The Planning Inspectorate

Appeal Decision

Hearing held on 3 September 2013
Site visit made on 3 September 2013

by Alison Lea MA (Cantab) Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 September 2013

Appeal Ref: APP/X5210/A/13/2196094
84 Hatton Garden, London EC1N 8JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against a refusal to grant planning permission.
- The appeal is made by Uniheights Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref 2012/4290/P, dated 15 August 2012, was refused by notice dated 10 October 2012.
- The development proposed is the conversion of the upper floors from vacant B1 to 5 two bedroom residential flats.

Procedural Matters

1. At the hearing a Unilateral Undertaking dated 3 September 2013 and made under Section 106 of the 1990 Act was submitted. However, as it became apparent during the hearing that the appeal property was subject to an outstanding mortgage, the appellants subsequently submitted a further Unilateral Undertaking dated 13 September 2013. This is in the same terms as the Undertaking dated 3 September 2013 save that it is also executed by the Mortgagor. In the interests of ensuring that all interests in the land are bound by any relevant covenants I shall, as requested by the appellant, treat the Undertaking dated 3 September 2013 as superseded, and take the Undertaking dated 13 September 2013 (the Undertaking) into account in considering this appeal.

Decision

2. The appeal is allowed and planning permission is granted for the conversion of the upper floors from vacant B1 to 5 two bedroom residential flats at 84 Hatton Garden, London EC1N 8JR in accordance with the terms of the application, Ref 2012/4290/P, dated 15 August 2012, subject to the following 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 the following approved plans: 1024.01, 1024.02, 1024.03, 1024.04, 1024.05, 1024.06, 1024.07, 1024.08, 1024.P.01, 1024.P.02, 1024.P.03, 1024.P.04, 1024.P.05, 1024.P.06, 1024.P.07 and 1024.P.08.

3) No residential flat shall be occupied until the lifetime homes features and facilities shown on the approved plans have been provided in their entirety.

4) No development shall take place until details of space for the parking of 5 bicycles has been submitted to and approved in writing by the local planning authority. The approved spaces shall be provided prior to first occupation of the residential flats.

Main Issue

3. The main issue in this case is whether the proposal would result in the loss of employment floorspace with a reasonable prospect of occupation by the jewellery industry contrary to the aims of development plan and national planning policy.

Reasons

4. The appeal property is a 6 storey plus basement commercial building located on the west side of Hatton Garden, an area recognised as a focus for the jewellery trade. The front part of the ground floor is occupied by a jewellery shop; the rear of the ground floor, the basement and all of the upper floors are vacant. I was informed at the hearing that the basement and rear of the ground floor have been vacant since early 2008, the 4th floor has been vacant since December 2007 and the remaining 4 floors have been vacant since late 2010/early 2011. Although the previous occupants had all been within the jewellery trade, the majority of the premises had been used as offices with only part of the 2nd floor having last been used as a jewellery workshop. The proposal would convert the 5 upper floors to residential use.

5. Core Strategy Policies CS8 and CS9 of the Local Development Framework state, amongst other matters, that the Council will promote and protect the jewellery industry in Hatton Garden. Development Policy DP13 states that the Council will "retain land and buildings that are suitable for continued business use and will resist a change to non-business unless:

   a) it can be demonstrated to the Council's satisfaction that a site or building is no longer suitable for its existing business use; and

   b) there is evidence that the possibility of retaining, reusing or redeveloping the site or building for similar or alternative business use has been fully explored over an appropriate period of time."

6. The policy goes on to state that where a change of use has been justified to the Council's satisfaction, the Council will seek to maintain some business use on site and that where it can be demonstrated that the site is not suitable for any business use other than B1(a), the Council may allow a change to permanent residential use, except in Hatton Garden where a mixed use development would be expected, which would include light industrial premises suitable for use as jewellery workshops.

7. The supporting text to Policy DP13 contains details of the marketing exercise, sustained over at least 2 years, which the Council would expect to see. Further details are contained within the Council's supplementary planning guidance

CPG5, which has been adopted by the Council following public consultation and therefore attracts significant weight.

8. The Council's reason for refusal states that the marketing had been insufficient. However, at the hearing further details of the marketing which had been carried out where provided. These included the various matters set out in CPG5 including a visible letting board, publication on the internet, and reasonable rents and lease terms. All of the vacant floors of the property have been marketed for in excess of 2 years, and some parts for in excess of 5 years, and although the Council suggested that marketing had been aimed at B1 uses in general rather than specifically referring to jewellery workshops, it is clear that at least for the last 2 years the particulars for the property have referred to jewellery workshops. Furthermore, although the Council referred to the needs of Centa Business Services, which I am informed is a body which makes managed jewellery workshop space available at subsidised rents, I have been provided with copies of letters from the appellant to Centa which do not appear to have led to any interest in the property. The appellant also referred to repeated attempts to contact Centa by telephone but to no avail.

9. At the hearing the Council agreed that the marketing measures appeared reasonable although pointed out that some of the details were not available when the application was determined and had not therefore been considered by the Council's economic development team. In my opinion it is difficult to see what further marketing measures the appellant could have taken.

10. The Council also points to the supporting text to policy DC13 and guidance in CPG5 which refer to 50% of the application floorspace being provided for the jewellery sector. However, in this case no change of use is proposed for the vacant parts of the ground floor and basement and the fact that these parts of the building have also been marketed unsuccessfully over a lengthy period suggests that requiring part of the upper floors to be retained for jewellery workshop use would not result in the occupation of those floors. To the contrary it would be likely to result in further sterilisation of the building. Furthermore, I note the proliferation of estate agents boards in Hatton Garden and have no reason to doubt the appellant's evidence that there is an over-supply of available premises. The appellant suggests that this is due to a decline in jewellery manufacturing and an increase in importing from other countries and I note that this view is reflected in the Hatton Garden Conservation Area Statement where it is stated that most of the jewellery sold in the retail outlets is no longer made locally.

11. The supporting text and CPG5 also state that where the provision of workspace is not possible a financial contribution, related to the area of workspace which would otherwise be expected, will be sought towards support for the jewellery industry. The Council referred to a number of properties in the area in relation to which a contribution has been made and has sought a contribution of £50,000 in this case. The appellant submits that as the contribution would not be related to the use of the property as residential it in effect amounts to a tax on the change of use. Although the Undertaking provides for a financial contribution to the jewellery sector, the covenant is drafted to ensure that if I consider that no contribution is required then it will not be payable.

12. The financial contribution is not required by Policy DC13. Similarly there is nothing in the National Planning Policy Framework (NPPF) which is supportive

of such a contribution. Although paragraph 21 of the NPPF refers to supporting existing business sectors, this is qualified by reference to taking account of whether they are expanding or contracting and by paragraph 22 which makes it clear that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. The evidence shows that to be the case here. Given that it has been demonstrated that there is no reasonable prospect of the premises being used by the jewellery sector, and in the absence of any demonstrable demand by the jewellery sector, it is difficult to see how a financial contribution to the jewellery sector is justified. Furthermore, other than referring to established practice, the Council was unable to clarify on what basis the figure of £50,000 had been calculated.

13. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) provides that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. For the reasons given I consider that an obligation requiring the making of a contribution of £50, 000 would fail these tests.

14. In my opinion the marketing demonstrates that the property is no longer suitable for its existing business use and that the possibility of retaining, reusing or redeveloping it for that use has been fully explored over an appropriate period of time. Some business use will be retained on the site and the proposal does not conflict with Policy DP13. Although there is some conflict with the supporting text to the policy and to CPG5, which could be met by the payment of a financial contribution, I consider that such a contribution is not required in order to make the development acceptable in accordance with Regulation 122 of the CIL Regulations.

15. Similarly although I acknowledge that taking account of the different roles and character of different areas is a core planning principle and that the Council views Hatton Garden as an area with a specific role there is no overriding principle which would prevent a change of use in this case. Indeed paragraph 51 of the NPPF states that applications for change of use to residential use from buildings currently in the B use class should normally be approved where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate. There is no suggestion that additional housing is not needed and the evidence demonstrates that there are no economic reasons why this change of use should not be allowed. I conclude therefore that the proposal does not conflict with the NPPF.

16. Accordingly I conclude that the proposal would not result in the loss of employment floorspace with a reasonable prospect of occupation by the jewellery sector and that it does not conflict with the aims of development plan or national planning policy.

Other Matters

17. The Undertaking contains covenants relating to the payment of financial contributions in respect of the provision of open space and educational facilities, in accordance with Policies DP31 and CS10 of the Local Development Framework. The Council confirms that the reasons for refusal relating to these

matters are addressed by the terms of the Undertaking and I am satisfied that the contributions are necessary to make the development acceptable in planning terms.

18. The appellant has submitted an Ecohomes pre-assessment report which indicates that the development would achieve an Ecohomes rating of "very good". The Council has confirmed that this complies with Policies CS13 and DP22, albeit that supplementary planning guidance encourages higher scores. The Undertaking contains a covenant to the effect that the residential units will not be occupied until a Post Development Sustainability Report certifying that the measures have been achieved and will be maintainable has been submitted and on this basis I am satisfied that the Council's aims with regard to incorporating sustainable development principles in design will be met.

19. The Undertaking also contains provisions relating to car free housing which the Council confirms satisfy its reason for refusal relating to parking congestion and air quality. The Undertaking contains a covenant to the effect that neither the appellant nor any future resident of the residential units will be entitled to apply to the Council for a car parking permit and that if any permit is wrongly issued it will be surrendered to the Council within 7 days of receipt.

20. The appellant acknowledges that this covenant is similar to that which was the subject of *Westminster City Council v Secretary of State for Communities and Local Government and Acons*. In that case the Secretary of State conceded that the undertaking was not a valid planning obligation, and the judge stated that in her view the undertaking did not meet any of the requirements of Section 106(1)(a)-(d) and therefore did not have the character required for a planning obligation. She also found that it was not enforceable and did not run with the land.

21. Counsel for the appellant submitted at the hearing that the weight of the judge's view is reduced as a result of the concession made by the Secretary of State, and furthermore, that that concession was wrongly made. In his opinion the covenant falls within S106(1)(a) as it is a restriction on the use of the land. However in the judgement the judge expressly states that in her view the concession was correctly made and there is nothing which distinguishes the wording presented to me from that considered in that case. I am therefore unable to conclude that the covenant is a valid planning obligation and accordingly I give it no weight.

22. The Undertaking also contains a covenant requiring a prominent notice to be erected within the common parts of the development stating that residents are not entitled to apply for a parking permit and that if wrongly issued such a permit would have to be surrendered. The appellant submits that this falls within S106(1)(b) as it is an operation required to be carried out on the land. I agree that requiring the erection and maintenance of a notice could fall within that sub-section. However, the Council stated that the undertaking may be difficult to enforce and although the appellant pointed out that the Council would become aware of a breach if anyone applied for a permit, the actual breach would occur by a failure to erect and maintain the notice which, as stated by the Council, would require regular visits to the premises. Furthermore the erection of the notice would not in itself prevent applications being made or permits being issued. In my view the covenant is not an enforceable planning obligation and accordingly I give it no weight.

23. Policy DP 18 states that the Council will expect development to be car free in the Central London Area and that in such areas it will not issue on-street parking permits and will use a legal agreement to ensure that future occupants are aware that they are not entitled to on-street parking permits. I accept that given the location of the appeal site in a congested area of central London and in a sustainable location in close proximity to many services and facilities and to numerous public transport routes it is important that the development is car free.

24. The Council explained at the hearing that applications are made to the Council's parking department who then have the responsibility of finding out if there are any restrictions relating to the address of the applicant, which is normally done by referring to the land charges department. It seems to me however that there is no reason why other measures could not be taken to ensure that the parking department is made aware that permits should not be issued. The lack of an enforceable undertaking in this respect is not therefore crucial and I consider that the aims of Policy DP18 can be met by the Council by other means.

Conditions

25. Although the appellant has suggested that a condition be imposed relating to car free housing, no wording has been proposed to me and I am not satisfied that such a condition would be necessary, reasonable and enforceable. I accept however that in the interests of encouraging cycling in accordance with Policy DP18 a condition relating to cycle storage is reasonable and necessary and that in the interests of sustainability, a condition should require the provision of the lifetime homes features shown on the plans prior to occupation. For the avoidance of doubt and in the interests of proper planning I shall also impose a condition requiring the development to be carried out in accordance with the approved plans.

Conclusion

26. Subject to these conditions and for all the reasons given I conclude that the appeal should be allowed.

Alison Lea

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Tabachnik	Counsel
Mr E Pick	E M Pick Planning
Mr J Levy	Formerly of Copping Joyce
Mr B Blair	Managing Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Tulloch	Planning Officer
Mr W Bartlett	Solicitor

DOCUMENTS HANDED IN AT HEARING

1 CPG5 Town centres, Retail and Employment
2 CPG8 Planning Obligations
3 Unilateral Undertaking dated 3 September 2013 subsequently replaced by Unilateral Undertaking dated 13 September 2013