
Appeal Decision

Site visit made on 5 December 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 6 January 2017

Appeal Ref: APP/E5330/W/16/3158246

Former New Tiger's Head Public House, 159 Lee Road, London SE3 9DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jacob Schreiber (Mothers Ltd) against the decision of Royal Borough of Greenwich Council.
 - The application Ref 16/0092/F, dated 12 January 2016, was refused by notice dated 9 March 2016.
 - The development proposed is described as change of use of the ground floor of the former New Tiger's Head Public House (159 Lee Road) to 3x1 bedroom flats with associated alterations to the building and for alterations to access and storage arrangements.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed change of use would provide satisfactory living conditions for the future occupiers of the flats with particular regard to noise, vibration and air quality.
 - Whether sufficient evidence has been provided to demonstrate that the property is no longer economically viable for use as a public house.

Reasons

Living conditions

3. The appeal property comprises the ground floor and basement of a former three storey public house located adjacent to the highly trafficked Lee Green road junction which forms the intersection of Lee Road with Burnt Ash Road, Lee High Road and Eltham Road. It lies within a small parade of retail/commercial premises forming the Lee Green District Shopping Centre. The adjacent use to the north is a restaurant and to the south a Post Office/store.
 4. The upper floors of the building have been converted to residential use and the appellant indicates that the property has not been used as a public house for the past ten years. The proposed change of use would involve the conversion of the ground floor into three one bedroom flats, each with a small rear
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- courtyard area. The bedrooms to all of the flats would have frontage to Lee Road with the existing glazing on the ground floor of the building being replaced by obscure glazing.
5. The proposed units would meet the requirements of the National Space Standards in respect of internal accommodation space. However, the Council's concern is that the proximity of the proposed flats to the busy road junction and adjacent commercial uses would give rise to noise, vibration and poor air quality which could have a detrimental effect on the living conditions of the occupants of the flats. I note the comments of the Council's Pollution Control Officer who suggest that a noise and air quality assessment would be required in order to quantify these exposures before any consideration can be given to mitigation measures.
 6. I observed at my site visit that the road junction is subject to high levels of traffic movements with traffic lights, stop lines and pelican crossing points being located in front of the existing building. As a large number of vehicles accelerate and decelerate in their approach to the junction, or stop and start as a consequence of the traffic lights, I observed that vehicle noise and vibration was significantly evident at the facade of the building. Given the close proximity of the proposed ground floor flats to this junction I share the Council's concerns that prospective occupants are likely to experience significant levels of noise, vibration and fumes, particularly given the position of the proposed bedroom windows to the road.
 7. I have no evidence to suggest that any noise or air quality assessment has been undertaken or whether such impacts are capable of mitigation. I note the appellant's view that such assessment and mitigation measures could be required by a suitable planning condition. However, in this case, the close proximity of the bedrooms to the junction and my observations of the potential impacts leads me to conclude that the consideration of such matters and their potential, or otherwise, for mitigation are fundamental to the determination of the acceptability of the proposed change of use. Therefore, in my view, they are not matters that should be, or are capable of being, addressed by a planning condition.
 8. As such, I have no evidence of the quantification of these important impacts, the extent of the capability to mitigate them, or the effect that any proposed mitigation measures may have on the design of the proposed internal layout and external appearance of the building.
 9. Taking the above factors into consideration, on the basis of the information provided at application stage, the proximity of the proposed flats to the junction would cause unacceptable harm to the living conditions of the occupants as a consequence of noise, vibration and air quality for which no evidence has been provided to enable an assessment of the quantification of such impacts and the capability to acceptably mitigate these.
 10. Consequently, the proposed change of use would be contrary to Policies E(a), E(c), H5 and H(b) of the Royal Greenwich Local Plan: Core Strategy 2014 (Core Strategy). These policies, amongst other things, indicate that planning permission will not be granted for proposals where there would be a significant effect on the amenity of occupiers as a consequence of noise, vibration, odour and fumes and that appropriate insulation against road noise is provided on sensitive facades.

11. The Council has also referred to conflict with Policies 3.5, 3.8 and 7.2 of the London Plan 2016. However, these policies relate to the quality and design of housing development, housing choice and the need for development to create an inclusive environment. I have no evidence to indicate how the proposed change of use would be in conflict with the requirements of these policies. In my view, they appear to have little relevance to the considerations in this appeal and as such I have afforded them minimal weight.

Viability of existing use

12. The Council has drawn my attention to Policy EA(b) of the Core Strategy which supports the retention of pubs that have a community role and suggests that changes of use will be resisted except where the continued use of the pub is no longer viable. This policy requires that evidence must be submitted to clearly demonstrate that reasonable attempts have been made to actively market the site as a pub for at least two years. The Council suggest that the submitted marketing report does not provide adequate evidence to demonstrate that appropriate marketing has been undertaken.
13. The building has not been used as a public house for ten years. The appellant has provided evidence to demonstrate that the property has been marketed throughout the vacancy by Paul Simon Seaton and John Payne Commercial. A number of property advertising leaflets and sale particulars were produced by both agents and although these are undated, photographs of the property showing the position of sale boards on the front façade of the building in the years 2008, 2014 and 2016 have been provided. In addition, a marketing activity report showing enquiries from August 2009 to August 2014 has also been provided. Whilst this shows some interest in the property, the appellant suggests that no interest from a pub operator was received.
14. The Council raised concerns that the appointed letting agents are not public house specialists. Evidence has also been provided that identifies the public houses and drinking establishments that the letting agents have recently dealt with. The appellant also suggests that the property was marketed at a rental values both of £60,000 and £35,000 per annum, the latter figure being below comparable market rent in the locality.
15. The National Planning Policy Framework (the Framework) states that when considering applications involving a loss of employment floor space decision makers should have regard to market signals prior to making their decisions. The appellant has identified that there are over 20 public houses or drinking establishments within a half mile radius of the property and therefore there is the potential for over-concentration in the market. I have no evidence to suggest that the appellant's calculation of other establishments may be incorrect. I agree with the appellant that, as with many urban public houses, competition within the market place for a decreasing market share of customers continues to lead to the closure of public houses.
16. Taking all of these factors into account, and on the basis of all of the evidence before me, I conclude that there is sufficient evidence of marketing well in excess of the two years required by Policy EA(b) and even at a reduced rental value, and a willingness of the appellant to consider alternative uses with Class A1, A2, and A3 of the Town and Country Planning (Use Classes) Order 1987 (as amended), no interest has been secured. In addition, taking into account the market signals as required by the Framework it is apparent that there is no

realistic prospect of the property being used as a public house in the foreseeable future. Consequently, there would be no conflict with Policy EA(b) of the Core Strategy.

Other matters

17. I have taken into account the views of some residents that the current appearance of the prominent façade of the building detracts from the appearance of the area and that a holistic approach to bringing the building into some use would be beneficial. Whilst the re-use of the building would undoubtedly bring improvements to the visual appearance of the property, this does not outweigh the fact that, on the basis of the evidence submitted, it has not been sufficiently demonstrated that the living conditions of the potential occupants of the property would not be harmed by its location close to the busy road junction.
18. I have also taken into account the views that the proposed use of the ground floor for residential purposes would interrupt the retail offer of the surrounding area. Whilst this may be the case, I am also mindful of the poor appearance of the property and the effect that this may have had over a ten year period on the appearance of the area. Whilst I recognise that commercial uses would be more sympathetic to the surrounding retail/commercial properties, on the basis of the evidence provided it unfortunately appears that there is little prospect of an alternative commercial use being secured in the foreseeable future.

Conclusion

19. I have found that sufficient marketing has been undertaken to demonstrate that there is no realistic prospect of the ground floor of the building being used as a public house. However, this does not outweigh the fact that there is a lack of any evidence to demonstrate that the proposed change of use would not cause harm to the living conditions of the occupants of the proposed flats as a consequence of the position of the building in close proximity to the Lee Green Junction. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR