



Appeal Decision

Site visit made on 9 February 2021

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPi

an Inspector appointed by the Secretary of State

Decision date: 1 September 2021

Appeal Ref: APP/N5660/W/20/3262910

Arch 115, Randall Road, London SE11 5JR

- 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 David Haye against the decision of the Council of the London Borough of Lambeth.
 - The application Ref: 20/00103/FUL, dated 13 January 2020, was refused by notice dated 20 May 2020.
 - The development is the change of use from storage to mixed use bar and private boxing gym. The majority of the premises is to be used as a professional boxing gym, primarily used to train professional boxers. The front area of the premises is to be used as a 24-hour bar/lounge, of 72 square metres in size.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. After the appeal was made, the Mayor of London published the new London Plan 2021, and the National Planning Policy Framework (the Framework) was revised. Both parties were given the opportunity to comment on any implications for the appeal. The New Lambeth Plan has not completed its examination in public, which limits the weight I can accord its policies.

Main Issue

3. The main issue is the effect of the change of use on the employment-generating, industrial capacity of the borough.

Reasons

4. The last lawful use of the site was for storage, use class B8. The application the subject of the appeal sought planning permission to change the use to a training gymnasium for boxing, incorporating a small bar area.
 5. Both the local and the regional plans have policies which protect against the loss of sites in industrial use, including use class B8. In the London Plan, policy E4 seeks to protect industrial land, including sites in use class B8, particularly provision for storage and distribution (use class B8), including 'last mile' distribution close to central London. London Plan policy E7 says that mixed use proposals on non-designated industrial sites, such as here, should only be supported where there is no reasonable prospect of the site being used for industrial and related purposes, including use class B8, or it has been allocated
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- in the development plan, or it retains some industrial floorspace in a mixed-use intensification. Its supporting text says that the evidence to demonstrate no reasonable prospect should include strategic and local assessments of demand, evidence of vacancy and marketing, with appropriate lease terms and at market rates suitable for the type, use and size (for at least 12 months), and evidence that the scope for mixed-use intensification with industrial uses has been explored fully.
6. In the Lambeth Local Plan 2015, policy ED2 resists the loss of floorspace in business, industrial or storage use, use class B, outside designated Key Industrial and Business Areas, such as here, unless clear and robust evidence shows there is no demand for the floorspace. The policy allows exceptions to the loss of industrial floorspace for environmental reasons, or where the proposal secures major planning priorities for which there is a demonstrable need which cannot be achieved in any other way, which include uses in class D2, such as gymnasia. The site falls within the Vauxhall Nine Elms Battersea Opportunity Area of the London Plan where LP policy ED5 also supports the use of railway arches for Class A, D, B1 and appropriate sui generis uses.
 7. Furthermore, Local Plan policy PN2(d) encourages the use of the railway arches at Vauxhall as an active spine, a focus for employment and business and a mix of community uses which could include cultural, artistic and community uses. The Council accepts, setting aside for a moment the loss of industrial floor area, that the proposed use of the arch is acceptable. The new use of the railway arch therefore, which is supported by planning policy, and the Council, counts in favour of the appeal.
 8. I understand that because of the size of the site and the constraints of its configuration, that mixed use intensification is not a realistic anticipation. I am alert to the appellant's predicament having occupied the arch successfully for many years, and I recognise the very significant social benefits the use brings to the community and its economic contribution to the local area. In these circumstances, and against the present background of the economic recovery after the coronavirus pandemic, to insist that the gymnasium shut for 12 months during a marketing campaign which may well prove fruitless, would be counter-productive to the objectives of sustainable development. That the arch has not been vacant during any marketing campaign does not therefore count against the appeal.
 9. Notwithstanding that, even having accepted that the arch be occupied rather vacant during a 12-month marketing campaign, without evidence to substantiate a lack of demand for the use of the arch in use class B, I cannot be sure that there is no demand for this floorspace in its lawful use which is protected by policies in the development plan. This lack of substantive evidence weighs against the change of use.
 10. I understand the appellant's frustration about the Local Plan being adopted after he acquired the site. However, the courts have confirmed that appeal decisions must be made on the basis of the development plan and national

policy which are in place at the time of the Inspector's decision rather than at the time the use was changed.

11. I note the appellant's point that in 2015 there was a lack of interest in neighbouring units for class B uses. However, in an application for planning permission, in order to be relevant, the evidence of any lack of demand should relate to the present, not to the position 6 years ago.
12. I note that neighbouring railway arches have a variety of uses, some perhaps without permission. However, while these uses may demonstrate their compatibility here, they do not justify the further loss of employment-generating, industrial capacity or the conflict with the policies of the development plan from this change of use, without clear and robust evidence to show there is no demand for the floorspace in that protected use.
13. I acknowledge the strong policy support for the new use which the appellant has highlighted, including policies in the Framework. However, the development plan needs to be read as a whole, including the policies which resist the change of use as well as those which support it. Notwithstanding the support for the use in Local Plan policies ED2 and ED5, without clear and robust evidence to demonstrate that there is no reasonable prospect of the site being used for business, industrial or storage use, class B, I cannot but conclude that the change of use harms the employment-generating, industrial capacity of the borough, bringing it into conflict with Local Plan policy ED2 and London Plan policies E4 and E7.

Other Matters

14. The use requires no external alterations. It preserves the C19 industrial character and appearance of this section of the Albert Embankment Conservation Area notable for the distinctive, masonry townscape of the railway viaduct structure, to the desirability of which I am required to have special regard.

Conclusion

15. There is no objection to the present use, which has significant social, health and community benefits from its sports use, as well as employment and economic benefits to the local economy. The use has support in the development plan as well as in the Framework. I accord these very positive factors of the appeal considerable weight.
16. However, they do not outweigh the loss of employment-generating, industrial capacity here, and the conflict with the development plan when read as a whole, which resists such a loss without clear and robust evidence to show there is no demand for the floorspace in use class B. For the reasons above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Patrick Whelan

INSPECTOR