



Appeal Decision

Site visit made on 16 October 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/C5690/W/24/3343548

1 Creekside, Deptford SE8 3DZ

- 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 Bluecroft Creekside against the decision of the Council of the London Borough of Lewisham.
 - The application Ref is DC/23/133096.
 - The application sought planning permission for clearance and demolition of existing buildings on site at 1 Creekside, SE8 and the construction of 56 residential units and 1541 sqm of commercial space (Use Class B1 Business) in a building ranging in height from 4 to 8 storeys, together with access, servicing/yard space, cycle parking, amenity space and refuse provision and associated works, without complying with a condition attached to planning permission Ref DC/18/106708, dated 22 May 2020.
 - The condition in dispute is No 26 which states that: Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the non-residential spaces shall be used for uses falling within B1(a-b-c) and for no other purpose of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.
 - The reason given for the condition is: In order to protect the proposed employment space and to accord with DM Policy 10 of the Development Management Local Plan (2014).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address above from the original application, although I note the address of the site has changed since its redevelopment.
3. Following changes to the Town and Country Planning (Use Classes) Order 1987 introduced on 1 September 2020¹, the uses within the former B1(a-b-c) Use Class now fall within Use Class E(g). The description in the original permission in this appeal cannot be changed. However, although the wording of the description of development is out of date in this respect, this does not affect my consideration of the proposal to vary a condition.
4. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. The proposed revisions to the Framework are draft and

¹ Via the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

therefore may be subject to change before the final Framework is published. Moreover, the draft revisions to the Framework and other proposed reforms are not directly relevant to this appeal. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on them.

5. I understand the Council has submitted a Draft Local Plan for examination, and the examination is ongoing. I am not aware of the extent of unresolved objections or whether the emerging Plan's policies will be considered as consistent with the Framework. Consequently, in accordance with Framework paragraph 48, I give the emerging Draft Local Plan little weight.

Background and Main Issues

6. The development granted permission under application Ref DC/18/106708 has been completed. This is a mixed-use scheme within an area designated in site allocation Ref SA14 of the Lewisham Site Allocations Plan (LSAP) as the Creekside Local Employment Location (CLEL).
7. Part of the commercial unit at the northern end of the development is vacant. The appellant wishes to broaden the range of uses permitted within this unit to include Class E(e) (medical services) in addition to those in Class E(g). The latter are: i) an office to carry out any operational or administrative functions, ii) the research and development of products or processes, or iii) any industrial process; and they must be uses that can be carried out in any residential area without causing detriment to the amenity of the area.
8. The proposed variation to condition 26 changed during the course of the application, to reduce the range of additional Class E uses sought and the amount of floorspace that would be affected. These changes to the application were agreed with the Council, who have acknowledged that the reference to financial and professional services in their first reason for refusal was an error.
9. The main issues are:
 - whether the case to broaden the range of permitted uses has been demonstrated, having regard to the CLEL designation; and
 - whether the proposal would preserve or enhance the character or appearance of the Deptford Creekside Conservation Area.

Reasons

Case to broaden the range of permitted uses demonstrated?

10. LSAP SA14 protects the CLEL for former B Use Class employment uses, noting its strong industrial character and significant cluster of creative industries. Policy CS3 of the Lewisham Core Strategy (LCS) and Policy DM10 of the Lewisham Development Management Local Plan (LDM) protect Local Employment Locations (LEL) generally for uses within the former B Use Class and appropriate *sui generis* uses. Policy DM10 also resists community facilities in these areas because of their incompatibility with LEL uses. These Policies are broadly consistent with the objectives of Policies E2 and E6 of the London Plan (LP) to protect B Use Class space and Locally Significant Industrial Sites.
11. Medical services, which are a type of community facility, do not fall within the range of employment uses permitted in LEL generally or the CLEL in particular.

12. I recognise the introduction of the E Use Class was intended to enable greater flexibility in the use of commercial premises. However, the new E Use Class includes a broad range of commercial, business and service uses, only a few of which overlap with the range of uses permitted in LEL. The former B and new E Use Classes are not fully interchangeable, and the CLEL is not in a town centre location where flexibility with other E Class uses such as shops would be appropriate. I therefore find the intention behind the protection of employment uses in the CLEL and that behind the introduction of Class E to be different.
13. I have considered the appellant's Marketing Report dated August 2023 (MR) and the update letter of March 2024. I note marketing of the unit started several months prior to practical completion of the unit and has continued since then. I understand marketing has primarily been for sale of the unit, via a broad range of media, and the asking price was lowered after an initial period.
14. The marketing brochure reproduced in the MR describes the property as having potential to "appeal to a range of occupiers that could include gym/fitness operators, office, medical & artists". Not all these uses are permitted by the disputed condition. In other communications reproduced in the report, the property is described as an "Office for sale" without mention of the other permitted uses. Evidence in the MR suggests the pricing strategy was informed in large part by office comparators, and the report refers to direct approaches to buyers and tenants looking for office space. Reasons given for low take-up include a lack of demand for office space in this location and a shortage of local amenities nearby to support office workers.
15. Conversely, there is little evidence to demonstrate marketing has been targeted to light industry or makers in the creative sector, that the unit has been offered at prices or on terms likely to be attractive to that type of business, or that the Council's advice on marketing to businesses compatible with the CLEL was sought. There is also little to substantiate the suggestion that the most likely permitted use to come forward would be an office; or that there are few amenities to sustain interest from a business to relocate its staff there, given a creative sector occupier would be within an acknowledged creative cluster.
16. I am therefore not persuaded on the evidence before me that all avenues to sell or let the unit within the range of uses permitted by the disputed condition have been fully exhausted.
17. I note there is interest in the unit from a dental service provider, contracted with NHS England (London Region) to be the sole provider of specialist urgent dental care in the Borough of Lewisham. I understand such provision is not currently available within the Borough. Nevertheless, there is little to explain why the appeal premises would provide a particularly appropriate location for an urgent dental care facility, bearing in mind it is not proximate to other local services and facilities. There is also little to demonstrate which other sites were considered for this facility or the reasons they were ruled out.
18. Moreover, whilst I note public support for more NHS dentists generally in the area, and the newspaper articles cited, the evidence before me does not quantify current dental service provision in Lewisham or gaps in its geographical distribution across the Borough. Consequently, the argument that local need for dental provision would be met if the appeal were to be allowed is not sufficiently compelling to outweigh the concerns about marketing I have

identified. For the same reasons, LCS Policy CS20, which promotes provision of health services in the Borough, provides only limited support for the proposal.

19. Furthermore, I am not persuaded that a dentist or other medical/health use would be similar in character to an office, research and development or light industrial use. Such a use would involve comings and goings by members of the public visiting to receive a professional service, which would be materially different from the types of employment use for which LEL are protected.
20. I recognise only part of the commercial unit at the northern end of the building is intended to benefit from the proposed widening of permitted uses, and that the size of the unit in question is relatively small. Nevertheless, even if I were to impose an additional condition to restrict the wider range of permitted uses to just this one unit, this would not overcome the risk of harm to the CLEL given I am not persuaded potential for a creative sector occupant has been fully tested through the marketing undertaken to date.
21. It has been put to me that, if the appeal were to be allowed, the quantum of floorspace protected just for Class E(g) uses would still provide a significant uplift over the original level of employment space and jobs on the wider site. Whether or not that is the case, and notwithstanding that lawful use of the unit for Class E(g) uses would not be lost and its use would remain commercial in nature, this does not outweigh the harm to the CLEL that would result from introduction of an incompatible medical use without sufficient justification.
22. For the above reasons, I conclude the case to broaden the range of permitted uses has not been demonstrated, having regard to the CLEL designation. This conflicts with LSAP Policy SA14, LCS Policy CS3, LDM Policy DM10, and LP Policies E2 and E6. It also conflicts with the Framework, where it seeks to address the specific locational requirements of different sectors, including making provision for clusters of creative industries.

Conservation Area

23. The Creekside Conservation Area (CA) encompasses land primarily located between Deptford Church Street and Deptford Creek. It includes the CLEL's mix of industrial yards, wharves, buildings and warehouses; as well as more recent developments, like that at 1 Creekside, that comprise workspaces below flats. Several of the older buildings and newer workspaces are occupied as artists' studios or by creative businesses. Having regard to the CA Character Appraisal, this combination of built heritage and uses, as well as murals and graffiti, contribute to the CA's distinctively mixed industrial and creative character. The CA's significance as a heritage asset is therefore both historic, as a focus of riverside industry between the 16th and 20th centuries and a rare surviving example of this type of riverside quarter; and cultural, as a growing creative business hub and community of artists.
24. Condition 26 contributes to the maintenance of this historic and cultural significance by ensuring future commercial uses on the appeal site are compatible with it.
25. Paragraph 205 of the Framework requires great weight to be given to the conservation of a designated heritage asset when considering the impact of a proposed development on its significance.

26. The proposed broadening of uses in Unit 1 to include medical services would introduce commercial activity of a materially different character to that found elsewhere in the CA. This difference would be manifest in the comings and goings associated with the provision of medical services to the public at a range of times, and in such a facility's need to maintain a professional appearance and identity. This would jar with the less public-facing, more informal and bohemian atmosphere found in and around many of the CA's other commercial units. Whilst the proposed widening of permitted uses would not preclude potential future creative use of the unit, it would dilute the concentration of such activities in the CA and thereby diminish its creative and artistic identity. I consider a person in the area would be able to appreciate this change in mix of uses in the CA.
27. I acknowledge the unit is on the periphery of the CA and I recognise there would be little change to its physical or architectural form from the appeal proposal. Nevertheless, for the reasons given, these factors are not sufficiently compelling to overcome my concern. Moreover, given that - on the evidence before me - mixed-used redevelopment of the site was supported to further the LEL policy objective, I do not accept completion of the scheme means divergence from industrial and creative uses has already occurred, such that the introduction of medical services in the CA would cause no harm.
28. Consequently, I conclude the proposal would not preserve or enhance the character of the CA and would therefore harm its significance as a designated heritage asset. I consider this harm would be less than substantial.
29. Paragraph 208 of the Framework states that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
30. There would be a public benefit from ending the vacancy of the unit, which would contribute to the Framework's objective of making effective use of land and support the local economy. However, as I am not persuaded all avenues to let the unit for a use more compatible with the CA have been fully exhausted, I give this benefit limited weight. Provision of an urgent dental care facility would be another public benefit, to which I also ascribe limited weight for the reasons set out under the first main issue.
31. Bearing in mind the special characteristics of the Creekside CA, which as noted above are particularly unusual, I give the harm to its significance significant weight. Alone or in combination, the weight of the public benefits of the proposal do not outweigh this harm.
32. I therefore conclude the proposal would conflict with LCS Policy 16 and LDM Policy 36, which resist development that is incompatible with the special characteristics of a CA and would adversely affect its character. These Policies are consistent with the requirements of the Framework in relation to designated heritage assets.

Other Matters

33. I have identified the benefits of the proposal under the second main issue. For the same reasons given in that section, I find these benefits would also not outweigh the harm I found under the first main issue.

34. The absence of objections does not in itself render the proposal acceptable.

Conclusion

35. I have found the proposal conflicts with the development plan, read as a whole. No other material considerations, including the Framework, have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal should be dismissed.

C Carpenter

INSPECTOR