
Appeal Decision

Site visit made on 12 July 2023

by S. Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2023

Appeal Ref: APP/X5990/W/22/3309390

1B-1C Tottenham Court Road, London W1T 1BB

- 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 A Harris, TCRP (1A & 1B) Ltd, against the decision of City of Westminster Council.
 - The application Ref 22/01941/FULL, dated 22 March 2022, was refused by notice dated 29 July 2022.
 - The development proposed is change of use from vacant language school (Class F1) to offices (Class E).
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use from vacant language school (Class F1) (part ground floor and floors 1-4 only) to offices (Class E) at 1B-1C Tottenham Court Road, London W1T 1BB, in accordance with the terms of application ref 22/01941/FULL, dated 22 March 2022 and subject to the following conditions:
 1. The development hereby permitted shall begin not later than three years from the date of this decision.
 2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Block Plan; Existing Plans; BL_NH_001 Rev 3; BL_NH_002 Rev 3; BL_NH_003 Rev 3; BL_NH_004 Rev 4

Application for costs

2. An application for costs was made by the City of Westminster Council against TCRP (1A & 1B) Ltd. This application is the subject of a separate Decision.

Preliminary Matters

3. 1 Tottenham Court Road is a Grade II listed building. The appellant originally applied for listed building consent and planning permission for the proposed change of use which relates to part of the ground floor, which constitutes the access to the upper floors, and the 1st to 4th floors only. No internal or external alterations to the building are proposed and the Council subsequently determined that listed building consent was not

required. Accordingly, only the planning application was determined. I have proceeded on that basis.

4. Property marketing details, which were not before the Council at the time it made its decision, were submitted with the appeal. The Council is aware of it and referred to it in its final comments and application for costs. On that basis I am satisfied that no party would be prejudiced by my acceptance of that information. I have therefore determined the appeal with regard to it.

Main Issue

5. The main issue in this case is, having regard to development plan policy, the effect of the proposal on the character and function of the area.

Reasons

6. The appeal building is located in a prominent position on Tottenham Court Road close to its junction with Oxford Street and to the Tottenham Court Road Underground Station where there is a vibrant mix of town centre and commercial uses.
7. The ground floor of the appeal building is currently occupied by a hot food take-away which would remain. The upper floors have been vacant since August 2021 and were last occupied by the 'Mayfair School of English'. The proposal seeks the change of use of that part of the building to offices.
8. In terms of planning policy, the site lies within the designated Central Activities Zone (CAZ), the West End Retail and Leisure Special Policy Area (WERLSPA) and also the Tottenham Court Road Opportunity Area. My attention has been drawn to several planning policies relating to office use in those areas which are broadly supportive of such use. Those include Policy 13 of the Westminster City Plan 2019-2040 (adopted 2021) (the City Plan) which states that new office floorspace will be supported in principle in parts of the CAZ with a commercial or mixed-use character, including the WERLSPA. The Council does not dispute that an office use is acceptable in principle and acknowledges that the modest increase in office floorspace would go some way to meeting the office and growth targets set out in the London Plan and City Plan.
9. However, Policy 17 (c) of the City Plan requires that existing community facilities and floorspace are protected other than where it can be demonstrated that either the loss or relocation is necessary as part of a published strategy to improve services and meet identified needs, or there is no demand for an alternative social and community use for that facility or floorspace, evidenced by vacancy and appropriate marketing for at least 18 months. The Fitzrovia West Neighbourhood Plan (the Neighbourhood Plan) Policy PR4 also seeks to protect community infrastructure stating that development proposals for redundant social infrastructure should provide for its full or partial use as other social infrastructure before consideration of alternatives. Similarly, Policy S1 (G) of the London Plan has a similar requirement.
10. Section 17 of the Employment and Economy Chapter of The City Plan sets that community infrastructure, which includes a range of facilities and

services including education facilities such as schools, colleges and universities, can be publicly or privately owned and/or operated. There is very little information about the Mayfair School of English before me but nevertheless, given that it was a facility for education, I have no reason to consider that it was not a community facility. The proposal therefore falls to be considered under Policy 17. I note the appellant's contention that at one time the premises were used as offices but, be that as it may, I can only determine the proposed change of use in the light of current policy and on its own merits.

11. There is no evidence before me that the use has relocated as part of a published strategy but nevertheless the use has clearly ceased and the upper floors of the building have now been vacant for some considerable time, well beyond the 18-month threshold set out in Policy 17 (c). The Marketing Assessment indicates that the premises were first marketed on 17 August 2021 as a Class F1¹ educational use. In addition, the premises have been advertised on the agent's website since the end of August 2021 and a 'To Let' board, which was still in situ at the time of my visit and which also refers to community uses, installed at the end of 2021.
12. The Marketing Assessment indicates there were only eight enquiries about the building between August 2021 and the time the information was submitted to support the appeal. Despite being marketed for Class F1 use, half of those enquiries related to potential office use. No offers have been made. Of those enquiries about an educational use, reasons for not pursuing the matter further included there being too many floors, the floor layout not being suitable, and there being no outdoor space.
13. There is no evidence before me that the rent set out in the marketing details is higher than the normal market rate. I note that not wanting to pay a market rent, or wanting nil-rent, was a factor in two of the aborted enquiries for educational use. However, the level of rent itself was not a factor in the reasons not to pursue the enquiry and I have therefore no reason to consider that it is not set at an appropriate commercial level. Accordingly, on the basis of the evidence before me, I am satisfied that there is no demand for the use of the building for a use under Class F1.
14. Other community uses, including health and leisure facilities, would also fall under the category of 'social infrastructure' albeit planning permission may be required for such uses. Whilst I am not aware of specific or targeted marketing for these alternative uses it seems to me that given the prominence of the building in a highly prominent position in the public realm which is clearly available to let, the length of the marketing period and the lack of enquiries, there is not a high demand for alternative uses in this building either.
15. Taking all of this into account, given that the property has been vacant for two years and has undergone a lengthy period of marketing, I am satisfied that the proposal is consistent with Policy S1 of the London Plan, Policy 17 of the City Plan and Policy PR4 of the Neighbourhood Plan.

Other Considerations

¹ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

16. The site lies within the Hanway Street Conservation Area and I am mindful of the duty under s72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act) which requires that special regard should be had to the desirability of preserving or enhancing the character or appearance of the conservation area.
17. As set out above no external changes to the building are proposed and in visual terms therefore the appearance of the building would be preserved. Furthermore, given the existing commercial character of the surrounding area, the proposed office use would be appropriate in its context. The proposal would therefore also preserve the character of the conservation area. As such I am satisfied that the proposal would meet the statutory requirements of the Act in that regard.
18. In addition, the proposal would re-use and provide new investment into a vacant part of a listed building and, having regard to the statutory duty of s66 (1) of the Act, would therefore assist in preserving the building and any features of special architectural or historic interest it possesses. Given the length of time the listed building has been vacant, this matter carries significant weight in favour of the proposal.

Conditions

19. The Council has suggested conditions in the event of the appeal being allowed which I have considered in the light of guidance within the National Planning Policy Framework.
20. In the interests of proper planning and to provide certainty the standard time limit and plans conditions are necessary.
21. I have considered whether a condition restricting the use of the premises to offices uses only is necessary. However, some other uses within Class E (Commercial, Business or Service Uses) are community based uses which, given the reason for refusal and the policies outlined above, the Council may seek to support in this building. Any physical works to the building are likely to require Listed Building Consent and would therefore be within the Council's control. Whilst I note the some uses may require agreement of a travel plan under a policy requirement, in practical terms it is unclear how those uses would differ in terms of traffic generation from the existing educational or proposed office uses. On that basis such a restrictive condition is not therefore necessary.

Conclusion

22. Taking into account all matters raised, the proposal would comply with development plan policy and would support the function of the area and preserve its character. For these reasons, the appeal is allowed.

S. Ashworth

INSPECTOR