



Appeal Decision

Site visit made on 17 January 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2023

Appeal Ref: APP/T5150/W/22/3306597

1A, 213 Park Mews, Kilburn Lane, North Kensington, Brent, London W10 4BQ

- 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 Luis Brieva against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/1730, dated 11 May 2022, was refused by notice dated 6 July 2022.
 - The development proposed is change of use from office use (Use Class:E(g)(i)) to residential use (Use Class:C3).
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on employment provision within the area, and the living conditions of future occupiers of the proposed residential unit, with particular regard to interior space and outdoor amenity space.

Reasons

Employment provision

3. The appeal site is occupied by a two storey brick office building situated behind a terrace of properties fronting Kilburn Lane, within an area that includes residential and commercial properties. The appeal building shares a gated vehicle and pedestrian access with a group of buildings set around a hard surfaced courtyard.
4. The appeal building, although currently unoccupied, has an office use and the Council considers it to be a Local Employment Site under Policy BE3 of the Brent Local Plan 2019-2041 (Adopted February 2022) (BLP). The appeal proposal is to change the use of the building to residential use.
5. An Article 4 direction has removed the national permitted development right to change the use of the building from offices to residential, so as to control the loss of offices and their contribution to employment and the economy.
6. Policy BE3 of the BLP states that the Council will require the retention of a Local Employment Site unless, amongst other criteria, continued wholly employment use is unviable. To demonstrate there is no demand for a Local Employment Site for ongoing employment use, the supporting text to Policy

BE3 of the BLP, requires applicants for planning permission to submit evidence that a vacant site has been marketed over a 24 month period by a commercial agent, at a realistic price for the area and reflecting the market value in relation to the use, condition, quality and location of the floor space. The supporting text continues that it must be demonstrated that consideration has been given to alternative layouts and business uses.

7. The appellant obtained valuations from 3 commercial property agents: Daniels Estate Agents, Winkworth, and Harris & Company.
8. The valuation letter from Harris & Company (HC) refers to the property having failed to attract a commercial tenant over a period of 228 months (a figure assumed to be a typographical error), however, the letter is not explicit as to whether HC was the marketing agent over that period.
9. The stated purpose of the HC letter was to provide the appellant with an estimate of the market value of the property. The rental valuations from HC include a market rate expressed within a range (£22,500 - £26,000) and a separate figure of £20,000, expressed as the original listing price per calendar year. Although the original listing price is broadly comparable to the valuations given by the other two agents, the price range quoted as the market rate, particularly the upper figure, is markedly higher. Without clarity on the actual price the appeal office building was marketed for, I am unable to draw a reasonable comparison against the market valuations provided by the two other agents and conclude whether the appeal building was marketed for a realistic price.
10. Furthermore, I have no substantive evidence before me to demonstrate that a thorough marketing campaign for the appeal office building has been undertaken. For example, I have not been provided with the marketing particulars of the appeal property or the precise dates over which the marketing period ran and the methods of marketing, such as where the property advertisements were placed and for how long in those places. I have not been provided with records of any enquiries that were received by the agent from prospective tenants and how those enquiries were followed up by the agent. I see no reason why such records could not be redacted to comply with relevant data protection regulations.
11. For these reasons, on the basis of the evidence before me, I am not satisfied that the appeal building was thoroughly marketed as an office over a sustained period of 24 months, at a realistic price reflecting its use, condition, quality and location, in order to seek to find occupiers.
12. I note the appellant's contention that the restricted size and access to the building did not allow for consideration of alternative layouts and business uses, and that the rent had been reduced to create affordable workspace. However, I have no substantive evidence that the appellant has explored alternative layouts within the appeal building or business uses other than office use, as required by the supporting text in the policy.
13. As such, the evidence has not demonstrated that continued employment use of the appeal building as a Local Employment Site is wholly unviable. I therefore conclude that the proposed development would result in the loss of a Local Employment Site, which would harm employment provision and the local economy, contrary to Policy BE3 of the BLP, which seeks to ensure that Local

Employment Sites are retained, unless the continued wholly employment use is unviable.

Living conditions - external amenity space

14. No external private amenity space would be provided for future occupiers of the proposed residential unit. However, Policy BH13 of the BLP, allows some flexibility where reasonable options for provision of external amenity space have been considered, including where high quality communal amenity space is available to meet the needs of future residents.
15. There is communal outdoor space to the side and front of the building, close to its front door and accessible without significant changes in level. This outdoor space is generally used for vehicle parking and access to other buildings within the group, and it is securely gated and generally secluded from the busy Kilburn Lane. Although this outdoor space would receive good levels of light and could accommodate a table and chairs for relaxation and recreation, it would be located uncomfortably close to vehicles and pedestrians passing along the access, and it would expose future residents to public views from the surrounding buildings.
16. For these reasons, I find that the quality of the communal amenity space would be unacceptably poor, and it would not provide a comfortable space for occupiers to use for relaxation and recreation. As such, the proposal would not provide high levels of external amenity for future residents of the proposed development.
17. I recognise that the appeal site is located in an area where there are opportunities to travel by sustainable means to reach a wide range of services, facilities and social infrastructure, including shops, restaurants and gyms for exercise. However, the availability of such services and facilities in the wider area does not justify permitting development that would provide poor quality living accommodation for future occupiers.
18. My attention is drawn to Prior Approval applications ref. 21/1729 and ref. 20/1884, for the conversion of office buildings to residential use that were granted without providing external private amenity space for residents. However, applications for Prior Approval are materially different to applications for planning permission. As such they have limited relevance to my considerations in this appeal.
19. For these reasons, I conclude that the proposed development would not provide future occupiers with external amenity space of a sufficiently high quality. Consequently, the proposed development would not provide acceptable living conditions for future occupiers, contrary to Policy D6 of The London Plan (2019) (TLP), and Policies BH13 and DMP1 of the BLP, which require development to provide high levels of external amenity for future occupiers.

Living conditions - interior space

20. Table 3.1 of Policy D6 of TLP sets a minimum gross internal floor area of 58 square metres (sqm) for a 1 bedroom, 2 person dwelling across two storeys, with built in storage of a minimum of 1.5sqm.
21. The appellant considers the proposed dwelling to have a gross internal floor area of 56sqm, whereas the Council considers it to have a gross internal floor

- area of 55.3sqm, with the bedroom covering 13sqm of that floor area. Even taking the appellant's figure, the proposed dwelling would fall short of the minimum gross internal floor area required by Policy D6 of TLP by some 2sqm.
22. The appellant contends that the proposed dwelling should be considered as a 1 bedroom, 1 person dwelling and therefore assessed against the lower minimum gross internal floor area requirement of 50sqm set out in Table 3.1 of Policy D6. However, Table 3.1 is clear that this lower figure is not applicable to a 2 storey dwelling. Furthermore, the floor area measurements for the ground floor and first floors of the proposed dwelling (33.8sqm and 20.2sqm respectively), as set out in the appellant's statement, show that the bedroom would occupy a relatively large proportion of the floor area of the dwelling. This is reflected in the floor plans which show a furnished bedroom layout containing a double bed with relatively generous circulation space around it and what appears to be wardrobe storage.
23. Based on the evidence before me, I find the proposal to comprise of a 1 bedroom, 2 person dwelling, that would not meet the minimum internal floor area requirements in Policy D6 of TLP. The shortfall in floor space relative to the minimum requirement would, given the size of the bedroom and the balance of space between ground and first floors, be particularly noticeable to future occupiers when using the ground floor of the proposed dwelling, resulting in unduly cramped and confined living accommodation.
24. Although I have not been provided with ceiling heights within the proposed dwelling, I have inspected the interior of the building. The first floor ceiling is particularly high as it follows the slope of the mono-pitch roof, giving generous headroom and a sense of spaciousness within the proposed bedroom.
25. However, the ground floor ceiling height was lower, particularly the ceiling directly above the proposed kitchen area, which was lower still and appeared to follow the underside of a structural beam. The evidence before me does not demonstrate that the proposal would meet the minimum ceiling height requirement of 2.5m for at least 75 per cent the gross internal floor area of the proposed dwelling set out in policy D6 of TLP, in order to provide housing of adequate quality, particularly in terms of ventilation, cooling and a sense of space.
26. I acknowledge that the windows in the building's front and side elevations would provide a dual aspect to the proposed dwelling with good levels of light within rooms and an acceptable outlook for future occupiers. However, these factors would be expected in any well designed development and they do not weigh in favour or against the development. They do not justify the harmful effect on future occupiers that would arise from inadequate internal living space.
27. I note the internal floor areas of the residential units in Prior Approval applications ref. 21/1729 and ref. 20/1884 for the conversion of office buildings to residential use that were approved. However, applications for Prior Approval are materially different to applications for planning permission and as such they have limited relevance to my considerations in this appeal.
28. For these reasons, I conclude that the interior space within the proposed development would be inadequate and would not provide acceptable living conditions for future occupiers. As such, it would be contrary to Policy D6 of

TLP and Policy DMP1 of the BLP, which require development to provide high levels of internal amenity and meet minimum interior space standards in order to provide adequately sized rooms with comfortable and functional layouts that meet the needs of occupiers.

Other Matters

29. I acknowledge that satisfactory secure cycle parking and bin storage space would be provided for future residents and that the proposed development would not lead to unacceptable noise disturbance or pollution affecting air or water quality. The appeal site is not at a high risk of flooding and would not harm highway safety, heritage assets or ecology. There are no objections from technical consultees, however, an absence of harm in these respects would be requirements of any well designed proposal and they do not weigh in favour or against the appeal proposal.

Conclusion

30. For the reasons given above, the proposed change of use of the office to a residential use would harm the local economy through the loss of a viable LES, and harm the living conditions of future occupiers. I therefore give significant weight to the appeal proposal's conflict with Policy D6 of the TLP and Policies BE3, BH13 and DMP1 of the BLP.
31. I therefore conclude that the proposal would be contrary to the development plan as a whole and there are no material considerations of sufficient weight to outweigh this finding. The appeal should be dismissed.

G Sylvester

INSPECTOR