

Appeal Decision

Hearing held on 13 September 2016

Site visit made on 13 September 2016

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 12 October 2016

Appeal Ref: APP/Z4310/W/16/3144488

5th Floor, West Tower, 8 Brook Street, Liverpool, Merseyside L3 9PJ

- 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 Panoramic 34 Holdings Ltd against the decision of Liverpool City Council.
 - The application Ref 15F/2066, dated 7 August 2015, was refused by notice dated 3 February 2016.
 - The development proposed is change of use of a 5th floor apartment to office use in conjunction with Panoramic 34 Restaurant.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of a 5th floor apartment to office use in conjunction with Panoramic 34 Restaurant at 5th Floor, West Tower, 8 Brook Street, Liverpool, Merseyside L3 9PJ in accordance with the terms of the application, Ref 15F/2066, dated 7 August 2015, subject to the conditions in the schedule to this decision below.

Procedural Matters

2. The appeal is partly retrospective as it relates to a use that has been on-going for some time. However, the proposal seeks to limit the use of the premises, apartment 501 (hereafter "No 501") to offices in connection with the administration of the Panoramic 34 Restaurant which is located on the 34th floor of the same building. The proposal includes conditions that would prevent some of the former uses of the appeal premises which appear to have included a rest and changing room for restaurant staff utilised both at evenings and weekends.
3. As the proposal seeks to tie down the use of No 501 to administration, I have not added the word 'retrospective' in my description of development given in the banner heading above. To distinguish what is proposed by the appellant from activities that may have been on-going before at No 501, I will use the phrase "proposed use".

Main Issues

4. I consider the main issues in this appeal to be firstly, the effects of the proposed use on the living conditions of the occupiers of adjacent residential property, particularly apartments 502, 503 and 504 in respect of noise, disturbance and comings and goings; and secondly, whether or not the appeal
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proposal would create a precedent for further similar changes of use within the West Tower building.

Reasons

The appeal premises

5. West Tower is a mixed use high rise building. The building comprises office uses up to the fourth floor, and the Panoramic 34 Restaurant is located in its 34th floor. The rest of the floors of the building are made up of residential uses, including the 5th floor within which No 501 is situated. I saw on my site visit that the residential floors share a more or less identical layout of four apartments, two of which wrap around the two lift shafts that run through the building. Entrances to all four apartments are clustered around a lobby area to one side of the lifts, and to the other side there is access to the escape stair and a room containing services and storage.

Living Conditions

6. The proposed use would introduce a commercial element within a residential floor. Whilst the West Tower is a mixed use building in the main uses are not mixed 'intra-floor', with clear separation of commercial and residential uses on different floors.
7. The pattern of activity associated with the use of No 501, and the related comings and goings, would undoubtedly be of a different frequency than those of a residential use of the same premises. However, the appellant argues that the nature of activities associated with comings and goings to an office would not be materially different to those of a residential use. These would include use of the elevator to access or egress the floor, people walking across the lobby, and people opening and closing No 501's door.
8. I heard at my site visit that the sound of the elevator arriving on the floor was not one that was unusually intrusive or loud. Moreover, the sound of No 501's door opening and closing was again neither noisy nor intrusive. As No 501's door is one of the closer ones to the lifts, the sound of people traversing across the lobby is likely to be brief. Furthermore, due to the internal layout of the office, and the insulation employed in its construction, noise breakout from No 501 is unlikely to be of material harm to adjacent residents, a point on which parties at the hearing concurred. What is more, I have no substantiated evidence before me to suggest that the 5th floor lobby would be a place where meetings would be undertaken, and indeed at my site visit I saw that its layout did not lend itself comfortably to such a use. Consequently, the noise created by office-related activities is unlikely to be materially greater than that associated with a residential use.
9. However, in terms of the frequency of the activity, there would be a difference between the comings and goings of office employees and those of residents. Indeed, at the hearing it emerged that in addition to staff coming in at the start of the day, potentially leaving and returning for a lunch break, and leaving at the end of the day, other day to day activities involve visits to the restaurant and down to the entrance lobby of the building. My attention was drawn at the appeal visit to the amount of wear on the lobby carpet adjacent to No 501 in comparison to carpet areas in front of adjacent residential doors, which suggests increased traffic in that area. However, it was unclear to what extent

this wear arose as a result of the other previous uses that now do not form part of the proposed use.

10. Be that as it may, I am conscious that a suitably worded condition could restrict all of these movements to reasonable 'office hours' and thus would avoid quieter periods of the day and weekends when residents could expect fewer comings and goings. Whilst I am aware that the occupier of No 503 works shifts, and thus could be at home during daytimes, the substance of that resident's objection to the scheme in terms of noise and disturbance concerns the previous use of No 501 as a staff common room and the noise created at evenings and weekends. In these regards, I am satisfied that restrictions of the hours of use, alongside the agreement and implementation of a management plan would help the proposed use to avoid any harmful effects of noise and disturbance outside of office hours.
11. I have considered the effects of the proposed office use on the residents' use of the lifts. The lifts are used both by residents and to service the restaurant. Whilst the proposed use is likely to cause additional lift journeys between the ground floor of the building and the 5th floor, and between the 5th and 34th floors, I have no substantive evidence before me which would suggest that the level of this use would be of such an intensity that would cause residents to wait for excessive amounts of time for a lift to arrive. Indeed at my site visit, whilst only a snapshot in time, I observed over a twenty minute period up until 1645 within the ground floor lobby that people did not have to wait for an excessive amount of time for the lifts. Whilst trips to the 34th floor were more common over this period than other floors, given its accessibility to the public, this is part and parcel of its use as a restaurant. Thus in the absence of more substantive evidence, and following my own observations on site, I am not persuaded that the use of No 501 in connection with the restaurant will place any further pressure on the use of the lifts that would have a materially harmful effect on the residents of the building.
12. I conclude that the effects of the proposed use, when controlled by appropriately worded conditions, would not cause material harm to the living conditions of the occupiers of adjacent apartments, or those of residential occupants of the building more generally in terms of noise and disturbance. Consequently, I find no conflict with Policies H3 or E6 of *The City of Liverpool Unitary Development Plan* (Adopted November 2002) ("the UDP"). Taken together, and amongst other things, these policies seek to ensure a complementary mix of uses in mixed use development projects.

Precedent

13. I have considered whether the change of use of No 501 would, given the similar layout on a number of the residential floors of the building, create a precedent that would make it difficult for the Council to refuse similar change of use proposals in the future.
14. In this regard, the nature of the proposed use, as one supportive or ancillary to the restaurant elsewhere within the building, would distinguish it from an independent office use. Moreover, as I have found that the appeal proposal, with the attachment of suitably worded conditions would not be harmful to the living conditions of the occupants of adjacent apartments or those of occupiers more generally of West Tower, its use would not justify other proposals which may have more significantly harmful effects. Furthermore, I note in several

representations allusions to empty office buildings elsewhere within the immediate surroundings of the West Tower. Given this apparent availability of office space, I consider that the demand for conversion of residential space in the West Tower to office space is unlikely to be of a degree that would have a significant effect on the current mix of uses within the block. Consequently, I consider that the appeal proposal would not create a harmful precedent for further changes of use within the building, and thus I can discern no conflicts with Policies H3 or E6 of the UDP in this regard.

Other Matters

15. Concerns were raised about odours and waste handling in relation to the proposed use. However, the proposal would not include any food or waste storage in connection with the restaurant, so there would be no harm to the living conditions of occupants of the building in relation to this matter.
16. I had regard to the proposed use's effects on the security of the building. I note that access to residential floors is secured by use of access codes. The staff of the office would have the code for the 5th floor. Given the limited amount of staff within the office, there would not be any material risk of a disgruntled former employee accessing the 5th floor for improper purposes. Moreover, it would be unlikely, due to the limited amount of staff employed, that residential occupiers of the 5th floor would not recognise the office staff in any day-to-day encounters in the lobby. Consequently, the proposed use would not have a materially harmful effect on the security of the building.
17. A number of representations received were in regard to the operation of the restaurant itself. Also the restaurant's store rooms, located on several floors of the building were discussed at the hearing and I saw some of these at my site inspection. However, the restaurant is an established and lawful use of the 34th floor, and I have been supplied with no substantive evidence to suggest that the use of the storerooms is not authorised. Consequently, I have only attached very limited weight to these matters in my consideration of the planning merits of the proposed use.
18. Whilst I am mindful of the proposal's potential effects on the wear and tear of the common parts of West Tower, these matters are essentially private ones given the nature of the building.
19. I have found no material harm would occur to the living conditions of the occupants of adjacent apartments from the proposed use, subject to conditions. Consequently, the matter of whether or not it is necessary for the office to be located in the same building as the restaurant has not been particularly determinative in this case.
20. I note concerns about internal alterations to No 501, but I have no substantive evidence before me to suggest that these would be harmful to the structural integrity of the building. I thus attach only limited weight to this matter in my assessment of the planning merits of the case.
21. I have considered whether the proposed use in the context of sustainable development. Whilst I note the position that the restaurant operates close to, or at, its physical capacity and thus it would be difficult to demonstrate any economic growth arising from the scheme, I do not consider that this matter would weigh heavily against the proposal in the overall planning balance.

22. The environmental effects of the scheme were brought to my attention. I have had regard to the comment that using the apartment for office use would have a higher carbon footprint than a residential use. However, given the limited number of staff employed, and the closure of the office at weekend, the proposed use would not constitute a significant level of environmental harm over and above that of a residential use. Similarly, whilst it may be the case that there is a general lack of recycling facilities within the building, this is not a matter that would weigh against the proposed use in particular to any substantial degree.
23. I have no substantiated evidence before me to suggest that the proposed change of use would have a negative effect on property values within the West Tower. In any event, the courts have generally ruled that such effects are incapable of being determinative matters in a planning decision of this nature.

Conditions

24. I have considered the suggested conditions submitted by the Council and the appellant, and the amended wording for these discussed at the hearing, against the tests set out within paragraph 206 of the National Planning Policy Framework.
25. Firstly, in the interests of certainty and in order that the proposed use operates as it is intended as per the description of development, I have attached a condition which links the office use to that of the restaurant. Given the linked nature of the restaurant and the office, I have also considered it necessary to ensure that the office use ceases if the restaurant should cease to trade.
26. Secondly, in order that the proposed use is as sensitive as possible to the living conditions of the occupiers of adjacent properties, I have attached a condition requiring approval of a management plan for the proposed use. Whilst I note the Council's concerns regarding the enforceability of such a condition, I am mindful that the level of interest in the case would mean that it is likely that any deviations from the management plan would be brought to the attention of the Council by residents of the building. Thus I consider such a condition to be both necessary and enforceable.
27. Thirdly, in order that the proposal avoids excessive comings and goings at times when the general residential environment is likely to be more quiet I have attached a condition restricting the use of the premises to office hours, and at no time at all on Saturdays and Sundays.
28. In the interests of residential amenity and effective management of waste arising from the proposed use, I have considered it necessary to attach a condition requiring the handling and storage of waste created in respect of the proposed scheme.
29. Given the proposal would not be of material harm to the living conditions of the occupants of adjacent properties if controlled adequately by conditions, I consider that a condition which made planning permission temporary in this case is not necessary.

Conclusion

30. The proposed use would not conflict with the development plan, insofar as the policies that have been brought to my attention are concerned. Consequently,

for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Neil Culkin	Pegasus Planning Group
Alan Evans	Kings Chambers
Cathy Frost	Panoramic 34 Ltd
Hugh Frost	
Amy Rainsford	Pegasus Planning Group

FOR THE LOCAL PLANNING AUTHORITY

Barbara Kirkbride Liverpool City Council

INTERESTED PERSONS

Alan Blythe	Residential Property Owner
Philippa Bracken	Edward Landor Associates on behalf of West Tower Management Ltd
Edward Landor	Edward Landor Associates on behalf of West Tower Management Ltd

DOCUMENT SUBMITTED AT THE HEARING

1. Liverpool City Council's Appeal Statement of Case

Schedule of Conditions

- 1) The office use hereby approved shall at all times be used in association with the 34th floor restaurant and in the event of the restaurant ceasing trading the office use shall cease within 6 months of that date.
- 2) Unless within 3 months of the date of this decision a scheme for an Office Management Plan is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.
 - If no scheme in accordance with this condition is submitted within 3 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.
 - Upon implementation of the approved Office Management Plan specified in this condition, that Office Management Plan shall thereafter remain in use.
 - In the event of a challenge to this decision to the High Court, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition shall be suspended until that legal challenge has been finally determined.
- 3) The use hereby permitted shall only take place between the following hours:
 - 0800-1800 Mondays-Fridays
 - and at no time at all on Saturdays or Sundays
- 4) Any waste generated to be discarded as refuse or recycled shall be kept within the curtilage of the premises (West Tower) and shall only be placed outside the premises on such days as trade refuse collection will occur.