
Appeal Decision

Site visit made on 3 October 2016

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 1st November 2016

Appeal Ref: APP/X5990/W/16/3153627

394 Edgware Road, London, W2 1ED

- 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 Miah Rouf Mohammed against the decision of City of Westminster Council.
 - The application Ref 14/07265/FULL, dated 24 July 2014, was refused by notice dated 1 June 2016.
 - The development proposed is described as "instalment of a new shop front, resetting of the canopy along with some interior decoration for using the premise as restaurant".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council altered the description of development to "Use of ground and basement floors as a restaurant (Class A3) with installation of new shop front and installation of a kitchen extract duct. (Retrospective application)". As this more accurately describes the development proposed, I have also used this description.

Main Issue

3. The main issues for the appeal are:
 - The effect of the proposal on the vitality and viability of the Church Street and Edgware Road District Centre, and
 - The effect of the proposal on the living conditions of nearby residential occupiers, in particular with regard to noise.

Reasons

Vitality and Viability of the Shopping Centre

4. The development plan for the area is made up of the *Westminster City Plan Strategic Policies*, (SP) which was adopted in 2013, and the *Westminster Unitary Development Plan* (UDP), which was adopted in 2007. Policy SS6 of the UDP seeks to protect the vitality, viability, character and function of designated District Shopping Centres by protecting the A1 retail function and sets out criteria for assessing this. The plan predates the Framework, and some parts of the policy, including those seeking to control changes from A1 to A2 use, do not reflect recent changes in the *General Permitted Development Order*
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- (GDPO). Nevertheless, insofar as the policy seeks to define the primary shopping area, and to make clear which uses will be permitted in the area, it remains consistent with guidance in the Framework.
5. Policy S21 of the SP seeks to protect existing A1 retail throughout the city, except where the unit is not viable, as demonstrated by long-term vacancy. Policy S12 relates to the *North Westminster Economic Development Area* and states that in the Church Street/Edgware Road District Shopping Centre some flexibility in relation to changes of use may be appropriate, provided the development delivers benefits to the local community, provides employment opportunities and contributes to the quality of the built environment.
 6. The proposal relates to the change of use of the ground floor and basement of a retail unit on Edgware Road to use as a restaurant. The property is already in use, and so the application is retrospective. I noted on site that very few of the units in the Core Frontage were vacant and this supports the Council's assertion that vacancy levels in the area are relatively low. The frontage in which the unit sits forms part of the primary retail frontage identified in the UDP. It differs in character from Church Street's more intimate character as it fronts a busy road, with a secondary frontage, on the opposite side of Edgware Road, which includes numerous hot food takeaways and restaurants.
 7. The stretch of Core Frontage in which the appeal property sits includes a range of retail uses, most of which are A1. However, a dentist and a bank sit in immediately adjacent units. As such, the retention of the A3 use in this location creates a cluster of non-A1 units in a prominent position in the Core Frontage, close to the junction with Church Street. This has an erosive effect upon the vitality of this part of the shopping area as it fragments the A1 frontage and undermines its connection with the retail function along Church Street.
 8. I recognise that non-A1 uses can contribute to how shopping areas function and note that UDP policy SS6 allows for up to 20% of the frontage in non-A1 use. Policy S12 also allows for some flexibility in this regard, provided that the proposed use brings other benefits to the shopping area and sets out criteria for how this can be assessed. The wider area is not deficient in A3 uses and I have been provided with no evidence of any community benefits the development would bring. Neither am I convinced that the employment generated by the proposal would be materially greater than a functioning A1 use in this location. I note that the proposal includes changes to the shop front and whilst the Council are satisfied that these do not cause visual harm, they have, in my view, no more than a neutral effect on the area, and so do not make a contribution to the quality of the built environment. It follows that when judged against the criteria outlined in policy S12 of the adopted plan, I can find no justification for greater flexibility in this case.
 9. Furthermore, no information has been supplied by the appellant to demonstrate any significant vacancy of the unit. I therefore have no evidence to suggest that there is no demand for an A1 unit in this location. In support of the application the appellant has submitted a survey of the units within the Core Frontage which seeks to demonstrate that the number of units in non-A1 use is just over 20%, and that the proposal would therefore have little material impact. However I noted during my visit that some of the properties surveyed were recorded as being A1 uses in error, and this reduces the weight I attribute

to the matter, which, in any case, does not alter my concerns relating to the position and concentration of non-A1 uses that the proposal would give rise to.

10. I note that the proposal retains an active frontage. Nevertheless, A3 uses differ in character to A1, with typically different hours of operation, which collectively reduce daytime footfall. I take into account that a change to A2 use would not require consent under recent changes to the GDPO and that over time this could impact upon the character of the shopping area. Nevertheless, due to the size of the unit, the A3 use, which is the subject of this application, falls outside the scope of that permissible in the GDPO and is therefore subject to the policies outlined above. Its retention would contribute to the loss of A1 retail function and this would have a harmful incremental effect on the vitality and character of this part of the District Shopping Centre.
11. It therefore follows that the proposal would be contrary to policy SS6 of the UDP and SP12 and SP21 of the SP and with advice in the Framework, which seeks to recognise the role of town centres as the heart of communities, and to pursue policies which support their viability and vitality.

Living Conditions

12. The development includes a large extraction unit, which has been installed at the rear of the property. It sits close to a first floor window of the flats above the adjoining 392 Edgware Road. The Council identified a number of discrepancies with the originally submitted noise report and so were not assured that the proposal would have an acceptable impact on the living conditions of the adjoining property due to potential noise from the extractor.
13. A revised noise report accompanies the appeal. This appears to respond to the Council's identified concerns by providing more comprehensive background noise data which identifies the correct operating period for the use, and providing an accurate location for the nearest noise sensitive property. It also shows much higher background noise levels than the initial assessment. The report concludes that with appropriate attenuation and taking into account the attenuating effect of the window itself, the proposal would not compromise acceptable internal living conditions.
14. The Council have not commented on the revised assessment. Nonetheless, I am satisfied that subject to the installation of an appropriate silencer on the extract system, and subject to appropriate conditions regarding the operation of the system, the proposal need not lead to any reduction in the quality of the living conditions of nearby occupiers. I therefore find no conflict with policies ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of the UDP and policy S32 of the SP which together seek to ensure development minimises noise and protects noise sensitive properties from its effects, or with the Framework, which has similar aims.

Conclusion

15. Although the proposal would, subject to conditions, have an acceptable impact on adjoining properties, it would nonetheless have a harmful effect on the vitality and viability of the Church Street and Edgware Road District Centre. I do not consider that any of the stated benefits of the proposal would outweigh this harm.

16. Accordingly, for the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

Anne Jordan

INSPECTOR