



Appeal Decision

Site visit made on 17 July 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2019

Appeal Ref: APP/U5360/W/19/3227526

29 Downham Road, London N1 5AA

- 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 Will Cumber of W Cumber & Son (Theale) Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2018/4683, dated 20 December 2018, was refused by notice dated 14 February 2019.
 - The development proposed is described as 'change of use of 69.26m² floorspace at ground level from motorbike repair shop (Use Class B2) to café/restaurant (Use Class A3). Installation of one air conditioning unit; acoustic fence; mechanical air intake fan at roof level in conjunction with the proposed A3 use at ground level'.
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Decision

1. The appeal is dismissed.

Background

2. The appeal site forms part of the Downham Road/Kingsland Wharf mixed use residential/office development¹. The new four and five storey office building included the whole of the ground floor (approximately 309 m²) as a motorbike workshop to facilitate the relocation of the then existing motorbike workshop that previously occupied the site. To reflect the circumstances of the case, the development plan policies at the time and that unrestricted use within Class B2 would have been refused, a condition was imposed restricting the B2 use to a "motorbike repair shop and for no other purpose included in B2 Class."
3. The intended occupants subsequently relocated elsewhere and the ground floor remained empty. Part of the ground floor (approximately 237m²) has since been granted planning permission for change of use from motorbike repair shop to a fitness studio (use class D2)². The gym use was allowed after the premises had been marketed unsuccessfully for B1 office use and because the gym would provide employment for around 18 people. The appeal relates to the remaining ground floor area, approximately 69.26m².

Main Issues

4. The main issues are the effect of the proposed development on the supply of employment floorspace, and whether the proposed extract flue would preserve or enhance the character or appearance of the Kingsland Conservation Area.

¹ Council ref: 2008/3131 granted 14 October 2010

² Council ref: 2018/1776 granted 13 July 2018

Reasons

Employment floorspace

4. The appeal site is located on Downham Road, off Kingsland Road within the Kingsland Conservation Area (CA). The area is predominantly commercial with mixed uses, and Downham Road becomes more residential beyond the appeal site away from Kingsland Road. The proposed use is for a café/restaurant (Use Class A3) on part of the ground floor.
5. Policy 4.1 of the London Plan seeks to promote and enable a diverse economy by ensuring the availability of sufficient workspace of different types and sizes. Reflecting this, the Council has a suite of policies to promote and protect employment land and floorspace. Policy CS16 of the Local Plan Core Strategy 2010 (CS) seeks to increase the employment offer in the borough and identifies Priority Employment Areas (PEAs), whose main purpose is to protect and promote affordable business locations and are expected to deliver over 400,000sqm of 'B class' employment floorspace. CS Policy 18 further promotes and protects employment land and floorspace. The appeal site is within a designated PEA.
6. CS Policy CS17 identifies that in PEAs, Business (B1), Hotels (C1) and non-residential institutions (D1) will be the preferred uses. Class A and C3 (residential) uses will be permitted in PEAs outside town centres, as long as they are auxiliary to business, hotel and non-residential institutions and where they will not draw trade away from existing retail centres.
7. The Development Management Local Plan 2015 (LP) Policy DM17 deals specifically with development proposals in PEAs. The supporting text acknowledges that additional uses are acceptable if they are secondary to the 'primary' employment use but that the majority of the floorspace should be for the primary employment use. Consequently in PEAs class B1, B2 and B8 uses are appropriate and Class C1, C3 and D1 uses are acceptable, subject to various criteria including following the marketing procedures set out in LP policy DM14.
8. LP Policy DM14 deals with the retention of employment land and floorspace and seeks to resist its loss. The policy sets out various measures developers are required to undertake, including the submission of robust marketing evidence that demonstrates that there has been no demand for the vacant floorspace in its current or former use and that reuse or redevelopment with a similar or alternative employment use has been fully explored. The type of marketing evidence required is set out in the Appendix 4 of the LP and lists a number of factors that should be followed to demonstrate that active marketing has been undertaken, subject to the specific circumstances of the proposal.
9. The appellant has submitted a number of letters from commercial letting agents³ that were used for the previous fitness studio application back in June 2018. The letters principally contain the professional opinions of the commercial letting companies and some mention of having tested the Class B1 market but with negative response. However, they described a different marketing scenario for a much larger floor area. More significantly, the proposed fitness studio is a Class D2 use, which LP Policy DM17 recognises as

³ Letter from Belchak Corin & Co (dated 25 June 2018) and letter from Dominion (dated 25 June 2018)

an example of an 'alternative employment generating use'. Hence there was no conflict with policy. The updated letter from Dominion⁴ does not offer any substantively different marketing evidence to that provided for the gym use.

10. The combined marketing evidence does not confirm whether Class B2 uses have been actively promoted. They do not detail the duration of any marketing period(s); whether the premises has been registered with the Council's 'Invest in Hackney' business support team; what property details were available to inquirers; rental levels; or contact information in the form of an advertisement board displayed prominently on-site advertising vacant B2 as well as B1 office uses. There was no letting/advertising board on the premises at the time of my visit, although some photographs submitted by both parties show a board on the front of the building advertising office space. But it is not clear when the photos were taken and if the board was just for marketing the upper office floorspace or part of the ground floor as well.
11. The lack of windows in the premises may make it unattractive as an office B1 use but this would not preclude a B2 use, which it was designed for. The proximity of residential uses to the appeal site was known at the time the condition was imposed, but even if the area has changed over time this does not necessarily make a Class B2 less suitable.
12. In conclusion, I find the marketing evidence in the previous letters and the update letter fall short of the substantive marketing requirements set out in Appendix 4 of the LP. They do not demonstrate that robust marketing efforts have been made to establish there is no demand for the vacant Class B2 floorspace or that alternative employment generating uses have been fully explored. As such, the change of use to Class A3 cafe/restaurant would result in the loss of the commercial floorspace and harm the Council's overall objectives of promoting and retaining employment land and floorspace for the wider economic benefit of the borough. Accordingly, the proposal would conflict with Policy 4.1 of the London Plan; CS Policies CS16, CS17 and CS18 and LP Policies DM14 and DM17, whose aims are outlined above.

Character and appearance

13. The pattern of development in the CA is broadly linear as it follows the alignment of Kingsland Road with small streets branching off on either side. The CA crosses the Regent's Canal and includes Kingsland Basin to the rear of the site. There is a mix of building styles, designs and ages evident in the CA, including new buildings under construction. The CA's significance stems from its historic importance as an old trading route in and out of London along Kingsland Road and the canal. The buildings generally reflect its commercial and industrial past and its current status as a PEA. The appeal building is a modern reflection of the area's mixed industrial and commercial history and its present uses. Despite the area's commercial character this has not led to a street scene cluttered by services, such as flues.
14. The proposed flue would be located on top of the roof, set back from the front of the building beyond existing roof plant. It would be a vertical cylindrical metal duct in front of the lift overrun and would protrude some 4m above the roof level.

⁴ Letter from Dominion (dated 17 December 2018)

15. The appeal building is close to the corner with Hertford Road and the corner is generally open to view. Therefore, as one approaches the appeal site, the CA and Kingsland Road from Downham Road the corner is a visually prominent feature. This makes the roofscape and profile of the appeal building visually exposed. As a result, the vertical alignment, height and width of the flue would add visual clutter and be unduly pronounced against the flat-roof blocky roofscape and skyline, and with it being closer to the end of the overall building. It would therefore be a discordant element on the building and street scene. Whilst it could be painted or screened to match the adjacent lift overrun that forms part of its backdrop, this would not overcome the vertical protrusion and disruption to the skyline. There are arials and another flue on an adjacent building as well as fire escape stairs, but all are either further back, less bulky and not as visually prominent as the appeal scheme would be.
16. Although new, the building is nonetheless an integral part of the CA and reflects the continued employment history of the area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is given to the desirability of preserving the character or appearance of a conservation area. In accordance with Paragraph 193 great weight should be given to the asset's conservation. The positive contribution that the host building makes to the CA would be diminished as a result of the proposal. The proposal would not preserve or enhance the character or appearance of the CA. The harm caused to the significance of the CA would be less than substantial and in such cases paragraph 196 of the Framework requires that the harm should be weighed against the public benefits. There would be a modest economic benefit from the provision of 5-6 jobs and the occupation of a vacant unit but this would not outweigh the harm to the character and appearance of the CA.
17. In conclusion, the proposed extract flue, due to its design and appearance, would harm the character and appearance of the host building and street scene and would not preserve or enhance the character or appearance of the CA. Accordingly, it would conflict with London Plan Policies 7.4, 7.6 and 7.8; CS Policies 24 and 25, and LP Policies DM1 and DM28. These collectively seek, amongst other things, to ensure high quality design that respects its surroundings and makes a positive contribution, conserving and enhancing the borough's historic environment and its heritage assets.

Other matters

18. The appellant refers to a previous A3 use on the site before the site was redeveloped, as evidenced in the appellant's Appendix 5. There is already a new A3 use nearby as part of the redeveloped scheme.

Conclusion

19. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

K. Stephens
INSPECTOR