



Appeal Decision

Site visit made on 23 February 2022

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2022

Appeal Ref: APP/N5660/W/21/3283026

82 Norwood High Street, London, SE27 9NW

- 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 Amarjeet Singh Whaid against the decision of the London Borough of Lambeth.
 - The application Ref 21/00365/FUL, dated 29 January 2021, was refused by notice dated 6 April 2021.
 - The development proposed is change of use of existing ground floor and basement level to showroom (Use Class A1) and associated works including alterations to existing shopfront.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development is taken from the Council's decision notice which describes just the proposed use and alterations. There is disagreement between the main parties on the present lawful use of the site.

Main Issues

3. The main issues are
 - (a) whether the proposal involves the loss of a public house and, if it does, the acceptability of the loss having regard to relevant planning policies,
 - (b) the effect of the shopfront alterations on the character and appearance of the host building, and
 - (c) the adequacy of the delivery and servicing arrangements in relation to highway safety.

Reasons

Public house use

4. The appeal relates to a detached three-storey building plus basement. There is a dropped kerb and vehicular access to its southern side leading to the rear of the site. A door to the southern side of the shopfront provides access to the upper floors. Doors to the shopfront's northern side provide access to a large ground floor rear addition, expressly excluded from the appeal proposal. The ground floor and basement of the frontage building have a long history of use as the Kings Head Public House but are currently vacant.

5. In September 1998 permission was granted for "*erection of conservatory to rear of pub to provide extensions to dance and bar area*" (ref. 98/01927/FUL). It would appear that the "*conservatory*" is the large rear addition and that it would have been used in association with the public house as a planning unit, although now access from this to the main frontage building has been bricked up. The planning application form describes the last use of the site as "*pub & night club (sui generis class use)*" and that this use ended on 29/09/2018.
6. The appellant's grounds of appeal, however, claim that the lawful use is now a nightclub. Scandals Night Club was granted a tenancy in November 2009 and operated for almost 9 years before closure. The appellant contends that the nightclub use would now be immune from enforcement action and is lawful.
7. The appellant has submitted two statutory declarations confirming that due to difficult trading, the freeholder of the site decided to cease operation of the public house and authorised works to remove fixtures and fittings, including the bar, seating, plumbing, pumps and chillers. This was to enable a reduction in the rateable value, which was achieved following inspection in February 2010. The freeholder's statutory declaration refers to diverting "*our efforts to the night club which operates separately at the rear with its own separate access*".
8. From the evidence before me it would seem that whereas the use following the 1998 permission related to the site as a whole, frontage building and rear addition, the nightclub use that operated from 2010 onwards related just to the rear addition "*with its own separate access*". The frontage building would have been functionally separate from the nightclub. Its use would have remained as a public house, albeit vacant and stripped out to obtain a rate reduction.
9. In the case of *Burdle*¹, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Where a unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes, each area that has a different primary use ought to be considered as a separate planning unit.
10. The appellant points to evidence to indicate a lawful nightclub use for the rear addition but in my judgement, there is doubt that the relevant planning unit includes the frontage building. As such, the ground floor and basement of the frontage building would retain a lawful use as a public house.
11. The proposal would therefore result in the loss of a public house and Policy ED9 of the Lambeth Local Plan 2020-2035 (2021) (LLP) and Policy HC7 of the London Plan (2021) fall to be considered. These policies relate to recently adopted development plans and seek to protect public houses. Policy HC7 states that "*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*". Policy ED7 also looks for marketing to be undertaken to demonstrate lack of viability. My site visit confirmed that considerable investment would be required for the public house use to recommence, but in the absence of any public house marketing information the proposal would be contrary to Policies ED9 and HC7.

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

Character and appearance

12. The appeal concerns an attractive historic building, a noticeable feature in this part of High Street. Its original pub front is largely intact with sturdy cast stone pilasters carrying a fascia and cornice. A roller shutter door for a goods lift would be inserted between two of the pilasters that frame the various window and door openings. Whilst the insertion would not change the structural framing, a portion of the frontage would be removed and the submitted plans do not provide details of the nature of the roller shutter, whether internal or not, or its implications for historic glazing and joinery.
13. The approval of such detailing would be more appropriate through a planning application rather than through discharge of a planning condition. The appellant has referred to the appeal decision² at 80 Norwood High Street in which the Inspector considered that a condition could be used to secure an appropriate design to proposed shutters. However, the shutter in the current appeal involves siting within a more sensitive building in which the shutter would be seen in the context of the remaining historic pub front. Moreover, the appeal is to be dismissed in relation to the first main issue. A new planning application would afford opportunity to review if this is the most appropriate location for a shutter and, if it is, to provide suitably detailed plans.
14. The proposal would be contrary to Policies Q11 and Q16 of the LLP and Policy D4 of the London Plan. These require alterations to positively respond to the original architecture which should be sympathetically incorporated into new work, even when changes of use are proposed.

Highway safety

15. The proposal is for a bathroom showroom. The plans show bays at ground floor and basement levels for the display of examples of bathroom fixtures and fittings. The goods lift would be necessary for the movement of larger items. The proposal does not include details of delivery and servicing arrangements. Vehicles could utilise the access to the site's southern side but there are uncertainties on the frequencies of trips, size of vehicles, turning arrangements and on how these could impact on the free flow of traffic in High Street.
16. Comparison has been made to the discussion on servicing arrangements in the appeal decision for the adjacent site at 80 Norwood High Street. However, that site is a builders' merchants with a high turnover of produce brought on to the site, some of it in large lorries which I observed at my site visit. The proposed showroom by contrast would be likely to be more modest in relation to both turnover of stock on site and frequency of large servicing vehicles needing to attend the site.
17. In these circumstances, a planning condition would suffice to enable appropriate delivery and servicing arrangements to be submitted to and approved by the Council to safeguard pedestrians passing by the goods lift and the free flow of traffic on Norwood High Street. A suitably worded planning condition could ensure compliance with the requirements of Policy T7 of the LLP and Policy T4 of the London Plan in relation to servicing and mitigating transport impacts.

² Appeal Ref: APP/N5660/W/18/3216953

Other Matters

18. The Council's fourth refusal reason related to the absence of a sustainability statement in relation to design standards. The Council subsequently accepts that this matter can be addressed through a planning condition in the event of the appeal being allowed.

Conclusion

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Policies ED9 and HC7 are engaged in relation to the use of the site and Policies Q11, Q16 and D4 in relation to its character. There are no material considerations that indicate that the appeal should be determined other than in accordance with the development plan.
20. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR

