



Appeal Decision

Hearing held and site visit made on 6 August 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Appeal Ref: APP/H5390/W/18/3219134

Bakery House, 2A Loftus Road, London, W12 7EN

- 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 Bazaar Investments Limited ("the Appellants") against the decision of the Council of the London Borough of Hammersmith & Fulham ("the Council").
- The application Ref 2018/03098/FUL, dated 20 September 2018, was refused by notice dated 16 November 2018.
- The development proposed is the change of use of the building from office (Class B1a) to 16 apartments (Class C1).

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Two other appeals¹ relating to Bakery House were dealt with at the Hearing and are the subject of separate Appeal Decisions.
2. In this Appeal Decision I will refer to:
 - a) The land and premises to which the appeal relates as "the Appeal Site".
 - b) The building which is on the Appeal Site as "Bakery House".
 - c) The building on the Appeal Site prior to the construction of Bakery House as "the Bakery".
 - d) The residential accommodation on the second floor of Bakery House as "the Flat".

Policy

3. The Development Plan for the area includes:
 - a) Policies 4.2 & 4.5 & Paragraphs 4.12 & 4.13 of the London Plan.
 - b) Policies HO2, E2 & E3 & Paragraphs 7.10, 7.14, 7.18, 7.19 & 7.20 of the Hammersmith & Fulham Local Plan 2018 ("the Local Plan").
4. I have also been referred to Paragraph 121 of the National Planning Policy Framework 2019.

¹ APP/H5390/C/18/3206312 & APP/H5390/W/18/3219161

Relevant History

5. I am aware of the extensive planning history which relates to the Appeal Site which is set out in the Appellants' Planning Statement² and other documentation.
6. In July 2007 conditional planning permission for the re-development of the Appeal Site comprising the erection of a two-storey building for use as an architect's offices and an ancillary residential flat. The ground and first floor office space were to be open plan. This planning permission lapsed.
7. In December 2007 planning permission was granted for a similar application to that referred to in paragraph 6 above. This planning permission has also lapsed.
8. In the early part of 2008, the Bakery was demolished. The firm of architects that were to occupy the building granted planning permission (see paragraphs 6 & 7 above) withdrew their interest in the scheme. The Appellants tried to sell the Appeal Site at auction. The reserve price was set at 10% below the market value. No bids were made for the Appeal Site.
9. In March 2014 planning permission was granted for the re-development of the Appeal Site comprising the erection of a three storey building for use as open plan offices at ground and first floor levels and an ancillary residential flat at the second floor level.
10. In June 2014 planning permission was granted for the re-development of the Appeal Site comprising the erection of a three storey building with a basement for use as open plan offices at basement, ground and first floor levels and an ancillary residential flat at the second floor level.
11. Bakery House was built in its current form in about 2015/2016.
12. In August 2017 planning permission was granted for alterations to fenestration at all levels; the excavation of an additional front lightwell and the replacement of six rooflights in the roof over the residential unit with one roof light. The approved floor plans for the former open plan office space at basement, ground and first floor levels indicated 16 individual offices each with en-suite facilities. These floor plans reflected how Bakery House had been built.

The Appeal Proposal

13. A Management & Operation Statement dated September 2018 was submitted with the application form. It explains that:
 - a) The proposed development seeks the use of Bakery House as 16 serviced apartments offering a high standard of accommodation for tourists and business persons who require accommodation for a period of time longer than a normal hotel stay.
 - b) The maximum length of stay for the occupiers would be 3-months.
 - c) The users of the apartments would have access to kitchenette facilities within their rooms where meals could be prepared and eaten.

² R17014.a dated September 2018

- d) The apartments would have the benefit of a high level of security with Bakery House having CCTV monitoring and a concierge service providing a range of services including room cleaning and changes of bed linen.

Reasons

- 14. At the Hearing it was agreed by all parties that there is a policy requirement to retain premises that are capable of providing continued employment accommodation unless the premises are no longer required for employment purposes.
- 15. The Appellants explained that for about the last 8-months parts of Bakery House (including the Flat) had been occupied and used as offices by their employees, in part, to deter any unauthorised access by squatters.
- 16. I understand that the last time the Appeal Site genuinely provided employment was when the Bakery was used in 2004.
- 17. Policy E2 of the Local Plan explains that the Council will require the retention of land and premises capable of continued accommodation for employment. Permission to change from employment will only be allowed if it can be evidenced that the property is no longer required for employment purposes. Where the loss of employment use is proposed the Council will have regard to a number of matters which I will deal with below:

Evidence of unsuccessful marketing over a period of at least 12-months

- 18. The marketing exercise has to be carried out by at least two recognised commercial agents.
- 19. Bakery House has been marketed by Lambert Smith Hampton. The Council accept that Lambert Smith Hampton are a recognised commercial agent. Mr. Scott, a Director of Lambert Smith Hampton, wrote a Report dated 5 June 2018 and he also attended the Hearing. I have read Mr. Scott's Report. In that Report he explains, amongst other things, that:
 - a) The Grade A offices at Bakery House have been built to a high specification.
 - b) The offices have been listed for rent on the major listing websites.
 - c) The rents at which the offices were advertised were in line with, or below, market rents for the Shepherds Bush area within which Bakery House is situated.
 - d) The market for serviced offices has changed dramatically with occupiers now preferring to work in creative open plan spaces.
 - e) Lambert Smith Hampton have been unable to secure any tenant for any of the offices that are available for letting at Bakery House.
 - f) There is no market in this area for the size of office units available at Bakery House.
- 20. Mr. Scott explained that Bakery House has been marketed by Lambert Smith Hampton continuously between December 2016 and the present date.
- 21. Tailor Made Management were not present at the Hearing, but they submitted a Report dated July 2018 at the application stage. They had marketed Bakery

- House between December 2016 and March 2018. They explained that they also utilised a range of third party agents for assistance with the marketing of Bakery House. Tailor Made Management explained that the commercial agents that they approached made comments that Bakery House was not in a suitable location for office use and they declined to become involved in the marketing exercise
22. Tailor Made Management marketed the individual offices at about £1,500 pcm + VAT. To generate interest in the office units they introduced large amounts of flexibility including:
- a) Licences to occupy ranging between 6 and 36 months.
 - b) Flexibility with the services that could be provided.
 - c) Flexible furnishings.
23. In addition to Lambert Smith Hampton and Tailor Made Management Bakery House was also marketed by Chamberlain (Commercial) for 8 or 9 months. Their marketing strategy is set out in their letter of 25 July 2018. Bakery House failed to attract any enquiries and they concluded that there was little point in their continuing to market it.
24. The Council are not satisfied that Tailor Made Management are a recognised commercial agent. There is no Local Plan definition as to what a recognised commercial agent is. The Appellants have explained that Tailor Made Management:
- a) Have over 20 years' experience in both commercial and residential property markets.
 - b) Currently run a large number of commercial / office properties.
25. There is no evidence before me to suggest that Tailor Made Management are not a commercial agent for the purpose of Local Plan Policy E2.
26. I therefore conclude that Bakery House has been marketed for a considerable length of time by commercial agents without any success in terms of letting any of the office space therein.

Is Bakery House a suitable site for continued employment use with or without adaption?

27. I have explained above that Bakery House cannot be let in the current market for employment uses. The Council have suggested that the office space at basement, ground and first floor levels could be turned into open plan offices and marketed as such.
28. The Appellants explained that this is not physically possible. The walls which divide the offices off from one another are structural walls. Even if they were not structural walls each office unit has a WC, shower and wash hand basin within it and the plumbing for these facilities means that adaption to open plan offices would be very difficult.
29. There is no evidence before me to suggest that the office floorspace within Bakery House could be adapted so as to be open plan. I do not consider that it would be reasonable to expect the Appellants to market Bakery House on the

basis that it could be adapted with a view to finding out whether there is a market for open plan offices at Bakery House given that this cannot physically be achieved.

30. I therefore conclude on the evidence that is before me that Bakery House is not a suitable site for continued employment use.

Would the proposed loss of the Flat result in the loss of permanent residential accommodation?

31. The proposal seeks the conversion of the Flat to a serviced apartment.
32. Policy HO2 explains that the Council will resist proposals which would result in a net loss of permanent residential accommodation.
33. I have set out the relevant planning history relating to the Appeal Site above. The Flat was approved by description in the June 2014 planning permission as an "ancillary residential flat" and by layout in the plans approved by that permission. No condition was imposed limiting the use of the Flat. An amended layout for the Flat was approved in the August 2017 planning permission.
34. I have had regard to the case of *Burdle & Williams -v- SSE & New Forest RDC 1972*. It is difficult to fully understand how the Flat could be "ancillary" to the office use. It is clear having regard to the history of the development at the Appeal Site that the term "ancillary residential flat" meant that the Flat was to be occupied by a person solely or mainly employed in the linked business carried out in the offices.
35. I do not agree with the Appellants that the planning permission for an "ancillary residential flat" means that the Flat is not protected by Policy HO2. The "ancillary residential flat" would be permanent residential accommodation albeit that there may be a need for a link between the occupiers of the Flat and the Offices, e.g. an employee who:
- a) provided on-site security when the offices were closed, or
 - b) provided technical services for say computer systems which could only be carried out when the offices were otherwise closed and who had to be present at Bakery House at most times to deal with emergencies, or
 - c) who was also the owner of the business carried on within the Bakery House offices and who felt he needed to be present when the offices were closed, or
 - d) temporary staff who worked at the offices but were unable to secure off-site accommodation e.g. overseas students on a business placement.
36. The Appellants also consider that the Flat should not be treated as permanent residential accommodation because the Flat can only be accessed through the office space. I do not agree with that assessment. As a matter of fact, the Flat can be accessed by using the common areas within Bakery House but in any event if the occupier of the Flat also carried out the type of functions described in paragraph 35 above access to the office space may well be functionally necessary.

37. The Flat would be lost if the proposal were to be granted planning permission. I conclude that the loss of the Flat would result in the loss of permanent residential accommodation contrary to Local Plan Policy HO2.

Overall Conclusions

38. I have explained above that Bakery House is not a suitable site for continued employment use. However, I consider that the loss of the Flat, which is permanent residential accommodation, outweighs this matter.
39. For the reasons given above I conclude that the appeal should not succeed.

Formal Decision

40. The appeal is dismissed.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANTS

Martin Ledger MRICS

Martin Ledger Associates

Ali Ravenshad

Bazaar Investments Limited

Eva Siskinova DipArch RIBA

Dandi Living Limited

Jonathan Scott

Director - Lambert Smith Hampton

FOR THE COUNCIL

Grace Harrison BSc(Hons), MSc, MRTPI

Principal Planning Officer

James Carleston BA(Hons) & MSc

Principal Enforcement Officer

INTERESTED PERSONS

Philippa Robb

Local Resident