

Appeal Decision

Site visit made on 19 September 2016

by Beverley Wilders BA (Hons) PgDurp MRTPI

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

Decision date: 11 October 2016

Appeal Ref: APP/X5210/W/16/3153744

317 Gray's Inn Road, London WC1X 8PX

- 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 (as amended).
 - The appeal is made by Mr Mahendran Sathyakumar against the decision of the Council of the London Borough of Camden.
 - The application Ref 2016/2480/P, dated 29 April 2016, was refused by notice dated 16 June 2016.
 - The development proposed is change of use of the retail premises at ground/basement levels to a restaurant.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Schedule 2, Part 3, Class C(a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the change of use of a building from a use falling within Class A1 (shops) to a use falling within Class A3 (restaurants and cafes), and building or other operations for the provision of facilities for ventilation and extraction (including the provision of an external flue), and the storage of rubbish, reasonably necessary to use the building for a use falling within Class A3.
 3. Paragraph C.1. sets out the circumstances when development is not permitted and paragraph C.2. (1) states that where the development proposed is development under Class C(a) together with development under Class C(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the impacts of the development as set out at C.2.(1)(a) to (g).
 4. Having regard to the available evidence the proposed development appears to be permitted development under Schedule 2, Part 3, Class C of the GPDO as none of the circumstances listed in paragraph C.1. applies and I note that this is also the view of the Council.
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5. The Council has refused prior approval under paragraph C.2.(1)(a) and (f)(ii) due to concerns regarding the noise impacts of the development and the impact of the change of use on the sustainability of the shopping area.

Main Issues

6. The main issues are:

- The effect of the proposal on the living conditions of occupiers of nearby residential properties having regard to noise;
- The effect of the proposal on the sustainability of the shopping area.

Reasons

7. The appeal site comprises a four storey building plus basement with a ground floor retail use located within a terrace of similar buildings containing commercial uses at ground floor. Residential flats are located on the upper floors of the appeal building and at the time of my visit it appeared that the upper floors of some of the other buildings within the terrace and that a property on St Chad's Street close to the appeal site also contained residential uses. Gray's Inn Road is a busy road located close to Kings Cross St Pancras station and the appeal site is located within the Kings Cross St Pancras Conservation Area and according to the Council is designated as being within the Central London Frontage Area.

Noise

8. As stated there are residential units on the appeal site and a number of other residential uses close by. Though Gray's Inn Road and the surrounding roads are very busy with traffic and contain a number of commercial premises, the height and form of the terrace within which the appeal site is located means that the rear elevation of the terrace and the rear of the buildings around the corner on St Chad's Street are to some extent shielded from any noise generated by traffic and by the comings and goings associated with the commercial uses.
9. The proposed extractor duct is large and would be positioned very close to a number of windows located in the rear elevation of the appeal building and nearby buildings. No noise information was submitted with either the application or the appeal. In the absence of this and having regard to the presence and position of residential uses and the size and position of the proposed extractor duct, it has not been demonstrated that the noise impacts of the development would be acceptable and that the proposal would not result in a significant adverse impact on the living conditions of the occupiers of nearby residential properties having regard to noise.
10. I do not consider that this issue could be adequately addressed by the imposition of a condition having regard to the uncertainty as to whether any noise arising from the extractor duct of the size and position proposed could be adequately overcome by other measures.

Shopping Area

11. As stated the appeal site comprises an existing ground floor retail use located within a terrace containing other ground floor commercial uses generally comprising a mixture of A1 and A3 uses. It is located within a designated

Central London Frontage Area and at the time of my visit the area was busy with pedestrians.

12. Though not referred to in the reasons for refusal, the Council has made reference to a number of its development plan policies and to supplementary planning guidance within the officer report and I have been provided with copies of these policies and guidance. I have taken these into account where appropriate however the provisions of the GPDO are that the prior approval that is the subject of this appeal should be determined having regard to the National Planning Policy Framework (the Framework) so far as it is relevant to the subject matter of the prior approval. Therefore in the determination of the appeal, the Council's policies and guidance have not been decisive.
13. The Council and the appellant have provided a list of the existing uses within the terrace and whilst these are the same, there is some disagreement as to how to treat uses that occupy double frontages with the Council counting them as one unit and the appellant counting them as two. Using the Council's methodology the proposed change of use would result in the percentage of non- retail uses within the terrace exceeding 50% whilst the appellant's methodology would result in non-retail uses accounting for 50% of uses within the terrace.
14. The appeal site is in use as a convenience store and at the time of my visit I noted that there are a number of other convenience stores within the terrace. Consequently the loss of the existing retail use would not result in the loss of such provision within the area. Additionally having regard to the mix of uses within the terrace and to the character of the immediate surrounding area, I do not consider that the loss of the small retail unit proposed and its replacement with a restaurant would adversely affect the sustainability of the shopping area. Though the proposal would mean that there would be slightly more non-retail units within the terrace than retail, having regard to the larger frontages of two of the retail units, I do not consider that this would be harmful to the retail function of the area.
15. Though I note that the Council's Supplementary Planning Document CPG5 states that planning permission will not be granted for further loss of retail on Gray's Inn Road, as previously stated, the Council's policies and guidance are not decisive. Paragraph 17 of the Framework sets out core planning principles and states that planning should proactively drive and support sustainable economic development and should take account of the different roles and character of different areas, promoting the vitality of our main urban areas. For the reasons stated above, I do not consider that the proposal would be harmful to the character, function, vitality or viability of the shopping area.

Conclusion

16. Taking the above matters into consideration, although I do not consider that the proposal would be harmful to the sustainability of the shopping area, it has not been demonstrated that the noise impacts of the development would be acceptable and that the proposal would not adversely affect the living conditions of the occupiers of nearby residential properties having regard to noise.
17. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR