

Appeal Decisions

Hearing held on 24 May 2017

Site visit made on 24 May 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 31 May 2017

Appeal A: APP/E5330/W/17/3169238 7-7A College Approach, Greenwich SE10 9HY

- 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 Hardy Inc Lease Limited against the decision of Royal Borough of Greenwich Council.
 - The application Ref 16/3617/F, dated 31 October 2016, was refused by the Council by notice dated 23 December 2016.
 - The development proposed is change of use of part of the building to provide a children's day nursery and alterations to the Admiral Hardy public house.
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Appeal B: APP/E5330/Y/17/3169261 7-7A College Approach, Greenwich SE10 9HY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Hardy Inc Lease Limited against the decision of Royal Borough of Greenwich Council.
 - The application Ref 16/3618/L, dated 31 October 2016, was refused by the Council by notice dated 28 December 2016.
 - The works proposed are change of use of part of the building to provide a children's day nursery and alterations to the Admiral Hardy public house.
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Decisions

1. I dismiss both appeals.

Preliminary Matters

2. The drawings that were submitted and considered as part of the planning and listed building consent applications were as set out in the Council's reasons for refusal. A subsequent application for essentially the same work, but in answer to the reasons for refusal over insufficient information, is with the Council but has not yet been determined. That application was accompanied by revised drawings 11C, 12B, 13B and additional drawing 15. As discussed at the Hearing, in view of these drawings being for works that differ in only limited detailed ways from that previously submitted, but which contain information as to the effects, there would be no prejudice in these later drawings being considered at appeal in substitution for the original ones.
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Main Issues

3. In Appeal A;

- The effect of the proposals on the operation of the Admiral Hardy public house, and the vitality and viability of the town centre.
- The suitability of the use with regard to the building and the town centre.

4. In both Appeals A and B;

- The effect of the proposals on the architectural or historic significance of the listed building and its setting within the West Greenwich Conservation Area and the Maritime Greenwich World Heritage Site.

Reasons

Policy Background

5. The buildings are listed Grade II and sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the buildings or their setting or any features of special architectural or historic interest which they possess. The setting is the West Greenwich Conservation Area and section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
6. 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. The site is within the Maritime Greenwich World Heritage Site which is a designated heritage asset.
7. London Plan Policies 7.4, 7.6 and 7.8 seek high quality design including with regard to architecture, and the identification, valuing, conserving and restoring of heritage assets, with development affecting heritage assets being required to conserve their significance.
8. The following policies of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) were referred to;
 - Policy E(a) states that planning permission will not normally be granted where a proposed development or change of use would generally have a significant adverse effect on the amenities of adjacent occupiers or uses. Housing or other sensitive uses will not normally be permitted on sites adjacent to existing problem uses, unless ameliorating measures can reasonably be taken and which can be sought through the imposition of conditions.
 - Policy EA(b) supports the retention of public houses that have a community role and will resist the change of use or demolition except where continued use as a public house is no longer economically viable. Evidence must be submitted to clearly demonstrate that reasonable attempts have been made to actively market the site as a public house for at least two years.

- Policy DH1 on design lists matters to be taken into account in achieving a high quality of design.
- Policy DH3 states that the Borough will protect and enhance the heritage assets and settings of Royal Greenwich, including the Maritime Greenwich World Heritage Site, preserving or enhancing the character or appearance of the 20 Conservation Areas, applying a presumption in favour of the preservation of statutory listed buildings and their settings.
- Policy DH4 concerns the protection and enhancement of the Maritime Greenwich World Heritage Site.
- Policy DH(h) is the detailed policy on the preservation or enhancement of conservation areas.
- Policy DH(i) is the detailed policy on the preservation of listed buildings, Proposals for external or internal alterations or additions to Listed Buildings should respect the integrity of the buildings and harmonise with their special architectural or historical character. Where consent is required for internal alterations, features of interest should be respected and left in-situ wherever possible. Proposals for changes of use of Listed Buildings will only be granted planning permission if it is no longer in its original or other established historic use and the new use is beneficial to the building and is compatible with its character and features of historic interest. Such a change of use should not conflict with other policies in the Core Strategy.
- Policy DH(j) is with regard to locally listed buildings.
- Policy IM(a) concerns the impact on the road network, but only in respect of major development and extensive sites.
- Policy IM(b) requires new development to promote cycling and walking.
- Policy CH1 on cohesive communities was not cited by the Council as an objection, but was referred to by an interested party. The development of new community facilities is supported where there is an identified local need and should be easily accessible and located in or on the edge of town or local centres. Nurseries are referred to in the supporting text at paragraph 4.7.15 which states that new nursery provision will be welcomed in Royal Greenwich. Any proposal should consider locating close to the residents it is serving. It must also satisfy the space standards set out by OFSTED.

Vitality and Viability

9. The present arrangement is of the public house The Admiral Hardy operating on the ground floor of number 7 with kitchen and stores in the basement and some non-public operations such as services extending into the upper floors. The remainder of the upper floors and across the archway into the ground floor and separate basement to number 7A is presently unused and unoccupied, but appears to be maintained and is in good condition. There is no separation between the two parts with two staircases between the ground floor of the public house and the remainder of the buildings and the reinstatement of an historical link between 7 and 7A results from permissions granted in 2002 after the two premises came under the same ownership.

10. The planning history set out in the appellant's Appeal Statement shows the hours of use of the public house to have been considered separately from the other areas, with the hours of operation being controlled only by the license, whereas the other areas, in use as an evening venue whether or not a 'club' as once alleged, had restrictive hours of use, apparently imposed in consideration of neighbouring uses. The final references in the history are applications for extended hours from the permitted 1130hrs (1100hrs on Sundays) which were refused on amenity grounds and enforcement action over alleged contravention of those hours, which the appellant states resulted in the closure of the venue.
11. With regard to the requirements of Policy EA(b), the public house would be retained, and its offer enhanced with improved toilets and kitchen arrangements. There would be no loss of a public house as sought to be avoided in the policy, as the upper areas are not a public house, even if it could be argued that they are a part of such an establishment. In view of the proposed improvements to that part which would remain as a public house, which could be secured by condition, the policy aim of supporting the retention of public houses that have a community role would be met.
12. The loss of the upper floor uses is not specifically covered by Policy EA(b) but the appellant pointed to the large number of eateries in the town centre area and the introduction of further stalls selling hot-food in the adjacent covered market as indicating that no harm would occur. The success of such eateries does appear to rely on a visible ground floor presence and whilst that might entail an upper floor area, the viable use of a first floor-only establishment is less apparent.
13. The proposed change of use could be considered to be a sensitive one as the subject of Policy E(a). There is no evidence that the public house should be considered a 'problem use' as it is protected under policy EA(b) in this town centre location and any previous alleged problems appear to stem from the use of the upper floors and number 7A. The proposed hours of use of the nursery would be 0700hrs to 1900hrs, and this could be secured by condition as suggested in the policy. Such hours would be unlikely to result in conflict with the public house and the use of separate entrances and the additional separation of routes as shown on the drawings would ensure compatibility.
14. There was discussion about further sound-proofing in number 7 between the public house and Room 3 shown for 0 to 2 year olds, but that age allocation need not be followed, and there did not appear to be a reason why the insulation should not be fitted from above, where there remain no floors of real architectural or historic significance.
15. Considering what appears to be a general use of the upper floors in the town centre, as offices, residential or an extension of the ground floor use, there does not appear to be a real threat to the public house through the use now proposed, and with the hours of operation restricted by condition, the use would be less sensitive than a residential one.
16. As a result, with conditions to control the use, the proposed change to a nursery would not give rise to a significant adverse effect on the amenities and viability of the existing public house, which would not be prevented or inhibited from fulfilling its role as a venue in the town centre for tourists and others. The loss of the redundant and hours-restricted venue use of the upper floors and number 7A would not adversely affect the vitality and viability of the town

centre, having mind to the preferable trading locations in use nearby. The proposal would accord with Policies E(a) and EA(b).

Suitability

17. Much of the considerations concerning the building will be discussed in the next main issue with regard to the effect on heritage assets. However, the building would provide a safe and secure environment away from traffic and with control exercisable at the entry points. In terms of the removal of later inappropriate additions and the opening-up of rooms the building appears well-suited to the proposed use. Doubt has been cast on the numbers shown to be accommodated in particular rooms, but that should be taken to be indicative only and the matter of the 1 or 2 less that might be eventually agreed through the nursery inspection and validation regime is not material to this appeal.
18. The outdoor play space is small and close to another office building that extends alongside the market. There are open spaces nearby and it would not be the case that children would need to negotiate the roads alone. The appellant refers to another nursery that had been permitted without any outdoor space. This is a matter for other legislation, but it would be reasonable to link the carrying out of the works to further agreement in that respect.
19. Highway concerns have been expressed, but it is the case that there are waiting restrictions in the vicinity of the site and it appears most unlikely that children would be dropped off quickly akin to a school, but that parents or guardians would need to enter the building to register attendance. In fact the appellant's evidence is that the facility would provide for people walking to the nearby Cutty Sark Docklands station for Canary Wharf, or to Greenwich National Rail station for central London, or on their way to more local destinations on foot or by bus. In choosing a nursery, location and ease of access would be considered. On that basis, the operation of the town centre or market would not be unduly affected in this already busy area at the time when people are going to work or returning home.
20. It is concluded that the proposed change of use would be consistent with the wording of Policy CH1 in helping to create and maintain cohesive communities that reduce inequalities, through the provision of childcare facilities where they would best serve the working population, close to transport. New nurseries are stated in the supporting text to be welcome in Greenwich, and this proposal would accord with that aim.

Designated Heritage Assets

21. The submitted drawings are plans only, although drawing 15 that was submitted later shows the front and part rear elevations. No change is proposed to the former, and the present panelled doors either side of the archway would remain. To the rear there would be no change to the market elevations of either building, but in order to accommodate the outdoor space, some alterations are required to a flat roof area that currently houses ducts and other servicing equipment. Cross sectional internal elevations would have explained more of the proposals, but with the benefit of the tour of the building carried out at the site inspection, during which the Hearing remained open for discussion, it became clear that limited architectural or historic significance remains in the internal areas due to the previous fitting out for the venue use.

22. That significance resides in the front and rear elevations and to a lesser extent the roof form, and these aspects contribute positively to the character and appearance of the conservation area and to the World Heritage Site. Internally the public house use contributes historic, evidential and community significance and some architectural value, although apparently altered over time. To Number 7A and over the public house at number 7 there have been harmful interventions to two staircases, the layout of rooms and the one-time balcony, with wholesale removal of features such as frames and architraves, and a covering-over of floors and ceilings. There remains some evidence of the former floor plan but alterations such as the servicing for the venue use has adversely affected the understanding of the original layout and activity that once occupied the building.
23. Two areas do however retain substantial architectural and historic significance, and they are the staircase to the eastern end of the public house and up to the third floor of number 7, and the former music hall on the first and part-second floors of number 7A. In addition there are various fireplaces that have been retained as features on the east and west walls of the front rooms to number 7.
24. Considering first the staircase to number 7, this is a simple affair but in the absence of any other stair in the building that has not been replaced, it is an important feature and evidence of the architectural history. It has already been somewhat compromised at ground floor level where it enters the public house, for security reasons and that would not alter, but above that there is strong evidential value to the balustrade and handrail, as well as the spatial quality of the stair and its enclosure. The proposed 'temporary' blocking at first floor level would undermine the visual flow of the space and erode the interest of the handrail and balustrade. It is unclear what would happen to the space between the handrails as the plan shows only a wall across the width rather than any blocking of the triangular space between flights. Whilst likely to be reversible, this intervention could in fact be permanent, and the harm would persist throughout its life.
25. Doubts exist over the nature of the lift, serving three floors but there is no information on the builderswork required, whether a pit or overrun is needed or the need for and location of any motor room. Platform lifts can provide a less intrusive installation, but with the lack of cross-sections it is not possible to be certain of the effect either on fabric or on the spatial qualities of the areas affected, albeit that they are already limited.
26. The major internal area of architectural and historic significance is the former music hall and here the significance is high despite later changes to the balcony arrangement. The ceiling form and decoration, together with the spatial qualities of the room provide strong evidence of the original use and this has not been substantially altered by the venue use last occupying this space. The interventions to allow the venue use have been limited although the nature of any original west staircase is difficult to discern. Whilst it appears that the evidence of a balcony would be retained in its altered state, the proposed enclosure of the west stair would intrude into the space and would seriously erode the appreciation and evidential value of the one-time music hall. There remains doubt over the extent of this enclosure; either low but impinging harmfully on the window to the market elevation, or high to avoid that but causing more harm to the spatial qualities of the hall.

27. The need for this enclosure stems from the introduction of a lift to allow access for wheelchair users, in which case a safe refuge from fire is required in a stair compartment while the user awaits rescue, as the lift would not be available. Whether or not required as a matter of law under the Equality Act 2010 or Part M of the Building Regulations, the provision of step-free access would be beneficial to the operation of a nursery spread over three floors. There was discussion at the site inspection of alternatives, but as with the doubts over the lift, it remains unclear how these could be provided and what effect this could have on the listed building.
28. The building currently has a reasonably high level of servicing, with cooling to the Hall by way of condensers within the third floor 'mechanical room' and these would not be required to the same, if any, extent for the proposed new use. The public house kitchens in the basement to number 7 have an extract over the cookers which can be traced on the plans through the ground floor but it is less clear where they go from there to emerge in open-air. The proposed use would retain a kitchen for the nursery in the same location, but the duct on the ground floor is not shown.
29. The new public house kitchen in place of the toilets does not have any extract ductwork shown and in view of the location against a flank party wall with 8 College Approach and 36 King William Walk, the route to open air would need to be upwards into the open space above, or sideways to pass through the proposed toilets on the first floor, and both locations could reduce the useable space available. Similar concerns surround the ventilation to the proposed uses in the basement of number 7A, and although a former cellar flap in the pavement of the market was pointed out, it would not be appropriate to route any ventilation ductwork externally here.
30. Less concern occurs with regard to water and drainage servicing as such smaller scale pipes can clearly be accommodated as at present and soil pipes and a manhole were seen in the basement and secure store of the public house.
31. Whilst it can occasionally be appropriate to seek further details by condition after the grant of permission and consent, that course of action would have to be in the knowledge that the building's significance can be safeguarded. In this case there are so many unanswered questions over step-free access and escape, ventilation and similar servicing that it is not possible to conclude with certainty that the building can be altered in the way intended without causing unjustified harm. For that reason too, it is not possible to be certain of the degree of harm as required by paragraphs 133 and 134 of the Framework. Even on the assumption that the latter applies, since 'substantial harm' is acknowledged to be a high test (Paragraph: 017 Reference ID: 18a-017-20140306 of the web-based Planning Practice Guidance) there is a need to balance the harm with public benefits, and that still requires full knowledge of the harm.
32. With that finding, it is concluded that the doubts over the detail of the proposal, in cross-sectional and elevational terms, cannot be safely overcome by the use of conditions, and that it cannot be shown that the harm is outweighed by the public benefits of the scheme. The proposal has not been shown to accord with Policies 7.4, 7.6 and 7.8 of the London Plan, nor Local Plan Policies DH1, DH3 or DH(i). The proposal therefore fails to satisfy the

statutory tests in sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The failure of the latter section is based on the risk of the ductwork having an adverse effect on the external envelope, and whilst not certain, such adverse effect could harm the West Greenwich Conservation Area and the Maritime Greenwich World Heritage Site.

Conclusions

33. The drawings left certain aspects of the proposal unclear. The site inspection was carried out with the aim of clarifying these uncertainties, since at a hearing discussion can take place at that stage. However, whilst this course of action gave the appellant the benefit of the doubts remaining at that stage, the reassurances derived from the inspection are insufficient to be certain as to the existence of harm or its level. There are public benefits in pursuance of Policy CH1, and the proposal would put the unused building to a use that is compatible with neighbouring uses and the town centre generally. The viability of the public house would not be likely to be adversely affected.
34. The conclusion is that the possibility of harm to the historic and architectural interest of the listed building is such that it cannot be overcome with conditions with a satisfactory degree of certainty. In view of this, both the planning appeal and the listed building appeal should be dismissed on listed building grounds.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

B Oates	Planning Officer
	Royal Borough of Greenwich Council
T Choudhury	Conservation Officer
	Royal Borough of Greenwich Council

FOR THE APPELLANT:

P Russell	Architect
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