



Appeal Decision

Site visit made on 6 November 2018

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 14 December 2018

Appeal Ref: APP/X5210/W/18/3203533

3 Hargrave Place, London N7 0BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Hargrave Developments Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref 2017/5159/P, dated 15 September 2017, was refused by notice dated 26 March 2018.
 - The application sought planning permission for the erection of 4 storey building comprising light industrial unit (Class B1(c)) on ground floor and 6 x flats on upper floors following demolition of existing light industrial unit without complying with a condition attached to planning permission Ref 2014/3714/P, dated 18 November 2014.
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of Class B1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, the ground floor commercial premises shall only be used for light industrial purposes (Class B1c) and no other uses within the B1 use class.
 - The reason given for the condition is: To ensure that the future occupation of the building does not adversely affect the provision of employment floorspace in the borough in accordance with policy CS8 (promoting a successful and inclusive Camden economy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP13 (Employment sites and premises) of the London Borough of Camden Local Development Framework Development Policies.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Hargrave Developments Limited against of the Council of the London Borough of Camden. This application will be the subject of a separate Decision.

Main Issue

3. Permission was granted in 2014 for demolition of a light industrial unit on the site and erection of a replacement building with a light industrial unit on the ground floor (use class B1c) and 6 flats on the upper floors. This replacement building has been constructed. However, the unit on the ground floor is in office use.
4. Condition three to the permission restricts use of the ground floor to light industrial purposes (use class B1c). The appellant seeks to vary condition 3 to allow all uses within the B1 use class. The main issue in this appeal therefore

is whether the condition is reasonable and necessary having regard to the supply of light industrial premises in the Borough.

Reasons

5. The development plan for the Borough includes the Camden Local Plan which was adopted in 2017. Policy E1 of the Local Plan states that a stock of premises will be maintained that are suitable for a variety of business activities. In relation to Camden's industries the policy states that existing employment premises that meet the needs of industry and other employers will be safeguarded. Policy E2 of the Local Plan reiterates this approach.
6. It is clear from the justified reasoning to this policy that Camden's industrial businesses provide London's Central Activities Zone with important goods and services. However, the Borough has a limited industrial stock and on the basis of the Camden Employment Study 2014 supply of such sites does not meet demand. Moreover, industrial businesses provide employment for people who would otherwise be at relatively high risk of being unemployed as they do not have the skills or qualifications sought by most employers. Therefore whilst office use (Class B1a) of the unit would generate more employment and potentially more local spend than a light industrial use, for strategic reasons, including the benefit to the local community described, a light industrial use is preferable.
7. The appeal property is located within Kentish Town but is not located within its Industrial Area. The Local Plan predicts high demand for office space. However, the spatial strategy of the development plan is that office space will primarily be met in the growth areas and Central London. Two thirds of the predicted office space has already been permitted at King's Cross with plans for the remainder in Euston. Therefore, whilst there is a need for some smaller scale office development in other parts of the Borough, in terms of Camden's strategic approach to its economy, the ground floor of the appeal property is of more value as light industrial premises.
8. Policy E2 of the Local Plan protects sites that are suitable for continued business use. Higher intensity redevelopments are supported by this policy where existing businesses on the site are retained, in particular light industry. The appellant states that this is not the case here as the site was sold as a redevelopment site. Given that permission was granted for more intensive redevelopment of the site under the policies of a previous development plan, and this appeal is dealing with whether a condition is reasonable and necessary in order to protect the supply of light industrial premises, this point is of little relevance. It is further pointed out that the existing office business occupying the ground floor of the premises would not be protected, as policy E2 seeks, because it would be forced to move out if the condition was enforced. However, as the legal use of the ground floor unit is currently for light industry, rather than offices, the enforcement of the condition would not be contrary to policy E2.
9. Although there is planning policy support for the protection of light industrial premises, if it is demonstrated that there is no market interest in the appeal property for this purpose this would be an important consideration in favour of allowing the appeal. Camden's Planning Guidance regarding employment sites provides advice in this regard. The submitted marketing report shows that the property was marketed for approximately a year before the office tenants moved in and evidence has not been provided that the advertised rents were

- competitive. As a result, the marketing does not comply with Camden's guidance. Therefore, notwithstanding that in terms of floor to ceiling height and access for deliveries the unit is not ideal for light industry, it has not been demonstrated that there is no demand for a light industrial use of the unit.
10. In terms of whether condition 3 prevents a different use of the unit within the B1 use class, the condition must be construed on the basis of its wording. As the condition requires 'only' light industrial use and 'no other uses within the B1 use class' I find that the condition is effective and achieves its desired purpose of excluding other uses within the B1 use class, including offices, under the permitted development right. Planning Practice Guidance makes clear that conditions which restrict the future use of permitted changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances¹. For the reasons given above, such circumstances exist in relation to industrial uses in the Borough.
 11. The original single storey light industrial unit had housing nearby on most sides. The new unit additionally has residential accommodation on the floors above. Whilst a light industrial use is likely to generate more noise than use of the ground floor as offices, only those industrial uses that can be carried out without detriment to the amenity of the area fall within Class B1c. Given this consideration and that the building would have been constructed to comply with Building Regulations, which require insulation between properties, noise complaints are unlikely occur and the unit would be well related to nearby land uses.
 12. Reference has been made to an application considered this year where the Council resolved, subject to a section 106 agreement, to grant planning permission for the redevelopment of a nearby photographic studio (Class B1c) to provide flats with reduced employment space. The appellant states that the employment space in the development would be Class B1a space, albeit based on the officer report I have been provided with on the application, it appears that it would be for Class B1 employment space rather than office space.
 13. The appellant also states in relation to this permission that, unlike in relation to 3 Hargrave Place, a condition protecting the Class B1c employment space by only allowing light industrial use was not attached. This assertion has not been challenged by the Council. However, this consideration is not a reason on its own to vary the contested condition in this appeal in the manner sought. This is because, having regard to the development plan and evidence that has been submitted, the condition as written is necessary and the proposed variation would harm the supply of light industrial floorspace in the Borough.
 14. In retaining floorspace for small businesses the varied condition would comply with policy SW1 of the Kentish Town Neighbourhood Plan. However, in undermining the stock of premises for light industrial use the permission sought would be contrary to policies E1 and E2 of the Local Plan. As a result, I find that the effect of varying the condition in the manner sought would be contrary to the development plan considered as a whole.
 15. For the reasons given above, I therefore conclude that condition three is reasonable and necessary having regard to the supply of light industrial premises in the Borough. Condition three also complies with the remaining

¹ Paragraph: 017 Reference ID: 21a-017-20140306

tests of paragraph 55 of the National Planning Policy Framework and the advice in Planning Practice Guidance on the use of conditions.

Other matters

16. A number of the reasons given by the tenant of the offices at 3 Hargrave Place in support of the appeal have been addressed above. It is argued by the tenant that allowing the appeal would enhance property values and avoid the cost of alterations. However, as Planning Practice Guidance makes clear, it is the effect of a proposal on matters that affect the public interest which must be considered rather than private interests². For this reason I attach little weight to these matters in favour of the appeal.
17. Mention has been made of the inconvenience that would be caused to neighbours by any alterations that would be necessary for the ground floor to be used by a light industrial business and that the appearance of the building could detrimentally change if the appeal was dismissed. Given the powers though that the Council has to deal with noise nuisance and that the appearance of the building is governed by the permissions that have been granted, I consider these concerns to be unrealistic.

Conclusion

18. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector

² Paragraph 008 Reference ID 21b-008-20140306