
Appeal Decision

Site visit made on 21 February 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 13 March 2017

Appeal Ref: APP/H5390/W/16/3164709
397 North End Road, London SW6 1NR

- 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 Rajab Chamlakh against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/01652/FUL, dated 12 April 2016, was refused by notice dated 14 June 2016.
 - The development proposed is described as 'continued permitted use Application. Proposal for an A3 restaurant. A continued /ongoing use of premises as the property has been operating for 2 years.'
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor and basement of the premises from a shop (Class A1) to a restaurant (Class A3) at 397 North End Road, London SW6 1NR in accordance with the terms of the application, Ref 2016/01652/FUL, dated 12 April 2016, subject to the following condition:
 - 1) The use hereby permitted shall only take place between 12:00 hours and midnight on any day.

Procedural matter

2. The descriptions of the development that appear on the application form, decision notice and appeal form do not specify the use of the unit that the application seeks to change. They also include the word 'continued' which is not a description of development. As a result, they are inaccurate and unclear. I shall therefore use the following description in the determination of the appeal which remedies these issues, 'the change of use of the ground floor and basement of the premises from a shop (Class A1) to a restaurant (Class A3)'.

Main Issue

3. The main issue in this appeal is the effect of a change of use of the unit from retail (Class A1) to a restaurant (Class A3) on the viability and vitality of Fulham town centre.

Reasons

4. The National Planning Policy Framework ('the Framework') is an important material consideration. It advocates that planning policies should promote competitive town centre environments and set out policies for their management and growth. In so doing, amongst other matters, the Framework advises that policies should recognise that town centres are at the heart of communities and pursue policies to support their viability and vitality. Policy
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- DM C2 of the Hammersmith and Fulham Development Management Local Plan (DMLP), in seeking to ensure the viability and vitality of Fulham town centre by protecting retail (Class A1) use, is therefore consistent with the Framework.
5. The development for which permission has been sought has already been carried out. The appeal site is located within a prime retail frontage outside the core area of Fulham town centre where, subject to the passing of the three tests in policy DM C2 2(a) to (c), some non-retail use is supported.
 6. The view of the Council, expressed in its delegated report, is that the change of use is contrary to the first two of these tests for the following reasons. Firstly, because it has resulted in the length of non-Class A1 uses within the prime retail frontage as a whole exceeding 33%. Secondly, as it has resulted in the length of Class A3 to A5 uses in the street block exceeding 20%. However, no survey has been produced by the Council to substantiate these findings.
 7. The appellant's statement includes a retail frontage survey whose results have not been challenged by the Council. Based upon its results, within the prime retail frontage of Fulham as a whole, the length of non-Class A1 uses including the appeal site is less than 33%. On the basis of my site visit, I found the submitted survey to be sufficiently accurate to support this finding.
 8. In relation to the street block of seven units of similar width in which the appeal site is located, I note that Subway has been classified as an A1 unit. However, as it predominantly serves sandwiches and other cold food, I agree with this classification. Based upon the survey and what I saw, the only non-A1 use within this street block is the appeal property. As a result, the level of A3 to A5 use is also comfortably below the 20% policy limit. For the same reason, it is also below the 33% limit for non-Class A1 use in a street block. In relation to the test in policy DM C2 2(c), the appeal unit frontage at approximately 5m in width is comfortably within the 15m limit that applies.
 9. Reference has been made to the emerging Hammersmith and Fulham Local Plan. Policy TL2 proposes to raise the limit for non-retail use within the prime retail frontage from 33% to 40% and remove the 20% limit for Class A3 to A5 use within a street block. Nonetheless, the extent of objections to such a change in policy and whether such objections have been resolved is not apparent. Moreover, the plan has not been subject to public examination. As a result, in accordance with paragraph 216 of the Framework, I attach limited weight to this policy.
 10. Taking all these matters into account, I therefore conclude that the change of use of No 397 from retail (Class A1) to a restaurant (Class A3) complies with policy DM C2 of the DMLP and would not adversely affect the viability or vitality of Fulham town centre.

Other matters

11. A nearby resident has complained of odour and noise from the extraction ventilation serving the premises and litter. Nevertheless, as the Council notes, such issues can be addressed by the powers that the authority has to investigate and resolve nuisance complaints. In terms of litter, I note that the Council does not have any objections in this regard, and I did not see any litter associated with the business on North End Road or neighbouring residential side streets. Reference to these matters therefore has not altered my conclusions in relation to this appeal.

Conditions

12. To protect neighbours from noise and disturbance associated with operation of the restaurant late into the night, opening hours need to be limited. I have required this matter by condition, revising the Council's suggested condition where necessary to better reflect the requirements of Planning Practice Guidance.
13. A condition has been suggested which states that no alterations shall be carried out the external appearance of the building without planning permission having first being obtained in order to protect the character and appearance of the area. However, should such development occur, given the control that exists in relation to development that has been carried out without planning permission, I consider such a condition is unnecessary.

Conclusion

14. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be allowed.

Ian Radcliffe

Inspector