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Councillor Martin Clute
Chair Planning Sub-Committee
London Borough of Islington
222 Upper Street
LONDON N1 1XR

Dear Councillor Clute

**RE: APPLICATOIN REFERENCE: P2015/4907/FUL.
CHANGE OF USE OF PUBLIC CONVENIENCES TO AN A3/D1 MIXED USE (SUI
GENERIS), PLUS EXTERNAL ALTERATIONS TO SURFACE INCLUDING
STRUCTURAL GLAZING, NEW SURFACING, NEW VENTILAITON HOUSING,
REMOVAL OF ASPHALT TO STEPS, AND NEW ENTRANCE DOOR.**

I write on behalf of the Clerkenwell Green Preservation Society (CGPS) which opposes this application. It strikes at the very reason for their existence, the preservation and enhancement by the restoration of Clerkenwell Green, to the **open public space** it should be. Public open space is needed in this deficient area, and it should, and could be, fully available for public assembly and leisure use again. Just as it was in the Middle Ages through to the 20th century. Traffic has to be removed so that openness, public circulation and assembly is restored. **Private use has no place.**

This aspiration has since been become adopted policy for the Green and it has always been understood would be supported by Islington Labour Party. Great support was given by Chris Smith, the local MP, and later as Lord Smith of Finsbury, by Wally Burgess a local councillor, and by Tristram Hunt, now a Labour MP. The Marx Memorial Library still gives support as and when it can. Sadly the Freemasons Lodge on the Green were supporters but have moved on.

CGPS, over the years, have sought planning permission for improvements. Their interim application was never decided by Liberal Islington. An Appeal could not be afforded. The CPGS application is referred to in the Application Report Planning History **but not named**. Furthermore permanent proposals have been worked upon by leading architects sponsored by a generous client funding supporting the CGPS but a new sponsor is now needed to carry on. Work undertaken so far shows what is possible, but the enhancements could be sterilised and damaged if this development and privatisation of public space proceeds. Drawings can be submitted to you.

This proposal also appears to be the worst form of short term privatisation. All the more surprising that it is a Labour Council that has promoted it on what appears to be its own initiative. An Environmental Information Regulations request confirms an un-named Executive Member progressed the proposals by verbal instruction to an un-named Head of Service. I attach the relevant letter from Islington. It appears Councillors were informed, no evidence of this has been supplied. **If you do not know why the application came about and is to be decided without proper local consultation, the EIR response letter is also being emailed to you.**

This is hardly the prior consultation with the local community the Council promised and has adopted as development planning policy. A material consideration that this has not been properly taken into account in the Report – the Case Officer has only just asked for the policy basis of this objection. **There has been no prior consultation opposite as expected.** CPGS has been excluded from what is now appears to be one Member's project pushed through by an internal opaque process without much of a paper trail. This is a material consideration given adopted policy.

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You will appreciate given the limited information supplied in the response to the EIR request there is concern that further material may have been withheld. A complaint to the relevant authority is now being contemplated. The Chief Executive has been informed. The CGPS asks that the determination of this application be deferred until the position is clarified. The Committee can decide to defer a decision. This would allow time for a proper consultation and for CGPS and others to work closely with the Council. This would accord with adopted development plan policy:

“The council will take forward individual improvement schemes as and when funds are available, working closely with heritage groups, the voluntary sector, local residents and businesses. The emphasis will be on making the most of the area's excellent quality spaces, for recreation, enjoyment and special events”.

It is surprising that the application has been changed three times. It is now for a specific mixed A3/D1 use, a sui generis use. This means no other use can take place without a further planning permission. Consent will still be needed for just A3 or just D1. This narrow restriction devalues property. This suggests there is a named occupier in mind but who or what the use will be is not known and has been withheld. The cooking for the A3 use and the layout used is unknown. Therefore odour emission requirements and capacities cannot be accurately determined.

The Officer's Report to you, in my view, fails to properly deal with all the relevant planning policies and material considerations that should be applied when making this planning decision. It is based on inadequate information for an A3 use. This which would usually be required and it is odd that it has not been sought. It fails to fully and properly report the material considerations and objections.

In January I submitted a very detailed assessment of the application which clearly shows there were significant failures to meet with policy criteria in the relevant development plan documents. Although some issues have been addressed. The works and use change are within the boundary, the amendments fail to address the many policy issues and material concerns that direct a refusal. I have submitted this in a rather long document. It is being emailed to you. It is difficult to summarise but there are ample sound planning grounds and reasons for refusing the Authority's own application. It is the duty of the Planning Authority to do so even if it is dealing with its own application, otherwise the decision can be challenged as biased and pre-determined.

The Report also overlooks the potential for the restoration and use of these now rare public conveniences, built and designed by George Jennings, and which are still in more or less complete condition and repairable without destruction. A website dedicated to this world famous sanitary engineer states *“not many original Victorian public toilets survive today. In London they are recognisable by the fine and fancy railing work above ground, with steps leading under street-level”.*

Although not listed, these are community facilities that could be an asset of community value, and are in sufficient condition to be restored for use in an area where there are many pubs and bars, but few conveniences, over 500 metres away apparently. On event days, on march and rally days, the lack of conveniences is missed. The Marx Memorial Library usually assists with just one ground floor wc being made available for the May Day masses - the labour movement in need.

Privatisation and use during event days has not been thought through and has not been considered in the Report. Banners are laid out and unfurled around the conveniences where the marchers assemble and rally, listening to speeches by Jeremy Corbyn and Frances O'Grady. How will they give way for access and egress to this privatised space in the middle of the Green?

The Report.

The Report states the conveniences are in a designated open space (4.2) but does not say that the proposed A3/D1 use does not accord with that land use and it is a departure from the Plan. It overlooks this obvious failure to accord with the defined use. **A departure may need to be advertised. This does not appear to have been done.** Any decision could be challenged. It could be a waste of public money to make a premature decision. A decision should be deferred.

Loss of conveniences is irrelevant to the Policy CS15 referred to. Such a conclusion fails the UK Supreme Court decision, Tesco V Dundee 2012 test. **Policy means what it says in plain English.** What it does say is to protect all local open spaces and to create and enhance civic space which this proposal does not, and cannot, with the potential impacts from the odour from cooking with no evidence of control measures or capacity. It interrupts the public use function. The Proposal makes the objectives of Policy CS15 more difficult to achieve. **It does not accord with CS15.**

The loss of public conveniences is considered acceptable in principle. No consideration of their function or need as a community facility is given. **Public toilets are a community facility and this is confirmed by reference to adopted policies. It is simply wrong to say they are not protected by policy.** Why the Officer's Report asserts otherwise is unclear. It is also a public need and **an issue for those who need them.** A recent Guardian article on their sale confirms.

No evidence of need or demand for a community facility has been required by the planning department of the Council as applicant as is usually the case before allowing a change of use of community facilities. They are still there. They have not been abandoned. They can be readily restored and used. **They are also part of the social infrastructure and are still protected in the London Plan Further Alterations 2015 and in Islington policies. There is a need to justify their loss and no such justification has been submitted or considered necessary.**

The appearance of the proposed use is considered acceptable but it will not be as it will have to have above ground use and activity with it and there will be signs and advertising; and then the inevitable tables and chairs licence with above ground shelters, as the existence of the use will generate this "need". These will impact on the openness and use and potential use and restoration of Clerkenwell Green as well as odour and noise from the participants.

The area is neglected because historically Islington Council will not work with the Society to help fund raise and spend money wisely to improve Clerkenwell Green. It still it seems will not.

It is of great concern as well that there is only consideration of a ventilation housing. An A3 use implies cooking from fresh ingredients, as part of many an appeal decision. Cooking needs extract vents and ducts and produces smells to be dispersed. There is no odour emission controls and surprisingly this is of no concern to Environmental Health.

Planning authorities usually require layout plans showing the details of the equipment proposed and how it will vent and how odours will dispersed to ensure there is no adverse impact on amenity. Councils require this of applicants to show equipment will be quiet and discrete and above local eaves height before a decision is made and not by condition. No details have been required and provided for this problem. I am sure when I make an application for a client in Islington proposing ground level odour dispersal I will be asked for details. Perhaps there will be a giant flue on the Green lasting away shortly with tables chairs set around?

The repair of the finial (6.1), appears to be the vestiges of the pole that Chartists and other protestors mounted the red cap of liberty during their gatherings on Clerkenwell Green. It may be too hot do so from now on or the top too high to reach. These matters are not properly considered.

Objections as reported (8) and summarised do not make clear the weight of relevant policy considerations. The proposals fail to meet the criteria of many more policies and these are considered in detail in my letter of January 2016 which is provided. A list of the policy failures are also appended to this letter.

Consultations.

Clearly **Planning Policy** in consultation are not applying their own policies to the Council's application save for Policy DM4.3 regarding cumulative impacts. The policy requirements are not met for the many policies listed above. Why is there no detailed consultation response by Policy?

Environmental Health have forgotten to comment on cooking odours from an A3 use and do not seem interested in the lack of detail of equipment, flue etc. or odour dispersal.

The **Access Officer** objects but the lack of access is a problem for the proposed use as well as the current use. Lack of access is only applied to the current use in the Report however.

Licensing requires less hours and the capacity excludes additional persons standing around outside or seated at the inevitable table and chairs. **There is no clear evidence or layout plan that a capacity of 40-45 just below the unacceptable 50 is measured.** However there is every likelihood that capacities will be exceeded by 10% and so exceed the 50 threshold in practice.

The consultation responses as summarised appear superficial and I would say do not appear to comply with usual practice and are based on inadequate information.

Conservation Officer. Unusually for a proposal in a Conservation Area there is no mention of the Conservation Officer's consultation response in this section of the Report. In the initial application the submissions indicate the response was that **"there should be the retention of original features as far as possible"**. It is very disappointing that the external features and just three urinals are to be retained with the remaining Jennings features stripped out and lost. Why has the Officer's initial advice been ignored in the proposals as submitted and now recommended?

The National Planning Policy Framework.

This needs to be considered in its entirety as it directs, rather by occasional comment, generally without regard to the relevant paragraph number(s). It has policies which requires good design and there is no design at all for odour dispersal and control for the proposed part A3 use. If a flue is required how will it appear and how wide and how high will it be in the middle of the Green? Surely the Authority should set an exemplar standard for its own applications and accord with the NPPF and their own policies and practice?

The NPPF also great weight to adverse impacts on heritage assets, even unlisted ones, both internally, where just token urinals are being saved for no clear reason, and also on the wider Clerkenwell Green area and setting and function as ancient public open space. A Heritage Assessment for these impacts should be provided to accord with Islington policy.

The works now proposed, the likely future works probably needed such as a flue, and signing, and the activities proposed, with their cumulative impacts need to be properly assessed but have not been. This does not accord with the NPPF. There has been no prior consultations either. The conclusion that there is compliance with the NPPF is simply not understood.

National Planning Practice Guidance.

Pre-application guidance if properly taken should not then require three application amendments during the six months or so of prolonged consideration of this application. It remains deficient and if it was not the Council it probably would have been declared invalid or refused by now. **It is still lacking in the information necessary to make a proper and lawful determination.**

Assessment – Land Use.

The Report mentions Policy CS15 as mentioned above and DM6.3 which requires proposals not to negatively impact amenity and function. However given the lack of information regarding use, capacity and odours and consequential appearance how this accords with policy and the Public Space Priority Project (28) which CGPS supported, how the Officer can report works to destroy the Jennings conveniences as an enhancement is beyond the comprehension of CGPS and mine.

Access (10.7) is an issue for any use and if acceptable for A3 it is acceptable for wc use.

There is no consideration of community facility policies in the London Plan and Islington Development Plan Documents and the criteria for their release. This is very odd. Why left out? Any why is 500 metres acceptable at Farringdon Station when the night time activity will increase with re-use of the Sessions House? The application has to be refused on this basis alone.

The re-use of space for any use accords with the NPPF but only after the current use can be justifiably demonstrated as not required. (10.9). The Report conclusion in 10.40 is not agreed with and marketing evidence for community facility use should be undertaken first. Again deferment is advisable for this to be provided.

The Report seeks to justify the use by employment potential which is noted although re-use for wcs or a public use in accord with the open space use would do likewise. Whereas another A3 use will add to the over-concentration of uses in the area and add to late night noise and activities which the Council has policies to stop.

A small increase in entertainment uses is still an increase and a cumulative impact is not linear - the Council should be an exemplar and not a contributor to the problems of the area.

Design and Appearance.

CGPS have consistently contributed to the evolution of the policies referred to in this part of the Report. For the reasons given above the proposals are incomplete and more information is needed regarding flues and signing and these impacts cannot be assessed. The impacts on the original Jennings wcs still in situ and saveable condition is terminal.

Just by being small and mainly underground, these are still heritage assets which are being damaged, without any adequate justification and benefit and so fails the requirements of the NPPF and the application should be refused. Conditions cannot control the damage to appearance and function of the Green, its history and spirit of place and it should be refused.

Accessibility and Highways.

Step free access is not readily possible for any use and it applies to the current and proposed use.

Although small the impact on the public space function and highways especially during events on the Green could be considerable. No thought or consideration has been submitted or given in the Report as to the impact when there are road closures etc.

Other Matters.

The application has to take account of future plans and proposals in adopted policies and 10.32 regarding representations is clearly disingenuous. CGPS are seeking to implement the Council's policies for the Green and these proposals detract and derail the regeneration and improvement of the Green. It is not a matter of the application being considered on its merits without regard to the Council's own policies which the Report is attempting to distort into an "Other Matter". (10.32)

Likewise policies for community facilities that apply are being ignored and there are policies to retain these contrary to para. 10.33 in the report and non-designated heritage assets can be considered assets – but as part of the Green the wcs cannot be taken out of the heritage asset and called an application site. Again the Report does not make sense and is challengeable. (10.33). There is harm to the designated asset and there has been wholly inadequate consideration of the matter as set out above. The conclusion in 10.35 is wrong and a Heritage Statement is needed.

More detailed knowledge of the operation is necessary to determine the application and it is being withheld or not asked for. (10.34). More information is needed for capacity and odour control to assess harm to amenity. The Report is inadequate.

Although the application site follows the title plan boundaries any works required beyond the boundary which the structural works may still need would require agreement of the sub-soil frontagers to the Green and they may not give consent. A revised application will be needed.

Conditions and Recommendation.

The conditions as drafted are not being considered in this letter because the application is so deficient in the usual proper content and materials as to be incapable of proper determination with conditions.

The CGPS Request to the Committee.

The Report's recommendation for a conditional approval does now appear biased and pre-determined, with significant omission from usual practice and information needed. The Members of the Committee are asked to refuse the application or at least defer a decision.

By so doing this will allow time for the further consultations with residents and the CGPS to better accord with the Council's own policies to see if a better proposal for re-use can be agreed, and the opportunities for alternative funding considered for community uses and the restoration of the Jennings conveniences in more suitable and appropriate way.

Yours sincerely

Alan Wipperman BA MRICS MRTPI C Dip AF

Policy Failures List – see also the January 2016 letter for further details:

National Planning Policy Framework.

- Para. 14 Fails to accord with development plan policies.
- Para. 17 Empower and co-operate with local people.
Meet local needs.
High quality design.
Conserve heritage assets appropriate to significance.
- Para. 56-66 Good design and work closely with those directly affected and evolve
Designs that take account of the views of the community.
- Para. 70 Plan positively for community facilities.
Guard against unnecessary loss of valued facilities and services.
- Para. 74 & 75 Access to high quality open space and public rights of way and access.
- Para. 126 Positive strategy for conservation has been set out and supported by the CGPS. Allow viable uses consistent with conversation – this is not.
- Para. 128 Heritage asset description required with appropriate specialist assistance.
None submitted and Conservation Officer advice ignored.
- Para. 130 Deliberate neglect should not be taken into account and appears to have been.
- Para. 131 Proper assessment of impacts not undertaken and not enhancement.
- Para. 133 Substantial harm arises and should be refused in accord with para. 133.
- Para. 135 Non-designated assets require balanced judgement but this status has been discount in the report completely and therefore contrary to NPPF.
- Para. 140 This is not enabling development.
- Para. 141 Not complied with in the application documents.
- Para. 188-189 Failure to comply with pre-application advice and community consultation.
- Para. 203 The proposals cannot be made acceptable by condition.
- Para. 210 Decisions must be made in accordance with the development plan. The proposals do not accord – see further below.

Development Plan Policies.

London Plan 2015 and Mayor's Policy Documents.

This has not been considered in detail but there are policies to protect the environment, design and appearance and heritage assets, as well as community facilities and social infrastructure. Policy 3.16 seeks to protect and enhance social infrastructure. This can apply to toilet provision although this is mainly considered in a town centre context.

Core Strategy 2011. (Explanatory paragraphs from part of policy by court case decision).

Para. 2.81 Bunhill and Clerkenwell Area requires careful management. There is no evidence of this – the application has been Executive Member led by verbal instruction. Proposals fail careful management.

Para. F CS7. Material considerations listed fail to be satisfied.

Policy CS9. Protection and enhancement not achieved.

Policy CS10 No evidence of sustainable design submitted. No real details of use supplied. Criteria not met.

Policy CS11 No evidence of detailed waste management. Policy not met.

Policy CS15A Fails to protect open space heritage.

The above Core Strategy policies are not met.

Development Management Policies 2013.

DM2.1A Lift access rejected and accessibility not met for new use. More damage if met to non-designated heritage asset. Impacts on use and function of the Green as open space. Introduces fragmentation and damages legibility. Cumulative impacts on residential and street amenity as result of noise and odour; etc. Policy criteria clearly not met.

DM2.1B Insufficient submission of information and materials to properly determine the application for criteria (i) to (viii).

DM2.2 Inclusive design cannot be achieved.

Para. 2.31 Confirms conveniences form part of the designated Clerkenwell Green and an irreplaceable resource as a valued component. A failure of provide proper heritage assessment is a failure to meet the explanatory text.

Policy DM2.3 Conversation and enhancement does not include almost complete destruction of the conveniences as proposed. Few are left in such good condition now.

Policy DM2.3 The requirements of the use will impact adversely on the conservation area and setting of the listed buildings and so fails policy.

Para. 2.37 Substantial harm or total loss of designated asset will not be allowed. Para. 133 of the NPPF applies. The proposals fail.

Policy DM2.6 No advertising or signing is proposed but will be needed for commercial reasons and will give rise to clutter and harm. Policy is failed.

Para. 4.15 A3 uses are entertainment and night time uses and adverse impacts and cumulative impacts cannot be properly assessed without the usual and more detail – policy is not met.

Policy DM4.2 Outside the designated town centre locations for the use. Policy not met.

- Policy DM4.3 No adequate assessment of cumulative impacts submitted and should be refused. Affects amenity and study and lecture uses at the Marx Memorial Library.
- Policy DM4.12 Social infrastructure (community facilities) should be safeguarded. No justification for loss or replacement proposed and contrary to policy.
- Policy DM6.1 Policy is not met for access to wcs.
- Policy DM6.2 Especially DM6.2D. Encourages public open space. This privatise the space above and takes away open space to be private space.
- Policy DM6.3 As above.
- Policies DM 7.1 – 7.3 No information on sustainability provided with regard to energy etc.
- Policy DM7.5 No information on details of heating and cooling save ventilation housing. No information on cooking/odour dispersal. How this can be done is uncertain and should not be left to a condition. With now windows policy is not met.
- Appendix 11 No marketing evidence provided as required for loss.

In summary there is a considerable failure to accord with the development plan policy.

Finsbury Local Plan – Action Area Plan for Clerkenwell and Bunhill 2013.

- Objective 3 Enhance the quality of the local environment. An A3 use will not do this.
- Objective 4 Accessible streets and public spaces will not be achieved.
- Objective 5 Enhancement of heritage and culture – this will be damaged by the loss of the Jennings conveniences and the impacts on the heritage assets.
- Policy BC5D An improved public realm promoting public circulation is not achieved by privatisation of the surface over the conveniences and loses public space. Policy not met.
- Community Infrastructure Priorities These include public toilets (page 66) and there is a need for these. They should be safeguarded and brought into use and not lost as a high priority.
- Project 28 Priority reinstatement of the public open space not use for private A3 use is sought. Contrary to the Plan.
- Figure 15 Stress is laid on the view of the Sessions House as an historic landmark. **No commercial use is proposed and this would be a departure from this Plan.** Pedestrian routes would be affected.
- Policy BC8 **The A3 use will only be allowed in an employment area and this too is a departure from the Plan, contrary to the policy requirements.**

The Plan states that implementation is to be through public consultation and there has been none, and that it should be a grass roots approach, there has been a decision to go ahead on the verbal instructions of one executive member of the Council to the Head of Service.

In summary the proposals and the approach of the Council does not accord with the Action Area Plan.