

## Appeal Decision

Site visit made on 18 January 2017

**by A J Mageean BA (Hons) BPI PhD MRTPI**

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

**Decision date: 28<sup>th</sup> April 2017**

---

**Appeal Ref: APP/E5900/W/16/3150733**

**The Duke of Wellington Pub, 12 Toynbee Street, London E1 7NE**

- 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 Mendoza Ltd against the decision of the Council of the London Borough of Tower Hamlets.
  - The application Ref PA/15/02489, dated 28 August 2015, was refused by notice dated 28 April 2016.
  - The development proposed is change of use from a public house (Class A4) to public house/hotel (sui generis) (public house being retained at basement & ground level) together with a two storey extension with mansard roof at second floor level and the installation of dormer windows to allow the conversion of the loft space into hotel accommodation.
- 

### Decision

1. The appeal is allowed and planning permission is granted for change of use from a public house (Class A4) to public house/hotel (sui generis) (public house being retained at basement & ground level) together with a two storey extension with mansard roof at second floor level and the installation of dormer windows to allow the conversion of the loft space into hotel accommodation at The Duke of Wellington Pub, 12 Toynbee Street, London E1 7NE in accordance with the terms of the application, Ref PA/15/02489, dated 28 August 2015, subject to the conditions set out in the attached schedule.

### Application for costs

2. An application for costs was made by Mendoza Limited against the London Borough of Tower Hamlets. This application is the subject of a separate Decision.

### Procedural Matter

3. Some take the view that a public hearing should have been held. Section 319A of the 1990 Act provides that the Secretary of State must determine the procedure by which the proceedings should be considered. I have been appointed to act on his behalf. Having regard to the views of the parties and the advice in the Planning Inspectorate's Procedural Guide I am satisfied that written representations are appropriate to decide the appeal. Moreover, I am entirely content that the various planning issues raised can be properly considered and determined by this method.
-

## **Main Issues**

4. The main issues are:

- The effect of the proposal on the viability and retention of the public house, an Asset of Community Value;
- The effect of the proposal on the safety and capacity of the road network in the vicinity of the appeal site; and,
- Whether the proposal should make provision for wheelchair accessible bedrooms.

## **Reasons**

5. The appeal site is a mid-nineteenth Century building located on a corner plot within the Wentworth Street Conservation Area. The building itself is three stories with additional accommodation in the roof space. A public house occupies the ground floor and beer gardens, with ancillary accommodation on the upper floors.<sup>1</sup> It appears that the public house, known as the Duke of Wellington, has been in existence as long as the building. The application site includes the area directly to the south of the public house which is currently used as a covered beer garden and storage area.
6. The proposal would extend the second and third floors and convert the existing floor area above the public house into 11 hotel rooms. This would include the extension of the mansard roof, the insertion of dormer windows externally, and internally the replacement of first and second floors to a lower level. The hotel rooms would be en-suite but modestly sized due to the limited space available.

### ***Viability and retention of the public house***

7. The reason for refusal expresses concern about the effect of the proposal on the viability and retention of the public house in terms of potential for noise and disturbance from this use to the occupiers of the hotel. Particular reference is made to the importance of the 'community infrastructure' role of the Duke of Wellington. In examining this issue I will consider firstly the social role of the public house, then the nature of any noise and disturbance which could arise from the proposal, and finally any effect on viability, including other related matters which have been brought to my attention.

### ***Social role***

8. The Duke of Wellington is a well-established and much valued community facility. This is evidenced by the considerable amount of public support for its retention from long standing customers and local organisations. One supporter sums up the pub as being "*a bustling hive of activity with darts teams, sports fans and people of all ages, sexes and cultures coming together to enjoy a drink and a chat*", and another says that it is a "*home from home*". I note that this is a particularly popular darts pub, with 6 teams playing out of it.
9. During the course of the appeal the Council has confirmed that the Duke of Wellington has been listed as an Asset of Community Value (ACV) under the Localism Act 2011. I note that the appellant has concerns about the listing

---

<sup>1</sup> Reference is made in the evidence presented to the fact that there are 4 letting rooms on the first floor and the top floor is a flat with 2 bedrooms for use by the publican.

procedure followed by the Council, and intends to pursue a review of the decision to list the pub. However, it is not for me to adjudicate on this matter and therefore this decision is made on the basis that the listing has been confirmed and that this, and the protection afforded to such community assets, is a material consideration.

10. Furthermore it is clear to me that the Duke of Wellington is an example of a community facility that Policy DM8 of the London Borough of Tower Hamlets Managing Development Document DPD 2013 (the MDD) seeks to protect. In line with the provisions of the policy, this facility clearly meets an identified community need and, as a long established traditional public house, this building continues to be suitable for this use. It is also relevant to note the provisions of the London Plan which acknowledge "*the important role that London's public houses can play in the social fabric of communities*", stating that *where there is sufficient evidence of need, community asset value [including an asset listed as an Asset of Community Value], and viability in pub use, policies to retain, manage and enhance public houses are encouraged*.<sup>2</sup> It is also relevant to note that paragraph 70 of the National Planning Policy Framework seeks to guard against the unnecessary loss of valued services and facilities.

#### *Noise and disturbance*

11. The Duke of Wellington is a well-used local. The rear yard area is an enclosed space which is largely covered and provides additional seating. As such I accept that this provides an attractive overspill space that is used at all times of the year. The noise typically associated with public house use, including loud conversation, background music, television sport and people arriving and leaving would be taking place in relatively close proximity to the hotel rooms, with four of these located directly above the bar area.
12. The Council considers that the noise and disturbance generated by ordinary use of the bar and yard area would lead to tensions between the hotel users requirements for a reasonable degree of peace and quiet and the typical levels of noise and disturbance associated with use of the bar and yard areas. It is suggested that this could lead to pressure to reduce or curtail public house activity.
13. However, the proposed hotel would be a small scale operation and the nature of the combined hotel and the pub use would reflect the long established tradition of let rooms above pubs. Prospective hotel users would be aware of the nature of this establishment when booking accommodation with its location above a traditional drinking establishment being an attractive feature. In this respect it would be highly unlikely that the activities of the public house would be so disruptive that the presence of the hotel would inevitably lead to pressure to reduce them and so diminish the social value of the pub.
14. In undertaking this assessment a noise survey is not essential. Indeed, my view is that this change of use would not in itself lead to issues with noise sensitivity, nor would it create significant levels of additional noise and disturbance. The hotel and public house uses proposed are not inherently incompatible. Nevertheless, I recognise that there is scope for issues of noise transference to potentially impact on future hotel guests. Therefore should this

---

<sup>2</sup> The London Plan 2016, paragraph 4.48A

application be acceptable in other respects, the internal reconstruction associated with this proposal would provide the opportunity to introduce an appropriate standard of noise insulation for the hotel rooms. This could be required by condition.

### *Viability*

15. The application is for a change of use from public house (Class A4) to a combined public house and hotel use. It is clear from the appellant's Deliveries/Servicing and Access Statement (DSAS) that access to the hotel rooms would be via the existing entrance on Toynbee Street which also provides access to the public house. Bookings would be managed over the internet with bar staff checking customers in and out. The pub lounge would provide for breakfast and other hotel catering requirements throughout the day within the bar area.<sup>3</sup> Deliveries to the hotel would need to be managed, particularly as no storage provision is indicated.
16. In these respects it appears that the day to day operation of the public house and hotel would be closely integrated. Objectors speculate that this proposal would constitute the conversion of the entire premises to hotel use, with the bar and cellar becoming ancillary to the hotel, particularly as the floor area occupied by the hotel would exceed that of the public house.<sup>4</sup> However, the size of the floorspace is not a wholly reliable guide as to how the premises would actually function and it would be perfectly possible for customers to use the pub separately from the hotel.
17. In this respect the examples of similar dual use arrangements currently operating successfully referred to by the appellant are relevant. I note objectors' comments that these examples are not comparable circumstantially to the present case, with most of them involving existing operators introducing a smaller number of hotel rooms. Nonetheless, with 11 rooms the present proposal would also be a small scale operation and not that dissimilar to those referred to. Whilst I accept that there are commercial differences such matters are not material planning considerations. Overall the existence of a similar juxtaposition of uses elsewhere supports the contention that the viability of the existing A4 use would not necessarily be jeopardised.
18. I understand that objectors are concerned that this proposal would ultimately lead to the loss of the public house, with references made to the business tactics of the appellant. Nevertheless the plan referenced 187\_GA\_00 shows that the pub area would be kept in its present form with the current bar area and beer garden retained. The business model currently being proposed may result in some changes to the character of the bar area, though given the relatively small numbers of guests involved, coupled with the existing commercial success of the public house, there is no reason to suppose that this would change dramatically.
19. The evidence presented by the current landlord of the Duke of Wellington indicates that there may be issues associated with the renewal of the lease on this part of the property. Whilst the appellant states that the garden area would be retained in pub use, it appears that the lease offered to the landlord

---

<sup>3</sup> Deliveries/Servicing and Access Statement

<sup>4</sup> The Design and Access Statement indicates that the area occupied by the Public House would be 188m<sup>2</sup> and that occupied by the hotel would be 204m<sup>2</sup>

relates to the ground floor and basement areas only. Reference is also made to the poor relationship between the pub landlord and building landlord (the appellant). Such matters could have an impact on the retention of the public house in precisely its present form. The pub landlord has also gained an extremely loyal following and support for the continuation of his tenancy. However, the planning system is concerned with the use of land and so these commercial and personal considerations are not central to the determination of the present case.

20. Should this proposal be acceptable in other respects, a condition requiring the retention of an A4 use at ground and basement levels could be imposed. Objectors refer to a similar case involving the conversion of a former public house to include flats on the upper floors whilst retaining the pub.<sup>5</sup> In that case, notwithstanding the use of a condition requiring A4 use to be retained, no pub use has been introduced. However, as this example involved the introduction of residential use on upper floors it is not directly comparable to the present case, in which there would be a complementary relationship between pub and hotel use.
21. The use of a condition would not in itself ensure that the pub use would endure, and in this respect I note the concerns of objectors that 52% of pubs in the borough have closed since 2000. Furthermore, such a condition would not be able to secure the retention of the existing character of the pub or to ensure that it would fulfil the same community role. However, it would protect an existing community use in line with relevant policies, and it would mean that the hotel use could not occupy that area without further assessment by the Council through a planning application. Furthermore, as the pub has demonstrable commercial credentials and community benefits, a condition would provide some certainty about operational arrangements.
22. The National Planning Practice Guidance advises that planning permission runs with the land and it is rarely appropriate to provide otherwise.<sup>6</sup> The exceptional circumstances required to justify a condition to secure the current landlord's continued occupation of the pub have not been demonstrated in this case.
23. Finally, a range of examples of planning applications which have been refused and appeals dismissed on the basis of their effects on the viability of public houses, which note particularly their social role, are referred to by the landlord's agent. However, most of these are residential conversions or redevelopment of existing public houses, with none involving the conversion of the upper floors to hotel use and the retention of a ground floor A4 use. As such they are not directly comparable to the present case.
24. I have also considered the relevance of those decisions referred to in the most recent representation from the landlord's agent, including a recent decision relating to The Carpenters Arms in Camden.<sup>7</sup> In each of these cases the Inspector attaches weight to the pub's ACV listing, and the loss of some significant element of the pub accommodation is central to the harm to these recognised community facilities. As the area in use as the public house at the

---

<sup>5</sup> The Beehive, London Borough of Lambeth Reference 14/00715/FUL

<sup>6</sup> Paragraph: 015 Reference ID: 21a-015-20140306

<sup>7</sup> APP/X5210/W/16/3153219

Duke of Wellington would remain intact these cases are not directly comparable.

### *Conclusion*

25. Pulling the threads of this analysis together, I have found that whilst the proposal would be likely to result in some alteration to the character and operation of the existing public house, there would not be a detrimental effect on either the hotel users in terms of noise and disturbance, or on the future viability and retention of an A4 use. More specifically, on the evidence before me it cannot be concluded that the proposal would be bound to ultimately lead to the demise of an A4 use on the ground floor. There is therefore insufficient justification to resist the proposal on the grounds of the unacceptable loss of this community facility, a recognised ACV. I therefore conclude that the proposal would not conflict with the MDD Policy DM8 or the London Plan Policy 3.1(b) which seek to protect community infrastructure, nor Policy SP01 of the London Borough of Tower Hamlets Core Strategy 2010 (the CS) which aims to ensure that there is an appropriate mix of uses in central locations. The reason for refusal also refers to MDD Policy DM2 which relates to local shop provision and is not of relevance to the present case.

### ***Safety and capacity of road network***

26. The site is located within the London Plan Central Activities Zone (CAZ) and is a busy area of mixed commercial with some residential use. It is served by a network of narrow roads with pedestrian pathways connecting Bishopsgate and Commercial Road. It has excellent accessibility to public transport, with the highest PTAL rating of 6b. However, vehicular access to the site itself is somewhat restricted, particularly due to the presence of a weekday market to the south, and there is limited opportunity for on-street parking in this area.
27. The appellants' DSAS indicates that in terms of deliveries and refuse there would be little change from the existing arrangements for the pub. However as no provision for on-site storage is indicated on the plans there would be an increase in vehicle activity in terms of regular, presumably daily, trips to service the hotel rooms. The hotel guests are likely to be short-stay and could also bring some additional traffic in terms of private cars and taxis, though my view is that in this location most hotel users would use public transport to access the building.
28. As this is already a busy commercial area, additional delivery and servicing vehicles to a hotel of this size would not in themselves add noticeably to congestion or road safety issues in this area. Neither Toynbee Street nor Brune Street are particularly narrow, and there are some parking bays close to the appeal site. Nevertheless, there would be some increase in vehicle movements in this area which could impact on the free flow of traffic. Therefore further information about delivery and servicing arrangements should be required in order that they are suitably controlled, taking into consideration existing restrictions on movement in surrounding streets.
29. Objectors make reference to the MDD Policy DM07, suggesting that the proposal would not meet the required parking standards for hotels. However, specific standards are not set out in this Policy, and as noted above, this would be a small hotel in an accessible location. I also note the suggestion that a

previously dismissed appeal decision dealt with similar servicing issues.<sup>8</sup> However, that proposal was for the conversion of a vacant public house into a convenience store of significant size located within a predominantly residential area. It is apparent that the concerns raised, site circumstances and proposed commercial operations were not directly comparable, and it is therefore not appropriate to draw parallels.

30. I therefore conclude that subject to a condition to control servicing and deliveries the proposal would not have a detrimental effect on the safety and capacity of the road network in the vicinity of the appeal site. In this respect it would not conflict with either the CS Policy SP09 or the MDD Policy DM20 both of which seek to ensure that new development has no adverse impacts in these respects.

### **Accessible accommodation**

31. The London Plan Policy 4.5 states that where new hotel accommodation is created at least 10% should be wheelchair accessible. This would amount to a single room in this case. No such provision is made as part of the present proposal. However, this is an existing building of modest size. Meeting the terms of the policy would require internal alterations, including the installation of a lift, which would themselves reduce the floor area on the ground floor and so impact on the community facility that other policies seek to protect. Whilst giving access to all is a priority the effect on the achievement of this objective would be very limited given the London Plan's aim of achieving 40,000 net additional hotel bedrooms by 2036.
32. In these circumstances, whilst the proposal is strictly contrary to Policy 4.5 a departure from it is justified by other material considerations.

### **Other Matters**

#### *Hotel Accommodation*

33. Some maintain that there is an over-supply of hotel accommodation in this area, and that a need for additional accommodation has not been demonstrated. The MDD Policy DM7 supports the development of visitor accommodation in the locations identified in the Core Strategy, where its size is appropriate to its location and where there is a need for such accommodation.
34. The application site is located within the CAZ which CS Policy SP06 states is, in principle, an appropriate location for hotel development. The London Plan also takes a positive approach to hotel development and it is not therefore necessary to demonstrate a specific need for this proposal. It does appear that in recent years the Council has approved a lot of hotel accommodation across the borough, though the development plan does not provide an upper limit in terms of the level of provision. Whilst Policy 4.5 of the London Plan states that *within the CAZ further intensification of provision in areas of existing concentration will be resisted*, this policy also supports small scale provision on the fringe of the CAZ. Therefore, whilst no specific evidence has been presented to demonstrate that this is an area of existing concentration, even if it was the addition of a small hotel would not in itself create or exacerbate an over-supply in this area.

---

<sup>8</sup> APP/R0335/W/15/3138504

### *Loss of residential accommodation*

35. Concern is also expressed about the loss of residential accommodation, and the effect of this on housing supply. However, the existing accommodation above the public house is ancillary to the pub and is not in itself classified as independent residential accommodation (class C3). The proposal would therefore not result in the loss of general needs residential accommodation.

### *Heritage Asset*

36. As the site is located within the Wentworth Street Conservation Area there is a statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to ensure that, in making planning decisions, *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area*. The appeal building currently contributes positively to the conservation area both in terms of its architectural style and use. Objectors criticise the proposed changes to the exterior of the building. However, these alterations would reflect the style of the existing building. In this respect the proposal would have a neutral effect and so would preserve the character of the conservation area.
37. The proposals would lead to some alteration of the present character of the public house in terms of the way it is run. However, the building would remain in A4 use and the existing bar area would be largely unaltered. Any change in this respect would be due to the operational differences between the current and proposed future business arrangements. As such the proposal would have a neutral effect on the character of the conservation area which would be preserved.
38. Finally, I note reference to concerns about the effect of the proposal on the structural integrity of the building, in the absence of a structural survey. However, when considering proposals affecting unlisted buildings in conservation areas the primary consideration is the effect of the proposal on the contribution of the exterior of the building to the area. In the present case the appearance of the building as a Victorian pub would be retained and it is not necessary to require details of how changes to the interior of the building would be managed.

### **Conditions**

39. I have considered the conditions suggested by the Council alongside the advice contained in the National Planning Practice Guidance. As a result I have amended some of them for clarity and accuracy. I have included a condition requiring development to be carried out in accordance with approved plans as this provides certainty. A condition requiring the ground floor and basement areas to remain in A4 use is necessary to protect a social and community facility.
40. I have included a condition relating to external materials in the interests of the character and appearance of the area. A condition requiring details of sound insulation is required to ensure that the accommodation is suitable for future hotel users. A condition requiring a delivery and servicing plan is required to ensure that the development does not have an unacceptable impact on the surrounding highway network. It is essential that the requirements of these

conditions are put in place prior to development commencing to ensure that the development is acceptable in respect of the matters they seek to address.

### **Conclusion**

41. The Duke of Wellington is a traditional public house which is a valued community asset as recognised by its ACV status. Whilst the proposed changes would have an impact on the day to day management of the existing pub, I have found that this would not in itself threaten the viability and retention of an A4 use. Furthermore, I have also found that it would not have a detrimental effect on the operation of the local highway network, nor that it should be required to provide wheelchair accessible accommodation.
42. Although there would be conflict with the London Plan policy on visitor infrastructure in relation to wheelchair access the proposal would adhere to other parts of Policy 4.5 and other policies concerned with hotel provision. It would also comply with other relevant policies concerned with community infrastructure and highway safety and capacity. The proposal would therefore comply with the development plan as a whole and there are no other material considerations to indicate that it should not be determined in accordance with it. Consequently I conclude that the appeal should succeed.

*AJ Mageean*

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: 187\_EE\_00; 187\_EE\_01; 187\_EE\_02; 187\_EE\_03; 187\_ES\_00; 187\_ES\_01; 187\_EX\_00; 187\_EX\_-01; 187\_EX\_01; 187\_EX\_02; 187\_EX\_03; 187\_GA\_-01; 187\_GA\_00; 187\_GA\_01 Rev A; 187\_GA\_02; 187\_GA\_03; 187\_GA\_04; 187\_GE\_00; 187\_GE\_01; 187\_GE\_02; 187\_GE\_03; 187\_GS\_00; 187\_GS\_01; 187\_S\_00.
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the extensions hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) Construction work shall not take place until details of the noise insulation for the hotel rooms shall have been submitted to and approved in writing by the local planning authority. The details shall demonstrate that the rooms achieve the 'Very Good' standard required by BS8233:2014. All works which form part of the scheme shall be completed before the hotel rooms are occupied and retained thereafter.
- 5) The premises in the area shown as '*public house 78 sqm*' on approved plan 187\_GA\_-01 and '*public house (A4) 188sqm*' (including the area marked '*yard*') on 187\_GA\_00 shall be used as a public house under Class A4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, and for no other purpose (including any other purpose in Class A4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that order with or without modification).
- 6) Prior to the first occupation of the development a delivery and servicing plan shall be submitted to and approved in writing by the local planning authority. The plan shall include details of how servicing vehicles will access the site from the Transport for London Road Network, the frequency of trips to the site, the size of vehicles to be used and suitable locations on the surrounding streets from where the premises will be serviced. Deliveries and servicing shall thereafter be carried out in accordance with the approved plan.