



Appeal Decision

Site visit made on 4 November 2019

by C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2019

Appeal Ref: APP/X5990/W/19/3234214

52 Lupus Street, London SW1V 3EE

- 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 Town Sky Investment Ltd against the decision of City of Westminster Council.
 - The application Ref 18/10574/FULL, dated 14 December 2018, was refused by notice dated 8 May 2019.
 - The development was originally described as 'Mixed Use as (Sui Generis) Sandwich Bar (Use Class A1) and cafe (Use Class A3).'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was retrospective. I have considered the appeal scheme accordingly.

Main Issues

3. The effect of the development on:
 - a) local shopping facilities; and
 - b) the living conditions of the occupants of neighbouring residential properties and local environmental quality, with regard to noise and odour.

Reasons

Local shopping facilities

4. The National Planning Policy Framework (Framework) states at paragraph 85 that 'planning policies and decisions should support the role that town centres play at the heart of local communities', and that 'planning policies should define a network and hierarchy of town centres and promote their long-term vitality and viability'.
5. Policy S21 of the Westminster City Plan (CP) seeks to maintain the concentration of shop uses within designated Shopping Centres to protect their attractiveness to shoppers, and states that 'existing A1 retail will be protected throughout Westminster except where the council considers that the unit is not viable, as demonstrated by long-term vacancy despite reasonable attempts to let'.

6. Westminster Unitary Development Plan (UDP) Policy SS7 states that 'outside the Core Frontages....permission will be granted for loss of an A1 use at ground floor level if the proposal would not be detrimental to the character or function of the centre, nor have a harmful effect on the vitality or viability of the centre; would not reduce the range of local convenience shops, or have a detrimental effect on local shopping facilities; would not result in more than three non-A1 units located consecutively in a frontage; and would not undermine the balance of A1 to non-A1 uses within the frontage or centre as a whole'.
7. As set out at Framework paragraph 213, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework. Rather than seeking 'to apply a blanket safeguard to a particular mix of uses' as asserted by the appellant, CP Policy S21 and UDP Policy SS7 take a positive approach to the growth, management and adaptation of centres as required by the Framework. Accordingly, I afford them full weight in considering this appeal.
8. The appeal relates to a ground floor unit at the corner of Lupus Street and St George's Drive, within Lupus Street Local Centre but outside the defined 'Core Frontage'. A pharmacy (Class A1) previously operated from the premises, although I have conflicting information from the appellant and interested parties as to precisely when this use ceased. The current use of the premises commenced, without the benefit of planning permission, in September 2018.
9. The premises are known as Café de Börek. Much of the sizeable floor area is given over to tables and chairs; 35 covers are shown on the submitted plans. I noted during my site visit, which took place mid-morning on a weekday, that most of the tables were occupied by customers eating and drinking, and that table service was in operation. The breakfast menu displayed on the counter included poached and scrambled eggs, salads, toasties and croissants. A range of food was being prepared and served during my visit, including food being heated in the sizeable Rational SelfCookingCenter in the kitchen.
10. At the time of my visit, a display fridge stocked with cold drinks and a freezer containing ice cream were located in the seating area and food items for sale were displayed on the counter. However, based on my observations and the submitted evidence, the premises appear to operate as a café (Class A3) with only limited ancillary Class A1 retail sales.
11. The City of Westminster Shopping Centre Health Check Survey (Health Check) published in 2014 found that the Lupus Street Local Centre had a higher than average amount of convenience retail floorspace. However, it also found that the overall number of Class A1 retail units in the centre decreased by 2 units between 2007 and 2013, and local convenience shops reduced from 18 to 12. The Council states that the 2017 Health Check reveals the number of local convenience shops has since fallen from 12 to 8, though I do not have a copy.
12. There may be a downturn in footfall within some UK town centres, together with an increase in internet shopping. The Government's 2018 consultation on 'Planning reform: Supporting the high street and increasing the delivery of new homes' sought views on reforms to support high streets and 'meet the demands of the 21st century consumer'. However, I have no evidence that there have been any subsequent changes to permitted development rights of relevance to the appeal.

13. I note the 2014 Health Check states at paragraph 2.3 that it is important to maintain the existing local range of convenience shops in the Lupus Street Local Centre as they encourage walking and make city life more practical and attractive. This accords with paragraph 92 of the Framework which states that planning policies and decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.
14. I noted only a small number of vacant units in the centre during my site visit. Moreover, I have not been provided with any evidence that the continued A1 retail use of the appeal premises is not viable. Nor do I have any marketing evidence to demonstrate that reasonable attempts were made to let the unit prior to the commencement of the use which is the subject of this appeal.
15. On the basis of the submitted evidence and my observations on site, the use does not result in more than three non-A1 units located consecutively in a frontage. However, it reduces the range of local convenience shops in the Local Centre. This undermines the balance of A1 to non-A1 uses within the centre as a whole to the detriment of the character and function of the centre and its vitality and viability.
16. For the foregoing reasons I conclude that the development has a harmful effect on local shopping facilities. Thus, it fails to accord with the retail protection aims of CP Policy S21 and UDP Policy SS7.

Noise and odour

17. There are residential properties directly above and opposite the appeal premises and, during my site visit, I did not note any evening or late night uses in the immediate vicinity. Although situated on a fairly busy road, I would therefore expect pedestrian and vehicular activity to reduce and the area to be quieter throughout the evening.
18. The appellant states that 'the opening hours are restricted from 10am to 10pm each day'. Noise is likely to result from customers arriving at and departing from the appeal premises, talking and possibly congregating in groups on the footway outside. In addition, noise may well arise from staff legitimately engaged in activities such as clearing away and locking up the premises at closing time. Such noise will occur directly beneath the windows of the upper floor flats and in close proximity to other neighbouring residential properties. This will be more intrusive during the evening when background noise levels are likely to be lower. Residents have a reasonable expectation that their living environment should be quieter at this time; indeed, I note representations from neighbours in this regard.
19. For the reasons set out above I conclude that the development has a harmful effect on the living conditions of the occupants of neighbouring residential properties with regard to noise and local environmental quality. As such, it fails to comply with the amenity protection aims of CP Policies S24, S29 and S32 and UDP Policies TACE8 and ENV6. Whilst the Council's decision notice also refers to CP Policy S31 and UDP Policies ENV5 and ENV7, these relate to air quality and noise emitted by plant and machinery and internal activities, and so are not applicable to my findings of harm regarding externally generated noise.

20. Noise and odour generated within the appeal premises could be controlled through the imposition of suitably worded planning conditions if the appeal scheme were acceptable in all other respects. Accordingly, I conclude there would be no harm to local environmental quality or conflict with the amenity protection aims of CP Policies S24, S29, S31 and S32 and UDP Policies TACE8, ENV5, ENV6 and ENV7 in relation to these matters.
21. The Council's decision notice refers to conflict with UDP Policy ENV13. However, as explained in the supporting text, this policy appears to primarily relate to residential accommodation. I have no evidence that it is directly relevant to this appeal case, and therefore I have not taken it into account in this instance.

Other Matters

22. The appellant refers to an appeal decision T/APP/X5990/A/98/290861/P2 dated 28 October 1998 in respect of a Class A3 use at 130 Edgware Road. However, on the basis of the limited details before me, it appears that the main issue in that case related to the effect on the living conditions of nearby residents in terms of fumes and odours. I have found no harm in relation to this matter, and in other respects the appeal schemes appear to differ. In any event, I must determine the appeal on the basis of the individual circumstances of the case and the submitted evidence.
23. The appeal site is located in Pimlico Conservation Area (CA). As such, I have a statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. No external alterations form part of the appeal scheme. I note that the Council has raised no objection in relation to the effect on the CA. Based on the evidence before me and my observations on site I see no reason to take a different view and conclude the appeal scheme preserves the character and appearance of the CA. A finding of no harm in this regard is a neutral matter.
24. The current use of the appeal premises may well provide a valuable community and social facility for all its customers. However, the adverse impacts set out above outweigh any such benefits.

Conclusion

25. The policies which are most important for determining the appeal are not out-of-date and so the scheme does not benefit from the presumption in favour of sustainable development as set out in paragraph 11 of the Framework. I have found conflict with the development plan, and there are no material considerations which indicate that the decision should be taken otherwise than in accordance with it.
26. Therefore, for the reasons given above and having had regard to all other matters raised I conclude that the appeal should be dismissed.

CL Humphrey

INSPECTOR