
Appeal Decision

Site visit made on 6 February 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 1 March 2017

Appeal Ref: APP/M5450/W/16/3158851
57 Burnt Oak Broadway, Edgware HA8 5EP

- 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, Paragraph C.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr Costica Hrisca of Bucovina Ltd. against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/3032/16, dated 16 June 2016, was refused by notice dated 16 September 2016.
 - The development proposed is change of use from A1 retail shop to A3 restaurant and café use, installation of flue to rear elevation with associated internal and external alterations.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Paragraph C.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, for change of use from A1 retail shop to A3 restaurant and café use, installation of flue to rear elevation with associated internal and external alterations at 57 Burnt Oak Broadway, Edgware HA8 5EP in accordance with the terms of the application Ref P/3032/16, dated 16 June 2016, subject to the following conditions:
 - 1) The use hereby permitted shall only take place between the following hours: 0700 to 2300 Mondays to Sundays (including bank holidays).
 - 2) Notwithstanding the submitted specification, before the use hereby permitted is commenced, equipment to control the emission of fumes and smell from the premises, to include anti-vibration mountings and noise suppression where appropriate, shall be installed in accordance with a detailed scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.

Preliminary Matters

2. The application was made under Schedule 2, Part 3, Class C of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('the Order') (hereafter referred to as 'Class C'). This permits, amongst other things, development consisting of: (a) a change of use of a building from a use falling within Class A1(shops) of the Schedule to the Use
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Classes Order to a use falling within Class A3(restaurants and cafés) of the same order; and (b) building or other operations for the provision of facilities for ventilation and extraction (including the provision of an external flue) reasonably necessary to facilitate the change of use.

3. The scheme includes details of an external flue and therefore approval is being sought under Class C(a) and Class C(b). The Council dealt with the application on this understanding and I shall determine the appeal on the same basis.
4. The Council acknowledges that the proposal would fall within the limitations set out in Paragraph C.1¹. Based on the information before me I concur.
5. Permission under Class C is conditional upon the developer first applying to the local planning authority for a determination as to whether its prior approval would be required as to the matters set out in Paragraph C.2(1).

Main Issue

6. The Council has raised no objections in relation to noise impacts, odour impacts, storage and handling of waste in relation to the development, hours of opening, transport and highways impacts, or the siting, design or external appearance of the external flue. I have no reason to take a different view.
7. The main issue in this case is whether the proposal is acceptable in terms of its effect on the sustainability of the shopping area.

Reasons

8. The appeal premises form part of a primary shopping frontage within the Burnt Oak district centre, as defined in the Harrow Development Management Policies Local Plan (2013) (LP). Although described as vacant in the grounds of appeal, the unit was being occupied as a butcher's shop at the time of my visit.
9. Policy DM36 of the LP sets out the particular circumstances under which ground floor premises within primary shopping frontages will be permitted for cafés and restaurants and other specified uses. The Council has refused the application on the basis of its non-compliance with criterion (b). This states that the length of primary frontage in non-retail use at street level should not exceed 25% unless it can be demonstrated that the proposed use would make a significant contribution to the centre's vitality and viability.
10. According to the Council's own calculations, which are not being contested by the appellant, the proposal would result in the proportion of non-retail uses increasing to 32.81%. This would be in breach of the policy threshold. However, this does not automatically result in conflict with Policy DM36 as a whole. The policy construction needs to be read carefully. Although paragraph 8.11 of the supporting text might suggest otherwise, the policy itself sets out two alternative scenarios whereby a scheme may be deemed acceptable. Firstly, the situation where Policy DM39 applies – not applicable in this case. Secondly, where criteria (c), (d) and (e) are all met.
11. The appeal site is flanked on either side by A1 shop premises and therefore it would not result in a concentration of more than three unit frontages in non-retail use. Criterion (c) is therefore met. The Council does not dispute this.

¹ All paragraph references hereafter relate to paragraphs within Schedule 2, Part 3 of the Order.

12. Paragraph 8.12 of the LP explains that cafés and restaurants that are open during the day contribute to the creation of a lively and varied frontage. The proposed opening hours are 0700 to 2300 and the officer report accepts that the proposal would not create inactive frontage during the day. Criterion (d) is therefore met.
13. Although there are likely to be flats above this shopping parade it is within a district centre where food and drink uses are to be expected. The general activity associated with customers and deliveries would not give rise to any significant additional noise or disturbance for local residents, even having regard to the opening hours being proposed. A condition securing full details of the proposed ventilation and extraction system and its subsequent installation would ensure that there are no adverse impacts by reason of noise, vibration or odour.
14. The Environmental Health Officer is satisfied that the use would not be detrimental to the amenity of neighbouring occupiers. There is also no evidence to indicate that the proposal would be detrimental to highway safety. Criterion (e) is therefore met.
15. Criteria (c), (d) and (e) are all met and therefore I conclude that the proposal would be compliant with Policy DM36 read as a whole. Besides drawing attention to the arithmetic policy conflict with criterion (b) the Council has not provided any substantive evidence to explain the actual harm that might be caused to the retail function of the district centre in this specific case. I was able to see during my visit that the centre is a vibrant commercial area containing a wide range of national and local retailers that appear to be capable of meeting the everyday needs of shoppers. The A1 uses throughout the centre are interspersed with other town centre uses but the ratio of restaurants and cafés did not strike me as unduly excessive.
16. Accordingly, based on my observations I am not persuaded that the proposal would compromise the sustainability of the shopping area. Whilst development plan policy is not determinative in prior approval cases², the lack of conflict with Policy DM36 lends weight to my conclusion. The proposal would not prejudice the objectives of Policies 2.15 and 4.8 of the London Plan insofar as they seek to support retailing and sustain and enhance the vitality and viability of district centres.
17. Paragraph W(13) of the Order states that approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approvals. I share the Council's view that conditions are required to control opening hours and the installation of the extraction system, in the interests of protecting the living conditions of any residents above the premises and nearby. To improve precision and enforceability, and to prevent overlap with other statutory controls, I have amended the suggested wording to require the submission of a detailed scheme for the ventilation and extraction system for the local planning authority's written approval.
18. For the reasons given above I conclude that the appeal should succeed.

Robert Parker

INSPECTOR

² S38(6) of the Planning and Compulsory Purchase Act 2004 does not apply to prior approval cases since the principle of development is already established through permission being granted by The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.