



Appeal Decision

Site visit made on 15 September 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2022

Appeal Ref: APP/V5570/W/22/3301493

41 Tabernacle Street, Islington, London EC2A 4AA

- 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 D Musquet against the decision of London Borough of Islington.
 - The application Ref P2022/0448/FUL, dated 10 February 2022, was refused by notice dated 25 March 2022.
 - The development proposed is the change of use of premises (basement and ground floor) from office to tattoo studio.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of premises (basement and ground floor) from office to tattoo studio at 41 Tabernacle Street, Islington, London EC2A 4AA in accordance with the terms of the application, Ref P2022/0448/FUL, dated 10 February 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The use hereby permitted shall only take place between the hours of 0900 and 1900 on any given day.

Main Issue

2. The main issue is whether or not, having regard to development plan policy, the proposed development would result in a harmful loss of business floorspace.

Reasons

3. The appeal site comprises the basement and ground floor of a four-storey building on Tabernacle Street. It has an established use as office floorspace. The surrounding area is predominantly made up of offices and residential uses. The site is within the Bunhill and Clerkenwell Core Strategy Key Area and is within an Employment Growth Area. It is also within the London Central Activities Zone (CAZ).
4. Policy CS13 of the Islington Core Strategy sets out that the Council will provide employment space for businesses in the borough by, amongst other things, for existing employment space: safeguarding existing business spaces throughout the borough by protecting against change of use to non-business uses, particularly in the CAZ. Development which improves the quality and quantity

of existing provision will be encouraged. In exceptional circumstances loss of employment floorspace might be acceptable in line with considerations which will be set out in the Development Management Policies.

5. Policy DM5.2 of the Islington Council Development Management Policies (DMP) (2013) outlines that proposals which would result in a loss or reduction of business floorspace will be refused unless the applicant can demonstrate exceptional circumstances, including through the submission of clear and robust evidence which shows there is no demand for the floorspace. This evidence must demonstrate that the floorspace has been vacant and continuously marketed for a period of at least two years. In exceptional cases related to site-specific circumstances, where the vacancy period has been less than two years, a robust market demand analysis which supplements any marketing and vacancy evidence may be considered acceptable. The Glossary to the DMP defines business floorspace as activities or uses that fall within the B-Use Class (i.e. offices, industry, or warehousing).
6. For exceptional circumstances to apply, it is necessary to submit clear and robust evidence of vacancy and continuous marketing for a period of at least two years. The appellant has confirmed that the property has been vacant for two years and marketed since July 2020. There is no evidence to dispute the claims. At the time of my consideration of the appeal, such a timeframe would exceed the required two years, despite this not being the case when the Council determined the application. The appellant has also supplied details of viewings that have been undertaken. An assessment has also been provided of other vacant units and their rental values.
7. The Town and Country Planning (Use Classes) Order 1987, as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, no longer includes use class B1 which included offices. Office use now falls under use class E, along with a wide range of commercial, business and service uses. The Council accept, as the appellant suggests, the property could be changed to non-office uses within use class E without the need for planning permission, and thus there would be a loss of office space, but a retention of employment space. This would represent a fallback that is a material consideration in the appeal.
8. The use subject to the appeal is a tattoo studio. It is suggested that this use does not fall within a defined class within the Use Classes Order and is therefore *sui generis*. I have no reason to form a different view. As I understand, a tattoo studio involves visiting members of the public paying for a service administered on site by an employee. As a matter of fact and degree, and as put forward in the appellant's evidence which states the use provides employment for 10 people, such a use is one which generates employment.
9. It therefore follows that, although the proposed use would not fall within the now outdated definition in the glossary of the DMP, it would nevertheless be an employment generating use and thus there would not be a loss of employment floorspace, even though it is *sui generis*.
10. I share the Council's concern that the vacancy and marketing evidence is somewhat less than robust and thus there is minor conflict with the requirements of the policy in this regard. However, the other material considerations in this case, most significantly that the use is one which generates employment, as opposed to one which does not (for example such

as a residential use), combined with the amendments to the Use Classes Order, leads me to conclude that exceptional circumstances have been demonstrated. These circumstances show that there would not be harm to the provision of employment floorspace within the borough, despite the use not constituting a business use as per the glossary of the DMP.

11. Therefore, although the proposed use would result in the loss of business floorspace, I have found no harm would be caused. The proposed development therefore complies with the economic development and employment generation aims of Policies CS7 and CS13 of the Islington Core Strategy (2011), Policy DM5.2 of the DMP, and Policy E4 of The London Plan (2021).

Other Matters

12. The Council have referred me to an appeal where it was held that the loss of business floorspace to residential was unacceptable. Although I do not have full details of the case, it is clear to me that in that example, the proposed use, unlike in the current appeal, was not for an employment generating use. I therefore give it limited weight in the appeal.
13. I note that representations have been received in terms of the proposed use being inappropriate to the character of the area and harm caused to living conditions. The issues raised are not pertinent to the main issue and there is no substantive evidence that the proposal would cause unacceptable harm to living conditions. The area may not have a typical high street appearance; however, it is nonetheless in a central, commercialised, and sustainable location. None of the issues raised would be reason to dismiss the appeal.

Conditions

14. In the interests of living conditions of occupiers of surrounding residential properties, it is necessary to impose a condition restricting the opening hours of the premises.
15. As the proposed development relates to a change of use only, it is not necessary to impose a condition listing the approved plans as suggested by the Council.

Conclusion

16. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR