



Appeal Decision

Site visit made on 16 December 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/P5870/W/22/3296084

First Floor Offices, Hamilton House, 17A Cedar Road, Sutton SM2 5DA

- 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 Permors Professional (Rosehill) Ltd against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2021/01741, dated 20 September 2021, was refused by notice dated 19 November 2021.
 - The development proposed is change of use of the first floor from E (offices) to C3 (residential) to provide 2 self-contained residential units with alterations to rear car parking spaces, erection of detached single storey cycle stores to rear, provision of new fence and trellis to separate private amenity spaces from communal amenity space/parking within the site and associated hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has submitted a revised floor plan drawing at appeal stage omitting previously proposed privacy film on windows to two bedrooms. Having regard to the *Wheatcroft* principles, I do not regard this as a material change to the proposal. The Council has had an opportunity to comment on this drawing during the appeal and would not be prejudiced by my taking this drawing into account.

Main Issues

3. The main issues are:
 - Whether the proposed change of use would be acceptable, having regard to relevant development plan policies and national guidance;
 - Whether the proposed flats would provide a suitable standard of accommodation for future occupants, with respect to outlook, privacy and external amenity space;
 - Whether the proposed development would accord with relevant development plan policies for carbon emissions and water efficiency;
 - Whether the proposed change of use should be car-free, having regard to relevant policies relating to parking and sustainable transport.

Reasons

Change of Use

4. The appeal relates to a detached three storey building with further roof level accommodation. The ground and first floors are in use as offices (Use Class E),

with the second and third floors in residential use as flats (Use Class C3). The proposal seeks the conversion of the first floor offices to two self-contained flats, together with external works to the rear car park to create a private amenity space for the flats, including hard and soft landscaping, fencing and alterations to the existing car parking spaces.

5. The Council accepts that the flats would be suitably located in the town centre with excellent access to public transport. The addition of two flats would maintain an appropriate density of development, in accordance with Policy D3 of the London Plan (March 2021) (the LP21) and Policy 7 of the Sutton Local Plan (February 2018) (the SLP). The Council is also satisfied with the resulting housing mix in accordance with the requirements of Policy 9 of the SLP.
6. Policy 16 of the SLP relates to office development. Part (c) resists the loss of B1(a)¹ offices unless it is shown that the office accommodation is no longer required, to be demonstrated through i) proof of marketing for a 12 month period at a reasonable market value with a recognised agent, and ii) proof that opportunities to reconfigure and reuse the accommodation as offices have been exhausted.
7. In seeking to justify the loss of offices, the appellant refers to the Covid-19 pandemic as having shifted working patterns away from offices to hybrid arrangements and points to the availability of some 17,000 sq ft of offices in Sutton Town Centre. It is added that the existing offices, comprising eight individual rooms, need extensive refurbishment and lack modern facilities such as a reception area, business lounge, meeting room or high speed communications/video conferencing or printing equipment. It is argued that it is not viable to modernise to such standards to compete with other nearby facilities due to the cost, the resulting reduction in lettable floorspace and the need to subsequently increase rents that would not be practical for offices at the lower end of the market.
8. The appellant further sets out that a marketing exercise has been undertaken for more than 12 months to August 2021, with no realistic demand arising. At the time, three of the eight units were still let to tenants, with this having reduced to two let units by the time of the appeal statement in April 2022. The marketing is indicated to have been undertaken by two estate agents, with advertisements placed in the windows of the estate agents and those of newsagents. Adverts were also indicated to have been placed with an online marketing company specialising in flexible working space and through Gumtree and Facebook.
9. The Council is critical of the marketing evidence, pointing to one estate agent not being local, one being a residential rather than commercial specialist, missing copies of advertisements and the absence of an up-to-date survey of office demand in the area. It also points to a lack of evidence that opportunities to reconfigure the offices have been exhausted.
10. By the time of my site visit, only one of the eight offices was occupied. I saw the offices to be small and dated in appearance. I also saw those units with north facing windows (Nos 5, 6 and 7) were quite gloomy spaces. The communal hall, tea room and toilets were also small, cramped spaces. Having

¹ Use Class B1(a) replaced by Class E under The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

observed the site, I agree with the appellant that the offices would require significant re-design and refurbishment to be attractive to prospective tenants.

11. In terms of the marketing evidence, I note the Council's concerns with the robustness of the advertising conducted, but I have no firm reasons to dispute that the offices were advertised through a number of estate agents and websites, for a well in excess of 12 months by the time of the appellant's appeal statement. Given the condition of the offices, their falling into the lower end of the market, and the effects of the Covid-19 pandemic on working patterns and demand for office space, I find the level of marketing to be appropriate in this case. The absence of demand is also not an unexpected conclusion given these factors. I also find the fact that there was and still is some degree of occupancy of the offices is not evidence of wider demand. It would be onerous to expect the offices to be wholly vacant for the marketing period given this would result in no rental income for the owner and may in fact reduce the attractiveness of the site to potential tenants.
12. Moreover, the Council has not offered any contrary evidence to dispute the appellant's conclusions as to a lack of demand. It does not refute the claim that some 17,000 sq ft of office space is available in the town centre. Nor has the Council commented on the evidence of build costs and marketing provided at appeal stage by the appellant in response to its initial criticisms. These costs are estimated at some £118,000. I do not have other financial evidence before me that would enable me to reach a comprehensive view on the viability of such refurbishment, but I can understand the appellant's hesitancy in taking on such costs in view of the other more modern facilities already operating nearby and the lack of demand being shown.
13. Taking these considerations together, I am satisfied that the appellant has provided evidence of marketing appropriate to the scale and nature of the offices in question for a sufficient length of time. The condition and constrained layout of the offices, together with the indicated availability of large amounts of more modern office space in the area are further factors which explain the lack of demand arising from the marketing exercise. I am also satisfied that opportunities to reconfigure and reuse the accommodation as offices have been considered.
14. On the balance of the evidence before me, I find that the existing offices are no longer required and the proposal would accord with the requirements of Policy 16(c) of the SLP. Moreover, even if I were to conclude that the loss of offices in this case was harmful, this loss would be very modest in scale and would be outweighed by the benefit of two additional residential units. Therefore, overall, I conclude that the change of use is acceptable in principle.

Standard of accommodation

15. The appellant has omitted the privacy film originally proposed to the windows of two bedrooms in Flat 6. I saw on site that these windows would be overlooked to a minor degree from windows in the neighbouring buildings, but at a reasonable distance and angle, such that any views would not be direct or invasive. I find that reduced outlook for occupants from the use of privacy film would be more harmful than limited views towards the windows from neighbours. Therefore, on balance, I am satisfied that the proposed flats, absent any privacy film, would provide a suitable standard of accommodation.

16. The proposal includes the provision of external amenity space to the rear of the car park, comprising a communal lawn for the use of both the existing five flats and the two proposed flats, together with two private amenity spaces for the new units. These would be enclosed by fencing and would contain cycle storage lockers and a small patio area.
17. The Mayor of London's Housing Supplementary Planning Guidance (March 2016) seeks 5 sqm of outdoor space for a 1-2 person dwelling and an extra 1 sqm for every additional person. The size of the proposed external spaces is not given, but the Council does not suggest they would fall below this standard. Separately, the Council's Urban Design Guide Supplementary Planning Document (the UDG) requires a minimum of 40 sqm of external space for two-bed units and 70 sqm for three-bed units. However, Policy 9 and Paragraph P9.6 of the SLP allow for a case-by-case assessment in Areas of Potential Intensification where such standards would be too onerous. Here, there are clear site constraints that preclude the provision of 110 sqm of external amenity space to meet the minimum standards of the UDG.
18. The external space at the rear would be separated from the flats by the car park and would be in a somewhat exposed position at the rear where it would be overlooked by neighbouring properties. This would reduce its potential as a space for meaningful private recreation by prospective tenants. Nevertheless, it could be used for things such as storage and drying clothes, and in this respect the proposed spaces would still offer a benefit. Moreover, the site is well located to access the many amenities of Sutton Town Centre, with public open space within walking distance at Manor Park and the Warren Recreation Ground. The flats would also slightly exceed the relevant internal floorspace requirements of the LP21 and so would provide a good standard of internal accommodation.
19. I note concern in respect of the potential for conflict should children cross the car parking area to reach the amenity space. However, the car park is modest in size and unlikely to be subject to continuous vehicular movements. Users would also be aware of the amenity space and that the car park would be a shared space. Given these factors, I am content that any risk of conflict in this respect would be low.
20. Taken together, I am satisfied that despite the modest size and locational constraints of the external amenity space, the proposal would still provide a suitable standard of accommodation overall for occupants of the flats, and would accord with the requirements of Policy 9 of the SLP and the aforementioned guidance in respect of external space.

Carbon Emissions and Water Efficiency

21. Policy 31 of the SLP seeks a reduction in CO2 emissions expressed as a percentage improvement over Part L of the 2013 Building Regulations. For minor residential developments, at least a 35% reduction in emissions on site is expected, to be demonstrated through the submission of an energy statement. However, Policy SI 2 of the LP21 seeks a 10% reduction in emissions for residential development against the 2013 Regulations. As the LP21 is the more recently adopted part of the development plan, I afford greater weight to its requirements.

22. The appellant has not provided an energy statement, but sets out that the building is capable of achieving the required reduction in emissions. However, the appellant's estimates of an expected 19% or greater reduction in emissions are not supported by any substantive evidence of how this would be achieved, except for brief reference to the use of solar panels. Therefore, there is insufficient evidence before me to demonstrate that the development would achieve, or is capable of achieving, the required reductions in carbon emissions. Given this level of uncertainty, I am not satisfied that this matter can be set aside to be resolved by condition.
23. Policy 33 of the SLP requires all new dwellings to limit domestic water consumption to 110 litres per person per day in line with the Government's higher 'optional requirements' for water efficiency. No details of how this would be achieved have been provided and despite the appellant's view that such measures could be easily incorporated, I have no site specific assessment to demonstrate this.
24. Consequently, I conclude that the proposal would fail to achieve reductions in carbon emissions as required by Policy 31 of the SLP and Policy SI 2 of the LP21, and would not meet the requirements of Policy 33 of the SLP for domestic water consumption.

Car Free Development

25. The existing site has 21 parking spaces, three to the front and 18 at the rear. Eight of these are for the use of the existing first floor offices. Two would be retained, one for each proposed flat, with six spaces replaced by the proposed amenity space at the rear. No objection is raised by the Council to the loss of parking spaces or the number of spaces to be provided for each flat, subject to an amended parking layout showing adequate access and circulation space for each space, further details of which have been provided by the appellant. However, the Council seeks a restriction on occupants obtaining residents' parking permits, citing the sustainable location of the site within the town centre and within a Controlled Parking Zone (CPZ).
26. Policy 37(b) of the SLP sets out that in town centres and other accessible locations, applications for developments proposing limited or no parking will be favourably considered, provided the applicant can demonstrate that this will not result in an increase in on-street parking which would adversely affect traffic flow. There would be a loss of 6 spaces overall and the flats would each have a dedicated off-street space. The use of two flats is also likely to generate fewer overall vehicular movements than eight offices. Therefore, I am satisfied that the proposal would not increase on-street parking and would accord with this part of the policy.
27. Part (c) of Policy 37 sets out that car-free development should normally be located in a PTAL 5 or 6 area, within a CPZ and should be subject to a legal agreement prohibiting residents from obtaining on-street parking permits. The Council seeks a legal agreement to this effect, but the appellant argues this is unnecessary given the overall reduction in parking demand which would result and the provision of off-street parking for the proposed flats.
28. On my reading of Policy 37, the requirement for a legal agreement is to secure car-free development in cases where parking cannot be provided on site and there would be additional pressure for on-street parking by future residents.

That is not the case here, as off-street parking would be provided for the flats, and rather than there being an increase in pressure for parking within the CPZ, it is likely that demand would decrease as a result of the change of use.

29. For these reasons, I find that a legal agreement prohibiting residents from obtaining on-street parking permits is not necessary to make the development acceptable in planning terms. No harm would arise from the proposal in terms of parking provision or highway safety and so I find no conflict with Policy 37.

Other Matters

30. The application was not refused in respect of the effect on character and appearance, neighbours' living conditions, trees, landscaping, refuse and cycle storage and fire safety, subject to conditions in some cases. I have no compelling evidence to contradict the Council's conclusions in these matters.
31. The proposal would deliver two additional flats for the borough's housing stock, which would accord with the Government's objective of significantly boosting housing supply. However, given the scale of the proposal, this benefit would attract limited weight in its favour. Economic activity arising from the conversion works and future engagement by residents with local businesses would be similarly limited in scale.

Conclusion

32. I have found that the proposal would accord with the development plan in a number of respects, including the principle of the change of use. However, the harm I have identified in respect of carbon emissions and water efficiency mean there would be conflict with the development plan, taken as a whole, to which I afford significant weight. Material considerations in this case, including the benefit of two additional flats and the re-use of redundant office space, would not be sufficient to outweigh this conflict.
33. Therefore, the appeal should be dismissed.

K Savage

INSPECTOR