



Appeal Decision

Hearing held on 19 November 2024

Site visit made on 19 November 2024

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 December 2024

Appeal Ref: APP/X5990/W/24/3347264

Globe House, 89 Eccleston Square, City of Westminster, London SW1V 1PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Eccleston Square London Limited against the decision of City of Westminster Council.
 - The application Ref is 23/01561/FULL.
 - The development proposed is the change of use of building to hotel (Class C1) and part of ground floor as flexible commercial, business or service premises (Class E).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application form description referred to the change of use of existing vacant floorspace to Class C1 (hotel) and Class E use. However, vacant floorspace is not a specific use and so the decision notice and appeal form refer to "Use of building as hotel (Class C1) and part of ground floor as flexible commercial, business or service premises (Class E)". The definition of development in Section 55 of the Town and Country Planning Act 1990 (the 1990 Act) refers to the making of any material change in the use of any buildings or other land. Therefore, the parties at the hearing agreed that the description should refer to change of use rather than just use. The banner heading above reflects this amendment which provides greater clarity.

Main Issue

3. The main issue is whether the proposed use would be acceptable having regard to:
 - (a) the existing use;
 - (b) the development plan including any marketing requirements; and
 - (c) any benefits or other material considerations.

Reasons

The existing use

4. Globe House is a 9-storey building on the corner of Bridge Place and Belgrave Road close to Eccleston Square. It dates from the early 1960s to mid-1970s and was a government building. It is within the Victoria Opportunity Area (VOA) and the Central Activities Zone (CAZ) in the London Plan 2021 (LP).

5. The building was occupied by the Department for Trade and Industry (DTI) until the late 1990s. In June 1999, the Crown gave notice¹ to the Council of a proposed refurbishment and part change of use of the building for the relocation of the United Kingdom Passport Agency, now known as His Majesty's Passport Office (HMPO), from Clive House, Petty France (the 1999 scheme). The Council responded in September 1999 with no objection to the proposal, which they referred to as "external alterations...; new roof level plant and screen; and use as offices to include the making, submission and collection of passport applications by visiting members of the public".
6. While the Crown made some amendments to their plans in 2000 relating to external elements only, the 1999 scheme was implemented within a couple of years. HMPO and its predecessors occupied the building for around 20 years until moving to a new location in converted office premises known as Warehouse K in Newham in 2023. The building has remained vacant since. It was acquired by the appellant in late 2022.
7. The parties agree that the building and site represents one planning unit but disagree on whether the existing use is sui generis or a composite/mixed use. Section 191 of the 1990 Act allows anyone to ascertain whether any existing use of buildings or other land is lawful by applying to the local planning authority for a certificate of lawfulness. This is a separate process to a planning application or appeal and has not been carried out by the appellant. However, given the disagreement on the existing use, and the implications for the application of development plan policies, it is necessary for me to address this issue. Nevertheless, any findings will be based on the evidence before me and should not be regarded as a substitute for a certificate of lawfulness.
8. It is agreed that the DTI occupation was an office use and that the 1999 scheme represented a change of use at least in part. This is evident from the Crown's description in June 1999, but also the Council's description in September 1999 where reference is made to public facing elements as a distinct part of the scheme ("use of offices to include...").
9. The Council contends that the building was used partly for the provision of non-financial and non-professional services to visiting members of the public in a commercial, business or service locality, and partly as an office to carry out operational or administrative functions. In broad terms, these were previously Classes A2(c) and B1(a) of the Use Classes Order 1987 (UCO) but are now respectively Class E(c)(iii) and Class E(g)(i) of the UCO as amended. As such, the Council states that the building had a mixed or composite use.
10. The appellant contends that the level of interaction between the office and public facing elements of the HMPO occupation were of such an extent that the use was sui generis. The elements were not unrelated or separate as would be the case with a mixed or composite use. Therefore, unlike a mixed use where one could have a distinct office use, the appellant argues that the building does not benefit from an existing office use, even in part.
11. The approved plans relating to the 1999 scheme indicate there was both local office and headquarter (HQ) functions within HMPO's occupation of the building. The plans show that the lower floors including the ground floor contained local office counters for the public to make and collect passport

¹ Under powers separate to planning permission that existed at the time

applications. Space for local office staff only is shown between the mezzanine and fourth floors. Space for HQ staff only is shown between the fourth and sixth floors. The seventh and eighth floors are shown as empty. It is unclear whether this layout was adhered to and for how long, but it illustrates the range of functions within the building for HMPO including back office services.

12. Documentary evidence from the appellant indicates that the fifth floor housed the Chief Inspector of Borders and Immigration (CIBI) in 2010 and 2022, His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) in 2011 and 2018, and the Independent Anti-Slavery Commissioner in 2016 and 2020. The sixth floor appears to have also housed HMICFRS in 2010 and 2022 and the seventh floor was advertised as an HMPO prayer room in 2008. Photographic evidence indicates that CIBI and HMICFRS moved into the building between July 2008 and September 2012.
13. Assuming that occupation did not change markedly between any of the above dates cited for each organisation, it would appear that at least two occupants (CIBI and HMICFRS) were present for over 10 years. There is no evidence of any planning permission or certificate of lawfulness relating to any of these occupants, and no enforcement action either. While the evidence is lacking as to whether these occupants remained in the same part of the building or moved around even within the same floor, it is evident that the building was used by more than just HMPO for considerable periods of time.
14. Case law has found that the concept of a composite use within a single planning unit is where the occupier carries out a variety of activities and it is not possible to say that one is incidental or ancillary to another. The component activities can fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land². A composite use exists where there is no physical separation within the unit and there is no functional connection between the uses.
15. Case law has also found that the occupation of a single planning unit by a single occupier can be sui generis depending on specific features relating to that occupier³. This is particularly true for government buildings where there are often both offices and public spaces such as meeting rooms and council chambers that distinguish such buildings from conventional offices. The mixture of activities is so integral to each other that a sui generis use exists.
16. As part of the relocation process for HMPO, the London Borough of Newham (LBN) rejected a certificate of lawfulness for the proposed use of Warehouse K as a passport office in October 2021. This was on the basis that the proposed use was a mix of sui generis and Class E(g)(i) whereas the existing building was solely a Class E(g)(i) office use. LBN then granted planning permission in October 2022 for a change of use from offices to passport office described as sui generis by the applicant.
17. There is an agreed single planning unit in this case and HMPO was a long-term occupant for around 20 years. While not every part of the building used by HMPO had a direct link to the public as part of a local office, the HQ and back office functions were essential to the overall purpose of HMPO to issue passports. Parallels can be drawn with a local government building where

² *Burdle v SSE* [1972] 1 WLR 1207

³ *London Residuary Body v SSE* [1989] 58 P & CR 370

there may be supporting services such as finance and human resources that have little interaction with the public but are necessary for the local authority to serve the public. Therefore, on the evidence before me, it is not unreasonable to describe HMPO as a sui generis use.

18. However, the 1999 scheme only provided for the partial change of use of an office building for use by HMPO. This is evidenced by the descriptions used by both the Crown and the Council at the time, and the floor plans which show empty floorspace on the top two floors. Moreover, the occupation by organisations with little or no direct public interaction indicates that the building continued to have a Class E office function. The absence of any planning or enforcement records does not invalidate the presence of these organisations, two of which appear to have been there for over 10 years.
19. Although there was more than one organisation in the building, this does not mean there was more than one planning unit. Unlike a block of flats with separate front doors for each flat, it is not evident that each organisation was physically separated from each other. Most of the non-HMPO organisations also appeared to share the same floor at certain points. The organisations had no obvious functional connections either, ranging from passport applications to anti-slavery responsibilities.
20. Concluding on this main issue, based on the evidence before me, the existing use of the building was a combination of sui generis and Class E office use. This can be best described as a mixed or composite use, rather than solely a sui generis use. This affects the application of development plan policies.

The development plan and marketing requirements

21. LP Policy E1 seeks to retain and expand viable office floorspace in London, including within central London and the CAZ. Part I of the policy supports the redevelopment, intensification and change of use of surplus office space to other uses subject to the provisions of Parts G and H. These parts refer to the need for a range of suitable workspace including lower cost and affordable space, and the scope for the re-use of otherwise surplus large office spaces for smaller office units.
22. Supporting paragraph 6.1.7 clarifies that surplus office space includes sites and/or premises where there is no reasonable prospect of these being used for business purposes. Evidence should include strategic and local assessments of demand and supply, and evidence of vacancy and marketing at market rates suitable for the type, use and size for at least 12 months, with the evidence used to inform viability assessments.
23. Policy 13 of the Westminster City Plan 2019-2040 (WCP) supports economic growth. In Part D2, it states that the net loss of office floorspace from the CAZ to hotel use will only be permitted where there is no interest in its continued use for office or any other Class E (commercial, business and service) uses or education or community use, as demonstrated by vacancy and appropriate marketing for a period of at least 12 months. The WCP glossary defines appropriate marketing as "where a use has been prominently marketed for the existing use, with reasonable terms and conditions, as certified by an appropriately qualified professional, independently verified by the Council at the applicant's expense".

24. The parties agree that these two policies are key for this appeal, but they are also supported by other policies in both plans. Amongst other things, LP Policies SD1, SD4 and SD5 respectively address Opportunity Areas, the CAZ, and strategic functions within the CAZ. Between them, the policies seek to deliver growth, support a range of uses including economic and tourism facilities, with strategic functions like offices given greater weight in most parts of the CAZ than residential development.
25. WCP Policy 1 sets out Westminster's spatial strategy including balancing the competing functions of the CAZ as a retail and leisure destination, visitor attraction, global office centre, and home to residential neighbourhoods. Growth is focussed on the intensification of the CAZ with commercial-led and mixed-use development to provide significant growth in office, retail and leisure floorspace alongside new homes, with major mixed use redevelopment in Opportunity Areas too. WCP Policy 4 focuses on the VOA and seeks to deliver at least 1,000 new homes and 4,000 extra jobs with additional and enhanced social and community facilities.
26. References to offices in LP Policy E1 and WCP Policy 13 are those office uses falling with Class E. Neither policy states that the entire planning unit must have an office use. WCP Policy 13 only refers to a net loss of office floorspace, while LP Policy E1 refers to surplus office space as including sites and/or premises. A rational approach should be applied to what constitutes an office. A back office ancillary to a supermarket is unlikely to comprise an office use in its own right, whereas a composite use within a building that includes office floorspace would comprise an office use in part. Therefore, based on my above findings, I consider that the above policies apply to this appeal.
27. To clarify, the policies would only apply to those parts of the building that were not used by HMPO on the basis that HMPO was a sui generis use. It is not possible to quantify the precise amount of office floorspace from the evidence before me, but it would appear that at least two floors were not in use by HMPO based on the 1999 scheme floorplans and the occupation by other organisations. The proposed provision of around 90sqm of Class E commercial, business or service floorspace on a small part of the ground floor would not prevent an overall net loss of office floorspace.
28. According to the appellant, the building has been subject to marketing since early 2020, although I only have documentary evidence of the marketing process since the appellant acquired the building in November 2022. It was marketed for sale as offices by CBRE from March 2021 until mid-2022 with two offers received in June 2021 and May 2022. Both offers were withdrawn after concerns about the quality of office space and the viability of such use.
29. The appellant commenced its own marketing upon acquisition, advertising offices for rent through Next Property estate agents at a price of £50 per square foot for a term ranging between 1 to 15 years. The three pages of marketing particulars refer to multiple offices to let arranged over different floors ranging from 100 to 1,000 square feet. They contain a few internal photographs of vacant floorspace and two seemingly duplicate external photographs, plus a location plan. Apart from some standard text, that appears to be the extent of the particulars.
30. According to Next Property, the marketing exercise included the use of websites and social media, commercial listing pages, mailshots, cold calls, and

direct enquiries. 14 viewings took place between September 2022 and June 2023 with little apparent interest and no offers. Those companies who viewed the building expressed a range of concerns with the building space and its location. A marketing report from Criterion Capital (the appellant's parent company) set out similar findings.

31. There was an independent review of the marketing process by Avison Young who were engaged by the Council at the application stage in line with the WCP requirements. I concur that the marketing particulars are scant with no floor plans, limited photographs, and little information on the building itself. No evidence of the website or social media campaigns have been provided either.
32. The Social Infrastructure and Office Market Assessment carried out by Savills in February 2023 concludes that the building is not suitable for most education or community uses based on its size, shape and location. Savills highlights the exception of GP or dental services but considers there is no NHS policy or demand for such provision. However, no marketing of the building for education or community uses appears to have taken place as advocated by WCP Policy 13 at D2. The Next Property marketing particulars only refer to offices. Consequently, there has been no testing of Savills' conclusions.
33. It is not disputed that the building needs to be refurbished and updated for any future use. The interior has been stripped out and so is a blank canvas for any desired floor layout which could work around the existing columns. The ceiling heights are low but not prohibitive for office use, while there is extensive glazing on three sides of each floor to provide ample daylight. Energy efficiency improvements would be necessary for any future use. There is limited parking on site, but the location has excellent public transport links with Victoria Station a short walk to the north. A large range of shops and other amenities can be found around the station too.
34. There is also limited evidence to support the appellant's position that obtaining financing for office use would be difficult to secure, and little viability evidence to show that an office refurbishment is not possible. Thus, the building is suitable for office use in terms of its condition and location, with no obvious financial impediments. Subject to any planning issues, office use could include multiple smaller users given that the floorspace is flexible in its current state.
35. While the building has been marketed for more than 12 months through separate phases over the past few years, the evidence before me is insufficient to show that there is no interest in continued office use or other Class E or community/education uses, or that the building represents surplus office space. The evidence does not indicate that the marketing has been appropriate or prominent, with an independent review raising several issues.
36. I note that the Council granted the loss of office space at 8-10 Grafton Street in 2022 without meeting the marketing requirements of WCP Policy 13. However, the building had been vacant since 2013 and was in a derelict state. The same circumstances do not apply to this building.
37. Concluding on this main issue, it has not been demonstrated that the proposed use would be acceptable having regard to the development plan and any marketing requirements. Therefore, the proposal would not accord with LP Policies E1, SD1, SD4 and SD5 and WCP Policies 1, 4 and 13.

Benefits and other material considerations

38. Despite the policy conflict, it is possible for planning permission to be granted based on the benefits and other material considerations. There is no argument between the parties that a hotel use would deliver economic benefits relating to the construction and operational phases with a range of jobs. There would also be an average of over 600 guests staying in the hotel who would spend money in the local economy. However, an office related use could generate significantly more employees than a hotel. Office workers would have local spending power too, albeit not as high as a hotel guest.
39. Moreover, while there has been a trend since the Covid pandemic for increased homeworking, it is unclear whether this is a permanent change. The government is pursuing a policy of relocating departments away from central London, but it has not been adequately demonstrated that there is little demand for office space in this location. Therefore, the proposal would only deliver moderate economic benefits.
40. Despite the presence of several hotels in the area including other affordable options, it has not been demonstrated that the local area is already over capacity for such accommodation. I do not have detailed evidence on the need for additional hotels in the locality, but nevertheless the provision of over 600 bedspaces would represent a significant tourism benefit, having regard to LP Policies SD1, SD4 and SD5 and WCP Policies 1 and 4.
41. Improvements to energy efficiency and sustainability are not specific to the proposed use. Refurbishment to a certain standard would be required for any future use. Likewise, the accessibility of the location would apply to any development in this vicinity. Therefore, these are only modest benefits.
42. Weighing against these benefits would be the loss of office space and conflict with the development plan where the marketing evidence is insufficient, and where it has not been shown that the building is unsuitable or surplus for office use. These negative factors are considerable and weigh heavily against the proposal. They would not be outweighed by the above benefits and material considerations. This indicates that permission should not be granted.

Other Matters

43. Interested parties have raised concerns including the effect of the proposal on nearby residential properties, traffic and parking, and the overall suitability of a hotel use. However, given my findings on the main issues, it has not been necessary to consider these matters in detail.

Conclusion

44. The proposed use would not be acceptable having regard to the existing use, the development plan and any marketing requirements, and any benefits or other material considerations. For these reasons, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR

Appearances

For the Appellant:

Reuben Taylor KC	Counsel
Aaron Zimmerman	Centro Planning Consultancy
Mariam Malakzi	Centro Planning Consultancy
Samuel Da Silva Resende	Eccleston Square London Limited

For the Local Planning Authority:

Michael Feeney	Counsel
Max Leonardo	Westminster City Council

Interested Parties:

Anthony Smith	Eccleston Square Residents Association
Robert Morton	Local resident

Documents submitted at the Hearing by the appellant:

1. Court judgment *Burdle v SSE* [1972] 1 WLR 1207
2. Planning Encyclopedia extract of paragraphs P55.45 to P55.48
3. Use Classes Order 1987 (as amended) extract of Class E
4. Court of Appeal judgment *London Residuary Body v SSE* [1989] 58 P & CR 370
5. Legal Submissions from Reuben Taylor KC dated 19 November 2024

Documents submitted at the Hearing by the local planning authority:

1. Appeal Decision APP/X5990/W/22/3292545
2. Glossary from the Westminster City Plan
3. Appendices 1 and 2 from the Next Property Marketing Report
4. Legal Submissions from Michael Feeney dated 19 November 2024

Documents submitted after the Hearing:

1. Amended wording for Condition 5