
Appeal Decision

Site visit made on 23 February 2016

by Robert J Jackson BA MPhil DMS MRTPI MCI

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

Decision date: 24 March 2016

Appeal Ref: APP/X5210/W/15/3130785
13 St Cross Street, London EC1N 8UB

- 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 Mr Alec Alexandrou, Alexander Developments Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2011/1433/P, dated 16 March 2011, was refused by notice dated 25 June 2015.
 - The development proposed is described as "erection of new build 7 storey plus basement building to provide eight self contained flats, 1 x 1 bedroom, 6 x 2 bedroom and 1 x 3 bedroom, on vacant land".
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Decision

1. The appeal is allowed and planning permission is granted for erection of new build 7 storey plus basement building to provide eight self contained flats, 2 x 1 bedroom, 5 x 2 bedroom and 1 x 3 bedroom, on vacant land at 13 St Cross Street, London EC1N 8UB in accordance with the terms of the application, Ref 2011/1433/P, dated 16 March 2011, subject to conditions set out in the Schedule.

Application for costs

2. An application for costs was made by Mr Alec Alexandrou, Alexander Developments Ltd against the London Borough of Camden. This application is the subject of a separate Decision.

Procedural Matters

3. Planning permission was granted in May 1991 for a six storey building with workshops on the ground and first floor with offices above. The appellant asserts that this permission was begun; the Council expresses doubts. However, this appeal is not the mechanism to determine whether this is the case and accordingly I have given this matter little weight in my decision.
 4. The proposal was amended during the processing of the application to reduce the extent of the fifth and sixth floors and the Council accepted those drawings. The applicant sought to amend the scheme further by altering the upper floors but the Council declined to accept the drawings on the basis that they changed the scheme too substantially from the original submission.
 5. In amending the application the same drawing number was used twice for two different drawings and the applicant did not amend the nomenclature of the
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- floor plans on the drawings for the middle floors when amending the upper floors.
6. Following the Council's decision it came to light that the Council had not considered some of the plans it had accepted as an amendment. It therefore indicated that it did not wish to pursue reason for refusal 1 relating to the impact on the living conditions of adjoining occupiers. Accordingly, I shall not consider the matter further.
 7. For the avoidance of doubt I have used the drawings set out in condition 2, with the change in nomenclature noted, as these were the drawings which the Council had in front of it at the time of the decision and which had been consulted upon. These amendments had the effect of changing the description so that the mix of bedrooms was 2 x 1 bedroom, 5 x 2 bedroom and 1 x 3 bedroom. This was the description utilised by the Council on its decision notice and I have considered the application on this basis and used it in the formal decision.
 8. Since the application was submitted the Council has adopted a Community Infrastructure Levy which would be applicable to this development. The appellant has made various comments about the effect on the viability of the appeal proposal and any off-setting for the original planning permission which he asserts has been implemented. These are not matters which are material to the determination of this appeal.
 9. The appellant submitted a Planning Obligation by way of a Unilateral Undertaking dated 7 December 2015 to seek to address reasons for refusal 3 to 6 relating to car-free housing, a construction management plan, highway works and renewable energy matters. I will discuss the implications of this below.

Main Issues

10. The main issues are:
 - whether in the light of development plan policies and other considerations, including the location of the site within the Hatton Garden Conservation Area, the proposal should make provision for secondary uses within the development; and
 - whether the Planning Obligation is necessary in respect of the matters contained within it.

Reasons

11. The appeal site is a vacant area of land set between two substantial buildings. The site rises to the west along St Cross Street and is in the middle of a highly urban part of London. The bottom of the site is set at a lower level than the street meaning that the basement volume already exists.
12. The site lies within the Hatton Garden Conservation Area (HGCA). A Conservation Area Statement was agreed by the Council in 1999. The Statement indicates¹ that the character and special interest of the Hatton Garden area is defined largely by the quality and variety of buildings and uses, as well as the unique pattern of streets. The character is not dominated by one

¹ Paragraph 5.10

particular period or style of building but rather by the combination of styles that make the area of special interest. It notes² that the area has seen considerable change in building uses over time particularly during the nineteenth century when the jewellery industry began to occupy many of the buildings within the estate and the area transformed into a commercial and retail centre.

13. The appeal proposal involves infilling the site with a seven storey building plus basement and roof garden. Above first floor level the building would leave space between the appeal proposal and the adjoining property to the west, Da Vinci House, thereby allowing light into the flats within that building.

Secondary uses

14. Policy CS8 of the Camden Core Strategy 2010 (the CS) indicates that the Council will seek a strong economy in Camden. In particular it seeks to promote and protect the jewellery industry in Hatton Garden.
15. Policy DP1 of the Camden Development Policies (the CDP) requires, where appropriate, a mix of uses in development and sets out criteria for assessing proposals. It makes clear that in the Hatton Garden area where more than 200m² of additional floorspace is to be provided, as here, up to 50% should consist of secondary uses, including a contribution to housing to affordable premises suitable for the jewellery industry. The supporting text in paragraph 1.23 notes that given housing is the priority land use, the Council may not seek secondary uses unless there is a shortfall of facilities in the area (e.g. open space or health facilities), which is not alleged here, or a secondary use is needed to provide an active street frontage.
16. Policy DP13 of the CDP indicates that the Council will seek to retain land and buildings for continued business use and will resist a change to non-business use unless it can be demonstrated that a site or building is no longer suitable for its existing business use and 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. The explanatory text sets out various criteria to demonstrate this.
17. The Council has published Supplementary Planning Document CPG5 on Town Centres, Retail and Employment. This was adopted after public consultation and therefore attracts significant weight. Reference is made to the supporting text to Policy DP13 and the guidance in CPG5. It does, however, accept that where it is agreed that the provision of jewellery workshop space is not possible a financial contribution towards the support of the jewellery industry will be required.
18. This proposal is not for a conversion but a new build and as the site is not in active use there is no business use to continue. Consequently I find that Policies DP13 and CPG5 are not directly engaged.
19. The National Planning Policy Framework (the Framework) makes clear in paragraph 22 that planning policies should avoid the long term protection of sites allocated for employment uses where there is no reasonable prospect of a site being used for this purpose. In such circumstances applications for alternative uses of land or buildings should be treated on their merits having

² Paragraph 5.29

- regard to market signals and the relative need for different land uses to support sustainable local communities.
20. The appellant has not submitted details of any marketing exercise which has been undertaken or any economic and financial viability analysis as required by Policy DP1. Rather he refers to the number of estate agent boards in the area showing premises which are available and internet search results as evidence that there are sufficient workshops available in the area. He considers that the site is somewhat isolated from the main Hatton Garden jewellery quarter and that the benefits of bringing the site back into beneficial use outweigh any harm arising from the lack of employment provision.
 21. By their very nature estate agents boards and internet searches only show a snap-shot in time and should be given lesser weight than if a marketing campaign had been undertaken. Having said that I note from the Conservation Area Statement³ that most of the jewellery sold in the retail units is no longer made locally which would suggest that there may be less of a need for workshop space than was previously the case.
 22. The appeal site is some short distance from the main retail area in Hatton Garden, although there some workshops on the ground floor in the areas away from the main retail area. On one side of the appeal building Da Vinci House has been converted entirely to residential uses and opposite is a multi-storey public car park. While there are workshops within the building to the east, the premises seemed to me to relate visually more to Farringdon Road. The site is therefore not in the heart of the Hatton Garden jewellery industry. Given these adjoining uses there is no particular need to require the maintenance of an active frontage.
 23. All parties agree that the current vacant condition of the appeal site detracts from the appearance of the HGCA. The redevelopment of the site in the manner proposed would enhance the appearance of the HGCA and thus, in line with paragraph 132 of the Framework, great weight should be given the conservation of the HGCA as a heritage asset. Similarly, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires special attention should be given to the desirability of preserving or enhancing the character or appearance of the conservation area.
 24. Taking this together I find that although the proposal would be contrary to Policy CS8 in that it would not provide employment space, given the priority to housing in Policy DP1 and in national policy, the lack of need to provide an active frontage and the benefits to the HGCA of bringing the site back into use the balance lies with permitting the use of the whole of the site solely for residential purposes.

Planning Obligation

25. Regulation 122 of the Community Infrastructure Levy Regulations (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development. This is reiterated in paragraph 204 of the Framework.

³ Paragraph 4.22

26. The submitted Obligation is drafted so that should I conclude that any part of it is incompatible with any of the above tests then that element of the obligation will cease to have effect.
27. The first matter deals with car-free housing. The obligation is drafted so that any new resident of the proposed development shall be informed of the Council's policy which states that they shall not be entitled (unless disabled) to a residents' parking permit. It does not prevent occupation by anyone holding a parking permit.
28. The site is located within the Kings Cross Area controlled parking zone (CPZ). Council records already show that there are more permits than spaces and consequently do not wish to see parking stress and traffic congestion made worse and road safety and air quality compromised. Relevant policies in the CS and CDP promote sustainable travel and limiting parking in areas with good public transport. The appeal site lies in close proximity to Farringdon Station and other public transport networks. No parking is proposed as part of this development.
29. I can appreciate the need for a car-free development. However, it seems to me it would be difficult for the Council to enforce the requirement that any new resident be advised that they could not obtain a permit. While appreciating the aim of the Obligation this limits the weight I can give to it.
30. Having said that as parking permits are issued by the Council it could have mechanisms to ensure that any occupier (except someone who is disabled) could be aware that no permit would be issued and is prevented from obtaining a permit. I therefore consider the aims of Policy DP18 could be met in other ways.
31. The second matter within the Obligation requires a Construction Management Plan (CMP) to be submitted to and agreed by the Council prior to implementation of the development and thereafter be complied with.
32. The Council has set out in some detail the issues why a CMP is necessary and why it should be dealt with as a Planning Obligation as opposed to a condition. Paragraph 11 of the national Planning Practice Guidance (the PPG) on the Use of Conditions makes it clear that a condition should be used in preference to a planning obligation where this can be used to overcome a planning objection.
33. I concur that due to the nature of the site and its relationship with other land uses a CMP is necessary to avoid highway safety concerns and unacceptable impacts on the living conditions of the occupiers of adjoining properties. However, I see no reason why this cannot be delivered by a planning condition provided that the CMP is appropriately drafted in negative form which would allow it to deal with matters, for example, on the public highway. In light of this conclusion I give this clause within the Obligation no weight.
34. The third matter relates to the provision of a financial contribution essentially as a bond towards the reinstatement of the highway should works be required following construction. Currently the footway in front of the appeal site is in poor condition having been patched on numerous occasions. The sum within the Obligation is said by the Council to be the cost for replacing the kerb and repaving of the footway. This goes beyond simple reinstatement to the current condition.

35. While this may be desirable, this goes beyond that which can reasonably be considered necessary to make the development acceptable. Compliance with other legislation would be necessary to allow works on the highway. Consequently I consider that this part of the Obligation fails to comply with Regulation 122 and give it no weight.
36. The final matter in the Obligation is drafted to prevent occupation of the property until a satisfactory post-completion review of the measures included within the Energy Efficiency and Renewable Energy Plan submitted with the application has been completed. This Plan dates from 2011 and indicates that the scheme is likely to result in the energy requirements of Code Level 3 and that greater than 10% of energy demand would be supplied by renewables.
37. Policy DP22 of the CDP expects new build housing to meet the Code for Sustainable Homes Level 4 by 2013 and Level 6 by 2016. Since the CDP was adopted matters of energy efficiency have been progressed with the Code for Sustainable Homes being withdrawn. However, the Written Ministerial Statement of 25 March 2015, entitled "Planning update March 2015", allows existing energy performance policies that set requirements up to the equivalent of the energy requirements of Code Level 4 until the amendments to the Planning and Energy Act 2008 in the Deregulation Act are commenced.
38. Consequently the 2011 Energy Efficiency and Renewable Energy Plan is outdated and would not comply with Policy DP22. Equally the technology proposed may no longer be the most appropriate. I therefore consider that appropriate energy performance should not be delivered through this plan but rather through a revised scheme which could be delivered through a condition. I therefore give that part of the Obligation dealing with energy matters no weight.
39. Therefore I conclude that the Obligation complies with Regulation 122 of the CIL Regulations in respect its provisions relating to car-free housing but does not so comply in respect of its provisions relating to a construction management plan, highway works and renewable energy matters.

Other matters

40. At the application stage concerns were raised about a potential loss of light to or overlooking of adjoining properties, and as noted above the Council did refuse the application on this basis. However, on the basis of the scheme as amended I am satisfied that the proposal would not have an adverse impact on the living conditions of adjoining occupiers.
41. Concerns were also raised that the design is poor, the materials used would be out of keeping with surrounding buildings and the scheme would result in overdevelopment. In my view the overall design of the building would be in keeping with other buildings in the area, being of similar height. The precise materials to be used can be resolved through a planning condition. The amount of building also appears to be appropriate for this central site.
42. There were also concerns raised about effects on Rights to Light. However, this is a private matter between the relevant parties and is not part of the planning consideration of this appeal.

Conditions

43. I have considered the conditions put forward by the Council against the requirements of the PPG and the Framework. In addition to the standard timescale condition, and the conditions referred to above I have imposed a condition requiring details of materials to be submitted and approved to ensure that they are appropriate within the HGCA. In addition, to encourage cycling in accordance with Policy DP18 of the CDP a condition relating to cycle storage is reasonable and necessary.
44. Otherwise than as set out in this decision and conditions as explained above, I have imposed a condition specifying the relevant drawings as this provides certainty. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusion

45. For the reasons given above I conclude that the appeal should be allowed.

Robert J Jackson

INSPECTOR

Schedule of 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: 13SC10/SP, 13SC10/007, 13SC10/008, 13SC10/010, 13SC10/011, 13SC10/012A and 13SC10/015 except in respect of plan No 13SC10/008 where that shown as "Second – Fifth Floor Plan" shall be taken as "Second – Fourth Floor Plan".
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) hours when construction works may take place on site;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from construction works.
- 5) The dwellings hereby permitted shall not be occupied until the relevant requirements of level of energy performance equivalent to ENE1 level 4 of the Code for Sustainable Home have been met and the details of compliance provided to the local planning authority.
- 6) The dwellings hereby permitted shall not be occupied until the cycle storage shown on the approved plans is made available and this storage shall thereafter be retained for its intended purpose.

End of Schedule