



Appeal Decision

Site visit made on 22 February 2021

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2021

Appeal Ref: APP/T2215/W/20/3251203

Unit D Langley Square, 230 William Mundy Way, Dartford DA1 5WX

- 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 Newstay Properties Limited against Dartford Borough Council.
 - The application Ref DA/19/01538/COU, is dated 31 October 2019.
 - The development proposed is insertion of a mezzanine floor, part change of use and external alterations to provide 3 number self contained flats.
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Decision

1. The appeal is allowed and planning permission is granted for the insertion of a mezzanine floor, part change of use and external alterations to provide 3 number self contained flats at Unit D Langley Square, 230 William Mundy Way, Dartford DA1 5WX in accordance with the terms of the application, Ref DA/19/01538/COU, dated 31 October 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P001A; P002A; P003A; P004A; P005; and P006A.
 - 3) Prior to the commencement of the development hereby approved a scheme for protecting the proposed flats from noise generated from the occupation of the ground floor non-residential unit shall be submitted to and approved in writing by the local planning authority. All works which form part of the approved noise protection scheme shall be completed before the flats are occupied and shall be retained thereafter.
 - 4) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 5) The construction works associated with the implementation of the development hereby permitted shall only be undertaken between the hours of 08.00 to 18.00 Mondays to Fridays inclusive and between the hours of 08.00 to 13.00 on Saturdays and no construction works shall be undertaken at any time on Sundays or on Bank and/or Public Holidays.

- 6) Prior to occupation of the flats hereby approved, the refuse storage facilities shown on drawing P001A shall be provided and made available for use. Thereafter the refuse storage facilities shall be retained for the duration of the occupation of the flats.

Procedural matters

2. The appeal is against the failure of the Council to make a determination within the prescribed period and concerns premises known as Unit D Langley Square (the unit/premises).
3. Prior to the appeal's submission revised drawings¹ were submitted to the Council showing amendments relating to the elevational alterations associated with the proposed development. The Council has raised no objection to those amended plans being considered and I have therefore determined the appeal on that basis.
4. A description for the proposed development was not set out on the planning application form. The development has been described by the Council as being for '*the insertion of a mezzanine floor, part change of use and external alterations to provide 3 number self contained flats*', based on what was stated in the appellant's design and access statement. The appellant has raised no objection to that description being used and I have considered the appeal on that basis.

Main issues

5. Having regard to the cases made by the appellant and the Council, I consider the main issues are whether the development would:
 - be compatible with the mixed use character of the area;
 - provide adequate living conditions for its occupiers, with particular regard to noise;
 - make adequate provision for car and bicycle parking; and
 - make adequate provision for affordable housing.

Reasons

Compatibility with the character of the area

6. The unit has a gross internal floor area of 267 square metres (sqm) which comprises 223 sqm on the ground floor and 44 sqm in a mezzanine level to the rear of the premises². The premises occupy one corner of the ground floor of one of the blocks (The Holland) that make up Langley Square and those blocks adjoin the 'Mill Pond'. The Holland being a six storey building, plus basement parking area that is within a scheme of 400 flats and 2,582 sqm of flexible commercial floorspace (commercial space)³. Langley Square forms part of the southernmost extremity of an extensive regeneration area, the 'Northern Gateway Strategic Site' (NGSS), which lies wholly to the north of Dartford town centre.

¹ Drawings P001A, P002A, P003A, P004A and P006A

² Based on the floor areas quoted in the marketing agents' particulars appended to the appellant's Design and Access Statement

³ Paragraph 2.2 of the Council's appeal statement

7. The NGSS being a strategic allocation that is subject to Policy CS3 of the Dartford Core Strategy of 2011 (the CS) and, amongst other things, it is expected that the NGSS will include 2,040 new homes. The area immediately adjoining the Mill Ponds having been identified as the location for a new area of public realm. That area of public realm, also referred to by the Council as 'town square', being tied in with the provision of commercial space, as referred to in Policy CS3(1)(c) of the CS.
8. The unit is within a largely completed part of the regeneration area and the planning permission for the unit permits it to be occupied for: retail; financial and professional services; food and drink; drinking establishments; offices; non-residential institutions; or assembly and leisure uses⁴.
9. Within close proximity to the unit there are three other ground floor commercial units forming part of Langley Square. One of those units is to the east (opposite) and is occupied as a small supermarket (the supermarket). Another of the nearby commercial units is occupied as a gymnasium. The third unit has been used as the marketing suite for Langley Square, a use which now appears to have ceased.
10. The existing mezzanine level amounts to a partial first floor and the development would involve the creation of what would be a full first floor integral to the unit. On the ground floor two of three existing external doorways would be devoted to accessing the proposed flats. To facilitate the use of those doorways for accessing the flats, two internal lobby areas, occupying around 35 sqm, would be created on the ground floor. Based on the area quoted on drawing number P001A⁵, the formation of the lobbies would leave the retained commercial unit with a floor area of 190 sqm.
11. The development would therefore result in the retained unit's gross internal floor area being reduced by around 80 sqm. I consider that reduction in the availability of commercial space, of itself, would not fundamentally alter the ground floor mixed use character within this part of Langley Square, with the original outline planning permission having been for between 2,500 to 5,000 sqm of commercial space. The development would involve some external alterations being made to the unit. Nevertheless, I consider the premises' front (eastern) elevation would essentially continue to have a shopfront type appearance that would be compatible with the streetscene within a town square type location and would continue to be capable of contributing to the area's vibrancy.
12. Although the insertion of the full mezzanine would reduce the extent of the unit's exterior curtain wall glazing, I consider that the resulting outward change in the appearance of the premises would not discourage the occupiers and users of the other parts of the NGSS from visiting the town square area. In that regard I consider it noteworthy that while the supermarket has a similar floor to ceiling height to the unit, some of its glazing above what might be considered to be a traditional fascia level has in effect been blacked out. For the supermarket where there is above fascia clear glazing that provides views of internal plant and equipment, which contributes little to the area's appearance. I am therefore not persuaded that the outward appearance of the unit would be adversely affected by the creation of a full mezzanine level.

⁴ Based on the classification set out in The Town and Country Planning (Use Classes) Order 1987

⁵ The proposed ground floor plan

13. It is contended that the formation of the internal entrance lobbies would have a detrimental effect upon the external appearance of the premises. While the creation of the lobbies would reduce some of the views into the unit, I consider that change would not result in the creation of a significant amount of dead frontage and that in this regard there would be no adverse effect on the area's mix used character. In that respect I saw that both the previously mentioned supermarket and the nearby gymnasium have had window graphics applied to sections of their extensive glazed frontages affecting views into both of those premises. While the gymnasium was closed at the time of my visit⁶, there were constant comings and goings to the supermarket and the limitation on the inward views into this shop, presented by the extensive window graphics coverage, did not appear to be inhibiting this shop's patronage or detracting from the area's vibrancy.
14. In terms of the unit's utility, the insertion of a full mezzanine would reduce the internal floor to ceiling height. However, I do not consider that would have any significant effect on the unit's utility. That is because the available floor to ceiling height would be comparable with many commercial premises attended by visiting members of the public. In that regard, if the supermarket unit's occupation is anything to go by, the above fascia level space would be more likely to be used to accommodate services and plant rather than create an airy internal environment that the users of the unit might benefit from. While there is concern that the development would negate the unit's suitability for occupation as a restaurant or drinking establishment, the appellant has submitted that there would be no access for the installation of ventilation ducting⁷. So, while the unit benefits from a flexible use planning permission, there appear to be some practical factors affecting which of the permitted uses that could actually be accommodated in this unit.
15. The appellant has argued that its proposal to introduce three flats has arisen because during the marketing period, from October 2018 onwards, there has been very little interest in acquiring or renting the premises. Only the marketing particulars from the two instructed marketing agents and brief commentaries from the appellant's application and appeal agents relating to what has happened during the marketing period have been submitted. No marketing reports from either of the marketing agents have been made available, explaining precisely how the unit has been marketed and setting out the reasons or professional opinions as to why an occupier for the unit has not emerged. On the available information it is unclear whether for example there has simply been no demand for the unit or the acquisition or rental costs for a prospective occupier might be too high or a combination of those factors or some other reasons in play.
16. I am mindful of the Council's concerns about the limitations of the marketing evidence that has been provided. However, this is not an instance where there would be a complete loss of a commercial unit. Instead there would still be a unit providing commercial space within the mixed use area. I therefore consider that the shortcomings of the marketing evidence are not of such significance as to warrant grounds for withholding planning permission in this instance.

⁶ Due to the restrictions in force in response to the COVID19 pandemic

⁷ The appellant's final comments

17. For the reasons given above I conclude that the development would be compatible with the mixed use character of the area. I consider that the modest loss of commercial space and the provision of three flats would not be inconsistent with the expectations of Policy CS3(1)(c) of the CS, with there being no undermining of the creation of a 'vibrant hub' within this part of the NGSS. With respect to the external appearance of the development I consider that there would be no conflict with Policy DP2 of the Dartford Development Policies Plan of 2017 (the DDPP) because it would maintain a sense of place and the mixed use character of the area.

Living conditions for the occupiers of the development

18. The living conditions for the occupiers of the proposed flats might be affected by the occupation of the retained unit, especially if it was to become either a food and drink outlet or a drinking establishment and generated noise. However, the flats would be in a mixed use area and the Council's environmental health department has raised no objection to the provision of three flats, with it requesting that details for noise insulation be submitted 'in a worst case scenario'. I therefore consider that with the provision of noise insulation there is no reason to suppose that the living conditions for the occupiers of the flats would be harmed by the unit's use. The provision of noise insulation being something that could reasonably be secured by imposing a planning condition.
19. I therefore conclude that the development would provide adequate living conditions for its occupiers. In this regard I consider that the development would accord with Policy DP5 of the DDPP because the living conditions for the occupiers of the flats could be safeguarded without materially impeding upon the use of the retained commercial unit.

Parking

20. With respect to car parking the appellant has stated that of the two spaces allocated to the unit, one would be available to the occupiers of the proposed flats. There would therefore be a shortfall of 2.6 spaces against the requirement for there to be 1.2 spaces for one and two bedroom homes in urban locations, as stated in the Council's Parking Standards Supplementary Planning Document of July 2012.
21. The additional flats, like those in the rest of Langley Square, would be situated in a highly accessible location, being within easy walking distance of the town centre and Dartford railway station. Given that I consider the occupiers of the proposed flats would not necessarily be car owners. I further consider that even if there was some car ownership amongst the occupiers of these flats, that would be unlikely to generate a level of demand which would cause stress upon either any on-street parking available in the area or for the off-street parking available to the occupiers of The Holland or other parts of Langley Square.
22. Bicycle parking/storage may be available for occupiers for the flats within The Holland, beyond the extent of the red line area for the submitted planning application⁸. However, under the terms of the submitted application there would be no way of securing the availability of those bicycle storage facilities

⁸ Based on comments made in the appellant's final comments

for the occupiers of the appeal development. Although that is undesirable, I consider this would not be of such significance as to warrant the withholding of planning permission in this instance.

23. I therefore conclude that there would not be inadequate provision for car and bicycle parking. I therefore consider that with respect to car parking there would be no unacceptable conflict with Policies DP3(2)(c), DP4(2)(g) and DP7(3)(d) of the DDPP because while the development would not make provision for off-street parking, its scale and location would be unlikely to give rise to significant parking demand.

Affordable housing

24. Policy CS19 of the CS addresses the provision of affordable homes and for private housing developments in urban areas this policy requires affordable homes to be provided at the rate of 30% when the scheme in question would be for fifteen or more (net) new dwellings.
25. The three additional flats would be accommodated in a building that has largely been completed and occupied, with some affordable homes having already been provided within the wider Langley Square development. I therefore consider that the appeal proposal marks a fresh chapter in the planning history for The Holland and that for the purposes of Policy CS19 of the CS there is no new need to provide affordable homes. That is because the net increase in dwellings would be considerably below the threshold of fifteen stated in Policy CS19.
26. While the development would make no provision for affordable housing, I conclude that would be acceptable and that there would be no breach of Policy CS19 of the CS.

Conditions

27. I have considered the need for the imposition of conditions, having regard to the Council's seven suggested conditions and the provisions of the national policy and guidance for the use of conditions.
28. Apart from the standard time limit condition, it is necessary that the development be built to accord with the submitted plans for certainty (the plans condition). To safeguard the appearance of the building and the surrounding area it is necessary that the external alterations to The Holland be controlled. However, as the external alterations concern changes to some of the building's fenestration and brickwork and it is the appellant's intention that matching materials would be used, as notated on the application drawings, I consider that the imposition of a matching materials condition would be more appropriate than requiring samples of external materials to be submitted for the Council's approval. I have therefore imposed a matching materials condition rather than the Council's suggested condition 3.
29. In terms of safeguarding the living conditions for the occupiers of the proposed flats, as explained above, I consider it necessary that a condition be imposed requiring the submission of a noise attenuation scheme for the Council's approval. So that refuse storage facilities are available to the occupiers of the unit and the proposed flats, it is necessary that a condition be imposed securing the availability of such facilities. To safeguard the living conditions of the existing occupiers of The Holland, it is necessary that the

times when construction works can be undertaken be limited to 08.00 to 18.00 hours for Mondays to Fridays and 08.00 to 13.00 hours on Saturdays.

30. The Council's seventh suggested condition would require evidence of the flats compliance with the Nationally Described Space Standard of March 2015 (NDSS)/Building Regulations Optional Requirement being submitted to the appointed 'building control body' prior to the occupation of the flats. However, I consider there is no need for the imposition of such a condition. That is because the floor areas for each of the flats and the bedrooms within them, as shown on the floor plan for the flats, would comply with the NDSS and the development would need to be implemented in accordance with the plans condition I have previously mentioned.

Conclusion

31. For the reasons given above the appeal is allowed.

Grahame Gould

INSPECTOR