



Appeal Decision

Site visit made on 28 June, 2017

by G. Rollings, BA (Hons) MA(UD) MRTPI

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

Decision date: 9th August, 2017

Appeal Ref: APP/U5360/W/16/3164076

Basement and ground floor, 46 Great Eastern Street, Hackney, London, EC2A 3EP

- 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 MKM Entertainment Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref: 2016/2636 dated 11 April, 2016 was refused by notice dated 26 September, 2016.
 - The development proposed is a change of use of the basement and ground floor from offices (use class B1) to a restaurant (use class A3) and installation of a new shopfront and rear flue.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of the basement and ground floor from offices (use class B1) to a restaurant (use class A3) and installation of a new shopfront and rear flue at Basement and ground floor, 46 Great Eastern Street, Hackney, London, EC2A 3EP in accordance with the terms of the application, Ref: 2016/2636 dated 10 April, 2016 subject to the conditions attached at Annex A to this letter.

Procedural Matters

2. The application form refers to the proposed use as a mixed-use bar/restaurant (use class sui generis), rather than the restaurant use (use class A3) description on the Council's decision notice, and provided on the appeal form. The evidence before me suggests that the description of development was amended at the application stage, to delete the bar element of the proposal, thereby proposing only a restaurant use, with the resultant proposed use class changing from sui generis to A3. The amended description is used within appellant's appeal statement and evidence. I have therefore used the amended description of development set out in the appeal form, and have considered the appeal on this basis.
3. The appeal property is unlisted but is within the South Shoreditch Conservation Area. There is no dispute between the parties that the proposed physical works to the property, which would be minor in nature, would not have an adverse effect on the character or appearance of the Conservation Area. Having considered the proposal and visited the site I concur with that view. Accordingly, it is my view that the development proposed would preserve the character and appearance of the designated

heritage asset and conservation area, and I shall make no further reference to this matter.

Main Issues

4. The main issue is the effect of the proposed development on the supply of office accommodation in the area.

Reasons

Effect on the supply of office accommodation

5. The appeal site occupies two floors of the building at 46 Great Eastern Street, and incorporates a street frontage and entrance at ground floor level. The surrounding area is densely developed; the appeal building is part of a perimeter block with a central lightwell, serving both the appeal site and the surrounding buildings in the block. The proposed extraction and ventilation system, which includes a flue, would rise adjacent to the lightwell.
6. The site is within the Central Activities Zone (CAZ), defined within *The London Plan* (2016, as consolidated). Policy 4.1 of the Plan supports the continuing economic success of central London as well as a diverse economy across the region, with Policy 4.2 recognising the “distinct needs” of the CAZ, with the accompanying text stating that local plans should promote mixed use development and conversion of surplus office space. Consistent with these policies are the Council’s adopted *Core Strategy* (2010) Policies 17 and 18 protect employment land, and *Development Management Local Plan* (2015) (DMLP) Policy DM14 requiring proposals for the loss of CAZ office floorspace to be supported by appropriate marketing evidence, as set out in detail in DMLP Appendix 4.
7. The advice in Appendix 4 contains specific requirements to be undertaken in the marketing of sites for their current use, prior to occupation by an alternative use. Marketing must occur for a period of at least two years, by at least two property agents. The Council has raised concerns that the site was only marketed by one agent, for an indeterminate period, and that a second agent identified by the agent had not marked the property as available on its website. In response, the appellant has supplied additional information indicating that the site was marketed by three agents, with supporting information from 2014 through to 2016 and including marketing brochures and archived webpages indicating availability.
8. The appellant has also submitted further evidence to indicate registration of the vacancy via additional marketing channels and it is apparent from the appellant’s evidence that relevant marketing information would have been available, on request, to interested parties. I acknowledge the Council’s concerns that information might have been inaccessible during the required marketing period, although in this instance the volume of evidence suggests that despite website outages, there steady availability to information throughout the period. In light of the evidence submitted by the appellant, I am satisfied that the activities undertaken fulfil the active marketing requirements of Appendix 4, and that the current office use is surplus to current requirements.
9. I therefore conclude that the proposed development would not have a detrimental impact on the continued supply of office space within the area. It

would not conflict with London Plan Policies 4.1 and 4.2, Core Strategy Policies 16, 17 and 18, or DMLP Policies DM14 and DM17, for the reasons set out above.

Other issues

10. The Council previously expressed concerns regarding the effects of the proposed development on the living conditions of surrounding residential occupiers, particularly resulting from the clustering of existing 'evening economy' uses, similar in nature to the proposed use, within the immediate area. It noted that given the current proposed restaurant-only use, which omits the previously proposed bar element, together with the submission of a noise impact assessment and noise management plan by the appellant, potentially detrimental impacts would be mitigated. I am satisfied that the appellant's submitted documents are suitable to limit harm to neighbours' living conditions. The Council also mentioned limitation of the appellant's proposed hours of operation. Given the hours of existing surrounding evening uses, I am satisfied that the hours set out within the licencing approval would be suitable in preserving living conditions, and have applied them in this decision.
11. An interested party has raised concerns regarding the placement of the proposed extraction flue, along with the dispersion of its outtake. There is restricted space within the lightwell, and its proposed corner position, close to existing risers, is appropriate. The appeal plans indicate that it would have a reasonable height clearance above the building's roof ridge and I am satisfied that this would allow for suitable extraction of waste gases and fumes.
12. I have noted that the appellant expressed misgivings regarding the Council's assessment of the application, but this has not affected the planning merits of the case, on which I have based my decision.

Conditions

13. Neither of the main parties suggested conditions to be used in the event of the appeal succeeding. Given that there are no issues of significant contention within the scope of the conditions, I have applied only the usual commencement and plans conditions, as well as conditions setting out the hours of operation of the proposed use, and noise limitations. The Council's Delegated Planning Report, dated 26 September 2016, also suggests that a condition requiring the submission of a waste management plan would be appropriate, and a similar management condition was referred to by the appellant. I have therefore applied relevant conditions.
14. I have applied to these conditions the tests set out in the Planning Practice Guidance (PPG)¹. Condition no. 2 is required to provide certainty, and to ensure that the proposed building works, including the façade details, extraction arrangements, and internal alterations, are undertaken as set out on the appeal plans. Condition no. 3 sets out the allowed hours of operation, with condition no. 4 controlling the playing of amplified music; these hours are the same as those set out in the licensing approval for the use, and are imposed to preserve the living conditions of occupiers of surrounding properties. Additionally, condition nos. 5 through 8 are all applied to preserve

¹ PPG reference ID: 21a-003-20140306; revision date: 06 03 2014.

the living conditions of surrounding occupiers, particularly in respect of noise and disturbance. Condition no. 7 has also been applied to ensure the proper management of the site and ensure adequate waste and other servicing.

Conclusion

15. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

G Rollings

INSPECTOR

Annex A – List of 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: Site Plan; F/E-01.1; PR-01.1; PR-01 CAM; PR-03 EXTRACT; PR-06 EXTRACT.
- 3) The premises shall only be open for customers between the following hours: 09:00 and Midnight on any day of the week.
- 4) Amplified or other music may only be played in the premises between the following hours: 12:00 and 23:30 on any day of the week.
- 5) The development hereby permitted shall not be occupied until the measures set out in the submitted ventilation specification shall have been constructed in accordance with details set out in submitted document "Proposed Kitchen Ventilation System at in support application 2016/1442, 46 Great Eastern Street, EC2A 3EP".
- 6) The development hereby permitted shall not be occupied until the measures set out in the submitted noise impact statement shall have been constructed in accordance with details set out in submitted document "Noise Impact Statement" dated 26 July 2016 and prepared by Sound Licensing Limited.
- 7) Before the development is first occupied or brought into use an operational management plan, including details of servicing and waste management, shall be submitted to and approved in writing by the local planning authority. The plan shall be carried out as approved and its measures complied with at all times during the subsequent operation of the use. Any alteration to the plan must be agreed in writing by the local planning authority prior to being carried out.
- 8) The use hereby approved shall be carried out in accordance with the measures set out in the submitted "46 Great Eastern Street Noise Management Plan", and its measures complied with at all times during the subsequent operation of the use. Any alteration to the plan must be agreed in writing by the local planning authority prior to being carried out.