent to which this can be a material consideration when determining an application, is addressed at the end of policy CHW04 which mirrors the wording used within the first policy of this chapter of the Local Plan relating to community infrastructure. Therefore, to ensure the internal consistency of the policy approach being taken, it is necessary to carry through the Council's proposed modification (MM 210) in respect of CHW01 to Policy CHW04. Accordingly, the Council proposes a further modification to the last sentence of the policy to read:

In considering proposals involving the loss of public houses the Council will take into account the listing ~~or nomination~~ of 'Assets of Community Value' as a material planning consideration.

Conclusion

The Council invites the Inspectors to consider and recommend that the Council makes the further modifications set out in this paper recognising that those considered to be Main Modifications will need to be formally consulted upon following the examination hearing sessions.