



Appeal Decision

Site visit made on 17 January 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st June 2023

Appeal Ref: APP/X5990/W/22/3303774

26-28 Warwick Way, London SW1V 1RX

- 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 Aron Teitelbaum against the decision of City of Westminster Council.
 - The application Ref 21/08498/FULL, dated 24 November 2021, was refused by notice dated 18 May 2022.
 - The development proposed is change of use of existing offices at first and second floor level into 8no. bedroom House in Multiple Occupation (HMO) for up to 8 people (Sui Generis).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The loss of office floorspace.
 - The effect of the proposed development on the living conditions of future occupiers and neighbouring residents.

Preliminary Matter

3. There are some contradictions in the evidence regarding the most recent use of the appeal site. I am not in possession of any evidence in the form of lawful development certificates or planning permissions to precisely ascertain its current lawful use. However, the planning application form specifically seeks a change of use from office space, and this has not been disputed by the Council. Therefore, based on the evidence before me, I have treated the proposed development as a change of use from office space.

Reasons

Office floorspace

4. The appeal site comprises the upper 2 floors of a 3-storey building. All 3 floors of the building are currently vacant. Other neighbouring ground floor uses include shops, pubs, cafes, hairdressers, estate agents, hot food takeaways, and a street market on nearby Tachbrook Street. The site is a short walk from Victoria Station and the area appeared busy and vibrant at the time of my visit.
5. The proposed development would convert the upper 2 floors of the building to residential use as a house in multiple occupation (HMO) for up to 8 people. The

upper floors would be accessed directly from a door on Warwick Way between ground floor commercial units.

6. Policy 13(D) of the City of Westminster City Plan 2019-2040 – Adopted April 2021 (the CP) states that in the Central Activities Zone (CAZ), of which the site forms a part, the net loss of office floorspace to residential development will only be permitted in those parts of the CAZ that are predominantly residential in character and where the proposal would reinstate an original residential use. The policy is clear that to comply, both objectives must be met.
7. In determining the planning application, the Council noted the area lies within a predominantly commercial part of the CAZ. The appellant disputes this, on the basis that the retail element is almost entirely focussed on the ground floor along the street, and there is a large proportion of upper floor residential use. This is supported through the submission of council tax data.
8. For the purposes of clarification, the supporting text to Policy 13 as a whole states that some parts of the CAZ are largely residential in character but include isolated office buildings that have historically come from conversion of buildings originally built and occupied as residential. It therefore seems to me that the areas referred to in Policy 13(D) as predominantly residential in character are those with residential comprising the predominant use on all floors of buildings and with very limited visible commercial activity. Conversely, whilst I do not dispute there are a mix of uses including residential, the dominant ground floor use in this area is very clearly commercial. It would therefore not fulfil the definition of predominantly residential in character, as set out in Policy 13(D).
9. The appellant has submitted evidence to demonstrate that the original use was residential, in the form of an electoral register showing the appeal site to be in residential use in 1965. I do not dispute this evidence shows that a residential use has occurred at some point in the property's history. However, it does not necessarily demonstrate it was the original use. Furthermore, Policy 13(D) requires both objectives to be met. As such, even if I were to accept the original use was residential, the proposed development would still conflict with the policy based on its location in an area that is not currently predominantly residential in character.
10. The supporting text to Policy 13 as a whole refers to instances where existing office stock has reached the end of its economic life and there is no interest in its continued use for such purposes, or for other uses that fall within Class E of the Use Classes Order. In such circumstances, the policy sets out a hierarchy of alternative uses that may be considered acceptable, and these proposals must be supported by justification that reasonable options have been exhausted. The hierarchy of preferred uses does not include residential use. Whilst I note the appellant's statement advises they have not been responsible for a lack of marketing of the property and that the existing office provision is low quality and would not meet modern standards, I have been provided with no substantive evidence for this or why any of the alternative uses cited in the supporting text to Policy 13 have not first been considered.
11. For the above reasons, I conclude the proposed loss of office floorspace would harm the Council's objectives to support economic growth, which would conflict with the aims of Policy 13(D) of the CP which seeks to resist the loss of office floorspace as a means of supporting economic growth.

Living conditions

12. The CP identifies HMOs as 'specialist housing' for the purposes of Policy 10(D), which states that the Council supports the provision of well-managed new housing which meets an identified specialist housing need. Whilst Policy 10(D) refers to such housing meeting an identified need, neither the policy nor its supporting text place any requirement on proposals for new specialist housing to identify or justify that they would meet a specific need.
13. The site lies close to several residential properties, and I acknowledge the objections from neighbouring residents on grounds of noise and disturbance, including the potential for the flat roof to the rear to be used for social gatherings. However, at my visit I observed no evidence that any of the rooms would provide direct access to this space. There also appears to be a sufficient separation between the building and the closest neighbouring properties to address concerns of noise and disturbance.
14. The supporting text to Policy 10 requires a management plan for new specialist housing to be secured through a legal agreement or planning condition to ensure the new use would not have negative impacts on the amenity of neighbouring residents. A letter has been submitted by the prospective letting agent to address this policy requirement. Whilst I acknowledge this does not fulfil all the objectives of the management plan noted by the policy, I have no evidence before me to substantiate that the proposed development would have a materially adverse effect on the living conditions of neighbouring occupiers. Accordingly, I do not find specific harm in this regard.
15. Regarding the living conditions of future occupiers, I refer to the issue of internal space standards, particularly the Environmental Health officers' concerns that the rooms do not meet HMO licencing requirements with specific regard to communal space. The second-floor accommodation would include reasonable communal space provision in the form of a living room with a separate kitchen to cater for 3 bedrooms. The first floor would not include a communal living area, with only a small communal kitchen proposed to cater for the 5 first-floor bedrooms. This would mean that residents using the first-floor kitchen would need to carry cooked meals either back to their bedrooms or to the second floor living area, which would not be a practical arrangement for occupiers. Whilst I have not been directed to any specific space standard in the development plan or any supplementary guidance, the layout arrangements proposed would result in both impractical and cramped living accommodation for future first floor occupiers.
16. I acknowledge the provision of specialist accommodation, for which there is an identified need, would be a benefit. However, this would not outweigh the harm identified above.
17. For the above reasons, whilst I have identified no specific harm with regard to the living conditions of neighbouring occupiers, the proposed development would provide substandard accommodation that would harm the living conditions of future occupiers. This would result in overall conflict with the aims of Policy 10(D) of the CP, which seeks to support the provision of well-managed new housing which meets an identified specialist housing need.

Conclusion

18. For the above reasons, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR