The Planning Inspectorate

Appeal Decision

Site visit made on 26 April 2021

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 MAY 2021

Appeal Ref: APP/E5900/W/20/3260969
48 White Horse Road, London E1 0ND

- 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 N Lukka against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/20/00923, dated 6 May 2020, was refused by notice dated 7 July 2020.
- The development proposed is a change of use of a public house (A4 use) to residential (C3 use) to provide a self-contained 3-bedroom unit with associated cycle storage, including replacement of ground floor frontage and detailing.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The London Plan[1] 2021 was published after this appeal was lodged but prior to its determination. Consequently, I contacted the Council and the appellant and sought their comments in relation to the publication and this appeal and I have had regard to the responses provided.

3. Both parties make reference to policies in the *Intend to Publish* version of the London Plan, which are said to be unchanged from policies within the published 2021 London Plan. However, I must determine the appeal on the submitted evidence and copies of these referenced policies have not been provided by either of the parties.

Main Issues

4. The main issues are the effect of the proposal on:
    - Public house and community facility provision in the area
    - the vitality and viability of the Limehouse Neighbourhood Centre.

Reasons

Public house and community facility provision in the area

5. The appeal property is located within a three storey building and occupies most of the ground floor as well as a rear yard area, which has a separate access.

[1] Spatial Development Strategy for Greater London March 2021

On the first and second floors of the building, two flats have been constructed, with a separate access from White Horse Road to the appeal property.

6. The building is located within the Limehouse Neighbourhood Centre and the appeal property, which has a lawful use as a public house, has been vacant since August 2017.

7. The supporting text to Policy D.CF4 (public houses) of the Tower Hamlets Local Plan 2031 (THLP) notes that many London Boroughs have experienced a significant net loss of public houses since the millennium, with the rate of decline in Tower Hamlets said to have far exceeded the average for London. To address the unnecessary loss of public houses, the policy sets out specific measures, where the loss of a public house is proposed, in order to justify such a loss.

8. Part 1(a) of the Policy requires evidence that all reasonable efforts have been taken to preserve the facility as a public house. There is no substantive evidence to demonstrate that the public house business was not viable prior to its closure. Reference is made to the tenant being charged a 'below market rent of £16,000 per annum'. However, no evidence of this has been provided and furthermore, no accounts for trading years have been supplied, despite the supporting text[2] to Policy D.CF4 identifying this as a means of satisfying Part 1(a).

9. I also note that some significant works have been undertaken to the appeal property since it was last used as a public house, including some demolition work, a rear extension and various internal works, said to be linked to a previous planning permission granted in 2018 as part of the works to create the upper floor flats (LPA Ref. PA/17/02564).

10. The proposed ground floor plan for this permission[3] shows a bar, a front bar area and a rear bar / lounge area, as well as two separate toilets and a rear garden / terrace area. This plan is significantly different to the 'existing floor plan' for the property which was submitted as part of the appeal proposal[4]. The 'existing ground floor' plan does not show a bar area or separate toilets. It also shows that the separate ground floor access area for the upper floor flats has been enlarged into the bar area, significantly reducing its size, so as to allow more space for residential cycle storage.

11. Photographs of the works are also shown in part at Appendix Two of the Viability Assessment dated 21 April 2020. These photographs do not show any bar servery remaining, such as would be required for a public house, and were taken prior to the submission of the appeal proposal.

12. The absence of previous trading accounts, together with the apparent reduction in size of the public house floorspace from that granted planning permission with the rear extension; the apparent removal of the necessary fixtures and fittings such as the bar servery; and, the absence of customer toilets as previously approved, does not, in my view, demonstrate that all reasonable efforts have been taken to preserve the facility as a public house.

13. Part 1(b) of Policy D.CF4 requires evidence to demonstrate that the property has been marketed for at least 12 months as a public house at a reasonable

[2] Explanation - Paragraph 12.27
[3] Drawing P-11
[4] Drawing PL076-1

market rent and free of tie and restrictive covenant. The property is said to have been marketed continuously since August 2017, by Miltec Marketing until October 2018 and since then by Stelfort, including on a broader range of online platforms[5]. Date stamped web-pages show that the property was available on 14 December 2018 and on 18 September 2020 but little substantive evidence of the actual marketing duration has been provided.

14. From the evidence only limited text and photographic material was available online and it is not clear what further information would be provided, were further details to be requested. I also note that the description states that the property has a 'central bar servery' and 'Ladies and Gents toilets' neither of which are shown on the aforementioned 'existing ground floor' plan that accompanied the appeal proposal. The 'existing' public house is also significantly smaller than the previously approved layout. Such details are likely to be confusing and off-putting to potential tenants or purchasers.

15. A Marketing Report from Stelfort dated April 2020 summarises the marketing for the public house that took place between October 2018 and April 2020. 35 requests for further details were said to have been submitted during this time, resulting in five viewings and two parties showing further interest. However, no substantive details of the interests shown are provided, no firm offers were made and no further details of the outcome of the marketing exercise are provided.

16. It is unclear to me why, if a rental price of £16,000 per annum was previously considered to be reasonable, that the smaller sized property without some of the necessary fixtures, was marketed for £25,000 per annum. Together with the inconsistencies between the previously approved and existing ground floor plans and between the existing ground floor plan and the online description, this raises concerns as to the robustness of the marketing arrangements.

17. The appellant has produced a Viability Assessment, which is said to have been made in relation to the premises following the refurbishment works completed in May 2020. There appear to be further inconsistencies between the Viability Assessment and the Marketing Approach.

18. The Viability Assessment states there is no commercial kitchen, whilst the (commercial) property is marketed as having a small kitchen area; the Viability Assessment states that trade fixtures and fittings are needed, yet the marketing information states 'All fixtures and fittings included'.

19. The assessment of seven nearby public houses in the Viability Assessment is not detailed and contains a significant number of subjective comments that are not well-substantiated. From the limited evidence I am not sure that the properties are suitably comparable. No substantive evidence has been provided that any of the nearby premises has a significant food offer, private outdoor space, or car parking.

20. I note the hypothetical profit and loss document provided at Appendix Five of the Valuation Assessment. However, from the limited information for the nearby public house premises, which would presumably have similar expenses and income, it is not clear to me that this is a realistic assessment.

[5] Including *Rightmove*; *Zoopla*; and *On The Market*.

Furthermore, it is not possible to compare this with actual accounts for the premises when it was open, which have not been provided.

21. I am not satisfied that the closure of the public house since 2017 or the absence of designated car parking would put it at a particular disadvantage, given its highly accessible location within a designated centre, close to established residential areas, with further proposed nearby. Notwithstanding the comments regarding the generally declining patronage of public houses, other public houses in the area appear to operate successfully and it is likely that the appeal property, with over 30sqm of private outdoor space, would also be able to.

22. The full impact of the Covid-19 pandemic on the hospitality industry remains unknown at present. Whilst the lockdown restrictions have significantly affected public houses over the past year, there is no compelling evidence to suggest that this will continue once restrictions end.

23. The appeal property is located within a Neighbourhood Centre less than 50 metres from Commercial Road. Notwithstanding the children's theatre on the opposite side of the road, I am satisfied that this remains an appropriate location for a public house use.

24. The Council's evidence includes some confusing and contradictory statements concerning the suitability of the premises for use as a public house[6]. However, these statements are not well substantiated and I do not find them to be compelling.

25. From the evidence it has not been demonstrated that the appeal property could not operate successfully as a public house, and I note that some interest was shown in this use as the result of the marketing, despite my significant concerns as to its adequacy.

26. Part 1(c) of Policy D.CF4 requires that evidence of marketing is provided to demonstrate that there has been no interest in the property for an alternative community use. This evidence should be for a 12-month period following the marketing for a public house use.

27. The appellant states that at January 2021 the appeal property had been marketed for a period of 8 months for an alternative community use. The appellant has provided date stamped web-pages from 18 September 2020 to evidence this, but nothing prior to this date.

28. Furthermore, from these web-pages, the property was marketed as a public house, with a sentence added to the description stating that it 'may also be suitable for community use or other uses subject to Planning'. In the four months or so for which evidence for marketing for a community use is provided no interest was generated.

29. The marketing for a community use is significantly less than that required by Part 1(c) of the policy. Furthermore, the marketing for a community use is concurrent with, and in my view subservient to, the marketing for a public house use. No substantive evidence of marketing the premises to community

[6] Paragraph 6.9 of the Council's Statement of Case

organisations has been provided[7] and given the manner in which it has been marketed, as an addendum to the marketing for a public house, it is not clear to me whether such organisations would be aware of the property's availability for a community use rather than as a public house.

30. I note the appellant's commentary on why the property may be unsuitable for a range of community uses. Nevertheless, this has not been adequately tested by either the timescale or scope of the marketing exercise.

31. It has not been demonstrated that all reasonable efforts have been taken to preserve the facility as a public house. I am not satisfied that the marketing for the use as a public house or for an alternative community use has been adequate. Furthermore, I am not satisfied that a viable public house use could not take place at the appeal property, or that an alternative community use could not operate there.

32. For these reasons the proposal would adversely affect public house and community facility provision within the area. It would, therefore, conflict with Policy D.CF4 of the THLP. Policy 4.8 (supporting a successful and diverse retail sector and related facilities) of the London Plan 2016[8] is no longer part of the development plan for Tower Hamlets.

Vitality and viability of the Limehouse Neighbourhood Centre

33. The appeal property is located within the Limehouse Neighbourhood Centre, which forms part of the town centre hierarchy under Policy S.TC1 (supporting the network and hierarchy of centres) in the THLP.

34. Neighbourhood Centres occupy the fifth tier in the hierarchy and amongst other things are intended to provide a range of shops and services to meet the day to day needs of their local communities. Within the Limehouse Neighbourhood Centre are a range of shops and services, including several public houses, a convenience store, small supermarkets, takeaways, cafes and other small businesses and services. No substantive evidence has been provided in relation to the current health of the Limehouse Neighbourhood Centre or its ability to fulfil its role at the present time.

35. The Council makes reference to Policy D.TC2 (protecting retail within town centres) of the THLP. This policy is strongly focused upon A1 uses[9] and with reference to Neighbourhood Centres such as Limehouse, specifies that 'A1 retail' uses should not fall below 40% of the units within the designated centre. No evidence has been provided in relation to the current quantum of A1 or other uses within the Limehouse Neighbourhood Centre.

36. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Order).

37. Paragraph 4 of the Regulations concerns transitional arrangements. In terms of this appeal, the effect of paragraph 4 means that it should be determined in relation to the use classes contained in the Order that were extant at the time of the submission of the planning application, not the amended use classes.

[7] This is in contrast to the marketing for the public house use, where around 1000 potential tenants were contacted.
[8] The Spatial Development Strategy for London consolidated with alterations since 2011
[9] As set out in the Town and Country Planning (Use Classes) Order 1987, as amended.

Consequently, whilst a public house is a *Sui Generis* use as a result of the changes introduced by the Regulations, for the purposes of this appeal I have considered it to be a class A4 use.

38. I note the Council's comments regarding what it sees as the overarching aim of Policy D.TC2, to protect the vitality and viability of town centres. Nevertheless, the appeal property has a Class A4 use – not Class A1 - and I can find no reference to an A4 use within this Policy. Regardless of the Council's views as to the interpretation of the policy, I can find no conflict with its actual wording.

39. The appeal property has been vacant since August 2017 and so has not made a contribution towards the vitality or viability of the Limehouse Neighbourhood Centre since this time. Whilst a public house use would make a greater contribution to activity within a street than a dwelling house, with reference to the development plan I am not satisfied that this would preclude such a ground floor use in this case.

40. Furthermore, an approved mixed use scheme at the junction of White Horse Road and Commercial Road, to the south of the appeal site, includes a ground floor residential use on White Horse Road. As such, it has not been demonstrated that residential space at ground floor level at this location within the Neighbourhood Centre, would be unacceptable.

41. Reference is also made to two appeals at this property[10]. However, the development plan for the area was different to that which exists at present and the evidence before me is also different. Each proposal should be determined on its individual merits, which is what I have done in this case. I have had appropriate regard to the submitted evidence, including the current development plan, in determining this appeal.

42. For these reasons the proposed development would not cause unacceptable harm to the vitality and viability of the Limehouse Neighbourhood Centre. It would, therefore, not conflict with Policies S.TC1 and D.TC2 of the THLP.

Other Matters

43. The appellant states that the delivery of a family sized dwelling would contribute towards the delivery of homes within Tower Hamlets, and I note that there has been an under-delivery of homes in the borough in recent years. However, even if I were to conclude that the Council cannot demonstrate a deliverable five year housing land supply, the adverse impacts of the appeal proposal would significantly and demonstrably outweigh the very limited benefits arising from the provision of a single additional unit.

Conclusion

44. It has not been demonstrated to my satisfaction that the loss of the public house use is justified in this case or that the property could not be used for alternative community uses. The adverse impact on public house and community facility provision would outweigh the otherwise not unacceptable impact of the proposal upon the vitality and viability of the Limehouse Neighbourhood Centre.

[10] Ref. APP/E5900/W/18/3218677 and APP/E5900/W/18/3218678

45. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is dismissed.

Andrew Parkin

INSPECTOR