



Appeal Decision

Site visit made on 2 May 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th May 2023

Appeal Ref: APP/V5570/W/22/3307718

38 Charterhouse Street, London EC1M 6JH

- 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 Oak Investment Holdings Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2022/1359/FUL, dated 14 April 2022, was refused by notice dated 9 June 2022.
 - The development proposed is 'use of the lower ground, ground and first floor as a flexible Class E use'.
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Decision

1. The appeal is allowed and planning permission is granted for 'use of the lower ground, ground and first floor as a flexible Class E use' at 38 Charterhouse Street, London EC1M 6JH in accordance with the terms of the application Ref P2022/1359/FUL dated 14 April 2022 subject to the conditions in the attached schedule.

Preliminary Matter

2. The Council's decision notice gives a revised description of development from that stated on the planning application form, referring to 'change of use of the existing drinking establishment/public house (lower ground, ground and first floor) (sui generis) to a flexible Class E use'. However, the appellant disagrees with the inclusion of 'public house' as a description of the existing use. This is a matter that I consider further as part of my assessment of the main issue below. In my view though, the description given on the application form adequately sets out what is being proposed, and I have therefore used this original description in the banner heading and my formal decision above.

Main Issue

3. The main issue is whether or not the proposed change of use would be acceptable having regard to relevant planning policies including in relation to public houses and the effect of the proposal on the Central Activities Zone, the Bunhill and Clerkenwell Key Area, the Employment Priority Area and the Charterhouse Square Conservation Area.

Reasons

4. The appeal relates to the lower-ground, ground and first-floor levels of a broadly triangular building which sits in a prominent position addressing a corner between 2 arms of Charterhouse Street. The site is located within the Charterhouse Square Conservation Area ('the CA'). It is also within the Central

Activities Zone ('the CAZ') as identified by the London Plan 2021 ('the LonP'); within the Bunhill and Clerkenwell Key Area ('the BCKA') as identified by the Islington Core Strategy 2011 ('the ICS'), and an Employment Priority Area (General) ('an EPA') as noted by the Finsbury Local Plan Area Action Plan for Bunhill & Clerkenwell 2013 ('the AAP').

5. At the time of my visit, the appeal building was vacant. The main parties indicate that it was last occupied as 'Beer Hawk', and agree that the use of the premises fell under the former A4 Use Class of the Use Classes Order 1987 (as amended) ('the UCO'), and is now a Sui Generis use following amendments to the UCO which no longer specifies a class for uses including public houses, wine bars or drinking establishments. However, the appellant contests the Council's position that the proposal would result in the loss of a public house use and should be assessed having regard to Policy HC7 of the LonP and Policy DM4.10 of the Development Management Policies 2013 ('the DMP'). These policies contain specific provisions for proposals affecting public houses, including requirements for marketing evidence to demonstrate that there is no realistic prospect of use as a pub in the foreseeable future.
6. In essence, the appellant's view is that the existing use of the building ought to be considered as a drinking establishment while the Council considers that there is no distinction between a drinking establishment and a public house. The former A4 Use Class of the UCO referred to 'Drinking Establishments - Public houses, wine bars or other drinking establishments'. The description of the uses with no class specified now listed at Article 3(6)(p) of the UCO also includes both 'public houses' and 'drinking establishments'. Neither term is defined further in the legislation, but the reference to both public houses and drinking establishments does suggest to me that there may be some practical distinction between them, even if they still fall under the same use categories for the purposes of the UCO.
7. Furthermore, the appellant points to the definition provided within the glossary to the DMP which sets out that a public house is '*an establishment generally featuring a bar and/or other public rooms licensed for the sale and consumption of alcohol on the premises, which caters for a wide range of people within local communities and beyond. A Public House is distinguished from other licensed drinking establishments by its contribution to the historic character of an area, particularly through historic and architectural features of the building itself.*' The explicit reference in the glossary to a public house being distinguished from other licensed drinking establishments indicates to me that the terms are not necessarily interchangeable and that there is a distinction to be made between them for the purposes of Policy DM4.10 which refers specifically to 'Public Houses'.
8. Turning then to whether the appeal building would be a public house under the definition in the DMP, the evidence before me and my observations at my visit indicate that the building was in use as an establishment featuring a bar and/or other public rooms licensed for the sale and consumption of alcohol on the premises. I have no firm reason to find that use of the site in this way could not realistically cater for a wide range of people. The existing use of the building would therefore fulfil the first part of the definition of public house within the glossary to the DMP.

9. However, the Council has not challenged the appellant's evidence that the appeal building was originally constructed as a warehouse, and was subsequently used variously as a showroom with offices, for office and retail purposes, as a café/restaurant and as a bar prior to the most recent occupiers. The use of the premises as an establishment licensed for the sale and consumption of alcohol is therefore a relatively recent chapter in the building's history. The unusual shape of the building and its retained architecture and detailing provide an attractive feature in the street scene which I consider to make a positive contribution to the character and appearance of the CA. The premises are also part of the overall mix of uses in the area which are an important element of the significance of the CA. Nevertheless, I have not been directed to any historic or architectural features of the building which originate from or which are particularly associated with use as a licensed establishment and that contribute to the historic character of the area. Nor have I been provided with compelling evidence that would lead me to conclude that the existing use contributes in itself to the historic character of the area or to the significance of the CA.
10. On that basis, I find that the existing use of the building would not comply with the second part of the DMP definition of a Public House, and it would instead be an 'other licensed drinking establishment' within the terms of the glossary to the DMP. As a consequence, I consider that the requirements of Policy DM4.10 of the DMP which pertain specifically to public houses would not be directly relevant to the proposal.
11. I have not been made aware of a similar definition or specific guidance on the meaning of public houses in the context of Policy HC7 of the LonP. However, Policy HC7 only sets out a requirement for marketing evidence where loss of public houses with heritage, cultural, economic or social value is proposed.
12. The supporting text to Policy HC7 lists characteristics to be considered when assessing whether a public house has heritage, cultural, economic or social value. The site is in the CA, but for the reasons above, I consider the contribution that the site makes to the historic character and significance of the area to be unrelated to its specific use as a public house or drinking establishment. The Council outlines that the premises previously benefitted from a licence which provided for entertainment by way of films, live music, recorded music and dance performance, and that it could potentially accommodate private functions. Even so, the information before me indicates that Beer Hawk occupied the building for only a fairly brief period between acquiring the premises in 2019 and March 2020 when it closed owing to the COVID-19 pandemic and did not reopen. While the premises could be visited by different groups and communities, the scope to build community relationships was accordingly limited, and the appellant advises that there were no affiliations with any sports club or team. From the information before me and my observations of the layout, fit out and nature of the premises, the use would in my judgement have been more akin to a bar than a public house catering particularly for the local community or having notable heritage, cultural or social value.
13. The use of the site could make a positive contribution to the area's day, evening and night-time economy which is one of the attributes of pubs highlighted by the LonP. Nevertheless, the relatively small scale of the premises would limit the contribution, and the Council has not asserted that

there would be conflict with Policy HC6 of the LonP which seeks broadly to support the night-time economy.

14. The supporting text to Policy HC7 comments that pubs are a unique and intrinsic part of British culture, and that many pubs are steeped in history and are part of London's built, social and cultural heritage. I acknowledge that it is not essential for a pub to have historic value to be important. Be that as it may, I consider with the above factors in mind that the existing use is not particularly deserving of many of these descriptors, and I am not persuaded that the degree of heritage, cultural, economic or social value of the existing use are sufficient to warrant application of the requirements of Policy HC7 in this case.
15. Even if I am wrong in my view on the direct relevance of Policies DM4.10 and HC7, the Council has not asserted that significant features of historic or character value would not be retained. Nor has it argued that the proposed use under Class E would in itself detrimentally affect the vitality of the area or the character of the street scene. I have no firm reason to find differently, and there is little before me to indicate that the proposal would result in the loss of a service or function that is of particular value to the local community here. There would not therefore be conflict with criteria at Part B ii), iii) or iv) of Policy DM4.10, or circumstances where the supporting text to Policy DM4.10 notes that proposals resulting in the removal of a Public House or a Change of Use away from the A4 Use Class would be particularly resisted.
16. In addition, I have already noted that the proposal would not result in the loss of a public house use of notable heritage, cultural or social value, and in my view the existing use plays a negligible role in the historic character, identity and community function of the area. The building has also been vacant for over 3 years, and the appellant indicates that it has been marketed since early 2022 with no interest. I have limited details of the marketing carried out, but the flexible Class E use proposed would in any event cater for a range of potential occupiers according to market demands which would be likely to support the future occupation of the building. This would add to the mix of uses locally which is a positive feature that adds to the significance of the CA and the vitality and viability of the area. In my judgement, the contribution that the site makes to the economic value of the area would not be unacceptably diminished by the proposal. These factors and the consequent lack of meaningful harm associated with the loss of the existing use are material considerations that I consider would outweigh any conflict with Policy DM4.10 of the DMP and Policy HC7 of the LonP on account of the lack of marketing evidence.
17. The application proposes a Class E Use which covers a range of different uses, although the appellant anticipates that the ground and lower ground floors would be used as retail/showroom with office space on the first floor. Having regard to the circumstances of the appeal site and Policies DM4.4 of the DMP and Policy BC 8 of the AAP, the Council considers that Class E(a) (display or retail sale of goods, other than hot food), Class E(c) (financial, professional and other services) and Class E(g)(i) (uses which can be carried out in a residential area without detriment to its amenity – offices) uses would be appropriate on the site. I have no firm reason to find differently.
18. The Council has raised concerns that Class E(b) (sale of food and drink for consumption (mostly) on the premises), Class E(d) (indoor sport, recreation or

fitness), Class E(e) (provision of medical or health services), Class E(f) (creche, day nursery or day centre), Class E(g)(ii) (uses which can be carried out in a residential area without detriment to its amenity - research and development of products or processes) and Class E(g)(iii) (uses which can be carried out in a residential area without detriment to its amenity - industrial processes) could result in noise and disturbance to neighbouring occupiers. It refers to plant or extraction equipment that may be required to support these uses, but plant or extraction equipment does not form part of the development applied for, and it seems to me that the effects of any such new equipment that may be proposed in future could appropriately be considered at that time. Given also that Class E(g) uses are defined as uses 'which can be carried out in a residential area without detriment to its amenity', I see no reason that they would be likely to result in use of noisy equipment on the site.

19. In addition, the site has previously been occupied as a café/restaurant and as a drinking establishment. Compared to these uses, I consider that Class E(b), E(d), E(e) or E(g) uses would be unlikely to result in significantly greater numbers of patrons, frequency of trips or events, or in a pattern of activity so as to result in a harmful increase in noise or disturbance from the existing situation. Trading hours and details of servicing and access for vehicles could also be controlled by planning conditions to ensure that activity associated with the proposed use would not result in greater detriment to nearby occupiers than the existing arrangements. I therefore consider that Class E(b), Class E(d), Class E(e) or Class E(g) use on the site would not cause unacceptable harm to the quality of life of nearby occupiers through noise or disturbance.
20. However, having regard to the location and characteristics of the site and on the basis of the limited information before me, I share the Council's concerns that the site would not appear to be well-suited to Class E(f) use. In particular, there is insufficient detail to demonstrate that the building would be suitably accessible and could provide design and space standards to meet the needs of occupiers of such uses as required by Policy DM4.12 of the DMP. I therefore consider that it would be appropriate to restrict use under Class E(f), and the appellant indicates that they would be happy to accept such a restriction.
21. Subject to a restriction on Class E(f), I consider that the proposed Class E use would be entirely appropriate to the immediate context of the site. I observed that there are a number of other pub and drinking establishments near to the site. The proposed flexible use would complement these uses, and would allow for a range of different occupiers which would be likely to increase potential occupation of the site, making a positive contribution to the overall mix of uses locally benefitting the character, vitality and viability of the area.
22. Overall, the proposal would maintain the mixed use character of the area and would contribute to local distinctiveness as sought by Policy CS 8 of the ICS, Policy DM2.1 of the DMP and Policy BC 7 of the AAP. There would be no net loss of business floorspace, and the overall vitality, vibrancy and character of the BCKA and the balance of uses within the EPA would be maintained, and the role of the CAZ would not be compromised as sought by Policy CS 7 of the ICS, Policy BC 8 of the AAP and Policy SD4 of the LonP.
23. I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA in accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, I have

found that the existing use does not in itself contribute to the historic character of the area or to the significance of the CA and that the proposal would add to the mix of uses locally which is a positive feature that adds to the significance of the CA. Noting also that there would be no external changes to the building, and no significant changes to its fabric, I am satisfied that the proposal would preserve the character, appearance and significance of the Charterhouse Square CA. I therefore find no conflict with Policy HC1 of the LonP, Policy CS 9 of the ICS, Policy DM2.3 of the DMP or Policy BC 7 of the AAP insofar as they include requirements broadly for the significance of heritage assets to be conserved or enhanced.

24. Drawing matters together, the proposal including the loss of the existing use of the site would not cause unacceptable harm to the CAZ, the BCKA, the EPA or the Charterhouse Square CA, and I find no conflict with Policies SD4 and HC7 of the LonP, Policies CS 7, CS 8 and CS 9 of the ICS, Policies DM2.1 and DM2.3 of the DMP or Policies BC 7 and BC 8 of the AAP. Even if I were to agree with the Council that there would be a loss of a public house and find in the absence of marketing evidence to specifically justify this loss that there would be conflict with Policy DM4.10 of the DMP and Policy HC7 of the LonP, there are material considerations that outweigh this conflict. Overall, I therefore conclude that the proposed change of use of the site would be acceptable.

Conditions

25. I have considered suggested conditions having regard to the tests set out in the National Planning Policy Framework. As a result, I have amended some where necessary, or for the sake of consistency, brevity or clarity.
26. In addition to the standard time limit, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. The Council has suggested a condition to restrict the use of the site only to Classes E(a), E(c) and E(g), but in light of my findings above, I consider it is only necessary to restrict Class E(f) use, and I have amended the suggested condition accordingly. This condition would also restrict the change of use of the site to other uses including dwellings which I consider is justified in this case as reasonable and necessary to maintain the contribution that the site makes to the mixed character of the area and the role of the CAZ, EPA and BCKA in accordance with the requirements of the development plan, and a separate condition is therefore unnecessary.
27. A condition to control the hours of use of the site is necessary to safeguard the living conditions of neighbouring occupiers. However, the proposed uses would be unlikely to result in greater noise or disturbance than the existing use, and there is no compelling evidence before me to explain why it would be necessary for activity to cease earlier than the existing as the Council's suggested condition proposes. I have therefore amended the condition to reflect the 0800 opening time proposed by the Council and the existing closing times.
28. Although omitted from its list of suggested conditions, the Council's report on the application refers to conditions to secure details of cycle storage, waste storage and collection and servicing and delivery arrangements. A condition to require details of cycle storage would be reasonable and necessary to address Policy DM8.4 of the DMP which includes a requirement for cycle parking provision where minor developments create new commercial units. Conditions to require details of waste storage and collection and delivery and servicing

would also be necessary to ensure adequate provision as part of the future use of the site and in the interests of highway safety and the living conditions of nearby occupiers. I have therefore attached these conditions.

Conclusion

29. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than the expiration of 3 years from the date of this decision.
- 2) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 4728-02-001, 4728-02-EX-100, 4728-02-PR-100, 4728-02-EX-099, 4728-02-PR-099, 4728-02-EX-101 and 4728-02-PR-101.
- 3) The development hereby permitted shall not be occupied until details of cycle storage have been 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.
- 4) The development hereby permitted shall not be occupied until details of arrangements for waste storage and collection have been submitted to and approved in writing by the Local Planning Authority. The waste storage and collection arrangements shall be provided in accordance with the approved details and shall be retained as such thereafter.
- 5) The development hereby permitted shall not be occupied until details of arrangements for servicing and deliveries to the premises have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be operated in accordance with the approved details.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification) and the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any amended order or order revoking and re-enacting that Order with or without modification), the premises shall only be used for a purpose within Class E(a), Class E(b), Class E(c), Class E(d), Class E(e) or Class E(g) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any equivalent use within any amended order or order revoking and re-enacting that Order with or without modification) and for no other purpose whatsoever including any other use within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order with or without modification).
- 7) The development hereby permitted shall only be in use and occupied between the following hours: 0800 – 2300 on Mondays and Tuesdays; 0800 - midnight on Wednesdays and Sundays; 0800 – 0100 the following day on Thursdays; and 0800 – 0200 the following day on Fridays and Saturdays.

End of Schedule