



Appeal Decision

Site visit made on 3 December 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/P5870/W/24/3342526

12 High Street, Sutton, SM1 1HN

- 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 Mr Merter Hilmi against the decision of the Council of the London Borough of Sutton.
 - The application Ref is DM2023/00513.
 - The development proposed is the conversion of first and second floor offices to 5 flats, incorporating a rear dormer and front rooflights.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council's notice of decision, both the Deputy Prime Minister and Secretary of State for Housing, Communities, and Local Government's Written Ministerial Statement "Building the homes we need" dated 30 July 2024 regarding changes to the planning system, and the consultation "Proposed reforms to the National Planning Policy Framework and other changes to the planning system" dated 30 July 2024 have been issued. The main parties have had the opportunity to comment on these changes in regard to the appeal proposal.
3. The appellant has submitted an unsigned and undated Unilateral Undertaking (UU) with their appeal relating to car-free development provisions, I shall return to the UU later in my decision.

Main Issues

4. Taking into account the above and the reasons for refusal, the main issues are:
 - The loss of the office use at the appeal site, with particular regard to its marketing; and,
 - Whether an obligation relating to car-free housing, would be reasonable and necessary to make the development acceptable.

Reasons

Loss of office space

5. The appeal site includes the first and second floor of a mid-terraced three storey property in Sutton town centre, near to Sutton Station and the

pedestrianised part of High Street. The accommodation at the appeal property has an office use, which is said to have been vacant since 2010.

6. Policy E1 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP) states existing viable office spaces should be retained. In addition, Policy 16 of the Sutton Local Plan 2016 – 2033, dated February 2018 (SLP) seeks to limit the inappropriate loss of office space in Sutton town centre, by not granting planning permission for proposals involving their loss unless no demand has been demonstrated, with proof of marketing for a 12-month period at a reasonable market value. It also states an independent survey of office demand for the office type should be provided along with proof that opportunities to reconfigure and re-use the accommodation as offices has been exhausted.
7. The appellant has provided a marketing report prepared by Jenkins Law dated February 2023 (MR), it states that marketing commenced in April 2019, with an annual rent of £17,000, later reduced to £15,000 per annum in June 2020. The MR says that there were 6 no. viewings that resulted in no offers to rent the premises, with reasons for this relating to; the restaurant below; its lack of amenities; that it requires refurbishment; no parking; and a change of use would be required. The MR also states that the marketing particulars were circulated locally to businesses, including Jenkins Law's existing clients, on their website, together with marketing on the EACH (office), shop property and Pipnet platforms. As a result of the marketing exercise, said to have occurred for nearly 4 years, the MR concludes that the appeal property would continue to remain vacant as office space for the foreseeable future due to the lack of demand for it.
8. Although I cannot be certain how long it has been in place, I saw at the time of my site inspection that a Jenkins Law advertising board for an office to let was attached to the appeal property. Based on the evidence submitted the appeal property has been marketed for more than 12 months, and the MR was prepared a month before the application was made. In addition, there was sufficient time both before and after the disruption caused by the Covid restrictions to attract potential tenants for the property, and the appellant has demonstrated flexibility by reducing the annual rent charge. Based on the marketing information submitted, the minimum 12-month marketing period has been met.
9. The Council has suggested that; marketing was not undertaken immediately before the application was made; there is limited marketing details of when it was marketed or any photographic evidence of its marketing; and that there is no comparable rent information provided. However, the Council have provided no substantive evidence to support their assertions that the appeal property was not actively marketed as stated in the MR, nor has it provided any evidence of what rent should be charged or why the rent stated is unreasonable. In addition, there is no specific policy requirement for this exact information to be provided with the application. The MR is dated February 2023, which is the month before the application was submitted, and the enquiries from prospective tenants were made between 1st December 2019 and 1st December 2022 (across a three-year period). Taking the MR at face value, there appears to have been reasonable efforts made to market the appeal property to possible interested parties. Against this background, I have no firm evidence provided to counter what is stated in the appellant's MR,

including how and when it was said to be marketed or that its annual rent charge was unreasonable.

10. Furthermore, the MR sets out why the appeal property would be unsuitable for office letting in terms of its lack of amenities, such as no perimeter trunking, or air conditioning, and I see no reason to disagree with these arguments. Moreover, its layout of individual rooms would mean it could not be easily reconfigured to provide open plan office space, and it is not likely that there would be demand for its use as offices in the near future, therefore it would be unlikely to contribute to the town centre's vitality and viability. The Council has not specifically identified the lack of an independent survey of office demand in the town centre as part of its reason for refusal, and due to the constraints of the office accommodation at the appeal property and my findings above, I am not persuaded that it would be necessary in this case.
11. I therefore conclude that the loss of the office use and its change of use to residential is justified, and adequate marketing has taken place that has demonstrated there is no demand for offices at the appeal site. In doing so, I find the proposal to comply with SLP Policy 16 and LP Policy E1, insofar as they collectively seek to only retain viable office uses and permit their change to residential use when there is no reasonable demand for them, the precise requirements of which, are set out in detail above.

Car-free development

12. SLP Policy 37 states that in town centre and accessible areas (with a Public Transport Accessibility Level (PTAL) 5 and above) car-free development will be considered favourably, and that amongst other things it should be within a Controlled Parking Zone (CPZ) and delivered through a planning obligation restricting future occupiers from obtaining parking permits. In addition, LP Policy T6.1 states car parking provision should not exceed the standards set out in its accompanying Table 10.3, which states car free development is the maximum parking for areas with a PTAL rating of 5 or 6.
13. The appeal site is located within Sutton Town Centre in an area with a PTAL rating of 6a, and within a CPZ, requiring parking permits to park within parking bays on the roadside. I also saw on my site inspection that outside of the appeal site and nearby on the A232 there were double red lines, and parts of High Street were pedestrianised to one side of the appeal site. I also saw there was very limited on-street parking space near to the appeal site. As such, future occupiers would likely add to parking pressures in the local area.
14. Against the policy background outlined above, the proposed development in the appeal site's location should be car -free development. There is apparently no dispute between the parties regarding this, hence the submission of the draft UU. Notwithstanding the Council's concern regarding whether the obligations within the UU would provide car-free development, the UU itself has not been signed or dated. Consequently, I am unable to take it into account in my decision, and there is no planning obligation provided to ensure the proposed development would be car free.
15. I therefore conclude that the proposed development should be car -free development, and in the absence of a planning obligation to secure this, the proposal is contrary to the requirements of LP Policy 6.1 and SLP Policy 37, the requirements of which are set out above.

Other Matters

16. The appeal site is within the Sutton Town Centre Conservation Area (the CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires when determining proposals in conservation areas that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The proposed re-use of the existing building for residential purposes, together with the proposed external extensions and alterations, particularly the limited changes to its front elevation would not be harmful to the host property and the CA. Consequently, the appeal proposal would preserve the character and appearance of the CA, consistent with the duty in the Act.
17. It is noted that the proposal would; provide new housing on a small site; that it is in a well-connected area; it would make an efficient use of land; that it would meet minimum space standards; and there would be no harmful effects on the living conditions of neighbouring occupiers. However, these matters, do not outweigh the proposed development's conflict with the development plan, as outlined above.
18. I have also had regard to objections received from residents and others, expressing concerns in addition to the main issues above, relating to vehicle and cycle parking and highway safety, disturbance from construction works; refuse storage, and the size of the proposed accommodation. However, I note that these matters were considered where relevant by the Council when it determined the planning application, and it did not find any harm that could not be addressed through planning conditions. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conclusion

19. The loss of the office use at the appeal property, and its re-use for residential purposes would comply with policies of the development plan. However, there would be conflict with policies of the development plan that seek to reduce parking pressures in well-connected areas by ensuring new residential development is car-free, which attracts significant weight. I therefore conclude that there are no considerations, including those matters raised in favour of the scheme when considered either individually or collectively that outweigh the identified conflict with the development plan in this case. For the reasons given above, the appeal should be dismissed.

A Hunter

INSPECTOR