



Appeal Decision

Hearing Held on 6 November 2019 and 4 February 2020

Site visit made on 4 February 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2020

Appeal Ref: APP/K5600/W/19/3231664

Hotel, 19 Prince of Wales Terrace, London W8 5PQ

- 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 D Davidovich, against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PP/18/06944, dated 14 April 2018, was refused by notice dated 24 December 2018.
 - The development proposed is change of use from a hotel (Use Class C1) to a single residential dwelling (Use Class C3) together with refurbishment and restoration of the building.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the determination of the application the Council has adopted The Local Plan, September 2019 (LP). This supersedes the Consolidated Local Plan Royal Borough of Kensington and Chelsea, July 2015. I have therefore considered the proposal against the relevant policies of the new LP.

Main Issues

3. The main issues are whether: The loss of the existing hotel use is justified; the proposal optimises the sites potential for a mix of small and family sized accommodation; and, the proposal makes adequate provision for mitigating against on-street parking.

Reasons

Loss of existing hotel use

4. The appeal site comprises 19 Prince of Wales Terrace (No 19) a mid-terrace, multi-storey building within the De Vere Conservation Area. The extant use of the building is a hotel, which was trading as Clearlake Hotel, when it ceased operating in 2015.
5. The hotel has a gross internal area of about 541 sqm and incorporates 12 bedrooms, all of which have en-suite facilities. The property is in a particularly dilapidated state.

6. Policy CF8 of the LP seeks to ensure that the visitor economy is supported through appropriate hotel provision, this includes, protecting hotels and hotel bedrooms across the Borough.
7. In this case, No 19 was marketed for sale from 2015 to 2018, by three main agents: Knight Frank, Portland Hill and Hamptons International. The marketing undertaken by Knight Frank was for a limited period (4 weeks) while a marketing report from Portland Hill indicates that both the appeal property and an adjoining property, 18 Prince of Wales Terrace (No 18) were marketed from mid-2015 to late 2017. The report states that the marketing was via emails and phone calls to prospective purchasers and through various property websites. The marketing particulars include floor plans, floor areas and a brief description of the area and properties. These also identify No 19 as a commercial property with hotel use.
8. Marketing information provided from Hamptons International, confirms that No 18 and the appeal property were marketed for a period of 9 months during 2015 and 2016. The marketing included the use of a number of websites and a postal campaign, which resulted in 49 viewings. Some details of viewings and offers are provided in an anonymised format. Although the particulars refer to a 25-bedroom terraced house, the one property is identified as being in commercial use as a hotel. Based on the submitted marketing information, I am satisfied that No 19 was actively marketed for a continuous period of at least 12 months for sale as a hotel.
9. Knight Frank have undertaken a viability assessment for the continued use of No 19 as a hotel. This identifies that the required investment for a shell and core refurbishment, based on an average cost of £250 per square foot, along with professional fees and contingency would equate to building works of approximately £2.21m excluding the actual hotel fixtures and fittings themselves. These costs have then been considered in respect of two possible options for the property. Option 1 is for a bed and breakfast facility and Option 2, as a boutique hotel. Both scenarios have been modelled, and on the available information, which is sufficiently detailed it has been concluded that neither option would be financially viable.
10. Furthermore, on the information available, the extent of refurbishment works required to the property are likely to require compliance with other current regulations and any associated reconfiguration of the property is likely to result in a reduction in the number of bedrooms and its overall viability.
11. The appellant also advises that the hotel was owned and operated by an elderly couple who have both passed away and therefore no historic accounts or operational details for the hotel are available. Instead, the appellant has referred me to customer reviews of the Clearlake hotel dating back to 2010 from the tripadvisor.com website. Along with a graph extracted from the Companies House website, which shows details of the net assets, total assets and total liabilities for the business. The reviews indicate that the property operated as a budget hotel with limited facilities, offering a poor quality of accommodation. These along with the data on the graph are insufficient to conclude that the business was trading at a loss. Nonetheless, the reviews and the general condition of the property are strong indicators that the continued use of the property as a hotel in its former form was not viable.

12. The appellant has also reviewed hotels on the market within an approximately 1.5km radius of No 19. This shows about 50 branded and unbranded hotels in the area, providing 2 to 5-star accommodation. The appellant has also identified that as a consequence of changes in government legislation in 2015 there has been an increase in homes and rooms being used as short lets in the Borough, for instance via online letting agents.
13. To highlight that properties like the appeal property can accommodate hotels to modern standards, the Council has referred me to the Kensington House Hotel, which is close to the appeal property. However, this is an established and operational hotel which incorporates a bar, restaurant and occupies a larger building than the appeal property, as such it is not directly comparable. Therefore, its existence does not lend any significant weight to the retention of the hotel use at the appeal property.
14. Drawing on the above reasons, the permanent loss of the hotel use at the appeal property would be in conflict with paragraph (a) of Policy CF8 of the LP. Nevertheless, in this particular case the evidence shows that having been marketed for over 12 months there was no strong interest to retain the property for hotel use, and any future operation of the property as a hotel would be economically unviable. Furthermore, the area in which the appeal site is located is well served by existing hotel provision. Therefore, the loss of this modest 12-bed hotel would not have any significant impact on the overall provision of hotels and hotel bedrooms in the Borough, in particular given that it has been closed for over 4 years. Consequently, the overall aim of Policy CF8 of the LP to maintain appropriate hotel provision would not be significantly undermined.

Proposed accommodation

15. Policy CH1 of the LP aims to boost the supply of homes in the Borough and to deliver this, amongst other things, it seeks to restrict the creation of very large units in order to optimise the number of residential units delivered in new developments by taking into account the relevant range within the London Plan density matrix. Furthermore, Policy CH3 of the LP requires new residential developments to include a mix of types and sizes of homes to reflect the varying needs of the Borough, considering the characteristics of the site, and current evidence in relation to housing need.
16. The supporting text to Policy CH1 of the LP states that in recent years the Borough has seen an increase in planning applications for 'superprime' developments. These are very large luxury, high-end, high-specification developments with multi-million pound sales values known as prime and super prime housing. The supporting text also states that the Borough's Strategic Housing Market Assessment (SHMA) 2015 concludes that super prime properties are those valued at more than £10 million and prime properties between £2 million and £10 million. It adds that the provision of these larger units has an impact on the ability of the Borough to meet its housing supply targets as the sites for these developments are often capable of accommodating a much larger number of smaller units.
17. The supporting text to Policy CH1 of the LP goes on to state that given the increase in the Borough's housing supply target to 733 units per annum in the 2015 London Plan, the Council is under increasing pressure to ensure that the delivery of new housing is optimised on all sites. Further, that the provision of

new very large units to meet the requirements of prime and super prime buyers is unlikely to contribute to meeting local housing needs as identified through the Borough's SHMA.

18. The Council advises that its latest evidence in the SHMA (December 2015) demonstrates a 50/50 split between the need for smaller (1-2 bedrooms) and larger unit (3-4+ bedrooms). It claims, therefore, that the scheme should be designed with this in mind and provide an appropriate balance of smaller and larger units.
19. The proposed dwelling would utilise the entire property and comprises a 5-bedroom dwelling. The resultant dwelling would be significantly in excess of the minimum space standard for a 5-bed dwelling, as set out within the London Plan. As such, it would constitute a very large residential unit. Whilst I acknowledge these floorspace standards are expressed as minima, the site has the potential to provide a greater number of units and a more balanced mix of sizes, whilst still meeting the minimum standards.
20. In recent years the Council has failed to meet its 733 per units housing supply target. Therefore, although the proposed development would deliver an additional dwelling, this would only make a minimal contribution towards the housing supply target. Further, whilst the appeal property may have originally been designed as a single dwelling, on the available evidence, I cannot be certain that its layout is not suited to subdivision, as suggested by the appellant.
21. For the above reasons, the proposal would fail to optimise the sites potential for a mix of small and family sized accommodation and would be in conflict with Policies CH1 and CH3 of the LP and similar aims of Policies 3.4 and 3.8 of the London Plan.

On-street parking

22. The Council advises that the Borough experiences very high levels of on-street parking demand, to an extent that the occupancy level of spaces is at saturation levels across the Borough and at most times of the day and night. The whole Borough is subject to one Controlled Parking Zone and therefore the parking demand generated by new residential developments will not necessarily be focused in the area surrounding the development. In order to ensure that new developments do not exacerbate this situation, Policy CT1(c) of the LP requires that all new additional residential development will be street parking permit free, secured via a legal agreement.
23. A draft legal agreement has been submitted with the appeal. At the Hearing, the Council's representative confirmed that the content of this was acceptable. However, because this legal agreement is not signed and dated, it is incomplete. On this basis, the main parties suggested that a completed legal agreement to secure a permit free development could be secured by a planning condition.
24. The Planning Practice Guidance¹ provides advice on the use of a condition, requiring an applicant to enter into a planning obligation or an agreement under other powers. It advises that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement

¹ Paragraph: 010 Reference ID: 21a-010-20190723

has been entered into is unlikely to be appropriate in the majority of cases. However, it further states that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).

25. Such circumstances do not exist in this case. Therefore, in the absence of completed legal agreement the proposal fails to make adequate provision for mitigating against on-street parking, in direct conflict with the aims of Policy CT1(c) of the LP.

Other Matters

26. The proposal would facilitate the complete refurbishment of the appeal property, which would bring it into use and improve its fabric and appearance. This in turn would preserve the appearance of the De Vere Conservation Area. However, such improvements could be secured by other schemes, for example, those which optimise the sites potential for housing.
27. I have had regard to planning permission granted² in August 2015 for a change of use of a hotel to a dwelling at 10 Vicarage Gate. Despite this site being close to and sharing similarities with the appeal property, that permission was granted in the context of the previous local plan and different planning policies.
28. The appellant has drawn my attention to other proposals which resulted in larger properties. However, on the limited information before me, these relate to amalgamations of existing residential units and were also determined prior to the adoption of the new LP and are therefore not directly comparable to the appeal proposal. In any event, each application is determined on its merits.
29. Whilst I note the appellant's frustration over the Council's decision not to accept his legal agreement to secure a permit free development, during the planning application stage, this is a matter for the Council.

Conclusion

30. Although I have found that the loss of the existing hotel use has been justified, the proposed development would harmfully fail to optimise the site's potential for a mix of small and family sized accommodation contrary to the development plan, such that planning permission should be refused. Nor has a suitable mechanism been put in place to mitigating against on-street parking, contrary to the development plan. I, therefore, conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR

² Ref: PP/15/03731

APPEARANCES

FOR THE APPELLANT

Daniel Di-Lieto
Alena Shylin

Lichfields
Personal Assistant to Mr D Davidovich

FOR THE LOCAL PLANNING AUTHORITY

Stephanie Malik

Royal Borough of Kensington and Chelsea

INTERESTED PERSONS

Sarah Sheehan

Neighbour

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Copy of pre-application advice from Council to appellant dated, 6 December 2017.
2. Officer report for a planning application in respect of 10 Vicarage Gate.
3. Information relating to Kensington House Hotel, 15-16 Prince of Wales Terrace.
4. Copy of the Council's Housing Strategy.
5. Copies of relevant development plan policies.