
Appeal Decision

Site visit made on 22 August 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 6 September 2017

Appeal Ref: APP/C5690/W/17/3174029

Lord Palmerston Public House, 81 Childers Street, London SE8 5JR

- 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 Morphuse Construction Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/16/097914, dated 11 August 2016, was refused by notice dated 9 March 2017.
 - The development proposed is the partial demolition of existing public house; retention of existing façade; erection of two additional storeys to original public house and erection of five storey rear extension; retention of existing public house use over ground floor and basement levels; associated bin store; formation of 12 x 1 bed flats over upper floors; associated bin store and cycle store at ground floor level; formation of communal roof terrace.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Morphuse Construction Ltd against Council of the London Borough of Lewisham. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effects of the proposal on:
 - the significance of the existing building, which is a non-designated heritage asset, and the character and appearance of the surrounding area;
 - the living conditions of future occupiers with particular regard to noise and disturbance;
 - the viability of the public house use.

Reasons

Heritage Asset and Character and Appearance

4. The appeal property is a late Georgian or early Victorian public house which occupies a prominent position at the corner of Childers Street and Arklow Road. The three storey London stock brick and stucco building has frontages onto both roads. At ground floor level the stucco frieze and columns, together with the deep windows and recesses mark out the building as a public house with
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- accommodation above. Whilst there is some evidence of alterations, the building's original form and external fabric appears to be largely intact.
5. The surrounding area includes examples of larger scale modern residential development as well as the recent residential conversion and extension of the large former commercial building, known as SR House, behind the appeal building. Nevertheless, the simple formality and carefully considered detailing of the appeal building help it to stand up to these changes to its setting. Particularly when viewed alongside the nearby brick-arched railway viaduct, it provides a valuable reminder of the history of the area and makes a positive contribution to local distinctiveness. Therefore, having regard to its state of preservation, architectural quality, and contribution to the street scene, I consider that the appeal building retains its significance as a non-designated heritage asset and is worthy of protection, notwithstanding recent changes to its setting.
 6. The appeal proposal is to add two floors to the existing building and erect a five storey extension to its Arklow Road frontage. Although the Childers Street and Arklow Road frontages would be retained, they would be altered by the removal of the distinctive broad stucco roof parapet and the stucco band between first and second floor levels, the insertion of windows within blank recesses at first and second floor levels and the replacement of windows at ground floor level. A glazed balustrade would run round the building at roof level.
 7. Taken together, these changes would engulf the distinctive character of the building which contributes to its heritage significance. The additional two floors would fundamentally alter the scale and proportions of the building. The ground floor public house element, which provides the building with much of its identity, would be diminished by the increase in the scale of the rest of the building. Whilst there may be potential to extend to the side of the existing building, the height and bulk of the proposed side extension, notwithstanding the tapered Arklow Road frontage, would be comparable with the existing building as extended by the two additional floors. The side extension would not, therefore, be subservient to the existing building.
 8. I recognise that the storey heights and some of the fenestration in the extension would align with the existing building as extended. However, little detail has been provided on the wall cladding panels or the windows. I am not persuaded that what appear to be flat horizontal panels and a vertical band of glazing behind the glazed balconies abutting the existing building would be a sympathetic response to the solidity and the vertical emphasis of the openings in the elevations of the existing building. The same is true of the proposed roof level glazed balustrade. I recognise that the balustrade would be set back from the edge of the roof, such that it may not be visible in short range, street level views. Nevertheless, the building is prominent in medium and longer range views from Childers Street and Abinger Grove and the balustrade would be an incongruous feature in those views.
 9. The loss of the parapet and stucco bands and the replacement of the existing ground floor windows would also impoverish the appearance of the retained element of the building.
 10. The appellant argues that the scale of the extended building would reflect that of SR House and nearby modern developments. However, my concern is with

the relationship of the proposal to the existing building, its significance as a non-designated heritage asset and its contribution to local distinctiveness. I have already found that the building retains its heritage significance notwithstanding recent developments nearby.

11. The appellant also suggests that conditions could be used to control the details of materials and finishes, including the stucco render and the removal of the side extension balconies. However, reinstatement of the stucco band and frieze in the extended building could materially change its appearance, as would the removal of the balconies from the proposal. These changes would, therefore, amount to more than simply agreeing detailed matters. No drawings have been provided to illustrate what the effects might be. As such, I consider that it would not be appropriate to leave these matters to be dealt with by condition.
12. The appellant argues that the Council has not raised an 'in-principle' objection to the demolition of the existing building. However, such a proposal was not before the Council; nor is it before me. Consequently, I can give it negligible weight.
13. For the reasons set out above, I consider that the proposal would not sustain or enhance the significance of the non-designated heritage asset and would be harmful to the character and appearance of the the surrounding area. As such, the proposal would conflict with Policy 15 of the Council's Core Strategy 2011 (CS) and Policies DM30 and DM32 of its Development Management Local Plan 2014 (DM). Together, these policies require development to protect or enhance the historic environment, achieve a high standard of design which responds positively to the existing townscape, preserve building features and roofscapes and use materials and ornamentation sensitively in relation to their context. The proposal would also conflict with DM Policy DM37 which seeks to protect local distinctiveness by sustaining or enhancing the significance of non-designated heritage assets and paragraph 135 of the National Planning Policy Framework (the Framework) to the extent that it has similar aims.

Living Conditions

14. The proposal would retain the pub use at basement and ground floor levels and provide residential accommodation at first floor level and above. Policy DM32 of the DM requires new housing to be sited to minimise disturbance from incompatible uses, amongst other things. Policy 7.15 of the London Plan 2015 (LP) states that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and the quality of life as a result of new development and should mitigate the adverse impacts of noise from new development without placing unreasonable restrictions on development or adding unduly to the burdens on existing businesses. Framework paragraph 123 has similar aims and also refers to the use of conditions.
15. The appellant has submitted a Noise Exposure Assessment¹. However it does not assess the effects of noise from the pub use. Noise from such a use could arise from the activity within the building, including amplified music, congregation outside of the building, the comings and goings of customers and plant and equipment. Very limited details of the noise generated by plant and equipment associated with the pub use have been provided. The fact that the

¹ Clement Acoustics Ref: 11171-NEA-01

- proposal does not include an external area for use by customers would not necessarily prevent them from congregating outside the building.
16. The appellant argues that the building would be constructed to meet the requirements of Part E of the Building Regulations. However, that is concerned with the transmission of sound through the fabric of the building and, as Framework paragraph 123 indicates, the planning system is concerned with broader matters. It is also suggested that a condition could be used to secure an appropriate sound insulation scheme. The flats most directly affected by noise from activity within the pub would be the first floor flats within the retained part of the existing structure. The appellant has suggested a condition which would require a further acoustic survey to be carried out and mitigation measures identified. Since the pub is not currently in operation, it is difficult to see what useful information would be provided by the survey.
 17. In the absence of any assessment of future noise levels or construction details, I cannot be sure that it would be practical to achieve the required level of sound insulation by adapting the existing structure and, therefore, meet the terms of any requirements under the Building Regulations or a condition. Therefore, such a condition would not comply with the tests at paragraph 21a-003-20140306 of the Planning Practice Guidance requires any conditions imposed on a planning permission to be enforceable, precise and reasonable.
 18. The appellant has also suggested conditions to limit the hours of operation of the pub use and the use of amplified sound. Whilst such conditions would help to mitigate noise effects, they fall short of the provision of a comprehensive management strategy dealing with any aspects of the operation of the pub likely to affect the living conditions of nearby residential occupiers. This approach is consistent with the 'agent for change' principle which advises that the party responsible for any change in the noise environment is responsible for managing the impact of the change².
 19. The appellant considers that the Council was not explicit in its requirements for the consideration of noise matters. However, the issue was raised in the Council's pre-application advice, repeated in the second reason for refusal and expanded upon in the Council's appeal statement. My decision is based on the planning merits of the proposal having regard to the submitted evidence.
 20. Both parties have drawn my attention to a dismissed appeal decision for a proposal to extend and alter a public house and create additional residential units³. Each proposal must be considered on its merits and I have not been provided with the full details of that scheme. Nevertheless, the current appeal proposal would appear to be similar inasmuch as at least some of residential units would be created with an extension above an existing pub building. Notwithstanding that one bedroom units are unlikely to be occupied by households with children, I am not persuaded that those occupiers should be expected to accept a lower level of protection from noise and disturbance than occupiers of two bedroom units. Consequently, although the cited appeal decision has not been determinative, I consider that my approach to the noise issue is consistent with it.

² This is set out in the Mayor for London's emerging Culture and Night Time Economy Supplementary Planning Guidance. Whilst this guidance carries limited weight at present, it indicates the direction of travel in the consideration of the noise effects with regard to the night time economy in London.

³ Appeal ref: APP/C5690/W/16/3156597

21. Overall therefore, I find that the information available does not adequately demonstrate that the public house use would not have an adverse impact on the living conditions of future occupiers with particular regard to noise and disturbance. The proposal would not, therefore, accord with DM Policy DM32 or Framework paragraph 123.

Viability of the Public House

22. The second reason for refusal also alleges that the proposal may compromise the viability and future operation of the public house and cites conflict with DM Policy DM20. This policy deals with proposals for the change of use or re-development of public houses. As such, it is not directly applicable to the appeal proposal. Nevertheless, I recognise that LP Policy 3.15 and Framework paragraph 70 seek to resist the loss of valued facilities, which could include public houses. Although the officer's report notes that the appeal pub was in successful and active use until recently, there is no substantive evidence regarding its value to the local community. Moreover, in the absence of information on how the facility would be managed in order to minimise noise and disruption for residential occupiers, it is difficult to know whether any such limitations would unduly affect the viability of the operation. On the basis of the information available therefore, I am not able to reach a firm conclusion on the effect of the proposal on the viability of the public house.

Other Matters

23. A draft Planning Obligation to secure financial contributions towards affordable housing and the implementation of a controlled parking zone has been submitted. However, these matters were not reasons for refusal of the application. Moreover, a completed Obligation has not been provided. Therefore, I have not taken the draft Obligation into account.
24. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

Planning Balance and Conclusion

25. Paragraph 135 of the Framework requires a balanced judgement to be reached when considering proposals which affect non-designated heritage assets.
26. The appellant suggests that the residential-led extensions would allow the appeal building to be cleared of squatters and returned to use as a public house. I am not convinced that development of the type proposed is the only means of dealing with squatters at the site. I have already referred to the difficulty of establishing whether the pub use would be viable. Nevertheless, to the extent that the appeal proposal holds out the possibility of reinstating the use, I consider that it would be a benefit to the community and weighs in favour.
27. The provision of additional residential units is supported by paragraph 47 of the Framework and Policies 3.3 and 3.8 of the LP which seek to boost the supply of housing. However, the 12 units proposed would make a modest contribution to the supply of housing and this limits the weight I can attach to this benefit.
28. Although the public house would be a Class A4 rather than a Class B1 use, there is nothing to suggest that its retention would conflict with the underlying aims of Policy SA8 of the Council's Site Allocation Development Plan Document

2013 insofar as it seeks to retain 20% employment space as part of the Childers Street Mixed Use Employment Location. However, the absence of conflict with that policy does not amount to a positive point in favour of the proposal.

29. Consequently, I find that the housing and potential community benefits of the proposal do not outweigh its harm to the non-designated heritage asset, the character and appearance of the area and the living conditions of future occupiers. For those reasons, the appeal should be dismissed.

Simon Warder

INSPECTOR