



Appeal Decision

Site visit made on 22 January 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Appeal Ref: APP/V5570/W/23/3325803

Craft House, 88 Goswell Road, Islington, London EC1V 7DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by 88 Goswell Road Limited against the decision of the Council of the London Borough of Islington.
 - The application Ref P2023/1267/S73, dated 2 May 2023, was refused by notice dated 27 June 2023.
 - The application sought planning permission for "Alterations to the existing building including the rearrangement of the ground floor elevation, replacement of all windows on front and rear elevations, the rationalisation of the rear rooflight at first floor level, the rebuilding of the existing second storey rear extension, the creation of terrace space at first, second and third floor levels, along with the replacement of existing plant at roof level" without complying with a condition attached to planning permission Ref P2022/3398/FUL, dated 16 November 2022.
 - The condition in dispute is No 7 which states that: "RESTRICTED USE (COMPLIANCE) CONDITION: Notwithstanding the provision of the Town and Country Planning (Amendment) (England) Regulations 2020, the premises shall be used only for the purposes indicated in the submitted details (office) and not for any other purpose listed within Use Class E of the Town and Country Planning (Amendment) (England) Regulations 2020."
 - The reason given for the condition is: "to ensure sufficient office space is protected within the CAZ."
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Decision

1. The appeal is allowed and planning permission is granted for alterations to the existing building including the rearrangement of the ground floor elevation, replacement of all windows on front and rear elevations, the rationalisation of the rear rooflight at first floor level, the rebuilding of the existing second storey rear extension, the creation of terrace space at first, second and third floor levels, along with the replacement of existing plant at roof level at Craft House, 88 Goswell Road, Islington, London EC1V 7DB in accordance with application Ref P2023/1267/S73 dated 2 May 2023, without compliance with condition 7 previously imposed on planning permission Ref P2022/3398/FUL dated 16 November 2022 and subject to the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by 88 Goswell Road Limited against the Council of the London Borough of Islington. This application is the subject of a separate decision.

Preliminary Matters

3. Since the Council determined the planning application, it has adopted the Strategic and Development Management Policies September 2023 (SCMP) and the Bunhill and Clerkenwell Area Action Plan September 2023 (AAP). The policies in the SCMP and AAP supersede policies from the Islington Development Management Policies 2013, the Finsbury Local Plan 2013 and the Emerging Local Plan which were included in the Council's reason for refusal of the planning application. I sought the parties' comments on the implications of the SCMP and AAP for the proposal and, insofar as they are relevant, have determined the appeal based on the adopted policies in the SCMP and AAP.
4. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.
5. Within the context of this appeal under section 78 of the Act, it is not within my remit to formally determine whether the use is lawful. If the appellant wishes to ascertain whether it is lawful, an application can be made under section 191 of the Act. Nevertheless, I have had regard to the use insofar as it is relevant to my consideration of the case.

Background and Main Issue

6. Planning permission was granted in November 2022¹ for alterations to the building. The original permission included Condition 7 as set out in the banner heading above which in effect restricts the building to office use. The condition was imposed 'to ensure sufficient office space is protected within the CAZ'.
7. The appellant sought to vary the condition to allow the ground and lower ground floors to also be used for a retail showroom (Class E(a)), retaining the restriction on the first, second, third and fourth floors to office use only. This was refused by the Council.
8. In the appeal, the appellant is now seeking a flexible Class E use for the whole building, the Council has had the opportunity to comment on this matter and I consider the appeal accordingly.
9. Therefore, the main issue is whether condition 7 is necessary and reasonable with regard to the provision of office space in the Central Activities Zone (CAZ).

Reasons

10. The site comprises a vacant six-storey building (including basement) in a commercial area on Goswell Road. In its Planning Officer's Report on the original application, the Council recognised that the office use (Class E) of the site is established, and it also refers to the Class E use of the building in other documents submitted with this appeal.
11. The original proposal included alterations to the ground floor frontage, replacement of the second-floor extension resulting in additional floorspace of 4sqm, additional and replacement terraces, replacement plant and windows,

¹ Application ref P2022/3398/FUL, the 'original application/proposal/permission'.

and changes to the first floor rooflight. The Council did not object to its design or its impact on the character and appearance of the area.

12. In terms of the SCMP and the AAP, the site lies within the CAZ and the Bunhill and Clerkenwell AAP (BCAAP) area. The Council considers that the condition restricting the use of the building is necessary to ensure the protection of office space in the area and that varying it would conflict with several policies in the SCMP and AAP which give priority to office uses in the CAZ and BCAAP area, amongst other things. In this respect, it outlines that the marketing evidence is insufficient and fails to demonstrate a lack of demand for business floorspace in this location as required by Policy B3 of the SCMP. The Council acknowledges that Policy AAP7 of the AAP allows supporting uses such as retail and leisure at ground floor level in this location but this is where appropriate and needs to be read alongside the relevant policies relating to business use.
13. The Framework and the Planning Practice Guidance state that conditions should only be imposed where they meet several tests, including where they are necessary, relevant to planning and relevant to the development to be permitted. There is no dispute that the condition is relevant to planning.
14. The Council accepts that Class E use of the site is established and there is no evidence before me that this use is restricted by earlier permissions or other means. The original proposal was to renovate and improve the building including a replacement extension resulting in a very small increase in the floor area, and the Council did not object to these alterations.
15. The supporting documentation for the original proposal referred to the creation of a modern high-quality office space and outlined that the development would create flexible, adaptable commercial accommodation attractive to small and medium sized businesses. There was nothing to suggest that the building would be put to a different use from its established use within Class E. There are now references to the potential use of the building as a retail showroom, but this would also be within Class E. Therefore, irrespective of the development plan policies, the condition restricting the use of the building to offices is not necessary because there is no need to restrict the use in order to make the proposed physical alterations acceptable. Further, it is not reasonable as it places an unnecessary and unjustified restriction on the established use of the property. Therefore, it fails the policy tests for conditions outlined in paragraph 56 of the Framework.
16. In reaching this conclusion, I have had regard to the legal tests for conditions set out in the Newbury² principles.
17. Consequently, I conclude that condition 7 is not necessary and reasonable with regard to the provision of office space in the CAZ.

Other Matters

18. The site lies within the Hat and Feathers Conservation Area (CA) where there is a requirement for special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. Having regard to the Clerkenwell Green, Charterhouse Square, Hat & Feathers Conservation Area Design Guidelines 2002, the significance of the CA derives in part from its mix of uses, its architecture and its history which has developed incrementally from

² Newbury District Council v Secretary of State for the Environment [1981] AC 578

Norman times to the present day. The host property makes a positive contribution to the area due to it being a Georgian style tall red brick building with blue timber framed sash windows at the front. The original proposal included improvements to the ground floor frontage, replacement of a rear extension which is not high quality, regularising the building with terraces at all available levels, rationalising the plant within an enclosure, replacing inconsistent types and quality of windows with timber framed windows, and installing a new rooflight which would not be readily visible. As the original proposal would improve the appearance of the building, the character and appearance of the CA as a whole would be preserved. I note that the Council raised no objection in this regard either.

Conditions

19. By allowing this appeal, a new planning permission is created. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
20. The PPG outlines that the time limit within which the development must be started cannot be amended so I have altered the timescale condition to reflect 3 years from the date of the original permission. I have also made a minor change to the drawing and document numbers condition to correct a typo on one of the plan numbers.
21. As I have no information before me about the status of the other conditions imposed on the original permission, I have imposed all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
22. The Council suggests a different set of conditions, but this is not consistent with the original planning permission and my finding that restricting the use of the building is not necessary and reasonable.

Conclusion

23. For the reasons given above, I conclude that the appeal should be allowed and grant a new planning permission.

A Wright

INSPECTOR

Schedule of Conditions

- 1) **CONSENT PERIOD:** The development hereby permitted shall be begun not later than 16 November 2025.
- 2) **DRAWING AND DOCUMENT NUMBERS:** The development hereby approved shall be carried out in accordance with the following approved plans:
119-ANO-XX-B1-DR-AX-11999 P5, 119-ANO-XX-00-DR-AX-11000 P5,
119-ANO-XX-01-DR-AX-11001 P5, 119-ANO-XX-02-DR-AX-11002 P5,
119-ANO-XX-03-DR-AX-11003 P7, 119-ANO-XX-04-DR-AX-11004 P5,
119-ANO-XX-XX-DR-AX-16001 P5, 119-ANO-XX-XX-DR-AX-17001 P6,
119-ANO-XX-XX-DR-AX-17002 P7, 119-ANO-XX-XX-DR-AX-17003 P6,
119-ANO-XX-XX-DR-AX-20001 P4, 119-ANO-XX-RF-DR-AX-27002 P5,
Design and Access Statement by Anomaly (29.09.22) Planning Statement by Icen Projects (September 2022) and APD Noise Survey (August 2022).
- 3) **MATERIALS (COMPLIANCE):** The development shall be constructed in accordance with the schedule of materials noted on the plans and within the Design and Access Statement. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.
- 4) **PLANT NOISE (COMPLIANCE):** The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level LAeq Tr arising from the proposed plant, measured or predicted at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 5dB(A) below the background noise level LAF90 Tbg. The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142: 2014+A1:2019.
- 5) **TERRACE HOURS OF USE (COMPLIANCE):** The terrace areas hereby approved shall not operate outside the hours of:
0900 to 1800 hours Monday to Friday.
- 6) **NO AMPLIFIED MUSIC (COMPLIANCE):** No amplified music shall be played at any time upon the terrace areas as shown on the approved plans.
- 7) **RESTRICTION OF PD RIGHTS - CLASS E TO RESIDENTIAL (COMPLIANCE):** Notwithstanding the provisions of Schedule 2, Part 3, Class MA the Town and Country Planning (General Permitted Development) Order 2021 (or any order revoking and reenacting that Order with or without modifications), no change of use of the converted floorspace hereby approved from Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses) shall take place without an express grant of planning permission.