
Appeal Decision

Hearing Held on 12 September 2018

Site visit made on 12 September 2018

by H Butcher BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2018

Appeal Ref: APP/F5540/W/17/3177092

10 Windmill Road, Chiswick, London, W4 1SD

- 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 Lamington UK against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 01218/10/P11, dated 27 July 2016, was refused by notice dated 27 January 2017.
 - The development proposed is the demolition of the existing building and redevelopment with the erection of a three storey, plus lower ground and set-back fourth storey, 78 bedroom apart-hotel (Class C1) and associated works to the public highway including the creation of a shared surface loading bay and a disabled parking bay.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing building and redevelopment with the erection of a three storey, plus lower ground and set-back fourth storey, 78 bedroom apart-hotel (Class C1) and associated works to the public highway including the creation of a shared surface loading bay and a disabled parking bay at 10 Windmill Road, Chiswick, London, W4 1SD in accordance with the terms of the application, Ref 01218/10/P11, dated 27 July 2016, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by the Council of the London Borough of Hounslow against Lamington UK. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - The effect of the development on employment land supply in the borough;
 - The effect of the development on the character and appearance of the surrounding area, and;
 - The effect of the development on the living conditions of occupiers of Jonathon Court, having particular regard to matters of outlook.

4. It was confirmed at the hearing that a third reason for refusal which required the development to achieve either a 35% carbon dioxide reduction or a BREEAM rating of 'Excellent' is no longer being pursued by the Council following the submission of further information. There is no need, therefore, for me to take this matter further.

Reasons

Employment land

5. The appeal site comprises a detached, three storey building with a carpark to the rear which is currently vacant and has a B1a office use. The proposal would result in a loss of this B1a employment land. Policy ED2(e) i of the Local Plan 2015-2030 seeks to maintain the borough's supply of employment land and to this end sets out that where a development will lead to a loss of this the site should be actively marketed for employment uses for a period of at least two years. In this case, no marketing of the site has been undertaken and the parties are in agreement that the proposal conflicts with this policy. Similarly Policy 4.2 of the London Plan supports the retention of existing office stock in viable locations.
6. The appeal site, however, has a planning history, and this includes the granting of planning permission by the Town and Country Planning (General Permitted Development) Order 2015 for a change of use of the building from B1a office to 22 residential units (ref 01218/10/PA3). This therefore forms a 'fallback' position which is where consideration is given to the potential exercise of, amongst other things, an extant planning permission. The appellant argues in this case that the loss of B1a employment land is justified as it would be lost in any event having regard to the 'fallback' position which would be implemented were the appeal to fail.
7. In ascribing weight to a 'fallback' position it is helpful to consider whether there is greater than a theoretical possibility that the development might take place. The planning permission in question expires on 23 December 2019 meaning there is approximately 15 months for the appellant to implement the permitted change of use. Condition 3 of this permission, relating to site contamination, still needs to be discharged and physical works to the building are also required but these could be done in tandem with the discharging of the remaining condition. The appellant produced a timetable at the hearing demonstrating that the outstanding condition and works to the building could be carried out in advance of the expiry date.
8. The Council argue that the timetable is just a piece of paper and that if the appellant intended to implement this change of use they would be in a position to do that now. However, the implementation of this permission at present is largely out of the hands of the appellant as applications to discharge the outstanding condition have been submitted to the Council and are awaiting determination. The Council accept that this condition could be discharged within 15 months and in my experience this would not be an unreasonable timescale. The Council also do not dispute that the required works to the building could be undertaken within this time and the offices have been stripped out in anticipation of future development. In addition to this, both of the main parties agree that implementing the 'fallback' position is financially more viable than retaining the existing offices.

9. Taking all of the above points together I find that there is greater than a theoretical possibility that the 'fallback' position might take place in the event that the appeal failed, and that the likelihood of this happening is such that I afford this matter significant weight.

Character and appearance

10. Windmill Road has two very different and contrasting characters. The west side is characterised by large, tall, detached twentieth century buildings in mixed uses which decrease in height and scale as you move further north along Windmill Road towards Chiswick Common. In contrast, the east side of Windmill Road is characterised by two storey Victorian terrace properties which are significantly smaller and more domestic in scale.
11. The appeal site is on the west side of Windmill Road. The proposed replacement building would be approximately 2m wider than the existing, but given the substantial width of the existing building, in conjunction with the width of 214 Windmill Road adjacent, which is also a wide building, the resulting building would not appear uncharacteristically wide.
12. The existing building is three storeys and the proposed building, in terms of what would front directly onto Windmill Road, would be more like two and a half storeys, meaning the front parapet would be slightly lower than the existing building. There would be an additional floor above this but it would be set well back from the front elevation. Therefore, overall, I do not consider that the resulting building would appear significantly taller or more dominant than the existing building so as to amount to harm to the character and appearance of the area.
13. I note that the proposal also includes a change of building line along the west side of Windmill Road. The existing building is angled away from the road on its northern end. The proposal, however, aligns the whole of the replacement building with Windmill Road. I find no harm with this approach specifically as the overriding pattern of development here is that of buildings in close proximity to and in alignment with Windmill Road. This does mean that the proposed building would be closer to some of the terrace properties opposite than the existing building. However, the distances involved would be very similar to those which currently exist between terrace properties at the southern end of Windmill Road and the buildings opposite. Overall, therefore, I find that the character of Windmill Road would be preserved.
14. In terms of views from Chiswick Common, at present the rears of various buildings, including the appeal building, can be seen from here along with areas of parking, none of which have been designed to positively address the common. Although the proposal is for a much larger building with a far greater footprint, the extent of which would be most visually apparent in views from the common, it has, however, been designed to positively address this public area due to its angled design and the inclusion of a large, feature window. I therefore find no harm in respect of views from Chiswick Common, and for the same reasons I also find no harm in terms of the increased footprint of the building.
15. In light of my findings above I find no harm to the character or appearance of the surrounding area as a result of the proposed development. It follows, therefore, that I find no conflict with Policies CC1 or CC2 of the LP or 7.4 and

7.6 of the London Plan which support high quality urban design which has regard to local context and character.

Living conditions

16. In considering the impact of the development on outlook I have approached this on the basis of any harm which could be caused by a development having a dominating or enclosing effect. Around six bedroom windows at 7-10 Jonathon Court would look directly towards a rear corner of the development which would be around 8.5m away. At this distance the building would not be so close so as to be harmful to outlook, particularly as views over the carpark serving Jonathon Court would still be possible beyond the proposed building. I therefore find no harm to occupiers of Jonathon Court in terms of a loss of outlook and as such no conflict with the relevant provisions of Policies CC2 of the LP and 7.6 of the London Plan which seek to protect the amenity of residents of surrounding buildings.

Other matters

17. Local residents raised concerns in respect of the living conditions of occupiers of the terrace properties in Windmill Road. I visited two of the properties concerned during my site visit and I am satisfied that the proposal would not be harmful to their outlook for similar reasons to those given under character and appearance above.
18. The front to front relationship between the terraces and the proposed building would not be unusual and although the office building may have been quieter than the anticipated apart-hotel in the evenings and at weekends I have to consider the 'fallback' position whereby residential flats would have a similar effect on the terrace properties at all times of day in terms of noise and overlooking.
19. At the hearing the Council confirmed that they agreed with the findings of the appellant's Daylight, Sunlight and Overshadowing Report which overall found that the retained light levels for neighbouring properties were considered good for an urban area, and I find no reason to disagree with this.
20. The Council raised no concerns in respect of highway safety on Windmill Road and subject to suitable conditions I similarly find no harm in this respect. The site is highly accessible and any harmful impacts from, for example, deliveries, coach parties and any other visitors to the apart-hotel on Windmill Road can be mitigated by suitable conditions.
21. Originally bedroom windows were shown to overlook the communal space in-between the two buildings which comprise Jonathon Court. However, following concern raised by the Council in respect of overlooking these plans were amended reducing the number of windows and adding louvres to those that remained to ensure oblique views of windows in Jonathon Court were not possible. Based on these amended plans I am satisfied no harm in terms of a loss of privacy to occupiers of Jonathon Court would occur as a result of the development.
22. Local people raised concerns over the lack of direct consultation from the appellant. However, that is not something that would alter the outcome of this appeal, as all necessary consultations have been carried out by the Council. Damage to private property or services would be a matter between the parties

involved. Finally, any disturbance during construction, although not ideal, would be a temporary effect which could be mitigated by conditions relating to hours of construction and the submission of a Construction Management Plan.

Conditions

23. A number of conditions were agreed between the Council and the appellant. I have undertaken some minor editing and rationalisation of these. The number of pre-commencement clauses is also limited to where this is essential for the condition to achieve its purpose.
24. In addition to the standard time limit condition I have included a condition specifying the relevant drawings as this provides certainty. To ensure a satisfactory appearance I have also included conditions in respect of materials, boundary treatments and landscaping. Conditions relating to hours of construction, as well as the submission of a Delivery and Servicing Management Plan and a Construction Management Plan are also necessary in the interest of the living conditions of occupiers of neighbouring properties and general highway safety along Windmill Road.
25. To comply with the development plan I have imposed conditions to ensure the apart-hotel has a sustainable design and construction. I have also included a drainage condition and a condition relating to waste and recycling to ensure a satisfactory form of development. In addition to these, to make the fullest opportunity of people cycling to the site, I have included a condition requiring an enclosure for the cycle parking area.
26. There is potential contamination of the site due to its previous use therefore a condition to deal with this is necessary. Finally, given the narrow nature of Windmill Road and the fact that this area does suffer from parking stress as set out in the submitted Transport Statement I have included a condition requiring the submission of a Travel Plan, which will deal with, for example, coach parties to the site and how staff and guests can access this car-free development, as well as a condition restricting persons accessing the development from obtaining car parking permits in the area.
27. A condition requiring the development to be carried out in accordance with Secured By Design Principles was suggested by the Council. However, when questioned, the Council was not able to explain why such a condition was necessary therefore I have not included this.
28. A local resident suggested a condition with respect to noise from air conditioning units but as these are to be housed in acoustic plant enclosures I do not consider such a condition to be necessary. Levels across the site are also not so severe that a specific condition in this respect is necessary either.

Conclusion

29. I have found no harm to the character or appearance of the surrounding area, or any harm to the living conditions of occupiers of Jonathon Court. I have, however, found conflict with the development plan in terms of a loss of B1a employment land, but planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The 'fallback' position at the site is a material consideration to which I afford considerable weight given its likelihood of occurring and as such this outweighs the policy conflict in this

case. Consequently, for the reasons given, and having had regard to all matters raised, the appeal is allowed.

Hayley Butcher

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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|-----------------|---------------------------|
| Grant Leggett | Boyer Planning Ltd |
| Billy Pattison | Boyer Planning Ltd |
| Peter Stewart | Peter Stewart Consultancy |
| Christopher Ash | Project Orange |
| Mike Liverman | |
| Robert Godwin | Lamington UK |

FOR THE LOCAL PLANNING AUTHORITY:

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|----------------|-------------------------|
| Sam Smith | Senior Planning Officer |
| Jessie Rotrand | Planning Officer |

INTERESTED PERSONS:

Timothy George
Martin Garnett
Peter Ashton
Nigel Denton
Bill Mann

DOCUMENTS SUBMITTED AT THE HEARING

1. Signed Statement of Common Ground.
2. Copy of planning permission ref. 01218/10/PA3.
3. Timeline of 10 Windmill Road conversion to flats.
4. Letters from the Planning Inspectorate.
5. Emails from/to the Planning Inspectorate.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P100, P101, P110, P111, P112, P113, P120, P121, P122, P123, P130, P201B, P202B, P211F, P212K, P213D, P214D, P215C, P216C, P220F, P221E, P222H, P223G, P224E, P230E, P231E, P232F, P240D, P250, 2015-2385-DWG-206.
- 3) Prior to the construction of above ground works, samples of the materials to be used in the construction of the external surfaces of the development hereby permitted shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to first occupation of the development details of all boundary treatments on site shall have been submitted to and approved in writing by the local planning authority and implemented on site in accordance with the approved details.
- 5) Prior to first occupation of the development full details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority and implemented on site in accordance with the approved details.
- 6) No demolition or construction shall take place on the site, except between the hours of 8:00am to 6:00pm on Mondays to Fridays and 09:00am to 1:00pm on Saturdays, and none shall take place on Sundays or Public Holidays without the prior agreement of the local planning authority.
- 7) Before the development is occupied a Delivery and Servicing Management Plan shall have been submitted to and approved in writing by the local planning authority and implemented as approved in perpetuity.
- 8) Before development commences a Construction Management Plan and a Construction Logistics Plan shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out as approved.
- 9)
 - a) Prior to commencement of works (excluding demolition and site investigations) a BREEAM New Construction Fully-Fitted Design Stage certificate and a summary score sheet (or any such equivalent standard that replaces this) showing that an 'excellent' (minimum score 70%) rating will be achieved must be submitted to and approved in writing by the local planning authority.
 - b) Prior to occupation of the building a BREEAM New Construction Fully-Fitted Post-Construction Review Certificate and summary score sheet (or any such equivalent standard that replaces this) showing that an 'Excellent' (minimum score 70%) rating has been achieved must be submitted to and approved in writing by the local planning authority.
- 10) Prior to the commencement of works (excluding demolition and site investigations) an Energy Strategy shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved Energy Strategy and shall

not commence above ground until Full Design Stage calculations under the National Calculation Method have been submitted to and approved in writing by the local planning authority to show that the development will be constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions and achieve reduction in emissions of 35% on Part L 2013.

b) Prior to first occupation of the building evidence to show that the development has been constructed in accordance with the approved Energy Strategy shall be submitted to and approved in writing by the local planning.

- 11) Prior to the commencement of development, excluding demolition and site investigations, a Sustainable Water Drainage Strategy shall be submitted to and approved in writing by the local planning authority and shall be implemented as approved and permanently retained thereafter.
- 12) Prior to the first occupation of the development a cycle parking enclosure shall have been erected in line with details which shall have first been submitted to and approved in writing by the local planning authority. The enclosure shall thereafter be retained at all times without obstruction.
- 13) Prior to occupation of the development details of the arrangements for the storing of waste and recycled materials shall be submitted to and approved in writing by the local planning authority and implemented on site in accordance with the agreed details.
- 14) Before the development hereby permitted commences
 - a) A contaminated land Phase 1 desk study report shall be submitted to and approved in writing by the local planning authority. Should the Phase 1 report recommend that a Phase 2 site investigation is required then this shall be carried out, submitted to and approved in writing by the local planning authority. The site shall be investigated by a competent person to identify the extent and nature of contamination. The report should also include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary.
 - b) If required a scheme for decontamination of the site shall be submitted to the local planning authority for written approval. The scheme shall account for any comments made by the Local Planning authority before the development hereby permitted is occupied.
 - c) The local planning authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination and shall submit appropriate amendments to the scheme for decontamination in writing to the local planning authority for approval before any work on that aspect of development continues.
 - d) Before the development is first brought into use the agreed scheme for decontamination referred to in clauses (b) and (c) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to the local planning authority for approval.
- 15) Prior to first occupation of the development hereby permitted a Travel Plan, which has first been submitted to and approved in writing by the

local planning authority, shall be implemented on site and the apart-hotel shall thereafter be managed in accordance with the approved Travel Plan in perpetuity.

- 16) Prior to first occupation of the development hereby approved arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement that shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:
- i) No occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and
 - ii) Any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.