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# Appeal Decision

Site visit made on 30 September 2024

**by C Harding BA (Hons) PGCert PGDip MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

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**Appeal Ref: APP/B5480/W/24/3340079**

**Royal Oak, North Road, Havering-atte-Bower, Romford RM4 1PP**

- 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 Andrew Pigney against the decision of the Council of the London Borough of Havering.
  - The application Ref is P1767.23.
  - The development proposed is demolition of existing single storey sections at the rear of the pub. Conversion of live in work unit to 2 bedroom flat. Part conversion of pub to create 2 additional flats.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appeal includes a number of plans amended from those considered by the Council at the application stage. I have considered these revised plans having regard to the principles established in *Holborn Studios Ltd*<sup>1</sup>. Although some of the amendments are minor, they are numerous. Interested parties would not be aware of the amended scheme and for that reason, I consider that they would be prejudiced if I determined the appeal on the basis of these plans. Accordingly, I have considered the appeal on the basis of the plans originally submitted with the planning application and on which the Council made its decision.

## Main Issues

3. The main issues are:
  - whether the proposal would provide adequate living conditions for future occupiers with particular regard to the standard of accommodation, noise and disturbance, the provision of outdoor space, outlook and privacy.
  - the effect of the proposal upon the living conditions of occupiers of nearby properties with particular regard to outlook and light;
  - the effect of the proposal upon the viability of the public house, and;
  - the effect of the proposal upon the character or appearance of Havering-atte-Bower Conservation Area.

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<sup>1</sup> *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

## Reasons

### *Living conditions of future occupiers*

4. The proposal would lead to residential accommodation both adjoining and above the retained Public House ('PH') area. Flat 3 would be above the PH. Flat 2 would adjoin the PH on the ground floor, and in particular, bedroom and bathroom areas would be adjacent to the kitchen, store and bar areas. Given their nature, these are areas of the PH that are likely to give rise to noise and activity until potentially late into the evening, whilst the bedroom of Flat 2 would be particularly sensitive to increased noise levels given the use of such rooms for sleep and quiet activity.
5. Flat 2 would also have a bedroom window in the front elevation of the building. This window would be close to, although not directly fronting on to the retained PH patio area. Some distance between the window and this area would be maintained and is stated by the appellant to be around 4 metres. Given the size of the patio area and the number of people that it could potentially accommodate, the distance to the bedroom window would not be significant. It is therefore conceivable that general noise generated by users of the PH patio area could carry this distance. This would be particularly likely should the bedroom window be open, as might be expected in warmer weather and when the PH patio is most likely to be in use.
6. It is stated that the separation of this bedroom window from the PH patio would be comparable to that between the existing beer garden and a neighbouring property which is said to be 5 metres away, and that such a relationship has satisfactorily persisted for many years. This is anecdotal, and in any event, the absence of any previous complaints does not indicate that none would occur in the future as a result of the proposal. Additionally, while few details are provided and comments are equally anecdotal, interested parties have made reference to antisocial behaviour being associated with the previous operation of the PH. On balance, this existing relationship does not provide such a precedent that it would indicate that the proposed arrangement would not lead to harm.
7. Moreover, the evidence before me does not include a noise impact assessment or details of any noise mitigation to demonstrate that the PH and the proposed accommodation could operate acceptably in such proximity. Based on my reasoning above, in the absence of such evidence, I consider that there is a reasonable likelihood that the operation of the PH would result in noise and disturbance to occupiers of Flat 2.
8. Flat 3 would be located above both the PH and Flat 2, and would have bedrooms windows facing over the retained outdoor area of the PH. The parties agree that this could be a source of noise. However, there is presently residential accommodation on the first floor of the building, and there is no evidence before me to indicate that its occupation is currently tied to the PH operation. On this basis, and as the PH could reopen without the need for further permission and the flat above could remain occupied, the proposed arrangement of Flat 3 would be no more harmful than the current arrangement.
9. The proposed residential accommodation would be provided with areas of outdoor space, primarily in the form of a communal area to the rear of the building, although further smaller areas to the west of Flat 1 and to the east of Flat 2 would also be provided.

10. The shared space would be an irregular shape and would not be directly accessible to occupiers of Flat 3, who would have to exit the front of the building and travel around to the rear in order to access it. Given that Flat 3 is proposed as a family unit, this arrangement would not be satisfactory. Flats 1 and 2 would have direct access to outdoor areas, but both would contain windows directly onto the space. As a result, the area would have little privacy for any users.
11. Although 1.8 metre ('m') high hedges are indicated and would serve as a means to break up the space and would provide some privacy, they would also result in a contrived layout. The additional areas close Flats 1 and 2 would both be spaces of limited size and functionality, as well as being relatively public facing locations. Overall, the proposed outdoor amenity spaces would not be of an appropriate standard and would lack privacy.
12. The two bedrooms proposed in Flat 2 would each have a window. A door is proposed in the open plan living area of this flat and would open into the shared area. Other than four rooflights, this flat would have no other external openings. The arrangement of the living space would mean that the external door would be located in the corner of this room, and would be partially screened by a wall. It is therefore probable that from many positions in this area, that no external views would be possible, other than via the rooflights.
13. While rooflights would be likely to provide adequate light and views of the sky, only the rear door would provide any ground level or horizontal external views. As a result, this room would have an unacceptably enclosed and oppressive character.
14. It is not disputed that the floor to ceiling height of Flat 1 would fail to meet the standard of 2.5m for at least 75% of the Gross Internal Area, as set out in London Plan ('LP') Policy D6. The appellant has highlighted that Flat 1, would, however, meet the 2.3m floor to ceiling height for at least 75% of the Gross Internal Area set out in the Nationally Described Space Standards ('NDSS').
15. There is no explicit reason stated within LP Policy D6 as to why it requires a higher standard than that set out in NDSS. However, NDSS is a minimum national standard, and does not prevent local authorities from developing other locally specific standards. Havering Borough Plan ('HBP') Policy 7 requires adherence with both NDSS and the LP standards.
16. As they are part of an adopted policy within the development plan, I afford the LP standards significant weight. In this context, even if the floor to ceiling heights were to accord with NDSS, they would nevertheless fail to accord with the LP standard. HBP Policy 7 requires adherence with both, rather than either, and it has not been shown that it would be appropriate to depart from the development plan standards in this instance.
17. The proposal would fail to provide adequate living conditions for future occupiers. It would be contrary to HBP Policies 7, 26 and 34 and LP Policies D3, D4, and D6. Together and among other factors, these policies state that new residential development should be of a high design quality, providing an attractive, safe and accessible living environment for new residents, that adequate internal space is provided, that the proposals delivers appropriate outlook, privacy and amenity, and prevents or mitigates the impacts of noise.
18. The Council has also cited conflict with LP Policy D1, however this policy relates to London's form, character and capacity for growth rather than this main

issue. It has not therefore, been determinative in my considerations in relation to this issue.

*Living conditions of existing occupiers*

19. The proposal would incorporate a rear extension to provide the accommodation for Flat 1. This would be located adjacent to the shared boundary with the neighbouring residential property. There is an existing rear projection to the PH located on this boundary.
20. There is a distinct difference in levels to the rear of the PH and the neighbouring property. As a result, the rear entrance to the neighbouring dwelling is in a raised position accessed via steps and also incorporates a raised terrace area. Beyond, at a lower level is the rear garden of this house.
21. The existing rear projection of the PH extends along the shared boundary which angles away from the neighbouring house. The Council state, and it has not been disputed that the current projection is around 6m. Given the topography and orientation of the appeal property and its neighbour, it is likely that the current projection has an effect upon the levels of light and outlook available to occupiers of the neighbouring property when using the rear terrace area.
22. The Council has indicated, and it is not disputed, that the proposed extension to accommodate Flat 1 would increase this projection by an additional 4m. This increase would extend the blank wall of the rear projection further to the rear of the neighbouring property alongside the rear garden.
23. Although the difference in levels means that this increase would be unlikely to lead to material harm to the living conditions of occupiers of the neighbouring property when using internal space or the external terrace, it would reduce the level of outlook available to occupiers when using the rear garden, which as a result of topography and the proximity of built structures, would become significantly enclosed. As the proposed extension would be directly to the south of this garden, it is also likely that it would harmfully affect levels of light in this area also.
24. The proposal would be harmful to the living conditions of occupiers of the neighbouring property. It would conflict with HBP Policy 7 which states that residential developments should ensure that the amenity and quality of life of existing residents is not adversely impacted.

*Viability of the public house*

25. It is not disputed that the PH is currently closed as a business. Although it is stated that it closed for business in 2019, the provided marketing report indicates that it remained let until 2021, and was then relet in February 2021, before this business subsequently failed. The provided marketing report demonstrates that the volume of beers sales had declined from 92 barrels to 80 barrels between 2015 and 2020. Representations from third parties and the Council indicate that the PH was a valued community asset prior to the change of ownership, at which point its popularity declined.
26. The PH was subject to a marketing campaign between April 2022 and June 2022 comprising a variety of measures. It is stated that 109 enquiries were received, and 5 offers were made. Although details are limited, it is stated that all of the offers received were from parties considering residential conversion. I note that the PH was not marketed for the minimum period of 24 months set out in the supporting text of LP Policy HC7.

27. Nevertheless, the proposal would retain a PH as part of the proposal. This would operate within a reduced floorspace, and would not include the existing beer gardens to the rear or staff accommodation. Given the decline in sales prior to the PH closing, I accept that there is a possibility that a smaller operation with reduced overheads would be more economically sustainable, even with a smaller level of outdoor space.
28. LP Policy HC7 states that proposals for redevelopment of associated accommodation, facilities or development within the curtilage of a public house that would compromise the operation or viability of the public house should be resisted. The supporting text of this policy highlights that the change to residential use of parts of PHs can limit operational flexibility, and threaten viability through increased noise complaints, and that developments must put in place measures to mitigate the impacts of noise for new and subsequent residents.
29. The PH would be provided with a total of four parking spaces. I have not been directed to any parking standards in relation to public houses, however as the proposed drawings indicate that up to 24 seated customers could be accommodated within the PH in addition to any staff, this appears to be a low level of provision. The fact that the level of provision would exceed that which would be required for a retail shop of commensurate size is of limited relevance, as it is unlikely the operation of the PH would be comparable in terms of customer dwell times. However, in itself, the limited level of customer parking does not indicate that the PH would be inherently unviable.
30. However, having regard to my reasoning in relation to whether the proposal would provide acceptable living conditions for future occupiers of Flat 2 with regard to noise and disturbance, it follows that the relationship between the pub and Flat 2 would be such that noise complaints in relation to the PH would be reasonably likely, particularly as no details of noise mitigation are before me. Having regard to LP Policies HC7 and D13 and Paragraph 193 of the Framework, Flat 2 would effectively become an 'agent of change' and it is possible that the PH could have restrictions placed upon it, affecting its operation and viability.
31. Overall, therefore, while I find that the PH would not be inherently unviable, its relationship with other proposed uses within the building could affect its operation or viability. The proposal would therefore be contrary to LP Policies HC7, D13 and S1, as well as HLP Policies 16 and 19. Together, and among other factors, these policies seek to protect social infrastructure, ensure that new development does not harm the operational flexibility or viability of public houses, and encourage and promote business growth.

### *Conservation Area*

32. The appeal property is located within Havering-atte-Bower Conservation Area ('the CA'). I am therefore mindful of my duty under Section 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 to preserve or enhance the character or appearance of CAs.
33. The significance of the CA insofar as it relates to this appeal, is derived from its character and form as a village of medieval origin focused around a village green, the closeness of open countryside, the historical significance of the village as the former seats of the Kings of Essex, and later England until the 17<sup>th</sup> century, and the general good quality of building fabric.

34. The appeal property is a former public house with a commensurate size and status within the street. It incorporates a number of design details such as chimneys, window surrounds and hipped dormers which elevate the building, The CA Character Appraisal identifies it as a building making a positive contribution to the area, and despite currently being closed as a commercial enterprise, I have no reason to disagree with this assessment.
35. The proposal would include extensions and the remodelling of the rear of the PH. These works would not be prominent from public viewpoints and the removal of some existing later additions to the building would in itself be of minor benefit. The proposed extensions would be of an appropriate scale and design, and would not otherwise be harmful to the character or appearance of the CA.
36. However, the provided plans also indicate that the proposal would result in the loss of a chimney stack, the hipped roofs to the front dormer windows and the shallow arched heads to existing windows. The loss of these features would diminish the overall quality of design exhibited in the original PH, and in doing so, would harm the character and appearance of the CA. This harm would be less than substantial.
37. It has been clarified that the loss of these elements is the result of a drafting error in the proposed plans. Be this as it may, the proposal can only be assessed having regard to the drawings that are before me. While amended proposed drawings have been provided which include the retention of these elements, as set out above, I consider that the appeal should be considered on the basis of the proposal as submitted to the Council. The Procedural Guide: Planning appeals sets out that the appeal process should not be used to evolve a scheme.
38. Furthermore, I consider that it would not be appropriate to attach planning conditions to control the implementation of the scheme such that these elements were retained, or to require the submission of further amended drawings. I have not been presented with any suggested wording for such conditions, and in any event, in the former case such a condition would be likely to be insufficiently precise, and in the latter, would result in potential prejudice to interested parties.
39. HBP Policy 28 and Paragraph 208 of the Framework state that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, that the harm should be weighed against the public benefits of the proposal.
40. The proposal would deliver three dwellings, where the Council acknowledges it cannot demonstrate the required supply of housing sites. This is a factor to which I afford moderate weight.
41. There would also be economic benefits during construction works and thereafter following the occupation of the flats and PH. Given the minor scale of the proposal, these would be limited benefits.
42. The reuse of a currently largely disused building would also be likely to increase its longevity and overall condition. While this would be a further benefit of the proposal, given that I have found that the proposal would be likely to harm the operation or viability of the proposed PH operation, the weight that I can afford the reuse of the building as a benefit of the proposal is limited, as it is possible that the extent of the reuse could be time limited.

43. The proposal would have a negative effect upon the significance of a designated heritage asset and the Framework states that great weight should be given to the conservation of such assets. The public benefits identified would not outweigh this harm.
44. Given the above, the proposal would conflict with LP Policy HC1 and HBP Policies 26 and 28. Together, and amongst other factors, these policies state that developments should be informed by, respect and complement the distinctive qualities of their surroundings, and should not affect the significance of heritage assets.
45. The Council has also cited conflict with HBP Policy 27 which relates to landscaping, however it is unclear what the Council's concerns are in relation to this policy. Accordingly, it has not been determinative in my consideration of this main issue.

### **Other Matters**

46. Rose Cottage, a Grade II listed building is located to the southeast of the appeal site. There is no dispute between the parties as to whether the proposal would preserve the special interest of this listed building and its setting. Due to the orientation of Rose Cottage and its distance from the appeal site, I have no reason to find that the appeal proposal would harm the special interest of this designated heritage asset. As I am dismissing the appeal for other reasons, no harm in this regard could arise from my decision.

### **Conclusion**

47. The Council has stated that it cannot currently demonstrate an appropriate supply of housing sites. I am therefore taken to Paragraph 11 d) i) of the Framework which states that planning permission should be granted unless the application of policies in the Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed. The relevant policies set out at Footnote 7 include those relating to designated heritage assets.
48. As I have found that the benefits of the proposal would not outweigh the less than substantial harm to the CA that would result, the Framework provides a clear reason for refusing the development proposed. Therefore, the presumption in favour of sustainable development set out at Paragraph 11 d) ii) of the Framework is not engaged in this case.
49. The proposal would conflict with the development plan when read as a whole. There are no material considerations, including the Framework which would indicate that a decision should be taken other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

*C Harding*

INSPECTOR