The Planning Inspectorate

Appeal Decision

Site visit made on 11 June 2019

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th July 2019

Appeal Ref: APP/E5900/W/19/3224823
34 Settles Street, London, E1 1JP

- 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 Magri Developments against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/18/02743, dated 19 September 2018, was refused by notice dated 21 December 2018.
- The development proposed is the conversion of existing ground and basement floors of A1 retail and associated storage into 1no. 3bed flat (class C3)

Decision

1. The appeal is allowed and planning permission is granted for the conversion of existing ground and basement floors of A1 retail and associated storage into 1no. 3bed flat (class C3) at 34 Settles Street, London, E1 1JP in accordance with the terms of the application Ref PA/18/02743, dated 19 September 2018, subject to the conditions identified in the attached Schedule to this decision.

Main issue

2. The main issue is the effect of the proposal on local shopping provision.

Reasons

3. Although both parties do not subscribe to the same view as to the policies applicable in this case, both agree that the appeal property is located within the Tower Hamlets Activity Area (THAA) for the purposes of policy DM1 of the Tower Hamlets Local Plan - Managing Development Document 2013 (MDD). This policy provides that:

   Within the THAA a mix of uses will be supported. Development in these areas should provide a transition between the scale, activity and character of the CAZ and Canary Wharf major centre and their surrounding places. Development proposals should be mixed use schemes with active uses at ground floor level with residential or office space on upper floors. Key anchor uses, such as supermarkets and civic uses, will only be allowed within the town centre boundaries of the Activity Areas.

4. The consented use of the site reflects this policy guidance in that it is of mixed use, with retail consented on the ground floor and basement with residential above. However, whilst the residential use of the upper floors is evident, according to the appellants the ground floor and basement has not been used for retail purposes for a period in excess of 5 years. During this time, the ground floor was used as building site/storage in connection with the

development of the residential accommodation above. More recently, from July 2018, the appellants have marketed the vacant retail unit, and this has proved unsuccessful. I noted the presence of an advertising board on the ground floor during my site visit.

5. The appellant disputes the relevance of policy DM2 of the MDD, relied upon by the Council, on the basis that the appeal property lies within a town centre. The Council has not responded to the appellant's contention, but neither party has produced a map or plan to show the boundaries of the nearest town centre. Spatial Policy 01 of the Council's Core Strategy (CS) defines the Borough's retail hierarchy, and more detail is provided in the list at CS Appendix 4. However, neither this nor the table provided by the appellant in the statement throw distinct light on the matter.

6. Having regard to the nature of the neighbourhood in which the appeal property is located, it is of mixed use, including a nearby primary school, but is predominantly residential with commercial/retail uses dotted around on ground floors. My impression is that this does not form part of a town centre, and that accordingly MDD policy DM2 is applicable. In applying this policy, the Council's central concerns are that the appellants vacated the retail unit from choice, and that the marketing exercise conducted by the appellant is insufficiently robust.

7. However, the Council does not dispute the existence of alternative shops, some very close on Fordham Street and others including small convenience supermarkets within what I would consider as reasonable walking distance of the appeal property. The retail element of the property has been vacant for considerably longer than 12 months. As to the marketing exercise, this has taken place by now for just short of the 12 months requirement of the policy, and there is little or no evidence that positive interest has been shown by prospective retail occupiers.

8. Although the proposal involves the theoretical loss of an active use on the ground floor, no active use, for whatever reason, has subsisted for over 5 years. As a consequence the ground floor appears lifeless in the street scene. There is no compelling evidence that the retail unit is attractive for that purpose to potential occupiers, and alternative retail provision is available to local residents, who would not therefore be disadvantaged by the proposed change of use. No local resident, following consultation by letter, press & site notices, has objected to the change of use.

9. I therefore conclude that whilst the proposals do not wholly comply with aspects of MDD policies DM1 & DM2, the Council has failed to demonstrate that the resumption of an active use of the ground floor is either desirable or likely, or that the change of use would cause harm in respect of the availability or choice of retail facilities for local residents.

Conditions

10. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be completed in accordance with the approved plans.

11. Since the property is located within the Myrdle Street Conservation Area (CA), it is necessary that the detail of the works required to the property to facilitate the change of use are of an appropriate quality to ensure that the character

and appearance of the CA is preserved. A condition requiring further detail in respect of these matters is therefore imposed.

12. In the interests of promoting sustainable transport, the Council's proposed condition directed to ensuring that the development becomes 'car-free' is imposed.

13. I have taken into account all other matters raised in the representations, but no other matter raised is of such strength or significance as to outweigh the considerations that led me to my conclusions. Accordingly, for the reasons set out above, the appeal is allowed.

G Powys Jones

INSPECTOR

Schedule of Conditions

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

2. Save than where otherwise provided in condition 3, the development hereby permitted shall be carried out in accordance with the following approved plans and illustrations: Drawing Nos. SSW/OS; SSW/S/01; SSW/S/02; SSW/S/03; SSW/P/21; SSW/P/22; SSW/P/23 & SSQ/P/24.

3. Prior to the relevant works taking place details of all external facing materials to be used in the construction of the development shall be submitted to and approved in writing by the Local Planning Authority. The details submitted pursuant to this condition shall include drawings showing: secondary glazing; fenestration to include reveals, sills and lintels; front access door and pavement lights. Drawings shall be at a scale of no less than 1:20. The development shall be carried out in accordance with the approved details.

4. The residential unit, hereby permitted, shall not be occupied until a scheme to secure its occupation as 'car-free' has been implemented in accordance with details which have first been submitted to and approved in writing by the local planning authority. The scheme shall ensure that:

   - No residential occupiers of the development (not being holders of a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation) including all such future occupiers, shall apply for or hold an on-street parking permit to park a vehicle on the public highway at any time within the administrative district of the local planning authority.

   - Any permit that is issued to or held by any occupant of the development shall immediately be surrendered to the local planning authority.

   - The restrictions and requirements of the scheme shall apply to and be communicated to all future residential occupiers of the development including successors in title as well as any person occupying the premises as a tenant or licencee.