
Appeal Decision

Site visit made on 17 January 2017

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 20 February 2017

Appeal Ref: APP/Q0505/W/16/3158236

**Lock House, Jesus Green, Victoria Avenue, Cambridge, Cambridgeshire
CB4 3BD**

- 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 Simon Godfrey against the decision of Cambridge City Council.
 - The application Ref: 16/0001/FUL, dated 3 January 2016, was refused by notice dated 7 June 2016.
 - The development proposed is a change of use from residential to commercial A3 use and minor alterations to the listed building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council have granted listed building consent for the proposed scheme (Ref: 16/0002/LBC) and in doing so have found that the special interest of the Grade II listed building, Jesus Green Lock House, and the significance of the Central Conservation Area would be preserved. I am inclined to agree after having had special regard of the facts that are before me. This is the basis upon which this appeal has been determined.
3. The Council has an emerging plan that is at an early stage and is yet to be examined in public. As its policies have not been tested this appeal will be determined according to the Cambridge City Local Plan 2006 (LP) and the National Planning Policy Framework 2012 (the Framework). Consequently, little weight will be given to reasoning based on the content of the emerging plan.

Main Issue

4. The main issue is whether or not there is sufficient justification for the proposed change of use.

Reasons

5. The appeal building is located on the northern edge of Jesus Green immediately adjacent a river lock and footbridge spanning the River Cam. The building was originally a lock keeper's dwelling and is currently a House in Multiple Occupation (HMO) comprising five self-contained units. It has a small curtilage which is well defined by a concrete boundary wall that separates it from the

wider public space of the Green. The proposal comprises a change of use and associated alterations to the listed building.

6. Saved policy 5/4 of the LP states that the redevelopment of existing dwellings or a change in the use of residential accommodation will not be permitted unless specific criteria can be met. The appellant is of the opinion that the proposal potentially satisfies two of the criteria, namely that the change of use would best preserve the listed building and that it is necessary for the provision of community facilities for which there is an identified need. I shall deal with each of these matters in turn.
7. The appellant has suggested that it would best preserve the listed building because it would make the building 'more enticing and welcoming' and better reveal its significance. I accept that the removal of internal studwork and minor alterations to the boundary wall would offer some superficial enhancement. I also accept that the catslide extensions would not interfere with the legibility of the original building. However, I am not satisfied that the architectural and historical special interest of the building is threatened by its current use as an HMO.
8. I observed that the building is not in a parlous condition and that it is clearly habitable given that it is currently occupied. Consequently, its continued viable use as a residential dwelling is not dependent on the proposed works as it would have an ongoing residential use that would not cease in its absence irrespective of whether or not the house is suitable for single occupancy. As the Council point out, the building has been registered as a HMO since 1996 and I have no substantiated evidence before me to suggest that this use would not continue.
9. I acknowledge the appellant's claim that the present owners have no intention of investing in the preservation of the building. However, paragraph 130 of the Framework advises that any deteriorated state resulting from the deliberate neglect of heritage assets should not be taken into account in any planning decision. As such, this matter carries little weight even though the building has a somewhat unkempt appearance. Given the above, I am not satisfied that a change of use is critical to the preservation of the building or that it would be best served by the proposed scheme. As such it would not satisfy criterion c of saved policy 5/4 of the LP.
10. Turning to the provision of community facilities, I accept that expressions of interest have been received in relation to the potential use of the first floor for this purpose and acknowledge that it is an explicit element of the appellant's business plan. In the absence of any planning obligation there would, however, be nothing to stop future occupiers from withdrawing this provision and using the space solely for commercial purposes, a fact acknowledged by the appellant. Moreover, whilst the appellant has identified a potential use that would be welcomed by local groups I have no substantiated evidence before me to suggest that there is a lack of alternatives and thus the presence of an objectively identified need. As such the proposal would not satisfy criterion d of saved policy 5/4 of the LP.
11. The appellant has drawn my attention to saved policy 6/4 of the LP in support of the proposal which states that development that maintains, strengthens and diversifies the range of visitor attractions will be permitted where it is well-related to the cultural heritage of the city. Although the policy justification

highlights the need for more meeting places and covered seating areas this policy cannot be made to mean whatever the appellant would like it to mean. Policies should be interpreted objectively, in accordance with the language used and read within their proper context. Consequently, I am not satisfied that a café constitutes a visitor attraction or that there is an established need given the proximity of similar establishments beyond the immediate environs of the Green. As such it gains little support from this policy.

12. Whilst I accept that a café would lead to visitors spending more time in the vicinity of Jesus Green this would be co-incidental to its primary function of providing a verdant, open space for outdoor enjoyment. As such I am not satisfied that it would become a visitor attraction in its own right. I also note the presence of alternatives to the north east, along Chesterton Road and the A1134, as well as to the south of the Green in the city centre. These are a short walk away and I have no substantiated evidence before me that this use class is under-represented in the surrounding area. As such I do not find that a single café would make a significant contribution to the vitality or viability of the city.
13. I acknowledge that the Audience Development Plan for Jesus Green recommended that greater use of the park could be encouraged by the provision of a wider range of facilities or an improved visitor infrastructure. However, I note that the only explicit café provision in the recommended actions is associated with the lido situated a short distance to the east of the appeal property. In any event, the recommendations of the report are just that and carry no statutory force as they are not part of the development plan nor have they been adopted as supplementary planning guidance by the Council. As such these recommendations only carry limited weight in the balance of this appeal.
14. Given the above, I conclude that there is insufficient justification for the proposed change of use and that this would be contrary to saved policy 5/4 of the LP and therefore not in accordance with the development plan.

Other Matters

15. Planning law¹ requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is one such material consideration that the appellant has relied upon.
16. However, paragraph 150 of the Framework advises that local plans are the key to delivering sustainable development. It follows that any proposal not in accordance with an up-to-date local plan cannot rely upon a presumption in favour of sustainable development. The Framework advises that a plan should not be considered out-of-date simply because its policies were adopted prior to the publication of the Framework. In this instance I am satisfied that there is a high degree of consistency and this fact is not disputed.
17. I acknowledge the sustainable location, limited 'food miles', low impact delivery methods and jobs that would be created. However, the proposed change of use would not amount to a sustainable form of development and the 'golden thread' would be broken owing to the conflict with the development plan and

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended)

contrary to paragraph 14 of the Framework. Having had regard to the Framework as a whole, this conflict would not be outweighed by any other material consideration.

18. The appellant is of the opinion that the existing residential use is not suited to the location and has drawn my attention to a lack of privacy, anti-social behaviour, criminal damage and the hypothetical difficulties that might be present if the HMO were to be returned to single occupancy use. However, I have no substantiated evidence before me that any of these wider circumstances have had any bearing on the occupancy of the building or its continued use as an HMO. Furthermore, the reversion of the building to single occupancy is not a matter for consideration in this appeal and has not been tested through the submission of a planning application to this effect. Consequently, I give this matter negligible weight in the balance of this appeal.

Conclusion

19. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

Roger Catchpole

INSPECTOR