



Appeal Decision

Site visit made on 9 November 2023

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 3rd January 2024

Appeal Ref: APP/N5660/W/23/3322320

21-27 Dalton Street, Lambeth, London SE27 9HS

- 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 MH Holdings Corporation against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 22/03364/FUL, dated 14 September 2022, was refused by notice dated 9 March 2023.
 - The development proposed is the change of use of ground floor office unit (Class E) to residential use (Class C3) to provide a 1-bedroom residential unit, along with associated ground floor amendments to create a further additional bedroom within consented ground floor unit, and other associated amendments.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice dated 09 March 2023 lists four reasons for refusal, however, reasons 2 and 3 are identical, both relating to the living conditions of future occupiers. Elsewhere within the Council's submissions, including on the delegated officer report, reason for refusal 3 relates to sustainable design and construction. This is also reflected within both parties submissions. I am satisfied that all parties have had the opportunity to comment on this matter. The fourth reason for refusal relates to the absence of a planning obligation under section 106 of the Town and Country Planning Act 1990. The need for such an obligation is not disputed between the parties.
3. On this basis, I consider the main issues to be:
 - whether it has been adequately demonstrated that there is no demand for the employment floorspace.
 - whether the proposal would provide suitable living conditions for future occupiers of flat 9 in respect of privacy, and
 - whether the proposal would provide a high standard of sustainable design and construction.

Reasons

Loss of employment floorspace

4. The appeal site comprises a mixed-use building including a ground floor office which is under construction. The unit would be converted to residential under the appeal scheme. The buildings along Dalton Street are of a secondary scale

and character compared to the main commercial frontage along Norwood Road. My site visit observations included a relatively low footfall along the road, and I did not observe any other comparable examples of office buildings on Dalton Street.

5. Policy ED1 of the Lambeth Local Plan 2021 (LLP), part C, states that proposals involving the complete loss of office floorspace will not be permitted unless three tests are all met.
6. The first test is that there is no demand for the office floorspace as demonstrated by evidence that the floorspace has been vacant and continuously marketed for a period of at least two years. The office floorspace has been vacant since its construction, with marketing undertaken between December 2020 until January 2023, when the last update was provided. The length of the marketing exercise therefore exceeds the minimum two-year requirement.
7. The Marketing of Employment Premises and Sites Guidance Note 2015 (EPG) is used by the Council as a tool for assessing the marketing undertaken. The date of this guidance pre dates the LLP and the relevant policies within it, nonetheless, the principles contained within the guidance provide a useful basis for assessing the quality of marketing exercises.
8. There are a number of shortfalls within the marketing exercise undertaken, with the marketing limited to an online exercise. No signs were placed at or near the premises and no marketing was undertaken within any physical paper publications, however I acknowledge that online and targeted marketing covers a much wider audience than the newspapers would be able to. The low footfall on the road does not justify the lack of a sign at/near the premises, nor does the construction works on going. These limitations are therefore missed opportunities.
9. The evidence indicates that the asking price for the office floorspace was not competitive. The examples provided by the appellant of a similar or higher price relate to locations which are very different in their setting and location to the appeal site, including within much larger office buildings and within a large business centre. The majority of the details for sites provided were priced considerably lower than the per square foot rate which applies to the appeal site. The modern construction of the appeal site may justify a higher asking price than other more dated office space, however, there is no evidence before me as to the age or condition of the examples provided. The appellant indicates that the location of the site, which is on a secondary street with limited footfall and very limited parking, is likely to limit the price that could be achieved. The West Norwood and Tulse Hill Business Space Demand Study (November 2022) also indicates that the price sought is on the high side for the area. Whilst I note that no offers were made for a reduced price, this could be in part due to the high asking price deterring prospective tenants.
10. The evidence submitted is limited in terms of demonstrating a continuous two-year period of marketing. The evidence indicates that the marketing efforts in relation to the unit were largely at the beginning of the marketing campaign, and I concur with the Council that the attempts to refresh the marketing campaign during the two-year period appear to have been limited and infrequent.

11. The EPG contains a number of requirements and failing to meet all of these does not necessarily indicate a marketing exercise is insufficient. However, I find that the shortcomings in terms of a solely online campaign (with uncertainty over whether it was continuous), together with a high rent that has not been justified, are significant factors. It is not therefore possible to know if the lack of offers for the office floorspace accurately reflects a true lack of demand, and the first test of Policy ED1 part C of the LLP is not therefore achieved.
12. I note that the marketing details have listed the premises for Class E, thereby including other uses beyond just office space. However, as the aim of Policy ED1 is to protect office floorspace, rather than alternative uses within Class E, this matter is not determinative. Similarly, whilst I note that marketing of the previous car repair premises took place prior to the construction of the current appeal building, given the time that has lapsed since, together with the different use and building, this similarly carries little weight.
13. The second test of Policy RD1 requires evidence to be provided that it would not be feasible and/or viable to refurbish, renew or modernise the unit to meet the requirements of existing or future occupiers, whilst the third test requires evidence that it would not be feasible and/or viable to adapt the office space as smaller office units. Evidence in relation to tests two and three is limited, however, as the existing office space is already a smaller office unit, and has been recently constructed, there is no anticipated benefit or need for further modernisation or redevelopment into a smaller unit. As such, I am satisfied that there is no conflict with these two tests.
14. The appellant has drawn my attention to the potential for the change of use of the office floor space to be achieved under permitted development rights contained within Class MA. However, any such change would be subject to a prior approval application. There is no evidence before me that such an application has been made, or that the requirements of Class MA would be met. As such, this fails to demonstrate a realistic prospect of the fall-back position being implemented and therefore this theoretical position does not alter my above findings.
15. A number of appeal decisions have been brought to my attention. The decision at Groveway¹ related to the change of a use from a nursery. In that case, a shorter marketing period was justified having regard to the condition of the building together with the marketing undertaken. As the appeal site forms part of a recently constructed building, the condition of the building does not appear to justify the identified deficiencies in the marketing exercise. At 156 Larkhall Quarter², a lack of marketing for alternative employment uses was found acceptable having regard to the predominantly residential surroundings. In the case of the current appeal, I have identified deficiencies in the marketing campaign for its current use, therefore that appeal decision is of little relevance.
16. I note the Inspector in relation to the 2018 appeal decision³ at the appeal site did not raise any objection to the loss of employment uses. This, together with pre-application advice provided in 2016, indicate difficulties in finding tenants

¹ APP/N5660/W/15/3002515

² APP/N5660/W/18/3217432

³ APP/N5660/W/17/3186613

for employment uses. In both cases, a significant period of time has since passed, and neither relate to the current condition of the appeal site which contains a new building and is of a different use. As such, these decisions do not justify the identified deficiencies in the marketing exercise.

17. Having regard to the above considerations, in the absence of sufficient evidence to demonstrate a lack of demand for the employment floorspace in this location, the proposed change of use conflicts with the requirements of LLP Policy ED1 part C i.

Living conditions for future occupiers of flat 9

18. The appeal scheme involves the creation of an additional flat within the newly constructed building, labelled as flat 9, and all the windows of this unit are oriented towards Dalton Street. A recessed courtyard would provide a limited amount of separation between the kitchen/living room and the street. The bedroom would front directly onto the street.
19. I acknowledge that total privacy is unlikely to be achieved, in densely built up areas and that it is not uncommon, including on Dalton Street, for a residential property to have individual rooms fronting directly, or with limited separation to, the street. This would not necessarily be harmful if there was provision of an alternative outlook.
20. The recessed courtyard provides some limited separation in the case of the living room, however given the very modest scale of this space, this would not overcome the issue. The low metal railings would not prevent intervisibility and similarly would not sufficiently address the significant privacy issue resulting from overlooking to the ground floor unit from the street. I acknowledge the relatively low footfall on Dalton street, however, this does not justify the substandard level of living conditions arising from the single aspect of the ground floor flat to the street.
21. The proposal would therefore fail to provide suitable living conditions for future occupiers of flat 9 in respect of privacy and would therefore conflict with Policy Q2 of the Lambeth Local Plan 2021 and D6 of the London Plan 2021. These policies seek to ensure that housing developments are afforded acceptable standards of privacy and avoid unacceptable levels of overlooking.

Sustainable design and construction

22. Policy EN4 D requires minor developments to demonstrate sustainability principles in a supporting statement. The information should be proportionate to the scale of the proposed development and its likely impact on, and vulnerability to, climate change. No such statement is before me; however, I note that the unit forms part of a larger new build for which an appropriate statement was secured. Sustainability measures, including matters such as water consumption, could be secured by way of condition in the event that I was minded to allow the appeal.
23. Nonetheless, there is a degree of conflict with Policy EN4 of the LLP due to the absence of a supporting statement demonstrating sustainability principles, as such there is insufficient information to demonstrate that the proposal would provide a high standard of sustainable design and construction.

24. Policies SI1, SI2 and SI3 of the London Plan 2021 are also listed in the reason for refusal. My attention has not been drawn to any particular requirements of these policies that the appeal scheme would conflict with. Notwithstanding this, a completed planning obligation, which would have been sought in the event of my allowing the appeal, would provide a suitable planning mechanism to secure sustainable travel requirements such to protect air quality.

Other Matters

25. Reason for refusal 4 relates to the absence of a planning obligation under section 106 of the Town and Country Planning Act 1990, to secure the development as car permit free, together with car club membership and cycle hire membership for future occupants. The appellant has indicated their agreement to provide a planning obligation, however, no such planning obligation is before me. In the event that I was minded to allow the appeal, an opportunity would have been provided to the appellant to submit a suitable planning obligation. However, as I am dismissing the appeal on other grounds, it not necessary in this case.

Planning Balance

26. The proposal would have the benefit of adding to the supply of housing within an accessible location. It is also noted that the proposal would see a vacant unit brought into use. However, as the proposal is for a single residential unit, the contribution to the supply of housing would be very modest and any benefit arising does not outweigh the unacceptable living conditions for future occupiers and the lack of demonstration of demand for the employment space.
27. Therefore, these factors do not outweigh the identified conflicts with the development plan.

Conclusion

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

R Lawrence

INSPECTOR