



Appeal Decision

Site visit made on 18 September 2019

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

Appeal Ref: APP/N5660/W/19/3233103

Pensbury Arms, 4 Pensbury Street, London SW8 4TJ

- 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 Mr N Lukka of Macneill Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 19/01292/FUL, dated 5 April 2019, was refused by notice dated 31 May 2019.
 - The development proposed is single storey rear extension (at first floor level) and additional single storey roof extension at second floor level to enable the change of use of the existing residential accommodation ancillary to existing A4 use into 3 self-contained dwellings (C3 use) at first and second floor levels and the retention of a single dwelling ancillary to the existing A4 use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Amended drawings have been submitted showing changed window types and internal cycle storage that reduces the floor area of the public house. As such, the amended scheme is so changed that to accept the revisions would deprive those who should have been consulted on the changed development of the opportunity of such consultation. I have determined the appeal based on the plans that the Council have based their decision on. Additional information to substantiate sales values to address another reason for refusal has been responded to by the Council. As this does not change the nature of the development, it is accepted.

Main Issues

3. The main issues are:
 - (a) whether or not the proposal might render the public house unviable;
 - (b) whether or not the proposed residential use would conflict with the strategic objective of reserving industrial and business land;
 - (c) the effect of the proposal on the character and appearance of the conservation area and the host building;
 - (d) whether or not the proposed development would provide acceptable living conditions for future occupants, with particular regard to internal and outdoor space;

- (e) whether or not the proposal makes adequate provision for car free parking and sustainable transport; and
- (f) whether or not the proposal makes adequate provision for affordable housing.

Reasons

Viability of continued use

4. The appeal site is a three-storey public house, with public bar on the ground floor and ancillary residential accommodation to the upper levels. The Council aims to protect public houses on the basis that they have both an economic role, in contributing to employment and vitality, and a social role, in providing a hub for community life and interaction. Notwithstanding the Key Industrial and Business Area (KIBA) designation, which I shall return to later, the existing lawful use of the appeal premises is as a public house.
5. Policy ED8 of the Lambeth Local Plan (LLP) seeks to ensure that development schemes should not result in loss of features which might render the public house unviable. This is broadly consistent with paragraphs 83 and 92 of the National Planning Policy Framework (the Framework), which require planning decisions to protect and plan positively for community facilities such as public houses.
6. Whilst the commercial floor area of the public house would be approximately the same, the efficiency of space would be improved. Although daylight penetration would be reduced, this is not unusual in public houses and there is no reason why effective interior design could not address this. The provision of unrelated residential accommodation directly above a public house raises concern from both the Council and the Campaign for Real Ale, in terms of potential complaints prejudicing commercial operations. The appellant rightly points out that there is no policy test to provide evidence of realistic prospect of letting, but paragraph 182 of the Framework does emphasise the agent of change principle. The submitted Noise Impact Assessment (NIA) concludes that an independent acoustic floor system should be installed in order to meet internal noise criteria, which I accept.
7. However, the proposal would result in a commercial proposition that would be more constrained by proposed uses than it currently is. Whilst it is not clear whether the premises has been marketed or not since its closure, interest may decrease as a result of those actual or perceived constraints. On the other hand, a renovated commercial premises may be more attractive. Without commercial operator or end-user engagement at this stage, I find the evidence before me is not definitive in determining whether the proposed residential development might affect viability of the public house. Furthermore, the family accommodation within the upper floors, with up to four bedrooms, would be reduced to one bedroom. This is likely to reduce attractiveness to any publican, even when compliant with space standards. Loss of south-west facing outdoor seating would also reduce attractiveness to customers.
8. Overall, when taking all of these considerations into account, I find that the risks outweigh the benefits. I therefore conclude that the proposal is likely to render the public house unviable. Accordingly, the proposal conflicts with LLP policy ED8.

Reserve of industrial land

9. The appeal site lies within a KIBA, representing the Council's strategic reservoir of land for business use. Policy ED1 of the LLP defines protected KIBA uses as business, industrial and storage uses, specifically use classes B1, B2 and B8. The policy is fully restrictive; only the identified uses will be permitted, or uses ancillary to the needs of the KIBA. As such, the proposed residential use is contrary to the development plan.
10. Whilst the inclusion of the class A4 use within the KIBA may appear anomalous, the Council consider the use policy compliant in providing for the needs of the KIBA, which I accept. A recent review by the Council suggests that KIBAs are not being unrealistically protected, and the Pensbury Place and Pensbury Street area is designated to protect small industrial units in particular. Following the review, the Wandsworth Road KIBA designation remained unaltered, with the exception of areas excluded directly as a result of recent residential development within the KIBA. Whilst the recommendations of the NIA are agreed by the main parties to mitigate noise from the adjacent Royal Mail depot such that residential use could potentially be accommodated, the KIBA review provides evidence that residential use is not compatible with long term maintenance of the reserved land. The risk of the public house becoming unviable consequently puts the protected use at risk of being lost to the KIBA.
11. The benefits of providing three units of housing on an underutilised and sustainably located site do not outweigh my above concerns, neither does the proximity of the appeal site to the margins of the KIBA and nearby residential uses. That no complaints have arisen from the appeal premises is not determinative. Whilst the Framework supports opportunities for the use of airspace above buildings, this would be outweighed by the harm that I have found. Integration of co-locational residential uses in the KIBA would be more appropriately dealt with through formal review and examination. I do not have full details of the planning permission at Corben Mews, but note that it related to a site with an established residential use, unlike this appeal. In any case, I must determine the appeal on its own merits.
12. I therefore conclude that the proposed residential use would conflict with the strategic objective of reserving industrial and business land, contrary to LLP policies ED1 and ED8 and paragraph 182 of the Framework.

Character and appearance

13. The building is an undesignated heritage asset on the local list, noted as being in the Tudor Revival style, and with a large and distinct projecting central dormer running full depth through to the rear. The public house is located in the Wandsworth Road Conservation Area (WRCA) which is predominantly characterised by 19th century development within a tightly defined cluster along the northern side of the Wandsworth Road. The immediate north and west of the site is industrial land, with offices to the east. The effect of the proposal would be a flat roof extension absorbing the entire rear of the premises.
14. The building is identified as one of a small number of pubs locally in the Tudor Revival style. The significance of the building as an undesignated heritage asset derives primarily from its frontage, and main parties agree this designation is unaffected by the proposal, subject to appropriate conditions.

15. Notwithstanding this, I must also consider the wider building. Whilst the proposed rear elevation would be largely hidden from public view, the flanks of the proposal would be readily visible from the public realm. Although previous piecemeal extensions detract from the building, the existing pointed gables, which contribute positively to the arrangement of the roof, would be subsumed within the proposed flat roof. An overlarge expanse of blank wall would be provided instead that fails to reflect the intricacy of the building's frontage, thereby diminishing the building's existing intimate scale and proportions. I find that the overall effect of the side flanks would be to overdominate the building.
16. The refuse and cycle stands together would create visual clutter on the street frontage, within this otherwise open pub frontage. Whilst harm to the significance of the WRCA would be less than substantial, the public benefits gained by contribution of three new units to the supply of housing and the retention of the public house, are outweighed by the great weight I attach to preserving the character and appearance of the WRCA.
17. I conclude that the proposal fails to preserve the character and appearance of the conservation area and has a significant adverse effect on the host building. The proposal would therefore be contrary to LLP policies Q11, Q12, and Q22 and paragraph 196 of the Framework.

Living conditions

18. Policy H5 requires flatted development to provide at least 50sqm of communal outdoor space. In this particular case, the constrained site boundary and heritage asset status of the building and its surrounds make this difficult to achieve. Given this constraint, it is therefore important that adequate private outdoor space is available. Regardless of which space standards are applied or the proximity of public parks, such provision has not been made for each flat.
19. Similarly, provision has not been made for dual-aspect accommodation to each flat, notwithstanding wider compliance with internal space standards. I do not find that the optimisation of use of the site demonstrates the exceptional circumstances required by policy H5. This is particularly so in the context of outlook over the adjacent industrial and business land uses, notwithstanding the effectiveness of any noise mitigation measures.
20. I conclude that the proposed development would not provide acceptable living conditions for future occupants, with particular regard to internal and outdoor space. The proposal would conflict with LLP policies H1, H5, and H6.

Sustainable transport

21. The Council encourage sustainable travel patterns and seek to address congestion through control and management of parking availability. Development in areas with good public transport accessibility is expected to be car-free. That a planning obligation is required for car club membership and to exempt occupiers from parking permit entitlement is not a matter of dispute between the parties. However, no such signed and completed obligation has been provided.
22. In order to encourage the increased use of cycling for sustainable transport and wellbeing, the Council also require all development to provide appropriate storage for cycles. This requirement is acknowledged by the appellant in their amended plans, which, for reasons given above I cannot consider. The use of

Sheffield bike stands would not provide covered or secure storage. Alternative provision could not be reasonably required by condition, given my above findings on character and appearance or given the potential reduction in commercial floor space.

23. I therefore conclude that the proposal fails to make adequate provision for car free parking and sustainable transport, contrary to LLP policies D4, H6, T6, T7 and Q13 and LP policy 6.13.

Affordable housing

24. LLP policy H2 seeks affordable housing contributions on all development, requiring a financial contribution on sites of fewer than 10 units towards delivery of off-site units. This is not consistent with paragraph 63 of the Framework. However, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
25. The appellant refers to two appeal decisions¹ where the Inspectors concluded that Framework paragraph 63 was not outweighed by local considerations. I am not aware of what evidence was before those Inspectors, however I must determine the appeal on its own merits. In doing so, I am persuaded by the detailed and substantive evidence provided to me by the Council of an acute affordable housing shortage and the contribution provided by small sites.
26. Although the appellant refers to forthcoming Framework-compliant policy wording in the draft LLP, this emerging policy is most appropriately addressed through the development plan examination and adoption process, particularly as I have not been provided with details of any unresolved objections to that policy. Furthermore, the existing policy should not be considered out of date simply because it pre-dates the Framework. Accordingly, I find that a contribution to affordable housing should be provided.
27. Notwithstanding the principle of such a contribution, the appellant has submitted a viability assessment to demonstrate that the development is not viable if a contribution is paid. Had the development been otherwise acceptable, the Council have indicated that they would have sought review of aspects of the viability assessment by an independent quantity surveyor. In the circumstances, given that I am dismissing the appeal on other substantive issues, it is not necessary for me to explore this matter further and balance out the viability or otherwise of the development or any amount payable.
28. In conclusion, even in the circumstances that I was to find that an affordable housing contribution was unnecessary it would not outweigh my findings on the above main issues. Consequently, based on the evidence before me, it is not necessary for me to conclude whether or not the proposal fails to make adequate provision for affordable housing to accord with LLP policy H2 and policy 3.12 of the London Plan (LP), which together seek to provide affordable housing to meet the identified need within the borough.

¹ Appeal decisions APP/N5660/W/18/3203420 and APP/N5660/W/16/3163836

Conclusion

29. I have found that the proposed development is likely to render the public house unviable; conflicts with the strategic objective of reserving industrial and business land; fails to preserve the character and appearance of the conservation area and has a significant adverse effect on the host building; would not provide acceptable living conditions for future occupants, with particular regard to internal and outdoor space; and fails to make adequate provision for car free parking and sustainable transport. Even were I to find that an affordable housing contribution was unnecessary, this would not outweigh my conclusions on the other main issues.
30. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Patrick Hanna

INSPECTOR