



Appeal Decision

Site visit made on 8 June 2021

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2021

Appeal Ref: APP/Z5060/W/20/3257655

Jolly Fisherman, 108 North Street, Dagenham IG11 8LA

- 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 Kahn, Advantage Rock Limited, against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application Ref 19/01766/FUL dated 14 November 2019, was refused by notice dated 14 February 2020.
 - The development proposed is described as redevelopment of existing public house to provide retail unit at ground floor and residential at first floor, with additional residential accommodation at roof level. The existing beer garden is to be a 3 storey element to provide storage, bike parking, bins area and 7 apartments. Total number of units will be 8.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Kahn, Advantage Rock Limited against the decision of the Council of the London Borough of Barking and Dagenham. This application is the subject of a separate Decision.

Procedural Matter

3. The Council altered the description of development. The description of development stated on the application form accurately described the proposal and accordingly I have adopted original description in the heading above rather than the Council's description of development.
4. Since the submission of the appeal the London Plan 2021 has been published. The Council's reason for refusal number 1 includes a policy within the superseded document. The London Plan 2021 does not diverge from the policy referenced. No party has been prejudiced or caused any injustice by me proceeding with the appeal in light of this change in policy.
5. The Council have confirmed that the Barking and Dagenham Draft Local Plan 2037 Regulation 19 Consultation Version (September 2020) (the Draft Local Plan) has advanced since the determination of the application and that this should be a material planning consideration.

Main Issues

6. The main issues in this appeal are (i) the loss of the public house; the effect of the proposed development on (ii) the character and appearance of the area; and (iii) the living conditions of future occupants.

Reasons

Loss of a Public House

7. Policy DMS3 of the Draft Local Plan, seeks to protect public houses, specifying that development proposals resulting in the loss of a public house will be strongly resisted unless justified by robust and up-to-date planning and marketing evidence in accordance with Policy DMS1.
8. Policy DMS1 of the Draft Local Plan is clear that active marketing over a continuous 24 month period is required to be demonstrated, along with evidence that the loss of the facility would not lead to a shortfall in the provision for the specific use for the population it serves. Notwithstanding this I am conscious that the Draft Local Plan has not been adopted and could be subject to modification.
9. Similarly, Policy BC6 of the Planning for the Future of Barking and Dagenham, Borough Wide Development Plan Policies, Development Plan Document (2011) (the DPD) requires proposals to demonstrate that community facilities are no longer needed and there are no reasonable prospects of reuse by an alternative community use. A 12 month minimum marketing period is specified. This timeframe is echoed in the Last Orders? Preserving Public Houses, Supplementary Planning Document (2014).
10. The Appellant has provided evidence to demonstrate that the property was actively marketed from April 2019 to October 2019, this falls short of the marketing period specified in the Policies of the DPD and Draft Local Plan. Substantive evidence has not been provided to persuade me that the loss of the public house would not lead to a shortfall in provision for this use to the population it serves.
11. I conclude that there is conflict with Policy BC6 of the DPD, Policies DMS1 and DMS3 of the Draft Local Plan, and Policy HC7 of the London Plan which amongst other things seek to protect public houses.
12. The reason for refusal number 1 contends that there would be conflict with Policy BP2 of the DPD. This policy seeks to protect heritage assets it does not relate to justification for the loss of a public house reference in the reason for refusal.

Character & Appearance

13. The Jolly Fisherman is a non-designated heritage asset. Substantive evidence has not been provided by the parties with regard to its local, historic or architectural interest. Notwithstanding this I noted during my site visit that the building comprises a traditional two storey detached double fronted public house. The public house is situated in a prominent position on a busy road junction. The proposed development would increase the height of the existing building and extend it significantly.

14. The proposed development does include demolition of a Victorian wall, whilst a pleasant feature in the area, I am not persuaded that its removal compromises the character and appearance of the area.
15. Overlooking would occur from the balconies on the southern elevation towards the access route to the school, notwithstanding this given the limited number of balconies I find this would not adversely affect the character and appearance of the area.
16. The substantial extension would be contemporary in design utilising large panes of glazing to separate the new from the old. Within the context of the area which has buildings of varying scale and design the design and scale of the proposed development would not be out of keeping and would not detract from the features of the existing public house.
17. Notwithstanding this the proposed development would sit forward of the front elevation of the existing building which would diminish the visual appearance of the locally listed building. The proposed development by virtue of its positioning and massing would be a prominent feature in the area which would dominate the streetscene and the locally listed building.
18. I conclude that the proposed development would harm the character and appearance of the area. There is conflict with Policies BP8 and BP11 of DPD, and Policy CP3 of the Planning for the Future of Barking and Dagenham, Core Strategy (2010) which amongst other things seek to ensure developments have regard to the local character, promote high standards of design and positively contribute to an area.

Living Conditions

19. Policy BP5 of the DPD sets out standards for external amenity space which normally proposals for new dwellings will be expected to meet. I understand from the plans before me that Flats 5 and 8 do not propose any private external amenity space.
20. The Appellant has drawn my attention to a recent proposal at Ashdown Court¹ a short distance from the appeal site. In which external amenity space was lacking. I note that the Council's report recommending approval for the proposal comprising 9 additional flats confirmed that the site was in close proximity to Barking Town Centre, did not lend itself to occupation by families, and therefore the limited provision of external amenity space would not result in unacceptable living conditions.
21. Notwithstanding this I am not convinced that the flats proposed in the submission before me would not be occupied by families and therefore there would be pressure for external private amenity space. Nonetheless the location is close to the Town Centre and there are pockets of green space within the locality. This combined with the Council's position on the proposal at Ashdown Court which was also assessed against Policy BP5 of the DPD persuades me that in this instance the proposed lack of external amenity space would not harm the future occupiers of the proposed development.

¹ Application Reference: 19/01341/FUL

22. I find that the proposed development would not conflict with Policy BP5 of the DPD which seeks to ensure developments have appropriate external amenity space.

Conclusion

23. Whilst I have not found harm to the living conditions of the future occupiers of the proposed development, this does not outweigh the harm I have found in relation to the loss of the public house and the effect on the character and appearance of the area.

24. For the above reasons I conclude that this appeal should be dismissed.

C Pipe

INSPECTOR