
Appeal Decision

Site visit made on 29 September 2016

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 October 2016

Appeal Ref: APP/E5330/W/16/3142319

Trafalgar Tavern, Park Row, London SE10 9NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Trafalgar Tavern Lease Ltd on behalf of London UK Property against Royal Borough of Greenwich Council.
 - The application Ref 15/0456/F, is dated 13 February 2015.
 - The development proposed is minor external alterations and partial change of use at second and third floor levels to provide hotel accommodation with improved disabled access.
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Decision

1. I allow the appeal and grant planning permission for external alterations and partial change of use at second and third floor levels to provide hotel accommodation with improved disabled access at Trafalgar Tavern, Park Row, London SE10 9NW in accordance with the terms of the application, Ref 15/0456/F, dated 13 February 2015, subject to conditions 1) to 7) on the attached schedule.

Main Issues

2. These are;
 - Whether the application contains sufficient information to enable it to be validated and determined.
 - If so, the effect of the proposals on the aims of Development Plan policies, national guidance and statutory provisions along with other material considerations on the preservation of heritage assets.

Reasons

Background

3. The application form was dated 13 February 2015 and the Council sent an e-mail on 21 May referring to that February date but stating that the application had been received on 24 April. That e-mail stated that the application had been checked and found to be invalid due to there being changes from the original planning permission 08/0743/F and therefore the original listed building consent was no longer applicable and a new application would be required. It further stated that an existing basement plan was needed, and that a flood risk assessment was also required.
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4. The appellant replied on 26 May to the effect that there had been a misunderstanding as to which previous scheme was being referred to in the Design and Access Statement. This was not 08/0743/F, but an earlier scheme which appears to be reference 06/0411/F. It appears therefore that the appeal application was considered by the appellant to be the same as one previously approved by the Council. A basement plan was provided and the appellant expressed the view that as the changes at second floor level are 11.586m above sea level, there was no need for a flood risk assessment.
5. The web-based Planning Practice Guidance sets out under the heading '*Making an Application*' (Paragraph: 016 Reference ID: 14-016-20140306 and subsequent paragraphs) the various provisions for validation, these being a completed application form, compliance with national information requirements which are further listed in a later paragraph, the correct fee, and any local information requirements.
6. These last requirements are referred to in paragraph 193 of the National Planning Policy Framework '*Local planning authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals and reviewed on a frequent basis. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.*' The Planning Practice Guidance makes clear that the 'local list' should be formally adopted and published.
7. There is a procedure in the Development Management Procedure Order to resolve disputes on this issue. An applicant must first send the local planning authority a notice under article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This must set out the reasons why the applicant considers that the information requested by the local planning authority, in refusing to validate the planning application, does not meet the statutory tests. The appellant's correspondence of 26 May 2015 should be regarded as an Article 12 Notice.
8. The appellant details various correspondence that followed, but the relevant point is that an appeal against non-determination was made as provided for in the Planning Practice Guidance which states that the Planning Inspectorate will consider the merits of the validation dispute and the appeal itself (Paragraph: 053 Reference ID: 14-053-20140306).

Validation

9. Correspondence during the appeal process elicited the information from the Council that at the time of the application, the Council had not adopted a Local Information Requirements List for Planning Applications, as this was only adopted in January 2016. Formal adoption is a requirement for such a list to be enforced, as set out in the Planning Practice Guidance. The e-mail containing that information accepted the Inspectorate's findings in their own validation procedure that there should be no connection between validating a planning application and the need for a listed building application. The lack of a basement plan had been rectified in any event.
10. That leaves the matter of the flood risk assessment. The Council accepted by e-mail dated 13 June 2016 that since a subsequent application 16/0095/F had been validated on 29 February 2016 without a flood risk assessment, there was

no need for that to accompany the appeal application. The confusion appears to have arisen from the site being within an area of flood risk albeit the development is at second floor and above, but the lack of the 'Local List' until January 2016 also adds weight to this not being a validation requirement for the appeal scheme.

11. The third party representation raises various issues, one of which on the validity of the appeal was answered direct by the Planning Inspectorate. Another regarding the information available on the planning history is assisted by the Inspector appointed in 2014 to hold a Hearing and consider the previous appeals has been appointed to determine the present appeal. That Hearing was able to investigate the planning history more fully than is possible in a written representation appeal (Refs APP/E5330/A/14/2219502 and APP/E5330/E/14/2219545).
12. With regard to the extent of information available to this appeal, the Design and Access Statement contains reference to the architectural and historic significance of those parts that are the subject of this planning application specifically, the more widespread works of the listed building consent regime having been deemed extant in the 2014 Appeal Decision. If there are now works that differ from that extant consent, this would need to be dealt with and justified separately from this planning appeal. The Building Regulations are a separate regime, and would require more detail than is necessary in this planning appeal. Similarly there is clearly a need for the consent of the freeholder, which again is a separate issue.
13. In conclusion on this main issue, there does not appear to be a reason why the application should not have been validated on receipt of the basement plan and the appellant's Article 12 Notice, and there is sufficient information on which to reach the Decision that follows.

Planning Considerations

14. The subsequent application 16/0095/F was considered acceptable under delegated powers and the appellant informed accordingly, but not as a formal Decision. In the event, it appears that formal Decision was not issued as the application was then considered invalid through an incorrect Certificate having been signed, but that fault does not apply to the appeal application. The applicant was advised to withdraw the application and resubmit it. Further to this, the Council's Appeal Statement makes clear that the appeal proposals are considered acceptable subject to conditions. That Statement provides a full assessment against Development Plan and national policy.
15. Nevertheless, the making of an appeal against non-determination removes the decision making from the Council and places the responsibility on the Secretary of State or as in this case, the appointed Inspector, to consider the case afresh. In addition, there has been representation from the freeholder of the site which needs to be addressed.
16. Policy 7.8 of the London Plan states that development should identify, value, conserve, restore, re-use and incorporate heritage assets, where appropriate. Development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail. Policy 7.10 states that development should not cause adverse impacts on World Heritage Sites or their settings.

17. The Royal Greenwich Local Plan Core Strategy was adopted in July 2014 and the Council have referred to various policies including DH1 on design, DH3 on heritage assets, DH4 on the Maritime Greenwich World Heritage Site, DH(h) on conservation areas and DH(i) on listed buildings. Policy EA5 on tourism in particular sets out the aims of the waterfront being a major tourism centre for the Thames Gateway, and increasing the number of visitors who stay overnight by encouraging the development of hotels particularly in town centres and on the waterfront.
18. Paragraph 132 of the National Planning Policy Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. The courts have determined that considerable importance and weight should be given to harm found to the significance of listed buildings.
19. The building is listed Grade II and section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The site is partly within the Greenwich Park Conservation Area and partly in the East Conservation Area and section 72(1) of the same Act states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of those areas.
20. The site lies also within the Maritime Greenwich World Heritage Site which is a designated heritage asset, and as made clear in paragraph 132 of the Framework, it is one of the highest significance.
21. Turning to the detail of the development proposed, the planning history shows previous acceptance of substantially the scheme now proposed, and the Council confirmed in writing after the site investigation that the previous permission and consent approved the lift shaft and alterations to the chimney at roof level. There have been no significant changes to the Development Plan or statutory framework governing consideration of development affecting heritage assets. More recent court cases such as 'Barnwell Manor' make clear the considerable importance and weight that should be given to harm found to the significance of listed buildings, but that is a matter of balance later in this Decision.
22. Consistency in planning decisions is an important element in the public's and owner's perception of the planning system, and there is no substantial reason to consider that the original grants of permission and consent were flawed, or that the decisions have been subsequently overtaken by events. The extant listed building consent, determined in the 2014 appeal as being so, and for which that Appeal Decision granted approval of details, is a matter of considerable weight in favour of the effect on the heritage assets.
23. The roof arrangement currently in place detracts seriously from the architectural significance of the listed building, from the setting of other listed buildings in the area, from the character and appearance of the conservation areas, and from the appreciation of the World Heritage Site. The proposed alterations to the roof arrangement would be a substantial enhancement of the listed building, as well as having been found acceptable previously.

24. The fact appears to be, confirmed by an internal inspection in connection with this appeal, that there is limited architectural or historic significance at third floor and roof level. The reinstatement of a mansard roof would remove jarring aspects of the present arrangement as well as enabling the desirable enhancement of the accommodation in line with Development Plan policy on tourism. It would bring back into beneficial use areas of the building that are at present unused, further assisting in the viability of the building and its future upkeep.
25. One aspect of the proposal that appears to differ from that previously approved is the provision of the hoist to store refuse in the basement. This is not a fixed item and does not appear to require listed building consent as it makes use of an existing cellar flap in the footway to Crane Street, but weight can be given to it as the present unsightly storage of bins on Crane Street would be avoided. A condition would be required to secure this provision.
26. Another aspect that is objected to in the third party representation is the effect that the top lift station and shaft would have on the mansard arrangement to the south elevation. It was the fact that this was not shown on the drawing entitled 'Existing Approved South Elevation 0690-A-E01' that led to the request for clarification from the Council. The appellant has provided a rationale for this intervention, in order for the lift and hence disabled persons' access to serve the third floor. Part M of the Building Regulations states that a passenger lift is the most suitable means of vertical access and should be provided wherever possible, although the document accepts that this may not be possible in all buildings. The Disability Discrimination Act 1995 aims to ensure that disabled people have access to the same services as others.
27. It is good practice that the disabled persons' access should follow as closely as possible that for the general public, in this case by following the route of the main staircase. This provides for the refuge in case of fire being alongside the protected staircase where rescue would be available. The position of the lift appears to accord with that aim, but would need to be tested through the Building Regulation regime.
28. The lift shaft and landing or refuge area on the third floor results in a breach of the lower slope of the mansard roof, proposed to be disguised to an extent by an enlarged chimney. This is less desirable than a smaller chimney and unimpeded lines of the lower slope, but that is not what is being proposed, and this still represents a substantial improvement on the existing situation.
29. There would therefore be a limited amount of harm to the designated heritage assets through this non-authentic arrangement. The level of harm is 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The third party representation commented on the lack of this balancing exercise in the appellant's submissions, but as the appellant's case is that there is no harm, there would be no need for this under the provisions of the Framework.
30. Looking then at the public benefits, the improvement in appearance over the present situation is a benefit and even with the non-authentic chimney stack and lift shaft, the external appearance of the building would be significantly improved. The setting of adjacent listed buildings would be enhanced as would

the World Heritage Site. There are public benefits in the opening-up of the upper parts of the building to disabled people, and making better use of the under-used upper floors in this sustainable location would also be a benefit.

31. To the extent that the lift arrangement would cause harm, that is more than outweighed by the public benefits of the scheme as a whole. The proposal would promote tourism in line with Policy EA5 and would preserve the significance of the listed buildings, the two conservation areas and the World Heritage Site in accordance with Policies 7.8 and 7.10 of the London Plan, and Policies DH1, DH3, DH4, DH(h) and DH(i) on the same issues. The proposal would satisfy the statutory tests in the 1990 Act and would accord with the requirements of section 12 of the Framework on conserving and enhancing the historic environment.

Conditions

32. Notwithstanding the details shown on the drawings, the Council suggested a condition on materials. Having mind to the location of the site among designated heritage assets and the nature of the building, that level of control is necessary. Hours of working during the demolition and construction phase should be controlled to avoid undue effects on neighbouring residential occupiers, and the control should include deliveries to and removals from the site. Further details would be required of cycle parking and facilities for staff to cycle to work.
33. A Delivery and Servicing Plan as suggested by the Council is essential, but the Plan should be submitted prior to commencement rather than occupation, to ensure it is part of the detailed design of the scheme. The proposed Refuse and Recycling Strategy should be in operation prior to commencement since this seeks control of the construction phase and is needed to ensure that benefits relied on in this Decision are realised.
34. Lastly a condition is required naming the drawings, because otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans as this provides certainty.

Conclusions

35. Whilst the lack of a basement plan appears an acceptable reason to delay initial validation, when that was delivered the information was sufficient. The lift proposals have some effect on designated heritage assets, but this is justified by the enhancements brought about and the provision of disabled persons' access. The change of use to a hotel is in line with Development Plan policy for the area. In the terms of a planning application, the proposals satisfy the statutory tests and national guidance on the preservation of heritage assets and with the Development Plan policies previously cited. For the reasons given above it is concluded that the appeal should be allowed and planning permission granted.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 0690/A/B02A, 0690/A/G10A, 0690-A-110, -210, -310, -R10, -E11, -E12, -E13, and -E14.
- 3) No development shall commence until full details of materials to be used in the external surfaces of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. Only the approved materials shall be incorporated into the development.
- 4) No development shall commence until full details of facilities for the parking of cycles (including but not limited to, locker and changing facilities within the building for staff) have been submitted to and approved in writing by the Local Planning Authority. The facilities shall be complete and available for use prior to the occupation of the part of the building the subject of this permission and shall be retained as such thereafter.
- 5) No development shall commence until a detailed Delivery and Servicing Plan (including but not limited to, full details of the use of the hydraulic scissors goods lift) has been submitted to and approved in writing by the Local Planning Authority. The Plan shall endeavour to ensure that deliveries and other servicing shall take place outside peak hours. The Plan shall be in place and operative prior to the occupation of the part of the building the subject of this permission and shall be retained as such thereafter.
- 6) No development shall commence until a detailed Refuse and Recycling Strategy (including but not limited to, full details of the use of the hydraulic scissors goods lift) has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include the provision of a Waste Audit covering the removal and disposal of all waste arising from the demolition, construction and operation of the development hereby approved. The Strategy shall be in place and operative prior to the commencement of the development hereby approved and shall be retained as such thereafter. The Waste Audit shall be maintained for regular inspection by the Local Planning Authority.
- 7) No works of demolition, earth removal, foundation or other construction, nor any deliveries to or removals from the site shall be carried out outside the hours of 0800 and 1800 Monday to Friday, and 0800 and 1200 on Saturdays. No such work shall be carried out at all on Sundays, Bank Holidays and Public Holidays.