
Appeal Decision

Site visit made on 29 November 2016

by Philip Lewis BA (Hons) MA MRTPI

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

Decision date: 05 January 2017

Appeal Ref: APP/K5600/W/16/3157119

Beirut Express, 124 Cromwell Road, London SW7 4ET

- 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 Mrs Rania Baalbaki, Kensington Inc. Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/01978, dated 1 April 2016, was refused by notice dated 22 June 2016.
 - The development proposed was originally described as '*proposed Baalbaki's restaurant will be used A5, dining restaurant and hot food takeaway (sandwiches - shawarma - grill meat and chicken with lebanese food appetizers and Snack and hot Arabic bread foods made in Special Oven) serving soft drink - coffee and juices*'.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council has stated that the proposed change of use appears to have taken place since the planning application was made and this accords with what I saw at my site visit. I have therefore determined the appeal on the basis that the development has already occurred. The Council dealt with the application on the basis that it is a change of use from internet cafe / deli (Use Class A1) to dining and hot food takeaway (Use Class A5) and so shall I.

Main Issues

3. The main issues for the appeal are:
 - The effect of the change of use on the vitality and retail offer of the Cromwell Road Air Terminal Neighbourhood Shopping Centre; and
 - The effect of the change of use on the living conditions of nearby residents with particular regard to any increase in noise and disturbance, smells and litter.

Reasons

Cromwell Road Air Terminal Neighbourhood Shopping Centre

4. Policy CF3 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (Local Plan) seeks to secure the diversity of uses and vitality of centres. It includes that all shops within defined neighbourhood centres will be protected unless the proposal is to change to a social and community use and where 66
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per cent of the relevant street frontage remains in an A1 use. The appeal property is situated within the defined Cromwell Road Air Terminal Neighbourhood Shopping Centre. The Local Plan in paragraph 31.3.26 includes that the function of the neighbourhood centres is to serve both the shopping and other day-to-day need of the residents of the area and that the main retail function cannot be allowed to be lost.

5. The former use of the appeal premises is said to be as an internet café / deli falling within Use Class A1. The Council has stated that less than 66 per cent of the units within the defined Neighbourhood Shopping Centre are currently in A1 use, which accords with my observations on site, where I noted that there appears to be significantly fewer units in A1 use than the 66 per cent figure. I also noted the variety in retail, restaurant and other commercial uses in the Centre. Consequently the loss of an A1 unit has an appreciable effect on the Neighbourhood Shopping Centre and undermines its main retail function and ability to serve the shopping needs of residents. It also has a harmful effect on the retail character of the Neighbourhood Shopping Centre. The use of the site for an A5 use therefore conflicts with Local Plan Policy CF3.
6. I note that in paragraph 31.3.25 of the Local Plan that the Council recognises that restaurants and drinking establishments have a role in supporting the diversity of the borough's town centres and in providing a useful day-to-day service to residents and I have considered the appellants comments in this regard. I also note that the premises are open at the same time as the retail units, is close to other retail units, has similarities with the former use and does not give rise to a 'dead frontage'. However, whilst the business may bring some diversity and vitality to the area and meet some local need and having taken into consideration the comments regarding the size of the unit, I do not consider that these matters outweigh the effect of the loss of a retail unit on the retail functioning of the Neighbourhood Shopping Centre.
7. I have taken into account that the former internet café use ceased, that the premises became vacant prior to the present use and was then not providing a retail service and the comments regarding the level of vacant shop units in London. Additionally, I have considered the comments that a vacant unit could worsen the vitality of the centre and that centres should adapt to changing needs. However, it has not been demonstrated that there is no reasonable prospect of the appeal premises being used for an A1 use. I have also taken into account the policies of the National Planning Policy Framework (the Framework) in respect of the economy, town centres and promoting healthy communities cited by the appellant, but they do not lead me to a different conclusion. I note that the Council, as part of their "Local Plan Partial Review Shops & Centres Background Paper - December 2015", are considering extending the Cromwell Road Air Terminal Centre to include the supermarket beneath Point West. However, I have little information in this regard and give the emerging policy minimal weight given that the position may change.
8. To conclude on this matter, the change of use harms vitality and retail offer of the Cromwell Road Air Terminal Neighbourhood Shopping Centre contrary to Local Plan Policy CF3.

Living conditions

9. I saw during my site visit that the appeal premises occupy the ground and lower ground floors of a terraced property and noted that there are residential

properties above. The application form sets out that the dining and hot food takeaway use would take place between 0900 and 0200 each day. Whilst I note that the former internet cafe was open between 0800 and 2400 each day, the opening of the business to 0200 would extend activity with people coming and going into the early morning, when neighbours ought to be able to enjoy a quieter environment. Whilst I note that the appellant would not tolerate unruly behaviour or allow loitering outside the premises, and makes a firm assurance that customers entering and leaving the property would be asked to do so in a considerate manner, having taken into account the area and the size of the business, I do not consider that this would prevent noise and disturbance taking place at unsocial hours.

10. I saw at my site visit that an extraction system has been installed at the premises and I have considered the details submitted regarding specifications, noise, maintenance and operation. I cannot be certain however that the system installed is as per the submitted details, or on the balance of evidence, whether the system is sufficient to safeguard the living conditions of neighbours. I also note that the property was to be internally soundproofed to meet the appropriate standards in the Building Regulations. However it has not been demonstrated that the appropriate standards have been met. This matter could however be dealt with by way of a planning condition should the appeal be allowed.
11. The Council is concerned that the takeaway gives rise to an increase in litter in the area. Whilst this is a reasonable concern, again this is a matter which could be dealt with by way of a planning condition should the appeal be allowed.
12. To conclude on this matter, I find the change of use unacceptably harmful to the living conditions of nearby residents. Consequently, the appeal proposal conflicts with Local Plan Policy CL5 which is concerned with living conditions and includes that all development ensures good living conditions for occupants of new, existing and neighbouring buildings. The proposal also conflicts with the Framework, which in paragraph 17 includes that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

13. I have considered the policies of the Framework cited by the appellant in respect of determining applications and the comments by the appellant regarding the character and appearance of the area. These matters do not lead me to a different conclusion.

Conclusion

14. For the reasons above and having considered all matters raised, I conclude that the appeal should be dismissed.

Philip Lewis

INSPECTOR