



Appeal Decision

Site visit made on 19 September 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2024

Appeal Ref: APP/U5360/W/23/3318481

1 Motley Avenue, Hackney, London EC2A 4SU

- 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 Portland Investments (OHA) Ltd against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2022/1230, dated 12 May 2022, was refused by notice dated 13 September 2022.
 - The development proposed is the change of use of the ground floor office and upper floor maisonette to form a single-family dwelling with alterations to the rear of the ground floor to form amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. The parties have been given the opportunity to comment on changes to the Framework, which have been taken into account in my decision.
3. I saw on my site inspection that internally the appeal property was laid out and furnished as a unit of residential accommodation, however the demolition required to create the rear outdoor private space had not taken place. Nevertheless, the appellant has stated that the change of use of the office space to residential has not commenced. I have determined the appeal based on the proposed plans.
4. An amended Unilateral Undertaking (legal agreement) has been submitted dated 17 October 2023. The legal agreement seeks to provide for financial contributions towards affordable housing, carbon off-setting, and management and monitoring of the obligations together with provisions to make the development car-free. The Council has been given the opportunity to comment on the legal agreement and their comments have been taken into account. I shall return to the legal agreement later in my decision.
5. The Council has referred to the emerging Draft Future Shoreditch Area Action Plan, dated April 2019 (AAP). As the AAP has not been adopted, I attach limited weight to it in my decision.

Main Issues

6. Taking into account the reasons for refusal, the main issues are:

- the loss of the office use;
- whether future occupiers of the proposed dwelling would have satisfactory living conditions with particular regard to the proposed outdoor space, the amount of light available and the outlook from ground floor habitable rooms; and,
- whether the developer contributions relating to, affordable housing, car-free development, carbon offsetting, and the monitoring and management of the obligations are reasonable and necessary to make the development acceptable.

Reasons

Loss of Office Space

7. The appeal site is a terraced three storey property located on a side road away from nearby much busier roads. The area is predominantly in use for offices, along with some commercial uses on nearby roads.
8. Both parties agree that the second floor of the property has a residential use following a planning permission granted in 1995 for a live-work unit, and that the ground floor has an office use. Although there is a disagreement about the use of the first floor. The appellant's statutory declaration and supporting information asserts that the first floor has been used as part of the residential use, but no such certificate of lawfulness has been obtained. The Council has queried whether the requirements would be met for such a certificate given the property is said to have been vacant from 2019. Whilst it would appear that the first floor has been in residential use at certain times, given the lack of substantive evidence of a continuous residential use, and without a certificate to confirm this. It is not certain on the information before me that the first floor has a lawful residential use. I will therefore assess the appeal based on an office use across both ground and first floor of the appeal property.
9. The site is located within a designated Priority Office Area (POA) and a Central Activity Zone (CAZ). Within the POA, Policy LP27 of the HLP and Policy FS01 of the APP do not permit the loss of office floorspace to residential use. Policy LP26 of the HLP emphasises that new development in POA's should maximise employment floorspace in accordance with Policy LP27 of the HLP. In terms of the CAZ, Policy SD4 of The London Plan, The Spatial Development Strategy for Greater London, adopted March 2021 (LP) recognises the nationally and internationally significant office functions of the CAZ. Further support is offered by Policy SD5 of the LP which protects offices in such areas and states that offices are to be given great weight relative to new residential development, with possible exceptions only in wholly residential streets or predominantly residential neighbourhoods. Against this policy background there is strong protection for the retention of the office use at the appeal site, which is not in a predominantly residential area.
10. Nevertheless, the appellant asserts that there is no demand for the appeal property as offices, after trying to market the property. I am also mindful of paragraph 124 d) of the Framework that promotes and supports the development of under-utilised land and buildings, together with paragraph 126 that states decisions should reflect changes in demand for land. Furthermore, paragraph 9 of the Framework requires the presumption in favour of

sustainable development, and paragraph 8 is clear that there is an economic objective to sustainable development and seeks to help build a strong, responsive, and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time. In light of the above, and whilst not explicitly supported by relevant policies of the development plan, the marketing information submitted by the appellant is an important relevant planning consideration.

11. The property has been marketed for approximately two years, initially said to have been by Colab Spaces for 4 months and then by Strettons since January 2020. It is noted that the property was marketed for rent (the rent was reduced during the period of marketing), and after numerous viewings no tenant was found. The reasons for this are said to relate to the configuration of the building, its limited size and accessibility, that it could not support open plan office on one level, its limited toilet provision, its lack of communal areas, lack of expansion opportunities, together with difficulty meeting equalities duties, with it having no lift. It is also said by the marketing agent that there has been an increase in office vacancy rates in the area, which notwithstanding the above limitations, would likely make finding an office tenant harder.
12. Although part of the marketing period was through the Covid pandemic, there were periods of marketing both before and after when there were no restrictions, as such the marketing exercise should be reliable. The Council has not raised any concerns regarding the marketing period, and I see no reason to disagree.
13. Carefully considering all the marketing evidence as a whole, I am satisfied that it is comprehensive and demonstrates a lack of demand for the site in its current use. Notwithstanding the location within a POA and the CAZ, the marketing feedback particularly the significantly limited size of the appeal property, its configuration, and accessibility strongly indicate to me that there is no demand for this type of office space.
14. As the office use falls within Class E of the Use Classes Order 1987 (as amended), there are other uses within Class E, which include retail; the sale of food and drink; indoor sport; health services; day nursery; and light industry, which the Council suggested should have been included to in the marketing exercise as there is no Article 4 to prevent these different uses taking place in the building. However, I do not regard it necessary for these other uses to have been marketed for the purpose of this appeal, as the relevant planning policies are specifically seeking to restrict the loss of office space. Moreover, in the event the appeal is dismissed, the office use of part of the appeal property could be lost through movement between the different uses in Class E without requiring planning permission. Given that the appeal property is said to be vacant and the unsuccessful marketing of the property, exercising one of these fallback uses is a likely fallback provision, which I attach weight to in my decision.
15. To conclude, the evidence demonstrates a lack of demand for office use at the appeal site, which is a relevant consideration that should be given weight in this decision. Notwithstanding this, there is conflict with Policies SD4, and SD5 of the LP, Policies LP26 and LP27 of the HLP and Policy FS01 of the AAP, insofar as they collectively seek to promote and protect office uses in the POA and CAZ

and prevent office space being lost to residential use to support the internationally and nationally significant office functions in these areas.

16. The Council referred to the proposal conflicting with Policy E1 of the LP, whilst that policy broadly seeks to promote and consolidate the inner and outer London office areas, it does permit the change of use of surplus office space to other uses including housing. Consequently, I did not find the proposal to directly conflict with Policy E1 of the LP in this case.

Housing standards

17. There is no dispute that the proposed rear outdoor space, said to measure some 18 square metres, would be above the minimum size required by Policy D6 of the LP, which is said to require an area of 8 square metres in this case. The proposed rear outdoor space is situated amongst mainly blank tall brick walls, mostly belonging to neighbouring properties and being at least three storeys high. Nevertheless, the space would be usable, and is functionally well related to the proposed property. In addition, the proposed plan shows landscaping within this area which would provide a pleasant and private area in this urban environment.
18. The proposed ground floor habitable open plan lounge, kitchen and dining area has a partly glazed front door, large front window and large rear glazed openings. Notwithstanding that neither a daylight or sunlight assessment has been submitted, I saw on my site inspection that to the front there is a reasonable separation to the nearest buildings to enable sufficient light to enter the front of the ground floor of the appeal property. Whilst noting the concerns regarding the outlook to the rear, within this urban environment, and taken together with the front facing openings, there would be sufficient light into the open plan ground floor area. For the same reasons there would be a satisfactory outlook for future occupiers of the appeal property on its ground floor level. I also saw from within the property that other habitable rooms on the first and second floor had sufficient light.
19. I therefore conclude that the proposed development would provide satisfactory living conditions for future occupiers and meet the requirements of Policy D6 of the LP and Policies LP2 and LP17 of the HLP, that amongst other things require new properties to meet outdoor space standards, and have sufficient daylight, and not have significant adverse effects upon amenity from daylighting and outlook.

Developer Contributions

20. It is necessary for me to consider the obligations contained within the legal agreement against the three tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regs.) and paragraph 57 of the Framework which require obligations to be necessary to make the development acceptable, related to the proposed development and in scale and kind to it.

Affordable Housing

21. Policy LP13 of the HLP, requires a contribution for new residential development of 1-9 dwellings, by way of either an on-site or off-site contribution. In accordance with Hackney's S106 Planning Contributions Supplementary Planning Document, dated July 2020 (SPD) new residential units of between 1-

9 units, should provide 50% on-site affordable housing provision or an off-site contribution of either £50,000 or £60,000 (depending on location). The legal agreement provides for a contribution of £50,000 towards the delivery of affordable housing within the London Borough of Hackney.

22. However, in this case and notwithstanding the marketing, there is already a unit of residential accommodation within the appeal property at second floor. As this proposal would see the extension of that existing residential unit across the entirety of the appeal property, there would still only be one unit of residential accommodation within it. Therefore, the appeal proposal does not yield any net increase in the total number of residential units within the appeal property. Consequently, the requirements of Policy LP13 and the SPD to provide an affordable housing contribution would not apply in this particular case.
23. I therefore conclude that an affordable housing contribution would not be necessary to make the development acceptable. The proposal would therefore not satisfy the tests set out in Regulation 122 (2) of the CIL Regs. or paragraph 57 of the Framework. The contribution would conflict with Policy LP13 and the SPD, which only seek affordable housing contributions from the creation of new residential units of accommodation.
24. In its reason for refusal, the Council referred to the proposal conflicting with Policy H4 of the LP in terms of affordable housing provision. However, that policy is focussed on delivering affordable housing in a range of different ways, including from on-site contributions from major development. I did not find that policy to be determinative on the circumstances of this case.

Car-free development

25. The appeal site is in a well-connected area, said to have a PTAL rating of 6b, and within a Controlled Parking Zone, with on-street parking restrictions. Policy T6 of the LP states that car-free housing is the starting point for all new development proposals in well-connected areas. Policy LP45 of the HLP and the SPD require all new development to be car-free to promote travel by means other than the private car, and not add to parking stress, congestion and air pollution in the surrounding area. The proposed increase in the size of the existing residential unit at the appeal property to include all three floors, constitutes development, and is likely to generate greater demand for car use. The proposed development is therefore required to be car-free development in this case.
26. Turning to the submitted car free development obligation, there are covenants that prevent applications being made for Parking Permits, for existing Permits by occupiers of the appeal property to be surrendered, and measures to ensure future tenants and owners are made aware of the car-free requirement. However, none of those covenants go directly with the land, as such there would be difficulty enforcing them. The exception to this is clause 2.3, which restricts occupation of the proposed development until either notice has been provided that occupiers are not, entitled to a Parking Permit, or that they cannot enter into a contract to park within a Council operated car park. Although, the clause does not specify who the notice must come from. Furthermore, this covenant requires compliance with only one of the two requirements, if a notice was issued to the effect, it was not possible to apply to park in a council car park, it would not prevent a Parking Permit being issued

after occupation of the proposed dwelling. This would not achieve the necessary car-free development restrictions.

27. There is also no explicit clause that prevents occupation of the proposed development until the Council have removed the appeal property's address from the relevant Traffic Regulation Order, to prevent a parking permit being obtained.
28. Accordingly, this obligation would not make the development either car-free, neither would it meet the relevant statutory tests within Regulation 122(2) of the CIL Regs. and paragraph 57 of the Framework. As such the proposed development would be contrary to Policy T6 of the LP, Policy LP45 of the HLP and the SPD which require new development to be car free.

Carbon off-setting

29. Policy LP55 of the HLP requires all development to mitigate the effects of climate change through design. It further states that where it is not possible to provide carbon zero development, carbon off setting payments can be secured through a planning obligation. The appellant's Energy Statement has confirmed it is not possible for the proposal to be carbon zero, and calculated the carbon off setting contribution in this case to be £4,258, in accordance with the SPD. The legal agreement states that the contribution would be paid towards carbon off setting projects in the London Borough of Hackney. The proposed contribution is necessary to make the development acceptable in accordance with Policy LP55 of the LP and the SPD, it relates to the proposed development, and it is in scale and kind to the development proposed. I therefore find the contribution meets the tests within Regulation 122(2) of the CIL Regs. and complies with the tests set out in paragraph 57 of the Framework.
30. The Council referred to Policy SI 2 of the LP in its reason for refusal, however, as that policy is mainly related to major development, I did not find it to be determinative on the requirement for this obligation.

Management and Monitoring Contribution

31. The legal agreement contains an obligation for a management and monitoring fee of £3,600 towards the Council's costs of monitoring and administering the obligations. The SPD states that for the management and monitoring of the obligations, a fee of £555 per non- financial obligation can be required and for financial obligations a fee which is the higher of £555 per obligation or 5% of the value of the contribution can be required.
32. Although the management and monitoring obligation can reasonably be required for the carbon off-setting obligation. As I have found the affordable housing contribution not to be necessary in this case and the car-free development obligation not to satisfactorily secure the development as car-free, the management and monitoring fee is more than that required by the SPD. Consequently, I find the obligation relating to the management and monitoring fee not to be necessary, and not to meet the statutory tests contained within Regulation 122(2) of the CIL Regs. and paragraph 57 of the Framework. As such I also find this obligation to conflict with the SPD.

Conclusion

33. The carbon off setting contribution is necessary and does meet the statutory tests, and I shall attach positive weight to it in my decision. In light of the above findings, the obligations relating to affordable housing, car free development, and management and monitoring do not meet the statutory tests. I do not attach positive weight to them in my decision.

Other Matters

34. The appeal site is located within the South Shoreditch Conservation Area (the CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires when determining proposals in conservation areas that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
35. The CA comprises many commercial and tall buildings, mainly arranged as terraced properties across a variety of busy roads, including some side streets. The appeal proposal relates primarily to a change of use of the building, although it would involve the demolition of a single storey rear element to provide outdoor space. The creation of this space would be contained behind existing buildings, without public views, and involves the addition of glazed openings at ground floor level. In this case the alterations are considered to respect the character and appearance of the building and the CA. Consequently, the appeal proposal would preserve the CA, consistent with the duty in the Act.
36. The appellant has drawn my attention to appeals at 18 Ellingfort Road, Hackney and at 2 Heron Court, 3-5 High Street, Hampton. Those cases relate to the change of office space to residential in a POA and Key Office Area, respectively, and were both allowed following a marketing exercise. However, neither of those sites were located within a CAZ, and they both had existing residential development in close proximity to them. Whilst I have taken into account the issues raised insofar as they are comparable to the appeal proposal, they are not identical due to their different locations, context and planning designations.
37. It is noted that the appellant has stated that the site is not near to listed buildings; that it would use sustainable technologies to reduce carbon emissions; there would be no unacceptable effects upon the living conditions of surrounding occupiers; it would provide cycle storage provision; and the proposal would meet national space standards. However, these are all likely to be requirements of any well-designed scheme, as such they individually and collectively do not weigh in favour or against the proposal.

Conclusion

38. For the reasons outlined above, the proposal conflicts with Policies SD4 and SD5 of the LP, Policies LP26 and LP27 of the HLP, and Policy FS01 of the AAP, which specifically seek to prevent the loss of office uses in POA and CAZ areas. The proposal also conflicts with Policy T6 of the LP, Policy LP45 of the HLP and the SPD, insofar as they require new development to be car free, to ensure the proposal does not add to car usage, congestion, parking stress and air quality impacts, and promotes sustainable travel choices. I attach significant weight to the conflict with the development plan.

39. The appeal site has been unsuccessfully marketed for office use for approximately 2 years, with feedback indicating its limited size, layout, accessibility and limited services does not make it appropriate for a small modern office. Furthermore, the office use of part of the property could also change to another use within Use Class E of the Use Classes Order 1987 (as amended) without requiring planning permission, taking the property out of office use. This is also a realistic fallback in the event the appeal is dismissed. The proposal would also improve the quality and size of the existing residential accommodation, increasing its bedroom size and providing a wider choice of housing in the area. The proposal would also provide a small contribution towards carbon off-setting. These factors, together with the proposal being an extension of an existing residential unit within the property, along with bringing an underutilised building back into use in this sustainable location, weigh heavily in favour of residential use on the ground and first floor of the appeal property.
40. The arguments in favour of the loss of office space when taken together, particularly in view of the marketing, outweigh the conflict with the relevant development plan policies that protect office use at the appeal site. However, these arguments, including those relating to the fallback provision and the carbon off-setting contribution, would not overcome the conflict with Policy T6 of the LP, Policy LP45 of the HLP and the SPD regarding ensuring new development is car-free. In this case I find the conflict with the development plan in relation to car-free development is not outweighed by the benefits of the proposed development and there are no other considerations which indicate a decision other than in accordance with the development plan. I therefore dismiss the appeal.

A Hunter

INSPECTOR