The Planning Inspectorate

Appeal Decision

Site visit made on 29 March 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2022

Appeal Ref: APP/U5360/W/21/3277929
91-93 Rendlesham Road, Hackney, London E5 8PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Rendlesham (Holdings) Ltd against the decision of the Council of the London Borough of Hackney.
- The application Ref 2021/0807, dated 12 March 2021, was refused by notice dated 26 May 2021.
- The application sought planning permission for demolition of existing buildings on site and erection of a part 3, 4, 5, 6 storey building to include commercial floorspace at ground floor and 9x self-contained residential units without complying with a condition attached to planning permission Ref 2020/0385, dated 12 June 2020.
- The condition in dispute is No 6 which states that: 'The development hereby approved at ground floor level shall be used for B1a (offices) and for no other purpose (including any other purpose in any class in the schedule to the Town and Country Planning (Use Classes) Order 1987, unless otherwise agreed with in writing by the Local Planning Authority.'
- The reason given for the condition is: 'Changes of use as permitted by the Town and Country Planning (General Permitted Development) Order 1995 are not considered appropriate in this case under policy.'

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Rendlesham (Holdings) Ltd against the Council of the London Borough of Hackney. This application is the subject of a separate Decision.

Preliminary Matter

3. The planning application form gave the name of the applicant as 'Lichfields'. However, a letter dated 16 July 2021 explains that Lichfields was the agent for the application, and that the application and appeal were made on behalf of Rendlesham (Holdings) Ltd. The cover letter submitted with the application advised that it was submitted on behalf of Rendlesham (Holdings) Ltd. Other documents submitted with the application including the Community Infrastructure Levy (CIL) Form 1 and the Planning Statement also refer to Rendlesham (Holdings) Ltd as the applicant, and that is therefore who I have identified as the appellant in the banner heading above.

Background and Main Issue

4. The National Planning Policy Framework outlines that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. It further advises that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

5. Planning permission was granted on the appeal site under application reference 2020/0385 ('the original permission') subject to a number of conditions, and a legal agreement securing planning obligations. A subsequent application under s96A of the Town and Country Planning Act 1990 (reference 2021/0231) resulted in an amendment to the description of development to the form set out in the banner heading above, but did not alter the conditions or legal agreement attached to the original permission.

6. Condition 6 of the original permission provides that the commercial floorspace at the ground floor level of the building shall be used for B1a (offices) and for no other purpose (including any other purpose in any class in the schedule to the Town and Country Planning (Use Classes) Order 1987 ('UCO').

7. Since the original permission was granted, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. These made amendments to the UCO, including the creation of a new 'commercial, business and service' use class (Class E) which incorporates a number of the former use classes, including offices that were formerly within Class B1a.

8. The appellant is seeking to remove Condition 6 of the original permission to enable floorspace at the ground-floor level of the development to be used in commercial, business and service use under the new Class E. In addition, the appellant is seeking to substitute the ground floor plan approved as part of the original permission with a revised proposed ground floor plan (plan no 011 005 REV 03) which annotates the ground floor as 'Use Class E'.

9. With regard to the above background and the evidence before me, the main issue is whether or not the proposal would result in an unacceptable loss of office floorspace.

Reasons

10. Class E includes at E(g)(i) use for the purpose of an office to carry out any operational or administrative functions. However, it also includes a range of other uses including shops, financial and professional services, restaurants and cafes; uses such as gyms, nurseries and health centres; as well as uses for research and development and any industrial purposes which can be carried out in a residential area without detriment to the amenity of that area. The proposal would enable the ground-floor commercial space to be used for any of the purposes listed within Class E, and because there could be no certainty that the end use or uses would include offices, it could effectively result in the loss of the approved office floorspace from the site.

11. Policy LP27 of the Hackney Local Plan 2033 (adopted 2020) ('LP33') seeks to protect and promote office floorspace in the borough, and while it refers to B1 and B1a use classes, it is therefore relevant to the proposal. In addition to directing new office developments to the most sustainable locations, Policy

LP27 identifies at Part I criteria that must all be met for development involving the net loss of existing office floorspace outside of Priority Office Areas to be permitted. Broadly, these criteria require:

i. robust marketing evidence demonstrating that there is no demand for use of land or floorspace as it exists, and that the possibility of alternative employment generating use has been fully explored;
ii. that any new employment use provides a range of higher quality, more flexible floorspace and preferably a higher density employment than the previous use; and
iii. demonstration that the new commercial floorspace being provided has a strong likelihood of being occupied through the submission of a detailed marketing strategy.

12. The appellant's evidence includes a letter from a marketing agent which comments that there is currently no office market to speak of and that take up of space is not envisaged to improve until at least 2022. It suggests that there will be a large oversupply in office space over the coming years, and that it is not believed there would be a good demand for the appeal property having regard to its location which is not within a desirable office destination, with poor transport links and no amenities close by.

13. I do not doubt the professional experience of the marketing agent, but the letter is dated 18 February 2020, more than a year before the submission of the application to the Council. No update on trends and market conditions, including the envisaged improvement in take up of space in 2022, has been provided as part of the appeal to indicate that the position remains current. In addition, the evidence before me does not indicate that the property has in fact been marketed for office use. Accordingly, I can not be sure that it would be of little interest to potential office use occupiers, and I find I can give only very limited weight to the appellant's assertion that there would not be good demand for the space.

14. In my assessment, the submitted information falls far short of offering the robust marketing evidence that would be required under part I.i of Policy LP27 to show that there is no demand for the floorspace in office use.

15. The intended use would be flexible and the proposal would increase the range of potential future occupiers for the site. However, there is little detail to demonstrate the potential employment opportunities that could be supported by the appeal, and it has not been shown that the proposal would offer higher quality, more flexible floorspace in accordance with part I.ii of Policy LP27. There is also no detailed marketing strategy demonstrating that the proposed Class E floorspace would have a strong likelihood of being occupied as required by part I.iii of Policy LP27.

16. Given the above, I can only conclude that the proposal to remove Condition 6 would conflict with the requirements of Policy LP27 of LP33.

17. I appreciate that the reasons given by the Government for the changes to the UCO included providing flexibility for businesses to adapt and diversify to meet changing demands, and that this is likely to be important in supporting recovery from the economic impact of Coronavirus. The appellant has further highlighted comments by the Government that the changes could support the

revival of commercial uses and repurposing of premises with the aim of creating a new approach which works better for modern economy and society.

18. However, I must consider the appeal proposal according to its individual circumstances and merits. In this case, Condition 6 restricts the use of the commercial floorspace on the site to office use, and I do not consider that the current economic climate or general support for increased flexibility in national or local policy are, in themselves, compelling evidence that the condition is no longer reasonable or necessary.

19. The reason given for Condition 6 was that changes of use that would otherwise be permitted are not considered appropriate in this case under policy. In this regard, the officer report for the original permission indicated that the car repair workshop which previously occupied part of the appeal site was considered to be an employment-generating use. This employment use would be lost, but in granting the original permission, the Council considered that the requirements of policies of the Core Strategy and the Development Management Local Plan documents that were extant at the time, and which generally sought the retention of employment floorspace, would be addressed by the provision of office space which would see an uplift in potential employment opportunities on the site. It is against this background that Condition 6 was imposed, seeking to retain the office use on the site as replacement employment floorspace.

20. Although the Core Strategy and the Development Management Local Plan have now been superseded by LP33, Policies LP27 and LP28 of the LP33 carry forward objectives to generally protect office and industrial land floorspace in the borough, including in locations outside of priority areas, irrespective of the numbers of people who may actually be employed on a site. The policies were adopted before the changes to the UCO and the effects of Coronavirus, but that does not mean that they serve no useful planning purpose, and I have no firm reason to conclude that their overall objectives and requirements are inappropriate or should be set aside as a matter of principle. In my judgement, condition 6 continues to serve a useful purpose in the context of the requirements of the development plan.

21. I acknowledge the appellant's reference to an oversupply of over 600,000sqft office space in the borough and more space in the pipeline, but I do not know details such as the location, quality or size of available units that this is based on and so I can draw little firm comparison with the space on the appeal site. I cannot therefore be sure that there would be no need for the office space on the appeal site, or that its loss would not be detrimental to the local economy.

22. Similarly, there is little to substantiate the appellant's assertion that demand for small office space in this location is limited, or to show that there is no realistic prospect of the unit being occupied as office space. I agree with the appellant that it would be undesirable for the unit to remain vacant, but I find for the reasons above that there is insufficient evidence to demonstrate that this outcome is likely in the absence of the appeal proposal, irrespective of the location of the site outside of a town centre or priority area for employment with relatively limited other amenities nearby. It is not therefore clear that there would be harm to the vitality or townscape of the area if the appeal were to fail, or that the proposal is essential to secure an occupier. Moreover, the site is not within a town centre location where the appellant refers to policies of

LP33 that acknowledge the need to diversify commercial uses in order to increase the potential for growth, employment and vibrancy.

23. I recognise that the proposal would enable use of the property for a broader range of purposes including as a shop or cafe which could offer a service to nearby residents. However, there is no firm evidence before me to show that there is a lack of shops or services to adequately meet day-to-day needs in this area currently which limits the weight that I afford to this as a benefit.

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise. The changes made to the UCO including the introduction of Class E are an important material consideration, and I appreciate wider changes including to the economy that have occurred since the Council considered the original permission application.

25. However, I find having regard to the background of the site and the provisions of the development plan which seek generally to protect office and industrial land floorspace that the requirement within Condition 6 for continued office space is necessary. In addition, there is no robust marketing information or other compelling site-specific evidence to demonstrate that the site is unsuitable for the permitted office use, or that Condition 6 has, or will continue to, inhibit occupation of the site and the viability or deliverability of the scheme. I do not doubt that there are current challenges to the office sector market in general, including as a result of Coronavirus, but I am not therefore persuaded from the evidence before me that restricting use of the site to office use is unreasonable.

26. Notwithstanding the changes that have been made to the UCO, I therefore find that Condition 6 remains necessary and reasonable, and that there is a clear justification for a restriction on the use of the commercial floorspace on the site. I conclude that the proposed removal of Condition 6 would result in an unacceptable loss of office space, and conflict with Policy LP27 of LP33. Based on the strength of the evidence before me, I do not find that this conflict would be outweighed by material considerations so as to indicate that a decision should be made other than in accordance with the development plan. Accordingly, I do not consider that Condition 6 should be removed.

Other Matters

27. The original permission was subject to a legal agreement securing planning obligations under the provisions of s106 of the Town and Country Planning Act 1990. In response to a query I raised with the main parties, the appellant indicated that a Deed of Variation ('DofV') would be necessary to secure the planning obligations associated with the original permission in the event that I were to allow the appeal. The appellant subsequently indicated that a DofV had been prepared for signatures. I have not received a signed and executed copy of the DofV, but as I am dismissing the appeal, it would not be required.

Conclusion

28. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR