
Appeal Decisions

Hearing Held on 3 October 2017

Site visit made on 3 October 2017

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 10 November 2017

Appeal A Ref: APP/N5660/W/17/3175814

Camel and Artichoke, 121 Lower Marsh, London SE1 7AE

- 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 Wellington Pub Company against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/06726/FUL, dated 30 November 2016, was refused by notice dated 30 January 2017.
 - The development proposed is the construction of an extension at first floor level with access to a rear roof terrace and conversion of the upper floors into 3 x two bedroom flats; construction of cycle and bin store in rear yard; retention of existing pub use at ground floor and basement levels.
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Appeal B Ref: APP/N5660/W/17/3180707

Camel and Artichoke, 121 Lower Marsh, London SE1 7AE

- 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 Wellington Pub Company against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 17/02342/FUL, dated 12 May 2017, was refused by notice dated 19 July 2017.
 - The development proposed is the conversion of the upper floors into 3 x two bedroom flats; retention of existing pub use at ground floor and basement levels and construction of an enclosure in rear garden for bikes and bins.
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Decisions

1. Appeal A is allowed and permission is granted for the construction of an extension at first floor level with access to a rear roof terrace and conversion of the upper floors into 3 x two bedroom flats; construction of cycle and bin store in rear yard; retention of existing pub use at ground floor and basement levels at the Camel and Artichoke, 121 Lower Marsh, London SE1 7AE, in accordance with the terms of the application, Ref 16/06726/FUL, dated 30 November 2016, subject to the attached schedule of conditions.
2. Appeal B is allowed and permission is granted for the conversion of the upper floors into 3 x two bedroom flats; retention of existing pub use at ground floor and basement levels and construction of an enclosure in rear garden for bikes and bins at the Camel and Artichoke, 121 Lower Marsh, London SE1 7AE, in accordance with the terms of the application, Ref 17/02342/FUL, dated 12 May 2017, subject to the attached schedule of conditions.

Main Issues

3. The main issues in relation to both appeals are:
 - whether the first floor seating area should be retained as part of the public house use; and
 - whether the proposed flats would provide acceptable living conditions for their occupiers in relation to noise and disturbance and outdoor amenity space.
4. In addition, in relation to Appeal A only:
 - the effect of the extension on the character and appearance of the locally listed building and the area generally, including the effect on the Lower Marsh Conservation Area (CA); and
 - the effect of the extension on the living conditions of the occupiers of No 122 Lower Marsh in relation to outlook and daylight.

Reasons

Background

5. The Camel & Artichoke is a mid-terrace building comprising four storeys and a basement on the north west side of Lower Marsh, a busy inner-city street lined with commercial uses at ground floor level within the Lower Marsh CA. Until recently the property comprised a public house on the ground and first floors with basement cellarge and ancillary residential accommodation on the second and third floors. The proposal is to reconfigure the building to provide a 'lock-up' public house comprising a ground floor bar and basement cellar/kitchen with the first, second and third floors converted into three self-contained flats. The first scheme (Appeal A) includes a rear extension at first floor level to facilitate this whilst the second scheme (Appeal B) is contained within the existing confines of the building.

Retention of the first floor seating area – both appeals

6. Both schemes involve the loss of a first floor seating area which until recently comprised an integral part of the public house use. When the tenancy of the public house changed earlier in the year the new tenant only required a smaller 'lock-up' public house and to achieve this the open stairs from the ground floor bar to the first floor seating area were removed. This internal work did not require planning permission and the public house has since reopened with the new lease covering just the ground floor and basement of the building.
7. Initially, the Council were concerned that the loss of the first floor seating area, part of the beer garden, some of the cellar space and the ancillary residential accommodation upstairs would combine to threaten the viability of the public house contrary to Policy ED8 of the Lambeth Local Plan 2015 (LLP). This seeks to protect public house uses given their value to the community. However, the appellant's viability report together with the evidence of a new lease confirms that a smaller 'lock-up' public house is a viable operation in the long term. The future of a public house on the site is therefore secure. Nevertheless, the Council object to the loss of the first floor seating area as a valuable part of the public house use and hence worthy of protection in its own right.

8. Although now severed from the ground floor and currently unused, the first floor included a square shaped informal seating area surrounding an open stairwell which provided access from the bar downstairs. This first floor area comprised about a third of the total floorspace for customer use but did not have its own bar and could not be used as an independent space separate from the ground floor. As such, the description 'Function Room' shown on the application plans is misleading and its use was limited in practice to additional or overflow seating for the ground floor bar.
9. There is no evidence that the space was hired out or used for any specific community or pub events and no individuals or groups have objected to its loss. With a central stairwell and no means of separating the area from the ground floor the potential uses of the space were necessarily limited. The previous tenant reported that it was the least favoured seating area given the distance from the bar and being out of sight lacked direct supervision. Whilst the area provided a second, quieter sitting space and increased the flexibility and overall capacity of the public house, there is no evidence that it was so important that its loss would unduly restrict the future of the business. The optimum amount and layout of seating in a public house must primarily be a matter for the operator who in this case has opted for reduced floorspace.
10. For these reasons there is insufficient justification to insist on the retention of the first floor seating area for public house use. Contrary to the Council's view both schemes would comply with LLP Policy ED8 which seeks to retain public houses by resisting changes of use or the loss of features which might render the public house use unviable.

Living conditions provided by the flats – both appeals

11. Both schemes involve an independent flat at first floor level immediately above the public house use and a further two flats at second and third floor levels. To assess the potential for noise and disturbance to affect living conditions within the flats the appellant has submitted both an acoustic design review and noise impact assessment. The design review specifies the acoustic requirements for the party floor separating the public house and first floor flat and the floors between the flats, also the requirements to mitigate noise from the public house. Similarly, the noise impact assessment specifies the window glazing required to mitigate external noise levels. By implementing these works the appropriate noise standards within the flats would be met.
12. Although these reports have not been validated by the Council it was accepted at the hearing that the necessary measures can be secured by condition. The public house operator has confirmed that they do not envisage any conflict arising from the residential accommodation given their strict company policy for limiting noise under the terms of the licence. In the case of Scheme A, the first floor flat would have an external terrace directly above the beer garden, but this is already the position with a terrace behind No 122 Lower Marsh.
13. There is no dispute that the three flats in both schemes would exceed the minimum internal floorspace standards required under Policy 3.5 of the London Plan 2016 (LP), but LLP Policy H5 also requires an external amenity space of 10 m² per flat. Only the first floor flat in Scheme A would have such a space, slightly below standard at 8 m², whilst the other flats and all the flats in the case of Scheme B would have no external space. The further requirement for a communal space of 50 m² would not be met with either scheme.

14. The lack of amenity space for the flats would clearly be a disadvantage of both schemes. However, the upper floors of this locally listed building need to have a beneficial use and lend themselves to use as three flats. The conflict with LLP Policy H5 has to be weighed against Policy H1 which seeks to maximise the number of homes in Lambeth, Policy PN1 which promotes the role of Waterloo as a mixed residential area and Policy ED6 which supports the conversion of unused or underused space above ground floor units for residential use. In addition, the appellant cites the precedent of two conversion schemes at 347 Clapham Road and 17 Sidney Road where the lack of external amenity space for some of the flats was accepted by the Council¹. Given the constraints of the building in this case the lack of external amenity space for the flats is not a sufficient reason to withhold permission for either scheme.
15. The proposed flats would therefore provide acceptable living conditions for their occupiers in relation to both noise and disturbance and outdoor amenity space.

Effect of the extension on character and appearance – Appeal A only

16. Scheme A involves an extension to the rear of the building to improve access to the upstairs flats with a more efficient stairwell arrangement than Scheme B. It would also provide extra floorspace and an external terrace for the first floor flat, and a better rear facing outlook for the second bedroom in all three flats. The extension would be at first floor level, above the rear of the ground floor bar and male toilets, and alongside the narrow two storey closet outrigger which projects from the rear of the building.
17. The Camel & Artichoke was built in the mid to late 19th Century as a public house fronting onto Lower Marsh, one of the oldest streets in Lambeth and now designated as a CA. The locally listed building has an impressive four-storey stock brick frontage onto the street, but the rear of the building is also exposed to view as it faces Station Approach, a busy high level thoroughfare alongside Waterloo station. Station Approach itself lies outside the CA boundary, but from it there are close views of the rear of the properties within the CA which line the north west side of Lower Marsh.
18. These comprise a wide variety of buildings of different ages, heights and types which together form a diverse collection of buildings reflecting the continuous development and redevelopment of the area. Whilst forming an attractive streetscape along Lower Marsh, from the rear these buildings have a jumbled, disjointed appearance with numerous piecemeal alterations and additions to their rear elevations. With both half-width and full-width rear extensions of one and two storeys and of different dates, there is little coherence or uniformity to the appearance of the CA from this direction.
19. Seen from the rear, the Camel & Artichoke is a prominent but relatively plain four storey building with a narrow two storey outrigger which may or may not be part of the original building. There have certainly been two incremental rear extensions, the single storey bar extension and later the male toilet alongside the outrigger. The proposed extension and terrace would appear as a further piecemeal addition, concealing one window and most of the exposed side of the outrigger and the adjacent rear facing first floor window. This would obscure part of the original form of the building and its outrigger. However, the

¹ Reference 16/05402/FUL and 15/00481/FUL, the latter refused on other grounds.

building is not statutorily listed, only locally so, and the alteration would not be to the important frontage of the building but to its lower status rear elevation.

20. In relation to the outrigger, the extension would be set back a little but having the same roof height would not be clearly subordinate. However, the extension and outrigger together would remain subordinate to the building as a whole when seen from the rear. Being constructed of different materials (see below), it would be possible to distinguish the new extension and balcony from the earlier ground floor extensions and the original outrigger, thus enabling the continuing evolution of the building to be apparent to an observer. The patio door access to the balcony would be large but partly screened by the terrace parapet. The extension would therefore only cause limited harm to the character and appearance of the building as a whole, and this would be partly offset by a more discreet replacement flue rising up to the roof.
21. In relation to its wider setting as part of the CA, the extension would not seem out of place given the disjointed appearance of adjacent buildings with their ad-hoc rear extensions. Whilst the glazed half-width rear extension of No 120 next door is attractive, the tall full-width extensions behind Nos 119 and 124 obscure the buildings completely and the original form of Nos 122 and 123 is also obscured by lower, full-width extensions and balconies. The character and appearance of this part of the CA would therefore be preserved.
22. For these reasons the extension would not significantly harm the character and appearance of the area in compliance with Policies Q2, Q5, Q8, Q11, Q14 and Q22 of the LLP and Policies 7.4 and 7.8 of the LP. These seek, inter alia, to protect the visual amenity of the public realm, ensure local distinctiveness, the subordination of extensions and respect for the established characteristics of a CA. In relation to the locally listed building, the harm would be limited, much less than substantial, and outweighed by the public benefit of securing the optimum layout for the three flats. LLP Policy Q23, which seeks to sustain the significance of such buildings, would not be materially breached. The design details of the scheme would also avoid a bland, full-width two storey rear extension which would comply with LLP Policy Q11.

Effect of the extension on No 122 Lower Marsh – Appeal A only

23. The extension and balcony behind the main rear elevation would increase the length of the flank wall as seen from the rear facing first floor window and terrace of the adjacent property No 122. This would restrict the outlook from the living room concerned and the outside amenity space accessed from it. However, the increased sense of enclosure would be limited as the rear facing window is already set well back behind the rear elevation² and existing bushy vegetation obscures much of the outlook in this direction. The great majority of the west facing outlook, over the tracks leading towards Waterloo station, is open and would remain unaffected. For the same reasons the loss of daylight to the window concerned would be minimal.
24. For these reasons the proposed extension and balcony would not significantly harm the living conditions of the occupiers of No 122 Lower Marsh in relation to outlook or daylight. This would comply with LLP Policy Q2 which seeks to protect the visual amenity of adjoining sites and adequate outlooks, avoiding any undue sense of enclosure.

² Illustrated in the Daylight & Sunlight Study – Vertical Sky Component diagram for First Floor Window W1

Other matters

25. Both schemes include a single storey building for cycle parking and waste/recycling storage on a small part of the beer garden next to the boundary wall alongside Granby Place. In the case of Scheme A the Council object to its bulk and design, but in the case of Scheme B a lightweight structure has been substituted which the Council support. The Council remain concerned with the proposal for vertical cycle parking but it would appear some horizontal spaces could be provided within the building and this detailed matter can be resolved by condition.
26. The extension proposed as part of Scheme A would be clad with artichoke shaped wooden shingles. There is no dispute that contrasting materials should be used to distinguish the extension from the brickwork of the main building and its earlier extensions, but the Council object to the use of wood as uncharacteristic of the CA. Whilst this may be the case, the extension would be small and shingles would add some attractive variety to the building. In any event, details of the materials to be used can be controlled by condition.
27. Users of the external terrace provided for the first floor flat in Scheme A would only have a very oblique view towards the terrace and rear facing first floor window of No 122. As such, there would be little loss of privacy in practice. Nevertheless, details of a balcony privacy screen can be required by condition.
28. The appellant has submitted a unilateral undertaking for each scheme to confirm that, unless disabled, occupiers of the three flats would not be entitled to a residents parking permit or to park in any Council car park. These undertakings are acceptable to the Council and given the location in Central London are necessary, directly related to the developments concerned and fair and reasonable in scale and kind³.
29. The Council officer reports raise concerns regarding the access lobby for the three flats and the energy and water use of the development. However, these concerns were not pursued in the reasons for refusal or at the hearing.
30. The parties have put forward several conditions should the appeals be allowed and these have been assessed these against the relevant tests, making minor amendments as necessary. In both cases it is necessary to impose the standard implementation time limit, to define the plans which have been approved in the interests of certainty, to restrict the use to a public house to protect that function and to control the materials to be used to ensure the satisfactory appearance of the development. Conditions are necessary to ensure fume extraction/filtration equipment and sound insulation/mitigation is provided to prevent nuisance to residential occupiers. It is also necessary to require flood safety/protection measures and the provision of cycle parking and waste/recycling storage to ensure a satisfactory development.
31. In the case of Scheme A it is also necessary to impose conditions to ensure the provision of a revised cycle parking/waste and recycling storage building, to control the details of the rear extension to protect the character of the locally listed building and to require a screen for the rear terrace to protect the privacy of the occupiers of No 122.

³ The three tests in the Community Infrastructure Regulations 2010 and paragraph 204 of the National Planning Policy Framework.

Conclusions

32. There is insufficient justification to insist on the retention of the first floor seating area for public house use and no compelling reason to preclude the beneficial use of the upper floors as three independent flats. Whilst the rear extension which forms part of Scheme A would cause some limited harm to the character and appearance of the locally listed building (although not the CA) this would be outweighed by the benefits of the extension for the layout of the three flats and improved living conditions for their occupiers. The extension would facilitate a significantly better second rear aspect for the flats and an external terrace for the first floor flat – both aims of LLP Policy H5.
33. Having regard to the above both appeals should be allowed.

David Reed

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dinny Shaw MA BSc MRTPI	Boyer Planning
Sean Breslin	Boyer Planning
John Leech RIBA	KLA Architects
Jennifer Tonkins MA BA IHBC	Turley - Heritage Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Ross Whear MA BA	Major Applications, Lambeth LBC
Joanne Broadbent BA MSc MRTPI	Senior Planning Officer, Lambeth LBC
Luke Farmer MA BA	Senior Planning Officer, Lambeth LBC

Schedule of conditions - Appeal A

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
0083-DR-0100 Rev P01, 0083-DR-0101 Rev P01, 0083-DR-0102 Rev P01, 0083-DR-0103 Rev P01, 0083-DR-0104 Rev P01, 0083-DR-0105 Rev P01, 0083-DR-0200 Rev P01, 0083-DR-0201 Rev P01, 0083-DR-0300 Rev P01, 0083-DR-0301 Rev P01, 0083-DR-0302 Rev P01, 0083-DR-0303 Rev P01.
- 3) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 2015 (or any orders revoking and re-enacting those orders with or without modification) the basement and ground floor levels of the premises shall be used as a public house and for no other use.
- 4) Notwithstanding the details shown on the submitted drawings, prior to the commencement of any external works the following shall be submitted to and approved in writing by the Local Planning Authority:
 - (a) drawings at 1:10 scale (including sections) or at another scale agreed by the Local Planning Authority showing external construction details of all elements relating to the rear extension;
 - (b) plans and construction details of the building for cycle parking/waste and recycling storage;
 - (c) full details (and samples if requested) of the materials to be used in the construction of the external surfaces of the rear extension and the cycle parking/waste and recycling storage building; and
 - (d) full details including colour of the rear flueThe development shall then be carried out strictly in accordance with the details and drawings thus approved.
- 5) Prior to first occupation of the first floor flat hereby permitted a privacy screen on the south west side of the rear terrace shall be erected in accordance with details (drawings at 1:10 scale (including sections) or at another scale agreed by the Local Planning Authority) submitted to and approved in writing by the Local Planning Authority. The approved privacy screen shall be retained at all times thereafter.
- 6) Use of the basement level kitchen hereby permitted shall not commence until fume extraction and filtration equipment has been implemented in accordance with a detailed and fully specified scheme (including an ongoing maintenance plan) submitted to and approved in writing by the Local Planning Authority. The approved fume extraction and filtration equipment shall thereafter be retained and maintained in full working order for the duration of the use in accordance with the approved details.
- 7) Use of the basement level kitchen hereby permitted shall not commence until:
 - a) safety measures which would be in place for staff working within the kitchens at basement level in the event of a flood occurring; and

- b) surface water run-off reduction measures incorporating water butts and soak away pits, as well as flood resistance and resilience measures have been implemented in accordance with details submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out strictly in accordance with the details thus approved and the measures maintained at all times thereafter.
- 8) Notwithstanding the submitted Acoustic Design Review and Noise Impact Assessment, prior to the commencement of the development full details of sound insulation measures for the residential flats and sound mitigation measures for the public house use shall be submitted to and approved in writing by the Local Planning Authority. Such measures shall include:
- a) Sound insulation measures for external windows, the party floor between the public house and the first floor flat and the party floors between the flats, in order to meet the following standards:
 - i) for living rooms, 35 dB(A) LAeq 16 hour between 0700 and 2300 hours;
 - ii) for bedrooms, 30 dB(A) LAeq 8 hour between 2300 and 0700 hours;
 - and
 - iii) 45 dB(A) max for any individual noise event (measured with F time weighting) between 2300 and 0700 hrs.
 - b) Full details of the sound limiter, loudspeaker mounting and any other measures necessary to control recorded, live or amplified music within the public house to meet the above standards.
- Prior to first occupation of any of the flats hereby permitted the measures thus approved shall be fully implemented and shall be maintained at all times thereafter.
- 9) Prior to first occupation of any of the flats hereby permitted, cycle parking spaces within the building approved under (4) above shall be made available in accordance with a layout and other details to be submitted to and approved in writing by the Local Planning Authority. The cycle parking spaces shall thereafter be retained solely for their designated use.
- 10) Prior to first occupation of any of the flats hereby permitted, waste and recycling storage within the building approved under (4) above shall be provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The waste and recycling storage shall thereafter be retained solely for its designated use. The waste and recycling storage areas/facilities should comply with Lambeth's Refuse & Recycling Storage Design Guide 2013 unless it is demonstrated in the submission that such provision is inappropriate for this specific development.

Schedule of conditions - Appeal B

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
0083-DR-1100 Rev P01, 0083-DR-1101 Rev P02, 0083-DR-1102 Rev P02, 0083-DR-1103 Rev P02, 0083-DR-1104 Rev P02, 0083-DR-1105 Rev P01, 0083-DR-1200 Rev P01, 0083-DR-1201 Rev P01, 0083-DR-1300 Rev P01, 0083-DR-1301 Rev P01, 0083-DR-1302 Rev P01, 0083-DR-1303 Rev P01.
- 3) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 2015 (or any orders revoking and re-enacting those orders with or without modification) the basement and ground floor levels of the premises shall be used as a public house and for no other use.
- 4) Notwithstanding the details shown on the submitted drawings, prior to the commencement of any external works the following shall be submitted to and approved in writing by the Local Planning Authority:
 - (a) full details (and samples if requested) of the materials to be used in the construction of the external surfaces of the cycle parking/waste and recycling storage building; and
 - (b) full details including colour of the rear flueThe development shall then be carried out strictly in accordance with the details thus approved.
- 5) Use of the basement level kitchen hereby permitted shall not commence until fume extraction and filtration equipment has been implemented in accordance with a detailed and fully specified scheme (including an ongoing maintenance plan) submitted to and approved in writing by the Local Planning Authority. The approved fume extraction and filtration equipment shall thereafter be retained and maintained in full working order for the duration of the use in accordance with the approved details.
- 6) Use of the basement level kitchen hereby permitted shall not commence until:
 - a) safety measures which would be in place for staff working within the kitchens at basement level in the event of a flood occurring; and
 - b) surface water run-off reduction measures incorporating water butts and soak away pits, as well as flood resistance and resilience measures have been implemented in accordance with details submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out strictly in accordance with the details thus approved and the measures maintained at all times thereafter.
- 7) Notwithstanding the submitted Acoustic Design Review and Noise Impact Assessment, prior to the commencement of the development full details of sound insulation measures for the residential flats and sound mitigation measures for the public house use shall be submitted to and approved in writing by the Local Planning Authority. Such measures shall include:

a) Sound insulation measures for external windows, the party floor between the public house and the first floor flat and the party floors between the flats, in order to meet the following standards:

i) for living rooms, 35 dB(A) LAeq 16 hour between 0700 and 2300 hours;
ii) for bedrooms, 30 dB(A) LAeq 8 hour between 2300 and 0700 hours;
and

iii) 45 dB(A) max for any individual noise event (measured with F time weighting) between 2300 and 0700 hrs.

b) Full details of the sound limiter, loudspeaker mounting and any other measures necessary to control recorded, live or amplified music within the public house to meet the above standards.

Prior to first occupation of any of the flats hereby permitted the measures thus approved shall be fully implemented and shall be maintained at all times thereafter.

- 8) Prior to first occupation of any of the flats hereby permitted, cycle parking spaces within the cycle parking/waste and recycling storage building shall be made available in accordance with a layout and other details to be submitted to and approved in writing by the Local Planning Authority. The cycle parking spaces shall thereafter be retained solely for their designated use.
- 9) Prior to first occupation of any of the flats hereby permitted, waste and recycling storage within the cycle parking/waste and recycling storage building shall be provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The waste and recycling storage shall thereafter be retained solely for its designated use. The waste and recycling storage areas/facilities should comply with Lambeth's Refuse & Recycling Storage Design Guide 2013 unless it is demonstrated in the submission that such provision is inappropriate for this specific development.