



Appeal Decision

Site Visit made on 26 May 2021

by Scott Britnell MSc FdA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2021

Appeal Ref: APP/K5600/W/20/3264438

Basement, 10 Roland Gardens, London SW7 3PH

- 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 Ms L Jones against the decision of the Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref PP/20/03709, dated 8 July 2020, was refused by notice dated 9 September 2020.
 - The development proposed is the change of use of the basement flat at No.10 Roland Gardens SW7 3PH from office to residential.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of basement from office to a 2-bedroom residential unit (Use Class C3) at Basement Flat, 10 Roland Gardens, London SW7 3PH in accordance with the terms of the application, Ref PP/20/03709, dated 8 July 2020, and the plans submitted with it, subject to the conditions set out on the attached schedule.

Preliminary Matters

2. The description of development in the banner header above is taken from the application form. The Council refer to the proposal as 'change of use of basement from office to a 2-bedroom residential unit (Use Class C3)'. It is common ground between the parties that the lawful use of the basement is as an office and not a residential flat and the appellant is content to proceed on the basis of the Council's description. I have therefore determined the appeal on that basis.
3. Following the submission of the appeal, the Government published the National Planning Policy Framework 2021 (the Framework). I sought comments from the main parties with regards to this matter although no responses have been received.
4. The Council refused the planning application on two grounds. The second reason relates to the failure of the appellant to enter into a legal agreement to secure the new residential unit as residents parking permit free. During the appeal process, the appellant submitted a Unilateral Undertaking (UU). The Council have been provided with a copy of the UU and have commented that they note the agreed s106 UU was completed on 16 July 2021 and that they have no further comment. The UU overcomes the second reason for refusal and I do not need to consider it further.

Main Issue

5. In light of the preceding preliminary paragraph, the main issue is the effect of the proposal on the availability and range of business premises in the borough of Kensington and Chelsea.

Reasons

6. Policy CF5 of the Local Plan September 2019 (LP) seeks to protect offices and office floorspace throughout the borough. The supporting text to this policy indicates that between 2016 and the end of the plan period in 2028, there is a net demand of 47,100 square metres office floorspace in the borough and that any loss of the existing business stock would hinder the Council's ability to meet that need. The policy seeks to protect offices and office floorspace throughout the borough but includes exceptions for offices in Employment Zones and town centres and permits their replacement, subject to certain requirements, with specified uses. There is no dispute between the parties that the appeal proposal fails to accord with these exceptions.
7. The evidence before me indicates that 10 Roland Gardens was originally constructed as a dwelling. In 1952, an application for planning permission for the change of use of the basement to an office was refused. Nevertheless, an office use was commenced and a Lawful Development Certificate for the use of the basement flat as an office was granted in 1999.
8. The office has a layout which is residential in nature with separate rooms for office space mixed with bathroom and kitchen facilities. In my view, such a layout, with the subdivision of rooms, is likely to limit the number of potential users of the property for office purposes. Moreover, the location of the office at basement level presents significant issues in terms of access arrangements. In particular, access to the office is down a steep flight of external steps which is likely to prevent occupation by those with mobility issues. As such, I consider that the office, while making a useful contribution to the total of the borough's office floorspace, is of poor quality. Consequently, its loss would not be unacceptable.
9. In reaching this conclusion, I note the Council's comments that the office appears to have been in constant use since its creation and that there is a lack of evidence to demonstrate that the office would prove unlettable or that it would not be feasible to make improvements to the space if required. The Appellant indicates that they have undertaken a marketing exercise although little evidence of this has been submitted. I am advised that the premises were marketed in July 2020 and that only one viewing has taken place, by an organisation looking to run the premises as a child's nursery. Notwithstanding the lack of information with regards to the marketing exercise, I consider that the office is of poor quality and unlikely to be attractive to potential occupants for the reasons I have set out above.
10. With regards to making improvements to the office space, I accept that it may be possible for changes to be made to its layout. However, any external changes, such as improving the access down to the basement, would need to be carefully considered and I am mindful that the appeal site is located in a Conservation Area. In any case, I have assessed the appeal proposal on its merits and having regard to the current situation.

11. I conclude that the proposal would be acceptable. Although it would conflict with LP Policy CF5, there are material considerations that justify a determination being made other than in accordance with the development plan.

Other Matters

12. The appeal site is located in the Thurloe/Smith's Charity Conservation Area (CA). Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that, in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. No external alterations are proposed as part of the appeal scheme, while the proposed use would be appropriate given the residential character of the area. Consequently, the proposal would preserve the character and appearance of the CA and harm to its significance as a designated heritage asset would not result. It is also noteworthy that the Council has not raised the Conservation Area location as being an issue of concern.

Conclusion and Conditions

13. For the above reasons, and having regard to all matters raised, I conclude that the appeal should succeed.
14. In terms of conditions, the Council has suggested a number of planning conditions that it would wish to see implemented in the event that the appeal is allowed. In imposing these conditions I have had regard to the tests set out in the Framework.
15. In the interests of certainty, I have imposed a condition specifying that the development shall be implemented in accordance with the approved plans. To ensure the safe and sustainable movement of traffic on neighbouring highways and to promote alternative modes of transport, I have imposed conditions requiring details of cycle and waste storage to be submitted to and approved by the Council.
16. The Council's Environmental Health Officer (EHO) has suggested a number of planning conditions in relation to potential land contamination. I have sought comments in relation to these conditions from the main parties, as none of the conditions proposed by the EHO appear on the Council's list of suggested planning conditions. The Council confirm that due to the nature of the application they do not consider that any conditions would be necessary and I agree with this approach.

Scott Britnell

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this permission.
2. The development hereby approved shall be carried out in accordance with the following approved plans:

Site location plan 01, Site plan 010, Proposed residential plan

3. The development shall not be occupied until details of cycle storage facilities have been submitted to and approved in writing by the local planning authority and fully implemented in accordance with the approved details and made available for immediate use. The cycle facilities shall thereafter be retained for that use at all times.
4. The development shall not be occupied until details of waste storage facilities have been submitted to and approved in writing by the local planning authority and fully implemented in accordance with the approved details and made available for immediate use. The waste storage facilities shall thereafter be retained for that use at all times.