
Appeal Decision

Site visit made on 27 September 2016

by Christina Downes BSc DipTP MRTPI

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

Decision date: 28 September 2016

Appeal Ref: APP/A5840/W/16/3150527
200 Rye Lane, Peckham, London SE15 4NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Miss Lerryn Whitfield against the decision of the Council of the London Borough of Southwark.
 - The application Ref 16/AP/0356 was dated 21 January 2016.
 - The application sought planning permission for change of use from Class A2 to Class A3 without complying with conditions attached to planning permission Ref 15/AP/0199, dated 9 April 2015.
 - The condition in dispute is No 3 which states that: *The rear garden included on the Location Plan, Site Plan and General Arrangement Plan hereby approved shall not be used by customers as part of the café.*
 - The reason given for the condition is: *In order that the amenity of the occupiers of neighbouring dwellings may be protected in accordance with the National Planning Policy Framework 2012, Strategic Policy 13 High Environmental Standards of the Core Strategy 2011 and saved Policy 3.2 "Protection of Amenity" of the Southwark Plan 2007.*
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from Class A2 to Class A3 at 200 Rye Lane, Peckham, London SE15 4NF in accordance with the application Ref 16/AP/0356 dated 21 January 2016, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1035-101B; Lerryn's-Site Plan; Lerryn's-General Arrangement Plan.
 - 2) The use of the internal floorspace for Class A3 purposes shall not be carried on outside the hours of 0800 to 2300 on Mondays to Fridays and 1000 to 2300 on Saturdays, Sundays and Bank Holidays.
 - 3) The rear garden shall not be used by customers as part of the café outside the hours of 0800 to 1800 on Mondays to Fridays and 1000 to 1800 on Saturdays, Sundays and Bank Holidays

Reasons

2. The planning application also sought the variation of Condition 2 to extend the opening hours to 2300. The Council agreed to this change and issued a new decision, Re 16/QAP/0356 dated 31 March 2016.

3. The area in question is currently a walled yard that is reached by a door at the back of the café. Its western boundary comprises the flank elevation of a four storey building with the flats of Robert Court on its upper floors. There are windows in the side wall, but all but one comprise high level fenestration and all appeared to be fitted with opaque glass. I observed that the flats have balconies at the front facing towards Sternhall Lane. There is also a large first floor terrace to the rear, which is close to the boundary of the appeal site. I further noted that there are first floor rear windows in the properties either side of the appeal premises. Those immediately to the north, which I assumed to serve a flat, are near to the side boundary of the walled yard.
4. The proposal is that the yard would be refurbished for use as a garden for customers. The Appellant calculated that there would be room for about 20 covers where people could enjoy a calm and relaxing environment. The main objection of neighbouring residents is that due to the proximity of windows and balconies, there would be a detrimental impact on the quiet enjoyment of their properties and the amenity value of their outdoor spaces. I can understand this concern if the extended opening hours of the café were also to apply to the garden. It is of sufficient size that customers eating and drinking late into the evening would have the potential to cause an unacceptable amount of noise. Whilst the café is within a location close to a busy road junction, the area to the rear is mainly residential. I would expect the noise environment to be significantly quieter during the evening away from the commercial frontage.
5. However, the Appellant appears to be sensitive to the concerns of her neighbours and has made it clear that the outdoor space would only be used during the daytime. This seems to me to be a reasonable compromise between the expectations of the residents for a period of peace and quiet and the desire of the Appellant to increase the flexibility and potential of her small business enterprise. The hours of use could be controlled by a planning condition.
6. I have also considered whether there would be any adverse consequences in terms of overlooking. In relation to Robert Court, the large rear terrace is enclosed by a high opaque glazed screen and the main aspect from the nearest balconies is towards Sternhill Lane. As I have already observed the windows in the flank elevation are high level or opaque glass. Taking account also of the position and angle of view to the first floor windows to the north, I am satisfied that there would not be unacceptable privacy issues to the adjoining occupiers.
7. It is therefore concluded that the living conditions of neighbouring residents would not be unacceptably harmed. The proposal would comply with Strategic Policy 13 in the Council's Core Strategy and saved Policy 3.2 in the Southwark Plan. There would also be no conflict with the National Planning Policy Framework or its principles concerning good design.
8. The appeal site is within the Rye Lane, Peckham Conservation Area but this small extension to the permitted A3 use would not affect its character or appearance. I have taken account of all other matters raised in the representations but have found nothing to alter my conclusion that the appeal should succeed.

Christina Downes

INSPECTOR