
Appeal Decision

Hearing held on 21 February 2017

Site visit made on 21 February 2017

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 April 2017

Appeal Ref: APP/X5210/W/16/3153219

The Carpenters Arms, 105 King's Cross Road, Camden, London WC1X 9LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mendoza Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref 2016/0759/P, dated 10 February 2016, was refused by notice dated 18 April 2016.
 - The development proposed is a change of use of the first and second floors from public house (Class C4) to create 1 x 2 bedroom and 1 x 3 bedroom flat (Class C3); erection of a mansard roof extension to create 1 x 3 bedroom flat (Class C3) and associated works.
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Decision

1. The appeal is dismissed.

Procedural matters

2. A signed and dated Section 106 Obligation was submitted before the Hearing to secure car-free housing for the residential units, a contribution towards highway works and a construction management plan. I will consider this Obligation below.
 3. Although the name of the appellant on the planning application and appeal forms is Mr Mendoza it was agreed at the Hearing that the appellant is Mendoza Limited, as set out above. I have also included 'The Carpenters Arms' in the description of the appeal site as agreed at the Hearing.
 4. I have used the agreed description of the proposal as above rather than the description used on the planning application form as it more accurately describes the development before me.
 5. During the appeal process I have been presented with drawings PP 834/200 and PP 834/201. The appellant has confirmed that these are for illustrative purposes only and do not supersede Drawings PP 834/200 Rev A and PP 834/201 Rev B. It was also agreed that Drawing JDD/CA-E1 Existing Site Plan is actually the existing roof plan.
 6. At the site visit I observed that some of the works associated with the proposal have been implemented, including the replacement of the stairways between the ground and first floor and the ground floor and basement and the installation of a new front entrance. These are in accordance with the
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proposed plans and therefore the scheme is in part retrospective. I also observed that the first floor is currently occupied as two studio flats and the second floor is occupied as a three bedroom flat. Extensive works were being carried out inside the property, including the removal of internal fittings such as the bar and toilets.

Main Issues

7. The main issues are:
 - i. whether the proposal would prejudice the long term retention of the public house which is an Asset of Community Value (ACV); and
 - ii. whether the proposal would provide satisfactory living conditions for future occupants of the upper floor flats or prejudice the operation of the public house with particular reference to noise disturbance.

Reasons

Retention of the ACV

8. The appeal property is located at the corner of King's Cross Road and Frederick Street and comprises a three storey plus basement 19th century terraced public house known as the Carpenters Arms. The property has a lawful A4 use; however, the manager's tenancy ended and the public house closed in October 2016, since which date it has remained closed. The ground floor formed the main bar and drinking area with a stage for performances /darts platform and toilets to the rear. The basement was used for ancillary storage purposes. At first floor level there was a commercial kitchen and a former function room used as the pub manager's office and as a staff rest area. The second floor incorporated a living room, bedrooms and a bathroom used as the manager's living accommodation.
9. The property forms part of a larger terrace of buildings which mainly comprise commercial ground floor uses with residential above. There are a number of restaurants, hot food take-aways, hotels and hostels in the vicinity of the site. King's Cross Road is a very busy and noisy, heavily trafficked main road. There are quieter residential streets near to the site, including around Frederick Street and Acton Street.
10. The whole of the appeal property is a designated ACV in recognition that it furthered the social interests of the local community, particularly sporting interests as an important darts venue. There was also regular live music and charitable activities at the pub. It had a healthy customer base as locals were supplemented by workers from local businesses as well as some tourists. It played an important social role for members of the local community. Hot and cold food was served at the pub for events and functions only; food service for paying customers having stopped around 2001.
11. The site is situated within the Bloomsbury Conservation Area, though is not listed or locally listed. The Bloomsbury Conservation Area Appraisal and Management Strategy April 2011 recognises the building as a positive contributor to the conservation area and the ground floor shopfront is also recognised as a shopfront of merit.

12. The proposal is to convert the first and second floors into two flats and add a new storey to provide a third flat at third floor level. The ground floor and basement would be retained for use as an A4 public house, but reconfigured in order to provide space for a new staircase to the upper floors, a new entrance at street level and a new internal access to the basement.
13. The Government's *Community Right to Bid: Non-statutory advice note for local authorities* October 2012 advises that local planning authorities can consider whether listing as a ACV is a material consideration in determining a planning application, taking into account all of the circumstances of the case. In this particular case I regard the ACV as an indication of the local support for the premises having a function which furthers the social wellbeing or social interests of the local community. In this case, the pub's importance as a local darts venue with regular live music and charitable activities furthered the social interests of the local community. It provided an environment distinctive from other drinking establishments in the area, according to the Council's reasons for why the pub meets the definition of an ACV. Therefore I consider it to be an important material consideration in this appeal and this was agreed by all parties at the Hearing.
14. Policy CS10 of the Camden Core Strategy 2010-2015 (November 2010) (the CS) states that the Council will work to ensure that community facilities and services are provided for communities and people who work in and visit the borough, including a range of community facilities to support the borough's growing population. The supporting text to Policy CS10 is clear that a community facility provides an opportunity for people to meet and socialise and can provide a range of services in one location. The text also refers to Policy DP15 of the Camden Development Policies 2010-2015 (November 2010) (the DP) which also relates to community and leisure uses. The Council will protect existing community facilities by resisting their loss except in specific circumstances. Paragraph 15.6 of the supporting text relates specifically to local pubs that serve a community role, for example by providing space for clubs, meetings or performances, the loss of which will be resisted. From the evidence before me it is clear that the ground floor of The Carpenters Arms performed this function until its closure in October 2016. Facilities on the first floor also contributed to its operation as a community facility.
15. The National Planning Framework (the Framework) also advises that planning decisions should promote opportunities for meetings between members of the community who might otherwise not come into contact with each other. Furthermore, decisions should plan positively for the provision and use of community facilities such as public houses in order to enhance the sustainability of communities and residential environment.
16. In paragraph 4.48A of The London Plan March 2016 (the London Plan) the important role of London's public houses is recognised in terms of the social fabric of local communities. In order to address the concerns of the rapid rate of closures over the past decade and the factors behind these boroughs are encouraged to bring forward policies to retain, manage and enhance public houses.
17. My attention has also been drawn to Policy C4 of the Draft Camden Local Plan 2015 (the LP) which relates to public houses. The Council consulted on the Local Plan submission draft between February and April 2016. Policy C4 was

also considered at the Local Plan Hearing in October 2016 when it was agreed with the Inspector that the policy needed to be modified to ensure it will be clear and effective in determining planning applications. The Inspector raised no concerns about the principle of the Local Plan including a policy to protect pubs. The modified version of Policy C4 was the subject of public consultation between 30 January 2017 and 13 March 2017. It seeks to protect public houses which are of community value. Planning permission will not be granted for the loss of pubs which are valued by the community unless there are equivalent premises available to serve the community's needs or there is no interest in the continued use of the property or site as a public house. Although Policy C4 does not yet form part of the development plan, given the consistency with the Framework and the London Plan both parties agree that it should be given some weight in determining the current appeal.

18. Given the provisions of the Framework, Policies CS10 and DP15, the London Plan, the emerging development plan and the evidence before me I am satisfied that a public house is a community use. Therefore, the Framework and these policies which seek to protect and enhance community facilities and resist their loss unless specific circumstances can be demonstrated are relevant to this case.
19. Public houses play an important community and cultural role which is often associated with a longstanding presence in the community in which it is set. The closure of a pub can therefore compromise the vibrancy of an area and its associated diversity and attractiveness as a place to live. Pubs also perform an important economic role in contributing to the vitality of an area, attracting people from nearby as well as visitors from further afield, including tourists. They provide job opportunities and support jobs in the wider economy through the supply chain.
20. From the evidence before me including a number of recent planning appeal decisions it is clear that a major issue for some pubs is the loss of some of their operating space, which may include a function room, a commercial kitchen or ancillary staff living accommodation. Such loss may have a negative impact on how the pub operates, its character and its role within the community. The loss of even one key feature or supporting use within a pub may result in negative effects which may compromise a pub's entire future.
21. In this particular case, the Council confirmed that its key concerns relate to the loss of the commercial kitchen and the combined loss of the upper floors which contain uses ancillary to the public house. The appellant contends that before it was closed the ground floor was in bar use and that the first floor comprised a commercial sized kitchen and a living room used as part of the pub manager's living accommodation. The kitchen was used mainly by the pub manager for his domestic use. However, the evidence presented at the Hearing clarified that the first floor kitchen was used to cater for five darts matches per week (one each day Monday to Friday) plus frequent parties and events, including birthdays, engagements, weddings and other celebrations. It also catered for a monthly meeting held by a private organisation. All food for these events was produced on site by the pub manager to be served on the ground floor. It is clear to me that the catering kitchen at first floor was important in the day-to-day functioning of the pub as a community facility.

22. Also, rather than being living accommodation for the pub manager, the first floor living room was used as a manager's office and staff room, where staff could take breaks and watch television, for example. The second floor accommodation included a living room and bedrooms for the pub manager and has never been accessible to the public. I understand that the first floor former function room has not been used by the public since before April 1996. Access to the first floor by the public was stopped around this time due to the manager's understanding that fire escape arrangements were inadequate, rather than there being a lack of demand. It was not being used by the public at the time of the pub's designation as an asset of community value and therefore I do not consider it to be significant to the future functioning of the premises as a community pub.
23. The proposal would retain the public house use at ground and basement levels. However, it is important to consider how the development would affect the quality of the offer as it most recently existed with the functioning ancillary accommodation and facilities at first and second floor levels. Traditionally, pub managers or landlords and staff had on-site accommodation due to the working hours associated with running a pub and the need to be on site to deal with emergencies. The loss of manager's accommodation would make employment less attractive and may compromise the viability of the public house as it may be more difficult to attract prospective managers and staff.
24. The appellant's submission and in particular the Viability Report by Lambert Smith Hampton makes the point that there are many pubs that function successfully solely on the ground and basement floors of a building with no ancillary upper floor accommodation whatsoever. Such an establishment is commonly known as a 'lock-up pub'. Other than suggesting that many establishments in London operate very successfully as 'lock-up pubs' there is no evidence that this particular pub would function successfully in the form and layout proposed. The pub would operate as a much reduced facility and no evidence is presented that a tenant would be willing to take the business on with a long-term lease. I consider it far more likely that the pub which includes a range of ancillary living and other accommodation would be a more attractive and sustainable potential enterprise for pub operators than the scheme as proposed. Indeed, the report itself acknowledges that the loss of living accommodation may make the premises less attractive to potential operators or future tenants and may have a negative effect on the marketability of the premises, even though operators may not expect living accommodation.
25. I also understand from the Hearing that the presence of the manager / landlord living on site at the Carpenters Arms was a key feature which contributed to the pub being considered as a haven for local residents and a safe environment for a range of different people from the local community. The loss of the on-site manager's accommodation may represent a trend across London and other parts of the country, but in this case it would be regrettable and diminish the role of the former community pub in this regard.
26. The Viability Assessment addresses factors that influence the viability of an enterprise, including depreciation, property costs and operational costs. However, it does not demonstrate the specific impacts of the current proposal on the viability and long term marketability of the Carpenters Arms. Instead, it sets out that 'lock-up' premises are common today and have helped to maintain the demand for public houses in London, generally and the model of

operation that may suit a wet-led (drinks-led) drinking establishment situated on the ground and basement floors of the premises. There is no dispute in the approach to viability in the report and from a commercial perspective I can understand that the immediate consequence of not having a commercial kitchen may not be significant itself since the pub has not served food other than for regular events for some time. I also understand that from commercial and practical points of view it may not be desirable to reinstate the former function room. However, it does not address the key matter relating to the effect of the proposal on the use of the pub for community purposes and the very different offer resulting from a 'lock-up' establishment rather than a community pub.

27. The appellant contends that the loss of the large first floor commercial kitchen could be mitigated through the provision of a smaller kitchen at ground floor. Indeed, illustrative plans have been submitted which show a much reduced kitchen facility at ground floor, which is significantly less than half the size of the original first floor commercial catering kitchen.
28. I have also noted the appellant's willingness to accept a condition that a kitchen/preparatory area be re-provided to a design to be approved by the local planning authority. Although I have illustrative plans showing how the ground floor and basement could be reconfigured to accommodate a small kitchen that is not the proposal before me. Furthermore, given the limited space that would remain in public house use I do not consider that a comparable and suitably sized and resourced catering kitchen providing hot and cold food for customers and events could reasonably be accommodated without compromising other important features such as the bar, drinking area, stage and circulation space.
29. The appellant has also suggested that a kitchen must be viable to operate successfully and that, even though not shown on the submitted drawings, a small theatre / galley kitchen as shown on illustrative material would adequately serve the requirements of customers and would be proportionate to the likely demand for food. Other options such as using outside caterers could also be explored. Although there may be examples of successful pub and restaurants elsewhere which use a small kitchen it seems to me that the ability for the kitchen to cater for large events on a regular basis was valuable in the Carpenters Arms' role as a community pub, with the capability of providing large amounts of hot and cold food on a regular basis for sporting and community events. The loss of the large commercial kitchen would compromise this important function.
30. Although the viability report suggests that the likely and most fitting use as a public house is likely to continue for a wet-led outlet and that there is demand for a wide variety of styles of public house catering for a range of needs and requirements there is no recognition of the most recent function of the Carpenters Arms as a community pub catering for the sporting, cultural and social requirements of the local community with a range of facilities, including a commercial kitchen, which enabled it to do so very successfully. There is no suggestion from any party that the pub was closed because it was commercially unviable and no evidence that there was no interest or demand for the continued use of the premises as a community pub. Therefore, I conclude that the loss of the large first floor kitchen would prejudice the important catering function which was an important and significant feature of

the pub in meeting the catering requirements of functions and events held on a regular basis.

31. There is no overall loss in the floor space available to the public, but rather a very slight increase of 0.2 square metres. However, concern has been raised with regard to the relocated darts / music stage and the fact that employees would have to use the public area to access the basement via the proposed new stairway. The relocated stage would be positioned in place of the original staircase and would be less visible from within the main drinking area, therefore making it potentially less attractive as a music venue. However, I consider that this effect would be only marginal and on its own would not reasonably constitute a reason to dismiss the appeal. Access to the basement via the main public drinking area may be less convenient than the original layout of the pub; however, I do not consider that this matter could reasonably lead to a dismissal of this appeal on its own.
32. Having considered all the submissions and evidence before me I consider the proposal would result in the loss of part of the premises that contribute to the functioning of the pub and that the development would therefore prejudice the long term retention of the public house which is an ACV. Consequently, the proposal would be contrary to the overall aims of Policy CS10 of the CS, Policy DP15 of the DP, emerging Policy C4 of the LP and the Framework which seek to safeguard the community benefits that may arise from public houses.

Living conditions

33. At the Hearing the Council confirmed that the Noise Impact Assessment by KP Acoustics dated 24 May 2016 overcomes the original concerns regarding noise levels from within the building. Therefore, the remaining concern with regard to living conditions is the effect of noise outside the pub on the residents of the proposed living accommodation.
34. After explanation from the appellant's acoustics consultant that the noise generation calculations from general conversations between patrons entering and exiting the building and those gathering outside in front of the pub are based on ten pairs of people talking rather than ten people talking the Council's Environmental Health Officer (EHO) confirmed that the noise levels would be acceptable. Subject to the imposition of a condition limiting the number of patrons outside the pub to twenty and the other acoustic measures covered in the Council's suggested conditions the conflict on this issue would be overcome.
35. It should also be borne in mind that the terms of the premises licence includes measures to prevent noise and disturbance to local residents. Having considered the matters raised with regard to living conditions I conclude that the proposal would provide satisfactory living conditions for future occupants of the upper floor flats without prejudice to the operation of the public house with particular reference to noise disturbance. As such it would accord with the provisions of Policy CS5 of the CS and Policy DP26 of the DP. However, this does not outweigh the harm identified regarding the long term retention of the public house which is an ACV.

Section 106 Obligation

36. A signed and dated Section 106 Planning Obligation was submitted prior to the Hearing and it is agreed between the appellant and the Council that this satisfactorily addresses the third, fourth and fifth reasons for refusal. However, the Obligation does not overcome the harm I have identified with regard to the long term retention of the public house. Consequently, it is not necessary to assess the Obligation against the relevant tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 or accompanying guidance.

Other Matters

37. The appellant states that, in accordance with Policy 3.3 of the London Plan, CS6 of the CS, Policy DP2 of the DP and the Framework the proposal would contribute towards the supply of additional housing by resulting in three new residential units, two of which are capable of meeting the accommodation needs of families. Accordingly, due weight should be given to this matter in the determination of the appeal. Evidence presented by the Council clarifies that the borough does have a five year supply of housing land and indeed London Plan targets are being exceeded year-on-year. Projections to 2031 show a surplus of 1,800 units over targets. Although the appellant is correct that the five year supply figures are minimum figures rather than maximum targets the relatively small contribution of the current proposal does not outweigh my concerns on the main issue relating to the future of the ACV.
38. The site lies within the Bloomsbury Conservation Area and I have had special regard to the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The introduction of the mansard roof would provide a consistent roof form and the proposed materials, including slate roof with lead-clad timber dormer windows is also appropriate. The proposed alterations to the ground floor shop front are also acceptable in relation to the existing shopfront of merit. Consequently, I find that the proposal would preserve or enhance the character or appearance of the conservation area in accordance with the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990.
39. The fact that some works have been carried out without permission is not a reason in itself to dismiss the appeal. The development should be assessed against material planning considerations.
40. The appellant claims that other appeal decisions referred to by the Council do not present the same circumstances as those relating to the current appeal. In arriving at this decision I have taken account of the other appeal decisions, particularly those relating to The Sir Richard Steele¹ and The Golden Lion², to which my attention was particularly drawn by the Council at the Hearing. Each case has some relevance to the current appeal and the approach I have taken with particular reference to long term retention of the public house which is an ACV is not inconsistent with the approach taken by my Inspector colleagues in determining these other cases.
41. The appellant has also drawn my attention to some decisions for sites converted to self-contained residential uses above A3 and A4 establishments. I note that none of these cases are in Camden and therefore the development

¹ APP/X5210/W/15/3003396

² APP/X5210/A/14/2218740

plan context for each of them will be different to those which relate to the current appeal. Furthermore, in the cases of The Surprise Public House (City of Westminster) and The Old Justice (Southwark Council) the only details I have is the decision notices and therefore insufficient evidence that they are directly comparable to the current appeal case. Although I do have extracts from officer reports for The Peacock (Wandsworth) and 286 Club (Lewisham) there is no indication in either case that the loss of a public house or an ACV was a material planning consideration that was taken into account in approving the developments. In the case relating to The South London Pacific (Lambeth) the effect of the proposed extensions and alterations on the public house was a material consideration. Although it was concluded that the proposal met with development plan policy requirements I have no details of the proposal and its potential effect on the operation of the pub. Therefore, I do not have the full details of any of these schemes and so cannot be certain that the circumstances are the same. In any case I have dealt with the current appeal on its own merits.

Conclusion

42. For the reasons given above and taking into account other matters raised I conclude that the proposal conflicts with the development plan taken as a whole and that the appeal should be dismissed.

Alastair Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Hicks	Agent, RPS CGMS
Ken Hogg	Lambert Smith Hampton
Dan Green	KP Acoustics
Kyriakos Papanagiotou	KP Acoustics
Konrad Romaniuk	Milan Babic Architects

FOR THE LOCAL PLANNING AUTHORITY:

Ian Gracie	Case Officer
John Diver	Planner
Edward Davies	Environmental Health Officer

INTERESTED PERSONS:

Ian Shacklock	CAMRA
Elizabeth Bond	Local resident
Judy Dainton	Mount Pleasant Association, Mount Pleasant Neighbourhood Forum and Calthorpe Street Residents Association
Michael Clapson	Carpenters Arms Supporters
David Wheeler	Former licensee

DOCUMENTS SUBMITTED DURING THE HEARING

Doc 1	Statement of Common Ground RPS CgMs Ref. 22199
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