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## Appeal Decision

Site visit made on 4 June 2019

**by G Ellis BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8<sup>th</sup> July 2019**

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**Appeal Ref: APP/C5690/W/19/3224704**

**1a Tyrwhitt Road, London SE4 1QD**

- 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 Mr & Mrs Y Patel against the decision of London Borough of Lewisham.
  - The application Ref DC/17/104231, dated 27 November 2017 was refused by notice dated 3 December 2018.
  - The development proposed is described as: - change of use at ground floor from class A1 - shops and retail outlets to class C3 – dwelling house. Replacement of rear extension and landscaping treatment at ground floor. Refurbishment of ground floor shop front at ground floor. Replacement of UPVC windows throughout all three floors with white painted timber sash windows
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### Decision

1. The appeal is allowed, and planning permission is granted for change of use at ground floor from class A1 - shops and retail outlets to class C3 – dwelling house. Replacement of rear extension and landscaping treatment at ground floor. Refurbishment of ground floor shop front at ground floor. Replacement of UPVC windows throughout all three floors with white painted timber sash windows at 1a Tyrwhitt Road, London SE4 1QD in accordance with the terms of the application, Ref DC/17/104231, dated 27 November 2017, subject to the conditions set out in the attached schedule.

### Main Issue

2. The main issue is whether the loss of the retail unit has been justified, having regard to the development plan and the effect on the vitality and viability of the local economy.

### Procedural Matters

3. The replacement of the UPVC windows with timber sash windows to the upper floors and the removal of the rear extension has already taken place, together with some internal works. The replacement of the windows and the extension are not matters of dispute between the parties, which is limited to the change of use of the retail unit.

### Reasons

4. The three-storey property is located at the end of Tyrwhitt Road, it is currently enclosed by hoarding but the shop frontage remains. Opposite the appeal site is a public house but otherwise the street is residential in character comprising

traditional Victorian properties. The adjoining property, 2a Pretoria Parade, has recently been redeveloped into flats. To the other side and detached from the appeal site is a café/deli fronting Loampit Hill but which wraps around the corner. The café forms part of a parade of retail units on Loampit Hill which is a busy street with a range of retail and community facilities.

5. DM policy 16 of The Development Management Local Plan (Local Plan) states that A1 shops located in local shopping parades or operated as a corner shop will be retained unless the applicant can justify the loss. Four criteria are set out: - availability of alternatives; a balance to the units in the parade; marketing of vacant shops; and that the replacement will result in no harm to the amenity of adjoining properties.
6. The only criterion of dispute between the main parties is the need for reasonable attempts to market the property for more than 12 months. Marketing has not been undertaken. The appellant does have advice from an agent indicating reluctance to take instructions to let the retail unit and comments that the unit is "*located on a predominantly residential road and would have limited footfall. I have considered alternative commercial uses but cannot see many uses considering this as a viable location*".
7. Other supporting information submitted by the appellant provides financial information which indicates that the shop, which until July 2017 had been trading as an off licence for 22 years, is not viable. As observed on my site visit and as set out by the appellant a range of alternative retail units, including a number of convenience stores are available in the locality including on Loampit Hill less than approximately 20m from the appeal site. My attention has been drawn by the appellant to Core Strategy policy 6 which sets out that the Council will protect local shopping facilities from changes of use or redevelopment "*where there is an economic demand for such services and that change of use will be considered if evidence is established that there is no economic prospect of such uses continuing*". In my view such evidence has been provided.
8. The justification for Local Plan DM policy 16 is to preserve or enhance the local character and support the provision of essential daily goods and services. Whilst interested parties have raised concerns regarding the loss of the retail unit, and it is suggested that there is a strong local demand, this is anecdotal. Other successful businesses referred to are along Loampit Hill are not directly comparable to the site which is in a tertiary location. Therefore, whilst I acknowledge the proposal has not directly complied with the marketing element the appellant explains that more informal attempts have been undertaken to try and secure interest in the business without success and the profitability of the business has severely declined due to competition from larger retailers. There is no substantive evidence before me which demonstrates that the loss of the retail unit in this location would be harmful to the provision of goods and services to the area, which includes a range of other retail outlets.
9. The second limb to Local Plan DM policy 16 sets out that a change of use to residential at ground floor will only be permitted at the end of a parade and not corner shops. The Council in their appeal statement seek to identify the property as a corner shop but acknowledge that it does not occupy a true corner plot. A corner shop is not defined however, I cannot agree with this

assessment. It is not located at a corner, the neighbouring property, 63 Loampit Hill, occupies that location. The site is also referred to as '1a Pretoria Parade' and would have formed a group with the previously adjoining commercial property, 2a Pretoria Parade, which has since been demolished. The property is detached from the parade in Loampit Hill and fronts Trywhitt Road. As such, the loss of the retail unit would not break the continuity of a retail frontage which the policy seeks to protect.

10. The existing shop frontage is modern in form and does not make a positive contribution to the Brockley Conservation Area in which the property is located. Whilst the shop would be lost the ground floor the proposed alterations include the installation of panelling and glazing to create a Victoria style shopfront which would act as a visual record of the original use. The scheme also involves a number of other aspects, for example the replacement of UPVC windows and the provision of frontage boundary treatment, which would enhance the appearance of the property making a positive contribution to the street scene and conservation area.
11. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be had to the desirability of preserving or enhancing the character and appearance of a conservation area. The enhancements to the property and streetscape are acknowledged by the Council and are a benefit of the scheme to which I give significant weight.
12. Overall, whilst no direct marketing has been undertaken all other elements of DM policy 16 are complied with. There is no identified harm to the day to day needs of local residents and the proposal would preserve and enhance the local character of the area. I therefore find that the proposal would be in general conformity with Local Plan DM policy 16.
13. The decision notice also refers to Core Strategy policy 5, which relates to 'other employment locations' and therefore is not directly relevant to this proposal. Similarly, Local Plan DM policy 11 relates to the retention of employment uses (B use class). I acknowledge that there is reference to retail within the policy, however the relevant section seeks active marketing and therefore this aspect is covered by Local Plan DM policy 16 which directly relates to the loss of shops.

### **Other Matters**

14. The justification for the loss of the retail unit are specific to this property and its location. I do not consider that allowing the appeal would undermine the integrity of the policy or set a precedent that would prevent the Council refusing other proposals, as each case must be considered on its own merits. Furthermore, my conclusion reflects that reached by the case officer making a planning judgement.

### **Conditions**

15. As development has commenced a time limit condition is not required. However, conditions are necessary in the interests of compliance with statutory requirements relating to certainty [1] and to secure the materials to ensure a satisfactory external appearance [2]. A condition is also necessary to ensure appropriate provision for cycle storage to help facilitate sustainable modes of transport [3].

16. The Council suggest a condition regarding the windows, but these have already been installed. The design is such that the roof of the extension could potentially be used as a terrace which would have privacy issues for the neighbouring properties and as such, I have imposed a condition to control this [4].
17. General details of the hard and soft landscaping are shown on the plans and given the limited scale of the development I do not consider it necessary for further details be approved, however given the conservation area location I have included the boundary treatment under the materials condition.

### **Conclusion**

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

*G Ellis*

INSPECTOR

### **Schedule of Conditions**

1. The development shall be carried out strictly in accordance with the application plans; 185/100/P; 185/101/P; 185/102/P; 185/103/P; 185/104/P; 185/121/P; 185/122/P; 185/123/P; 185/234/P1; 185/111/P1; 185/112/P1; 185/201/P3; 185/202/P3; 185/203/P3; 185/204/P3; 185/211/P3; 185/212/P3; 185/221/P3; 185/222/P3; 185/223/P3; 185/224/P3; 185/231/P3; 185/232/P3; and 185/233/P3.
2. No development shall commence on the existing shop frontage until details / samples of the materials to be used in the construction of the external surfaces and the front boundary treatment hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details / samples.
3. No dwelling shall be occupied until space has been laid out within the site for the storage of a minimum of 2 cycles. Details of the storage shall be submitted to and approved in writing by the local planning authority and retained thereafter.
4. The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area.