
Appeal Decision

Site visit made on 12 April 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 22 May 2017

Appeal Ref: APP/G5750/C/16/3160982

Land at 7 Woodgrange Road, Forest Gate, London E7 8BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Kalipten Hasan against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice was issued on 16 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a spa and massage physical injuries parlour.
 - The requirements of the notice are:
 1. Cease the use of the property as a spa and massage physical injuries parlour.
 2. Remove from the property all fixtures and fittings that solely facilitate the use as a massage parlour.
 3. Remove all resulting debris from the site.
 - The period for compliance with the requirements is one month from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The enforcement notice is corrected by replacing "to" in the description of the breach of control with "from Class A1 retail use to a sui generis use as".
 2. Subject to this correction the appeal is allowed and the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the change of use from Class A1 retail use to a sui generis use as a spa and massage physical injuries parlour at 7 Woodgrange Road, Forest Gate, London E7 8BA referred to in the notice, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the existing front elevation plan and existing ground floor plan contained within drawing sd007/PL01 Rev B.
 - 2) Notwithstanding condition 1) unless within three months of the date of this decision a scheme for the redesign of the vestibule entrance to the ground floor sui generis unit hereby permitted, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto
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the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

- 3) If no scheme in accordance with condition 2) is approved within three months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.
- 4) Upon implementation of the approved scheme specified in condition 2) that scheme shall thereafter be retained in use.
- 5) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in conditions 2) and 3), the operation of the time limits specified therein will be suspended until that legal challenge has been finally determined.
- 6) The glass contained within the door and window of the frontage of the ground floor sui generis unit hereby permitted shall not be altered, including by way of further painting, tinting or other obscuring thereof and no furniture or fixings that may obscure visibility shall be placed within the entrance vestibule.
- 7) The ground floor sui generis commercial unit hereby permitted shall not be operated or open to customers outside the following times:
 - i. 0900 to 2300 Monday to Friday; and
 - ii. 0900 to 2330 Saturdays and Sundays.

Preliminary matter

3. The design and access statement for the refused application to retain the current use, Ref 16/00983/COU, explains the activities being carried on as sports injuries and general therapy massage, as well as spa and beauty treatment. It was pointed out on my visit that there was no spa equipment, however the fascia sign displays the wording "Wood Grange Spa". The existing plan of the internal layout of the ground floor, sd007/PL01 Rev B corresponds to what I saw which includes a sauna and steam room and several rooms that could be used for massage or other health and well-being treatments.
4. I consider that the spa and massage physical injuries parlour referred to in the notice is a sui generis use that extends beyond a Class D1 health services use. For the avoidance of doubt I will correct the allegation of the breach accordingly using powers available to me under s176(a) of the Act.

Ground (a) and the deemed application for planning permission

5. The main issue on this ground is the effect of the change of use on the retail character, function and vibrancy of the district shopping centre and the Forest Gate Town Centre Conservation Area (CA). In considering whether to grant permission in a conservation area there is a duty to pay special attention to the desirability of preserving or enhancing its character or appearance.
6. 7 Woodgrange Road is in a secondary shopping frontage within the CA. The area includes a mix of residential, small scale retail, and community uses. The parade has mainly retail and commercial uses on the ground floor with flats

- above. The shops and other ground floor units project from the main buildings to the adjacent footway where I observed a strong pedestrian activity.
7. The Council's objection is that the nature of the use provides a frontage that is devoid of activity and permeability. CS Policy SP6 seeks to ensure that town and local centres are vibrant, vital and valued as components of local neighbourhoods that respond to local character and the street scene.
 8. Several non-retail units in the general vicinity of the appeal site on Woodgrange Road have frontages that are not as permeable as many retail shopfronts, through which displays of goods and internal activity can be seen. For example nearby there are betting shops, solicitors' offices, a health centre and premises offering counselling and advice services. A few units associated with personal health and welfare may have a more discreet presence, with waiting areas screened from views within the street. Generally however the immediate threshold within such premises is of a reasonable depth.
 9. The ground floor front elevation of No 7 consists of an aluminium framed shop front with an entrance door, behind which is a narrow entrance vestibule contained by a further wall and internal door which leads to the waiting area. The fascia sign set between decorative consoles is of a suitable design and the illustrated advertisements on the glass front for various types of massage and aromatherapy treatments add visual interest to the frontage. Provided that the glass is not further obscured, I consider that the front door and window areas preserve the character of the established commercial frontages in the CA.
 10. A concerning factor however is the very shallow depth at which the new wall has separated the entrance from the rest of the premises. This creates an undesirable visual barrier. The appellant accepts that the Council's concerns could met by a requirement for a different shop front which was not devoid of activity or permeability. I consider that in the circumstances a condition could ensure the vestibule was redesigned to improve the degree of permeability.
 11. Several policies cited by the Council are said to be relevant but it is not explained how the principle of the use conflicts with them. Some policies discourage the loss of retail uses, for example the Newham Core Strategy 2012 (CS) Policy INF5 highlights the importance of Forest Gate centre in maintaining its retail function for community needs. However it is not explained how the loss of a retail unit in this location has unacceptably undermined the vitality or viability of the secondary frontage or the wider shopping centre.
 12. No party has provided a breakdown of the proportion or relative locations of retail and non-retail uses in the frontage or the wider centre. The units to either side of No 7 are a supermarket and a Subway. Generally there appears to be a mix of retail uses and other commercial services offered within the area and I did not see, nor was I made aware of, vacant premises in the parade.
 13. The use provides employment but the activity generated is limited to the hours of use which are currently in the afternoons and evenings. The former retail unit was vacant for 18 months without a buyer and although it is unclear to what extent the premises were actively marketed the Council does not suggest that any policies for the marketing of vacant retail units have been breached. If the notice were upheld the premises would have to remain empty until market conditions made them attractive again to retailers. Rather than wait

for that change, on balance it would be preferable to allow a non-retail use that would have limited but more immediate benefits for the viability of the centre.

14. The Council points to an appeal decision APP/X5210/W/15/3140916 that relates to dismissal of an appeal concerning a change of use from A1 retail to a betting shop. Beyond illustrating that loss of an active frontage is capable of being a determinative issue, it is not explained how the circumstances of that appeal are similar to the current appeal and so it is of limited assistance here.
15. I conclude that subject to imposing suitable conditions which would secure that its frontage is active and permeable, the change in use of the site to a spa and massage physical injuries parlour would maintain the retail character, function and vibrancy of the Forest Gate town centre and CA. The use accords with Policies 2.15, 4.7, 4.8, 7.1, 7.4, 7.6 and 7.8 of the London Plan, in particular the aim to create a positive relationship with street level activity so that people feel comfortable with their surroundings. It would also comply with CS Policies S1, S6, SP1, SP3, SP5, SP6 and INF5 in that among other matters it would not adversely affect the retail function of the centre. The policies are consistent with the National Planning Policy Framework, especially sections 7 and 12 which seek development to be of a high quality design, whilst taking account of the impact of development on the significance of designated heritage assets.

Conditions

16. I have considered conditions in the light of the advice in the Planning Practice Guidance and bearing in mind that use as a sui generis unit would be new and not ruled by any previous consent. A condition is needed for the avoidance of doubt to confine the use to the ground floor area shown on drawing sd007/PL01 Rev B. Further, conditions to ensure that the vestibule is designed and maintained so as to contribute to an active frontage are highly desirable. The purpose of these conditions is to require the appellant to comply with a strict timetable for dealing with the alterations to the vestibule which need to be addressed in order to make the development acceptable. The condition is drafted in this way as it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of these matters where development has taken place. The use of the site may therefore only continue if the appellant complies with each one of a series of requirements.
17. To prevent disturbance to adjoining occupiers due to noise occurring late at night or early in the morning a condition to control the hours when the premises are open is necessary and reasonable. However there is no planning argument that the current hours of use lead to anti-social behaviour or other disturbance. The Council's proposed condition would not reflect current hours so I will amend it to allow the premises to stay open until 2330 at weekends.

Conclusion

18. For the reasons given above I conclude that the appeal on ground (a) should succeed and that the enforcement notice should be quashed. Therefore I do not need to consider the appeal on grounds (f) or (g) any further.

Grahame Kean

INSPECTOR