The Planning Inspectorate

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: 09 October 2019

Appeal Ref: APP/X5210/W/19/3229023
35 Pratt Street, London, Camden NW1 0BG

- 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 Domino's Pizza UK and Ireland Plc against the decision of the Council of the London Borough of Camden.
- The application Ref 2018/3591/P dated 14 August 2018, was refused by notice dated 30 April 2019.
- The development proposed is the change of use from a restaurant (Use Class A3) to hot food takeaway (Use Class A5), installation of extraction and ventilation equipment and associated works.

Decision

1. The appeal is allowed and planning permission is granted for the change of use from a restaurant (Use Class A3) to hot food takeaway (Use Class A5), installation of extraction and ventilation equipment and associated works at 35 Pratt Street, London NW1 0BG in accordance with the terms of the application Ref 2018/3591/P dated 14 August 2018, and subject to conditions set out in the schedule at the end of this decision

Application for costs

2. An application for costs was made by Domino's Pizza UK and Ireland Plc against the Council of the London Borough of Camden. This application will be the subject of a separate Decision.

Procedural Matter

3. A duly executed Section 106 Agreement has been submitted since the appeal was lodged. It provides a 'Delivery and Servicing Plan' and a 'Waste and Recycling Plan'. This overcomes the Council's third and fourth reasons for refusal. The agreement meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations (2010) as amended as it would be necessary, relevant and fairly related to the proposed development. I have taken the planning obligation into account in my decision.

Main Issues

4. In light of the above, the main issues are i) whether the proposed development would result in harm to public health, and ii) the effect of the proposal on the living conditions of the occupiers of nearby residential properties with regards to noise, disturbance, air-quality and anti-social parking.

Reasons

5. The appeal property is a detached three storey former public house, which is locally listed and hence a non-designated heritage asset. Latterly the ground floor was a restaurant but is now vacant. The upper floors are in residential use. The property is located a short distance from Camden High Street and from other cafes and restaurants to the east along Pratt Street. There are blocks of flats opposite and immediately adjacent to the west (Carpenters Court). Alongside the property is an access leading to St Martin's Gardens, an enclosed landscaped public open space whose other entrance is off Camden Street. The wrought iron entrance gates on Pratt Street and the drinking fountain are Grade II Listed, and are designated heritage assets. The parties do not dispute that there are three primary schools within 400m walking distance of the site.

6. The proposal would be to change the use of the ground floor and basement from a café (Use Class A3) into a hot food takeaway (Use Class A5), but with only a small area on the ground floor for customer use. There would be also be a new shopfront, an extraction grille and timber enclosure to house plant for extraction and ventilation.

Effect on public health

7. Policy TC4 (Town Centre Uses) of the Camden Local Plan 2017 (CLP) seeks to ensure that development for town centre uses, including food and drink, do not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. In assessing such proposals there are various criteria to be considered including the mix and balance of uses within frontages for each centre, the cumulative impact of non-shopping uses and the health impacts of the proposed development. The policy's supporting text acknowledges that energy-dense fast food may be one of a number of contributing factors to obesity, particularly in children, and therefore the Council is aiming to improve the food environment of the borough. The policy does not specify that hot food takeaways must be a certain distance away from schools.

8. The draft London Plan Policy E9 seeks to resist hot food takeaways within a 400m walking distance of primary and secondary schools, and that boroughs that wish to set their own boundaries must be sufficiently justified. However, as the plan is currently going through independent examination I give Policy EC9 limited weight.

9. Appendix 4 of CLP Policy TC4 sets out the mix and balance of uses, and proportions of retail uses and the number of consecutive A3, A4 and A5 uses that will be permitted in Primary, Secondary and Sensitive frontages of the borough's various town centres. The Policy is also to be read in conjunction with Camden Planning Guidance on 'Town Centres and Retail' (the CPG), which provides further guidance on how planning applications will be treated in the individual town centres in the borough, reflecting the different characteristics and needs of each., and reiterates the numerical restrictions.

10. The CPG includes a map showing the boundary of Camden Town's town centre and its designated Primary, Secondary and Sensitive frontages. The appeal site lies outside Camden's town centre boundary and is not within a designated Primary, Secondary or Sensitive frontage. Hence the particular controls on the

proportion of non-retail uses or the number of consecutive non-retail uses in the designated street frontages does not apply to the appeal site. The premises is already a non-retail food and drink use so the proposal would not introduce a new non-retail use nor would it alter the number of such consecutive uses.

11. The Council's Statement and the comments of its Environmental Health Department show the locations of existing hot food takeaways relative to the appeal site and those within 400m of the nearest primary schools. Most of them are some distance away spread along Camden High Street within the defined town centre. I find there is sufficient separation between the various premises, as well as sufficient distance between them and the appeal site, to ensure there is no overconcentration. The nearest hot food takeaway to the appeal site is nearby on Bayham Street. I also observed a number of cafes/restaurants and commercial premises along Pratt Street between the appeal site and Camden High Street. However, their number and nature, together with the proposed use, would not result in an over-representation of hot food takeaways as to create a significant cluster or overconcentration.

12. The Council has presented evidence of high levels of childhood obesity and deprivation in the area. I concur with the Council that primary school children would be less likely to travel to school independently and have access to their own independent funds to patronise such a premises. Secondary school children would be more independent and would likely walk further and may visit the premises on their way to and from school. However, the proposed format of the business would be more directed towards deliveries than walk-in customers. This is reflected in the submitted floor plans that show a small customer area, with the majority of the premises given to the 'bake and serve' area, kitchens and storage.

13. The National Planning Policy Framework ('the Framework')[1] advises at paragraph 91 that decisions should enable and support healthy lifestyles including access to healthier food. A restaurant could occupy the appeal premises without planning permission and sell the same types of foods as a hot food takeaway. Therefore, a hot food takeaway would not necessarily sell worse food than a restaurant or food that is inherently bad.

14. In the absence of controls for the number of hot food takeaways in this part of Pratt Street or distances from schools, plus the fact the premises already has a café/restaurant use, I find there would be no loss of a retail use nor an overconcentration of hot food takeaways in the immediate area. As there would not be an over concentration of hot food takeaways uses, there would not be a harmful cumulative impact on public health. Accordingly, I find no conflict with CLP Policy T4, the aims of which are outlined above. In addition, the proposal would not conflict with advice in the Town Centres CPG.

Living conditions

15. The proposed use would operate Monday to Sunday between 11am and 11pm and this would be conditioned. According to the parties this would be similar to the opening hours of the previous restaurant that stayed open until 11.30pm Fridays to Sundays and to other restaurants along Pratt Street. With residential premises above, opposite and adjacent the proposed hours would be reasonable.

[1] Updated in February 2019

16. A restaurant would operate differently from a hot food takeaway. The latter would generally see a quicker turnover of customers, but they would be on the premises for a shorter time. With a small customer area inside the premises there would be less room for groups to gather, hence there would be less potential for antisocial behaviour. The Council's committee report refers to the Metropolitan Police 'Design Out Crime' Team having been consulted who confirmed other sites under the same operation did not result in anti-social behaviour.

17. There would likely be some noise and disturbance from customers entering and leaving the premises and this would be difficult to control. However, taking account of the small size of the customer area; there not being an overconcentration of such uses nearby; that the business would be more delivery-orientated than for walk-in customers; the hours of operation would be conditioned, and the site is not far from Camden High Street the proposal would not give rise to unacceptable levels of activity to cause significant harm to the living conditions of nearby residents in terms of noise and disturbance.

18. There is no dispute between the main parties relating to noise emitted from plant equipment. With appropriate mitigation, it would be within the Council's acceptable thresholds for noise, subject to conditions.

19. With regards comings and goings of delivery and servicing vehicles, there is a motorcycle parking bay opposite the site, as well as some on-street parking. The signed s106 agreement sets out various measures that would include, amongst other things, avoiding delivery vehicles arriving at the same time and specified unloading areas. This would go some away to appeasing concerns. There are no objections from the Highway Authority relating to traffic movements, parking or highway safety and I have not been presented with substantive evidence that the proposed development would result in anti-social parking. In addition, the Council has not provided any substantive evidence to indicate that delivery and servicing vehicles would significantly reduce air quality in the area. Therefore, I have not been persuaded that harm would be caused to the living conditions of nearby residents.

20. The Council's Environmental Health Team has no objection to the Odour Risk assessment and the details of the proposed extraction equipment submitted with the application, subject to conditions. Furthermore, the appellant's Odour Management Plan with regard to the site and its associated plant, was also deemed acceptable. I have no reason to come to a different conclusion.

21. Third parties have raised concerns that the proposed use would increase anti-social behaviour in the adjacent St Martin's Gardens. The premises would open until 11pm, so would not be open into the early hours. Pratt Street links with Camden High Street so is likely to attract some footfall in the evenings, even along its residential parts. Reference has been made to some recent anti-social behaviour in the Gardens, but no details have been provided as to the nature or frequency of such activity. As such, it is not possible to surmise that a hot food takeaway was the cause and that the proposed takeaway would do the same. I have not been advised if the gates to the Gardens would be locked at dusk, as is sometimes the case with public parks.

22. On balance, I find the proposed use would not have a harmful effect on the living conditions of occupiers of nearby residential properties. Accordingly, there would be no conflict with CLP Policies A1, A4 and TC4. These collectively

seek to manage the impact of new development to ensure the amenities of neighbours are protected.

Other matters

23. Under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a duty to have special regard to the desirability of preserving the listed building or its setting i.e. the entrance gates to St Martin's Gardens and drinking fountain. Furthermore, I must consider the effect on the locally listed building. The proposed plant would not significantly alter the rear elevation of the building and the ground-mounted plant at the rear would be screened by timber fencing within the rear area already enclosed by metal railings. Hence neither the hot food takeaway use or the proposed plant would affect the setting of the designated and non-designated heritage assets.

24. A number of local residents and a Local Councillor have objected to the proposal and I have covered most of their concerns above. The fact the operator is a 'chain' and already has a presence in Camden is not pertinent to the site specific planning considerations of the proposal. Some residents want the premises to return to its previous use of a public house. However, the Council cannot insist on this and the appeal before me is for a hot food takeaway. The premises can continue as a restaurant without planning permission if the hot food takeaway use was not implemented. I have no evidence before me to indicate that drainage is a problem with the building or within the area. The consideration of any advertisements on the building does not fall within the scope of this appeal as they are controlled by different legislation.

25. I have no evidence before me to suggest that the Council did not undertake the necessary public consultation. The Council states it sent email alerts and erected a site notice. The number of comments from local residents indicates to me that there has been considerable awareness of the proposed development.

Conditions

26. It is necessary for me to consider whether or not conditions could be imposed to control the risk of future harm. The Council has provided a list of conditions, which the Appellant agrees with. For clarity and to ensure compliance with the Planning Practice Guidance, I have amended some of the Council's suggested wording.

27. In addition to the standard condition that limits the lifespan of the planning permission, it is necessary to ensure that the development is carried out in accordance with the approved plans for the avoidance of doubt. I have amended this to include the additional noise assessment submitted with the appeal. The appellant's Waste Management Plan and Delivery and Serving Management plan have been superseded by the requirements of the s106 agreement.

28. In the interests of living conditions of occupiers of nearby residential properties conditions are necessary to restrict operating hours, acoustic insulation of plant, operating hours of the air conditioning and extract plant, and that noise levels are in accordance with the submitted Odour Management Plan.

29. As the building is locally listed, conditions would be necessary to limit various alterations and additions to reduce visual clutter and remove redundant plant.

30. The Council has suggested requiring materials to resemble those of the existing building. However, I find this to be ambiguous and unnecessary as the plans show the details of the new shopfront, plant, machinery and associated works.

Conclusion

31. Having regard to all matters raised, I conclude that the appeal should succeed, and planning permission should be granted subject to conditions.

K Stephens
INSPECTOR

SCHEDULE OF CONDITIONS:

1) The development hereby permitted shall begin not 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 and documents:

   Location Plan (B10413-AEW-PJ003029-XX-DR-0005 Rev A);
   Block Plan (B10416-AEW-PJ003029-XX-DR-0006 Rev H);
   Existing GA Plan (B10413-AEW-PJ003029-ZZ-DR-0001 Rev B);
   Existing Elevations (B10413-AEW-PJ003029-ZZ-DR-0002 Rev B);
   Proposed GA Plan (B10413-AEW-PJ003029-ZZ-DR-0003 Rev F);
   Proposed Elevations (B10413-AEW-PJ003029-XX-DR-0004 Rev F).

   Plant Noise Assessment (Report 18/0393/R01) prepared by Cole Jarman, dated 28/08/2018;
   Environmental Noise Assessment (Report 18/0393/R02) prepared by Cole Jarman, dated 17/05/2019;
   Specification and Defra Report, dated 2 August 2018;
   Proposed Ventilation System Annex B report B10413-AEW-PJ0023755-XX-SP0001[B], dated 22/11/2018;
   Proposed Ventilation System Annex C Document report BB10336-AEW-PJ003192-XX-SP-0002, dated 02/08/2018;
   Preventative Maintenance Contract with Purified Air, dated 13 August 2018.

3) The use hereby permitted shall only take place between the following hours: 11:00 hours - 23:00 hours, Mondays to Sundays.

4) The development shall not be brought into use until the air conditioning and extract plant has been provided with acoustic isolation, sound attenuation and anti-vibration measures in accordance with the details hereby approved. All such measures shall thereafter be retained and maintained in accordance with the manufacturers' recommendations.

5) Notwithstanding the cold room compressor, the air conditioning and extract plant hereby approved shall only be operational between the hours of 11:00 hours - 23:00 hours, Mondays to Sundays.

6) The development shall not be brought into use other than in complete accordance with the Odour Management Plan (OMP), as set out in the details provided in the Specification and Defra Report dated 2 August 2018, including Annex B (SP-0001-[B]) dated 22.11.2018, and Annex C (SP-0002) dated 02.08.2018, and the Preventative Maintenance Contract dated 13 August 2018, and all other approved documents setting out cleaning, maintenance, filter replacements and servicing commitments, in accordance with manufactures recommendations hereby approved. The consolidated Odour Management Plan shall be kept on the premises at all times and be made available upon request by visiting inspecting officers for the Council.

7) Noise levels at a point 1 metre external to sensitive facades shall be at least 10dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 15dB(A) below the LA90, expressed in dB(A).

8) The development shall not be brought into use until all existing redundant plant equipment has been removed from the existing building.

9) No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials, satellite dishes or rooftop 'mansafe' rails, other than those hereby permitted, shall be fixed or installed on the external face of the building.