
Appeal Decision

Site visit made on 19 November 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 03 December 2019

Appeal Ref: APP/X5990/W/19/3236258

10 Little Newport Street, London WC2H 7JJ

- 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 Yap Leong against the decision of City of Westminster Council.
 - The application Ref: 18/05612/FULL, dated 4 July 2018, was refused by notice dated 11 March 2019.
 - The development proposed is use of the ground floor and basement for a hot food take away (Use Class A5) and installation of extract ducting.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal building forms part of a Grade II listed terrace of houses, at 8-10 Little Newport Street, dating from circa 1772 and altered in the mid-19th century with the addition of shopfronts. The site also falls within the Chinatown Conservation Area (CCA).
3. As the appeal relates to a listed building within a conservation area, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
4. The Council has already granted listed building consent for the proposed changes¹ and the appeal relates solely to the refusal of planning permission. The Council also considers that the proposal would not cause harm to the character or appearance of the CCA. The external physical changes relate to the installation of extract ducting within a rear lightwell, backing onto the rear of an adjacent terrace. It would not be visible from the public domain and private views would be limited. Therefore, given the listed building consent and the Council's assessment, I see no clear reason to take a different view from the Council regarding the effect on designated heritage assets.

Main Issue

5. The main issue is the effect of the development on the retail character and function of the area.

¹ 18/05613/LBC

Reasons

6. The building at No 10 comprises a basement, ground and three upper floors. The appellant confirms that the proposal is to change the use of the ground floor and basement from retail (Class A1 use) to a hot food takeaway (Class A5 use). The Council Officer's Report advises that at the time of the Officer's site visit the unit was in retail use as a local convenience store ('Kaya'), although at the time of my site visit it was operating as a juice bar ('Yunique').
7. Policy S7 of the Westminster City Plan (WCP)² states that the unique status and offer of the 'West End Special Retail Policy Area' (WESRPA), which the appeal site falls within, will be maintained and enhanced. One of the priorities set out in policy S7 is '*improved retail space*'. The 'Reasoned Justification' to the policy explains that: '*The location, accessibility and scale of the Primary Shopping Frontages, together with their return frontages, make them especially suitable for retail growth. A1 Retail should be provided at basement to first floor levels to maintain their character and to reflect their importance at the top of London's retail hierarchy*'.
8. In support of that approach, policy S21 of the WCP says 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.*' Similarly, policy SS 5 of the Council's Unitary Development Plan (UDP)³ seeks to secure an appropriate balance of town centre uses in the Core Activities Zone (CAZ), with restrictions on the concentration of non-A1 uses. UDP policy TACE 9 also seeks to resist entertainment uses, such as takeaways, where they would have an adverse effect on the character or function of an area. Policy S24 of the WCP similarly requires that new 'entertainment' uses will need to demonstrate that they would be appropriate in terms of, amongst other things, the character and function of the area.
9. Therefore, the general thrust of development plan policies appears to be to maintain an appropriate balance of uses, while retaining A1 retail units, to ensure that the character, vitality and viability of the WESTPRA and the CAZ are maintained and enhanced.
10. No evidence has been submitted by the appellant to suggest that the existing A1 retail unit is not viable, and it currently appears to be in use. Therefore, contrary to the appellant's assertion, the proposal would clearly conflict with policy S21 of the WCP which aims to protect existing retail uses. The northern side of Little Newport Street consists of nine units and a small kiosk fronting the street at ground floor level. At the time of my site visit, three units were in restaurant or takeaway use, four were in retail use, including the appeal premises, and two units at Nos 12-13 were unoccupied. There is also a restaurant on the corner with Newport Place and another restaurant on the other side of the street on the corner with Charring Cross Road. Therefore, the proposal would result in the loss of a retail unit and contribute to a predominance of non-A1 uses along the street, contrary to the intended thrust of relevant development plan policies.

² November 2016

³ Adopted in January 2007

11. The appellant refers to the 'Chinatown Supplementary Planning Guidance' (SPG) and has provided an extract from it. Although the date of the SPG is unclear from the extract, given that it only refers to the UDP, it would appear to pre-date policies in the more recent WCP. Moreover, supplementary planning guidance does not form part of the development plan and, as it is guidance, it does not attract the same weight as development plan policies. In any event, the quotation cited by the appellant simply provides a general description of the commercial nature of the area, including the concentration of restaurants, public houses, cafes and takeaways, which it indicates is a high proportion. However, while they contribute to the character of the area, I am not persuaded that would justify an over-concentration of such uses, when the thrust of relevant development plan policies is to maintain an appropriate balance of uses, which includes retaining A1 retail uses, where possible.
12. While the appellant refers to the limited scale of the appeal site, which relates to a ground floor and basement of less than 150 sqm, the relevant development plan policies still apply to small development. They seek to address the cumulative effect of loss of retail frontage and prevent a concentration of A3 and 'entertainment' uses in a street or an area.
13. The appellant says that there is no evident planning history of permitted A5 uses within Little Newport Street and that, therefore, the proposal would not result in an overconcentration of mixed uses. However, limited details are provided and that does not address the loss of a retail use or the apparent predominance of restaurants and takeaways ('entertainment' uses) along the street.
14. I also understand that a similar proposal was previously dismissed on appeal partly on the basis that '*...the addition of a further non-retail unit would adversely affect the balance of uses, which would ultimately threaten the vitality and viability of the locality.*'⁴ The Council advises that the uses along the street have not changed since that previous linked appeal decision. My findings on that issue appear, therefore, to be broadly consistent with those of the previous Inspector and I consider that the proposal would have a similar detrimental effect, in that respect.
15. The above factors lead me to conclude that the proposal would adversely affect the retail character and function of the area. It follows that the development would be contrary to policies S7, S21 and S24 of the WCP and policies SS 5 and TACE 9 of the UDP which, essentially, seek to ensure that there is an appropriate balance of retail and other uses to protect the character and function of an area and to safeguard the vitality and viability of a shopping frontage or locality.

Other Matters

16. The appellant says that the development would not have an adverse effect on living conditions of neighbouring occupiers. Whilst that may be, those matters did not form part of the Council's reasons for refusal. Moreover, the absence of a significant adverse effect on living conditions is neutral and cannot be advanced as a positive benefit of the development. Similarly, the lack of third-party objections and the fact that listed building consent has been granted by

⁴ APP/X5990/W/17/3184270 and 3184271

the Council for the proposal are not relevant to the main issue dealt with above.

Conclusion

17. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR