



Appeal Decision

Site visit made on 11 December 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal Ref: APP/A5840/W/19/3237070
777 Old Kent Road, London SE15 1NZ

- 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 Mr Danish Hanif against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3990, dated 26 November 2018, was refused by notice dated 15 March 2019.
 - The development proposed is conversion of existing first floor from office (Use Class B1) to 5 residential dwellings (Use Class C3) comprising 2 two-bed flats 2 one-bed flats and 1 studio unit and alterations to side and rear elevations at first floor level including installation of projecting windows with clear and obscure glazing.
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Decision

1. The appeal is dismissed.

Procedural matter

2. I have taken the description of development from the decision notice as this captures the extent of development involved more completely than those on the application and appeal forms.

Main Issues

3. The main issues are
 - (a) the acceptability of the change of use from offices to residential,
 - (b) the adequacy of the living conditions of future occupiers of the proposed flats regarding outlook, amenity space and the impacts arising from other uses and users of the building,
 - (c) the adequacy of the refuse storage arrangements in respect of accessibility from the proposed flats and impact on living conditions of adjoining occupiers, and
 - (d) the acceptability of the proposed provision for cycle parking.

Reasons

Change of use

4. The site comprises a four storey commercial building located on the northern side of Old Kent Road at its junction with Sylvan Grove. The appeal relates to the vacant first floor which has a lawful Class B1 office use. On the ground floor

are a shop unit and restaurant with a bar whilst the second floor is occupied by a place of worship. The upper floors are accessed from a side entrance in Sylvan Grove via a staircase or a lift. There is a fire escape staircase at the opposite eastern end of the building leading to a rear service road with access to Sylvan Grove. There are flats at 1-6 Sylvan Grove to the rear of the site whilst Old Kent Road is predominantly commercial in character.

5. The proposal would have the benefit of providing 5 additional dwellings that would contribute towards ongoing housing need within Southwark and within London generally. The National Planning Policy Framework (the Framework) reflects the Government's objective to significantly boost the supply of homes. The proposal would be in accordance with this objective, but this benefit needs to be weighed against other policy considerations.
6. Policy 10 of the Southwark Core Strategy (2011) (SCS) and Saved Policy 1.4 of the Southwark Plan (2007) (SP) seek to protect existing business space in appropriate locations including along classified roads such as Old Kent Road. The latter policy stipulates a marketing period of 24 months to demonstrate that office floor space is no longer required. Whilst these policies pre-date the Framework they nonetheless still form part of the development plan and attract appropriate weight in relation to consistency with the Framework.
7. Subsequent to refusal of the planning application, the appellant has submitted a Marketing Report prepared by GAM dated August 2019. The report summarises marketing initiatives since 2013 and includes a log of enquiries and viewings through to 2019, none of which resulted in a follow up. It concludes that there is no local desire for an office use in this secondary location compared with more central locations in the borough and that the lack of car parking facilities is another disincentive to letting. The appellant also refers to competition from serviced offices with walk in walk out terms that the owner would find difficult to replicate because the critical mass is lacking, and the management costs would be disproportionate to the income generated.
8. The Council contends that the Marketing Report is of questionable reliability due to lack of substantiated evidence to support the claims, the absence of a marketing board outside the premises at various times in 'google streetview' images and the promotion of other uses at the site during this period as evidenced by the planning history at the site, particularly an enforcement investigation into sub-division of the first floor into 13 self-contained studio units. Whilst such internal alterations would not have enhanced prospective commercial letting, the statements from three independent property consultants confirm that the reduced marketing rental for the premises in the marketing material is reasonable and reflects the local market. The absence of a marketing board outside the premises at certain times is not a necessary requirement when much marketing is undertaken using internet platforms.
9. The Council has referred to the site being within the Old Kent Road Action Area Plan for comprehensive development following the extension of the Bakerloo Underground Line to the area. However, there is uncertainty if this project will go ahead and, on its timing, if it does proceed. In relation to its long-term timing and large scale, the impact of appeal proposal on the project would be very limited. Moreover, the Council's minute of the delegated decision notes comments in the report relating to introduction of residential uses and potential to discourage comprehensive redevelopment but concludes "*Whilst this is an*

issue of some concern, it does not constitute a reasonable reason to refuse planning permission”.

10. Having regard to the evidence presented by both parties including reference to current and emerging policy documents, my judgement is that notwithstanding inadequacies in relation to the Council’s preferred marketing methods, that the case for retaining the appeal site as offices is now outweighed by the need for additional housing. Paragraph 68 of the Framework states that small and medium sites can make an important contribution towards meeting the housing requirement of an area and are often built out relatively quickly. The benefit of a residential use would outweigh any remaining conflict with Policies 10 and 1.4 of the development plan. Whilst the principle of a change of use from offices to residential would therefore be acceptable, the adequacy of the proposed conversion to flats needs to be assessed on its merits.

Living conditions

11. The appellant has submitted revised plans with the appeal amending the glazing to the five proposed rear facing box windows to show obscured glazing up to 1.7m and clear glazing above instead of all obscured glazing. I consider that the revised plans could be accepted without prejudice to any interested party. The windows would be large enough to provide sufficient natural daylight and although contrived in form, there would be an outlook to the side or rear to provide adequate living conditions in this respect.
12. The two front facing units would each have a winter garden, but there would be no outdoor amenity space provision for the three rear facing units. Whilst I acknowledge the need to safeguard the privacy of residents in Sylvan Grove to the rear of the site, given the overall size and regular rectangular shape of the first floor, there does not appear to be a good reason why some private or communal outdoor amenity space could not be provided for the occupiers of all units. The Council’s Technical Update to Residential Design Standards Supplementary Planning Document (2015) (SPD1) states “*where developments are within immediate proximity of a substantial area of public open space, accessibility to the open space, combined with better outlook, may justify less amenity space as part of the development*”.
13. The flats are not within immediate proximity of a substantial area of public open space, and outlook from the rear units is also compromised. The proposal would not accord with SPD1. There would also be conflict with Policy 5 of the SCS and with Saved Policy 4.2 of the SP which require the provision of high quality new homes including in relation to suitable outdoor amenity space.
14. The occupiers of the proposed flats would be vulnerable to noise, disturbance and nuisance in relation to activity on the floors below and above and from traffic on Old Kent Road. The appellant’s Noise and Vibration Assessment dated April 2019 concludes that break-out noise from ground and second floor levels would fully comply with recommended criterion, but the Council have cast doubt on the reliability of the data used for both the church use above and below the flats.
15. I am not satisfied that occupiers of the flats would be adequately protected from noise sources or from the odour impacts from the low level kitchen flue beneath the windows of the proposed north facing flats. In addition, there may be conflict between residential and church uses arising from high numbers of

persons arriving or leaving the upper floors at the same time. It has not been demonstrated how this could be managed. The appellant claims that their ownership of the ground and upper floors would enable proper management of other uses and handling of complaints, but there remains a reasonable requirement that the proposed flats should provide a sufficiently high standard of amenity in these respects in the first place. The proposal would conflict with Policy 13 of the SCS and Saved Policy 3.2 of the SP which require high environmental standards for new dwellings including in relation to noise and disturbance.

Refuse storage

16. Bins for refuse and recycling for the flats would be located to the side of the rear servicing alley alongside bins for the ground floor commercial uses. The Council is concerned that the storage areas would be more than 30m travelling distance from the flats recommended in its Sustainable Design and Construction Supplementary Planning Document (SPD2). Given the length of the internal corridor to the lift by the side entrance it would be difficult to adhere to this maximum distance. The SPD is phrased that applicants should "*take into account*" this and other listed issues in designing waste storage areas and that the storage areas "*should be*" located within 30m of the units. The guidance in SPD2 should not be taken as totally prescriptive. Having regard to the site's constraints the proposed location of the refuse storage areas would be satisfactory.
17. Residents would need to traverse a short section of Sylvan Grove between the side entrance and the rear servicing alley to access the storage area. However, the footway here is sufficiently wide to ensure no conflict with pedestrians in Sylvan Grove. The storage area could be designed to be enclosed to prevent odours affecting the occupiers of the nearest dwellings to the rear in Sylvan Grove. The doors to the enclosure could slide rather than open outwards so as not to obstruct the service alley. I am satisfied that the final design and siting of the refuse storage area could be the subject of a planning condition.
18. The proposal would ensure adequate provision of recycling and residual waste storage and collection facilities and would thereby comply with Saved Policy 3.7 of the SP. There would be no conflict with Policy 13 of the SCS which sets high environmental standards across a range of issues.

Cycle parking

19. Cycle parking would be in the form of vertical standing wall hanging within a store at first floor level. This would require residents to either carry their cycles up and down a staircase or hold a cycle in a vertical position within the small lift providing access to the first floor. Such arrangements would not be conducive to encouraging cycling and would be contrary to London Plan Policy 6.9 and to Saved Policy 5.3 which collectively seek to ensure that cycle parking facilities are designed to be convenient and accessible. The existence of less convenient facilities elsewhere and concerns about security for an alternative ground floor facility are not justifications for poor provision here. The appellant has suggested that cycle parking could be the subject of a planning condition. This might be appropriate to approve final details within an agreed site but there remains considerable uncertainty on the optimum location for cycle parking and access to it. It would not therefore be appropriate to defer this matter to a planning condition.

Conclusion

20. I have found that the change of use from offices to residential would be acceptable in policy terms and that adequate refuse and recycling facilities could have been secured by a planning condition if permission were to be granted. However, the benefits of the proposed residential use would be outweighed by the harm arising to the living conditions of future occupiers of the proposed flats in respect of inadequate amenity space provision, the impacts arising from other uses and users of the building and in relation to inadequate cycle parking provision. For the reasons given and having regard to all other matters raised the appeal is dismissed.

Rory MacLeod

INSPECTOR