



Appeal Decision

Site visit made on 19 September 2023

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2023

Appeal Ref: APP/A5270/W/23/3319078

12 The Avenue, West Ealing, London W13 8PH

- 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 Steve Badger against the decision of the Council of the London Borough of Ealing.
 - The application Ref 225399FUL, dated 23 December 2022, was refused by notice dated 2 March 2023.
 - The development proposed is the change of use of existing storage unit to a live/work unit.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of existing storage unit to a live/work unit at 12 The Avenue, West Ealing, London W13 8PH in accordance with the terms of the application, Ref 225399FUL, dated 23 December 2022, and the plans submitted with it, subject to the conditions set out in the schedule.

Preliminary Matters

2. The description of development was amended by the Council in its decision letter. I have used the description of development as written on the planning application form.

Main Issues

3. The main issues are:
 - Whether the proposal would result in the loss of an employment use.
 - The effect of the proposal on the living conditions of future occupiers with particular regard to amenity space, privacy and pedestrian access.

Reasons

Employment use

4. The appeal site is the outbuilding to the rear of a building comprising basement, ground and three upper floors. The basement, ground floor and outbuilding are currently occupied by an electrical contracting company, whilst the upper floors comprise residential flats. This part of The Avenue is lined with shops and services at street level, generally with residential uses on the upper floors.

5. The 2015 permission¹ for various works including the construction of the rear outbuilding and ground floor extension was subject to a condition restricting the use of the outbuilding as ancillary storage to the retail unit, not allowing the unit to be used for any separate residential, industrial, commercial or business use. A subsequent certificate of lawfulness² was issued in 2017 for the use of the property as an electrical consultancy and contracting company. It was judged that this use fell within Class A2. The plans referenced on the decision notice show the ground floor and basement and include the rear outbuilding which is labelled as storage. My attention has not been drawn to any other planning decisions pertaining to the use of the rear outbuilding. On my site visit I saw that the electrical consulting company still occupies the ground floor, basement and outbuilding, and the outbuilding was being used for the storage of cabling and tools. Further to the changes to the Use Classes Order in 2020, the use would now be classified as Class E.
6. In terms of the description of the use on the original planning application form, there is no consistent way that the outbuilding has been described; there is one reference to it being Class B8 but it is also referred to as 'storage unit' or 'storage area to the rear of No. 12'. Given that the outbuilding was specifically shown on the plans referenced by the certificate of lawfulness, that no other permission has been granted allowing any variation to condition 5 of the 2015 permission and that no other substantive evidence has been submitted with the appeal regarding the status of the outbuilding, my view is that it constitutes ancillary storage to the ground floor/basement of the main building and it does not constitute a separate planning unit.
7. Policy 4A of the Ealing Development Management Development Plan Document 2013 (DMDPD) states that the change of use from an employment use may be permitted where the site is not viable for reoccupation, not viable for an alternative employment use, and the proposal does not constrain or undermine neighbouring employment uses. Paragraph E4.A.1 goes on to state that employment uses are those which fall within the B use classes along with other closely related uses found on employment sites such as garages and motor repair. London Plan (2021) policy E4 aims to secure an adequate supply of industrial land across the city, whilst London Plan policy E7 seeks to encourage industrial intensification, co-location and substitution, focussing on conventional industrial and storage uses (B2, B8 and former B1c).
8. The current use of the outbuilding is a commercial use within Class E, as it is ancillary to the main ground floor and basement unit. Whilst I accept that the definition of employment uses set out in the supporting text to policy 4A is not exhaustive, I do not consider that this type of use is one which the policy is intended to protect. In these circumstances, I do not find that policy 4A is determinative to this appeal. Similarly, London Plan policies E4 and E7 are strategic in nature and their focus is not directly relevant to the appeal.
9. Taking the above factors into consideration, I am not of the view that the use of the outbuilding as a live/work unit would result in the loss of an employment use and would not therefore undermine the strategic aims of the employment land use policies contained in the development plan. Consequently, I find no harm in relation to the loss of the ancillary storage area to the commercial unit.

¹ Reference PP/2014/2099 dated 30 March 2015.

² Reference 163081CPE dated 8 May 2017.

Living conditions of future occupiers

10. The entrance to the proposed live work unit would be directly off the service road leading to the car park for the Drayton Court Hotel. There are other residential units along this road which are accessed directly from the carriageway, as would be the case here.
11. Whilst no substantive evidence has been submitted to demonstrate that the road is unsafe, the fact remains that this is a narrow road with no pedestrian footway. However, I accept that due to the nature of the uses it serves and the form of the road, there is not likely to be significant traffic and that these vehicles are unlikely to be travelling at speed given the configuration of the road and surroundings. The existing door to the storage area is shown on the drawings as being retained to serve the proposed live/work unit; the storage area is capable of being accessed via this door at any time. With this in mind, along with the prevalence of other similar access arrangements along the road, I am not of the view that the proposed arrangement would be demonstrably harmful to pedestrian safety.
12. Whilst the proposed terrace would not fit the 50 square metres required in the development plan for new two storey houses, I note that it would comply with the space standards set out in policy D6 of the London Plan and policy 7D of Ealing's DMDPD 2013 for 1-2 person dwellings. Although it is 2 storeys, the residential element of the proposal is not a conventional house and as such the standards relating to flats would be more appropriate in this case. There is a reasonably open outlook to the sides and the terrace would be capable of receiving some sunlight due to its orientation. Provided the access is restricted for the occupiers of the main building as emergency escape only, along with the installation of the opaque film as shown on the plans, the terrace would offer a good level of amenity given the constraints of the site.
13. There may be some very limited views into the ground floor kitchen area from passing pedestrians, but I do not consider that this would be an unusual occurrence in an urban area. This is particularly so on a street such as this which solely provides access to the buildings on the street and the hotel car park. I do not therefore find that there would be any harm to the living conditions of future occupiers arising from the positioning of the kitchen window.
14. In respect of living conditions therefore, the proposal is consistent with the aims of section 12 of the National Planning Policy Framework 2023 (the Framework) which relates to achieving well designed places, as well as policies D3 and D6 of the London Plan, and 7B and 7D of Ealing's DMDPD 2013. Policy 7B includes a requirement for new development to achieve good levels of privacy and policy D3 of the London Plan 2021 states development should deliver appropriate outlook, privacy and amenity, amongst other things. London Plan policy D6 and Ealing's DMDPD policy 7D include specific provisions for residential and outdoor space standards.
15. The Council have cited Ealing DMDDPD 2013 policies 3.5 and 7A in the reason for refusal relating to living conditions for future occupiers. Policy 7A focuses on development which could potentially cause noise, particulate, light or other emissions, whilst policy 3.5 refers to space standards. Neither are directly relevant to the matters in dispute and are not therefore determinative in this case.

Other Matters

16. There would be no space for parking on the appeal site, which lies within a Controlled Parking Zone. I accept that future occupiers might have a vehicle which would potentially add to on-street parking pressure locally. I also note that the site is classed as having a PTAL rating of 3, it is close to public transport links, as well as local shops and services. No substantive evidence has been provided to show whether the effect of the additional 1 bedroom live-work unit with no dedicated off street parking would make the availability of on-street parking in the area materially worse. I do not therefore find that it has been demonstrated that the suggested planning obligation to remove the appeal site from those properties eligible to receive a parking permit (and any necessary changes to the traffic management orders) would be necessary to make the proposal acceptable in planning terms. As such, the suggested planning obligation would not meet the tests as set out by paragraph 57 of the Framework and by Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
17. There are some external alterations proposed to facilitate the conversion of the outbuilding to a live/work unit, including replacement of the garage style door with a traditional mews-style timber screen with casement windows to the kitchen, and two new casement windows at first floor. The proposed alterations would be in keeping with the character and appearance of the area.

Conditions

18. The Council have provided some suggested conditions which I have considered against advice in the Framework and Planning Practice Guidance. I have attached the standard time limit condition (1) and a plans condition (2) as this provides certainty. I have added a condition concerning materials to ensure a satisfactory appearance (3). Conditions 4, 5 and 6 are necessary to protect the living conditions of surrounding residents and to ensure that the live/work unit is occupied as such. Conditions 7 and 8, requiring the provision of bicycle and refuse storage, are required in the interests of extending sustainable transport options and providing appropriate living conditions for future occupiers. Conditions 9 and 10 are necessary to ensure privacy to users of the terrace.
19. The Council have suggested the addition of a condition (11) requiring details of noise insulation due to the appeal site's location within an area that is subject to significant aircraft noise. This is necessary to ensure an appropriate living environment for future occupiers. It would be a pre-commencement condition and the appellant has agreed to it in writing. Similarly, conditions 12 and 13 are necessary to control noise and vibration should mechanical ventilation be required as a consequence of the requirements of condition 11.

Conclusion

20. I have found that the proposal is in line with the development plan read as a whole, and no material considerations have been shown to have sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. For the reasons set out above, the appeal is allowed.

L Francis

INSPECTOR

Schedule of 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 approved plans: 594-L001, 594-L002 rev B, 594-L003 rev C, 594-L004 rev B, 594-L005 rev B, 594-L012 rev C, 594-L013 rev B, 594-L014 rev B, 594-L015 rev B, 594-L016 rev C
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be those shown on the approved plans: 594-L014 rev B
- 4) The business floorspace of the live/work unit shall be finished ready for occupation before the residential floorspace is occupied and commencement of the residential use shall not precede commencement of the business use.
- 5) The business floorspace of the live/work unit shall not be used for any purpose other than purposes within Class E of the Schedule to the Town and Country Planning (Use Classes) Order 2020 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 6) The residential floorspace of the live/work unit shall not be occupied other than by a person solely or mainly employed in the business occupying the business floorspace of that unit.
- 7) The cycle storage shown on the approved plans shall be provided prior to first occupation of the live/work unit and thereafter maintained for as long as the development remains.
- 8) The refuse storage shown on the approved plans shall be provided prior to first occupation of the live/work unit and thereafter maintained for as long as the development remains.
- 9) The opaque film labelled on drawing 594-L015 rev C up to a height of 1.8m above internal floor level shall be installed prior to first occupation of the live/work unit and thereafter maintained for as long as the development remains.
- 10) Access from the main building to the rear courtyard shall only be permitted for emergency escape or maintenance purposes.
- 11) The site is within the worst mode aircraft 1-day noise contour predicted for 2016 (60 dB). Before the development is commenced, details shall be submitted for approval by the Council in writing, for the sound insulation of the building envelope, assessed according to the criteria specified in Section 6, Ealing Supplementary Planning Guidance 10, and not exceeding the internal noise limits for sensitive rooms in BS8233:2014. If compliance requires the windows to be closed, then acoustically attenuated mechanical ventilation and cooling shall be installed as necessary (with air intake from the cleanest aspect of the building and low self-noise), in accordance with Authority's criteria. The works shall be completed before occupation and permanently retained thereafter.

- 12) The individual and combined external sound level emitted from plant, machinery or equipment at the development site shall be lower than the lowest existing background sound level by at least 10dBA, as measured at/ calculated to the nearest and most affected noise sensitive premises at the development site and at surrounding premises. The assessment shall be made in accordance with BS4142:2014 +A1 2019, with all machinery operating together at maximum capacity.
- 13) Prior to first use, all machinery, plant or equipment/extraction/ventilation system, fan motors and ducting at the development shall be vibration isolated to an extent that prevents transmission of vibrations to the interior of the approved or any neighbouring dwelling, and thereafter maintained as such.