
Appeal Decision

Site visit made on 7 February 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 6th March 2017

Appeal Ref: APP/N5660/W/16/3162440

The Beehive, 6 Crossford Street, London SW9 9HQ

- 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 Ms Kimberley Datnow of Sound Properties Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref: 16/04294/FUL, dated 15 July 2016, was refused by notice dated 13 September 2016.
 - The development proposed is a change of use from vacant Public House (Use Class A4) to create 2No. self-contained residential flats (Use Class C3).
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - The effect of the development on parking availability and highway safety in the area;
 - Whether the building should be retained as a public house or in another commercial or leisure use;
 - Whether the proposed development would provide suitable living conditions for the future occupants, with particular regard to daylight and sunlight, ventilation, and outdoor amenity space; and
 - Whether the development provides suitable cycle storage.

Reasons

3. The appeal building is a three storey building with a public house at ground floor level, located in a predominantly residential area. The public house has an existing cellar area, and the building has recently been extended to the side and a mansard roof, containing an additional level of accommodation, added as part of an earlier conversion of the upper floors of the building to flats.

Parking and Highway Safety

4. Policy T6 of the Lambeth Local Plan 2015 (Local Plan) seeks to ensure that new development does not have an adverse effect on the highway network. Policy T7 seeks to minimise car parking and to promote car free development. The
-

appeal building is located within a Controlled Parking Zone (CPZ). No car parking places are proposed with the development which would comply with Policy T7. Although appellant has stated that she is prepared to enter into an obligation that would ensure that the flats would not be occupied by people who hold a car parking permit, I do not have either a draft, or a completed obligation before me.

5. There is no evidence in respect of parking stress from either party, nonetheless, the fact that the area is designated as a CPZ indicates that there is a high demand for, and consequent need to manage, on-street car parking in the vicinity of the appeal site. The CPZ operates between 8:30-17:30 on Monday to Friday, and I saw during my site visit that the available on street parking in the area was well used. There are a limited number of resident's only parking bays available and the density of surrounding development means demand for parking is likely to be high outside of the controlled hours.
6. The area has a Public Transport Accessibility Level (PTAL) rating of 5 which indicates very good access to public transport, and would mean that the residents of the proposed development would not necessarily be dependent on private cars for their day to day transport requirements. However, this of itself, would not prevent the future occupiers from owning or operating cars.
7. Within this context, if the development were not car free, increased demand for the limited number of available parking spaces would result in an increase in parking stress and consequent illegal or unsafe parking, which would be prejudicial to highway safety in the area.
8. In order to fully comply with Policy T7 it must be demonstrated that development would be car free. In the absence of a planning obligation to ensure that the flats would not be occupied by people who hold a car parking permit, the appeal must fail.
9. I have considered whether this matter could be addressed by using a planning condition to secure the development as a car-free. However, the Planning Practice Guidance advises that a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence will only be appropriate in exceptional circumstances, such as in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. Due to its small scale, I do not consider that the proposed development can be considered strategically important and, therefore, would not meet this test in order to be considered as an exceptional circumstance.
10. I therefore find that the proposed development would cause harm to parking availability and highway safety in the area. It would be contrary to the requirements of Policy T6 and Policy T7 of the Local Plan which seek to ensure that new development does not cause harm to highway safety and that car parking in connection with new developments is minimised.

Whether the premises should be retained as a public house

11. Policy ED8 of Local Plan specifically addresses and seeks to support the retention of public houses, recognising that they have an economic role as well as playing a part in local community life and identity. Policy ED8 requires that

before consideration can be given to alternative uses, it must be demonstrated that the public house is no longer viable and that it must have been actively marketed for a period of at least 12 months. It also seeks to retain facilities which are of particular value to the local community and to prevent any harm to the vitality of the area or to the character of the street scene.

12. A marketing report and a financial viability report were submitted with the application. Whilst the Council have questioned the robustness of the viability report as part of it is based on assumptions, the Council has not submitted any viability evidence of its own, or a detailed audit of the submitted viability report. It is clear from the viability report how the relevant assumptions have been arrived at, based on rateable value which in turn is based on Fair Maintainable Trade that is derived from trading figures, and in the absence of any substantive evidence to the contrary, I have no reason to question the findings of the viability assessment.
13. The Council also suggest that the appellant has not used the Campaign for Real Ale's (CAMRA) Public House Viability Test. However, Policy ED8 merely requires that a viability report be submitted. The supporting text to Policy ED8 suggests that the CAMRA Public House Viability Test, or a similar objective evaluation method, is to be used. As the Policy itself does not require the use of the CAMRA viability test, the fact that the appellant has used a different evaluation method does not make the approach non-compliant with the policy.
14. The marketing report is also clear that the property has been marketed for a period of at least 12 months by a number of means including direct approaches to potential interested companies including pub chains, book makers, estate agents and convenience stores as well as local businesses. The Council suggest that the marketing of the property was inadequate as it was not offered for sale in appropriate publications or through specialised licensed trade agents in line with Policy ED8. Policy ED8 requires active and appropriate marketing to have been undertaken. The reference to appropriate publications and specialised licensed trade agents is contained in the supporting text and not within the Policy itself. Although the supporting text is intended to assist in interpreting and applying the policy it does not, of itself, have the force of policy. The marketing report sets out that the property was widely advertised, including direct approaches to pub chains and for other uses, and within this context, I am satisfied that appropriate marketing for a period of at least 12 months as required by Policy ED8 has been undertaken.
15. Although previously included on the register of Assets of Community Value, the appeal building has been removed from the register and there is no substantive evidence before me that the public house is of particular value to the local community. Whilst there is an objection to the proposal from CAMRA, no representations in respect of either the planning application or the appeal were received from other third parties.
16. Policy ED8 also seeks to ensure that proposed alternative uses of public houses would not adversely affect the vitality of the area or the character of the street scene. It is common ground between the parties that the proposed development would preserve the appearance of the building, although the Council suggest that the character of the building would be harmed by the loss of a purpose built public house and the loss of active frontage at ground floor level. The proposed development would retain and incorporate the existing

ground floor public house frontage and, whilst it would no longer operate as a public house, the original function of the building would continue to be evident. Although the proposal would remove a commercial premises from the street, the surrounding area is predominantly residential in character, and the proposed use would not be inconsistent with this.

17. When it was trading as a public house the appeal building would have generated a degree of activity and movement on the street. However, as the appeal building is the only commercial property in the street, I do not find the argument that the loss of active frontage would be so harmful to the character of the street such as to warrant refusing planning permission a persuasive one.
18. I therefore conclude that it is not necessary to retain the appeal building in a public house use or other commercial use. The proposal would comply with the relevant requirements of Policy ED8 of the Local Plan which seeks to retain public houses unless particular criteria are met.

Living conditions of the future occupiers

19. It is not in dispute between the parties that the proposed flats would meet the internal space standards for new residential accommodation set out in the London Plan 2016 (London Plan) and the Technical Housing Standards - Nationally Described Space Standard. Policy H5 of the Local Plan states that new development should be dual aspect unless there are exceptional circumstances. Although the rooms in the basement would be single aspect, the ground floor of the building provides an outlook to both the front and the rear. Given that the proposed development is a conversion of an existing building as opposed to a new build, the fact that part of the accommodation is single aspect does not, in my view, represent a conflict with the requirement of Policy H5.
20. I have had regard to the Council's point that the proposed light wells at the rear of the building are partly overhung by the upper floors of the building. However, I saw when I visited the site that the rear of the building faces south and is adjacent to a large area of communal open space associated with the neighbouring blocks of flats. As such the rear of the building would receive direct sunlight for a large part of the day. The rear of the building would also be recessed which would result in a lesser degree of overhang at ground floor level than at first floor level. A daylight assessment was submitted with the appeal which shows that within the principal living areas of the flats, which would be located at basement level, the Average Daylight Factor would be above the minimum levels recommended by the Building Research Establishment. Whilst I am mindful that this information was not available to the Council when the planning application was determined, it has had the opportunity to comment on it as part of the appeal and has not challenged the conclusion of the Daylight Assessment.
21. Policies 5.3 and 5.9 of the London Plan and the London Plan Housing Supplementary Planning Guidance 2016 (SPG) seek to ensure that new development has adequate ventilation to avoid potential overheating. Whilst the basement element of the development is single aspect, these rooms incorporate full height bi-folding doors to the light well/external space and, in the absence of any evidence to the contrary, I am satisfied that adequate ventilation can be provided to these basement rooms.

22. Although the principal living accommodation is located in the basement of the building and looks out into a light well, resulting in a limited outlook from these rooms, the ground floor accommodation has an unrestricted outlook to both sides of the building. Overall, the outlook that would be achieved from the proposed flats would not be so constrained as to warrant refusing planning permission.
23. I have noted the Council's point in respect of potential overlooking of the proposed accommodation from the surrounding area. However, I saw when I visited the site that, due to the position of the windows on the surrounding buildings, there would be no direct overlooking of the new basement rooms from adjacent properties and overlooking of the ground floor rooms would not be significantly different from the degree of overlooking experienced by existing windows on the rear of the building. Although the development is adjacent to an area of communal open space, opportunities for causal overlooking of the main habitable rooms in the basement would be very limited.
24. Local Plan Policy H5 states that new flats should be provided with at least 10m² outdoor amenity space. The outdoor area that would be provided at the new flats falls only slightly below this figure. This notwithstanding, there are a number of public parks within a short walking distance of the appeal building and the gross internal area of the flats slightly exceeds the minimum required floorspace by approximately the same amount that the external amenity areas fall short of the outdoor space requirements.
25. Whilst the outdoor amenity space would be located below ground level and would be partly oversailed by the upper levels of the building, as I have set out above, the rear of the appeal building faces south and is adjacent to an area of open space. Consequently, light levels at the rear of the building would be relatively high which would result in higher levels of available light in the basement level amenity area. Although direct sunlight would be limited, I do not consider that the outdoor amenity areas would be excessively dark or oppressive.
26. I therefore conclude that the proposed development would provide suitable living conditions for the future occupants, with particular regard to daylight and sunlight, ventilation, and outdoor amenity space. It would comply with the relevant requirements of Policies 5.3 and 5.9 of the London Plan, Policy Q2 and Policy H5 of the Local Plan and the SPG which seek to ensure that new housing meets certain minimum requirements in order to be fit for purpose and provide acceptable living conditions for the occupiers.

Whether the development provides suitable cycle storage

27. The development would provide storage for five bicycles within a separate part of the building which is accessed from Crossford Street. The Council have not raised concerns in respect of the number of cycle storage places proposed. Policy Q13 of the Local Plan sets out the requirements in respect of cycle storage. I note that the Council is less favourable towards the vertical storage of cycles as proposed, stating a preference for horizontal anchoring points. Nonetheless, Policy Q13 is not specific in this respect and does not preclude the use of vertical storage. Nor does it preclude cycle storage in areas that are used for other purposes.

28. The Council consider that the combined use of an area for cycle storage and refuse bin storage may deter use of the cycle store as a result of odours from the refuse bins. Policy Q13 requires that cycle storage areas be fully ventilated and good practice would suggest that bin storage areas should also be fully ventilated. The detailed design of the storage area could be controlled by a planning condition and, consequently, I find that there would not be any inherent conflict with Policy Q13.

Conclusion

29. I have found that appropriate marketing and viability reports have been provided and that the appeal building is not required to remain in a public house use by Policy ED8 of the local plan. I have also found that the proposed development would provide suitable living conditions for the future residents and that appropriate cycle storage is proposed.
30. However, due to the demand for car parking in the area and the lack of a mechanism to secure the development as car free, the proposal would cause harm to highway safety. This is an important matter and is, of itself, sufficient reason to refuse planning permission.
31. I therefore conclude that for the above reasons, and having regard to all other matters raised, that the appeal should be dismissed.

John Dowsett

INSPECTOR