



Appeal Decision

Site visit made on 8 August 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2022

Appeal Ref: APP/U5360/W/21/3288085

Myrdle Mansions, 2 Stamford Hill & 12a Stamford Hill, London N16 6XZ

- 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 Samuel Berger against the decision of London Borough of Hackney.
 - The application Ref 2021/2268, dated 20 July 2021, was refused by notice dated 15 November 2021.
 - The development proposed is described as: retention of infill extensions at first and second floor levels to Stamford Hill elevation; at second floor to Cazenove Road elevation; rear extensions to second floor level; Third floor extension (retrospective); the alteration of two windows to create two doors at ground floor level to Cazenove Road elevation; and the change of use of the first floor of the building to office use (Class B1) and the second and third floors to residential (2x2b 3p, 1x3b 6p, and 1x4b 6p) (proposed) in respect of land at Myrdle Mansions, 2 Stamford Hill, London, N16 6XQ and the change of use of the upper floors from 3 x Studio Flats (C3) to 6 Offices (B1) in respect of land at 12a Stamford Hill, London, N16 6XZ.
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Decision

1. The appeal is allowed and planning permission is granted for retention of infill extensions at first and second floor levels to Stamford Hill elevation; at second floor to Cazenove Road elevation; rear extensions to second floor level; Third floor extension (retrospective); the alteration of two windows to create two doors at ground floor level to Cazenove Road elevation; and the change of use of the first floor of the building to office use (Class B1) and the second and third floors to residential (2x2b 3p, 1x3b 6p, and 1x4b 6p) (proposed) in respect of land at Myrdle Mansions, 2 Stamford Hill, London N16 6XQ and the change of use of the upper floors from 3 x Studio Flats (C3) to 6 Offices (B1) in respect of land at 12a Stamford Hill, London N16 6XZ, in accordance with the terms of application 2021/2268, dated 20 July 2021, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. A signed and dated unilateral undertaking (UU) has been submitted by the appellant. The Council have been given an opportunity to comment on its contents. The UU is considered in the reasoning of my decision below.
3. The description of development in the banner heading and decision has been taken from the application and appeal forms. The Council has used a different description in its refusal notice. The essential and operative parts of the proposal are correct in both respects. Accordingly, my use of the appellant's description does not prejudice either party.

Main Issues

4. The main issues are:

- the effect of the proposal on the stock and quality of employment floorspace in the Borough;
- the effect of the proposal on the provision of housing in the Borough; and
- whether or not an affordable housing contribution is necessary to make the proposed development acceptable in planning terms

Reasons

Background

5. The appeal site's extensive planning history includes three schemes that were dismissed at appeal in September 2020 (the previous appeals). Those decisions related to the unauthorised change of use to residential flats¹ and the creation of 9 flats on the upper floors of No 2 Stamford Hill (No.2)², and the change of use from studio flats to offices on upper floors at No 12a Stamford Hill (No 12a)³.
6. In dismissing those appeals, the Inspector found that the quality of residential accommodation at No 2 was unacceptable, while also resulting in a net loss of employment floorspace. In respect of No 12a, he concluded that the proposed office space was of unacceptable quality and would reduce the area's housing stock.
7. From my reading of the site's planning history, which includes details of enforcement proceedings, the occupation of part of No 2 as residential flats is currently unauthorised development.
8. The appeal scheme proposes the provision of office floorspace at first floor and four residential flats on the second/third floors of No 2. The three studio flats on the upper floors of No 12a would be replaced by six new offices.

Employment floorspace

9. The appeal site comprises two separate properties located a short distance from one another in a frontage containing a mix of commercial and residential uses. The area is well served by services, facilities, and public transport connections.
10. Policy LP27 of the Hackney Local Plan 2033 (adopted 2020) (the Local Plan) seeks to protect and promote office floorspace in the Borough. In addition to directing new office developments to the most sustainable locations. To be considered acceptable, Part I of the policy identifies criteria that must be met for development involving the net loss of existing office floorspace outside of Priority Office Areas. Broadly, these require:

¹ APP/U5360/C/18/3217940 – 2 Stamford Hill, dismissed 13th September 2020;

² APP/U5360/C/18/3231017 – 2 Stamford Hill, dismissed 13th September 2020;

³ APP/U5360/C/18/3237275 – 12 Stamford Hill, dismissed 13th September 2020

- 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.
11. Part A of Policy LP27 states that new development involving the provision of new office (B1a) floorspace must 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, including for occupation by small or independent commercial enterprises.
12. There appears to be some dispute between the main parties regarding the amount of pre-existing office floorspace at No 2, with the Council referring to a figure of 430m², relying on drawings submitted with an earlier application⁴. Those drawings, however, are not before me, while the figure cited by the appellant of 287m² appears to be more consistent with the scale, layout and dimensions of the floorplans that accompany this appeal. Moreover, the pre-existing situation would have related to a building with a smaller overall floor area than the current situation on account of the works that have subsequently taken place. Accordingly, the previous office space would in my view be closer to 287m². This was also the figure referred to by the Inspector when assessing the previous appeals.
13. The proposed development would leave 193m² of office floorspace remaining at No 2's first floor. The resultant shortfall incurred by the proposed upper floor flats, would be mitigated by the provision of approximately 104.5m² of new office floorspace at No 12a. Together, this would amount to around 295.5m², and exceed the pre-existing office floor area at No 2. Therefore, the proposal would not result in the net loss of existing office floorspace in the locality. Moreover, this outcome would not require the marketing evidence referred to above.
14. Unlike the Inspector presiding over the previous appeals, I was able to inspect all the floors of No 12a in relation to the proposal. The proposed offices comprise small yet well-proportioned spaces with sufficient headroom and floor area to comfortably provide seating, a workstation and storage. The windows openings are tall and sufficiently wide to allow ample natural light to enter the rooms, while providing a largely unconstrained outlook of the surrounding townscape. The offices would likely appeal to individuals or small workforces seeking a moderately sized workspace in an accessible town centre location. Together with the large open plan offices proposed at No 2, I am satisfied that the offices at No 12a would provide well-designed, high-quality employment space suitable for a range of commercial B1 uses.

⁴ Local Planning Authority Ref – 2018/4582

15. Although forming part of the appeal site, the appellant does not own No 12a. Accordingly, the provision of the offices at that property would be secured through a UU to ensure that part of the scheme is implemented before the new housing units at No 2. This would also avoid a situation where only one element of the scheme was enacted. The terms of the UU are discussed later.
16. In the previous appeals, the Inspector noted that the top floor would not provide acceptable commercial floor space on account of it appearing cramped and partially within the building's roof space. Yet, I have had the opportunity to inspect the floor in question internally and am satisfied that it would be acceptable in qualitative terms given the suitable area, headroom, and outlook I observed.
17. Therefore, the proposal would have an acceptable effect on the stock and quality of employment floorspace in the Borough and would accord with Policies E1 and E2 of the London Plan 2021 and Policies LP26 and LP27 of the Local Plan. Together these require the retention of existing office and commercial floor space in accessible locations, and the provision of a range of suitable workspace sizes that are acceptable in terms of type, use, size and quality.

Housing provision

18. The Council identifies a loss of housing units in its refusal reasons. However, the loss of three flats at No 12a would be mitigated and enhanced by the provision of 4 dwelling units at No 2. Additionally, the units at No 2 would be larger resulting in an increase of 336.6m² in residential floor area. This uplift would address the Council's concerns despite their preference to retain the flats at No 12a. Moreover, they have not raised any issue in terms of the layout and mix of units proposed at No 2.
19. Accordingly, the proposal would not harm the provision of housing stock in the Borough. It would comply with Policy H8 of the London Plan 2021 and Policy LP24 of the Hackney Local Plan (2020) where they require the loss of housing to be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace.

Affordable housing

20. Policy LP13 of the Hackney Local Plan outlines that residential developments which fall below a 10-unit threshold, will be required to provide on-site provision or payments in lieu up to the equivalent of 50% of housing delivered as affordable housing, subject to viability. This position is also reflected, and elaborated on in more detail, in the Hackney S106 Planning Contributions Supplementary Planning Document (the SPD), published by the Council. However, the policy pre-dates the most recent Framework which states that affordable housing should not be sought for residential developments that are not major developments (i.e. less than 10 units).
21. The supporting text to policy LP13 indicates an acute need for affordable housing in the Borough, the importance of small sites in delivering this, and that these requirements do not place a disproportionate burden on developers. The appellant does not dispute the relevance of the policy, therefore, based on this specific local evidence, the Framework's provisions, do not outweigh the development plan in this instance.

22. The proposal would result in four new residential units, and a net gain of one unit. The Council indicates an affordable housing contribution of £200,000 is required under the terms of Policy LP13.
23. The appellant has submitted an Affordable Housing Viability Report (AHVR), that was included with the application. Despite, having the opportunity to assess the AHVR during the application stage, the Council has not verified its findings. As the scheme is flawed in other respects it chose not to assess whether an affordable housing contribution was viable, despite including it as a refusal reason.
24. This is not particularly helpful for my assessment of the appeal. Nonetheless, in assessing the AHVR I have had regard to the guidance on Viability issued by the Department for Levelling Up, Housing and Communities (updated 1st September 2019) (the viability guidance). The inputs in the AHVR include coverage of gross development value, benchmark land value, costs, land value, local market conditions, landowner premium and developer return. I also note that many of the assumptions applied in the viability that informed the Hackney Local Plan have been used, whereas adjustments to those values have been explained. The AHVR concludes that there will be no surplus generated to allow for financial contributions towards affordable housing. A small contribution could be provided but this would result in reduced developer profits below the figures advised in the viability guidance.
25. From my assessment of the AHVR I am satisfied it has covered the standardised inputs advised by the viability guidance. In the absence of any compelling evidence to the contrary, I have no reason to dispute the conclusions of the AHVR that an affordable housing contribution in this respect is unviable. In view of the more recent and site-specific information outlined in AHVR I have given this matter significant weight.
26. Accordingly, an affordable housing contribution is not necessary to make the proposed development acceptable in planning terms. It accords with Policy LP13 of the Hackney Local Plan (2020) and the SPD where they require proposals to demonstrate the viability of costs associated with affordable housing contributions.

Other Matters

27. Nos 2 and 12a are in separate ownership. The submitted UU contains specific clauses that would ensure that the proposed uses are implemented within a specific timescale of each other. The UU also contains a mechanism which prevents the proposed flats at No 2 from being occupied until the proposed replacement office space at No 12a has been provided. This prevents a situation whereby the loss of the office space at No 2 is not replaced by the new office floorspace within No 12a.
28. Notwithstanding the above, it is, however, necessary that I consider this obligation against the three tests set out in the National Planning Policy Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. The terms of the UU would prevent a situation whereby there would be a shortfall in either office or residential uses at the sites. Without such mechanisms there could be an unacceptable loss of housing and commercial floorspace within the Borough, with consequential effects on the provision of economic and social infrastructure. Therefore, I am satisfied that

the terms of the UU would be necessary to make the development acceptable in planning terms. Furthermore, on the evidence before me, it would be directly related, and fairly and reasonably related in scale and kind, to the development proposed. The obligation therefore meets the relevant tests.

Conditions

29. In addition to the standard time limit condition, I have considered it necessary to include a schedule of plans that the development relates to, for the avoidance of doubt and in the interests of certainty.
30. I have considered the condition suggested by the Council that requires the office use to be provided before the residential use. However, this is not necessary as that matter is covered in the Unilateral Undertaking. In addition, there are enforcement powers available to the Council in the event the UU is not complied with.

Conclusion

31. For the reasons given I conclude that the appeal should succeed.

RE Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this permission.
2. The development hereby permitted shall be completed and retained in accordance with the following plans and documents:
SH2.CA.LP; SH.2.Pre-EX.01 Rev A; SH.2.Pre-EX.02 Rev A; SH.2.Pre-EX.03 Rev A; SH.2.Pre-EX.04; SH.2.Pre-EX.05; SH.2.Pre-EX.06; SH.2.AB.01 Rev A; SH.2.AB.02 Rev A; SH.2.AB.03 Rev A; SH.2.AB-PR.04 Rev A; SH.2.AB-PR.05 Rev B; SH.2.AB-PR.06 Rev B; SH.2.AB.07; SH.2.AB.08; SH.2.PR.00 Rev B; SH.PR.01 Rev A; SH.2.PR.06 Rev B; SH.2.PR.07 Rev A; SH.2.PR.08 Rev A; SH.2.PR.22 Rev B; SH.2.PR.33; SH.12.LP; SH.12a.EX.01 Rev A; SH.12a.EX.02 Rev A; SH.12a.PR.01 Rev A; SH.12a.PR.02 Rev A; Design and Access Statement; Affordable Housing Viability Report.

*****End of Schedule*****