



Appeal Decision

Site visit made on 26 July 2022

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2022

Appeal Ref: APP/K5600/W/22/3291532

33 Marloes Road, London W8 6LG

- 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 Matthias Hieber against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PP/21/00058, dated 30 December 2020, was refused by notice dated 13 September 2021.
 - The development proposed is described as the amalgamation of basement garden flat and ground floor office use with associated alterations to create family maisonette; replacement rear extension with terrace and staircase to rear garden; re-instatement of front side bay window at basement level.
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Decision

1. The appeal is dismissed.

Preliminary Issue

2. The appeal site comprises a self-contained basement flat and the ground floor level, currently set out as office space, of 33 Marloes Road. While no planning permission exists for office use at ground floor, it is common ground between the main parties that this is its lawful use. In the absence of any compelling evidence to the contrary, I have dealt with the scheme on that basis.

Main Issue

3. The main issue of this appeal is the effect of the development on the availability and range of business premises available in the borough.

Reasons

4. Policy CF5 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019 (the Local Plan) seeks to ensure that there is a range of business premises within the borough to allow businesses to grow and thrive. This is achieved through the protection of offices and office floorspace throughout the borough, except for in specific locations. There is no dispute between the main parties that the appeal site lies outside these locations and therefore the development is contrary to Policy CF5 of the Local Plan.
5. As identified in the justification of Policy CF5, one of the strengths of the borough's office sector is the diversity of location and type of business premises available. I acknowledge that the types of users of the ground floor is restricted by its modest size, stepped and communal access, kitchen and toilet facilities. Whilst the appellant indicates that the property is currently being marketed, little evidence has been submitted detailing when this exercise

commenced, and the level of interest received. In addition, I have limited information before me demonstrating that the office space is, or has been, vacant, and for how long. Therefore, I am unable to determine that the office space could not be occupied. Similarly, I have no substantive evidence before me demonstrating the office space does not meet relevant fire safety standards.

6. I conclude that the loss of office space would have an unacceptable harmful effect on the range of business premises available and contrary to Policy CF5 of the Local Plan which seeks, amongst other things, to protect offices and office floorspace throughout the borough.

Other Matters

7. As the appeal site lies within the Lexham Gardens Conservation Area and close to the boundary with the Edwards Square/Scarsdale and Abingdon Conservation Area, I am required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Given the use of complementary materials and design, subservient form and scale, I consider that the rear extension and replacement bay window would preserve the character and appearance of the conservation area.
8. My attention has been drawn to the lack of office space in properties in the road and specific addresses where other uses have changed to residential, including where floors have been amalgamated. The absence of office space and the number of amalgamated basement and ground floor areas in neighbouring properties does not justify development that conflicts with the development plan. Moreover, as the change of use examples relate to former retail and hostel uses, rather than office space, they represent materially different circumstances to this appeal.
9. I have also been referred to another appeal decision within the borough¹ relating to the change of use of office space to residential. Despite some similarities with this case, as the example relates to the use of a basement floor level with external accessibility issues that limit potential occupants and improvement opportunities, it is not directly comparable with this appeal.
10. I acknowledge that the development would result in improvements to the space, layout and condition of the basement flat, I have no evidence before me to suggest these improvements could not be undertaken without amalgamation with the ground floor. Additionally, I have no evidence that the ground floor office use has resulted in harm to the living conditions of occupiers of the basement flat or other neighbouring properties, with particular reference to privacy and noise disturbance. Similarly, no evidence relating to security issues have been provided. Whilst the amalgamation of floors would provide a larger residential unit which could be occupied by a family, the benefit of a larger unit of accommodation would not outweigh the harm I have found above in respect of the loss of office space.
11. I note the details of discussions with Council officers on this, and another, now withdrawn, application on the site². However, the Council is not bound to

¹ APP/K5600/W/20/3264438

² ref PP/21/00505

accept the recommendations within such discussions. Additionally, comments regarding the Council's handling of the application have not affected my impartial assessment of the planning merits of the case.

Conclusion

12. In conclusion, I find that the development would not accord with Policy CF5 of the Local Plan in respect of the protection of business premises and that the adverse effect of the development would significantly and demonstrably outweigh the benefits when assessed against the development plan as a whole. Consequently, having had regard to all other matters raised, I conclude that the appeal is dismissed.

Juliet Rogers

INSPECTOR