The Planning Inspectorate

Appeal Decision

Site visit made on 6 December 2016

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/U5360/W/16/3157254
31-35 Pitfield Street, London N1 6HB

- 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.
- The appeal is made by Shaun Clarkson ID against the decision of the Council of the London Borough of Hackney.
- The application Ref 2016/1895, dated 13 May 2016, was refused by a notice dated 13 July 2016.
- The development proposed is for a change of use of part of the ground floor from existing A1 (Retail) Use to A3 (Café/Restaurant) Use.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the proposed change of use is permitted development, and if so, whether prior approval should be granted.

Reasons

3. The appeal premises are an attractive three-storey double fronted building, located in an area which is characterised by a mixture of both residential and commercial/retail premises. The upper floors of the building are in business use, and planning permission was granted in 2010 for the change of use of the ground floor from B1 (office) to A1 (retail). This permission is extant, and it remains the lawful use of the ground floor of the building.

4. The floor plan, as existing, submitted with the proposal[1] shows the ground floor of the building to comprise retail space (152 square metres (sqm)) and a further area of temporary retail floor space (65.3sqm). The remaining area is partitioned off to provide toilets, an office, loading bay and refuse area. The retail area is shown to include a kitchen, servery and an area laid out with tables and chairs. The floor plans, as proposed[2], show the temporary retail floor space reverting to a B1 use and 107 sqm of the existing retail floor space changing to A3 (restaurant /café) use. The remaining area would remain as A1 (retail). There is no subdivision shown between the areas to be

[1] 243 PITFIELD WORKSPACE 001 01
[2] 243 PITFIELD WORKSPACE 001 02 Rev A

used for retail and as a café/restaurant, and the only realistic access to the A3 and A1 areas would be through the front main entrance.

5. The Appellant Company considers the existing operations to fall within Class A1 of the Schedule to the Use Classes Order. Notwithstanding that there appeared to be an extensive menu, including hot food, with significant areas of seating provided throughout the area identified as in Class A1 retail use, no argument has been put to me that the proposed change of use to A3 has already taken place.

6. Although the area proposed to revert back to B1 use could be physically separated, it would still rely on access through areas directly associated with the proposed A3 use, or areas, such as the toilet area, serving that use. Indeed, in this case the ground floor of the premises, which forms a single planning unit, would comprise A1, A3 and B1 uses, and there would be no one primary overall use of this planning unit to which the other uses are ancillary. Paragraph 010 of Planning Practice Guidance[3] advises that where buildings are being used for different uses which fall into more than one Class, then the overall use of the building is regarded as a mixed use, which will normally be sui generis.

7. The Appellant Company contends that it is not necessary for the uses to be physically separated and that the purpose of the proposed A3 use would be to allow the existing operation to expand their menu and provide customers with the opportunity to sit down and have an alcoholic drink with their food, with extended opening hours. Nonetheless, on the evidence before me, it would appear that either the proposal represents the change of use of the retail area to A3 use, identified by the appellant as being 152sqm, or that the proposal would result in a mixed or sui generis use. In accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class C, a condition of permitted development is that the floor area should not exceed 150sqm. Nor does the Order provide for permitted development to include the change of use from A1 to a sui generis use.

Conclusion

8. For the reasons given above and taking into account all other matters raised, the proposed change of use would therefore not satisfy the requirements of Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 and therefore is not development permitted by it. I conclude that the appeal should be dismissed.

Elizabeth Pleasant

INSPECTOR

[3] ID 13-010-20140306