



Appeal Decision

Site visit made on 18 August 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2020

Appeal Ref: APP/P4605/W/20/3251101

The Flapper and Firkin, Kingston Row, Birmingham B1 2NU

- 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 William Adams, Whitehorse Estates Ltd against the decision of Birmingham City Council.
 - The application Ref: 2018/08647/PA, dated 23 October 2018, was refused by notice dated 5 December 2019.
 - The development proposed is the redevelopment of the site of the Flapper Public House to create a part three and part four storey development comprising 27 residential apartments (4 x 3 bed, 16 x 2 bed and 7 x 1 bed).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Government published a Written Ministerial Statement (WMS) on 14 July 2020 which, in part, is concerned with preventing the loss of theatres, concert halls and live music performance venues. The main parties were given the opportunity to comment on the WMS. Accordingly, I have considered it in my decision, along with the responses that were made.

Main Issues

3. The main issues are the effect of the proposal on (i) the provision of community facilities, in particular live music venues; (ii) highway safety and the free flow of traffic, by way of the proposed access arrangements; (iii) the setting of listed buildings, in particular the Cranes and the Kingston Row Cottages; (iv) a non-designated heritage asset, the Birmingham and Fazeley Canal and whether the existing building on the site constitutes such an asset; and, (v) the character and appearance of the area.

Reasons

Community Facilities

4. The appeal property comprises a vacant building that was formerly in use as a public house and as a live music venue, commonly known as The Flapper. The premises closed at the start of 2020 when the lease expired. The building itself lies adjacent to the canal basin known as Cambrian Wharf and close to the associated Birmingham and Fazeley Canal. The site is located on the edge of

the city centre and whilst there are office buildings close by, the predominant use in its immediate vicinity is residential.

5. It is understood that the music venue operated from a lower ground floor bar of the building. The performance space included a stage and engineer's rostrum at one end. It was exclusively used for live music. It had a capacity of 120 people with performances mainly taking place on Friday and Saturday nights. Prior to its closure, it functioned on a model of the tenant operator working in association with band promoters, with a focus on amplified hard rock music.
6. Policy TP25 of the Council's Birmingham Development Plan (2017) supports the City's existing tourist and cultural facilities. The policy protects and promotes smaller scale venues and attractions that are an important part of creating a diverse offer. Policy TP24, more broadly, supports a diverse range of facilities and uses, including community uses and cultural facilities. Policy TP28 refers to new residential development being sympathetic to cultural assets, amongst other considerations. Paragraph 92 of the National Planning Policy Framework (Framework), similarly, supports community facilities and guards 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.
7. The appellant's main justification for the loss of the music venue is the number of alternative such facilities. The appellant points to evidence submitted in the 'Fleurets' Reports (the Reports) submitted with the application which consider that there are sufficient other facilities for the presentation of live music so that the loss of the appeal property would not be unreasonably detrimental.
8. The premises that are considered in the Reports are located throughout Birmingham on the basis that the established custom for live music performances is not local resident. The music venues are said to cover a diverse range of musical styles and tastes, and are relatively unrestricted as regards the presentation of amplified live music.
9. It is less clear, though, whether these venues would actually be able to accommodate what would be displaced live music performances that would have taken place at the appeal property, not least as they would likely have their own performance schedules. As a consequence, it is not evident if there would be sufficient music venues, if The Flapper was lost to a different use. If it was not deemed, in effect, 'surplus' to the provision of music venues, then its loss would be detrimental to such community facilities as it would limit their range.
10. The Reports also state that the supply of live music venues is principally driven by market economics. This, no doubt, reflects the business practices of running such venues. However, the function of such venues, as a community facility, goes beyond such an approach because it also has a role in serving the needs of the community. The strength or volume of objection to the proposal is not, in itself, a determining factor, but what those objections demonstrate in this case is the value of the facility to the community, whether this be a local or a wider population that was attracted due to the music offer.
11. The appellant does not claim that The Flapper, when it was trading, was struggling financially. What viability evidence has been submitted relates more to the costs that would be needed to upgrade the venue, rather than whether it

would be viable for an operator to take on the music venue or whether there has been interest in doing so since it closed. References are made to the costs associated with the building and rent matters, but not to what income may be generated. Again, this does not provide sufficient assurance that the loss of the venue can be accepted, based on the information before me.

12. Nor does the closure of The Flapper amount to compelling evidence and that it is vacant does not itself mean that its future as such an establishment is irrelevant, given the protection that is afforded to community facilities through the planning system. Once it is lost, it would not be a situation that would be easily retrieved as regards the provision of such venues. Hence, it is not about the protection of individual facilities but, as I have set out above, Policy TP25 seeks to protect and promote smaller scale venues, whilst the Framework guards against the unnecessary loss of valued facilities. A strong level of protection is afforded.
13. The development plan policies and the Framework are not prescriptive about how such a loss can be justified because they seek to recognise the value of such facilities. Accordingly, it is a matter for the decision maker, based on the evidence submitted. I find that a satisfactory justification for the loss of such a venue has to be broader than based on whether there are other such facilities, with the level of protection that is afforded against such a loss. In drawing these considerations together, there is not sufficient evidence before me to warrant the loss of the music venue.
14. The WMS is principally concerned with the loss of live music venues in the context of the Covid-19 pandemic, which occurred after The Flapper closed. The WMS states that where an alternative use or demolition for a long-term vacant theatre, concert hall or live music performance venue is proposed, local planning authorities should consider the application in the normal way. I have done so in my decision with regard to the development plan and the Framework.
15. The matter of dispute between the main parties appears to concern solely the loss of the music venue, rather than the public house function of The Flapper. I am aware that interested parties have also raised concerns about its loss as a public house. However, as I have already found against the proposal on community facility grounds due to the loss of the music venue, I do not have cause to consider this matter further.
16. Based on the evidence before me, I conclude that the proposal would have an unacceptable effect on the provision of community facilities, in particular live music venues. As such, its loss would not comply in this regard with Policies TP24, TP25 and TP28 of the BDP and with paragraph 92 of the Framework.

Highway Safety

17. The proposal would be accessed via Kingston Row. Vehicular access would be limited to a service area and 2 on-site parking spaces for use solely by disabled persons. Access would also be provided to the proposal for cyclists and pedestrians.
18. Nearest the site, Kingston Row is a narrow shared public highway which is of a cobblestone construction. It narrows further past the site with bollards to prevent vehicular access. In the opposite direction, it rises and widens to allow

- 2 way traffic and becomes tarmacked nearer to where it joins King Edwards Road and Cambridge Street.
19. The Transport Statement Addendum (TAS) submitted with the planning application shows that the vehicular trip levels associated with the proposal would be on a modest scale. Most of the associated journeys are expected to be by pedestrians or by public transport. Kingston Row would ably allow for movement on foot. Whilst vehicular access is constrained, this would not cause an unacceptable level of safety for pedestrians and traffic because the movements would be limited as they would relate to servicing or access for disabled persons.
20. In addition, the use of the existing building itself would have generated servicing requirements and would also have been accessed from Kingston Row. The same applies by way of access for emergency vehicles. When this is considered with the nature of the proposal, the means of access would not be inadequate.
21. Whilst not contained in its highway safety related reason for refusal, the Council has raised parking concerns, as have interested parties. There is not, though, substantive evidence to depart from TAS, which shows the modes of transport other than the car would dominate movements. The location of the site lends itself to journeys on foot, by cycle and using public transport. Disabled persons would be catered for by the on-site parking, placing less of a reliance on having to negotiate Kingston Row. As a consequence, I am not persuaded that the proposal would cause undue parking pressure in the area.
22. In relation to access and parking matters arising during construction, this could be dealt with through a construction management plan condition, if I was minded to allow the appeal.
23. I conclude that the proposal would not have an unacceptable effect on highway safety and the free flow of traffic, by way of the proposed access arrangements. Hence, it would comply in this regard with Policies TP28, TP38 and TP39 of the BDP which state that new residential development should be adequately serviced by existing or new infrastructure which should be in place before the new housing for which it is required, and are concerned with the delivery of a sustainable transport network and the provision of safe and pleasant walking environments, including pedestrian safety, amidst other matters.

Listed Buildings

24. The Cranes comprise 2 grade II listed structures, one of which is located within the site boundary. It is a pivoting timber gallows type structure with an iron chain drive wheel and a winching mechanism. It is of a fairly modest height and shows signs of disrepair. The other such structure that was located at the east end of the canal basin has been removed.
25. The significance of the remaining crane structure is derived from its proximity and close relationship to the canal basin, in terms of its historical use for moving goods to and from the moored boats. The relationship is evident when viewing the crane from around the canal basin. The proposal would fall within its setting. The crane would remain in situ and the proposal would broadly

- have a similar effect on the significance of its setting as the existing building, as far as it would not be linked to the historical use of the crane.
26. Concerning the crane that has been removed, even if at some point it was reinstated as has been inferred by some of the submissions, the effect would again be similar to the existing building when the crane was in place. Harm to the significance of the setting of the Cranes would not occur.
 27. Kingston Row Cottages are also grade II listed and are found to the west of the site. They consist of a small grouping of dwellings that are located around a small courtyard area that extends up to and is elevated above the canal basin, as well as the site. The rear elevation of the nearest cottage faces the site.
 28. The proposal falls within their setting. It would not, though, disrupt the positioning of the cottages around the courtyard, nor its proximity to the canal basin, as aspects of the cottages' significance. That it would be viewed as a larger structure would be offset somewhat by the difference in levels.
 29. The adjacent cobbled access on Kingston Row to the cottages forms an attractive historical feature within the setting. If the appeal had been allowed, its protection during the construction period could be controlled through a planning condition, as could related measures to protect the foundations of the cottages.
 30. Reference has also been made to other listed structures around the canal basin. What connects their significance is how they relate to the canal rather than to other buildings around it. This would apply to the proposal. The significance of their settings would also be maintained.
 31. I conclude that the proposal would preserve the setting of the listed buildings, in particular the Cranes and the Kingston Row Cottages. Accordingly, it would comply with Policies PG3 and TP12 of the BDP which, amongst other considerations, concern the local area context, including heritage assets; state that the historic environment will be valued, protected, enhanced and managed for its contribution to character, local distinctiveness and sustainability; and, that great weight should be given to the conservation of the city's heritage assets, with proposals affecting a designated heritage asset or their setting determined in accordance with national policy.
 32. The proposal would also accord with the Framework as far as it would conserve and enhance the historic environment in relation to designated heritage assets. No harm would occur to their significance for the purposes of the Framework. As a result, I do not have cause to weigh harm against public benefits under paragraph 196.

Non-Designated Heritage Assets

33. The Birmingham and Fazeley canal forms part of the industrial heritage of the city. With the development and use of canal systems, its significance is derived in this way to the extent that it is a non-designated heritage asset. The basin itself is a focus of activity associated with the canal and forms part of the asset.
34. The existing building makes use of its proximity to the basin and the canal. It has a main orientation towards the asset, with numerous openings, an associated extended balcony and sitting out areas. The proposal would have a

similar effect, albeit on a larger scale, to take advantage of the canal side setting with a prominent elevation facing over the basin. The asymmetrical rooflines and glazing arrangement would add visual interest and it would sit comfortably within the setting of the canal. The proposal would not diminish from its significance.

35. Whether or not the existing building on the site should be considered as a non-designated heritage asset is disputed. The Planning Practice Guidance (PPG) advises that such assets are identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets. The PPG goes on to state that a substantial majority of buildings have little or no heritage significance and thus do not constitute heritage assets. Only a minority have enough heritage significance to merit identification as non-designated heritage assets.
36. The existing building is not identified as a non-designated heritage asset, although the Council and interested parties consider it is of merit in this regard. It is, however, a fairly recent addition which relates to a leisure use that takes advantage of its canal side setting, rather than relating to the historical significance. It is of an unusual design with its rooflines and use of the external materials. It has interest in terms of how it is orientated towards the canal basin, although this is not unusual in buildings that are located close to waterways. Its interest is not as such that it warrants, as a minority of buildings, to be considered as a non-designated heritage asset. I do not, therefore, have reason to consider the effect on its significance.
37. I conclude that the proposal would not have an unacceptable effect on a non-designated heritage asset, the Birmingham and Fazeley Canal. The existing building does not constitute a non-designated heritage asset. The proposal would comply with Policies PG3 and TP12 of the BDP where they afford protection to the historic environment, including a non-designated heritage asset. No harm would be caused to its significance for the purposes of paragraph 197 of the Framework, and so no balanced judgment is required.

Character and Appearance

38. There are a variety of buildings in the vicinity of the site. On the same side of the canal basin, as well as the Kingston Row Cottages, there are a number of high rise buildings containing flats. On the opposite side there are office buildings, and there is a mix of commercial, leisure and residential buildings in the broader area, some of which are of a significant size. The canal basin and the associated public realm provide some open relief from the built environment. Nonetheless, the area displays the attributes of a location on the edge of a large city centre.
39. The design of the proposal, in particular, as it would face the canal basin would have a distinctive design. Its placement on the edge of the basin would not be untypical of other buildings along the canal and it would respect the shape of the basin. The proposed asymmetrical roof arrangement would also lessen the scale of the building as it would be viewed from the basin and the canal boats moored on the pontoons. From the opposite side of the canal, it would be seen against the considerably larger backdrop of the high rise buildings. When these factors are taken together, it would not have an overbearing effect on the canal basin, the moored boats and the properties around it.

40. The Council also consider that the proposal would not enhance the walkway down to the basin, due to the servicing arrangements. As I have set out, this would not appreciably be different from the existing building, whose servicing would also have been apparent as it would have been of a commercial nature.
41. The open character of the area by way of the public realm around the basin would be maintained. In terms of pedestrian access through the site, this is already gated and would have related to the use of the building, rather than as a through route. Pedestrian access would still be maintained along the walkway. A suitable level of greenspace would be maintained within the site through the proposed communal garden and landscaping, having regard to its urban context.
42. I conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. Therefore, it would comply in this regard with Policies PG3 and TP28 of the BDP where they are concerned with high quality design, a sense of place, local distinctiveness, and with new residential development. It would also accord with the Framework where it concerns achieving well-designed places.

Planning Balance

43. The proposal would increase housing provision with the number of additional units created. It would make a contribution towards the Government's objective of significantly boosting the supply of homes, as well as under the BDP. It would also aid housing mix and balanced communities, including by way of the provision of 3 bedroom accommodation and it would be located where there would be a high degree of accessibility to local services.
44. It is also understood that the proposal would seek to achieve high levels of energy efficiency, with the potential use of low carbon energy systems. Related benefits would also occur during the construction phase and it would support the local economy. It would also seek to minimise the number of deliveries during construction, including the possible use of the canal. There is also the potential for biodiversity enhancements.
45. Based on the absence of a legal agreement or the agreement of the appellant to a planning condition, and notwithstanding that the PPG cautions against the use of a condition to deal with such a matter, there is not a mechanism before me to deliver affordable housing. Hence, the proposal would not provide such a benefit. I am aware that the viability of providing such housing was a matter at the application stage and that the Council considered that some could be provided following a review by the assessor. As I am dismissing the appeal on other grounds, though, I do not have reason to consider this issue further.
46. Similarly, the appellant does not agree to a condition, or has submitted a legal agreement, concerning the refurbishment and reinstatement of the listed Cranes. As a consequence, there is also not a benefit in terms of securing the future conservation of these heritage assets.
47. The proposal would not be unacceptable concerning the effects on highway safety; the non-designated heritage asset, the Birmingham and Fazeley Canal; and the character and appearance of the area. It would also preserve the setting of the listed Cranes and the Kingston Row Cottages. Both the existing and the proposed buildings have positive attributes in terms of their design and

so the proposal would not be particularly advantageous in this regard, in my view. The provision of a power supply to the pontoons would be required to ensure that the future occupiers of the proposal would not be unduly disturbed by way of engine noise from the nearby canal boats. These matters attract neutral weight.

48. In relation to the harm that arises, this concerns the provision of community facilities and, in particular live music venues. It would result in the loss of what can be considered to be a valued community facility. The venues for live music performances would be diminished and the evidence is not of a sufficient strength to demonstrate that such a loss can be satisfactorily justified. This attracts significant weight in my decision and counts against the proposal. Set against this would be the benefits that I have set out. The weight to be attached to the benefit to housing land supply would be moderate. All other benefits carry limited weight. In taking these considerations together, the harm would not be outweighed by the benefits.
49. Interested parties have raised a number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

Conclusion

50. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR