
Appeal Decision

Site visit made on 2 July 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2020

Appeal Ref: APP/V5570/W/19/3242435

1 Kingsland Passage, Islington, London E8 2BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Blackfriars Investments (Management) Ltd against the Council of the London Borough of Islington.
 - The application Ref P2018/4070/FUL is dated 3 December 2018.
 - The development proposed is application for planning permission to allow the use of existing office building (Use Class B1) to provide flexible/mixed B1 and D1 facilities.
-

Decision

1. The appeal is allowed and planning permission is granted to allow the use of an existing office building (Use Class B1) to provide flexible/mixed B1 and D1 facilities at 1 Kingsland Passage, Islington, London E8 2BB, in accordance with the terms of the application, P2018/4070/FUL, dated 3 December 2018, subject to the conditions set out at the end of this decision.

Procedural Matters

2. This appeal against the Council's failure to give notice of a decision has transpired due to a validation dispute between the main parties. An assessment by the Council of the scheme's planning merits has now taken place at appeal stage. I have identified the main issues in this appeal having considered the Council's Statement of Case, which sets out their main concerns should it be determined that a valid planning application was in fact made.
3. It is my understanding from the evidence before me that a new Local Plan for the Borough is currently emerging, but that the associated examination process has yet to conclude. The emerging Local Plan is currently at a stage that attracts limited weight and I have considered the appeal on this basis.

Main Issues

4. The main issues are:
 - Whether or not the planning application should have been validated by the Council; and in the event that I find it should have been validated
 - Whether or not the proposal would have a detrimental impact upon the area's primary economic function;
 - Whether or not the proposal satisfactorily promotes inclusive design;

- Whether or not the site is able to accommodate suitable parking, delivery and servicing arrangements; and
- Whether or not the proposal would satisfactorily minimise emissions and maximise energy efficiency.

Reasons

Validation

5. Section 62(3) of the 1990 Act provides that a local planning authority may require that an application for planning permission must include (a) such particulars as they think necessary, and (b) such evidence in support of anything in or relating to the application as they think necessary. Section 62(4A) provides that section 62(3) requirements must be reasonable having regard, in particular, to the nature and scale of the proposed development and may require particulars of, or evidence about, a matter only if it is reasonable to think that the matter will be a material consideration in the determination of the application.
6. With respect to the planning application that is now the subject of this appeal, the Council, through separate letters dated 13 February 2019 (the February letter) and 2 August 2019 (the August letter), declared it invalid based on missing information they considered necessary to allow the application to proceed to determination stage. The February letter set out requirements for proposed floor plans and marketing evidence. Following the subsequent submission of marketing evidence, the August letter set out that, due to the proposal being considered to represent major development, various additional documents were required to meet the adopted Local Validation Requirements (published June 2019). The August letter also refers to a specific part of the application form needing amendment.
7. The appellant disputes the need for the additional information and has followed the process set out under article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) for dealing with such disputes. The outcome is that the application is classified as a non-validated application, by virtue of DMPO article 34(5). As such, the time periods for decisions set out under DMPO article 34 apply. This in turn enables an appeal to be made under section 78(2) of the 1990 Act where the Council has not given notice of their decision on the application. The relevant time period for making an appeal is set out under article 37(2) of the DMPO, which I am satisfied has been met in this case.
8. However, the structure of the legislation is that it is a dispute about the need for the required information that provides the right to appeal. Hence this appeal determination must first resolve that dispute before going on to consider whether a grant of planning permission is justified. Consistent with section 62(4A) of the 1990 Act, DMPO article 34(6) refers to required particulars or evidence being reasonable (having regard to the nature and scale of the proposed development) and for it being reasonable to think that the matters to which the requested additional evidence relates would be material considerations in determining the application.
9. Therefore, I must first consider whether the Council's requests for additional information in this case were reasonable and related to matters reasonably

likely to be material considerations in determination. Only if I conclude that the Council was unreasonable in requesting additional information, and that the application should have been validated, would it be appropriate to consider whether planning permission should be granted.

10. Major development involves one or more of several categories of development as defined in the DMPO. Pertinent to the proposal before me, these categories include the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more. In this case the proposal is purely for a change of use of an existing office building and involves no operational development. The proposal does not therefore involve the provision of a building (as it is already there), nor the creation of floor space (as the proposed use would utilise existing floor space). Thus, even though the gross internal floor space under consideration exceeds 1,000 square metres and the proposed change of use relates to the entirety of the building, the proposal does not constitute major development.
11. It is evident that the various requirements for additional documents as laid out in the August letter were generated from the Council's categorisation of the proposal as major development. In light of my finding that the proposal does not constitute major development, I do not consider it was reasonable to require, prior to validation, an Air Quality Assessment, a Health Impact Assessment, a Noise Impact Assessment, parking and servicing provision details, a Site Waste Management Plan, a Planning Obligations Statement, a Planning Statement, a Transport Statement or a Sustainable Design and Construction Statement.
12. Even had I found that the proposal was correctly categorised as major development, when noting the nature and scale of the proposed use and the lack of operational development, I would not have seen clear justification for requesting any of the documents referenced in the preceding paragraph of my reasoning. Indeed, the Council's Local Validation checklist sets out that instances when such reports/documents are required should be tailored to the type of development involved.
13. As regards the requested Economic Regeneration Statement, I acknowledge that the site is located within a designated employment growth area and that the proposal could lead to a loss of employment floorspace. Indeed, it is clearly reasonable to think that such evidence would be material in determination. Nevertheless, I am not persuaded that such a requirement is proportionate or thus reasonable in this case. This is particularly when noting that the application submission is supported by a covering letter providing details of the intended end user of the building as well as of estimated employment numbers. Again, this finding would apply even had I found that the proposal represents major development.
14. Consistent with the suite of plans submitted, the appellant confirmed in writing at validation stage that the proposal relates to the whole site and thus not to only particular parts of the building. To my mind, it is unclear why, under the February letter, further drawings were requested to show the proposed layout for a flexible use and for a mixed use. The essence of the proposal is seeking flexibility in the way the building is used and a mixed use (B1/D1) constitutes one of the potential flexible use options being applied for. Thus, to achieve a valid planning application, it was not necessary to request additional drawings

highlighting specific areas of the site to be dedicated for each use. Indeed, such a request sits at odds with the nature of the development being applied for.

15. The amended application form that has been submitted indicates, at section 17, that a specific extent of gross internal floor space (716.2 sq m) is proposed to change use from B1 to D1. It is not clear how this figure has been calculated or why it appears on the application form. Indeed, given that a flexible/mixed use is sought, it should not be the case that specific gross internal floor space figures can be confirmed. It is nevertheless evident that section 17 of an application form for planning permission does not contain specific provisions for applications involving flexible uses, which likely helps to explain why specific figures were inputted. In any event, given that the description of the proposal is clear, I am content that section 17's submitted content does not jeopardise the validity of the application.
16. For the above reasons, having particular regard to the nature and scale of the proposed development, I find that the Council's validation requirements were not reasonable. Thus, the planning application¹ should have been validated. I must now consider the planning merits of the proposal in accordance with the relevant main issues that I have identified.

The area's primary economic function

17. The site is located within the Balls Pond Road East Employment Growth Area (the EGA) and sits alongside a large telephone exchange building that comprises a sizeable portion of the EGA. The site also, I understand, makes up part of an allocated site designated for the purposes of mixed use commercial and residential development where the retention, intensification and improvement of existing employment provision is promoted.
18. Policy DM5.2 of Islington's Local Plan: Development Management Policies (June 2013) (the DMP) sets out that proposals that would result in a loss or reduction of business floorspace will be refused unless the applicant can demonstrate exceptional circumstances, including through the submission of clear and robust evidence which shows there is no demand for the floorspace. Furthermore, the policy sets out that within EGAs the loss or reduction of business floorspace will be resisted where the proposal would have a detrimental individual or cumulative impact upon the area's primary economic function.
19. In this instance a flexible permission is sought that would likely lead to a reduction in business floorspace at the site. The appellant has thus produced a Marketing Evidence Report (July 2019) (the Report) in the interests of presenting the current local market conditions for offices. The Report sets out that the building was vacated in August 2018 and contains marketing and vacancy evidence as well as demand analysis. Marketing via a variety of channels based on the building's current composition commenced in February 2018.
20. The Report indicates that the local market offers a strong supply of vacant office space that is predominantly made up by smaller-sized units. Indeed, the appeal building is the largest unit identified. This availability information

¹ P2018/4070/FUL, dated 3 December 2018

indicates that it is uncommon for vacant units to be marketed over periods exceeding 12 months. Nevertheless, the information also suggests that a selected number of medium to larger sized units have been marketed for lengthy periods of time.

21. The Report contains a list of inspections carried out by prospective occupiers. Detailed information has not been provided on a case-by-case basis to demonstrate why these initial inspections did not lead to formal offers being made. Even so, as set out within the Report, reasons of a general nature related to the building's large size and internal configuration have been suggested. Indeed, the building contains expansive areas of open-plan space that may not easily be sub-divided and that would likely only suit a limited number of potential occupiers.
22. The Council has identified discrepancies in the appeal premise's advertised rental value, owing, it would appear, to a reduction made in March 2020. Nevertheless, the Report remains accurate up to the point in time of its submission and continues to be relevant to my considerations here.
23. Appendix 11 (Marketing and market demand evidence) of the DMP sets out that marketing must occur at a price that genuinely reflects market value. It is notable that the Report does not contain details of the rental values achieved at comparable office facilities in the local area. The Council has undertaken its own review of local rental values, which indicates that the rental value of £42.50psf that was used in marketing the appeal site exceeds values achieved elsewhere and does not wholly reflect the local market. I have not been provided with evidence to clearly demonstrate otherwise.
24. It is thus the case that, whilst the Report assists in setting out current market conditions and indicates that the premises would be unlikely to attract an occupier, it does not robustly evidence that there is no demand for the office floorspace at the site. Indeed, not all the DMP's requirements in a marketing/market demand context have been met. Nevertheless, it is important to note that Policy DM5.2 does not set out that exceptional circumstances (for a reduction in business floorspace) can only be demonstrated through evidence showing there is no demand for the floorspace.
25. In this case a flexible use of the premises is proposed and the identified end-user, an adult training and education provider, intend to operate Head Office functions from the site. It has been confirmed that the proposed D1 training and education component would not occur without the B1 office function and that there is no intention to sub-divide the site to create separate planning units.
26. It would be possible to impose a planning condition to ensure that the premises could only be used for the purposes of either officing or a mixed used comprising offices and educational/training facilities, and to impose a further condition restricting occupation to a single operator (should the building be occupied in a mixed use capacity). Such restrictions would provide important assurances that the premise's use would retain an economic function.
27. Furthermore, I see merit in the argument that the provision of training would support economic activity both locally and further afield. It is also relevant to note that a flexible use is intended that would retain the potential for the

premises to be used purely for officing without further future permission needing to be sought.

28. When factoring in the building's current vacant state, the marketing evidence that has been provided and the specific and flexible nature of the proposed use, I am satisfied that exceptional circumstances have been demonstrated to allow for the likely reduction in business floorspace that is proposed. I am also satisfied that the proposal would not have a detrimental individual or cumulative impact upon the EGA's primary economic function.
29. The proposal accords with Policy CS13 of Islington's Core Strategy (February 2011) (the Core Strategy), Policy DM5.2 of the DMP and Policies 4.1, 4.2 and 4.3 of the London Plan (March 2016) in so far as these policies promote and enable the continued development of a strong, sustainable and increasingly diverse economy and require that proposals that would result in a loss or reduction of business floorspace will be refused unless exceptional circumstances can be demonstrated.

Inclusive design

30. The Inclusive Design in Islington Supplementary Planning Document (February 2014) (the SPD) sets out that common entrances should, amongst other requirements, have a level or ramped approach. The SPD also states that the most satisfactory means of transport between the storeys of a development will always be via the use of a passenger lift.
31. The building provides a relatively wide common entrance point across a level threshold. It was also evident from internal inspection that, due in-part to the presence of a stair lift where the building's finished floor level alters, the entire ground floor of the property would appear accessible to all without stairs needing to be negotiated. Even so, in the absence of a lift, the building's upper floor levels would be accessed via internal stairways.
32. It is important to note that the proposal does not involve operational development and is instead focussed upon the intended change of use of an existing building. An appropriate level of inclusivity provisions must be considered from this starting point. Any proposed mixed use of the premises would retain a substantial element of officing. The way in which the building could be used and accessed (in a mixed use capacity), when compared to its last office use, would not realistically be anticipated to alter radically.
33. I thus do not consider it either reasonable to impose a planning condition, in the event the appeal be successful, to require that any further inclusive design measures need necessarily be installed. The proposal accords with Policy DM2.2 of the DMP in so far as it sets out that all developments shall demonstrate that they provide for ease of and versatility in use and shall deliver safe, legible and logical environments.

Parking, deliveries and servicing

34. The premises incorporate a gated hard-surfaced area to the building's frontage. Whilst of relatively limited size, this area is evidently capable of accommodating some parking as well as off-street servicing. As confirmed by the Council, the site occupies an excellent location in terms of its public transport opportunities. In this context, when also noting that the proposal would retain a significant extent of existing officing, I am satisfied that the site

is able to accommodate suitable parking, delivery and servicing arrangements. The proposal accords with Policy DM8.6 of the DMP in so far as it requires that provision for delivery and servicing should be provided off-street.

Emissions and energy efficiency

35. The proposal is focussed upon the change of use of an existing building. There is thus limited potential for measures to be put in place to minimise emissions and promote energy efficiency. Indeed, the requirement for proposals to be accompanied by a Sustainable Design and Construction Statement, as set out in Policy DM7.1 of the DMP and the Council's Environmental Design Supplementary Planning Document, does not apply here as major development is not under consideration. For the same reason, Policy DM7.3 is of little relevance.
36. Particularly when noting that a flexible use is proposed that would not reasonably be anticipated to radically alter the way in which the building would be occupied and operated when compared to its current/latest office use, I am satisfied that the proposal would satisfactorily minimise emissions and maximise energy efficiency. When noting that no physical construction works are proposed, a potential planning condition requiring the submission of a sustainable design and construction statement would be unnecessary.
37. The proposal accords with Policies DM7.1, DM7.4 and DM7.5 of the DMP and with Policy CS10 of the Core Strategy in so far as these policies require that proposals shall include details of sustainable design and construction considerations to a level of detail appropriate to the development.
38. The proposed development accords with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conditions

39. The Council has suggested a number of conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes and omitted others related to sustainable design, inclusive design measures, cycle storage/scooter parking and refuse storage. I have additionally considered suggestions raised by the appellant with respect to conditions. A revised draft list of conditions was subsequently consulted upon with both main parties and I have duly considered any comments received.
40. In the interests of certainty, a condition specifying the approved plans is required. It is not necessary to list various marketing documents and covering letters that have been submitted, as these documents provide merely supporting information.
41. For the reasons already given above, in the interests of protecting the area's primary economic function, conditions are reasonable and necessary to confirm that the only uses permitted (on a flexible basis) are officing or a mixed use comprising offices and educational/training facilities and to confirm that any mixed use of the premises is operated only by a single occupier. When noting these restrictions, it is not necessary to impose (via a further condition) a personal permission specific to the intended end-occupier. Indeed, as set out

in the Planning Practice Guidance, permission usually runs with the land and it is rarely appropriate to provide otherwise.

42. I accept the Council's concerns that any condition intended to specify maximum non-office floor space at the site in percentage terms would be unduly difficult/onerous to enforce. Given the flexible nature of the proposal, it would not be appropriate in my view to look to secure an internal layout plan rigidly specifying the precise location of different uses within the building should a mixed use operate. Nevertheless, I am satisfied that the restrictions discussed in the preceding paragraph would provide adequate assurances that the site's future occupation, even if in a mixed use capacity, would make a continuing and important contribution to the EGA's primary economic function.
43. There is a residential presence in the area local to the site. A condition is thus reasonable and necessary that guards against the operation of any training facilities during various early morning and late evening hours.
44. It was evident from my inspection that dedicated and secure cycle storage facilities are already in place on-site. It was also apparent that external spaces on-site could readily offer the opportunity for secure/dedicated scooter parking. It is not therefore either reasonable or necessary to impose a condition requiring further details in these respects.
45. The site already contains a roadside compound that appears geared towards storing refuse and recyclables. There is no reason to suspect that any noticeably increased requirement for waste storage would be generated by the proposal. I do not consider it reasonable or necessary to impose a condition requiring any further details in this respect.
46. As set out under Schedule 2, Part 3, Class V of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), a change of use specifically authorised when planning permission is granted cannot be carried out more than 10 years following that date. In the interests of certainty and clarifying the terms of the permission granted, a condition is reasonable and necessary that confirms this stipulation.

Conclusion

47. For the above reasons, the appeal is allowed and planning permission is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (scale 1:1250); Ground Level Floor Plan (Issue 1); First Level Floor Plan (Issue 1); Second Level Floor Plan (Issue 1).
- 3) Notwithstanding the flexible/mixed use hereby permitted, the premises shall be used only for the purposes of either offices or a mixed use comprising offices and educational/training facilities and for no other purpose, including any purpose falling solely under Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 4) Any use of the premises that is comprised of a mix of offices and educational/training facilities shall be operated only by a single operator and there shall be no sub-division of the premises.
- 5) Any use of the premises that is comprised of a mix of offices and educational/training facilities shall not operate outside of the following hours: 0700-2200 Monday to Friday and 0900-1900 on Saturdays, Sundays and bank holidays.
- 6) In accordance with Schedule 2, Part 3, Class V of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, no change of use of the premises shall be carried out under the terms of this flexible permission more than 10 years after the date of this decision.