



Appeal Decision

Site visit made on 9 July 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2024

Appeal Ref: APP/X5990/W/24/3341997

5 Dryden Street, City of Westminster, London WC2E 9NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by The Mercers' Company against the decision of the City of Westminster Council.
- The application Ref is 23/06313/FULL.
- The development proposed is use of basement and ground floor for Class E.

Decision

1. The appeal is allowed, and planning permission is granted for the use of basement and ground floor for Class E at 5 Dryden Street, London WC2E 9NA in accordance with the terms of the application, Ref 23/06313/FULL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The 2011 planning permission¹ for change of use of the appeal site includes a condition restricting the use of the ground floor and basement to a use under Class D1 of the Town and Country Planning (Use Classes) Order 1987 (as amended). Class D1 uses, at that time, were non-residential institutions such as health centres, clinics, art galleries, training, or education centres, amongst other uses. In September 2020 Use Class D1 was revoked and non-residential institution uses were included into Class E and Class F1. However, without an application to vary the use, such as the appeal before me, the condition on the previous permission would prevent any other uses other than those previously falling within Class D1.

Main Issue

3. The main issue is the effect of the proposed change of use on the character and function of the area.

Reasons

4. The appeal site relates to the ground floor and basement of No 5 Dryden Street which is part of a four storey building with a large floorplate. The building sits on the corner of Dryden Street and Arne Street with its main entrance on the corner and ground floor windows on both roadside elevations. At the time of my visit the ground floor and basement were occupied by the London Film School. There was also a "to let" advertisement in the window.
5. From the evidence before me the Council has granted consent, through approval of details reserved by condition, for uses which would fall within the

¹ Council reference 11/02648/FULL

uses restricted by the condition. Moreover, the current occupant is a use which would comply with the condition. Notwithstanding this, the current user is occupying the building, rent free, for a temporary period.

6. Policy 17, subsection C, of the City of Westminster City Plan 2019-2040 (the City Plan) seeks to protect existing community facilities and floorspace. However, Policy 17(C) does allow for the loss of such uses where, under Part 2 of subsection C, there is no demand for an alternative social and community use for that facility or floorspace, evidenced by vacancy and appropriate marketing for at least 18 months. Paragraph 17.8 of the supporting text provides additional advice recommending early marketing of the unit and requiring a comparable market value.
7. The appellant has submitted evidence of marketing between 2013 and 2021, across three different marketing companies. The marketing of the property commenced two years after the 2011 consent. The marketing was, therefore, carried out early in relation to the completion of the works to the building, as advised by the supporting text to Policy 17.
8. The marketing information provided also shows the rental value the property was marketed at, although the appellant also advises that it was marketed at a "price on asking" so as not to dissuade any potential tenants. The Council has challenged one of the valuations, based on the other two valuations. However, the appellant has shown that there was interest in the property, even at the higher rental value. In my judgement the property has been marketed at an appropriate value, especially when taking into account the "price on asking" marketing. The appellant has also shown flexibility in their negotiations on rental value, lease terms and rent free periods. Notwithstanding the flexibility no tenant has been found.
9. I acknowledge that the marketing evidence submitted with the planning application does not include evidence of recent marketing, i.e. within the last 18 months. Nevertheless, the evidence shows more than the 18 months marketing required by Policy 17 of the City Plan. I also acknowledge that the COVID pandemic and construction of nearby developments may have influenced potential tenants. However, the earlier marketing was before the pandemic and did not result in any lettings. Furthermore, the flexibility noted above considered the construction site opposite as part of the negotiations.
10. Although there was interest shown from a number of users during the marketing none of these completed. Several reasons were given for the user not taking on the premises. I have no evidence that any of these were due to the appellant's lack of willingness and the negotiations appear to show that the appellant was attempting to find a tenant. Furthermore, a number of the interested parties would have been a D2 Use and subsequently would not have complied with the condition on the 2011 planning permission. One potential tenant did not continue due to the length of the terms of the lease. However, the evidence before me indicates that most did not continue due to the costs of fitting out the unit for their end use.
11. Moreover, the appellant has provided evidence of recent marketing, covering three months between commencement of marketing and submission of final comments, which also indicates no interest from tenants.

12. The building sits within the Central Activities Zone (the CAZ) and West End Retail and Leisure Special Policy Area (the WERLSPA). The supporting text of Policy 14 of the City Plan notes that the CAZ covers much of the city and that the mix of uses contribute to the character and function. The supporting text of Policy 14 of the City Plan also notes that there is an insatiable demand for new floorspace across all land uses in the WERLSPA and the text also recognises the important contribution continued growth in a diverse range of uses makes to meeting employment growth targets.
13. The Council has accepted that the principle of Class E floorspace would be welcomed and contribute to the diversity, vibrancy, and economic activity of the area. Furthermore, the change of use of the basement and ground floor to Class E use would fit in with other uses in the immediate area.
14. Consequently, even if I were to agree with the Council that there is insufficient recent marketing and the building is not currently vacant, the evidence before me shows sufficient levels of marketing over a significant period of time. Although the marketing has resulted in interest from potential tenants, some of which progressed to Heads of Terms, it has not resulted in any tenant taking on the premises, other than temporary uses which were heavily discounted. I have no substantive evidence that the appellant has not been flexible in their negotiations. Moreover, the length of time the property has been marketed for would suggest that the appellant has genuinely attempted to find a social or community use for the space.
15. For these reasons, I consider that the marketing which has been carried out, which exceeds seven years, is more than sufficient to evidence that there is no demand for an alternative social and community use for that facility or floorspace. Consequently, I find that the development would not adversely affect the character and function of the area and, therefore, I find no conflict with the aims of Policy 17 of the City Plan.

Other Matters

16. The appeal site lies within the Covent Garden Conservation Area. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) ('the Act') provides, at section 72(1), that with respect to any buildings or other land, in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character, or appearance of that area.
17. Insofar as it is relevant to the appeal, I consider that the significance of the conservation area is mainly derived from the surviving 17th and 18th century street pattern and the mix of building sizes and ages. The area has a dense, urban, character. The mix of buildings, including several with large footplates, contributes positively to the character and appearance of the conservation area as a whole.
18. The proposal is for change of use of the building and no external changes are proposed. Consequently, the visual appearance of the building would not change and the character and appearance of the Conservation Area, as a whole, would be preserved. I note that the Council raised no objection in this regard either. As such I am satisfied that the proposal would meet the statutory requirements of the Act in that regard.

Conditions

19. The Council has provided a list of conditions that it considers would be appropriate and the appellant has had an opportunity to comment on this. I have considered these in light of the Framework and the Planning Practice Guidance, and I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity.
20. In addition to the standard condition, which limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of certainty as to the extent of the planning permission.
21. Given that there are residential units above the ground floor and other residential properties in the immediate area I consider it is necessary to limit the hours of construction work. However, I have simplified the Council's standard condition as the appeal does not propose any piling, excavation or demolition works.
22. Although I note the comments from the appellant with regard to the condition restricting the hours the premises can be open to customers, I have also considered the residential nature of the area. The CAZ covers most of the city and does not consider site specific constraints in its general support for mixed uses. Moreover, although I noted other premises in the area with earlier opening hours, these were all located on the main road which had a higher level of vehicle and pedestrian movement and associated noise.
23. The residential character of the area and the narrow highway which serves the site also justifies restricting the types of uses which can be carried out within the premises. I note the appellant has not objected to this restrictive list and that there is highway capacity and parking reasons for not allowing uses that would fall under Class E (f) such as creches and day centres. However, I have included Class E (g) as these uses would be appropriate in a residential area and would not result in significant trip generation.
24. The residential nature of the area also justifies the requirement for details of any equipment to control emissions of fumes and smell from the premises to first be submitted to the Council for approval and thereafter installed, operated, and maintained appropriately.
25. To ensure that servicing the premises is carried out, and waste storage arrangements are provided, without adversely affecting highway safety or the living conditions of nearby residents, I have included a condition to this effect. It is also reasonable, given the need to promote alternative means of travel to secure cycle parking within the development.

Conclusion

26. For the reasons given above the appeal should be allowed.

K Townend

INSPECTOR

SCHEDULE OF 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 drawing numbers 1029(EX)010 rev E, 0143(L)_010 and 0143(L)_011.
- 3) Construction works, audible at and beyond the boundary of the site, shall take place only between 08:00 and 18:00 on Monday to Friday, 08:00 and 13:00 on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 4) Customers shall only be permitted on the premises between the following hours: 08:00 to 23:00 hours Monday to Sunday.
- 5) Prior to the first use of the building for Class E Uses a Service Management Plan shall be submitted to and approved in writing by the local planning authority. The plan must identify the process for receiving deliveries, scheduling of deliveries, and areas for internal storage. The premises shall operate and be managed in accordance with the Services Management Plan for the lifetime of the development.
- 6) The premises shall be used for uses falling within the following parts of Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification): Class E (a), Class E (b), Class E (c), Class E (d), Class E (e), or Class E (g) and not for any purpose within Class E (f).
- 7) Prior to the first occupation of the premises for any Class E use details of one cycle parking space shall have been submitted to and approved in writing by the local planning authority. The approved cycle parking space shall thereafter be kept available for the storage of bicycles.
- 8) Details of the means of waste and recycling storage within the premises shall be submitted to and approved in writing by the local planning authority before the use hereby permitted commences. The development shall be carried out in accordance with the approved details.
- 9) Before any use, that would fall under Use Class E (b), commences equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a detailed design and operation scheme that shall first have been submitted to and approved in writing by the local planning authority. The details shall also include information on the number of covers that the proposed use will provide. All equipment installed shall thereafter be operated and maintained in accordance with the approved scheme and retained for so long as the use continues.

*** END OF CONDITIONS ***