



## Appeal Decision

Inquiry held on 6-9 October 2020

Site visit made on 12 October 2020

**by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 November 2020**

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**Appeal Ref: APP/C5690/W/19/3241119**

**184 New Cross Road, London SE14 5AA**

- 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 Wellington Pub Company against the decision of the Council of the London Borough of Lewisham.
  - The application Ref DC/18/106613, dated 4 April 2018, was refused by notice dated 8 August 2019.
  - The development proposed is described on the application form as "alterations in connection with the conversion of the upper floors (currently a hotel) of the existing building into flats and reconfiguration and retention of the existing public house at ground floor. The proposal would create four flats (3 x 1 bedroom 2 person and 1 x 2 bedroom 3 person".
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### Decision

1. The appeal is allowed and planning permission is granted for alterations in connection with the conversion of the upper floors of 184 New Cross Road SE14 into 2 one bedroom, self-contained flats, a two bedroomed self-contained flat and a one bedroomed self-contained maisonette with study, together with the reconfiguration and retention of the existing public house at ground and basement level and the provision of two lantern lights to the flat roof at the rear of the existing public house at 184 New Cross Road, London SE14 5AA in accordance with the terms of the application Ref DC/18/106613 dated 4 April 2018, subject to the 10 conditions set out in the attached schedule.

### Procedural and Background Matters

2. The description of development in the formal decision is taken from the decision notice and appeal form, as it includes greater clarity on the arrangement of the four flats along with reference to the basement level and the provision of two lantern lights at the rear as shown on the plans.
3. Listed building consent ref DC/18/106611 was granted on 8 August 2019. The consent includes alterations and restoration works to the upper floors, reinstatement of sash windows at the rear and the removal of ventilation ducts, the relocation of the pub kitchen and toilets, and the restoration of period features within the public house.
4. The Inquiry was initially due to open in March 2020 but was postponed due to Covid-19. Further work was undertaken by main parties during the postponement on noise and heritage matters. This resulted in the provision of a sound insulation investigation report by the appellant along with supplementary noise and heritage proofs from both main parties.

5. During the postponement, a second listed building consent application was submitted (ref DC/20/116148). This application includes most of the works covered by the 2019 approved listed building consent plus noise attenuation works between the ground and first floors. The proposed lantern lights are also omitted. The application is due to be determined by committee in November 2020 with a recommendation for approval by Council officers.

## **Main Issues**

6. The main issues are as follows:
- whether satisfactory living conditions would be provided for future occupiers of the proposed development with regard to noise and disturbance;
  - the effect of the proposed development on the character and viability of the existing public house operation; and
  - the effect of the proposed development on the vitality and viability of the surrounding area with particular regard to the late night economy of New Cross.

## **Reasons**

### *The appeal building*

7. The White Hart at 184 New Cross Road has operated as a public house since it first opened in c.1870. Today, the basement, ground floor, and part of the first floor of the building are used in connection with the pub. The remainder of the upper floors are used as a hotel. Planning permission and listed building consent were granted for the latter use in 2005. Prior to that, the main parties note that the upper floors were likely used for temporary or ancillary residential accommodation in connection with the pub. The proposed development is for two self-contained flats on the first floor and two more on the second floor.
8. The White Hart is a Grade II listed building. The street elevation encompasses glazed red tiles at ground floor and decorative brickwork and stucco above. There are a number of entrances into the building from the street, with a fascia running the length of the street elevation with end pilasters. The upper floor windows are timber sashes with cast iron flower guards. The roof is hidden by an elaborate parapet and panelling while the Queens Road elevation has a distinctive curved bay wall, similar to the adjoining building. The rear elevation is plainer and contains later extensions including modern extract ducts.
9. Internally, the ground floor is open plan with a number of decorative and historic details associated with the public house use. This includes the timber panelled bar, cornicing, embossed ceiling, fireplaces, and cast iron pillars. Earlier bar partitions no longer exist while a narrow corridor cuts across the northern end of the bar area to provide separate access to the hotel above. The bar area leads through to a seating area and toilets at the rear within the later extensions. The basement is utilitarian and used principally for storage, with a series of rooms appearing to reflect the original plan form of the building before its extension and alteration.
10. The first floor contains a number of modern partitions that create bedrooms and bathrooms for the hotel as well as the kitchen for the public house. The partitions are crude, cutting through architectural features and making it

harder to appreciate the earlier plan form of this floor. Nevertheless, the bedrooms in particular contain a number of historic details including fireplaces, cornices, embossed ceilings, skirting boards and architraves. The second floor has similar modern partitions alongside the survival of similar historic details, while there is a small room at third floor. Historic staircases link each floor with the exception of a modern staircase from ground to first floors.

11. The listed building has undoubted special architectural and historic interest. The former is influenced greatly by the detailing and survival of historic features on the street elevation and at ground floor, but also from the plan form and detailing of the other floors. The latter is derived chiefly from its historic and continued use as a late 19<sup>th</sup> century public house next to a major road to and from London. The listed building also contributes notably to the architecture and history of New Cross. The significance of the listed building is high and is underpinned by the above heritage interests.
12. The White Hart has been nominated by the Hatcham Conservation Society as an Asset of Community Value (ACV). The nomination is currently with the Council for determination. The ACV would apply to the public house parts of the building only. It would provide a moratorium period on the sale of the public house to anyone other than a community interest group. While ACV status does not provide any additional planning controls, it would constitute a material consideration when assessing any proposal that might affect its status.

#### *Policy context*

13. There are a number of relevant national and local policies and guidance documents relating to the three main issues. Paragraph 182 of the National Planning Policy Framework (NPPF) expects new development to be integrated effectively with existing businesses and community facilities, including pubs. Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant or 'agent of change' should be required to provide suitable mitigation before the development has been completed.
14. The noise chapter of the national Planning Practice Guidance (PPG) states that decision makers should take account of the acoustic environment and consider whether or not (a) a significant adverse effect is occurring or likely to occur, (b) an adverse effect is occurring or likely to occur, and (c) a good standard of amenity can be achieved<sup>1</sup>. The PPG seeks to avoid significant adverse effects through the use of appropriate mitigation such as altering design and layout<sup>2</sup>.
15. The adopted development plan does not refer to the agent of change principle explicitly. However, the adopted London Plan 2016 (LP) seeks in Policy 7.15 to mitigate and minimise existing and potential adverse impacts of noise on new development without placing unreasonable restrictions on development or adding unduly to the burdens on existing businesses. LP Policy 3.1 aims to protect and enhance facilities and services that meet the needs of particular groups and communities while Policy 4.6 seeks to enhance and protect creative work and performance spaces. LP Policy 4.8 looks to prevent the loss of pubs

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<sup>1</sup> Reference ID: 30-003-20190722

<sup>2</sup> Reference ID: 30-005-20190722

and advocates the management of clusters of uses that can contribute to an area's sense of place and local identity.

16. Spatial Policy 2 of the Lewisham Core Strategy 2011 (CS) designates New Cross as one of the district town centres noting the contribution to the local night-time economy. CS Policy 19 seeks to maintain community facilities and ensure no net loss. CS Objective 5 cited in the decision notice relates to climate change and is not relevant to this appeal.
17. Policy 20 of the Lewisham Development Management Plan 2014 (DM) aims to prevent the loss of public houses, while DM Policy 43 aims to protect existing art, culture and entertainment uses. DM Policy 26 requires new noise sensitive developments to be located away from existing sources of noise pollution unless it can be demonstrated through design or mitigation that noise levels can be satisfactorily controlled and managed by the noise sensitive development and there will be no adverse impact on the continued operation of any existing or proposed business or operation.
18. The Intend to Publish version (December 2019) of the draft London Plan (DLP) refers to the agent of change principle in Policies D13 and D14. DLP Policy D13 places the responsibility for mitigating impacts from existing noise generating activities or uses on the new development and seeks to ensure that established noise generating uses remain viable and can continue or grow without unreasonable restrictions being placed on them. DLP Policy D14 seeks to avoid significant adverse noise impacts on quality of life amongst other things.
19. DLP Policy HC5 aims to protect existing cultural venues, facilities and uses. DLP Policy HC6 promotes the night-time economy where appropriate and protects and supports evening and night-time cultural venues such as pubs while addressing noise pollution for residents and nearby uses. DLP Policy HC7 seeks to protect pubs where they have a heritage, economic, social or cultural value to local communities or where they contribute to wider policy objectives for town centres and night-time economy areas. Proposals for the development of associated accommodation, facilities or development within the curtilage of a public house that would compromise the operation and viability of the pub use should be resisted.
20. DLP Policy GG1 advocates strong and inclusive communities and promotes the role of town centres in the social, civic, cultural and economic lives of Londoners. DLP Policy D1 cited in the decision notice refers to area assessments to understand character and inform growth. However, it is unclear why this policy is relevant to this appeal and so I have disregarded it.
21. The Culture and the Night-Time Economy Supplementary Planning Guidance (SPG) 2017 informs the adopted and draft London Plans. It deals with the protection of pubs in Section 2 and considers that the agent of change principle applies when changing the upper floors of a pub to a residential use, noting the difference between ancillary and independent residential uses. The Town Centre SPG 2014 also underpins the London Plan and promotes the evolution and diversification of town centres to support a range of uses and activities. The New Cross Area Framework 2019 (NCAF) assesses the local area and considers how it might evolve in the future. It highlights the number of public houses and live music venues in the area and the threat of noise complaints, economic changes, and development pressures on such venues.

22. Turning briefly to heritage matters, NPPF paragraph 196 states that where a proposal results in less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. LP Policy 7.8, CS Policy 16 and DM Policy 36 seek to conserve and enhance heritage assets.

*Living conditions*

23. The current leaseholders of the public house took on the lease in 2015. The pub has a premises licence to open until 3am every day for the sale of alcohol and the provision of regulated entertainment defined as live and recorded music and dance. Prior to Covid-19 restrictions, the pub ran a range of events throughout the week. Regular music events include traditional Irish music every Wednesday and Sunday and late night DJ sessions until 3am on Fridays and Saturdays.
24. The hotel above the pub contains over a dozen bedrooms including six on the first floor. Above the lath and plaster ceiling to the ground floor are timber joists and floorboards. A viability report from May 2018, commissioned by the pub leaseholders, refers to regular complaints from hotel guests on the first and second floors in relation to late night events. There is email evidence from late 2019 and early 2020 (Inquiry Document (ID) 11) of noise complaints from individual hotel guests. The appellant wrote to the pub leaseholders in January 2020 about possible breaches of the lease. The hotel leaseholder wrote to the pub leaseholders in April 2020 about the noise and has recently asked the Council to investigate the matter (ID03, ID04 and ID05).
25. Noise standards (BS 8233:2014) recommend indoor ambient noise levels for dwellings of 35dBA for living rooms and bedrooms between 7am and 11pm and 30dBA for bedrooms between 11pm and 7am. The noise standards do not differentiate between bedrooms in hotels and dwellings in terms of recommended levels. The appellant's noise impact assessment (16812.NIA.01.Rev C) measured noise levels within the pub between 10pm and 3am on one weekend in December 2018. The average noise level was 97dB(A), which is commensurate with live music. Even with the floor upgrade details provided at the application stage, the noise level at first floor during the same night-time hours would be 57dBA according to noise transfer predictions. This indicates a significant adverse effect and a nuisance.
26. Occupants of a hotel are likely to be more transitory than occupants of a flat, but it is arguable whether they would be more tolerant of noise. Both types of occupant can be regarded as independent of the pub operation and could decide not to reside above the pub based on the events it runs. Moreover, both types of occupant would be entitled to a good night's sleep with no difference in recommended noise standards. Therefore, it would be unreasonable to justify high levels of noise on the basis of occupant types.
27. The floor upgrade details proposed at the application stage involved a cementitious board between the floorboards and joist at first floor. This forms part of the August 2019 listed building consent. At the time, this was considered the maximum intervention possible within the constraints of the listed building. It would mean that the pub would have to close by 11pm and have no live or amplified music at any time due to the above noise transfer predictions.

28. The appellant presented three alternative floor upgrade options in their proofs of evidence. During the period of Inquiry postponement, Option 2 has been refined and further discussions held between the main parties' noise and heritage witnesses. The revised Option 2 was submitted as part of the current listed building consent application (ref DC/20/116148). It would involve the retention of the existing lath and plaster ceiling, floor joists and floorboards, with mineral wool installed between the joists and cementitious boards and mineral wool inserted above the floorboards.
29. This would necessitate the raising of historic features such as fireplaces, skirtings and architraves to accommodate the new floor and a slight lowering of floor to ceiling heights. There would also be a small loss of historic fabric around door openings and slight alteration to the staircase. However, the main parties agree that the less than substantial harm caused would be outweighed by the heritage benefits associated with the proposal including the improvement of the historic plan form at ground and first floors.
30. The floor upgrade works do not form part of the formal application plans being considered at this appeal and have yet to be granted listed building consent. However, a condition could be attached to this appeal decision requiring the works to be implemented in full prior to first occupation of the flats. The current listed building consent application is being recommended for approval by officers. At the Inquiry, the appellant confirmed that the works would be implemented if approved even if this appeal was dismissed. Therefore, there is a reasonable prospect that the works would be carried out.
31. In addition to the works, a noise limiter would need to be installed to control amplified music. This would be set to ensure that noise levels of not more than 35 dB(A) during the day (7am to 11pm) and 30dB(A) at night (11pm to 7am) for the flats. There would need to be restrictions on any live acoustic music (instruments and singing) on the ground floor between 11pm and noon, and no drums other than handheld percussion played on the ground floor at any time. There would also be agreed arrangements for residents of the new flats to raise noise concerns. All of the above would be secured by conditions. The noise attenuation measures assume that the two lantern lights would be omitted.
32. With the works in place alongside the noise limiter and the music restrictions, predicted noise levels within first floor rooms at night would range from 25 to 36 dB(A)<sup>3</sup>. For the ground floor pub this would equate to somewhere between background music/high level speech and no music/high level speech. Compared to the existing situation and the limited floor upgrade works proposed at the application stage, such levels would likely fall below a significant adverse effect on occupants of the upper floors.
33. I have taken into account Article 1 of the First Protocol of the Human Rights Act 1998 which states that every person is entitled to the peaceful enjoyment of his possessions. The noise attenuation measures outlined above would allow future occupants of the flats to enjoy them peacefully. Therefore, there would be no interference with the rights under Article 1 of the First Protocol.
34. Concluding on this main issue, satisfactory living conditions would be provided for future occupiers of the proposed development with regard to noise and

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<sup>3</sup> Based on sound insulation investigation report 16812.SII.01 Rev A



disturbance. However, it is necessary to consider the effect of the development on the remaining two main issues before reaching an overall conclusion.

*Character and viability of the public house operation*

35. In addition to the regular music events outlined above, The White Hart serves a range of food and drink including craft beers, runs regular pub quizzes, hosts charity events, and exhibits the work of local artists. The pub leaseholders and a number of public comments made at the application stage and during the Inquiry itself underline the safe and inclusive environment that The White Hart provides. It is evident that the pub is valued by many in the local community. The ACV nomination is one indication of this.
36. There are 7 competitor pubs in the New Cross area. Only two host regular live music with a similar late-night licence (Amersham Arms and New Cross Inn) but the musical genres and audiences differ and neither appears to have a focus on food and drink. Three of the others have a strong food or gastro pub offer (The Rose, New Cross House and The Walpole). The remaining two are more traditional pubs without a food offer (Five Bells and Marquis of Granby). In addition, there are two nightclubs (The Venue and Crystals).
37. From the evidence before me, including my observations on site, none of the pubs or clubs make the same offer as The White Hart in terms of food/drink, music and community events. Therefore, it is possible to concur that the pub has a unique and intrinsic character.
38. The pub is an existing business and community facility and is a lawful use that seemingly dates back to the 19<sup>th</sup> century. To my knowledge, there are no extant planning permissions or planning conditions restricting its pub-related activities or hours of opening. The current operating model including late night events until 3am does not require planning permission, notwithstanding the current noise issues.
39. The change of use of the upper floors from a hotel to self-contained flats requires planning permission and so would represent a form of new development. Therefore, the agent of change principle set out in NPPF paragraph 182 and DLP Policies D13 and D14 and indicated in LP Policy 7.15 and DM Policy 26 is applicable to this case.
40. The pub's existing operation could have significant adverse effects on the flats in terms of noise. The appellant has sought to demonstrate that they can provide suitable mitigation in the form of the floor upgrade works and noise limiter. It would also be necessary for the pub to limit the level and types of sounds it can generate, particularly after 11pm. The question is whether such restrictions are unreasonable or place an undue burden on the pub.
41. Between noon and 11pm, it would be permissible for live acoustic music (excluding non-handheld percussion) and background music (e.g. played from a digital device via speakers) to take place subject to the noise limiter. After 11pm, no live acoustic music could take place and any background music would be controlled by the limiter.
42. The noise limiter would be required to control noise levels in the first floor flats to no more than 35dB(A) during the daytime and 30dB(A) during the night. Given that predicted noise levels with no music and high level speech alone could reach around 35dB(A), based on the calculations in Appendix B of the

- noise assessment, there would be restrictions on amplified music levels before 11pm and greater restrictions after 11pm.
43. The pub has been running post-11pm music events (DJ sets) on two nights per week. This amounts to 8 out of 21 hours of amplified music according to the pub leaseholders' evidence. However, in theory, the pub could be running post-11pm music events every night of the week. The proposed development would prevent such events from occurring altogether. The reduction in live music, particularly the loss of late night music, would result in a change to the character of the existing public house operation.
  44. However, due to the lawful use of the upper floors as a hotel, it is doubtful whether existing late night live music events could continue take place even if the appeal was dismissed. Investigations into noise complaints have yet to conclude, but existing noise levels are significant. The floor upgrade works, which could be implemented even without this appeal being allowed, would not be sufficient to allow live late-night music. Therefore, the change in character would be necessary to ensure a satisfactory noise environment for any occupier of the upper floors.
  45. Turning to viability matters, the pub leaseholders estimate approximately 50% of bar takings coming from late-night events. However, the loss of takings would still result in a rental figure of approximately £16,500. At the Inquiry, it was accepted by the leaseholders that the current rental figure is more than double £16,500 so that in reality the loss of takings at 50% would not be as severe. Moreover, none of the leaseholders' analysis appears to be based on actual turnover figures. In addition, the statement of common ground between the main parties accepts that a lock-up pub would be a viable business. Comparable lock-up pubs highlighted by the appellant operate until 1am and appear to be viable with a variety of activities beyond live music. Thus, from the evidence before me, the reduction in music events would not make the pub operation unviable.
  46. The pub could continue to open beyond 11pm and potentially until 3am based on the premises licence. There are no draft conditions that seek to control or alter the opening hours. It could continue to play music to a certain level and time, serve food and drink, and host a range of events for the local community. The safe and inclusive space that it provides could continue. The ACV status (if granted) would be sustained. The unique and intrinsic character of the pub would be altered by the reduction in live music, but it would not be lost. Therefore, the restrictions imposed by the proposed development, including those imposed via planning conditions, would not be unreasonable or place an undue burden on the pub operation.
  47. Concluding on this main issue, the proposed development would have an acceptable effect on the character and viability of the existing public house operation. Therefore, it would accord with LP Policies 3.1, 4.6, 4.8 and 7.15, CS Policy 19 and DM Policies 20, 26 and 43. It would also accord with DLP Policies D13, D14, HC5, HC6 and HC7. There would be no conflict with NPPF paragraph 182, the noise chapter of the PPG or the Culture and Night-Time Economy SPG.

*Vitality and viability of the surrounding area especially the late night economy*

48. New Cross is identified by the DLP as an area with more than local significance in terms of the night-time economy of London. The night-time economy is



defined by the DLP as operating between 6pm and 6am. The late-night economy is not explicitly defined anywhere although there is general consensus between the main parties that this means after 11pm.

49. The majority of the district town centre of New Cross lies between the two train stations and is where most of the pubs and clubs are located. The White Hart is within the western outlier north of Queens Road, with only one other pub (The Five Bells). All of the pubs in New Cross have opening hours beyond 11pm on at least one night of the week, with the Amersham Arms and New Cross Inn able to operate until 3am.
50. Night-time venues are at risk not least due to the impact of Covid-19. The reduction in the ability to perform live music, particularly after 11pm, would alter the contribution The White Hart makes to the late-night economy. However, it is doubtful that this would be able to continue based on the existing noise issues. Moreover, the pub could continue to operate up to 3am and provide a variety of events alongside food, drink and certain levels of music. It could still support other businesses such as takeaways and restaurants which people could go to before or after visiting the pub. There is little evidence to show a significant adverse effect on the late night economy of New Cross.
51. Concluding on this main issue, the proposed development would have an acceptable effect on the vitality and viability of the surrounding area with particular regard to the late night economy of New Cross. Therefore, it would accord with LP Policies 4.6 and 4.8 and CS Spatial Policy 2. It would also accord with DLP Policies HC5, HC6, HC7 and GG1. There would be compliance with the Town Centre SPG and NCAF too as the pub would continue to contribute to the town centre of New Cross.

#### *Heritage balance*

52. The significance of the listed building is derived from both its architectural and historic interest as a 19<sup>th</sup> century public house. It is agreed between the main parties that the less than substantial harm to the significance of the listed building caused by the floor upgrade works are outweighed by the public benefits of restoring features and improving the plan form of the ground and upper floors. While such benefits could be secured via an alternative use of the upper floors (e.g. office or community use), it is uncertain whether such uses would be appropriate to the listed building in themselves.
53. The fact that the listed building continues to operate as a public house today makes a considerable contribution to its significance. Most historic pubs would have had ancillary residential accommodation above and The White Hart appears to be no different. This ancillary accommodation has already been lost with the conversion to a hotel, but the existing and proposed uses at least retain residential elements on the upper floors.
54. The proposed development would alter the way the pub currently operates, particularly in terms of its role as a late night music venue. However, the precise operation of the pub is a decision for those tasked with managing it as a pub and could change without the need for planning permission or listed building consent. The upper floors would remain in residential use. The pub would remain viable and continue to operate as a pub in the future. Its optimum viable use as a pub with residential above would be sustained. As a

consequence, there would be no harm to the significance of the listed building as a result of the proposed change of use to the upper floors.

55. Concluding on the heritage balance, the proposed development would preserve the listed building where the harm to its significance from the physical alterations would be outweighed by the public benefits. Thus, there would be no conflict with the NPPF including paragraph 196 or conflict with LP Policy 7.8, CS Policy 16 or DM Policy 36.

### *Planning balance*

56. The proposed development would ensure satisfactory living conditions for future occupants of the development on the basis of the noise attenuation measures. The viability of the public house operation would be sustained and the listed building preserved. There would be benefits in the form of heritage improvements but also in the provision of four new dwellings in an accessible location. The latter would be less than significant given the number of units and the Council's ability to meet housing supply/targets. Nevertheless, the overall benefits carry reasonable weight.
57. There would be changes to the character of the public house operation and the viability and vitality of the late night economy of New Cross due to the reduction in live music. However, the restrictions on the pub would not be unreasonable taking into account the existing noise issues, while the pub would continue to provide an important role to the local community and the local economy through its events and its food and drink. The ACV status, if granted, would not be diminished and the pub would retain a unique and intrinsic character. The impact of physical changes to the listed building would be low.
58. In conclusion, the benefits of the proposed development would outweigh the limited harm. The development would accord with the adopted and emerging development plan and supplementary planning guidance as set out above. This indicates that planning permission should be granted.

### **Other Matters**

59. The development would not provide any affordable housing, but national policy directs against such provision for smaller schemes like this. While there would be a loss of hotel accommodation, it has not been demonstrated that this would have a significant effect on the provision of such accommodation locally. There is little evidence that moving the kitchen into the basement would be unsafe or unsuitable. It is possible to restrict the use of the flat roof at the rear by planning condition while none of the windows to the proposed flats would directly overlook windows to other properties. Thus, there would be no loss of privacy for existing and new residents.

### **Conditions**

60. Conditions 1 (time limit for commencement) and 2 (approved plans) are necessary for clarity and compliance. The predicted noise levels with the noise attenuation works do not factor in the provision of the two lantern lights at the rear. Therefore, it is necessary to exclude these features from the approved plans in Condition 2 to ensure satisfactory living conditions.
61. Conditions 3, 8 and 10 are necessary and reasonable to strike a balance between ensuring satisfactory living conditions for occupants of the flats,

preserving the listed building, and ensuring that the public house can continue to operate. Condition 4 is necessary to ensure adequate provision of refuse and recycling facilities for occupants of the flats, while Condition 5 is necessary to ensure that any new ventilation system safeguards the living conditions of occupants within and adjoining the site. Condition 6 is necessary to ensure that the flat roof at the rear is not used in a way that would harm the privacy of occupants of adjoining properties.

62. Condition 7 is necessary to ensure that the public house is unable to change use to any other purpose under existing or future permitted development rights. Condition 9 is necessary to secure the enhancement works to the listed building that form part of the benefits associated with the development.

### **Conclusion**

63. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*Tom Gilbert-Wooldridge*

INSPECTOR

## **SCHEDULE OF CONDITIONS (10)**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 0100-SK-0010 Rev P01, 0100-DR-0100 Rev P02, 0100-DR-0101 Rev P01, 0100-DR-0102 Rev P01, 0100-DR-0103 Rev P02, 0100-DR-0104 Rev P02, 0100-DR-0105 Rev P01, 0100-DR-0106 Rev P01, 0100-DR-0107 Rev P01, 0100-DR-0108 Rev P01 and 0100-DR-0109 Rev P02 except in respect of the two lantern lights to the flat roof at the rear of the public house as shown on plans 0100-DR-0101 Rev P01, 0100-DR-0102 Rev P01, 0100-DR-0103 Rev P02, 0100-DR-0104 Rev P02, 0100-DR-0105 Rev P01, 0100-DR-0108 Rev P01 and 0100-DR-0109 Rev P02.
- 3)
  - (a) Prior to the first occupation of the residential element of the development hereby permitted, the floor upgrade soundproofing detailed at Section 6.4 of the Sound Insulation Investigation Report 16812.SII.01 Rev A dated 14 September 2020 prepared by KP Acoustics Ltd shall be implemented in full.
  - (b) Following the installation of the floor upgrade soundproofing approved in part (a) and prior to the first occupation of the residential element of the development, sound insulation testing for a noise limiter shall be undertaken by a qualified independent acoustician in order to achieve noise levels of not more than 35 dB(A) during the day (07:00 to 23:00) and 30 dB(A) at night-time (23:00 to 07:00) for the residential accommodation. A report documenting the testing, results and details of the noise limiter shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the residential element of the development. The noise limiter shall be installed by a qualified independent acoustician and tested to ensure compliance with specifications prior to the first occupation of the residential element of the development and shall be in operation permanently during any hours that the public house is open.
  - (c) The soundproofing measures approved in parts (a) and (b) shall be retained permanently in accordance with the approved details.
- 4)
  - (a) Prior to the first occupation of the residential element of the development hereby permitted, details of the proposed storage of refuse and recycling facilities for each residential unit shall be submitted to and approved in writing by the local planning authority.
  - (b) The facilities as approved under part (a) shall be provided in full prior to the first occupation of the residential element of the development and shall thereafter be permanently retained and maintained.
- 5)
  - (a) Detailed plans and a specification of the appearance of and the equipment comprising a ventilation system which shall include measures to alleviate noise, vibration, fumes and odours (and incorporating active carbon filters, silencer(s) and anti-vibration mountings where necessary) shall be submitted to and approved in writing by the local planning authority prior to the installation of the relocated kitchen in the basement.

- (b) The ventilation system shall be installed in accordance with the approved plans and specification prior to the first use of the relocated kitchen in the basement and shall thereafter be permanently maintained in accordance with the approved specification.
- 6) The flat roof on the building shall not be used as a balcony, roof garden or similar amenity area.
- 7) Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the ground floor and basement of the building shall remain in use as a public house and for no other purpose whatsoever (including any other purpose in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 as amended, or any purpose in any Order revoking, re-enacting or modifying that Order).
- 8) (a) The residential element of the development hereby permitted shall not be occupied until a Noise Management Policy ('NMP') has been submitted to and approved in writing by the local planning authority. The NMP shall comprise details of the means by which residential occupiers are able to raise concerns as to the on-going management of the public house with the building's freehold owner (or via their appointed property managers) and/or the public house operating company.
- (b) A notice shall be prominently displayed within the residential lobby on the ground floor of the building stating that the proximity of a public house means that a degree of noise can be expected and setting out the details of NMP.
- (c) The approved NMP shall be implemented in full prior to the first occupation of the residential element of the development and such measures to enable communication of concerns shall remain in place thereafter.
- 9) Prior to the first occupation of the final residential unit hereby permitted, all approved internal refurbishment of the public house and external refurbishment of the uppers floors shall have been completed in accordance with approved plans 0100-DR-0100 Rev P02, 0100-DR-0101 Rev P01, 0100-DR-108 Rev P01 and 0100-DR-109 Rev P02.
- 10) (a) No live acoustic music (defined as acoustic instruments and singing) shall be played within the ground floor of the building (public house) at all between 23:00 and noon on any day of the week.
- (b) Other than handheld percussion, drums shall not be played at any time within the public house in accordance with the recommendations of Section 6.5 of the Sound Insulation Investigation Report 16812.SII.01 Rev A dated 14 September 2020 prepared by KP Acoustics Ltd.



## **APPEARANCES**

### **FOR THE APPELLANT**

Paul G Tucker QC and Stephanie Hall of Counsel, instructed by CMS Cameron McKenna.

They called:

Richard Brookes BSc(Hons) Dunelm MTP(UC) IHBC MRTPI  
Director, Turley

Daniel Green MIOA  
Senior Consultant, KP Acoustics Ltd

David Queen CBII  
Property Manager, Criterion Asset Management Ltd

Mark Batchelor BSc(Hons) MSc MRTPI  
Director, Boyer

### **FOR THE LOCAL PLANNING AUTHORITY**

Giles Atkinson of Counsel, instructed by the Head of Law at the London Borough of Lewisham (LBL)

He called:

Joanna Ecclestone BA(Hons) MSc, DipTP  
Senior Conservation Officer, LBL

Lise W. Tjellesen MSc Eng Acoustics MIOA  
Technical Director, RPS

Alfie Williams BA MA  
Planning Officer, LBL

### **INTERESTED PARTIES WHO SPOKE AT THE INQUIRY**

Joseph Ryan	Leaseholder of The White Hart
Emily Finch	Chairwoman of Hatcham Conservation Society (HCS)
Father Grant	Priest of All Saints Church Hatcham
Gary Halliday	Local resident
Oliver Smith	Local resident
Sarah Umar	Local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

ID01	Plans relating to listed building consent application ref DC/20/116148
ID02	Letter from LBL to HCS dated 23 September 2020 acknowledging receipt of application to register The White Hart as an Asset of Community Value (ACV)

ID03	Email from Ian Woods to Alison Cornelius dated 29 September 2020 regarding noise issues
ID04	Letter from Ian Woods to P+J Ryan dated 11 April 2020 regarding noise issues
ID05	Email and letter from Ian Woods to Environmental Protection Team at LBL dated 1 October 2020 regarding noise issues
ID06	Appellant's opening submissions
ID07	Council's opening submissions
ID08	Inquiry statement from Emily Finch of HCS
ID09	Email from Gary Halliday dated 6 October 2020
ID10	ACV bid testimony from Father Grant
ID11	Bundle of 3 separate emails from occupants of the hotel at The White Hart regarding noise issues, dated between 9 November 2019 and 22 January 2020
ID12	ACV note from Kings Chambers dated 7 October 2020
ID13	Council's closing submissions
ID14	Appellant's closing submissions
ID15	Site visit itinerary and note of heritage aspects
ID16	Revised agreed wording for Condition 8
ID17	Policies D1 and GG1 from Intend to Publish version of the London Plan