



Appeal Decision

Site visit made on 11 February 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2020

Appeal Ref: APP/C5690/W/19/3241547

Fairway House, Rear of 53 Dartmouth Road, Forest Hill, London SE23 3HN

- 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 Richard Cohen of Mayfair 500 Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/112183, dated 8 May 2019, was refused by notice dated 23 July 2019.
 - The development proposed is described as: 'Change of use of ground floor commercial units to Use Class D2 leisure uses'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. For clarity and precision, I have inserted 'Forest Hill' in the address in the banner heading above, as it is listed on the appeal form. I have also inserted 'Mr Richard Cohen' and 'Ltd' as appellant as they are listed on the appeal form and on the Appeal Statement of Case, respectively.

Main Issues

3. The main issues of this appeal are the effects of the proposed development on:
 - whether or not the proposed development would result in the unacceptable loss of office space; and,
 - the living conditions of neighbouring occupiers, particularly through noise and disturbance.

Reasons

Loss of office space

4. The appeal site is sustainably located within the Forest Hill District Centre and comprises 2no. recently constructed blocks, with both B1a) commercial space present at ground floor with residential accommodation above on the upper floors, which would be unaltered from the proposed development. The commercial area in Block 'A' amounts to some 506m² and the commercial area in Block 'B' amounts to some 325m². The proposed development would see the use of the ground floors in both Block 'A' and Block 'B' change from B1(a)¹: Offices to Use Class D2: Assembly and leisure.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended) (Use Class)

5. Policy 5 of the Lewisham Local Development Framework Core Strategy Development Plan Document (2011) (CS) and DM Policy 11 of the Lewisham Local Development Framework Development Management Local Plan (2014) (DMLP) both seek to achieve economic growth and avoid the loss of employment sites unless they are demonstrated to be unviable, amongst other things.
6. DM Policy 11 of the DMLP states applications for redevelopment for change to other business uses suitable for a residential area will be approved where the site has become vacant for an appropriate length of time and evidence is provided that it is no longer suitable and viable for its existing or an alternative business use by reason of access difficulties or environmental incompatibility. Furthermore, it also states that sites should be subject to a suitable period of active marketing for re use/redevelopment for business uses through a commercial agent that reflects the market value. I find that these policies are generally consistent with the requirements of the National planning Policy Framework (the Framework).
7. It is common ground between the main parties that marketing for the properties commenced in May 2016 and that the units were substantially completed in January 2018. It is also agreed that in October 2018 the marketing was amended to include reference to a rent-free period, and that the marketing has been uninterrupted and is ongoing. The marketing report² has been undertaken by suitably qualified professionals and indicates little expressions of interest and to a lack of offers, due to lack of demand for office accommodation in this location, suggesting that should the use class of the units be widened, they would likely be let. I also note that the only acceptable offers to the appellant have been received in connection with D1 and D2 uses.
8. The appellant has brought to my attention several planning applications that have been approved by the Council³ in his submission. However, relatively little detail has been provided regarding the planning backgrounds to these schemes. Consequently, I cannot be sure that they are entirely representative of the circumstances in the appeal before me. In any event all appeals are judged on their own individual merits. Accordingly, that is how I have assessed this appeal scheme.
9. Additionally, I also note, the findings contained within the Council's Employment Land Study 2019⁴ where it acknowledges that Lewisham's industrial market is much stronger than its office market and vacancy levels in the borough for offices is reasonable. It further identifies that the nature of demand for office space means it is not viable for standalone development and if new space was to be brought forward it would need to be in the form of small units, delivered as part of a mixed-use development to enable higher value uses to cross-subsidise the unviable office space. It also advises the importance of how this space is brought to the market, not as shell and core, but to be appropriately designed and 'fitted out' to meet occupier requirements.

² Marketing Report – Prepared by Stiles Harold Williams Partnership LLP dated 19 February 2019 and updated position dated 6 November 2019.

³ Table 2.3 Precedents and relevant planning history of other sites and Table 2.4 Similarities between Appeal Scheme and Lewisham Precedents

⁴ Lewisham Employment Land Study - Final Report by CAG Consultants in association with Aspinall Verdi dated 24 March 2019

10. Whilst, I accept that a continuous period of marketing has been ongoing since 2016, I find that the requirement to amend the marketing in October 2018 to include reference to the rent-free period to be a significant omission. Although, I accept that it is likely that prospective occupiers would have been informed of this incentive, I cannot be certain that prospective occupiers have not be deterred from making an enquiry on the appeal properties.
11. In the supporting text to DM Policy DM 11 of the DMLP, reference is made to indicative timescales for marketing purposes, which should be normally for at least 2 years and up to 5 years in areas of strong demand for particular premises. Therefore, on the evidence before me, I am not convinced on what I have seen, that the appeal properties have benefitted from sufficient marketing with all relevant information being presented. Additionally, in this instance, it has not been demonstrated that such a shorter marketing timescale is appropriate for the appeal properties.
12. For all of these reasons, I therefore conclude that the proposed development would result in the unacceptable loss of office space. Consequently, this would be contrary to the employment aims of CS Policy 5, DM Policy 11 of the DMLP and the Framework.

Living conditions

13. The appellant submitted a Noise Impact Assessment⁵ (NIA) in support of his planning application. The NIA suggests various methods of mitigation⁶ and confirms that the tests were only undertaken in Block 'A'. However, as the construction of Block 'B' is identical, the same solutions as proposed for Block 'A' would be appropriate. In the absence of any substantive evidence to the contrary, I have little reason to disagree with this finding. I note the concerns raised by the Council's Senior Environmental Protection Officer regarding the ability to incorporate the methods of mitigation, particularly surrounding the fitness/dance studios and other associated works.
14. Nonetheless, I acknowledge that the proposed change of use has the potential to cause significant harm to the living conditions of neighbouring occupiers from internal noise, particularly to the occupiers directly above the ground floor units. However, on the evidence before me, there is little to confirm a lack of ability to undertake the recommended methods of mitigation that are being proposed. Thus, given my findings on the details before me, I do consider that otherwise unacceptable development could be made acceptable through the use of a planning condition in this instance, and the methods of mitigation could be secured through the imposition of a suitably worded condition.
15. Given that the NIA appears to have been produced by a suitably qualified authority and in the absence of an equivalent report on the part of the Council, I have given it significant weight. In the absence of substantiated evidence to the contrary, I have found no good reason to conclude that the NIA is unreliable in this or any other significant respect. Additionally, the appellant has brought to my attention an appeal decision⁷ for a gym. Whilst I am not

⁵ Noise Impact Assessment Report by KP Acoustics Ltd, dated 17 April 2019

⁶ Audio Systems (Distributed Sound System, Loudspeaker Mounting, Sound Limiter); Ground Floor Façade Upgrades; Ground Floor Underfloor Soffit Upgrade; Ground Floor Slab Isolation (for Dance Activity); Ground Floor Slab Isolation (for Free Weight use); Resistance Machines; Skylight Upgrades and Notes; Fitness/Dance Studio Rooms.

⁷ APP/C5690/A/13/2207484

aware of the evidence that was before the Inspector of this appeal, I note his comments surrounding activity during unsocial hours.

16. I consider it entirely feasible that a similar situation would occur in the scheme before me and that only a modest number of customers would be attracted to the site throughout the night. Although customers would visit the site outside of normal office hours, such as in the early mornings, evenings and weekends, I consider that it is highly unlikely that all customers would visit the site at one time and that it is more probable that individual visits would occur steadily throughout the day. Accordingly, the evidence indicates that works could be undertaken to prevent unacceptable noise emanating from the buildings and that the level of activity would not generate significant customer movements, to and from the site.
17. For all of these reasons, I therefore conclude that the proposed development would not result in significant harm to the living conditions of neighbouring occupiers, particularly through noise and disturbance. Consequently, this would comply with the living condition aims of DM Policy 26 of the DMLP and the Framework.

Other Matters

18. I also acknowledge that the development would bring some social and economic benefits to the area from the occupation of the building and the creation of a number of employment opportunities. However, these are minor factors in favour of the development.
19. I have also had regard to concerns raised by the appellant about the way that the Council handled the application, but this does not affect the planning merits of the case. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Planning Balance and Conclusion

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
21. I have found that the proposal does not create any significant harmful effects from a living conditions point of view. However, this is a neutral matter in the overall planning balance. Whilst the proposal would seek to provide a leisure facility for the community and its associated benefits, this would not significantly and demonstrably outweigh the significant harm that would be caused by an unacceptable loss of office space.
22. The proposal would be contrary to the development plan when taken as a whole, and there are no other considerations which outweigh this finding. It would also be at odds with the requirements of the Framework. Therefore, taking all matters into consideration, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR