



# Appeal Decision

Site visit made on 7 November 2023

**by Mark Philpott BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> December 2023**

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**Appeal Ref: APP/E5900/W/23/3320796**

**234-236 Whitechapel Road, London E1 1BJ**

- 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 Jeeves Sanger (Romano International Ltd) against the decision of the Council of the London Borough of Tower Hamlets.
  - The application Ref PA/22/01038, dated 5 October 2021, was refused by notice dated 7 December 2022.
  - The development proposed is described as 'change of use from Office E(c) to Hotel C1 to first, second and third floors'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The site relates to a four storey building with commercial uses at ground floor and vacant office space above. The proposal principally seeks to turn the first, second and third floors into a hotel without catering facilities.
3. New evidence and drawings have been submitted to support the appeal. However, it is important that the proposal that I consider is essentially that which has been considered by the Council and on which interested parties' views have been sought, as to do otherwise would be prejudicial to the positions of the Council and interested parties.
4. Marketing evidence has been provided during the appeal. A letter from a company giving a summary update on the marketing of the site and an extract of an online advertisement were provided at the beginning of the appeal, and a further letter and advertisement extract were provided with the appellant's final comments. The Council and interested parties had an opportunity to consider the evidence provided at the start of the appeal. Whilst this is not the case for the later evidence, in substance it is similar to the earlier letter and extract. Accordingly, I have taken all this marketing evidence into account as I am satisfied that no prejudice arises in doing so.
5. A Delivery and Servicing Management Plan (DSMP) was also provided at the start of the appeal. Amongst other things, it explains that the site's waste is presented in bags for collection on, and servicing and deliveries take place from, Whitechapel Road. It sets out that this would remain the case for the hotel, except waste would be presented in wheelie bins that would be stored on the ground floor. Trip generation data is also included. The DSMP principally adds detail to and clarifies the information supporting the application and the Council and interested parties have been able to consider it during the appeal process. I have therefore taken it into account.

6. Drawings have also been provided with the appellant's final comments which show that waste would be presented by moving bins through the building at ground floor level via a new internal door. The Council and interested parties have not been able to consider the proposed arrangement, and so I have not taken those drawings into account.
7. The revised National Planning Policy Framework was published on 19 December 2023. However, the changes to national policy arising from it are not relevant to the areas of dispute for this appeal. Accordingly, I have not sought comments from the main parties about this matter.

## **Main Issues**

8. The main issues are whether or not the proposed development would result in:
  - an unacceptable loss of employment space; and
  - adequate waste, servicing and delivery arrangements.

## **Reasons**

### *Employment*

9. The site is located in Whitechapel and subject to a range of designations in the Tower Hamlets Local Plan (LP). It is in a District Centre, wherein LP policy D.TC6 supports visitor accommodation subject to various criteria, including where it does not compromise the supply of land for new jobs. It is also in the Whitechapel Local Employment Location (LEL) and the Whitechapel South site allocation, wherein small office spaces meeting local needs are found and employment-led, housing and civic uses are supported.
10. LP policy D.EMP3 sets out criteria relating to the loss of employment space and it is undisputed that parts 2 and 3 of it are applicable due to the site's inclusion in the LEL. Amongst other things, the policy requires evidence to be provided of active marketing over a continuous period of at least 24 months at a reasonable market rent which accords with indicative figures; or it to be robustly demonstrated that the site is genuinely unsuitable for continued employment use due to its condition, reasonable options for restoring the site to employment use are unviable, and that the benefits of alternative use would outweigh the benefits of employment use. Additionally, it should be demonstrated that alternative employment uses would not be viable and the loss of employment floorspace would not compromise the operation and viability of the wider LEL.
11. The scheme is supported by assessments relating to the existing building and the proposed use. Details indicating a lack of office demand and information on the availability and rental values of commercial floorspace elsewhere in the area have been provided. It is also backed by evidence that marketing has occurred through a range of methods for far exceeding 24 months. I also have no reason to doubt that the office rental market is currently challenging. However, although correspondence from marketing agents claims that the asking rents were below market rates, no objective appraisal has been presented to demonstrate this, or that the rents sought have been realistic for the type, size and condition of the site, such as through detailed comparison with other available premises in the area.

12. Based on the extracts submitted with the application, the floorspace has been marketed as nine separate units. In addition, the extracts provided during the appeal suggest a floorspace total of around 450 square feet has been advertised. However, there is in excess of 400 square metres (and therefore over 4000 square feet) of floorspace overall. None of the extracts provided clearly indicate that the floorspace could be leased flexibly, as for example it is not made obvious that multiple units, or one or all three floors could be leased together, and latterly the quantity of available floorspace was presented inaccurately. Consequently, it has not been shown that marketing has taken place robustly.
13. The characteristics of the accommodation, particularly its compartmentalised layout and the lack of a lift, likely deters potential occupiers. However, there is no objective evidence that the site's characteristics have been accurately reflected in the asking rent and, based on what I have read and my visit, the condition of the site is not such that it would be genuinely unsuitable for employment use. Moreover, firm financial evidence has not been provided to indicate that some investment into the site, which could increase its desirability, would be unviable.
14. The LP defines employment uses as offices, industrial and storage and distribution facilities as well as other sui generis uses with industrial functions. In that context, and having regard to the nature of the proposal as visitor accommodation and the development types supported by the site allocation, the scheme would not be employment-led. While it is clear that alternative employment uses, such as industrial uses, would not be suitable for the site due to its location above ground floor level, this does not obviate the issues identified regarding loss of the office floorspace.
15. It is reported that the proposal would secure 11 direct jobs and significantly more indirectly, but it is likely that there would be more associated with the office use. Indeed, the DSMP suggests that based on average densities for professional service offices, the site could have 36 direct office jobs alone. I note that the evidence indicates that there is sufficient demand for and no oversupply of hotels, and there would be benefits arising from the proposal including increased vitality to the area and the evening economy in a highly accessible location. However, these considerations do not outweigh the benefits of the employment use, which is recognised in the office use viability assessment<sup>1</sup>, or remedy the issues otherwise found. Moreover, while the LEL would likely have resilience in respect of its ongoing operation and viability, the proposal would nonetheless result in an unsubstantiated and marked loss of office floorspace and thus compromise the supply of land for jobs.
16. In a 2017 enforcement appeal decision<sup>2</sup> the use of the site for short-term serviced accommodation was found not to harm the local economy. While there are some similarities between the policies forming the development plan now and at the time of the enforcement decision, the overall policy contexts are not directly comparable.
17. Notably, it is not disputed that the site allocation did not exist previously and LP policy S.SG1 states that development within a site allocation is required to deliver the land uses identified. In addition, the LP emphasises the importance

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<sup>1</sup> Page 11 of the Office use viability assessment for 234 Whitechapel Road, London E1

<sup>2</sup> Appeal reference: APP/E5900/C/17/3168420

of employment land through policies S.EMP1, D.EMP3 and D.TC6, with the latter two setting out different criteria to the nearest equivalent policies<sup>3</sup> at the time of the enforcement appeal. For example, LP policy D.EMP3 has a more stringent requirement for continuous marketing to be demonstrated for at least 24 months instead of 12 months, and LP policy D.TC6 concerns itself with land supply for both jobs and housing, whereas the former policy refers to the supply of land for new homes only. The extant London Plan also differs from its predecessor such as in setting out that existing viable office floorspace should be retained in policy E1. The enforcement appeal decision therefore does not justify the conflict identified with the abovementioned current development plan policies.

18. The proposal would therefore result in an unacceptable loss of employment space. It conflicts with LP policies D.EMP3 and D.TC6, the purposes of which are identified above.

*Waste, servicing and deliveries*

19. Whitechapel Road is a busy Transport for London Red Route, and the site is near a junction and the area where Whitechapel Market takes place. Nevertheless, loading and disabled parking are permitted near the site in marked bays within a bus lane and beside Cycle Superhighway 2. Approximately two or three vehicles can be accommodated in the bay at a time. It is logical that the other properties along the road between Sidney Street and Maples Place would rely upon the bays, and the evidence shows that at least some of those present bagged waste. An additional space is also located on the opposite side of the highway, which can be accessed via a nearby controlled pedestrian crossing.
20. The DSMP indicates that there would be an overall reduction in the number of movements to and from the site in comparison with the office use. Hence, there would be a reduced likelihood of highway safety or traffic flow issues compared to the existing scenario, such as a lower chance of encountering situations where no bays are vacant. A condition could be imposed to ensure that the collections, and regular servicing and deliveries such as for linens, minimise vehicle dwell times in the bays and avoid peak hours on the highway network. In these respects, I am satisfied that the waste collection, servicing and delivery arrangements would be appropriate.
21. It is unclear whether there would be sufficient space for the waste generated by the scheme in the proposed refuse store. Additionally, it would be less than ideal for waste to be taken through the building for presentation, which is the implication from the appellant lacking access rights over land to the rear of the building. However, the Council would not be responsible for waste collections. While the presentation arrangements may be somewhat impractical, there is a reasonable prospect for an appropriate management arrangement to be put in place, irrespective of whether there would be a bag or bin-based system. Collections may be required more than once weekly, but this would not be significantly harmful having regard to the trip data. Appropriate waste management arrangements could therefore be controlled by a condition.
22. Drawing the above together, the effects of the proposed waste, servicing and delivery arrangements would be comparable to the existing situation. In that

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<sup>3</sup> Policies DM7 and DM16 of the Managing Development Document: Development Plan Document

context, the proposal would have adequate waste, servicing and delivery arrangements. In terms of this main issue, the scheme accords with LP policies D.TR4 and D.TC6, which set out criteria to ensure that deliveries and servicing would be adequate for the scale, nature and location of the proposal and have an appropriate impact on amenity and the transport network.

### **Conclusion**

23. For the reasons set out the proposal conflicts with the development plan as a whole. Material considerations do not indicate that a decision should be taken otherwise than in accordance with the development plan. Accordingly, the appeal is dismissed.

*Mark Philpott*

INSPECTOR