



Appeal Decision

Site visit made on 9 October 2019

Hearing Held on 9 October 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

Appeal Ref: APP/C2741/W/18/3213654

The Jubilee, Balfour Street, York YO26 4YU

- 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 Tri-Core against the decision of City of York Council.
 - The application Ref 16/00682/FUL, dated 6 April 2016, was refused by notice dated 29 May 2018.
 - The development proposed is the conversion of first and second floor of public house building to 4no. self-contained apartments and retention of reduced size public house on part of the ground floor.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description I have used is taken from the appeal form and is as it is also shown on the Council's decision notice. It differs from the description shown on the planning application form as the scheme has evolved since it was initially proposed. The number of flats was reduced from six to four and the public house use as was retained in part as opposed to being removed. Both main parties have used this description and other parties with interest are both aware and have commented on the change. I am mindful that this description represents the scheme on which the Council based their decision and consequently am content to use it. I have proceeded on the basis that no party would be prejudiced by me doing so.

Main Issue

3. Whether the appeal scheme would result in the unacceptable loss of community facilities.

Reasons

4. The appeal site is a substantial detached brick and tile building located in a prominent street corner location, abutting the back edge of the public highway. It has been closed and boarded for some time. It is laid out over three storeys. The ground floor has two lounges and a pool room. There is a function room served by a separate bar on the first floor which also, along with the second floor, houses a two storey three bedroom flat. Outside there is a currently

overgrown lawned area used previously as a beer garden as well as a hard-surfaced delivery yard. This has a gated access onto Balfour Street.

5. The immediate area is something of an 'island' in community and physical terms. It is bounded to the north, east and west by the River Ouse and a railway line to the south. It has a distinct identity of a network of mostly residential streets of terraced housing and a number of small businesses. The Leeman Rose is another public house, located a short distance to the southwest of the appeal site. York city centre is walkable, taking around ten to fifteen minutes at a reasonable pace.
6. Paragraph 92 of the Framework¹ sets out, amongst other things, that planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs. Such a stance, in regard to the protection of existing community facilities, is echoed by Policy HW1 of the Emerging City of York Local Plan (ELP). This policy requires, where a given proposal involves the loss of community facilities, certain criteria to be met based essentially around whether there are alternatives available or provided elsewhere or a lack of demand or need for the specific facility is satisfactorily proven. Policy D3 of the ELP also sets out the importance placed on cultural provision and reinforces the need to prevent the loss of services.
7. I am mindful of the status of the ELP in that it remains in draft form. At the hearing the Council explained that the current 2018 publication draft is due for examination in December of 2019. There is no clear indication at the time I write this decision as to when the plan might be adopted. I have not seen detail of outstanding objections or those that might be raised during the forthcoming examination in respect of the cited policies. Taking all of this into account I am minded to take the lead from the most up to date expression of national policy set out by the Framework. It would perhaps be fair to state nonetheless that the aims of the cited policies broadly align with what paragraph 92 seeks to achieve.
8. As I have said, the existing building comprises a public house and other rooms associated with separate leisure and function space. It was established at the hearing that the Leeman Rose, whilst providing services as a public house, lacks the breadth of offer at the Jubilee, namely the absence of quality outdoor drinking space or separate leisure or function rooms. The local area as I have defined it above benefits from a limited amount of other community accessible spaces. There are a number of small businesses but only the church seems to have lettable floor space which hosts a number of local groups albeit it was raised at the hearing that its layout and make up inside constrained its usability.
9. Whilst it is not clear for exactly how long, the Jubilee was owned by a national chain up until its closure in early 2016. The written evidence paints a picture of a business in decline over the final years of the Jubilee being open to the public, takings were on the wane and footfall down as time passed. The final six months of the most recent tenancy seemed to make a loss. The business remains closed as I determine this appeal.

¹ The National Planning Policy Framework 2019

10. The appellant, since taking ownership after its closure, marketed the building as a going concern. The first period of marketing between July 2016 and May 2017 yielded an offer on a sealed bid basis. Whilst negotiations were undertaken the offer did not result in a sale. A second period of marketing took place starting in May 2017 with a second agent. Evidence from the agent in September set out that there were 15 viewings and seven offers, with a number turned down as interest was being sought on a leasehold basis. Four of the offers considered were on the basis of the building being re used as a public house. Others looked at part changes of use or an entire change of use to space for the service of the community. The marketing periods were over a not insignificant period of time and employed industry accepted methods such as online advertisement, a posted for sale board and mail outs.
11. The appellant reiterated their stance that the appeal scheme did not result in the loss of a community facility since it sought to retain a public house use on part of the ground floor. I agree, but only to a point. The appeal scheme would seek to provide a public house when there is a public house existing. The loss in this case however would be what the Jubilee has to offer that is not readily available locally, mainly in the shape of the additional lettable space it can provide as well as a sizable outdoor space. In this respect it is not just the sale of drinks to passing or regular patrons to consider. The provision of usable floor space for functions, socially connected sports teams or meetings for local groups can act as a focal point for a community otherwise bereft of such provision and a good quality outdoor space would be beneficial to a business in the summer months. The close proximity of the city centre and what it can offer would not, in my view, be sufficient to let such space go. The city centre does offer substantially more and a greater choice but to make people travel for it when it is in existing supply seems to me to go against the principles of reinforcing a sense of community in a local and not displaced context. A particularly important factor in my view given the distinctly defined nature of the community as I have identified it.
12. The marketing of the premises was extensive as I have set out and based on what I have seen the asking price was fair. It did nevertheless yield interest, some to renovate and re open the building as a public house. Indeed, two of the parties interested in the purchase of the building to do so were present at the hearing and gave oral evidence thereof. The hearing also received a petition signed by a significant number of people from the local area and beyond which is a clear indication to me that the facilities provided either now or potentially by the Jubilee are indeed valued.
13. There is nothing sufficiently compelling, some logistical and security issues aside that seem eminently possible to overcome, that would lead me to conclude that a reduced sized public house could not operate viably and thus successfully. The appellant has every intention of investing in the fit out of the public house element in the scheme, being willing to accept conditions imposed on a planning permission. That said, such a reduced size would have resulted from the loss of a significant proportion of floorspace that would be of benefit to the community in the manners I have described.
14. Whilst it might be stretching it to suggest that the loss of the floor space and facilities on offer at the Jubilee would impinge on the ability of the community to meet its day to day needs, this should not devalue what it can offer and how that can be of benefit to incumbent and future residents on a socially inclusive

level. There seems little doubt that significant investment would need to be made but again, there seems stated willingness from external parties to do so. A commercial decision no doubt it is but interest expressed appears to be on both a leasehold and freehold basis. I am also mindful of comments put to me concerning the previous ownership of the premises by a national chain and, whilst anecdotal evidence to a degree, it does seem to be the case that tied pub ownership brings with it an inherent limitation on choice of supply, pricing and investment to be able to make a business, as a going concern, an attractive or successful one. These seems to me every possibility that a party could, with investment, operate a successful business independently of a tie with the ability to sell a range taking into account choice and demand as well as being free to spread cost in a broader more competitive market.

Other Matters

15. The appeal scheme would provide new housing and add to the Council's supply albeit I do not have detailed evidence pertaining thereto. If the Council are in an undersupply situation and I were to engage the so called tilted balance of paragraph 11 of the Framework I would be granting a planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
16. In this case, and as I have said, the proposed development would provide new homes and be positive socially albeit a very limited number would be secured in the grand scheme. The economic benefits associated therewith would accordingly be equally limited. There would be some environmental benefit arising from the redevelopment of what is currently a run down and unattractive site. However, the social impact of the loss of the facilities on offer would, for the reasons I have set out, be detrimental to the local community in the manner I have explained. The impact felt would be significant given the lack of alternative facilities. Taking all of this into account, I would be inclined to conclude that the adverse impacts of granting a planning permission for the proposed development would significantly and demonstrably outweigh the benefits. The appeal scheme would not therefore be sustainable development for which the presumption in favour set out by the Framework applies.
17. The appeal scheme would be acceptable in other areas such as the living conditions of existing and future occupiers, design and access as well as the appeal site being accessible by means other than the private car. These however represent a lack of harm which cannot be used to weigh against harm. They are neutral in the balance.

Conclusion

18. For the reasons I have explained I am of the view that the appeal scheme would result in the unacceptable loss of community facilities. Such that it would be contrary to the aims of paragraph 92 of the Framework and the policies of the ELP as I have identified them. The appeal is thus dismissed.

John Morrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jamie Pyper	Nineteen47
Mr Dominic Woodward	Tri Core

FOR THE LOCAL PLANNING AUTHORITY:

Mr Neil Massey	City of York Council
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OTHER INTERESTED PARTIES:

Ms Becky Blackburn	Local Resident
Mr Jonathan Bryant	York Conservation Trust
Ms Helena Crossland	Leeman Road Residents Association
Mr Paul Crossman	Interested Purchaser
Miss Sarah Fillingham	Local Resident
Mr Nick Love	York CAMRA
Mr John McCurley	Interested Purchaser
Mr Lawrence McNamara	Local Resident
Cllr Rachel Melly	Local Ward Member Holgate
Cllr Kallum Taylor	Local Ward Member Holgate
Mr Luke Thomson	Leeman Road Residents Association

DOCUMENTS SUBMITTED AT THE HEARING:

- 967 signatory petition stating support for the retention of the Jubilee submitted by Mr Luke Thomson