

## Appeal Decision

Site visit made on 5 September 2016

**by Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

**Decision date: 29<sup>th</sup> September 2016**

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**Appeal Ref: APP/A5270/W/16/3149893**  
**153 Norwood Road, Southhall UB2 4JB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class C, of The Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Mr J Pal against the decision of the Council of the London Borough of Ealing.
  - The application Ref 160717PATCU, dated 28 September 2015, was refused by notice dated 29 April 2016.
  - The development proposed is change of use of existing ground floor retail unit A1 to food and restaurant A3 unit (prior approval).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application for prior approval was dated 28 September 2015. The appellant has clarified that the application was submitted subsequently on 4 March 2016. I note that the decision notice confirms the received and valid date to be 4 March 2016 and that the decision notice is dated 29 April 2016.
3. Paragraph W of Class V of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) sets out the procedure for application for prior approval under Part 3. Paragraph 11 (c) refers to *'the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused'*. The decision date was issued 56 days following receipt/validation of the application and consequently I consider that the Council determined the application within the required timescale.

### Background

4. Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) allows for the change of use of a building from a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Class Order<sup>1</sup> to a use falling within Class A3 (restaurants and cafes) of that Schedule, subject to conditions.
5. The provisions of the GPDO require the Local Planning Authority to assess the proposed development solely on the basis of the noise impacts of the development; odour impacts of the development; impacts of storage and handling of waste in relation to development; impacts of the hours of opening of the development;

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<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987

transport and highways impacts of the development; whether it is desirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use on the adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or as the case may be, Class A2 (financial and professional services) of the Schedule, but only where there is a reasonable prospect of the building being used for such services, or where the building is located in a key shopping area, on the sustainability of that shopping area; and the siting, design or external appearance of the facilities to be provided under Class C (b). My determination of this appeal has been made in the same manner.

6. There is no dispute between the parties that the proposal would meet the limitations set out at paragraph C.1 of the GPDO. From everything I have seen in submissions and on my site visit I have no reason to disagree.
7. Paragraph W of the GPDO states that the local planning authority may refuse an application, where, in the opinion of the authority the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.
8. The Council notified neighbouring occupants by way of a site notice and no representations were received. The Council considered that prior approval was required and refused the application on the basis that the proposed development would detriment the key shopping area contrary to condition C.2 (f) of the GPDO schedule 2, Part 3, Class C. The second reason for refusal states that inadequate provision has been made for the storage and handling of waste, contrary to condition C.2 (c) of the GPDO Schedule 2, Part 3, Class C of the GPDO. The third reason for refusal states that insufficient information has been supplied to provide an informed decision as to whether suitable ventilation and extraction would be provided on site. No plans or technical specification of the ventilation, extraction or flue has been included as part of this application. The lack of information is contrary to condition C.2 (a) and (b) of the GPDO, Schedule 2, Part 3, Class C.

## **Main Issues**

9. Taking into account the above I consider that the main issues in this case are:
  - Whether sufficient evidence has been provided to demonstrate that the proposal meets the conditions under paragraph C.2 (1) (c) in relation to the impacts of storage and handling of waste in relation to the development.
  - Whether sufficient evidence has been provided to demonstrate that the proposal meets the conditions under paragraph C.2 (1) (a) and (b) in relation to the noise and odour impacts of the development with specific reference to the living conditions of existing occupiers.
  - The effect of the proposal on the vitality of the centre.

## **Reasons**

### *Storage and handling of waste*

10. The Council are concerned that there is no refuse storage shown on the submitted plans and point out that the rear alley would not be possible to use as a collection point as a vehicle could not gain access.

11. A restaurant or café is likely to generate a significant amount of waste. Whilst a condition requiring that any waste generated remain within the curtilage of the property could be attached to any permission in the event that the appeal is allowed, I have no evidence before me to demonstrate that this waste could be satisfactorily accommodated or that appropriate access for refuse collection could be achieved. Given the potential harmful effect on the living conditions of neighbouring occupiers I do not consider it reasonable to leave the acceptability of any such measures to be approved by way of a planning condition.
12. I, therefore, conclude that there is insufficient evidence before me to determine the impacts of storage and handling of waste in relation to the proposed development. The proposal has not, therefore, met the condition set out at paragraph C.2 (c) of the GPDO.

#### *Noise and Odour*

13. The Council consider that there was insufficient information submitted with the application in order to assess whether the ventilation and extraction system would result in due harm to neighbours in terms of noise and odour.
14. I note that there is a residential flat above the appeal unit and residential accommodation on the first floor of the wider terrace of commercial units. Consequently, there is potential for the living conditions of nearby residents to be affected by noise arising from extraction and ventilation systems and odours arising from cooking. Such effects can be particularly intrusive when they take place late into the evening when other background noise levels generally diminish.
15. I note that no plans or technical specification of the ventilation, extraction or flue has been included as part of the application. The appellant contends that this could be dealt with by way of a condition requiring the submission of such details by a future tenant.
16. Whilst there may be sufficient room to install a ventilation or extraction system in between the first floor windows above the ground floor extension there are no details before me to assess whether the ventilation or extraction system would harm the living conditions of the occupiers of the upstairs flat. There is no evidence before me to suggest that any such noise would be attenuated and given the close proximity of residential properties it would not be reasonable to leave the acceptability of any such noise measures to be approved by way of a planning condition.
17. I, therefore, conclude that there is insufficient evidence before me to determine the noise and odour impacts of the development and consequently whether the proposal may have a harmful effect on the living conditions of nearby residential properties. The proposal has not, therefore, met the condition set out at paragraph C.2 (a) and (b) of the GPDO.

#### *Vitality of the centre*

18. The appeal premises is located within a primary shop front as defined with the adopted Policies Map 2013. Criteria B of Policy 4B of the Development Management Development Plan Document (DPD) states that A1 retail uses should constitute 100% of the designated Primary Frontage at street level. Criteria C of the Policy states that development in any designated frontage should not result in a net loss of active frontage and should increase the active frontage where appropriate.

19. The designated Primary Frontage is comprised of 9 units in total with 6 of those units being in A1 use (approximately 67%); 1 within Class A4 (public house) and 2 were sui generis (betting shops) at the time of the determination of the application. The proposal would, therefore, conflict with criterion A of Policy 4B which requires that A1 retail uses should constitute 100% of the designated Primary Frontage at street level.
20. Changes were introduced by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016/332 art.5 on 6 April 2016 which enable the change of use of a building with Class A1 (shops) to Class 2 (financial and professional services) of the Use Classes Order. The appellant applied for a Certificate of Lawful Development for a change of use from a retail shop (A1) to an estate agent (A2) and the Council determined that the change of use was permitted development on 6 July 2016. I noticed on my site visit that the appeal unit is in the process of being fitted out as an estate agent and as a consequence 5 units are now in A1 retail use amounting to approximately 56%.
21. As the unit is no longer occupied as an A1 use there would be no loss of A1 retail as a consequence of this proposal. The proposed restaurant/café would retain an active frontage throughout the day and into the evening and would, therefore, encourage pedestrian flows, thus complementing existing retail uses. The proposal would retain the shop front and would thus have a reasonable level of permeability due to the glass frontage, with views from the street into the restaurant. Furthermore, it would contribute to the diversity of uses and vitality of Norwood Street. The proposal would, therefore, not conflict with criterion C of Policy 4B which states that development in any designated frontage should not result in a net loss of active frontage and should increase the active frontage where appropriate.
22. I, therefore, conclude that the proposal would contribute to the vitality of the street consistent with the paragraphs 19 and 23 of the National Planning Policy Framework which seeks to support sustainable economic growth and ensure the vitality and viability of town centres. On balance I consider that the benefits of the proposal in terms of contributing to the diversity of uses and vitality of the street would outweigh the conflict with criterion A of Policy 4B. Consequently, no conflict would arise with paragraph C.2 (f) of the GPDO.

## **Conclusion**

23. I have concluded that the proposal would not have a harmful effect on the vitality of the primary shopping frontage. However, insufficient evidence is before me to determine the noise, odour and waste implications of the proposal. The proposal does not, therefore, meet conditions C.2 (a), (b) or (c) of the GPDO. For the reasons stated above and taking all other matters into consideration I conclude that the appeal should be dismissed.

*Caroline Mulloy*

INSPECTOR