The Planning Inspectorate

# Appeal Decision

Site Visit made on 12 October 2021

**by L Douglas BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 November 2021**

**Appeal Ref: APP/M9584/W/21/3269179**
**Unit H (first floor), 52-54 White Post Lane, Hackney Wick, London E9 5EN**

- 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 52-54 White Post Lane LLP against the London Legacy Development Corporation.
- The application Ref 20/00379/FUL, is dated 2 October 2020.
- The development proposed is "change of use of southern part of the first floor (Unit H) from commercial (Use Class E) to residential use (Use Class C3), to create six new dwellings, along with external alterations".

## Decision

1. The appeal is dismissed and planning permission for the proposed "change of use of southern part of the first floor (Unit H) from commercial (Use Class E) to residential use (Use Class C3), to create six new dwellings, along with external alterations" is refused.

## Preliminary Matters

2. The London Legacy Development Corporation (LLDC) has referred to Unit H as covering 635 sqm in floorspace, but I note the appellant's marketing materials refer to Unit H's floorspace as 598 sqm. I have therefore taken the existing floorspace of Unit H to measure 598 sqm, as this is the most consistently referred to figure within the appellant's submissions.

3. The description of the development proposed changed during the course of the application being considered by the LLDC, reducing the number of residential units proposed. I have therefore taken the description of development proposed from the appellant's appeal form and made minor corrections, which align with the descriptions in both main parties' appeal representations.

## Main Issue

4. The main issue is whether the proposal would result in an unacceptable loss of employment floorspace.

## Reasons

5. The appeal site comprises part of the first floor (Unit H) of a contemporary mixed use development known as The Bagel Factory located within Hackney Wick and Fish Island (HWFI), as defined in the LLDC's Local Plan[1]. The development was completed in 2019, providing 5552 sqm of employment

[1] London Legacy Development Corporation Local Plan 2020 to 2036 (2020)

floorspace, 682 sqm of other commercial floorspace and 220 dwellings. Unit H comprises 598 sqm of vacant office floorspace; the proposal would create 6 dwellings and 2 smaller commercial units resulting in an overall loss of 429 sqm of employment floorspace.

6. Unit H has been marketed to let since February 2018 and marketing reports[2] conclude that a lack of 'D1/retail/leisure' uses in the surrounding area make the appeal site unattractive as office space to prospective tenants. This, alongside other vacant office floorspace, it is claimed, is why Unit H remains vacant. The LLDC claim there is strong demand locally for employment floorspace, but it is the size at which Unit H has been marketed and its rent exclusions which have made it unattractive to the local market, which the appellant has not sought to address through a suitably targeted and flexible marketing strategy.

7. Policy B1 of the LLDC's Local Plan states that the employment function of employment land shall be protected and developed through 7 measures. The seventh measure states that proposals, including conversions, shall be considered against evidence of demand for the form of employment space through viability appraisal showing the suitability of maintaining or re-providing industrial or employment within the building, marketing strategies with appropriate lease terms for two immediately preceding years and other overriding factors potentially inhibiting the continuation of employment use.

8. The marketing reports demonstrate Unit H has been advertised to let for at least two years prior to the submission of the application, commencing prior to the completion of the development. I note 78% of commercial floorspace within The Bagel Factory development has been let following the same strategies referred to within the marketing reports, suggesting the effectiveness of those strategies. The marketing reports explain that the rates at which other units within the development have been let are at approximately £30-35 per sqft, justifying the £35 per sqft rate at which Unit H has been advertised throughout the marketing period, anticipating negotiation on rates from prospective tenants.

9. The advertising particulars relating to Unit H do not provide any details of the business rates, service charge or VAT that any prospective tenants would be liable for, and the LLDC claim the rate of £35 per sqft exclusive of these charges does not align with the local market, where such a rate would only be a realistic market rent for HWFI if it was inclusive of services and utilities. The LLDC has provided examples of local workspace comparisons[3] which show Unit H has been marketed as a substantially larger area of office floorspace than others with very high occupancies, which remain in high demand, and the £35 per sqft rate exclusive of services/utilities is higher than most, but not all. The LLDC refer to the additional services, facilities and flexibility provided where rates are higher, which do not form part of the offer at The Bagel Factory.

10. The marketing reports refer to a significant amount of existing vacant and proposed office floorspace within HWFI, available at rates varying between £25.00 per sqft and £49.50 per sqft. Various other examples of office floorspace advertised to rent elsewhere in London have also been presented

[2] Marketing Summary Reports by Strettons, dated August 2020 and February 2021
[3] LLDC's WDC3 Appendix 1: Local Workspace Market Evidence and WDC3 Appendix 2: Detailed Workspace Providers Evidence

without any accompanying explanation of what they signify, other than the availability of office floorspace generally throughout London, which I do not doubt. This shows that despite the high demand for certain forms of office floorspace locally, vacant office floorspace is not uncommon, but no detailed analysis has been presented to explain why this may be the case or why Unit H has not been let despite high demand for certain office floorspace locally. The LLDC has claimed the supply of office floorspace locally is broadly in line with the demand projected by their Local Plan, and there is no oversupply.

11. The marketing reports do not differentiate between rents inclusive or exclusive of services/utilities but demonstrate there is a range of office floorspace available and undergoing development in the local area. This, it is claimed, has created an imbalance between that space and D1/retail/leisure space, but no figures relating to D1/retail/leisure space have been presented to confirm this is the case. The LLDC has identified 6 supermarkets/convenience stores, 7 gyms/fitness studios, 7 fashion retail units, 6 beauty services, and 5 entertainment venues in the local area, not including food and beverage services which are claimed to be too numerous[4]. I also note the appellant's Bagel Brochure[5] identifies many nearby drinking, dining, wellbeing and gallery spaces, and the appellant's final comments refer to this becoming less of an issue for prospective tenants[6].

12. The appellant's claim that it is a lack of D1/retail/leisure space in the locality which has prevented Unit H from being occupied appears to be based on the comments made by prospective tenants who viewed The Bagel Factory[7]. These comments provide an insight as to what may be preventing them from proceeding to occupy Unit H, but they are of limited detail and the conclusions of the marketing reports conflict with the LLDC's more detailed and precise evidence. The marketing reports do not sufficiently demonstrate a lack of demand for office floorspace in this location or overriding factors potentially inhibiting the continuation of employment use, such as the claimed imbalance between uses which would be beyond the appellant's control. I note some of the comments relating to the viewings made by prospective tenants refer to those parties going on to sign leases for smaller office floorspace elsewhere within The Bagel Factory.

13. The LLDC has undertaken an assessment of existing businesses within HWFI, which found the local market is mainly made up of 'micro-businesses' employing 0 – 4 people, which tend to need small, flexible workspaces. They have also advised that the enquiries they received over the past year related to office floorspace significantly larger or smaller than Unit H. I do not consider the lack of prospective tenants put in contact with the appellant by the LLDC demonstrates the lack of market demand for office floorspace in this location. The layouts of other units within The Bagel Factory show Unit H is one of only a few large units over 500 sqm in area, with the majority measuring under 200 sqm.

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[4] Paragraph 4.11 of LLDC's WDC3 Developer and Business Engagement Manager's Appeal Statement and WDC3 Appendix 3
[5] Page 6 of the appellant's appendix CMA 2
[6] Point 8 of Strettons' letter dated 21 September 2021
[7] Section 7 of Marketing Summary Reports by Strettons, dated August 2020 and February 2021

14. In their final comments, the appellant confirmed that Unit H has since been marketed as 3 smaller units[8], but remains vacant. This information has been presented without any explanation as to how, why or when that change in the marketing strategy took place or whether any alternative layouts were or could be considered. Its presentation at this late stage suggests the change took place after the submission of the appeal in February 2021. Based on the limited information provided in this regard and the minimal period of time Unit H has been marketed in such a manner, I do not take this as sufficient evidence that there is a lack of demand for smaller units or that alternative layouts of Unit H would also fail to find tenants. Indeed, the proposal would see 205.8 sqm of office floorspace retained as two smaller units measuring 106.5 sqm and 99.3 sqm, according to annotations on the proposed first floor plan. There is no explanation as to why the appellant may consider those proposed units would be more attractive to tenants than the existing 598 sqm as one unit, or why the marketing strategies have not considered splitting Unit H into smaller units previously.

15. The marketing strategies of the appellant have largely remained unchanged since February 2018, in that the advertised rate and size/layout of the Unit H have not been altered, until some unspecified time since the appeal was submitted. I note the appellant's point that the same marketing strategy has seen a substantial amount of commercial floorspace occupied in the remainder of the development, but the success in securing tenants for those other units suggests to me that it is not simply a perceived lack of D1/retail/leisure space in the local area preventing Unit H from being occupied, as concluded by the marketing reports. The marketing reports do not explain whether any other measures within the appellant's control were considered or undertaken to adapt strategies to make Unit H more attractive to prospective tenants.

16. The latest marketing report addresses the COVID-19 pandemic market impact, advising that many companies may be delaying or rethinking office moves due to a number of uncertainties. It is also suggested there may be a potential rise in demand for self-contained units, rather than multi-let buildings. There is no evidence to show the marketing strategies adopted since February 2018 have been revised in this regard, but I am aware economic uncertainties are not limited to prospective tenants and circumstances may have changed over the course of the application and the appeal.

17. I am therefore unconvinced that the appellant's marketing strategies demonstrate appropriate lease terms have been offered in respect of Unit H, considering the LLDC's evidence of strong local demand for small office floorspace on flexible leases. It has not been demonstrated that Unit H could not be reasonably marketed in an alternative fashion with appropriate lease terms to serve that strong demand. No viability appraisal showing the suitability of maintaining or re-providing industrial or employment space within the building has been provided, and no other overriding factors potentially inhibiting the continuation of Unit H for employment use have been presented. The proposal would therefore result in the unacceptable loss of employment floorspace and fail to accord with Policy B1 of the LLDC's Local Plan, the aims of which are set out above.

[8] Page 2 of CMA Planning's letter dated 23 September 2021 and Point 4 of Strettons' letter dated 21 September 2021

## Other Matters

18. The appellant has referred to measures announced by the Government to encourage the change of use of vacant office space to dwellings without the need for a planning application. In this case Unit H is subject to a planning condition preventing such a change of use without express planning permission and the appeal site forms part of a recently developed site. I attach substantial weight to the harm I have identified which would be caused by the proposal's failure to accord with the development plan. The reasoning behind the measures seeking to encourage the change of use of vacant office floorspace to dwellings do not convince me to apply significantly less weight to the harm identified.

19. The appellant has also explained that the loss of employment floorspace proposed would be small in the context of what has been built by them, representing 6% of total combined commercial floorspace provided at The Bagel Factory and the adjoining urban block. These are large sites and Unit H occupies a small proportion of those developments, but the loss of employment floorspace would not be so small as to be negligible or otherwise acceptable as an exception to the aims and requirements of Policy B1.

20. I have been referred to previous planning decisions of the LLDC with regard to changes of use from office floorspace to uses within what were formerly the A use classes[9] and a gym at The Bagel Factory. The appellant has explained that those decisions were made by the LLDC based on the same marketing strategies presented as part of this appeal. The LLDC has explained that those changes of use were permitted because they would generate employment and retain or enhance employment levels. I have not been presented with the full details of those schemes, but based on the information provided, it is sufficiently clear that the long-term implications of those changes of use on employment opportunities locally would be significantly different to those resulting from the proposal. I do not consider those other planning permissions and the LLDC's approach in approving them justify the proposed development.

## Conclusion

21. The proposal would result in the unacceptable loss of employment floorspace in conflict with the development plan. There are no material considerations worthy of sufficient weight that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

*L Douglas*

INSPECTOR

[9] As defined in The Town and Country Planning (Use Classes) Order 1987 (as amended)