



Appeal Decision

Site visit made on 7 January 2020

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal Ref: APP/K5600/W/19/3236006

35 Bramley Road, London W10 6SZ

- 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 Mrs Ann Tang (Harvest Properties) against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref: PP/19/00729, dated 30 January 2019, was refused by notice dated 3 April 2019.
 - The development proposed is 'rear extension to ground and first floor level and erection of mansard roof and rear extension to basement with courtyard to provide Office Space (A1/A2) and 3No. Flats (C3).'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council states in its Officer's Report that: *'There is some confusion as to whether the proposal is for a change of use as the application form describes the proposed uses at the site as A1/A2 and C3. There would be no objection to A1/A2 use as this would not require planning permission. However, planning applications are determined according to the submitted drawings and these clearly indicate a change of use to B1(a) office. As such the issue at hand is the loss of retail at the site.'* It appears, with regard to a change from Class A1 (Shops) to Class A2 (Financial and professional services), that the Council may be alluding to permitted development rights under Class D of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (GPDO).
3. The appellant's Statement of Case does not address that alleged confusion directly or specifically challenge the basis on which the Council considered the change of use. In response to the Council's second reason for refusal concerning the loss of the shop, the appellant states in discussing its employment potential that *'the new development proposes a change of use to offices (A2).'* The Town and Country Planning (Use Classes) Order 1987 defines Class A2 as use for the provision of:— (a) financial services, or (b) professional services (other than health or medical services), or (c) any other services which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.
4. Whether the proposed change of use of the shop requires planning permission is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the

appellant to apply to the Council to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal. Given the above, the description of the proposed area as 'office' space on the submitted plans and that the appeal relates to a planning application, I have considered that aspect of the scheme on the same basis as the Council, that is, the effect of changing the use of the shop to an office (Class B1(a)).

5. At the time that the Council determined the application, a Local Plan Partial Review (LPPR) was being undertaken. The Council advises that the LPPR was adopted on 11 September 2019. Although after the planning application was determined and just after the appeal was lodged, the new 'Local Plan, September 2019' (LP) advises that: *'It incorporates all the extant policies and their supporting text from the Consolidated Local Plan 2015.'* Therefore, the relevant policy framework is basically unchanged, although it is of relevance that the 'Latimer Road Station' area, which includes Bramley Road, has been designated as a 'Neighbourhood Centre' within the LP. Given the lack of substantive policy change, there would be little purpose in me seeking further comment from the appellant on that aspect. I am required to determine the appeal proposal in accordance with the current development plan, unless material considerations indicate otherwise.¹

Main Issues

6. The main issues are:

- the effect of the proposed development on the character and appearance of the existing building, the terrace, and the area; and,
- the effect of the proposed change of use from a shop to an office on local shopping facilities and the vitality of the neighbourhood centre.

Reasons

Character and appearance

7. The appeal property, 35 Bramley Road, comprises a three storey plus basement terraced building, with a shop front at ground floor level, and residential accommodation on the upper floors, consisting of a three-bedroom maisonette. The shop front projects out from the floors above, which resolve at a prominent parapet. With Nos 37 and 39 to the north, it forms part of a terrace of three properties of similar age and architectural design, all with shopfronts at ground floor level. There is a more modern block of residential flats opposite which is part 4/part 5 storey. The area is a mix of commercial and residential uses, with a number of terraced blocks with residential flats above shops, pubs, and cafes.
8. Adjoining the appeal property to the south is a newer block within the terrace, which stretches from 23-33 Bramley road. It also incorporates shop fronts at ground floor level with residential flats above. Like Nos 35-39, it is three storeys high and makes clear reference to those earlier buildings by respecting their height and continuing their existing parapet feature along its length. Therefore, although the upper storeys of the newer building project further forward, its sympathetic design respects the form of the historic terrace, of

¹ s.38(6) Planning and Compulsory Purchase Act 2004 and s.70(2) Town and Country Planning Act 1990

which the appeal property forms a part. Further south adjoined to the newer mixed-use block are a group of earlier three-storey houses. The three-storey form with parapet remains largely consistent along this part of the road, with only the public house at No 41 being marginally higher but maintaining the same basic form.

9. Part of the proposal involves erecting a mansard roof extension on top of the appeal building. The mansard roof would rise well above the parapet and, effectively, add another storey to the building, making it higher than its immediate neighbours and prominent in public views along the road. Consequently, within that context, the mansard addition would appear a highly incongruous feature disrupting the generally consistent existing roofline, formed by the continuous parapet along the terrace. The set-back and use of matching materials, which could be secured by condition, would not sufficiently mitigate that negative effect. As an isolated mansard along the terrace, it would also adversely affect the character and appearance of the existing building which would present as the odd one out.
10. The appellant refers to permissions for allegedly similar roof extensions further along the street at 9 and 11 Bramley Road.² However, those properties are on a separate terraced block further south, where I saw three existing roof extensions at Nos 3, 7 and 9 with the permission at No 11 apparently not built-out. Although I have limited details of those schemes, the Council advises the permission relating to No 11 was granted, in part, because there were already other similar roof extensions along that terrace, including at No 9, the adjacent property.
11. Therefore, given that those permissions relate to properties on another block, some distance from the appeal property, where other roof extensions already existed, the context is different from that of the appeal proposal where there are no existing similar extensions on the adjacent properties in the terrace. Moreover, policy CL8 of the Council's Local Plan (LP)³, which specifically addresses roof alterations or additional storeys on existing buildings, indicates that such changes will be resisted on complete terraces or groups of buildings where the existing roof line is unimpaired by extensions, which is the case here. Consequently, I give those other permissions and existing mansard extensions in the area limited weight in my assessment of the appeal proposal, as their context is different.
12. Accordingly, I conclude that, given its height and incongruity, the proposed mansard roof would harm the character and appearance of the existing building, the terrace and the area. It follows that it would conflict with policies CL1, CL2 and CL8 of the LP. Collectively, those policies seek to ensure that development is of high-quality design and that it respects and responds to local context and townscape, including in relation to height, street form and roofscape. Furthermore, that roof alterations and additional storeys should be architecturally sympathetic to the character of the building and group of buildings and resisted where the existing roof line is unimpaired by extensions.

² PP/01/01712 and PP/15/04885

³ September 2019

Change of use

13. Bramley Road forms part of the Latimer Road Station 'Neighbourhood Town Centre', as designated in the recent LP. Paragraphs 19.3.10 and 19.3.14 of the LP refer to four levels of town centres, with the fourth type being 'Neighbourhood Centres'. The LP 'CO1 Strategic Objective for Keeping Life Local' seeks to ensure strong, effective neighbourhood centres, which includes the provision of local shopping facilities, integral to the concept of 'walkable neighbourhoods' where the day-to-day needs of local communities can be met.
14. In support of that strategic objective, LP policy CF3(d) indicates that the Council will protect all shops within neighbourhood centres, unless the proposal is to change to a social and community use, and where 66 per cent of the relevant street frontage remains in an A1 use.
15. The building, including the shop premises, is in a poor state of repair internally and appears to have been unused for some time. According to the submissions of the main parties, the shop element was previously a DIY or hardware store and may have been vacant since about 2012. The appellant submits that it used to employ up to 2 people but that the change of use to offices would provide employment for up to 5 people. However, no evidence has been submitted to support that assertion or that continued use as a shop would not be viable. While employment opportunities are important, shops also offer employment and can contribute to the vitality of neighbourhood centres by providing for the everyday needs of local residents and creating footfall, which is part of the reason that the LP seeks to protect them.
16. Given the above, I conclude that the change of use, which would result in the loss of a shop in a 'neighbourhood centre', would be detrimental to the provision of local shopping facilities and the vitality of the neighbourhood centre. The proposal would also be contrary to the LP strategic objective of 'keeping life local' and clearly conflict with LP policy CF3 which, amongst other things, seeks to protect all shops within neighbourhood centres, subject to limited exceptions which the appeal proposal does not meet.
17. Although when determining the application, the Council referred to conflict with LP policy CK2, that policy concerns the protection of individual shops (Class A1) outside of designated town centres, whereas the appeal proposal now falls within a recently designated 'Neighbourhood Town Centre', which the LP and its associated mapping/lists⁴ indicate is one of four types of town centre. Therefore, I do not consider that policy CK2 is applicable to the appeal proposal.

Other Matters

18. The Council also advises that there is a subsequent extant permission, granted on 23 July 2019, which retains the A1 shop use at ground floor level and the conversion of the existing maisonette above into three flats.⁵ The description indicates that it incorporates a rear extension to ground, first floor and basement.
19. Although the Council has not specifically assessed or objected to the rear extension element of the appeal proposal, given the extant permission, there

⁴ Pages 353-353

⁵ PP/19/02465

would be no purpose in me considering a split decision to allow that element, even if it was acceptable and clearly severable, both physically and functionally. Moreover, the appellant has not expressed an interest in such an outcome. It appears, therefore, that an alternative approved scheme exists for the site, which does not occasion the harm identified above. Nonetheless, I have considered the appeal proposal on its own individual merits.

Conclusion

20. Even if the proposed change of use of the shop related to a change to Class A2 use for financial and professional services, which may be achievable via the exercise of permitted development rights under the GPDO, the harm to the character and appearance of the existing building, the terrace and the area, caused by the proposed mansard roof, would remain decisive and lead me to find against the scheme.
21. I have also considered that the proposal would provide three residential units whereas the current 3-bedroom maisonette offers one residential unit, albeit a sizeable one. However, the extant permission would achieve a similar outcome in that respect. In any event, the contribution to the supply of housing would not outweigh the character and appearance harm resulting from the appeal proposal.
22. Consequently, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR