
Appeal Decision

Site visit made on 17 February 2014

by Michael Boniface MSc MRTPI

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

Decision date: 12 March 2014

Appeal Ref: APP/K5600/A/13/2204340
6 St. Catherine's Mews, London, SW3 2PX

- 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 Clockhouse Jersey Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref /PP/13/01036, dated 19 February 2013, was refused by notice dated 16 April 2013.
 - The development proposed is change of use together with an application to alter the existing front entrance with an additional window.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) Whether the loss of a small office unit would diminish the range of office premises in the area to the detriment of business and employment opportunities;
 - (b) Whether the development would result in an increase in on-street parking;
 - (c) Whether the development would appropriately mitigate its impact on local infrastructure.

Reasons

3. The appeal site is located within the Chelsea Conservation Area. The Council have concluded that the relatively minor alterations proposed, including those to the front of the building and the existing access, would preserve the character or appearance of the conservation area. I agree that the development, in terms of both its use and design, would not harm the character or appearance of the conservation area and I need not consider this matter further.

Effect on range of office premises

4. The appeal site comprises a 3 storey plus mezzanine level office building located at the end of a residential mews which is served by a gated private access from Milner Street. The surrounding area is predominantly residential in character but I noted numerous ground floor commercial uses interspersed. The Council highlights the rich mix of land uses as an important characteristic

of the area and I acknowledge that the presence of small commercial uses which are compatible with the surrounding residential uses is likely to be beneficial to local people, providing convenient and easily accessible services, facilities and employment close to where they live.

5. Policy CF5 of the Core Strategy for the Royal Borough of Kensington and Chelsea with a Focus on North Kensington Development Plan Document (CS) (2010) seeks to ensure that there is a range of business premises within the Borough. Amongst other things, it states that small offices will be protected throughout the Borough. The supporting text notes the significant pressures for redevelopment of comparatively low value uses such as offices, given the high land values in the Borough and Policy CF5 seeks to offer some protection of these important commercial uses, maintaining local employment and avoiding out commuting. The CS defines small offices as those with a floor space between 100-300sq.m and the appeal property falls within this definition.
6. The appellant argues that the small office is not needed and an independent Office Supply Report by Tuckerman Chartered Surveyors is provided in support, identifying that, at the date of the report, 87 vacant small offices (100-300sq.m) comprising a total of 8,883sq.m were available in the Borough. It goes on to consider the amount of small office space let between the 1 January 2012 – July 2013, concluding that the supply of small office space is far greater than past demand during this period.
7. The reports conclusions are based upon the demand for small office space during the 19 month period surveyed, with the figures extrapolated to predict demand for the latter part of 2013. The report does not appear to take account of any longer term trends or changes in the economy that might lead to greater demand at the present time or in the future. Given that the plan period extends up to 2028, it is important that the long term strategic needs of the Borough are considered, particularly as the CS identifies a demand for further office space provision. I also note that the report does not identify the source of the data relied upon and that insufficient information has been provided to allow me to draw any direct comparisons between the vacant office units identified and the appeal property. For these reasons, I am not persuaded that the report provides a sufficiently robust assessment to demonstrate a lack of need for the small office unit in question, despite the fact that there may have been limited demand in the past.
8. Notwithstanding that the appeal property has been vacant since June 2012, I note that it has been occupied by a range of businesses over the past few years. Whilst the most recent occupiers have not been long term tenants, in the absence of any evidence to the contrary, the range of occupants suggests that the unit has been viable and attractive to small businesses and the recent period of vacancy can in part be explained by the lack of any marketing. As such, I do not accept that the appellant's decision not to market the property can be justified by any perceived view that the building was no longer appropriate for its current use. In the absence of any marketing it would be unsafe to conclude that no occupier could be found.
9. Although the Tuckerman Chartered Surveyors Report suggests that the unit is unlikely to be attractive due its isolated position outside of a core office location, it seems to me that this is exactly the type of small office provision

which the CS envisages within residential areas and I am mindful of its highly accessible location which the Council identify as falling within PTAL (Public Transport Accessibility Level) rating 6A (Excellent). I also noted the range of small businesses within walking distance of the site and do not agree that the unit can be considered isolated.

10. I have had regard to the appellant's view that the existing office use is incompatible with the neighbouring residential uses, as well as the petition and letters of support from local residents accompanying the appellant's appeal statement. Whilst I accept that neighbouring residents would no doubt prefer a residential use on the site, the small office unit is an existing use and the Council does have powers to deal with any statutory nuisance that arises from the business use. I have not been made aware of any existing complaints and whilst I note that the appeal property may not have been used at capacity by the previous occupiers I see no reason why the small office use could not co-exist with neighbouring residential uses without unacceptable noise and disturbance.
11. Although the existing office and dwellings make use of shared vehicular access, parking and manoeuvring facilities, I have already identified the highly accessible location of the site by means other than private cars. Occupants of the office need not, therefore, be reliant on private vehicles. I acknowledge that some servicing and delivery vehicles are likely to be attracted to the site and that the lack of separate pavements mean that pedestrians, including children, share the space within the mews, but this in itself would not create unacceptable living conditions given the limited frequency of visits of this nature in relation to the small amount of office floor space.
12. I note that the appeal property represents a very small proportion of the overall office space available in the Borough, including in relation to small offices. However, it would nonetheless result in the loss of a small office unit which the CS specifically acknowledges as being of importance to the local economy. As such, it would diminish the range of office premises in the area to the detriment of business and employment opportunities in conflict with Policy CF5 of the CS which seeks to protect small offices.
13. I have considered the planning permission¹ granted by the Council in 1999 for change of use of 1 St. Catherine's Mews from office to residential. Whilst I acknowledge that the mews remains predominantly residential and the proposed development would consolidate this use, this planning permission was granted some time ago, prior to adoption of the CS. Therefore, it was considered in a different policy context and I do not consider it to be directly comparable to the current appeal proposal.
14. I have also had regard to the planning application² and subsequent appeal³ at 11 Harriet Walk where permission was refused by the Council and dismissed at appeal for change of use from residential to office but, in my view, this demonstrates a demand for office space and does not lend support to the current appeal proposals, notwithstanding that the Council's policies take account of neighbouring living conditions.

¹ PP/99/02195: 1 St. Catherine's Mews

² PP/11/00052: 11 Harriet Walk

³ APP/K5600/A/11/2163967: 11 Harriet Walk

15. The appellant also refers to an appeal⁴ at 7-9 Kensington High Street but this again pre-dated the CS and involved first floor offices that had been vacant for a much longer period.
16. More recently, the Council has granted planning permission⁵ for change of use of small office space to residential accommodation contrary to Policy CF5 of the CS. However, this application was supported by some marketing information to demonstrate that the building had been offered to the market for its small office use, without positive results. This is not the case for the current appeal.

On-street parking

17. Policy CT1 of the CS promotes alternatives to car use so as to manage traffic congestion and the supply of car parking. Amongst other things, it requires that all new residential development be permit-free so that future occupants do not add to the pressures for on-street parking in the area. The whole of the Borough is subject to a single controlled parking zone meaning that parking demand generated by a residential development will not necessarily be focussed in the immediate area. The policy recognises the very high levels of on-street parking demand and that the occupancy level of spaces is at saturation point in most parts of the Borough and at most times of the day and night.
18. Although the appellant argues that the proposed residential use would generate less traffic and parking than the existing office use, no evidence has been provided to support this assertion. Whilst the actual amount of parking may well differ, the pattern of demand would also be somewhat different with a residential occupier likely to require a more permanent parking space, particularly during the evening and night.
19. In any case, the appellant accepts that the development should be permit-free and having regard to the accessible location of the development, I see no reason why the development should generate a need for parking provision. A completed Unilateral Undertaking has been submitted during the course of the appeal which seeks to prevent future occupants from applying for a parking permit. In principle, this would appear to ensure that the development remained parking permit free, avoiding any additional pressure on the highway network from on-street parking, congestion and its attendant impacts on neighbours living conditions. However, the wording of the undertaking seeks to prevent applications by residents for parking permits rather than impose a restriction on the development. Therefore, the covenant does not constitute a planning obligation falling within the terms of section 106 (1) (a)-(d) of the Act⁶.
20. As such, it would not be enforceable as a planning obligation and I have not taken account of the Undertaking in so far as it relates to parking. The development would therefore lead to on-street parking pressures in conflict with Policy CT1 of the CS which seeks to manage traffic congestion and the supply of car parking, ensuring that all new additional residential development is permit-free. It would also conflict with advice contained within the Council's

⁴ APP/K5600/A/08/2085413: 7-9 Kensington High Street

⁵ PP/13/04059: 9 Roland Mansions

⁶ Town and Country Planning Act 1990

Transport Supplementary Planning Document (TSPD) (2008) which has similar objectives.

Local infrastructure

21. Policy C1 of the CS seeks to ensure that development mitigates its impact on local infrastructure through the provision of developer obligations involving financial contributions to be used towards specific local improvements. These contributions are to be calculated in accordance with the Council's Planning Obligations Supplementary Planning Document (POSPD) (2010). Using the formula contained within the POSPD, the Council have determined that contributions would be necessary towards education, health, community facilities and that a monitoring fee should be secured. I am satisfied that the contributions accord with the development plan, that they relate to the development proposed and are necessary and reasonable.
22. The appellant agrees that these contributions are necessary and has provided a Unilateral Undertaking to provide these payments in the event that planning permission was granted. The document undertakes to make the above payments in accordance with the POSPD, but being a Unilateral Undertaking, does not provide any mechanism to ensure that the Council utilise the money for the purposes identified. The Undertaking provides no assurance that the contributions would be used in order to mitigate the impacts of the development or for infrastructure that is directly related to the development. For these reasons, the Undertaking does not accord with the requirements of CIL Regulation 122 and again, cannot be taken into account. Therefore, the development fails to accord with Policy C1 of the CS and advice in the POSPD.

Other Matters

23. I have had regard to the presumption in favour of sustainable development contained within the National Planning Policy Framework (the Framework) and note the social and economic benefits of providing an additional 4 bedroom dwelling which would be accessible to disabled people in an area of undisputed need. However, these matters would not outweigh the harm that I have identified with regards to the main issues.

Conclusion

24. I conclude that the development would diminish the range of office premises in the area to the detriment of business and employment opportunities, compound pressure for on-street parking and fail to mitigate its impact on local infrastructure.
25. In light of the above, and having considered all other matters, the appeal is dismissed.

Michael Boniface

INSPECTOR

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