
Appeal Decision

Site visit made on 20 February 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 16th March 2017

Appeal Ref: APP/U5360/W/16/3157085
224 Graham Road, Hackney, London E8 1BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Clementine Gardens Property Ltd against the Council of the London Borough of Hackney.
 - The application Ref 2015/3930, is dated 30 October 2015.
 - The development proposed is described on the application form as the change of use of ground floor and basement from retail unit (A1 use) to Restaurant (A3 use) with opening hours 12:00 to 02:00 Thursday to Saturday and 12:00 to 00:00 Sunday to Wednesday and bank holidays.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from A1 (Retail) to A3 (Restaurant) and an extraction system to rear at 224 Graham Road, Hackney, London E8 1BP in accordance with the terms of the application, Ref 2015/3930, dated 30 October 2015, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Proposed ground floor plan; Proposed basement floor plan; and the Proposed rear elevation layout plan.
 - 3) The use hereby permitted shall only take place between 10:00 and 23:00 each day, and no customers shall be on the premises outside of these hours.
 - 4) The odour control and extraction system shall not be in operation outside of the hours of 10:00 and 23:00 and shall be maintained and cleaned at least every six months unless otherwise first agreed in writing by the local planning authority.

Application for costs

2. An application for costs was made by Clementine Gardens Property Ltd against Council of the London Borough of Hackney. This application is the subject of a separate Decision.
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Procedural Matter

3. The application form describes the development as the "change of use of ground floor and basement from retail unit (A1 use) to Restaurant (A3 use) with opening hours 12:00 to 02:00 Thursday to Saturday and 12:00 to 00:00 Sunday to Wednesday and bank holidays". However, the Council altered the description of development to the "Change of use from A1 (Retail) to A3 (Restaurant) extraction system to rear". This revised description is also used on the Appellants appeal form and given this I have determined the appeal on this basis.

Main Issue

4. The main issue is the effect of the development on the living conditions of the occupiers of the surrounding residential properties.

Reasons

5. The appeal development relates to the basement and ground floor of 224 Graham Road together with the installation of an external flue at the rear. There is a residential use on the upper floors of No 224, together with residential uses on the upper floors of neighbouring buildings and to the rear of the site.
6. The operation of the extraction equipment, together with noise from the comings and goings of the premises has the potential to affect the living conditions of the occupants of the nearby residential properties.
7. The application form indicates that the premises would close at midnight on Sundays to Wednesdays and on Thursday to Saturdays would remain open until 02:00 the following morning. However, given the residential uses in the area (including the ones on the upper floors of the appeal building) these hours of operation would cause an unacceptable level of noise and disturbance very late at night to the occupiers of these residential properties.
8. From the evidence before me, there has been a recent prior approval given for the change of use of the premises to a restaurant and this has opening hours restricted to between 10:00 and 23:00 each day. I consider that these hours of operation are reasonable and would mitigate the harm caused by very late opening hours.
9. I have also had regard to the potential for increased litter and anti-social behaviour. However, given that the proposed use is a restaurant, and not a hot food takeaway, this would be unlikely to result in litter being discarded in the street, nor would it be likely to result in an increase in anti-social behaviour.
10. For the above reasons the development would not harm the living conditions of the occupiers of nearby residential properties and would accord with Policies 7.15 and 7.6 of the London Plan (2015), Policy CS 15 of the Hackney Local Development Framework Core Strategy 2010 and Policies DM1, DM2 and DM11 of the Hackney Development Management Local Plan 2015 which amongst other things seek to protect the amenity of the occupiers of existing residential properties.

Other matters

11. I have also had regard to the other matters raised in the representations including highway safety, the amount of eating establishments, the loss of the retail premises and public health matters.
12. Outside of the appeal site is a reasonable width pavement with a bus stop nearby. At the time of my site visit there were some people congregating on the pavement nearby, but this did not present any significant pedestrian flow issues. Whilst I am conscious that my site visit was only a snapshot of the pedestrian flows, I consider that the use of the premises as a restaurant would not give rise to any material increase in highway or pedestrian danger. Whilst there is no on street parking on Graham Road in the vicinity of the site, I am conscious that this applies to the existing commercial use of the premises as well. Given the location of the site, which has good public transport links, the lack of on-street parking on Graham Road does not lead to any transportation concerns.
13. In respect of the loss of a retail unit, and the amount of eating establishments, I note that the Council have not raised any objections to these matters. On the evidence before me, the loss of the former launderette premises would not lead to harm to the retailing activities in this part of the Hackney, nor would the introduction of a restaurant lead to an over concentration of such uses.
14. Concern has also been raised over public health matters, such as the potential for vermin. However, this matter is controlled via other legislation and I give this only very limited weight.
15. The site is also close to the Town Hall Square Conservation Area. Given the distance to the Conservation Area, the nature of the development and the intervening buildings I consider that the development would not harm the setting of the Conservation Area.

Conditions

16. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. A condition restricting the hours of operation of the premises is also required to protect the living conditions of the occupiers of nearby residential properties.
17. The suggested condition regarding noise levels below the background level is not precise or enforceable as the background noise level is not defined and would be likely to be variable over a period of time. However, in order to protect the living conditions of the occupiers of nearby residential properties the use of the extraction equipment should also be limited to the hours of operation of the restaurant and that it should be maintained and cleaned at regular intervals.

Conclusion

18. Taking all matters into consideration, the appeal should be allowed.

Chris Forrett

INSPECTOR