

Appeal Decision

Site visit made on 22 May 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 08 June 2017

Appeal Ref: APP/V5570/W/17/3170464
332 Essex Road, Islington, London N1 3PB

- 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 Monir Alghazali (Palmera Oasis) against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2628/FUL, dated 4 November 2016, was refused by notice dated 6 February 2017.
 - The development proposed is a change of use from existing restaurant A3 to mixed use restaurant with takeaways A3 and A5.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from existing restaurant A3 to mixed use restaurant with takeaways A3 and A5 at 332 Essex Road, Islington, London N1 3PB in accordance with the terms of the application, Ref P2016/2628/FUL, dated 4 November 2016, 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 and details: Location Plan of n13pb; Existing and proposed plans- DRAWING NUM A-01; Planning Statement dated 11 December 2016; Hot Food Takeaway Management and Operating Strategy dated 16 January 2017; Planning for Health Self-assessment
 - 3) The use hereby permitted shall only take place between the following hours:
1100 – Midnight Mondays-Sundays

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupants of adjacent residential properties in terms of noise and disturbance.
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Reasons

Site, surroundings and proposed development

3. Set within a row of similar buildings, the appeal property comprises the lower floors of a building the foremost part of which is of one storey and addresses Essex Road, with its first and second storeys set considerably back from the street frontage and including residential uses. There is a mix of commercial uses within the row's single-storey elements that address Essex Road, including a greengrocer, dry cleaner, takeaways, restaurants, a pharmacy and a treatment centre. The row is bookended by more substantial buildings one a public house, and the other a mixed use building with a showroom at ground floor. Across the road from the block there are mixed use buildings including two 'metro' superstores at ground floor with residential uses above.
4. At the time of my visit, the area of Essex Road appeared to be a vibrant and busy thoroughfare. Whilst the appeal property sits within a designated Local Shopping Area for the purposes of the development plan, I saw that quieter streets of a predominantly residential character branch off from Essex Road. The proposed development is as described in the banner heading above.

Living Conditions

5. I saw onsite that the appeal property is close to residential uses. However, these residential properties are situated in an area with a clear mix of uses including several that are operative late into the night, including the pub, the two superstores, and other restaurants and takeaways within the block. Moreover, the existing use of the appeal premises as a restaurant is one that is likely to lead to opening and activity at night. Furthermore, I saw that Essex Road is a bus route for a number of different services, with a bus stop immediately to the front of the appeal property, and this is another matter that would add to the noise environment and activity in its environs.
6. Due to these uses and activities in the immediate surroundings of the appeal property combined with its current use I consider that the existing noise environment is one within which the proposed development would readily assimilate. Moreover, given the mixed nature of the commercial uses in the block within which the appeal site sits, and the dispersed nature of the take-aways within it, I consider that the proposed development would not lead to an accumulation of such uses. As a consequence, the proposed use would not, individually or cumulatively with other uses in the block, lead to any materially harmful effects to the living conditions of the occupants of adjacent residential properties.
7. In arriving at this view, I am mindful that delivery drivers and others accessing food from the appeal premises may need to use quieter residential side streets from time-to-time, and the effects of this could be harmful if the proposed use operated into the early hours of the morning, as suggested in the planning application form. People congregating around the appeal property combined with noise escape from the premises from additional openings of the door could also cause material harm to the living conditions of the occupiers of adjacent properties in the early hours of the morning. However, I consider that these activities would not cause a material level of harm at hours when the street and uses thereon were more generally active.

8. For these reasons, I consider that a condition limiting the hours of the proposed use to those suggested by the Council, rather than those outlined in the application form should be attached to ensure that the appeal scheme would avoid additional noise and disturbance at hours when a generally quieter noise environment could be expected. In reaching this conclusion, I am conscious of references to noise complaints in connection with the appeal property in the Council's Officer Report, and the appeal property's lack of an existing premises licence for the hours as applied for.
9. Accordingly for the reasons given above, I conclude that the proposed development would avoid causing material harm to the living conditions of the occupants of adjacent residential properties. As a consequence, I can find no conflict with Policy CS14 of Islington's Core Strategy (adopted February 2011); or Policy DM4.2B and DM4.3A of Islington's Development Management Policies (adopted June 2013); or Islington's Location and Concentration of Uses Supplementary Planning Document (adopted April 2016). Taken together the policies and documents seek to ensure, amongst other things, that hot food takeaway developments avoid negative cumulative impacts and unacceptable disturbance.

Other Matter

10. The appeal property is within the East Canonbury Conservation Area. I am therefore mindful of my duty established in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In this regard, as the proposed development includes no material alteration of the exterior of the building, I conclude that it would preserve the character and appearance of the Conservation Area.

Conditions

11. I have assessed the list of suggested conditions supplied by the Council against the tests given in paragraph 206 of the National Planning Policy Framework (the Framework). This states that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have amended the wording of the suggested conditions where necessary to ensure clarity and precision.
12. In the interests of certainty I consider it necessary to attach a condition which specifies the approved plans and details.
13. Whilst I note that the appellant considers later opening times should be allowed, for the reasons given above, I consider that the nature of the surrounding area would mean a generally quieter noise environment in the early morning hours. I consider therefore that it is reasonable to attach a condition limiting the times when the use can operate to ensure that materially harmful effects to the residential amenity of the occupants of adjacent and adjoining properties would be avoided. As a consequence, the condition I have attached is clearly necessary in this case.

Conclusion

14. The proposed development would not conflict with the development plan insofar as the policies that have been drawn to my attention are concerned.

Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR