



Appeal Decision

Site visit made on 15 November 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/T5150/W/23/3324048

7 Monterey Studios, 239 Kilburn Lane, London W10 4BS

- 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 Hossein Shajari against the decision of the Council of the London Borough of Brent.
 - The application Ref 23/0262, dated 26 January 2023, was refused by notice dated 4 April 2023.
 - The development proposed is described on the planning application form as: "Proposed change of use from 'work to live' to residential (family home). Only external changes are to fix doors shut on ground floor, front elevation."
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Decision

1. The appeal is allowed and planning permission is granted for development described as "Proposed change of use from 'work to live' to residential (family home). Only external changes are to fix doors shut on ground floor, front elevation", at 7 Monterey Studios, 239 Kilburn Lane, London W10 4BS, in accordance with the terms of the application, Ref 23/0262, dated 26 January 2023, 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:
Location Plan – E15 1TX.005
Proposed Floor Plans – W104BS.003
Proposed Sections and Elevations – W104BS.004
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Preliminary Matters

2. The site addresses given in the planning application form and appeal form are slightly different. The site address in the banner heading above has been taken from the appeal form, which is consistent with the Council's decision notice and I am satisfied accurately describes the site.
3. An update to the National Planning Policy Framework (the Framework) was published on 19 December 2023 but there are no material changes relevant to the substance of the appeal.

Main Issues

4. The main issues are:

- whether the proposed development is acceptable having regard to the protection of employment floorspace; and
- whether the proposed development would provide suitable living conditions for future occupiers in terms of floor-to-ceiling heights and provision of external amenity space.

Reasons

Protection of employment floorspace

5. No 7 Monterey Studios is a 3-storey mid-terrace property within a gated complex of 10 units, accessed from Kilburn Lane. The complex of Nos 1 to 10 Monterey Studios comprises a row of terraced 3-storey properties of broadly similar scale and appearance, although Nos 6, 7 and 8 appear slightly shallower from front to rear. All units are bound to the front by a servicing and parking area, and to the rear by a railway line.
6. I understand the units were granted consent as live-work units under the original planning permission, with the ground floors providing employment space and the upper floors providing residential accommodation.
7. The supporting text to Policy BE3 of the Brent Local Plan 2019-2041 – Adopted February 2022 (the BLP) clarifies that the appeal site should be categorised as a Local Employment Site. Policy BE3 sets out that the Council will only allow the release of Local Employment Sites for non-employment uses in certain circumstances. The Council considers the proposal fails to accord with criterion a), which permits such development where continued wholly employment use is unviable. The supporting text to Policy BE3 sets out that unviability must be demonstrated through an appropriate marketing exercise.
8. The proposal would result in the release of land comprising a Local Employment Site for non-employment use and no marketing evidence has been provided to demonstrate that the property is no longer viable for employment use. The proposal would not meet any of the other criteria identified by Policy BE3 that may support such development. As such, the proposal would not accord with Policy BE3.
9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Having identified conflict with the development plan, I must consider whether any material considerations outweigh this.
10. I am provided with evidence that 9 of the 10 units have been granted planning permission to use the ground floor as residential accommodation, either through successful planning applications or appeals. The first of the 9 units to be granted such permission was via appeal in January 2009. The subsequent planning permissions were granted by the Council in 2011 and 2013. Although a reasonable period of time has passed since the most recent granting of planning permission, the previous decisions and the present nature of the site and its surroundings are material considerations.

11. The 2009 appeal decision considered there was very little demand for the occupation of the unit for employment purposes at a time when the lawful ground floor use of all neighbouring units was for employment purposes. Given the intervening permissions, the present situation leaves the appeal site as the only employment use in an otherwise wholly residential complex. My overriding impression of the complex at my site visit was of an inherently residential area with no indication of employment use. Although this may not be what was envisaged when it was first granted planning permission, the nature of the site has evolved.
12. When compared to my colleague's view in 2009, I consider it highly unlikely that the property would now be any more attractive for employment use, given all immediate neighbouring uses are now residential. I fully understand why this isolated position would dissuade potential employment occupiers from the site, and marketing evidence is not crucial to persuade me that the site is not viable for employment use. Moreover, I am provided with no specific evidence that the proposal would harm the overriding objective of Policy BE3 to ensure a range of employment premises are available to meet employment needs.
13. Policy E1 of the London Plan – March 2021 (the LP) seeks, among other objectives, to retain existing viable office floorspace in non-designated employment areas. Because I am satisfied the proposal would not lead to the loss of viable office space, there would be no conflict with Policy E1.
14. For the reasons given above, the proposed development would not result in the unacceptable loss of employment floorspace and would comply with Policy E1 of the LP, the aims of which are set out above. Although the proposal would conflict with Policy BE3 of the BLP, for the reasons detailed above I conclude that there are material considerations that outweigh this conflict.

Living conditions

15. LP Policy D6 sets standards to provide high quality housing development, among which is a requirement for the minimum floor to ceiling height to be 2.5 metres for at least 75% of the gross internal area of each dwelling.
16. The proposal would provide additional residential accommodation at the ground floor, with this area meeting the policy requirement. Although the floor to ceiling height of the upper floors is less than 2.5 metres, these areas already provide lawful residential accommodation, and this would not change as part of the proposal. I therefore find the proposal to be compliant with Policy D6 in this regard.
17. Turning to external amenity space, Policy BH13 of the BLP requires all new dwellings to have private amenity space of a sufficient size and type to satisfy its residents' needs, which is normally expected to be 50 square metres for family housing with 3 or more bedrooms. The supporting text to the policy indicates a flexible approach, acknowledging not all developments will be able to meet the standards. However, it does acknowledge the baseline minimum standards set by LP Policy D6 should be met.
18. Although the amount of external amenity space would not strictly meet the expectation of Policy BH13, the amenity space would be broadly comparable to that already provided at the neighbouring units. Paragraph 128 of the Framework states that planning policies and decisions should support

development that makes efficient use of land, and the flexible approach set out by Policy BH13 reflects this. Considering the nature of the site and the planning history of the immediate area, the proposal would support this objective of the Framework and accord with the overarching aim of Policy BH13 to provide appropriate amenity space to meet residents' needs. Furthermore, based on the likely number of occupants, the amount of private external amenity space would meet the requirements of LP Policy D6.

19. For the reasons given above the proposal would provide suitable living conditions for future occupiers and would accord with Policy BH13 of the BLP and Policy D6 of the LP, the aims of which are set out above.

Conditions

20. The Council has provided a list of suggested conditions that I have considered against the provisions of paragraph 56 of the Framework and the Planning Practice Guidance (the PPG). To ensure compliance with these provisions I have amended, and in some cases omitted, certain conditions.
21. Conditions relating to the statutory time limit and a list of approved plans are necessary in the interests of certainty. A condition requiring the external materials to match closely with the existing building is necessary to ensure the development delivers a high standard of design and reflects the character and appearance of the area.
22. The Council suggests a condition to remove permitted development rights for the property to be converted to a Class C4 small house in multiple occupation (HMO). The PPG advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. I am provided with limited justification for the condition in this instance and I do not consider it to be reasonable or necessary.
23. A condition is suggested to remove the right for occupiers to apply for residential or visitor parking permits, to ensure the development does not result in increased parking demand. The Council has not refused the application based on parking related issues or referred to the approach suggested by the condition in its officer report. As such, I have been provided with limited substantive details supporting the imposition of this condition and I do not consider it to be necessary or reasonable.
24. Secure cycle storage could be installed to the private amenity area and I do not consider it necessary to require further details by condition.

Conclusion

25. For the reasons given above I conclude that the appeal should be allowed subject to the conditions listed in my formal decision.

P Storey

INSPECTOR