The Planning Inspectorate

Appeal Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 2 June 2017

Appeal Ref: APP/A5840/W/16/3165639
12-14 Marshalsea Road, London SE1 1HL

- 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 I Ogilvie of Cyrus Homes Ltd against the decision of the Council of the London Borough of Southwark.
- The application Ref 16/AP/1767, dated 29 April 2016, was refused by notice dated 6 July 2016.
- The development proposed is: "Extension of the existing mansard roof to create a full storey to match the building below and the erection of a new mansard roof above, together with the change of use of part of the ground floor accommodation at no. 14 from an office (Use Class B1(a)) to a café (Use Class A1/A3) and the change of use of the first, second, third, fourth and fifth floors of no.14 from offices (Use Class B1(a)) to 5 two bedroom flats and the use of the new roof level accommodation as 2 one bedroom flats; together with refuse and cycle storage at ground floor level".

Decision

1. The appeal is allowed and planning permission is granted for "Extension of the existing mansard roof to create a full storey to match the building below and the erection of a new mansard roof above, together with the change of use of part of the ground floor accommodation at no. 14 from an office (Use Class B1(a)) to a café (Use Class A1/A3) and the change of use of the first, second, third, fourth and fifth floors of no.14 from offices (Use Class B1(a)) to 5 two bedroom flats and the use of the new roof level accommodation as 2 one bedroom flats; together with refuse and cycle storage at ground floor level" at 12-14 Marshalsea Road, London SE1 1HL in accordance with the terms of the application, Ref 16/AP/1767, dated 29 April 2016, subject to the conditions attached in the Schedule to this Decision.

Application for costs

2. At the Hearing an application for costs was made by Mr I Ogilvie against the Council of the London Borough of Southwark. This application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the description of development from the Statement of Common Ground. This differs slightly from the description given on the application form, but I understand that the amendment has been agreed by both parties.

Main Issues

4. The main issues are:

- The effect of the development on the vitality and viability of the town centre, in particular, whether it would result in the loss of viable employment floorspace.
- The effect of the development on the character and appearance of the area, in particular, the Liberty of the Mint Conservation Area and the host building.

Reasons

Vitality and Viability

5. The appeal site lies on the north side of Marshalsea Road at the junction with Disney Place, approximately 65m to the west of the Borough Underground Station and the junction with Borough High Street. Nos 12-14 comprise six storeys, of which No 12 is in residential use and No 14 is in office use, although the ground and fourth floors of No 14 are currently vacant.

6. The site is within the Liberty of the Mint Conservation Area; Bankside and Borough District Town Centre; Central Activities Zone (CAZ); and the Bankside, Borough and London Bridge Opportunity Area, as defined by the Council's adopted Policies Map (2015).

7. Policy 1.4 of the Unitary Development Plan (UDP),[1] in seeking to protect floorspace in Class B use,[2] includes a requirement for applicants to demonstrate that convincing attempts to dispose of the premises, either for continued B Class use, or for mixed uses involving B Class, including redevelopment, over a period of 24 months have been unsuccessful. The appellant argued that the policy is not compliant with the National Planning Policy Framework (the Framework). In particular, paragraph 22 of the Framework states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Although Policy 1.4 requires evidence of marketing for a period of 24 months, I consider that this is not an excessively long period in which to establish whether there is a reasonable prospect of an employment site being used for that purpose. Consequently, I consider that Policy 1.4 is broadly consistent with the overall aims of the Framework.

8. The Marketing and Viability Report[3] submitted by the appellant sets out that the appeal building at No 14 is in a state of disrepair, and the internal accommodation is compromised. The Council's view was that the building has been allowed to fall into a state of disrepair and this does not justify the proposed development. The Council also asserted that, as the second, third and fifth floors are in use as offices, the premises must be attractive to tenants.

9. The Marketing and Viability Report advises that the accommodation is unviable as it is compromised by the small size of the floor plates, the lack of shower facilities and bicycle storage, and limitations on the ability to install air conditioning and telecommunications. As a result, the office spaces are unattractive to potential tenants, regardless of the lease terms on offer.

[1] The Southwark Plan 2007
[2] The Town and Country Planning (Use Classes) Order 1987
[3] Marketing and Viability Report prepared by Daniel Watney LLP, dated November 2016

10. The appellant also set out the current market conditions and the effect of the UK's vote to leave Europe. This has resulted in a period of uncertainty with the effect that demand in the office market has declined. In relation to the Southbank market, the Report notes that take-up has slowed to 47 percent below the five year average for the area across the first six months of 2016. The appellant further explained that recent months have shown a decrease in rents being achieved and longer rent free periods are being offered by landlords. The appellant asserted that that the effect of the market uncertainty is more apparent in the Marshalsea Road area as there have been significantly fewer transactions within a 0.25 mile radius of the appeal site in recent years. The data provided shows there is more demand for office accommodation along the major roads in the area.

11. In response, the Council referred to its Employment Land Study,[4] which forecasts an increased demand for office space over the period 2011-36. Of the 460,000 sqm of net additional office space predicted to be required in the Borough over the period 2014 to 2036, around 80 percent should be provided in the CAZ. In particular, the Study found that it will be important for Southwark to continue to provide office space that is suitable for a wide range of traditional office occupiers, including the provision of space for Small and Medium Sized Enterprises (SMEs).

12. The Study notes that office space for smaller occupiers will be needed to meet the demand from smaller firms being driven from London's office core as costs escalate, and Southwark's CAZ is in a position to absorb some of this demand. The Council considers that, as the site is close to the Borough Tube Station and because of the size and nature of the office space provided, the appeal site would serve the needs of SMEs. Therefore, based on the evidence in the Study, the Council considered that there are strong economic reasons why the office space should be retained for that purpose. Also, the Council explained that a recent office development at No 3 Marshalsea Road demonstrates that the area is viable as an office location.

13. In relation to the Council's Study, the appellant countered that the data used was from 2015 and there had been no accounting for more recent market factors. Up-to-date data from the first quarter of 2017 showed 14 percent availability of comparable office space in the SE1 area. There is serviced accommodation in the vicinity, which is being offered with flexible lease terms, but this has not been taken up. Should the forecasts of the Council's Study prove accurate, the appellant argued that there is an existing surplus of office space in the vicinity that would meet this demand.

14. In relation to No 3, the appellant stated that this is a very different type of building with none of the structural constraints of the appeal site, consequently it is not comparable.

15. The appellant confirmed that marketing has not been continuous. However, the office space at No 14 has been advertised since 2008 and the building has not been fully occupied since that date. The Council agreed that marketing has been extensive, but maintained that the lack of uptake is because the vacant parts of the building are in a state of disrepair.

[4] Southwark Employment Land Study Part 1 – Final Report, January 2016

16. During the site visit, I saw that the ground floor would require fitting out in order to be used as an office. The appellant explained that these works, and the maintenance works to address water ingress, had not been carried out as the ground floor office has planning permission for change of use.[5] It was also explained that, because tenants' requirements can vary, improvements and fittings are often negotiated as part of the lease arrangements. The areas of the building which were in use as offices were fitted out to a reasonable standard and communal areas were maintained. I understand that the building was re-decorated in 2012. Overall, there was limited evidence that the building, as a whole, has been allowed to fall into disrepair.

17. The appellant argued that the fact that part of the building is occupied does not prove the office use is viable. The Marketing and Viability Report sets out the rental values achieved which, it is advised, are below average for the area. The appellant also stated that all the tenants are on rolling lease arrangements, which means they could vacate the premises after a relatively short notice period. The income is lower than would normally be expected, and the building has been, on average, only 50 percent occupied since 2008. Moreover, the flexible lease arrangements do not allow for investment in the building. Further information on viability was presented, which suggested that redevelopment and refurbishment options are not viable.

18. The appellant referred to the completed development at Nos 16-18 Marshalsea Road.[6] Planning permission was granted in July 2014 for the change of use of the offices to retain space at the ground floor level with nine flats across first, second, third, fourth and a new fifth floor. The Council explained that, although the building was largely in use as offices, it was achieving a nil rent when the application was considered. This, combined with the lack of interest resulting from the marketing exercise, demonstrated that there was limited demand for the type of office space on offer at Nos 16-18. Consequently, the Council considered that the site-specific circumstances were different to the appeal site.

19. It appears from the supplementary information that £37,500 rent per annum was being received for the fourth floor unit at Nos 16-18 up until the end of the tenancy in April 2013. In the case of the appeal building, the appellant stated that the total rent amounts to approximately £31,000 per annum. However, this income is not secure given the flexible terms of the lease arrangements, and I understand that some payments are in arrears. The building at Nos 16-18 may not have been generating rental income when the application was considered by the Council. Nevertheless, the annual rental income was higher than the appeal building in the 12 months prior to the submission of the application. In view of this, and because of the flexible lease arrangements at the appeal building, I consider the circumstances to be similar in this respect.

20. There are further similarities in terms of the location, size and type of office space offered by both sites, and the vacancy rates. Significantly, the marketing methods used for both premises are comparable, and the Council was satisfied that the marketing exercise for Nos 16-18 demonstrated that there was limited

[5] Ref 13/AP/1658, Change of Use of the Ground Floor Office Use (Use Class B1) to a café (Use Class A1/A3), dated 11 November 2013

[6] Ref 13/AP/3367, The change of use of the building from office (Use Class B1) to retail/financial services (Use Classes A1/A2) on the ground floor, residential use (Use Class C3) on the upper floors (floors 1-4), to create 4x2 bed and 4x3 bed flats and the addition of a single storey roof extension to create a 2 bed flat with a private terrace, dated 17 July 2014

demand for the type and configuration of floorspace on offer, despite the rental income that was paid up until the end of March 2013. Overall, I consider that the two sites and the circumstances are comparable, and the Council's explanation as to why it reached a different conclusion against its policy tests is not compelling.

21. The Council considered that the partly occupied office building makes a positive contribution to the vitality and viability of the town centre, as it increases footfall to the surrounding area during the working week. Both parties agreed that the change of use at ground floor level and the introduction of the active frontage would be a benefit.

22. However, the appellant argued that a fully utilised building in residential use would bring more activity to the area throughout the week and into the evening. Also, it was asserted that investment in the building would improve its 'tired' appearance and benefit the commercial character of the centre.

23. To conclude on this issue, I find that it has been demonstrated that convincing attempts to market the premises for office use, over a period of 24 months, have not resulted in the full occupation of the building. Consequently, the exception test of Policy 1.4 of the UDP is satisfied. The rents being achieved on the units that are occupied are below market value, despite flexible terms being offered. Moreover, the rolling lease arrangements do not provide security of income. It is likely that the physical constraints of the building affect its attractiveness to tenants, and this would continue to adversely affect the viability of the building. It has been shown that there is other higher grade office space in the locality which is likely to meet the demand predicted in the Council's Employment Land Study. I also find that the proposal would maintain levels of economic activity and there would be no adverse effect on the vitality and viability of the town centre.

24. On the basis of the evidence submitted, I am satisfied that the development would not result in the loss of viable employment floorspace, in particular, that which would meet the needs of small businesses. The development would comply with Strategic Policy 10 of the Core Strategy (2011), and Policies 1.4 and 1.7 of the UDP which, in combination, seek to increase the number of jobs in the Borough and support businesses through the protection of existing business space in key areas, whilst also ensuring development would not harm the vitality and viability of town centres.

Character and Appearance

25. The character and appearance of the Conservation Area is summarised in the Council's Draft Conservation Area Appraisal,[7] as a varied selection of townscape broadly dating from the later 19th Century. It is stated that the area has particular significance due to the rebuilding of much of the area, with the construction of Marshalsea Road dating from 1888. The Appraisal identifies that Marshalsea Road is a key space within the Conservation Area and, on Marshalsea Road, good quality late 19th Century warehouse buildings can be seen at Nos 6-14, even.

26. No 12 Marshalsea is constructed from red brick with yellow brick detailing and arched windows and includes a decorative parapet. It was probably built as a

[7] Southwark Council Liberty of the Mint Draft Conservation Area Appraisal (November 2015)

lodging house. No 14 is built from a yellow stock brick with red brick columns and banding at window cill level across each floor. This building was a purpose-built factory/warehouse.

27. The parties agreed that Nos 12-14 Marshalsea Road should be considered as a non-designated heritage asset. The significance was attributed to the contribution the buildings make to the Conservation Area, in terms of their historical interest and because of their former use as Victorian commercial buildings. It was agreed that the buildings are also significant due to their architectural interest, in particular, the details of the former warehouse at No 14 which includes loading bays, windows, brick banding and contrasting materials.

28. The development would involve the extension of the existing mansard roof to create an additional storey, and the erection of a new mansard roof above. The appellant asserted that the development would not harm the significance or the character and appearance of the Conservation Area, as it would be a small localised change that would be imperceptible in the wider scale. In terms of the non-designated heritage asset, all the existing features would be retained or preserved. The additional height created would result in a minor change to the proportions of the building, but this in itself would not be harmful.

29. The Council accepted that the significant architectural features would be retained, but disagreed that the impact of the additional storey would be marginal. Concerns were expressed about the elongated façade, the design of the dormers which would emphasise the additional storey, and the height in relation to the established development in the area.

30. During the site visit, I looked at the building from several aspects. Whilst I agree that the additional storey would increase the prominence of the building, especially in views from the eastern end of Marshalsea Road, the vertical emphasis of the building, which is part of its architectural significance, would be preserved. The roof and dormer design would reflect the host building. Although the buildings would be higher than those either side, the development would be seen in the context of other tall buildings in the vicinity and it would not appear incongruous in the street scene.

31. The development would not affect the historical significance of the buildings in relation to their contribution to the wider Conservation Area, as their former use would remain evident. The architectural interest of the non-designated heritage asset would be retained.

32. To conclude on this issue, I find that the development would not harm the significance of the heritage assets, or the character and appearance of the Conservation Area. Therefore, the development would achieve a high standard of design and would preserve the character and appearance of the Conservation Area, in accordance with Strategic Policy 12 of the Core Strategy and Policies 3.12, 3.13 and 3.16 of the UDP.

Conditions

33. In addition to the standard time limit condition, I have imposed a condition requiring the development to be undertaken in accordance with the approved plans, as this provides certainty.

34. However, there are minor discrepancies in the fenestration details of No 14 as shown on the existing elevations and carried through to the proposed elevations. Consequently, I have not specified these plans as approved and further details are required. In particular, it is important that the fenestration hierarchy as depicted by the decreasing window size and architectural detailing is retained, as these features have been recognised as making a contribution to the significance of the building as a non-designated heritage asset. I have, therefore, imposed a pre-commencement condition requiring elevation drawings to be approved by the local planning authority. A further pre-commencement condition requiring details of the mansard extension, parapets and dormer windows is necessary to ensure the proposed roof details complement the building and its surroundings.

35. A condition requiring matching materials is necessary to ensure the development preserves the character and appearance of the Conservation Area, and the host building.

36. I have imposed conditions to restrict access to parking permits and ensure the development includes provision for cycle storage, in order to promote the use of sustainable transport and reduce reliance on the private car.

37. I have imposed the Council's suggested condition restricting the hours of operation of the ground floor café. It was discussed at the Hearing whether restricting the use of the premises to retail (A1 Use) only would overcome the need for the condition. I consider that restricting the use would reduce the pool of potential occupiers of the unit, which would not be desirable as both parties agree that the café would make a positive contribution to the vitality and viability of the town centre. Notwithstanding the relatively small size of the unit, a condition restricting the hours that customers can occupy the premises is necessary to ensure the living conditions of future occupiers of the building, and neighbouring residents, are protected.

Conclusion

38. For the reasons given above, the appeal is allowed.

Debbie Moore

Inspector

CONDITIONS

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans:
   - Location Plan Ref: 1000 SP(0)01;
   - Proposed Plans Ref: 1000 P(2)01 and 02;

3) Development shall not commence until detailed drawings showing the existing and proposed elevations, at an appropriate scale to accurately show the fenestration and associated architectural features, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

4) The facing materials used in the construction of the development hereby permitted shall match the original materials in type, colour and dimensions, and in the case of brickwork, bond, coursing and pointing.

5) Before the first occupation of the development hereby permitted, the cycle storage facilities as shown on drawing 1000 P(2)01 shall be provided and thereafter such facilities shall be retained and the space used for no other purpose.

6) No developer, owner or occupier of any part of the development hereby permitted, with the exception of disabled persons, shall seek a parking permit within the controlled parking zone in Southwark, in which the development is situated.

7) Development shall not commence until detailed drawings, including sections, at a scale of 1:5 and 1:10 of the: mansard extension; parapets; and dormer windows have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

8) The ground floor café (Use Class A1/A3) shall only be open for customers between the following hours:
   [0630 - 2100] Mondays - Fridays
   [0700 - 2100] Saturdays and Sundays.

APPEARANCES

FOR THE APPELLANT:

Mr Mark Batchelor	Peacock and Smith
Mr Ian Ogilvie	Appellant
Mr Charlie Browne	Daniel Watney LLP
Dr Jonathan Edis	Heritage Collective
Mr Oliver Ogilvie	OO Architects

FOR THE LOCAL PLANNING AUTHORITY:

Mr Neil Loubser	Senior Planning Officer (Major Applications)
Ms Tracy Chapman	Team Leader (Design and Conservation)

INTERESTED PERSONS:

Martha Dankwa	Graduate Planner (Major Applications)
Adrian Parry	Heritage Collective

DOCUMENTS SUBMITTED AT THE HEARING

1. Statement of Common Ground
2. Southwark Employment Land Study: Part 1 – Final Report, dated January 2016
3. Southwark Council Draft Liberty of the Mint Conservation Area Appraisal (November 2015)
4. Suggested Design Condition (No 7)