



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/18/3219161

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 2018/03099/FUL, dated 20 September 2018, was refused by notice dated 16 November 2018.
- The development proposed is the change of use from office with ancillary flat (Class B1a) to shared facilities residential accommodation (sui generis).

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 residential accommodation on the second floor of Bakery House as "the Flat".

Policy

3. The Development Plan for the area includes:
 - a) Policies 3.5, 4.2, 4.5 and paragraphs 4.12 & 4.13 of the London Plan.
 - b) Policies HO2, HO3, HO4, HO11, E2, E3 and 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:
 - a) Paragraphs 121 & 213 of the National Planning Policy Framework 2019.
 - b) Policy H18 and paragraph 4.18.1 of the Draft London Plan (July 2019) ("the Draft London Plan").
 - c) Paragraphs 1.4 & 1.5 of the Council's document entitled, "Standards and Guidance for Houses in Multiple Occupation".

¹ APP/H5390/C/18/3206312 & APP/H5390/W/18/3219134

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 appeal documentation.
6. I have noted the March 2009 conditional planning permission for the re-development of the Appeal Site comprising the erection of a two-storey building with accommodation at ground, first floor and roof space for use as five flats. This planning permission lapsed.
7. 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 on the second floor.
8. 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 on the second floor.
9. Bakery House was built in its current form in about 2015/2016.
10. 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

11. A Management & Operation Statement² was submitted with the application form. It explains that the proposed development seeks:
 - a) To deliver 16 rooms with en-suite showers within a secure environment including a concierge service.
 - b) Shared kitchens and dining facilities.
 - c) A communal lounge.
 - d) To provide high standard of car-free living accommodation to meet the needs of young responsible professional persons.

Reasons

12. 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 property is no longer required for such purposes.
13. The Appellants explained that for about the last 8-months parts of Bakery House (including the Flat) have been occupied by their employees, in part, to deter any unauthorised access by squatters. I understand that the last time the Appeal Site provided employment was when the former Bakery on the Appeal Site was used in 2004.

² R18004.a dated September 2018

14. 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

15. The marketing exercise has to be carried out by at least two recognised commercial agents.
16. Bakery House has been marketed by, amongst others, Lambert Smith Hampton. The Council accept that Lambert Smith Hampton are a recognised commercial agent. Mr. Scott, a Director with 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 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.
17. Mr. Scott explained that Bakery House has been marketed by Lambert Smith Hampton continuously between December 2016 and the present date.
18. Tailor Made Management were not present at the Hearing, but they submitted a Report dated July 2018 at the application stage. They had also marketed Bakery House between December 2016 and March 2018. They explained that:
- a) They had utilised a range of third party agents for assistance with the marketing of Bakery House.
 - b) 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.
19. 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 the offices ranging between 6 and 36 months.
 - b) Flexibility with the services that could be provided to the occupiers.
 - c) Flexible furnishings.

20. 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.
21. 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 .
22. 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.
23. 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 of any of the office space therein.

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

24. I have explained above that Bakery House cannot be successfully let in the current market in its current layout for an employment use. 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.
25. The Appellants explained that this is not physically possible. The walls which divided the offices off from one another are structural walls.
26. There is no evidence before me to suggest that the office floorspace within Bakery House could be adapted so as to be in an open plan form. 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 to open plan accommodation 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.
27. 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?

28. The proposal seeks the conversion of the Flat to two shared apartments and a communal shared dining/cooking area.
29. Local Plan Policy HO2 explains that the Council will resist proposals which would result in a net loss of permanent residential accommodation.
30. 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.

31. 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.
32. I do not agree with the Appellants that the planning permission for an “ancillary residential flat” means that this 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 the office business, e.g. the maintenance and upgrading of 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 but were unable to secure off-site accommodation e.g. overseas students on a business placement.
33. 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 32 above access to the office space may well be functionally necessary.
34. 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.

Is it likely that any of the rooms within the shared facilities accommodation would become self-contained dwellings?

35. The Council are concerned that it is likely that some of the rooms would become self-contained dwellings because some of the occupiers would not use the communal cooking facilities. Instead they would prepare and consume their food within their rooms and after a period of time the rooms would, in planning terms, become self-contained dwellings because those rooms would have all the facilities necessary for day to day living and would be used as such.
36. Having visited the rooms and seen the kitchenette facilities and the amount of space available I understand the Council’s concerns. At the Hearing the parties discussed this issue and the Appellants confirmed:

- a) That they did not want the rooms within Bakery House to become self-contained dwellings.
 - b) That they would be willing to remove the existing kitchenettes from the rooms and to prevent them being reinstalled.
 - c) That the rooms within Bakery House would not be sold off as this would devalue Bakery House as a whole.
37. I have noted the assurances given by the Appellants. However, those guarantees do not bind future owners or occupiers of Bakery House. In addition, I am not satisfied that these matters could be addressed through the imposition of planning conditions.
38. The Appellants also pointed out the direction of travel as regards this type of development set out in Policy H18 of the Draft London Plan. This Policy applies to large purpose built shared living accommodation of at least 50 units. However, I note that such accommodation is defined as not being capable of being used as self-contained dwellings albeit that the units may include en-suite bathrooms and limited cooking facilities.
39. I also note that the Draft London Plan Policy requires Section 106 Agreements to deal with the matters referred to in paragraph 4.18.4 and there is no such Agreement presented with this appeal.
40. I therefore conclude on the basis of the evidence before me that it remains likely that rooms within the shared facilities accommodation at Bakery House could become self-contained dwellings.

Other Relevant Planning Matters

41. The Appellants agreed at the Hearing that:

- a) If any of the rooms within Bakery House became self-contained dwellings those rooms would be of a size that would fail to meet the London Plan's minimum floor area requirement.
- b) They had failed to demonstrate that the daylight and sunlight levels within the rooms would be acceptable. I have no doubt that the daylight and sunlight levels in all the rooms at and above ground level would be acceptable. However, I have serious concerns regarding those levels within some of the basement units at certain times of the day.
- c) They would have failed to provide any affordable housing at Bakery House.
- d) The residential density of the development amounts to about 508 units per hectare which is in excess of the recommended range set out in the London Plan. That level of density would be out of keeping with the character of the local area and would also result in substandard unit sizes.
- e) For the reasons explained in paragraphs a) to d) above the proposal would be contrary to Policies HO3, HO4 and HO11 of the Local Plan and Policy 3.5 of the London Plan.

Overall Conclusions

42. 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 and the unacceptability of the proposal for the agreed reasons set out in paragraph 41 above, outweighs this matter.

43. For the reasons given above I conclude that the appeal should not succeed.

Formal Decision

44. 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