



Appeal Decision

Site visit made on 6 August 2019

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal Ref: APP/G3110/W/19/3230317

3 Hurst Street, Oxford OX4 1EZ

- 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 City College Oxford against the decision of Oxford City Council.
 - The application Ref: 19/00247/FUL, dated 31 January 2019, was refused by notice dated 3 May 2019.
 - The development is the change of use of building from Offices (Use Class B1) to Non-residential Institutions (Use Class D1).
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Decision

1. The appeal is allowed, and planning permission granted for the change of use of building from Offices (Use Class B1) to Non-residential Institutions (Use Class D1) at 3 Hurst Street, Oxford OX4 1EZ, in accordance with the terms of the application, 19/00247/FUL, dated 31 January 2019, subject to the following condition:
 - 1) Within one month from the date of this permission, full details (including dimensions, means of enclosure, and a timescale for implementation) of cycle storage shall be submitted to, and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and shall be retained for cycle storage thereafter.

Application for costs

2. An application for costs was made by Mr Feras Al Zudi against Oxford City Council. It has been confirmed to me that Mr Feras Al Zudi is a director of City College Oxford. This application is the subject of a separate Decision.

Procedural Matters

3. The Council altered the description of the development from 'change of use of building from B1 to D1' to 'change of use of building from Offices (Use Class B1) to Non-residential Institutions (Use Class D1)'. This is also the description used by the appellant on the appeal form. I consider this to be a more accurate description of the development and I have therefore considered the appeal on this basis.
4. On my site visit, I observed that the use of the building had already changed to being used as a private college in conformity with the submitted details. Accordingly, I am considering this appeal retrospectively.

5. The Council has referenced its emerging Local Plan, and specifically Policy E3. However, I understand that the conclusions of the examination are awaited and that there are currently unresolved objections in respect of this policy. As a result, this has reduced the weight that can be given to this policy.

Main Issue

6. The main issue is the suitability of the site as a location for a private education college.

Reasons

7. The appeal site consists of a two-storey building with an additional basement, previously used as an office. The immediate surroundings are characterised by the presence of residential accommodation, which is arranged in the form of traditional terraces. On street car parking is subject to a permit system. To the east of the site is Cowley Road, and Iffley Road is to the west.
8. My attention has been drawn to Policy ED9 of the Oxford Local Plan 2001-2016 (2005) (the Local Plan). This policy sets out the approach for the assessment of developments involving private colleges. In broad summary, the preamble states that the upper floors of non-residential premises in the City centre, District centres and other areas of secondary shopping frontages are the most suitable areas for developments of this type. The policy sets out the criteria by which such proposals would be addressed.
9. The appeal site, by common agreement, is not sited within one of the locations highlighted by Policy ED9. Accordingly, I do not believe that the policy can be applied to the appeal development. Therefore, the key issue is whether any harm would arise from the scheme given that Policy ED9 cannot be used to assess its merits. Accordingly, I have assessed the scheme against the wider requirements of the National Planning Policy Framework (the Framework).
10. I do not appear to have any evidence before me that is indicative of the appeal use causing an undue detrimental impact upon the living conditions of the occupiers of the adjoining, predominantly residential, properties. Furthermore, I note that teaching activities are unlikely to generate substantial amounts of noise, and therefore in the future would be unlikely to create significant levels of disturbance. I also note that the development is sited in a building that has been used for offices, where some activity in the form of people entering and leaving the premises would have been expected to occur.
11. Whilst the development is not located within the City Centre, a District Centre, or a secondary shopping frontage, it is in proximity to both Cowley Road and Iffley Road. There are several bus routes that operate at these locations and, accordingly, students may utilise these when travelling to and from the college, particularly as the walk between the bus stops and the college is over relatively level ground and features street lighting. I also note that there are several commercial activities and services in both Cowley Road and Iffley Road. The potential therefore exists for linked trips between such activities and the college. I am therefore of the view that the development is in a suitable, and sustainable, location.
12. I acknowledge that, notwithstanding the preceding points, some students may prefer to travel by private cars to and from the college. Furthermore, given the scale of the building, the number of vehicle movements attracted to the site is

unlikely to be substantial. I have also had regard to the fact that, whilst the use ceased some time ago, the building was previously used as an office where some vehicle movements would have been expected. As a result, I do not believe that the development is likely to have a severe impact on the surrounding highway system. There is no evidence before me that indicates that in the time since the development has been operational, it has led to an adverse impact on highway safety.

13. In respect of the Council's suggestion that the development has resulted in the loss of a site that could accommodate a use that should be prioritised in this location, the appellant has referenced several pieces of case law regarding the consideration of alternative uses, which I have considered. The broad thrust of the cited examples appears to be that if a development is otherwise acceptable, it should not be resisted on the grounds that there may be an alternative use for the building. Given that I have found that the development is an appropriate use for its surroundings, and its operation does not create harm, I am therefore not required to consider whether an alternative use is better suited to this site.
14. I have found that Policy ED9 of the Local Plan does not apply to this development, which is the only adopted policy to which I have been directed. I therefore conclude that the site is a suitable location for a private college having assessed the development against the requirements of the Framework, which amongst other matters, seeks to ensure the carrying out of sustainable development without detriment to the living conditions of neighbouring properties, highway safety, or leading to a significant adverse impact on the highway system.

Conditions

15. I have had regard to the list of conditions suggested by the Council. Owing to the use having already commenced, I do not believe that conditions regarding the implementation of any permission, or the approved plans, are necessary or reasonable. In order to encourage more sustainable means of travel, I am persuaded that a condition regarding the implementation, and retention, of cycle storage is appropriate. However, I have amended the wording to reflect the fact that the development is operational.
16. Leaving aside some concerns as to whether a condition can be utilised to prevent the operator of the development from obtaining parking permits, I am not satisfied that such a condition is necessary. The reasoning being that that the relatively small scale of the development, and its location, is such that significant traffic movements are unlikely to be generated.

Conclusion

17. For the foregoing reasons, I conclude that the appeal should be allowed, and planning permission granted.

Benjamin Clarke

INSPECTOR