



Appeal Decision

Site visit made on 27 June 2019

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Appeal Ref: APP/Y5420/W/19/3225901

28 North Hill (The Victoria), Hornsey, London, N6 4QA

- 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 MJP Properties against the decision of the London Borough of Haringey.
 - The application Ref. HGY/2018/2430, dated 5 June 2018, was refused by notice dated 23 October 2018.
 - The development proposed includes the change of use of a closed public house from A4 to C3, and the creation of five new residential units via the extension and conversion of the existing original building and the demolition of an existing extension to the retained building.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether sufficient evidence has been provided to justify the permanent loss of the existing community facility (public house); and
 - whether the proposed development would preserve or enhance the character or appearance of the Highgate Conservation Area.

Reasons

Loss of community facility (public house)

3. The appeal site is located on the western side of North Hill and comprises a public house (which is vacant) and ancillary residential accommodation above.
4. Policies SP15 and SP16 of the Haringey Local Plan Strategic Policies (HLP) seek to safeguard and protect cultural heritage and community facilities within the Borough. This approach is consistent with Policies 4.8 and 7.1 of the London Plan (LP), which, amongst other objectives, emphasise the need for local plans and planning decisions to protect the loss of local facilities, including the retention, management and enhancement of public houses, as part of the overall objective of planning for a mixture of infrastructure and services that are accessible to local communities.
5. Policy DM50 of the Haringey Development Management DPD (HDM) continues by confirming that the Council will resist proposals for a change of use that

results in the loss of a public house unless it can be demonstrated that the use is no longer viable and all feasible options for the re-provision of a public house on the site have been explored.

6. These policies are consistent with paragraph 92 of the National Planning Policy Framework (Framework), which says that planning policies and decisions should plan positively for the provision and use of community facilities, including public houses, and guard against the unnecessary loss of valued facilities and services.
7. The supporting text, paragraph 7.21, to Policy DM50 sets out the areas (criteria i to iv (inclusive)) where evidence will be required to support and justify the loss of a public house.
8. In relation to criterion i, accounts for the four years prior to the public house closing in January 2017 have been provided. These show that the business incurred losses over that period. The Council have argued that the accounts are not for a full four year period. The appellant has indicated that this is due to the fact that the public house was purchased from the previous owners in 2013, and that they have been unwilling to reveal their accounts for the previous years. The trading evidence provided is consistent in showing that the existing public house incurred losses until it closed. Whilst this may not cover a full four year period, I am satisfied that this evidence is robust and demonstrates that the business was not operating on a profitable basis.
9. Criterion iv refers to the adequacy of public houses serving the local area. Whilst the latter is not defined, the appellant has referred to the existence of a number of public houses within close proximity to the appeal site. Most of these are within easy walking distance. The Council have not challenged this evidence or indicated that there is any deficiency in local provision. Based on this, there appears to be adequate provision for public houses within the local area.
10. Criterion iii requires evidence of the marketing of the business. The text refers to a "*suitable*" marketing exercise, but does not expand on this. The appellant undertook a discrete marketing exercise prior to the public house closing and a further marketing exercise, in February 2017, following its closure.
11. The appellant indicates that the property was offered on a leasehold basis. I would have expected the property to be offered on a freehold basis as well, to cover all possibilities. Furthermore, a marketing exercise for this type of property would normally include a listing (advert) in a relevant journal and/or nationally, a similar advert online and/or on the agent's website and a sign board placed outside the property. It would appear that none of these actions were taken. Even though the appellant employed commercial agents that specialise in this field, based on the above, I am not convinced that the marketing exercise undertaken was sufficient or exhaustive.
12. Moreover, the appellant's submissions do not include any details of sales literature or a marketing brochure that was prepared and circulated to interested parties. Similarly, there are no details (list) of the parties that were mailshot, no copies of the interest they received or subsequent correspondence indicating why those parties were not in a position to make an offer. The absence of this information raises further questions concerning the suitability of the marketing exercise undertaken.

13. The appellant indicates that the responses received from interested parties raised issues over the size and location of the public house, but they also made reference to the inefficient and awkward layout of the public house, which was not felt to be conducive to maximising the number of patrons. It is not clear whether these comments were explored further by the appellant with those parties. In addition, the commercial agents, in the conclusions to their supporting letter, commented that the nature of the property and its challenges required a particular “*outfit*” to take on what was a significant challenge, especially in the current market. This statement does not appear to conclusively rule out potential intertest in the property.
14. In relation to criterion iii, the appellant indicates that various actions were taken to promote the viability of the business, which included refurbishing the property, promoting live music evenings, reducing opening hours and closing the kitchen. However, none of these actions were successful. All of these actions appear to me to be minor and do not, as the second half of this criterion requires, include an “*evaluation of the potential for expansion, contraction and diversification.*” There is no evidence to indicate that the appellant has undertaken any such evaluations. That said, prior to the current appeal being lodged, the appellant obtained planning permission, in February 2019, to reconfigure the public house, convert the upper floor to a 1 bed apartment and the side extension to a 2 bed house, under reference HGY/2019/0015.
15. Whilst I have not been provided with copies of the approved plans, I understand that the public house element would be reduced in size to just under 100 square metres and that the layout would be reconfigured so that it was more efficient and usable. The appellant indicated that this layout would allow for a reduction in rent and rates, thus presenting the opportunity for a more viable operation. The evidence from their commercial agents indicates that this revised proposal would offer the opportunity for a new business model to be brought forward, which would create a unique offer that would distinguish it from other competition and potentially revitalize the premises. Such a “*destination establishment*” could, they advise, generate additional clientele and revenue, and thus reasonable profit margins.
16. In the appellant’s Final Comments, they suggest that it is optimistic to expect that the approved smaller and bespoke A4 use could survive in such a location and that “*The odds are not favourable for prospective landlords primarily due to location.*” However, this statement does not reflect the positive advice of their commercial agents. In addition, there is no evidence to indicate that this revised format has been tested or put to the market.
17. Based on the above, the potential contraction and diversification of the existing public house, as proposed in the February 2019 consent, could provide the potential for it to be retained in a viable format. Moreover, it is not possible to say with any certainty that the revised format would not be attractive to potential tenants or owners. As a consequence, all the feasible options for the re-provision of the existing public house have not been properly or thoroughly explored and assessed.
18. The appellant has referred to the decision not to designate the public house as an Asset of Community Value. I note that this decision was made following the

closure of the public house, but even so, for the reasons given above, it does not affect my findings on this main issue.

19. The appellant has questioned the value of the public house to the local community given the low number of objections to the appealed application. However, that could be a reflection of the fact that the public house has been closed since January 2017. Even so, there is no reason as to why, if interest could be secured, that it would not once again become an important asset to the local community. Both the development plan and the Framework recognise that public houses can contribute greatly to social cohesion and enhance the vitality of residential neighbourhoods. It is important, therefore, that where, as in this appeal, the proposal would result in the permanent loss of such an asset, all potential actions and options are thoroughly evaluated and exhausted. Such an approach takes on greater importance given the well documented decline in public house provision nationally.
20. The appellant has referred to the constraints imposed on the existing public house by its residential location and lack of parking. However, it is not uncommon to find public houses in residential areas or with no on-site parking provision. As I observed on site, the appeal site is within easy walking distance of a large residential catchment. It is also accessible to public transport, with bus stops nearby on North Hill and Highgate Underground Station within approximately 10 minutes walking distance.
21. The appellant has drawn comparisons with other public houses in the area, which they say are in a better location, with passing footfall and a larger offer. That may be so, but it does not negate the requirement for me to determine this proposal on its individual merits, having regard to the circumstances of the case and the evidence that is before me.
22. The appellant also refers to the restrictions imposed on the February 2019 consent preventing patrons from using the rear garden area. However, the commercial agent's evidence does not suggest that this is an obstacle to seeking potential interest in the smaller format.
23. I find, therefore, that the loss of this community facility has not been justified in that the marketing exercise does not appear to have been exhaustive and that the option for re-providing the public house, through its contraction and/or diversification, has not been demonstrated. The loss of the public house would, therefore, be contrary to Policy DM50 of the HDM, Policies SP15 and SP16 of the HLP, Policies 4.8 and 7.1 of the LP and paragraph 92 of the Framework.
24. The Council, in their reason for refusal, also refer to Policy 3.1 of the LP. However, this relates to the loss of facilities that meet the particular needs of local groups and communities, specifically disadvantaged and vulnerable groups. For these reasons, it is not, in my view, directly relevant to the appeal proposal.

Character and appearance of the conservation area

25. The appeal site lies within the Highgate Conservation Area (HCA). Paragraph 190 of the Framework requires consideration to be given, therefore, to the impact of any new development on the character and appearance of the

conservation area. This approach is reflected in Policy DM9 of the HDM, Policy SP12 of the HLP and Policy 7.8 of the LP.

26. The host building, on the appeal site, is not listed and neither is it identified as a building of local interest. The parties appear to agree that the host building was originally constructed as a shop and was only converted to a public house in the early part of the 20th Century.
27. The proposed alterations and extensions to the host property would not result in any harmful impact to the HCA and are therefore acceptable. These works include the replacement of the side extension, adjoining 32 North Hill, with a contemporary extension that would complement the host building, as well as 32 North Hill. The low quality additions to the front elevation would be removed, as well as the unsightly timber and plastic pergola, the poor quality paving and other furniture. The existing ground floor façade would remain as existing and be refurbished. Combined, the proposed works would preserve the appearance of the host building.
28. The character of the area surrounding the appeal site is mixed. Other than the older properties at 32 and 34 North Hill, the style, scale, design and age of properties in the area varies considerably. Within that context, the proposed alterations would preserve the character and appearance of this part of the HCA.
29. The Council allege that the loss of the public house use would result in “some” harm to the HCA and that whilst this would be less than substantial, they contend that it would not be negligible. They argue that this would arise from the loss of the general activity and vibrancy associated with the use, which they contend forms part of the positive contribution that the use made and could make to the character and appearance of the HCA. Whilst I accept that the loss of the public house use would result in less activity, the harm that would result would, in my view, be limited. This harm would not be significant nor substantial and would not provide justification in itself to refuse planning permission. It would not harm the architectural or historical importance of the host building and the contribution it makes in this respect to the HCA.
30. The Council have referred to the Opinion from Leading Counsel in a Court Case from 1991, which they say concluded that the loss of a public house could be harmful to the character and appearance of a conservation area. However, I have not been provided with a copy of this Opinion or the Case itself and do not know the full planning circumstances. It is not possible for me to determine, therefore, whether this would be comparable to the appeal proposal. Even so, as I have found, the proposed works would enable the distinctive appearance and architectural features of the host property to be retained and preserved.
31. The Council have mentioned the possible need for obscure glazing on the ground floor frontage, but that does not form part of the appeal proposal. They also indicate that there would be a loss of light on the ground floor, when residential areas are normally dark. I do not agree. The proposed residential use would generate a certain level of activity as well as light in the evenings.
32. I find, therefore, that the appeal proposal would preserve the character and appearance of the HCA. It would comply, therefore, with Policy DM9 of the

HDM, Policy SP12 of the HLP, Policy 7.8 of the LP and paragraphs 192 – 193 of the Framework.

Other Matters

33. I have had regard to the concerns of neighbours regarding overdevelopment, overlooking, impact on parking and existing trees. However, none of these matters is of sufficient weight to outweigh my findings on the main issues.
34. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires all proposals for development to be determined in accordance with the development plan unless material considerations indicate otherwise. There are benefits to the appeal proposal, including the small contribution the development would make to meeting future housing provision and the visual improvements that would be secured to the host property and thus to the character and appearance of the HCA. These benefits are supported by policies in the development plan and the Framework. Whilst I have, therefore, attached modest weight to these benefits, they are not sufficient, either individually or cumulatively, to outweigh the significant harm that I have identified above. This harm arises from the conflict with the policies of the development plan that require applicants to undertake “*suitable*” marketing activity and explore all feasible options for the re-provision of community assets, so as to prevent their unnecessary and permanent loss.

Conclusions

35. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR