

Appeal Decisions

Hearing held on 13 September 2016

Site visit made on 13 September 2016

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 07 October 2016

Appeal Ref: APP/K5600/W/16/3144402 – Appeal A 88 Cromwell Road, London SW7 4EN

- 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 Matthew Samuel-Camps as LPA Receiver for Liberty 2 and Pizza Express against the decision of the Council of the Royal Borough of Kensington & Chelsea.
 - The application Ref PP/15/03098, dated 18 May 2015, was refused by notice dated 14 August 2015.
 - The development proposed is change of use from bank (use class A2) to restaurant (use class A3).
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Appeal Ref: APP/K5600/W/16/3144477 – Appeal B 88 Cromwell Road, London SW7 4EN

- 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 Matthew Samuel-Camps as LPA Receiver for Liberty 2 and Pizza Express against the decision of the Council of the Royal Borough of Kensington & Chelsea.
 - The application Ref PP/15/03811, dated 18 June 2015, was refused by notice dated 18 August 2015.
 - The development proposed is replacement of existing plant at first floor level including installation of additional air conditioning units.
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Decision

Appeal ref: APP/ K5600/W/16/3144402 – Change of use (Appeal A)

1. The appeal is allowed and planning permission is granted for the change of use from bank (use class A2) to restaurant (use class A3) at 88 Cromwell Road, London SW7 4EN in accordance with the terms of the application, Ref PP/15/03098, dated 18 May 2015, subject to the conditions set out in the attached schedule.

Appeal ref: APP/K5600/W/16/3144477 – Instillation and replacement of plant (Appeal B)

2. The appeal is allowed and planning permission is granted for the replacement of existing plant at first floor level including installation of additional air conditioning units at 88 Cromwell Road, London SW7 4EN in accordance with the terms of the application, Ref PP/15/03811, subject to the conditions set out in the attached schedule.
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Procedural Matters

3. There are a number of differences between the planning application and the appeal documentation. At the start of the Hearing the appellant confirmed that the correct name for the appellant was Matthew Samuel-Camps who was the Receiver acting on behalf of Liberty 2 (the landlord) and Pizza Express (the prospective tenant) and the description of development used by the Council on their decision notice and by the appellant on their appeal forms should be used for the purposes of the appeal. I have amended the banner heading accordingly.
4. Since the application was determined the Council have consolidated the reviews of the Council's Core Strategy (2010) into one document the 'Consolidated Local Plan, consolidated with alterations since the Core Strategy (December 2010) incorporating Pubs and Local Character Review (October 2013), Miscellaneous Matters Review (December 2014), Conservation and Design Review (December 2014) and Basement Review (January 2015)' which for brevity is also known as the Consolidated Local Plan (2015) (the CLP). The Council confirmed that none of the policies which they referred to in the decision notices had changed as a result of the adoption of this document.

Main Issues

5. The main issues are:

Appeal A

- whether the proposed use would be out of character with the surrounding area with particular reference to whether or not it would preserve or enhance the Queens Gate Conservation Area;
- whether the proposed use would adversely affect the living conditions of the occupants of adjoining residential properties with particular reference to noise; and
- whether the proposed use would adversely affect pedestrian and highway safety.

Appeal B

- whether granting planning permission for the proposal would have been premature and as a result would adversely affect the living conditions of the occupants of adjoining residential properties with particular reference to noise.

Reasons

6. The Queens Gate Conservation Area covers a wide area consisting of a number of different character areas ranging from national museums and grand terraces to intimate mews and leafy garden squares. Whilst originally designed as a predominantly residential area a large number of the buildings have been converted into a variety of commercial uses including hotels, embassies and retail units. Many of the original architectural features have been retained including windows, doors, chimneys and decorative iron work. The buildings, street layout and architectural features contribute positively to the character and appearance of the conservation area as a whole and its significance as a designated heritage asset.

7. The appeal site is located at the junction of Cromwell Road and Gloucester Road which I observed on my site visit is an exceptionally busy intersection with high levels of pedestrian and vehicular traffic. Although the property fronts onto Cromwell Road it benefits from a return frontage on to Gloucester Road which is similar to the post office and the bureau de change on the opposite corners, albeit that the entrances for both these buildings are on Gloucester Road.
8. The Council and local residents advocate that the character of the north and south sides of Cromwell Road differs, although they recognised that this was not defined by planning policy. They considered that the south side was predominantly commercial and the northern side was more residential and subsequently, in their opinion, quieter in character. Although I recognise that this may be the case as you move away from the junction I consider that immediately adjacent to the junction the character of the area for both Cromwell Road and Gloucester Road, particularly at ground floor level, is very active and predominantly commercial.
9. Unlike the previous use as a bank, I agree that the proposal would result in the introduction of a use that would attract more visitors throughout the day and would be active in the evening and at weekends. However, I observed at my site visit that the two neighbouring uses are hotels which also operate on a seven day basis and are open to the public both during the day and the evening as is the bureau de change opposite the site. Furthermore, both hotels include dining facilities at ground floor level which are open to hotel residents and the wider public at similar times to the proposed use. Therefore, given the location of the site, the surrounding uses and existing levels of activity in the area I consider that the proposal would not be out of character and consequently would not be harmful to the character and appearance of the Queens Gate Conservation Area.
10. As a result I conclude that the proposal would be in accordance with policies CL1 and CL3 of the CLP which require development to respect the existing character and appearance of an area and to preserve or enhance the character and appearance of the conservation area and section 12 of the National Planning Policy Framework (the Framework).
11. At the Hearing the residents of both Atherstone Mews and Atherstone House advocated that the proposed use would result in noise and disturbance from deliveries and servicing and from users and staff accessing the property and smoking. On the basis of all the evidence I have heard and read I consider that the servicing and delivery situation could be satisfactorily controlled and managed through the use of a suitably worded condition to prevent these activities from occurring at night and in the early morning when noise levels are normally lower.
12. Whilst I agree that there would be an increase in the number of people accessing the building, due to the nature of the proposed use these would be small to medium sized groups who would enter and exit the building intermittently throughout the day and evening. Specific concerns were also raised regarding potential noise from staff and visitors exiting the premises in order to smoke, however I consider that these would be relatively limited in number. Therefore, given the relatively high existing activity and noise levels in the surrounding area I consider that the additional movements that would be generated by the proposal would not lead to an increase in noise and

disturbance to such a level that it would adversely affect the living conditions of the occupiers of neighbouring properties.

13. Whilst I acknowledge that the proposal would introduce additional plant onto the roof which would operate for longer periods it would be in a similar location to the existing plant. I note that the Council's Environmental Health Officer is satisfied that noise reports submitted with the application were robust and I heard no evidence at the Hearing to lead me to a different conclusion. The Council in their appeal statement have queried whether the proposed plant would be sufficient to meet the needs of the proposed use. However, I have no evidence before me to substantiate this claim and therefore I have afforded it no weight
14. At the Hearing questions were raised regarding whether the design for the proposed extract for the oven was correct and whether it would need to extend higher to vent above roof height. The appellant has confirmed¹ that no chimney would be required for the type of extract vent proposed.
15. There were also concerns, given the proximity of a number of windows in Atherstone House, regarding potential odours. However, following discussions at the Hearing I am satisfied that the Council has a robustly worded condition that has proved effective in dealing with this issue on other sites and which could be used here.
16. As a result I consider the proposal would be in accordance with policy CL5 of the CLP which requires all development to ensure good living conditions for occupants of existing and neighbouring buildings. This policy reflects the Framework which seeks amongst other things to secure a good standard of amenity for all existing and future occupiers of buildings.
17. At the Hearing it was clear that local residents had concerns, given the proximity to the busy junction, that deliveries and servicing of the site would cause highway safety issues, particularly at peak times. The Council confirmed that neither Transport for London nor the Council's own Highways Officer objected to the proposal both of whom considered that any additional traffic could be accommodated on the local network and that deliveries and collections could be satisfactorily made to and from the site within existing restrictions. I agree that the servicing arrangements are not straightforward and that delivery bays are located some distance from the site and that neither are ideal. However, such arrangements are not uncommon in central London or unique within the local area and on the evidence I have read and heard I consider could be managed satisfactorily through the use of a suitably worded condition.
18. Local residents were also particularly worried about pedestrian safety given existing concerns about the junction and the width of the pavement. I acknowledge that the junction is very busy and the proposal would increase footfall to the northern side of the road. However, as the use would be accessed intermittently throughout the day, I do not consider that the additional pedestrian movements would place additional pressures on the junction to such a level that it would put users of the crossing at further risk.
19. I observed at my site visit that the pavement is quite wide and whilst I agree with residents that the pavement in this area could become quite crowded I consider that it would be wide enough to accommodate the additional footfall

¹ Letter from Vail Williams dated 12 May 2016

that the use would generate. Furthermore, I consider that given deliveries and servicing of the site would be managed these could be timed to ensure that these occurred outside of the busiest times to maintain the free flow of pedestrians.

20. As a result I consider that the proposal would be in accordance with policies CT1, CR7 and CL5 of the CLP which require developments to function satisfactorily without giving rise to adverse effects on or increase traffic congestion, pedestrian safety including reducing the attractiveness of footpaths and residential amenity the London Plan (2015) and the Framework.

Other matters

21. Concerns were raised at the Hearing regarding the amount and location of proposed signage. However, this is not a matter before me and I have therefore not considered it.
22. Local residents were concerned that the introduction of an evening use would lead to an increase in anti-social behaviour including an increase in begging and behaviour related to alcohol consumption. However, whilst it was confirmed that begging does already occur within the area no evidence was presented to demonstrate that the use would result in an increase in this activity and therefore I have afforded it very limited weight in coming to my conclusions. The effect of consumption of alcohol at the premises is an issue that would be managed through the licensing regime.
23. Local residents were concerned that the proposal would lead, particularly in the evenings, to increased parking in Atherstone Mews and that due to the width of the mews and the 90 degree bend this could have highway safety implications. However, the site is in a highly accessible location and I note from my site visit that there are parking restrictions in place within the mews. The Council's Highways Officer considered that the proposal would not result in a significant increase in vehicular trips and that it would have an acceptable impact on parking. Therefore, I am satisfied that any increase in parking would be limited and could be accommodated within the existing parking provisions.
24. I note the concerns regarding the loss of a local facility. However, I observed at my site visit that there are a number of other banking facilities within the area and I am therefore satisfied that local residents would continue to be able to access local services.
25. At the Hearing it was highlighted that the appeal site, unlike the upper floors, was in a poor state of repair and concerns were raised that this was deliberate neglect. However, as advocated by paragraph 130 of the Framework I have given this no weight in considering this appeal.
26. The proposal is for a change of use to a restaurant (use class A3) however at the Hearing there was a discussion about whether or not this would include a takeaway element with particular concerns raised regarding potential noise from delivery vehicles. However, such a use would fall within use class A5 (hot food takeaway) and as a result I am satisfied that any takeaway element that would operate would be very limited in order to be ancillary to the A3 use and therefore on balance unlikely to give rise to noise and disturbance.

27. Throughout the appeal the appellant has placed weight on the reputation of the potential tenant Pizza Express. However, the proposal is not for a named tenant and I have considered the appeal on this basis.
28. Local residents contended that the building could be used for alternative uses such as residential which they considered would be more in keeping with the location. However, the appeal before me is for a change of use to A3 and this is what I have considered.

Conditions

29. Paragraph 206 of the Framework sets out a number of tests that conditions need to meet. I have considered the conditions suggested by the Council against paragraph 206, the advice contained within the Planning Practice Guidance and the discussions at the Hearing. Where necessary I have adjusted their wording in the interests of clarity. In addition to the standard time limit, for the avoidance of doubt and in the interests of proper planning I have included a condition that requires the development be carried out in accordance with the approved plans.
30. To protect the living conditions of the occupants of neighbouring properties conditions requiring sound insulation; restricting the hours of use and limiting the use of the fire exit for appeal A and limiting the noise and fumes from the proposed plant for appeal B are necessary.
31. I note the request from an adjoining occupier regarding the sound insulation and the hours of use. However, I consider that requiring sound insulation in excess of Building Regulation standards would not, given the existing noise levels, be reasonable and that given the previous opening hours and the limited activity that would occur when customers are not on the premises to limit staff access to the building would not meet the tests set out in the Framework.
32. To ensure highway safety and to protect the living conditions of the occupants of neighbouring properties are protected adequately I consider conditions requiring a servicing and delivery plan and the management of construction are also necessary. I am satisfied that there is capacity at the site to accommodate cycle parking for staff and a condition requiring details of where this will be and requiring its provision will encourage sustainable travel patterns in accordance with the Framework.

Conclusion

33. I have taken into account all the other matters raised including the letters and evidence provided at the Hearing by third parties voicing concerns about noise and highway safety. However, these do not outweigh the evidence submitted that has led me to the conclusion outlined above.
34. For the reasons above and having regard to all other matters raised, I conclude that appeal A and appeal B should be allowed subject to the conditions that I have outlined.

Jo Dowling

INSPECTOR

APPERANCES

FOR THE APPELLANT

Paul Gray BSc(Hons) MIDA	Mayer Brown
Kimberley Hammonds	RGP
Sarah Isherwood	Vail Williams
Graeme Keen	Landmark Chambers
Chris Wilmhurst	Vail Williams

FOR THE LOCAL PLANNING AUTHORITY

Rebecca Marshall	Planning Officer
Sian Saadeh	Team Leader

INTERESTED PARTIES

Matteo Colombo	Local resident
Billie Lee	Local resident
Friederike Maeda	Local resident
Mr H S Matharu	Local businessman
William Reeve	Local resident

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE HEARING

Document 1	Signed and dated statement of common ground
Document 2	List of agreed conditions

Schedule – Conditions

Appeal A

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development shall not be carried out except in accordance with the details shown on the approved plans.
3. No development shall commence until a scheme of sound insulation designed to prevent the transmission of excessive airborne and impact noise between the proposed ground floor and basement commercial use and the first floor dwelling(s) and adjacent residential properties at 3 Atherstone Mews and Atherstone House has been submitted to and approved in writing by the local planning authority. The sound insulation shall be fully installed prior to the commencement of the new use and maintained thereafter in accordance with the details so approved.
4. The use hereby permitted shall not be open to customers other than between 11:00 hours and 00:00 hours, on any day.
5. No development shall commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved:
 - a) Proposed floor plan(s) indicating that a minimum of 3 bicycle parking spaces would be provided by the development for the use of members of staff.
6. The development shall not be occupied until a Delivery and Servicing Management Plan (the DSMP) has been submitted to and approved in writing by the local planning authority. The DSMP should include, but should not be limited to:
 - a) How delivery vehicles and servicing will be managed at the site;
 - b) hours of deliveries and servicing which shall exclude the hours of 08:00-09:00 and 17:00-18:00;
 - c) times of general servicing of the premises;
 - d) how deliveries will be controlled to ensure there is no adverse impact on the highway;
 - e) servicing and delivery locations including where and how rubbish will be collected;
 - f) routing plans for delivery and servicing vehicles;
 - g) delivery management measures, including deliveries to and from the site; and
 - h) details of the type and size of vehicles that will attend the site.

The DSMP shall be consistent with the London Lorry Control Scheme and TfL's code of practice for quieter out of hours deliveries. The development shall be operated strictly in accordance with the details so approved, shall be

maintained as such thereafter and no change shall take place to the DSMP without the prior written consent of the local planning authority.

7. The rear external doors at ground level on Atherstone Mews shall be used as a fire exit only and shall at no time be used as an access for staff or for servicing and deliveries.
8. No development shall commence until a site specific Construction Management Plan has been submitted to and approved in writing by the local planning authority, detailing the following:
 - a) location of skips;
 - b) location of construction workers vehicles;
 - c) locations where materials are to be stored/held;
 - d) the expected vehicle journey numbers, routes and delivery times; and
 - e) hours of working at the site.

Once approved, the development shall be constructed in accordance with the details so approved.

Appeal B

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development shall not be carried out except in accordance with the details shown on the approved plans.
3. Noise emitted by all building services plant and vents shall not exceed a level 10dBA below the existing lowest LA90 (10min) background noise level at any time when the plant is operating, and where the source is tonal it shall not exceed a level 15dBA below. The noise emitted shall be measured or predicted at 1.0m from the façade of the nearest residential premises or at 1.2m above any adjacent residential garden, terrace, balcony or patio. The plant shall be serviced regularly in accordance with the manufacturer's instructions and as necessary to ensure that the requirements of the condition are maintained. If at any time the plant is determined by the local planning authority to be failing to comply with this condition, it shall be switched off upon written instruction from the local planning authority and not used again until it is able to comply.
4. The plant shall not operate unless it is supported on adequate proprietary anti-vibration mounts to prevent structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.
5. Fumes or odours expelled from any flue serving a stove, oven or other cooking device shall not be detectable at the property boundary. If at any time the extraction plant is determined by the local planning authority to be failing to comply with this condition, it (or the source device) shall be switched off upon written instruction from the local planning authority and not used again until it is able to comply.