



Appeal Decision

Site visit made on 28 February 2013

by David M H Rose BA (Hons) MRTPI

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

Decision date: 23 April 2013

Appeal Ref: APP/L5810/A/12/2187054

Royal Oak, Ham Street, Richmond, Surrey, TW10 7HN

- 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 Mr Neil Burgess against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 12/0524/FUL, dated 20 February 2012, was refused by notice dated 26 October 2012.
 - The development proposed is described as 'Change of use from public house (A4) to family dwelling (C3)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal includes alterations to the external appearance of the building shown on drawings 203 Rev B; 204 Rev B; 205 Rev B; and 206 Rev B. Drawing No 301 shows the proposed ground floor and rear courtyard. An e-mail dated 25 May 2012 confirms that the parking has been removed from the rear to provide a larger amenity area. This is the basis of the project before me.
3. The appeal site is located within the Ham House Conservation Area which is focused on Ham House and its grounds extending southwards from the river to include a variety of 18th century mansions and smaller scale cottages some of which are Victorian. The local planning authority raises no objection on design grounds as the proposal would retain the external character of the public house. I am satisfied that the development would preserve the character and appearance of the Conservation Area.

Main Issue

4. The main issue is whether the proposal would result in an unacceptable loss of a local community facility.

Reasons

5. The Council relies on 3 policies to underpin its decision. Policy CP16 (Local Services/Infrastructure) of the Core Strategy (2009) provides the overall strategic approach in ensuring the provision of services and facilities for the community. In turn, Policy DM SI 2 (Loss of Existing Social Infrastructure Provision) of the Development Management Plan (2011) also resists the loss of social infrastructure.

6. Policy DM TC 4 (Local Shops, Services and Public Houses) of the Development Management Plan is directly relevant to the appeal proposal. It is broadly consistent with paragraph 70 of the National Planning Policy Framework which indicates that planning decisions should guard against the unnecessary loss of valued facilities particularly where this would reduce the community's ability to meet its day-to-day needs. It therefore merits full weight.
7. In terms of changes of use from public houses, the policy contains 3 mutually exclusive criteria. The first resists the change of use unless there is another public house within convenient walking distance; the second seeks to retain such uses unless it is inappropriate in terms of access or neighbourliness; and the third indicates that any new use should provide a community service or function.
8. Taking each in turn, the Ham Brewery Tap is approximately 400 metres from the appeal site and within convenient walking distance; there is a significant element of local support for the change of use with some references to un-neighbourly activities; and an 'Alternative Use Assessment' demonstrates that the area is well served by community facilities and the building would be unsuitable for such uses.
9. Although the appellant claims that the proposal meets Policy DM TC 4, the supporting text indicates that before accepting the loss of any local pub the Council will require satisfactory evidence of full and proper marketing normally for at least 2 years. It is the lack of marketing which concerns the Council.
10. It is said that the previous long-term tenant placed the lease for sale over a period of 18 months but no buyers could be found; and, following the return of the keys, Enterprise Inns intervened by offering incentives to short-term tenants, so as to keep the public house open. However, the efforts of the long-term tenant are not documented and Enterprise Inns' confirmation of internal marketing over a two year period and lack of viability is similarly unsupported by detailed documentary evidence.
11. The subsequent open marketing by a specialist firm of Chartered Surveyors commenced on 3 August 2011 but lasted no more than 2 weeks following the acceptance of an offer from Burfield Construction. Although there was no reported interest from licensed retail users it can be concluded that the very limited duration of the marketing was inadequate to properly test the market. Although the property was returned to the market in August 2012, there is again no supporting evidence which makes impossible any assessment of the veracity of the exercise.
12. Although the appellant claims that there is nothing in the Development Management Plan to indicate that the marketing needs to be continuous, nor does it specify when the marketing should be conducted, the manner in which it is expressed clearly indicates that there needs to be convincing evidence of a genuine attempt to secure the retention of the existing use. That is manifestly lacking in this case.
13. It is pointed out that Paragraph 70 of the National Planning Policy Framework makes no reference to the need to provide marketing evidence; but that does not change the requirement, as confirmed in paragraph 2 of the Framework, that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. On the contrary, it adds support to policy DM TC 4 in its aim of avoiding the unnecessary loss of community facilities.

14. The further reference to the Framework, at paragraph 158, is that account has to be taken of market conditions; and that appears to be the thrust of the development plan in its requirement for evidence about market conditions. The appellant's evidence in this regard is superficial and falls well short of providing a robust assessment.
15. Although the requirement for full and proper marketing is not embraced within Policy DM TC 4, the policy has to be read with the supporting text. On this basis the absence of clearly documented marketing compromises the appellant's case; and the suggestion that the evidence presented does not need to be corroborated is misplaced in light of the clear explanation as to the manner in which the policy is to be applied and the level of evidence required.
16. Against this background, despite the presence of other nearby facilities, including the Ham Brewery Tap, and the considerable degree of public support, there has been an express failure to provide clear and convincing evidence relating to viability and marketing. Similarly, the suggestion that the public house could not be adapted in a manner which would allow it to be run successfully is not explained. Without convincing evidence to support these elements the proposal would represent a premature, unsupported and unacceptable loss of a local community facility which would be at odds with Policy DM TC 4 (Local Shops, Services and Public Houses) of the Development Management Plan.
17. It is suggested that the purpose of the policy is to ensure that local communities have access to public houses in the community and to meet their day-to-day needs. The manner in which the local planning authority applies the policy is also challenged in that there is doubt expressed as to whether the policy is being applied 'in a way that delivers what the policy seeks to deliver rather than delivering bizarre or extreme results'. The policy has to be read at face value with the supporting text; the latter is unambiguous in its expectations.
18. A number of 'precedents' are cited but none of the decisions reflects the unique elements of location, policy background and the material considerations applicable to this appeal.
19. All other matters raised, including the benefits of securing the conversion of an existing building to an additional unit of housing in a sustainable location, have been taken into account. However, there is nothing of sufficient weight to undermine the conclusion to dismiss the appeal.

David MH Rose

Inspector