



Appeal Decision

Site visit made on 10 November 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal Ref: APP/A5840/W/21/3276876

The Black Horse, 254 Tabard Street, Southwark, London, SE1 4UN

- 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 Blackhorse Investments Limited against the decision of London Borough of Southwark.
 - The application Ref 20/AP/3071, dated 20 October 2020, was refused by notice dated 11 December 2020.
 - The development proposed is change of use of a disused public house to a 3 bedroom flat at ground floor with retention of existing 1st floor flat.
-

Decision

1. The appeal is allowed, and planning permission is granted for change of use of a disused public house to a 3 bedroom flat at ground floor with retention of existing 1st floor flat at The Black Horse, Southwark, London, SE1 4UN in accordance with the terms of the application, Ref 20/AP/3071, dated 20 October 2020, subject to conditions set out in the attached schedule.

Preliminary Matters

2. Planning permission was granted in August 2020 for redevelopment of the site to provide a 6-storey building comprising 9 dwellings with a replacement public house and other commercial use of the ground floor (ref. 19/AP/5641).
3. The appellant comments that the current proposal is a 'fallback' to enable fuller use of the site in the event of being unable to implement the approved scheme.
4. Subsequent to the issue of the Council's decision notice the London Plan (2021) has been adopted and Policy HC7 on 'protecting public houses' attracts full weight.
5. The decision notice also refers to Policy 41 on 'pubs' in the emerging New Southwark Plan (NSP), which has not yet been adopted. However, the NSP is at an advanced stage with there being no unresolved objections to Policy 41 following Examination in Public, so this policy attracts significant weight.

Main Issues

6. The main issues are:

(a) whether the loss of the existing public house use is acceptable having regard to relevant development plan policies and

(b) whether living conditions for occupiers of the proposed flat would be adequate in relation to privacy.

Reasons

Loss of public house

7. The appeal relates to a vacant public house within a 2-storey building on a corner site that fronts Great Dover Street, has a rear vehicular access from Tabard Street and a flank to Blackhorse Court. The surrounding area is mainly residential in nature, predominantly in much higher buildings but there is also a mixture of other uses nearby.
8. Policy HC7 of the London Plan (2021) states "*Applications that propose the loss of public houses with heritage, cultural, economic or social value 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*". Supporting paragraphs indicate authoritative marketing should require proof that all reasonable measures have been taken to market the public house to other potential operators, which should include marketing the pub for at least 24 months at an agreed price following an independent valuation. Policy 41 of the NSP is similar stating proposals resulting in the loss of a pub will only be permitted where there is no market demand for the pub use demonstrated by a marketing exercise for two years.
9. The appellant has submitted a Marketing Report by Kalmars Commercial, local property consultants. This confirms that marketing of the property began in November 2018 when the public house was struggling but still operating and continued beyond July 2019 when it closed. The report is dated September 2020, approaching the two year mark, but the property has continued to be marketed since then. The Kalmar marketing board mounted on the public house sign was evident at the time of my visit.
10. The Marketing Report indicates that there has been interest from prospective purchasers and tenants but mainly for other uses requiring permission for a change of use. Relevant considerations for the low interest as a public house would appear to be the non-central, mainly residential location, the limited floor area and the proximity of many other public houses in more favourable locations.
11. Those interested in recommencing the public house use would also appear to have been put off by the likely extensive costs needed for refurbishment. The Council comment that the proposed rent is reasonable and reflective of the property's market value but criticise the report's lack of evidence on the current state of the public house in relation to refurbishment costs. The report indicates that the public house has been stripped back to a 'shell condition' due to poor internal conditions.
12. In my judgement, the lack of detail here does not undermine the validity of the report's findings. Prospective occupiers would have had opportunity to view the interior of the building and make informed assessments on refurbishment costs whether presented with a ground floor in 'shell condition' or in the apparently poor previous decorative condition. Even allowing for the prevalence of Covid-19 restrictions on activities during parts of the marketing period, the marketing exercise is well in excess of the stipulated two year period cited in relevant development plan policies. There is not a requirement for the Marketing Report to refer to successfully turned around sites such as the nearby Beehive.

13. There is no evidence before me that the public house in the present building has a particular heritage, cultural or economic value. The building is not of architectural merit and permission has been granted for its redevelopment, albeit with inclusion of a replacement public house facility. There would appear to be little social value with the prevalence of many other public houses in the surrounding area to cater for potential customers.
14. Having regard to all relevant considerations, the loss of the existing public house use would be acceptable having regard to relevant development plan policies. There would not be conflict with Policy HC7, with Policy 41 or with the Mayor of London's Culture and Night-Time Economy SPG.

Living conditions

15. The proposed flat would be of satisfactory size and layout for a 3-bedroom unit. The flank and front windows to bedroom 3 would be close to the footway in Blackhorse Court but I am satisfied that a suitably worded planning condition on obscured glazing could address this concern.
16. There is a substantial rear yard which serves as a shared parking area with occupiers of the upper floor dwelling. This is overlooked from the windows of several high residential buildings nearby but at a distance. A covered terrace to the rear of the living room would provide privacy from these windows and also from those of the upper floor unit. Occupiers of the upper floor would need access to the shared bike and bin store alongside the living area. A landscaping condition could ensure suitable privacy measures between the store and the open terrace whilst also enhancing the appearance of the site.
17. In the absence of implementation of the extant permission to redevelop the site, the proposal would also have the benefit of making a modest contribution to meeting the ongoing need for additional dwellings.
18. Subject to incorporation of suitable planning condition to safeguard privacy, there would not be conflict with Saved Policy 4.2 'Quality of residential accommodation' of the Southwark Plan (2007), Strategic Policy 13 'High environmental standards' of the Southwark Core Strategy (2011) or with the Technical Update (2015) to the Residential Design Standards SPD (2011).

Other Matters

19. I am satisfied that there has been sufficient publicity for interested parties to submit representations. I have noted the objection submitted but have found no conflict with development plan policies. Planning conditions can address matters raised by Transport for London.

Conditions

20. In addition to the statutory time condition to limit the permission's lifespan a condition is needed to list the plans in the interests of certainty. Conditions are necessary to approve landscape measures around the site on land not required for the two parking spaces to ensure a satisfactory appearance and to provide privacy for the occupiers of the new unit. Obscured glazing is required to the lower part of the windows to bedroom 3 to ensure privacy here. A condition is needed to ensure provision of cycle and refuse storage arrangements as shown on the plans. In view of local poor air quality and traffic noise, conditions are necessary to ensure satisfactory internal living environments.

21. The Council's suggested condition on external materials is not necessary as there would be no changes other than through landscaping. Finally, the suggested condition to exclude application of a parking permit in the controlled parking zone is not necessary as parking already exists on site.

Conclusion

22. For the reasons given above I conclude that the appeal should be allowed.

Rory MacLeod

INSPECTOR

Schedule of Conditions

- 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:
 - Site Location Plan (Drawing Reference 156/01);
 - Existing Floor Plans (Drawing Reference 156/11);
 - Existing Elevations (Drawing Reference 156/12);
 - Proposed Site Plan, Floor Plans and Elevations (Drawing Reference 156/13);
 - Marketing Report prepared by KALMARs Commercial dated September 2020;
 - Flood Risk Assessment prepared by Stilwell Partnership ref. A18320C dated June 2019;
 - Design and Access Statement prepared by Studio Ley Architecture and Planning dated October 2020
- 3) Before the first occupation of the ground floor flat hereby permitted, detailed drawings of a hard and soft landscaping scheme including fencing, showing the treatment of all parts of the site not covered by buildings (including cross sections, available rooting space, tree pits, surfacing materials for the parking, access and pathways and edge details), shall be submitted to and approved in writing by the local planning authority. The landscaping shall not be carried out otherwise than in accordance with any such approval given and shall be retained for the duration of the use.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 5) The windows to bedroom 3 located on the corner with Great Dover Street and Blackhorse Court shall have obscure glazing to a height of 1.7m above the external ground level and shall not be replaced or repaired otherwise than with obscure glazing to this height.
- 6) Before first occupation of the ground floor flat hereby permitted space shall be laid out within the site for 2 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear; these spaces shall thereafter be kept available at all times for resident parking.
- 7) Before the first occupation of the ground floor flat hereby permitted, the cycle storage facilities and refuse storage arrangements shown on the drawings hereby approved shall be provided and made available to the users of the development. Thereafter, such facilities shall be retained, and the spaces used for no other purposes.
- 8) The use hereby permitted shall not be begun until full particulars and details of a scheme for the internal ventilation of the development which shall include appropriately located plant, inlets and outlets; filtration and treatment of incoming air to ensure it meets the national standards for external air quality; plant noise output levels; and a management and maintenance plan have been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the approval given.
- 9) The ground floor flat hereby permitted shall be designed to ensure that the following internal noise levels are not exceeded due to environmental noise:
 - i) Bedrooms - 35dB LAeq T†, 30 dB LAeq T*, 45dB LAFmax T *
 - ii) Living rooms- 35dB LAeq T †
 - iii) Dining room - 40 dB LAeq T †
 - iv) * - Night-time - 8 hours between 23:00-07:00
 - v) † - Daytime - 16 hours between 07:00-23:00

A report shall be submitted in writing to and approved by the local planning authority. The approved scheme shall be implemented prior to the commencement of the use hereby permitted and shall be permanently maintained thereafter. The development shall be carried out in accordance with the approval given. Following completion of the development and prior to occupation, a validation test shall be carried out on a relevant sample (usual minimum of 10%) of the premises. The results shall be submitted to the local planning authority for approval in writing.