



## Appeal Decision

Site Visit made on 13 July 2021

by **A Caines BSc(Hons) MSc TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 July 2021

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**Appeal Ref: APP/X5210/W/21/3266565**

**1st Floor, 53-54 Tottenham Court Road, London W1T 2EJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
  - The appeal is made by Trustees of Micro Anvika against the decision of the Council of the London Borough of Camden.
  - The application Ref 2020/0640/P, dated 6 February 2020, was refused by notice dated 9 July 2020.
  - The development proposed is described as "change of use from vacant commercial unit that has been marketed as a flat (Class C3) to an office (Class B1)."
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### Decision

1. The appeal is allowed and planning permission is granted for change of use from vacant commercial unit to an office (Class B1) at 1st Floor, 53-54 Tottenham Court Road, London W1T 2EJ in accordance with the terms of the application, Ref 2020/0640/P, dated 6 February 2020, subject to the following 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: NJH/182269/001; NJH/182269/002.

### Applications for costs

2. An application for costs was made by Trustees of Micro Anvika against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

### Procedural Matters

3. The description in the banner heading above has been taken from the planning application form, but in my formal decision I have omitted the reference to "*that has been marketed as a flat*" because it is not an act of development.
4. The Council's decision notice sets out three reasons for refusal. Reason 2 relates to the absence of a legal agreement to secure car free development. However, a completed Section 106 Agreement (S106) to this effect has been provided during the appeal and the Council's decision notice and appeal statement confirms that this would overcome the second reason for refusal. Whilst I will return to the provisions of the S106 later in this Decision, I am satisfied that this matter is no longer a main issue in this case.

5. Subsequent to the Council's decision, the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force on the 1 September 2020 and has significantly amended aspects of the previous system of use classes. This introduced a new Commercial, Business and Service Use Class E, which incorporates several of the previous use classes including Class B1 offices and Class A1-A3 commercial uses. The implication of the Regulations is that changes of use within the new Use Class E no longer constitute an act of development for which planning permission is required. However, as the application was submitted before the new regulations came into force, it must be determined in accordance with reference to the previous Use Classes Order. I have determined the appeal accordingly.
6. On 20 July 2021, the Government published an updated revised version of the National Planning Policy Framework (the Framework). Other than a change to the relevant paragraph numbers, the revised Framework does not materially alter the national policy approach in respect of the issues raised in this appeal and I am satisfied no parties have been prejudiced by my having regard to it.

### **Main Issues**

7. The main issues are:
  - The principle of the development in this location, including whether it involves loss of residential floorspace; and.
  - Whether adequate cycle parking facilities could be provided.

### **Reasons**

#### *Principle of development and whether loss of residential floorspace*

8. Tottenham Court Road is a busy central London high street. Shops and other retail uses predominate at ground floor level with offices, institutions and some flats above. The appeal concerns the first floor of a four storey building located on the south west side of Tottenham Court Road. The ground floor unit is currently in use for the sale of hot food. There are three flats on the second and third floors.
9. Notwithstanding the application description, the Council considers the first floor to be in residential use based on Council Tax records. The appellant acknowledges that Council Tax has been paid and that the site was marketed as a flat, but explains that it has never been occupied as such and has remained vacant since 2013. Prior to that, the appellant's uncontested evidence indicates that the first floor was used in association with an electrical goods retail shop on the ground floor from around 2003. In particular, the Valuation Reports provided with the appeal describe the use of the first floor during the period of 2003-2012 as "*ancillary*" and "*office space*" to the ground floor shop. Most notably, the latest Valuation Report from 2012 states "*the first floor is currently arranged as a large enclosed office to the front of the building with an open plan office area together with a small reception and computer room at the top of the staircase leading up from the ground floor*".
10. The first floor is now accessed via a side door on Kirkman Place, which also serves the second and third floor flats. That aside, at my site visit I found the first floor layout to be much the same as described in the aforementioned 2012 Valuation Report with no indication of residential use. The smaller room

off the open plan office area was filled with office chairs and other equipment. I note from plans submitted with a previously withdrawn application that this room was labelled as a bedroom, but I saw that it does not contain any external windows, making it inherently unsuitable as such. Furthermore, although there is a small toilet room and kitchenette, these are not unusual facilities for an office. Significantly, there is no shower or bath, and no cooking facilities. These observations appear consistent with the planning officer's site visit in 2018, as evidenced in the November 2018 email correspondence in which the planning officer states, "*I was surprised to see that the space is already laid out as an office and looks to have been that way for a while*".

11. Within the context of this appeal, which is made under Section 78 of the Act, the lawfulness of any existing use is not for me to judge. Nevertheless, in light of the foregoing, I do not have any substantive evidence that the proposal involves the change of use from residential accommodation, as claimed by the Council. Marketing of the site as a flat and registration for Council Tax purposes is not substantive evidence of residential use. Nor would it make a residential use lawful in planning terms. The application that is before me, and registered as valid by the Council, is for the change of use from a vacant commercial unit to an office. Therefore, in the absence of any substantive evidence to the contrary, I have considered the appeal on the basis of the proposal described on the application form.
12. Policy TC2 of the Camden Local Plan (2017) (the LP) seeks to protect a high proportion of shops in primary shopping frontages, such as Tottenham Court Road. However, the appeal site is located at first floor level and is therefore not part of the primary frontage. As such, there would be no change in the proportion or continuity of frontage in retail use and the retail function of the centre would be retained.
13. LP Policy G1 identifies a need to provide 695,000m<sup>2</sup> of office floorspace to 2031, and identifies Tottenham Court Road as a growth area where development should be concentrated. In addition, LP Policies E1 and E2 encourage provision of employment premises, particularly those suitable for small and medium-sized enterprises (SMEs).
14. Clearly, the proposal for the provision of office space in this central location and designated growth area complies with the economic objectives and growth strategy of the LP. Moreover, having regard to the size and nature of the floorspace proposed, it would make a valuable contribution to meeting an identified need for premises that are suitable for SMEs. The proposal is also likely to support the local economy in general through additional activity and trade within eating establishments, coffee shops, and other retail outlets in the area, particularly at lunch times.
15. I therefore conclude, on this issue, that the proposal is an acceptable form of development in this location as the proposal complies with LP Policies TC2, G1, E1 and E2, as stated. It also complies with paragraph 81 of the Framework, which places significant weight on the need to support economic growth, and allowing areas to build on their strengths, counter any weaknesses and address the challenges of the future.
16. In addition, for the reasons given, I find no conflict with LP Policy H3, which seeks to resist development that would involve loss of residential floorspace.

### *Cycle parking*

17. The proposal does not include any secure cycle parking facilities, although the appellant refers to there being sufficient space for cycle storage within the bin store area. However, I do not have any details of the capacity of this area for storing bicycles in addition to the bins. In any event, this arrangement seems neither practical, nor desirable to encourage cycle use.
18. I have considered the use of a planning condition, such as that suggested by the Council, to require further details of cycle storage facilities. However, there does not appear to be any alternative space within the site for such facilities and therefore it is unclear that the condition could be complied with. This would be unreasonable.
19. Notwithstanding this, the appeal site is located within a highly accessible central London location with excellent links to public transport, including Goodge Street underground station which is only a short walk from the site. I also noted the availability of on-street cycle parking facilities nearby.
20. Policy T1 of the LP seeks to prioritise walking, cycling and public transport. Despite the absence of dedicated cycle parking, I am satisfied that users of the development would have access to a genuine choice of sustainable transport modes. Accordingly, there would be no significant conflict with LP Policy T1, the overall aims of which are to ensure that sustainable transport will be the primary means of travel to and from the site. The proposal also complies with paragraph 105 of the Framework in this regard.

### **Planning Obligation**

21. The completed S106 submitted as part of the appeal is additionally made in pursuance of Section 16 of the Greater London (General Powers) Act 1974 and Section 111 of the Local Government Act 1972. The obligations set out in this agreement place restrictions on occupiers holding or being granted a Business Parking Permit to park a vehicle in a Business Parking Bay, or being able to park within a Council controlled car park. This would ensure the development is 'car free', in line with the requirements of LP Policy T2.
22. I am satisfied that this obligation complies with the relevant tests as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, and paragraph 57 of the Framework. I have therefore taken it into account.

### **Other Matters**

23. The appeal site is located within the Charlotte Street Conservation Area (CA), however the effect of the development on the CA has not been raised as a concern by the Council and I can see no reason why the proposal would adversely affect the character or appearance of the CA.

### **Conditions**

24. I have considered the conditions suggested by the Council in light of the Framework and the Planning Practice Guidance. In addition to the standard commencement condition, I have imposed a condition defining the approved plans in the interests of certainty. However, in light of my findings above, a condition requiring details of cycle parking facilities would not be reasonable in this case, so is not imposed.

**Conclusion**

25. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal should be allowed.

*A Caines*

INSPECTOR