



Appeal Decision

Site visit made on 12 December 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal Ref: APP/D0840/W/23/3318316

Lamb & Flag Inn, A30 Between Whitecross and The Lamb and Flag, Canonstown TR27 6LU

- 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 P O'Neill against the decision of Cornwall Council.
 - The application Ref PA21/11603, dated 18 November 2021, was refused by notice dated 25 January 2023.
 - The development proposed is conversion of redundant building to form five apartments.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of redundant building to form five apartments at Lamb & Flag Inn, A30 Between Whitecross and The Lamb and Flag, Canonstown, TR27 6LU in accordance with the terms of the application, Ref PA21/11603, dated 18 November 2021, subject to the conditions set out in the Annex attached to this decision.

Preliminary Matters

2. During the course of the appeal the revised National Planning Policy Framework (Framework) was published. The main parties have had the opportunity to comment on the implications of this change and where comments have been received, I have taken them into account.
3. I observed at my site inspection that internal refurbishment works were taking place, and some external works, including the insertion of roof lights had also taken place. However, it did not appear that the proposed use had commenced, and development that has been undertaken differs from the submitted plans in various aspects including the positioning and addition of rooflights, as well as the insertion of an additional window within the south elevation. For the avoidance of doubt and notwithstanding any work that has been undertaken, my responsibility is to consider the appeal based on the scheme as it appears on the plans submitted.

Main Issue

4. The main issue is whether the proposed change of use from a public house to apartments would be acceptable, with particular regard to the adequacy of the marketing of the property and the viability of the continued use of the property as a public house.

Reasons

5. The appeal site is a public house that is not currently operating, located within the settlement of Canonstown, and directly adjacent the A30 Highway. Policy 4 of the Cornwall Local Plan Strategic Policies 2010-2030 (LP) seeks to retain community facilities wherever possible, with loss of provision only being acceptable where there is no need for the facility or service; it is not viable; or adequate facilities or services exist or the service can be re-provided in locations that are similarly accessible by walking, cycling or public transport.
6. Policy ED8 of the St.Erth Neighbourhood Plan 2017-2030 (NP) refers directly to the appeal site amongst other businesses. This Policy requires that proposals for conversion demonstrates that it is unviable to continue the operation of the use, demonstrated by market evidence of sustained attempts to secure its existing use or an alternative business re-use for at least twelve months.
7. A letter from Marshall's estate agents dated 17 November 2021 indicates the site was marketed for '*almost two years*' and highlighted that it was becoming increasingly unlikely that a purchaser would be found to continue the premises as a public house.
8. Further evidence of marketing has been presented confirming that the site was marketed by Stacey Mann Estates from the 05 October 2022. Within a letter dated 20 February 2023, the marketing agent states that there was minimal interest from marketing, although notes interest in relation to re-developing the site, and a single interest in the operation of a restaurant.
9. A further letter dated 23 October 2023 again confirms continuous marketing from October 2022. Methods of marketing were stated to incorporate internet portals including Rightmove and Zoopla. Evidence of this marketing confirms there had been 1 physical viewing booked plus 3 phone calls to discuss, all of which had withdrawn their interest.
10. Given that some interest was shown by potential purchasers, albeit minimal, I have no substantive evidence before me to indicate that the premises were not marketed at a reasonable rate. Therefore, since the site has been marketed for some time via a range of avenues, I am persuaded that the steps reasonably necessary to market the property have been undertaken.
11. Against this background of marketing, the recent history of the operation of the appeal property provided to me indicates a high turnover of landlords. This is despite an investment in the facility by way of a '*face lift*' in 2013 and refurbishment works in 2017 in order to make the facility more attractive to customers.
12. No detailed viability information such as business accounts has been presented to me within the evidence. Nonetheless, the marketing that has been undertaken, in combination with the operational history indicates the apparent failure of the business under a number of differing landlords, notwithstanding significant financial investment in a refurbishment. Although I appreciate interested parties' views that the site is a cherished community asset and is more centrally located within Canonstown than other nearby eating and drinking establishments, the substantive evidence before me is compelling and adequately demonstrates that the current use is unviable.

13. Interior works have been carried out which the appellant states was undertaken to address critical damp issues in the building. Whilst the bar and other fixtures and fittings had been removed, these fixtures and fittings could clearly be replaced, and I do not consider that this has prejudiced the marketing of the site and I note that the marketing agent is of the same view.
14. Consequently, the proposed change of use from a public house to apartments would be acceptable, with particular regard to the adequacy of the marketing of the property and the viability of the continued use of the property as a public house. It would accord with LP policies 1, 2 and 4(4) and NP policies ED 8, HT 2 and CBF 1 which together seek to retain existing business or facilities unless it can be demonstrated that they are no longer financially viable through active marketing. The scheme would also accord with the provisions of the Framework in this respect.

Other Matters

15. The appeal site is adjacent Treloweth House. The nearest elevations of the appeal buildings overlook this properties garden and parking area. Given the relationship between the ground floor windows within the public house building and the neighbouring property, there would be overlooking from the proposal into the parking and garden area of Treloweth House, as well as vice-versa into the proposed apartment. However, a planning condition requiring obscure glazing of these windows can be imposed which would overcome any potential overlooking.
16. Furthermore, the single first floor window to the south elevation of the beer cellar building as indicated on the proposed plan serves a landing area. Given the distance between this building and the garden of Treloweth House, and the potential for some existing overlooking as I observed at my site visit, this window would not result in any additional significant overlooking. Whilst I observed the second window in this elevation, this is not part of the proposal before me. Nevertheless, given the distance of the window from the garden, and noting the existing overlooking of the garden area, I do not find that this would result in significant impact on privacy.
17. The appellant's Heritage Impact Assessment notes the need for an archaeological watching brief given the archaeological potential of the area. Although relating to a change of use of existing buildings, the proposal would require certain groundworks such as trenching for utilities, and as such a watching brief would be required, which can be secured by the imposition of a planning condition.
18. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
19. The appeal buildings are near the Grade II listed Lamb and Flag smelting works. In so far as it relates to the scheme before me, the significance of the smelting works lies in its historic fabric, architectural detail and the relationship with the historical commercial development of the area. The setting of the heritage asset is formed by the physical and commercial relationship with a grouping of buildings which contributes to the significance.

20. However, given the limited exterior changes proposed to the public house building closest to the smelting works, lack of change of spatial relationship with the surrounding buildings, as well as distance and lack of intervisibility with the proposed car parking area, the proposal would have a neutral effect on the setting and significance of the heritage asset.
21. Although not a designated heritage asset themselves, or forming part of the Council's reasons for refusal, the Council's Historic Environment team consider the appeal buildings to be non-designated heritage assets (NDHA). As such, the Framework requires that a balanced judgement is made when assessing the application, having regard to the scale of any harm or loss and the significance of the heritage asset.
22. The significance of the appeal buildings includes their age, architectural features and their relationship with surrounding historic commercial development of the area. While the change of use, potential replacement of internal fixtures and some external elements such as roof lights would result in the domestication of formerly commercial buildings (particularly that of the beer cellar), the overall external form and relationship with the grouping of buildings would be retained.
23. The proposal would therefore result in a minor degree of harm to the significance of the NDHA. Notwithstanding, in the overall planning balance, noting the significance of the NDHA, the benefits of the proposal, including the provision of additional homes, outweigh the minor harm to the NDHA that would result.

Conditions

24. A number of conditions have been suggested by the Council in the event of the appeal being allowed, which I have assessed and, where necessary, amended wording with regard to the advice provided in the Planning Practice Guidance. Given the differences between work that may have already taken place and those proposed, conditions relating to commencement of development and the approved plans are required to provide certainty.
25. A condition requiring an assessment of risk from contamination is necessary to ensure health risks to future occupiers are minimised. Given the potential heritage interest of the site, a condition is necessary to ensure archaeological recording has taken place. Conditions are necessary in the interests of the safe and efficient operation of the A30 trunk road and in the interests of highway safety. A further condition is necessary to ensure ground floor windows in the south elevation of the public house building are obscure glazed in the interests of protecting future occupiers and neighbouring occupiers living conditions.

Conclusion

26. For the above reasons and having regard to all other matters I conclude that the appeal is allowed.

S Harrington

INSPECTOR

Annex

Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 001H; 005; 006; 007A.
- 3) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.
- 4) No demolition/development shall take commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions, and:
 - a. The programme and methodology of site investigation and recording;
 - b. The programme for post investigation assessment;
 - c. Provision to be made for analysis of the site investigation and recording;
 - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - e. Provision to be made for archive deposition of the analysis and records of the site investigation;
 - f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition/development shall take place other than in accordance with the Written Scheme of Investigation. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme

of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured. The archaeological recording condition will only be discharged when all elements of the WSI including on site works, analysis, report, publication (where applicable) and archive work has been completed.

- 5) Prior to the occupation of the development hereby permitted, a minimum of five resident car parking spaces and two visitor car parking spaces with associated turning area shall be provided within the former public house car park, in accordance with plan 001H. Thereafter, the parking spaces and turning area shall be retained and maintained as parking for the hereby approved apartments only and shall not be used for any other purpose.
- 6) Prior to the occupation of the development hereby permitted a scheme for restricting direct access between the car parking spaces and apartment buildings to pedestrian movements only (in accordance with plan 001H), shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in full in accordance with the agreed design prior to the apartments being brought into use, and retained and maintained as such thereafter.
- 7) Prior to occupation of the development hereby permitted, ground floor windows to the south elevation of the former public house building shall be fitted with obscure glazing. Details of the type of obscure glazing shall be submitted to and approved in writing by the local planning authority before the obscure glazing is installed, and the obscured glazing shall be retained thereafter.
- 8) During the construction of the development hereby permitted, no construction or construction-related vehicles shall be permitted to wait or park on the A30 trunk road, and no loading or off-loading of materials shall be permitted to take place on the A30 trunk road.
- 9) Vehicular access to the resident and visitor car parking spaces shall only take place via the former public house car park entrance in accordance with plan 001H.

End of Conditions