



**PLANNING
STATEMENT ON
BEHALF OF
LANGUARD HOMES
2020 LLP ARISING
FROM THE
PROPOSED CHANGE
OF USE FROM A4 TO
C3 AT
CHARLIE BUTLER
40 HIGH STREET
MORTLAKE**

**KR PLANNING
NOVEMBER 2011**

1. INTRODUCTION

- 1.1. This statement is submitted to the London Borough of Richmond upon Thames on behalf of Languard Homes in support of a full planning application for redevelopment of the site at 40 High Street, Mortlake. The proposal is to replace the existing licensed premises with a 9 unit residential development, housed within a four (4) storey building.
- 1.2. A previous planning application for the redevelopment of the site with an eight (8) storey building housing 24 units was withdrawn in June 2008.
- 1.3. As part of the pre-application process for this revised submission, Officers asked for a report to address the policy requirements of Policy DM TC4, as to the potential implication to the community arising from the loss of the premises.

2. THE PREMISES

- 2.1. Presently located on the application site is a 2 storey building, with a steeply pitched roof. The ground floor is in use as a Public House and the upper floor provides ancillary residential accommodation. Based on advice from Young's Breweries, the existing building dates from the 1950's.

3. LOCATION

- 3.1. The Charlie Butler Public House is located at 40 Mortlake High Street, London, Richmond Upon Thames, SW14 8HR. The site is located on the fringes of the town centre of Mortlake, and is but a short walk from the main district centre of Mortlake and Barnes High Street.
- 3.2. The site is flanked on one side by 'Rann House' a four storey residential building, likely dating from the 1960's. On the other side is Vineyard Heights, a modern residential and mixed use complex which steps from four storeys to ten storeys. The rear of the site is residential buildings, predominantly two storeys.

- 3.3. The area is subject to relatively high ambient noise levels dominated by aircraft noise from aircraft approaching Heathrow Airport and traffic along the Mortlake Rd.

4. LICENSING

- 4.1. A premises licence was granted on 22/12/2005 and was subject to conditions to ensure that licensing objectives were achieved.
- 4.2. Following a history of complaints, including the issuing of a noise abatement notice, the Borough resolved in December 2010 to reduce the licensed hours of the premises, and the implications of such are discussed in Section 6 below. A copy of the Licensing Report and Committee minutes are attached at Appendix A and B.

5. PLANNING POLICY

- 5.1. The proposals need to be considered in light of national, regional and local planning policy. The Local Planning Authority is required by statute to determine the application in accordance with relevant development plan policies, unless material considerations indicate otherwise.

Planning For Growth

- 5.2. In March 2011, the Minister for Decentralisation via the Chief Planner, issued a ministerial statement dealing with, amongst other things, the need for LPA's to be fully aware of viability matters. As a preamble, but relevant to this appeal is the following paragraphs

Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy.

And

When deciding whether to grant planning permission, local planning authorities should support and facilitate housing, economic and other forms of sustainable development.

Draft NPPF

- 5.3. In July 2011, the Government has published the Draft National Planning Policy Framework for consultation. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth. This consultation closed on 17 October 2011, but the Government has advised that it can be a material consideration in the determination of planning applications.
- 5.4. Of particular relevance to this application is the advice at para 107 which states the Governments key housing objective is to increase significantly the delivery of new homes. This means; delivering a wide choice of high quality homes that people want and need and creating sustainable, inclusive and mixed communities, including through the regeneration and renewal of areas of poor housing.
- 5.5. Para 126 of the same document advises that planning policies should '*safeguard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs*'.

Development Plan Policy

- 5.6. For the purpose of this report, the Development Plan policy comprises the London Plan 2011, the London Borough of Richmond upon Thames Core Strategy and Development Plan Document.
- 5.7. The London Plan 2011 functions as the Spatial Development Strategy for the whole of London. There is no specific policy dealing with loss or retention of Public Houses. Generalised policy advice with regards to support for shopping centres is to be found at Policy 4.8.
- 5.8. The London Borough of Richmond upon Thames Core Strategy was adopted in April 2009, and sets out the strategic planning policies to inform the now adopted DMP. Although there are policies relevant to the appropriateness of the replacement building, there are none that assist the decision maker in relation to public houses. There are objectives, such as at para 5.2.4 that *infrastructure needed by the Community* is available to all, and that opportunity is provided to visit entertainment facilities.

- 5.9. The London Borough of Richmond upon Thames DMP was adopted in November 2011, and sets out the planning policies to inform development control decisions made in relation to planning applications.
- 5.10. Of particular relevance to the application, Policy DM TC4 supports retention of isolated shops, small groups of shops and public houses which serve local needs. The policy seeks to ensure that there is provision of essential daily goods within reasonable walking distance around the Borough. The policy is subject to three distinct criteria,
- 5.11. The criteria are as follows:
- (a) there is another public house within convenient walking distance or
 - (b) The public house use is inappropriate in terms of access or neighbourliness or
 - (c) The proposed new use would provide a community service or function.
- 5.12. It is noteworthy that the criteria are not intended to be applied concurrently, but independently. This policy application was confirmed by the Borough during the EIP process (change reference H11).
- 5.13. In the reasoned justification is reference to a 2 year marketing requirement, however no policy criteria would assess any marketing. This is discussed in detail below.
- 5.14. Policy DM TC 5 states that uses which support the evening economy such as pubs (inter alia) will be supported if they are compatible with other policy, add diversity to the economy and do not impact on nearby amenity.

6. COMMENTARY

- 6.1. Coupled with the general economic outlook, the public house and restaurant sector has suffered since the onset of the global financial crisis. On a micro-economic level, the sector has in recent years been significantly altered by many legislative changes,

including the Licensing Act 2003, the DDA and perhaps most notably the ban of smoking within pub premises.

- 6.2. Furthermore, the sector has also had to deal with a number of social and political pressures during the past few years, including the health concerns over 'binge drinking' and associated anti-social behaviour, rising duty on alcoholic beverages and price competition particularly from supermarkets.

Alternate Venues

- 6.3. The policy does not quantify what a 'convenient walking distance', so the Applicant has determined to apply a 10 minute threshold in identifying its area of search.
- 6.4. There are currently fifteen (15) alternate pubs within a 10 minute walk of the application site, and four within a 2 minute walk from the application site. Many of these venues are located on High Streets, which are considered a more appropriate sites for these uses This high density of pubs is not considered sustainable and is unlikely to change any time soon. A plan with alternate pubs marked is attached at Appendix C.
- 6.5. These venues have been visited to ascertain that the fare offered is similar to that provided within the Charlie Butler, and the results are contained within the table below:

Venue	Pint Of Beer	Glass of Coke	Sky	Meals available
Charlie Butler	£3.70	£2.40	Yes	No
The Ship	£3.80	£2.30	Yes	Yes
The Tapestry	£3.85	£1.95	No	Yes
The Railway	£2.29	£1.85	Yes	Yes

- 6.6. It is noted that the offer at each of the alternate venues compares favourably to the existing premises, bar The Tapestry, which appears to operate more as a restaurant facility than a traditional pub.

Neighbour Amenity

- 6.7. It is noteworthy that the premises, particularly given criteria (b) of Policy DM TC4, has been the cause of significant noise disturbance to neighbouring residential properties. This disturbance is quantified in the attached licensing report, and resulted in the reduction in licensed hours at the venue, further reducing the potential for the pub's viability. The close proximity of the public house to these properties suggests that whatever the management regime, there will always be conflict between the two land uses.
- 6.8. A perusal of the objections to the previous application highlight that the loss of the pub was not raised as an issue by the local residents, nor by the local branch of CAMRA. Whilst the applicant is aware that these objections are not determinative, if the public house were fulfilling a valued local service, you would expect an outcry from that same community were it proposed to be removed.

Policy Requirement for Marketing

- 6.9. The criteria of Policy DM TC4 do not require a marketing exercise to be undertaken to judge compliance with the policy. The reference to marketing at para 4.2.35 has not been carried forward into any criteria for the determination of the application.
- 6.10. This has been discussed with Fiona O'Toole in the Policy Section of the Borough, and it was accepted that the reference to marketing was contained only in the reasoned justification, was not a determining factor for the policy, but that the policy would be engaged if marketing evidence were not forthcoming. This puzzling interpretation flies in the face of PPS12 which advises that this should not contain new policies, or expand on the policy to which it applies, and should not contain material which will itself be used for taking decisions on planning applications. The only conclusion is that marketing is irrelevant in the determining the applicability of DM TC4.
- 6.11. Whilst it may be desired by the Borough that other parties views of the premises (notwithstanding that they have unanimously waved it goodbye in the past), there is no

policy criteria against which this marketing may be assessed. The correct criteria are those outlined above, none of which address or need have site of marketing evidence to inform that judgment.

- 6.12. It is noted that the premises could revert to A2 or A3 use without the benefit of planning permission, and that neither of these land uses would be 'protected' by DM TC4.

7. CONCLUSION

- 7.1. The evidence demonstrates that the premises have not operated as a viable public house for at least the preceding five (5) years. Furthermore, the operations on-site have caused demonstrable harm to the amenity of neighbouring properties, requiring enforcement action from the Borough resulting in a reduction in trading hours further reducing the ability of the premises to operate viable.
- 7.2. A head count of nearby pubs demonstrates that there is more than sufficient capacity with equivalent offer for the change of use of the Charlie Butler without injurious loss to *the community*.

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RESPONSIBLE AUTHORITY PREMISES LICENCE REVIEW REPORT

THE CHARLIE BUTLER

OCTOBER 2010

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1. Summary

The Commercial Environmental Health Department (CEHD) is designated as a responsible authority under the Licensing Act 2003 and may take a premises licence review due to matters arising in connection with any one of the licensing objectives it is responsible for.

It is the opinion of the CEHD that the operation of the Charlie Butler Public House, 40 Mortlake High Street, Richmond is not compliant with the Licensing Act 2003 objective, of the promotion of the prevention of public nuisance, due to noise disturbance caused by live music noise break out from the premises and noise from patrons congregating in the external area. This results in significant disturbance and intrusion to residents in the vicinity of the premises.

There have also been alterations made to the building structure without consultation with the Licensing Authority and it is our opinion that these alterations have exacerbated the noise break out issues.

The CEHD is requesting that the premises licensed be reviewed and that further restrictions be imposed in order that the licensing objective of the promotion of the prevention of public nuisance may be achieved. The proposed conditions are presented in Table 1:

2. Site Details

The Charlie Butler Public House is located at 40 Mortlake High Street, London, Richmond Upon Thames, SW14 8HR. The premises are located in a mixed commercial and residential area with residential properties on Vineyard Path to the north and east of the premises. The area is subject to relatively high ambient noise levels dominated by aircraft noise from aircraft approaching Heathrow Airport and traffic along the Mortlake Rd. A location map is presented in Appendix A.

A premises licence was granted on 22/12/2005 and is subject to conditions to ensure that licensing objectives are achieved.

There have been a number of changes to the Licensee and DPS's since 2005 with the latest being Mr Crispin Mallet in April of 2010.

3. Complaint History.

From 2005-2010 there were a total of 23 noise related complaints made to the local authority. Intervention was typically taken on the night of the complaint and subsequently with a visit or letter to the licensee.

From April 2010 to June 2010, after Mr Mallet had taken over as licensee, a total a seven complaints were received by the CHED and/or the weekend noise service. The complaints concerned disturbance including sleep disturbance, caused live music breakout from the premises and were made by several residents living in the vicinity of the public house. Complaints were visited and noise witnessed by weekend noise service officers on more than one occasion. It was noted that on occasion patio doors remained open allowing music noise to break out. On other occasions windows and doors were closed but the level of music still caused disturbance.

Informal discussions were undertaken by officers from the CEHD and the licensee, Mr Mallet, in order to bring matters to his attention. Mr Mallet gave a verbal undertaking to introduce measures to reduce the noise breakout and ensure that the patio doors to the external area were not used during live performances and to control noise from customers using the external areas..

Following this meeting complaints continued to be received and have been witnessed on more than one occasion by weekend noise service officers within residential properties at levels which they judged to cause a significant intrusion.

The Environmental Protection Act 1990 Pt111 section 79-80 requires local authorities to investigate complaints made to them regarding noise and other statutory nuisances. Where they are convinced that a statutory nuisance in law exists they are duty bound to serve an abatement notice. Failure to comply with such a notice can result in further formal action being taken by the local authority.

Nuisance is not defined within the act but retains its common law definition;

"An unlawful interference with a persons use or enjoyment of land, or of some right over, or in connection with it." Read vLyons & Ltd (1945) KB 216.

The CEHD were satisfied that a statutory nuisance existed and on 30/06/2010, served an abatement notice on the person responsible; Mr Mallet and the owner of the property, Young's Brewery.

Following service of the notice there was a complaint received on 07/06/2010 by the weekend noise service. This was visited and the noise witnessed by council officers and assessed within a resident's bedroom with windows closed. In the opinion of the officers the noise was dominated by low frequency bass noise which was loud enough to cause sleep disturbance and as such was a breach of the abatement notice.

A further meeting was arranged between council officers from the licensing department, the CEHD, the licensee and area manager from Young's Brewery to discuss the ongoing noise disturbance issues, and the intentions of the licensee regarding noise control. A number of measures were identified by Mr Mallett including the purchase of a noise limiter, temporary sound insulation measures to the windows/doors and signage. Mr Mallet was confident that these measures would be sufficient to resolve the disturbance issues.

After this meeting, a further 5 complaints were received from residents in the vicinity of the premises by the weekend noise service. On 17/9/2010 a further complaint was received and witnessed by a weekend noise service officer who was of the opinion that the noise disturbance amounted to a breach of the abatement notice.

4. Public Nuisance Criteria

The section 182 guidance issued under the Licensing Act 2003 in regard to public nuisance states;

Public nuisance "retains its broad common law meaning for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbances affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of the licensed premises" (Para 7.40 of the Guidance).

Public nuisance will mainly concern noise nuisance, light pollution, noxious smells and litter (Para 7.39 of the Guidance)

The CEHD is therefore of the opinion that the above evidence clearly indicates that the public nuisance objective is not being complied with and that the actions of the

licensee to try to reduce music noise breakout through management and physical measures have been insufficient.

5. Alterations to Building Structure

The photograph taken of the premises in 2005 clearly shows that the facade of the building facing onto Vineyard Path is constructed of brick block work with single glazed windows inset in wooden frames. The 2010 photograph shows that there has been alteration to the structure including the installation of 2x single glazed patio doors to a newly constructed external seated patio area. It is our opinion that such alterations would have needed a premises licence variation which was not made to the Licensing Authority.



Building Structure 2005



Building Structure 2010



6. Assessment

The current structure of the building allows for music noise breakout every time the patio doors are opened for access to the external area. The doors contain single glazed panels which offer limited sound attenuation, specifically to low frequency bass noise, which has been complained of by several residents. Other windows to the side and rear facades are also single glazed and the window facing the Vineyard Path properties to the rear, has a openable window vent which even when closed allows significant noise breakout.

There are ventilation fans built into the wall and ceiling which also allow music noise breakout.

In summary it is our opinion that the current standard of sound insulation and control does not allow for "live band" performances at reasonable internal entertainment levels without causing disturbance to residents living in the vicinity of the premises.

Further physical measures will need to be taken if live music performances are to be continued at the premises. Options may include the installation of an acoustic lobby to the patio doors, upgrade single glazed windows with acoustic glazing, and install acoustic vents to ventilation system termination points. We understand that a "Formula Sound" music noise limiter has been purchased. In order for the licensee to obtain maximum benefit this should be installed to the manufacturer's instructions and internal music noise level limits controlled in order that the proposed condition or equivalent may be achieved. We recommend that this is undertaken in conjunction with a suitably competent acoustic consultant. We are of the opinion that due to the specific factors detailed above, simply installing a music noise limiter is insufficient in controlling the potential music noise breakout, but may be used as one of a group of measures to control the noise.

The CEHD therefore proposes that the following conditions are imposed in order that the public nuisance objective of the promotion of the prevention of public nuisance will be achieved.

7. Proposed Conditions

Table 1: Existing & Proposed Conditions

Item	Existing Conditions	Proposed Conditions
Live & Recorded Music	Monday - 19:00 to 23:30 Tuesday - 19:00 to 23:30 Wednesday - 19:00 to 23:30 Thursday - 19:00 to 23:30 Friday - 19:00 to 00:30 Saturday - 12:00 to 00:30 Sunday - 12:00 to 23:30	Monday - 19:00 to 22:30 Tuesday - 19:00 to 22:30 Wednesday - 19:00 to 22:30 Thursday - 19:00 to 22:30 Friday - 19:00 to 23:00 Saturday - 12:00 to 23:00 Sunday - 12:00 to 22:30
Noise Level Condition	Regular noise checks shall take place during the performance of regulated entertainment	<p><i>Up to 23:00 h applicable to entertainment premises which adjoin or are adjacent to noise sensitive properties. The noise climate of the surrounding area shall be protected such that the A-weighted equivalent continuous noise level (LAeq) emanating from the application site, as measured 1 metre from any façade of any noise sensitive premises over any 5 minute period with entertainment taking place shall not increase by more than 5 dB as compared to the same measure, from the same position, and over a comparable period, with no entertainment taking place.</i></p> <p><i>The unweighted equivalent noise level (Leq) in the 63Hz Octave band, measured using the "fast" time constant, inside any "living room" of any noise sensitive premises, with the windows open or closed, over any 5 minute period with entertainment noise taking place, should show no increase as compared to the same measure, from the same location(s), and over a comparable period, with no</i></p>

		<p><i>entertainment taking place.</i></p> <p><i>The licensee shall demonstrate compliance of the above condition by provision of an acoustic report undertaken by a competent acoustic consultant.</i></p>
Sound Insulation	None	<p><i>1. an acoustic lobby shall be created between all exits leading onto the external patio area. The acoustic lobby should achieve a sound insulation performance of at least Rw40</i></p> <p><i>2. Single glazed windows to facade which faces onto Vineyard Path to be replaced with acoustic glazing which should achieve a sound insulation performance of at least Rw40</i></p> <p><i>3. Ventilation to be acoustically treated which should achieve a sound insulation performance of at least Rw40</i></p>
External Area	No speaker music or otherwise shall take place within the garden of the licensed premises unless covered by the serving of a Temporary Event Notice.	<i>No use of the external areas by customers after 23.30, except for customers to smoke.</i>

Appendix A: Site Layout



LICENSING SUB-COMMITTEE

Record of the proceedings held on 9 December 2010.

PRESENT: Councillor Treble (Chairman), Councillor Chappell and Councillor Salvoni.

Agenda Item No.

3

Guy Bishop, Licensing and Litigation Lawyer from the Council's Legal Services Department, Barry Croft, Licensing Team Leader and John Giffin, Licensing Committee Manager also attended the meeting.

The Sub-committee considered reports and **RESOLVED:**

49. PROCEDURE [Agenda Items 1]

The procedure set out in the Council's Licensing Sub-committee Procedures be confirmed.

50. DECLARATIONS OF INTEREST [Agenda Item 2]

There were no declarations of interest.

51. MINUTES [Agenda Item 3]

There were no records of proceedings for approval.

52. CHARLIE BUTLER – 40, HIGH STREET, MORTLAKE [Agenda Item 4]

The Sub-committee was required to hear and determine an application for a review of a premises licence called by the Council's Commercial Environmental Health team.

The Sub-committee heard that a meeting had recently taken place between the premises licence holder and an officer from the Commercial Environmental Health team to resolve the noise issues which had prompted the licence review. An agreement has been reached and subject to the approval of the Sub-committee the following measures will be imposed as conditions on the premises licence once the necessary work required to enable their implementation has been completed.

Schedule of agreed further Conditions to be imposed on the Premises Licence

1. External Area – No use of external area is permitted after 23:00, except for smokers, who may only use the front area after 23:00. No drinks in open containers shall be taken outside after 23:00.
2. Live and Recorded Music is only permitted at the following times:
Monday - Friday 19:00 – 23:30
Saturday - Sunday 12:00 – 23:30
3. A music noise limiter device shall be installed and set by a suitable qualified acoustic consultant/engineer in order that the following noise criteria will be achieved. All amplified music shall only be played through power supplies controlled by the music noise limiter. An acoustic report

shall be provided which demonstrates that the following criteria will be complied with:

- 'Up to 23:00 applicable to entertainment premises which adjoin or are adjacent to noise sensitive properties. The noise climate of the surrounding area shall be protected such that the A-weighted equivalent continuous noise level (LAeq) emanating from the application site, as measured one metre from any façade of any noise sensitive premises over any five minute period with entertainment taking place shall not increase by more than five dB as compared to the same measure, from the same position, and over a comparable period, with no entertainment taking place.
- The unweighted equivalent noise level (Leq) in the 63Hz Octave band, measured using the "fast" time constant, inside any "living room" of any noise sensitive premises, with the windows open or closed, over any five minute period with entertainment noise taking place, should show no increase as compared to the same measure, from the same location(s), and over a comparable period, with no entertainment taking place.
- After 23:00 applicable to all entertainment premises the noise climate of the surrounding area shall be protected such that the A-weighted equivalent noise level (LAeq) emanating from the application site, as measured one metre from any façade of any noise sensitive premises over any five minute period with entertainment taking place shall not increase by more than three dB as compared to the same measure, from the same position, and over a comparable period, with no entertainment taking place.
- The unweighted equivalent noise level (Leq) in the 63Hz Octave band, measured using the "fast" time constant, inside any "living room" of any noise sensitive premises, with the windows open or closed, over any five minute period with entertainment noise taking place, should show no increase as compared to the same measure, from the same location(s), and over a comparable period, with no entertainment taking place'.

Works Undertaken to Address Noise Control Steps

Patio Doors

The left hand side patio door set to be blocked up with concrete block work or equivalent. The right hand side doors to be upgraded with acoustic laminate glazing 6.8/10/6.8 (glass, airspace, glass). Acoustic type seals to be fitted. Switches fitted to the door set to activate cut off to power supply to amplification if doors are open during regulated entertainment.

Extraction Vents

Two vents to be filled with concrete blocks and plastered over. The remaining vent will be treated with an inline silencer or equivalent works.

Fire Place

Baffle to be built and used during regulated entertainment.

Ceiling

Southern end of premises - under boarding of this area to add further mass to ceiling.

External Area

Close board fencing to be installed where the existing hazel type fence is located.

Noise Limiter

A noise limiter to be set to ensure that the LBRuT noise control criteria (as per review report) will be achieved.

Acoustic Report

An acoustic report detailing all the above measures and results from assessment which demonstrates compliance with criteria to be undertaken.

The Sub-committee requested that a revised licensing plan be submitted to show the changes to the patio doors.

On behalf of the Sub-committee the Chairman commended the Commercial Environmental Health officer for his effort in achieving a satisfactory conclusion on this matter and welcomed the measures undertaken and proposed as a result of this licence review process.

James Anderson from Poppleston-Allen Solicitors spoke on behalf of the applicant Youngs Brewery. He was accompanied by the area Manager from Youngs Brewery Mr J. Miller and Mr C. Mallett the licence holder. An officer from Richmond Council Commercial Environmental Health Team spoke as a Responsible Authority.

CHAIRMAN

The meeting which started at 7:04pm and ended at 7:28pm adjourned between 7:20pm and 7:24pm.