

Grounds of Appeal

Application PP/11/02421/Q13 was refused permission on 6th March 2012 for three reasons.

The second and third reasons for refusal concern the requirements for a Section 106 Planning Obligation to secure funding towards local infrastructure provision and to remove on-street residents' parking permit eligibility rights. Informative 2 of the Decision Notice confirms that both Reasons can be overcome by the submission of a Section 106. The Appellant agrees with this statement and has confirmed in writing that both obligations are acceptable, as reaffirmed in paragraph 4.12.2 of the Planning Applications Committee 06/03/2012 Agenda Item No. S20 officer's report. A Section 106 Planning Obligation covering both obligations will be submitted as part of the appeal documentation.

The first reason for refusal alleges that the loss of the public house to a residential use:

- i) would be damaging to the value and significance of the public house as a heritage asset; and
- ii) would cause harm to the character, identity and distinctiveness of the Cheyne Conservation Area.

The grounds of refusal do not allege that any harm would be caused by the proposed development by reason of the loss of a social and community use in terms of the functioning of the local community or otherwise.

Neither do the grounds of refusal allege that any harm would be caused by the proposed external alterations to the building or by the proposed basement extension works.

In addressing the first ground of refusal the Appellant will demonstrate that the proposed development would:

- i) cause no harm to the heritage asset value of the building – in fact it will preserve and enhance the building; and
- ii) cause no harm to character, identity and distinctiveness of the Cheyne Conservation Area area.

It will, accordingly, be contended that the proposed development:

- is not in conflict with Core Strategy Policy CO5; the proposal will maintain, conserve and enhance the built heritage comprising the building.
- is not in conflict with Core Strategy Policy CK 1; the policy does not include public houses in the category 'social and community uses' (Core Strategy 30.3.4) and their loss is not resisted (Core Strategy 30.3.7)

The absence of conflict with Policy CK 1 is demonstrated by consistent decisions regarding changes of use in the Borough allowed both on appeal by the Secretary of State (APP/K5600/A/11/2152776) and on application by RBK&C (PP/10/04063 and PP/09/00599, PP/09/01488 and PP/10/00271).

The Appellant will contend that the proposed development:

- is not in conflict with Core Strategy Policy CL1. The policy is concerned with architectural character and appearance, and with urban form. The proposed development involves no changes to the architectural character or appearance of the building but only its preservation and enhancement by restoration. No changes would be made to the urban form of the locality.
- is not in conflict with Core Strategy Policy CL 3. The purpose of the policy is explained in paragraph 34.3.37 of the Core Strategy: "The character and appearance of a conservation area is not only provided by the high quality and appearance of individual buildings within the area and the inter relationship between them but it is also gained from views, gaps and vistas into and out of the area.." The proposed development is submitted as a full planning application and does not involve any demolition of the building. On the contrary, the appearance of building will be preserved and enhanced and no change is proposed as to its

physical interrelationship with its neighbours. Nor would the proposed development change or materially affect any views, gaps or vistas into and out of the conservation area.

The case for the Appellant will demonstrate the following:

- 1) The proposed change of use from Class A4 to Class C3 single family dwelling accords with the policies of the development plan and there are no material considerations that indicate that planning permission should not be granted having regard Section 38(6) of the 2004 Act.
- 2) Specifically there are no policies which seek to prevent the change of use of the public house use to residential use in either the 2011 London Plan or the 2010 RBK&C Core Strategy, which together comprise the development plan. The Core Strategy defines "social and community uses" in paragraph 30.3.4 for the purposes of the application of Policy CK1 – the list does not include public houses. This has been recently confirmed by Inspector Barton in APP/K5600/A/11/2152776.
- 3) Paragraph 30.3.7 says that public houses are considered a social and community use in the Borough but that there is too little evidence to resist their loss at the present time. The paragraph says the Borough has 113 traditional public houses and that only 6 have been converted to dwellings in the last 10 years to December 2010. Everywhere in the Royal Borough is within 10 minutes walk of a public house. It will be demonstrated that there has been no material change in these circumstances since the adoption of the Core Strategy in December 2010.
- 4) It will be shown that there are currently 12 other public houses within 10 minutes walk of the appeal site. It will further be shown that since December 2010, 3 public houses have been granted planning permission for change of use to residential dwellings in accordance with the development plan, two of which were approved by RBK&C and one was allowed on appeal.
- 5) It will therefore be argued that in land use policy terms the proposed change of use of the public house is not in conflict with the development plan, with specific reference to Core Strategy Policies CO5 and CK1.
- 6) It will further be shown that the proposed change of use to a family dwelling supports and is supported by London Plan Policy 3.3 to increase housing supply and also by Core Strategy Policy CH1 which seeks to make provision for a minimum of 600 net additional dwellings per year. Paragraph 35.3.10 of the Core Strategy confirms that over the next twenty years the size of market housing likely to be required is 80% larger family dwellings of "*three and four and more bedroom units.*"
- 7) It will be shown that there are no development plan policies which specifically resist the change of use of public houses to dwellings in conservation areas.
- 8) It will be shown that the contribution of the appearance of the public house to the conservation area heritage asset will be preserved and enhanced by the appeal proposals. In particular the external appearance of the building will be maintained in general terms and improved in detailed terms.
- 9) It will be shown that the existing character of the use of the large garden attached to the public house by customers detracts from the setting of the directly adjacent listed buildings in Margareta Terrace and from the residential character of the conservation area as a whole.
- 10) It will be argued that the existing use of the public house as a 'gastro pub' is far removed from the character of the former traditional Victorian public house use of the premises, both in terms of the regular use of cars by patrons coming and going to the 'gastro pub / restaurant' today and by the use of the garden area for drinking and eating at all times and in all weathers. The retention of the 'gastro pub / restaurant' use does not therefore preserve or enhance the historic character of the conservation area – its use is not that of a traditional corner public house, which originally served a very local pedestrian community behind closed doors. It is a 'gastro pub / restaurant' destination attracting custom from outside the area not in keeping with the predominantly domestic character of this quiet residential enclave; and a use that has, in very recent years, proved erosive of that character by virtue of the

liberalisation of licensing hours, by its encouragement of the use of the car and by the smoking ban within public buildings making smoking an outdoor / street activity.

- 11) It will therefore be argued that the proposed change of use would not cause any material harm to the character of the conservation area, but would be more in keeping with its quiet residential character and in this respect it would support and is supported by Core Strategy Policies CL1 and CL3, as well as conforming with the 2008 English Heritage advice in "Conservation Principles, Policies and Guidance for Sustainable Management of the Historic Environment".
- 12) Evidence of the problems relating to the operation of the gastro-pub and its licensing restrictions will be adduced in evidence. It will be argued that an important "other material consideration" in this case is the detrimental impact on the residential amenity of the local community resulting from the changes to the nature of the public house use, occasioned in part by the changes in the regulatory regimes. As a result, this quiet residential enclave is now disturbed by the 'gastro pub / restaurant use,' notwithstanding the very strict licensing controls imposed upon it and despite continuous efforts and best endeavours by the operators to stay within those constraints. The public house use of the large front garden on the corner of two residential streets, of which one is a cul-de-sac, has a unique and disproportionately greater adverse impact on residential amenity than is caused by any of the other public houses within walking distance of the appeal site.
- 13) It will therefore be argued that, on its own merits, this particular change of use proposal would cause no material harm to any interest of planning importance or in terms of prevailing planning policies at national, strategic or local level. With regard to the compelling other material consideration of the preservation of residential amenity it will be argued that on its merits this proposal accords with prevailing policies. The retention of the building as a 'gastro pub / restaurant,' is problematic and is likely to remain problematic and a "bad neighbour" use which impacts adversely on the character of this predominantly residential area.
- 14) In addition, the proposed development will contribute to the provision of much needed family housing whilst securing the sustainability of the residential neighbourhood.
- 15) It will be demonstrated, with supporting technical evidence, that the proposed extensions comply with the 2011 London Plan Climate Change and Historic Environment and Landscape policies, the 2010 Core Strategy Extensions Policy CL2 and Climate Change Policy CE1 and with the 2009 RBK&C "Subterranean Development Supplementary Planning Document".
- 16) In support of the appeal proposals reliance will be placed on other planning decisions allowing the change of use of public houses to dwellings in the Borough including premises in conservation areas. Chief among these will be the careful assessment of and the application of development plan policy to, the change of use from public house to a dwelling involving the Prince of Wales public house (APP/K5600/A/11/2152776).
- 17) It will further be shown that no material weight can be afforded to the Draft Public Houses Issues and Options Paper, published for consultation on 13th March 2012 for a six week period to 24th April 2012. "Due date" objections to it will have been submitted by the Appellant and there is no certainty that any of the four options being considered will be formally adopted by RBK&C.
- 18) With regard to the new National Planning Policy Framework (NPPF):
Paragraph 48 requires housing applications to be considered in the context of the presumption in favour of sustainable development, which this proposal delivers;
Paragraph 50 requires the delivery of a wide choice of high quality homes. In that context, paragraph 35.3.10 of the Core Strategy states that "Over the next 20 years, the size of new market housing likely to be required in the Borough is 20% one and two bedroom units and 80% three and four or more bedroom units". The proposal to create a large family house therefore supports and is supported by NPPF paragraph 50.
Paragraph 58 requires good design which will:
 - i) ensure that developments function well and add to the overall quality of the area. Replacement of the disruptive gastro pub/restaurant use by the creation of a family dwelling achieves this;

- ii) establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit. Retaining and refurbishing the appearance of the historic pub, whilst replacing the disruptive Class A4 use by a comfortable Class C3 dwelling, achieves this;
- iii) optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses and support local facilities and transport networks. The extension works optimise the site potential, whilst the mix of uses locally is sustained by the continued proximity of 12 other pubs, which the new residential occupiers of 9 Phene Street are likely to support. The removal of the right to a “residential parking permit” and the removal of the Class A4 use are both likely to reduce car trips in this locality. These NPPF objectives are thereby secured by this proposal;
- iv) respond to local character and history, reflecting local identity and materials, which is achieved here by the retention and enhancement of the appearance of the pub, whilst responding to the identity of the area as a quiet residential hinterland;
- v) create safe and accessible environments where crime and disorder, and fear of crime, do not undermine the quality of life or community cohesion. The letters of support for the application, occasioned by the disruptive nature of the existing Class A4 use confirm that these objectives will be fulfilled by the creation of a dwelling house in its place;
- vi) be visually attractive as a result of good architecture and landscaping. The refurbishment of the building will add to its visual attraction, as will the proposed landscaping scheme for the front garden, which is made possible by the change of its use from being the outside area for the gastro pub use to that of a residential garden amenity area.

Paragraph 61 recognises the importance of visual appearance, whilst adding that planning decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment, which is achieved here by the removal of the disruptive gastro pub/restaurant use and its replacement by the far more compatible residential use.

Paragraph 70 requires policies and decisions to:

- i) plan positively for the provision of community facilities, including public houses, to enhance the sustainability of communities and residential environments. Core Strategy Policy CK1 has undertaken that task and confirmed that so readily available are pubs throughout the entire borough that there is no, in principle, objection to their change of use to other appropriate uses. In this case the removal of the pub use will enhance the sustainability of the residential environment without any detrimental impact on the sustainability of the community, having regard to the number of alternative pubs within walking distance of the appeal site;
- ii) guard against the loss of facilities where this reduces the community’s ability to meet its day-to-day needs. That is not an issue here, because of the large number of public houses in the locality.;
- iii) ensure that facilities are able to modernise in a way that is sustainable and retained for the benefit of the community. In this case every effort has been made by the Appellants to modernise the pub and to make it a sustainable viable commercial enterprise. However it currently suffers commercially from the very restrictive liquor licensing regime applied to it so that its future viability is in doubt. This regime has the effect of imposing additional unusual costs on the commercial enterprise which are associated with the management of the pub garden under the terms of the current liquor licence. Even with those extraordinary measures in place, the use has proved to be incompatible with the quiet residential neighbourhood in which it is located;
- iv) ensure an integrated approach to considering the location of housing, economic uses and community facilities. In this case the pub is surrounded by housing, with which it

fails to integrate because of the commercial need for the pub operation to use its large garden and because of the need for it to attract clientele from further afield than just the local community if it is to have any prospect of achieving viability - the result of which is to bring a large volume of cars and visitors from outside the area to this quiet cul-de-sac, disrupting still further the amenity of the residential neighbourhood and the functional character of this part of the conservation area.

Paragraph 95 requires local planning authorities to actively support energy efficiency improvements to existing buildings, which this proposal achieves, as the technical evidence will demonstrate.

Paragraph 99 requires new developments to take account of such factors as flood risk, water supply and changes to biodiversity and landscape, with their designs planned to avoid the increased vulnerability from the impacts of climate change. These proposals embrace those design imperatives, incorporating a Sustainable Drainage System (SUDS) and new soft landscaping, as the supporting technical evidence and landscaping proposals will demonstrate.

Paragraph 100 supports using opportunities of new development to reduce the causes and impacts of flooding, which in the borough has been regularly suffered from storm-water surface drainage deficiencies. The proposed SUDS takes the opportunity to reduce those damaging impacts locally.

Paragraph 126 takes into account:

- i) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, which is achieved in this case by replacing the loss-making gastro pub/restaurant use with a financially viable family dwelling house use, at a time when 80% of the market housing demands in the borough is for such family-sized accommodation.;
- ii) the desirability of new development making a positive contribution to local character and distinctiveness, which is here achieved by removing the harmful impacts of the pub use and by the refurbishment works to the external appearance of the building and its garden setting.

Paragraph 128 requires the Applicant to describe the significance of the heritage asset and its setting, sufficient to understand the potential impact of the proposals on its significance. In this case that has been identified as relating to restoring and retaining the distinctive appearance of the building and its external architectural features and signage, and enhancing the landscaping of its garden setting. Evidence will be presented and draw upon appropriate heritage expertise accordingly.

Paragraph 131 requires planning decisions to take account of :

- i) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses, achieved here by the refurbishment works to the building and its garden setting and by the replacement of the commercially fragile gastro pub/restaurant use by a viable family dwelling;
- ii) the positive contribution that the heritage asset can make to sustainable communities including their economic vitality, again achieved here by removing the disruptive and commercially vulnerable gastro pub/ restaurant use and replacing it by a viable family dwelling;
- iii) the desirability of new development making a positive contribution to local character and distinctiveness, achieved her by the refurbishment works to the building and garden setting, as well as to the integration of a compatible residential use into this quiet residential enclave in the hinterland of the conservation area.

Paragraph 133 resists substantial harm to or the total loss of the significance of a heritage asset, unless that loss is outweighed by substantial public benefits. In this case the heritage significance derives from the special architectural contribution of the building to the townscape, which is preserved and enhanced by these proposals. The historic interest does not derive from the current gastro pub/restaurant use catering for a clientele coming from a wide geographical area. Its historic interest is the knowledge that it was originally a traditional Victorian public house behind closed doors and frosted glass windows for use by the residents in the immediate locality. That historic usage / heritage significance no longer exists in functional terms. The heritage asset comprised in the building is in its architectural design and appearance, which is preserved by the current proposals. There is no substantial loss of what is of heritage significance therefore and the proposals are not in conflict with paragraph 133.

Paragraph 134 requires that where the proposal leads to less than substantial harm to the significance of the heritage asset, then any such harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. In this case, even if the loss of the Class A4 use in its current contemporary manifestation is regarded as harmful to the significance of the heritage asset, it is less than substantial and there are important public benefits by its removal to those members of the public most affected by that use, namely the neighbouring residents who suffer the consequences of the noise and disturbance of the use and the associated traffic and visitor impact every day and night of the year. In addition the proposed residential family dwelling use is the optimum viable use. The proposals thereby are in full accord with paragraph 134.

Taken together, the proposals thereby deliver sustainable development in economic, social and environmental terms and benefit thereby from the presumption in favour of sustainable development, which paragraph 14 confirms is at the heart of the NPPF and is the golden thread which should be seen as running through both plan-making and decision-taking.