



Appeal Decision

Hearing held on 6 December 2022

Site visit made on 7 December 2022

by Alison Scott (BA Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Appeal Ref: APP/K5600/W/22/3293575

57 Princedale Road, London W11 4NP

- 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 Barry Polley c/o Kingscastle Limited against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/00816, dated 5 February 2021, was refused by notice dated 25 August 2021.
 - The development proposed is Retention of public house at basement and ground floor. Alterations and erection of three storey infill extension, basement extension and change of use of first and second floor of public house to Class C3 (dwelling houses) to provide 5 residential dwellings.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is:
 - The effect of the proposal on the viability of the public house.

Reasons

3. Norland Conservation Area was originally built as a residential neighbourhood dating from the early nineteenth century. It was built on a grid layout comprising of long runs of three storey terraced houses constructed from London stock bricks, rusticated ground floor, stone dressings to first and second floor windows, with the main front elevation based on neo-classical proportions.
4. The character of the conservation area is typical of this period of residential development complete with the appeal site public house built on the corner of Princedale Road and Penzance Street, using the same materials but a more imposing development with stone quoins and corner stone pilaster. It is likely that the public house at the corner would have been an important social venue for the local Victorian community. The appeal building known as 'The Academy' is arranged as three storeys over a basement. It is typical of its original use where the bar and saloon are at ground floor with the upper floors laid out to ancillary residential accommodation.
5. The proposal is to extend the building by a side infill extension with a basement excavation and extension to form eating and drinking space for customers and

staff quarters. A reconfigured ground floor would also be created. The ancillary living accommodation above the ground floor saloon at first and second floor would be converted into two self-contained flats.

6. It is apparent from the Asset of Community Value (ACV) designation, and the numerous letters from interested parties, that The Academy was a valued community pub in an area where other premises have been lost to different uses. The business ceased trading around August 2016, with its closure likely to have been associated with demographic and societal changes. In addition, the effect of its back street location would likely to have been a factor in the premise's demise as it is set away from the footfall of Holland Park Avenue and Ladbroke Grove which reduced opportunities for passing trade. Indeed, I note at my site visit that the interior of The Academy was tired in appearance with little financial investment for some time.
7. The appellant is of the view even if the upper residential floors were not tied to the use of the public house, it would be possible to bring it back into successful operation through the proposed re-development in combination with a strong food and beverage offer.
8. The new basement has been designed to compensate for the loss of the existing conservatory as a dining room and to similarly be capable of overflow drinking space, as well as a private hire or events space. In the appellant's view, the proposal would increase the overall volume of tradeable floor space within the building.
9. In terms of the practicalities of the existing conservatory, it is not located within an inconveniently circuitous location away from the main bar. Nor does the shallow internal steps pose as a barrier to its accessibility for patrons or employees. There is nothing before me to agree with the appellant that it is 'poor quality' and not fit for purpose.
10. In contrast, the new basement has no externally independent access for customers. It would only be accessed via an internal staircase located on the ground floor. Although discussed at the Hearing, I conclude it would not be acceptable to provide a chair lift as a means of mitigation to ensure access for all into the basement, due to its practicalities.
11. The Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The definition of 'Protected Characteristics' include people who have a disability, age, as well as pregnancy and maternity. The proposed layout, where patrons would have to negotiate several steps, would make the venue less attractive to those less mobile, or with children, for example. As a multifunctional space, therefore, its poor accessibility would preclude its use to everyone in the local community. As a consequence, this is likely to severely restrict its function and ability to meet customer demand.
12. Moreover, the only accessible toilet would be located on the ground floor. This would further compound the poorly designed nature of access to the building for all, especially during a privately hired event within the basement.

13. The basement space would not be an improvement to the existing conservatory, or of comparable quality in terms of community benefit. Such adverse factors cumulatively weigh against it. As a result, this would not create an operationally flexible venue and be likely to lead to an undermining of the popularity of the public house and hence its viability.
14. Turning to other layout considerations, there would be ancillary storage space for the bottled/drinks store on the ground floor. The comments received from a fellow publican pointing to the inconvenience of deliveries and collections that would have to be taken via the main entrance on Princedale Road and across the saloon floor to the store on the opposite side of the bar, I also find would be problematic.
15. The operator's sales of a variety of craft beers, spirits and soft drinks relies on deliveries from the supplier. As such, due to the limited circulation space as demonstrated on the submitted plans and the drag distance to the bottle store, the proposed arrangement would be inconvenient to the operator who would be required to move furniture to accommodate deliveries across the saloon floor. Customers would also be disrupted as a consequence. A scissor lift within the basement would not improve delivery options to the bottle store. Deliveries and collections from the supplier would lead to inevitable damage to the fit-out of the saloon area. This would have an influence on the quality of the environment and cost implications associated with such damage.
16. Timing of deliveries and collections to the venue could be imposed by condition according to the operator. He said he has easy access to suppliers although this is a personal situation to him and could not necessarily be applied to another operator. However, it would be onerous as a planning condition in this case in light of the requirements of paragraph 56 of the National Planning Policy Framework (the Framework). Furthermore, I am not convinced that a planning condition could be reasonably applied to ensure deliveries and collections occurred before trading times. Besides, this would have an adverse effect on their business should they require short notice in the demand for more beverages.
17. No dedicated storage for effects associated with the public house such as external furniture including ancillary business equipment and systems management keeping is proposed, even if the venue is to be cashless with CCTV equipment to operate remotely. There will be a need for storage of items associated with running the business, made more severe by the proposed loss of the upper ancillary space. This further compromises the flexibility of the venue.
18. Therefore, all these matters considered, I apportion significant weight to the practical and functional shortcomings I have identified. These would have an adverse effect on the operation, and consequentially the viability of the public house.
19. Aside from the layout, the public house needs to rely on customer trade to be a successful venture. As I have heard from neighbours, The Academy was viewed locally as a walk-to pub, not a destination venue, despite the evidence presented as a 'bar and restaurant', it was a drinking establishment with food available, as shown on the submitted menus. The comparison trading profiles brought to my attention by the appellant of The Castle, Julies, and The Ladbroke Arms do not lead me to reach a different conclusion on the matter.

20. To influence customer demand from beyond the immediate area to increase its flexibility and bolster its income as a travel to trade destination would require initiatives to draw in patronage. The reputation of a chef or executive chef and the number of years' experience of the operator could have an influence on customer attraction. However, without more precise information, there is not enough before me to quantify how this could attract a following away from the local neighbourhood.
21. There are public houses with no live-in staff which is preferable to the appellant to sever the ancillary accommodation from being tied to the public house given, amongst things, profit considerations as well as the operator's own experiences of live-in staff. This is however based on his own account and cannot be considered as a broad view on the matter. I am also aware of public houses where staff members reside; The Ladbroke Arms is one such example. All things considered however, I would not disagree with a previous Inspectors' reasoning on an earlier appeal¹ at the site. She formed the view that it may be difficult to attract skilled catering staff without on-site accommodation. In addition, the effects of post Covid staff retention and the current economic climate and offer of staff accommodation can also have a bearing on recruitment.
22. Practicalities of living on site can extend to deliveries and collections which could reasonably occur late at night or early morning, and should no on-site accommodation be available, this could reduce the flexibility of the business. In addition, I am aware that an extant permission to retain the ancillary accommodation exists at the appeal site.
23. The circumstances at the Queens Head in Chelsea are not sufficiently the same as the appeal proposal before me to justify the loss of ancillary accommodation. Although it is also an ACV, the Council approved this, taken together with the effects of various other developments at the site in February 2017² by balancing the effect of a tradeable floorspace at basement level with evidence that rationalising floorspace does not result in a detrimental effect on viability, and the internal layout did not pose a logistical problem. Important is the fact that the ACV has since been re-designated in around December 2019 by the Council to remove the upper floors from the earlier ACV status. I also note it is located in the Chelsea region of the Borough, and its position is better served to be able to attract passing trade from the Kings Road.
24. Nor do I consider the Cross Keys³ at Chelsea Embankment to be suitably comparable. The Council confirmed that they applied considerable weight to the viability report submitted with the scheme. The internal arrangement of the Cross Keys does not compare to that of the proposal before me with its problematic layout. Furthermore, the Cross Keys is not an ACV. Neither of these venues convince me in favour of the proposal. Indeed, all these matters point to no sound evidence to remove this ancillary accommodation.

¹ APP/K5600/C/19/3242973 & APP/K5600/C/19/3242974

² PP/16/08494 Change of use of first and second floors to residential use; Incorporation of 1a Elystan Place into the site and alterations to provide 1No. dwelling at ground to third floor level and rear extension at basement and ground floor to create additional pub floorspace; Change of use of 25 Tryon St to create 1No. dwelling, including excavation of basement and improvements to front elevation to match the rest of the terrace along Tryon St; Mansard roof on the Queen's Head pub to provide 1No. dwelling; Installation of plant and associated ducting; Rear extensions at first and second floor levels and other associated alterations. Approved 27 February 2017

³ PP/14/03576 Change of use of 1st and 2nd floor to residential, mansard extension, rear extension, retention of pub use at basement and ground floors. Public House, 1 Lawrence Street, LONDON, SW3 5NB

25. I apportion only limited weight to the appellant, operator, and architect's 'considerable experience' of this industry although that does not guarantee a successful business model, with no robust evidence before me to justify that operators are seeking out smaller venues. Many of the venues the operator has been associated with or brought to my attention as justification for the scheme, are located in other areas of the capital or of different sizes. They do not reflect the specific circumstances of this site and are therefore of limited relevance here.
26. Nor do I have evidence before me to attest that it would be a feasible working model for another operator to successfully run, despite the submitted letters of interest from other small-scale operators prepared to lease the building. Of consequence is that their businesses are of a different hospitality nature to that of the appellant's operator's, with no evidence presented to demonstrate it would fit their particular concept without considerable investment.
27. Even though The Academy has since closed, there is nothing to say that another operator could make the premises financially viable without the same financial resources being ploughed into it, or the need to travel to trade to support it.
28. I note the appellant's commitment to leasing the building and fitting out the public house and basement prior to the residential accommodations being occupied by way of securing a planning condition to this effect. I have no reason to suggest this could not meet the requirements of paragraph 56 of the Framework. Nevertheless, this would not mitigate the harm I have previously raised to the development.
29. Turning to the financial viability of the scheme, the operator has submitted various viability reports including one dated January and May 2021 to which I have taken into account. In addition, I also acknowledge the professional appraisal by the appellant's own Chartered Surveyor, Trevor Watson, dated February 2022 and that of the interested parties dated March 2021.
30. The cost of the fit-out of the public house from warm shell position varies considerably between that of the operator's appraisal figure and that of the appellant's. There will of course be differing costs associated with the specification and the standard of the interior to which the CGI's demonstrate a contemporary finish. I am mindful that despite the operator's own connections with the construction industry as a reason for such a low fit-out cost, the venue is in central London where build costs are inevitably higher than the majority of other regions. In this regard, I am more persuaded by the figures presented by Mr Watson.
31. A significant difference between the appraisals before me is the differing methods of collecting revenue figures. I cannot be certain that the method used by the operator when he applies the revenue figures from The Academy, last operating in 2014, and the consequence of a new basement trade floor and a food-based narrative, to form an accurate but 'conservative estimate' of the amount of turnover the business would generate.
32. The appellant's forecast predictions are detailed as a working 'hypothetical' account using figures derived from revenue from other 'similar affluent neighbourhoods'. However, the comparisons presented are not consistent due to the likes of historic revenue, date of accounts and size of venue. This leads

to uncertainty. Furthermore, he uses Year 2 financial forecasts. Without understanding the financial forecast for Year 1, it cannot be determined whether or not the business would be financially sustainable, despite their assurance that the revenue it would generate would clear the debt in a short number of years.

33. The effect of staff wages would also have a considerable influence on profitability. These vary between the operator's own figures and that of the appellant's expert and are based on the total income from sales. Therefore, I cannot be certain from the information before me what is a reliable and accurate reflection of wages for this type of business. They could lead to unnecessarily high outgoings that may have a negative effect on the venue's viability. This is taken together with unidentified 'operating supplies', and the high costs associated with repairs and maintenance in Year 1, and various high fees leads to more uncertainty as to the accuracy of financial forecasts.
34. As I have read, in this type of industry, there are a considerable number of variables at work from the initial starting point and gathering a more thorough understanding of trading patterns after the initial start-up period. For the business to be viable, the operator is required to make a profit to service the debt, from the beginning. Revenue margins need to be realistic and are further affected by the fragility of the current economic climate, impacts of staff shortages, and rising construction and steep energy costs. In a nationally recognised turbulent economy, I have no substantial evidence to back up Mr Watson's comments that the UK hospitality sector will see a strong uplift in revenue in the year 2023, or beyond, despite any government incentives that may arise.
35. Revenue is ultimately predicated on a successful turnover of customer sales. The operator would need time to build up a customer base, especially as they stipulate a draw from travel to trade custom. Nevertheless, there will be considerable pressure on relying on footfall, from early on. Moreover, I have genuine concerns regarding the reliability of the figures presented within the viability reports and the background they have been derived from.
36. Bringing matters together, the appellant's unique selling point is gastro-style food and beer-centric offer. However, the removal of ancillary accommodation would erode its flexibility and attractiveness for potential employees. I have assessed how the complete floor areas would function. I have found that the replacement conservatory space to be re-provided within the basement would not be acceptable. Its poor accessibility would lead to community segregation that is a critical factor of the ACV designation. In addition, the effect of the layout of both floors in other ways has severe limitations to the detriment of the customer. I am convinced customer trade would be severely compromised by the proposal before me.
37. Consequently, whilst this scheme does not set out to see the loss of a public house, its retention as a community facility is an imperative of the Kensington and Chelsea Development Plan 2019 Policy HC7 that seeks to protect local facilities where their uses make a positive contribution to the area. This sentiment is also echoed through the Norland Neighbourhood Plan 2013 Policy N9 and London Plan 2021 Policy HC7. The successful operation of the public house relies on flexible and an adaptable space to which the accumulation of the factors I have identified places this in doubt.

38. Therefore, I find that the development would result in an adverse effect upon the future adaptability and flexibility of the public house and consequentially harm its viability and undermine the safeguarding of the Asset of Community Value.
39. To conclude, the proposal does not wholly conflict with the objectives of the Kensington and Chelsea Local Plan 2019 Policy CK2 or the Norland Neighbourhood Plan 2013 N9 that aims to resist the loss of public houses. However, the combination of its compromised operation would not meet the objectives of London Plan 2021 Policy HC7 that aims to protect public houses.

Other Matters

40. The Council's policy on parking restricts future residential occupants of the development from gaining access to on-street parking permits in order to reduce on-street parking stress within the local area. To secure this, a unilateral undertaking is the Council's preferred method. The appellant has provided a signed unilateral undertaking.
41. Having considered its purpose, I am of the view that the obligation is satisfactory to prevent future occupants from being able to access on-street vehicle parking permits. Therefore, the proposal would accord with Local Plan Policy CT1 and the Transport and Streets Supplementary Planning Document in their broad aims to control on-street parking stress.
42. In accordance with the statutory duty set out in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. I find no reason to disagree with the Council's position on the matter. To that end, the general appearance and character of the CA would not be adversely affected, and the appearance of the immediate surroundings would be preserved. There would be no harm to the significance of the heritage asset as a whole. However, irrespective of my conclusion on this, I am considering the proposal before me as a whole.
43. The appellant confirmed at the Hearing that the extant permission at the site is not a viable scheme although no specific details have been submitted.

Balance

44. I find the proposal conflicts with the development plan when taken as a whole. With regards to the issue of residents parking, it would comply with Policy CT1 of the Local Plan. It would cause no harm to the living conditions of future and local occupants. However, these are neutral matters in the overall consideration of the proposal and neither weighs for or against the scheme.
45. More significantly, the fact that the proposal would bring back into purpose a public house that is vacant and has not been a going concern for over six years, is a material consideration. In recent years, it has therefore not fulfilled its function as a community venue. I apportion substantial weight to the value that would arise to the community by trading again.
46. As well as this, I appreciate the contribution the scheme could make in boosting the supply of housing in the Royal Borough of Kensington and Chelsea in accordance with Local Plan Policy CH1. The severe shortfall in their housing delivery, agreed at the Hearing to be 3.7 years, and the recognised need for

more homes only serves to highlight the Council's failings at providing new homes.

47. Footnote 8 of the Framework establishes that the policies of the development plan which are most important for determining the application are out-of-date in respect of a 5 year housing land supply, Paragraph 11 of the Framework indicates that in such circumstances the presumption in favour of sustainable development is engaged. This means granting permission for the proposal unless:
- i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
48. There are identified benefits associated with the proposal and these are material considerations. The economic benefits through construction are noted and weighs in its favour. Revenue to the Council would directly occur through Council Tax and CIL contributions. It would generate spend within the local area and job creation would arise as part of the scheme. The contribution the landscaped communal garden is a welcome addition to the scheme. Its wider contribution to biodiversity would be small as would the availability of external seating in light of the Coronavirus pandemic. As a combination of factors, these would bring relatively modest benefits and as such, in my judgement, attract only moderate weight. These benefits could arise without this specific scheme in place. The fact that it would lead to no harm to the significance of the conservation area is also of only moderate weight to my judgement.
49. The most significant of benefits would be the increased number of residential units, especially in one where there is currently a lack of supply. It would however only add a very limited contribution to the supply of local housing. To trade again as a public venue is welcome, but it would come at the expense of significant compromises. It would not be accessible to all, severe limitations of its practicality, function and adaptability, would operationally affect the venue. The loss of ancillary residential accommodation only seeks to limit its options as live-in staff quarters, overflow storage or ancillary facility.
50. Therefore collectively, the adverse impact of the adaptability and flexibility of the scheme would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework when taken as a whole. Under Framework paragraph 11(d), the appeal proposal would not benefit from a presumption in favour of sustainable development.

Conclusion

51. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal is dismissed.

Alison Scott

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Derek Taylor	Team leader
Sarah Gentry	Principal Planning Officer
Carolyn Goddard	Team Leader Enforcement

FOR THE APPELLANT:

Richard Ground	KC Cornerstone Barristers
Nick De Lotbiniere	Savills (UK) Limited
Jourdan Alexander	Savills (UK) Limited
Andrew Clinch	Clinch Design
Trevor Watson	Chartered Surveyor
Philip O'Sullivan	ETA

INTERESTED PARTIES:

Carolyn Arnold	Chair Clarendon Cross Residents Association
Mary Sheehan	Clarendon Cross Residents Association
Amanda Frame	Chair The Kensington Society
Michael Bach	Chair The Kensington Society Planning Committee
Libby Kinmonth	Chair Norland Conservation Society
Michael Johnson	Licensee The Duke of Wellington Chelsea