
Appeal Decision

Site visit made on 6 December 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 03 January 2018

Appeal Ref: APP/V5570/W/17/3181065
18 Brecknock Road, London N7 0DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mercedes Casto of ME Languages against the decision of the Council of the London Borough of Islington.
 - The application Ref P2017/0731/FUL, dated 10 February 2017, was approved on 9 May 2017 and planning permission was granted subject to conditions.
 - The development permitted is use of the front ground floor unit as an educational institution (Use Class D1).
 - The condition in dispute is No 3 which states that: Planning permission is hereby granted on a personal basis and shall operate for the benefit of ME Languages only and shall not operate for the benefit of the land nor any other company having an interest therein. On the cessation of the personal planning permission hereby granted the building and land shall revert to the use/purpose for which it was normally used prior to the grant of this planning permission.
 - The reason given for the condition is: The council in determining the planning application consider that permission should only be granted subject to its limitation on a personal basis. It is considered that the grant of planning permission on a non-personal basis may cause harm to the amenity of neighbouring occupiers and would impact on the vitality, viability and predominantly retail function of the local shopping area.
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Decision

1. The appeal is allowed and the planning permission Ref P2017/0731/FUL for use of the front ground floor unit as an educational institution (Use Class D1) at 18 Brecknock Road, London N7 0DD granted on 9 May 2017 by the Council of the London Borough of Islington, is varied by deleting condition 3.

Application for costs

2. An application for costs was made by Mercedes Casto of ME Languages against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Background and Main Issue

3. The development concerned has been implemented and the unit is in the use described in the fourth bullet point of the above header. Planning permission for that use included the condition referred to in the fifth bullet point of the header. This relates to policies DM4.6 and DM2.1 of Islington's Local Plan: Development Management Policies. The former policy requires the retention of an appropriate mix and balance of uses within the Local Shopping Area (the LSA), which maintains and enhances the retail and service function of the LSA.

That policy also sets out that existing ground floor retail units will be protected from change of use unless various criteria are satisfied including, amongst other things, the requirement for marketing evidence to be provided to demonstrate no interest in the retail unit during a continuous vacancy period of at least 2 years; that it would not result in a harmful break in the continuity of retail frontages and would not have an adverse effect on the vitality, viability and predominantly retail function of the LSA. The latter policy sets out the requirement for development to, amongst other things, provide a good level of amenity including consideration of noise and the impact of disturbance.

4. Taking account of the above background, the main issues are whether condition 3 is reasonable or necessary in the interests of the vitality, viability and predominantly retail function of the LSA and the living conditions of neighbouring residential occupiers with respect to noise and disturbance.

Reasons

5. Fundamentally, the terms of condition 3, in relating to a company, as opposed to a specific person only, is inappropriate as the shares of that company could be transferred to other persons without affecting the legal personality of the company. Notwithstanding this, I have had regard to the reason given for imposing the condition.
6. The current use occupies a unit within an established LSA where there are a substantial number of existing shops. Whilst I have received no evidence of previous vacancy or marketing for ongoing A1 use at the site, the use concerned maintains the retail type shop frontage and provides a local service which provides footfall of students. Therefore, it is a use which, in the context of the significant number of remaining A1 uses in the LSA, supports and is unlikely to materially lessen the retail and service function of the LSA. Importantly, the Council, in approving the use concerned, took the same stance concerning the contribution of the existing education institution to the mix and balance of uses within the LSA, albeit that insufficient vacancy and marketing evidence had been provided relating to the unit prior to its current use. It also found that it did not result in a harmful break in the continuity of retail frontages. I have received no substantive evidence to demonstrate to the contrary in this particular case and context, despite the run of three non-A1 uses at Nos 14, 16 and 18.
7. The Council states that the condition was imposed so that the unit would revert back to A1 retail use upon the current use ceasing, such that it would continue to support the primarily retail function in the LSA. However, the current non-A1 use is acceptable in principle in respect of its effect on the LSA for the above reasons and the Council does not highlight the need for a time restriction on its continued use as such. Furthermore, I have received no substantive evidence to demonstrate that any other educational use or non-residential institutions under the D1 Use Class would provide any less support to the LSA or that they could not be reasonably expected to present an appropriate frontage design in the LSA context. In this respect, a condition to restrict the D1 use and to ensure its reversion back to A1 use upon cessation is therefore unnecessary.
8. The remaining issue concerns any effects on the living conditions of residential occupiers of the flats above the LSA in terms of noise and disturbance. The current use does not operate during the evenings or weekends. However, no

restrictive conditions to control this were imposed by the Council in determining the application. Furthermore, the site is located within an active LSA with a variety of uses including hot food takeaways which would be likely to extend activity into the evenings and weekends. The unit concerned is also of a fairly small size which would be likely to limit the number of people occupying or visiting it if in any other D1 use. It is therefore unlikely that any other D1 uses would cause a material increase in noise and disturbance at or in the vicinity of the site. As such, in respect of this issue also, there is no substantive basis for restricting the use to the existing specific educational institution as opposed to any other educational or other D1 use generally.

9. The Council raises concern about a precedent being set within the LSA. However, any future proposals for similar change of use elsewhere would need to be considered on their merits and circumstances at the time, as I have done in this case.
10. For the above reasons, condition 3 is not reasonable or necessary in the interests of preserving the vitality, viability and predominantly retail function of the local shopping centre or the living conditions of neighbouring residential occupiers with respect to noise and disturbance; and the Council's suggested amended condition, in the event that I were to allow the appeal and remove condition 3, to limit the use to an educational institution as opposed to any other D1 use, would be unnecessary and unreasonable.

Conclusion

11. For the above reasons, I conclude that the planning permission should be varied as set out in the formal decision.

Andrew Dawe

INSPECTOR