



Appeal Decision

Site visit made on 2 December 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th of January 2024

Appeal Ref: APP/Z5630/W/24/3346676

62 Old London Road, Kingston Upon Thames KT2 6QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Audbern Investments Ltd against Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/03067/FUL.
 - The development proposed is the change of use of existing first floor offices to form two self-contained residential units (1 x 1 bed 2 persons flat and 1 x studio).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of existing first floor offices to form two self-contained residential units (1 x 1 bed 2 persons flat and 1 x studio) at 62 Old London Road, Kingston Upon Thames KT2 6AQ in accordance with the terms of the application, Ref 23/03067/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Background and Main Issues

2. The appeal is against the Council's failure to determine the planning application within the relevant statutory timeframe. Following the submission of the appeal the Council has not provided a statement of case, so it is unclear whether it would have approved or refused the application. Moreover, I have not been provided with consultation responses or objections from statutory consultees or interested parties, other than the Borough Environmental Health Officer, who raises no objection to the proposal subject to the imposition of planning conditions. The Council has provided development plan policies in relation to the provision of employment land and premises, particularly office space, and the mitigation and management of noise.
3. Taking these factors into account and my own observations on site, the main issues are:
 - the effect of the proposed development on the supply of employment land and premises to meet current and future demand; and
 - whether the development would provide suitable living conditions for future occupiers having regard to noise and other nuisance generating activity.

Reasons

Effect on employment land supply

4. The appeal property is a 4 storey detached building, plus a basement, comprising residential units on the second and third floors and commercial uses on the floors below. The surrounding area includes a mix of residential and commercial uses. The appeal proposal would see the conversion of the first floor office space, which is currently vacant, to 2 residential units.
5. Policy DM17 of the Royal Borough of Kingston upon Thames Local Development Framework Core Strategy, adopted April 2012 (CS) sets out that employment land and premises will be protected to meet business needs and provide employment. Alternative uses will not be acceptable unless it has been demonstrated by sound evidence and rigorous marketing over a number of years (up to two years) that there is no quantitative or qualitative need for a range of employment uses.
6. Policy E1 of the London Plan 2021 (LP) allows for the change of use of surplus office space to other uses including housing, taking into account the need for a range of suitable workspace including lower cost and affordable workspace. Policies E2 and E3 of the LP seek the protection of a range of B Use class business space to meet the needs of small and medium sized enterprises and set out requirements for affordable workspace.
7. The appeal submissions indicate that, marketing of the first floor office space has not been successful. It is suggested that this is due to factors including practical constraints such as the location of the property beyond the main commercial area, the first floor nature of the office space, including residential uses above and shared facilities and access arrangements, which mean the office space is not attractive to potential commercial tenants. These matters are not disputed by the Council, nor has the Council alleged any policy conflict.
8. I therefore conclude that the proposal would not have an adverse effect on the supply of employment land and premises to meet current and future demand. Accordingly, it would not conflict with Policy DM17 of the CS or Policies E1, E2 or E3 of the LP.

Living conditions of future occupiers

9. Policy D13 of the LP amongst other things, states that planning decisions should reflect the Agent of Change principle and take account of existing noise and other nuisance-generating uses in a sensitive manner when new development is proposed nearby. Policy D13 is clear that development should be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue to grow without unreasonable restrictions being placed on them.
10. There is no substantive evidence to suggest that the future occupiers of the units would be adversely affected by surrounding uses in terms of noise, or that appropriate measures could not be implemented to ensure acceptable living conditions would be achievable. Moreover, the Council's Pollution Control Team has raised no objection to the proposal, subject to a condition to secure a scheme of noise attenuation to ensure acceptable noise levels within the building.

11. I therefore conclude that the development would provide suitable living conditions for future occupiers having regard to noise and other nuisance generating activity and, in that regard, it would accord with Policy D13 of the LP.

Conditions

12. I have considered the conditions put forward by the Council in the event that I were to allow the appeal in light of the requirements of the Planning Practice Guidance (PPG) and the Framework. I have amended those I find to be necessary in accordance with advice in the PPG. In addition to the standard timescale condition, a condition specifying the relevant plans is necessary to provide certainty. The appeal submissions indicate that there are no external changes to the building proposed, as such there is no need for an external materials condition.
13. The Council's suggested condition relating to cycle parking facilities requires details to be submitted, however drawing number CR0623/101/B includes a Brompton bike stand within each unit. As such, I have amended the wording of the condition to require the provision and retention of these facilities only, in the interest of sustainable transport.
14. A condition is also necessary to secure the provision of the communal waste and recycling bins within the internal bin store to serve both the existing and proposed flats, as shown on the drawings, to ensure a satisfactory form of development having regard to waste management. A requirement for the developer and/or their successors in title to ensure that all refuse and recyclable materials are either stored within these facilities or internally within the building(s), apart from on collection days, would not meet the tests as it would not be enforceable or precise.
15. I have imposed a condition to secure a scheme of noise mitigation to ensure the proposal would achieve acceptable standards, having regard to external noise and noise within the building. The condition is pre-commencement as these works are an integral part of the development that may affect how it is constructed. Given the presence of residential properties on the upper floors of the building, a condition to restrict the hours of construction is necessary to protect the living conditions of the occupants of the neighbouring property during the construction phase.

Conclusion

16. For the forgoing reasons the appeal is allowed.

E Worley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. CR0623/100 Location Plan only, Drawing No. CR0623/101/B Proposed Ground and First Floor Plans, Elevations and Section AA and Drawing No. CR0623-102 Proposed Fire Strategy Plan.
- 3) Prior to the first occupation of the development hereby approved the cycle storage facilities within each unit, as shown on drawing number CR0623/101/B, shall be provided. The facilities shall thereafter be permanently retained for that purpose and kept free from obstruction.
- 4) Prior to the first occupation of the development hereby approved the refuse and recycling facilities, as shown on drawing number CR0623/101/B, shall be provided and shall be permanently retained thereafter.
- 5) Prior to the commencement of the development hereby approved, a scheme shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the noise level of 35 dB LAeq,16 hour in living rooms and bedrooms during the daytime (between the hours of 07.00 and 23.00) and 30 dB LAeq,8 hour during the night time (between the hours of 23.00 and 07.00) in bedrooms, in accordance with BS8233:2014, shall not be exceeded. Noise levels in bedrooms should also not normally exceed 45 dB L_{Amax} F more than 10 times during the night time. Where these levels cannot be met with windows open, appropriate acoustic ventilation should be provided so that the room can be sufficiently ventilated. The acoustic performance of any passive vent, variable speed mechanical air supply unit or whole house ventilation must be sufficient to ensure that the noise level standards given above are not compromised. The approved scheme shall be fully implemented prior to the first occupation of the development and retained thereafter in perpetuity.
- 6) Construction works shall take place only between 08.00 and 18.00 on Mondays to Fridays and between 8.00 and 13.00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

******* end of conditions *******