



Appeal Decision

Site visit made on 26 July 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th August 2022

Appeal Ref: APP/X5210/W/21/3288089
107 King's Cross Road, London WC1X 9LR

- 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 Husseyn Guzel against the decision of The Council of the London Borough of Camden.
 - The application Ref 2021/3394/P, dated 12 July 2021, was refused by notice dated 19 November 2021.
 - The development proposed is Erection of railings to the front elevation, front stairs to the basement, opening of lightwell to the front and inclusion glass glazing to the basement. Change of Use of Office Storage (Class E) to residential basement flat (C3) (Retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The basement unit is currently in residential use (Use Class C3) and the development has been carried out. As such, the appellant is seeking retrospective planning permission.
3. I have used the description of development as included on the Council's decision notice. This more accurately reflects the development than that included on the planning application form and it also reflects the description provided by the appellant on the appeal form.

Main Issues

4. The main issues are:
 - The effect of the development on the provision of employment premises within the Borough.
 - The effect of the development on the character and appearance of Bloomsbury Conservation Area.
 - Whether the development provides an adequate standard of living accommodation for occupiers.
 - The effect of the development on highway safety and the use of sustainable modes of transport, with particular regard to whether provision has been made for car-free development.

Reasons

Employment premises

5. The appeal site comprises the basement and the opened up light well to the front of 107 King's Cross Road. There is an hairdressers on the ground floor with residential units provided on the upper floors. The appellant and the Council both consider that the basement was formerly an office ancillary to the ground floor Class E use.
6. Camden Local Plan (2017) (the Local Plan) Policy E2 states that the Council will resist development of business premises and sites for non-business use unless it is demonstrated to the Council's satisfaction that the site or building is no longer suitable for its existing business use (criterion a) and that the possibility of retaining, reusing or redeveloping the site or building for a similar or alternative type and size of business use has been fully explored over an appropriate period of time (criterion b).
7. The Local Plan text (paragraph 5.39) clarifies that, in such instances, the applicant must submit evidence of a thorough marketing exercise, sustained over at least two years. The premises should be marketed at realistic prices, including a consideration of alternative business uses and layouts. There is no substantive evidence to indicate that the appellant has done this.
8. The appellant has indicated that the basement of the premises has been vacant for some considerable time since the work was undertaken for the erection of the railings to the front elevation. However, it is not clear whether and for how long any marketing of the premises took place. The appellant has referred to the implications of the pandemic in terms of the demand office development. However, without any substantive evidence to support the assertion that demand has fallen, this consideration does not carry any significant weight.
9. The Local Plan text explains that the term 'business use' for the purposes of applying Policy E2 means uses falling within B Use Classes and other sui-generis business uses. Whilst the Use Classes Order 1987 has since been amended such that B Use Classes have been subsumed into a new Use Class E, the Local Plan is sufficiently clear that Policy E2 applies to office uses and other particular sui generis uses as opposed to Class E uses in general.
10. The evidence before me is not sufficient to determine whether the former use of the basement falls within this remit, bearing in mind that it is common ground that the former use was ancillary to the ground floor retail use. Indeed, I have not been provided with any substantive evidence to demonstrate that the use of the basement formerly comprised solely of an office use (as opposed to an ancillary office use associated with the retail unit).
11. Therefore, despite my conclusion that the appellant has not provided evidence to demonstrate that the property has been marketed for a sufficient period of time, it is not possible for me to establish whether the development conflicts with Policy E2 or indeed whether it has a harmful impact on the provision of employment premises within the Borough. Nonetheless, given that I am dismissing the appeal on other grounds it is not necessary to consider this matter further.

Conservation Area

12. The appeal site is located within the Bloomsbury Conservation Area (CA). Under section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I am obliged to pay special attention to the desirability of preserving or enhancing the character and appearance of the CA.
13. The CA primarily derives its significance from its grid of streets enclosed by mainly three and four storey development which has a distinctly urban character, with broad streets interspersed by formal squares which provide landscape dominated focal points.
14. The appeal site is within sub-area 14 of the CA as set out within the Bloomsbury Conservation Area Appraisal and Management Strategy (2011) (the CAAMS). The CAAMS notes that there is much uniformity in appearance within this sub-area, within which streets generally follow an east-west pattern and are of a generous width.
15. The CAAMS also outlines that varied cast iron railings, separating basement lightwells from pavements, are a characteristic feature of the wider CA (Para 3.30). However, paragraph 5.47 of the CAAMS states that where the introduction of shops has resulted in the infilling of basements and the streetscape is characterised by the pavement extending to the building, the excavation of the basement would not normally be acceptable.
16. The appeal site itself is located within a terrace where the lightwells of basements have been covered over to the front of all ground floor retail units. Indeed, this side of King's Cross Road, leading up to Britannia Street is characterised by retail uses at ground floor, few if any of which include railings and lightwells to the front. This creates a consistent character and widens the streets, opening up the retail frontages. This consistency makes a positive contribution to the significance of the CA as recognised by the reference to the wider busier streets at paragraph 5.259 of the CAAMS.
17. Whilst there are many examples of railings and lightwells nearby (including opposite the appeal site and to the south on King's Cross Road) these are all set within different contexts where there is less consistency between the ground floor uses and their relationship with the street scene. As such, these examples do not provide a justification for the development.
18. Within this context the development is not in keeping with the character of the street scene, with the railings, lightwell and glazed basement window all harmfully diminishing the consistent pattern of development on this side of King's Cross Road. As such, alterations in the design of the railings used (as suggested by the appellant) would not overcome this harm. Indeed, the design of the railings themselves is not dissimilar to other varied designs within the surrounding area. However, the lack of a concrete plinth beneath the railings and the glazed basement window both exacerbate the harmful visual impact of the development.
19. Whether or not historically the basement included access, railings and a lightwell is not the determinative factor in considering the effect of the development. This is because the character and appearance of this part of King's Cross Road has changed over time. Indeed, the currently consistent

- appearance of ground floor retail uses and their relationship with the street is now a defining characteristic of this part of the CA (CAAMS Paragraph 5.47).
20. Therefore, having regard to the desirability of preserving or enhancing the CA, I conclude that the development causes 'less than substantial harm' within the meaning of Framework Paragraph 202.
21. The development does not preserve the character and appearance of the CA. As such, and for the reasons outlined above, it conflicts with Local Plan Policies D2 and D1, which seek in part to preserve or enhance the historic environment and heritage assets.
22. For the same reasons, the development also conflicts with the general design guidance contained within the Framework and in particular Framework Paragraph 130 which requires that development is sympathetic to local character.
23. I apply the relevant provisions of the Framework in relation to heritage assets in the 'planning balance' below.

Standard of Accommodation

24. The development includes a full height glazed window to the front of the basement dwelling. During my site visit I observed that this provides sufficient access to natural light, such that the development provides an acceptable standard of accommodation to occupiers. The living accommodation provides a basement flat and as such, the outlook from the dwelling will inevitably be restricted. The full height glazed window would provide sufficient outlook in this context.
25. For these reasons the development complies with Local Plan Policies A1 and D1 which require new development to protect living conditions and ensure a high standard of accommodation, respectively.

Car-free development

26. Local Plan Policy T2 outlines that the Council will limit the availability of parking and require all new developments in the Borough to be car-free, through the use of legal agreements to ensure that future occupiers are aware that they are not entitled to on-street parking permits. The evidence, including my observations during the site visit, indicate that there are strict parking controls in the surrounding area. As such, in order to ensure that the development does not lead to an increased pressure on parking and subsequently adversely effect highway safety, I consider that a legal agreement is necessary in this instance.
27. The appellant has provided a planning obligation which seeks to make provision for car-free development. However, the mortgagee is listed as a party to the agreement, yet they have not signed the agreement. As such, the planning obligation is not legally binding against all owners of the site and the obligation cannot properly be considered. It is therefore not necessary for me to consider compliance or otherwise with the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
28. For these reasons, the development could lead to increased pressure for on-street parking locally. Given the absence of sufficient available on-street parking this could lead to obstructions to the highway and subsequent adverse

effects on highway safety. The development is therefore contrary to Local Plan Policy T2 as well as Policy T1 which requires new development to promote the use of sustainable modes of transport.

29. The development would also likely harm the living conditions of occupiers as a result of the inconvenience and disruption caused by the lack of access to a regular and convenient parking space (in the absence of a legal agreement to ensure that they are aware of this in advance). It is therefore also contrary to Local Plan Policy A1, which in part seeks to protect living conditions.

Other Matters

30. For clarity, there is insufficient evidence to confirm whether or not the development has immunity from enforcement action due to the passage of time since it was implemented. Regardless, this is not a matter which I can make a determination on in the context of this appeal.
31. The appellant has indicated that if I determine that the residential use should not be allowed then the access to the ground floor is still necessary. However, the plans submitted with the appeal indicate that access was originally provided via an internal staircase and as such this is not a matter which alters my conclusions or approach to this appeal.
32. The appellant makes reference to permitted development rights which he suggests would allow the change of use to occur in any event, thus providing a fallback position. The appellant does not cite any particular part of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). However, the Council makes reference to Class MA which permits (subject to limitations and conditions) development consisting of a change of use of a building and any land within its curtilage from a use falling within Use Class E (commercial, business and service) to a use falling within Use Class C3 (dwellinghouses).
33. For development falling within the ambit of Class MA to be permitted development the developer must first apply to the Council for a determination as to whether the prior approval of the authority will be required. Considerations include the provision of adequate natural light in all habitable rooms of the dwellinghouses. Clearly this is a matter of contention between the parties. Whilst I have found no harm in this regard, that is on the basis of the development as it exists as opposed to that which existed previously. In other words, the consideration of access to natural light would need to take account of the lawful development as opposed to the existing development which includes a large, glazed window.
34. In the absence of any substantive evidence that these issues have been addressed, I do not consider that there is a realistic prospect of the fall-back development being implemented and it does not therefore carry any significant weight in the determination of this appeal.

Planning Balance

35. The appellant refers briefly to Framework Paragraph 11d. However, there is no substantive evidence before me to indicate that the development plan policies are out-of-date.

36. Framework Paragraph 202 requires that less than substantial harm (to the CA) is weighed against the public benefits of a proposal including, where appropriate, securing the heritage asset's optimum viable use. The development includes social and economic public benefits associated with the addition of one dwelling to the housing stock. There are also social and economic public benefits from the small increase in support for local services and facilities.
37. However, given the relatively small scale of the development, these public benefits can only be attributed moderate weight. Conversely, the less than substantial harm to the heritage asset should be afforded great weight, in line with the provisions of Framework Paragraph 199. As such, the modest public benefits of the development do not outweigh the less than substantial harm.

Conclusion

38. There is insufficient substantive evidence before me to confirm whether the development harms the provision of employment premises within the Borough. However, I have found that the development does provide an adequate standard of living accommodation.
39. Notwithstanding this, the absence of harm in this regard does not outweigh the harm which the development causes to the character and appearance of the CA nor the harm caused by the lack of a suitable mechanism to secure a car-free development.
40. As such, the development conflicts with the development plan taken as a whole and there are no material considerations of sufficient weight to indicate a decision other than in accordance with it.
41. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR