



Appeal Decision

Site visit made on 8 March 2022

by C Shearing BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal Ref: APP/T5720/W/21/3276442

12A Deer Park Road, South Wimbledon, London SW19 3TL

- 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 Ruslan Aliyev against the decision of London Borough of Merton Council.
 - The application Ref 20/P2018, dated 17 June 2020, was refused by notice dated 17 May 2021.
 - The development is described as 'continued use of the premises as a 16 bedroom house in multiple occupation (HMO)'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have observed that the development has been carried out and the premises is occupied. The cycle parking area shown on the supporting plans has not been installed in full.
3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. There are no substantive changes relevant to the appeal before me and therefore no interested parties would be prejudiced by my consideration of the 2021 version of the Framework.

Main Issues

4. The main issues are:
 - i. The effect of the development on the function of the designated Strategic Industrial Location and the supply of sites for industrial purposes;
 - ii. Whether the development provides an acceptable standard of living conditions for its occupiers, with particular regard to noise, air quality and living facilities, and;
 - iii. Whether the development supports sustainable means of transport with particular regard to cycle storage.

Reasons

Effects on the designated Strategic Industrial Location

5. The appeal site is located centrally within a busy Strategic Industrial Location (SIL), which is protected by local Policy CS 12 of the Merton Core Planning

Strategy 2011 (the CS) to ensure that it contributes towards business, industrial, storage and distribution functions. Policies E4 and E5 of the London Plan 2021 (the LP) reiterate the need for a supply of land and premises to meet current and future demand for industrial uses and states that such uses within SILs should be maintained. The development has resulted in the loss of an area of office space which supported the industrial function and for which there is an identified local need. As such, its loss conflicts with the above policies.

6. In addition, the development has resulted in the introduction of a noise-sensitive use within an industrial location where noise is inherent. I note the appellant states there have been no complaints or issues with the surrounding businesses. However, the need to protect occupiers of the development from noise disturbance in the future could affect the functioning of the nearby noise-generating uses and their ability to expand or intensify. This would further undermine the role of the SIL and the purposes of its designation. While there are already some examples of isolated residential uses nearby, this issue would be significantly intensified by the continuation of the use and the occupation of the site by up to 22 occupants.
7. The appeal development causes harm to the function of the designated Strategic Industrial Location and the supply of sites for industrial purposes. As such it would conflict with Policies E4, E5, D13 and D14 of the LP; Policies DM E1 and DM EP2 of the Merton Sites and Policies Plan and Policy Maps 2014 (the MSPP), and Policy CS12 of the CS, which together seek to protect the function of such SILs and require development to minimise the implications of new development on existing noise-generating uses. These policies are broadly consistent with the Framework where it states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt, and that significant weight should be placed on the need to support economic growth and productivity.

Living conditions of occupants

8. The appeal site is surrounded by predominantly industrial and commercial uses, although there are also some isolated examples of residential units nearby. The Council have identified that there is one nearby use which currently operates across 24hrs a day.
9. The site is set back from the main roads which serve the industrial estate and at the time of my site visit, during typical operating hours in the middle of the day, I found the immediate area to be relatively quiet. This is, however, only a snapshot in time. The site neighbours a forecourt to the north and at the time of my visit the parking areas to the east and west of the site were heavily used. The site is also surrounded by a range of industrial uses which have the potential to cause noise disturbance to occupiers of the development. Given the development is served by predominantly single glazed windows and as the majority of the rooms are served by a single window, there is a strong likelihood that noise from the nearby uses causes significant noise disturbance to occupiers.
10. In the absence of a noise report or survey information to the contrary, I find the development provides an unacceptable standard of living conditions in respect of noise. While the development benefits from an HMO license, this is managed by separate Environmental Health legislation and does not

necessarily mean that the standard of accommodation is acceptable in planning terms.

11. Due to the raised location of the development on the second floor and its set back from the main roads within the estate, and based on the evidence before me, occupants of the development are not subject to unacceptable levels of air quality.
12. Through being located on the second floor of the building, the windows of the development benefit from an unobstructed outlook over the tops of the neighbouring buildings. While the views are predominantly of the industrial estate, the level of outlook and the levels of natural light experienced by the development are acceptable. The nature of the views are not considered to be harmful to living conditions in this instance. During my site visit I found that windows were openable, and there was appropriate ventilation for the occupiers.
13. The facilities include two separate toilet areas with separate cubicles for showers and toilets, and separate kitchen areas at either end of the building. This is adequate to serve the needs of occupiers and appeared to be appropriately managed. While the development does not benefit from any outdoor amenity spaces, I observed that there is some public open space within walking distance of the site which, in this case, is adequate for the occupiers of the development. Other matters relating to the management of entry security systems, deliveries and mail are matters that could be addressed by condition where necessary were the appeal to be allowed.
14. However, as the development does not provide satisfactory living conditions for occupiers in terms of noise disturbance, it is contrary to LP Policies D3, D13 and D14 which among other things, require development to manage and mitigate against noise to improve health and quality of life. The scheme conflicts with Policy DM D2 of the MSPP which relates to amenity of development and protection from noise impacts. These are broadly consistent with the Framework, where it states that decisions should avoid noise giving rise to significant adverse impacts on health and quality of life.
15. There is no conflict with MSPP Policies DM EP2 and DM EP4 as they relate to air quality and the impact of noise from new development on existing uses, which is not the case here. There is also no breach of MSPP Policy DM H2 which relates to housing mix, nor the criteria for shared housing contained in Policy DM H5 or CS Policies CS9 and CS14, which relate to housing need and design.

Sustainable transport

16. The supporting plans show an area for cycle parking at the lower ground level. This area is easily accessible to occupants and benefits from a degree of natural surveillance due to its location outside the HMO entrance and through being directly outside the lower ground level windows. This area could accommodate the required cycle parking and is fit for purpose, secure and well-located. As such the development would support the use of sustainable means of transport by future occupiers and would comply with the aims of LP Policy T5 and CS Policy CS18 insofar as they relate to the design of cycle storage areas.

Other Matters

17. While the appellant suggests that prior approval was granted in 2013 for change of use of the site to self-contained flats, the Council's decision notice states that the application for prior approval was refused (ref 13/P2132). Nonetheless, such a scheme was not implemented and the Council have subsequently imposed an Article 4 direction on the area which removes permitted development rights for that type of change of use. On the basis of the information before me, I am not therefore satisfied that the use of the appeal site could otherwise be changed to a residential use through the permitted development or prior approval processes. I afford this fallback minimal weight.
18. The development provides 16 HMO rooms and accommodation for up to 22 people. As such the development makes an important contribution to the supply of flexible and affordable accommodation for particular types of occupiers and serves an identified local need. Despite this, as the standard of accommodation does not provide appropriate living conditions to its occupiers, the weight I afford to this benefit is limited.
19. While I acknowledge the general provision of permitted development rights for change of use away from commercial and industrial uses, their presence alone does not mean that less weight should be afforded to the relevant policies of the development plan. This is particularly the case here as the Council have since undertaken steps, through the Article 4 direction, to control uses in this particular area.
20. The appellant's planning statement refers to an appeal decision for change of use of an office to a dwelling in Brighton (ref APP/Q/1445/A/13/2200736). Based on the information provided, in that case, the Inspector considered it likely that prior approval would otherwise be granted for that development. This is not the case here for the HMO use. Furthermore, there are differing policies and local circumstances applicable in this case. I therefore do not consider that the two are directly comparable and that appeal does not alter my assessment.
21. The lawfulness of the residential use is not a matter for this appeal. While the development has not been found to cause harm in respect of other issues including transport, accessibility to services, neighbouring living conditions, character and appearance and energy efficiency, this lack of harm is a neutral factor.

Conclusion

22. The development causes harm to the supply of commercial and industrial premises and to the long term function of the designated SIL. In addition, the development does not provide satisfactory living conditions to its occupiers in terms of noise disturbance. I have not identified harm in terms of sustainable transport options, however this is a neutral matter.
23. I find the policies applicable in the above assessment to be consistent with the objectives of the National Planning Policy Framework (the Framework) insofar as they are relevant to the appeal. The development would be contrary to the development plan as a whole and this conflict is not outweighed by other

material considerations in this instance. The appeal should therefore be dismissed.

C Shearing

INSPECTOR