



Appeal Decision

Site visit made on 5 July 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2022

Appeal Ref: APP/U5360/W/21/3283971

17-33 Westland Place, London, N1 7LP

- 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 K Pankhania of Acre City Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref: 2021/1201, dated 5 October 2020, was refused by notice dated 4 September 2021.
 - The development proposed is described as: Erection of a double basement and five storey building to accommodate a hotel with 110 bedrooms (class C1).
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a double basement and five storey building to accommodate a hotel with 110 bedrooms (class C1) at 17-33 Westland Place, London, N1 7LP in accordance with the terms of the application, Ref 2021/1201, dated 5 October 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The planning application form sets out a lengthy description of the proposed development with detailed references to a previous planning permission for the site. The Decision Notice issued by the Council describes the development as 'Erection of a double basement and five storey building to accommodate a hotel with 110 bedrooms (class C1)'. Although there is nothing that would indicate that this description was agreed with the appellant, I note that the appellant has adopted this description on the appeal form. The description used by the Council adequately and succinctly describes the development proposed and, therefore, I have also used this for the purposes of the appeal.
3. From the submitted evidence, the site has a quite lengthy planning history, culminating in a planning permission granted in February 2019 for the erection of a double basement and five storey building to accommodate an 87 bedroom hotel (class C1) at lower ground to fourth floor level and 818m² of office floorspace (class B1) at basement level (Planning Permission Ref: 2017/2123). A non-material amendment to this planning permission was subsequently granted in December 2019 to alter the development description to remove the specific references to the number of hotel rooms and the quantum of office space. The planning permission was then further amended by way of an application under Section 73 of the Town and Country Planning Act 1990 (as amended), hereinafter the Act, to substitute new drawings for those previously approved (Planning Permission Ref: 2019/1733, granted in February 2020).

4. A planning permission granted under Section 73 of the Act creates a new planning permission for the development subject to a different set of conditions. The appellant states that it is this latter planning permission (Ref: 2019/1733) which has been implemented.
5. I saw when I visited the site that construction of the building is well advanced and that the shell of the building has been erected with internal floors in place, although the shell was not yet weathertight. As the building was encased in sheeted scaffolding, it was not possible to discern whether it was being constructed in accordance with the submitted and approved drawings. However, there is no evidence before me that would indicate that this is not the case.
6. The appellant's evidence variously refers to the proposal as a variation of Planning Permission Ref: 2019/1733 and a change of use of the basement. Whilst this would be the practical effect of granting planning permission for the current application, the office use of the basement area has not commenced and could not do so unless and until the building was completed and occupied in accordance with the terms of Planning Permission Ref: 2019/1733.
7. Similarly, the planning application that forms the subject of this appeal was not made under Section 73 of the Act and, in any event, having regard to the Court of Appeal judgement in *John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited* [2019] EWCA Civ 1868, 2019 WL 05699117, Section 73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission, that is, the description of the development for which the original permission was granted.
8. The appeal proposal is, therefore, a new planning application for the development of a double basement and five storey building to accommodate a hotel with 110 bedrooms, albeit that it relies in part on being a building that is already under construction under the terms of a different planning permission.
9. Section 55 of the Town and Country Planning Act 1990 (the Act) describes development as the carrying out of building operations, or the making of material changes of use, as opposed to their retention or continuation. Section 73A of the Act makes allowance for the submission of a planning application for development which has been carried out before the date of the application and, consequently, I have considered the appeal on the basis that the proposal is for a new hotel as described above.

Main Issue

10. The main issue in this appeal is the effect of the proposal on the supply/provision of office floorspace and/or residential accommodation in the area having regard to the policies in the development plan.

Reasons

11. The appeal site is located in a mixed use area containing various commercial uses together with residential uses. The site is within the Central Activities Zone (CAZ) identified in Policy SD4 of the London Plan 2021 (the London Plan) and within an area which is designated a Priority Office Area (POA) by Policy LP26 of the Hackney Local Plan 2020 (the Local Plan).
12. Local Plan Policy LP25 sets out that large scale hotels, those comprising 50 or more rooms will be permitted in the CAZ and major town centres where there is

an identified need that the Council deems to be greater than the identified need for other policy compliant land uses. Local Plan Policy LP27 allows for hotel development in POAs to be permitted where the development forms part of an employment-led, mixed-use scheme; is appropriate to the characteristics and functioning of the site; and will not compromise the on-going operations of businesses in the POA.

13. The Council accept that there is capacity for the provision of further hotel rooms in the Borough and that the location of the site in the CAZ is appropriate in principle for an enlarged hotel use. It also accepts that the proposal would not result in an overconcentration of hotel uses in the surrounding area.
14. The Council's principal objection to the scheme is that the office floorspace proposed by the previously permitted development would be replaced in the appeal scheme by additional hotel rooms and, as such, the proposal does not include any office floorspace. Part C of Local Plan Policy LP25 sets out a number of criteria against which proposals for new visitor accommodation will be assessed. The Council do not dispute that the proposal meets most of the criteria set out in Part C. However, it is contended that the proposal does not meet Criterion (iii) which expects proposals for visitor accommodation to not result in the loss of opportunities to provide conventional C3 housing or employment uses in line with Policies LP12, Housing Supply, and LP26, New Employment Floorspace.
15. Local Plan Policy LP26 sets a target for 118,000m² of new office floorspace by 2033 and sets out that in POAs office led development will be supported. Neither party has submitted any definitive evidence that illustrates delivery of office floorspace in the Borough against this target. From the evidence that I do have, the previously approved scheme would have made a very modest contribution towards meeting this target, 818m² as specified in the original planning permission, although it is not clear whether this was reduced by subsequent amendments.
16. Policy LP26 also sets out that new development in designated employment areas, which include POAs, should maximise employment floorspace. Local Plan Policy LP27 expects new development within designated POAs to be employment-led and have the former B1 use class¹ as the primary use. In addition, it expects at least 60% of the floorspace across the area that includes the current Shoreditch POA and part of the Wenlock POA to be B1 uses. London Plan Policy E2 likewise expects the provision of a range of B Use class business space to meet the needs of small to medium sized firms.
17. The appellant contends that these policies are out of date as a result of both changes to the Use Classes Order and changes in working patterns caused by the coronavirus pandemic. I have, however, noted that the Greater London Authority have published an explanatory note on applying the Use Classes Order to the London Plan, as this was written and submitted for examination prior to the changes to the Use Classes Order coming into effect. This indicates that references to Class B1(a) should be read as referring to Use Class E(g). As a

¹ Offices, research and development, or industrial processes, which can be carried out in a residential area without detriment to its amenity. This Use Class was subsequently incorporated into the new Use Class E as Class E(g) by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. SI 2020 No. 757. For the purposes of this decision, I have continued to refer to former Use Class B1 as this is the wording used in the relevant development plan policies.

consequence, whilst there has been a change, it is not so fundamental as to render the policies out of date or inoperable.

18. I also accept that the pandemic suppressed demand for traditional office accommodation, however, I would agree with the Council's position that it is too early to determine whether this is a long term or permanent trend. Similarly, I do not consider that this would render the policies out of date.
19. The appellant's evidence does, nonetheless, indicate that there are increased vacancy rates and longer void times on office premises, potentially as a result of an increase in supply in the years preceding the pandemic and schemes that had been commenced being built out. The appellant's evidence also recognises that there is still a relatively robust demand for office space.
20. The Council has not submitted any substantive evidence that would indicate that there is an undersupply of office accommodation in the POA or that the target for providing new office floorspace in Policy LP26 is at risk of not being met.
21. I observed when I visited the site that in the vicinity of the appeal site there were a fairly large number of other buildings that were in whole, or in part, in office and/or shared workspace use. I also observed that there were a number of signs advertising office space to rent.
22. Local Plan Policy LP27 expects new development involving the provision of office floorspace to comprise well designed, high quality buildings and floorspace that is flexible/adaptable to accommodate a range of unit sizes and types with good natural light, suitable for sub-division and configuration for new uses and activities. This echoes London Plan Policy E2 which states that development of B Use Class business uses should ensure that the space is fit for purpose having regard to the type and use of the space.
23. I have not been provided with a copy of the drawings from the previously approved scheme showing the proposed office accommodation. However, it is clear that this was to have been located in the lower basement level of the building. From the plans submitted with the current application, it is nonetheless evident that there would be severely restricted daylight to the lowest level of the building with only a narrow strip of skylights along most of the western side. In addition, these skylight windows would be within a relatively small space enclosed by tall buildings on all sides which would limit the potential for sunlight penetration into the interior of the perimeter block and result in lower levels of ambient light at ground level.
24. Whilst there is some additional scope for daylighting at the south west corner of the building, where an area projecting beyond the main wall is shown that would provide potential for a lightwell, given the overall floor area and depth of plan of the basement it is unlikely that there would be good levels of natural light within this space.
25. Whilst I do not doubt that the basement area would be useable as office space, I would agree with the appellant's assessment that the lack of natural light and the subterranean location would make this space less desirable to potential future occupiers, particularly as there is no evidence that points to a notable shortfall of available office accommodation.
26. Policy LP27 is permissive of hotel development in the POAs where the development is part of an employment led, mixed use scheme. The appellant

argues that the appeal proposal would generate similar, if not greater, employment than if an office use was incorporated. The policies in the development plan differentiate between proposals for employment uses and proposals for visitor accommodation and whilst the expanded hotel use proposed would undoubtedly generate employment, I have difficulty in seeing it as an employment led scheme in the terms used in the development plan. The appeal proposal is also self-evidently not a mixed use scheme. In this respect it would conflict with Part D of Policy LP27.

27. That said, the previously approved scheme, which is currently under construction, whilst being a mixed use scheme, had only 18% of the overall floorspace given over to office use and similarly could not be said to be truly an employment led scheme. Local Plan Policy LP25 allows for large scale hotels in the CAZ where there is an identified need that is greater than the identified need for other policy compliant land uses. The Council's figures indicate that there is capacity to accommodate the additional rooms within the overall target for visitor accommodation and I have not been presented with any persuasive evidence that the need for office accommodation is so great that losing the potential accommodation that would have been provided by the previously approved scheme would prejudice the implementation of Local Plan Policies LP26 and LP27 and London Plan Policy E2.
28. Although it is cited as part of the reason for refusal, in its Statement of Case the Council has not elaborated further on the loss of opportunities for the provision of housing.
29. Local Plan Policy LP12 sets out a target to deliver 1,330 homes per annum to 2033 and identifies Shoreditch as an area where housing growth is planned for approximately 7000 units. Policy LP12 also sets out that self-contained residential units are the priority residential land use in the Borough and the type of land use for which there is the greatest need. It requires that proposals involving the provision of, among other things, visitor accommodation will only be permitted where it can be demonstrated that it is not feasible to deliver C3 residential development on site. London Plan Policy H1 sets a 10 year housing target for the Borough of 13,280 housing completions between 2019 and 2029.
30. Neither party has provided any evidence in respect of housing supply and delivery in either the Borough as a whole, or in the Shoreditch area. Within their appeal submissions the appellant has produced drawings that illustrate the provision of a two bedroom flat with an external patio area within the basement area. The floorplan drawing (Drawing Number 16L03SK01_basement 10.09.2021) shows that a single aspect flat with the habitable rooms opening onto the patio area. The site section drawing (Drawing Number 16L03SK02_basement 10.09.2021) illustrates that although the ground level to the rear of the proposed building would be lower than the street level, the second basement level would, nonetheless, be well below the ground level at the rear of the building.
31. Whilst the patio area illustrated extends the across the whole length of the flat, it is clear from the drawings that the patio is of restricted width, that it would be partly oversailed by projecting features on the floor above and that ground level planting boxes on the far side of the lightwell/patio area would increase the perceived depth of the external area below ground level. In addition, as set out earlier, the space within which this would be located would be enclosed by tall buildings.

32. Based on these drawings, which I recognise are illustrative only, I would concur with the appellant's position that residential accommodation at this level would have an extremely restricted outlook and would likely have poor levels of natural light. Due to these factors, a flat in this location would not be a pleasant place to live and would not provide a high standard of living conditions for any potential occupiers.
33. From the other drawings provided, I am of the view that it would be impractical to include residential units that would have adequate outlook, daylight, and external space elsewhere in the basement area without fundamentally redesigning the building. Given the advanced state of construction I do not consider that would be likely to be a viable option. Consequently, I am satisfied that it has been demonstrated that it is not feasible to deliver residential development on site.
34. Drawing these strands together, it is common ground that the principle of a hotel use within the CAZ is acceptable. The site is also located within a POA where Local Plan Policy LP27 supports employment led, mixed use, schemes in order to assist in meeting the Council's targets for office accommodation in the Borough. The appeal proposal is not a mixed use scheme, however, I am satisfied that the appellant has demonstrated that it would not be feasible to include residential accommodation within the basement. Whilst the basement level of the building could accommodate an office use, based on the information provided the quality of the accommodation would be less than that which is expected by London Plan Policy E2 and Policy LP27 of the Local Plan. It is indicated by the appellant's evidence that basement office accommodation may be difficult to let, and this is not gainsaid by any substantiated evidence from the Council. It is accepted that there is capacity for the provision of additional hotel bedrooms in the Borough. In addition, there is no evidence that would indicate that the development plan targets for the provision of office floorspace or new housing are not being met or are at risk of not being met.
35. I am also mindful that the previously approved scheme for this site, which is currently being implemented would not strictly meet the requirements for an employment led mixed use scheme as contemplated by the development plan policies. Within this context, I am satisfied that the absence of either office accommodation or self-contained residential accommodation from the proposal is not sufficient grounds to withhold planning permission.
36. I therefore conclude that the proposed development would not cause harm to, or prejudice, the supply or provision of office floorspace and/or residential accommodation in the area having regard to the policies in the development plan. It would not conflict with the relevant requirements of London Plan Policies H1 and E2 or Local Plan Policies LP12, LP25 and LP26. Whilst the proposal would not comply with Parts C and D i. of Local Plan Policy LP27, the material considerations set out above are such as to indicate that permission could be granted for a development that does not entirely comply with a particular Policy in the development plan. There are inevitably tensions between some Policies in a development plan that seek to achieve different objectives. Nonetheless, for the reasons set out above, I am satisfied that the proposal would not conflict with the development plan when it is taken as a whole.

Other Matters

37. The appeal site is located within the Underwood Street Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

requires that when considering a planning application or appeal with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Neither party has submitted any substantive evidence in respect of the significance of the Conservation Area and I have noted that the Council has not raised any objections to the proposal on this ground.

38. From what I saw when I visited the site, the conservation area is a compact area, mainly comprising substantial warehouse and commercial buildings that have been re-purposed to new uses; and a small number of more modern buildings, that have been inserted into the existing urban fabric. A modern, six storey, mixed use, building is located on the corner of Westland Place and Nile Street adjacent to the appeal site. Some small remnants of Georgian housing are present although also re-purposed to other uses, including some with attached shop units fronting city road. The impressive, gabled, 'The Eagle' public house with its corner tower and ornate ground floor frontage is a visual counterpoint to the larger commercial buildings. In so far as it is relevant to this appeal the significance of the conservation area is primarily derived from the architectural interest of the form and typology of the buildings and it has aesthetic value in terms of how the component buildings relate to each other and to the street pattern, and to the spaces that they enclose.
39. From the submitted drawings, the proposed building would be of a comparable height to the surrounding buildings and the long façade with a regular grid of windows would echo the built form of the warehouse/commercial buildings that characterise the area. The proposed building would also be built up from the back of the footway, in common with the other buildings in the area, and have a similar relationship with the highway. This would result in a comparable degree of enclosure to the road as that caused by the existing building around the appeal site. As such, the proposal would have a neutral effect on the character and appearance of the conservation area.
40. The Council has not raised objections to the proposal on any other grounds and, from what I have read and from what I saw when I visited the site, I have no reason to find otherwise.

Conditions

41. Neither party has suggested any conditions that might be required if planning permission were to be granted. As set out in the preliminary matters, permitting the application would result in an entirely new planning permission for the site that, were it to be implemented, would supersede any previous planning permissions. The most recent planning permission for the site, Planning Permission Ref: 2019/1733) contained a number of conditions that were either required to be complied with prior to the first occupation/operation of the hotel use or were operational and ongoing conditions.
42. These conditions related to the submission of an Air Quality Management Plan; the provision of cycle storage and cycle parking spaces; submission of a refuse strategy; submission of details of the kitchen ventilation extraction system; operational noise levels from plant and machinery associated with the hotel use; submission of a Hotel Management Plan; and the provision of obscure glazing and fixed lights to certain windows of the building. There is no evidence before me that would indicate that these conditions would not be necessary in connection with the hotel development proposed by the appeal scheme.

43. Both main parties were notified of these conditions and their views sought on whether the conditions were still necessary and were acceptable to them. The appellant responded that they agreed to the conditions as being necessary. No response was received from the Council. I have therefore imposed these conditions in essentially the same form as they appeared on Planning Permission Reference: 2019/1733.
44. As building works are well advanced at the site, is it not necessary to attach a condition relating to the commencement of the development. However, given the complex planning history of the site and as this would be, in effect, a new planning permission, in order to provide certainty as to what has been granted planning permission, I have attached a condition specifying the approved drawings.

Conclusion

45. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 16L03PL01A; 16L03PL02A; 16L03PL_20; 16L03PLS73_13A; 16L03PLS73_14; 16L03PLS73.21_01; 16L03PLS73.21_02; 16L03PLS73.21_03; 16L03PLS73.21_04; 16L03PLS73.21_05; 16L03PLS73.21_06; 16L03PLS73.21_07; 16L03PLS73.21_08; 16L03PLS73.21_09; 16L03PLS73.21_10; 16L03PLS73.21_11; and 16L03PLS73.21_12
- 2) An Air Quality Management Plan shall be submitted for approval by the Local Planning Authority prior to occupation of the development and the measures identified within the submitted plan shall be implemented in full prior to first occupation of the development.
- 3) Notwithstanding the details shown on the approved plans, full details of secure cycle parking for 31 cycles serving the development site and additional visitor cycle space shall be submitted to and approved in writing by the local planning authority and provided prior to the occupation of the development.
- 4) Prior to occupation of the development hereby approved, a refuse strategy shall be submitted to and approved in writing by the Local Planning Authority. Refuse collection shall only be carried out in accordance with the details thus approved, unless otherwise agreed in writing by the Local Planning Authority.
- 5) Details of all the kitchen ventilation extraction systems shall be submitted to and approved by the Council before the relevant part of the works are begun, and the approved details shall be implemented in full prior to the commencement of the hotel use and shall be permanently maintained thereafter.
- 6) Noise from all plant and machinery shall at all times remain at least 5dB(A) below background levels when measured at any nearby sensitive location, such as residential windows.
- 7) Prior to first use of the hotel, a hotel management plan shall be submitted to and approved by the local planning authority. The plan shall include measures to minimise noise and disturbance to neighbouring occupiers and restrictions on the opening hours of the hotel restaurant and bar. The use shall thereafter be carried out in full accordance with the management plan.
- 8) Notwithstanding the details shown on the approved drawings, all west facing windows on the rear elevation of the proposed building and the first three of the south facing 'bays' of the rear sawtooth facade shall be fitted with obscured glazing and sealed shut, and the glass paving at lower ground floor level shall be obscured and shall be permanently maintained as such.