



Appeal Decision

Site visit made on 11 July 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2023

Appeal Ref: APP/G3110/W/23/3315372

British Railways Western Region, Mill Street, Oxford OX2 0AJ

- 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 Stephen Clarke on behalf Oxford Collegiate Ltd c/o Carter Jonas LLP against the decision of Oxford City Council.
 - The application Ref 22/01529/FUL, dated 21 June 2022, was refused by notice dated 20 December 2022.
 - The development proposed is change of use of the former Oxford Railway Workers Club from a social club (Use Class F2) to school teaching facility (Use Class F1). Renovation of the building including alterations to fenestration and renewal of external finishes. Formation of level access connecting the site to Cherwell House immediately to the south and on to Osney Lane. Associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At final comments stage, a Structural Inspection Report was submitted by the appellant. However, I am mindful of the advice in the Planning Inspectorate's 'Procedural Guidance: Planning Appeals England', that at this stage no new evidence is allowed. This is because the other parties may not have had the opportunity to comment on it. For this reason, I have been unable to accept the Structural Inspection Report and it has not formed part of the evidence for my decision. I have however taken into account the remaining information submitted.

Main Issue

3. The main issue is whether the proposal would result in the loss of a community facility.

Reasons

4. The site consists of two adjoining single storey structures adjacent to the Great Western mainline railway and behind dwellings on Mill Street. It also shares a boundary with the existing Cherwell College. Access to the site is currently provided via a lane leading off from the junction of Mill Street and Botley Road. The buildings were formerly occupied by the Oxford Railway Workers Club. This social club operated until 2009 when it ceased.
5. The proposal seeks to change the use of the building to provide tuition rooms and study space for Cherwell College. Physical changes to the building would include alterations to the windows, renewal of external finishes and replacement of the existing roof. A new access would be provided via the

- existing College site, with the current access to the building being used only for emergencies. No replacement community facility is proposed.
6. Policy V7 of the Oxford Local Plan (OLP), adopted June 2020, resists the loss of community uses unless new or improved facilities would be provided. Although the previous use was for a private club, there is no dispute that it would have been regarded as a community facility under this policy. Consequently, the dispute centres on whether the community facility has been abandoned, such that the site now has a nil use.
 7. The Courts¹ have established that abandonment applies if a building remains unused for a considerable period of time, in such circumstances that a 'reasonable man' might conclude that the previous use had been abandoned. Four criteria have been established for abandonment, namely the period of non-use; whether there had been any other use; the physical condition of the building; and the owner's intentions i.e. whether to suspend the use or to cease it permanently. Decisions turn on their own facts and the weight to be applied to each factor is a matter of judgement in each case².
 8. The building has been unused for around 14 years. This is not an insignificant length of time, although in my view it is not a considerable period. In *Hughes*³ for example the period of non-use had been much longer, at 34 years. Furthermore, there has been no intervening use of the building since the closure of the social club. These factors therefore suggest that the club use has not been abandoned.
 9. In terms of the previous owners' intentions, the Courts in *Hughes* have held that whilst the subjective intentions of the site owner may be relevant, it is the 'reasonable man' test that matters. In this case, with its members in advancing years, membership of the club had dwindled, such that it became bankrupt. There were no trustees to receive the proceeds of the sale to the appellant.
 10. Nevertheless, this does not necessarily mean that the intention of the previous club owners was to abandon the use. I saw that there remained furnishings and features of the club use still inside. Moreover, I have little reason or evidence to believe that there was an actual deliberate intention to close the club, or that it could not have been re-started after it had ceased.
 11. In terms of its physical condition, for the reasons already given, I have been unable to take into account the Structural Inspection Report. Nevertheless, from my visit and the evidence before me, the building has large holes in the roof, extensive water damage and collapsed floors. It has also been the subject of anti-social behaviour.
 12. However, the proposals are to renovate the building through alterations to fenestration and renewal of external finishes. Indeed, the Design and Access Statement refers to comprehensive refurbishment of the eastern half of the building as being quite straightforward, requiring a roof membrane, new windows and insulation. It describes the western half as to be rehabilitated, with this being more challenging but still viable. This suggests that the physical condition of the building has not deteriorated significantly enough to require complete rebuilding.

¹ Hartley v. MHLG [1970] 1QB 413

² R oao Samuel Smith Old Brewery (Tadcaster) v Bradley [2005] EWHC 3034 (Admin)

³ Hughes v SSETR [2000] 80 P&CR

13. Taking each of these threads together, for the reasons given above, I conclude that the community use of the building has not met the test of being abandoned. As such, the proposal would result in the loss of a community facility.
14. OLP Policy V7 also supports the alteration and expansion of schools. However, I understand that the proposal primarily seeks to replace existing facilities already provided elsewhere, so can draw only limited support from this element of the policy. Overall, I conclude that the proposal would conflict with OLP Policy V7, read as a whole. It would similarly conflict with the aim of the National Planning Policy Framework to ensure that established facilities are retained for the benefit of the community. I therefore give significant weight to this conflict.

Other Matters

15. Regardless of the status of the building, the appellant considers that its future community re-use is not credible. The current access lane is owned by Christ Church College, who grant an annual licence for pedestrian access only, which can be terminated with three months' notice.
16. I am told that Christ Church were not prepared to grant an easement for access to the building. However, I have little substantive evidence to demonstrate this or its terms. The occupiers of properties in Mill Street have vehicular access to their rear parking spaces from this lane. Moreover, emergency pedestrian access and egress using the lane forms part of the proposal. These factors suggest that Christ Church would continue to allow at least some form of access to the building using this lane.
17. The appellant says there has been no single, written expression of interest for its community reuse from any party. There are other community facilities available nearby, such as the Democrats Club and the West Oxford Community Centre. However, local representations refer to some interest for future community use possibly in association with development of the former Osney Power Station. I have few details of the marketing of the building for community uses, or of any viability exercise. I am therefore unable to conclude that there would be no demand for such re-use, or that it would not be viable.
18. The proposal would result in benefits including making effective use of previously developed land in an urban location. Its construction would contribute to the local economy, both during construction and subsequently, as well as providing employment. The proposal would also provide improved teaching facilities. However, given its relatively small size, I give these benefits only moderate weight.

Planning Balance and Conclusion

19. For the reasons given, I have found conflict with the Development Plan, read as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR