The Planning Inspectorate

Appeal Decision

Site visit made on 14 September 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/D5120/W/21/3269639
2-4 Powerscroft Road, Sidcup DA14 5DT

- 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 The Hightower Church (c/o Ms. C. Eze) against the decision of the Council of the London Borough of Bexley.
- The application Ref 20/02956/FUL, dated 13 November 2020, was refused by notice dated 18 January 2021.
- The development proposed is 'retrospective planning application for the change of use from Class E (office/light industrial) to F1 (place of worship) of Jacob House, 2-4 Powerscroft Road, Sidcup DA14 5DT'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice refers to policies from The London Plan 2016 and the then draft replacement London Plan. However, since the decision was made the new London Plan has been published, in March 2021. I have, therefore, had regard to the relevant policies from the new plan.

3. A revised version of the National Planning Policy Framework (the Framework) was issued in July 2021. The parties were given the opportunity to comment on any implications.

Main Issue

4. The main issue is the effect of the change of use on the supply of commercial office space.

Reasons

5. The appeal site includes a two storey detached building located within the Foots Cray Business Area, which is designated as a Strategic Industrial Location (SIL) by Policy E5 of The London Plan 2021. The policy says that SILs should be managed proactively through a plan-led process and that development proposals within them should be supported where the uses proposed fall within the industrial-type activities set out in Part A of Policy E4. In addition,

development proposals within SILs should not compromise the integrity or effectiveness of these locations in accommodating industrial-type activities.

6. The Bexley Unitary Development Plan 2004 (UDP) designates the site as part of a Primary Employment Area (PEA), within which land and buildings will be safeguarded for industrial and commercial uses as appropriate to each area, in accordance with Policy E3. Policy E6 of the UDP relates specifically to the Foots Cray Business Area and says that land available for redevelopment will normally only be permitted for business, storage and distribution or general industry uses.

7. The site is also located within a Preferred Office Location (POL) designated in the UDP, in which locations Policy E14 says the Council will encourage office developments, including changes of use, subject to a number of criteria. Finally, Policy CS12 of the Bexley Core Strategy 2012 concerns Bexley's future economic contribution and says that the Council will ensure a sufficient and appropriately located provision of employment land to meet the borough's existing and future requirements.

8. While other development plan policies support community uses, these policies do not allow for a change of the established use of the appeal building to a place of worship and, therefore, the proposal is contrary to these strategic and local development plan policies.

9. The appellant draws attention to the reference in Policy CS12 of the Core Strategy of up to 50 hectares of surplus employment land and that Policy E1 of The London Plan allows other uses in surplus offices. However, Policy CS12 is also clear that a managed transfer of surplus land should properly take place through the development plan process rather than development proposals for other uses, which the development plan as a whole resists in this designated location. While the Secretary of State directed changes to the intention-to-publish version of The London Plan to remove the 'no net loss' requirement, this relates to existing industrial land as a whole. The adopted development plan accords a strong degree of safeguarding to the site through the various economic and employment-related designations referred to above.

10. It is also contended that there is considerable available office floorspace in the surrounding area, that projected office demand will decline in outer London and that the appeal site has been vacant since June 2020 with no interest in an office use. However, the existing use as a place of worship was underway during part of this period and I am not aware of any evidence of active marketing of the property. Furthermore, in the exceptional circumstances of the economic impact of the Covid-19 pandemic, this not a substantive period of time; nor is it possible to conclude with any certainty that the pandemic or economic circumstances more generally will result in a long-term reduction in demand for such premises. In these circumstances, the fact that some other offices are available in the surrounding area can only have limited bearing, particularly where there is little evidence of how long these have been marketed for or broader information about vacancy rates. Moreover, the development plan policies referred to, notably Policies E5 and E4 of the London Plan and Policy E6 of the UDP, seek to safeguard existing uses in this location for a broad range of business and industrial-type activities. There is no basis to suggest that the building could not viably be refurbished.

11. Nos 5 and 7 Powerscroft Road, which are similar types of building to the appeal property, have prior approval for conversion to flats and I acknowledge that this reflects greater flexibility of use resulting from changes to permitted development rights. However, the proposal is for a specific community use, which is currently underway. As such, I give little weight to the contention that a loss of the office floorspace to another use, particularly a residential use, is a credible fallback in the particular circumstances of this appeal. In particular, I have no evidence to suggest that the appellant or another party would pursue such an option were the appeal to fail.

12. The appellant questions whether relevant UDP policies are up-to-date in the context of more recent changes to the Use Classes Order, which provide for greater flexibility in changes between offices and other uses. However, such matters are properly considered as part of the planning balance, which is separate to consideration of the main issues against relevant development plan policies as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004.

13. Reference is made by the appellant to a large-scale development involving retail, residential and hotel uses on land behind the appeal site[1]. The Council responds that this scheme is part of a long-term regeneration project, where the site has lain vacant for many years and which secures a number of jobs across different land uses. As such, this scheme does not provide a direct precedent for the appeal proposal, particularly as this does not involve any substantive employment opportunities.

14. Accordingly, while I have had full regard to the matters raised by the appellant, they do not provide a sufficient basis to overcome the conflict with the development plan found above. Consequently, I conclude that the proposal results in a materially harmful effect on the supply of commercial office space. As such, it is contrary to Policy E5 of The London Plan 2021, Policies E3, E6 and E14 of the UDP, and Policy CS12 of the Core Strategy, all as described above.

Other Matters

15. I have had regard to the representations made by interested parties in support of the proposal. I acknowledge in particular that the building is accessible to disabled and elderly people, and that the church provides community-based support. However, these matters are not sufficient to overcome the conflict of this particular use with the development plan as found with regard to the main issue. I also note the alleged lack of engagement by the Council with the appellant. However, such concerns are properly outside the scope of this appeal.

16. The Framework is a material consideration in planning decisions[2]. It says that plans and decisions should apply a presumption in favour of sustainable development[3]. In the circumstances of this appeal where there are relevant development plan policies, this requires an assessment of whether the policies which are most important for determining the application are out-of-date. The Framework is clear that existing policies should not be considered out-of-date

[1] Ref 10/01712/OUTM, which renews a lapsed permission under ref 06/05574/OUTM.
[2] Paragraph 2.
[3] Paragraph 11.

simply because they were adopted prior to the current Framework's publication, as in this case. Due weight should be given to them, according to their degree of consistency with the Framework[4].

17. The appellant contends that relevant policies in the UDP are out-of-date because recent changes to the Use Classes Order now allow for greater flexibility for changes of use from offices to non-industrial type activities under the new 'E' use class[5]. While I acknowledge this, I note also that the current version of the Framework was issued after these regulatory changes were introduced.

18. The Framework says that planning policies should set out a clear economic vision and strategy which positively and proactively encourages sustainable economic growth; and which set criteria, or identify strategic sites, for local and inward investment[6]. Insofar as the relevant development plan policies in this case seek to do this, I find that they are consistent with the Framework. While the changes to the Use Classes Order enable greater flexibility in individual uses, this does not undermine the overall objectives of the plan policies as a whole or the extent of their consistency with the Framework. As such, I find that the presumption in favour of sustainable development is not engaged.

19. However, for the avoidance of doubt, were the presumption to be engaged in this case, I have found that the proposal results in a materially harmful effect on the supply of commercial office space due to its conflict with relevant development plan policies, which themselves are consistent with the Framework's objective to build a strong, competitive economy. As such, as well as it being contrary to the development plan, the proposal is contrary to the Framework. Conversely, the Framework says that planning policies and decisions should plan positively for the provision and use of community facilities, including places of worship[7]. However, in the particular circumstances of this case I consider that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits.

Conclusion

20. I have found that the proposal is contrary to development plan policies as it results in a materially harmful effect on the supply of commercial office space. The presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

[4] Paragraph 219.
[5] The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 amend the Town and Country Planning (Use Classes) Order 1987 and came into force on 1 September 2020.
[6] Paragraph 82.
[7] Paragraph 93.