The Planning Inspectorate

Appeal Decision

Site visit made on 28 March 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 3 May 2017

Appeal Ref: APP/A5840/W/16/3165823
95 Elgar Street, London SE16 7QW

- 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 San Do against the decision of the Council of the London Borough of Southwark.
- The application Ref 16/AP/3571, dated 24 August 2016, was refused by notice dated 21 November 2016.
- The development proposed is a change of use from retail (Class A1) to restaurant and cafe (Class A3) and hot food take away (Class A5) and installation of an extraction duct.

Decision

1. The appeal is dismissed.

Preliminary matters

2. For completeness, I have used the description of development contained within the Council's decision notice.

Main Issues

3. The main issues are:

    - the effect of the change of use on the vitality and viability of the shops within the street; and
    - the effect of the proposed restaurant and takeaway on the living conditions of neighbouring residents, with particular reference to noise and odour.

Reasons

Vitality and viability

4. The appeal site is one of five ground floor commercial properties in the street. It is currently vacant and is situated adjacent to a Class A1 shop. The site is separated by a short distance to the other three units which are occupied by a beauty salon and two takeaways. It is explained that the premises was last used as a bakery/kitchen but has been vacant since April 2016. The appeal proposal seeks planning permission to change its use from retail (Class A1) to restaurant and cafe (Class A3) and hot food take away (Class A5).

5. Policy 1.10 of the Southwark Plan (SP) states that outside town centres, local centres and protected shopping frontages, such development will only be

permitted when the applicant can demonstrate that a number of criteria are met. Dealing with each in turn, for the reasons explained below, it has not been demonstrated that the use would not materially harm the amenities of surrounding occupiers. Accordingly, the proposal would conflict with the first criteria of the policy.

6. In terms of the second criteria, notwithstanding that it appears that the neighbouring unit is in use for Class A1 purposes, the appellant has provided evidence that there are other retail units within 600m of the site. The proposal would not therefore result in the loss of a use that is the only one of its kind within a 600m radius. The use of a currently vacant unit would also enhance the vitality of the existing parade, and would increase the offer available to local residents.

7. Whilst I acknowledge that it is the intention of the appellant to provide an up market family café, the permission would run with the land and therefore any future operators may well change the focus of the business under Class A3 or A5. As such there is potential that the proposal would result in three out of the five commercial units being used for takeaways. Such a proliferation could in turn adversely affect the viability of this parade, and therefore result in conflict with the second criteria of SP Policy 1.10.

8. Turning to the third criteria, although the premises will now have been vacant for 12 months, this would not have been the case at the time of making the appeal and I have no evidence of sufficient effort to let it. I cannot therefore be certain that the proposal would not result in the loss of a viable Class A1 unit.

9. The appeal site falls within the demise of the Canada Water Area Action Plan (CWAAP), Policy 4 of which states that proposals for small scale shopping, cafes and restaurants will be permitted outside the town centre. This is inconsistent with CS Strategic Policy 3 of the Core Strategy (CS) which seeks to protect small scale retail facilities outside town and local centres to help meet the needs of Southwark's population. The appellant considers that the Council has given insufficient weight to the CWAAP, stating that it is more up to date than the CS and that the appeal proposal is compliant with Policy 4. Whilst I agree with the latter, the CWAAP makes clear that it forms one of several planning documents which make up the local plan documents and highlights that the most important document is the CS. As the proposal would result in the loss of a small scale retail facility, it would be in conflict with CS Strategic Policy 3.

10. Moreover, for the reasons I have explained, the proposal would also conflict with SP Policy 1.10 and section 2 of the National Planning Policy Framework (the Framework).

Living conditions

11. The appeal site is situated on the ground floor with three storeys of flatted accommodation above. The proposed plans show that the main ventilation and extraction system would terminate at the rear of the premises, 115cm below a residential window. Whilst I appreciate that in some cases the precise details of how odours are to be dealt with can be left to a condition, this requires a reasonable certainty that there is a viable and effective means of controlling the same without giving rise to unacceptable noise.

12. In this case however, a number of the flats above also benefit from balconies, which appear to be the occupants' sole associated external amenity space. This is a sensitive relationship and I am not persuaded that given the proximity that there is a reasonable certainty that a viable and effective solution would be available. Consequently, it would not be reasonable to attempt to deal with this matter by condition. This is not to suggest that the appellant would not comply with any condition relating to fume extraction; my concern is that in the circumstances of this case there is a significant risk that neighbours could be subjected to unacceptable levels of odour and/or noise which would adversely affect the living conditions they currently enjoy. My findings on this matter are consistent with the consultation response from the Council's Environmental Protection Team.

13. The appellant asserts that the other establishments in the area enjoy similar relationships and that there is nothing to suggest that a suitable scheme could not be devised to the satisfaction of the Council. Evidence has also been provided of planning permission being granted in 1999 for a restaurant at No 93 Elgar Street, where the ventilation of that premises was dealt with by way of condition. However, I note from the objections received that local residents already experience odour from the existing takeaway establishments in close proximity to the appeal proposal. There is therefore potential for a cumulative effect, which reinforces my view that in the circumstances of the appeal proposal, it would not be appropriate to defer to a condition.

14. Accordingly, I conclude on this main issue that it has not been demonstrated that the proposed restaurant and takeaway would not unacceptably affect the living conditions of neighbouring residents, in terms of noise and odour, contrary to SP Polices 3.1 and 3.2 and CS Policy 13. These state, amongst other matters, that planning permission will not be granted where it would cause loss of amenity, including disturbance from noise, to present and future occupiers in the surrounding area.

15. Given the significant potential for harm to the living conditions of neighbouring properties, the proposal would not meet the social dimension of sustainable development. Accordingly, the proposal would not amount to sustainable development, having regard to the advice at paragraphs 7 of the Framework, and as such no such presumption, as anticipated by paragraph 14 of the Framework, applies.

16. Although the Council's decision notice also refers to conflict with section 7 of the Framework, this relates to the requirement for good design, which is not directly relevant to this main issue.

Conclusion

17. For these reasons, and having taken all other matters raised into account, I conclude that the appeal should fail.

Richard S Jones

INSPECTOR