



Appeal Decision

Hearing held on 28 September 2011

by David Smith BA(Hons) DMS MRTPI

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

Decision date: 1 November 2011

Appeal Ref: APP/X5210/A/11/2154322

55 Rochester Place & 3A Wilmot Place, London, NW1 9JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Micagold Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2011/0833/P, dated 24 December 2010, was refused by notice dated 10 May 2011.
 - The development proposed is erection of a three storey plus basement and mansard end of terrace building at 3A Wilmot Place comprising of 4 residential units and a three storey plus basement end of terrace building at 55 Rochester Place comprising Class B1 on all floors following demolition of existing building.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the hearing an application for costs was made by Micagold Ltd against the Council. This is the subject of a separate Decision.

Preliminary Matters

3. A section 106 agreement was completed between the parties prior to the hearing. It includes provisions relating to car free development; a construction management plan; a sustainability plan and highway contributions. As a result reasons 4-7 of the original refusal have been overcome.
4. In response to reasons 2 and 3 the appellant submitted a Code for Sustainable Homes Pre-Assessment Report and a Structural Engineer's Report covering the formation of a basement. The latter is desk-based and did not involve a site investigation but this is consistent with Camden Planning Guidance Supplementary Planning Document (CPG) 4 on *Basements and Lightwells*. As a result of this additional information these reasons are not being pursued.
5. Although this is queried by others I have followed the main parties in referring to 3A Wilmot Place in the site address.

Main Issue

6. In the light of the above the main issue is the effect of the proposal on the supply of employment premises and sites having regard to relevant development plan and other policies.

Reasons

7. The appeal site contains a two-storey 'L' shaped building on the corner of Wilmot Place and Rochester Place. It has had a variety of employment uses over the years including a scientific instrument works and a photographic studio. The ground floor is now unused but the upper floor is laid out and appeared to be in use as residential accommodation without the benefit of planning permission. The proposal is to demolish the existing building and to construct a three-storey building fronting Wilmot Place containing 4 flats. Behind this and facing Rochester Place would be a three-storey building with a basement for purposes within Class B1 of the Use Classes Order.
8. Similar proposals were considered and dismissed at appeal in 2010 (Refs: APP/X5210/A/09/2116338 & 10/2131298). The quantum of built development was almost identical to the proposal but in both cases the rear block contained a mixture of Class B1 and residential uses. Both schemes would have resulted in a reduction in commercial floorspace and the Inspector concluded that neither would accord with Unitary Development Plan policies designed to preserve employment opportunities in the area. These decisions and the other detailed findings are material considerations in this case.
9. Planning Policy Statement (PPS) 4: *Planning for Sustainable Economic Growth* establishes that the Government's overarching objective is sustainable economic growth. This was confirmed as the Government's top priority in the Ministerial statement of 23 March 2011 on *Planning for Growth* which also underlined that the answer to growth and development should be 'yes' wherever possible. Moreover, the need to secure economic growth and employment should be given significant weight.
10. The Camden Core Strategy and Development Policies have been adopted since the last appeals. Policy CS8 promotes a successful and inclusive economy. Of more direct relevance is Policy DP13 concerning employment premises and sites. In addition, CPG5 on *Town Centres, Retail and Employment* was adopted as a supplementary planning document in September 2011. Chapter 6 addresses employment sites and business premises.
11. The last Inspector found that the present building offers opportunities for a range of business uses including light industrial. This is not disputed. So as it is accepted that the premises are suitable for continued business use criteria a) and b) of Policy DP13 do not apply. Rather the proposal should be tested against criteria c) – g) which are relevant when redevelopment for mixed uses is being considered. Therefore the absence of evidence regarding marketing is immaterial when assessing the scheme against the development plan.
12. The Reed's and Rochester Place Neighbourhood Association (NA) allege that the amount of floor space would fall but the basis of this calculation is not explained. The previous Inspector referred to the existing floorspace as 279 sq m and this is not contested by the main parties. They also agree that the net internal area proposed is 308 sq m and the appellant's figure of 336 sq m for the gross internal area is not challenged by the Council. These therefore form a reasonable basis for the determination of the appeal.
13. As the level of employment floorspace would be increased criterion c) would be met. However, criteria e) and f) establish that provision should be suitable for new small or medium enterprises and for either light industry, industry,

warehousing or offices. Consequently both the quality and the quantity of any new development should be considered and this should also have regard to the nature of the space that would be lost. Paragraph 13.6 confirms that the provision of inappropriate business space will not be acceptable as this often fails to attract an occupier which can lead to vacancy. It is also worth observing that the criteria in Policy DP13 are given equal ranking.

14. CPG5 identifies 3 main categories of sites and premises in the Borough. These are to be used to determine which should be retained and which released for redevelopment. The appellant argued that the existing building falls into category 3 which may not be suitable for continued use but this does not sit easily with the finding outlined in paragraph 11. The characteristics of categories 1 and 2 should also be used to guide the design of new business premises. Rather than deciding precisely which category the existing or proposed units fall into the features listed provide a useful checklist for assessing the differences.
15. In this respect and when taken overall the proposed floor space would be inferior in a number of ways. First, it includes a basement which is listed in category 3 and which would not be particularly well lit. A category 2 characteristic is clear, high floor to ceiling heights of 3m-5m and the existing building accords with this better than the proposed one would. Both would have level access onto Rochester Place but the existing premises have the benefit of access onto Wilmot Place albeit constrained by internal steps. From my inspection I consider that internal lighting would be on a par. Put the other way, the proposed space would not offer any clear advantages when judged against the category 2 and 3 features.
16. One of the main differences is the splitting of the layout across four levels (including the basement) as opposed to two at present with less space at ground floor level. Category 1 premises are predominantly single storey suggesting that this is an important factor in the assessment of the quality of accommodation and therefore that the proposal would be less useful. The appellant argued that the more regular shape of the proposed building would work better and that, in effect, the existing 'arms' would be replaced on the four proposed floors. For its part, the Council doubted the suitability of the proposed arrangement and highlighted possible logistical issues. There is no evidence either way on this point from potential commercial occupiers.
17. However, along Rochester Place to the north-west are a series of small enterprises operating largely in the creative sector. These are of a mixture of sizes but all are two-stories in height with no basements. The majority of these buildings are in use. Moreover, the appellant could provide no examples of similar types of narrow fronted commercial buildings with 3 floors above a basement that had been built and occupied recently. These factors support the view that a larger area on one level offers greater potential for flexible usage and that a building of the proposed configuration may not ultimately be attractive to prospective occupiers.
18. Another way of looking at this question is to consider the likelihood of different types of business occupying both the existing and proposed premises. In this respect the Business Premises Study (BPS) produced for the Council in March 2011 in the lead up to the adoption of CPG5 is helpful. It notes, for example, that offices in mixed use schemes have generally proved very difficult to let. This is partly because there is little or no demand for office space in Camden.

19. A further reason is that such offices are often compromised in terms of quality. However, the proposal would be exemplary in providing a clear distinction between residential and commercial uses. Nevertheless, this is identified as important in paragraph 13.6 of the Development Policies and should be regarded as the norm rather than a positive feature that supports the scheme. In any case, as there appears to be no shortage of office space or office development opportunities neither the existing or proposed building would be likely to be occupied by users within Class B1(a)
20. On the other hand, Camden has a restricted supply of sites and premises suitable for light industrial uses. The BPS nonetheless gives Rochester Place as an example of a mews where sites are heavily compromised due to the proximity to residential uses and as access is restricted to light vehicles only. This does not entirely tally with the current situation in Rochester Place. However, in its review of industrial space the BPS deals with general and light industrial uses together. The limitation on Class B2 uses is understandable but are less likely to affect businesses within Class B1(b) or (c) which, by definition, can operate in any residential area without detriment to amenity.
21. So the location of the site does not rule out potential light industrial occupiers of either the current or proposed floor space. Moreover, the BPS also covers what it describes as "Business Units" which share the characteristics of both industrial and office sectors. Examples of occupiers include design, fashion, TV and IT centre companies. Key drivers for occupiers are the presence of clusters and the preference for character buildings. Both these and the other descriptors of typical units favour the existing premises.
22. The appellant maintained that it is the interests of any developer to ensure that the proposed employment floor space is attractive so that it can be sold or let. However, there is no financial information to indicate that this is an essential part of making the development 'tick'. The BPS also notes that developers may treat the industrial element of mixed use schemes as loss leaders and may even have in mind a future change of use to residential although there is nothing to indicate that this is contemplated here.
23. At the application stage commercial property agents commented that the proposal should create strong interest from a wider range of commercial users than the existing format. However, the experience of the company is in the City of London rather than Camden and this opinion is therefore of limited weight. A revised application has apparently been submitted with commercial floorspace on the ground floor and with a larger basement but this has not been determined and so such an arrangement has not been accepted.
24. Other appeals relating to employment uses in Rochester Place have all been dismissed as was the case highlighted by the Council at Belmont Street, NW1 (Ref: APP/X5210/A/10/2131137). However, in each of these cases there would have been either a total or partial loss of commercial floorspace which is not the situation in this appeal. They can therefore be distinguished from the proposal and do not compel a similar outcome.
25. In summary, when judged against the features listed in the categorisation of commercial premises in CPG5 the proposal fares worse than the existing building. Particular drawbacks are the inclusion of a basement and the 'spreading' of the accommodation across two additional floors. Because of the state of the market occupation as offices is unlikely. The BPS also indicates

that the existing premises may suit some businesses where occupiers would see market appeal in 'quirky' space. This is borne out by the existing uses along Rochester Place. There is no persuasive evidence regarding the attractiveness of the proposed unit for light industrial purposes.

26. The policy test is whether new premises or floorspace would be "suitable" rather than whether it is simply better or poorer than what is there now. However, paragraph 13.6 of the Development Policies provides that it must be demonstrated that the commercial element is appropriate to meet the likely needs of the end user. That has not been done in any meaningful way and coupled with the reservations outlined above there would be a conflict with criteria e) and f) of Policy DP13.
27. The Council raised issues relating to the quality of accommodation in respect of the previous appeals. However, at that time the Unitary Development Plan was in force and neither Policy E2 nor Policy E3-B contained any requirement for replacement floor space to be "suitable". So the policy background was different. Nevertheless, the Inspector made no finding that the proposed floor space was unsatisfactory and commented that "... accommodation meeting modern standards might be more likely to attract an occupier." However, that general observation was made without the benefit of the BPS. As such, there is not an obvious contradiction between those decisions and my finding.
28. The proposal would be contrary to two of the relevant policy provisos but it would increase the amount of commercial floor space by about 20% although in absolute terms the gain would be modest. In any event, there is no point in providing extra accommodation if it is unsuitable for potential occupiers and inferior to what is already there. On the basis of the information presented that is the situation here and the effect of the proposal would be to diminish the quality of the supply of employment premises in Camden. As well as Policy DP13 this would be at odds with the more general aims of Policy CS8.

Other Matters

29. The NA alleges that the mansard roof extension permitted in 2008 at 3 Wilmot Place has been built about 1m higher than approved. The Council's investigation of this is, to date, inconclusive. However, whatever the situation at No 3 the proposed scheme has to be assessed on the basis of the submitted drawings relating to it rather than the comparison shown with the building next door. The top of the proposal would therefore either 'line up' with No 3 or be slightly lower but in either event the eaves would be the same. If there were to be a difference in overall height this would cause no harm to the townscape.
30. The appeal site is between Jeffreys Street and Rochester Conservation Areas. The proposal would result in a substantial building on the corner of Rochester Place where development is essentially 2-storey in scale. However, it would be seen as clearly separated from the mews. The flank wall would be large and the overall bulk of the building would be greater than No 4 on the opposite corner. Although No 3 may not have historically been part of a pair or a longer terrace the similarity between the two would ensure that the proposed building would sit comfortably in its setting rather than dominate it.
31. Indeed, the last Inspector was satisfied that both conservation areas "...are sufficiently robust in their architectural character to accommodate redevelopment of the appeal site in broadly the form proposed." The scheme

before me would be similar and I share that analysis so neither of these heritage assets would be compromised.

32. The rear facing windows at No 3 serve bedrooms. The existing building has a louvered first floor window that faces this fenestration. The proposed windows at first and second floor level would be more offset but could give rise to overlooking. However, these could be obscure glazed. A condition could similarly prevent flat roof areas from being used for sitting out. The creation of a gap between the residential and Class B1 buildings would result in a modest improvement for occupiers at No 3. Indeed, overall living conditions for them would be satisfactory in a dense urban location.
33. The existing first floor window allows views towards the rear of Rochester Terrace. Given this, the distance to the proposed front roof terrace and the requirement for some form of enclosure a material loss of privacy would not be experienced at these properties.
34. Consequently having regard to these findings in relation to character and appearance and living conditions there would be no conflict with Policies CS14, DP24, DP25 and DP26 that seek to secure high quality design, conserve heritage and manage the impact of development on neighbours. The proposal is also consistent with the aims of CPG1 on *Design* and CPG6 on *Amenity*.
35. The provisions in the obligation generally arise from relevant development plan policies and the further guidance in the CPG. The highway contribution is to cover works directly associated with the development in repairing and reinstating the footway. However, whilst a post construction review to ensure that sustainability measures have been incorporated is good practice this could be adequately covered by condition. Consequently this part of the obligation is unnecessary but otherwise the tests in the Community Infrastructure Levy Regulations are met and these elements of the agreement should be taken into account. However, they simply address matters arising in connection with the development and do not overcome the objection identified.

Overall balancing

36. The proposal would have a negative effect on the supply of employment premises and sites in terms of quality. As such the national policy imperative of supporting sustainable economic growth would not be well served by permitting the development to go ahead. The proposal would deliver 4 housing units and Policy DP2 seeks to maximise the supply of additional homes in the Borough. However, there is no evidence of a particular shortage for this type of accommodation in this part of Camden.
37. The last Inspector acknowledged that the appeal site is capable of being redeveloped at an intensity greater than that which presently exists and that there is potential to secure a form of development more sympathetic to the area's character. The appellant argued that the urban grain would be repaired. That said, whilst by no means a conventional beauty the existing building epitomises the mixed industrial character that exists nearby. In other words, the building is not so unsightly that it should be replaced at the cost of a lowering in the quality of commercial floorspace.
38. Understandably the appellant will be frustrated by the dismissal of a further appeal that has sought to address criticisms made by the Inspector in 2010. However, the policy landscape has changed since then and I have to assess the

proposal against the development plan and on the basis of the evidence presented including the recent BPS. The appellant wishes to know what will get planning permission but my main task is to assess the acceptability of the proposal. Nevertheless in setting out its drawbacks my decision should assist all parties in determining whether an alternative is likely to obtain permission.

Conclusions

39. The harm that would arise and the conflict with the development plan is not outweighed by other considerations. So for the reasons given the appeal should not succeed.

David Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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INTERESTED PERSONS:

Miss G Scott

Reed's and Rochester Place Neighbourhood Association

Mr M McCarthy

Chair, South Kentish Town Conservation Area Advisory Committee

Mr G Stevens

DOCUMENTS

- 1 Planning obligation dated 26 September 2011
- 2 Chapter 6 of Camden Planning Guidance 5 on Employment Sites and Business Premises
- 3 Camden Planning Guidance 4 on Basements and Lightwells
- 4 Camden Planning Guidance 6 on Amenity
- 5 Business Premises Study
- 6 Floor plans submitted by Mr Cooper
- 7 Drawings of previous scheme – Appeal B (ref: APP/X5210/A/10/2131298)
- 8 Letter of 12 September 2011 from Mr Cooper re floor areas
- 9 Photographs of interior of building
- 10 Camden Planning Guidance 1 on Design