

Appeal Decision

Site visit made on 26 September 2016

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 21 October 2016

Appeal Ref: APP/A5840/W/16/3152192

221 Rye Lane, Southwark, London SE15 4TP

- 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 Mr M Olaleye against the decision of the Council of the London Borough of Southwark.
 - The application Ref 15/AP/3060, dated 30 July 2015, was refused by notice dated 11 March 2016.
 - The development proposed is the change of use from retail use class A2 to hot food take away (use class A5) and installation of associated extract system.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from retail use class A2 to hot food take away (use class A5) and installation of associated extract system at 221 Rye Lane, Southwark, London SE15 4TP in accordance with the terms of the application, Ref 15/AP/3060, dated 30 July 2015, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: DP/2593/DH/01; DP/2593/DH/02 and DP/2593/DH/03.
 - 2) Within three months of the date of this permission, a scheme for the installation of equipment to control the emission of fumes and smell from the premises, which shall first have been submitted to and approved in writing by the Local Planning Authority, shall be installed. The approved scheme shall be implemented in complete accordance with the agreed details, and all equipment installed as part of the scheme shall thereafter be retained, operated and maintained in accordance with the manufacturer's instructions.
 - 3) The use hereby permitted shall not be open to customers outside the following times:

11:00 to 23:00 Mondays to Fridays
11:00 to 23:00 Saturdays
11:00 to 22:30 Sundays and Bank Holidays.

Procedural Matters

2. At the time of the planning application, it was stated that the current use of the site was vacant. However, I noted during the course of my site visit that the appeal site was operating as a hot food take away use. It was apparent from my site visit however that the internal layout of the premises did not accord
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with that shown on drawings DP/2593/DH/01, and the extract ducting, flue and vent did not tally with the details shown on drawing DP/2593/DH/03. I have determined the appeal based on the drawings submitted with the planning application and not on the works as undertaken.

Main Issues

3. The main issues are the effect on:

- The vibrancy, vitality and viability of the Peckham Major Town Centre; and
- The effect of the proposal on living conditions of the neighbouring residential development, with particular reference to noise and odour.

Reasons

Peckham Major Town Centre

4. Strategic Policy 3 of the Southwark Core Strategy (the CS) sets out a broad vision relating to shopping, leisure and entertainment, which seeks to maintain a network of successful town centres which have a wide range of shops, services and facilities that are, amongst other things, well used and vibrant. Saved Policy 1.7 of the Southwark Plan defines Peckham as a "Major Town Centre" where development providing a broad range of uses will be permitted where they meet a number of criteria are met. Amongst these, it states that proposals will not harm the vitality or viability of the centre, uses falling within Use Class A should be retained or replaced and proposals would not materially harm the amenities of surrounding occupiers.
5. Saved Policy 1.9 of the Southwark Plan (the SP) states that changes of use from uses within A1 Use Class will be granted provided that, amongst other factors, the proportion of units within any protected shopping frontage does not fall below 50%. It goes on to reflect SP Policy 1.7 in that it seeks to avoid harm to the amenity of surrounding occupiers and to the vitality or appearance of the protected shopping frontage. It also states that proposals will be granted where it has been demonstrated that the premises has been vacant for at least 12 months with efforts to let the premises also demonstrated.
6. The Council have not referred to these development plan policies in their reason for refusal, relying instead on the provisions of the Peckham and Nunhead Area Action Plan (the PNAAP), and particularly Policy 4 of that document. However, the Council have not challenged the appellant's statement that the previous use of the appeal site fell within Use Class A2 and I have no reason to disagree. On that basis, the provisions of SP Policy 1.9 do not apply to this proposal whilst the proposal would fall, in broad terms, within the range of uses that SP Policy 1.7 seeks to promote within the Borough's centres.
7. Policy 4 of the PNAAP states that the Council will encourage a healthy population and vibrant town and local centres by controlling the amount and location of hot food takeaways (HFTAs). To this end, it states that the proportion of HFTAs within the Peckham major town centre protected shopping frontage (the PSF) will not exceed 5% and, where PSFs have reached a 5% saturation level, no more A5 uses will be permitted. Additionally, not more than two A5 uses should be located adjacent to each other, with no less than two non-A5 uses located between a group of HFTAs.

8. Both main parties agree that the proportion of A5 uses within the protected shopping frontage (the PSF) would, as a result of the proposal, increase to approximately 6%, although there is disagreement as to the exact figure. Whilst clearly the proposal would be at odds with PNAAP Policy 4 in that respect, I am not convinced that this would result in any materially detrimental impact upon the vibrancy, vitality or viability of the PSF, or the Peckham Major Town Centre as a whole.
9. The Council have not sought to challenge the appellant's submission, drawing on the Council's recent Southwark Retail Study Final Report (2015), that Peckham town centre has a vibrant level of A1 retail uses. In any event, the proposal would not result in the loss of an A1 retail unit, and I have not been presented with any substantive or compelling evidence to demonstrate that the proposal, and the corresponding increase of A5 uses within the PSF to 6% would have any materially detrimental effect on the vibrancy, vitality or viability of the retail function of the town centre as a whole.
10. The appellant has stated that the supporting text to PNAAP Policy 4, at paragraph 4.2.21 states that overconcentration and clustering can affect viability and vitality of a retail centre, undermining its predominant retail function. However, although the Council have not advanced an argument regarding the latter two criteria of Policy 4, my observations did not suggest that the proposal would result in an overconcentration of A5 uses in the terms set out in PNAAP Policy 4.
11. With regard to the second main aim of PNAAP Policy 4, that of encouraging a healthy population, I note that the PNAAP identified 400 metre exclusion zones around secondary schools. However, I have not been presented with any evidence to suggest that the appeal site lies within such an exclusion zone. The clustering and overconcentration of A5 uses is also cited within PNAAP Policy 4 as encouraging unhealthy eating. Whilst the supporting text to that policy refers to evidence that suggests A5 uses can encourage people to eat unhealthily, no information or evidence has been submitted to substantiate such a concern.
12. The National Planning Policy Framework (the Framework) indicates that there should be a presumption in favour of sustainable development and that significant weight should be placed on the need to support economic growth. It goes on to recognise the role that the planning system can play in facilitating social interaction and creating healthy, inclusive communities.
13. On the evidence before me however, I have to conclude on the first main issue that the proposal would conform to the requirements of CS Strategic Policy 3 and SP Policy 1.7. Thus, I find that in this respect the Council's case has not been made out and that the proposal would not harm the overall retail function, or the vibrancy, vitality or viability of the Peckham town centre PSF in the terms set out in Policy 4 of the PNAAP. Nor have I been provided with compelling evidence that the proposal would encourage unhealthy eating, or would cause material harm to the Council's aspirations for encouraging a healthy population.

Living Conditions

14. The building adjoining the appeal site at 219 Rye Lane that was referred to in the submissions of both main parties as being under construction appeared, at

the time of my site visit, to be complete and occupied. The flank elevation of that building, and also that of the commercial building on the other side of the appeal property, are both blank and devoid of window openings. Whilst the submitted plans indicated a wall mounted vent for the extract system, it appeared from my site visit that the extract flue exited on the roof of the appeal property, towards the rear of the building.

15. It was on the basis of the submitted plans that the Council expressed concern about the potential for conflict with the living conditions of residents of the adjoining building. However, I have not been presented with any substantive evidence to demonstrate that the proposal would result in an unacceptable level of odour or fumes. The appellant has submitted information regarding extraction systems and states that such a matter could be adequately dealt with by way of condition. I am satisfied that the nature and scale of the proposal is such that there is sufficient scope to secure an effective extraction system without harm to the living conditions of nearby occupants of residential properties and that this could be adequately addressed by way of a condition.
16. The opening hours proposed are noted, and seem reasonable in the context of the site's location and surrounding uses, and could be controlled by condition. Similarly, the approval of a scheme for the control of fumes and odour could also be controlled by condition. I am satisfied therefore that, with these safeguards, the proposal would not have a materially harmful effect on the living conditions of nearby residential properties. I therefore find no conflict with the aims of CS Strategic Policy 13 or SP Policy 3.2 which together aim to set high standards for reducing, amongst other matters, air and noise pollution, and which seek to resist proposals that would cause a loss of amenity, including disturbance from noise, to present and future occupiers of the surrounding area. These policies reflect one of the core planning principles set out in the Framework of seeking to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

17. The appeal site lies within the Rye Lane Conservation Area. I am required, by virtue of s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The proposal is for the reuse, for commercial purposes, of an existing commercial unit within a commercial area in a major town centre. The Council raised no objection to the proposal on this ground, and I have no reason to disagree with that assessment. The proposal would therefore preserve the character and appearance of the Rye Lane Conservation Area.
18. It is stated that Rye Lane is part of the Bus Priority Network and that, as the proposal does not provide any car parking spaces, there should be no delivery services associated with the use of the premises as an HFTA. However, a large public car park is located a short walk away to the rear of the appeal premises and I noted that there are cycle parking facilities in an on-street location close to the site. From my experience, food delivery services can take many forms, including by bicycle, whilst the car park would provide reasonably convenience parking for car-borne, or motorcycle, deliveries. I therefore give this matter only limited weight, and it does not alter my conclusions in respect of the two main issues.

Conditions

19. The Council have not put forward any conditions in the event that the appeal should succeed. I have therefore considered potential conditions in light of the Framework and Planning Practice Guidance.
20. As the use has already commenced, a time limit condition relating to the commencement of development is not necessary. In order to provide certainty a condition is attached to set out the approved plans, whilst a condition requiring the submission of full details of an appropriate extract system is necessary in the interests of living conditions of occupiers of nearby residential properties. The appellant has put forward proposed opening hours as set out in their planning application form. As the area is located within a major town centre amongst a variety of commercial uses, a condition confirming these hours is both reasonable and appropriate.

Conclusion

21. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR