
Appeal Decision

Site visit made on 7 January 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Appeal Ref: APP/A5840/W/19/3239195
16 Denmark Hill, London SE5 8RZ

- 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 Aamir Majeed against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/0916, dated 22 March 2019, was refused by notice dated 21 May 2019.
 - The development proposed is described as: 'Change of use A1 to A3 restaurant'.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Aamir Majeed against the Council of the London Borough of Southwark. This application is the subject of a separate Decision.

Procedural Matter

3. The description of development used in the banner heading above is taken from the application form. However, the proposal also included the installation of extraction equipment to the rear of the premises, and was described on the Council's decision notice as a 'Change of use from Shop (Use Class A1) to Restaurant (Use Class A3) with installation of an extraction system to rear elevation'. The Council determined the application on that basis, and I have done the same.

Main Issues

4. The main issues are:
 - The effect of the development on the living conditions of the occupiers of the flats above and adjacent to the appeal property, having particular regard to noise and odour; and
 - The effect of the proposed change of use on the vitality and mix of services in the protected shopping frontage.

Reasons

Living conditions

5. The building within which the appeal property sits has three storeys plus a mansard level at the front facing onto Denmark Hill, and a two-storey outrigger to the rear. The proposal is a change from its current use as a shop within Use Class A1 to a café/restaurant within Use Class A3, along with the installation of a ventilation/extraction system to the rear.
6. The upper floors of the appeal property, as well as those of the adjoining buildings, are used as flats. The proposed extraction flue would run up the rear wall of the two-storey outrigger. It would discharge above the eaves of the outrigger but, although there would be some horizontal separation, it would be below the eaves and windows of the main part of the building. While it is not unusual for there to be flats above cafés and restaurants in town centres, it is nonetheless important that the uses can coexist in a way which does not cause unacceptable harm to residents' living conditions. No substantive evidence has been provided to demonstrate that the design, positioning and operation of the flue would not lead to nuisance from noise and smells for residents of the upper flats in particular. As a consequence, I am not satisfied that the development would not have a significant adverse effect on living conditions of occupiers of the flats above and adjacent to the appeal property. Furthermore, given the close proximity of the residential properties it would not be reasonable to address a fundamental matter such as the positioning of the flue by way of a planning condition.
7. The proposal therefore conflicts with Policy 13 of the 2011 Southwark Core Strategy and Saved Policies 3.1 and 3.2 of the 2007 Southwark Plan (the SP), which together require developments to reduce air and noise pollution, and to protect the living conditions of neighbouring occupiers. For the same reasons it would fail to accord with the provisions of the 2019 National Planning Policy Framework, in particular paragraph 127 which seeks to create places which have a high standard of amenity for existing and future users.

Protected shopping frontage

8. The appeal site is within Camberwell District Town Centre (Camberwell DTC), and sits within Protected Shopping Frontage (PSF) No. 24, which is defined in the development plan. Saved Policy 1.9 of the SP seeks to preserve the vitality and viability of these shopping areas by ensuring that they can continue to offer a mix of goods and services to local people, and that their retail function is protected. In order to achieve this, SP Policy 1.9 indicates that changes of use from Use Class A1 will be permitted as long as certain criteria are met.
9. Criterion (i) is that the proportion of units in A1 use within any PSF would not fall below 50%. The appellant has stated that the proportion of units in A1 use within the PSF is 62%, although the Council disputes this and indicates that 45% of units within PSF 24 were in A1 use at the time of its most recent survey. From the information before me it is clear that the appellant's survey covers only part of the PSF, and also includes a number of units which fall outside the PSF. My observations at the time of my site visit tallied closely with the Council's survey, and although there was a small number of premises where A1 uses had opened or closed in the intervening period this had not significantly altered the balance within the PSF. On this basis, I consider that

the proportion of units in A1 use within PSF 24 falls some way below 50%, and the proposal therefore does not comply with this criterion.

10. Criterion (ii) requires that the premises have been vacant for a period of at least 12 months with sufficient effort to let the property being demonstrated, or that there has not been a profit over a two-year period. Marketing information provided pre-dates the premises' current use as an electronics shop and, although it is suggested that the current use is in decline, no further evidence has been provided to substantiate this. I therefore also consider that this criterion is not met.
11. Criterion (iii) requires that the proposal would not result in a material loss of amenity for surrounding occupiers, which I have addressed above in the section on living conditions. Given my findings on that matter, I do not consider that the proposal complies with this requirement.
12. Criterion (v) is that the proposal would not harm the vitality or appearance of the PSF. The loss of the A1 unit would increase the number of non-retail uses in Camberwell DTC in general and the PSF in particular. Although I acknowledge that the individual effects of the loss of a single small shop within a PSF of more than 160 units would be limited, nonetheless the vitality of the centre would be likely to be diminished as a consequence of the reduced retail offer. While no harm to the appearance of the PSF has been identified, the proposal would not comply with this criterion as a whole.
13. A café or restaurant would be visited by members of the public, and therefore the proposal would comply with criterion (iv). However Policy 1.9 requires proposals to comply with all five criteria, which the proposal before me does not. Consequently, I conclude that the proposed change of use would unacceptably harm the vitality and mix of services in the protected shopping frontage.
14. The proposal therefore conflicts with Saved Policy 1.9 of the SP, which seeks to ensure that shopping areas remain viable and vital through providing a mix of uses, including retaining retail uses.

Other matters

15. The appeal property lies within the Camberwell Green Conservation Area, and I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The Conservation Area is described in the Camberwell Green Conservation Area Appraisal as being distinctive for its three and four storey blocks of buildings which typically have finely detailed upper storeys repeated the length of the street frontage to create very strong architectural rhythms. Although the Appraisal suggests that the quality of the Conservation Area is somewhat marred by badly-designed shop fronts, I note that the appeal site currently retains some period features alongside its modern fascia.
16. The proposed ventilation flue would be behind the building and not visible from public spaces. The submitted drawings also show minor changes to the shop front, but had I been minded to allow the appeal conditions could have been used to ensure that the details of these changes would be acceptable in design terms. I am therefore satisfied that the proposal would preserve the appearance of the Conservation Area. Given the town centre location, I am also

satisfied that the proposed change of use would not alter the Conservation Area's overall character. This lack of harm to the Conservation Area does not, of course, mitigate the other harm which I have identified.

17. The appeal property has previously had a temporary change of use from A1 to A3 under the provisions of the Town and Country Planning (General Permitted Development)(Amendment)(England) Order 2013, on the basis of a notification from the Council in 2014 that prior approval was not required. I have not been provided with full details of that application. However, the criteria against which a prior approval application in respect of such a change of use is assessed are considerably narrower than those which apply for an application for planning permission. That a 'prior approval not required' notice for a temporary A3 use was issued in 2014 is therefore a point which carries minimal weight in my determination of this appeal.
18. Similarly, that the appeal property was operating as an A3 use immediately before it was acquired by the appellant is of little relevance in determining this appeal, as it is the effects of the change from its current A1 use which must be assessed against the development plan.
19. Finally, the appellant has drawn my attention to a number of other cases within Southwark where changes of use from A1 to A3 have been permitted. While I have not been provided with full details, one of the examples provided is from several years ago, and the other two are in other parts of the borough. None therefore appears to be comparable to the case now before me, which I have considered on its own merits and find would cause harm as described above.

Conclusion

20. For the reasons given above the appeal is dismissed.

M Cryan

Inspector