



Appeal Decision

Site visit made on 13 May 2024

by **Jane Smith MA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th July 2024

Appeal Ref: APP/B1930/W/23/3331288

The White Horse PH, 182 High Street, London Colney, Hertfordshire

AL2 1JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Punch Partnerships (PML) Limited against the decision of St Albans City & District Council.
 - The application Ref is 5/22/0598.
 - The development proposed is described as 'retention of existing public house and garden and erection of 4no. flats (Use Class C3) with access from Morris Way, associated parking, landscaping, and reconfiguration of public house car park including replacement storage shed'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Noise Impact Assessment¹ (NIA) was prepared following the Council's decision and submitted with the appeal. The Council and interested parties have had the opportunity to respond to this additional evidence and I have taken it into account.

Main Issues

3. The main issues are:
 - whether acceptable living conditions would be provided for future occupiers, with regard to the amount and quality of outdoor amenity space, and
 - the effect of the proposed parking arrangements on highway safety.

Reasons

Living Conditions – Outdoor Amenity Space

4. The proposed flats would be on land currently used for car parking at the rear of a public house. There is also outdoor seating on a patio and on the grass around the car park. Although the main outdoor seating area is currently at the front, the plans show several tables in a reconfigured area between the car park and patio, and there appears every prospect that this could become a well-used outdoor seating area.

¹ Airtight & Noisecheck Limited Noise Impact Assessment dated 8 September 2023

5. The reason for refusal refers to the siting of the proposal, its proximity to the public house, and 'poor amenity space provision', without clearly specifying the consequential harm. However, the Council's Statement of Case more specifically alleges harm in relation to both the amount of amenity space and the effect of noise and disturbance due to its siting in relation to the beer garden. The appellant has provided evidence on both matters, including the September 2023 NIA, and has been able to respond to the Council's case. I have taken evidence from both parties on this matter into account.
6. Both parties agree that the size of the rear gardens would exceed the area required in Design Advice Leaflet No. 1, as referenced in Policy 70 of the 1994 Local Plan² (LP). Policy 70 also recognises that flats will normally be provided with communal amenity space, and that gardens may be smaller where there is public open space nearby. The upper flats would each have a private balcony, and there is a recreation ground within easy walking distance, providing space for active recreation. Taking these factors into consideration, the proposal would provide a reasonable amount of outdoor amenity space, proportionate to the limited scale of the development.
7. The NIA includes calculated noise levels, modelling the effect of people using the outdoor seating. These factor in a 6m separation distance, which corresponds with the distance between the flank wall of the proposed flats and the rear of the pub building. However, there would be no such separation between the proposed rear gardens and the adjacent outdoor seating area as shown on the plans. Without the adjustment for distance, the calculated noise level for use of this outdoor seating would significantly exceed the recommended upper level for enjoyment of outdoor amenity areas, as referenced in the NIA. Furthermore, the level of mitigation which it is predicted would be achieved through use of acoustic fencing would not bring the calculated noise levels within that recommended range.
8. Noise levels are likely to fluctuate according to factors including weather conditions and number of customers, and the NIA describes the calculated noise levels as a worst-case scenario. However, it also proposes that the outdoor seating should not be used after 10pm. The Council's Environmental Compliance Officer recommended a more stringent limit of 9pm. Since the public house is currently open until midnight or 1am, either restriction would be difficult to enforce and could place an unreasonable burden on operation of the business, contrary to advice in the National Planning Policy Framework (the Framework). Furthermore, neither limit would mitigate disturbance earlier in the afternoon or evening, when future occupiers could reasonably expect to be able to enjoy use of their gardens.
9. A restriction on amplified music outdoors could be enforced and the NIA is based on measurements taken at times when the regular live music events occur. However, although these currently take place in the front of the pub, that could not reliably be ensured. Furthermore, noise from live music could be transmitted outdoors when the patio doors are open and the NIA does not clearly demonstrate that this has been considered.
10. For the above reasons, based on the evidence before me there would be a significant adverse effect on future occupiers' enjoyment of the proposed gardens as a result of their siting in relation to the outdoor seating area behind

² City and District of St Albans District Local Plan Review, adopted 1994

the public house and the consequent levels of noise and disturbance. Furthermore, this harm would not be adequately addressed by the proposed acoustic fencing or other mitigation measures.

11. I therefore conclude that the proposal would not provide acceptable living conditions for future occupiers, with regard to the quality of outdoor amenity space. As such, it would not meet the high standard of design required by Policy 69 in the LP. Nor would it comply with relevant paragraphs in the Framework, notably paragraph 193 which requires that new development can be integrated effectively with existing businesses such as public houses, including by providing suitable mitigation where the operation of the existing business could have a significant adverse effect on new development.
12. In the absence of suitable mitigation, the relationship between the outdoor amenity space and the public house could create ongoing tension between residents of the flats and the normal business operation of the public house, contrary to the 'agent of change' principle as outlined above. This is therefore a matter to which I have given significant weight in the planning balance below.

Parking

13. Based on parking standards adopted in 2002, the Council's Officer Report confirms that no parking would generally be required for a public house in this location. On that basis, the Council has not alleged any harm arising from the reduced level of customer parking. The reason for refusal refers only to the proposed level of residential visitor parking.
14. Both main parties agree that there would be a shortfall of two spaces against the parking standards for residential development in Policy 40 of the LP. Although the 2002 parking standards allow for a small shortfall in some cases, there is no dispute that Policy 40 remains applicable. The Appellant alludes to an alternative requirement for 0.25 visitor spaces per flat, but that applies only where all spaces are unallocated, which is not the intention.
15. Although they are of some age, no compelling evidence has been provided that the Council's standards are insufficiently justified, and Paragraph 111 of the Framework allows for the use of local parking standards where they are supported by relevant evidence. Furthermore, Framework Paragraph 115 confirms that development may be refused on highways grounds where there would be an unacceptable impact on highway safety.
16. Although the appeal site is within a neighbourhood centre, where alternative modes of transport are available, there is evidence of parking stress in representations from interested parties and in a survey conducted by the Council's parking team. In contrast, the Appellant's parking survey concludes that there is adequate on-street capacity. Both parking surveys purport to follow the so-called Lambeth Methodology³, covering streets within 200m of the site. However, the precise extent of the study areas differ, as does the date and timing of the underlying surveys. The Council's survey covers a limited number of timed survey points, but includes overnight results, whereas the Appellant's survey was undertaken at more frequent intervals, but with no results after midnight.

³ Lambeth Council Parking Survey Guidance Note

17. Neither survey clearly captures peaks in demand associated with the nearby Islamic Centre, church or other community uses. These are referred to in evidence from interested parties as placing particular pressure on on-street parking and the nearby public car park at Haseldine Road. Although there was no highway safety objection from the Highways Authority, anecdotal evidence from interested parties includes examples of parking congestion, including illegal or anti-social parking near the appeal site. Illegal parking is also described in both parking surveys.
18. Given these existing conditions, there is no clear justification for a reduced parking provision against the adopted parking standards, despite the availability of alternative forms of transport. While I recognise that the Appellant considers evidence of parking stress to be over-stated, having considered all the evidence in the round, it is apparent that there are periods of high demand which are associated with illegal or anti-social parking. There is consequently a material risk that the lack of adequate space for visitors arriving by car would lead to further parking in locations which increase parking stress, and that this could, in turn, obstruct the safe flow of traffic or emergency access.
19. The earlier appeal decisions referred to in the Council's Officer Report have not been provided. However, based on the limited extracts quoted, there is no clear evidence that either Inspector was presented with objective evidence of parking stress comparable to the evidence provided with this appeal. Furthermore, since the Islamic Centre was the subject of one of the appeals, and is now operational, it is clear that circumstances have changed since those decisions were made.
20. The shortfall of only two spaces would be small. Nevertheless, for the reasons given above, I conclude that the proposed parking arrangements would have a limited but unacceptably harmful effect on highway safety. As such, the proposal would conflict with Policies 39 and 40 of the LP, which specify requirements for parking to support new residential development, and with paragraph 115 of the Framework as summarised above.

Planning Balance

21. The main parties agree that the Council cannot demonstrate an adequate supply of housing land. In an update provided by the Council for this appeal, it was confirmed that there remains a substantial shortfall, with supply standing at slightly under two years. Since the Council's emerging Local Plan remains at an early stage, there is no immediate prospect of the position improving. As a consequence of the shortfall in housing land supply, the provisions of Framework paragraph 11d are applicable.
22. The proposal would contribute to the supply of housing on a small, brownfield site in a location with good access to services and facilities. Development at this scale could be delivered relatively quickly and there would be some economic benefit proportionate to the modest scale of the development. Cumulatively, small sites can make a material contribution to the supply of housing, and these are benefits which are supported in the Framework. Nevertheless, the benefits of this particular development are, of themselves, modest given that only four small flats are proposed.

23. The Council did not allege any harm in relation to other matters, including the character and appearance of the area, compliance with space standards, heritage, flooding, or the relationship with neighbouring properties. However, these are neutral factors which weigh neither for nor against the proposed development.
24. The harmful aspects of the proposal would conflict with the development plan as a whole, as described above. The requirement for a high standard of design in LP Policy 69 is consistent with the Framework. I have also concluded based on the evidence before me that the implementation of local parking standards in Policies 39 and 40 remains consistent with the Framework. I have accordingly given the conflict with the development plan significant weight for purposes of this appeal, notwithstanding its considerable age.
25. Two of the proposed flats would provide a sub-standard environment for future occupiers, as a result of the siting of the private amenity space in relation to outdoor seating for the public house. This would prevent the development from functioning well in the long term or providing a high standard of amenity for future occupiers, contrary to paragraph 135 of the Framework. It would also conflict with the 'agent of change' principle in paragraph 193. There would be more limited harm to highway safety, as a consequence of the shortfall in parking provision, which is contrary to paragraph 115 of the Framework.
26. Considered cumulatively, the harm arising from the proposal carries significant weight. As such, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the modest benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal does not benefit from the presumption in favour of sustainable development, as articulated in paragraph 11d of the Framework.

Other Matters

27. I recognise that the Council's decision was contrary to the recommendation made in the Officer Report. However, local planning authorities are not bound to accept the recommendations of their officers and I have considered the appeal on its merits.
28. Interested parties have raised additional concerns, including the effect on the viability of the public house, which is an Asset of Community Value. However, none of the additional matters raised would be capable of shifting the balance in favour of the proposed development. Since I am dismissing the appeal for other reasons, there is no need for me to consider these matters further.

Conclusion

29. The proposed development would conflict with the development plan. No other material considerations, including the provisions of the Framework, indicate that a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR