



Appeal Decision

Hearing Held on 3 December 2019

Site visit made on 3 December 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2020

Appeal Ref: APP/K5600/W/19/3233465

2 Blenheim Crescent, London W11 1NN

- 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 David Cooper & Co against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/19/03153, dated 8 May 2019, was refused by notice dated 5 July 2019.
 - The development proposed is the change of use of the first and second floor from office use (Use Class B1) premises to a residential dwelling (Use Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the proposal was refused by the Council it has adopted the Local Plan Partial Review (September 2019) (the Local Plan). Together with the London Plan (March 2016) this forms the development plan for the area. Two policies, CF5 and CF6, from the Consolidated Local Plan (July 2015) were referenced in the reason for refusal. Policies CF5 (with a revised wording) and CF6 (unchanged) are included in the new Local Plan and these policies still form the basis of the case advanced by the Council.
3. A signed and dated Unilateral Undertaking seeking to ensure that the unit of accommodation would be car parking permit free housing has been submitted. I will return to this matter later.
4. The description of the development on the application form and in the decision notice refers to the office use of the first and second floor as falling within Use Class A1. However, the Statement of Common Ground and the supporting appeal papers confirm that the lawful use of the upper floors are offices (Use Class B1). The lawful use of the first and second floor as B1 offices is not in dispute. The above description of the development more accurately reflects the proposal and was used by the appellant on the appeal form.

Main Issue

5. The main issue is the effect the loss of the office floorspace would have on the range of office premises available and the impact on the local and wider economy.

Reasons

6. The site is located close to Portobello Road within Notting Hill and concerns the upper two floors of 2 Blenheim Crescent. The space is accessed via a separate door and corridor from the footway. The floorspace extends to about 110sqm and the space is divided into a number of rooms, with an elevated rear terrace.
7. Policy CF5 of the Local Plan sets out the plan approach to business uses to ensure that there is a range of business premises within the borough to allow businesses to grow and thrive. In relation to offices, as the site is located within a town centre, the policy protects offices and office floorspace, except where it would be replaced by a shop or shop floorspace, by a social and community use which predominantly serves, or which provides significant benefits to, borough residents, or by another (not residential) town centre use where this allows the expansion of an adjoining premises. In this case, the change of use of the office accommodation to a unit of residential accommodation would therefore not comply with Policy CF5 of the Local Plan.
8. In support of the proposal to help to justify that the circumstances of the change of use would cause no material harm, an Office Market Review report, with addendum and Response to the Frost Meadowcroft's Notting Hill Office Market Review (the Savills evidence) has been submitted¹. I have taken into account the findings of the analysis which indicates, in summary, that when looking at factors such as availability rates, vacancy levels and net absorption there is an oversupply of office accommodation, particularly with accommodation of less than 2,000 sqft, with more offices in the pipeline, such that it is argued that the present floorspace, because it is of a poor quality, could be lost without harm.
9. I have also taken into account the Frost Meadowcroft Notting Hill Office Market Review (October 2019) which indicates that a different boundary to parts of the property market area should be analysed and that, if this is assessed in accordance with their analysis, vacancy levels indicate that there is an undersupply of offices locally.
10. All the reports and analysis are instructive in helping to assess the state of the local property market. It seems to me that for different types of offices (within the less than 2,000 sqft category) and for different potential occupants the office market area of search could be different. I also note that the evidence from local agents indicates that some parts of the local area may be more sought after than others and the example of Latimer Road being less sought after than Portobello Road is given². In respect of the type of office accommodation being analysed in this appeal, from the evidence before me, I consider that the broad type of offices and the nature of the location in the Notting Dale area is not generally of such direct comparison to justify this area to be included in the analysis as possible alternatives for tenants to the appeal site. Furthermore, to my mind, the Westbourne Grove area possesses more similarity with the appeal site area to justify its inclusion in the property market area in the circumstances of this case. This reduces the weight I attach to the Savills evidence in this respect.

¹ Office Market Review 2 Blenheim Crescent Final Report 8 April 2019, Addendum October 2019 and Savills Response to Frost Meadowcroft's Notting Hill Office market Review November 2019.

² Paragraph 4.2.4 of the Savills Office Market Review 8 April 2019.

11. I am also aware that the Frost Meadowcroft Report did not analyse in detail the availability rates or net absorption levels, or make detailed references to the London Office Policy Review 2017, and this weighs against this evidence.
12. There are clear differences between the evidence in relation to the property market, and whether there is an under or over supply in the under 2,000 sqft segment of the office market. Taking all these issues into account, on balance, I have a preference for the Frost Meadowcroft submissions and conclusions on the basis that the property market area appears to be more consistent with the type of office accommodation and nature of location being considered at this appeal.
13. It is argued that the upper floors at 2 Blenheim Crescent are poor quality, including that they have a narrow corridor access, lack disabled access with no lift, have only one fire exit and the toilets do not open into a lobby. On the other hand, the accommodation was upgraded in 2015 and has wooden boarded floors, reasonably high ceilings and if the present more domestic furnishings were replaced by office furniture and upgraded facilities such as lighting and fibre internet access installed, the space could provide small and medium sized rooms that may suit some tenants looking for this more period type of accommodation. The site is located in proximity to Portobello Road which appears a lively and vibrant place and where there is good access to public transport. Looking at the potential suitability of the accommodation as a whole, I consider that the physical circumstances of the building do not demonstrate to my satisfaction that office use would not be a reasonable proposition for some types of tenant.
14. At the hearing it was explained that the appellant had undertaken an analysis of likely rent and other costs of occupation, such as business rates, and concluded that the use of the site in office use was not viable such that tenants would not be willing to take on the floorspace at the present time.
15. However, the potential for the floorspace to be used for office accommodation by a tenant has not been tested in the market in the circumstances where there is a willing landlord. The wider analysis in terms of the property market area from both main parties, while helpful, is not definitive either way as to whether this relatively small office floorspace, in a location close to Portobello Road, could be let and therefore make a contribution to the economy of the area. Marketing the property would be a usual way to help demonstrate whether the office floorspace would be taken up in office use. The absence of the marketing of the property, and related information in a detailed report, weighs to a substantial extent against the case that seeks to demonstrate that the office floorspace is not suitable or needed.
16. I note the argument that the fallback position, if permission was not granted, would be that the space would be empty and for the past few years the space has been in a low key use that has made only a limited contribution to the social and economic wellbeing of the area³. Nevertheless, given the location and the general vibrancy of the area, in the absence of the accommodation being marketed, I am not satisfied that the evidence leads me to conclude that this need be the case.

³ It is explained that only the front first floor space has been used in recent years such that the effective loss of office accommodation would only be about 22.4sqm.

17. I have also had regard that the Council has justified an exemption from permitted development rights which would otherwise have allowed the conversion from office to residential use. I also note that the recently adopted Local Plan explains that small (as in this case) and very small business premises across the borough are valued as these are the premises which are in demand by both the creative sector and by the borough's residents.
18. As a consequence of the above, I am satisfied that the evidence considered as a whole does not adequately demonstrate that this office floorspace could not make a contribution to the economic wellbeing of the area such that its loss would be to erode to a small extent an element in the range of office provision which is important to the borough. Furthermore, the space is small and potentially the workspace could be used by a tenant to help to support the creative and cultural industries across the borough and therefore the proposal would not accord with Policy CF6 of the Local Plan.
19. Policy CF5 of the Local Plan would allow office space to go to alternative uses other than offices, although not residential. This could result in the loss of the office accommodation. However, those other uses are said to be beneficial town centre uses and therefore they could contribute to the wellbeing of the area. As this approach is set out in a recently adopted Local Plan and the policy specifically precludes residential use, I am satisfied that the option of these alternative town centre uses does not materially undermine the case made by the Council for the retention of the office floorspace in this appeal.
20. In the light of the above analysis, I conclude that the loss of the office floorspace would have a harmful effect on the range of office premises available and adversely impact on the local and wider economy. This would be contrary to Policies CF5 and CF6 of the Local Plan which seeks, amongst other things, to protect offices and office floorspace throughout the borough.

Other Matters

21. The site lies within the Ladbroke Conservation Area. I am mindful of the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of any land or buildings in a Conservation Area. However, as the proposal is the change of use of the upper floorspaces with no external changes, I consider that the character and appearance of the Conservation Area would be preserved.
22. My attention has been drawn to the previous appeal⁴ on the site which sought to change the office accommodation to a live/work unit. However, as that proposal was considered under different local plan policies and I have different evidence before me, I attribute this earlier appeal limited weight.
23. The signed and dated UU would enable the residential unit to be car parking permit free housing. This would be necessary to comply with development plan policies and would enable the proposed residential accommodation to be occupied in a more sustainable way. I consider that the UU would meet the tests for obligations set out in paragraph 56 of the National Planning Policy Framework (the Framework). However, as the obligation would mainly mitigate the impact of the additional accommodation on the area, I attribute it limited weight.

⁴ APP/K5600/W/16/3156851 dated 3 November 2016

Planning Balance and Conclusion

24. The proposal would provide an additional unit of high quality residential accommodation on a windfall site and in an area with good access to services, facilities and public transport. This would accord with the Framework intentions to boost housing supply, particularly on an existing developed site within a built-up area and where there are other residential units on the upper floors of adjoining buildings. The unit of accommodation would be able to be delivered quickly and was historically designed and used as residential accommodation. The provision of the residential accommodation would accord with development plan policies for the delivery of housing and the modest size of the unit would complement the existing range of dwellings within the borough. Furthermore, the residential use of the site would bring economic and social benefits to the area and the appropriate Community Infrastructure Levy charge would be paid to help improve infrastructure in the area. These are all worthwhile benefits that would accrue from the proposal, however, as only a single unit of accommodation would be formed, cumulatively I attribute these benefits limited weight.
25. I heard evidence regarding the change to the Council's policy to allow amalgamations of some residential units. It was said that this would reduce the number of units across the borough placing greater need to deliver housing on other sites. The proposal was argued as a small contribution to offset the loss of units from amalgamations. However, the Council explained that this approach to amalgamations has been factored into its assessment of housing delivery and as the Local Plan has only very recently been adopted I afford this matter limited weight in favour of the scheme.
26. Taking all these matters into account, the proposal would not accord with the policy of the development plan in respect of the protection of office floorspace. Furthermore, I consider that the balance of evidence leads me to conclude that it has not been adequately demonstrated that the office accommodation could be lost without harm to the economy and the supply of office accommodation locally. I attribute these matters substantial weight. The cumulative benefits of the scheme merit limited weight, and these benefits would not outweigh the harm I have identified.
27. In conclusion, and having regard to all other matters raised, the proposal would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and the associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr David Cooper	Appellant – David Cooper & Co
Mr Julian Cooper	David Cooper & Co
Mr Matt Richards	Savills
Mr Rory Brooke	Savills
Mr Ryan McKenzie	Savills
Mrs Camilla Guinness	Tenant
Mrs Jasmine Rainey	Tenant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Stephanie Malik	The Council of The Royal Borough of Kensington & Chelsea
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INTERESTED PERSONS

Miss Katherine Barnes	Counsel on behalf of Mr Anthony Jeffrey
Mr Anthony Jeffrey	Local resident
Mrs Marion Gettleson	Local resident

Documents submitted at the hearing:

- 1) List of available office premises with Frost Meadowcroft comments
- 2) Local Plan Partial Review – Employment Land Needs and Availability (ELNA) Background Paper October 2016
- 3) Office Market Review and Viability in the Royal Borough of Kensington and Chelsea – July 2014
- 4) Office Market Commentary in Kensington and Chelsea – February 2013
- 5) Policies from the London Plan (March 2016)