



Appeal Decision

Site Visit made on 9 September 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2021

Appeal Ref: APP/T5720/W/21/3270749

The Prince of Wales, 98, Morden Road, S. Wimbledon, London, SW19 3BP

- 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 Ram Gnanasekaran against the decision of London Borough of Merton.
 - The application Ref 20/P3478, dated 27 October 2020, was refused by notice dated 22 December 2020.
 - The development proposed is conversion of function room within the public house to one two bedroom three person flat and one one bedroom two person flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the Council issuing their decision, the London Plan (2021) has been adopted. Its policies are up to date and attract full weight in this decision.
3. In July 2021, the Government issued an updated version of the National Planning Policy Framework (the Framework). I have taken account of the changes to policies and paragraph numbers in this Decision.

Main Issues

4. The main issues are (a) the effect of the proposal on the vitality and viability of the public house and (b) the adequacy of living conditions for occupiers of the proposed dwellings with respect to noise, disturbance and privacy.

Reasons

Viability

5. The appeal relates to a public house with 4 flats on the upper floors accessed from the building's northern side. There is a large car park to the building's southern side and a smoking shelter for patrons next to the building. An extension has been constructed at the rear of the public house in recent years to form a function room. The proposal is to convert the function room to two dwellings. The public house would thereafter operate from the floor area present prior to the recent construction of the extension.
6. Policy CS12 of the Merton Core Strategy (2011) supports the development of a diverse economic base whilst Policy DMR5 of the Merton Sites and Policies Plan (2014) (MSPP) recognises the appropriate siting of food, drink and leisure uses as part of that base. Clause (g) to Policy DMR5 seeks to resist the loss of public

houses unless demonstrated not to be economically viable. The proposal does not involve the loss of the public house and so would not therefore be directly in conflict with policy DMR5. There would only be conflict with Policy CS12 if the loss of the function room would materially harm the diversity of the local economic base or threaten the viability of the public house.

7. Policy HC7 of the London Plan (2021) states that planning decisions should protect public houses where they have a heritage, economic, social or cultural value to local communities. Furthermore, that development proposals for redevelopment of associated accommodation, facilities or development within the curtilage of the public house that would compromise the operation or viability of the public house use should be resisted. Supporting paragraph 7.7.8 refers to the change to residential use of ancillary uses, such as function rooms, as potentially limiting the operational flexibility of a public house, making it less attractive to customers, preventing ancillary spaces being used by the local community and possibly also threatening the viability of a pub.
8. The loss of the function room would diminish social and recreational facilities available at the site for the local community. The appellant claims that there has not been demand for the additional floor area as a function room, but no evidence has been submitted to verify this. Reference has been made to 3 bookings for the function room but there is no detail of their nature. Evidence such as marketing details, charge out rates and enquiries for hire would be appropriate to verify the absence of demand and that no significant harm to opportunity would arise through the loss of the function room.
9. The public house would revert to a floor area that had long existed prior to construction of the function room. But it is nonetheless necessary to examine the proposal in the light of current planning policies in place relating to economic circumstances that have threatened the viability of many public houses in recent years. The high demand for additional dwellings makes residential conversions an attractive proposition. The public house may be a viable business on its remaining original floor area, but there is no evidence to verify this. If it would be advantageous to retain additional floor area for the public house to ensure its viability, then it would not be appropriate to release all or part of the function room for residential accommodation.
10. In the absence of evidence to verify minimal demand for the function room and the viability of the public house on the retained floor area, the proposal could undermine the diverse economic base promoted by Policy CS12 and the protection of public houses set out in Policy HC7. It would also be contrary to Paragraph 93 of the Framework requiring planning decisions to plan positively for the provision of shared spaces such as public houses.

Living conditions

11. The larger flat would have a secondary flank window to its living room and kitchen in the southern wall facing the car park. The single bedroom to the smaller flat would have two windows in this wall. Both flats therefore would be subject to noise and disturbance arising from the movement of customers and cars in the car park. But the existing flats on the upper floors to the building have flank windows facing the car park. These are also closer to Morden Road, a source of traffic noise. It is unlikely that noise from customers in the car park or from car engines and headlamps would be materially greater for occupiers of the flats proposed than for occupiers of the flats already permitted.

12. Occupiers of the proposed ground floor flats would potentially be subject to loss of privacy if public house customers were to walk close to their flank windows. But these windows are towards the rear of the flank wall and customers walking between their cars and the building's entrance would not be likely to pass close to them. Customers would also be inclined to walk away from the building due to the position of the smoking shelter. As the flank windows are south facing, they would receive sufficient natural lighting. Occupiers could use blinds or curtains to safeguard privacy levels during hours of darkness. The communal amenity space for occupiers of the flats to the rear and northern side of the building would be of substantial area. It is unlikely that occupiers of flats using the area would be obliged to be so close to the windows of other flats to result in undue loss of privacy. Occupiers of the proposed flats would be aware of this arrangement prior to committing to occupation.
13. The bedroom windows would be close to the covered smoking shelter and occupiers could be disturbed by noise from persons using the shelter. However, windows to the flats on the upper floors are already closer to the recently permitted smoking shelter. There is no evidence to suggest that the shelter's location has resulted in nuisance to these occupiers or would be so close to the windows to the proposed flats to cause material nuisance.
14. The proposal would not therefore be contrary to Policy DMD2 of the MSPP which seeks to ensure residential accommodation receives appropriate levels of privacy and natural lighting and that living conditions are not unduly diminished in relation to noise, disturbance and other forms of pollution. Neither would there be material conflict with Policy DMEP2 of the MSPP in which noise-sensitive developments are expected to be located away from sources of noise and disturbance.
15. Policy D13 of the London Plan sets out the 'Agent of Change' principle which places the responsibility for mitigating impacts from existing noise and other nuisance-generating activities or uses on the proposed new noise-sensitive development. It also seeks to ensure that established noise generating uses, including public houses, remain viable and can continue or grow without unreasonable restrictions being placed on them. The impacts on living conditions for future occupiers of the proposed flats would not be so great or so different from those pertaining to existing flats to warrant resisting the proposal on the agent of change principle. Neither would the noise impacts be so significant to be contrary to London Plan Policy D14 in relation to noise, and overall living conditions would be satisfactory and in compliance with Policy D3.

Other Material Considerations

16. The proposal would result in the benefit of two additional dwellings that would make a modest contribution to meeting the demand for more homes. However, this benefit would not outweigh the harm I have described in relation to the first main issue.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR