
Appeal Decision

Site visit made on 2 May 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 23rd June 2017

Appeal Ref: APP/X5990/W/17/3168220

Unit 4 Bishop's Quarters, Bishop's Bridge Road, London W2 6ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by BMO Developments Ltd. against the decision of City of Westminster Council.
- The application Ref 16/09313/FULL, dated 28 September 2016, was refused by notice dated 21 December 2016.
- The application sought planning permission for the reconfiguration of the ground floor and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three retail shop units (Class A1) and two restaurant/ café units (Class A3) at ground floor level, extension to Porchester Road and Bishop's Bridge Road elevations to infill existing colonnade and create entrance lobby to supermarket, infilling of basement vents to Bishop's Bridge Road, alterations to street facades, amendments to rear service yard, installation of mechanical plant and associated public realm works without complying with conditions attached to planning permission Ref 13/12442/FULL, dated 9 October 2014.
- The conditions in dispute are Nos 16 and 17 which state that:
 - 16. *'You must use Units 3 and 5 (as annotated on drawing 17 Rev.13) only for restaurant/ cafe use within Class A3 of the Town and Country Planning (Use Classes) Order 1987 as amended April 2005 (or any equivalent class in any order that may replace it).'*
 - 17. *'You must use Units 1, 2, 4 and 6 (as annotated on drawing 17 Rev.13) only for retail shop use within Class A1 of the Town and Country Planning (Use Classes) Order 1987 as amended April 2005 (or any equivalent class in any order that may replace it).'*
- The reasons given for the conditions are:
 - 16. *'To maintain the character, function and vitality of the Core Frontage and Secondary Frontage of Porchester Road Local Centre in accordance with Policies SS7, SS11 and TACE9 in our Unitary Development Plan that we adopted in January 2007 and Policies S21 and S24 in Westminster's City Plan: Strategic Policies that we adopted in January 2013.'*
 - 17. *'To maintain the character, function and vitality of the Core Frontage and Secondary Frontage of Porchester Road Local Centre in accordance with Policies SS7, SS11 and TACE9 in our Unitary Development Plan that we adopted in January 2007 and Policies S21 and S24 in Westminster's City Plan: Strategic Policies that we adopted in January 2013.'*

Decision

1. The appeal is allowed and planning permission is granted for the reconfiguration of the ground floor and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three retail shop units (Class A1) and two restaurant/ café units (Class A3) at ground floor

level, extension to Porchester Road and Bishop's Bridge Road elevations to infill existing colonnade and create entrance lobby to supermarket, infilling of basement vents to Bishop's Bridge Road, alterations to street facades, amendments to rear service yard, installation of mechanical plant and associated public realm works, dated 9 October 2014 at Unit 4 Bishop's Quarters, Bishop's Bridge Road, London W2 6ES in accordance with the application Ref 16/09313/FULL made on the 28 September 2016 without complying with conditions Nos 16 and 17 set out in planning permission Ref 13/12442/FULL granted on 9 October 2014 by the City of Westminster Council, but otherwise subject to the conditions contained within the Schedule attached.

Main Issue

2. The main issue is the whether the conditions are reasonable and necessary in the interests of maintaining the vitality and viability of the Porchester Road Local Centre.

Procedural Matters

3. A Deed of Variation has been submitted with the appeal to vary the S106 agreement associated with the approved scheme¹. I will discuss this matter later in my decision.

Reasons

4. The appeal proposal seeks to amalgamate units 4 and 5. This would involve the removal of the dividing wall between the two units as indicated on the approved plans for planning permission 13/12442/FULL. The approved use for unit 4 is A1 and unit 5 is A3. There would be no change in the proportion of floorspace for each of the approved A1 and A3 uses for these units, granted under planning permission 13/12442/FULL.
5. In order to facilitate this, the appellant seeks to vary condition 16 to read, 'You must use unit 3 (as annotated on Proposed Ground Floor Layout: AAYA-180-I-101) only for restaurant/ café use within Class A3 of the Town and Country Planning (Use Classes) Order 1987 as amended April 2005 (or any equivalent class in any order that may replace it)'. It also seeks to vary condition 17 to read, 'You must use Units 1, 2 and 5 (as annotated on Proposed Ground Floor Layout: AAYA-180-I-101) only for retail shop use within Class A1 of the Town and Country Planning (Use Classes) order 1987 as amended April 2005 (or for any equivalent class in any order that may replace it'.
6. Furthermore, in order to safeguard the already approved use of unit 4 and ensure its intended use is not lost, the appellant seeks to add a new condition to read, 'Unit 4 will be used for both Use Class A1 and Use Class A3 as designated on the drawing Proposed Ground Floor Layout: AAYA-180-I-101. The location and amount of both use classes (A1 and A3) will not deviate from the drawing Existing Ground Floor Plan at 1:100: AAYA-180-I-102. Every time the operator changes the LPA must be notified in writing to ensure the floorspaces of A1 and A3 are retained as denotated'.

¹ LPA Ref 13/12442/FULL

7. Saved Policy SS7 of the City of Westminster Unitary Development Plan (UDP) 2007 seeks to protect Local Shopping Centres. It goes on to set four requirements to satisfy when considering the loss of an A1 use. Furthermore, Policy S21 of the Westminster City Plan (WCP) seeks to retain existing A1 retail throughout Westminster.
8. The proposal would result in units 4 and 5 being occupied by a single business. However, there would be two distinct, separate areas; the retail area in unit 4 and the restaurant area occupying unit 5. The only difference to that which is already approved would be the removal of a dividing wall between the two units and therefore the ability to move freely between them.
9. In addition to the internal alterations and functions, from the outside, the two units would have their own individual entrances off Bishops Bridge Road. I note that there may not be window displays. However, the display units and layout of unit 4 would clearly be identified as a retail unit. In any event, a window display strategy could be sought by way of an appropriately worded condition ensuring that it has a suitable display.
10. The Council have referred to the limited range of goods on offer in the retail unit and questions its long term commercial viability. However, it seems to me that this is no different than many other specialist goods businesses and whether or not the business succeeds is not a matter which has had any bearing on my consideration of the planning merits of the proposal.
11. The proposal would retain the already approved A1 floorspace, and an appropriately worded condition could secure as such. Furthermore, the unit would retain the appearance of a retail unit. Whilst it would be linked with the A3 use, it would be clearly distinguishable.
12. Therefore, I do not consider that the proposal would reduce the range of local convenience shops or undermine the balance of A1 to non-A1 uses within the centre. In addition, it would not result in more than three non-A1 units located consecutively in a frontage.
13. There is some conflict with Saved policy SS7 and Policy S21, in that the proposal would technically result in the loss of an A1 unit. However, the retained retail function and the distinguishable frontages of the two elements of the mixed use would not significantly harm the vitality or viability of the Porchester Road Local Centre. As such, I do not find that it conflicts with the thrust of these policies.

Other Matters

14. I have had regard to the planning permission referred to me by the Council regarding unit 2. However, there is no evidence before me of the layout of this proposed scheme and it would appear that it was contained within a single unit, whereas the appeal proposal does not alter the approved A1/A3 floor space.
15. The Deed of Variation signed and dated 9 June 2017 supplements the original s106 agreement and ensures that it remains in force should the appeal be successful. The planning obligations in the s106 agreement have to meet the tests in the Community Infrastructure Levy Regulations (CIL) Regulation 122 in order for them to be taken into account in my determination of this appeal. These tests are that the obligation is necessary to make the development

acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development. These tests are also identical to those set out in paragraph 204 of the Framework. From the evidence before me, I am satisfied that the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework.

16. The appeal site lies within the Bayswater Conservation Area and is close to the Queensway Conservation Area and Hallfield Estate Conservation Area. The Council have raised no objection to the proposal in respect of whether it preserves or enhances the character or appearance of the Conservation Areas. As the proposal would not involve any external alterations, I find that it would have a neutral effect on the significance of the Conservation Areas and therefore would preserve their character and appearance.

Conditions

17. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Section 73 allows the decision maker to attach new conditions, to not attach conditions that were previously imposed or to attach modified versions of them. In this case the decision relates to two separate conditions.
18. I have considered both of these conditions and find that their suggested varied wording would not harm the vitality or viability of the Porchester Road Local Centre. I note that the Council's suggested varied wording refers to a different drawing to that referred to by the appellant. I find that drawing 468 provides greater clarity and therefore I shall include this in the varied condition.
19. I note that the details required in a number of the original conditions has already been submitted and approved by the Council. I have amended these conditions accordingly, as suggested by the Council.
20. In addition, I have regard to the appellant's suggested additional condition which would secure the unit as an A1/A3 and its respective floorspace as set out in the approved plans. I have also had regard to the Council's suggested additional conditions, to which the appellant has not raised any objections. I find that these conditions are necessary in order to protect the vitality and viability of the Porchester Road Local Centre and therefore shall impose them accordingly. For the sake of clarity, I have used the Council's suggested conditions as opposed to the appellant's.

Conclusion

21. For the reasons given above I conclude that the appeal should succeed. As a result I will vary the respective planning permission by varying the disputed conditions and impose the additional conditions suggested by the appellant and the Council.

Alexander Walker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.
- 2) You must carry out any building work which can be heard at the boundary of the site only:
 - * between 08.00 and 18.00 Monday to Friday;
 - * between 08.00 and 13.00 on Saturday; and,
 - * not at all on Sundays, bank holidays and public holidays.Noisy work must not take place outside these hours. (C11AA)
- 3) You must carry out the development in accordance with the facing materials that we approved on 11 February 2015 (14/12071/ADFULL), 13 July 2015 (15/02293/ADULL and 15/03869/ADFULL).
- 4) You must carry out the development in accordance with the details of new shopfronts and associated framing, ground level uplighters to facades, the recycling centre recess/ enclosure to Porchester Road elevation and recycling centre shutters that we approved on 13 July 2015 (15/03869/ADFULL) and 30 November 2015 (15/06305/ADFULL).
- 5) You must illuminate Porchester Walk and install CCTV in accordance with the Lighting strategy and details of CCTV we approved on 13 July 2015 (15/03869/ADFULL) and you must permanently retain and maintain the lighting and CCTV to Porchester Walk in accordance with the approved details.
- 6) (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be

expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:

- (a) A schedule of all plant and equipment that formed part of this application;
- (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;; (c) Manufacturer specifications of sound emissions in octave or third octave detail;
- (d) The location of most affected noise sensitive receptor location and the most affected window of it;
- (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;
- (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- (i) The proposed maximum noise level to be emitted by the plant and equipment.

- 7) No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
- 8) You must carry out the development and install the mechanical plant in in accordance with the supplementary acoustic report and noise attenuation measures that we approved on 30 November 2015 (15/06305/ADFULL). If any attenuation measures were approved, you must install these in accordance with the details we approve prior to occupation of the new retail units and thereafter permanently retain and maintain the attenuation measures in the approved locations.
- 9) The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

- 10) You must provide each cycle parking space shown on the approved drawings prior to occupation. Thereafter the cycle spaces must be retained and the space used for no other purpose without the prior written consent of the local planning authority.
- 11) You must provide the reconfigured service yard area shown on the approved plans prior to occupation of the new retail units. Thereafter you must only use the service yard area to service the retail units hereby approved and the residential accommodation within the Colonnades.
- 12) You must permanently operate the development and manage the service yard in accordance with the Servicing Management Plan that we approved on 11 February 2015 (14/12071/ADFULL), unless or until we approve an alternative Servicing Management Plan in writing.
- 13) You must hang all doors or gates so that they do not open over or across the road or pavement.
- 14) You carry out the development in accordance with the hard landscaping scheme for the surfacing of any part of the site not covered by buildings that we approved on 10 February 2015 (14/12605/ADFULL).
- 15) You must provide the publicly accessible disabled toilet at ground floor level, as shown on drawing 17 Rev.12 prior to occupation of the new and enlarged retail units. Thereafter the toilet must be permanently retained and maintained in this location and it must be open accessible from the public highway and available for public use between 07.30 and 23.00 daily.
- 16) You must use Unit 3 (as annotated on drawing 468) only for restaurant/ cafe use within Class A3 of the Town and Country Planning (Use Classes) Order 1987 as amended April 2005 (or any equivalent class in any order that may replace it).
- 17) You must use Units 1, 2 and 5 (as annotated on drawing 468) only for retail shop use within Class A1 of the Town and Country Planning (Use Classes) Order 1987 as amended April 2005 (or any equivalent class in any order that may replace it).
- 18) Customers shall not be permitted within the ground floor level retail shop units (Units 2 and 5) before 07.00 or after 23.00 Monday to Saturday (not including bank holidays and public holidays) and before 10.00 or after 18.00 on Sundays, bank holidays and public holidays.
- 19) Customers shall not be permitted within the restaurant/ cafe unit (Unit 3) and mixed retail shop and restaurant unit (Unit 4) before 08.00 or after 23.30 Monday to Saturday (not including bank holidays and public holidays) and before 09.00 or after 22.30 on Sundays, bank holidays and public holidays.
- 20) No tables and chairs shall be placed outside of the retail units hereby approved on the forecourt of the building (where it does not form part of the public highway) without our written approval. You must apply to us for approval of the location, number, appearance, hours of use and location of storage for any tables and chairs and associated non-fixed structures such as enclosures or barriers around tables and chairs or sun shades that you propose to place on the forecourt of the building. You must not place the table and chairs or associated structures outside the

retail units until we have approved what you have sent us. You must then only place the tables and chairs in the locations we approve in accordance with the details of their use and appearance that we approve.

- 21) All of the retail units hereby approved shall achieve a BREEAM 'Very Good' rating or higher (or any such national measure of sustainability for commercial design that replaces that scheme of the same standard). Within 3 months of occupation of each of the retail units you must submit to us for our approval a copy of a Building Research Establishment (or equivalent independent assessment) Final Post Construction Stage Assessment and Certificate, confirming that the retail units, when built, have achieved a BREEAM 'Very Good' rating or higher.

If the submitted assessment does not demonstrate that the retail units have achieved a BREEAM 'Very Good' rating or higher, you must also submit to us for our approval a report that sets out remediation measures that are to be carried out so that the retail units will achieve this rating or higher. The submitted remediation report (if required) must also provide a time frame within which the specified remediation works will be carried out. You must not carry out any remediation works until we have approved the remediation report. You must then carry out the remediation works in accordance with the remediation report that we approve.

- 22) You must provide the recycling centre (annotated 'Relocated recycling bins' on drawing 17 Rev.13) at ground floor level prior to occupation of the new and enlarged retail units. Thereafter the recycling centre must be permanently retained in this location.
- 23) You must carry out the development in accordance with the waste and recycling storage for the supermarket (Unit 1) that we approved on 13 July 2015 (15/02293/ADFULL). You must then provide the stores for waste and materials for recycling according to these details prior to occupation of the supermarket (Unit 1) and thereafter permanently retain them for the storage of waste and recycling from the operation of the supermarket.
- 24) Prior to occupation of the ground floor retail units (Units 2 to 5 as shown on drawing 468) you must provide the store for waste and materials for recycling shown on drawing number 17 Rev.13. You must clearly mark them and make them available at all times to everyone working in these retail units.
- 25) Prior to occupation of the retail units you must provide the storage area within the service yard for residential waste and materials for recycling shown on drawing number 17 Rev.13. You must clearly mark this area and make it available at all times to everyone living in the residential part of the Colonnades.
- 26) Notwithstanding the drawings approved on 9 October 2014 (13/12442/FULL), in accordance with the non-material amendment approved 9 February 2015 (15/00810/NMA), you must not form any windows in the eastern elevation of the supermarket at first floor level (Unit 1) or the ground floor retail unit (Unit 5 - as numbered on drawing 468).

- 27) Customers shall not be permitted within the retail supermarket unit (Unit 1) before 07.00 or after 23.00 Monday to Saturday (not including bank holidays and public holidays), before 10.00 or after 18.00 on Sundays and before 08.00 or after 20.00 on bank holidays and public holidays.
 - 28) You must use Unit 4 (as annotated on drawing 468) only for mixed retail shop and restaurant use (Sui Generis) and for no other use. The area shaded grey on drawings 468 and AAYA - 180- I - 101 shall only be used for the retail sale of goods and shall not be used to provide restaurant covers.
 - 29) You must not occupy Unit 4 for mixed retail and restaurant use until a detailed scheme for the shop windows of the retail shop part of the unit (where shaded grey on drawing 468) has been submitted to and approved in writing by the local planning authority. The scheme shall include the area immediately behind the windows, shall not include any obscured glass and shall define any display panels within the windows. The development shall thereafter be carried out in accordance with the approved scheme and no further modifications shall be made.
 - 30) You must not occupy Unit 4 for mixed retail and restaurant use until we have approved in writing appropriate arrangements to secure the following:
 - i. Provision and adherence to a shop front and advertisement strategy.
 - ii. Provision, access and ongoing future maintenance of a publicly accessible disabled toilet.
 - iii. Provision, access and ongoing future maintenance of accommodation for 'recycling centre', including provision of sleeves to enclose Eurobins.
 - iv. Provision and adherence with a façade cleaning strategy.
- In the case of each of the above benefits, you must include in the arrangements details of when you will provide the benefits, and how you will guarantee this timing. You must only carry out the development according to the approved arrangements.