



Appeal Decisions

Site visit made on 13 June 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 July 2019

Appeal A - Appeal Ref: APP/K5030/W/18/3215017 Globe Public House, 83-85 Moorgate, London EC2M 6SA

- 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 Mitchells and Butlers Plc against the decision of the City of London Council.
 - The application Ref 17/00764/FULL, dated 20 July 2017, was refused by notice dated 31 May 2018.
 - The development proposed is conversion of upper floors of the Globe Public House and change of use to create 4 self-contained flats.
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Appeal B - Appeal Ref: APP/K5030/Y/18/3215016 Globe Public House, 83-85 Moorgate, London EC2M 6SA

- 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 Mitchells and Butlers Plc against the decision of the City of London Council.
 - The application Ref 17/00765/LBC, dated 20 July 2017, was refused by notice dated 31 May 2018.
 - The works proposed are conversion of upper floors of the Globe Public House and change of use to create 4 self-contained flats.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Main Issues

3. The main issues are:
 - Whether the proposal would provide adequate living conditions for future residents, with particular regard to noise and disturbance;
 - Whether the site would be an appropriate location for residential development with regard to business function in the area, and;
 - The effect of the proposal on the special interest of the Globe Public House, a grade II listed building, and on the settings of 87 Moorgate and 118/118a London Wall, which are also grade II listed.

Reasons

Appeal A only - living conditions

4. Policy DM21.1 of the City of London Local Plan (LP) relates to the location of new housing development, and resists housing development that would result in poor residential amenity, including excessive noise or disturbance. The Council are concerned that residents would be affected by noise from a number of sources, including activities associated with the neighbouring businesses, and noise from Moorgate, which is a heavily trafficked principal road.
5. In support of their proposal, the appellants have submitted a Noise Assessment (NA) report by Hepworth Acoustics (Report No: P17-427-R02v2, dated February 2018). An initial survey was carried out for a period of 24 hours in September 2017. This was followed up by a week-long survey during January 2018. The NA recommends a number of mitigation measures which it considers would be required in order to achieve acceptable living conditions.
6. In terms of external noise generation, the Globe pub has outdoor space for patrons, generating both noise and smoke fumes. Similarly, the adjacent Fox Wine Bar allows customers to drink outside until 11pm, and potentially later. Noise would also arise from activities such as deliveries and collections at the businesses, and also refuse collections. On Moorgate, street works would be likely to be undertaken outside normal working hours for traffic management reasons, and possibly during the night.
7. The report recommended that internal secondary glazing should be fitted to the existing sash windows as well as upgrading any existing sash windows which are damaged. A mechanical ventilation system would be installed in all the habitable spaces. The appellants suggest that future residents would not be required to open windows as the mechanical system would provide an alternative means of ventilation. If residents did open the windows, they might be subjected to excessive noise levels, disturbance and fumes from vehicles and pedestrian movements along Moorgate.
8. The Council's Environmental Health Officer commented that during particularly warm periods, mechanical ventilation may be inadequate for cooling and thereby may require the opening of windows, negating the benefits provided with respect to air quality and noise mitigation. In my view, expecting the windows to be kept shut at all times would inevitably have a deleterious effect on the ability of future occupants to enjoy their homes, and so would result in unacceptably poor residential amenity.
9. Within the Globe, there are two function rooms that are available for private hire. The appellants state that the function rooms have never been used to host live music. They confirm that amplified music is played at occasional events within these rooms, and that these events may continue up until 11pm. However, there is little evidence of any restriction on the numbers of events that may be held in these rooms, and so there can be no certainty that their frequency would not increase in the future.
10. I note that the flat directly above the function room on the second floor has concrete flooring, which would reduce the potential for disturbance. Whilst sound insulation between the floors is recommended, its effectiveness would depend on a number of different factors. For example, acoustic insulation could potentially be vulnerable to piercing or damage from normal activities such as putting up shelves. Furthermore, the Council are concerned that a planning condition to ensure the efficacy of the sound insulation would be difficult to enforce. Although the appellants dispute this point, it is likely that problems

with the sound insulation would only come to light once the new flats were finished and occupied. By that stage, it could be very disruptive and difficult to seek to remedy such a situation.

11. At paragraph 4.26, the NA states that it 'does not guarantee that noise from the pub will not be noticeable within the new flats, particularly during lulls from other sources or busy periods within the pub.' Another factor is highlighted in terms of staff turning up music without authorisation. Although a compression limiter is recommended, it is unclear whether such a measure could be enforced. The noise report further recommends that live bands or non-house PA systems should not be permitted in the first floor Function Room without prior agreement of the residential tenants above. In practice, such a measure could be difficult to manage, and could give rise to conflict between the two uses. The large number of variables, and the difficulty in controlling them, leave me unconvinced that adequate living conditions could be provided in terms of noise disturbance.
12. In light of the above considerations, I conclude that it has not been demonstrated that adequate living conditions would be provided for future residents with respect to noise and disturbance. The scheme would thus conflict with LP Policy DM15.7, which sets out requirements in terms of noise pollution, LP Policy DM 21.1, insofar as it seeks to avoid poor residential amenity within proposed development, including excessive noise or disturbance, and LP Policy DM21.3, insofar as it requires all new residential development proposals to demonstrate how potential adverse noise impacts will be mitigated.
13. Whilst there may be a demonstrable market for the type of residential units proposed, this fact would not overcome the harmful impacts that would arise. Moreover, each case is to be assessed on its own individual merits, and so the presence of dwellings in other city centres and urban areas has not led me to a different conclusion on this main issue.
14. My attention has been drawn to an example¹ where an agreement was made granting an entertainment venue a right to continue to produce sound that could be heard at the site in question. However, as this was evidently a private matter between the parties involved, it cannot outweigh the duty to assess proposals for development against the relevant local and national planning policies, particularly at a site unrelated to that case.

Appeal A only - whether an appropriate location for residential development

15. LP Policy DM21.1 requires that new housing should be located on suitable sites in or near identified residential areas. Within these areas, a mix of appropriate residential and commercial uses will be permitted. New housing should not prejudice the primary business function of the City, and should not inhibit the development potential or business activity in neighbouring commercial buildings and sites. The accompanying narrative text says that concentrating housing in the areas indicated in Figure X allows greater opportunity to avoid conflict with office and other commercial uses and to provide better residential amenities.

¹ 09/AP/0343

16. In this case, the nearest residential location is Barbican, which is located 166m away at the closest point from the appeal site. The appeal site is thus outside the identified area, but conversely, I note that the policy does not entirely prohibit housing outside the marked residential areas.
17. With reference to Figure 4 in their statement of case, the appellants assert that there is very limited development potential in the vicinity of the appeal site. However, development is not confined to, for example, new buildings or new extensions. It might also include changes of use, or changes to the opening hours of existing premises, all of which might have an effect on the living conditions of future occupants of the appeal site.
18. As noted above, there are a number of existing noise generating commercial units in the vicinity of the appeal site. The Council are concerned that the proposed residential development would potentially limit the commercial activities of these premises. I am mindful that a residential use already exists in the form of the ancillary accommodation. Nonetheless, once the new units were occupied, the presence of the residents would have to be taken into account when considering any proposed developments in and around the site that might have an adverse impact on their living conditions. This may well have the effect of inhibiting business development or growth in the immediate area.
19. As noted above, the NA references the possibility of the Globe pub needing to reach agreement with the new residents above over the use of the function rooms. This in itself would suggest that the use of the functions room could be restricted if the residents were not agreeable, which would clearly fetter the pub's ability to conduct its business as it wished.
20. In the absence of compelling evidence to the contrary, I conclude that the proposed development would have an unacceptable adverse affect on the business function in the area, contrary to the provisions of LP Policy DM21.1.

The listed buildings

21. The appeal site originally comprised two buildings at 83 Moorgate and 85 Moorgate, which have subsequently been amalgamated. However, No 85 is not listed. The building is in mixed use, with a public house at ground, first and part second floor levels, and ancillary residential space at second, third and fourth floor levels.
22. The listed building at No 83 dates from the early 19th century, standing at four storeys in height with cellars. The upper floors were refronted in the 1870s, and the ground floor was altered in the late 20th century. The striking stucco upper floors are designed in an elaborate French Renaissance style, and retain the diminution of height from the earlier façade. The shallow pitched hipped slate roof is hidden behind a parapet.
23. The listed building has been significantly altered internally in the late 20th century, according to the list description. However, its significance derives from its fine facades, and from the remaining internal historic elements, floorplans and historic roofing. Further interest and communal value arise from its continued historic use as a pub. It also makes a positive contribution to the appearance of the surrounding area, and to the settings of the nearby listed buildings.

24. 118 and 118a London Wall and 87 Moorgate also date from the early 19th century, and are terraced houses with later shops. The ground floor of No 118 is notable as it retains a rare 1937 shopfront. Taken as a whole with the appeal site, these buildings form a fine group of elegant Georgian terraced properties that are now rare in the City area.
25. It is proposed to change the use of the upper level ancillary accommodation to create three one-bed flats and one two-bed flat. These flats would be accessed separately from Moorgate. Cycle accommodation and storage would be provided on the fourth floor, and refuse facilities at ground floor level.
26. In terms of alterations to the listed building at roof level, the Council are concerned about the proposed high and low level slate vents within the hipped slate roof, although these are not shown on the proposed fourth floor plan or the proposed Moorgate elevation. I accept that some areas of the roof covering have been replaced over time. Nevertheless, in the absence of any more detailed information, I am unable to be certain about the level of disruption that would occur to the historic fabric, or the impact on the appearance of the roof as a result of these new vents.
27. Concern is also raised over the installation of a large utilitarian extract flue would be required to extract a minimum of 1m above main ridge height. The appellants have clarified that the flue would be level with the ridge line. They state that it would be visible from very few locations and limited to higher level views rather than street level. However, I saw on my site visit that a modern building sits adjacent to the Globe that is considerably taller. As a result, it is likely that views down onto the roof of the Globe would be available. Moreover, as the flue does not appear to be shown on the proposed drawings, it is difficult to make a full and proper assessment of its visual impact.
28. Two new extract vents would be formed at second and third floor level on the façade of No 85. These would not directly affect the fabric of No 83, but would add an element of visual clutter to the façade. Whilst these would have some visual impact on the settings of Nos 83 and 87, this would be somewhat limited due to the height at which they would be installed. I note that a number of other vents/extracts are shown in the facades of the listed building which do not appear on the existing floorplans, but the Council have not referred to them in their evidence.
29. Drawing these factors together, there is insufficient evidence of the impact of the proposals for me to be certain that they would preserve the character and appearance of No 83, and the setting of the nearby listed buildings. Due to the potential for harm, I am not satisfied that these elements could be left to be dealt with by condition.
30. I therefore conclude that it has not been demonstrated that the proposed works would have an acceptable impact on the significance of the listed buildings. Accordingly, overall, a conflict arises with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the National Planning Policy Framework (NPPF). In addition, the scheme has not been shown to comply with LP Policy CS12, insofar as it seeks to safeguard the City's listed buildings and their settings, while allowing appropriate adaptation and new uses.

Other Matters

31. I have had regard to the previous planning permission² and listed building consent³ which permitted a scheme of conversion to residential use at the appeal site, but which was not implemented. These permissions predate the current development plan and NPPF policies by some years, and so I can afford them negligible weight in my consideration.

Conclusion

32. For the reasons above, I conclude that the proposed works and development would conflict with the development plan as a whole, and so both appeals are dismissed.

Elaine Gray

INSPECTOR

² 07/00705/FULL

³ 07/00706/LBC