

Appeal Decision

Site visit made on 10 September 2024

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2024

Appeal Ref: APP/V2004/W/23/3336032

77-79 Charles Street, Kingston Upon Hull HU2 8DE

- 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 Mr Chris Colcomb Kingston Apartments (Yorkshire) Ltd against the decision of Hull City Council.
 - The application Ref is 23/02715/FULL.
 - The development proposed is Change of use to 29 bed HMO including external alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Application as originally submitted sought planning permission for a 32-bed House in Multiple Occupation (HMO). During the course of the planning application amended plans were submitted reducing the number of bedrooms to 29. Therefore the banner heading reflects this rather than the one provided on the planning application form.

Main Issues

3. The main issues are: i) whether the proposal would result in the loss of a significant and valued community facility contrary to local and national planning policies; and ii) the effect of the proposed development upon highway safety, with particular regard to whether the proposed development makes reasonable parking provision for the area.

Reasons

Community facility

4. The appeal site relates to the 'New Clarence' a Public House (PH) which is also listed as an Asset of Community Value (ACV) under Part 5, Chapter 3 of the Localism Act 2011. The PH closed in June 2023, and the building has been vacant since. The appeal site is located within the designated city centre within the Hull Local Plan 2016 to 2032 adopted November 2017 (the Local Plan).
5. The proposal is for the conversion of a PH to a large HMO. The appellant has significant experience and is highly regarded in this sector. The internal layout of the proposed development seeks to provide 29 ensuite bedrooms with shared kitchen, dining and living areas on each floor. An area of outdoor amenity space, a bin store and a cycle store are provided on the ground floor for use by all residents.

6. The PH was first registered as an ACV by the Council on 30 August 2023. As such the Council maintains that the proposal would result in the loss of an important community facility. The appellant has drawn my attention to an appeal decision¹ where the Inspector set out that the primary purpose of ACV listing is to afford the community an opportunity to purchase the property, not to prevent otherwise acceptable development. Although it is listed as an ACV, I agree with that Inspector, that it is not determinative, nor is how many ACVs are in Hull. However, it is a matter of planning judgement that the listing as an ACV can be a material planning consideration² and I have considered it as such.
7. Local Plan policy 13 states development that would involve the loss of significant community facilities will not be supported unless it can be demonstrated in accordance, in this case, with criterion 8 a) that the site is no longer needed for community use, or the loss would not create or add to a shortfall in the provision of such uses within its locality. The supporting text to Local Plan policy 13 suggests that community services and facilities are very varied but include health provision, government offices, nurseries, places of worship, and in some cases public houses fulfil this role.
8. This policy reflects the advice of paragraph 97 of the National Planning Policy Framework (the Framework), which includes the provision that decisions should provide the social, recreational and cultural facilities and services the community needs. It advises that planning policies and decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. As such, the use of the word particularly does not expressly exclude a PH.
9. In this case, the Council identifies that the combination of a PH with a food offer, a beer garden and a separate, sizeable function room makes the premises attractive as a venue for a wide-ranging list of community and group-based activities. Interested parties refer to these music and cultural performances and festivals, workshops, as a place to practice and meet for residents' groups, sporting groups, health, support groups and charities. As such, the appeal building has contributed to the overall mix community facilities and brought its own distinctive attributes as a venue to that mix within the city centre.
10. Framework paragraph 96 highlights the promotion of social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other. The retention of the PH has generated considerable support. This is identified by the creation of a business plan for the Hull Community Pub Society for a not-for-profit community enterprise. The successful bids and establishment of a management committee to oversee the delivery of the renovation of the PH to also offer social support and creative space in Hull is an indication of the significance of the venue.
11. Regardless of the weight to be attached to the ACV, I consider that the PH can be deemed to be a significant and valued facility taking into account the ancillary uses which were able to be facilitated at the appeal building. As such, it is my view that the PH is very much the type of community facility that Local Plan policy 13 and the Framework seek to safeguard.

¹ Appeal Ref: APP/Y5420/W/14/3001921

² Planning Practice Guide Paragraph: 008 Reference ID: 21b-008-20140306

12. The level of support for the building to operate as it did before, and the evidence that some former users have not relocated to other locations suggests that the site is still in demand and needed for community use. This results in conflict with criterion 8 a) of Local Plan Policy 13. However, the wording of it implies that, to satisfy the policy the loss would not create or add to a shortfall in the provision of such uses within its locality.
13. During my site visit, I observed that many of the internal fittings and fixtures were removed from the building mainly at first floor, I could not see for myself all the facilities that would have been available for community use in their original form. However, other than the traditional large bar area and banks of seating, which were in situ, the PH on the ground floor alone would have been large enough to perform several differing functions particularly relating to performances, socialising as well as being large enough for informal meetings and serving food.
14. The appellant has provided a list of licensed and unlicensed venues within the wider city centre and surrounding areas. However, the existence of numerous other PHs does not automatically confer that its loss should be accepted because it would be expected that a city the size of Hull would offer a range of differing types and sizes of public house, all with their own individual offer. Local Plan policy 13 makes no differentiation between urban and rural areas.
15. The appellant's submission lists venues which provide such uses as a food offer, function rooms and the information suggests some of them have the capacity to provide performances, cultural facilities, host sporting groups, have guest speakers, and charity nights are but some of the many listed types of activity. The venues identified by the appellant could feasibly be used for community use purposes and those previously provided at the New Clarence. Interested parties have provided a detailed, but personal analysis of why these venues are not the same.
16. However, the appellant has not provided details of how the appeal building and PH, with ancillary provisions formerly operated. Insufficient evidence has also been provided regarding the nature of the rooms, suitability, availability or cost. As such the appeal building may be better suited than other venues and spaces referred to. It has also not been demonstrated that groups and activities that were held at the PH are being accommodated in the other venues nearby, or that any of those are as accessible as the appeal site thereby addressing the community needs.
17. I appreciate that the pandemic has brought difficulties to the hospitality sector. Although the appellant has outlined trading difficulties, I have not been provided with any detailed analysis regarding the decline in trade at the PH following the redevelopment of the Hull New Theatre. I have not been presented with any analysis of recent trading accounts nor do I have details regarding the opening times or compelling evidence to demonstrate that the use is no longer financially viable despite efforts of recent landlords.
18. Therefore I therefore conclude, although there are numerous facilities within city centre, when judged against Local Plan policy 13 and the Framework that the proposal would result in the harmful loss of a significant and valued community facility. The development is contrary to Local Plan Policy 13 which recognises the importance of readily accessible community services which meet a wide range of social needs. Consequently, I am not satisfied that the

proposal would align with the intentions of the Framework to guard against the unnecessary loss of valued facilities and services, and that the proposal is therefore contrary to the provisions in paragraph 97.

Highway safety

19. The appeal site is located within Hull city centre. There is established pedestrian and cycling infrastructure in the city. The proposal is within walking and cycling distance to jobs, shops, services, education establishments, health services, cultural and leisure facilities as well as Hull Paragon Interchange, providing rail, bus and coach services. The appeal site is therefore highly accessible.
20. The proposal does not provide any off-street parking. Policies 7 and 32 of the Local Plan sets out minimum parking standards for HMOs. Policy 32 and Appendix C Table A, identify that the proposal should provide 28 spaces. However in recognition of the enhanced accessibility to sustainable transport modes within the city centre, the Council advises that its Supplementary Planning Document Note 5 - Hull City Centre Parking Strategy, adopted 30th October 2019, (the SPD) interprets the general requirements of Policy 32 with a specified degree of flexibility thus reducing this figure.
21. Although I note interested parties consider that a higher level of parking and visitor parking is specified, the Council's statement of case and the Highway Authority identify the proposal should provide 6 off-street spaces in light of this adopted SPD. As there is a shortfall of parking spaces, the failure to provide the required parking means that there is conflict with Policy 7 and Policy 32 of the Local Plan and the SPD.
22. The appellant suggests that reduced parking provision is justified due to the site's accessibility and public transport links. However, accessibility is already accounted for in the parking requirements, which substantially reduces the number of parking spaces. As such, there is no overriding justification to provide a lower number of spaces simply for these reasons alone.
23. It has also not been firmly evidenced that HMOs generate fewer vehicle trips than private houses, and it is not fully explained why this equates to lower parking provision. The appellant also suggests that car ownership amongst those who reside in HMOs is low. Although this is based on HMOs operated by the appellant, I cannot be certain when or how this figure was established. There may be site specific factors or parking restrictions which give rise to these very low figures. In the absence of substantive evidence on car ownership for HMOs, it cannot be ruled out that some future occupiers may have a vehicle.
24. Consequently, it is likely that the level of proposed parking would need to be accommodated on the more convenient surrounding roadside or local car parks. The roadside parking consists of on-street parking bays. These fall within the Controlled Parking Zone (CPZ) of the city centre. At the time of my site visit, around 9:30 am on weekday morning, there was visibly more than enough capacity on the surrounding roads to accommodate more than six vehicles. However, I appreciate that this was only a snap shot in time.
25. The appellant's parking survey was undertaken on a single day at 08:30, between 10:15-10:45 and at 17:00. This is a very limited timeframe and does

not fully take into account evening time when residents may have finished work, or there are theatre performances when there would be a sharp influx of visitors to the area. It is not clear whether the situation may have changed particularly given the reduction in spaces at the nearby short stay Albion Street car park and other car parks, albeit this may be a temporary issue due to development in the area.

26. The comments and photographs from interested parties suggests that local residents experience parking problems in the vicinity of the site. This arises from the proximity to large establishments which are open in the evening attracting large number of visitors. Indiscriminate parking can be harmful to highway safety, preventing vehicles from being able to manoeuvre safely or inhibiting pedestrian visibility and access. Congested parking can undermine how an area functions if it prevents residents from being able to safely or conveniently access parking near their homes.
27. However, the appeal site benefits from an existing lawful use as a public house. This is a fall-back position to which I must have regard, particularly as the internal features of the buildings still contained the bar and seating areas. Interested parties have provided a business plan, which outlines a proposed business model for running the appeal building as a community owned run pub. As such there is more than a theoretical possibility that the building could re-open as a PH.
28. Applying the same SPD parking standards, the Council's officer report identifies that the PH would be expected to have a higher demand for parking than the appeal proposal. This means it is likely that incidences of parking associated with the use could not be accommodated at the property, being displaced to either on-street locations or public car parks in the surrounding area. Parking would also be likely to occur during the evening times and customers who drive are also likely to want to park close to the building in the surrounding roads. Given the large catchment area of former regulars from Hornsea and Lincolnshire it is possible that the private car would be used.
29. The fall-back position is that a use could occupy the building which on the pure application of those parking standards, would require marginally more parking spaces than the proposal before me. As a consequence the fall-back position presented is comparable to the appeal before me and I therefore afford this consideration significant weight.
30. I note the specific circumstances surrounding the location of the appeal site close to homes, theatres, education facilities and reduction in nearby car park capacity. However, the Highway Authority has raised no objection to the proposed development, which is a matter of importance as they are responsible for the safety of users of the local highway network.
31. As a result, the shortfall in the residential car parking required by Local Plan Policy 7 and Local Plan Policy 32 notwithstanding, I conclude that other considerations indicate that the proposal would not be harmful to highway safety, with particular regard to whether the proposed development makes reasonable parking provision for the area. Therefore, the proposal accords with criteria in Local Plan policy 7 c) as it would not create unacceptable parking problems in the area and would accord with Local Plan policy 32 given that the policy states the standards are applied flexibly.

Other Matters

32. The site lies within the Georgian New Town Conservation Area (CA). I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The significance of the CA is derived from the historical pattern of development, together with the typically traditional architecture, proportions and details to many of the buildings which provide for attractive area.
33. The appeal building is located in a prominent corner location, and contributes to the character and appearance of the CA. The Council has not raised any concerns regarding the effect on the CA. As the proposed development would reinstate an historical residential use and details relating to windows can be secured by condition the proposal would therefore have a neutral impact on the CA.
34. The Council has not raised any concerns about the suitability of the location for residential use, the quality of the accommodation or conditions in terms of privacy, noise and disturbance for existing residents. There are no concerns raised in relation to flood risk, crime and disorder, energy efficiency biodiversity or other such matters such as cycle or refuse storage can be accommodated by suitably worded planning conditions.
35. I note other concerns have been raised by interested parties, including matters regarding the effects of having a large HMOs in the local area. While I recognise that these strongly held concerns raised by the wider community, the Council has not concluded that they would have amounted to reasons to justify withholding planning permission and I see no reason to disagree.
36. The appellant is clearly highly regarded and has experience in providing and managing HMOs for professionals including NHS workers. Although the Council's officers recommended the application for approval, the Planning Committee are not bound to accept their officer's recommendation. These matters do not alter or outweigh my findings on the proposal before me, which I have in any event considered on its own merits.
37. It is not clear if a contribution towards the open space deficit as set out in the officer report has been secured by a legal agreement. However, as I am dismissing the appeal it is not necessary for me to examine this matter in further detail.

Planning Balance

38. I have identified harm which would be caused by the proposal through the unacceptable loss of a significant community facility, contrary to the development plan. Although this is tempered by the presence of other venues in the city centre the Framework also expects that the unnecessary loss of valued facilities is avoided. The harm arising would be long-lasting. Therefore conflict between the proposal and Local Plan policy 13 should be given significant weight.
39. The proposals would provide a large HMO of 29 rooms, which would deliver benefits in terms of adding to the housing stock and providing choice at the lower end of the housing market, and in an accessible location. This would accord with the Framework aim of boosting the supply of housing nationally. There would be economic benefits arising for local construction firms in the

renovation and redevelopment of the building, albeit these would be temporary in nature, and slightly offset by renovation required for the PH to be brought back into use. Subsequently, there would be a boost from residents engaging in the local economy. Having regard to the scale of the proposal, I attribute moderate weight to these benefits.

40. Notwithstanding the conflict with the policies in respect of parking provision, I have found parking to be acceptable. The Council did not raise concerns in respect of other issues, referred to above. These are neutral considerations weighing neither for nor against the proposal.
41. For reasons set out above, the proposal would conflict with the development plan as a whole. While there might be compliance with the Framework in respect of the delivery of housing in an accessible location and some of the neutral matters there is also conflict with the provisions of the Framework. The benefits advanced in favour of the appeal are not of sufficient weight to outweigh these conflicts.

Conclusion

42. Therefore, for the reasons set out, and having regard to matters raised, I conclude that the appeal should be dismissed.

K Williams

INSPECTOR