

Appeal Decision

Site visit made on 25 July 2024

by C Butcher BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2024

Appeal Ref: APP/U5360/W/24/3339171

189-201 Morning Lane, Hackney, London E9 6LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by The Arch Company Properties LP against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/0478.
 - The application sought planning permission for the change of use of arches at 189-201 Morning Lane from industrial and storage (B1 and B8 uses) to retail (A1 use). Installation of new shopfronts to front elevation and louvres to rear elevation, erection of two single storey detached kiosks for retail use (A1 use), landscaping, refuse/recycling facilities and bicycle parking, without complying with a condition attached to planning permission Ref 2012/2585, dated 5 December 2012.
 - The condition in dispute is No. 12 which states that: The units shall be used as retail floorspace for the sale of clothing and clothing accessories only (Use Class A1) and for no other purpose, including other A1 uses, unless otherwise approved in writing by the Council.
 - The reason given for the condition is: To ensure that the retail use does not impact upon the vitality and viability of existing town centres pursuant to Core Strategy Policy 13 of the Hackney Development Plan 2010.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of arches at 189-201 Morning Lane from industrial and storage (B1 and B8 uses) to retail (A1 use). Installation of new shopfronts to front elevation and louvres to rear elevation, erection of two single storey detached kiosks for retail use (A1 use), landscaping, refuse/recycling facilities and bicycle parking at 189-201 Morning Lane, Hackney, London E9 6LJ in accordance with the application Ref 2023/0478, without compliance with condition number 12 previously imposed on planning permission Ref 2012/2585 dated 5 December 2012, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is whether the removal of the condition would be acceptable in policy terms.

Reasons

3. The appeal site comprises a series of units that are set within railway arches. Permission was granted by the Council in 2012¹ to allow a change of use from industrial and storage to retail. Condition 12 of the permission currently restricts the use of the units to the sale of clothing and clothing accessories.
4. The site is located within the Homerton Priority Industrial Area (PIA). Policy LP26 of the Hackney Local Plan, July 2020 (LP) sets out that new development within PIA's should maximise the amount of employment floorspace. Similarly, Policy LP28 states that the redevelopment of PIA's will be permitted where it includes the maximum viable amount of employment floorspace. The glossary to the LP defines employment generating uses as those that fell within previous use classes B1, B2, B8 and any Sui Generis uses of an industrial nature.
5. The use class order was updated in September 2020 and various uses that previously fell within classes A and B, including A1 retail, have been amalgamated into the new use class E. The proposed removal of condition 12 would therefore remove the current restriction that limits the use of the units to fashion retail, and would allow them to be utilised for any purpose within class E.
6. In coming to a decision on this matter, I note that it is agreed between the main parties that amending condition 12 to require a certain percentage of units to be within employment generating uses would be unlawful. I have no reason to disagree with this assessment given that the imposition of such a condition would result in a change to the operative part of the development as set out in the original description.
7. The Council recognises that the original permission to allow A1 uses was a departure from the adopted development plan policies at the time and that this was only allowed due to the possibility of attracting high end fashion retailers to the site. However, the fact remains that the existing lawful use of the units does not encompass employment generating uses as defined within the LP. It is also the case that all of the units are currently vacant.
8. Class E includes a number of different uses, including those that are regarded as employment generating. It is therefore clear that removing condition 12 would provide the possibility of introducing employment generating uses on the site. Indeed, it would be theoretically possible for all units to be used for those purposes, subject to demand. In my view, given the current lawful use of the units, and the changes to the use class order, providing the potential to maximise employment generating uses is sufficient to conform with the wording of LP Policies 26 and 28.
9. I therefore conclude that the removal of condition 12 would not conflict with LP Policies 26 and 28 or Policies E2 and E4 of the London Plan, 2021. Taken

¹ Council ref: 2012/2585

together, the relevant aspects of these policies seek to maximise employment generating uses on suitable sites.

Other Matters

10. The appeal site is adjacent to the Clapton Square Conservation Area (CA). However, the units face away from the CA and there are no proposed external changes to the appearance of the units. The setting of the CA would therefore not be affected. Furthermore, the units are currently vacant which detracts from the character and appearance of the area. Bringing them back into use would therefore be a net benefit.
11. The lack of external changes means that there would not be any negative effects on the living conditions of neighbouring occupiers in terms of daylight, sunlight and outlook. With regards to noise, particularly any noise associated with ventilation equipment and music, I am satisfied that the imposition of suitably worded conditions can limit any negative effects to an acceptable level, particularly given that the units face onto Morning Lane, rather than the residential street of Mehetabel Road.
12. Class E does not include uses such as bars, nightclubs or hot food takeaways and so there is no possibility of such establishments being introduced. While future uses could include restaurants, any associated noise would be controlled by the above mentioned conditions. I have no reason to conclude that odours emanating from the units would have an unacceptable impact on nearby residents.
13. Finally, there is no substantive evidence before me that would lead me to conclude that the transport impacts of the change of use would be unacceptable or that such uses would lead to a rise in anti-social behaviour.

Conditions

14. Conditions 1 to 11 and Condition 13 are replicated from the original permission and have been imposed for the same reasons as originally stated by the Council. I recognise that some of these conditions are likely to have been discharged already. However, I do not appear to have evidence to that effect, and this is a matter that can be easily resolved between the main parties. I have imposed additional conditions to restrict noise associated with ventilation and sound amplifying equipment in the interests of the living conditions of neighbouring occupiers.
15. I have not imposed a condition to require a minimum level of employment generating uses for the reason already provided.

Conclusion

16. For the reasons given, the appeal is allowed.

C Butcher

INSPECTOR

Schedule of Conditions

1. The development hereby permitted must be begun not later than the expiration of three years beginning with 05/12/2012.
2. The Development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.
3. Notwithstanding the details shown on the plans and documents hereby approved, full particulars of the following shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development: a) a sample board for all external materials including ground surface materials; b) shutter design and specification including a mock up panel; c) a lighting strategy internal and external.
4. A hard landscaping scheme illustrated on detailed drawings shall be submitted to and approved by the Local Planning Authority, in writing, prior to the commencement of the use hereby approved, including details of paving, gates, bollards, means of enclosure, an street furniture and/or any planting; all landscaping in accordance with the scheme, when approved, shall be carried out prior to the commencement of the uses hereby approved, and shall be maintained to the satisfaction of the Local Planning Authority for a period of ten years.
5. Cycle spaces shall be made available within the development for the secure parking of 17 bicycles before the first occupation of the units hereby approved unless otherwise agreed in writing by the Local Planning Authority.
6. The applicant shall cooperate with the Council Job Brokerage Scheme to ensure that employment opportunities go to residents of Hackney wherever possible.
7. A Delivery, Service and Refuse Management Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the use hereby approved, thereafter all delivery, servicing, refuse storage and collection shall be in accordance with the details thus approved.
8. A full sustainable travel plan shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the use hereby approved, the measures within the sustainable travel plan thus approved shall be implemented in full.
9. The redundant vehicle crossovers to the site shall be closed permanently prior to the commencement of the use hereby approved.
10. Prior to the commencement of the use hereby approved, a shared pedestrian/vehicle surface shall be provided on Link Street between the

junction with Morning Lane and the viaduct unless otherwise agreed in writing by the Local Planning Authority.

11. The total noise from any fixed plant at the site shall at all times be 5dB(A) or more below the background noise level when measured at any nearby residential window.
12. The advertisements to be displayed on each of the arches shall comply with the size and location limitations set out on approved drawing 13-001 rev B, unless express advertisement consent is granted for another form of advertising.
13. Ventilation details shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of use of any of the arches for uses that fall within Use Class E(b) of the Town and Country Planning (Use Classes) Order 1987 or such replacement legislation. Thereafter all ventilation shall be in accordance with the details thus approved.
14. Sound-amplifying equipment, loudspeakers, or public address systems may not be installed or operated externally. The playing of amplified music internally should be restricted to background levels only.