
Appeal Decision

Site visit made on 23 January 2017

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 14 February 2017

Appeal Ref: APP/H5390/W/16/3158311
64 Uxbridge Road, London W12 8LP

- 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 Adil Catering Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/01976/FUL, dated 29 April 2016, was refused by notice dated 30 June 2016.
 - The development proposed is a change of use of the basement and ground floor level from retail (Class A1) into a restaurant/takeaway (Use Class A3/A5); erection of a single storey rear extension with 2 No air conditioning units and associated ductwork mounted above the roof of the new single storey back addition; removal of the existing awning from the shopfront and associated external alterations.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are;
 - The effects of the proposal on the provision of retail uses and the vitality and viability of the area
 - The effects of the proposed air conditioning units at the rear of the property.

Reasons

The effects of the proposal on the provision of retail uses and the vitality and viability of the area

4. The appeal property is located within the Prime Retail Frontage within the Shepherd's Bush Town Centre. The Council's 'Development Management Local Plan' (DMLP) contains 2 specific relevant policies referred to by the main parties. Policy DM C1 relates to promoting vibrant and attractive town centres and states that support will be given to proposals that enhance the viability and vitality of centres and seek to ensure a range of shopping and other town centre uses. Policy DM C2 relates to managing uses in prime retail frontages

and is of a more detailed nature. Amongst other things, it states that in the Prime Retail Frontage changes from A1 to A2 or A3 uses may be permitted if, amongst other things: no more than 33% of the length of the prime frontage as a whole and no more than 33 % of the length of the frontage in an individual street block would be other than A1; no more than 33% of the length of an individual street block in the prime frontage would be A3-A5 uses. It also states that A4 and A5 uses will not be permitted in the Prime Retail Frontage. The policy usefully explains that in calculating these proportions of the frontage lengths, the lawful use and any unimplemented planning permission will be taken into account.

5. The justification for Policy DM C2 explains that for a town centre to operate successfully, it is necessary for shops to group together in order to enable shoppers to make comparisons, adding that the intrusion of non-retail uses on too large a scale can inhibit this process, reducing the attractiveness of a centre and damaging its trading position. Further, the justification recognises that other uses such as restaurants and banks can provide complementary services but a limit is necessary so that the retail function is not too diluted or dispersed. Whilst I fully appreciate that the justification does not form part of the policy, it is a useful explanation.
6. The appellant and the Council present slightly varying figures in relation to the number of units in various uses within the centre. The Council has acknowledged some inaccuracies in its original figures but also points out that some may be the result of unauthorised developments, although they have not sought to verify all of the appellant's figures. However, what is agreed is that the existing Prime Retail frontage has 54% in A1 use and this would reduce to 53% as a result of the proposal. In relation to the frontage of the relevant block, the Council states that the existing level of A1 use is 50% and this would reduce to 46% whilst the appellant states this to be 53% reducing to 49%. In relation to the length of the block in uses A3-A5, the Council states this to be 26%, rising to 29% and the appellant states 23% rising to 27%.
7. In my consideration, the proposal would be contrary to a number of criteria set out in Policy DM C2. Firstly, it involves use (in part) for A5 use which is specifically prevented in the Prime Retail Frontage. Secondly, it would involve a reduction of the percentage of A1 uses in the centre as a whole, where that percentage is already below the limit set in the policy. Thirdly, it would involve the reduction of A1 use in the block, which is already below the limit set in the policy. The appellant points out that, in terms of the percentage reductions, these are marginal and would not unduly affect the centre or frontage. In my view, the breach is already significant and any further reduction would be a clear breach of these aspects of the Policy DM C2. In any event, I do not agree that a reduction of 4% of the frontage where the Policy limit is 33% can be seen as marginal. In addition, even though the proposed use is only partly for A5 use, it is specifically prevented by Policy DM C2 in such a location.
8. The appellant sets out that the proposal would bring about a use which would generate considerable numbers of customers and it would provide an active frontage within the centre and frontage. However, Policy DM C2 aims to protect the retail function of the centre and in my view the proposal would fail to do this as a result of reducing the percentage of A1 frontage in the area. In this way, I consider that it would be contrary to Policy DM C1 also.

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004, states that planning decision must be made in accordance with the development plan, unless material considerations indicate otherwise. I have carefully considered the other material considerations referred to by the appellant, including the range of uses that are/would be provided in the area, but find that they are insufficient to outweigh the provisions of Policy DM C2 that I have set out above.

The effects of the proposed air conditioning units at the rear of the property

10. The appeal property is a 5 storey Edwardian building which is a Locally Listed Building of Merit and is within the Shepherd's Bush Conservation Area. The proposed rear extension would accommodate air-conditioning and extraction equipment. One of the Council's reasons for refusing the application relates to the effects that these would have on the character of the building/area, especially without any agreed means of screening. As part of the appeal, the appellant has submitted a suggested means of partly screening the equipment by increasing the height of the parapet wall on the rear extension.
11. The Council suggests that if I were to consider the screening as shown on the appellant's new drawing, or perhaps some other similar measure by means of a condition, that no interested local people would have had an opportunity to comment on this aspect of the development and so their interests may be prejudiced. The appellant notes that there have been no third party objections and no-one would be prejudiced by consideration/inclusion of the screening.
12. I have taken account of the principles established in the *Wheatcroft* case in deciding upon this matter. In my judgement, there is a likelihood that the additional height of the parapet wall as shown, or any other means of visual screening, would be something that close neighbours may wish to comment on. The site is bounded by other uses within the terrace including, from what I saw at my site visit, an outside seating area to one side. There are also residential units above this and neighbouring premises. In addition, the rear of the property is immediately adjacent to Sterne Street which is otherwise a residential road. Taking these matters and the statutory designation of the Conservation Area into account, I consider that the suggested alteration indicated by the appellant, or other means of screening, should be the subject of publicity and if I were to consider these matters as part of the appeal, interested parties would be prevented the opportunity to comment and so their interests would be prejudiced. Therefore, I shall not consider the new drawing as part of the appeal and I shall not consider imposing a condition requiring screening, for the same reason.
13. Having set that out, my view is that the proposed equipment on the rear extension would appear obtrusive when seen from Sterne Street and the surrounding properties. In this way it would fail to either preserve or enhance the character or appearance of the Conservation Area. Whilst I accept that the main interest of the building derives from its front elevation and being part of an attractive terrace facing the green, I consider that the harsh and immediate impression of the equipment would have some negative effect on the building itself. Therefore, the proposal is contrary to Policies BE1 of the Core Strategy, DM G3 and DM G7 of the DMLP.

Conclusions

14. Reference is made by the appellant to an appeal, said to be of a similar nature (Ref:APP/K5600/W/15/3130250), wherein, amongst other things, the Inspector adopted a flexible approach to achieve retail policy objectives. Having read the decision I would comment that, it's in a different Borough with different policy requirements, it related to a neighbourhood centre with a small number of units, the property had been vacant for a number of years and the centre had a number of vacant units. The Inspector went on to say that that, having balanced the conflict with policy against other matters, allowing the appeal was preferable to it remaining vacant. Many of these considerations have no direct relevance to the appeal before me and so I attach very limited weight to it in the determination of this appeal.
15. The appellant refers to the Council's Draft Replacement Local Plan and suggests that it is supportive of the proposal. However, they acknowledge in their statement that this should be given only limited weight in this appeal. I agree and I find this insufficient to outweigh the consideration brought about by the adopted plans.
16. I have concluded that the proposed change of use would involve development that would be contrary to Policies DM C1 and DM C2 of the DMLP. In addition, the proposed works at the rear would be contrary to other policies, as set out above. I have taken account of the other provisions of the development plan that are referred to but none outweighs the harm arising from the conflict with these policies. The appellant considers that the development represents sustainable development and that this should weigh in its favour. I have judged that the proposal would prejudice the retail function of the area and so would not fulfil the economic role of sustainability. Furthermore, by failing to have an acceptable effect on the conservation area and the building itself, it would not fulfil the environmental role. My conclusion is that the proposal does not represent sustainable development. Therefore, the appeal is dismissed.

S T Wood

INSPECTOR