

**Notice of public meeting of
Joint Decision Session - Cabinet Leader, Finance & Performance
and Cabinet Member Environmental Services, Planning and
Economic Development**

To: Councillor Williams and Councillor Levene

Date: Monday, 22 December 2014

**(Please note: this is the reconvened meeting of the
Joint Decision Session that was adjourned on 11
December 2014 to enable further written legal advice
to be received in respect of agenda item 4)**

Time: 5.30 pm

Venue: The Thornton Room - Ground Floor, West Offices (G039)

A G E N D A

Notice to Members – Calling In:

Members are reminded that, should they wish to call in any item* on this agenda, notice must be given to Democratic Services by:

4.00pm on Wednesday 24 December 2014 if an item is called in after a decision has been taken.

*With the exception of matters that have been subject of a previous call in, require Full Council approval or are urgent which are not subject to the call in provisions. Any called in items will be considered by the Corporate and Scrutiny Management Committee.

1. **Declarations of Interest**

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. **Exclusion of Press and Public**

To consider excluding the press and public from the meeting during consideration of Annex B to agenda item 4 – Request for an Article 4 Direction relating to The Punch Bowl public house, Lowther Street York on the grounds that it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. This information is classed as exempt under paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006).

3. **Minutes [This item was dealt with on 11 December 2014]**

To approve and sign the minutes of the Decision Sessions - Cabinet Member Environmental Services, Planning and Sustainability held on 13 October 2014 and 30 October 2014.

4. **Public Participation**

At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is **12:00 noon on Monday 22 December 2014**.

Members of the public may register to speak on an item on the agenda or an issue within the Cabinet Members' remit.

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The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at

http://www.york.gov.uk/downloads/download/3130/protocol_for_webcasting_filming_and_recording_of_council_meetings

**5. Request for an Article 4 Direction relating to (Pages 1 - 32)
The Punch Bowl public house, Lowther
Street, York**

This report relates to a request from the York Branch of CAMRA that the Council make an immediate Article 4 Direction in respect of the Punch Bowl public house, 134 Lowther Street, York.

6. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Senior Democracy Officer:

Name: Jill Pickering

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For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim (Polish)
własnym języku.

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

☎ (01904) 551550



11 December 2014

Public Joint Decision Session of the Cabinet Member for Environmental Services, Planning and Sustainability and Cabinet Member for Finance and Performance

Report of Director of City and Environmental Services

Request for Article 4 Direction in respect of the Punch Bowl Public House, York

1.0 Summary

- 1.1 This report relates to a request from the York Branch of CAMRA that the Council make an immediate Article 4 Direction in respect of the Punch Bowl public house, 134 Lowther Street, York.
- 1.2 Members may recall that the matter was considered at the meeting of the Cabinet held on 7 October. The report to that meeting as appended (Annex A) sets out the basis for the request, the legislative and policy background and provides an analysis of the evidence presented along with the request. Officers recommended that an immediate Article 4 direction should not be imposed.

It was resolved:

- (i) That, as a matter of urgency, the Director of City and Environmental Services and the Director of Customer and Business Support Services be requested to further investigate options in relation to the request for action to preserve the Punch Bowl public house, Lowther Street, York as a public house;
- (ii) That the Cabinet Members for Environmental Services, Planning and Sustainability and Finance and Performance, each be asked to consider the options identified by the Directors under (i) above and, if satisfied that action is justified, to take such action under his delegated powers.
- (iii) To confirm the delegation of powers to the Cabinet Member for Environmental Services, Planning and Sustainability to make an

Article 4 direction to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) if satisfied that sufficient evidence exists to justify the making of such a Direction.

- (iv) That Officers be requested to bring a report back to a future Cabinet meeting outlining a long term strategy to assist with similar future requests.

Reason: In order to allow further work to evidence if exceptional circumstances exist to show that a change of use would harm the amenity or the proper planning of the area, and whether there is a need to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) by the making of an Article 4 Direction.”

- 1.3 Members should note that at the time of writing this report, the minutes of the meeting have yet to be formally agreed. The purpose of this report is to address point (iii) of the Cabinet resolution, to provide advice regarding the available evidence in relation to the “exceptional circumstances” legal test relevant to an immediate Article 4 Direction. This update report should therefore be read in conjunction with the Cabinet report.
- 1.4 Members are asked to consider, having regard to the additional evidence provided from CAMRA and outlined in this report, whether exceptional circumstances exist to make an immediate Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1).
- 1.5 It is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction restricting the change of use from Class A4 to Class A1 for the following reasons:
- The change of use would not harm the visual amenity of the area
 - The change of use would not damage the historic environment
 - The future provision of community facilities at the premises is entirely dependent on how it is managed, which is outside the control of the local planning authority
 - Any issues that arise as a result of crime, disorder or anti-social behaviour could be more appropriately addressed through the Licensing process.
 - The use of an *immediate* Article 4 Direction would expose the Council to a claim for compensation for abortive expenditure or other loss or damage

directly attributable to the withdrawal of permitted development rights, in circumstances where a subsequent planning application made within 12 months of the Direction is refused or granted subject to conditions. This would be likely to include business losses, which could be substantial.

- The imposition of an Article 4 Direction in this case may result in further requests being made in respect of public houses elsewhere within the city. It should be borne in mind that the General Permitted Development Order (GPDO) is national legislation which is intended (amongst other things) to provide a degree of flexibility between use classes and that an Article 4 Direction to bring a permitted change within planning control should only be imposed in *exceptional circumstances*. It is not recommended that Article 4 Directions be imposed on an “ad hoc” basis on individual sites in order to address particular situations as and when they arise. In situations where the problem relates to a wider area, it is considered that a more holistic approach would be appropriate.

2.0 Background

- 2.1 The request was accompanied by a petition with over 1200 signatories, strongly opposed to its replacement with a convenience store. The representations originally submitted by CAMRA have since been expanded upon and supplemented by a number of Witness Statements and relevant testimonials from users of the Public House. The documents include submissions from University of York Football Club, The Gravers - a specialist residential mental health care home, 2 longstanding patrons of the Punch Bowl and a resident who has made representations to the Cabinet Members.

3.0 Consultation

- 3.1 No external consultation has been carried out in respect of this request for an immediate Direction. However Highway Network Management have been consulted with regard to potential traffic issues that would arise should be premises be used for retailing.

4.0 Options

- 4.1 Members can either agree that an immediate Article 4 Direction be made, or alternatively reject the request. In either case, reasons should be given. A third option would be to consider a *non-immediate* Article 4 Direction, imposed following a consultation period of, usually, 28 days and with at least 12 months notice of it coming into force. Clearly, this would not provide the instant protection that an immediate Article 4 Direction would provide, but would not expose the Council to subsequent claims for compensation.

5.0 Additional Submissions

5.1 Since the original request for the Article 4 Direction was made, further supporting information has been submitted by CAMRA. This can be broadly categorised and summarised as follows:-

The Punch Bowl is an invaluable resource for the local community

5.2 The Punch Bowl is an excellent example of a community pub serving a wide customer demographic. This includes pensioners, families, disabled clientele (neither The Castle Howard Ox nor The Brigadier Gerard are wheelchair friendly), vulnerable clientele who perceive the pub as a safe environment and do not fear intimidation or prejudice, and sports clubs. The pub has its own darts team, pool team, dominoes team and golf society. It provides a meeting place for teams from York St. John University, specifically the football team and netball team. There is a large function room which is used by the football team for meetings and social events, and which is also used for karate instruction.

The historical loss of similar facilities within The Groves area

5.3 Paragraph 70 of the National Planning Policy Framework (NPPF) clearly states that planning policies and decisions should guard 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. The Groves area has already sustained the loss of The Reindeer, The Magpie and The Groves Working Men's Club. This has reduced the facilities within the immediate area to just two public houses.

The Punch Bowl provides social, recreational and cultural facilities for the local community not available elsewhere within a reasonable distance

5.4 The Punch Bowl has a large upstairs function room and ground floor games room that serve the needs of the local community. These would not be replicated by a convenience store and thus would constitute a net loss. Neither The Castle Howard Ox nor The Brigadier Gerard have similar facilities in one building that can all be used at the same time by different groups.

The need for a community to have pubs within a reasonable walking distance

5.5 Paragraph 70 of the NPPF refers to the need to plan positively for the provision of community facilities, including public houses, to enhance the sustainability of communities and residential environments. However, distance is not the only criteria cited by Planning Inspectors when considering alternative facilities, and the character of a particular establishment as perceived by those who use it is also an important factor.

5.6 Taking The Punch Bowl, The Castle Howard Ox, The Brigadier Gerard and Tap & Spile, there are 4 pubs serving 5762 adults in 2723 households within the three polling districts that make up the local community. In addition, it is not the distance from the Punch Bowl to the nearest pubs that should be measured, it is the distance from people`s homes to the alternative facilities. These alternative facilities are not well placed to serve the local community and for many are not within easy walking distance when compared to the Punch Bowl.

Planning permission would not be granted for a convenience store due to traffic concerns

5.7 CAMRA contends that the replacement of the public house with a convenience store would generate a significant increase in traffic. This is not an issue at the present time as customers do not drive to the pub. There is already insufficient parking for residents and shoppers in Lowther Street. There is nowhere for a delivery lorry to park, which would occur several times a week at a convenience store. A lorry parked in Lowther Street could block emergency vehicles from York Hospital, and there are traffic lights directly outside The Punch Bowl so parking would be impossible without restricting the free flow of traffic.

5.8 N.B. Highway Network Management have been consulted and do not consider that there would be grounds to refuse planning permission for the change of use to a shop on highway safety grounds. The comments are discussed in more detail below.

Significant local feedback has stated there is no desire for a convenience store

5.9 Over 1200 people have signed a petition stating “we have adequate shopping facilities already in the area”. The balance of amenities in the area has to be considered. A convenience store would merely duplicate existing facilities in the area whilst removing a valuable community asset. The strength and depth of local opinion has been an important consideration in the determination of appeals, particularly in terms of meeting a broader community need.

A convenience store represents a threat to the social and mental health balance of the Groves area

5.10 The area surrounding the proposed convenience store, which would include the sale of alcohol, is close to Arc Light (drug & alcohol rehabilitation centre), Bootham Park Hospital (mental health services), Sycamore House (mental health day centre) and 98 Union Terrace (community mental health facility).

Conversion to a convenience store would adversely affect the visual amenity of the area

- 5.11 Although not listed, The Punch Bowl is a building of character dating back to 1856, and adds to the visual amenity of the area. It is in a prominent and highly visible location on a busy junction. The conversion to a convenience store would involve modifications which would significantly change the character of the building. It is likely that the traditional bay windows would be replaced with a more conventional shop front. Other works would be necessary in order to make it fit for purpose as a convenience store.
- 5.12 The conversion to a convenience store would have a negative impact on parking and highway safety, and would adversely affect the visual amenity of the area.

6.0 Officer Analysis of Additional Submissions

- 6.1 As reported to Cabinet, of the National Planning Policy Framework considers community facilities to include both shops and pubs. However, in this case the evidence suggests that the local community attach greater value to the public house than they would to another convenience store. The local plan policy background is reported previously. Paragraph 200 of the NPPF is very clear that there are two reasons to consider when issuing an Article 4 Direction – *“to protect local amenity or the wellbeing of the area”*.
- 6.2 The loss of The Punch Bowl needs to be assessed from both a qualitative and quantitative perspective. The local community perceive it as more than just a drinking establishment; it is reported that it performs a valuable role in the community by contributing to the social, recreational and cultural facilities in the area. It provides facilities that are not available elsewhere in the local community including a function room and games room, and provides a meeting place for a number of local organisations including sports clubs. In addition to not providing a similar range of facilities, it is contended that the nearest public houses are not as accessible for disabled users or as conveniently located to serve the local community, being located either on the periphery of The Groves (e.g. The Castle Howard Ox and Brigadier Gerard) or further towards the urban area (e.g. The Gillygate). The value of The Punch Bowl to the local community is illustrated by the petition signed by over 1200 people, who are opposed to its replacement with a convenience store.
- 6.3 However, an Article 4 Direction to control a change of use would not control the management of the public house, or guarantee the continued provision of the range of facilities currently made available. The community facilities are not the primary lawful use of the premises (which is as a public house) and their continued provision is entirely dependent on how the pub is managed. This is completely outside the control of the local planning authority. Also there is a requirement under the Disability Discrimination Act for service providers (including public houses) to ensure they are not unreasonably difficult for disabled users, which would apply to other public houses within the area.

- 6.4 Justification for an Article 4 Direction would be that exceptional circumstances exist whereby the change of use *would harm local amenity or the proper planning of the area*. If it could be demonstrated that there are site specific circumstances at the Punch Bowl which would make the change of use to a supermarket undesirable on planning grounds (which could, for example, include highway considerations), then an Article 4 Direction may be justified.
- 6.5 The representations made by CAMRA include reference to the lack of car parking at the site and other traffic issues that would arise should the supermarket proposal go ahead. Another issue could be whether large delivery vehicles in this location would interrupt the free flow of traffic and cause danger to highway users.
- 6.6 With this in mind, Highways Network Management has been consulted and were asked to comment on the basis that a formal application for planning permission had been submitted for the change of use of the public house to a shop, as would be required if the Article 4 Direction were imposed. They have commented as follows:

“The site is surrounded by a number of various Traffic Regulation Orders (TRO`s) which would prevent indiscriminate parking. The natural layout of the highway also assists in restricting where people could stop to wait or park for short periods. The building frontage is on a signal controlled junction; parking in this area would constitute obstruction and would result in vehicles proceeding beyond the traffic signal head, thus effectively waiting within the signalised area. An advanced cycle stop line also covers a large part of the site frontage.

In terms of impact on highway safety, I would be confident that the Planning Inspectorate would take the view that it is within the power of the Local Highway Authority to implement/amend TRO`s as may be necessary in order to protect the free flow of traffic and highway safety.

Furthermore the site is in a sustainable location and it is entirely reasonable to assume that a large proportion of customers will arrive by non car modes. The site is located in a residential area and will provide a convenience/top up shop facility for residents.

The building also has a side elevation to Lowther St. From experience of other developments of this nature it is likely that this is where the ‘back of house’ and servicing would be located.

Lowther St is also covered by various waiting restrictions, including double yellow lines and a residents parking scheme (R25 scheme with 10 min limited waiting).

At the junction of Haxby Road/Lowther St, on Lowther St there is an existing residents parking bay which is in a location which could be considered suitable

for servicing requirements. Any changes or loss to residents parking in the R25 scheme are likely to be controversial and unpopular given that the scheme is heavily subscribed. An alternative solution is that an existing traffic build out could be removed to enable the adjacent respark bay to be relocated. This, in turn, could allow a Goods Vehicle Only Loading Bay to be provided and protected by an appropriately worded traffic order (potentially also providing an area of limited waiting for customers of the shop).

We would seek funding to change the double yellow lines on the site frontage to a 24 hour loading ban and funds to cover the necessary highway works to Lowther Street. Changes to TRO`s are not guaranteed to be successful and as such there would be an element of risk to the developer should the orders not progress.”

- 6.7 For these reasons, it is not considered that an Article 4 Direction could be justified on the grounds that the change of use to a shop would compromise highway safety.
- 6.8 Concerns have been expressed by CAMRA that a new convenience store would represent a threat to the social and mental health balance of the Groves area as a result of the availability of cheap alcohol. However, Members will be aware that the opening hours of the premises and sale of alcohol could be separately controlled through the Licensing process and those procedures are in place for licenses to be reviewed should any problems arise.
- 6.9 Concerns have also been expressed that the conversion to a convenience store would adversely affect the visual amenity of the area. However, this could not be argued in the case of a proposal for a change of use, particularly as any external changes could be controlled through a subsequent planning application.
- 6.10 It should be borne in mind that the imposition of an “immediate” Article 4 Direction, as requested by CAMRA, would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO. Officers are aware that in similar circumstances elsewhere this has amounted to a claim of several hundred thousand pounds. Whilst acknowledging that it can not be used as formal evidence, CAMRA has stated that, according to the licensee, the retailer involved would cease their interest in the property in the event that an immediate Article 4 Direction were to be imposed. CAMRA suggests that there is no risk to the Council, as the Article 4 could be rescinded if a challenge were to be made. However, there remains a clear risk of compensation being claimed if an immediate Direction were to be made, as enshrined in Sections 107 and 108 of the Town and Country Planning Act 1990.

- 6.11 However, the basis for making a Direction must be that there are considered to be exceptional circumstances in planning terms, in the full knowledge of possible future significant compensation arising from a refused application or contested condition. Therefore if the planning amenity issues remained at the time of any challenge, it could be considered as a misuse of the Provision for the Council to rescind the Direction purely because of compensation concerns, having considered it necessary to protect amenity and imposed the Direction knowing full well that this scenario could arise. Further, officers are concerned that there is no guarantee the particular retailer would not contest the Article 4 Direction, nor is there any confirmation that the owners are obliged to offer the lease of the premises to the one retailer mentioned. Another may wish to pursue the proposed change of use and challenge the Direction.
- 6.12 A further consideration is that the imposition of an Article 4 Direction in this case may set a precedent for further requests to be made in respect of similar proposals which would otherwise not normally require planning permission, not just affecting public houses but also other uses/local amenities. In order to avoid this possibility, Members would need to be satisfied that The Punch Bowl is an exceptional case and presents a unique set of planning circumstances that may not necessarily occur elsewhere. The General Permitted Development Order (GPDO) is national legislation which is intended (amongst other things) to provide a degree of flexibility between use classes and that an Article 4 Direction to bring a permitted change within planning control should only be imposed in exceptional circumstances. It is not recommended that Article 4 Directions be imposed on an "ad hoc" basis on individual sites in order to address particular situations as and when they arise.
- 6.13 A non-immediate Article 4 Direction would not provide instant protection as 12 months notice prior to a direction taking effect is required, but would not expose the Council to significant costs arising from subsequent claims for compensation. However exceptional circumstances relating to the harm to planning amenity of the area would still be required for the imposition of such a Direction to be justified.
- 6.14 It is acknowledged that there are valid and genuine concerns regarding the potential loss of the public house and the much valued community facilities it provides. However in light of the above analysis of the additional representations from a planning perspective and in the circumstances outlined, officers still do not consider that there are exceptional circumstances to show that local amenity or the proper planning of the area would be harmed by the change of use of the public house, and could not therefore recommend that a Direction is made.
- 6.15 In situations where the issue and concern relates to a wider area, it is considered that a more holistic approach would be appropriate. This is the approach being adopted by Wandsworth Borough Council, who intend to address the issue through the Local Plan process, using a criteria based Supplementary Planning Document to guide decision making alongside an

Article 4 Direction which will identify specific public houses that require protection. In accordance with point (iv) of the Cabinet resolution, a report outlining a longer term strategy to deal with such requests will be brought to Cabinet in due course.

7.0 Council Plan

7.1 The most relevant section is that relating to Community Infrastructure, which seeks to establish appropriate community facilities, including housing, leisure opportunities, schools, and work and enterprise units. It states that in planning for our communities, the Council will work in a more joined up way in order to better meet the infrastructure needs of each neighbourhood.

8.0 Implications

8.1 **Financial** - the imposition of an “immediate” Article 4 Direction would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO. A Direction with a 12 month notice period would not give rise to such a substantial financial risk.

8.2 **Human Resources (HR)** – There should be no Human Resources implications

8.3 **Equalities** - The Council’s duty under the Equality Act 2010 must be considered in determining whether to make an Article 4 Direction. Having regard to the circumstances of the case, it is not considered that the recommendation not to make the Direction would conflict with the Council’s statutory duty under the Act, particularly bearing in mind the requirement on other public houses in the area to ensure that they are not unreasonably difficult for disabled users.

8.4 **Legal** – Whether to make an immediate Article 4 Direction is a discretionary power to be exercised in accordance with the principles of Wednesbury reasonableness. An Article 4 Direction should only be made if Members are satisfied that exceptional circumstances exist where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Members must consider whether the change of use would be prejudicial to the proper planning of the area or constitute a threat to the amenity of the area. The potential harm must be identified to justify making the Direction. If an Article 4 Direction is made, and a subsequent planning application is refused, the Local Planning Authority can be liable for compensation.

8.5 **Crime and Disorder** - There are no known implications

8.6 **Information Technology (IT)** – There are no known implications

8.7 **Property** – There are no known implications

8.8 **Other** – None

9.0 Risk Management

9.1 The imposition of an “immediate” Article 4 Direction would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO. There are also concerns that a precedent would be set for other similar requests which would then have to be dealt with on an “ad hoc” basis.

10.0 Recommendations

10.1 It is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) for the following reasons:

- The change of use would not harm the visual amenity of the area
- The change of use would not damage the historic environment
- The Article 4 Direction in itself would not prevent the public house from changing to a shop, it merely requires a planning application to be made
- The future provision of community facilities at the premises is entirely dependent on how it is managed, which is outside the control of the local planning authority
- Any issues that arise as a result of crime, disorder or anti-social behaviour could be addressed through the Licensing process.
- The use of an *immediate* Article 4 Direction would expose the Council to a claim for substantial compensation for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights, in circumstances where a subsequent planning application made within 12 months of the Direction is refused or granted subject to conditions. This would be likely to include business losses, could be substantial.
- The imposition of an Article 4 Direction in this case may set a precedent for further requests to be made in respect of public houses elsewhere within the city, which if supported would also give rise to significant risk of further substantial compensation claims

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**Report
Approved**



Date **2nd December 2014**

Annex

- A - Report to Cabinet 7th October 2014
The Punch Bowl Public House, Lowther Street, York – Article 4 Direction



Cabinet**7 October 2014**

Report of the Cabinet Member for Environmental Services, Planning & Sustainability

The Punch Bowl Public House, Lowther Street, York – Article 4 Direction**Summary**

- 1.1 This report relates to a request from the York Branch of CAMRA that the Council make a make an immediate Article 4 Direction of the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1).
- 1.2 It is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction restricting the change of use from Class A4 to Class A1 for the following reasons:
 - The evidence does not show that *exceptional circumstances* exist whereby such a change of use would harm local amenity or the proper planning of the area
 - The National Planning Policy Framework (NPPF) states that community facilities include both shops and pubs. The change of use would not, therefore, result in the net loss of a community facility
 - The change of use would not harm the visual amenity of the area
 - The change of use would not damage the historic environment
 - The public house is within the urban area where there are similar facilities within a reasonable distance.
 - The circumstances outlined by CAMRA in which Article 4 Directions have been made by other authorities differ from this case, in that they predominantly relate to the demolition and redevelopment of public houses rather than a change of use.
 - The Article 4 Direction in itself would not prevent the public house from changing to a shop, it merely requires a planning application to be made.

- The use of an Article 4 Direction gives rise to compensation (payable by the Council) for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights, in circumstances where a subsequent planning application made within 12 months of the Direction is refused or granted subject to conditions.

Background

- 2.1 The reasons given by CAMRA for requesting the Article 4 Direction are that they understand that the Punch Bowl public house is the subject of active discussions for a change of use to a supermarket selling alcohol, between the owners (Enterprise Inns) and a national retailer. Such a change of use could normally take place without the need for planning permission. CAMRA state that discussions are at an advanced stage, and that the pub is at imminent risk of being lost as a public house, which is a “community facility” in terms of the NPPF. CAMRA consider that an immediate Article 4 Direction is the most appropriate way of protecting the public house as it would require the submission of a formal application for planning permission for a change of use to a shop.
- 2.2 The Punch Bowl is clearly a much valued local amenity and its potential change of use to a supermarket has resulted in a significant amount of local opposition. The request is accompanied by a petition containing 70 signatures, although CAMRA states that around 1000 signatures have been collected from Punch Bowl patrons that could be supplied if necessary.

Legislative Background

- 2.3 The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) sets out the categories of development that can be undertaken without the need for planning permission, known as “permitted development”. Class A of Part 3 of Schedule 2 to the GPDO states that development consisting of a change of use of a building to a use falling within Class A1 (shops) from a use falling within Class A3 (restaurants and cafes), A4 (drinking establishments) or A5 (hot food takeaways) falls within permitted development. Thus a change of use from a public house to a shop is classed as permitted development, and under national legislation can take place without the need for planning permission.

The Effects of an Article 4 Direction

- 2.4 The effect of an Article 4 Direction would be to remove permitted rights for any category of development specified within it. In this particular case, if an

Article 4 Direction was to be imposed, planning permission would be required for the change of use of the public house (Class A4) to a shop (Class A1). It is important to note that an Article 4 Direction would not, in itself, prevent the change of use from going ahead, it would merely bring it within planning control by requiring a formal application for planning permission to be submitted. Any such application would then need to be considered against national and local planning policies and any other relevant material planning considerations. If the application is refused or granted subject to conditions more restrictive than the GPDO, the Local Planning Authority can be liable for compensation under S108 of the Act.

- 2.5 The request has been made for an “immediate” direction, whereby permitted development rights are removed with immediate effect and the Direction is then consulted upon. The Direction will lapse after 6 months from when it was made unless it is confirmed by the Council following the consultation within the six month period. An immediate direction should only be used where there is an urgent, justified requirement for protection.
- 2.6 The right to compensation (payable by the Local Planning Authority) arises if an application is made for planning permission for development formerly permitted by the GPDO and this application is refused, or granted subject to conditions more limiting than those in the GPDO

Compensation can be claimed:-

- (i) For abortive expenditure (this would be expenditure incurred in the preparation of plans for the purpose of any development).
- (ii) For other loss or damage directly attributable to the revocation. This includes depreciation of land value in certain circumstances, where permitted development rights are taken away and loss is suffered which is directly attributable to their removal. “Directly attributable” suggests a close causal link e.g. a claimant can show that they had a business, and that as a result of removal of permitted development rights, they have lost future profits.

- 2.7 It is relevant to take into account the potential financial consequences to the public purse of making an Article 4 Direction.

Role of the Secretary Of State (SoS)

- 2.8 Whilst Local Planning Authorities have the power to make and confirm their own Article 4 directions and do not require the SoS's approval in this respect, the SoS does retain the power to cancel or modify Article 4

directions made by an LPA. This power can be exercised by the SoS at any point (i.e. either before or after the direction has been confirmed by the LPA). Accordingly, the SoS essentially has the jurisdiction to oversee and review directions made by an LPA. Thus the imposition of an Article 4 Direction should be carefully considered as any that fail to convincingly meet the criteria described in the relevant legislation and guidance may be cancelled by the SoS.

Ministerial Guidance

- 2.9 Guidance on the use of Article 4 Directions is contained within Department of the Environment Circular 9/95 (Replacement Appendix D). This states that local planning authorities should consider making article 4 directions *only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area.*
- 2.10 For all Article 4 directions the legal requirement is that the local planning authority is satisfied that it is expedient that development that would normally benefit from permitted development rights should not be carried out unless permission is granted for it on an application. Additionally, for directions with immediate effect, the legal requirement is that the local planning authority considers that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenity of their area.
- 2.11 In deciding whether an Article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address.
- 2.12 In deciding whether an Article 4 direction might be appropriate, Circular 9/95 states that local planning authorities may want to consider whether the exercise of permitted development rights would (amongst other things):
- Undermine the visual amenity of the area or damage the historic environment;
 - Undermine local objectives to create or maintain mixed communities;

Consultation

- 3.1 Due to the urgent nature of the case, no consultation has been undertaken. In the case of an immediate Article 4 Direction, permitted development

rights would be removed with immediate effect and the Direction would then be consulted upon.

Options

- 4.1 Members can either agree that an immediate Article 4 Direction be made, or alternatively reject the request. In either case, reasons should be given.

Analysis

- 5.1 The following is a précis of the case put forward by the applicant, in favour of an Article 4 Direction:

- A public house is classed as a community facility within the National Planning Policy Framework (NPPF)
- The NPPF seeks to guard against the loss of valued facilities and services (paragraph 70), and Article 4 Directions can be used to remove national permitted development rights in order to protect local amenity or the wellbeing of an area (paragraph 200).
- The Punch Bowl is a thriving and irreplaceable local amenity offering valued facilities not available elsewhere in the immediate neighbourhood.
- It is an asset for residents in The Groves, including pensioners, families, disabled clientele and local sports teams (e.g. darts, dominoes and pool).
- There is a large function room used for karate instruction and as a training facility, as well as wedding receptions, birthdays and other social events. There is also a large ground floor games room. Other nearby venues (e.g. Conservative Club, Clarence Club, Castle Howard Ox, Brigadier Gerard) do not match the facilities provided at the Punch Bowl.
- No other local pub has three separate facilities in one building that can all be used at the same time by different groups.
- Residents should not have to travel long distances to visit a public house or have to travel into York for “a quiet pint”.
- A supermarket does not have the same place in society for community cohesion as a public house
- The area around The Punch Bowl is not well served by a good variety and availability of public houses and risks becoming a “pub desert”.
- The removal, one by one, of pubs in the area makes that more of a possibility in the future.
- A supermarket has the potential to harm the viability of existing established businesses, for example, by undercutting prices.
- It would have a large stock of aggressively priced alcoholic drinks, sandwiches, snacks and other foodstuffs all in competition with other shops and stores within the area.
- A new supermarket would threaten other remaining pubs in the area due to the sale of discounted alcohol.

- A supermarket represents a threat to the social and mental health balance of the area. The surrounding area is York`s central hub for mental health services, including Arc Light, Bootham Park Hospital, Sycamore House and 98 Union Terrace.
- Whereas the public house permits drinking in a managed environment, the sale of alcohol for consumption off the premises would encourage more anti-social behaviour
- There is a highly persuasive argument for an Article 4 Direction on two counts, i.e. the protection of a local amenity, and the protection of the wellbeing of the area
- Although Council`s are averse to Article 4 Directions, CAMRA is aware of a number of precedents and to their knowledge there have not been any successful claims for compensation.

Officer response:

5.2 Central Government guidance on the use of Article 4 Directions makes it clear that they should only be used in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Paragraph 200 of the National Planning Policy Framework (NPPF) states that Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. Thus prior to imposing an Article 4 Direction, Members would need to be satisfied that the change of use of the Punch Bowl public house to a shop falls within the category of “exceptional circumstances” and would harm local amenity or the proper planning of the area, such that it warrants being brought within planning control.

5.3 In support of their request, CAMRA have included a copy of a policy briefing published by the Local Government Information Unit “*Public Houses: How councils and communities can save pubs*”. This includes a number of case studies relating to the protection of public houses, and makes reference to Interim Planning Guidance (IPG) published by Cambridge City Council (“Protection of public houses in the City of Cambridge”). However, the Cambridge document recognises that it is possible to use permitted development rights contained in the Use Classes Order to change the use of a pub to a restaurant/café (Class A3), financial or professional services office (Class A2) or retail shop (Class A1) (paragraph 4.11). It goes on to say that *the council considers it is important to allow the flexibility for pubs to pass in and out of pub use according to market conditions, and recognises that no permission is required to change use from a pub to a restaurant, office or shop*. Thus the IPG does not override national permitted development rights and could only be applied in cases where

planning permission is actually required for a change of use (e.g. to residential use), for the complete redevelopment of a public house site, or in situations where an Article 4 Direction is already in place. It is of no direct relevance to the present situation.

- 5.4 The document also refers to specific examples of public house that have been protected by Article 4 Directions, including the Baring Hall Hotel in Lewisham. However, in this case the proposed development related to the demolition and redevelopment of the site rather than a change of use. Thus it is not directly comparable to the present case. Any alterations to the Punch Bowl public house arising out of a change of use to shop could be controlled through a subsequent planning application. In the case of the Catford Bridge Tavern (also in Lewisham), which was the subject of a planned conversion to a supermarket, there was a perceived conflict with policies that seek to protect the viability and vitality of town centres that is not applicable in the case of the Punch Bowl. The Catford Bridge Tavern was also locally listed and was already covered by an Article 4 Direction prohibiting conversion from its existing Class A4 use.
- 5.5 A further case relates to The Highbury Barn in Great Cornard, Suffolk. Once again this related to the demolition and redevelopment of the site rather than a change of use. It is also located within a village context rather than within an urban area. An Article 4 Direction was imposed and a subsequent planning application refused. In dismissing the appeal the Inspector referred to the loss of a significant local heritage asset which makes a positive contribution to the street scene and local distinctiveness and which provides a historic link to the area's past. Clearly this could not be argued in the case of a proposal for change of use, particularly as any external changes could be controlled through a subsequent planning application.
- 5.6 CAMRA have also referred to an Article 4 Direction that was recently made in respect of The Maiden Over public house, Silverdale Road, Earley (Wokingham Borough Council), in order to prevent it becoming a convenience store. This was approved against officer recommendation in August 2014. However, the Council has subsequently rescinded the Article 4 Direction, following representations from the retailer and further legal advice. The particular concern was that the retailer would have been entitled to compensation, which was expected to be a substantial sum. A similar situation could arise should an Article 4 Direction be imposed on the Punch Bowl.
- 5.7 As stated above, the imposition of an Article 4 Direction would not, in itself, prevent the change of use from going ahead; it would merely bring it within

planning control by requiring a formal application for planning permission to be submitted. Any such application would then need to be considered against national and local planning policies and any other relevant material planning considerations.

5.8 Paragraph 70 of the NPPF states that in order to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environment;
- guard 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;
- ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community; and
- ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

5.9 In terms of the NPPF, therefore, community facilities include both shops and pubs. The proposed change of use would not, therefore, result in the net loss of a community facility, rather the substitution of one community facility with another. Indeed, whilst the loss of the public house would result in the loss of a particular type of community facility, there is a possibility that some residents may attach similar or even greater value to a shop or supermarket. It is unlikely that the change of use would harm visual amenity or damage the historic environment, or undermine local objectives to create or maintain mixed communities. Whilst the loss of a public house in a small village or rural community may be of concern where it is the only such facility in the area, it is not considered that similar weight could be attached to a public house within the urban area where there is a wider choice of similar facilities available.

5.10 Policy L1b "Loss of Leisure Facilities" of the Development Control Local Plan states that planning permission will only be granted for a change of use that would result in the loss of a leisure facility where it can be demonstrated that:

- a) a need for the leisure facility no longer exists; or
- b) appropriate alternative facilities exist within the catchment area.

- 5.11 The policy states that leisure facilities cover a variety of uses such as pubs, bingo halls, sports and leisure clubs. In considering applications for the change of use of these facilities, an assessment of provision in that area would be required to identify whether there are any alternative facilities which can be accessed using sustainable transport methods.
- 5.12 In terms of alternative facilities in the area, the Castle Howard Ox public house is approximately 60 metres to the south. The Gillygate is approximately 450 metres towards the centre of town, whilst The Brigadier Gerard in Monkgate is approximately 650 metres to the southeast. These public houses are considered to be reasonably well located to serve the local area.
- 5.13 A further consideration is that the imposition of an Article 4 Direction in this case may set a precedent for further requests to be made in respect of similar proposals which would otherwise not normally require planning permission, not just affecting public houses but also other uses/local amenities. It should be borne in mind that the General Permitted Development Order (GPDO) is national legislation which is intended (amongst other things) to provide a degree of flexibility between use classes and that an Article 4 Direction to bring a permitted change within planning control should only be imposed in exceptional circumstances. It is not recommended that Article 4 Directions be imposed on an “ad hoc” basis on individual sites in order to address particular situations as and when they arise.
- 5.14 In addition, the imposition of an “immediate” Article 4 Direction, as requested by CAMRA, would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO.
- 5.15 For these reasons, it is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction restricting the change of use from Class A4 to Class.

Council Plan

- 6.1 The most relevant section is that relating to Community Infrastructure, which seeks to establish appropriate community facilities, including housing, leisure opportunities, schools, and work and enterprise units. It states that in planning for our communities, the Council will work in a more joined up way in order to better meet the infrastructure needs of each neighbourhood.

Implications

- 7.1 **Financial** - the imposition of an “immediate” Article 4 Direction would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO.
- 7.2 **Human Resources (HR)** – There should be no Human Resources implications
- 7.3 **Equalities** - There are no known implications.
- 7.4 **Legal** – Whether to make an immediate Article 4 Direction is a discretionary power to be exercised in accordance with the principles of Wednesbury reasonableness. An Article 4 Direction should only be made if Members are satisfied that exceptional circumstances exist where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area. Members must consider whether the change of use would be prejudicial to the proper planning of the area or constitute a threat to the amenity of the area. The potential harm must be identified to justify making the Direction. If an Article 4 Direction is made, and a subsequent planning application is refused, the Local Planning Authority can be liable for compensation.

Crime and Disorder - There are no known implications

Information Technology (IT) – There are no known implications

Property – There are no known implications

Other – None

Risk Management

8.1 The imposition of an “immediate” Article 4 Direction would open up the possibility of compensation being claimed (payable by the Local Planning Authority), should an application be made for planning permission and this application is refused, or granted subject to conditions more limiting than those in the GPDO. There are also concerns that a precedent would be set for other similar requests which would then have to be dealt with on an “ad hoc” basis.

Recommendations

9.1 It is recommended that the Council does not use its discretionary power to make an immediate Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995 to remove permitted development rights for the change of use of The Punch Bowl public house, Lowther Street, York from its existing use as a public house (Class A4) to a shop (Class A1) for the following reasons:

- Evidence does not show that exceptional circumstances exist whereby such a change of use would harm local amenity or the proper planning of the area
- The NPPF states that community facilities include both shops and pubs. The change of use would not result in the net loss of a community facility
- The change of use would not harm the visual amenity of the area
- The change of use would not damage the historic environment
- The public house is within the urban area where there is a wide choice of similar facilities.
- The circumstances outlined by CAMRA in which Article 4 Directions have been made by other authorities differ from this case, in that they concerned an isolated rural public house or an historic asset
- The Article 4 Direction in itself does not prevent the public house from changing to a shop, it merely requires a planning application to be made.
- The use of an Article 4 Direction gives rise to compensation (payable by the Council) for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights, in circumstances where a subsequent planning application made within 12 months of the Direction is refused or granted subject to conditions (s.108)

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| Author: | Cabinet Member and Chief Officer Responsible for the report: | | |
| Simon Glazier Principal Development Management Officer 01904 551322 | Cllr Dave Merrett, Cabinet Member for Environmental Services, Planning & Sustainability Mike Slater Assistant Director Development Services, Planning & Regeneration | | |
| | Report Approved | √ | Date 26 th Sept 2014 |
| Specialist Implications Officer Implication: Legal Name: Alison Hartley Title: Senior Solicitor Tel No. 01904 553487 | | | |
| Wards Affected: Guildhall, Clifton | | All | |
| For further information please contact the author of the report | | | |

Annexes – Annex A - Map

Background Papers: online only

Formal request for an Article 4 Direction submitted by CAMRA with petition attached

Local Government Information Unit Policy Briefing: “Public Houses: How councils and communities can save pubs”

Cambridge Public House Study (GVA Humberts Leisure)

Protection of public houses in City of Cambridge – Interim Planning Guidance

List of abbreviations used in the report:

CAMRA – Campaign for Real Ale

GPDO - General Permitted Development) Order 1995

IPG - Interim Planning Guidance

LPA – Local Planning Authority

NPPF - National Planning Policy Framework

SoS - Secretary Of State

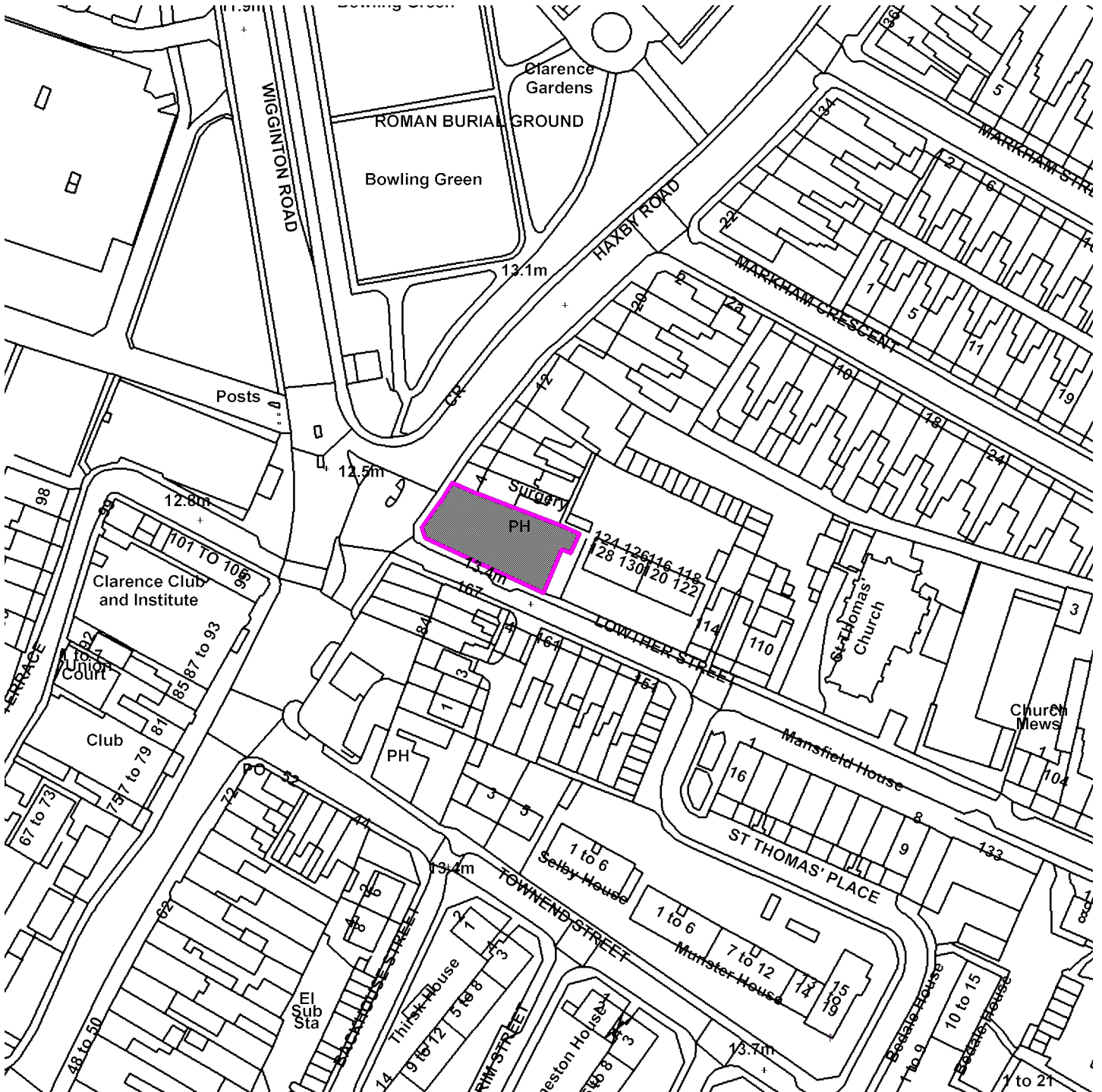
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Punch Bowl Public House

Lowther Street



GIS by ESRI (UK)



Scale : 1:1272

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