

Committee: Development Committee	Date: 6 th April 2016	Classification: Unrestricted	Agenda Item Number:
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Report of: Corporate Director of Development and Renewal	Title: Planning Application
Case Officer: Beth Eite	Ref No: PA/15/02489
	Ward: Spitalfields and Banglatown

1. APPLICATION DETAILS

Location: Duke of Wellington, 12-14 Toynbee Street, London, E1 7NE

Existing Use: Public House (use class A4) on ground and basement floors with ancillary residential accommodation above.

Proposal: Change of use from public house (A4) to a mixed public house / hotel use (sui generis). Erection of two storey extension at second floor and roof level and installation of dormer windows to allow the conversion of the first, second and third floor to accommodate 11 hotel rooms.

Drawing and documents: Design and Access Statement rev B; Refuse Strategy; Heritage Statement; 187_EE_00; 187_EE_01; 187_EE_02; 187_EE_03; 187_ES_00; 187_ES_01; 187_EX_-01; 187_EX_00; 187_EX_01; 187_EX_02; 187_EX_03; 187_GA_-01; 187_GA_00; 187_GA_01 rev A; 187_GA_02; 187_GA_03; 187_GA_04; 187_GE_00; 187_GE_01; 187_GE_02; 187_GE_03; 187_GS_00; 187_GS_01; 187_S_00

Applicant: Mendoza Ltd

Ownership: Mendoza Ltd

Historic Building: N/A

Conservation Area: Wentworth Street

2. BACKGROUND

2.1 This application for the change of use of the Duke of Wellington from a public house with ancillary accommodation above to a sui generis, mixed use (public house / hotel

use) with 11 hotel rooms and a two storey extension to the second floor and roof level was reported to Development Committee on 7th April 2016.

2.2 The Committee, by way of a unanimous vote, resolved not to accept the officer recommendation to grant planning permission and therefore resolved that permission should be refused and indicated the following reasons for refusal:

- The potential loss of the public house as a result of a change to a sui generis use.
- Lack of wheelchair accessible bedrooms
- Insufficient information on the servicing requirements of the scheme and the potential detrimental impact this will have on the surrounding street network.
- Impact to the character and appearance of the building and surrounding conservation area resulting from the construction of the proposed extension and resultant loss of the roof terrace.

2.3 This report considers the reasons for refusal in the context of the officer's original assessment of the application and whether these are likely to be sustainable in the event of an appeal.

3. COMMITTEE REASONS FOR REFUSAL

Loss of the public house

3.1 The application intends to retain the public house on the ground floor, but for it to be used in conjunction with a hotel on the upper floors. Given the arrangements of the layout these uses cannot be operated independently and as such this is a mixed use (sui generis). Officer's believe that there is sufficient control within the proposed planning condition to ensure that a public house use remains on the site.

3.2 Concerns were raised regarding the potential for the characteristics of the public house to change from that which currently exists. The planning controls proposed would require a further change of use application were the ground floor to be used as an ancillary hotel bar or café/restaurant. It would not be possible under Planning regulations however to guarantee that the existing character of the Duke of Wellington is retained as the condition would secure any public house / drinking establishment use, not the character of the public house.

3.3 Members were also concerned that the use of the upper floors for hotel rooms could affect the ongoing viability of the public house. As the standards for noise insulation for hotel rooms is the same as for residential properties it is considered that a reason for refusal could be based around the potential for noise and disturbance resulting from the public house detrimentally affecting the hotel element. This may result in a curtailing of the public house activities, including the use of the beer garden / yard, either through controls set through licencing or measures taken by the owner / operator (who would be managing both uses). Whilst the condition would prevent the owner / operator from changing the use without planning permission, it would not prevent a closure of the public house / reduction in hours or restrictions on the use of the beer garden in order to ensure less disruption for the visitors to the hotel.

Lack of wheelchair accessible bedrooms

3.4 Policy 4.5 of the London Plan requires 10% of hotel bedrooms to be wheelchair accessible. In this case as 11 hotel rooms are provided one of these should be

wheelchair accessible to meet this policy. There are constraints associated with this site which led officer's to conclude that the provision of one wheelchair bedroom would be too onerous a requirement for this scheme and would not be a sufficient reason to refuse planning permission. These constraints centre predominantly around inclusion of a lift within the building, to serve just one bedroom, would take up ground floor trading area, thus affecting the viability and public house which is established as being of important value to the community. However, as this element of the proposal is contrary to policy officer's believe that this reason could be defended at appeal.

Insufficient information on servicing

- 3.5 The officer view as set out in the original report is that this is a relatively small scale proposal so the addition of 11 hotel rooms on this site would not require significant levels of servicing over and above those which are already carried out for the existing public house and that these could be accommodated on the surrounding highway network without causing significant congestion. Concern was raised that no modelling had been carried out to evidence this claim and that the application should not be supported in light of this.
- 3.6 Officer's would recommend that this refusal reason be coupled with the issue around lack of storage within the hotel element of the proposal. There is only one small storage cupboard within the first floor which means that deliveries and collection of linen and refuse are likely to be required daily, if a storage area were to be provided within the development the Committee may have had more confidence that deliveries and servicing could occur with less frequency. Taking account of the Council's concerns regarding the additional pressure on the surrounding streets resulting from this additional activity it is considered that officers could defend a reason for refusal on this basis.

Character and appearance of the extensions

- 3.7 The building is located in a prominent position within the Wentworth Street conservation area, as such the development is required to preserve or enhance the character and appearance of this conservation area.
- 3.8 Members raised concerns with the appearance of the extensions and how they would result in the unacceptable loss of the roof terrace at second floor level, which is considered to be a key feature of the building.
- 3.9 The proposed extensions are considered to be a modest addition to the rear of the building and subject to a condition that the materials would need to match the original building, officer's believe that this addition would preserve its character and appearance and would not be a particularly noticeable alteration when comparing the existing situation to the proposed one.
- 3.10 The terrace area at second floor level is surrounded by a 2m high close boarded fence which is not an original feature for the building and in officer's opinion is of little or no heritage significance. Officer's believe that defending this reason at appeal is unlikely to be successful and recommend that this reason is withdrawn from the decision. Further information will be presented to the committee when the report is considered.

4. ADDITIONAL REPRESENTATIONS AND PROSPECTIVE CHANGES TO SCHEME

- 4.1 Since the publication of the Committee Report and Update report the Council has received no additional representation from local residents or the wider community.

5. IMPLICATIONS OF REFUSING PLANNING PERMISSION

- 5.1 The officer recommendation has been to grant planning permission but it is the Committee's prerogative to disagree with that recommendation if there are clear planning reasons for doing so.

- 5.2 In coming to an alternative view the Committee has to take into account the provisions of the development plan, any other relevant policies and relevant material considerations.

- If planning permission is refused, there are a number of routes that the applicant could pursue:
- Appeal to the Secretary of State. An appeal would be determined by an independent Inspector appointed by the Secretary of State. Whilst officers have recommended approval, any appeal would be vigorously defended on behalf of the Council.
- To pursue an alternative scheme. The applicant could commence pre-application discussions on an amended scheme that seeks to address the reasons for refusal and submit a fresh planning application.

- 5.3 In this case the applicant has not indicated what course of action they might pursue if any.

Financial implications - award of costs

- 5.4 In dealing with appeals, all parties, including the Local Planning Authority, are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

- 5.5 Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

- 5.6 An example of the former might be failing to keep to the requirements of an appeal timetable to submit statements of case or other evidence. An example of the latter might be taking a decision which could be described as unreasonable in the context of all of the evidence available to the decision maker. It is this latter aspect that the Committee members in their role as decision makers need to be mindful of.

6. RECOMMENDATION

- 6.1 The proposal has not been amended and has been considered in the context of the relevant Development Plan policies and the officer recommendation to **GRANT** planning permission remains unchanged.
- 6.2 However if members are minded to **REFUSE** planning permission the following reasons are recommended:

Loss of the public house

1. As a result of the potential for noise and disturbance to the occupiers of the hotel the proposed inclusion of 11 hotel bedrooms above the public house would threaten the vitality and viability of the existing Duke of Wellington Pub which therefore fails to protect its function as community infrastructure. As such the proposal would be contrary to policy SP01 of the Core Strategy 2010, and policies DM2 and DM8 of the Managing Development Document (2013), policy 3.1(b) of the London Plan 2015, National Planning Policy Framework (2010) and the National Planning Policy Guidance.

Servicing

2. Insufficient information has been provided with the application to demonstrate that the development would not have a detrimental impact upon the surrounding street network through the servicing requirements generated by the proposal, contrary to policies SP09 of the Core Strategy 2010 and DM20 of the Managing Development Document 2013 which seeks to ensure that new development does not have an adverse impact upon the safety and capacity of the road network.

Wheelchair accessible rooms

3. The application fails to provide any wheelchair accessible bedrooms contrary to policy 4.5 of the London Plan 2015 which seeks to ensure that developments contribute to providing a suitable choice and range of accommodation for all visitors to London by including a minimum of 10% of new hotel rooms as wheelchair accessible.