
Appeal Decision

Hearing Held on 7 December 2020

Site visit made on 8 December 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Appeal Ref: APP/X5990/W/19/3241362
46 Chippenham Road, London W9 2AF

- 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 A H Levy and Mr N A Cowell against the decision of City of Westminster Council.
 - The application Ref 19/01895/FULL, dated 7 March 2019, was refused by notice dated 29 August 2019.
 - The development proposed is the use of existing public house (Class A4) at ground and basement level as 5 residential flats (Class C3) and associated external alterations including formation of lightwell to Elgin Avenue elevation, lightwell within forecourt area to Chippenham Road elevation and alterations to ground floor fenestration.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have used the description of development given on the appeal form and decision notice as it is more comprehensive than that on the original planning application form.
3. The Council's decision letter showed four reasons for refusal, one of which related to the loss of a viable public house. A hearing was originally scheduled for 24 March 2020. However, restrictions imposed due to the Covid-19 pandemic resulted in a lengthy postponement. Changes to economic circumstances affecting the hospitality sector wrought by the pandemic in the intervening period caused both main parties to review their position in relation to the viability of the public house use. Consequently, at the hearing the main parties agreed that the public house is no longer viable and would not be viable in the period after the pandemic. Notwithstanding the change in the Council's position, interested parties at the hearing disputed whether the pub use would be viable and submitted a separate viability report in this regard. Therefore, I have considered this matter as a main issue in my determination.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area including having regard to the setting of the Maida Vale Conservation Area (CA);

- Whether the proposal would make provision for a suitable mix of housing;
- The effect of the proposal on pedestrian movement, and;
- Whether the proposal would result in the unnecessary loss of a public house with reference to local and national planning policies.

Reasons

Background

5. 46 Chippenham Road is a purpose built traditional Victorian corner public house in Maida Hill and has operated as a public house at ground floor level under various names until it ceased trading in June 2018. The proposal seeks to convert the ground and lower ground floor of the building to provide five residential apartments.

Character and appearance

6. The appeal building is located on the corner of Chippenham Road and Elgin Avenue. Terraced buildings along the roads in the vicinity generally attain at least three or four storeys in height with many presenting close to, or directly onto the street. There is a regularity to the arrangement of building plots within blocks whereby those with commercial or public uses at ground floor level tend to be situated closer to the intersections of streets. Taken in combination with the nearby mature street trees and architectural detailing of the more traditional buildings, this results in an ordered and pleasant urban character.
7. The site is approximately 180m from the nearest boundary of the CA. Its significance lies primarily in the way the street layout and mostly residential buildings reflect the mid-19th Century growth of Maida Vale around the canal system. Paragraph 193 of the National Planning Policy Framework (the Framework) indicates that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
8. The appeal building is a four storey Victorian purpose-built public house that is prominent within the street due to its height and corner location. The chamfered corner of the building, which includes the main entrance door, faces towards the road intersection giving it added presence in the wider streetscape. The legibility and stature of the building means it acts as a way marker building in the neighbourhood. Furthermore, the balanced proportions, entrances, fenestration, pilasters and detailing of the building at ground floor are all attuned to its historic function as a public house. Together with the associated signage and lighting this gives the ground floor a manifestly public character. As such, although the main parties agree in the statement of common ground that the building is not a heritage asset¹, it nevertheless possesses a distinctive character. Consequently, it makes a notable positive contribution to its surroundings by adding richness to the townscape by virtue of its form and historical function.

¹ Paragraph 4.3

9. The physical alterations proposed to facilitate the conversion would be particularly apparent in the street scene due to its prominence and proximity to Chippenham Road and Elgin Avenue. Firstly, the changes to the floor levels would mean that the building would not retain a floor level at pavement levels². This would have significant repercussions for how the building would relate to and be perceived from the street. It means the entrances into the building would fundamentally change with none of the three original doors into the public house remaining as a door. This would be particularly harmful in the case of the chamfered corner main entrance and would considerably dilute the legibility of the building within the street.
10. Additionally, as illustrated in Sectional Elevation E-E', drawing 3-08, the change in floor levels would fragment the fenestration. This would cut across the balanced proportions of the building and would have a disconcerting effect when perceived from the street.
11. Moreover, the lightwell, use of balustrade and set back fenestration proposed in the elevation facing onto Elgin Avenue would add complexity to the profile of the ground floor elevation and the fenestration would not successfully align with the pilasters. This would result in a discordant confusing elevation directly adjacent to the footway.
12. Furthermore, the introduction of a lower patio area along Chippenham Road and planted garden on the chamfered corner, demarcated by boundary railings would increase the sense of separation of the building from the street. This concerns a larger area than that used for outside seating for the pub. Planting to the front of what would have been the original entrance door would be visually confusing rather than an enhancement in this sensitive context. The differences in land levels and private nature of the space would also mean that the impact would be permanent and more extensive.
13. These factors would conflict with the traditional design of the building whereby an active frontage at ground floor level forms part of its intrinsic character. It follows that there would be an inherent tension between overtly domestic alterations within an intentionally public frontage. Hence, although the appellants describe the proposals as modest external physical alterations, by weakening the intrinsic features of the most public parts of the structure, the proposal would have a significantly adverse impact on the character and appearance of a prominent and distinctive building.
14. Although it would be possible to see the building from the CA, due to the separation distance to the boundary to the CA, this would be in longer views. The building would represent only a small part of the vista and would merge into the general backdrop. As such, the changes to the detailing described are unlikely to be easily discernible in such views and therefore, would not affect the surroundings in which the CA is experienced. On that basis, it would not be harmful to the setting of the CA nor the way its significance might be appreciated. Nevertheless, this would not overcome the localised harm to the character and appearance of the area I have identified, nor does it mean that it is not important. Paragraph 127c of the Framework states that decisions should ensure that developments are sympathetic to local character and history.

² Drawing 3-03, Section A-A' and Drawing 3-04, Section B-B', Drawing 3-06, Proposed Section C-C'

15. The appellants indicate that the proposal would bring a vacant building back into use. Be that as it may, it is not shown that this could not be done without resulting in harm to the character and appearance of the area and so is of limited weight.
16. Reference is made to examples of nearby buildings that utilise split and sunken patio levels with boundaries³. However, it is not shown that any of those buildings constituted a traditional corner public house and therefore, they do not display similar features to the appeal building. On that basis, they are not directly comparable and are of limited weight.
17. Accordingly, I find that the proposal would be harmful to the character and appearance of the area contrary to policy S28 of the Westminster City Plan, November 2016 (WCP) and policies DES1 and DES5 of the City of Westminster, Unitary Development Plan, January 2007 (UDP). In combination, and amongst other things, these policies require development to achieve the highest standards of architectural quality and respect the character of the existing building. As I have not found harm would be caused to the setting or significance of the CA, it follows that there would be no conflict with policy S25 of the WCP or policy DES9(F) of the UDP which seek to conserve heritage assets, including conservation areas.

Mix of housing

18. Policy S15 of the WCP states that residential development will provide an appropriate mix of units in terms of the size and type in order to meet Westminster's housing needs. Policy H5 of the UDP specifically refers to the need to protect and provide family sized housing, which is defined as dwellings that provide 3 or more bedrooms. All developments should normally provide a minimum of 33% family sized dwellings. These policies are in accordance with paragraph 61 of the Framework which stipulates that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. The proposal would provide no family sized units.
19. Supporting text in paragraph 3.74 of the UDP explains that the requirement will be applied with some flexibility and an example is given where proposed housing would be located in a very busy, noisy environment. The appellants consider that this applies in this case as the site lies at a road junction. However, when I visited the site, its location did not appear unusually busy or noisy within the generally urban context. Little specific evidence has been provided to demonstrate that the site would be remarkable in these regards for the City of Westminster. Furthermore, given that family accommodation was required in the upper levels of the building, I am not persuaded that it would be unsuitable at the lower and ground floor levels.
20. Meeting space and light standards may present design challenges, but it is not shown that family accommodation could not be appropriately configured. The proposal would make a contribution towards the overall housing supply. Even so, this would not provide sufficient basis to discount the policy requirement on housing mix.

³ Photographs, Appendix 2, Appellants' Rebuttal Statement, March 2020

21. Whilst the policy does allow for some flexibility, the normal approach should apply in the majority of cases, otherwise it would be set aside too easily and be undermined. I am not persuaded that the reasons put forward in this case would justify departing from the normal approach. Accordingly, I find that as the proposal would not make provision for family housing it would fail to provide a suitable range of housing sizes contrary to policy S15 of the WCP and policy H5 of the UDP.

Pedestrian movement

22. Policy S41 of the WCP states that all developments will prioritise pedestrian movement and the creation of a convenient, attractive and safe pedestrian environment. Policy TRANS3 of the UDP refers to securing an improved environment for pedestrians with particular regard to their safety, ease, convenience and directness of movement. These principles are translated into general design advice for the public realm in the Westminster Way, Public Realm Strategy, Design principles and practice, Supplementary Planning Document, September 2011 (SPD).
23. The explanatory text for policy TRANS3 of the UDP refers to walking as having the least damaging impact on the environment as well as health benefits. The policy and the SPD recognise that in order to promote behavioural change, giving priority to walking means more than simply protecting pedestrians from danger and includes measures to tackle inconvenience and unpleasantness.
24. A planted garden area is proposed in front of the chamfered corner of the building. The cordoning off of this area would permanently reduce the space available to pedestrians and would present an obstacle to the natural directness of movement for pedestrians who wish to turn the corner. Consequently, they would be forced closer to the edge of the footway and nearer to the traffic on the carriageway which would be less pleasant. In addition, there is a greater concentration of street furniture at the outer edges of the footway and there may be other pedestrians waiting in this area to cross the road. As such, the proposal would be detrimental to the convenience and directness of movement for pedestrians.
25. Whilst a condition might be used to further set back the alignment of the planted garden area, it would not remove this obstacle altogether and so would not fully address my concerns.
26. The proposed sunken patio area shown on drawing ST01⁴ would generally align with an area that has been used for outside seating when the public house was trading. It may also read as a continuation of a patio area at the adjacent building. Whilst this would reduce the degree of harm arising from the proposal, it would not surmount it altogether. In any event, the existing enclosed patio area at the adjacent premises is not positioned on the corner.
27. Given the width of the footway that would be retained, the passage of pedestrians would not be hindered to such an extent that public safety would be put at risk. Even so, this does not outweigh nor justify the harm to ease and directness of movement identified. Accordingly, I find that the proposal would be contrary to policy S41 of the WCP and policy TRANS3 of the UDP.

⁴Appendix 3, Appellants' Rebuttal Statement, March 2020

Loss of the public house

28. Policy 4.8 of The London Plan 2016 (LP), amongst other things, encourages boroughs to bring forward policies to retain, manage and enhance public houses. Similarly, policy HC7 of the Intend to Publish Version of the New London Plan (2019) (NLP) states that boroughs should protect public houses where they have a heritage, economic, social or cultural value to local communities. Applications that propose their loss should be refused unless there is authoritative marketing evidence that demonstrates that there is no realistic prospect of the building being used as a pub in the foreseeable future. Although this policy is not adopted and does not form part of the development plan, given the advanced stage of its preparation it attracts moderate weight.
29. In general accordance with this approach policy SS8 of the UDP aims to protect shops and services outside the designated District and Local Centres, because of the convenience and service they provide to residents, visitors and local businesses. The supporting text to the policy further states in paragraph 7.98 that *'Traditional public houses are generally considered to add to the character and function of a locality and their loss will only be acceptable if they have been vacant and marketed for at least eighteen months without success'*.
30. These policies broadly align with paragraphs 91 and 92 of the Framework which seek to promote healthy and safe communities and social interaction. In providing the social, recreational and cultural facilities and services the community needs, paragraph 92 c) stipulates that planning decisions should guard against the unnecessary loss of valued facilities and services.
31. The public house is not registered as an Asset of Community Value. Nevertheless, I do not consider that this is sufficient reason to discount its importance as a community facility as the significant number of representations received concerned at the loss of the pub suggest that when it was trading, it was of value to the local community. My approach in this regard is similar to that of the Inspector in an appeal⁵ to which my attention is drawn. Accordingly, in order to meet local policy, robust evidence is necessary to show appropriate marketing has taken place that would justify the loss of a public house to another use.
32. The evidence provided by the appellants indicates that marketing has taken place over a prolonged period and conducted by agents who are experienced leisure property agents and valuers⁶. The main parties agree that effective marketing generally in line with normal industry practice has taken place and that no offers have been received for the use of the property as a public house.
33. Some representations asserted that the description of the condition of the property used in the marketing material was inaccurate. However, feedback collated from the marketing exercise⁷ suggests that most parties were deterred by the size and location of the building rather than its condition. At the hearing, the potential interest of an experienced publican was highlighted. However, I note that the Council's valuer considered that the enquiry had been professionally dealt with and from the evidence before me and given at the hearing, I am not persuaded otherwise.

⁵ Reference APP/M1595/W/16/3154574, Appendix 5 Council's Statement of Case

⁶ Second paragraph, Page 4, Fleurets Report dated 29.7.19

⁷ Appendix 6 of the Davis Coffey Lyons Report dated 13 July 2020

34. Therefore, robust evidence exists to demonstrate that the marketing carried out was comprehensive, authoritative and undertaken for a sufficient length of time but ultimately, without success.
35. I am provided with a viability report prepared by Morgan & Clarke Chartered Surveyors⁸ (Morgan report) which estimates that it may be possible under certain circumstances for a public house to make a small profit at the appeal site. However, due to the impact of the Covid-19 pandemic on the hospitality sector, market conditions have been particularly volatile making future conditions difficult to accurately predict. Direct and indirect consequences from the pandemic are likely to continue to have an impact on future trading conditions which increases uncertainty. Furthermore, there are discrepancies between the Morgan report in relation to the likely levels of revenue and gross margin used when compared to the broad consensus on those levels in the viability reports provided by the main parties. In addition, limitations arising from the size of the public house would curtail its capacity for profitability and include the restricted ability to prepare and serve food as well as the lack of live-in accommodation for an operator.
36. Given the number of variables that may affect such an operation, the profits test valuation put forward in the Morgan report fails to show a robust picture that would make the continued use of a public house a realistic prospect in the foreseeable future. This is reinforced by the balance of viability evidence provided, the lack of response to the marketing undertaken and the actual trading figures shown when The Squirrel was operating⁹.
37. Furthermore, planning permission has recently been granted for the change of use from a public house to a pharmacy¹⁰. At the hearing it was generally indicated that if the appeal proposal was unsuccessful, then this development was likely to proceed. As such, it amounts to a realistic fallback position of considerable weight. The existence of this fallback position reinforces that there would be no realistic prospect of a public house resuming at the appeal site.
38. Reference was made at the hearing to other policies in the WCP as well as the emerging City Plan. However, it was not shown that additional policies in the WCP would have direct relevance to the circumstances of the proposed development and as consultation is still on-going in relation to the emerging City Plan, it is of only limited weight. Accordingly, these policies would not lead me to a different view.
39. Although the proposal would reduce the choice on offer, the public house has been closed for a considerable period and it is not shown that the range of establishments close by would be unable to adequately cater for the needs of the local community.
40. Accordingly, I find that the proposal would not result in the unnecessary loss of a public house as the evidence shows that all reasonable measures have been taken to market the appeal site and there is no realistic prospect of the use resuming in the foreseeable future. Therefore, it would not conflict with policy 4.8 of the LP or policy SS8 of the UDP which seek to safeguard against the

⁸ Dated 19.11.20

⁹ Fourth Column, Appendix 2 Davis Coffey Lyons, Marketing report 5.10.19

¹⁰ Planning reference 20/05072/FULL

unjustified loss of public houses. Similarly, although of moderate weight, it would be in general compliance with emerging policy HC7 of the NLP.

Planning balance and conclusion

41. The proposal would contribute towards the overall housing supply in an accessible location and would make effective use of previously developed land by bringing a vacant building back into use, which is generally encouraged by paragraphs 117 and 118 of the Framework. Nevertheless, the relatively modest scale of the proposal means that overall, the extent of such benefits would be limited. Therefore, they attract a commensurate amount of weight.
42. Reference is made to the absence of harm to the living conditions of existing residents and that appropriate space and light levels would be achieved for proposed future residents. As these would be required to make the development policy compliant, I consider that these are neutral factors in the overall balance rather than benefits.
43. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹¹. I have found that the proposal would conflict with development plan policies relating to the matters of character and appearance, the mix of housing and pedestrian movement. The conflict with those policies and consequent harm attracts significant weight. Consequently, the benefits are insufficient to justify my determining the development other than in accordance with the adopted development plan.
44. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

APPEARANCES

FOR THE APPELLANTS

Samruti Patel BA(Hons), MA, MRTPI	Planning Director at Savills
Lucy Aspden BSc, MRTPI	Associate Planner at Savills
Nicholas Cowell	Appellant, Director of Cowell Group Property
Simoni Devetzi Dip.Arch.Eng, MSc	Architect
Trevor Watson BSc, MBA, FRICS	Executive Director at Davis Coffey Lyons
Connie Start	Davis Coffey Lyons

FOR THE LOCAL PLANNING AUTHORITY

Will Philips MSc	Planning Officer, City of Westminster Council
Rebecca Mason MSc, MA, IHBC	Urban Design and Conservation Officer, City of Westminster Council
Ian Morrison	Principal Engineer (Highways Planning), City of Westminster Council

INTERESTED PARTIES

Councillor Tim Roca	Deputy Leader, Westminster Labour Group. Shadow Cabinet Member for Children's Services, Member for Harrow Road Ward, City of Westminster Council.
Dominic Pinto	Pub Protection CAMRA West London
Dafydd Elis	Maida Hill Neighbourhood Forum Committee

DOCUMENTS SUBMITTED AT THE HEARING

a) Existing Elgin Avenue & Chippenham Rd Elevation Drawing 3-12 and Proposed Elgin Avenue and Chippenham Rd Elevation Drawing 3-13.

b) Extracts from Comments for Planning Application 19/01895/FULL from Dominic Pinto, Pub Protection and Conservation, CAMRA West London Branch