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## Appeal Decisions

Hearing Held on 31 July 2018

Site visit made on 31 July 2018

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 September 2018**

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### **Appeal A: APP/X5210/C/18/3193274** **105 King's Cross Road, London WC1X 9LR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mendoza Limited against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice was issued on 12 December 2017.
  - The breach of planning control as alleged in the notice is change of use of the first and second floors from ancillary accommodation for public house use (A4) to three self-contained flats (Class C3).
  - The requirements of the notice are 1. Permanently cease the use of the first and second floors as self-contained flats and 2. Reinstate the original shopfront removing the new door that gives separate access to the upper floors.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B: APP/X5210/W/16/3153219** **105 King's Cross Road, 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 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.
  - This decision supersedes that issued on 4 April 2017. That decision on the appeal was quashed by order of the High Court.
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### **Procedural Matters**

1. It was agreed at the hearing that the scheme for the enforcement appeal and planning appeal are similar with similar considerations. The main difference is that currently for the enforcement appeal there are two flats at first floor level. The kitchen area is also different between the two appeals.
2. While the Council had other concerns about the developments, it was agreed that an acoustic report and Section 106 obligation provided by the appellant

overcomes those concerns and so these matters are not a main issue for these appeals.

3. The site is within the Bloomsbury Conservation Area whose special interest and significance is set out in the Area Appraisal. It is also common ground that the developments would preserve its significance and special interest and I concur with this. The proposed mansard roof and alterations to the shop front are in keeping with the scale, proportion and arrangements of the appeal building and nearby buildings and the use for residential accommodation at upper floor levels is acceptable in the area.
4. The Section 78 appeal was quashed by order of the High Court because the lease for the current A4 use for the ground and basement floors had not been fully considered.

## **Decisions**

### *Appeal A*

5. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### *Appeal B*

6. The appeal is dismissed.

## **Main Issue**

7. The main issue is the effect of the proposal on the use of the public house as a valued local community asset. (The public house has been designated as an Asset of Community Value (ACV))

## **Reasons**

8. The development plan includes the London Plan [LP] and the Camden Local Plan [CLP], which has been adopted recently. LP Policy 4.48 relates to supporting a successful and diverse retail sector and related facilities and services. It indicates that the Local Development Frameworks should take a proactive approach to planning for retailing and related facilities and services providing a policy framework for maintaining, managing and enhancing local and neighbourhood shopping and facilities which provide local goods and services, and develop policies to prevent the loss of retail and related facilities that provide essential convenience and specialist shopping or valued local community assets, including public houses, justified by robust evidence.
9. Supporting paragraph 4.48A indicates that The Mayor recognises the important role that London's public houses can play in the social fabric of communities (see also Policy 3.1B) and recent research highlights the rapid rate of closures over the past decade and the factors behind these. To address these concerns, where there is sufficient evidence of need, community asset value and viability in pub use, boroughs are encouraged to bring forward policies to retain, manage and enhance public houses.
10. CLP Policy C4 relates to public houses and notes that the Council will not grant planning permission for proposals for the change of use of a public house unless it can be demonstrated it would not be a loss of a pub valued by the

local community unless there are equivalent premises available or there is no interest in the continued use of the public house or reasonable prospect of being able to trade over the medium term. It also notes that applications involving the loss of floor space, including facilities ancillary to the operation of the public house, will be resisted where this would adversely affect the operation of the public house.

11. The appeal building is a designated ACV furthering the social interests of the local community, particularly sporting interests as a darts venue. There was also regular live music and charitable activities that took place at the public house. It had a reasonable customer base with locals supplemented by nearby workers as well as some tourists. Representations clearly indicate that it played an important social role in the community.
12. The provisions for assets of community value give communities a right to identify a building or other land that they believe to be of importance to their community's social well-being. The aim is that, if the asset comes up for sale, then the community will be given a fair chance to make a bid to buy it on the open market.
13. These provisions do not restrict in any way who the owner of a listed asset can sell or lease their property to. They do not confer a right of first refusal to community interest groups. Permitted development rights have been modified to take into consideration assets of community value, removing or modifying the right in respect of them.
14. The provisions do not place any restriction on what an owner can do with their property, once listed, if it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is designated may affect planning decisions – it is open to the Local Planning Authority to decide that designating an asset of community value is a material consideration if an application for any change of use is submitted, considering all the circumstances of the case. The nomination as an asset of community value indicates there is value to the community and this value is a significant material consideration in both appeals, but it is the development plan that remains the major consideration.
15. There are effectively three aspects to the loss identified by the Council: the manager's accommodation on the second floor, the first floor kitchen and the first floor function room.
16. Traditionally, landlords have lived on site, which suits the long and late working hours and having the accommodation makes managing and running a public house easier and likely to be a more attractive proposition. A viability report by Lambert Smith Hampton indicates that many pubs function successfully with only ground and basement accommodation (lock-up premises), but the report also acknowledges that lack of accommodation would make the premises less attractive to potential operators or tenants and may have a negative effect on marketability.
17. The previous inspector noted how the lack of on-site accommodation may make it more difficult to attract prospective managers and staff. However, while I accept that without the manager's accommodation it would be less attractive that does not mean that it is essential or of major importance in terms of the benefits provided by the ACV. The appellant has not had difficulty

in letting the premises for an A4 use and there is currently a 15 year lease in place. So while I acknowledge the concerns of the Council and the previous inspector, the negative effect on marketability is likely to be small and to my mind not sufficient to impact on the use of the building as an ACV.

18. It was also indicated that the presence of the landlord living on site contributed to the public house being considered as a safe environment for people in the community. However, there was no reasonable explanation as to how that would be any different if the landlord lived off the premises. I acknowledge that living there he would be part of the community, but to my mind, so would the operator of the business and living on or off site would have little effect on this.
19. I therefore consider that the loss of the accommodation on the second floor would not affect the premises as an ACV or materially affect its community function or compromise the operation or viability of the use.
20. The first floor appears to have had a combined use in the past with it being used by the manager, including for some office and staff use. It was acknowledged that the function room has not been used publicly since the mid 1990s. The kitchen was used to cater for darts matches on weekdays and regular parties and other events, including for weddings, engagements and birthdays. Food for these events was prepared in the kitchen and taken down stairs to the bar areas. The kitchen clearly is an important facility providing the ability to serve the community in a flexible and varied way providing, considerable value to the community.
21. The function room has not been used for a considerable time and not at the time of the ACV designation and the weight I attach to it is therefore less.
22. The appellant argued at the hearing that it is not for planning to control the day to day running or internal arrangement of buildings, including ACVs or who the operator is. Even if the developments are not permitted the current use can and will continue as there is a 15 year lease that can only be broken by the agreement of the parties. I do not agree with the Council that the lease does not indicate an intention to continue the current use and it seems to me to be the normal arrangement that would be made. It is also noted that internal alterations, as have already occurred, such as moving the ground floor toilets to the basement, or relocating the kitchen in the lower areas, releases space for direct use by patrons.
23. I acknowledge that planning control is not for the minutiae of the use of the building and that the owner should be allowed to manage the building as necessary and generally in response to the needs of the business. However, a very important aspect of planning is to control where different types of development can occur and to ensure that less valuable uses, such as public houses, are able to survive by protecting space for their use. The fact that parts of the building are not used does not mean that it should not be protected for the future giving the ability for the use to return.
24. I also note the offset in floor areas that has and could occur within the building with the different developments, but to my mind the basement area is not the same quality of space as the first floor, not least as there are no reasonable windows, and in any case, although not previously a publicly accessible area, it had a role in providing storage for the use.

25. The London Plan identifies the rapid rate of loss of public houses and, as set out in Policy 4.48, promotes authorities taking a proactive approach in relation to this type of facility and for them to develop policies to prevent the loss of valued local assets. This has been done, the building has been identified as an ACV, and CLP LP Policy C4, which aims to protect loss of floor space, adopted in the recent local plan.
26. To my mind, while I conclude that the loss of the second floor would not adversely affect the operation of the public house, I conclude that the loss of the first floor accommodation and its potential to contribute to the ACV would adversely affect the public house. The current use, while providing a high class A4 establishment, does not provide the same community service, and this may continue as long as the owner and landlord want, but it remains important to ensure that the building can function as an ACV in the future in accordance with the development plan policies to protect such uses and loss of their floor space.
27. Either development would provide three additional flats that could be used for family use. The Council has planned for housing in the Borough that meets its targets and this is common ground, but targets are not maximum limits and clearly there remains a considerable need for housing in London. I therefore consider that some weight should be attached to the benefit of providing residential accommodation, but to my mind this is not overriding and does not outweigh the need to protect community assets as identified by CLP Policy C4 as promoted by London Plan Policy 4.48.
28. I have also taken into consideration the S106 obligation, which while making the residential aspects acceptable, does not provide such benefits as to outweigh the harm of the development.

*Graham Dudley*

**Inspector**

## **APPEARANCES**

### **FOR THE APPELLANT:**

Luke Raistrick  
Konrad Romanick

Planning Consultant, MRPP  
Architect

### **FOR THE LOCAL PLANNING AUTHORITY:**

Charlotte Meynell  
John Sheely

London Borough of Camden  
London Borough of Camden

### **INTERESTED PARTIES:**

Michael Clapson  
Jack Foxcroft

### **DOCUMENTS SUBMITTED AT THE HEARING**

Document	1	Notification
	2	Suggested conditions
	3	Appeal reference APP/X5210/W/16/3147284
	4	PL/834/200 & 201