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# Appeal Decision

Site visit made on 14 March 2022

**by Graham Chamberlain BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 April 2022**

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**Appeal Ref: APP/X5210/W/21/3286282**

**2nd Floor, 31-33 High Holborn, London, WC1V 6AX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr Kamal Pankhania of Westcombe Homes against the London Borough of Camden.
  - The application Ref: 2021/1896/P, is dated 16 April 2021.
  - The development proposed described as 'the conversion of the second floor from offices to form five flats.'
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## Decision

1. The appeal is dismissed, and planning permission refused.

## Background and Main Issues

2. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit this appeal. The Council has confirmed through putative reasons for refusal that, had it been able to do so, it would have refused the proposal. Thus, in this instance the main issues flow from the Council's putative reasons for refusal and are:
  - The effect of the proposed development on living conditions, with particular reference to noise, outlook and privacy;
  - Whether the proposal would make adequate provision for affordable housing and provide an adequate mix of homes;
  - The effect of the proposed development on the supply of business accommodation; and
  - Whether the proposal would adhere to the Council's strategies for 'car free' housing and cycle parking.

## Reasons

*The effect of the proposed development on living conditions*

3. Save for the provision of air source heat pumps (ASHP), the appeal scheme would not involve external alterations and therefore the layout of the five flats would make use of existing windows. The second bedroom in Flat 1 would be single aspect and positioned at very close range to the single aspect window serving the bedroom area of the bedsit labelled as Flat 1.

4. Although positioned at oblique angles to one another, the proximity and size of these windows would allow the respective occupants to easily see into each other's bedrooms at close range and therefore an adequate level of privacy would not be achieved. A similarly unacceptable and harmful arrangement would occur between the single aspect Bedroom 1 in Flat 4 and Bedroom 1 in Flat 3. As a result, the occupants of these flats would also experience poor living conditions due to a harmful lack of privacy.
5. The appeal site is in a dense urban area where expected levels of privacy may not be as great as in more spacious suburban locations. However, the overlooking in this instance would be particularly acute given the positioning, size and single aspect configuration of the windows and because the bedroom/bedroom areas would be used intensively given the modest overall size of the homes. The effected rooms could not be fitted with obscured glass because they are single aspect and the need to permanently close blinds or curtains to maintain privacy would also harmfully effect outlook.
6. There would be potential for inter overlooking between the 1-bedroom Flat 4 and the bedsit also labelled as Flat 4. However, the bedsit would be dual aspect with two sizable windows overlooking High Holborn. As a result, it would be possible to retain the obscured glass currently in the proposed bedroom area without harming outlook and levels of light.
7. Flat 3 and the 1-bedroom Flat 4 would have single aspects bedrooms overlooking the ASHP at close range. Given the location at a second-floor level above a pedestrian side street, background noise levels may not be high in the proposed bedrooms. As a result, the ASHP could be audible and harmfully so, especially when the windows were open. As a result, I share the Council's view that the specification of the ASHP, including any mitigation, should be assessed at the application stage (and not left to a planning condition) to ensure it would be effective and visually acceptable. In the absence of this information, the appellant has failed to demonstrate that the proposal would result in acceptable levels of noise and disturbance at the nearest proposed flats.
8. In addition to the impact on future occupants, the Council has also vaguely referred to 'wider neighbouring amenity' and 'neighbouring occupiers' in respect of noise and disturbance. However, it is unclear to what properties it is referring. In the absence of this detail, I have not found against the proposal in this respect. This does not however, outweigh the harm I have identified.
9. In conclusion, the appeal scheme would fail to provide adequate living conditions for the occupants of four of the proposed flats. This would be contrary to Policies A1, A4, D1, H1, H6 and H7 of the Camden Local Plan 2017 (LP), which seek to secure development that balances housing delivery with ensuring that the amenity of occupiers is protected when having regard to privacy and noise and disturbance. This is consistent with Paragraph 130(f) of the National Planning Policy Framework (the 'Framework').

*Whether the proposal would make adequate provision for affordable housing*

10. Policy H4 of the LP sets a strategic target of providing 5,300 additional affordable homes by 2030/31. To achieve this the Council expects a contribution towards affordable housing from all developments that provide one or more additional homes. In this instance, the contribution is calculated based on a sliding scale linked to the gross quantum of residential floor space

created. The appeal scheme would generate a contribution of 6%, which would amount to £93,300.

11. This approach is inconsistent with the Framework, which states (at Paragraph 64) that affordable housing should not be sought for residential developments that are not major developments. The Framework sets out government policy and is therefore a material consideration of significant weight. However, the supporting text to Policy H4 specifically addresses this and sets out the rationale for setting a lower target as an exception to the national threshold. The justification is based on the very high need<sup>1</sup>, and evidence demonstrating that contributions in line with a sliding scale would not affect viability. The appellant has not questioned the approach or provided contrary viability evidence. Thus, in the circumstances there is clear justification to depart from national policy.
12. Accordingly, the provision of affordable housing would be necessary to make the development acceptable in planning terms, would be directly related to the development and, due to the sliding scale, the contribution sought by the Council would be fair and reasonable in scale and kind to the development.
13. Policy DM1 of the LP explains that planning contributions would be used to support sustainable development. These are usually secured through planning obligations. However, the appellant has not submitted a completed planning obligation as a means of securing the contribution towards affordable housing (only a draft is before me).
14. There is limited evidence before me to indicate the Council and appellant have agreed the heads of terms to go into a planning obligation. Moreover, the circumstances around the absence of a planning obligation are not exceptional. As a result, the imposition of a negatively worded condition as a means of securing the planning obligation, as discussed in the Planning Practice Guide<sup>2</sup>, would not be appropriate in this instance. A positively worded condition would not meet the test of enforceability as there would be nothing to prevent commencement. Consequently, an appropriate mechanism to secure the provision of affordable housing is not before me and therefore the proposal would be contrary to Policies DM1 and H4 of the LP.

*Whether the appeal scheme would provide an adequate mix of homes*

15. Policy H7 of the LP seeks to secure a range of homes of different sizes that will contribute to the creation of mixed, inclusive, and sustainable communities. The basis of this approach is set out in the supporting text to the policy, where the Council explains that the borough's housing stock is largely made up of relatively small dwellings<sup>3</sup>. This has led to constrained choice and overcrowding, in part because household sizes have grown. The Camden SHMA indicates that the greatest need is for two- and three-bedroom properties. This is expressed in a dwelling size priority table in the LP. The appellant has not disputed this background evidence.
16. The appeal scheme would deliver two 2-bedroom flats, which are of high priority. However, the other three homes would be bedsits or a 1-bedroom property. These are of a lower priority. The proposal would not deliver any 3-

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<sup>1</sup> As demonstrated in the Camden Strategic Housing Market Assessment (SHMA)

<sup>2</sup> Paragraph: 010 Reference ID: 21a-010-20190723

<sup>3</sup> The 2011 census indicates that 70% of households live in homes with two bedrooms or fewer.

bedroom homes. The appellant's submissions do not justify this approach. For example, there is no viability evidence before me or anything to suggest a 3-bedroom property would be inappropriate or undesirable. As a result, there is no reasoned justification to step away from the aim in Policy H7 of securing a mix of large and small homes.

17. In conclusion, the proposal would be at odds with Policy H7. This policy is broadly consistent with Paragraph 62 of the Framework, which states that the size and type of housing needed by different groups in the community should be reflected in planning policies.

*'Car free' housing and cycle parking*

18. To reduce air pollution and congestion and use land more efficiently, Policy T2 of the LP requires all new development to be 'car free'. The Council aims to achieve this by not issuing on street or on-site parking permits. The appeal scheme does not propose on site parking and the Council has confirmed that the occupants of the proposed homes would not be eligible for on street parking permits in any event. It is therefore unclear why a planning obligation is necessary to secure a 'car free' proposal.
19. Policy T1 of the LP requires cycle parking facilities in accordance with the minimum standards in the London Plan. In this instance, the Council suggest the requirement would be eight long stay cycle parking spaces and 2 short stay spaces. The appellant has not disputed the necessity of this.
20. I observed during my visit that there is cycle parking available at ground floor level in the form of vertical racks. The existing cycle parking is to serve properties approved elsewhere in the building. It is unclear how additional cycle parking spaces could be accommodated alongside those spaces required to serve existing users of the building. A drawing showing adequate cycle parking is not before me. As a result, the appellant has failed to demonstrate that the proposal would provide adequate cycle parking in accordance with Policy T1 of the LP.

*The effect of the proposed development on the supply of business accommodation*

21. Policy E1 of the LP outlines a strategy aimed at safeguarding existing employment sites. Policy E2 of the LP flows from this and seeks to protect premises that are suitable for continued business use by resisting development of business premises to non-business uses unless; a) the site or building is no longer suitable for its existing use; *and* b) 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.
22. The supporting text to Policy E2 provides some further guidance on how to apply the tests set out in the preceding paragraph. In Paragraph 5.37 an open list of factors to consider is set out. With this in mind, the appeal premises is in a suitable location for a business use given its position on High Holborn, which is a busy thoroughfare close to public transport. Moreover, there is nothing of substance before me to suggest the existing business/office use does not relate well to nearby land uses, which appear varied in any event. The appeal premises can also be used by a small to medium sized business.
23. Moreover, the condition of the office premises seems reasonable. It has lots of natural light and is in an apparently good condition. The marketing information

suggests it has had new air conditioning fitted and the front of the building is very attractive and appears well cared for. That said, there are some limitations. Feedback from the marketing indicates that common parts of the building are of a lower standard, such as the lift. Moreover, there is little space for bike racks. The energy efficiency of the premises is also at a level that is near to being unlettable. However, there is nothing to suggest this cannot be rectified. Therefore, when considered in the round the appeal premises seems to be suitable for its existing business use as an office. The proposal would therefore be at odds with Policy E2(a).

24. However, I share the view of the appellant that 'suitability', whilst relevant, may not be a determinative test. This is because there seems little point in retaining floor space in a business use when there is no demand for it as such. Paragraph 82(d) of the Framework, as a material consideration, explains the need for planning policies to be flexible and enable a rapid response to changes in economic circumstances. Thus, Policy E2(b) is of greater significance, as it allows for flexibility as advocated within the Framework.
25. To this end, the appellant has indicated that the premises has been on the market since October 2019 without finding a tenant and generating 'hardly any interest'. The guide price of £55 per sq ft seems reasonable when compared to other similar premises outlined in the Kinney Green report. The Council has not directly challenged these aspects of the marketing campaign. Many of the comparables have also been on the market for a long period, which seems to be an indicator that demand for office space in the area is sluggish.
26. Accordingly, the marketing evidence indicates that the possibility of retaining, reusing, or redeveloping the premises has been fully explored. That said, the supporting text to Policy E2 explains that marketing should take place for at least two years. But in the two years following October 2019, there has been a global pandemic that necessitated unprecedented periods of national lockdown. This would have seriously hampered the ability to find a tenant. Nevertheless, I have seen nothing to suggest the marketing ceased in October 2021 and therefore it has apparently endured for more than two years, and this period would have included times outside of any lock down. Therefore, it is still reasonable to afford the marketing campaign a high degree of weight as evidence of little demand for the appeal premises.
27. Moreover, the appellant sets out a broader point, supported by evidence<sup>4</sup>, that the pandemic seems to be altering the office market. This is because higher levels of home working may explain the sluggish demand for office space. If this is the case, then the Council's evidence underpinning Policy E2 may be out of date, thereby possibly rendering the policy out of date. For example, it may be that a long-term implication of the pandemic is a marked over supply of business floorspace due to low demand. Therefore, a policy that strictly limits changes of use to non-business uses could be unnecessary. The approach set out in Policies E1 and E2 is also undermined by changes to permitted development rights, as office space can now revert to other uses, such as retail, without requiring planning permission.

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<sup>4</sup> Evidence from Cushman and Wakefield suggests 73% of the companies surveyed would like to embrace flexible working long term. KPMG has also recommended that businesses look at their real estate as a result of the pandemic and a JLL report suggests there may be a de-densification of main office space.

28. However, the evidence of fluctuations in the market is embryonic and could simply be an indication of a short-term trend as the market recovers from the pandemic and adjusts to 'Brexit'. Thus, at this stage it would be premature to conclude that Policies E1 and E2 are out of date.
29. In conclusion, the appeal premisses is suitable for a business use, albeit with some limitations to the communal areas and levels of insulation. However, the submitted evidence demonstrates that there is very little interest in the premises and market trends may be changing. Consequently, there would be little to gain from retaining the appeal premises in its current use. Thus, on balance, the evidence before me indicates the proposal would not harmfully affect the supply of business accommodation. This suggests that the proposal should be determined otherwise than in accordance with Policies E1 and E2.

### **Other Matters**

30. The Council has indicated that the submitted drawings do not show the mansard extension granted permission under application 2009/4519/P. However, it has not explained why it is necessary to do so and therefore I have not considered this matter further. The appeal scheme would preserve the character and appearance of the conservation area because no external alterations are proposed and the use would be compatible with those nearby.

### **Planning Balance**

31. The proposal would not harm the supply of business accommodation and the Council have failed to demonstrate that a planning obligation is required to secure a car free development. However, the proposal would result in poor living conditions and would not provide an adequate mix of housing, sufficient cycle parking or a contribution towards affordable housing. The appellant is apparently close to resolving the latter point, but the former are still serious matters regardless. The proposal would therefore be contrary to the development plan as a whole. This is a matter of significant weight, especially given the consistency with the Framework.
32. As a material consideration, the proposal would have several benefits. It would result in new homes that would modestly support housing delivery. Being small scale, the proposal could be delivered quickly and by a small developer. That said, no party has suggested that the Council are unable to demonstrate a five-year housing land supply. This tempers the benefit. The occupants of these homes would be able to support the local economy and community. However, the practical effect of this has not been demonstrated. For example, there is nothing to suggest local services are failing for lack of patronage. Overall, the benefits carry limited weight and would not outweigh the conflict with the development plan.

### **Conclusion**

33. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

*Graham Chamberlain*  
INSPECTOR