



Appeal Decision

Site visit made on 25 January 2022

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2022

Appeal Ref: APP/V5570/W/21/3281724

The Duchess of Kent Public House, 72 Prebend Street, Islington, LONDON N1 8PR

- 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 Ginger and Mint against the decision of the London Borough of Islington.
 - The application Ref P2021/1410/FUL, dated 12 May 2021, was refused by notice dated 27 July 2021.
 - The development proposed is change of use from public house (sui generis) to cafe and juice bar (Use Class E(b)) on ground and lower ground floors.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from public house (sui generis) to cafe and juice bar (Use Class E(b)) on ground and lower ground floors at The Duchess of Kent Public House, LONDON N1 8PR in accordance with the terms of the application, Ref P2021/1410/FUL, dated 12 May 2021, subject to the attached schedule of conditions.

Main Issue

2. The main issue is whether sufficient evidence has been provided to justify the loss of the public house.

Reasons

3. The former Duchess of Kent public house occupies a corner position in a primarily residential area, within the Arlington Square Conservation Area (CA). The pub, which occupied the ground and lower ground floors of the building, closed in March 2019. The premises have been vacant since, but under the proposed scheme would be re-used as a café and juice bar.
4. Policy HC7 of the London Plan 2021 and Policy DM4.10 of the Islington Local Plan Development Management Policies 2013 (DMP) seek to protect public houses, in recognition of the intrinsic role that they play in community life. Both policies resist applications for the change of use of pubs, unless marketing evidence demonstrates that there is no realistic prospect of the building being used as such in the foreseeable future. Policy DM4.10 requires evidence that the public house has been vacant for 2 years with continuous marketing for the vacant 2-year period. Paragraph 7.7.7 of the London Plan requires that the pub has been marketed as a pub for at least 24 months.

5. Efforts to find a new owner or leaseholder for the pub was carried out in two stages. Marketing activity commenced in May 2018, prior to the closure of the pub, and was ongoing in August 2021. The initial period of marketing was undertaken by a London based firm of leisure property specialists, A G & G. The particulars produced by A G & G show that the property was marketed as a pub, and that the building was offered for sale, at a price open to offers. No further detail about this marketing exercise have been provided, but it appears that an initial sale fell through before the pub was acquired by the current freeholder in May 2019.
6. The current owners are not pub operators and sought a new tenant for the premises. Marketing was continued through a different agent, 3H Property Consultants, who specialise in commercial and licenced leisure property in the north London area. During this second period of marketing, a sign board was erected advertising the opportunity, and the marketing particulars were available to view on the agent's website.
7. I note the Council's comment that there is no evidence of marketing by the second agent prior to November 2020, but the lack of images of an advertising board on Google streetview prior to that date does not necessarily indicate that there was no such sign in place, or that web-based marketing was not ongoing. Similarly, the marketing particulars may simply have been updated to reflect changes to the Use Classes Order in September 2020, rather than being prepared at that time.
8. I have no reason to doubt the content of the letter provided by 3H Property Consultants, which states that marketing efforts took place for over 2 years, during which time details of the property well circulated and advertised in the national press, and forwarded to most commercial agents around central London.
9. Although closed, the property was in a condition that would have allowed it to continue functioning as a pub, as required by paragraph 7.7.7. of the London Plan. The sign board erected at the site during the second marketing period listed alternative uses, but the sales particulars made it clear that the building was a former pub, and that proposals for any other use would require planning permission. The letter from 3H Property Consultants reports that marketing resulted in interest from various commercial operators, but not for a pub use. Even if that interest was a response to other uses referred to within the marketing information, it is apparent from the evidence provided that there was a lack of interest from any potential pub operators.
10. I acknowledge that the marketing information provided lacks detail, and that the activity does not fully reflect the marketing requirements of London Plan paragraph 7.7.7 and DMP Appendix 11. However, on balance I am satisfied that in this case, the marketing which was carried out by two specialist agents over a period of more than two years, is sufficient to meet the requirements of Policies HC7 and DM4.10, and to demonstrate that there is no reasonable prospect of the property being used as a pub in the foreseeable future.
11. In coming to this view, I have also had regard to Policy HC7 of the London Plan, which seeks to protect pubs which have a heritage, economic, social or cultural value to local communities.

12. The Council has provided little information to explain why it considers the building to be a non-designated heritage asset, but the former Duchess of Kent is an attractive example of an early twentieth century pub. It is located within a conservation area, which is one of the characteristics to be taken into consideration when assessing the value of a pub, according to paragraph 7.7.6 of the London Plan. When I visited the site, I saw that there were features on the frontage, including a lamp and sign, which depict its previous use and contribute to the historical interest of the building.
13. The proposal would result in the loss of a former pub which has some heritage value, but no changes to the frontage are proposed as part of the appeal scheme. Any signage would need to be sensitive to the building and the wider CA, but this would require advertisement consent so could be appropriately controlled. As such, I am satisfied that the former pub would retain its historical interest, and that the character and appearance of the CA would be preserved.
14. I have been provided with no clear evidence of any special social or cultural value associated with the former Duchess of Kent public house. The objection to the proposed change of use from the Campaign for Real Ale contains general comments, rather than highlighting any particular value linked to this particular pub. I note the Council's concern about the lack of other pubs nearby, but the limited consultation response does not indicate any strong desire from the local community to see the pub retained or reopened. Indeed, a number of local residents expressed support for the proposed re-use as a juice bar.
15. Although not a pub, the proposed use would retain a social function, as it would enable people to meet and socialise during the day and evening, over a drink and some food. The former pub would have had some economic value, but the proposed juice bar would also employ staff, and by bringing the premises back into active use would also benefit the local economy. As such, the values associated with a pub which Policy HC7 seeks to retain, would, in part, be maintained through the proposed use. Furthermore, the internal alterations would be such that the proposal would not preclude future conversion of the ground and lower ground floors back into use as a pub.
16. The Council has confirmed that the proposed use would be acceptable in this location, and I have no reason to disagree. It would contribute to the objective of Policy CS14 of the Islington Core Strategy 2011 to provide a healthy retail and service economy in the area, providing a good range of goods and services.
17. Taking account of all the above considerations, I conclude that, in this particular case, sufficient evidence has been provided to justify the loss of the public house. The proposal meets the requirements of Policy HC7 of the London Plan and DMP Policy DM4.10, both of which seek to retain public houses unless it has been demonstrated through marketing evidence that there is no realistic prospect of the building being reused as a pub. I have found no conflict with the objective in Core Strategy Policy CS14 for Islington to continue to have a strong cultural provision.

Conditions

18. The proposed opening times are not specified on the application, and I agree that a condition limiting the hours of operation is reasonable to provide certainty and safeguard the living conditions of surrounding occupiers.
19. The Council has suggested a condition restricting delivery times. I agree that such a restriction in the early morning and evening is reasonable on Sundays and public holidays, which are times when residents could reasonably expect activities with the potential to cause some disturbance, such as deliveries, to be limited. However, the reason for the proposed restriction on a Saturday evening is less clear, and I have excluded it from the condition.
20. DMP Policy DM8.4 requires that minor developments creating new commercial units provide cycle parking in accordance with the minimum standards set out in Appendix 6 of the plan. In this instance, the policy requirement is triggered because the proposal involves a change to a new commercial use. A condition requiring the provision of 3 cycles parking spaces is therefore reasonable, and I have imposed it with minor wording changes.
21. The appellant has confirmed that the proposed use will use the existing refuse arrangements, and the Council has indicated that this is acceptable. The Council's suggested condition regarding refuse and recycling is imprecise and is also unnecessary, so I have not imposed it.
22. The proposal would involve a change from a pub (*sui generis*) use to a use which would fall within Class E, which is a wide ranging and flexible class. Although the current proposal is for a juice bar, planning permission would not be required for changes to other uses within Class E. However, the Council has identified some uses within that Class, notably facilities for indoor fitness and day nurseries, could result in traffic or other impacts which could have the potential to cause harm to the living conditions of surrounding occupiers. To enable assessment of any such impacts through a planning application, a condition restricting changes to such uses is therefore reasonable. I have altered the wording of the suggested condition in the interests of precision.

Conclusion

23. For the reasons set out, the appeal is allowed subject to the conditions set out in the attached schedule.

R Morgan

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:
 - CRH.30.EX.FP.01 – existing floor plan
 - CRH.30.PR.FP.01 – proposed floor plan
- 3) The use hereby permitted shall only take place between the hours of 08:00 – 22:00 Monday - Sunday
- 4) Service vehicle deliveries/collections to and from the unit hereby permitted shall only take place between the hours of:
 - 08:00 – 22:00 Monday to Saturday
 - 09:00 – 20:00 on Sundays and Bank/Public Holidays.
- 5) Prior to operation of the approved use, details of the layout, design and appearance (shown in context) of secure, covered storage for no less than 3 bicycles shall be submitted to and approved in writing by the local planning authority. The cycle storage shall be provided in accordance with the approved details and shall be retained as such thereafter.
- 6) The premises shall not be used for any purpose in Class E(d) or E(f) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).