



Appeal Decision

Site visit made on 26 April 2023

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 MAY 2023

Appeal Ref: APP/C5690/W/22/3294341

Units 1-6, The Arches, Childers Street, London, SE8 5BT

- 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 Evelyn Court (Deptford) LLP against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/119627, dated 14 December 2020, was refused by notice dated 9 September 2021.
 - The development proposed is alteration and conversion of six vacant commercial units into a 96 sqm community unit and 6 x two bedroom and 1 x three bedroom self contained flats together with the provision of 4 car and 16 cycle parking spaces.
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Decision

1. The appeal is dismissed.

Main Issue

2. This is whether, having regard to relevant policies, a financial contribution towards training and/or local employment is necessary to make the development acceptable in planning terms.

Reasons

3. The appeal site comprises three buildings of up to 8 stories in height. They were constructed pursuant to planning permission given in 2008 for re-development comprising 89 flats and commercial units. The proposal relates to six of those units which are on the ground floor of Blocks 1 and 3. They were permitted for use within Class B1 of the Use Classes Order which is now included in Class E.
4. Core Strategy Policy 5 seeks to protect the scattering of employment locations outside those that are designated. However, other uses, including residential, will be supported if it can be shown that the site should no longer be retained in employment use. The premises have been marketed for a considerable time without success and the agent's view is that commercial use is not viable and that the units will therefore remain empty. The Council is satisfied that the marketing has been thorough and that every reasonable attempt has been made to secure business re-use of this floor space.
5. As such, there is no conflict with the provisions in Policy DM11 of the Development Management Local Plan which refer to undertaking a suitable period of active marketing reflecting the market value. Given that the units have been offered for alternative commercial uses as well as those within Class B1, the objection identified at the previous appeal has been overcome (Ref:

- APP/C5690/W/18/3203029). There is also no evidence that the units have deliberately been left vacant or genuine interest in letting them rebuffed.
6. Nevertheless, Policy DM11 also establishes that where there is a loss of local employment as a result of redevelopment or change of use, contributions to training or local employment schemes will be sought. The appellant maintains that this is not necessary since the units have never been occupied for employment purposes and prior to that the site was vacant. There have therefore been no jobs directly associated with the relevant parts of the appeal site for about twenty years which is well before current policies were adopted.
 7. The Council's Supplementary Planning Document (SPD) on *Planning Obligations* indicates that the payment sought relates to jobs that have been lost or failed to be generated from missed opportunities for employment floorspace. The employment densities in the HCA Employment Densities Guide (EDG) will be used to calculate this.
 8. The inference from the SPD guidance is therefore that an obligation is required to address situations where the loss of jobs is either actual or theoretical. Furthermore, the Council comments that the redevelopment of this former industrial site was accepted because of the re-provision of a proportion of employment space in the form of Class B1 offices. The proposal would lead to the complete loss of a former employment site as referred to in paragraph 2.77 of the Local Plan. Whilst the intention to retain employment at the site has not worked out in practice, this should not dilute the aim of promoting uses that contribute to the economy.
 9. Indeed, there is no suggestion that a financial contribution is not required because of the strength of the economy in Lewisham or because there is a surfeit of commercial premises available at reasonable rents or for any other reason. The seven proposed flats may allow for home working but that would not be on a par with dedicated employment space which has greater potential for job creation. The National Planning Policy Framework provides that significant weight should be placed on the need to support economic growth and productivity. In the local policy context and notwithstanding the length of time that the units have been unused, a contribution should therefore be made to compensate for their ultimate loss.
 10. Based on the employment densities given in the EDG, the Council estimates that the net internal area of 774 sq m would have generated 40 jobs. This is based on a 50/50 split between office and light industrial floorspace. As a result, it considers that a financial contribution of £413,320 should be made. If this 'blended' approach were to include research and development, then the amount would be reduced. This would be reasonable as the original permission allowed for all types of use within Class B1.
 11. The EDG contains a section on vacant space and also refers to void periods and sensitivity analysis. However, this part of that document is about the evaluation of actual densities and not an estimate of the number of jobs that would have been created had the units been occupied. It stands to reason that in order to work out the actual density unoccupied space should be omitted, as including it would skew the results. Therefore, the principle of applying the figures in section 4 is sound as the advice about vacancy does not directly apply in this scenario.

12. Policy DM11 is concerned with the loss of local employment. However, this has not been factored into the Council's expected contribution. Whilst not referred to in the SPD, the development plan policy is clear that the contribution should be related to this and not employment generally. Based on census data, the appellant gives a figure of 11.2% of Lewisham residents who also work in the Borough. Any obligation should reflect the policy provisions and therefore take this into account.
13. The SPD applies a figure of £10,000 per job which is index linked. This has been calculated as the equivalent of the cost of supporting a trainee for one year to provide an opportunity to secure long term employment. However, no detailed rationale for this sum has been provided and so it is not possible to be certain that it is fairly and reasonably related in scale and kind.
14. Therefore, from the assessment undertaken so far, a payment is necessary to accord with relevant development plan policies. That said, the amount sought by the Council is excessive, having regard to the terms of the original permission, the lack of justification for the figure used for the cost of a job and, most significantly, the policy reference to local employment.
15. No contribution was sought in respect of the change to residential flats at Units 7-10 on Rolt Street. The Council has provided no explanation and, on the face of it, an inconsistent approach has been taken. This weighs in favour of the proposal although it is a matter of limited weight given that the details are unknown. It is unclear, for instance, whether the case references provided relate to the grant of planning permission or of prior approval.
16. As part of the previous application, which was eventually unsuccessful at appeal, an obligation was submitted for a much lower payment. This had the endorsement of Council officers and was based on a different section of the SPD. Whilst this 'change of tune' is a source of frustration to the appellant, it has little bearing on the outcome of this appeal.
17. The appellant observes that the approach taken by Lewisham is out of step with a number of other London Boroughs. That may be so, but the matter has to be settled on the basis of policies and guidance that relate to the appeal proposal and so this is not a significant factor.
18. In conclusion, none of the above matters alter the finding that a financial contribution towards training and/or local employment is necessary to make the development acceptable in planning terms. To permit the proposal without one would be contrary to Policy DM11.

Other Considerations

19. To make effective use of land, the Framework indicates that planning decisions should, amongst other things, support the development of under-utilised land and buildings. In some circumstances it also encourages the use of employment land for homes. Although there is no indication of a housing shortfall in Lewisham, the proposed flats would nonetheless contribute usefully to supply. National policy therefore provides support to the proposal. The appellant also mentions that The London Plan supports the change of use of surplus office space to other uses including residential.
20. However, the Framework also seeks to build a strong competitive economy and the proposal would not play the part expected of it in this respect. Due to the

sequence of events, it is understandable that the appellant did not submit viability evidence. Nonetheless, it is not claimed that making a financial contribution would jeopardise the deliverability of the scheme. As the level of contribution sought is inconsistent with both local and national policy, it might be possible to both provide the proposed units and support local employment in line with the development plan. Because of this, the importance to be given to the use of these empty units and the delivery of flats is reduced. Indeed, these considerations do not outweigh the policy conflict.

21. The community space is intended to be used for residents' meetings and has the support of the freeholder. It could also be used by other organisations and so would be beneficial to the wider community. However, other than in a general way, there is no evidence to indicate that such a facility would be particularly valuable. Therefore, the provision of this area as part of the proposal attracts only limited positive weight.

Conclusion

22. The appellant refers to the "unusual circumstances" of the site. Furthermore, the SPD does not contain specific advice about how to deal with situations where there has been a prolonged period of vacancy. However, the relevant development plan policy makes no exception for empty sites. It would nonetheless be unreasonable to go too far back in time to assess whether there has been a loss of an employment site. But in this case, there is a strong link to the planning history. Due to the site's previous function the commercial units were an important part of the agreed mix of uses. To ignore this would be to undermine the Council's policies and to reduce the importance of employment in achieving sustainable development across the Borough.
23. At the end of the day, the proposal would not accord with the development plan and there are no other material considerations to override this finding. Therefore, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR