
Appeal Decision

Inquiry held on 14, 15 and 28 May 2024

Site visit made on 28 May 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/A5840/C/23/3324674

The property known as, "The Ground Floor, The China Hall, 141 Lower Road, London SE16 2XL"

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeal is made by Hamna Wakaf Limited against an enforcement notice issued by the Council of the London Borough of Southwark.
- The notice was issued on 22 May 2023.
- The breach of planning control as alleged in the notice is described as, "Without planning permission, development not in accordance with planning permission 19/AP/5594 and unauthorised change of use of the building from sui generis (drinking establishment) at ground floor and basement level to two C3 Use Class residential dwellings ("the Unauthorised Development")".
- The requirements of the notice are:
 1. Cease the residential use of the ground floor of the building other than the communal entrance and stairway to upper floors for the purpose of C3 (Dwelling House).
 2. Remove all new partitions at ground floor and basement level, except for those that facilitate the communal residential entrance to the upper floors.
 3. Remove all cooking and sanitary facilities from the ground floor and basement that serve a residential use.
 4. Remove all fencing to the rear garden that subdivide it into ancillary garden space for the two flats.
 5. Either:
 - a) Demolish the rear extensions and restore the building to its original layout and condition prior to the works except for the new works that provide a communal access to the upper floors for the purpose of C3 (Dwelling House) by reconstructing like for like the interior of the public house, including provision of a bar, toilets, storage and kitchen facilities.
 - b) Demolish the rear extensions, then implement and complete the works within Planning Permission 19/AP/5594 including proposed internal works of a bar, toilets, storage and kitchen facilities that would facilitate the lawful Sui Generis (Drinking Establishment) use.
 6. Remove all rubbish and debris from the site including that resulting from the carrying out of Steps 5.1 to 5.5.
- The periods for compliance with the requirements are:
 - For Step 5.1, 28 days after this Notice takes effect.
 - For Steps 5.2 to 5.6, 12 months after the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act (the DPA).

Summary of decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

The Notice

1. I am required to ensure the Notice is in order, considering Section 173 of the Town & Country Planning Act 1990, which relates to the content and effect of an enforcement notice.

Internal inconsistencies

2. Sections 2, 3 and 5 of the Notice are inconsistent with each other in terms of the extent of the land, the breach of planning control alleged, and the requirements of the Notice.
3. Section 2 identifies the land as, "the property known as The Ground Floor, the China Hall ...", with reference to a plan encompassing the building and its external areas, but also including some additional land not associated with the property. The alleged breach of planning control in Section 3 refers to the ground floor and basement level of the building. The requirements in Section 5 refer variously to use of the ground floor, works and facilities on the ground floor and basement levels, subdivision of the garden, and restoration of the building.
4. Read as a whole, the Notice therefore relates to the entire parcel of land associated with the former China Hall public house, which encompasses two parcels of land registered with HM Land Registry.
5. Neither the development alleged in Section 3 of the Notice, nor the requirements in Section 5 should exceed the extent of the Land identified in Section 2. Therefore, if I am able to do so without injustice to the Council or the appellant, paragraph 2.1 should be corrected by deleting "The Ground Floor,", and the plan it refers to should be deleted and replaced with one which excludes the additional area of land not associated with the property.
6. In relation to use, the alleged breach of planning control refers to the ground floor and basement level of the building. However, requirement 5.1 only requires cessation of residential use of the ground floor, except for access to the residential units on the upper floors.
7. Therefore, were I to correct the description of the land in Section 2 without also varying requirement 5.1 to include the basement, planning permission would be granted for residential use of the basement under Section 173(11) of the Act. That was clearly not the Council's intention, since the basement is required for the proper functioning of the ground floor as a public house. I cannot therefore correct Section 2 without injustice to the Council, unless I also vary Section 5.1 to require cessation of the use of the basement.
8. On its face, variation of the requirement in Section 5.1 to cease residential use of the basement, would render the Notice more onerous to the appellant.
9. However, requirement 5.5(a) requires restoration of the building to its original layout and condition prior to the works except for "the new works which provide a communal access to the upper floors ...". The original layout includes a stairway from the basement to the side entrance of the pub on the ground floor, opening onto a corridor leading to the external side entrance of the pub, and the pub kitchen. It would provide no access to the basement from the residential access to the upper floors, which is gained directly from a new doorway in the side elevation.

10. Requirement 5.5(b) is an alternative to compliance with 5.5(a). It would result in full implementation of planning permission 19/AP/5594, which permits ground floor extensions to accommodate additional pub floorspace. That would also provide exclusive access to the basement from the public house.
11. Furthermore, the appellant's proposed alternative to requirement 5.5(b), to facilitate retention of elements of the extended ground floor as built, would separate the residential and public house stairways, and would also provide exclusive access for the public house to the basement, restoring it to a layout with areas marked as 'storage/cellar', 'manager's office/strong room' and 'staff room'.
12. Consequently, no residential access would be gained to the basement in any event, unless I were to allow the appeal on ground (a) and grant planning permission for residential use. It therefore follows that there would be no injustice to the appellant were I to vary the Notice to require residential use of the basement to cease. Neither would there be any injustice to the Council. I will therefore correct Section 2.1 and vary requirement 5.1 as described above.

Other issues

13. The alleged breach of planning control should be separated into two sections for clarity. In relation to use, it should refer to a 'material' change of use, since only a material change amounts to development. Likewise, it should clarify that the works alleged refer to operational development carried out without planning permission, notwithstanding the similarities of elements of those works with those granted by planning permission 19/AP/5594, as opposed to development in breach of condition.
14. The ground floor encompasses the primary living accommodation associated with the two flats, and each flat also has access to a private external garden area at the rear. The words, 'and rear garden' should therefore be inserted into both the description of the alleged breach and requirement 5.1, in order to reflect the use occurring.
15. As the basement is not exclusively associated with the two residential flats, and has been laid out with a storage room for each residential unit in the building, the words, "and residential storage" should also be added into the alleged breach of planning control in Sections 3.1 and 3.2.
16. The appellant also seeks specific reference to the operational development associated with the construction of two Class C3 residential dwellings in the breach of planning control. However, although requirements 5.2 and 5.3 require removal of the internal partitions and residential cooking and sanitary facilities, those internal works are not development on their own account. It is therefore not open to me to include them with the breach. The question as to whether the Notice can require their removal is matter for consideration under the appeal on ground (f).
17. Notwithstanding the number of changes required, these corrections and variations can be made without injustice to the appellant or the Council.
18. In conclusion, I will correct and vary the Notice accordingly, as set out in my formal decision below.

The appeal on ground (a)/DPA

19. Appeals on ground (a) are made on the basis that planning permission should be granted for the development alleged in the Notice.
20. The description of development for the DPA is derived from the alleged breach of planning control in Section 3 of the Notice. As corrected, that is:

“The material change of use of the ground floor, basement and rear garden from a public house (drinking establishment) (sui generis) to two residential dwellings (use class C3) and residential storage; and

Operational development comprising construction of a ground floor rear extension, such extension differing from planning permission 19/AP/5594 in that a large bi-fold door has been replaced with three individual residential style doors and a large roof lantern replaced with two smaller lanterns so that the constructed extension is materially different from that approved scheme.”

Background and Main Issues

21. The Land was in use as a public house until December 2018, with living accommodation on the first floor vacated in January 2019. Planning permission was granted on 19 May 2021¹, which included extensions to the building and conversion of the upper floors to four residential flats with enlarged pub floorspace on the ground floor. The residential elements and a ground floor kitchen extension granted by that permission have been carried out.
22. The bar was removed and the beer lines were cut in January 2022. In April 2022 a planning application was submitted for the change of use of the pub at ground floor and basement level to create 2 flats², and was refused by the Council in May 2023. The appellant advises the works to the ground floor were substantially complete by January / February 2023, and mirror the plans submitted pursuant to the refused planning application. The Notice was issued by the Council on 22 May 2023, and the appeal was lodged in June 2023.
23. The main issues are therefore:
 - Whether it has been demonstrated that there is sufficient justification for the loss of the use as a public house;
 - Whether the development will make adequate provision towards the delivery of new social rented and intermediate homes;
 - Whether the development will promote sustainable transport through car-free development; and
 - the needs of the occupiers of the residential dwellings on the ground floor, with regard to their personal circumstances.

¹ Planning permission: 19/AP/5594 for 'Construction of a single storey side extension at first floor level together with introduction of a new mansard floor in order to accommodate 3 x 2-bedroom and 1 x 1-bedroom flat on the upper floors; construction of a single storey rear extension at ground floor level to accommodate additional pub floor space and a single storey extension to the side for cycle and refuse storage purposes'.

² Planning application: 22/AP/0459 for 'Change of use of drinking establishment (Use Class A4) at ground floor and basement to create 2 flats (Class C3) (1x3b & 1x 2b)'

Reasons

Loss of the public house

24. The London Plan (TLP) Policy HC7 protects public houses with heritage, economic, social or cultural value. In relation to their loss, it requires applications to be refused unless there is authoritative marketing evidence that demonstrates there is no realistic prospect of the building being used as a pub in the foreseeable future.
25. There was much debate at the Inquiry about whether the public house was of heritage, economic, social or cultural value, and the text supporting TLP Policy HC7 advocates considering a broad range of characteristics in coming to a view.
26. The appellant's Design and Access Statements, for the planning applications made to the Council, describe the history of the site. The building is neither a listed building, nor locally listed. Nevertheless, it has association with the use of the site as an ale house, which was itself associated with a theatre named the China Hall; both having been operated by a tea and china trader in the 1700s. There have been several iterations of the site over the years, including a tea gardens, but there has been a public house associated with the name 'The China Hall' in this location for much of the preceding 250 years. The history of the site is also recognised in the China Hall Gate to the park, within sight of the building.
27. The pub welcomed Millwall fans on match days, being full to capacity and employing its own security³. It had a close association with the Surrey Quays branch of the In2Touch rugby league, which played their games in the park opposite and described the China Hall as their local pub from 2004 until its closure. It catered for players of the Southwark Park Cricket Club and the Southwark Park Bowls Club, and local darts teams.
28. The variety of the activities reported demonstrates the pub served a broad spectrum of local residents. It screened major sporting event tournaments, hosted children and families after school with board games, professionals for work meetings, networking events and promotions, dog walkers from Southwark Park, pensioners in daytime sessions, and offered traditional English pub food on Sundays. Although it may not have served any one of those groups exclusively, the evidence suggests it made a positive contribution to the local community as a whole.
29. It was also designated as an Asset of Community Value (ACV) in February 2017, which lapsed in February 2022, after 5 years. It was therefore designated as such until and beyond its closure, and the works of conversion to residential use commenced at a time when it was a designated ACV. An application has since been made for its re-designation.
30. The Southwark Plan 2019-2036 (2022) (TSP) Policy P42, which relates to pubs, requires registration or nomination of a pub as an ACV to be treated as a significant material consideration. Considering all of the above, the China Hall was clearly of heritage, economic, social or cultural value.

³ Millwall memorabilia was also cited in the list of items on offer in the auction to support the landlords after its closure.

31. The appellant commissioned two agents with experience in marketing property for the hospitality sector as joint agents, targeting both established businesses and the local market, on a leasehold basis. Davis Coffey Lyons (DCL) marketed the pub between January 2017 and December 2018 on a confidential basis, and from January 2019 until October 2021 on the open market. Jenkins Law (JL) marketed it between September 2018 and June 2023.
32. I note the brochures produced by each agent and signboards on the premises, and reference to mailouts, direct marketing and listing on the agents' websites. However, overall, generalised statements are made about the measures taken, and there is a lack of detail as to when action was taken, to/with whom, and with what information. No party has questioned the expertise of the appellant's marketing professionals, but the absence of detail in the evidence put before me limits the scope for scrutiny, and therefore the weight I can afford to the marketing undertaken, particularly in relation to the later periods.
33. In 2019 there were 20 viewings which led to at least 5 offers and demonstrate market interest at that time. Of the three offers not dismissed for other reasons, one was pursued in April 2019. I have not seen any evidence of the nature and extent of any progress made, or the communication between the parties at the time, but Mr Mylroie advises that fell through after six months without legal progress on the part of the prospective tenant.
34. A number of viewings took place in 2020, even during the COVID-19 pandemic, but it is perhaps not surprising that only two translated into offers while the country was going in and out of lockdowns, and measures affecting social gatherings were in place for much of 2020 and 2021.
35. I note the appellant did not accept an offer made in June 2020, and the Proof of Connie Start MRICS states it was not accepted on the basis that the 10-month rent free period sought was too long. At that time, England was emerging from the first lockdown period, and the property had been vacant for 18 months. I also note that an offer at the same rent, but with a 6-month rent free period had been deemed to be reasonable a year earlier, before the pandemic. And with the information before me the offer was otherwise similar to others considered potentially suitable prior to the pandemic, and was made by the operators of an existing pub. Notwithstanding the 5 year break clause sought, given the uncertainty in the market at that time, I have not seen convincing justification for the rejection of that offer, despite the oral evidence of Ms Start in general terms. In my view, that matter merited a fuller explanation.
36. DCL's decision to cease marketing the premises in October 2021 also means they only carried out a short period of marketing after the pandemic restrictions, although the property remained on the JL website.
37. I note the reported feedback from those who expressed an initial interest but did not make an offer. Those include the 'secondary location' of the property away from the busy high footfall area, 'over-competition' (with 4 pubs closer to Surrey Quays station), a customer and competitor preference for a place in Bermondsey, the small kitchen and limited space for dining covers, a cautious and shrinking market, and corporate/large multiple operators already having properties in the surrounding area.

38. At the same time, there was clearly interest in 2019 and 2020. The premises are visible from Southwark Park, and much of the custom reported during its operation was associated with users of the park, which contains cricket and rugby pitches and an athletics centre. A new Surrey Quays Overground Station entrance is also now under construction in sight of the premises and on the same side of the road, which will bring the pub significantly closer to, and more visible from, the rail station.
39. I have also not seen any consideration of whether a reduction in the marketed rental price was, or should have been, made following the pandemic period. Particularly given Ms Start's and Mr Mylroie's acknowledgment of other factors such as energy price rises, staffing cost increases, the cost of living crisis, and the absence of any serious enquiries since the last block viewing in 2020. And given that only two pub rentals informed the advertised rental price, both prior to the pandemic, and Mr Mylroie's view that the only way to test the market was to propose a rent.
40. Neither have I seen evidence of any renewed marketing campaign following the approval of the planning permission for the extended ground floor of the building in May 2021. I note Mr Mylroie and Ms Start's evidence that the expanded kitchen space would have made a negligible difference to the rental value. But I also note Ms Start said she was not sure when she became aware of the planning permission, and confirmed she had not updated the marketing particulars or undertaken another round of marketing. There was also an absence of any reference to the planning permission in Mr Mylroie's August 2022 marketing report.
41. Notably, the appellant's own justification in its planning permission for the extended ground floor was to "make the pub a more viable business"⁴, and a relatively significant expansion of the public floor area, more efficient use of the existing space, and modern sanitary facilities and kitchen was granted. Ms Start also explained that pub rent levels are a function of size and area, and it is therefore surprising that consent for a relatively significant expansion of the floor area was not addressed in the marketing taking place.
42. By January 2022 the extension of the building and the conversion of the upper floors had commenced. Scaffolding associated with the upward extension of the building and conversion of the upper floors to flats would also have significantly reduced or obscured the sign board on the building for much of the period of construction. At that stage the ground floor windows were boarded up and it would have been clear that major works were being undertaken.
43. By 27 January 2022 the bar had been removed, the beer lines cut, fixtures, fittings and carpets stripped out, leaving the ground floor little more than an empty shell. The following day, on 28 January 2022, a Building Regulations Amendment Notice revised the work being inspected from development of 4 flats as part of a mixed use, to the conversion of a mixed-use building into 6 flats.
44. At the Inquiry Mr Munnely acknowledged that much less weight could be afforded to the marketing once the ground floor had been converted into flats, and that great weight should be given to the ground floor flat conversions.

⁴ CD1.2 p26 (D&AS p04)

Although the development was substantially complete around a year later, it was clear from 28 January 2022 that the works related to the conversion of the entire building, and there was therefore little prospect of letting the ground floor and basement as a public house.

45. The evidence of Ms Start and Mr Mylroie was that the marketing particulars made no reference to the removal of the bar or the planning application for the 6 flats, and that there was therefore no effect on the marketing during that period. However, once the works of conversion of the entire building into residential flats had commenced, it is difficult to foresee the circumstances under which an offer for operation of the ground floor as a pub would be likely to be made or accepted.
46. Mr Mylroie could not say when he was told the bar had been taken out, but that it was later and not at the time. His August 2022 marketing report described the interior as fitted for pub use, with the bar in place and a cellar for beverage stock, despite those features having been removed at least 7 months earlier. Neither have I seen evidence of any comprehensive marketing carried out in 2022. Overall, I attach only very limited weight to the marketing of the property after 28 January 2022.
47. TSP Policy P42 permits the loss of a pub only in exceptional circumstances where there is no market demand for the pub use. That is to be demonstrated by a marketing exercise at market rates for two years immediately prior to any planning application, with the property marketed both in its existing condition and as an opportunity for improved use.
48. The planning application is the DPA arising from the appeal on ground (a). The two-year period immediately prior to the application is therefore June 2021 to June 2023 ("the relevant two-year period"), when the appeal was lodged. DCL's marketing therefore only occurred for around four months within the relevant two-year period. Marketing on the JL website occurred until June 2023, and the board remained on the property, but I have seen no evidence of proactive marketing during the relevant two-year period, and only around 7 months occurred before the bar was removed and residential conversion works commenced.
49. Considering all these matters, exceptional circumstances have not been demonstrated. The development results in the loss of a public house with heritage, cultural, economic or social value, and this is reflected in its former designation as an ACV and the application for its re-designation. Despite the length of time the property has been on the market, it has not been evidenced that authoritative marketing has been carried out demonstrating there is no real prospect of the building being used as a pub in the foreseeable future. Neither has it been demonstrated there is no market demand for the pub through marketing the property, in its existing condition and as an opportunity for improved pub use at market rates, for a period of two years immediately prior to the date the deemed planning application was made.
50. In conclusion, for the reasons above, it has not been demonstrated that there is sufficient justification for the loss of the use as a public house. The development conflicts with TSP Policy P42 and TLP Policy HC7, which are described above. It also conflicts with TSP Policy P47 and TLP Policies HC5 and HC6, which seek to protect existing cultural venues, facilities and uses, and protect the nighttime economy.

Delivery of new social rented and intermediate homes

51. The appellant and the Council agree that a financial contribution of £199,216 payable by the appellant is the maximum viable amount the development could make, and would make adequate provision towards the delivery of new social rented and intermediate homes. A Unilateral Undertaking dated 29 May 2024, under Section 106 of the Town and Country Planning Act 1990 ("planning obligation") makes such provision.
52. At the same time Councillor Witham advised at the Inquiry the contribution would not be sufficient to deliver an entire unit, with the cost of building a 1-bedroom flat being £400,000, and considered it to be negligible in the context of the large scale housing occurring in the area.
53. The contribution is necessary to make the development acceptable in planning terms and would meet the requirements of TSP Policy P1 which, in the circumstances before me, requires the maximum viable financial contribution towards the delivery of new Council social rented and intermediate homes.
54. It is also directly related to the development, being in lieu of 35% on-site provision for a development of two residential units. And would be fairly and reasonably related to the development in scale and kind, being the minimum required to meet the policy requirement.
55. It therefore meets the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the National Planning Policy Framework (the Framework).
56. In conclusion, the development therefore makes adequate provision towards the delivery of new social rented and intermediate homes, and accords with TSP Policy LO1, which is described above.

Car-free development

57. The Land is located within an area identified as PTAL 6a⁵. TSP Policy P54, which relates to car parking, requires there to be no parking spaces provided, and states that no on-street permits will be available for residents.
58. Although the appellant's plans show 2 car parking spaces on the land, the appellant and the Council agree planning conditions could require cycle parking, refuse storage and hard and soft landscaping in their place. That is evidently the case, and a suitably worded condition would remove the on-site parking spaces.
59. The appellant's Unilateral Undertaking dated 29 May 2024 includes an obligation under Section 16 of the Greater London Council (General Powers) Act 1974 ("Section 16"). Section 16 makes provision for an undertaking by the owner of land to a local authority and is enforceable against the owner's successors in title. The *Khodari* judgement⁶ established that Section 16 was an effective way to secure car-free development in London, as it simply requires a connection with the land, and is not bound by the more comprehensive requirements for planning obligations.

⁵ Transport for London Public Transport Accessibility Level

⁶ R (oao Khodari) v Royal Borough of Kensington and Chelsea & Cedarpark Holdings Inc [2017] EWCA Civ 333

60. In this case, there is a clear connection between the development and the availability of on-street permits for residents. The owner covenants with the Council not to apply for a parking permit and to ensure that prior to occupation of the residential units, and for the duration of the development, each new occupier is informed that they shall not be entitled to a parking permit in a parking bay or car park owned, controlled or licensed by the Council. TSP Policy P54 states that residents will not be eligible for a permit, and the obligation is a reasonable and adequate response to meeting its requirements.
61. In conclusion, subject to a suitable planning condition, the development would promote sustainable transport through car-free development, and would accord with TSP Policy P54, which is described above.

Personal circumstances

62. The two residential dwellings on the ground floor are occupied by two families, each with children. Article 8(1) of the Human Rights Act 1998 provides that everyone has the right to respect for their private and family life, their home and their correspondence. Article 3(1) of the UNCRC provides that 'in all actions concerning children... the best interests of the child shall be a primary consideration'.
63. Dismissing the appeal on ground (a), refusing the DPA, and upholding the notice in respect of the cessation of the ground floor as two residential dwellings, would interfere with the rights of the occupiers with respect to their private and family lives and homes. At the same time, the development results in the loss of a public house, which is a community facility. It was an ACV and an application has been made for its re-designation, and there are clear development plan policies protecting such facilities in the public interest.
64. Were I to dismiss the appeal, there would be no other means short of requiring cessation of the residential uses, and the interference would be necessary and proportionate. At the same time the appellant advises in general terms of the difficulties of finding suitable alternative housing in London, and at the Inquiry both the Council and the appellant agreed that the 28 day time period afforded in the Notice to cease the residential use would be inadequate.
65. In conclusion, there are no other means short of requiring cessation of the residential uses were I to allow the appeal and, subject to a longer time period of 6 months for compliance with paragraph 6.1 of the Notice, the interference would be necessary and proportionate in that event.
66. Although no appeal has been made in relation to ground (g), I will nevertheless vary time period in Section 6.1 of the Notice to 6 months.

Other Matters

67. The development contributes two new homes to the local area. These homes make a small contribution to local housing provision, but a limited one in comparison to the 5,000 homes being constructed across the Canada Water Opportunity Area, of which the land is a part.
68. The rear extension erected is similar to one granted by planning permission 19/AP/5594. The parties agree that permission has lawfully commenced and is

therefore extant. That development could be carried out in its entirety, and there is a reasonable prospect that would occur should I not grant planning permission for residential use. The appellant therefore benefits from a fallback position, and further consideration should therefore be given to whether I should grant planning permission for the rear ground floor extension, even if I determine not to do so in relation to the conversion and use.

69. The approved rear extension at the ground floor has the same footprint and volume as that which has been constructed, and the installation of three patio-style doors in place of bi-fold doors and smaller roof lanterns in place of one large one is not harmful. However, the original pub toilets were located in the same location as the extension and were demolished to facilitate it. To allow the extension itself, without the provision of toilet facilities elsewhere, would therefore result in conflict with TSP Policy P42, which prohibits alterations leading to a loss of functional or ancillary space in public houses.
70. Nevertheless, since there is a reasonable prospect that the appellant will in any case erect a rear extension in accordance with the planning permission, the extension subject to the notice is no more harmful than that which can be constructed in any event. Indeed, given I have identified the harm which arises in respect of the breach relates to the loss of the public house, the retention of the extension would in itself not contribute to that harm. Consequently, planning permission should be granted for the rear extension.

Conclusions on the appeal on ground (a)/the DPA

71. The loss of the public house without sufficient justification conflicts with development plan policies, and I attribute substantial weight against the development to that loss and the associated conflict with the development plan.
72. The development would be car free, and this matter is neutral in the planning balance.
73. In its favour, I attribute limited weight to the provision of two new dwellings in this location and moderate weight to the small contribution towards the delivery of new social rented and intermediate homes. I attach significant weight to the needs of the two families, each with children, accommodated in the ground floor residential dwellings.
74. Dismissing the appeal would interfere with the rights of the families to their private and family lives and homes, under Article 8 of the Human Rights Act 1998. However, those are qualified rights, and interference with them in this instance would be in accordance with the law and in pursuance of well-established and legitimate aims: preventing the permanent loss of the public house, a community facility.
75. It is therefore proportionate and necessary to refuse to grant planning permission for the material change of use of the ground floor, basement and rear garden from a public house to two residential dwellings and ancillary residential storage. The protection of the public interest cannot be achieved by means that are less interfering with their rights.
76. However, the operational development comprising construction of a ground floor rear extension is no more harmful than the extension which can be

constructed in any event, and planning permission should be granted for the rear extension.

77. In relation to the use, no other matters therefore outweigh the conflict with the development plan policies I identified in relation to the first main issue, and there are no other material considerations that require a decision to be made other than in accordance with the development plan.
78. In relation to operational development, the conflict with the development plan policy I identified in relation to loss of functional or ancillary space is outweighed by the reasonable prospect that the original pub toilets will not be re-instated in any event, on account of the extant planning permission, and considering that the extension constructed is no more harmful.
79. For the reasons given above, the appeal on ground (a) therefore succeeds in part, and the DPA is allowed in part.

Obvious alternatives

80. In these circumstances, the appellant seeks consideration of the retention of the rear extension and a layout across the original and extended ground floor and basement which accommodates functional use of those areas as a pub, as part of the restoration to its former use. I must therefore consider whether that is an obvious alternative to complete implementation of planning permission 19/AP/5594, and which would overcome the planning harm at less cost and disruption to the appellant. But I may only do so where it relates to the whole or part of the matters constituting the breach of planning control.
81. In relation to use, the breach of planning control alleged is the material change of use to residential dwellings and residential storage, not the resumption of use as a public house. In relation to works, the extension itself is expressly part of the matters, and revised access to the basement via a new staircase was part of the works facilitating residential storage use of the basement, even if the opening of a new doorway into the pub lounge would be required.
82. However, the proposed male and female toilets would be positioned in the former kitchen area, along with a corridor to the extended area where the former laundry stood, and which has been extended for use as a new pub kitchen. Although these works are essential for use as a pub, neither are part of the residential use or the conversion to residential dwellings or ancillary residential storage. Consequently, fundamental elements of the appellant's proposed amended scheme are not part of the matters constituting the breach of planning control, and I am therefore not able to grant planning permission for it. The appellant's alternative would therefore not overcome the planning harm.
83. Should the appellant wish to do so, the 12 month time period for compliance with requirement 5.5(b) should provide sufficient time to seek planning permission for the revised restoration scheme.

The appeal on ground (f)

84. The appeal on ground (f) is made on the basis that the steps required to comply with the requirements of the notice exceed what is necessary to remedy the breach of planning control, or remedy the injury to amenity as the

case may be. In this case, the purpose of the Notice is to remedy the breach of planning control.

85. In Section 5 of the Notice, paragraph 5.2 requires all new partitions at ground floor and basement level to be removed. 'New' partitions is not defined, and for clarity the word "new" should be deleted and reference should be made to those partitions not shown on the existing and approved ground and basement plans submitted in association with recent planning applications.
86. Section 5.5 of the Notice contains two alternative requirements which require either (a) demolition of the rear extensions and restoration of the building to its original layout and condition prior to the works⁷, or (b) demolition of the rear extensions and implementation and completion of the works within planning permission 19/AP/5594⁸.
87. In 5.5(a) and 5.5(b) reference should be made to 'extension' in the singular to distinguish the extension at issue with the kitchen extension carried out with planning permission. 5.5(a) should also refer to the 'ground floor and basement of' the building, rather than the building as a whole, and "; or" should be added at the end of the requirement to clarify that 5.5(a) and 5.5(b) are alternatives.
88. In 5.6, the words 'including that' should be removed for clarity.
89. In relation to the alternatives in 5.5(a) and 5.5(b), parts of the works carried out are similar to those granted by planning permission 19/AP/5594 and the appellant considers that in 5.5(b) elements of the works carried out could be incorporated into the steps required. He requests that reference should be made in 5.5(b) to plans submitted at the Inquiry, in place of those granted by the planning permission. Doing so would allow the retention of the exterior elements of the extension and facilitate a functional internal layout and access to the basement, without demolition of the extension or replacement of the recently installed basement stairway.
90. I must therefore consider whether that is an obvious alternative which would remedy the breach of planning control at less cost and disruption to the appellant.
91. I have granted planning permission for the retention of the extension through the appeal on ground (a)/the DPA, but have not done so for the revised scheme. It is therefore not open to me to substitute the reference to planning permission 19/AP/5594 with the appellants revised plans, as doing so would not remedy the breach of planning control. Nevertheless, the requirement to demolish the rear extensions can be deleted from requirement 5.5(b), and reference can be inserted so as not to require modification of the extension's external windows and doors.
92. The appeal on ground (f) therefore succeeds to that extent.

⁷ Demolish the rear extension and restore the ground floor and basement of the building to its original layout and condition prior to the works except for the new works that provide a communal access to the upper floors for the purpose of C3 (Dwelling House) by reconstructing like for like the interior of the public house, including provision of a bar, toilets, storage and kitchen facilities.

⁸ Demolish the rear extensions, then implement and complete the works within Planning Permission 19/AP/5594 including proposed internal works of a bar, toilets, storage and kitchen facilities that would facilitate the lawful Sui Generis (Drinking Establishment) use.

Conclusion

93. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for operational development comprising construction of a ground floor rear extension, such extension differing from planning permission 19/AP/5594 in that a large bi-fold door has been replaced with three individual residential style doors and a large roof lantern replaced with two smaller lanterns so that the constructed extension is materially different from that approved scheme.
94. Otherwise, I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission under section 177(5) insofar as it relates to the material change of use of the ground floor, basement and rear garden from a public house (drinking establishment) (*sui generis*) to two residential dwellings (use class C3) and residential storage. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Formal Decision

95. It is directed that the enforcement notice is corrected and varied by:

- The deletion of the words "The Ground Floor," from Section 2.1.
- The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
- The deletion of Section 3.1 and its substitution with the words:
"3.1 Without planning permission,

The material change of use of the ground floor, basement and rear garden from a public house (drinking establishment) (*sui generis*) to two residential dwellings (use class C3) and residential storage; and

Operational development comprising construction of a ground floor rear extension, such extension differing from planning permission 19/AP/5594 in that a large bi-fold door has been replaced with three individual residential style doors and a large roof lantern replaced with two smaller lanterns so that the constructed extension is materially different from that approved scheme.

(Together "the Unauthorised Development")."
- In Section 5.1: Addition of the words "and basement" after 'ground floor', and "and rear garden" after 'the building'.
- In Section 5.2: Deletion of the word "new", and addition of the words "not shown on drawings referenced 'Existing Ground Floor Plan PA933-MB-01-100 October 2021', 'Existing Basement Floor Plan PA-933-MB-100 October 2021' and 'Proposed Ground Floor Plan PA-933-MB-100 Revision C December 2018'" after the words 'ground floor and basement level'.
- In Section 5.5(a): Deletion of the words, 'rear extensions and restore the building' and their replacement with, "rear extension and restore the

ground floor and basement of the building". And addition of the word, "; or" at the end of the requirement.

- In Section 5.5(b): Deletion of the words, 'Demolish the rear extensions, then' and their replacement with, "Except for the rear extension's external windows and doors,".
 - In Section 5.6: Deletion of the words, "including that".
 - In Section 6.1: Deletion of the words, '28 days', and their substitution with the words, "6 months".
96. Subject to the corrections and variations, the appeal is allowed insofar as it relates to operational development comprising construction of a ground floor rear extension, such extension differing from planning permission 19/AP/5594 in that a large bi-fold door has been replaced with three individual residential style doors and a large roof lantern replaced with two smaller lanterns so that the constructed extension is materially different from that approved scheme, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for operational development comprising construction of a ground floor rear extension, such extension differing from planning permission 19/AP/5594 in that a large bi-fold door has been replaced with three individual residential style doors and a large roof lantern replaced with two smaller lanterns so that the constructed extension is materially different from that approved scheme.
97. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the material change of use of the ground floor, basement and rear garden from a public house (drinking establishment) (sui generis) to two residential dwellings (use class C3) and ancillary residential storage and planning permission is refused in respect of the material change of use of the ground floor, basement and rear garden from a public house (drinking establishment) (sui generis) to two residential dwellings (use class C3) and ancillary residential storage on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Peter White

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Peter Munnely BA(Hons) PGDip MRTPI
Connie Start MRICS
Ryan Mylroie BSc(Hons)

FOR THE LOCAL PLANNING AUTHORITY:

Michael Rhimes – Barrister
Philip Ridley MSc(Planning) PGDip(Heritage) AMIHBC Licentiate member of the RTPI

FOR THE CHINA HALL LOCAL COMMUNITY GROUP (RULE 6 PARTY):

Gabriel Nelson – Barrister instructed by Emma Montlake of the Environmental Law Foundation. He called:
Michael Robertson
Steve Cornish

INTERESTED PARTIES:

Cllr Stephanie Cryan - Rotherhithe ward councillor
Cllr Kath Wittam - Rotherhithe ward councillor
Andrew Large – South-East London branch of the Campaign for Real Ale (CAMRA)

DOCUMENTS AND PLANS

1. Development Plan policy designations
2. Ground floor plan
3. Letter from Neil Coyle MP - Member of Parliament for Bermondsey and Old Southwark
4. Revised proposed ground floor plan PA933-MB-100 RevD
5. Revised proposed basement plan PA933-MB-99 RevA
6. The Southwark Plan 2022 Glossary
7. In 2 Touch Rugby social media post
8. Revised plan for the Enforcement Notice
9. Revised Proposed Rear Elevation plan BR-933-MB-04-102-RevE
10. Revised Proposed Side Elevation [From Hithe Grove] plan BR-933-MB-04-103-RevE
11. CIL compliance statement
12. Revised Unilateral Undertaking dated 29 May 2024



Plan

The plan referred to in my decision.

Peter White BA(Hons) MA DipTP MRTPI

Appeal Ref: APP/A5840/C/23/3324674

The property known as, "The China Hall, 141 Lower Road, London SE16 2XL"

Not to scale

