



Appeal Decision

Site visit made on 5 October 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/V5570/W/20/3246450

443-449 Holloway Road, Islington, London N7 6LJ

- 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 Skylla Properties Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/2839/FUL, dated 20 September 2019, was refused by notice dated 13 December 2019.
 - The development proposed is change of use of Unit 1 and retrospective change of use of Unit 2 at ground floor of the Gatehouse Building from office (Use Class B1a) to flexible shop/restaurant and café/office (Use Class A1/A3/B1).
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of Unit 1 and retrospective change of use of Unit 2 at ground floor of the Gatehouse Building from office (Use Class B1a) to flexible shop/restaurant and café/office use (Use Class A1/A3/B1) at 443-449 Holloway Road, Islington, London N7 6LJ, in accordance with the terms of the application, P2019/2839/FUL, dated 20 September 2019, subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 0000-GA; 0020; 0210.

Procedural Matters

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020, which has had the effect of amending the Town and Country Planning (Use Classes) Order 1987 (the UCO). The main parties have had the opportunity to make any observations as regards the implications of this for the outcome of this appeal, and I have taken into account the representations received.
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 Issue

4. Whether or not the intended loss of business floor space has been adequately justified.

Reasons

5. The site is located within the Holloway Road North Employment Growth Area and is formed of two ground floor units that front Holloway Road and make up part of a wider complex of units/buildings that accommodate a range of different business/commercial uses.
6. 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 which should demonstrate that the floorspace has been vacant and continuously marketed for a period of at least two years. Furthermore, the policy sets out that within Employment Growth Areas 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.
7. The proposal is not supported by detailed marketing evidence or market analysis to help demonstrate that there is no demand for the floorspace in a business capacity. Whilst the scheme relates to a limited extent of floorspace, Policy DM5.2 applies to any proposal that would result in a loss or reduction of business floorspace. I do not accept that the units' limited sizes would prejudice them potentially being used by small enterprises. Indeed, Policy DM5.4 of the DMP contains specific provisions that encourage, within Employment Growth Areas, the provision and retention of workspace suitable for occupation by micro and small enterprises.
8. The units, if occupied in either a retail or café/restaurant capacity, do/would contribute towards local employment opportunities and provide active frontages to Holloway Road. Nevertheless, these factors, to my mind, do not represent the exceptional circumstances required by Policy DM5.2 to support the reduction in business floorspace that is proposed. Furthermore, an unimplemented planning permission¹ for the refurbishment and extension of the wider site is of limited relevance as various notable public benefits factored into that determination. In any event, it has not been clearly demonstrated that such a scheme is now either capable or likely to be implemented.
9. For the above reasons, the intended loss of business floor space has not been adequately justified. The proposal conflicts with Policy 4.1 of the London Plan (2016), Policy CS13 of Islington's Core Strategy (February 2011) and Policies DM5.2 and DM5.4 of the DMP in so far as these policies safeguard existing business spaces and require that proposals that would result in a loss or reduction of business floorspace will be refused unless exceptional circumstances can be demonstrated.

Other Matters

10. The site is located within the Mercers Road/Tavistock Terrace Conservation Area (the CA). Given that no physical external alterations are intended, I am content that the proposal would preserve the CA's character and appearance.
11. The recent amendments made to the UCO have created a new broad 'Commercial, business and service' use class (Class E), which incorporates uses

¹ P2013/3213/FUL

that would previously have fallen under a variety of different classes, including Classes A1, A3 and B1. A change of use within a single use class does not involve development and therefore does not require planning permission.

12. Whilst it is my responsibility to determine this appeal by reference to the use classes that applied when the original planning permission was submitted, the recent changes made to the UCO are a material consideration of great weight in this case. They provide a fallback position should this appeal be unsuccessful. Indeed, any change of use from an office to a shop, restaurant or café no longer requires planning permission because all such uses now fall under Class E.
13. Thus, whilst the proposal conflicts with the development plan when read as a whole, there are other material considerations that indicate that the plan should not be followed in this instance and that the appeal should be allowed. This is notwithstanding that I have found that the intended loss of business floor space has not been adequately justified.

Conditions

14. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice set out in the National Planning Policy Framework (February 2019) and Planning Practice Guidance. As a result, I have omitted a number of the suggested conditions for reasons that are set out below.
15. As the scheme is part-retrospective, it is not necessary for me to impose a condition setting out a time-limit for implementation. In the interests of certainty, a condition specifying the approved plans is required. It is not necessary to list a covering letter dated 20 September 2019, as this document provides merely supporting information.
16. The Council has suggested that a condition be imposed to ensure that no other use falling within Class E (other than those uses specifically applied for) could be operated at the site. However, as any use falling under Class E would not require planning permission at the appeal site, such a condition would be neither reasonable nor necessary. Furthermore, any alleged potential harmful implications that could come about from not imposing such a condition have not been clearly substantiated.
17. Considering the fallback position that exists, a condition securing a Delivery and Servicing Plan would be neither reasonable nor necessary. Indeed, the units contained within the appeal site could be used for the purposes intended without planning permission and thus, it would appear, without any such stipulation. In any event, a forecourt area set off the highway serves the units and, due to their small size, delivery and service trips would not be anticipated to be high or frequent in number.
18. I do not consider that a condition requiring all refuse and recycling facilities to be accessible to all and to meet current and future collection practices and targets would be either sufficiently precise or realistically enforceable. Indeed, there is a lack of clarity as regards what the required collection practices and targets would be. In any event, the small size of the units would heavily restrict the potential for refuse and recyclables to exceed easily manageable levels.

Conclusion

19. For the above reasons, the appeal is allowed and planning permission is granted subject to a condition specifying the approved plans.

Andrew Smith

INSPECTOR