



Appeal Decision

Site visit made on 8 August 2017

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 17 October 2017

Appeal Ref: APP/V5570/W/17/3175635 211 Blackstock Road, London N5 2LL

- 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 Sainsbury's Supermarket Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/1249/S73, dated 29 March 2016, was refused by notice dated 9 February 2017.
 - The application sought permission to vary condition 2 (approved drawings) of planning permission ref: P2014/1294/FUL to include the following changes: Change of use of the ground floor from Class D2 to Class A1 retail use and the provision of loading bay on Blackstock Road.
 - The description of development is proposed to be amended to "*Change of use from Sui Generis (Police Station) to ~~part D2 (Gym)~~ **Class A1 use** at upper ground floor level, four (4) flexible A1, A2, D1, & B1 use commercial units at lower ground and upper ground floor levels and eight (8) residential units at upper floors; external works including alterations to front facade, alterations to rear including upper ground floor extension, new stair core and lift shaft, new balconies and other alterations to roof and rear facade.*"
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The locally listed four storey appeal property was formerly the Highbury Vale Police Station and is a locally listed building. Planning permission was granted in 2015 for its conversion to residential on the upper floors and a flexible mixed use on the ground floor. A separate planning permission was granted for the development of 6 terraced dwellings to the rear of the site. The proposal is to use part of the building permitted as Class D2 for Class A1 retail use.
3. The main issues in the appeal are therefore:
 - Whether the development would make adequate provision for loading and unloading, with regard to highway safety; and
 - The effect of the proposal on the vitality and viability of Finsbury Park Town Centre.

Reasons

Highway Safety

4. The site is within a Controlled Parking Zone (CPZ) which is in operation between 08:30 to 18:30 on Monday to Saturday. The Emirates Stadium is nearby and these parking controls are extended on Mondays to Fridays to 20:30 on match days. A recessed parking bay is situated between 195 and 215 Blackstock Road, with capacity for between 12 and 14 vehicles. Two other parking bays of a similar length are located opposite and to the south of the site. Blackstock Road is a local distributor road with regular bus services and there are Bus stops in the vicinity of the site near to the adjacent recessed bay and near to the junction with Riversdale Road.
5. Policy DMP Policy 8.6 states that provision for delivery and servicing should be provided off-street, particularly for commercial developments of over 200 sqm gross floor area. Furthermore, section D of the above policy requires that where on-street servicing is proposed details must be submitted to demonstrate the need for on-street provision and that off-street provision is not practical, and to show that arrangements will be safe and will not cause a traffic obstruction or nuisance. Traffic modelling may also be required.
6. The store opening hours are proposed to be from 0700 to 2300 Mondays to Sundays. The development would be serviced on-street due to the new residential development at the rear of the property. There would be up to 7 deliveries per day in addition to one weekly delivery of cigarettes. The appellant maintains that servicing of the unit could be carried out without a time restriction on use of the parking bay, whilst retaining adequate parking capacity within the vicinity, but a condition restricting its use as a loading bay only between 10:00 and 16:00 would be accepted.
7. The parking survey carried out for the appellant found that there was spare capacity for at least 6 vehicles within this bay during the survey period, and that a similar number of spaces were coned off or taken up with skips during construction work. Nonetheless, the survey was carried out when the building was vacant, and no assessment has been provided of the likely parking demand associated with the proposed retail use.
8. The site is within an accessible location with good public transport links and as the store would have a local catchment, cycling and walking would be practical for many customers and staff. Even so it would be realistic to expect a proportion of customers and staff to arrive by private car, and no off-street parking would be available for customer or staff use. As a result capacity for car parking within the local area may be further reduced once the store is in operation.
9. The appellant has stated that co-ordination of the servicing and delivery movements will be the responsibility of the Store Manager as set out in the submitted Servicing and Delivery Plan, and that this could be controlled by condition, but it is not certain that it could be effectively enforced on this relatively busy road. If vehicles are parked within the bay during delivery periods it is likely that large vehicles waiting in the road would cause an obstruction on the highway.

10. It is indicated that the driver will pass the site if there is no space available and wait in a legal position elsewhere until they are able to return to make the delivery. However, in practice there is a risk that this may not happen, and obstruction of the road would be problematic, particularly given the proximity to the nearest bus stop. Even if a condition were to be imposed restricting use of the bay, with the best intentions, deliveries might also be made outside the specified loading and unloading period.
11. Moreover, the Highway Authority has stated that the loading bay would compromise the running lane widths, affecting the capacity of the road to accommodate both large delivery vehicles within the bay and passing buses. As buses operate on Blackstock Road 24 hours per day this provides further indication of the unsuitability of the proposal. Whilst the individual units permitted by P2014/1294/FUL would also be serviced on-street, that permission restricted the amalgamation of units for A1 use and thus the scale of deliveries associated with the appeal proposal would be likely to be greater.
12. The Council is also concerned with increased risks to pedestrians arising from loading and unloading of vehicles from the parking bay, but pedestrians would need to take the same care with double decker buses which pass the site regularly and stop nearby. On the basis of the evidence before me I do not consider that there would be an unacceptable risk to pedestrians if the appeal were allowed.
13. Nonetheless, for the above reasons I conclude that the proposal would fail to make adequate provision for off-street loading, unloading and servicing, and thus it would not accord with DMP Policy DM8.6 of the Islington Development Management Policies (2013).

Vitality and Viability

14. The proposal would create a single unit of approximately 411 square metres, with a net tradable area of about half that. Part C of Policy DM4.4 of the Islington Development Management Policies (DMP) (2013) states that development within designated Town Centres should be appropriate to the scale, character and function of the centre, and provide a variety of different sized retail units. The Council does not dispute that the proposed retail unit would perform an appropriate function within a town centre.
15. Paragraph 26 of the National Planning Policy Framework (the Framework) requires a retail impact assessment only for "retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan". The Council concedes that the size of the retail unit would not automatically trigger the need for a Retail Impact Assessment, and the appeal site is located in a Town Centre which is the preferred location for retail units. Nonetheless, it asserts that the proposal would result in an A1 retail unit of inappropriate scale and due to the proposed size of the unit, a Retail Impact Assessment would be necessary. A Retail Impact Statement was produced by Turley (November 2016) for the appellants to support the application.
16. The Council asserts that the portion of Blackstock Road within Islington is generally characterised by smaller sized units, and that its predominant role is to provide small scale convenience shops which serve the local community. Both parties have referred to the Greater London Authority Town Centre Healthcheck (2013) but have reported slightly different figures for the average

retail unit size, at 115 sqm and 128 sqm respectively for the Council and appellant. It is common ground that the average size of unit for convenience shopping is 83 sqm. The Council has also stated that business rates data for Blackstock Road indicate an average size of 185 sqm for A1 retail units within the road. This suggests that unit sizes within Blackstock Road are relatively typical for the Town Centre, if not slightly larger.

17. I acknowledge that there have been a large number of local objections to the scheme, including concerns relating to its impact on the diversity of small shops in the area and expressing a wish to attract and retain small independent shops rather than national chains. Although the proposed unit would be more than twice the size of the average retail unit, there are examples of other larger existing retail units within the Town Centre boundary, and as Finsbury Park Town Centre is a District Centre, a larger convenience store format would be appropriate to the scale of the centre. A variety of smaller units would remain available for occupation by retailers and other town centre uses.
18. The Retail Impact Statement notes that the site falls within an area with only 36% A1 uses, which is one of the lowest of all the identified main retail streets within the Town Centre. The proposed retail unit will improve the shopping offer and may encourage linked trips and thus assist in retaining more expenditure within the centre. Whilst there is another Sainsbury's Local within a few hundred metres of the appeal site and other convenience retail within the Town Centre as a whole, the Framework is clear that it is not the role of planning to regulate competition between different operators.
19. Concerns were expressed about the potential impact on Highbury Barn local centre, some 500 metres from the site. However as a local centre lower in the retail hierarchy this would have a smaller catchment and consists predominantly of independent shops including a delicatessen, fishmongers and hardware store, and provides a specialist retail offer that is qualitatively different to that of a national chain. I also note concerns with a lack of marketing of the site to alternative occupiers but as retail is welcomed in principle within Town Centres no evidence of marketing the units for this purpose are required.
20. I have had regard to the appeal at 74-76 St John Street, where the Inspector noted without a quantitative analysis of retail impact it was not possible to determine whether the proposal would harm the viability of Angel Town Centre, but in that case the appeal site was outside any designated town or local centre. As such it is materially different to the proposal before me.
21. Taking all of the above into account I conclude that the proposal would not harm the vitality or viability of the Finsbury Park Town Centre and would accord with DMP Policy DM4.4.

Other Matters

22. As the application was under section 73 and would create a new planning permission, a legal agreement in the form of a deed of variation to the original legal agreement, is required to replicate the requirements of the earlier planning obligation in relation to affordable housing and car-free development. The signed and executed legal agreement submitted with the appeal confirms that the affordable housing payment has been made and links the contributions to the current scheme. The legal agreement would also ensure the

continuation of the car free requirement set out in the original agreement. However, these considerations which were present in the previous scheme would not outweigh the harm found in relation to highway safety if the appeal were allowed.

Conclusion

23. I have found that the proposal would not harm the vitality and viability of the Finsbury Park Town Centre, but it would have a materially adverse effect on highway safety due to inadequate servicing arrangements. Consequently it would be contrary to the development plan as a whole.

24. For the above reasons I therefore conclude that the appeal should be dismissed.

Claire Victory

INSPECTOR