



Appeal Decision

Site visit made on 7 June 2023

by Hollie Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/Z5630/W/22/3300689

20 Fairfield South, Kingston Upon Thames KT1 2UL

- 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 Alkubaisy against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 21/01903/FUL, dated 11 June 2021, was refused by notice dated 12 January 2022.
 - The development proposed is change of use of vacant drinking establishment (Sui Generis) to accommodate a self-contained 4-bedroom dwellinghouse (Use Class C3) with associated parking provision, landscaping/amenity space, refuse/recycling facilities and cycle store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was submitted with plans which clarified some aspects of the proposal, such as the internal and external living spaces and the extent of obscure glazing to windows. These changes are minor in nature and do not contravene the Wheatcroft principles¹, i.e., they do not materially alter the proposal. Consequently, consideration of these plans would not prejudice any interested parties. The Council indicate that these plans satisfactorily address the third reason for refusal (RfR) and part of the fourth.
3. A completed unilateral undertaking (UU) dated 25 November 2022 was submitted prior to determination of the appeal. The Council indicated that the UU adequately addressed its sixth reason RfR in respect of parking and congestion. I find no reason to reach an alternative conclusion.

Main Issues

4. In view of the above, the main issues are:
 - whether the premises could help to meet the demand for employment uses;
 - whether the permanent loss of the public house is justified;
 - whether the proposal would provide adequate living conditions for future occupiers in terms of privacy;
 - whether the proposal would make the most efficient use of the site; and

¹ Wheatcroft Ltd V SSE [1982]

- whether the development could be made safe for future occupiers having regard to flood risks.

Reasons

5. The appeal building comprises a public house, not currently in use, situated on the south side of Fairfield South in Kingston. The site falls outside of the town centre and in a predominantly residential area. Part of the upper floor of the building is already in use as a self-contained flat, accessed via a rear staircase.
6. The proposal is to change the use of the public house to a self-contained dwelling with four bedrooms. External works proposed are relatively minimal but would involve the creation of a modest number of windows and provision of fencing to enclose the rear amenity area.

Employment uses

7. Policy CS11 of the Kingston Core Strategy (2012) (CS) sets out its support for economic and employment opportunities within the Borough through a range of different means. Policy DM17 of the CS seeks to protect existing employment land and premises. Neither of the Policies specifically identify the appeal building as employment premises and the wording infers typical employment uses, such as office and industrial premises. As such, whilst public houses may provide some valuable employment opportunities and indirect support for other local businesses, I do not consider that the wording of the Policies can be stretched to refer to them.
8. Consequently, the proposal does not conflict with CS Policies CS11 or DM17.

Loss of public house

9. CS Policy DM24 seeks to resist the net loss of community facilities unless there is evidence to suggest the facility is no longer needed, where appropriate, it has been vacant and marketed for a community use without success, or it can be re-provided elsewhere or in a different way.
10. The Policy objectives are further detailed in the '*Culture and night-time economy Supplementary Planning Guidance*' (2017). Policy HC5 and HC6 of the London Plan seek to protect existing cultural venues, including evening and night-time cultural venues. Policy HC7 seeks to protect public houses where they "...have a heritage, economic, social, or cultural value to local communities". Additionally, Policy HC7 (B) requires 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".
11. It is clear that the pub has a longstanding history at the site and was, when operating successfully, considered to be socially and culturally important to local residents. Therefore, it is considered that the premises has a value that renders Policy HC7 of the London Plan applicable.
12. From the evidence, the Appellant acquired the premises in early 2017 and it was tenanted until sometime in 2018. The evidence is less clear on the handover date to the Appellant's own management team. I have seen a profit and loss account for the period December 2018 – December 2019 which is

offered as the only period prior to the COVID-19 Pandemic which the Appellant has accounts for. However, no information is offered about the lease costs for the period prior to the expiration of the tenancy, which may have been useful as a benchmark. Conversely, the interested party comments indicate that the pub was a well-frequented social hub until the change in ownership, yet no profit or loss accounts have been provided to substantiate these claims.

13. In paragraph 7.7.7 of the London Plan, it states that proof should be required of all reasonable measures made to market a pub to other potential operators for at least 24 months at an agreed price following an independent valuation, and in a condition that allows the property to continue functioning as a pub. The marketing required by the London Plan is via local sale information, London-wide marketing and also through relevant specialised agents.
14. A number of documents, including marketing commentaries from two specialist companies, detail the marketing efforts employed to attract a new operator from around October 2018. The marketing undertaken was split between the agents but covers a combined period of at least 24 months, latterly during the COVID-19 Pandemic, which cannot have helped the prospects of achieving a tenant/purchaser.
15. The pre-application advice issued by the Council in June 2021 does not refer to the London Plan policies, but does state that any submitted marketing documentation "*would be independently assessed at the cost of the applicant*". The requirement to specifically agree the asking price was introduced on the adoption of the London Plan in March 2021, after much of the marketing had been undertaken.
16. For the duration of the marketing, the premises was advertised on an 'offers invited' basis and the options available were to purchase the freehold with vacant possession or secure a lease. There is little clarity about whether a formal valuation was undertaken, though it is indicated that the desired resale value and lease price that were offered for discussion were based on the agents' experience and agreed by the Appellant.
17. Despite that the marketing appears to have been relatively comprehensive, there is a suggestion in the Design and Access Statement that the guide purchase price indicated by one of the agents on enquiry was '*somewhere in excess of the*' purchase price paid for the premises in 2017. The evidence also points to the annual lease price negotiated in March 2019 being materially higher than it had been previously, despite the growing awareness at that time that the business was struggling to meet its overheads. These negotiations did not resolve successfully.
18. It seems fair to suggest that an asset's value will fluctuate and is not specifically dictated by a price paid for it at a certain point in time. For this reason, and in the absence of an independent assessment of the submitted marketing documentation, I cannot be certain that the freehold value or the lease price which the agents were seeking to negotiate during the marketing period were fair and reasonable, even if not advertised on the marketing period, particularly given the prevailing economic climate at that time.
19. I am mindful from the evidence that a number of improvements to fabric, fittings and furniture were made. Similarly, though based on limited evidence, other initiatives, such as the introduction of food sales, appear to have been

employed in order to attract new and returning customers. The Appellant's evidence suggests that these did not yield any material upturn in the business and that it was not and is no longer viable.

20. Other factors which it is alleged has deterred prospective publicans include the location of the appeal site some 0.5km from the town centre pub and bar leisure circuit, the limited footfall given the low-density nature of housing surrounding the site and the small customer trading area relative to the overall size of the building. I noted the number of other pubs in the area, including on the opposite side of Fairfield Park and within the town centre nearby. The local pubs include a range of both independent and chain business pubs which offer a wide range of food and drinks and appeared to be open to the public at typically expected times. There was even a specialist music venue nearby.
21. However, I regard the comment about a lack of customer car parking to be ill-conceived given the push towards public transport in the central and outer London areas and do not consider that this should be considered a necessary draw factor for a successful public house, given the absence of parking at other local venues outside of the town centre which appear to be well frequented.
22. Having regard to the evidence on both sides, the marketing evidence is not sufficiently authoritative to enable me to conclude that there are no prospects of the building being capable of being used as a pub. Though I do not seek to condemn the premises to a further two years of vacancy or the Appellant to a further marketing period of the same length, on the other hand, the loss of pubs is harmful to London's social and cultural infrastructure and such change is inevitably permanent. In such circumstances, the development plan points to the necessary rigour with which public houses should be marketed to ensure that the prospects for continued use as such are fully explored, and which I cannot be certain has been applied in this case.
23. For the foregoing reasons, the permanent loss of the public house has not been adequately justified and the proposal therefore conflicts with Policies HC5, HC6 and HC7 of the London Plan and Policy DM24 of the CS.

Living conditions of future occupiers

24. The existing first floor flat is accessed via an external stairwell that abuts a side wall. There is an existing large sash window in the side wall and this would serve one of the bedrooms of the new unit. This relationship would mean that occupants of the unrelated first floor flat would regularly pass by a window serving a bedroom, with consequent privacy effects.
25. On the site visit, I noted that the lower portion of the window is already obscure glazed to the extent that visibility into and out from the window is prevented. The window is relatively high level and large so it would afford sufficient light and outlook to future occupants, but, by virtue of the obscurity of the glazing, would also offer sufficient protection to future occupiers. A planning condition could ensure that the glazing were maintained as such.
26. For the foregoing reasons and subject to a planning condition, the proposal would provide adequate living conditions to future occupiers in terms of privacy in accordance with, in particular, London Plan Policy D6 and CS Policy DM13 which collectively seek to ensure that development accords with the principles of good design and ensures adequate outlook, privacy and amenity.

Efficiency

27. Policy H1(2) of the London Plan seeks to ensure that housing delivery on all suitable and available brownfield sites is optimised. Paragraph 119 of the National Planning Policy Framework (the Framework) seeks to ensure that planning decisions promote an effective use of land in meeting the need for homes, while safeguarding the environment and ensuring safe and healthy living conditions.
28. The Council questions whether the site has been sufficiently optimised to provide the maximum number of houses possible.
29. The proposal seeks to deliver one four bedroom home of approximately 265 sqm across both ground and first floors. Policy D6 of the London Plan sets out the minimum gross internal area (GIA) of a four bed, 8 person dwelling over two storeys is 124 sqm. A basic calculation suggests that two of such units could fit into the available floorspace of around 265 sqm in place of the generously-proportioned one proposed, and therefore, it is clear that there would be some inefficiency in the way that the site would be reused.
30. The building does not seem obviously capable of being divided into two units of similar proportions, but a more obvious solution may be in the creation of a unit on the ground floor and another smaller unit within the first floor, also accessed via the external stairwell in a similar manner to the existing separate flat. Whilst it would appear that the limited number and positioning of windows, and deep plan of the ground floor rooms could present some challenges in terms of creating a suitable quality of living environment, I have seen limited evidence that such could not be addressed through appropriate design. Ensuring suitable privacy for all respective occupiers could be achieved through a similar design process.
31. The constrained amount of external space has been put forward as a reason why no further units of accommodation could be provided on site. However, the amount of space required for flats under CS Policy DM13 and exemplified in Policy Guidance 13 of the Residential Design Supplementary Planning Document (2013) (SPD) is smaller at 10 sqm and for dwellings is 50 sqm plus a provision for additional occupants. Given the available 96 sqm, in my view, it appears possible to configure the space to achieve a combination of smaller amenity spaces from the total amount available.
32. The Appellant asserts that CS Policy DM13 also supports the need for family accommodation in (b), where it states that residential developments should provide a mix of unit sizes and types, with a minimum of 30% as units of 3 or more bedrooms. The Policy also states that this 30% figure should be exceeded on sites particularly suited to larger family housing.
33. It does not appear to me that the site is specifically better suited to the delivery of a larger family house instead of an alternative combination of smaller units. Consequently, in the absence of robust evidence to the contrary, I conclude that the proposal would not make the most efficient use of the site, contrary to, in particular, Policy H1 of the London Plan.

Flood risks

34. The site is located approximately 750m east of the River Thames and 300m north of the Hogsmill River A flood risk assessment (FRA) (WSP UK, May 2022)

was submitted with the appeal to address the Council's RfR based on the absence of such. The FRA sets out that the site is in Flood Zone 2 where the probability of river or sea flooding is between 0.1% & 1% in any given year.

35. The Appellant's FRA and related evidence has been compiled with reference to a range of sources² and determines that the risks of fluvial flooding at the site are in fact limited or capable of being described as 'limited' or 'very low hazard'. Furthermore, modelling undertaken by the Environment Agency in respect of the Hogsmill River shows that the appeal site is outside of the flooding extent, while a simulation for the 1 in 100-year storm event shows that flooding within the vicinity of the site would not surpass a depth of 250mm. In my view, when taken together, the evidence indicates that the overall risk level at the site can be reduced to 'low'. In addition, the Appellant has agreed that a precautionary emergency escape plan could be secured by way of planning condition.
36. In view of the above, the proposal would be safe for future occupiers having regard to flood risk and therefore accords with Policy SI2 of the London Plan and CS Policy DM4. Together, these Policies seek to ensure the development is designed to take account of the flood risk from fluvial and surface water flooding, and that residual risk is addressed.

Planning balance and conclusion

37. I have identified harm from the absence of evidence to demonstrate that the loss of the pub is justified and that the most efficient use would be made of the site. Notwithstanding the neutral effects and policy compliance of the scheme in most other respects, these harms are such that they render the scheme in conflict with the development plan when considered as a whole.
38. Though the deficit has not been quantified, the parties are in agreement that the Council cannot currently demonstrate an adequate five year supply of housing land as required by the Framework. Where an authority cannot demonstrate such, footnote 8 of the Framework specifies that policies of a development plan should be considered out of date for the purposes of assessing housing proposals.
39. Paragraph 11 of the Framework sets out a presumption in favour of sustainable development, otherwise known as the 'tilted balance'. In the context of decision making, this requires that development proposals that accord with an up-to-date development plan should be approved without delay, or where the policies which are most important for determining the application are out-of-date, permission should be granted unless (i) policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or (ii) where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits assessed against the policies in the Framework taken as a whole.
40. In this case, there are no policies engaged in respect of areas or assets of particular importance that provide a clear reason for refusing the development proposed.

² Royal Borough of Kingston Upon Thames (2011), Strategic Flood Risk Assessment, Royal Borough of Kingston Upon Thames (2015), Local Flood Risk Management Strategy and Kingston Strategic Flood Risk Assessment

41. The benefits of the scheme would principally arise from the creation of a family-sized single dwelling, which would contribute to the local housing stock and provide enhanced access to housing. There would also be economic benefits from the works necessary to convert the premises, albeit of a temporary nature. Taken together, these benefits attract modest weight in the overall balance.
42. However, in my view, the adverse impacts, from the irreversible loss of the pub without authoritative evidence to justify such, and the inefficient use of the site which appears to be suppressing opportunities to deliver greater public benefits, would significantly and demonstrably outweigh the benefits when considered in the context of the Framework. As a result, the presumption in favour of sustainable development does not materially weigh in favour of granting permission.
43. Drawing all matters together, there are no considerations of such weight to indicate that a decision should be taken other than in accordance with the development plan.
44. For the foregoing reasons, the appeal is dismissed.

Hollie Nicholls

INSPECTOR