



Appeal Decision

Site visit made on 7 December 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2022

Appeal Ref: APP/E5900/W/21/3281046

Dean Swift Public House, 2-6 Deancross Street, London E1 2QA

- 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 Dean Swift Pub Limited against the decision of London Borough of Tower Hamlets.
 - The application Ref PA/20/02005, dated 17 September 2020, was refused by notice dated 6 April 2021.
 - The development proposed is Demolition of the existing building and redevelopment to provide Public House (A4) at part ground and basement levels and 6 self-contained apartments within a four storey and basement development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst the first of the Council's two reasons for refusal states, inter alia, that the proposal would affect the setting of a grade II listed building, the application had not originally been advertised as such. The Council has, however, subsequently ensured appropriate publicity for the proposal has been carried out. I have determined the appeal accordingly.

Main Issues

3. The main issues are the effects of the proposed development upon:-
 - The character and appearance of the surrounding area, with particular regard to the setting of a grade II listed building¹, locally listed buildings² and the Commercial Road Conservation Area (the CA); and
 - The living conditions of occupiers of residential properties at 298 Commercial Road, with particular regard to sunlight and daylight.

Reasons

Character and appearance

4. Although there has been a public house (beerhouse) present on or close to the appeal site for a considerable length of time, sharing the current building's name for a significant portion of that time, the area around the appeal site has been subject to significant change over a comparable time period. Formerly part of an area characterised by closely-knit terraced streets to the south of

¹ 300 Commercial Road

² 1 – 11 (odd) Deancross Street

Commercial Road, bomb-blast damage during World War II (WWII) prompted extensive clearances and redevelopment of surrounding streets in the mid- to late twentieth century.

5. The appeal property, built in the 1940's in the style of a 1930's suburban, 'arts and crafts' influenced public house, is locally listed. The local list description notes it as making a positive contribution to local character and distinctiveness close to the boundary of the CA. Whilst something of an outlier in terms of its character, appearance and form in the context of those buildings around it, it nevertheless provides a 'homely' presence within the street, a pleasant throw-back to past times both in the current context and also in terms of when it was originally built.
6. It is, however, something of an anomaly set against the larger buildings surrounding it. Opposite, turning the corner from Commercial Road into Deancross Street is the imposing grade II listed early 19th century 3-storey terraced block of 300–330 Commercial Road and the locally listed 1–11(odd) Deancross Street. On both sides, and to the rear, of the appeal building lie taller and starkly angular mid- to late- twentieth century buildings. Together, these buildings dominate the immediate surroundings but nevertheless the existing building is a pleasantly modest yet distinctive local feature, particularly in comparison with the bulkier but bland 3-storey building to the south and the more recent, generic 4-storey residential block to the north.
7. Pastiche it may be to an extent, and somewhat out of context in comparison with the buildings around it, but its modest charm is nevertheless a positive contributor to the character and appearance of the surrounding area. Whilst its significance may be assessed more in terms of its continuation of a public house tradition at, or close to, the appeal site, this should not be to diminish its intrinsic character and visual contribution to the area.
8. The proposed development would maintain the site's social and cultural link to the past by incorporating a public house within the proposed ground floor (and basement) of the replacement building. However, in other respects, the proposal would bear little resemblance to the traditional notion of a pub. Indeed, the Council, accurately in my view, describe the building's ground floor façade as being more like a shopfront; the application of glazed green tiles a nod to those (presently over-painted) present on parts of the existing building's frontage.
9. It may be the case that the existing building, built to reflect an earlier style of public house, may not be wholly authentic within the local context. However, it seems to me that the timing that lies behind that approach; built in the immediate post-war period to reflect pre-war times and vernacular is as compelling as maintaining a public house use on the site. Within an area that was widely bomb-damaged, the presence of 300–330 Commercial Road, 1–11(odd) Deancross Street and, to a lesser but no less significant degree, the appeal building, create a compelling link with the past.
10. The Council have welcomed, I note, a reduction in overall height of the proposed building and state that its contemporary design would broadly satisfy the objectives and aims of London Plan policy HC7 and Local Plan policy S.DH3. However, from the Council's overall conclusion and balancing I take these positive aspects to apply to the proposal in isolation, ignoring the context and cultural and social context in which the existing building exists. Putting the

proposal in context and considering the character and appearance of the wider area and the building's role within it however, the loss of the Dean Swift public house to enable the redevelopment of the appeal site would cause harm to the character and appearance of the surrounding area.

11. As such, the proposal would result in the loss of a public house which, I conclude, on the evidence before me, possesses social, cultural and historical value, the loss of which would cause harm to the character and appearance of the area surrounding the appeal site. I have not been presented with the authoritative marketing evidence required by London Plan policy HC7 to justify the loss of a public house and as such the proposal would fail to accord with the aims and provisions of that policy.
12. The site lies in the setting of the grade II listed building at 300–330 Commercial Road. The listing description for this terraced block also notes the group value that it has with 1–11(odd) Deancross Street and the George Tavern public house³, diagonally opposite the eastern end of the listed block. Whilst the existing building on the appeal site post-dates the listed and locally listed buildings nearby, it nevertheless possesses a degree of 'homely' charm that is lacking in the more modern buildings on either side of it, others which lie within the setting of this group or indeed with the proposed replacement building. The loss of the existing building would cause harm to the setting in which the listed building is experienced, albeit that that harm would, in the parlance of the National Planning Policy Framework (the Framework), be less than substantial.
13. Nevertheless, the Framework goes on to state that any harm to the significance of a heritage asset requires clear and convincing justification. Where a proposal would lead to less than substantial harm to the significance of a listed building or, as in this case, its setting, this harm should be weighed against the public benefits of the proposal, including where appropriate securing its optimum viable use. The effect on the significance of a non-designated heritage asset should be taken into account in determining the application, taking a balanced judgement having regard to the scale of any harm and the significance of the asset.
14. The proposed development would ensure the continuation of a public house at the appeal site, thereby linking the proposal with the existing building and previous public house and beerhouses at or near the appeal site but on streets that no longer exist. The proposal would also deliver additional units of housing which would align with the Government's aims, as set out in the Framework's, of significantly boosting the supply of homes. The social and cultural benefits of the continuation of a public house presence at the site are therefore public benefits, as is the delivery of additional homes. These factors therefore weigh in support of the proposal.
15. The significance of the locally listed buildings is underplayed in my opinion. This, in turn, allows the appellant to reach the conclusion that the proposal would cause no harm to the setting of the listed buildings, or to the adjacent CA or locally listed buildings. The locally listed buildings at Nos. 1-11(odd) reflect and continue the proportions, massing and sense of rhythm and repetition from Commercial Road around into Deancross Street. Notwithstanding the appellant's views on the value of Nos 1–11(odd), or the

³ Diagonally opposite the eastern end of Nos 300 – 330 at the junction of Commercial Road and Jubilee Street

Dean Swift public house itself, I conclude that they nevertheless possess value both individually and collectively, and together contribute positively to the setting of the listed building, and to the overall character and appearance of the area.

16. There are public benefits arising from the proposal, as set out above, but without a robust justification in the manner set out by London Plan policy HC7 the proposal would fail to satisfy the requirements of London Plan policy HC7. Furthermore, as the proposal would fail to preserve or enhance designated and non-designated heritage assets it would also fail to accord with Local Plan policy S.DH3.

Living conditions

17. The appeal site lies roughly due south of the neighbouring four-storey residential block at 298 Commercial Road. That block has a roughly L-shaped footprint, with a small courtyard enclosed on two sides (north and east) by the building and by a substantial wall to the other two sides (south and west). There are habitable room windows on all four floors that look out from No. 298's south and west facing courtyard elevations, over the courtyard towards the proposed building.
18. The appellant's 'Daylight and Sunlight Report'⁴ (DSR) assesses a range of measures of daylight and sunlight. It confirms that existing daylight availability (measured as Vertical Sky Component – VSC) for the courtyard windows is below the Building Research Establishment (BRE) guideline figure of 27% VSC, a figure the BRE considers to be the minimum for sufficient skylight reaching an existing window. It also demonstrates that the proposal would reduce the VSC, albeit not below the BRE figure of 0.8 times the former value. The Council do not dispute these findings.
19. Whilst it is argued that this should be sufficient to demonstrate that the proposal would not cause unacceptable harm the Council, via a High Court judgement⁵, draws further on the BRE guidance which advises that where room layouts are known a 'no sky line' (NSL) assessment should also be undertaken. In this instance no such assessment has been carried out by the appellant nor, the appellant argues, is one necessary where the VSC criteria are met.
20. However, the judgement to which I have been referred, and which in turn sets out summary extracts of the BRE advice, states that it is both the total amount of daylight and its distribution within the building which are important. The summary extract refers to both VSC and NSL as being important in assessing whether or not an existing building may or may not be adversely affected.
21. At present, the main bulk, massing and rearward projection of the existing building is limited to largely in line with the flank elevation of the neighbouring building's south-facing elevation. Although the Dean Swift's rear yard is enclosed by a substantial masonry wall, both it and the wall around the courtyard area at the rear of No. 298 afford a relatively open aspect in the south / west quadrant.

⁴ Environmental Economics, dated July 2020

⁵ R v Sabine Guerry and London Borough of Hammersmith and Fulham and Newco 8915 Limited [2018] EWHC 2899 (Admin)

22. The proposed building would extend almost the entire depth of the plot's boundary with No. 298. At the rear, adjacent to and directly due south of the existing courtyard, this would mean the full four storey height of the building would extend across almost all of the courtyard's width. Figure 5 of the DSR demonstrates the extent to which the bulk and massing of the proposed building's flank elevation would have on amenity sunlight hours. Although the DSR downplays the effects of this on the courtyard windows at No. 298, it seems inconceivable that a building of the proposed height, bulk and rearward projection, due south of the courtyard area and the windows serving it and in close proximity to them, would not significantly reduce both direct sunlight and daylight more generally to the rear windows and courtyard of No. 298.
23. From my observations of the site and its surroundings and having given careful consideration to the evidence before me, I cannot be satisfied that without the inclusion of the NSL assessment, that the proposed development would not result in a materially harmful impact on the levels of daylight and sunlight enjoyed by occupiers of residential flats within 298 Commercial Road. As such, it has not been robustly demonstrated that the proposal would avoid material deterioration of the sunlight and daylight conditions, and therefore the amenities of, occupants of existing buildings. In failing to do so, the proposal is contrary to Local Plan policy D.DH8.

Balancing Exercise and Conclusion

24. The proposed development would ensure the continuation of a public house at the appeal site, thereby linking the proposal with the existing building and previous public house and beerhouses at or near the appeal site but on streets that no longer exist. The proposal would also deliver additional units of housing which would align with the Government's aims, as set out in the Framework, of significantly boosting the supply of homes. The social and cultural benefits of the continuation of a public house presence at the site are therefore public benefits, as is the delivery of additional homes. These factors therefore weigh in support of the proposal.
25. The appellant underplays the significance of the locally listed buildings to reach the conclusion that the proposal would cause no harm to the setting of the listed buildings, or to the adjacent CA or locally listed buildings. Notwithstanding the appellant's views on the value of the locally listed Nos 1-11(odd) or the Dean Swift public house itself, they nevertheless possess value both individually and together contribute to the setting of the listed building, and to the overall character and appearance of the area.
26. There are therefore public benefits arising from the proposal, as set out above, but without a robust justification in the manner set out by London Plan policy HC7 the proposal would fail to satisfy the requirements of London Plan policy HC7. Furthermore, as the proposal would fail to preserve or enhance designated and non-designated heritage assets it would also fail to accord with Local Plan policy S.DH3. These public benefits weigh in support of the proposal but not, I conclude, sufficiently so to outweigh the harm that would arise from the loss of the existing Dean Swift public house building and the redevelopment of the site or to the setting of the adjacent grade II listed building. The presence of the contiguous locally listed 1-11(odd) Deancross Street adds weight to my conclusions regarding harm to setting.

27. The failure to adequately and robustly demonstrate that the proposal would not result in a material deterioration of daylight and sunlight conditions for occupiers of existing residential properties is such that the proposal would fail to accord with Local Plan policy D.DH8. The limited public benefits identified above are not sufficient to justify a proposal that would result in material harm to living conditions in the manner I have identified, or the harm to the setting of the listed, and locally listed, buildings or that of the Commercial Road Conservation Area.
28. Thus, for the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR