



Appeal Decision

Hearing Held on 23 January 2018

Site visit made on 23 January 2018

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th March 2018

Appeal Ref: APP/K5600/W/17/3181151 158-168 Fulham Road, London, SW10 9PR

- 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 Imperial Tobacco Trustees Ltd against the decision of The Council of the Royal Borough of Kensington & Chelsea.
 - The application Ref PP/17/00077, dated 6 January 2017, was refused by notice dated 10 March 2017.
 - The development proposed is change of use of 2788.9sqft (259.1sqm) A1 retail floor space to A3 restaurant use at ground floor level; extension of ground floor commercial space by 1,754sqft (163.0sqm), extension of first and second floor office space by 4,842.8sqft (449.9sqm); external alterations to elevations and rear undercroft area; installation of green roofs at the front and rear, lowering of reception area floor to provide level access; and associated cycle parking provision.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from retail (Use Class A1) to restaurant (Use Class A3); extension and infill of Fulham Road frontage and infill of second floor rear and inner terraces to create additional commercial floor space at ground floor and additional office space at first and second floor. Installation of green roofs at front and rear; external alterations to elevations and rear undercroft area. Reduction of car parking spaces from 21 to 18 to accommodate lowering of reception area floor slab to provide level access and provision for 18 covered and lit cycle parking spaces at rear at 158 to 168 Fulham Road, London, SW10 9PR in accordance with the terms of the application Ref PP/17/00077, dated 6 January 2017, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development used in my formal decision above was agreed by the main parties following the submission of the planning application. The site address was also agreed by the main parties at the hearing.

Main Issues

3. The main issues are:
 - i) The effect of the proposal upon the vitality and viability of the town centre and the local retail character of Fulham Road,

- ii) The effect upon the character and appearance of the area, with particular regard to (a) the design of the proposed front elevation and (b) the proposed forward movement of the building line and its effect upon the streetscape, and
- iii) The effect upon pedestrian movement and safety.

Reasons

Vitality and viability of the town centre and the local retail character

4. The site is located within the primary retail frontage of the Fulham Road District Centre. The proposal would result in the loss of a substantial proportion of the existing A1 floorspace through the partial change of use to A3. It would change the ground floor layout from three separate A1 units to one large A3 unit and one A1 unit.
5. Policy CF3 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan July 2015 ('the Local Plan') seeks to secure the success and vitality of town centres. It promotes a diverse range of shops and seeks to ensure that these uses will be supported, but not dominated by, a range of complimentary town centre uses. In delivering this it protects shops at ground floor level in primary frontages of the Fulham Road district centre unless the change is to another town centre use and where 80% of the ground floor units in the relevant street frontage will remain in A1 use and the non-shop use is not adjacent to another non-A1 use. The main parties are agreed the proportion of non-shop uses within the relevant street frontage would be below 80%. The proposal is therefore contrary to part (a) of policy CF3 of the Local Plan. I go on to consider in further details the effect of the proposal upon the success and vitality of the District Centre below.
6. Policy CP17 of the Local Plan seeks to ensure that the local retail and residential character of Fulham Road is maintained by limiting new food and drink uses. The supporting text to this policy recognises that existing retail and restaurant offer contributes to the character of the centre but that this must be balanced against the primary function of the centre to provide for local residents shopping needs and with the amenity of the surrounding area. Although it seeks to limit A3 uses, it does not prohibit such uses.
7. The appellant says that the proposed A3 use would provide certainty and avoid void periods once the development is completed. However, from the evidence I am not persuaded that it would not be possible for suitable occupiers to be secured for continued A1 use, albeit on shorter leases. However, there are other factors which weigh more significantly in favour of the proposal.
8. An A Class use would be retained across the ground floor of the development. The proposed A3 use alongside the refurbished A1 use would undoubtedly contribute to the vitality of the town centre, both during the day time and also in the evening when shops are more likely to be closed, as well as contributing to a diverse range of uses within the town centre. There is no doubt that there may come a point where a greater proliferation of non-A1 uses could materially damage the retail dominance of the district centre. However, notwithstanding that the percentage of A1 uses would be below 80%, I do not consider that such a scenario is reached by this proposal.

9. I note the appellant's evidence that the overall proportion of retail uses has increased and that the proportion of A3 uses has decreased in the town centre since the formulation of policy CF3. This suggests that there is currently no significant threat to the predominance of shop uses in the town centre. The Statement of Common Grounds notes that there is not a significant shortage of A1 floorspace. The Council says that vacancy rates have consistently crept up since 2010. They are still considerably lower than the national average. In any case, if vacancy rates are rising, this adds weight to the argument that A3 uses can complement the retail offer and contribute to the overall vitality and success of the district centre.
10. Furthermore, though there are several other existing A3 uses in the vicinity of the site there are no other existing A3 uses in the street frontage between Gilston Road and the eastern entrance to Cavaye Place. The proposed A3 use would also be adjoined by A1 uses on either side. This adds weight to my view that the shop uses would not be dominated by complementary town centre uses. I also attached weight to support provided by the proposed A3 use in terms of increasing footfall and encouraging linked trips that could strengthen the overall retail function of the district centre.
11. Although representations have been made that coffee shops should not be counted as A1 uses, they are capable of being considered as such and the Council has not sought to argue otherwise. They also themselves contribute to the vitality and success of the district centre.
12. The proposed development would also extend the existing office floorspace within the extended building. Indeed, I consider that it would both quantitatively and qualitatively enhance the provision of office floorspace on the site given the rather dated condition of the existing office floorspace and the improvements to its layout and access that would be provided by the proposal. This is supported by policy CF5 of the Local Plan which includes support to ensure that there is a range of business premises within the borough and to promote the consolidation of large and medium offices within town centres.
13. Given the shortfall of office space within the Borough I have given the benefit arising from the improved and extended office space provision considerable weight. It would also support the vitality and viability of the District Centre through the likelihood of additional linked trips.
14. In the context of the residential amenity aims of policy CP17 of the Local Plan, I am satisfied that an appropriate condition as considered below can be imposed in order to prevent any significant adverse impacts upon the living conditions of the occupiers of neighbouring properties.
15. Objections have been made by interested parties in relation to the loss of the existing bookshop. Whilst I note that this appears to be a popular retail outlet, it is the implications of the loss of A1 shop floorspace in principle rather than the loss of an existing individual named shop that is central to my consideration of this issue. Although the relevant development plan policies seeks to retain the retail character of the centre, they did do not seek to retain particular retail outlets.

16. I have also given consideration to the emerging Local Plan Partial Review. However, this is currently being examined and therefore at this time carries limited weight. It has not altered my conclusion on this issue.
17. Whilst there is a technical breach of policy CF3 in terms of the proportion of retail uses being less than 80% of the relevant streets frontage, the impact on the overall retail character of the District Centre in this case would be modest. I do not consider that the proposal would be contrary to the overall aim of this policy in seeking to ensure the success and vitality of the district centre. It would also not result in any material harm in the context of policy CP17 of the Local Plan. The proposal would satisfactorily maintain the vitality and viability of the town centre and the local retail character of the Fulham Road District Centre.

Character and appearance

18. The existing building is at odds with the scale, style and proportions of the prevailing Victorian buildings along both sides of Fulham Road. The proposed front extension of the building, whilst being of a contemporary design, would result in a considerable enhancement to the appearance of the building and the wider streetscene. In particular the use of London stock brick and regular window openings approximately aligned with the adjacent building to the east would help to assimilate the building with the more traditional buildings adjoining the site. Although the proportions and overall appearance would be by no means identical to the surrounding architecture, the building would succeed in complimenting the streetscene, in contrast to the appearance of the existing building.
19. The proposal seeks to enhance the upper residential floors of the building through the attachment of metal panelling. Final approval of details of the materials to be used would be able to be secured through a condition. Given its height in relation to surrounding buildings, this part of the building would still not sit comfortably in the wider streetscape. However, I consider that the treatment proposed to its elevation would help to better integrate it with the remainder of the building. Furthermore, as it would be set back from the extended part of the building at the front of the site, its prominence in the streetscene would be decreased.
20. The proposed front extension would bring the building into line with its neighbouring buildings which are located adjacent to the pavement. This would be similar to the terrace of buildings that previously existed on the site which aligned with the neighbouring buildings.
21. The existing forecourt provides an area of open space. However, it consists of poor quality hard landscaping and the overhanging design of the existing building further detracts from its usefulness and value as open space. Whilst improvements could be made to the hard landscaping, I consider that its contribution to the amenity of the wider area and its value as open space is limited.
22. Although there are other examples of spaces in front of buildings on Fulham Road within the proximity of the site, these are the exception to the general pattern and layout of development. The proposed forward alignment would bring the building back into line with the traditional pattern of buildings prevailing in the streetscene. Coupled with the improvement to the elevations,

I consider that the resulting building would result in a considerable enhancement to the streetscene.

23. Given the overall improvements to the appearance of the building, including at the rear, I am satisfied that the proposed development would preserve the setting of the adjacent Boltons Conservation Area.
24. It would enhance the appearance of the streetscene in the vicinity of the site and the loss of the existing open space would not result in any significant harm to the streetscape. The proposed development would therefore not result in any adverse effects upon the character and appearance of the area. The proposal therefore would accord with the design aims of policies CL1 and CL2 of the Local Plan.

Pedestrian movement and safety

25. The footpath width on the northwest side of Fulham Road is generally narrower than typically found in similar town/district centre locations. The Council states that it is 1.85m and 2.05m wide on either side of the appeal site. Two lamp columns and a post located on the footpath in front of the site add obstacles for passing pedestrians. Although there is a row of concrete bollards located just inside the boundary of the appeal site, the forecourt to the front of the existing building allows pedestrians greater width in this location.
26. Generally, I would expect the pedestrians walking along the footpath past the appeal building to utilise the footway up to the concrete barriers. To a degree, I acknowledge that this existing situation provides a brief relief from the narrow footpath width along the road in this location.
27. The proposal would extend the building up to the front edge of the site, reducing the available footway, so that it is very similar to the prevailing width of the existing footway on this section of Fulham Road. The fact that the resulting footway would be similar to the existing, weighs considerably in favour of the proposal on this matter as the general accessibility for pedestrians would not be significantly worse than elsewhere along this stretch.
28. The Council acknowledges that whilst the pedestrian comfort levels on the footway would materially change as a result of the proposal, this would not be to a point that would be unacceptable under Transport for London's Pedestrian Comfort Level guidance. Whilst footfall may increase in the future the situation would still be the same as for the other stretches of pavement prevailing in the vicinity. Furthermore, although the relief currently offered would no longer remain, I do not consider this to be so significant to result in any material effect upon pedestrian movement and safety. Although the existing street furniture adds an impediment to movement, taking account of predicted flows, I consider there to be sufficient space between such obstacles and the edge of the pavement to allow reasonable pedestrian movement.
29. Even should the proposed building be set back further behind the front boundary of the site than currently proposed, the benefits in terms of pedestrian movement, the pedestrian environment and safety would be limited due to the narrow footway which prevails in the vicinity.
30. I note that in some instances, pedestrian flows are greater than normal, such as for Chelsea football club home matches. The photographs submitted indicate the amount of pedestrians that sometimes use the pavement. In such

situations, the pedestrian access on the pavement could be more constrained. However, as the footpath width would be similar to that existing on either side of the site, I consider that any harm would only be limited. This would remain to be the case in the event of an increased number of people attending Chelsea matches following stadium redevelopment. I also do not consider it likely that the number of people wishing to smoke outside the premises would be such to result in any significant accessibility or movement impacts on the front pavement.

31. Whilst my attention has been drawn to several accidents that have occurred along Fulham Road in the vicinity of the site, it does not generally appear from the information provided that these were primarily caused by a narrow pavement width. Based on the information before me regarding pedestrian flows and comfort levels, I am not persuaded that the appeal proposal would result in a significantly increased risk of pedestrians stepping into the highway.
32. The Council's Transport and Streets Supplementary Planning Document states that the Council will resist the loss of privately maintained forecourt areas to new buildings, recognising that the incremental loss of pieces of highway would cumulatively have a detrimental effect on the Borough's high quality pedestrian environment. It is not proven beyond doubt that the whole of the forecourt is a public right of way though the Council's appeal statement says that all available evidence indicates that the area of privately maintained footway in front of the bollards is highway over which the public have a right of way. In any case, I am satisfied for the reasons set out above having considered the planning merits that no significant harm would arise from the loss of the forecourt area, even should the public have an existing right of way over it, or part of it.
33. Satisfactory pedestrian access would be retained along the existing footpath to the front of the site. From the evidence before me, there would be no justification to refuse planning permission on such grounds in the public interest. Furthermore, a separate Stopping Up Order would appear to be required for any part of the site which is a public right of way, should the appeal proposal be implemented, which would be a matter for consideration outside of this appeal.
34. My attention has been drawn to a dismissed appeal scheme at 232-236 Brompton Road¹. The Inspectors primary concern in that case arose from the door of a telephone box that would open into the centre of the footway. Although that case also related to the retained width of the footway, the detailed circumstances appear to be somewhat different to those of the appeal scheme before me. I have therefore given that appeal decision only modest weight in my determination of this appeal, which I have considered taking account of the particular circumstances and evidence before me.
35. Consequently I do not consider that the proposed development would result in any significant adverse impacts upon pedestrian movement and safety. It would satisfactorily accord with the access and safety aims of policies CR3 and CT1 of the Local Plan.

¹ APP/K5600/W/16/3165993

Other Matters

36. I am satisfied that, through the use of conditions as set out below, the living conditions of the occupiers of neighbouring properties would be reasonably safeguarded. Furthermore, the separation distances to other residential properties would be sufficient to prevent any unacceptable impacts arising in terms of day/sunlight and outlook.
37. Deliveries would be to the rear of the premises. I do not consider that the number of deliveries and servicing movements would be of such frequency to result in any significant conflict with pedestrians at the rear of the site or on Cavaye Place in general. I am satisfied that a condition requiring the subsequent approval of a Delivery and Servicing Management Plan should enable appropriate servicing arrangements to be agreed that would safeguard residential living conditions.
38. Given the relatively small size of the site in the context of other development along Fulham Road, I consider it unlikely that the proposal would result in significant air pollution effects.

Conditions

39. I have considered the conditions suggested by the Council and discussed at the hearing, taking account of the relevant Planning Practice Guidance (PPG). It was agreed at the hearing, that a Delivery and Servicing Management Plan condition would be subsequently agreed by the parties after the hearing and submitted for my consideration.
40. I have attached a condition limiting the life of the planning permission in accordance with the relevant legislation. A condition specifying the approved plans is required to provide certainty. A materials condition is necessary in order to ensure the development makes a suitably positive contribution to the surrounding townscape. A Construction Traffic Management Plan is required to safeguard the surrounding highway network and the living conditions of neighbouring properties. Neighbouring living conditions and those of the residential units within the building would also be safeguarded by the restriction on noise emissions and vibration from plant and vents imposed by conditions 5 and 6.
41. A sound insulation condition is necessary to prevent unacceptable noise disturbance between the office and residential use. Further safeguarding of residential living conditions, including those of neighbouring properties, would be secured by conditions controlling fumes and smells, requiring the approval of a Delivery and Servicing Management Plan for the A3 unit and restricting its opening hours. Given its location on a busy commercial road and having regard to other uses in the area, I consider a midnight closing restriction to be reasonable on Fridays and Saturday nights.
42. A car parking condition is necessary to ensure that satisfactory parking provision is retained for the residential units within the development. Highway works are necessary in the interests of local traffic and highway conditions. A condition requiring refuse and recycling storage is necessary to safeguard the appearance of the development and neighbouring living conditions.
43. Some conditions require details to be approved before any development takes place. This is necessary in the case of conditions 3 and 5(b) as these

conditions relate to the design of the development. It is necessary for condition 4 as this relates to construction impacts. I have altered the wording of some conditions but this does not alter the essence of their requirements. I have not imposed the Council's suggested condition removing permitted development rights for telecommunication equipment as it has not been demonstrated that there are any exceptional circumstances for its imposition. It would therefore be contrary to the PPG. At the hearing the Council agreed that its previously suggested BREEAM condition would not be necessary.

Conclusion

44. Whilst there would be a technical breach of policy CF3 of the Local Plan in respect of the proportion of non-retail uses within the relevant street frontage, the overall harm to the retail character of the district centre would be modest. I have found that the proposal would be in general accordance with the aim of policy CF3 to secure the success and vitality of the district centre. The dominance of shops within the district centre would not be significantly affected in this case. I have attached considerable weight to the provision of additional office space of which there is a recognised shortage within the borough. I have also found that the proposed development would enhance the appearance of the existing building and the forward extension to the front of the site would not result in harm to the streetscape. Furthermore, the proposed development would not result in any significant harm to pedestrian movement and safety.
45. Therefore, I find that the proposed development would accord with the development plan when considered as a whole and there are no material considerations that have led me to find that permission should be withheld.
46. For all the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

David Cliff

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no 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: 10.101 rev P1, 10.201 rev P1, 10.202 rev P1, 10.203 rev P1, 10.204 rev P1, 10.205 rev P1, 10.206 rev P1, 10.207 rev P1, 10.208 rev P1, 10.251 rev P1, 10.252 rev P2, 10.253 rev P1, 10.271 rev P1, 10.272 rev P1, 10.273 rev P1, 20.201 rev P1, 20.202 rev P2, 20.203 rev P1, 20.204 rev P1, 20.205 rev P1, 20.206 rev P1, 20.207 rev P1, 20.208 rev P1, 20.251 rev P2, 20.252 rev P2, 20.253 rev P1, 20.271 rev P1, 20.272 rev P2, 20.273 rev P2, 20.274 rev P2, 20.275 rev P1, 50.601 rev P2, 50.602 rev P2, 50.603 rev P1, 50.604 rev P1, 50.605 rev P1, 50.606 rev P1.
- 3) No development shall take place until full particulars of the following have been submitted to (as appropriate) and approved in writing by the local planning authority and the development shall subsequently be carried out in accordance with such approved details.
 - a) Full details of material palette, including metalwork and glazing;
 - b) Sample panels (available on site) showing brickwork, glazing, framing materials at ground, first and second floor front elevation and rear first and second floors, fascia panels, framing and glazing at ground floor front elevation, spandrel panels and fins at upper floor levels;
 - c) Cross section and plans through typical window and door entrances at a scale of 1:5;
 - d) Details of the proposed green roofs to the flat roof areas.
- 4) No development shall take place until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include:
 - a) Routing of construction vehicles including a response to existing or known major building works at other sites in the vicinity and local works in the highway;
 - b) Access arrangements to the site;
 - c) The estimated number and type of vehicles per day/week;
 - d) Details of any vehicle holding area and vehicle call up procedure;
 - e) Estimates for the number and type of parking suspensions that will be required;
 - f) Details of any diversion or other disruption to the public highway necessary during the works;
 - g) Work programme and/or timescale for the construction works;
 - h) Measures to protect pedestrians and other highway users from construction activities;
 - i) For any works not contained within the site, details of the site layout on the highway including hoarding(s), pedestrian routes, parking bay suspensions and remaining road width.

The development shall be carried out in accordance with the approved Construction Traffic Management Plan.

- 5) a) Noise emitted by all building services plant and vents shall not exceed a level 10dBA below the existing lowest LA90(10min) background noise level at any time when the plant is operating, and where the source is tonal it shall not exceed a level 15dBA below. The noise emitted shall be measured or predicted at 1.0m from the façade of the nearest residential premises or at 1.2m above any adjacent residential garden, terrace, balcony or patio. The plant shall be serviced regularly in accordance with the manufacturer's instructions and as necessary to ensure that the requirements of the conditions are maintained.
b) Prior to the commencement of development, a noise report shall be submitted to and approved in writing by the local planning authority. The report shall show how noise from building services plant, whether located internally or externally within the development, when installed will comply with part (a) of this condition. The recommendations of this report shall be implemented in full and maintained thereafter.
- 6) Plant shall not operate unless it is supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within, adjacent or adjoining premises, and these shall be maintained thereafter.
- 7) Prior to the occupation of the office space at first and second floor level, a scheme of sound insulation, designed to prevent the transmission of excessive airborne and impact noise across the party walls between the office use at first and second floor levels and the residential accommodation above shall be submitted to and approved in writing by the local planning authority. Details shall demonstrate that the sound insulation value and, where necessary, additional mitigation measures are implemented to contain commercial noise within the commercial premises and to achieve the criteria of BS8233:2014 within the adjoining dwellings. The scheme of sound insulation shall be installed prior to the occupation of the office use and maintained thereafter.
- 8) Before the A3 use hereby permitted takes place, equipment to control the emission of fumes and smell from the A3 premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for as long as the use continues.
- 9) A minimum of twelve of the car parking spaces shown on the approved plans shall be permanently retained for the parking of vehicles in connection with the residential use of the building and used for no other purpose.
- 10) The approved A1, A3 and B1 floorspace shall not be occupied until the works to the public highway along Cavaye Place, as shown on drawing no. 20.202 rev P2 have been completed.
- 11) Prior to the commencement of use of the A3 use hereby permitted, a Delivery and Servicing Plan setting out a package of measures to be adopted by the occupier for the management of the deliveries and

servicing to the A3 unit shall be submitted to and approved in writing by the Local Planning Authority. The Delivery and Servicing Plan shall include:

- (a) measures to limit the number and size of delivery vehicles;
- (b) measures to avoid delivery vehicles arriving at the same time;
- (c) the times, frequency and duration of servicing movements;
- (d) measures taken to address servicing movements on and around the property with a view inter alia to combining and/or reducing servicing and minimise the demand for the same.

The A3 use shall subsequently be carried out in accordance with the approved Delivery and Servicing Plan.

- 12) The approved A1, A3 and B1 uses shall not commence until refuse and recycling storage facilities have been provided in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority. The approved storage facilities shall subsequently be retained thereafter.
- 13) The premises shall only be open for customers between 08:00 and 23:00 from Monday to Thursday, between 08:00 and 00:00 on Friday and Saturday and between 09:00 and 22:30 on Sunday.

APPEARANCES

FOR THE APPELLANT:

Richard Harwood	Queens Counsel
N Belsten	Indigo Planning
G Steele	Caneparo Associates
P Caneparo	Caneparo Associates
A Barr	Barr Gazetas
L Dalglish	Nash Bond
K Neaves	van Bruggen Urbanism
O Lauder	DTZ Investors
H Trubshaw	Pegasus Group
M Gudgin	Cote Brasserie

FOR THE LOCAL PLANNING AUTHORITY

Katie Hurrell	Team Leader
Sam Lowther	Planning Officer
James McCool	Transport Planning Manager

INTERESTED PARTIES

Hugh Field	Lea and Sandeman
Anthony de Winton	Local resident
Calvin Jackson	Chairman – The Boltons Association

DOCUMENTS SUBMITTED AT THE HEARING

1. Photographs of pavement adjacent to the site
2. Signed Statement of Common Ground

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Wording of suggested Servicing and Management Plan condition