



Appeal Decision

Site visit made on 15 August 2023

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th March 2024

Appeal Ref: APP/K5600/W/23/3315061

Basement, 4A Campden Street, London W8 7EP

- 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 Kevin O'Callaghan (Airspace UK Ltd) against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/22/00040, dated 22 December 2021, was refused by notice dated 17 November 2022.
 - The development proposed is change of use of basement from retail storage (Class E) to residential (Class C3) to provide a one-bed self contained flat with home office/workspace accommodation.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of basement from retail storage (Class E) to residential (Class C3) to provide a one-bed self contained flat with home office/workspace accommodation. at Basement, London, W8 7EP in accordance with the terms of the application, Ref PP/22/00040, dated 22 December 2021, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Airspace UK Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea. This application is the subject of a separate decision.

Preliminary Matters

3. Since the planning application was submitted an article 4 direction became effective restricting the change of use from uses within Class E to Class C3. Whilst I have had regard to this it has not been determinative as the proposal before me is a planning application and not an application for prior approval.
4. There has recently been a revised National Planning Policy Framework (the Framework) published by Government. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

Main Issues

5. The main issues are the effect of the proposal on:
 - the character and function of the Notting Hill District Shopping Centre, and

- the residents parking provision in the area.

Reasons

Retail storage space

6. The host building is located in the secondary shopping area of Notting Hill. The change of use relates to an area of approximately 29 square metres of retail storage space that was retained as part of a previous application to convert the basement of a 4 Campden Street to a one bedroom flat (PP/20/00083). The proposal before me seeks to change to use this area to residential use as part of the approved flat.
7. Whilst the Council is concerned about the period of time and the evidence for marketing, the policy CF3 of the Local Plan (2019) requires that it is successfully demonstrated that the loss of below ground floor shop uses would not adversely affect the essential shopping character, function or vitality of the centre. It does not require a specific period for marketing or for evidence that the storage area was marketed to other nearby commercial units.
8. The appellant has submitted evidence that both the previous and prospective tenant of the retail shop do not require the additional basement storage and indicates that the storage would not be likely to be required by future users. Due to the change in layout to facilitate the approved scheme, access to the basement storage area would be external to the retail premises. It would be likely therefore that it would remain as a vacant space. In addition, the change of use of the storage area would not harm the retail presence within the street scene due in part to the lack of street frontage.
9. Access to the basement storage would be via the access to the residential unit and would share the same stairway. Whilst I accept that the changes to the access to the storage space have been brought about by the change of use of the basement to residential use the current situation is likely to deter occupiers of the retail space above from utilising the basement storage area.
10. I conclude that the proposal would not harm the character and function of the Notting Hill District Shopping Centre with particular regard to retail storage space. It would comply with Policy CF3 of the Local Plan (2019) which amongst other matters seeks to ensure that the success and vitality of town centres are protected.

Residents parking provision

11. The proposed development makes no provision for on-site parking and there is the potential for it to generate demand for additional on street parking within the Controlled Parking Zone (CPZ). The appellant has provided a Unilateral Undertaking (UU) as the mechanism to ensure that the development would be car-free by preventing occupiers from obtaining a parking permit. The Council has confirmed that a legal agreement that would prevent future occupiers from obtaining a residents parking permit would overcome its concerns.
12. From my site visit I saw that the on-street parking close to the property was in demand and the street was busy. Additional residents searching for parking spaces could cause highway safety issues in the area.

13. The UU includes the legislation under which it is made, sets out the requirements, defines the site and is dated and duly executed. As such, I am satisfied that the UU serves to ensure that the development would be car-free by preventing occupiers from obtaining a parking permit.
14. In this case a negatively worded condition restricting on street parking would not meet the criteria in the Planning Policy Guidance as there is a signed UU in place.
15. Consequently, the proposed development would not affect the residents parking provision in the area. It would therefore comply with Policy CT1 of the Local Plan (2019) which amongst other matters, requires that all new residential development be permit-free.

Other Matters

16. The appeal site is within the Kensington Conservation Area. The proposal does not include external alterations to the front of the building. Accordingly, the proposal would preserve the character and appearance of the conservation area and there are no adverse impacts of granting permission.
17. Both parties agree that there is an absence of a 5-year supply of housing. Whilst the proposed development would create an additional dwelling adding to the areas housing stock and supporting the Government's objective of boosting the supply of homes, permission already exists for a flat. In this case there the proposal would not deliver a net increase in housing stock in the area.

Conditions

18. I have considered the conditions suggested by the Council in accordance with the Framework and Planning Practice Guidance. A condition specifying that the development is undertaken in accordance with the approved drawings is necessary to provide certainty and a condition requiring materials to match the exterior of the building is necessary to preserve the character and appearance of the area.
19. I have amended condition 3 to occur prior to first occupation, as on my site visit, I saw that work had commenced in line with the previously approved scheme, PP/22/00083. It is necessary to preserve the character and appearance of the area and to protect the living conditions of future occupiers.

Conclusion

20. The proposal does not conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding.
21. For the reasons given the appeal should be allowed.

H Senior

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A_PL_099 rev. B, A_PL_100 rev. 00, A_PL_400 rev. 00, A_PL_050 rev. 00, A_PL_051 rev. 00, A_PL_200 rev. 00, A_PL_201 rev. 00, A_PL_500 Location Plan, A_PL_550 Block Plan
- 3) Prior to first occupation full particulars of the following have been submitted to and approved in writing by the local planning authority. The development shall not be completed otherwise than in accordance with the details so approved and maintained thereafter:
 - (a) Cycle parking for the new dwelling at lower ground floor level;
 - (b) Facilities and arrangements for storage and disposal of refuse and recycling for the new dwelling at lower ground floor level; and
 - (c) Scheme of sound insulation between the lower ground floor residential use and ground floor retail use.
- 4) All work and work of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture, profile and, in the case of brickwork, facebond and pointing, and shall be so maintained.