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# Appeal Decision

Site visit made on 5 February 2020

**by Mr JP Sargent BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 February 2020**

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**Appeal Ref: APP/V5570/W/19/3236030**

**55-61 Brewery Road, Islington, London N7 9QH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by A&K Kaimakamis against the decision of the Council of the London Borough of Islington.
  - The application Ref P2019/1011/S73, dated 22 March 2019, was refused by notice dated 9 July 2019.
  - The application sought planning permission for a 2 storey extension to the existing building to provide business floorspace (B1) including light industry floorspace (B1c) at ground and first floor levels as well as the refurbishment of the existing facades involving an uplift of 502sqm (GIA) of employment floorspace without complying with conditions attached to planning permission Ref P2018/4248/S73, dated 18 February 2019.
  - The conditions in dispute are Conditions 2 and 8, which are listed in The Disputed Conditions Schedule at the end of this decision, along with their reasons for imposition.
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## Decision

1. The appeal is allowed and planning permission is granted for a 2 storey extension to the existing building to provide business floorspace (B1) including light industry floorspace (B1c) at ground and first floor levels as well as the refurbishment of the existing facades involving an uplift of 502sqm (GIA) of employment floorspace at 55-61 Brewery Road, Islington. London N7 9QH in accordance with the application Ref P2019/1011/S73, dated 22 March 2019 without compliance with Conditions 2 & 8 previously imposed on planning permission Ref P2018/4248/S73 dated 18 February 2018 but subject to the conditions in the Conditions Schedule below.

## Procedural matters

2. The Council alleged that the appellant was in fact seeking non-compliance with conditions attached to permission P2018/3596/S73. Mindful that permission was granted after the application subject of this appeal was submitted, I have nonetheless determined the scheme as proposed. In any event I have no reason to consider this had a material effect on the case before me.

## Main Issue

3. The main issue in this case is the effect of the proposal on the primary economic function of the Vale Royal/Brewery Road Locally Significant Industrial Site (LSIS).

## Reasons

4. The designation of the Vale Royal/Brewery Road area as an LSIS is in recognition of it being the only remaining significant concentration of industrial uses in this Borough. Its importance in this regard is not challenged by the appellants and is something I acknowledge. Policies CS6 and CS13 in *Islington's Core Strategy* seek to retain this designated area for industrial/warehousing/employment land. These policies are supported by Policy DM5.3 of the *Development Management Policies* (DMP) document that states the retention and intensification of uses appropriate to the LSIS will be supported. Such uses (hereafter called the LSIS uses) are identified as those within Classes B1(c), B2 and B8 of the *Town and Country Planning (Use Classes) Order 1987* (as amended). DMP Policy DM5.3B adds that proposals resulting in the loss or reduction of the LSIS uses would be refused unless exceptional circumstances can be demonstrated.
5. The appeal property is within the LSIS. In 2018 it could be lawfully used as 260sqm of floorspace within Class B8<sup>1</sup> with the remainder being Class B1 floorspace (I shall refer to this combination as the initial use). Although the Class B1 floorspace could have been used for purposes within Class B1(c), it was unrestricted in that no controls prevented it being used for uses in Classes B1(a) and/or B1(b). The parties therefore accepted that only the portion used for Class B8 activity fell within the LSIS uses.
6. Planning permission was then granted to extend the property by adding 2 extra floors on top, to modify the facades, and to use the resultant building for just Class B1 uses (P2018/1637/FUL). However, Condition 8 was imposed to restrict the use of at least 450sqm of the building to uses within Class B1(c) only, and the description of the development said this was to be on the ground and first floors. When compared to the initial use, this permission therefore resulted in an increase of some 200sqm in the provision of floorspace for LSIS uses. Two subsequent permission have been granted under section 73 of the Act (P2018/3596/S73 & P2018/4248/S73) for 'revisions' to this permission, but for the purposes of this appeal these have no material effect on the amount of floorspace for LSIS uses within the building. I shall refer to these 3 decisions collectively as the permitted scheme.
7. The parties agreed that the permitted scheme has been implemented as the 2 floors have been added, the facades modified and the service core has been provided. However, no operators have, as yet, moved into the building. The work area on each floor is therefore a large empty open space, (excepting what had been laid out as a show office), though the upper 3 floors have a finished flooring whilst the ground and first floors have flooring of unfinished concrete.
8. The appellant is seeking to allow development in non-compliance with Condition 8 so that only 265sqm of floorspace need be used for Class B1(c) purposes. Again, whilst some or all of the remainder could be also occupied by businesses within Class B1(c), that cannot be guaranteed. As a result, only this 265sqm can be treated as floorspace dedicated to LSIS uses and would be

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<sup>1</sup> Throughout the submissions the precise floorspace figures used have varied, seemingly dependent upon whether referring to the GIA or the NIA measurement. I have used the ones that appeared to be generally favoured, but insofar as this decision is concerned it was agreed by the parties that the amount of Use Class B1(c) floorspace now proposed was marginally above the amount of Class B8 floorspace in the initial use, but about 185sqm below the amount of Class B1(c) floorspace in the permitted scheme. Whilst the precise figures may vary, any such variance has no material effect on my reasoning

marginally more than was found under the initial uses, but appreciably less than the permitted scheme. It is shown as occupying the ground floor and about a third of the first floor. Therefore, when considering the appeal against DMP Policy DM5.3, to establish whether it would result in the loss or reduction of the LSIS uses, the case turns on identifying the combination of floorspace against which the proposal should be compared.

9. It is the Council's case that because the permitted scheme has been implemented and is at an advanced stage, then it is the most relevant fallback position and the initial use cannot be considered to be of particular relevance. Consequently, it finds that the proposal would result in a significant loss or reduction of floorspace given over to LSIS uses in the building as, when compared to the permitted scheme, it would reduce by some 185sqm.
10. To my mind the element of the permitted scheme that has been implemented, which is broadly the part that comprises operational development, is not inconsistent with the operation of the initial uses. There is nothing that specifically facilitates the uses of the permitted scheme, and I have been told of no way in which the works prevent those initial uses from being undertaken. Indeed, it is of note that the Council does not find the initial uses to be no longer relevant, but rather states they are of '*no particular*' relevance. I accept that as the permitted scheme is extant the combination of uses allowed under that scheme can start to operate from the site at any time in the future, and in doing so would prevent the initial uses from resuming. However, there is no obligation for the uses of the permitted scheme to be commenced and until they are it is open for the initial uses to operate from there, as they are not impeded from doing so by the works already completed.
11. I have little evidence to show the Class B8 element within the initial use would resume, and I am aware that the permitted scheme sought its discontinuance. At the same time though there is nothing to indicate the 450sqm of Class B1(c) use authorised under the permitted scheme would be taken up either, and that too is now subject of a proposal to reduce its extent. On balance, I have no reason to consider the permitted scheme should be treated as a preferential fall-back option when compared to the initial uses or that the initial uses should be considered of no particular relevance.
12. Consequently, when considering the scheme against DMP Policy DM5.3, I find the initial uses are no less likely to resume than the combination approved under the permitted scheme. It is therefore appropriate to judge DMP Policy DM5.3 against those initial uses as well, and so the proposal will not necessarily result in the loss or reduction of those LSIS uses.
13. The Council also said that the scheme would create a significant amount of additional non-LSIS floorspace that would undermine the function of the LSIS. However, given that there would not be a reduction in LSIS uses, the harm that would result from the unrestricted Class B1 activity has not been specified. Whilst it could be contended that it means the amount of floorspace given to LSIS uses is less when considered as a proportion of the entire building or the wider LSIS, I see nothing that supports considering the matter in this relative way. The emerging *London Plan* advises that boroughs should make clear the range of uses acceptable in LSIS areas (Policy E6). However, my attention has also been drawn to nothing in the adopted policy basis that resists, in principle, an increase in business use outside of LSIS uses, provided that increase is not

at the direct expense of LSIS uses. Indeed, Parts C and D of DMP Policy DM5.3 seek to safeguard business floorspace where its loss would have a detrimental effect on an area's primary economic function. This includes the unrestricted Class B1 use now before me, as non-business floorspace (and so the floorspace Parts C and D do not seek to safeguard) is defined as anything outside of the B Use Classes. As such, the increased provision of unrestricted Class B1 floorspace would not conflict with this, but would still contribute to the industrial/warehousing/employment uses in the LSIS.

14. Moreover, in an appeal dismissing a previous scheme at the site<sup>2</sup> the Inspector appears to have based her decision on the reduction in LSIS uses then proposed when compared to the initial use. It does not seem to have been dismissed as a result of the significant increase in unrestricted Class B1 usage that also formed part of that development, even though the amount of unrestricted Class B1 floorspace from that scheme was greater than what is now proposed. Indeed, in paragraph 19 of that decision the uplift in the amount of business floorspace appears to have been treated as a benefit to some degree. I therefore consider that the additional unrestricted Class B1 floorspace is not in itself a reason to resist the scheme.
15. Accordingly, the scheme would not result in a loss or reduction of floorspace for LSIS uses and so I conclude it would not harm the primary economic function of the Vale Royal/Brewery Road LSIS. As such, it would not be in conflict with *The London Plan* Policy 4.4, Core Strategy Policies CS6D and CS13, and DMP Policies DM5.2 and DM5.3, all of which seek to support and protect this, the largest concentration of industrial sites in the borough.

### Conditions

16. I therefore consider a new Condition 2 should be imposed to account for the plans now before me, while the required amount of Class B1(c) floorspace to be retained should be in a revised Condition 8. However, Condition 10 imposed on permission P2018/4248/S73 does not accord with advice in the *Planning Practice Guidance* and so should be deleted. All other conditions imposed on that permission should be re-imposed for the reasons previously stated, albeit modified to reflect the changes that have since occurred. I am also satisfied that Condition 18 would be appropriate on this scheme. When considering the previous appeal, the Inspector accepted that ensuring adequate provision for small/medium enterprises could be addressed by condition and I have no reason to differ. This condition, which was suggested by the Council in its submissions, would not materially alter the development.

### Conclusions

17. For the reasons stated I conclude the appeal should be allowed

*JP Sargent*  
INSPECTOR

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<sup>2</sup> APP/V5570/W/18/3206047 dated 19 December 2018

## **The Disputed Conditions Schedule**

- 2) APPROVED DRAWINGS: The development hereby approved shall be carried out in accordance with the following approved plans and documents:

Existing Drawings: G100\_P\_00\_001 Rev A; JA12\_P\_01\_001 Rev P1;  
JA12\_P\_00\_001 Rev P1; JA12\_P\_02\_001 Rev P1;  
JA12\_P\_RF\_001 Rev P1; JA12\_S\_AA\_001 Rev P1;  
JA12\_S\_AA\_002 Rev P1; JA12\_E\_N\_001 Rev A;  
JA12\_E\_S\_001 Rev A.

Proposed Drawings: 55-61BR\_PR\_RP2\_010\_A;  
G200\_E\_N\_001 Rev P1; G200\_E\_N\_002 Rev P1;  
G200\_E\_S\_001\_OP05 Rev P1; G200\_E\_E\_001 Rev P1;  
G200\_E\_W\_001\_OP05 Rev P1; G200\_P\_00\_001 Rev P2;  
G200\_P\_02\_001 Rev P2; G200\_P\_03\_001 Rev P2;  
G200\_P\_04\_001 Rev P2; G200\_P\_RF\_001 Rev P2;  
G200\_S\_AA\_001 Rev P2; G200\_S\_AA\_002 Rev P2;  
Planning Statement prepared by Savills dated May 2018;  
Design & Access Statement prepared by Squire & Partners dated May 2018;  
Daylight & Sunlight Study prepared by Rights of Consulting dated June 2017;  
Delivery & Servicing Management Plan prepared by TTP Consulting dated August 2018;  
Draft Work Place Travel Plan by TTP Consulting dated August 2018;  
Transport Statement prepared by TTP Consulting dated August 2018;  
Site Noise Survey & Preliminary Noise Assessment prepared by AAD dated June 2015;  
Energy & Sustainability Statement prepared by Mecserve dated February 2018 (Explanatory Note by Mecserve dated August 2018);  
Energy Response by Mecserve dated 18th April 2018;  
Utility Statement by Mecserve dated January 2016;  
Phase 1 Desk Top Study by Chelmer dated February 2016

### **Reason:**

For the avoidance of doubt and in the interests of proper planning

- 8) RESTRICTIONS OIF USE: At least 450sqm (GIA) of B1(c) floorspace shall be provided. The B1(c) shall be strictly limited to uses within the B1(c) use class and not for the purpose of Use Class B1a or B1b – of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended 2005 (or the equivalent use within any amended/updated subsequent Order).

### **Reason:**

To ensure that the use hereby approved is not able to change to a B1a via permitted development rights allowed under the Town and Country Planning (Use Classes) Order 1987 (As Amended) in the interests of preserving the economic function of the Locally Significant Industrial Site.

## The Conditions Schedule

- 1) The development hereby approved shall commence within 3 years of the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans and documents:
  - Existing Drawings: G100\_P\_00\_001 Rev A; JA12\_P\_01\_001 Rev P1; JA12\_P\_00\_001 Rev P1; JA12\_P\_02\_001 Rev P1; JA12\_P\_RF\_001 Rev P1; JA12\_S\_AA\_001 Rev P1; JA12\_S\_AA\_002 Rev P1; JA12\_E\_N\_001 Rev A; JA12\_E\_S\_001 Rev A.
  - Proposed Drawings: G100\_P\_00\_001 Rev A; 55-61BR\_PR\_PLAP\_010\_A; 55-61BR\_PR\_PLAP\_011\_A, G200\_E\_N\_001 Rev P1; G200\_E\_N\_002 A Rev P1; G200\_E\_S\_001\_OP05 Rev P1; G200\_E\_E\_001 Rev P1; G200\_E\_W\_001\_OP05 Rev P1; G200\_P\_02\_001 Rev P2; G200\_P\_03\_001 Rev P2; G200\_P\_04\_001 19 Rev P2; G200\_P\_RF\_001 Rev P2; G200\_S\_AA\_001 Rev P2; G200\_S\_AA\_002 Rev P2;
  - Cover Letter by Savills dated 22 March 2019
  - Planning Statement prepared by Savills dated May 2018;
  - Design & Access Statement prepared by Squire & Partners dated May 2018; Daylight & Sunlight Study prepared by Rights of Consulting dated June 2017;
  - Delivery & Servicing Management Plan prepared by TTP Consulting dated August 2018;
  - Draft Work Place Travel Plan by TTP Consulting dated August 2018;
  - Transport Statement prepared by TTP Consulting dated August 2018;
  - Site Noise Survey & Preliminary Noise Assessment prepared by AAD dated June 2015;
  - Energy & Sustainability Statement prepared by Mecserve dated February 2018 (Explanatory Note by Mecserve dated August 2018);
  - Energy Response by Mecserve dated 18 April 2018;
  - Utility Statement by Mecserve dated January 2016;
  - Phase 1 Desk Top Study by Chelmer dated February 2016
- 3) Unless otherwise agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the materials approved under application reference P2018/3422/AOD.
- 4) Unless otherwise agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the roof-level structures approved under application reference P2018/3923/AOD.
- 5) No cables, plumbing, down pipes, rainwater pipes, foul pipes or CCTV cameras or related equipment and installations shall be located/fixed to any elevation(s) of the building hereby approved. Should additional cables, pipes be considered necessary the details of these shall be submitted to and approved in writing by the Local Planning Authority prior to their installation. Notwithstanding the drawings hereby approved, no CCTV cameras or related equipment and installations are hereby approved.

- 6) Notwithstanding the plans hereby approved details including floorplans, sections and elevations of all business floorspace at a scale of 1:50 shall be submitted to and approved in writing by the Local Planning Authority prior to works commencing on site. The details shall include the following and may require amendments to the layouts shown on the approved plans:
- accessible WC provision;
  - public entrances including sections showing level access, door furniture and manifestations to glazing;
  - inclusive design measures adopted in the design of the refuse storage facilities;
  - inclusive design measures adopted in the design of the cycle storage facilities;
  - space for the storage and charging of mobility scooters;
  - details of accessible changing facilities for staff;
  - accessibility of corridors and lifts (the 1500x1500mm clear space)
  - details of how the development would comply with the relevant parts of the *Inclusive Design in Islington* SPD;
  - refuge area and management strategy in the event of fire evacuation;
  - how the ground floor lobby area will be managed and how assistance will be provided to those who need it, as there is no reception or WC facility shown;

The development shall be carried out strictly in accordance with the details so approved and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

- 7) The bicycle storage areas, which shall be secure and provide for no less than 18 bicycle spaces (and additional space for accessible parking, the parking of trailers or tricycles, and the parking and charging of mobility scooters) shall be provided prior to the first occupation of the development hereby approved, shall be maintained as such thereafter and no change therefrom shall take place unless otherwise agreed in writing by the Local Planning Authority.
- 8) At least 265sqm (GIA) of Class B1(c) floorspace shall at all times be provided. The use of this area of Class B1(c) floorspace shall be strictly limited only to uses within the Class B1(c) use class of the Schedule to the *Town and Country Planning (Use Class) Order 1987* as amended 2005 (or the equivalent use within any amended/updated subsequent Order) and not for the purposes of Classes B1(a) or B1(b) of that Order.
- 9) Unless otherwise agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the green roof approved under application reference P2018/3924/AOD.
- 10) *Condition deleted*
- 11) The development hereby permitted shall be constructed to achieve a 50.5% reduction in regulated CO<sub>2</sub> emissions, compared to compliance with the London Plan Baseline Emission Rate, and a water efficiency target of 95 l/p/d. A post fit-out Energy and Sustainability Statement shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation to demonstrate compliance with the above, and in accordance with the

developers proposed energy review post completion. The building shall be maintained as such thereafter in perpetuity. The proposed measures relevant to energy as set out in the Energy and Sustainability Statement hereby approved shall be installed and operational prior to the first occupation of the development and shall be maintained as such thereafter.

- 12) Unless otherwise agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the Construction Environment Management Plan approved under application reference P2018/3492/AOD.
- 13) Unless otherwise agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the Delivery & Servicing Management Plan approved under application reference P2019/1310/AOD.
- 14) Unless otherwise agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the Waste Strategy approved under application reference P2019/1310/AOD.
- 15) The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level  $L_{Aeq,T}$  arising from the proposed plant, measured or predicted at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 5dB(A) below the background noise level  $L_{AF90,T}$ . The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142:1997. A report to demonstrate compliance with the above requirements and prepared by an appropriately experienced and qualified professional shall be submitted to and approved by the Local Planning Authority prior to occupation of the development. The development shall be carried out strictly in accordance with the scheme and report so approved prior to first occupation, shall be maintained as such thereafter, and no change therefrom shall take place without the prior written consent of the Local Planning Authority.
- 16) All lifts hereby approved shall be installed and operational prior to the first occupation of the floorspace hereby approved.
- 17) Notwithstanding the plans hereby approved, no less than 2 nesting boxes / bricks shall be installed on the development hereby approved. The nesting boxes / bricks shall be installed prior to the first occupation of the building to which they form part or the first use of the space in which they are contained and shall be maintained as such thereafter.
- 18) Details, including floorplans, of business accommodation suitable for occupation by micro and small enterprises shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of any of the development's business floorspace. The development shall be carried out strictly in accordance with the details so approved and no change therefrom shall take place without the prior written consent of the Local Planning Authority.