



Appeal Decisions

Site visit made on 11 August 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 28 August 2020

Appeal A Ref: APP/K5600/C/19/3242973

Appeal B Ref: APP/K5600/C/19/3242974

The Academy, 57 Princedale Road, London W11 4NP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Kingcastle Ltd against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea. Appeal B is made by Mr Barry Polley.
- The enforcement notice was issued on 1 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property from a public house (Use Class A4) with ancillary residential accommodation to a solely residential use (Use Class C3).
- The requirements of the notice are:
 - i Cease the unauthorised use of the first and second floors as a self-contained residential unit (Use Class C3);
 - ii Remove the partition walls labelled A and B on 'Appendix 1';
 - iii Reinstate the staircase between the ground and first floors in accordance with the staircase shown in 'Appendix 2'.
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) the 1990 Act as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matter

1. The alleged breach, as set out in the banner heading above, is at odds with the requirements and the submitted evidence, which concerns the residential use of the upper floors only. I consider that this matter could be addressed through a correction to the allegation as follows – the material change of use of the first and second floors from a public house with ancillary residential accommodation (Use Class A4) to a self-contained residential unit (Use Class C3). I am satisfied that I can make this correction without injustice given the nature of the evidence and the matters in dispute. The effect of the notice would remain unchanged.

The appeals on ground (a) and the deemed planning applications

Background and Main Issue

2. The appeal premises is a purpose-built public house, known as The Academy, comprising three storeys over a basement. The basement and the ground floor formed the main focus of the public house use, with the first and second floors providing ancillary residential accommodation. The premises has been sub-divided and the upper floors are now used as a self-contained flat, served by an external staircase.

3. The terms of the deemed planning applications are derived from the corrected allegation. Hence, planning permission is sought for the use of the first and second floors as a self-contained residential unit. The main issue is whether the change of use of the upper floors would be harmful to the viability and function of the public house, which is recognised for its social and cultural value within the local community.

Reasons

4. The appeal premises is sited on a corner, in a predominately residential area and within the Norland Conservation Area. The public house was designated as an Asset of Community Value (ACV) on 30 December 2014 with re-designation on 21 January 2020. The premises ceased trading in August 2016 and the appellants explain it has been marketed since that date.
5. Development Plan policy seeks to protect local facilities where their uses make a positive contribution to the area. Public houses are particularly identified as important sources of identity and distinctiveness, providing opportunities for social interaction and places to meet which support community cohesion. It is apparent from the ACV designation, and the numerous letters from interested people and their representative groups, that The Academy was a valued community pub in an area where other premises have been lost to different uses.
6. The proposal would not affect the public house use over the basement and ground floors since the change of use concerns the upper floors only. What must be considered is whether the public house would be viable if it were to be sub-divided as proposed.
7. The Council argues that the development would limit the operational flexibility of the pub. It would also remove the tied accommodation traditionally used by staff, which would have negative operational impacts as local affordable accommodation is scarce. The Council relies on evidence from the First-Tier Tribunal [CR/2015/0007], which considered the decision to include the whole of the premises in the ACV listing. The Tribunal concluded that the Council was correct to treat the whole of the premises as comprising a building for the purposes of the Assets of Community Value (England) Regulations 2012, due to the physical and functional relationship between the residential accommodation and the pub. However, this decision did not need to address the issue of viability.
8. In contrast, the appellants argue that the upper floors have never been used as tradable floorspace. The retained floorspace would provide a kitchen, bar, seating, toilets and storage which would enable the public house to function. Support is drawn from a Viability Study (December 2019), which considered the long-term viability of the ground and basement as a 'lock-up' public house. The report examines operator requirements and trends, explaining that it is increasingly common for operators to acquire ground and basement lock-up units that do not comprise the whole building. It is argued that there are benefits to removing residential accommodation as this can lead to lower fixed and variable costs. A detailed list of recent transactions is provided, which includes premises that would operate a similar trading area to the appeal premises. Overall, it is concluded that the loss of residential staff accommodation does not necessarily mean a detriment to the business.

9. I accept that the demand for 'free of tie' properties in London is strong, however, I note the Viability Report acknowledges that the 'back-street' location of the appeal premises is unlikely to appeal to larger operators. This would limit the range of potential operators that may be interested. Location is an important consideration which is likely to have a significant impact on viability. I saw that the premises is located some distance from other commercial uses on Holland Park Avenue, which would affect opportunities for passing trade.
10. I have also taken account of the comments of the previous licensee whose evidence to the 2015 Tribunal indicated the premises was struggling to remain viable. It was suggested that there were not enough regular drinking customers, owing to demographic changes in the neighbourhood. It was explained that the business had increasingly come to rely on the sale of food. It is accepted in the Viability Report that loss of upper floorspace could lead to an adverse impact on a food-led public house, where it may be difficult to attract skilled catering staff without onsite accommodation. Although the appeal premises has not been food-led traditionally, it is important to retain flexibility to allow a food-based or some other approach to be considered.
11. It is claimed by the appellants that the conversion of upper floors to residential and the retention of the ground and basement pub has, in some circumstances, secured the long-term future of the pub. The added value created by converting the upper floors could provide additional funds to be invested in the ground and basement pub thereby improving the long term viability. While I do not doubt the reasoning of this, there is no mechanism before me that would secure this type of enabling development. There is no guarantee that funds would be invested in the pub should the development be allowed.
12. The appellants also point out that a similar scheme has been supported in recent years. I understand that the Council resolved to grant permission for the refurbishment, reconfiguration and extension of the public house which included infill development to provide a new dwelling (Ref PP/18/01556 dated 12 June 2018). I understand this scheme was considered acceptable as it would have retained the upper floors as ancillary accommodation, so is not wholly comparable to the matters at issue in this case.
13. The appellants draw my attention to various planning permissions, which are considered to be examples of schemes where ancillary space has been converted to residential without harming viability. It is difficult for me to draw conclusions from these permissions since I am not aware of the specifics of each case. Clearly, every case will be dependent on a range of factors including the site and location, the layout of the building and the physical/functional relationship between lower and upper floors. In each example it seems that the Council was satisfied the viability of the public house would not be affected. Those developments were thus policy compliant, which is not the Council's position here.
14. Ultimately, I find that the viability and function of the public house would be adversely impacted by the development. Despite the conclusion of the Viability Report, the long-term viability of the premises is highly likely to be dependent on a flexible and creative offering that engages and serves the local community. The smaller trading area would limit flexibility which would, in turn, affect the options available to the operator.

Other Matters

15. The development before me would not involve external alterations and I am satisfied that it would preserve the character and appearance of the Norland Conservation Area, thus meeting the statutory test of the Planning (Listed Buildings and Conservation Areas) Act 1990.
16. It is common ground that the development would have a limited benefit in that it would make a very small contribution to the local housing supply. The provision of one unit of residential accommodation would not outweigh the conflict with policy as set out above.
17. It is also agreed that the development would provide acceptable living conditions for the occupants and would not affect local parking conditions. This has a neutral effect and does not weigh for or against the proposal.

Conclusion

18. The development would not comply with Policies CK2 and CL3 of the Local Plan (2019), Policy 4.8C of the London Plan (2016) and Policy N9 of the Norland Neighbourhood Plan 2013-2028 (2013) which, in combination, seek to support local centres and secure the provision of strong and sustainable neighbourhoods. This includes resisting the loss of public houses where they make a positive contribution to the local neighbourhood. The development would not accord with Policy HC7 of the draft London Plan, which seeks to protect public houses where they have value to local communities. However, this policy does not form part of the development plan. It is not clear to me whether the wording, as provided, has been superseded and I only afford the emerging policy limited weight.

Conclusions

19. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed applications.

Formal Decisions

20. It is directed that the enforcement notice be corrected by the deletion of the allegation as set out in paragraph 3 of the Notice and its replacement with the following allegation - the material change of use of the first and second floors from a public house with ancillary residential accommodation (Use Class A4) to a self-contained residential unit (Use Class C3).
21. Subject to this correction, the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Debbie Moore

Inspector