
Appeal Decision

Site visit made on 25 July 2024

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Appeal Ref: APP/A5840/W/24/3340302
80 Southwark Bridge Road, SE1 0AS

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by A Burakowski against the decision of the Council of the London Borough of Southwark.
 - The application Ref 23/AP/3579, dated 20 December 2023, was refused by notice dated 15 February 2024.
 - The application sought planning permission for the change of use from commercial premises (Use Class E) to Live/Work (sui generis) without complying with a condition attached to planning permission Ref 23/AP/1632, dated 6 December 2023.
 - The condition in dispute is No 3 which states that: This permission shall be personal to Antoni Tomas Burakowski & Alison Jopp nee Roberts only, and shall not enure for the benefit of the land.
 - The reason given for the condition is: In granting this permission the Local Planning Authority has had regard to the special circumstances of the case. There are reasonable grounds for attaching a personal permission in order to protect CAZ/Town Centre employment floor space in accordance with: National Planning Policy Framework (2023) - Chapter 2 'Achieving Sustainable Development' & Chapter 6 'Building a strong, competitive economy'; London Plan (2021) - Policy SD4 'The Central Activities Zone (CAZ)' and Southwark Plan (2022) Policy P30 'Office and business development' and P35 'Town and local centres'.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from commercial premises (Use Class E) to Live/Work (Sui Generis) at 80 Southwark Bridge Road, London SE1 0AS in accordance with the application Ref 23/AP/3579 dated 20 December 2023, without compliance with condition 3 previously imposed on planning permission Ref 23/AP/1632 dated 6 December 2023 and subject to the condition the development shall be carried out in accordance with the plans: P100 proposed floor plans.

Main issue

2. The main issue is whether the disputed condition is necessary, relevant, enforceable, precise and reasonable in light of the nature and scope of the permitted scheme.

Reasons

3. The appeal premises are located on the western side of Southwark Bridge Road in a mixed residential and commercial area. It is a three storey mid-terrace building said to be in use as a fashion design studio. It is within the Union Street Conservation Area, although there are no heritage issues raised in this case.
4. Permission was granted by the Council in 2023 for the change of use of the premises from employment use to a live work unit. The disputed condition was imposed on this permission.
5. The policy context is clear. Both the London Plan (2021)¹ and the Southwark Plan (2022)² seek to retain employment floorspace as part of mixed-use areas. Only in exceptional circumstances will the permanent loss of employment floorspace be permissible. The proposal is contrary to the policy approach
6. It is far from clear what special circumstances existed to led to the imposition of the personal condition by the Council. I have very little evidence to explain the circumstances of the named individuals and why these led to the condition. However I have to deal with this proposal under the current circumstances in the light of the guidance on the use of conditions.
7. I have no reason to doubt that the condition is precise and enforceable, and is relevant to planning in the light of the policy context.
8. However I have considerable doubts as to its necessity and reasonableness of the disputed condition, particularly given the history of mixed use occupation of the premises. In my view, the history of the property is in itself an exceptional circumstance sufficient to allow the scheme in the absence of the personal condition. This is especially the case as the Council's report on the current proposal states that "...The property is owner occupied for a local design business which has been established for a number of years. The proposal [i.e. the removal of the personal condition] would not result in a loss of employment provision....".
9. In the light of this position, it is also unclear why the Council is seeking a marketing assessment to justify the removal of the condition.
10. Under these circumstances, although the change of use is in conflict with the development plan, there are material circumstances which justify the grant of permission.

Conclusion

11. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

¹ Policy SD4

² Policies P30, P35