



Appeal Decision

Site visit made on 26 July 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Appeal Ref: APP/V5570/W/21/3284945

First & second floors, 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 OYO Hotels against the decision of the Council of the London Borough of Islington.
 - The application Ref P2021/1930/FUL, dated 3 July 2021, was refused by notice dated 21 September 2021.
 - The development proposed is described as 'retrospective change of use of first & second floors of former public house (sui generis) to apart-hotel (Use Class C1)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I observed on my site visit that the change of use involved in this appeal has already occurred. Consequently, it is a retrospective application and I have dealt with the appeal on this basis.
3. I was granted access to nearly every room in the apart-hotel on my site visit. I am satisfied that the layout of the as-built development reflects that shown on the proposed plans¹. Therefore, I have assessed the change of use on the basis of those plans.

Main Issues

4. The main issues are:
 - whether or not the principle of the change of use is acceptable, having particular regard to the location of the appeal site and any loss of an ancillary use to a public house;
 - the effect of the change of use on the living conditions of the occupiers of neighbouring properties, with respect to noise and disturbance; and
 - whether the change of use adequately provides for disabled access.

¹ Drawing no: PS.72.EX.FP.02 Rev A (Existing & Proposed Floor Plans)

Reasons

Location and ancillary usage

5. This appeal relates to the first and second floors of 72 Prebend Street, Islington, which is a building located on the corner of Prebend Street and Coleman Fields. I observed that the appeal site was in use as an apart-hotel.
6. Appeal decision Ref APP/V5570/W/21/3281724 granted planning permission for the change of use of the public house on the ground and lower ground floors at 72 Prebend Street to a café and juice bar. I observed on my site visit that this use has been implemented. As no public house now exists on site, the Council's concerns relating to the loss of ancillary public house accommodation are no longer applicable, notwithstanding that the Council have mentioned that this is a discrete point of concern.
7. It follows that no conflict arises with Policy DM4.10 of Islington's Local Plan: Development Management Policies (adopted 2013) (DMP) which provides that, amongst other things, the Council supports the retention of public houses, and opposes their redevelopment, demolition and change of use. For the same reasons no conflict arises with Appendix 11 of the DMP which relates to marketing and market demand evidence.
8. Hotels are defined as a main town centre use in Annex 2 of the National Planning Policy Framework (the Framework). Similarly, Part G. of Policy CS 14 of Islington's Core Strategy (adopted 2011) (Core Strategy) provides that, amongst other things, the appropriate location for hotels and other visitor accommodation is within town centres, and Part A. of Policy DM4.11 of the DMP provides that, amongst other things, hotels and other visitor accommodation are generally appropriate in Designated Town Centres and areas within the Central Activities Zone (CAZ) that are within the designated City Fringe Opportunity Area or are in close proximity to national railway hubs.
9. Part G. of Policy E10 of The London Plan (published 2021) also provides that, amongst other things, in those parts of inner London outside the CAZ, serviced accommodation should be promoted in town centres and within Opportunity Areas.
10. However, the appeal site is neither within a town centre, the CAZ, or an Opportunity Area. Rather, the site is situated within a predominantly residential area, outside of these areas.
11. Considering this, I find that the principle of the change of use is not acceptable, having particular regard to the location of the appeal site. Hence, the change of use has caused significant planning harm by virtue of the change of use being in direct conflict with the Council's spatial aspirations for the area. In particular, as the supporting text to Policy DM4.11 of the DMP makes clear, while hotels can create jobs and support the visitor economy, it is important to ensure that other planning objectives are met, including ensuring that hotels do not limit the achievement of other priorities (including economic and housing growth), securing a balance of uses, protecting residential amenity, and addressing local impacts (particularly traffic impacts).
12. With regards to its location, the change of use therefore conflicts with Part G. of Policy CS 14 of the Core Strategy, Part A. of Policy DM4.11 of the DMP, Part

G. of Policy E10 of The London Plan, and Annex 2 of the Framework, the relevant parts of which I have summarised above.

Noise and disturbance

13. The site is located in a predominantly residential area. A long row of residential properties stretching along Prebend Street adjoins 72 Prebend Street and their gardens / sitting out areas lie directly to the rear of the site. Coleman Fields also contains a large number of residential properties in close proximity to the site.
14. In this tight-knit residential area, the change of use involving potentially up to 18 guests residing in the apart-hotel at any one time means that there is a likelihood of noise and disturbance being generated which would affect nearby residential occupiers. Indeed, in addition to the Council's reference to a noise complaint relating to the site, a number of concerns have been raised by local residents, including in relation to ongoing night-time noise, large noisy gatherings, traffic noise, and the comings and goings of food delivery vehicles.
15. I have had regard to the submitted Operational Management Plan. Although that plan refers to inappropriate behaviour by guests, it does not specifically refer to issues relating to noise and disturbance. As such, I cannot be certain that the Operational Management Plan would adequately address the concerns identified with respect to noise and disturbance.
16. The Council has suggested a planning condition relating to a Management Plan, to include details relating to noise mitigation measures (including monitoring access to the upper floors). However, as no Noise Impact Assessment or other relevant technical evidence has been provided to demonstrate the severity or otherwise of the change of use in its context, I am not convinced that such a Management Plan would adequately mitigate the concerns identified, especially considering that based on the evidence before me, these are not isolated incidents.
17. Had the appeal been acceptable in all other respects the option of seeking technical information from the parties regarding the impacts of the change of use with respect to noise and disturbance would have been open to me. However, as the appeal is being dismissed for other reasons, without this information I am unable to conclude that the change of use would not have an unacceptable effect on the living conditions of the occupiers of neighbouring properties, with respect to noise and disturbance.
18. On the evidence before me I find that the change of use conflicts with Policies DM2.1 and DM4.11 of the DMP, which collectively provide that, amongst other things, for a development proposal to be acceptable it is required to provide a good level of amenity including consideration of noise and the impact of disturbance, and with Policies D13 and D14 of The London Plan which collectively provide that, amongst other things, in order to reduce, manage and mitigate noise to improve health and quality of life, residential and other non-aviation development proposals should manage noise by avoiding significant adverse noise impacts on health and quality of life.
19. The change of use also conflicts with paragraph 130 f) of the Framework which provides that, amongst other things, planning decisions should ensure that

developments create places with a high standard of amenity for existing and future users.

Disabled access

20. The apart-hotel is accessed externally and independently from the rest of the building, via a door fronting Coleman Fields, which leads to a fairly steep staircase towards the upper floors. The apart-hotel, which is situated on the upper floors of the building, is therefore not accessible by individuals in wheelchairs.
21. Whilst the appellant has asserted that there has never been an internal link between the ground and the upper floors, the main parties do not agree as to whether it would be viable for wheelchair access to be provided on site, such as by the provision of an internal or an external lift. On the basis of the evidence before me, it is not possible to ascertain whether the building could be modified in such a way.
22. Notwithstanding this, I must assess the change of use as it stands. On this basis, the change of use is clearly in conflict with Part B. vii) of Policy DM4.11 of the DMP which provides that, amongst other things, proposals for new hotel and visitor accommodation will only be supported where they are inclusive, providing at least 10% of all hotel rooms to wheelchair accessible standards. I note that the 10% requirement in Policy DM4.11 would require that at least 1 of the rooms in the apart-hotel to be wheelchair accessible, but due to the access arrangements the change of use does not even meet this minimum requirement.
23. I am required by law to consider the change of use within the terms of the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010 (as amended) (Equality Act). It follows from my reasoning above that the change of use does not provide adequate access for persons with certain physical disabilities, specifically wheelchair users. Disability is a legally protected characteristic for the purposes of the PSED.
24. As such, whilst I note that the appellant has referred to marketing information stating that the apart-hotel is not appropriate for guests in wheelchairs, in my view the inescapable conclusion is that the apart-hotel effectively excludes certain people from staying because of their disability.
25. In other words, some disabled people are being treated less favourably than non-disabled people, because of their disability, which is a protected characteristic. Consequently, I consider that the change of use does not assist in meeting the aims of section 149(1)(a) of the Equality Act, which relates to the need to eliminate discrimination, but rather acts against this aim.
26. Similarly, whilst I have taken account of the size of the apart-hotel (including the maximum number of guests), by way of not providing adequate access for disabled people, the change of use does not serve to advance equality of opportunity between disabled and non-disabled people, which is a matter that I must have due regard to under section 149(1)(b) of the Equality Act.
27. I therefore find that the change of use does not adequately provide for disabled access. The change of use conflicts with Part B. vii) of Policy DM4.11, which I have summarised above, and with Policy DM2.2 of the DMP which provides that, amongst other things, all developments shall demonstrate that they

produce places and spaces that are convenient and enjoyable to use for everyone.

28. The change of use also conflicts with Policy E10 of The London Plan which provides that, amongst other things, London's visitor economy and associated employment should be strengthened by inclusive access, and to ensure sufficient choice for people who require an accessible bedroom, development proposals for serviced accommodation should provide either 10 per cent of new bedrooms to be wheelchair-accessible or 15 per cent of new bedrooms to be accessible rooms, and with paragraph 130 f) of the Framework, which provides that, amongst other things, planning decisions should ensure that developments create places that are inclusive and accessible.
29. Conflict also arises with the guidance given in Inclusive Design in Islington: Supplementary Planning Document (adopted 2014) which aims to deliver an inclusive and sustainable environment within which all sections of the community enjoy the same benefits and opportunities. Given the manifest policy conflicts identified above, I consider that the harm caused is significant.
30. Policy E10 makes reference to Policy SD7 of The London Plan, which is referenced in the Council's decision notice. However, Policy SD7 relates to 'Town centres: development principles and Development Plan Documents' and therefore is not directly relevant to this main issue.

Planning Balance

31. I have found above that the change of use conflicts with an up-to-date development plan. In this respect I am mindful of the Framework's requirement that the planning system should be genuinely plan-led. In such situations, the Framework advises that planning permission should not usually be granted. However, it is necessary to consider whether other material considerations indicate that the plan should not be followed.
32. The site is located within the Arlington Square Conservation Area (conservation area). The significance of the conservation area, as a whole, is derived in part from its abundance of well-maintained 19th century properties with period details, commonly arranged in cohesive terraces, and its wide streets. The site's positive contribution to the conservation area derives in part from its appropriate scale in relation to its immediate surroundings, and the brickwork to its upper floors which aesthetically blends well with many nearby properties. As the scheme relates to a change of use, with no alterations to the external appearance of the building, I am satisfied that the change of use preserves the character and appearance of the conservation area. Thus, there is no harm to its significance as a designated heritage asset. This, however, is a neutral factor, which does not weigh in favour of the change of use.
33. The change of use represents a viable commercial use on site, which based on the evidence before me, appears to have been previously vacant for an extensive period. The change of use adds to the stock of visitor accommodation in the local area and thereby makes an effective use of land, in compliance with paragraph 119 of the Framework, in strict land-use terms. Although reference has been made to paragraph 120 c) of the Framework, as no identified need for visitor accommodation in the area has been demonstrated and considering my findings on the first main issue above in relation to the location of the

change of use, I consider that the 'substantial weight' referred to in that paragraph is not applicable in this instance.

34. The change of use provides a number of economic benefits in that visitors to the apart-hotel likely contribute to the local economy during their stay, including to the night-time economy and the café and juice bar at 72 Prebend Street itself. Additionally, a number of services and facilities are available in the local area, including convenience stores, restaurants, and health care providers, which guests may frequent. Although the apart-hotel does not have a formal reception area, it does provide employment in relation to the regular cleaning, service and maintenance of the rooms within it.
35. The apart-hotel is located in a very accessible area, with bus, underground, and rail services within walking distance. Whilst the site is situated within a predominantly residential area, considering the proximity of the site to central London, I consider that it is likely that guests contribute to the economic vitality and social life of central London's tourist areas.
36. Ultimately this change of use relates to a fairly small-scale apart-hotel, with the scale of the various economic and social benefits as summarised above being intrinsically linked to the maximum number of guests catered for and its limited scope for employment generation. Thus, I consider that all these benefits when considered collectively provide only modest support for the change of use. Therefore, in total these amount to no more than moderate weight in favour of the change of use.
37. Set against these benefits is the significant planning harm that the change of use has caused by virtue of the change of use being in direct conflict with the Council's spatial aspirations for the area, and the separate instance of significant harm caused by the change of use not adequately providing for disabled access. On the second main issue, above, I found that I am unable to conclude that the change of use would not have an unacceptable effect on the living conditions of the occupiers of neighbouring properties, with respect to noise and disturbance.
38. As such, I find that the matters advanced in support of the change of use, do not, either individually or collectively, outweigh the harm identified, nor the conflict with the development plan identified.

Conclusion

39. For the reasons given above, having considered the development plan as a whole, the approach in the Framework read as a whole, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR