
Appeal Decision

Site visit made on 22 July 2019

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Reference: APP/H5390/W/19/3228149

Unit B 69, 57 Parsons Green Lane, Fulham, London SW6 4JA

- 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 V McKeivitt (of Megan's) against the decision of the London Borough of Hammersmith & Fulham Council.
 - The application (reference 2018/03012/FUL, dated 10 September 2018) was refused by notice dated 7 November 2018.
 - The development proposed is described in the application form as "change of use from A1 to A1/A3".
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor of the premises from retail (Class A1) to a sui generis mix of restaurant (Class A3) and retail (Class A1) use, at Unit B 69, 57 Parsons Green Lane, Fulham, London SW6 4JA, in accordance with the terms of the application (reference 2018/03012/FUL, dated 10 September 2018), subject to the conditions set out in the attached Schedule of Conditions.

Preliminary points

2. Notwithstanding the description of the application that was given in the application form, the nature of the proposal can more clearly be expressed as set out in the appeal form, as the "change of use of the ground floor of the premises from retail (Class A1) to a sui generis mix of restaurant (Class A3) and retail (Class A1) use".
3. In this case, the change of use for which planning permission is now sought has already been carried out. Therefore, the application is to be treated as having been made under Section 73A of the Town and Country Planning Act 1990.

Main issues

4. There are two main issues in this appeal. The first is the effect of the scheme on the retail frontage in this part of Parsons Green Lane. The second is the effect of the proposed development on the residential amenities of neighbours (whether nuisance would be caused by reason of noise and smells).

Reasons

5. The appeal site is located in Fulham, between Parsons Green itself and Parsons Green Underground Station. The short section of Parsons Green Lane has a busy and vibrant commercial character, with a number of retail and non-retail outlets on the ground floor frontages and residential uses on upper floors. The non-retail premises in this section of the road include cafés or restaurants and an estate agency, though shops selling clothes are also present, as well as a Co-operative supermarket in a relatively new development on the opposite frontage to the appeal site. Other retail food outlets are to be found within walking distance.
6. The location is attractive and the site lies within the Parson's Green Conservation Area, where special considerations apply. In this case, however, the development for which planning permission is sought does not materially affect the character or appearance of the Conservation Area.
7. The unit that is the subject of this appeal is in operation as "Megan's by the green", offering organic coffee, brunch, lunch and dinner on their principal signage. It is laid out internally as a restaurant or coffee shop, with a counter that also sells takeaway food and specialities. This is described as a mixed use including both A1 (Shops) and A3 (Food and drink) and planning permission is now sought for the regularisation of the use. The appeal can be determined on this basis.
8. In relation to the first main issue in this appeal, Policy TLC3 of the 'Hammersmith & Fulham Local Plan' (dated February 2018) is directly relevant. In terms of retail policy, the appeal site lies within a designated "Neighbourhood Parade", where Policy TLC3 seeks to retain 60% of the total length of the Parade in A1 use. At the same time, however, the explanatory text in the Local Plan does recognise the relevance of "additional non-quota criteria, such as vacancy and marketing evidence" in decision making. It acknowledges that "other uses such as community services or small businesses could be permitted", in some circumstances.
9. The 'National Planning Policy Framework' (which was revised in February 2019) is likewise concerned to ensure the vitality of town centres, though it also allows for some flexibility and recognises the potential for change in the retail and leisure industries.
10. The unit which is the subject of this appeal previously formed part of a larger unit occupied by the retailer Budgens. That shop was closed in 2016, prior to the opening of the Co-operative, and the current use was initiated in the premises in October 2017. Although, visually, the restaurant use appears to dominate, a significant proportion of sales relates to a retail element.
11. The road frontages in the vicinity of the appeal site are mixed in use, although the Co-operative supermarket (in a new development on the opposite frontage) is undoubtedly of particular importance to the character of the locality. Other uses include a variety of businesses and the mixed nature of the premises at Megan's is compatible with this general character. Megan's does provide a useful facility for local residents and does enliven the street frontage. It also encourages economic activity in this central location, outside normal shopping hours, and it introduces a mixed use that includes a proportion of retail use

- (A1). All these are material considerations that weigh in favour of the scheme in the planning balance.
12. The development for which planning permission is now sought does not comply with the strict criteria that are set out in Policy TLC3 and no robust marketing evidence for the premises has been provided (though there is some evidence that the property was vacant for about one year before the current use was implemented).
 13. Nevertheless, considering the current character of the locality, I have concluded that, in practice, the mixed use at the appeal site does not undermine the vitality or viability of the area or unacceptably reduce the availability of convenient and sustainable shopping facilities in the area. In this case, the other material considerations to which I have referred and the benefits of the scheme to the locality outweigh the conflict with formal planning policy and justify the grant of planning permission.
 14. In relation to the second main issue in this appeal, Policies CC11 and CC13 of the Hammersmith & Fulham Local Plan (dated February 2018) are directly relevant. They are intended to protect residential properties from undue noise, smells or other forms of pollution. Again, these aims are consistent with the revised 'National Planning Policy Framework'.
 15. In their second reason for refusal, the local planning authority raise a concern that "insufficient information has been submitted" to enable them to be satisfied that noise and smells would not cause a nuisance to neighbours. Additional information has been submitted for the appeal, however. Moreover, it has been pointed out that the types of cooking that are carried out on the premises are limited, by the nature of the enterprise (notwithstanding the comments made by neighbours).
 16. In the light of the submissions and the operational experience of the business, it can be concluded that the impact of the change of use on residential amenities would be limited in practice, provided that suitable protective and maintenance measures were to be kept in place. This matter can be dealt with by conditions, however, and does not justify the refusal of planning permission.
 17. Evidently, the appeal site lies within an established urban area, which is "sustainable" in planning terms, and the development for which planning permission is sought would support the economic viability and social cohesion of the area, by providing a useful service to local people and visitors. It would not cause undue harm to local residents by reason of noise or smells. On balance, therefore, I have concluded that the benefits of the scheme outweigh the objections that have been raised and the conflict with the criteria that are set out in Policy TLC3.
 18. In short, I am persuaded that the scheme before me can properly be permitted, subject to conditions and, although I have considered all the matters that have been raised in the representations, I have found nothing to cause me to alter my decision.
 19. I have, however, also considered the need for conditions and, in imposing conditions, I have taken account of the conditions suggested by the Council in the usual way (without prejudice to their main arguments in the appeal),

subject to modifications necessary, in my opinion, in the interests of clarity and simplicity.

20. I have concluded that conditions are necessary to identify the approved drawing and to define the use, though the usual commencement condition is redundant in the circumstances. Other conditions are required to deal with the installations and processes that are necessary to protect local residents from noise and smells and to ensure the proper functioning of the uses hereby permitted. Although some information has been submitted with the appeal, I am convinced that various reports ought to be submitted for formal approval by the local planning authority, in the context of this appeal decision, to facilitate monitoring and enforcement in the future. In relation to the hours of opening I have accepted the suggestion made by the Council.
21. However, I am not persuaded that additional conditions are necessary to regulate repairs or other alterations to the shopfront or front elevation of the premises, beyond those controls that apply under the general planning legislation.

Roger C Shrimplin

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the approved drawing number 2158-001 Rev A (entitled "Unit as Existing and Proposed").
2. The premises shall be used only for purposes within Use Classes A1 (Shops) and A3 (Food and drink) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) and for no other purpose.
3. The use hereby permitted shall not be open to customers outside the following times:
0730-2300 on Mondays to Saturdays,
0800-2100 on Sundays and Bank Holidays.
4. No removal of refuse, nor of bottles or cans, to external bins or to refuse or recycling stores at the premises shall be carried out outside the following times:
0900-2000 on Mondays to Fridays,
1000-1800 on Saturdays, Sundays and Bank Holidays.
5. No organised delivery of food from the premises shall be carried out using motor vehicles.
6. Within one month of the date of this decision, a satisfactory Delivery and Servicing Management Plan shall have been submitted to the local planning authority for their approval in writing. Details shall specify the number of weekly deliveries and collections, the size of vehicles to be used, the times for deliveries and collections, vehicle movements and measures for quiet loading and unloading. The Delivery and Servicing Management Plan shall be implemented forthwith upon approval by the local planning authority and the uses hereby permitted shall not be carried on other than in accordance with the approved Plan.
7. Within one month of the date of this decision, a satisfactory Refuse and Recyclables Management Plan, for the proper storage, management and disposal of refuse and recyclables, shall have been submitted to the local planning authority for their approval in writing. The Refuse and Recyclables Management Plan shall be implemented forthwith upon approval by the local planning authority and the uses hereby permitted shall not be carried on other than in accordance with the approved Plan.
8. Within one month of the date of this decision, a satisfactory Noise Report shall have been submitted to the local planning authority for their approval in writing. The Noise Report shall include details of machinery, plant or equipment, any extract and ventilation system and ducting at the premises and shall provide that equipment shall be mounted with proprietary anti-vibration isolators and that fan motors shall be vibration isolated from the casing and adequately silenced and maintained as such. The recommendations of the Noise Report shall be implemented forthwith upon approval by the local

planning authority and the uses hereby permitted shall not be carried on other than in accordance with the recommendations of the approved Report.

9. Within one month of the date of this decision, a satisfactory Cleaning and Maintenance Plan for the extract system and odour control system shall have been submitted to the local planning authority for their approval in writing. The Cleaning and Maintenance Plan shall be implemented forthwith upon approval by the local planning authority and the uses hereby permitted shall not be carried on other than in accordance with the approved Plan.